

Hazardous Materials Cost Recovery Ordinance

WHEREAS, the City Commission of the City of Gainesville finds and declares that "hazardous materials," as defined herein discharged from their designated containment or transport systems into the environment under uncontrolled conditions can threaten the health, safety, and welfare of the people, damage or destroy property, and degrade the quality of the environment; and

WHEREAS, the City Commission has determined that prompt response to and abatement of uncontrolled hazardous materials discharges is vital to the protection of people, property, and the environment; and

WHEREAS, the City Commission has determined that response to hazardous materials emergencies requires:

- (1) the use of proper equipment and supplies,
- (2) the repair or replacement of such equipment and supplies ,
- (3) extensive decontamination of reusable equipment or supplies, and
- (4) disposal of wastes generated during the incident; and

WHEREAS, the City Commission has determined, subject to the provisions contained herein, that the reimbursement for the cost of such equipment, supplies, decontamination and/or waste disposal from the producer, manufacturer, transporter, warehouse, wholesaler, retailer, disposer, and/or consumer of hazardous materials is in the best interest of people, property, and the environment; and

WHEREAS, the Gainesville Fire Rescue Department is the provider of hazardous materials emergency response services in the City of Gainesville; and

WHEREAS, the Gainesville Fire Rescue department is, by interlocal agreement, also a member of the "North Central Florida Regional Hazardous Material Response Team" (NCFRHMRT), which is designated by the North Central Florida Local Emergency Planning Committee (NCFLEPC) to provide emergency response and control services for hazardous materials incidents within those counties and municipalities who are members of the NCFRHMRT; and

WHEREAS, the City Commission hereby declares the intent of the City of Gainesville to establish this ordinance to allow the City of Gainesville Fire Rescue Department to recover the cost of equipment, supplies, decontamination, waste management (treatment, storage, or disposal) and related expenses associated with the

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response to and mitigation of a hazardous materials incident within the municipal boundaries and response area serviced by the Gainesville Fire Rescue Department pursuant to contract, interlocal agreement or mutual aid agreement;

Section One: Short Title

This Ordinance shall be known as and may be cited as the "Hazardous Material Incident Cost Recovery Ordinance"

Section Two: Authority

The City of Gainesville has the authority to adopt this ordinance pursuant to the provision of Chapter 166 and Chapter 252, Florida Statutes.

Section Three: Scope *(For Counties as an option)*

This ordinance shall apply to all of the unincorporated area of "Any" County. It shall also apply to the areas of those municipalities within "Any" County which enters into an interlocal agreement with "Any" County to implement this ordinance.

Section Four: Intent and Purpose

This ordinance is intended to provide for recovery by the City of Gainesville of costs incurred in the response and recovery efforts related to hazardous material incidents. This ordinance is also intended to provide for recovery of costs incurred by entities other than the City of Gainesville which are requested by the City of Gainesville to assist during a hazardous materials incident. In addition, it is intended to provide for cost recovery for damages to natural resources and government-owned properties.

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Section Five: **Rules of Construction**

The provisions of this ordinance shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare of the citizens and residents of the City of Gainesville.

Section Six: **Definitions**

A) **Cost(s)** shall mean and include, but is not limited to:

1. All costs incurred for response, containment and/or removal and disposal of hazardous materials or remedial action.
2. Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a hazardous material incident.
3. Costs of any health assessment or health effects study carried out as a necessity resulting from a hazardous materials incident.
4. Labor, including benefits, overtime and administrative overhead, exclusive of normal departmental operations.
5. The cost of operating, leasing, maintaining, repairing, and replacement where necessary of any equipment.
6. Contract labor and equipment.
7. Materials, including but not limited to, absorbents, foam, disperants, overpack drums, or containers.
8. Supervision and verification of clean-up and abatement.
9. Legal and professional costs.
10. Labor and equipment obtained directly by the City of Gainesville, their agencies or agents, and other agencies.

1. **Fire Chief** shall mean the Chief of the fire department or district which has responded to a hazardous materials incident.
2. **Hazardous Material** shall mean any substance or material in any form or quantity which poses an unreasonable risk to safety, health, or property.
3. **Hazardous Substance** shall mean any material which when discharged may be harmful to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public or private property, shorelines and beaches.

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4. **Hazardous Material Incident** shall mean actual or threatened release of hazardous substances or materials that pose an immediate threat to the health, safety or welfare of the population, including hazardous waste.
5. **Incident Commander** shall mean the Senior Fire Official at the site of the hazardous material incident; or the initial senior on-scene response official in the absence of the Senior Fire Official; or a Unified Command Structure which delegates control to officials from more than one agency.
6. **Natural Resources** shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, or otherwise controlled by the City of Gainesville.
7. **Recovery** (from an incident) shall mean a phase of emergency management which restores the site of an incident to pre-emergency conditions.
8. **Release** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant).
9. **Response** shall mean a phase of emergency management which occurs during and immediately following an incident. Provides emergency assistance to victims of the event and reduces the likelihood of secondary damage.
10. **Responsible Party** shall mean the person(s) whose negligent or intentional act or omission caused a release; or, the person(s) who owned or had custody or control of, the hazardous substance or waste at the time of such release without regard to fault or proximate cause; or, the person(s) who owned or had custody or control of the container which held the hazardous substance at the time of or immediately prior to such release without regard to fault or proximate cause. "Responsible Party" may also include a corporations or partnership, facility, or other type of business entity.

Section Seven: Hazardous Materials Incidents - Liability for Costs

The Incident Commander or Fire Chief is hereby duly authorized to take all measures to respond to, stabilize and remediate hazardous materials incidents. Any responsible party who causes a hazardous material incident shall be liable for the payment of all costs incurred in response to and remediation of such an incident.

The City of Gainesville will seek all available remedies at law to include the provisions of this ordinance, against any parties responsible for any environmentally

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damaging event, to include those actions and remedies available under the United States Bankruptcy Code relating to such matters.

Section Eight: **Establishment of Special Revenue Fund**

The City of Gainesville shall establish a special revenue fund, which shall be used only to reimburse agencies for costs incurred as a result of releases or threatened releases or hazardous materials.

Section Nine: **Collection and Disbursement of Funds for Cost Recovery**

The Gainesville Fire Rescue Department shall serve as the City's agent for collecting invoices and billing the responsible party for costs. Agencies of the City of Gainesville or organizations responding to a hazardous materials incident according to the responsibilities set forth in the LEPC Region 3 Hazardous Materials Response Plan or at the request of the City of Gainesville, will be eligible to submit bills.

Invoices that identify eligible costs under this ordinance shall be submitted to the Fire Chief or his designee within ten (10) working days after the costs were incurred or identified. Submitted invoices should include sufficient documentation for cost reimbursement (i.e., copies of time sheets for specific personnel, copies of bills for materials, equipment, and supplies procured or used, etc.). Accepting invoices from agencies outside the City of Gainesville shall not incur liability to the City to pay costs from such agencies until payment is received by the City of Gainesville from the responsible party.

The Fire Chief or his designee shall submit one or a series of consolidated invoice(s) to the responsible party identifying agencies or agents and their specific costs for reimbursement. The responsible party shall issue a certified check to the City within sixty (60) days of receiving a consolidated invoice. All funds received under the authority of this ordinance shall be deposited into the special revenue fund established in Section Eight (8).

Section Ten: **Verification and Supervision**

In the event that any person(s) undertakes, either voluntarily or upon order or direction of the Incident Commander or Fire Chief, to clean up or abate the effects of any hazardous material unlawfully released into the environment, the Incident Commander or

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Fire Chief may take any action necessary to supervise or verify the adequacy of the cleanup or abatement. The person(s) described in Section Seven (7) of this ordinance shall be liable to the City for all costs incurred as a result of such supervision or verification.

Section Eleven: **Conflict With Other Laws**

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the more restrictive requirements shall apply.

Further, this ordinance shall not restrict or replace cost recovery from funding sources available under state and federal regulations such as the Revolving Fund established under Section 311 (K) of the Federal Water Pollution Control Act {33 USC 1321 k}; the Hazardous Substance Response Trust Fund established under Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9611); and the Florida Coastal Protection Trust Fund established under Chapter 376, F.S.

Section Twelve: **Severability**

If any section; phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section Thirteen: **Effective Date**

This ordinance shall take effect immediately upon adoption.

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