

ORDINANCE NO. 01-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, CHAPTER 96, "FIRE SAFETY AND EMERGENCY SERVICES," SECTION 96.08, "HAZARDOUS SUBSTANCES AND HAZARDOUS WASTE; RECOVERY OF COST," BY ADOPTING A NEW TITLE, "RECOVERY OF COSTS," ADOPTING A NEW DEFINITION FOR FIRE-RESCUE RESPONSE, AMENDING THE DEFINITIONS OF COST, HAZARDOUS SUBSTANCE OR HAZARDOUS WASTE, AND PERSON, AND BY ADOPTING REGULATIONS FOR REIMBURSEMENT TO THE CITY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach (the "City") adopted rules and regulations governing fire and emergency services provided throughout the City in Chapter 96 of its Code of Ordinances (the "Code"); and

WHEREAS, the Code does not currently provide for cost recovery for fire and emergency services resulting from a violation of any City regulation or State Statute; and

WHEREAS, the City Commission finds adoption of this Ordinance to be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. Chapter 96, "Fire Safety and Emergency Services," Section 96.08, "Hazardous Substances and Hazardous Waste; Recovery of Cost," of the Code of Ordinances of the City of Delray Beach, Florida is hereby amended as follows:

**Sec. 96.08. ~~HAZARDOUS SUBSTANCES AND HAZARDOUS WASTE; RECOVERY OF COSTS.~~**

(A) *Definitions.*

*Cost.* Those necessary and reasonable expenses incurred by the City or its agents in connection with ~~investigating, mitigating, minimizing, removing, or abating the release of hazardous substances and hazardous waste~~ a Fire-Rescue Response, including, but not limited to, the actual labor cost of City personnel or its agents; cost of equipment operation and rental; cost to prevent or minimize mitigation off site; as well as the recovery of costs for any actions that the City may take in this regard out of the

City's jurisdiction or off site; and the cost of expendable items including, but not limited to, firefighting foam, chemical extinguishing agents, absorbent materials, sand, recovery drums, chemical protective clothing, gloves, and testing equipment.

*Fire-Rescue Response.* Any action taken by the Fire-Rescue Department in connection with rescue, emergency medical services, mitigation, health, life, and safety issues, suppression and investigation of suspicious or incendiary fires, investigating, mitigating, minimizing, removing, or abating the release of Hazardous Substances or Hazardous Waste.

*Hazardous ~~s~~Substance or ~~H~~Hazardous ~~w~~Waste.* Any substance or material in a quantity or form, which in the determination of the Chief of the Fire-Rescue Department or his authorized designee, poses an unreasonable and imminent risk to the life, health, safety, or welfare of persons or property within the City including, but not limited to, those substances listed in the National Fire Protection Association's "Guide on Hazardous Materials", the ~~EPA's~~ United States Environmental Protection Agency's list of "Extremely Hazardous Substances" ~~or the "Florida Substance List", promulgated by the State Department of Labor and [Employment] Security~~ "Florida Substance List", the Emergency Response Guide from the United States Department of Transportation, the Comprehensive Environmental Response, Compensation, and Liability Act C.R.C.L.A. in 40 C.F.R. 300.6., or Title 49 of the Code of Federal Regulations.

*Person.* One or more individuals, partnerships, corporations, joint ventures, associations, property owners, tenant, agents or any other entities or any combination thereof.

*Release.* Any intentional or unintentional action or omission resulting in the release or substantial threat of a release, spillage, pumping, pouring, emitting, emptying or dumping of a Hazardous Substance or Hazardous Waste upon public or private property located within the corporate limits of the City.

(B) *Authority to Initiate Action.* The Fire-Rescue Department is hereby authorized:

(1) to take, or cause to be taken, such steps as may be necessary to protect the life, safety, and health of the public; and

(2) to respond to and abate emergencies; and

(3) to remove or abate the effects of any Hazardous Substance or Hazardous Waste released upon or into public or private property or facilities located within the corporate limits of the City, and any actions associated therewith which occur off site.

~~(1) — The Fire-Rescue Department is hereby authorized to take, or cause to be taken, such steps as may be necessary to clean up, remove or abate the effects of any hazardous substance or hazardous waste discharged or released upon or into public or private property or facilities located~~

~~within the corporate limits of the City, and any actions associated therewith which occur off site designed to mitigate a hazardous substance or hazardous waste release or discharge.~~

~~(2) — Any person or persons responsible for causing or allowing a discharge or release of hazardous substances or hazardous waste that requires emergency action by the Fire Rescue Department of the City or its authorized agents, in order to protect the health, safety or welfare, shall be strictly liable both jointly and severally to the City for the cost incurred by the City in the investigating, mitigating, minimizing, removing and abating any such discharge.~~

~~(3) — When responding to the emergency caused by the unauthorized discharge or release or hazardous substances or hazardous wastes, the Fire Rescue Department of the City shall keep a detailed record of the costs and expenses attributable thereto.~~

~~(4) — The authority to recover costs under this Section shall not include costs incurred for actual fire suppression services or other services which are normally supplied by the City's Fire Rescue Department or its authorized agent.~~

~~(C) — *Recovery of Costs of Hazardous Substance and Hazardous Waste Cleanup.*~~

~~(1) — Any person or persons responsible for causing or allowing an unauthorized discharge or release of hazardous substances or hazardous waste shall reimburse the City for the full amount of all costs, as defined herein, associated with the investigation, mitigating, minimizing, removing or abating any such discharge or release within a period of thirty (30) days after receipt of an itemized bill for such cost from the City.~~

~~(2) — Any person or persons responsible for causing or allowing an unauthorized discharge or release of hazardous substances or hazardous waste and who fails to reimburse the City within the time set forth in subsection (C)(1) hereof, shall be subject to a surcharge equal to one hundred dollars (\$100.00) per day or ten (10) percent of the total amount of the bill, whichever is greater, for each additional day that the bill for such cost remains unpaid.~~

~~(3) — The remedy provided for in this Section shall be supplemental to, and in addition to, all other available remedies at law and equity.~~

(C) *Liability for costs.* Any Person charged with a City or State violation or responsible for causing or allowing an unauthorized discharge or release of Hazardous Substances or Hazardous Waste shall be jointly and severally liable to the City for the costs incurred by the City in its Fire Rescue Response.

(1) Incidents less than four (4) hours in duration. The responsible party shall be liable to the City for the costs of all expendable supplies including, but not limited to: firefighting foam, chemical extinguishing agents, recovery drums, absorbent materials, protective clothing, gloves and testing equipment.

(2) Incidents of four (4) hours or greater in duration. The responsible party shall be liable to the City for the costs of all expendable supplies, the equipment and apparatus, and personnel as determined by the City in its sole discretion. The cost of the equipment and apparatus shall be calculated in accordance with the current United States Federal Emergency Management Agency Schedule of Equipment Rates, as may be periodically amended.

(3) For the purpose of this Section, "duration" shall be determined as the time period beginning with the arrival on the scene of the first City response team member and ending with the release of the last City response team member from the scene until their return to their assigned station.

(D) *Record of Costs.* Following a Fire-Rescue Response, the Fire-Rescue Department shall submit a detailed record of the costs attributable thereto.

(E) *Reimbursement of Costs.* Any Person charged with a City or State violation or responsible for causing or allowing an unauthorized discharge or release of Hazardous Substances or Hazardous Waste requiring a Fire-Rescue Response shall reimburse the City for the full amount of all Costs incurred by the Fire-Rescue Department.

(1) Failure to pay Costs within 21 days from the billing date will be subject to the penalty outlined in subsection (F).

(2) Failure to pay costs within 45 days or more shall be referred to a registered collection agency which will pursue collection of the outstanding balance along with any collection fees, service charges, or costs accrued for the collection of said Costs in an amount not to exceed forty (40) percent of the amount owed at the time the account is referred to the collection agency.

(F) *Additional remedies.* The remedies provided for in this Section shall be supplemental to and in addition to all other available remedies at law and equity and may be negotiated or waived by the City Manager when in the best interest of the City.

Section 3. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 4. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. Specific authority is hereby given to the City Clerk to codify this Ordinance.

Section 6. This Ordinance shall become effective upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

ATTEST:

\_\_\_\_\_  
Katerri Johnson, City Clerk

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Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

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Lynn Gelin, City Attorney

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_