

ORDINANCE No. 97- 3

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH HAZARDOUS MATERIAL INCIDENT COST RECOVERY ORDINANCE, PROVIDING AUTHORITY; SHORT TITLE; INTENT AND PURPOSE; RULES OF CONSTRUCTION; DEFINITIONS; HAZARDOUS MATERIALS INCIDENTS-LIABILITY FOR COSTS; COLLECTION AND DISBURSEMENT OF FUNDS FOR COST RECOVERY; CONFLICT WITH OTHER LAWS; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. Authority.

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Short Title.

This ordinance shall be known and may be cited as the "Town of Fort Myers Beach Hazardous Material Incident Cost Recovery Ordinance."

SECTION 3. Intent and Purpose.

This ordinance is intended to provide for recovery by the Town of Fort Myers Beach, its agencies or agents, the Lee County Sheriff's Office, other law enforcement agencies, and the Fort Myers Beach Fire Control District, of costs incurred in response and recovery efforts related to hazardous material incidents. In addition, it is intended to provide for cost recovery for damages to natural resources, and government-owned properties.

SECTION 4. 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. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this ordinance:

- (1) In case of any difference of meaning or implication between the text of this ordinance and any caption, or heading, the text shall control.
- (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- (3) Words used in the present tense shall include the future; the words in the singular number shall include the plural, and

the plural the singular, unless the context clearly indicates the contrary.

(4) The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.

(5) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and", "or", or "either or" the conjunction shall be interpreted as follows:

(a) "And" indicates that all the connected terms, conditions, provisions or events shall apply.

(b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) "Either or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.

(6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character,

SECTION 5. 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 actions.

(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 material incident.

(4) Labor, including benefits, overtime and administrative overhead,

(5) Equipment, operation, leasing, repair and replacement where necessary.

(6) Contract labor and equipment.

(7) Labor and equipment obtained directly by the Town of Fort Myers Beach, its agencies or agents, the Lee County Sheriff's Office, other law enforcement agencies, and the independent Fire District(s).

(8) Materials such as absorbents, foam, dispersants, neutralization agents, over pack drums or containers, etc.

(9) Supervision and verification of clean-up and abatement.

B. Director shall mean the Town Manager or designee.

C. Fire Chief shall mean a Director of a fire department or district which has responded to a hazardous material incident.

D. Hazardous shall mean any substance or material in any form or quantity which poses an unreasonable risk to safety, health or property.

E. 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.

F. 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.

G. 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.

H. Natural Resources shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by Lee County, Lee County agencies, and those municipalities within Lee County which enter into interlocal agreements with Lee County to implement this ordinance.

I. Recover (from an incident) shall mean a phase of emergency management which restores the site of an incident to pre-emergency conditions.

J. 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).

K. 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.

L. 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 or persons 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 corporation or partnership, facility, or other type of business entity.

SECTION 6. Hazardous Materials Incidents - Liability for Costs.

The Incident Commander, Fire Chief(s) and Director are 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 by the Town or its agencies or agents, the Lee County Sheriff's Office, other law enforcement agencies, and Fire Districts within Lee County, for response to and remediation of such an incident.

The Town of Fort Myers Beach will seek all available remedies at law, to include the provisions of this ordinance, against any parties responsible for any environmentally damaging event, to include those actions and remedies available under the U. S. Bankruptcy Code relating to such matters.

SECTION 7. Collection and Disbursement of Funds for Cost Recovery.

Agencies or organizations responding to a hazardous materials incident according to responsibilities set forth in the Town Hazardous Materials Emergency Plan, or at the request of Town, will be eligible to submit bills.

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

The Director 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 each eligible agency or agent requesting cost recovery for the amount incurred, within sixty (60) days of receiving a consolidated invoice.

The Director shall also provide the responsible party with a list of estimated costs that have not been specifically identified that will be included in future consolidated invoices.

SECTION 8. 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 C33 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 9. Severability.

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance , and in no way affect the validity of all other provisions of this ordinance.

SECTION 10. Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 11. Effective Date.

This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon

a motion by Council Member Reynolds and seconded by Council Member Murphy and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>out</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 21st day of January, 1997.

ATTEST:

TOWN OF FORT MYERS BEACH

By: Marsha Segal-George
Marsha Segal-George, Town Clerk

By: Anita T. Cereceda
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney