

**BOROUGH OF PEAPACK AND GLADSTONE
SOMERSET, NEW JERSEY**

ORDINANCE NO. 1085-2019

AN ORDINANCE AMENDING CHAPTER XV, TITLED "STREETS AND SIDEWALKS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF PEAPACK AND GLADSTONE, COUNTY OF SOMERSET, STATE OF NEW JERSEY, BY PROVIDING FOR THE RECOVERY OF COSTS OF CLEANUP OF HAZARDOUS MATERIALS

SECTION 1

The Borough desires to protect itself from expenses resulting from responses to incidents involving hazardous materials. The Borough has determined that adopting such an Ordinance is in the best interests of the public health, safety and welfare of the Borough.

SECTION 2

The following terms are defined as follows:

"Appropriate Official" shall mean the Chief of Police, the Fire Chief, the OEM Coordinator or the Department of Public Works Superintendent, as the case may be.

"Hazardous Materials" shall mean any materials classified as hazardous by any federal, state, or local law, regulation, or authority, and shall include, but not be limited to any chemical that is combustible liquid, flammable gas, radioactive material, explosive, flammable, poison, organic peroxide, oxidizer, pyrophoric, unstable reactive, or water reactive or any other material that can cause serious disease or injury to humans, property or the environment.

"Incident" means actual or threatened release of a Hazardous Material, including hazardous waste, which poses an imminent threat to the environment and/or to the health, safety or welfare of the population and requires emergency response, incident assessment, control, containment and abatement of the immediate hazard.

"Recoverable Expenses" shall mean, in connection with an Incident, all actual costs or expenses incurred by the Borough, including but not limited to each of the following:

1. Charges for each fire department vehicle, including but not limited to, pumpers, ladder trucks, tankers, rescue squads, brush units, command units and other vehicles. Hourly rates for these charges shall be established by resolution of the Borough Council.
2. Replacement costs for equipment that is contaminated or damaged beyond reuse or repair (such as turn-out gear or self-contained breathing apparatus).
3. Expenses of decontaminating and cleaning equipment.

4. Technical consulting services specifically required as a result of the Incident, including but not limited to, technical experts or specialists not otherwise available to the Borough.
5. Laboratory costs of analyzing samples taken during the Incident.
6. Costs of cleanup, storage or disposal of the released Hazardous Material.
7. Unreimbursed medical and hospital expenses incurred as a result of the Incident.
8. Legal, engineering, accounting, billing, collection and other administrative expenses incurred as a result of the Incident, including but not limited to efforts to recover expenses pursuant to this Ordinance.

“Release” means the accidental or intentional, sudden or gradual 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 receptacles containing a Hazardous Material) whether such release occurs from a fixed facility or while the materials are being transported.

“Responsible Party” shall mean, in connection with an Incident, any individual or entity that participated in, or whose actions or inactions were a proximate cause of an Incident, and any individual or entity that is an owner, tenant, occupant or holder of any interest in real estate, buildings, equipment or other real or personal property onto which or from which Hazardous Materials were released.

SECTION 3

Recovery of Expenses:

All Responsible Parties in connection with an Incident, shall be responsible to the Borough for the Recoverable Expenses relating to an Incident. This responsibility shall be in addition to any other penalties, obligations, or remedies provided by law. The liability of Responsible Parties under this Ordinance shall be strict, joint and several, and without regard to fault.

SECTION 4

Billing and Collection Procedures:

After the conclusion of a Hazardous Materials Incident or periodically prior to the conclusion of the Incident, the Appropriate Official (or an agent of) shall submit an itemized list of all known recoverable expenses to the Borough Administrator, who shall prepare and send an invoice to all Responsible Parties for payment. The Borough Administrator’s invoice shall demand full payment within 30 days after receipt of invoice. Any additional expenses that become known to the Borough after Mailing the first invoice shall be billed in the same manner

to the Responsible Parties. Any amounts unpaid after 30 days after the due date will bear a late charge of one percent (1%) per month, or fraction of a month, or the highest legal limit of interest permitted by law, whichever is less.

SECTION 5

Appeal Process:

Any Responsible Party may appeal the amounts listed in an invoice to the Borough Council. The appeal shall be filed in writing delivered to the Borough Administrator not later than fifteen (15) days after the date the Borough Administrator invoices the Responsible Parties. The Borough shall give the appealing parties an opportunity to present evidence in support of their position. The appealing parties shall bear the burden of proof. After receiving all evidence deemed relevant by the Borough Council, the Borough Council shall make a decision on whether the expenses are properly recoverable under this Ordinance. An appeal to the Borough Council will not postpone or delay the applicable time periods for payment of any invoice issued under this Ordinance and will not toll the accrual of interest thereon. The Borough Council shall use reasonable efforts to make a decision no later than thirty (30) days after hearing the appeal.

SECTION 6

Violations; Other Remedies:

A violation of this Ordinance shall be a municipal civil infraction. The Borough may pursue any other remedy or may institute any other appropriate action of proceeding to collect charges imposed under this Ordinance. The recovery of expenses imposed under this Ordinance does not relieve or limit liability of any person under any other local ordinance or state or federal law, rule or regulation.

SECTION 7

Severability:

The various parts, sections and clauses of this Ordinance are severable. If a court rules that any part of this Ordinance or any other Borough Ordinance is unconstitutional or invalid, the remainder of the Ordinance shall not be affected.


Introduced: November 12, 2019

Adopted: December 17, 2019

Attest:



Nancy A. Bretzger
Borough Clerk



Gregory J. Skinner
Mayor