

**ORDINANCE NO. 2002-24**

**AN ORDINANCE OF HERNANDO COUNTY, FLORIDA; PROVIDING FOR THE PROHIBITION OF HAZARDOUS MATERIALS, PROVIDING FOR DEFINITIONS, PROVIDING FOR AUTHORIZATION FOR CLEAN UP AND ABATEMENT, PROVIDING FOR RECOVERY OF COSTS PROVIDING FOR JOINT AND SEVERAL LIABILITY, PROVIDING FOR, PENALTIES, ENFORCEMENT AND INJUNCTIVE RELIEF, PROVIDING FOR RESOLUTION OF CONFLICTS AND REPLACING SECTIONS 1-6 OF ORDINANCE 91-20, PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Hernando County, Florida finds that the protection of the soil, air, ground water and surface water of the County. The protection and preservation of these resources are matters of the highest priority; and

**WHEREAS** the storage, handling and transportation of hazardous materials may result in discharges having a significant adverse impact to the environment of the County and the health safety and welfare of the citizens of Hernando County; and

**WHEREAS** the persons or entities responsible for a discharge of hazardous material should bear the costs of cleanup and remediation of such discharge; and

**WHEREAS** the costs incurred by the County can easily exceed the normal, allotted costs of Emergency Response, as provided by the County for its citizens; and

**WHEREAS** it is necessary and consistent with the protection of health, safety and welfare to establish a cost recovery mechanism to pay for hazardous materials emergency response action performed by an authorized hazardous cleanup official;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA, THAT:**

**SECTION 1. DEFINITIONS**

*Costs* shall mean any and all expenses, paid, incurred or to be incurred, by Hernando County or another agency, entity, government or person on behalf of or in connection with the County. These shall include, but not be limited to:

- a. Disposable materials and supplies acquired, consumed and expended specifically for the clean up or remedial action.
- b. Compensation of employees for the time and efforts devoted specifically to the cleanup or remedial action.
- c. Rental or leasing of equipment, including but not limited to protective equipment, protective clothing, scientific and technical equipment used specifically for the cleanup or remedial action.
- d. Replacement costs for equipment owned or in the care and custody of the County or its agents that are contaminated beyond reuse or repair, if the contamination occurred as a direct or indirect result of the response, clean up or abatement. A product shall be deemed to be contaminated beyond reuse or repair if the cost of decontamination or repair exceeds the replacement cost of the equipment.
- e. Decontamination of equipment contaminated during the response.
- f. Special technical or other services specifically required for the response, including the time of experts and

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specialists not otherwise provided for by the County.

g. Laboratory costs for the analysis of samples taken in connection with the clean up or remedial action.

h. Costs of clean up, storage or disposal of released hazardous material or material contaminated directly or indirectly in connection with a release.

i. Costs associated with the services, supplies and equipment utilized in an evacuation as a result of a release of hazardous material.

j. Medical expenses incurred as a direct or indirect result of the response activity, whether paid directly or through a benefit paid by the County.

k. Legal expenses that may be incurred by Hernando County as a result of the clean up or remedial action, inclusive of costs to recover funds owed in connection with this ordinance.

*County Official* shall mean an employee of the County authorized to lead an emergency response.

*Discharge* shall mean the release of materials, whether willful, negligent or accidental, whether by act or omission, into the air, soil, water or any combination of surfaces, man made or natural, or any system for the drainage and or disposal of water, wastewater, storm water or sewage.

*Hazardous Material* shall mean any substance (solid, liquid or gas) capable of creating harm to people, property and/or the environment.

Any other technical term not included shall be defined according to its meaning under NFPA definitions.

## **SECTION 2. PROHIBITIONS**

No person or entity shall discharge, or cause to be discharged, any hazardous material within Hernando County that presents a risk or potential risk, directly or indirectly, to the health, safety and welfare of any person.

## **SECTION 3. CLEANUP ABATEMENT**

Hernando County is authorized to cleanup and/or abate, or petition for cleanup or abatement of the effects of any hazardous material discharged within the County. Hernando County, by and through its emergency response personnel, is authorized to enter property and take any and all action to protect the health, safety and welfare of the public at large, including but not limited to inspection, testing, evacuation, containment, clean up and removal of hazardous materials.

In the event that any person or entity undertakes, either voluntarily, upon order of a County Official or by order of a court of competent jurisdiction or other administrative authority, to clean up or abate the effects of any discharge of hazardous material within the county, which discharge is prohibited by this ordinance, a Hernando County Official may take such action as necessary to supervise or verify the adequacy of such clean up or abatement. The person or entity determined to be responsible, as per section 4, shall be liable to the County for any and all costs incurred as a result of such supervision or verification.

## **SECTION 4. RECOVERY OF COSTS**

Following a hazardous materials release, all agencies involved in abatement and/or clean up activities shall compile a report of all costs and expenses, and a staff assessment of the parties responsible for the discharge, to the Emergency Management Officer. If in the determination of the Emergency Management Officer, the costs of abatement and / or clean up of the discharge exceed those already paid annually in taxes for emergency services, the County, through the Emergency Management Officer shall submit by Certified

Mail a written itemized claim for the total costs incurred by the County, including those assessed to the County by other individuals, agencies and governments, to the responsible party or parties. Such claim shall also provide notice that unless the amounts stated are paid in full within sixty (60) days from the date of receipt, as evidenced by the acknowledgement of receipt, the County may file a civil action to recover the stated amount, plus other costs, legal fee, interest and other damages that the court may assess.

The Emergency Management Officer may calculate fees by use of actual costs and/or fee schedules adopted by the Federal Emergency Management Administration, or the State of Florida. Fees assessed be no less than the actual expenses to the county for the response.

## **SECTION 5. LIABILITY**

Any person(s), entity or entities, or combination of persons and entities as listed below shall be jointly and severably liable to the County for the payment of all costs incurred by the County for clean up and /or abatement.

- a. Those whose act or omission, whether negligent, willful or unintentional causes the discharge of hazardous material in violation of this section.
- b. Those who owned the hazardous material at the time of the discharge
- c. Those who had custody and/ or control of the hazardous material at the time of discharge
- d. Those who had ownership, custody or control of the container or other means of retention or transport in which the hazardous material was held at the time of, or immediately prior to the time of discharge.

## **SECTION 6. PENALTIES, ENFORCEMENT AND INJUNCTIVE RELIEF**

**Penalties.** Violations of this ordinance shall be punishable as provided by Section 125.69 of the Florida Statutes, by a fine not to exceed \$500 or by imprisonment in the County Jail not to exceed 60 days or by both. Violators of this ordinance may be punishable as provided in Section 162.09 of the Florida Statutes by a fine not to exceed \$250 per day for a first violation and a fine not to exceed \$500 per day for a repeat violation.

**Enforcement.** The Hernando County Code Enforcement Department may enforce this code using authority and procedures authorized by Chapter 162 of the Florida Statutes. Violations of this code may be referred to Hernando County Code Enforcement or the State's Attorney's Office, as applicable.

**Injunctive Relief.** The county may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this ordinance; to enjoin any violation of this ordinance, and to seek injunctive relief to prevent injury to the soil, air, and water, including animal plant and aquatic life and to protect human health safety and welfare caused or threatened by any violation.

Enumeration of penalties, enforcement and remedies herein are nonexclusive and shall not preclude any other enforcement means or remedy now or hereafter available under applicable law.

## **SECTION 7. RESOLUTION OF CONFLICTS**

As this ordinance modifies the Hazardous Material Response policy of Hernando County, Sections-6 of the Hernando County Ordinance 91-20 are hereby repealed.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this ordinance invalid, illegal or unenforceable under any applicable law. Nothing in this ordinance shall be construed to conflict with state or federal laws requiring person(s) or entities causing or responsible for releasing hazardous materials from engaging in remediation activities or paying the costs thereof, or both.

#### SECTION 8. SEVERABILITY

It is declared to be the intent of the Board of County Commissioners of Hernando County, Florida, that if any section, subsection, clause, sentence phrase or provision of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this Ordinance.

#### SECTION 9. INCLUSION IN THE CODE

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", or other appropriate designation.

#### SECTION 7. EFFECTIVE DATE

This Ordinance shall become effective upon receipt of official acknowledgment from the Secretary of State that said Ordinance has been filed.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS** in Regular Session this 17th day of December, 2002 A.D.

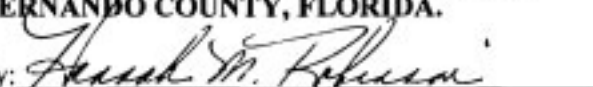
Attest:



KAREN NICOLAI  
Clerk

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA.**

By:



HANNAH M. ROBINSON  
Chairperson

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY



County Attorney's Office