

STATE OF MICHIGAN  
COUNTY OF WAYNE  
CITY OF ALLEN PARK

**ORDINANCE #11-2016**

**AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 2 “ADMINISTRATION”, BY THE REPEAL AND READOPTION OF ARTICLE VI “FINANCE” DIVISION 3 “RECOVERY OF EXPENSES OF EMERGENCY RESPONSE”, SECTIONS 2-863 THROUGH 2-868, TO PROVIDE FOR THE RECOVERY OF THE CITY’S COSTS ASSOCIATED WITH CERTAIN EMERGENCY EVENTS.**

**The City of Allen Park Ordains:**

**SECTION 1. Amendment to Code.**

That Chapter 2, Administration, Article VI “Finance”, Division 3 “Recovery of Expenses of Emergency Response” and Sections 2-863 through 2-868 are hereby repealed and readopted to read as follows:

Chapter 2, Administration  
Article VI, Finance  
Division 3, Recovery of Expenses of Emergency Response

**Sec. 2-863. – Title for citation.**

This chapter shall be known and cited as the "cost recovery ordinance."

**Sec. 2-864. - Purpose.**

The purpose of this ordinance is to enable the city to require reimbursement from those individuals and entities who receive direct benefits from emergency medical, fire, or police department services provided by the city; from those persons responsible for the release, threatened release, leaking, spilling, or escape of dangerous materials, and/or damage to public property; and those requesting or necessitating that an emergency response be provided.

**Sec. 2-865. - Definitions.**

For the purpose of this chapter, the words and phrases listed below shall have the following meanings:

- A. "Dangerous" or "hazardous" substance or material means any and all substances, compounds, mixtures or materials that are defined to be, designated as, listed as, or which have characteristics that are hazardous or toxic under any federal, state or local statute, ordinance, rule or regulation, or under the Relevant Environmental Laws.
- B. "Emergency response" means the provision/utilization of environmental removal and/or cleanup, firefighting, emergency medical, crowd control, investigatory, and rescue services by the police and/or fire department, or by a private corporation or governmental or inter-governmental entity or agency operating at the request of or direction of the fire department, as well as sign fabrication and repairs to damaged public property undertaken by or at the direction or request of the department of public works. This definition shall include, but not be limited to, the provision/utilization of the City's firefighting/emergency medical/rescue services, including resuscitator and emergency extrication service, to the scene of a fire, accident, utility emergency, hazardous material release, arson, or other emergency situation.
- C. "Environmental cleanup" means removal, abatement, mitigation and restoration activities necessitated by any release or threatened release of a dangerous or hazardous substance or material of unknown composition reasonably believed to be dangerous or hazardous.
- D. "Expense of emergency response" means the actual costs associated with an emergency response. The expenses of making an emergency response shall include the costs associated with investigation, removal, repair, restoration, enforcement, abatement, mitigation, environmental cleanup and analysis of chemical tests, if applicable. The costs of enforcement shall include but are not limited to attorney fees and costs associated with ensuring compliance with any and all provisions of this chapter.
- E. "Person" shall include one (1) or more individuals and/or corporate, unincorporated or partnership entities, including governmental entities and agencies.
- F. "Public Property" means real and/or personal property of a governmental entity.

G. The "Relevant Environmental Laws," as referred to herein, shall mean all applicable federal, state and local statutes, laws, ordinances, rules, regulations, orders, judicial determinations, and decisions or determinations by any judicial, legislative or executive body of any governmental or quasigovernmental entity, whether in the past, the present or the future, that regulate, prohibit, or impose duties or liabilities with respect to (i) the installation, existence, or removal of, or exposure to, Asbestos on the Property; (ii) performing or paying for testing, investigation, remedial actions, response actions, response activities, clean up, fines or penalties relating to Hazardous Materials that are or were present, released, discharged, disposed, stored, manufactured, treated, or utilized at or from the Property; (iii) the existence, manufacture, treatment, storage, use, release, disposal, discharge, manufacture, remedy, or removal of Hazardous Materials at, to or from the Property; and (iv) the effects on the environment of the Property or of any activity now, previously, or hereafter conducted on the property.

The Relevant Environmental Laws shall include, but are not limited to, the following, all as may be amended from time to time, and including any replacements thereof:

- 1) The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq.; Resource Conservation and Recovery Act, 42 USC 6901 et seq.; The Safe Drinking Water Act, 42 USC 300F et seq.; The Toxic Substances Control Act, 15 USC 2601, et seq.; The Hazardous Materials Transportation Act, 49 USC 1801, et seq.; The Federal Water Pollution Control Act, 33 USC 1251, et seq.; The Clean Air Act, 42 USC 7401, et seq.; and all regulations and interpretations promulgated in connection with the foregoing;
- 2) Environmental Protection Agency Regulations pertaining to Asbestos (including 40 CFR Part 61, Subpart M); the Occupational Safety and Health Administration Regulations pertaining to Asbestos (including 29 CFR 1910.1011 and 1926.58) as each may now or hereafter be amended; and
- 3) The Michigan Natural Resources and Environmental Protection Act, MCLA 323.101, et seq., and all regulations promulgated thereunder, and any similar local laws, ordinances and regulations pertaining to Hazardous Materials, Asbestos and other environmental matters.

H. "Utility Emergency" means downed power lines, gas pipeline breaks, or other events occurring in connection with the activities of public utilities or their suppliers which necessitate a response by the City's police, firefighting and/or emergency medical/rescue services or cause damage to public property.

**Sec. 2-866. - Presumption of liability.**

- A. The owner, lessor and operator of any property to which there is an emergency response shall be presumed liable for the expense of the emergency response.
- B. Any person or vehicle owner/lessee who owns, leases and/or operates a motor vehicle or other transporter or equipment, the operation of which results in an emergency response, shall be presumed liable for the expenses of said emergency response.
- C. Any individual who is the subject of an emergency response by the city shall be presumed liable for the expenses of said emergency response.
- D. Any person causing a fire, an accident, or any release giving rise to a need for environmental cleanup or other emergency response shall be presumed liable for the expenses of said emergency response.
- E. In the event of a utility emergency, the public utility whose activities or facilities necessitated the emergency response shall be presumed liable for the expenses of said emergency response.

**Sec. 2-867. - Dangerous or hazardous substances/materials liability.**

- A. It shall be the duty of any person who causes or controls leakage, spillage, or any other dissemination of dangerous or hazardous substances or materials to immediately remove such and clean up the area of the spillage in such a manner that the area involved is fully restored to its condition before such occurrence. The Fire Department shall be contacted to inspect said site to make sure that the cleaning is in compliance with local, state, and federal guidelines, regulations, and laws. Each day that a person fails to comply with this section shall be deemed a separate offense.
- B. Any such person who violates this section by failing to clean, without delay, a dangerous or hazardous substance release, shall be liable to and pay the City for its costs incurred, or incurred by any party which it may engage for the complete abatement, mitigation, cleanup, restoration and inspection of the affected area, and shall be guilty of a

misdemeanor punishable by up to ninety (90) days' imprisonment or a fine of up to five hundred (\$500.00) dollars or both.

**Sec. 2-868. - Cost recovery process.**

- A. The expense of an emergency response shall be a charge against the person or entity liable for such expense as set forth by this ordinance. The charge shall constitute a debt of that person or entity and is collectible by the city for incurring those costs in the same manner as any other debt, or may be made the subject of an order of restitution in any criminal prosecution. The city shall have a lien for all unpaid costs and damages incurred by the city and may enforce such lien in the manner prescribed by law for the enforcement of tax liens.
- B. The city shall be entitled to recover any and all expenses of emergency responses. Such expenses shall include, but are not limited to, any related third party costs which are necessary to ensure the safety of the city and its populace and buildings.
- C. Such expenses shall be the responsibility of the person(s) or entity identified in Section 2-866 of this chapter. In the event said emergency response involves more than one such person or entity, each shall be jointly and severally liable for all such expenses.
- D. The city's finance department or its designee shall, within ninety (90) days of receiving an itemized statement of expenses incurred for emergency response, submit a statement of charges for same by first class mail to any such person or entity whose identity and address are known to the director of finance. Such a statement may also be transmitted via facsimile or other electronic means if such means are reasonably determined to provide actual notice to the intended recipient. Said statement shall require payment within forty-five (45) days.
- E. Any person(s) or entity receiving such a statement shall have the opportunity to appeal all or any portion of the amount shown on such statement by filing a written request for same with the fire chief within thirty (30) days of receipt of an invoice from the city. The request must be accompanied by a written explanation as to why the amount appealed should not be charged to the appellant. Such appeals shall be heard by the fire marshal, or his designee, as hearing officer. If the hearing officer determines that the appellant is not properly responsible for any or all of the amount charged, the hearing officer may waive such charge against the appellant. The findings and decisions of the hearing officer shall be in writing and filed with the office of the fire chief.

- F. If no written request for appeal is received within the specified time, the city may proceed by suit in a court of appropriate jurisdiction to collect any monies remaining unpaid at the expiration of forty-five (45) days from billing, or, if no bill is submitted, at any time subsequent to the emergency response in question.
- G. In addition, the city shall have any other remedy available to the city by law.
- H. All fees and/or expenses for performing the services required under this division, including an interest rate and administrative oversight fee shall be established by council resolution.

### **SECTION 2. Repeal.**

All ordinance or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

### **SECTION 3. Saving Clause.**

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

### **SECTION 4. Severability.**

Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance held to be so invalid shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

### **SECTION 5. Publication.**

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

**SECTION 6. Adoption.**

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the **13<sup>th</sup>** day of **December, 2016.**

WILLIAM MATAKAS, Mayor  
City of Allen Park

MICHAEL I. MIZZI, City Clerk  
City of Allen Park