

ORDINANCE NO. 10- 2020

AN ORDINANCE PROVIDING FOR THE AMENDMENT AND SUPPLEMENTATION OF THE "REVISED ORDINANCES OF THE BOROUGH OF MORRIS PLAINS, NEW JERSEY, 1972" WITH THE ADDITION OF A NEW CHAPTER 30 ENTITLED "HAZARDOUS SUBSTANCE DISCHARGE CLEANUPS AND COST RECOVERY."

WHEREAS, the Borough Council is desirous of amending the "Revised Ordinances of the Borough of Morris Plains, New Jersey, 1972" ("Revised Ordinances") to implement the cleanup, removal and abatement of hazardous substance discharges in the Borough and to provide for the total reimbursement and recovery by the Borough of all costs associated with same.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Morris Plains, they being the Governing Body thereof, as follows:

Section 1:

The Revised Ordinances are hereby amended and supplemented with the addition of a new Chapter 30, entitled "Hazardous Substance Discharge Cleanups and Cost Recovery" which shall read in its entirety as follows:

Chapter 30. Hazardous Substance Discharge Cleanups and Cost Recovery.

30-1. Purpose & Intent.

The purpose and intent of this chapter is to authorize and direct the cleanup, containment and abatement of any hazardous and/or toxic substance discharges or spills and to provide for the total reimbursement and recovery of all costs to the Borough of Morris Plains. It shall be the responsibility of the Borough's Emergency Management Coordinator to seek full restitution and recovery of all costs related to said cleanup, removal and abatement activities incurred by the Borough of Morris Plains.

30-2. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

CLEANUP AND REMOVAL COSTS — All costs incurred by the Borough in connection with a discharge of a hazardous or toxic substantive as follows:

- A. In the removal or attempted removal of hazardous or toxic substances.
- B. In performing reasonable measures to prevent, contain or mitigate damage to the health, safety or welfare of the public, including but not limited to public, semipublic and private property, surface waters, subsurface waters, water columns and bottom sediments, soils and other affected property, including wetlands, wildlife and other natural resources within the environment.

DEPARTMENT OF PUBLIC WORKS — The Morris Plains Department of Public Works.

DISCHARGE — Any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous or toxic substances into the waters, onto the lands or into the air, which may or does cause damage or result in damage to the lands, waters, air or natural resources of the environment.

EMERGENCY APPARATUS AND PERSONNEL — Includes any apparatus, equipment, materials and personnel of the Borough's Fire, Police and Public Works Departments.

FIRE DEPARTMENT — The Morris Plains Fire Department.

HAZARDOUS SUBSTANCES — Those elements and compounds, including petroleum products, which are defined as such by the New Jersey Department of Environmental Protection and Energy, or as defined in the National Fire Protection Association

Guide of Hazardous Materials, or as are set forth in the list of hazardous substances adopted by the Federal Environmental Protection Agency (EPA), or as are defined on the list of toxic pollutants designated by the United States Congress or the Federal EPA. For the purpose of this chapter, however, sewage and sewage sludge shall be considered as "hazardous substances."

PERSON — Any public or private corporations, associations, societies, firms, agencies, partnerships, joint-stock companies, individuals, not-for-profit service organizations or any other entity.

PETROLEUM — Includes oil or petroleum of any kind, and in any form, including but not limited to oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils and substantives or additives utilized in the refining or blending of crude, petroleum or petroleum stock.

POLICE DEPARTMENT — The Morris Plains Police Department.

VEHICLE — Any motorized equipment, registered or unregistered, including but not limited to passenger cars, motorcycles, trucks, tractor trailers, construction equipment, farm machinery and military vehicles and equipment.

30-3. Authorization to abate hazardous substances and/or toxic material discharges and/or spills.

The Borough of Morris Plains, its departments and/or agents are hereby authorized and directed to contain, clean up, remove and abate any discharges and/or spills of hazardous substances, toxic materials as regulated by the New Jersey Department of Environmental Protection and Energy and the United States Environmental Protection Agency within the geographic boundaries of the Borough.

30-4. Responsibility; liability.

A. Any person who causes an intentional or unintentional act or emission, or is otherwise responsible for the discharge and/or spill of hazardous substances which requires containment, cleanup and/or abatement shall be liable and responsible for the payment of all costs incurred by the Borough or any of its departments or agents, as a result of such cleanup or abatement activity. The remedy provided by this chapter shall be in addition to any other remedies provided by law.

B. Any person who owns or operates any vehicle or equipment which causes a fire, leak, discharge and/or spill of hazardous substances onto any public, semipublic or private property shall be responsible and liable for reimbursing the Borough in full for all costs incurred by the Borough in the rendering of services by any of its departments or agents for the cleanup, containment and abatement of said hazardous spills.

30-5. Calculation of costs.

For the purposes of this chapter, costs incurred by the Borough of Morris Plains or any of its departments or agents, including the Police, Fire and Public Works Departments, shall include but shall not necessarily be limited to the following: actual labor costs of personnel, including workers' compensation benefits, fringe benefits, administrative overhead, cost of equipment and equipment operation, cost of materials, goods and supplies and the cost of any outside contractors for labor, materials, goods and equipment.

30-6. Recovery of costs for materials and equipment; procedure.

A. The cost of materials and/or equipment to be reimbursed to the Borough of Morris Plains, or any of its departments or agents, shall include, without limitation, fire-fighting foam, chemical extinguishing agents, absorbent material, sand and sand recovery drums, booms, lumber construction material and

specialized protective equipment and clothing, including but not limited to acid suits, acid gloves, goggles and protective clothing. This list is not all inclusive and may include any other goods, materials or equipment utilized by the Borough and/or its departments in the cleanup, containment or abatement of any hazardous discharge as described in this chapter.

B. Within seven (7) business days from the date of a cleanup, the Borough's Police Chief, Fire Chief and DPW Superintendent and any other agents of the Borough associated with the cleanup, containment or abatement of hazardous substances shall present to the Borough's Emergency Management Coordinator a specific itemization of all costs associated with a containment, cleanup and/or abatement. Upon receipt, the Borough's Emergency Management Coordinator shall send the person(s) responsible for the discharge of the hazardous substance or material a letter requesting direct payment(s) to the Borough, including a statement of charges. Such person(s) shall be advised that full payment(s) are expected within 30 calendar days after receipt of a statement of charges.

30-7. Violations and penalties.

A. Any person responsible for the discharge and/or spill of hazardous substances, and who fails to reimburse the Borough in full, within the timeframe prescribed by §30-6 of this Chapter, shall, upon conviction in the Municipal Court, be subject to one or more of the following penalties: a fine not exceeding \$2,000; imprisonment up to 90 days; or a period of community service not exceeding 90 days. These penalties shall be in addition to any other penalties prescribed and levied by the State of New Jersey and/or the federal government.

B. The imposition of any penalties through the Municipal Court shall not in any way relieve the person found guilty from making full reimbursement to the Borough for all costs associated with a containment, cleanup and/or abatement of hazardous substances.

Section 2:

All other provisions of the aforesaid Revised Ordinances shall be unaffected and are hereby continued.

Section 3:

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4:

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid by Court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinances.

Section 5:

This Ordinance shall take effect after final passage and publication in accordance with law.

Introduced: November 12, 2020

Adopted: December 3, 2020

/s/ Jason Karr