

VILLAGE OF ANTIOCH

10-07-25

***AN ORDINANCE AMENDING TITLE 5 OF THE MUNICIPAL CODE OF ANTIOCH
RECODIFYING HAZARDOUS MATERIALS "SPILLER PAYS" PROVISION***

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES

OF THE

VILLAGE OF ANTIOCH, ILLINOIS

ON

July 19, 2010

**Published in pamphlet form by authority of the Village Board
of the Village of Antioch, Lake County, Illinois,
this 22nd day of July, 2010.**

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ORDINANCE NO. 10-07-25

AN ORDINANCE AMENDING TITLE 5 OF THE MUNICIPAL CODE OF ANTIOCH RECODIFYING A HAZARDOUS MATERIALS “SPILLER PAYS” PROVISION

WHEREAS, there are many instances where hazardous materials are transported, used or temporarily stored in the Village, and

WHEREAS, the actual or threatened spill or emission of these materials requires a rapid response from the fire, police, ESDA and other governmental agencies, and frequently requires the use of sophisticated or expensive equipment, materials, protective gear and the like, and

WHEREAS, the actual or threatened emission or deposit of hazardous materials constitutes a public nuisance from the actual or threatened emission of the hazardous materials which endangers the public health, safety and welfare, and

WHEREAS, the Village of Antioch is authorized by Illinois statutes to regulate and control nuisances, and

WHEREAS, the taxpayers of the community should not be obligated to carry the burden of the costs of responding to or neutralizing actual or threatened emissions or deposits of hazardous materials, and

WHEREAS, the Village of Antioch has long had a “Spiller Pays” ordinance in effect, but for reasons that now are unclear, it no longer appears in the Antioch Municipal Code, possibly due to errors in changing code service companies or for other unknown reasons, but regardless of the reasons, it is important and appropriate to adopt a new ordinance to supercede the existing, but unlocatable ordinance,

NOW THEREFORE, BE IT ORDAINED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: Title 5 of the Antioch Municipal Code is hereby amended by the addition of Chapter 103 which shall hereafter read as follows:

CHAPTER 7: HAZARDOUS MATERIAL REGULATIONS

5-7-1 DEFINITIONS: For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them:

A) "Abandonment" means the act of leaving a thing with the intent not to retain possession of or assert ownership control over it. The intent need not coincide with the act of leaving. It is prima facie evidence of the necessary intent to abandon a vehicle, vessel or container containing a hazardous substance that:

- 1) The vehicle, vessel or container has been left for more than two (2) days unattended and unmoved; or
- 2) license plates or other identifying marks have been removed from the vehicle, vessel or container; or
- 3) The vehicle, vessel or container has been damaged or is deteriorated so extensively that it has value only for junk or salvage; or
- 4) The owner/operator has been notified by a law enforcement agent to remove the vehicle, vessel or container and it has not been removed within 24 hours after notification.

B) "Container" means a receptacle used for the shipment or storage of goods that meets one or more of the following:

- 1) Of permanent character and strong enough for repeated use; or
- 2) A cargo container used to transport or store small quantities of materials, such as a box, drum, barrel, can or carboy; or
- 3) Specifically designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading.

C) "Fire Chief" means the Fire Chief of the Village of Antioch or his authorized representative.

D) "Hazardous Substance" means:

- 1) Any material as designated pursuant to the federal "Comprehensive, Environmental Response, Compensation and Liability Act of 1980", 42 USC 9601 (14), as amended or as may be amended in the future;
- 2) Any substance, material, waste or mixture designated as a hazardous material, waste or substance according to the provisions of chapter 49 of the Code of Federal Regulations or according to 430 ILCS 35/1 et. seq., as

amended or as may be amended in the future, excluding highway route controlled quantities of radioactive materials as defined in 49 CFR and special fireworks as defined in 49 CFR 173.88(d) when the aggregate amount of the flash power does not exceed 50 lbs.; or

3) Any material listed on the Environmental Protection Agency Pollutants, 40 CFR 401.15, as amended, or as may be amended; or

4) Any material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class 2 combustible liquid, or a class 3 combustible liquid; or

5) Any material which has been determined by the party storing it, or having control of it, through testing or other objective means, to be likely to create a significant potential or actual hazard to the public health, safety, or welfare or to the environment. This definitions shall not establish any requirement to test for the purposes of this Section; or

6) Any material which has been determined by the Fire Chief, through information based on appraisal and assessment from reliable resources, to be likely to create a significant potential or actual hazard to the public health, safety, or welfare or to the environment. The fact that the material in question is not designated as a hazardous substance pursuant to subparagraphs D1 through D5 of this definition, or is excluded by the legislation of NFPA classifications of subparagraphs D1 through D4 of this definition does not preclude the Fire Chief from determining that the material is a hazard, given the totality of the particular facts and circumstances, existent at the time of the hazardous substance incident.

E) "Hazardous Substance Incident" means any circumstance involving the release of threatened release of a hazardous substance, which, in the judgment of an emergency response authority, whether said emergency response authority be the Village, a MABAS agreement member unit, or a federal or state agency or other local agency, creates a significant potential or actual hazard to the environment or to the public health, safety, and welfare excluding risks associated with hazardous substances in the normal course of an individual's employment. "Hazardous Substance Incident" includes those incidents of releasing or abandoning of a hazardous substance, whether or not such release or abandoning is found to threaten immediate and irreparable harm,

but such term does not include any release of a hazardous substance authorized pursuant to federal, state, or local law or regulation.

F) "Person" means any individual, public or private corporation, partnership, association, firm, trust, sole proprietorship, estate, state or any department, institution or agency thereof, any municipal corporation, county or other political subdivision of the state or any other legal entity whatsoever which is recognized by law as the subject of rights and duties and which is not subject to privilege or immunity from liability for a hazardous substance incident.

G) "Release" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, vaporizing, evaporating, or disposing into the environment, but excludes:

- 1) Any release which results in exposure to persons solely within a work place, with respect to a claim which such persons may assert against the employer of such person;
- 2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;
- 3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 1870 of such Act;
- 4) The normal application of fertilizer;
- 5) A release authorized pursuant to any federal, state or local law or regulation.

H) "Remove or Removal" means the controlling, containing, isolating, or stabilizing of released hazardous substances from the environment or any action as may be necessary to be taken in the event of the threat of a release of hazardous substances

or such actions as may be necessary to monitor, assess, and evaluate the release or threatened release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare or the environment which may otherwise result from a release or threatened release of hazardous substances. The term includes, in addition, but without limitation, security fencing, containment barriers or other measures to limit access to or spread of hazardous substances, provisions of alternative water supplies, temporary evacuation and housing of threatened individuals, any emergency assistance which may be provided under the Illinois Emergency Services and Disaster Agency Act of 1975, as amended or as may be amended, pursuant to a MABAS agreement.

I) "Vehicle" means any device which is capable of moving itself, or being moved, from place to place upon wheels or endless tracks. The terms includes, but without limitation, automobiles, trucks, semi-tractor, semi-trailers, railroad engines and railroad cars.

J) "Vessel" means any craft which is made to float upon water or which does float upon water.

5-7-2 ESTABLISHMENT OF LIABILITY FOR HAZARDOUS SUBSTANCE INCIDENT, REMOVAL AND COSTS:

A) The Antioch Fire Department is authorized to remove and abate the effects of any hazardous substance incident:

- 1) upon or into property or facilities located in the corporate limits of the Village; and
- 2) Pursuant to any mutual aid box alarm agreement in effect; and

3) In the waters of any lake, pond, creek, river, wetland or stream which directly or indirectly discharges water into any property located within the corporate limits of the Village; and

4) Outside the corporate or response limits where the health, welfare or property of the Village or those people within its protection are in danger.

B) The following persons shall be jointly and severally liable to the Village for payment of all costs, direct and indirect, foreseeable and unforeseeable, incurred by the Village as a result of any removal or abatement of a hazardous materials incident and to any member unit of a MABAS agreement rendering aid to the Village pursuant to said agreement:

1) The person or persons whose conduct caused such release; and

2) The person or persons who owned or had custody or control of the hazardous substance at the time of such release, without regard to fault or proximate cause; and

3) The person or persons who owned or had custody or control of the container, vehicle or vessel which held such hazardous substance at the time of, or immediately prior to, such release or threatened release, without regard to fault or proximate cause; and

4) Any person owning or in control of any real property from which a hazardous substance is or is threatened to be released.

C) In the event any person undertakes voluntarily or upon order of the Fire Chief to remove or abate the effects of any actual or threatened hazardous substance release, the Fire Chief may take such action as is necessary or desirable to supervise or verify the adequacy and safety of the removal or the abatement. The persons described in subparagraphs B1 through B4 of this section shall be liable to the Village for all costs, direct or indirect, incurred as a result of such supervision or verification.

5-7-3 EXTENT OF LIABILITY.

- A) The costs recoverable under this Chapter shall include the following:
- 1) Any and all costs and expenses incurred by the Village in connection with the clean-up, abatement, site-management or fire extinguishment involved in any hazardous substances incident;
 - 2) The actual cost of any experts or consultants needed by the Village in connection with the clean-up, abatement, site-management or fire extinguishment involved in any hazardous substances incident;
 - 3) Prejudgment interest on the costs and expenses described in subparagraphs A1 and A2 above at the rate of 9% per annum;
 - 4) Any and all collection costs, including, but not limited to attorney's fees and court costs incurred by the Village in enforcing this Chapter, or in obtaining payment from the liable party or parties hereunder.
- B) Notwithstanding the foregoing provisions, no person shall be liable for the expense of any fire not involving a hazardous substance incident, and no person shall be liable for the expense of the extinguishment of a fire beyond the expenses directly or indirectly attributable to any hazardous substance that may be present or involved in the fire;
- C) Nothing herein shall limit, change or impair the right of recovery or subrogation arising under any mutual aid agreement, or other ordinance, statute, regulation or provision of law. No criminal or quasi-criminal remedy for any wrongful action shall be excluded or impaired by this Chapter.

5-7-4 LIBERAL CONSTRUCTION: This Chapter shall be liberally construed to give effect to its purposes, which are as follows:

- 1) to shift the burden of liability for threatened or actual hazardous substance incidents from the taxpayers of Antioch to those persons defined as liable hereunder; and

- 2) to deter potentially liable persons from allowing hazardous substance incidents to occur; and
- 3) to protect the safety and living environment of the residents of the Village of Antioch.

SECTION TWO: SEVERABILITY. This is intended to be a severable ordinance, and if any portion of this Ordinance should be declared null and void by a court of competent jurisdiction, that declaration shall not be deemed to nullify or void the balance of the provisions of this Ordinance, which shall remain in full force and effect.

SECTION THREE: All ordinances and parts of ordinances in conflict with or which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS 19TH DAY OF JULY, 2010.

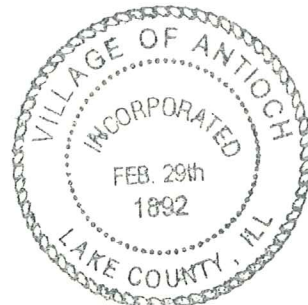
AYES: 6: Pierce, Poulos, Sakas, Crosby, Wolczyk and Jozwiak.

NAYS: 0.

ABSENT: 0.


LAWRENCE M. HANSON, MAYOR


CANDI L. ROWE, VILLAGE CLERK



STATE OF ILLINOIS)

)

SS

COUNTY OF LAKE)

CERTIFICATE

I, Candi L. Rowe, certify that I am the duly appointed Municipal Clerk of the

I certify that on July 19, 2010, the Corporate Authorities of such municipality passed and approved **Ordinance No. 10-07-25**, entitled ***“AN ORDINANCE AMENDING TITLE 5 OF THE MUNICIPAL CODE OF ANTIOCH RECODIFYING HAZARDOUS MATERIALS “SPILLER PAYS” PROVISION”*** which provided by its terms that it should be published in pamphlet form.

The pamphlet form of **Ordinance No. 10-07-25**, including the Ordinance and cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on July 22, 2010, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Antioch, Illinois, this 22nd day of July, 2010.

Candi L. Rowe
Candi L. Rowe, Village Clerk

