

## **ORDINANCE NO 2023-04**

### **BENSENVILLE FIRE PROTECTION DISTRICT NO. 2 SPILLER PAYS ORDINANCE**

**WHEREAS**, the Bensenville Fire Protection District No.2 (the "District") is a fire protection district duly organized under the laws of the State of Illinois; and

**WHEREAS**, the Board of Trustees (the "Board") of the District has full power pursuant to Section 6 of the Fire Protection District Act to pass all necessary ordinances, and rules and regulations for the proper management and conduct of the business of the Board for carrying into effect the objects for which the District was formed (70 ILCS 705/6); and

**WHEREAS**, the Board desires to create an ordinance that addresses the financial responsibilities of persons or entities that cause hazardous materials to be spilled in the District, requiring emergency response by the District, or supporting agencies.

**NOW, THEREFORE, Be it Ordained** by the Board of Trustees of the Bensenville Fire Protection District No. 2 as follows:

**SECTION 1 DEFINITIONS:** As used in this Ordinance, the following terms shall have the following meanings:

**COSTS:** All expenses incurred by the District for any removal or remedial action.

**FACILITY:** Any building, structure, installation, equipment, pipe, or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, pond, lagoon, impoundment, ditch, landfill, storage container, tank, motor vehicle, truck trailer, rolling stock or aircraft. Also, any site or area where a hazardous material has been deposited, stored, disposed of, abandoned, placed, or otherwise come to be located.

**HAZARDOUS MATERIALS:** Any material, substance or mixture of materials or substances which are toxic, flammable, corrosive, explosive, carcinogenic, organic, poisonous, or radioactive including but not limited to natural gas and/or, any substance or material which is designated a hazardous material pursuant to the "Hazardous Materials Transportation Act" (49 U.S.C. §5101 *et seq.*) in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise, managed.

**MUTUAL AID:** Any action taken by the pursuant to an intergovernmental agreement.

**PERSON:** Any individual, business, firm, partnership, corporation, association, trust, estate, joint venture, or other legal entity, or their legal representative, agent, or assign.

**RELEASE:** Any spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, leaching, dumping or disposing of a hazardous material into or on any land, air, water, well, stream, sewer, or pipe so that such hazardous material or any constituent thereof may enter the environment.

**REMEDIAL ACTION:** Any action consistent with permanent, remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate to cause a substantial present or potential hazard to human health, property, or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking containers, collection of leachate and runoff onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

**REMOVAL:** The cleanup or removal of released hazardous materials from the environment, such actions as may be necessary or appropriate to monitor, assess, and evaluate the release or threat of release of hazardous materials, the disposal of removed material, or the taking of such action as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the environment. The term includes, but is not limited to, security fencing, provision of alternative water supplies, and temporary evacuation of threatened individuals.

**RESPONSE:** Any removal or action.

**SECTION 2: PROHIBITED ACTS:** No person shall cause, threaten, or allow the release of hazardous materials into the environment unless such release is in accordance with an appropriate permit granted by the Illinois Environmental Protection Agency or other State or Federal agency having primary jurisdiction over the release and such release is in such place and manner as will not create a substantial present or potential hazard to human health, property or the environment.

**SECTION 3: RESPONSE AUTHORITY:**

- A. The Fire Chief or his authorized representative shall have authority to respond to any release or threatened release of hazardous materials within the District or affecting the public water supply, wells or sewage treatment works located within the District. This authority includes, but is not limited to, remedial action and removal.

- B. The Fire Chief shall have primary authority to respond to any release or threatened release of hazardous materials as described above. The Fire Chief shall report any release or threatened release of hazardous materials to all appropriate Federal, State and local public health, safety and emergency agencies within twenty-four (24) hours of any substantial release of hazardous materials. The Fire Chief shall relinquish his response authority at such time, if any, as the Federal, State, or local public health, safety or emergency agency having primary jurisdiction over the release or threatened release has assumed responsibility for response to the release or threatened release.
- C. The Fire Chief, during such time as response authority is vested in him, shall be authorized to utilize all District personnel and equipment and he may, in his sole discretion, take such remedial or removal action as he may deem necessary or appropriate to respond to the release or threatened release of hazardous material including the use of material and in accordance with any Mutual Aid Box Alarm System ("MABAS") agreements.
- D. All responding personnel shall cooperate with and operate under the direction of the Fire Chief or other person then exercising response authority under this Ordinance until such time as the person exercising such response authority has determined that the response is complete or responsibility for response is assumed by the Federal, State or local public health, safety or emergency agency having primary jurisdiction over the release or threatened release.
- E. The person exercising response authority under this Ordinance shall coordinate and/or cooperate with other Federal, State or local public health, safety or emergency agencies involved in response to the release or threatened release of hazardous materials.

#### **SECTION 5: LIABILITY FOR COSTS:**

- A. Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this Ordinance, the following persons shall be jointly and severally liable for all costs of removal and remedial action incurred by the District as a result of a release or threatened release of a hazardous material:
  - 1. The owner and operator of a facility or vessel from which there is a release or substantial threat of release of a hazardous material.
  - 2. Any person who, at the time of disposal, transport, storage, or treatment of a hazardous material, owned or operated the facility or vessel used for such disposal, transport, treatment or storage from which there was a release or substantial threat of a release of any such hazardous material.
  - 3. Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal, or treatment of hazardous materials owned, controlled or possessed by such person at a

facility owned or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous materials.

4. Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities or sites from which there is a release or a substantial threat of release of such hazardous substances.

**SECTION 6: DEFENSES:** There shall be no liability under this Ordinance for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous material and the damages resulting there from were caused solely by:

- A. An act of nature over which he or she had no control;
- B. An act of war; or
- C. Any combination of the foregoing.

**SECTION 7: COSTS AND PENALTIES:**

- A. Any person who is liable for the release or threatened release of a hazardous material who fails without sufficient cause to pay for or provide removal or remedial action upon or in accordance with a notice and request of the District, or in accordance with any order of any court having jurisdiction on the matter, shall be liable to the District for any costs incurred by the District as a result of such failure to provide or take such removal or remedial action, together with the cost of any removal or remedial action taken by the District in accordance with the ordinance, and all attorney's fees and related legal costs incurred in connection therewith.
- B. In addition, any such person shall be guilty of a violation of this Ordinance and shall be fined not less than one hundred dollars (\$300.00) nor more than one thousand dollars (\$3,000.00) for each offense. A separate offense shall be deemed committed for each day on which a violation occurs or continues. Where such violation is found to be the result of willful and/or wanton conduct or gross negligence, or the person committing such violation attempts to evade responsibility hereunder by leaving the scene of the occurrence or by other means, that person shall be subject to a fine as provided for above or a fine in an amount equal to three times the costs, including attorneys' fees and legal costs, for which it is liable under Paragraph A, whichever is greater.
- C. Charges for removal or remedial action when rendered by the District or any agency in accordance with any mutual aid agreement shall be as follows:
  1. The cost of vehicles as determined by the responding agency, but in no case less than \$355.00 per hour per vehicle; and
  2. The cost of all personnel including any over time cost to the Bensenville Fire Protection District No.2 or to any responding agency, incurred as a result of the removal or remedial action, but in no case less than \$100.00 per hour; and

3. The cost of all materials and equipment used, expended, depleted, destroyed or removed from service in accordance with federal, state or local ordinance as a result of the mitigation or containment operations or at the request of the District or any responding agency; and
4. The costs of service and/or goods provided by a private or public entity which are used, expended, depleted or destroyed as a result of the response.

**SECTION 8:** This Ordinance shall supersede any ordinances or motions or parts of ordinances or motions in conflict with any part herein, and any such ordinances or motions or parts of such ordinances are hereby repealed.

**SECTION 9:** If any section, paragraph or provisions of the Ordinance shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any of the remaining provisions of this Ordinance.

**SECTION 10:** The Secretary of the Bensenville Fire Protection District No.2 is hereby directed to publish this Ordinance in full at least once in a newspaper published in the District. Publication shall take place at least ten (10) days prior to implementation of this Ordinance. The provisions of this Ordinance shall be in full force and effect ten (10) days after publication as provided by law (70 ILCS 705II) or on August 1, 2023, whichever is later.

**ADOPTED** this 19<sup>th</sup> day of July 2023, by a roll call vote as follows:

AYES: Madura, Budnik, Eltman

NAYS: X

ABSENT: X

  
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President, Board of Trustees  
Bensenville Fire Protection District #2

ATTEST:  
  
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Secretary, Board of Trustees  
Bensenville Fire Protection District No. 2

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF DUPAGE    )

**SECRETARY'S CERTIFICATE**

I, Douglas Eltman, the duly qualified and acting Secretary of the Board of Trustees of the Bensenville Fire Protection District No.2, Cook and DuPage Counties, Illinois, do hereby certify that I am the keeper of its books and records and that the attached hereto is a true and correct copy of an Ordinance entitled:

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which Ordinance was duly adopted by said Board of Trustees at a regular meeting held on the 19th day of July, 2023. I do further certify that a quorum of said Board of Trustees was present at said meeting and that the Board complied with all requirements of the Illinois Open Meetings Act.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 19th day of July 2023.

  
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Secretary, Board of Trustees  
Bensenville Fire Protection District

(SEAL)