

ORDINANCE #12-14

**AN ORDINANCE ENTITLED
“REIMBURSEMENT FOR ABATEMENT OF HAZARDOUS RELEASE”**

WHEREAS, the Borough of Keyport offers a variety of emergency response services for dangerous and life-threatening incidents involving hazardous substances; and

WHEREAS, those responses often involve damage to, or the expending of, Borough-owned materials that must then be replaced in order for the Borough to continue to provide such services to protect the health, safety and welfare of its residents and their property; and

WHEREAS, in order to alleviate Borough taxpayers from the burden of such replacement costs, the Mayor and Council deem it appropriate to seek reimbursement from parties responsible for such emergencies and/or who received the benefit of said services.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Keyport as follows:

Section 1. Chapter III (“Police and Fire Departments”) of the Revised General Ordinances of Borough Ordinance are hereby amended as follows:

ARTICLE III

**REIMBURSEMENT FOR ITEMS EXPENDED
ABATING RELEASE OF A HAZARDOUS SUBSTANCE**

3-46 PURPOSE.

This Article provides for the reimbursement for, or the replacement of, any and all items expended, damaged or destroyed while utilized by the Borough of Keyport and any of its volunteer service companies, for the purpose of mitigating, controlling or containing any incident in which a hazardous substance is involved in a fire, leak, release or spill, or where the potential thereof exists, or for the prevention of same.

3-47 DEFINITIONS.

For purposes of this Article, the following terms shall have the meanings indicated:

Borough. The Borough of Keyport, including its employees, agents, officers and officials, and any of its volunteer emergency services.

Expended Item. Any item used or damaged while being used to extinguish, prevent, stop or contain any fire or release involving any hazardous material, which cannot be replaced, reused or cannot be replenished without cost after a particular incident. Expended Items shall include, but are not limited to, firefighting foam, chemical extinguishing agents, absorbents and absorbent materials, sand, recovery drums and any protective equipment and clothing, including, but not limited to, firefighting turnout gear, breathing apparatus, chemical protective suits, boots, gloves and goggles, and any other item owned or controlled by the Borough.

Fire. An uncontrolled or unplanned incident in which a tangible item, a living object or being, or property burns or catches fire, and which incident causes or threatens the release of a hazardous substance.

Hazardous Substance. Any material, solid, liquid or gas, in any quantity, listed as such under the NFPA Fire Protection Guide of Hazardous Materials, the Department of Transportation Emergency Response Guidebook, the list of hazardous substances and toxic pollutants as adopted by the Federal Environmental Protection Agency (EPA), pursuant to Sections 307 and 311 of the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977 (33 U.S.C. § 1251 et seq.) or other federal statute. Hazardous substance shall expressly include any oil or petroleum of any kind and in any form, including, but not limited to, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils and substantive or additives utilized in the refining or blending of crude, petroleum or petroleum stock.

Person. Any natural person or individual, or any firm, partnership, association, limited partnership, association, limited partnership, proprietorship, corporation or any other business entity or any governmental agency or entity.

Release. Any intentional or unintentional action or omission resulting in the releasing, discharging, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any hazardous substance within the Borough, or at any location to which Borough personnel or volunteers are providing an emergency response.

Vehicle. Any motorized equipment, registered or unregistered, including, but not limited to, a passenger car, motorcycle, truck, tractor trailer, construction equipment, farm machinery, watercraft, aircraft or train.

Vessel. Any container, drum, box, cylinder or tank used to hold or to contain or carry or store any hazardous substance, whether or not said container was manufactured for the containment of a hazardous substance.

3-48 FIRE OR RELEASE INVOLVING A HAZARDOUS SUBSTANCE.

3-48.1 Any person who causes or may be responsible for a fire, release or threatened release of or involving any hazardous substance shall immediately notify the Keyport Police Department at 732-264-0707. Any person who becomes aware of any such fire, release or threatened release is encouraged to notify the Keyport Police Department at 732-264-0707 as soon as possible.

3-48.2 In the event of a fire, release or threatened release of or involving any hazardous substance, the Borough may, in its discretion, act to prevent, contain, remove, or arrange for the removal of such release or threatened release.

3-49 PARTIES RESPONSIBLE FOR REIMBURSEMENT.

Reimbursement to the Borough for any incurred costs or expenses in responding to a fire, release or threatened release of any hazardous substance shall be made by the following parties (each, a "Responsible Party"):

3-49.1 Vehicle or Vessel. The owner or operator for any vehicle or vessel containing hazardous substance involved in any fire, release or threatened release on public or private property, whether stationary or in transit, whether accidental or through negligence or a criminal act.

3-49.2 Property. The owner or person in possession of any property from which any fire or release or of involving any hazardous substance emanates or is threatened, whether accidental or through negligence or criminal act.

3-49.3 Primary Responsibility. Without prejudice to the Borough's ability to seek reimbursement from any and all Responsible Parties, the Borough may demand reimbursement from the Responsible Party most directly responsible, in the judgment of the Borough, for the fire, release or threatened release.

3-50 REIMBURSEMENT FOR EXPENDED ITEMS AND SERVICE PROVIDERS.

3-50.1 Expended Items. Any Responsible Party shall reimburse the Borough for the full replacement cost for any and all Expended Items.

3-50.2 Service Providers. Any Responsible Party shall reimburse the Borough for any expenses it incurs for services rendered by any non-Borough service provider, including any recovery company or technical assistance provider, called by or on behalf of the Borough to respond to such an incident.

3-50.3 Period for Payment. Any Responsible Party shall reimburse the Borough for its costs and expenses under this Article within a period of 45 days after receipt of a statement from the Borough setting forth said costs and expenses. As applicable, this statement shall indicate the replacement cost of such items from a reputable vendor's catalogue or submitted receipts.

3-51 VIOLATIONS AND PENALTIES.

Any Responsible Party who fails to reimburse the Borough within the time set forth in this Article shall be subject to the penalties provided by § 1-5 of this Code. The Borough further reserves the right to pursue any legal claim it may have arising under this Article in a court of competent jurisdiction, and no provision herein shall limit the Borough's right to seek civil relief or compensation as it deems appropriate.


Section 2. All Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

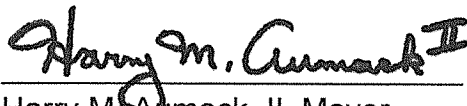
Section 3. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 4. The Borough Clerk is hereby directed, upon adoption of the Ordinance after public hearing thereon, to publish notice of the passage thereof.

Section 5. This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

Introduced: November 25, 2014
Public Hearing: December 9, 2014
Adopted: December 9, 2014


Valerie T. Heilweil, RMC
Borough Clerk
Borough of Keyport


Harry M. Ammack, II, Mayor
Borough of Keyport