

CITY OF MARCO ISLAND

ORDINANCE NO. 02-29

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 22, FIRE PREVENTION AND PROTECTION, CREATING ARTICLE I, SECTION 22-37 RECOVERY OF COSTS FOR HAZARDOUS MATERIAL, SUSPICIOUS OR INCENDIARY FIRES, INVESTIGATIONS, VIOLATIONS OF LAW AND WEAPONS OF MASS DESTRUCTION INCIDENTS; PROVIDING FOR CITY COUNCIL PROCEDURES; PROVIDING CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has recognized that the Code of Ordinances should provide for the recovery of costs associated with the actions and response of the Fire-Rescue Department, subcontractors, other city departments, and other agencies requested by the Fire Rescue Department to abate emergencies and/or ensure the safety of the public; and

WHEREAS, current cost recovery structure does not adequately provide for recouping the costs associated with such actions; and

WHEREAS, there are accepted Federal Emergency Management Association (FEMA), county and city cost recovery charges that reflect and standardize apparatus, equipment and personnel costs; and

WHEREAS, the City Council of the City of Marco Island, Florida, finds that it is in the best interest of the City to amend Chapter 22, Fire Prevention and Protection, Section 22-37, Recovery of Costs for, Hazardous Material, Suspicious or Incendiary Fires, Investigations, Violations of Law, and Weapons of Mass Destruction Incidents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION ONE:

That Chapter 22, Fire Prevention and Protection, Article I, Section 22-37, Recovery of Costs for Hazardous Material, Suspicious or Incendiary Fires, Investigations, Violations of Law, and Weapons of Mass Destruction Incidents is amended to read as follows:

Chapter 22: FIRE PREVENTION AND PROTECTION

Article I: In General

SEC. 22-37 Recovery of costs associated with Hazardous Material, Suspicious or Incendiary Fires, Investigations, Violations of Law, and Weapons of Mass Destruction Incidents.

(1) *Definitions.*

(a). *Cost recovery* means those necessary and reasonable costs incurred by the city or its agents in connection with rescue, emergency medical services, mitigation, health, life and safety issues, suppression and investigation of suspicious or incendiary fires, violations of law, mitigating, minimizing, removing or abating hazardous material or weapons of mass destruction incidents, including but not limited to the following: actual labor costs of personnel or its authorized agents, costs and operation of equipment, necessary rental, or subcontracting, or purchase and costs of expendable items, etc.

(b). *Suspicious or incendiary fire* means any fire not of natural or accidental cause.

(c). *Release* means any intentional or unintentional action or omission resulting in the attempted or actual release, spill, pumping, pouring, emitting, emptying or dumping of a suspected or actual hazardous, biological, chemical, explosive, radioactive substance or material upon public or private property located within or outside the corporate limits of the city.

(d). *Forfeiture* as defined in Florida State Statute Chapters 893.12, 932.701-704

(e). *Hazardous substance* means any substance or material in a quantity or form which, in the determination of the fire chief or the chief's authorized designee, poses an unreasonable and imminent risk to the life, health, safety or welfare of persons or property within the city and shall include but not be limited to those hazardous substances listed in the N.F.P.A. Guide on Hazardous Materials, the E.P.A.'s list of extremely hazardous substances and the Emergency Response Guide from D.O.T., or 49 CFR.

(f). *Restitution* as defined in Florida State Statute Chapters 775.089

(g). *Weapons of Mass Destruction* means any nuclear, biological, explosive or chemical event related to an act of Terrorism.

(2) *Authority of City.*

(a). The Fire Department is hereby authorized to take such steps as necessary, to protect the life, safety and health of the public and to take all such steps necessary to respond and abate emergencies and recover all associated costs as outlined within this section, including but not limited to the following: actual labor costs of personnel or its authorized agents, costs and operation of equipment, necessary rental, subcontracting, or purchase and costs of expendable items, etc.

(b). The City Manager or designee is hereby authorized to collect and recover costs associated with such services and work, including forfeiture and restitution.

(c). The City Manager or designee shall be authorized to adopt administrative policies regarding the collection of the fees, assessments, and liens. Costs will be based on the applicable schedule of rates provided by: the current FEMA table; the Florida Fire Chiefs Association; the Collier County Fire Chiefs Association cost recovery schedules; and actual costs for consumables, equipment, response and fill in personnel, subcontractors, and other city departments requested by Fire-Rescue.

(3) *Liability for costs.*

(a). Any person(s), property owner, renter or agent charged with a violation of: the City's Code of Ordinances, Florida Statutes, including Driving Under the Influence of drugs and/or alcohol, or otherwise responsible for action by the fire department or its authorized agents in accordance with provisions of this section shall reimburse the City as provided in (c) above.

(b). Reimbursement for expenses is due upon invoice from the City. Failure to pay the cost recovery invoice within 30 days will constitute a civil infraction with this article and as such will be enforceable in accordance with this article, the Code of Ordinances City of Marco Island, and state law.

(4) *Additional Remedies.*

(a). The remedy provided for in this section shall be supplemental to and in addition to all other available remedies at law and equity, inclusive of forfeiture and restitution as defined in Florida State Statute, and may be negotiated or waived by the City Manager when in the best interest of the City.

(b). Actions of a juvenile resulting in Fires Rescue response under this article shall be the responsibility of the legal guardian. The City Manager may waive charges upon the enrollment of the child in an approved counseling program.

SECTION TWO: CONFLICT AND SEVERABILITY

In the event this Ordinance conflicts with any other Ordinances or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION THREE: INCLUSION IN THE CODE OF LAWS AND ORDINANCE

The provision of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the City of Marco Island, Florida. The sections of this Ordinance may be numbered and relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION FOUR: EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 7th day of October, 2002

ATTEST:

BY: A. William Moss
A. William Moss
City Manager/City Clerk

CITY OF MARCO ISLAND

BY: E. Glenn Tucker
E. Glenn Tucker, Chairman

Approved as to form
and legal sufficiency:

Kenneth B. Cuyler
Kenneth B. Cuyler
City Attorney