

ORDINANCE NO. 561

AN ORDINANCE OF THE TOWN OF BELLEAIR, FLORIDA, AMENDING CHAPTER 18 OF THE TOWN CODE (CIVIL EMERGENCIES); MAKING RELATED FINDINGS; AND PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 18 of the Belleair Town Code, which addresses Town emergencies, was last revised in 1991; and

WHEREAS, the Town Commission has asked the Town Attorney to undertake a complete review of the Town Code, and to recommend any updates or revisions to ensure the Code is in accord with current constitutional and statutory law, and consistent with desired Town priorities and best practices; and

WHEREAS, the Town Attorney has recommended the revisions to Chapter 18 of the Town Code as are set forth in this Ordinance; and

WHEREAS, the Town Commission finds that the provisions of this Ordinance are in the best interests of the Town.

NOW, THEREFORE BE IT ORDAINED by the Town Commission of the Town of Belleair, Florida, that:

Section 1. Chapter 18 of the Belleair Town Code is hereby amended to read as follows:

Chapter 18 - CIVIL EMERGENCIES

ARTICLE I. - IN GENERAL

Sec. 18-1. - Intent.

- (a) It is the intent of this chapter to provide the necessary organization, powers, and authority to enable the timely and effective use of all available town resources to prepare for, respond to, and recover from emergencies or disasters, natural and manmade, likely to affect the security, safety, or health of the town and its residents, whether such events occur within or beyond the corporate limits of the town.
- (b) Nothing herein shall be intended to relieve town employees or contractors of their assigned duties, responsibilities, and functions.
- (c) Nothing herein shall be construed as a delegation of authority to abridge or diminish the legislative powers of the town commission.

Sec. 18-2. - Hazardous emergency response cost recovery.

- (a) Title. This section shall be known as the “Hazardous Material Emergency Response Cost Recovery Policy.”
- (b) Intent and purpose. This section is intended to provide for recovery by the town of costs incurred in emergency response, incident assessment, control, containment, and abatement efforts directly related to hazardous material emergency response within the town limits.
- (c) Authority. The town has the authority to adopt this section pursuant to the provisions of Florida Statutes Chapters 166 and 252.
- (d) Jurisdiction. This section shall apply to the corporate limits of the town.
- (e) Definitions. As used in this section, the following words and phrases shall have the meaning indicated unless the context otherwise requires:

Costs means all reasonable and necessary expenses that are incurred by the town as a direct result of the hazardous materials emergency response, including but not limited to the following:

- (1) Emergency response, incident assessment, control, containment, and abatement of a hazardous materials incident, to include costs associated with transportation and temporary storage of hazardous materials if such transportation and temporary storage is necessary to control and contain the hazardous materials incident.
- (2) Ensuring the safety of the public, both on and off the site of the hazardous materials incident.
- (3) Repairing or replacing equipment if said equipment was damaged or destroyed as a direct result of the hazardous materials incident.
- (4) Equipment, including rental equipment, utilized by the town to the extent such labor and equipment is necessary for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (5) Contract labor and equipment utilized by the town for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (6) Overtime costs for compensation of town employees for the time devoted specifically to the hazardous materials incident.
- (7) Labor and equipment utilized by the town via a mutual aid agreement for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (8) Disposable materials and supplies consumed and expended as a result of the hazardous materials incident, including but not limited

to, absorbents, foams, neutralization agents, over pack drums or containers.

(9) Decontamination of equipment that is contaminated during the hazardous materials incident.

(10) Laboratory costs for purposes of analyzing samples taken during the release.

Emergency response means the provision of authorized assistance during and following a hazardous material incident and to reduce the likelihood of secondary damage, and may include incident assessment, control, containment and abatement of the immediate hazard.

Hazardous material means a substance or material that the United States Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal Hazardous Materials Transportation Law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. 173.

Hazardous material incident means actual or threatened release of a hazardous substance or material, including hazardous waste, which poses an imminent threat to the environment and/or to the health, safety or welfare of the population and requires emergency response, incident assessment, control, containment and abatement of the immediate hazard.

Person means an individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental entity, or any other legal entity.

Release means the accidental or intentional, sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant) whether such release occurs from a fixed facility or while the materials are being transported.

Responder means any person authorized to participate in the town coordinated emergency response to a hazardous material incident.

Responsible party means the person or persons who cause or allow a release of a hazardous material or substance or who had custody or control of the hazardous material or substance at the time of such release.

(f) *Hazardous materials incidents—Liability for costs.* Any responsible party shall be liable for the payment of all reasonable and necessary costs incurred by the town or its agents for

emergency response, incident assessment, control, containment and abatement of the immediate hazard as a direct result of the hazardous material incident.

(g) Hazardous materials incidents—Exceptions. The authority to recover costs under this section shall not include costs incurred for actual fire suppression service, which is normally or usually provided within the town by the Largo Fire Department or its authorized agents.

(h) Collection and disbursement of funds for cost recovery.

(1) Agent for collection. The town shall be responsible for collecting invoices from responders to a hazardous material incident and presenting a bill to the responsible party for costs.

(2) Procedure for responders. When responding to a hazardous material incident, the town clerk shall keep a detailed record of the costs attributable thereto.

(3) Procedure for responders submittal of invoices to town. An invoice identifying eligible costs under this article shall be submitted by responders to the town within 30 days after the cost was incurred or identified. Submitted invoices must include sufficient documentation for cost reimbursement (i.e. copies of time sheets for specific personnel, copies of bills for the materials, equipment and supplies procured or used, etc.). Accepting invoices from agencies outside the town shall not incur liability to the town to pay costs from such agencies until payment is received by the town from the responsible party.

(4) Method of billing and payment. The town shall submit one or a series of consolidated invoices to the responsible party, identifying the responders (i.e. agencies, agents or municipalities) and their specific costs for reimbursements. The responsible party shall issue a separate certified check payable to each responder that submitted an invoice. The checks will be sent to the town within 60 days of receiving a consolidated invoice. The town shall disburse the checks to the responders.

(i) Methods of enforcement.

(1) Supplemental beneficial projects. This section shall not prohibit the town from entering into binding agreements with the responsible party for remedial actions such as supplemental beneficial projects (SBPs) in lieu of monetary payment, provided that all or part of the responders agree with the SBP in lieu of payment or the town accepts the SBP and compensates the other responders. SBPs are projects which a responsible party agrees to undertake to benefit the emergency response entity but is not otherwise legally required to perform. The SBP must have a direct benefit to the responding entity of the town and the value of the SBP can be used to offset monetary payment on a dollar-for-dollar basis. There is no minimum or maximum amount of monetary payment that can be offset by a SBP.

(2) Civil action. The town may enforce these provisions by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus

administrative collection costs, attorney fees, or for any other relief that may be authorized by law.

- (3) Remedies at law. The town may seek any or all available remedies at law, to include the provisions of this article, against any parties responsible for any hazardous materials incident, to include those actions and remedies available under the U.S. Bankruptcy Code relating to such matters.

(j) Conflict with other laws.

- (1) Whenever the requirements or provisions of this section are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the more restrictive requirements shall apply as to the matters in conflict, and all provisions of this section not in conflict shall remain in full force and effect.
- (2) This section shall not restrict or replace cost recovery from funding sources available under state and federal regulations including but not limited to the revolving fund established under section 311(K) of the Federal Water Pollution Trust Fund established under Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9611); and the hazardous materials account of the state division of emergency management operating trust fund established under Chapter 252, Florida Statutes.
- (3) This section shall not restrict or replace any legal remedy or cause of action otherwise available to the town, responding public safety agencies, or responsible parties.

Secs. 18-3—18-19. - Reserved.

ARTICLE II. - EMERGENCY MANAGEMENT

Sec. 18-20 – Declaration of a state of local emergency.

- (a) When in the judgment of the mayor a civil emergency or state of emergency as defined by Florida Statutes § 870.043 exists, the mayor is authorized to declare such emergency.
- (b) Any declaration of a state of local emergency and all emergency regulations activated under the provisions of this chapter shall be confirmed by the town commission by resolution within two working days of such declaration, or at the next regular or special meeting of the town commission, whichever comes first, unless the nature of the local emergency renders a meeting of the commission impractical. The resolution confirming the declaration shall state the basis for the declaration, the expected duration of the state of emergency, and such other emergency policies or actions as the commission deems appropriate.
- (c) The following policies shall, as necessary, also be effective during the period of a state of local emergency:
- (1) The town may utilize all available resources as reasonably necessary to cope with the

- effects of the emergency, including emergency expenditures authorized by the manager, with a report made to the town commission subsequent to the termination of the emergency declaration.
- (2) The town may make provisions for availability and use of temporary emergency housing and emergency warehousing of materials for citizens.
- (3) The town may confiscate merchandise, equipment, vehicles, or property needed to respond to the emergency. Reimbursement shall be within 60 days and at a customary value. Such action shall be taken by the manager only in extreme situations, where no resources from any other governmental agency are available, and only when necessary to prevent imminent death, injury or loss of property in the town.
- (d) Pursuant to Florida Statutes § 252.38(2), the town shall coordinate its emergency management activities with those of the county emergency management agency. To the extent the town has not elected to adopt an emergency management program, it shall be served by the county's emergency response agencies. To the extent the town, by resolution, elects to establish an emergency management program, the town must comply with all laws, rules, and requirements applicable to county emergency management agencies as set forth in Florida Statutes Chapter 252 and elsewhere. If the town elects to adopt its own emergency management plan, the plan must be consistent with and subject to the applicable county emergency management plan. The town is required to coordinate all requests for state or federal emergency response assistance with the county.
- (e) In the event of a declared emergency, the manager is authorized to engage in the following activities without compliance with the normal town procedures:
- (1) Performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community;
- (2) Entering into contracts for emergency goods or services;
- (3) Incurring obligations to respond to emergency conditions; and
- (4) Obtaining labor resources to respond to emergency conditions.

Sec. 18-21. – Manager's powers; duties; responsibilities.

- (a) In addition to those powers and duties set forth in § 18-20, the town manager shall direct all emergency management functions for the town, and shall have the following powers, duties and responsibilities:
- (1) To assist the commission or, where circumstances prohibit full commission action, the mayor, to make a declaration of emergency for the reasons set forth in this article;
- (2) To direct the creation, revisions and exercise of emergency response plans conforming

to state and county emergency plans for the mitigation of preparation for, response to, and recovery from emergencies or disasters;

- (3) To direct the efforts of the town staff in the preparation for, response to, and recovery from emergency conditions;
 - (4) To recommend a budget to the commission for the creation and maintenance of emergency response capabilities;
 - (5) To promulgate, during a declared emergency, regulations necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from the emergency;
 - (6) To coordinate the public information function of the town and to coordinate a town emergency awareness program;
 - (7) To direct the development and maintenance of the town's emergency plans, including annual revisions;
 - (8) To direct the development of a temporary town emergency operations center (EOC) to include equipment, staffing, and operational procedures necessary for the management and control of emergency conditions; and
 - (9) To provide and coordinate a town training program in emergency response and management.
- (b) The manager may designate an emergency management planning team, which may include staff and volunteers and which, under the manager's oversight, shall:
- (1) Assist in staffing the EOC during an emergency or state of local emergency; and
 - (2) Assist in the creation, revision, and exercise of emergency operations plans and ensure that all relevant town officials, employees and agents are trained as to their respective roles and responsibilities with respect to the town's response to emergency conditions.
 - (3) The emergency management planning team authorized by this section shall serve only in an administrative status, assisting the manager in planning and responding to emergency circumstances. It shall not possess any decision-making or screening role such as would subject such group to the sunshine law. At all times, the town manager shall have full authority, subject to guidance and direction from the commission, over emergency planning and management.

Sec. 18-22 – Curfew.

- (a) Pursuant to the authority provided in Florida Statutes § 870.045, once an emergency has been declared, the mayor is authorized to order a general curfew. A general curfew shall

prohibit any person being, walking, running, loitering, standing or motoring upon any highway, boulevard, street, avenue, alley, public property or vacant premises within the corporate limits of the town, except persons officially designated as having duties with reference to an emergency. The curfew limitations set forth above, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, shall not apply to persons designated as providing essential services such as fire, police, and hospital services, including the transportation of patients, utility emergency repair workers, debris removal services deployed by the town or the county, and emergency calls by physicians.

- (b) If the mayor orders a general curfew, the town manager shall, if practical, issue and disseminate the curfew order to the public by as broad a manner as is practicable under the circumstances, including providing notification of the order to the county sheriff, county administrator, and the radio, television and print media, as well as on the town website and available social media platforms.

Sec. 18-23 – Termination of a state of emergency.

A state of emergency shall be terminated by the mayor or a resolution of town commission when the conditions supporting the declaration no longer exist, and when the town's administration is able to manage the conditions without extraordinary assistance and powers. Notice of such termination shall be made to the public by the manager in the same manner as set forth in § 18-22(b).

~~DIVISION 1. – GENERALLY~~

~~Sec. 18-36. – Emergency powers of mayor.~~

- (a) ~~The mayor of the town is empowered to declare when a state of emergency exists within the boundaries of the town and to exercise the emergency powers conferred in F.S. §§ 870.041 through 870.047.~~
- (b) ~~No provision of this section shall be deemed to modify or waive any requirement imposed by state statute or regulation of any other governmental agency.~~

~~DIVISION 2. – RECOVERY TASK FORCE~~

~~Sec. 18-56. – Established; membership.~~

~~There is hereby established the recovery task force. The membership of the recovery task force shall consist of the town manager, the police chief, the fire chief, the town engineer, the town building official, and the director of public works. The town manager shall be the chairman of the recovery task force, with the authority to convene meetings of the recovery task force as the town manager deems appropriate.~~

~~Sec. 18-57. – Duties and responsibilities.~~

~~—In the event the town experiences a natural or other disaster, the following shall be the duties and responsibilities of the recovery task force:~~

- ~~(1) Hear preliminary damage reports;~~
- ~~(2) Take all steps necessary to seek financial assistance from the appropriate local, state and federal agencies;~~
- ~~(3) Authorize immediate cleanup and repairs necessary to protect the public health, safety and welfare;~~
- ~~(4) Identify areas within the town where minor, moderate and major damage has occurred;~~
- ~~(5) Recommend to the town commission that a temporary building moratorium be instituted for those building activities which are not essential to protect the public health, safety and welfare;~~
- ~~(6) Recommend to the town commission that appropriate hazard mitigation policies be implemented in response to the disaster; and~~
- ~~(7) Prepare a report evaluating post disaster redevelopment response, which report shall include recommendations to the town commission for appropriate changes to the comprehensive plan of the town.~~

Section 2. For purposes of codification of any existing section of the Belleair Town Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Town Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Belleair Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING by the Town Commission of the Town of Belleair, Florida, at the meeting held on the 17th day of January, 2023.

PUBLISHED THE ## day of [MONTH], 2023.

PASSED AND ADOPTED ON SECOND READING AND PUBLIC HEARING this ## day of [MONTH], 2023.

Michael Wilkinson, Mayor

ATTEST:

Christine Nicole, CPM, CMC, Town Clerk