

HAZARDOUS MATERIALS TRANSPORTATION ORDINANCE

SPONSOR: MAYOR NORWOOD

WHEREAS, the City Council of the City of Prichard finds the release of hazardous materials into the environment is injurious to the public health, safety and welfare and is hereby found to constitute a nuisance; and

WHEREAS, the City Council of Prichard finds that the city may incur substantial expense for emergency actions to mitigate injury to the public health, safety and welfare from the release of threatened release of hazardous materials; and

WHEREAS, such expenses should properly be borne by those that profit from the activities that resulted in the release or threatened release of hazardous materials into the environment, and the Mayor and City Council are desirous of placing the burden of such expenses upon such persons and/or entities;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRICHARD, ALABAMA, AS FOLLOWS:

SECTION 1. This article shall pertain to all modes of transportation as defined in the Code of Federal Regulations, Title 49, as may be amended from time to time.

SECTION 2. Definitions. The following definitions shall apply in the interpretation of this Section:

- (a) *Emergency action* shall mean all of the concerted activities conducted in order to prevent or mitigate injury to human health or the environment from a release or threatened release of any hazardous material into the environment.
- (b) *Fire Code* shall mean the fire code of the city as may be amended from time to time.
- (c) *Hazardous material* shall mean a substance or material, including a hazardous substance, which has been determined by the secretary of transportation, or other state or federal agency, to be capable of posing an unreasonable risk to health safety and property when transported in commerce, and which has been so designated, including any residue, vapors or fumes from

such substance. The above definition of hazardous materials shall include any material defined as hazardous material by the United States Department of Transportation, the Environmental Protection Agency, the Alabama Public Service Commission the Alabama Department of Environment Management or any other federal or state agency, including but not limited to the definitions and illustrations given in the code of Federal Regulations, Title 40, Section 171.8, as may be amended from time to time.

- (d) *Motor vehicle* shall be defined as is defined by state law and in the federal Motor Carriers Safety Regulations, as may be amended from time to time. For the purposes of this article, the above definitions shall also include railroad trains and cars.
- (e) *Persons* shall mean any individual, corporation, association, partnership, firm, trustee or legal representative.
- (f) *Recoverable expenses* are all those expenses that are reasonable and necessary for the emergency action, except as hereinafter provided. Recoverable expenses include, but are not limited to:
 - (1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the emergency action.
 - (2) Any compensation payable to employees, consultants and contractors for time and effort devoted to the emergency action.
 - (3) Rental or leasing of equipment used specifically for the emergency action.
 - (4) Replacement costs for city equipment that is contaminated beyond reuse or repair.
 - (5) Decontamination of equipment contaminated during the emergency action.
 - (6) Other special services specifically required for the emergency action.
 - (7) Any costs of cleanup, storage or disposal of the released material.
 - (8) Costs associated with the services, supplies and equipment procured for a specific evacuation.
 - (9) Laboratory costs of analyzing samples taken during the emergency action.

- (10) Medical expenses incurred as a result of response activities.
- (11) Legal expenses that may be incurred as a result of the emergency action.
- (g) *Threatened release of hazardous material* shall mean a condition which exists when a release of hazardous materials is likely to occur unless preventive measures are immediately taken to prevent such release.
- (h) *Transportation operations* shall mean any movement, driving or otherwise operating a motor vehicle; transportation, conveying, storing, parking or offering for transportation any hazardous material; all activities connected with the operation of a motor vehicle or the transportation of hazardous material, including but not limited to the proper placarding, packaging, marking, labelling; proper shipping papers and any other requirements concerning the operation of a motor vehicle or the transportation of hazardous material.

SECTION 3. Criminal penalty. Any person found guilty of violating any of the provisions of this article shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars, or by imprisonment in jail for a period not exceeding six (6) months, or by such fine and imprisonment unless otherwise prohibited by law.

SECTION 4. Release or threatened release a nuisance. The release or threatened of hazardous materials into the into the environment in violation of the city's fire code is a nuisance. It shall be unlawful for any person to permit, cause, keep or maintain any such nuisance within the city.

SECTION 5. Compliance required. All persons, companies, other legal entities and all motor vehicles engaged in transportation operations for commercial purposes as defined in this article shall comply with all federal and state laws and regulations shall include but not be limited to regulations enacted by the U. S. Department of Transportation, federal Highway Administration, Environmental Protection Agency, the Alabama Department of Environment Management and the Alabama Public Service Commission, as if fully set out and incorporated herein. Any violation of the above laws or regulations shall be a violation of this Ordinance. The city police department is hereby authorized to stop and inspect any vehicles suspected of engaging in improper transportation operations, which is operating within the city limits or police jurisdiction of the city in order to ensure compliance with this Ordinance.

SECTION 6. Unlawful acts enumerated.

- (a) It shall be unlawful for any person to move drive or otherwise operate a motor vehicle for commercial purposes, as defined herein, unless such vehicle shall comply with the most current regulations of the Federal Motor Carrier Safety Regulations and the Alabama Public Service Commission Motor Carrier General Orders, Rules and Regulations. This section shall apply to all motor vehicles when engaged in any transportation operations of passengers and/or property both public and private for commercial purposes.
- (b) It shall be unlawful for any person or other legal entity to transport, convey, store or offer for transportation any hazardous material as defined herein, unless such material is properly package, marked, labelled and accompanied by the proper documentation as required by Title 49 of the Code of Federal Regulations.
- (c) It shall be unlawful for any motor vehicle used for commercial purposes which contains hazardous material to park under any of the following circumstances:
 - (1) A motor vehicle which contains hazardous material parked on or within five (5) feet of the travelled portion of a public street or highway, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.
 - (2) On public or private property, including but not limited to premises of a fueling facility, an eating facility, a motel, hotel, truck stop or parking lot, without the knowledge and consent of the person who is in charge of the property.
 - (3) Notwithstanding any other provision in this section, a motor vehicle which contains hazardous material shall not be parked within three hundred (300) feet of a bridge, tunnel, dwelling, building or other place where people work, congregate or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

The police department is hereby authorized to cause the removal of any vehicle that is found in violation of this subsection.

SECTION 7. Recovery of expenses.

- (a) Any person responsible of a release or threatened release of hazardous materials into the environment which results in an emergency action shall be liable to the city for the city's recoverable expenses resulting from such action.
- (b) The staffs of each city department involved in an emergency action to stabilize the situations shall keep a detailed record of its recoverable expenses resulting from the emergency action. Promptly after completion of the emergency action, the staffs shall certify those expenses to the fire chief. The fire chief, or a duly authorized designed, shall forward the city's total claim to the City Clerk department to be mailed to any and all persons responsible for the emergency action. The claim shall be written, itemized statement of the total recoverable expenses incurred by the city or the emergency actions, along with an assessment detailed further in subsection (c) and shall include a notice that if such claim is not paid in full in thirty (30) days, the city may initiate a civil action for the collection of the claim.
- (c) The city's claim for emergency response shall include in addition to the city's recoverable expenses a hazardous materials special assessment in the amount of two hundred dollars (\$200.00). Appeal of this amount shall be to the city council. A written notice of appeal shall be filed with the city clerk within thirty (30) days from the date of the invoice. Notice of such appeal shall be forwarded to the fire chief, the accounts receivable office and the legal department by the city clerk's office.
- (d) The accounts receivable department is hereby authorized to have an action brought by the legal department on behalf of the city or recover any such claim which has not been paid or appealed within the specified thirty (30) days.
- (e) This civil remedy shall be in addition to and not in lieu of, any criminal prosecution or penalty.
- (f) The recoverable expenses and the hazardous materials special assessment resulting from an emergency response to any spill, or release of a hazardous substance, as defined herein which poses a significant present threat or potential hazard to human life, property or environment, shall be a charge against the person or entity whose conduct or conduct of its

employees, agents or contractors, cause or permitted the incident resulting in the emergency response.

SECTION 8. Repeal of Conflicting Code Sections and Ordinances.

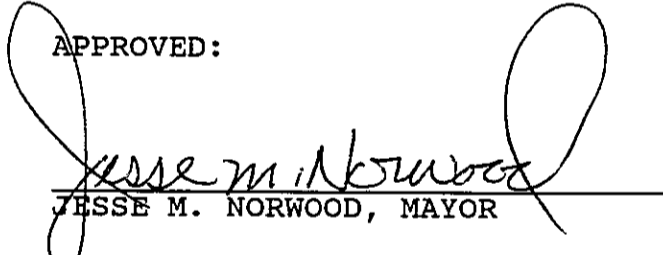
All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance, insofar as they conflict, are hereby repealed.

SECTION 9. Severability. In any section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause, or phrase thereof irrespective of the fact that one or more articles, sections, sentences, clauses, or phrases be declared invalid or unconstitutional.

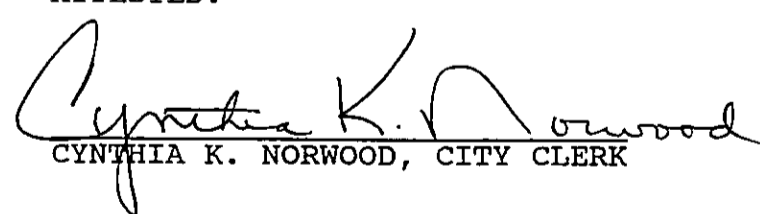
SECTION 10. Effect of Ordinance. This Ordinance shall be in full force and effect from and after its adoption and publication as required by law. This Ordinance applies to property within the city limits and police jurisdiction of the City of Prichard and shall be in full force and effect therein.

ADOPTED this the 25th day of February 1993.

APPROVED:


JESSE M. NORWOOD, MAYOR

ATTESTED:


CYNTHIA K. NORWOOD, CITY CLERK