

ORDINANCE NO. 52

AN ORDINANCE AUTHORIZING RECOVERY OF EXPENSES INCURRED IN RESPONDING TO HAZARDOUS MATERIALS EMERGENCIES.

WHEREAS, hazardous material emergencies provide a significant health risk to the public; and

WHEREAS, Utah Code Annotated §63-5a-4 authorizes political subdivisions of the State of Utah to adopt measures deemed necessary by the governing body to protect life and property and to deal effectively with disaster response and recovery; and

WHEREAS, Utah Code Annotated §53-2-105(3) specifically authorizes recovery of expenses incurred by political subdivisions of the State of Utah in responding to hazardous materials emergencies; and

WHEREAS, it is in the interest of health, safety and welfare of the public to provide for the recovery of expenses incurred by in hazardous material emergencies.

**NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE BODY
OF WASHINGTON COUNTY AS FOLLOWS:**

Section 1: Definitions.

For the purpose of this Ordinance, the following terms phrases and words shall have the following meaning:

1.1. A "hazardous materials emergency" means a sudden and unexpected release of any substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, presents a direct and immediate threat to public safety or the environment, and requires immediate action to mitigate the threat.

1.2. "Expenses" means all costs incurred for the response, containment and/or removal and disposal of hazardous materials on initial remedial action. It includes, but is not necessarily limited to, the actual labor costs of government and other personnel including workers compensation benefits, fringe benefits, administrative overhead, and any costs of equipment, equipment operation, materials, disposal and any contract labor or materials.

Section 2: Recovery of Expenses.

2.1. Those persons or entities whose negligent or intentional

actions cause or create, in whole or in part, a hazardous materials emergency within the boundaries of the County is liable to the County for all costs and expenses incurred in or arising from response to such hazardous materials emergency by the County and any other political subdivision, agency or cooperative entity. The County shall recover all such costs and expenses, including reasonable attorneys fees, litigation expenses and court costs incurred in, related to or arising out of, all cost recovery efforts and enforcement of the terms of this Ordinance.

2.2. All costs and expenses shall be billed at the current rate established and approved by resolution of the Executive Committee of the Interlocal Agreement for Cooperative Hazardous Materials Protection and Services.

2.2 The payment of expenses under this section does not constitute an admission of liability or negligence in any legal action for damages.

Section 3: Cost Recovery Procedure.

3.1. The County shall investigate and determine the person or entity responsible for causing or creating the hazardous materials emergency and shall notify the responsible party in writing of said determination of responsibility and the amount of costs and expenses incurred by the County in responding to the hazardous materials emergency.

3.2. The notice required by subsection 3.1 shall specify that the party determined to be responsible for causing or creating the hazardous materials emergency has the right to appeal the decision determining responsibility to the governing body of the County and shall specify a deadline for filing the notice of appeal and the person or office in which it must be filed. The deadline for filing the notice of appeal shall not be less than fifteen days from the date of the notice.

3.3. In the event a notice of appeal is filed, the hearing before the governing body shall be an informal public hearing, and the parties shall not be required to adhere to the Utah Rules of Civil Procedure or evidence. The appealing party and the County shall each be entitled to present evidence and argument in support of their respective positions, in accordance with procedures established at the hearing by the governing body.

3.4 The decision of the governing body shall be final.

Section 4: Action to Recover Costs.

In the event the responsible party fails or refuses to pay all of the costs and expenses determined by the County related to or arising out of the County's response to the hazardous materials emergency within thirty days after assessment or after the governing body's decision on an appeal, the County may initiate a legal action to recover such costs, including reasonable attorney's fees and costs.

Section 5: Expenses of other responding entities.

5.1. In the event that personnel and equipment from other political subdivisions, agencies or cooperative entities shall respond to assist with the hazardous materials emergency, then the County shall recover costs and expenses incurred by such other political subdivisions, agencies or cooperative entities as part of County's cost recovery efforts.

5.2. Upon recovery of costs and expenses from the responsible party, the County is authorized to reimburse such other political subdivisions, agencies or cooperative entities for their actual costs incurred in responding to the hazardous materials emergency.

Section 6: Severability.

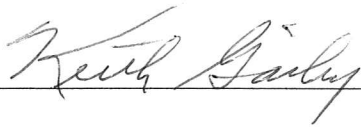
If any provision of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

Section 7: Effective date.

This Ordinance shall become effective immediately after passage and posting as required by law.

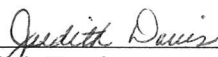
APPROVED and ADOPTED this 5 day of May, 2004.

BOULDER TOWN



KEITH GAILEY
Mayor

ATTEST:



Judith Davis
Boulder Town Clerk

Councilmember Behunin voted Aye
Councilmember Muse voted Aye
Councilmember DeMay voted Aye
Councilmember Harshman voted Aye