**INSERTS TO THE FLOATING STRUCTURE ORDINANCE DRAFT**

**PART 4. - ENVIRONMENTAL QUALITY DIVISION**

**Sec. 34.401. - Establishment; functions.**

There is created an Environmental Quality Division within the Neighborhoods Department. The Environmental Quality Division shall be responsible for the administration, operation and enforcement of the air and water resources management activities of the City.

(Ord. [2016-140-E](http://newords.municode.com/readordinance.aspx?ordinanceid=763402&datasource=ordbank) , § 9)

**Sec. 34.402. - Division Chief.**

The Chief of Environmental Quality shall be the Division Chief of the Environmental Quality Division. The Chief shall be appointed by the Mayor, subject to confirmation by the Council, and shall serve at the pleasure of the Mayor. The Chief shall have a bachelor's degree or higher in an accredited college or university five years of engineering or pollution control experience, including at least two years of experience in air and water pollution control activities and shall be registered by the State of Florida as a Professional Engineer within one year of appointment.

(Ord. [2016-140-E](http://newords.municode.com/readordinance.aspx?ordinanceid=763402&datasource=ordbank) , § 9)

**Chapter 360 - ENVIRONMENTAL REGULATION**[**[1]**](#fn_184)

Footnotes:

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**Charter reference—** Environmental protection board, Art. 11.

**State Law reference—** Natural resources and scenic beauty, Fla. Const. Art. II, § 7; Game and Fresh Water Fish Commission, Fla. Const. Art. IV, § 9; bonds for pollution control and abatement and other water facilities, Fla. Const. Art. VII, § 14; Countywide air pollution control, F.S. § 125.275; environmental control, F.S. ch. 403; local pollution control programs, F.S. § 403.182; open burning, F.S. § 590.026 et seq.

State rule reference—Environmental protection, F.A.C. tit. 62.

**PART 1. - PUBLIC POLICY; GENERAL PROVISIONS**

**Sec. 360.101. - Declaration of legislative intent and public policy.**

The Council finds and declares that the reasonable control and regulation of activities which are causing or may cause pollution of the air and of surface and underground waters so as to be injurious to human, animal or plant life or to property or which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business is desirable and in the public interest, having due regard for the commerce and industry of the City. The provisions of this Chapter are enacted in exercise of the police powers of the City for the purpose of protecting the health, safety and general welfare of the inhabitants of the City.

(Ord. 84-674-684, § 1)

**Sec. 360.102. - Exercise of County powers; territorial application of Chapter.**

This Chapter is an exercise of the City's powers as a County under Section 3.01 of the Charter of the City. This Chapter shall apply throughout the General Services District.

(Ord. 85-1295-690, § 1)

**Sec. 360.103. - Responsibility of Consolidated Government.**

In order to carry out the policy declared in Section 360.101, it is the continuing responsibility of the Consolidated Government to use all practicable means, consistent with other essential considerations of policy, to improve and coordinate the Consolidated Government's plans, functions, programs and resources to the end that the City may:

(a)  Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.

(b)  Assure for the inhabitants of the City reasonably safe, healthful, productive and aesthetically and culturally pleasing surroundings.

(c)  Attain the widest range of beneficial uses of the environment without significant degradation, undue risk to health or safety or other undesirable and unintended consequences.

(d)  Preserve important natural aspects of the City's heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice.

(e)  Achieve a balance between population and resource use which will permit high living standards and a wide sharing of life's amenities.

(f)  Achieve a reasonable balance between environmental quality and the economic well-being of the City.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1)

**Sec. 360.104. - Individual enjoyment and responsibility.**

The Director shall be responsible for the administration of this Chapter and of Chapters 362 and 390 and the rules promulgated by the Board pursuant to these Chapters and shall make regular reports to the Board.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1)

**Sec. 360.105. - Assumption of powers, etc., of certain former governments.**

It is the intent of the City to assume the powers, authority, duties and obligations previously exercised by the Duval County Air Improvement Authority pursuant to Laws of Fla. ch. 65-1474, as amended by Laws of Fla. chs. 67-1321 and 67-1338, and to provide for the exercise, performance and administration of those powers, authority, duties and obligations.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1)

**Sec. 360.106. - Definitions.**

As used in this Chapter:

(a)  *Board* means the Environmental Protection Board.

(b)  *Director* means the Director of the Neighborhoods Department.

(c)  *Department* means the Neighborhoods Department.

(d)  *Person* has the meaning given to it in Section 1.102(ll), Ordinance Code of the City of Jacksonville and in addition includes any officer, employee, agent, department or instrumentality of the Federal Government, any state, municipality, or political subdivision of the state, or of any foreign government.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1; Ord. 94-144-121, § 1; Ord. 2008-513-E, § 1; Ord. 2009-359-E, § 2; Ord. 2011-732-E; Ord. 2013-209-E, § 40; Ord. [2016-140-E](http://newords.municode.com/readordinance.aspx?ordinanceid=763402&datasource=ordbank) , § 16)

**Sec. 360.107. - Administration.**

The Director shall be responsible for the administration of this Chapter and of Chapters 362, 368, ~~and~~ 376, and 686 and the rules promulgated by the Board pursuant to these Chapters and shall make regular reports to the Board.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1)

**Sec. 360.108. - Conformity of rules, etc., with state law.**

It is hereby determined and declared that:

(a)  The creation of the Board was and is to protect and regulate environmental quality and environmental health within the City, in accordance with the public policy declared in Section 360.101 and the responsibility of the Consolidated Government in Section 360.103.

(b)  The Board is empowered to adopt rules substantively identical to regulations adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law and to regulations adopted in the Florida Administrative Weekly by the Environmental Regulation Commission or by the Secretary of the Department of Environmental Protection pursuant to state law. In this case, the Board shall reference in the rule adopted by it the federal or state regulation with which it is substantively identical; the rule shall nevertheless be adopted in accordance with Chapter 100. In adopting rules pursuant to this subsection, the Board shall specify which federal or state regulations it may have considered but declined to adopt as a local rule pursuant to this Chapter.

(c)  The Board is directed to maintain a continuing overview of the changes made by the United States or the state to the regulations which are referenced by the Board pursuant to subsection (b) of this Section which substantially change the law as applied, interpreted or implemented by those regulations. The Board shall apply and follow, in its application of the rules adopted pursuant to subsection (b) of this Section, the interpretations of the corresponding regulations in the Code of Federal Regulations and the Florida Administrative Code made by the courts, by the United States Environmental Protection Agency, by the State Environmental Regulation Commission or by the Secretary of the Department of Environmental Protection and shall be guided by opinions of the Attorney General of the state with respect to the state regulations, without prejudice to the authority of the General Counsel to issue opinions with respect to this Chapter or Chapters 362, 368 and 376 and a rule adopted pursuant to them or its application in particular instances.

(d)  Whenever a regulation contained in the Code of Federal Regulations or the Florida Administrative Code which is substantively identical to a rule adopted by the Board pursuant to subsection (b) of this Section is declared invalid or is withdrawn, revoked, repealed or remanded, so that its application at the federal or state level is terminated, suspended, withdrawn or substantially changed, the Board shall, by notice published in the Register, suspend the enforcement of the rule adopted by it until final action is taken by the appropriate federal or state agency. This suspension of enforcement by the Board shall not affect administrative or judicial action previously taken by or before the Director, the Board or the courts. The Board may proceed to adopt a revised or amended rule which is substantively identical to a revised or amended federal or state regulation in accordance with Chapter 100.

(e)  Whenever the Board intends to adopt a rule or standard which is different than or for which there is no substantively identical federal or state regulation, it shall report this fact to the Mayor and, prior to proceeding with rulemaking, make a determination, based upon the best evidence obtainable from all available sources, including evidence from the United States Environmental Protection Agency, the State Environmental Regulation Commission, the State Department of Environmental Protection or industry sources, that the proposed rule is or appears to be reasonably necessary based on a consideration of the likely environmental impact and administrative costs of implementing and enforcing the rule. Interested or affected persons may present evidence of compliance costs if they so desire. The Board shall not proceed with rulemaking until and unless the Mayor concurs in the Board's determination; provided, that the Mayor shall have 60 days from the date on which the Board's report is made to him in which to make his decision and, if he has not decided within this period, he shall be presumed to have concurred. If the Mayor does not concur, the Board shall not proceed with rulemaking. In determining whether he should concur, the Mayor may require the Board to conduct or cause to be conducted and file, as a part of the rulemaking proceeding:

(1)  An environmental impact assessment of the proposed rule which will indicate the results to be achieved as a result of the adoption and application of the rule in terms of reducing or eliminating air and water pollution, noise or odor.

(2)  An economic analysis of the proposed rule which will indicate the cost of compliance with and enforcement of the rule.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1; Ord. 88-117-123, § 1)

**Sec. 360.109. - Entry on property.**

(a)  Upon:

(1)  Either (i) 24 hours' notice to the person in possession of the premises or (ii) the obtaining of the consent of the person in possession of the premises; or

(2)  In the case of a suspected violation:

(i)  Without notice or consent, the written approval of the Director or the Public Health Unit Medical Director, obtained pursuant to the rules of the Board and presented to the person in possession of the premises, or

(ii)  Without notice, consent or approval, in emergency circumstances and pursuant to specific procedures prescribed in the rules of the Board;

The Director or his duly authorized representative, who shall be an employee or agent of the City, is authorized to enter and inspect any building, vessel, structure, or place, except a building which is used exclusively for a private residence, on or at which an air or water pollution source or a source of noise violative of Chapter 368, or of odor violative of Chapter 376, or of the prohibition on floating structures of Chapter 686 is located or is being constructed or installed at any reasonable time, for the purpose of investigating an actual or suspected source of air or water pollution or an actual or suspected violation of Chapter 368 or Chapter 376 or Chapter 686, and ascertaining compliance with this Chapter and Chapters 362, 368, ~~and~~ 376, and 686 and the rules of the Board. The person in possession shall have the right to be present whenever samples or measurements are taken for analysis and to receive promptly a copy of the analytical report. Based on sufficient cause derived from objective information, the Director may also require the person responsible for the source of air or water pollution, noise or odor to conduct tests which will show the emissions from the source and to provide the results of the tests to the Director. These tests shall be carried out under the supervision of the Director or his authorized representative and at the expense of the person responsible for the source of air or water pollution, noise or odor. The party in possession shall provide for the Director or his representative adequate scaffolding, which the Director or his representative will use at his own risk, sampling ports, measurement areas and utilities, as necessary and reasonably available, to conduct inspections and sampling or measuring.

(3)  In the event that the Director, or his duly authorized representative, enters upon a premises, he shall make his presence immediately known to the person in possession of the premises or to an employee or agent of that person if such person, employee or agent is on the premises at the time of entry. Upon making his presence known, the Director, or his duly authorized representative shall also advise the reason for his entry on the premises.

(b)  No person shall refuse immediate entry or access to the Director or his representative who requests entry for the purposes of inspection due to an imminent hazard to public health, certified under Section 360.113, and who presents appropriate credentials; nor shall a person obstruct, hamper or interfere with an authorized inspection.

(c)  In the event of an actual or suspected violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or in the event of an actual or suspected violation of any rule, regulation, order, standard, attainment plan or compliance plan of the Board, and if such actual or suspected violation can be reached by crossing real property, including sovereign submerged lands leased by the Board of Trustees of the Internal Improvement Trust Fund, then the Director or his authorized representative shall have the right of entry upon such real property and shall be immune from prosecution, civil or criminal, for trespass upon real property while in the discharge of his duties in searching for the source of such violation.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1; Ord. 88-117-123, § 2)

**Sec. 360.110. - Confidential records; secret processes.** – (not included in Floating Structure ord.)

**Sec. 360.111. - Variances. -** (not included in Floating Structure ord.)

**Sec. 360.112. - Appeals; reconsideration.**

A person aggrieved by an administrative order or a determination or decision by the Director shall have the right to appeal the order, determination or decision to the Board. Appeals shall be decided in the same manner as provided in Part 4 for hearings on complaints. In addition, the Director, the Board or a hearing officer may, upon a showing of just cause by the aggrieved party, reconsider an order, determination or decision that it or he has rendered.

(Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1)

**Sec. 360.113. - Reserved.**

**Editor's note—** The provisions of former § 360.113, relative to public health, safety or welfare determinations, were deleted as part of the Super Supplement to the Code. Former § 360.113 derived from Ord. 84-674-684, § 1; Ord. 85-1295-690, § 1.

**Sec. 360.114. - Abatement of unattended pollution sources.**

In the event of the discovery of an unattended pollution source which may be quickly eliminated by immediate abatement, the Director or his authorized representative shall have the right to take all reasonable steps to effect such abatement, if the owner, after reasonable inquiry, cannot be found or notified.

(Ord. 88-117-123, § 3)

**PART 2. - IMPLEMENTATION PLAN; ATTAINMENT PLANS -** (not included in Floating Structure ord.)

**PART 3. - COMPLIANCE PLANS**

**Sec. 360.301. - Compliance plans; compliance agreements.**

(a)  A person found by the Director or, upon appeal of the determination of the Director, by the Board to be in violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of the attainment plan applicable to him or of the rules of the Board, or a person unable to comply with the attainment plan prior to being cited for a violation, shall prepare and submit to the Board within a reasonable time fixed by the Board a compliance plan which provides for implementation, maintenance and enforcement of the emission limits, performance standards or other requirements applicable to that person. The Board shall, by rule, specify what elements and provisions are required in a compliance plan and in a compliance agreement embodying the plan. Compliance plans for violations of Chapter 686 shall be utilized only for Floating Structures that are not easily movable over water, and shall have a term of no more than three (3) months.

(b)  The Board shall, within a reasonable time after submission of the compliance plan, approve or disapprove the plan or a portion thereof. No person shall be cited for a violation while an application for a compliance plan is pending. If the plan or portion is:

(1)  Approved, the person submitting it shall be responsible for complying with the approved plan or portion. The approved plan or portion shall be embodied in a compliance agreement between the City and the person and it shall be signed on behalf of the City by the chairman of the Board and by the person.

(2)  Disapproved, the person submitting it shall, within a reasonable time allowed by the Board, resubmit the disapproved plan or portion with reasonable changes that take into account the comments of the Board in disapproving the compliance plan. The Board, in its rules, may specify a maximum number of times that a proposed compliance plan may be submitted, disapproved, and resubmitted without approval by the Board before the disapproval will be final action by the Board on the proposed compliance plan.

(c)  After a reasonable opportunity has been given to a person, the Board is authorized to create and approve *sua sponte* a compliance plan in those cases in which it determines that the person has not and will not submit an acceptable compliance plan.

(Ord. 84-674-684, § 1)

**Sec. 360.302. - Maximum length of compliance plan; extension.**

A compliance plan shall be designed to accomplish its objectives within the shortest possible time after the approval of the plan by the Board, but not more than five years from the date of approval of the plan. In cases in which the person demonstrates to the satisfaction of the Board that, because of environmental, economic or industrial factors beyond the control of, and not caused or contributed to by, the person, completion of the compliance plan will not be accomplished within five years from the date of approval of the plan, the Board may authorize an extension of the compliance plan for not more than an additional 30-month period; but no more than two extensions shall be allowed, and the person must demonstrate to the satisfaction of the Board when an extension is requested that substantial progress has been and is being made toward accomplishment of the compliance plan before the extension may be authorized. In every case of an extension that is requested, the Board shall conduct a public hearing after giving reasonable notice thereof, at which any affected or interested person may be heard.

(Ord. 84-674-684, § 1)

**Sec. 360.303. - Modification and suspension.**

A compliance plan and compliance agreement may be modified from time to time, with the consent of the person and the Board. A compliance plan and compliance agreement may be suspended temporarily, with the consent of the person and the Board, if the person demonstrates to the satisfaction of the Board that the suspension is necessary because of environmental, economic or industrial factors beyond the control of, and not caused or contributed to by, the person. A temporary suspension under this subsection shall remain in effect for a maximum of six months or such lesser period as may be specified by the Board in the order approving the suspension. No person shall be cited for a violation whose compliance schedule has been temporarily suspended, unless the Board determines that the violation presents an imminent danger to the public health, safety and general welfare.

(Ord. 84-674-684, § 1)

**Sec. 360.304. - Compliance plan not evidence of violation; failure to comply.**

A compliance plan shall not be considered as evidence or admission of a violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of the attainment plan or of the rules of the Board; however, unless a compliance plan and compliance agreement have been rescinded by agreement of the parties or voided by a court of competent jurisdiction, subsequent failure to comply substantially with the terms of a compliance plan and compliance agreement shall be prima facie evidence of a violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of the attainment plan or of the rules of the Board, unless the noncompliance is caused by environmental, economic or industrial factors beyond the control of the person.

(Ord. 84-674-684, § 1)

**Sec. 360.305. - Compliance with compliance plan no bar to subsequent enforcement proceedings.**

Compliance with a compliance plan to which the person is a party does not exempt that person from subsequent enforcement proceedings for violations unrelated to the compliance plan under this Chapter.

(Ord. 84-674-684, § 1)

**Sec. 360.306. - Inspection by Director or authorized representative; notice; enforcement of compliance plans.**

The Director is authorized, himself or by his authorized representative, to conduct periodic or other inspections with notice, consistent with Section 360.109, of persons operating a facility under a compliance plan, for the purpose of ascertaining whether the person and the facility are complying with the compliance plan. In addition to any other enforcement proceeding under Part 4 of this Chapter, if the Director or his authorized representative determines that the person or the facility is not complying with the compliance plan, the Director or his authorized representative is authorized to issue a written notice by hand delivery, with receipt required, to the person in charge of the facility, specifying the facts and circumstances constituting the noncompliance, and may impose a civil fine of up to $500 for each occurrence of noncompliance. For purposes of this Section, each day, after receipt of written notice, during any part of which such noncompliance occurs shall constitute a separate offense. Civil fines shall not be imposed for causative factors beyond the person's control. The person shall have the burden of proving that the occurrence of noncompliance was caused by factors beyond the person's control and could not have been overcome by due diligence.

(Ord. 88-117-123, § 4)

**Sec. 360.307. - Collection of fines; civil actions.**

Fines imposed under Section 360.306 shall be payable to the Tax Collector immediately within seven days after imposition. An unpaid but owing fine may be collected in a civil action in the name of the City. Moneys received by the City pursuant to this Section shall be deposited in the Environmental Protection Fund. The City shall be entitled to reasonable attorney's fees and costs, including appellate fees and costs, in an action where the City is successful in obtaining affirmative relief.

(Ord. 84-674-684, § 1; Ord. 88-117-123, § 5)

**PART 4. - ENFORCEMENT**

**Sec. 360.401. - Citations.**

Whenever the Director has evidence that a violation of this Chapter or of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of an attainment plan or of the rules or an order of the Board has been or is being committed, he shall issue a citation to cease the violation and shall cause it to be served upon the violator by personal service or certified mail or, if these forms of service are ineffective, by posting a copy in a conspicuous place on the premises of the facility causing the violation. The citation shall briefly set forth the general nature of the violation and specify the manner and a time within which the violation shall be corrected. If the violation is not corrected within the time specified, the Director shall file a complaint with the Board.

(Ord. 84-674-684, § 1)

**Sec. 360.402. - Complaints.**

(a)  Complaints alleging a violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of an attainment plan or of the rules or an order of the Board may be filed with the Director, on a form prescribed by the Board, and may only be filed based on sufficient cause of an alleged violation. The Director may initiate complaints. In a complaint filed by the Director, the Director shall be designated as the complainant and the alleged violator shall be designated as the respondent. In a complaint filed by another person, the person filing the complaint shall be designated as the complainant and the alleged violator shall be designated as the respondent. As many persons may be joined in one proceeding as are alleged to have participated in the alleged violation.

(b)  The complaint shall be in writing and shall include the following:

(1)  The name and last known address of the alleged violator.

(2)  The number and the nature of the charges, and the basis thereof, which, if true, would constitute one or more violations of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of the attainment plan or of the rules of the Board.

(3)  A statement advising the respondent that:

(i)  He may, but need not, be represented by counsel of his choice and at his expense.

(ii)  He is entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other evidence relevant to the matter to be heard.

(iii)  Failure to appear may result in a default being entered and action being taken according to the evidence before the Board.

(c)  The Director shall serve or cause to be served a copy of the complaint and notice of hearing upon the respondent, either personally or by registered or certified mail, addressed to the respondent at his last known address, as it appears on the records of the Division, at least 20 days before the time fixed for the hearing. Proof of service shall be filed with the Board but failure to file proof of service shall not invalidate a hearing held or action taken by the Board on the basis of the complaint.

(Ord. 84-674-684, § 1; Ord. 88-117-123, § 6)

**Sec. 360.403. - Hearing officers.**

(a)  Every complaint, notice of violation or final determination by the Director which is filed with or appealed to the Board shall be heard by a hearing officer designated by the Office of General Counsel. The hearing officer shall be a person who is thoroughly familiar with the applicable laws of the City and who is independent of the division and the Board and who has not previously been a complainant or enforcement officer or a representative of the party against whom the complaint has been filed. The hearing officer shall be licensed to practice law and shall have been so licensed for at least five years, and shall familiarize himself with the applicable rules governing administrative hearings. The hearing officer must possess the ability to listen attentively to persons giving testimony, be able to exercise mature judgment and tact and must be able to express himself clearly and concisely, orally and in writing. Where possible, the hearing officer shall be selected by mutual agreement of the parties. In the event the parties are unable to agree on a hearing officer, the Office of General Counsel will request appointment of a hearing officer from the State of Florida, Division of Administrative Hearings. Notwithstanding the provisions of Chapter 126, the hearing officer shall contract with the General Counsel and shall be paid a rate of compensation established by the General Counsel. In any administrative proceeding, the costs associated with hiring a hearing officer shall be paid by the nonprevailing party.

(b)  The hearing officer shall have the power, in the name and by the authority of the Board, to issue notices of hearings, to request the issuance of subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths and to take testimony as necessary.

(c)  In all complaint and enforcement hearings governed by this Part, the costs associated with the employment and use of a hearing officer shall be borne by the nonprevailing party in the administrative proceeding. These costs shall be taxed against the nonprevailing party by the Environmental Protection Board as the City agency responsible for these costs.

(d)  For purposes of this Section, the costs associated with employment and use of a hearing officer when the hearing officer is a City employee shall be computed on an hourly basis based upon that employee's salary and shall include time spent in prehearing preparation, actual hearing and drafting of a recommended decision. When the hearing officer is not a City employee, these costs shall be computed on a basis reflecting an hourly fee, per diem and other reimbursable expenses, pursuant to special services contracts by and between the hearing officer and the City.

(Ord. 84-674-684, § 1; Ord. 85-799-474, § 1; Ord. 88-117-123, § 7; Ord. 2001-289-E, § 1)

**Sec. 360.404. - Hearings; rules of evidence; report by hearing officer; rules of procedure.**

(a)  The hearing on a complaint shall be held within 45 days of service of the complaint upon the respondent, unless extended by the Board for good cause. The hearing officer may continue a hearing from time to time without further notice and, in proper cases, may allow the respondent additional time deemed necessary by him for the respondent to comply with the law and the rules of the Board.

(b)  The hearing officer shall give probative effect to evidence which would be admissible in civil proceedings in the courts of this state. In receiving evidence, due regard shall be given to the technical and highly complicated subject matter which the Board and Director must handle and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, effect shall be given to the rules of evidence recognized by law in this state.

(c)  Oral evidence shall be taken only upon oath or affirmation.

(d)  The proceedings of the hearing shall be stenographically recorded. A copy shall be provided to the respondent at the cost of transcription and upon terms set by the Board.

(e)  All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel.

(f)  The record in a case governed by this subsection shall consist only of:

(1)  All notices, pleadings, motions, and intermediate rulings;

(2)  Evidence received or considered;

(3)  A statement of matters officially recognized;

(4)  Questions and proffers of proof and objections and rulings thereon;

(5)  Proposed findings and exceptions;

(6)  Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

(7)  The official transcript.

(g)  Findings of fact shall be based exclusively on the evidence or record and on matters officially recognized.

(h)  Within 20 days from the close of the hearing, the hearing officer may receive suggested findings of facts and conclusions of law from the parties, within ten days from receipt, the hearing officer shall complete and submit to the Board and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, and recommended penalty, if applicable, and any other information required by law or Board rule to be contained in the final order. The Board shall allow each party at least ten days in which to submit written exceptions to the recommended order.

(i)  The Board shall adopt rules specifying procedures for the conduct of hearings.

(Ord. 84-674-684, § 1; Ord. 88-117-123, § 8)

**Sec. 360.404.1. - Alternative hearing procedures.**

In all cases in which the City is seeking penalties, but no corrective action, any party charged with a violation of Chapter 362 shall have the option of requesting: (a) an administrative hearing to be conducted in accordance with the procedures set forth in F.S. §§ 120.569 and 120.57, (b) an administrative hearing to be conducted in accordance with Sections 360.403 and 360.404, Ordinance Code, or (c) judicial proceedings in accordance with Section 362.110, Ordinance Code. Any request for a hearing or judicial proceeding using the procedures of this Section shall be made within 30 days of receipt of notice from the Department that no settlement has been reached between the City and the alleged violator. The costs associated with the employment and use of a hearing officer shall be taxed against the nonprevailing party by the Environmental Protection Board.

(Ord. 2001-289-E, § 1)

**Sec. 360.405. - Decision by Board.**

The Board may adopt the recommended order as the final order of the Board. The Board in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the Board first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The Board may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(Ord. 88-117-123, § 9)

**Sec. 360.406. - Rehearings and appeal.**

The Board shall have the discretion to grant a rehearing, if applied for, within ten days. For good cause, this time may be extended. Rehearings shall be conducted by a hearing officer in the same manner as hearings. The denial of an application for rehearing shall render the Board order, which was the subject of that application, final. Appeals to any final order of the Board shall be by common law certiorari in the Circuit Court in and for Duval County, Florida, pursuant to Rule No. 9.030(c)(3), Florida Rules of Appellate Procedure.

(Ord. 84-674-684, § 1; Ord. 88-117-123, § 10)

**Sec. 360.407. - Judicial remedy.**

In addition to other remedies and notwithstanding the existence of an adequate remedy at law, the Director or the Board, in the name of the City, is authorized to make application for an injunction to the Circuit Court. The court shall have jurisdiction, upon a hearing and for sufficient cause shown, to grant a permanent injunction restraining a person from violating or continuing to violate Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or an attainment plan or compliance plan or the rules of the Board or from failing or refusing to comply with the requirements of an attainment plan or compliance plan, the rules of the Board or an order entered by the Board. The City shall be entitled to reasonable attorney's fees and costs, including appellate fees and costs in an action where the City is successful in obtaining affirmative relief.

(Ord. 84-674-684, § 1; Ord. 2009-359-E, § 2)

**Sec. 360.408. - Environmental damage assessment; liability for damages; enforcement of orders; remittitur.**

(a)  *Definitions.* For the purposes of this Section, Sections 360.501—360.505 and Sections 360.601—360.604:

(1)  *Facility* means:

(i)  A building, structure, floating structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft; or

(ii)  A site or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of or placed or otherwise came to be located;

but does not include a consumer product in consumer use or a vessel.

(2)  *Hazardous substance* means:

(i)  A substance designated pursuant to Section 1321(b)(2)(A) of Title 33, United States Code.

(ii)  An element, compound, mixture, solution or substance designated pursuant to Section 9602 of Title 42, United States Code.

(iii)  A hazardous waste having the characteristics identified under or listed pursuant to Section 6921 of Title 42, United States Code (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. Section 6901 *et seq.*] has been suspended by act of Congress).

(iv)  A toxic pollutant listed under Section 1317 of Title 33, United States Code.

(v)  A hazardous air pollutant listed under Section 7412 of Title 42, United States Code.

(vi)  An imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15, United States Code.

This term does not include (i) petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (i)—(vi) or (ii) natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas).

(3)  *Owner* or *operator* means, in the case of:

(i)  And with respect to:

(A)  A vessel, a person owning, operating or chartering by demise, the vessel.

(B)  An onshore facility or an offshore facility, a person owning or operating the facility.

(C)  An abandoned facility, a person who owned, operated or otherwise controlled activities at the facility immediately prior to the abandonment.

(ii)  A hazardous substance, pollutant or contaminant which has been accepted for transportation by a common or contract carrier, the common carrier or other *bona fide* for-hire carrier acting as an independent contractor during the transportation. The shipper of the hazardous substance, pollutant or contaminant shall not be considered to have caused or contributed to a release during the transportation which resulted solely from circumstances or conditions beyond his control.

(iii)  A hazardous substance, pollutant or contaminant which has been delivered by a common or contract carrier to a disposal or treatment facility, the disposal or treatment facility. The common or contract carrier shall not be considered to have caused or contributed to a release at the disposal or treatment facility which resulted solely from circumstances or conditions beyond his control.

(4)  *Pollutant* or *contaminant* includes an element, substance, compound or mixture, including disease-causing agents, which, after release into the environment and upon exposure, ingestion, inhalation or assimilation into organisms, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformation, in those organisms or their offspring.

(5)  *Release* means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes:

(i)  A release which results in exposure to persons solely within a workplace, with respect to a claim which the persons may assert against their employer.

(ii)  Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.

(iii)  Release of source, byproduct or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. Section 2011 *et seq.*], if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42, United States Code or a release of source, byproduct or special nuclear material from a processing site designated under Section 7912(a)(1) or Section 7942(a) of Title 42, United States Code.

(iv)  The normal application of fertilizer.

(6)  *Remedy* or *remedial action* means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant or contaminant into the environment, to prevent or minimize the release of hazardous substances, pollutants or contaminants so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, clean-up of released hazardous substances, pollutants or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies and monitoring reasonably required to assure that these actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the Board determines that, alone or in combination with other measures, the relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction or secure disposition off-site of hazardous substances, pollutants or contaminants or may be otherwise necessary to protect the public health or welfare. The term does not include off-site transportation of hazardous substances, pollutants or contaminants or the storage, treatment, destruction or secure disposition off-site unless the Board determines that these actions (i) are more cost-effective than other remedial actions or (ii) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of the substances or materials.

(b)  *Action and administrative proceeding in case of release or threatened release.* Whenever:

(1)  A hazardous substance is released or there is a substantial threat of such a release into the environment, or

(2)  There is a release or substantial threat of release into the environment of a pollutant or contaminant,

Which may present an imminent and substantial danger to the public health or welfare, caused by a violation of Chapter 362, Chapter 368 or Chapter 376, or of an attainment plan, a compliance plan, or of the rules or an order of the Board, the Director may remove or arrange for the removal of, and provide for remedial action relating to, the hazardous substance, pollutant or contaminant at any time, consistent with the National Contingency Plan published under Section 1321(c) of Title 33, United States Code or revised pursuant to Section 9605 of Title 42, United States Code. In every case, the Director shall determine whether the federal or state government is responding or will respond to the release or threat of release and, if this is the case, the Director may abate the proceeding until the federal or state response and, if it proceeds with remedial action, may file a claim with the appropriate federal or state agency.

(c)  *Information-gathering by Director.* Whenever the Director is authorized to act pursuant to subsection (b) of this Section, he may undertake such investigations, monitoring, surveys, testing and other information-gathering as is deemed necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved and the extent of danger to the public health or welfare or to the environment. In conducting these information-gathering activities, the Director shall be guided by the provisions of Section 360.108 with respect to entry on property.

(d)  *Removal and remedial actions.* The Director and the Board shall select appropriate removal and remedial actions which are determined to be necessary and practicable and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Environmental Protection Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.

(e)  *Administrative proceeding to recover expenditures.* If the Director undertakes remedial or removal action in accordance with subsection (a)—(d) of this Section, he may, after providing 60 days notice to the responsible party, institute a separate proceeding before the Board to recover from the responsible party the expenses incurred by the City, for the removal or remedial actions including administrative costs associated with the removal or remedial action. After the hearing and an entry of the order of the Board, the responsible party may be ordered to pay the costs and expenses of all or a part of the removal or remedial work (including administrative costs associated with the removal or remedial action) undertaken by the City. Failure to either pay the costs and expenses as specified by the order of the Board, or to appeal that order to a court of competent jurisdiction, within 45 days of the date of the order shall subject the responsible party to a penalty of $1,000 for each day of nonpayment after 45 days. Monies received by the City pursuant to this Section shall be deposited in the Environmental Protection Fund.

(f)  *How proceedings treated; priority.* A proceeding under this Section shall be treated as a proceeding on a complaint filed by the Director under Section 360.402. A proceeding begun under subsection (b) of this Section shall be given priority on the Board's docket and shall be heard at the earliest practicable time.

(g)  *Liability.* Liability under this Section of an owner or operator or other responsible person for each release of a hazardous substance, pollutant or contaminant shall be for the expenditures incurred by the City, including administrative costs associated with the removal or remedial action. The order of the Board may make provision for the payment of the environmental damages or the administrative costs, or both, in installments over a specified period, but not exceeding five years. Nothing in this subsection shall be construed to relieve a person of responsibility for taking removal or remedial actions ordered by the Director. Nothing in this Section shall relieve a person from liability to other persons or to the City for matters not addressed herein. The remedies provided in this Section for collection of damages incurred and costs expended are not exclusive and are in addition to all other available remedies, including Chapter 112, City of Jacksonville Ordinance Code.

(h)  *Judicial action to recover costs.* If the amount specified as remedial costs or as reasonable administrative costs is not paid within a reasonable time or according to the installment-payment schedule, as prescribed by the Board in its order, the Board may institute an action in the appropriate court to have the amount reduced to judgment. Moneys received by the City pursuant to this Section shall be deposited in the Environmental Protection Fund.

(i)  *Remittitur.* The Board may remit to a violator all or part of a sum collected from the violator as reimbursement in whole or in part, or may accept as partial or complete satisfaction of a judgment entered against the violator, sums expended by the violator to restore the air or waters or plant or animal communities to their condition prior to the violation or to make capital improvements to the facilities which caused the violation so as to enable them to comply with Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or an attainment plan or compliance plan or the rules or an order of the Board at the option of the violator.

(j)  *Independent and cumulative remedies.* The remedies provided in this Section and in Section 360.502 are independent and cumulative.

(k)  *No private proceedings or actions.* Nothing in this Section shall be construed to give the Board the authority or right to bring an administrative proceeding or action on behalf of any person.

(Ord. 84-674-684, § 1; Ord. 91-902-417, § 1)

**Sec. 360.409. - Emergency proceedings.**

(a)  In the event a violation of Chapter 362, Chapter 368, ~~or~~ Chapter 376, or Chapter 686, or of an attainment plan or compliance plan or of the rules or an order of the Board creates an immediate health hazard or threatens immediate serious hazard to public health or threatens or causes serious, immediate and irreparable damage to human, animal or plant life or to property, the Director or the Board:

(1)  Shall have the power and authority to order immediate cessation of the operations causing these conditions. A person receiving an order for immediate cessation of operations shall immediately comply with the requirements of the order. It shall be unlawful for a person to fail or refuse to comply with an emergency order issued and served under the provisions of this paragraph. In the case of an emergency order issued by the Director, he shall inform the chairman of the Board, who shall call a special meeting of the Board within 24 hours after the issuance of the order. At the special meeting, the Board shall do either of the following:

(i)  Approve and confirm the emergency order issued by the Director. In confirming the Director's emergency, the Board may modify its terms or permit limited resumption of the operations which are the subject of the Director's order. If the order of the Board in confirming the Director's order, or if an order of the Board entered *sua sponte,* will have the effect of closing an entire facility, the Mayor shall concur in the Board's order before it becomes effective; however, the Mayor shall have 24 hours from the entry of the Board's order to express his concurrence or nonconcurrence, failing which his concurrence shall be presumed. In the event that the Mayor does not concur, the Board's order shall not become effective and the emergency order issued by the Director shall be dissolved.

(ii)  Disapprove the emergency order issued by the Director and dissolve it.

(2)  In the name of the City, may, immediately and without the necessity of a citation or a hearing upon a complaint before the Board, apply to the Circuit Court for a temporary or permanent injunction restraining and enjoining the offender from violating or continuing to violate the law or rule. The City shall be entitled to reasonable attorney's fees and costs, including appellate fees and costs, in an action where the City is successful in obtaining affirmative relief.

(b)  No temporary injunction shall be granted pursuant to subsection (a)(2) of this Section which shall limit or prevent operations of an industrial manufacturing, processing or utility plant, unless at the hearing the plaintiff shall establish by clear, certain and convincing evidence that immediate and irreparable injuries will result to the public from the failure to grant the injunction.

(c)  If a temporary injunction is improvidently or erroneously sought, suit may be instituted against the City or its sureties on the bond.

(Ord. 84-674-684, § 1)

**Sec. 360.410. - Consent orders and stipulated settlements.**

In order to avoid the time and expense of administrative litigation, the Director, or his authorized representative, is authorized to enter into consent orders and stipulated settlements with persons alleged to have violated or not complied with rules, regulations, orders, standards or compliance plans promulgated by the Board. Such consent orders and stipulations shall be approved by the Board.

(Ord. 88-117-123, § 11)

**PART 5. - LIABILITY; PUNITIVE DAMAGES; OTHER PROVISIONS**

**Sec. 360.501. - Liability for violation.**

In a proceeding under Section 360.408, whenever two or more persons are responsible for a release or threat of release of a hazardous substance, pollutant or contaminant, so that the damage is indivisible, after a good-faith effort has been made to find the source, each violator shall be jointly and severally liable for the damage and the reasonable costs and expenses. If the damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for the damage attributable to his violation.

(Ord. 84-674-684, § 1)

**Sec. 360.502. - Punitive damages.**

If a person who is responsible for a release or threat of release of a hazardous substance, pollutant or contaminant fails by his wilful or wanton misconduct to properly provide reasonable removal of or remedial action with respect to a hazard posing an imminent danger to the public health, upon order of the Board entered pursuant to Section 360.408, the person may be liable to the City for punitive damages in an amount at least equal to, and not more than three times, the amount of the costs and expenses incurred by the City as a result of the failure to take proper action. The Board is authorized to commence a civil action against the person to recover the punitive damages, which shall be in addition to any costs recovered from the person pursuant to Section 360.408. Moneys received by the City pursuant to this Section shall be deposited in the Environmental Protection Fund. The City shall be entitled to reasonable attorney's fees and costs, including appellate fees and costs, in an action where the City is successful in obtaining affirmative relief.

(Ord. 84-674-684, § 1)

**Sec. 360.503. - Activities pursuant to attainment plan or compliance plan.**

No person shall be liable under this Chapter for damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with an attainment plan or an applicable compliance plan or at the direction of an on-scene coordinator appointed under a plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of an action that resulted or may result in a release or threat of release of a hazardous substance, pollutant or contaminant. This Section shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of the person. For the purpose of the preceding sentence, reckless, wilful or wanton misconduct shall constitute gross negligence.

(Ord. 84-674-684, § 1)

**Sec. 360.504. - Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights.**

(a)  No indemnification, hold harmless or similar agreement or conveyance shall be effective to transfer from the owner or operator of a facility or from any person who may be liable for an action that constitutes a violation of Chapter 362, Chapter 368 or Chapter 376, an attainment plan or compliance plan, the rules or an order of the Board entered pursuant to Section 360.408, to any other person the liability imposed under this Chapter. Nothing in this subsection shall bar an agreement to insure, hold harmless or indemnify a party to the agreement for a liability under this Chapter.

(b)  Nothing in this Chapter, including the provisions of subsection (a) of this Section, shall bar a cause of action that an owner or operator or another person subject to liability under this Chapter, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(Ord. 84-674-684, § 1)

**Sec. 360.505. - Defenses.**

There shall be no liability in an administrative or judicial proceeding commenced under Section 360.408 for a person otherwise liable who can establish by a preponderance of the evidence that the action resulting in liability and the damages resulting therefrom were caused solely by one or a combination of the following factors:

(a)  An act of God.

(b)  An act of war.

(c)  An act of a governmental agency or political subdivision having jurisdiction over the person and the subject matter which requires the person to do or refrain from doing something that causes the damage or gives rise to the liability.

(d)  An act or omission of a third party other than an employee or agent of the alleged violator or defendant or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the alleged violator or defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the alleged violator or defendant establishes by a preponderance of the evidence that he (1) exercised due care with respect to the hazardous substance, pollutant or contaminant concerned, taking into consideration the characteristics of the pollutant in light of all relevant facts and circumstances, and (2) took precautions against foreseeable acts or omissions of the third party and the consequences that could foreseeably result from these acts or omissions.

Nothing in this Section shall be interpreted so as to preclude a person from asserting common-law or equitable defenses. This Section shall not be construed to impose strict liability.

(Ord. 84-674-684, § 1)

**PART 6. - ENVIRONMENTAL PROTECTION FUND**

**Sec. 360.601. - Environmental Protection Fund created.**

There is created an Environmental Protection Fund, hereinafter referred to as *the Fund,* which is to be supervised and used by the Board for the purposes described in Section 360.602 below. The Fund shall consist of:

(a)  Fines collected by the City under Section 360.308.

(b)  Moneys received as a result of an administrative or judicial proceeding under Section 360.408, except that moneys collected as administrative costs or attorney's fees or costs of litigation shall be paid directly to the City.

(c)  Moneys recovered as punitive damages under Section 360.502.

(d)  Moneys recovered by the City as civil penalties under Chapter 362, Chapter 368 or Chapter 376.

(Ord. 84-674-684, § 1; Ord. 91-902-417, § 2; Ord. 97-551-E, § 2)

**Sec. 360.602. - Uses of Fund.**

The money in the Fund shall be used for the following purposes:

(a)  To pay the amounts necessary to restore the respective polluted areas which were the subjects of Board action pursuant to Section 360.408.

(b)  To pay for work needed to restore areas which require more money than the Board was able to obtain by court action or otherwise or to restore areas in which the Board brought suit but was unable to recover any moneys from the alleged violators.

(c)  To recover the costs and expenses of the Board in administering the Fund.

(d)  In remittitur to violators as provided in Section 360.408(i).

(e)  To pay for the removal or remedial actions undertaken by the Director, pursuant to the authority of Section 360.408(b), not to exceed $50,000 for each occurrence, unless the Board approves a greater amount.

(f)  To fund education and outreach activities, studies, surveys, tests and investigations, as necessary, to implement the duties of the Board, as defined in Section 73.102, Ordinance Code. Such education and outreach activities, studies, surveys, tests and investigations may be conducted by the Department or by entities approved by the Board or by independent contractors and consultants retained for such purposes. Any studies, surveys, tests and investigations shall be special projects of a unique, onetime nature, and shall not be continuing, or ongoing duties, or programs of the Department. Prior to authorizing the use of such funds, pursuant to Section 360.604(c), the Board shall specify the extent, the anticipated use, and if possible, a listing of who may perform such activities as listed herein. After this information is developed, when appropriate, the Board shall provide public notice and an opportunity for hearing and consideration of public comments on the request(s) for and the use of such funds for the proposed activities as listed herein. In no event may such funds be obligated that will reduce funds available for removal and remedial actions, as provided for in Section 360.602(e) below $100,000.

(Ord. 84-674-684, § 1; Ord. 91-902-417, § 3; Ord. 2011-274-E, § 1)

**Sec. 360.603. - Peripheral matters and limitations.**

Uses of the Fund under Section 360.602 include:

(a)  The costs of assessing both short-term and long-term injury to, destruction of or loss of natural resources resulting from an action in violation of this Chapter, Chapter 362, Chapter 368 or Chapter 376, an attainment plan or compliance plan, the rules or an order of the Board or an order of the Director.

(b)  The costs of City efforts in the restoration, rehabilitation or replacement or acquiring the equivalent of a natural resource injured, destroyed or lost as a result of a violation of this Chapter, Chapter 362, Chapter 368 or Chapter 376, an attainment plan or compliance plan, the rules or an order of the Board or an order of the Director.

(c)  Subject to such amounts as are provided in appropriations, the costs of providing equipment and similar overhead, related to the purposes of this Chapter and Chapters 362, 368 and 376 and needed to supplement equipment and services available through contractors or other noncity entities, and of establishing and maintaining damage assessment capability for the Division and other City agencies involved in pollution response teams under an attainment plan.

(d)  Subject to such amounts as are provided in appropriations, the costs of a program to protect the health and safety of employees involved in response to pollution incidents.

(e)  The cost of environmental impact assessments and economic analyses required by the Mayor under Section 360.107(e).

(Ord. 84-674-684, § 1)

**Sec. 360.604. - Funding requirements.**

(a)  Obligations against the Fund shall arise only when the Board has approved the payment of an amount authorized under Section 360.602. With respect to costs involved in restoring polluted areas under Section 360.602(a) and (b), and except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce a continuing danger to natural resources or similar need for emergency action, funds may not be used under this Part for the restoration, rehabilitation or replacement or acquiring the equivalent of a natural resource until a plan for the use of the funds for this purpose has been developed and approved by the Board, after adequate public notice and opportunity for hearing and consideration of public comments.

(b)  Obligations against the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. These obligations become valid only when additional money is collected, appropriated or otherwise added to the Fund. Should the total obligations outstanding at any one time exceed the current balance of the Fund, the Board shall pay the obligations, to the extent authorized under this Section, in full in the order in which they were finally determined.

(c)  Disbursements from the Fund shall be authorized by the chairman of the Board upon approval of the Board. The moneys in the Fund are subject to appropriation by the Council for the purposes of the Fund. In the case of emergency action under Section 360.408 or Section 360.409 to avoid an irreversible loss of natural resources or to prevent or reduce a continuing danger to natural resources or similar need for emergency action, the Board may authorize, without prior Council approval being necessary, the expenditure of not exceeding $50,000 for each occurrence from funds not otherwise appropriated in the Fund and, to the extent that these funds are so used, they are hereby appropriated for the emergency action. Emergency expenditures under this subsection shall immediately be reported to the Council Auditor.

(Ord. 84-674-684, § 1)

**PART 7. - ENFORCEMENT OF MINOR VIOLATIONS**

**Sec. 360.701. - Environmental Protection Board ticketing authority; minor violations; penalties.**

The provisions of this Part are additional and supplemental means of enforcing the Ordinance Code and Board rules. Nothing contained in this Part shall prohibit enforcement by any other means. In addition to the enforcement provisions of Part 4, the Board, by and through its staff (the Department) is authorized to issue citations or tickets for minor violations of ordinances and Board rules as follows:

(a)  For purposes of this Part, a minor violation shall be one of the following offenses:

(1)  Open burning of tires, rubber material, bunker C residual oil, asphalt, roofing material, tar, railroad crossties, other creosoted lumber, plastics, garbage, trash, yard trash, household paper products and waste pesticide containers in violation of the Board's rules with respect to air pollution control.

(2)  Open burning within 1,000 feet of an active runway at a State Department of Transportation approved public airport, in violation of the Board's rules with respect to air pollution control.

(3)  Open burning of land-clearing debris, as defined by the Board's rules, within minimum setback distances for occupied buildings in violation of the Board's rules with respect to air pollution control.

(4)  Open burning of land-clearing debris, as defined by the Board's rules, within 100 feet of any public highway or road, or prevailing winds direct smoke toward public highway or road in violation of the Board's rules with respect to air pollution control.

(5)  Open burning of land-clearing debris, as defined by the Board's rules, prior to 9:00 a.m. or after one hour before sunset, in violation of the Board's rules with respect to air pollution control.

(6)  Open burning of land-clearing debris, as defined by the Board's rules, without attendant present, in violation of the Board's rules with respect to air pollution control.

(7)  Open burning of land-clearing debris, as defined by the Board's rules, causing excessive visible emissions equal to or greater than 40 percent opacity in violation of the Board's rules with respect to air pollution control.

(8)  Operation of an air-curtain incinerator, as defined by the Board's rules, with pit width greater than 12 feet, or without maintaining vertical sidewalls, in violation of the Board's rules with respect to air pollution control.

(9)  Operation of an air-curtain incinerator, as defined by the Board's rules, with waste materials to be burned positioned above the level of the air curtain in the incinerator pit in violation of the Board's rules with respect to air pollution control.

(10)  Operation of an air-curtain incinerator, as defined by the Board's rules, causing excessive visible emissions equal to or greater than 40 percent opacity, except for a period of 30 minutes during startups, shutdowns, or temporary malfunctions, in violation of the Board's rules with respect to air pollution control.

(11)  Open burning conducted without the permission of the Director in violation of Part 8, Ch. 360.

(12)  Failure to conduct required air pollution emissions compliance test in violation of the Board's rules with respect to air pollution control.

(13)  Conducting a required air pollution emissions compliance test without proper prior notification in violation of the Board's rules with respect to air pollution control.

(14)  Submittal of required air pollution emission compliance test report later than 45 days following completion of the final sampling run of the test in violation of the Board's rules with respect to air pollution control.

(15)  Loading of gasoline at a bulk gasoline plant or terminal into a petroleum tank truck or trailer not displaying a currently valid State Department of Environmental Control (FDEC) pressure/vacuum test certification sticker in violation of the Board's rules with respect to air pollution control.

(16)  Loading of gasoline at a bulk gasoline terminal into a petroleum tank truck or trailer without all loading and vaporlines being equipped with fittings that are vaportight, and with displaced vapors and gases vented only to the vapor control system, in violation of the Board's rules with respect to air pollution control.

(17)  Transfer of gasoline from any delivery vessel into any stationary storage tank at a gasoline service station equipped with stage I vapor control hardware, without connecting all vapor and gas lines to the stage I vapor control system, in violation of the Board's rules with respect to air pollution control.

(18)  Failure to install and maintain stage I vapor control equipment at a gasoline service station requiring stage I control equipment in violation of the Board's rules with respect to air pollution control.

(19)  Failure to apply for a renewal of a Department permit at least 60 days prior to a permit expiration in violation of the Board's rules with respect to air and water pollution control.

(20)  Sewage treatment plant equipment out of service (for period less than seven days) due to mechanical/electrical failure in violation of the Board's rules with respect to water pollution control.

(21)  Failure to notify Department of sewage treatment plant equipment breakdown in violation of the Board's rules with respect to water pollution control.

(22)  Failure to provide disinfection for sewage treatment plants in violation of the Board's rules with respect to water pollution control.

(23)  Failure to maintain an onsite log at sewage treatment plants in violation of the Board's rules with respect to water pollution control.

(24)  Failure to provide safe, dry access for inspection/sample in violation of the Board's rules with respect to water pollution control.

(25)  For up to six months, failure to submit accurate timely monthly operating reports in violation of the Board's rules with respect to water pollution control.

(26)  For up to 90 days, failure to provide certified operator attendance as required in violation of the Board's rules with respect to water pollution control.

(27)  Failure to monitor with required frequency (flow, pH, chlorine, biochemical oxygen demand (BOD), total suspended solids, nutrients) in violation of the Board's rules with respect to water pollution control.

(28)  Sound emitted to land Classes A, B, or C (broadband frequency or octave band frequency), in violation of the Board's rules with respect to noise pollution control.

(29)  Allowing or performing construction between 10:00 p.m. and 7:00 a.m., in violation of the Board's rules with respect to noise pollution control. However, generators, mudhogs, and well point pumps may be operated during this time period, but sound emitted from the operation of this equipment shall not exceed 60 dBA, in violation of the Board's rules with respect to noise pollution control.

(30)  Exhaust systems on construction equipment, not installed, not properly installed, or not in good repair, in violation of the Board's rules with respect to noise pollution control.

(31)  Intentionally operating or permitting the operation of any alarm, siren, whistle, or similar stationary signaling device in violation of the Board's rules with respect to noise pollution control.

(32)  Use any public address system in Class A or B land, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(33)  Operating a powered model vehicle within 100 meters of Class A or B land, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(34) Operating  or testing any motorized unit in Class A or B land, as defined by the Board's rules, between 10:00 p.m. and 7:00 a.m. in violation of the Board's rules with respect to noise pollution control.

(35)  Trash or refuse service, i.e. dumpster, between 10:00 p.m. and 7:00 a.m. within 200 meters of Class A or B land, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(36)  Property owner being serviced by a refuse service company for non-residential solid waste removal failing to prominently mark each dumpster as required, in violation of the Board's rules with respect to noise pollution control.

(37)  Property owner being serviced by a refuse service company for non-residential solid waste removal failing to label each dumpster within the time required, in violation of the Board's rules with respect to noise pollution control.

(38)  Air conditioning, air handling or refrigeration equipment exceeding 60 dBA to Class A or B land, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(39)  Sound exceeding set dBA levels produced by work on motor vehicles in Class A or B lands, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(40)  Improper exhaust systems on motor vehicles in violation of the Board's rules with respect to noise pollution control.

(41)  Refrigerated trucks near a Class A or B land exceeding 55 dBA during nighttime hours, as defined by the Board's rules, in violation of the Board's rules with respect to noise pollution control.

(42)  Use of horns and other warning devices in violation of the Board's rules with respect to noise pollution control.

(43)  Failure to notify the Department within 24 hours of a spill or release , of petroleum or petroleum product that is between ten gallons and 100 gallons by volume or causes a sheen on surface water, pursuant to Chapter 365, Ordinance Code, or Board Rule 7.

(44)  Failure to supply the Department with copies of information required to characterize pollutants released as a result of spills or leaking containers regulated in Chapter 365, Ordinance Code, or Board Rule 7 and/or to determine the presence of a hazardous regulated substance, pollutant or pesticide, in accordance with Chapter 365, Ordinance Code, or Board Rule 7, within 45 days.

(45)  Failure to provide the Department a monthly Status Report of PCB Transactions as required by Section 365.203(d), Ordinance Code.

(46)  Failure to keep a copy of a Jacksonville Emergency Management Plan available at the facility as required by Section 365.109, Ordinance Code.

(47)  Failure to provide one hour minimum instruction annually on the JEMP Plan to each employee whose duties require entry into the manufacturing area, or failure to provide written confirmation of such training, pursuant to Section 365.109, Ordinance Code;

(48)  Failure to post warning-identification signs on National Priority List Sites. Reference F. S. § 403.7255(1).

(49)  Failure to provide safe access per Section 365.104(b), Ordinance Code.

(50) Location of a Floating Structure anywhere withing the Waters of the County.

(b)  Each such minor violation shall be subject to a civil penalty of $250.

(c)  Each day during any part of which an offense, specified in subsection (a) occurs shall constitute a separate offense.

(d)  For purposes of this Part, Chapter 362, Chapter 368 or Chapter 376, controlled open burning for silvicultural or agricultural purposes will continue to be authorized and regulated by the State Division of Forestry as permitted by the Florida Statutes and the Florida Administrative Code; provided, however, this Section shall not be construed to prevent local enforcement of state and local environmental laws, rules or regulations against silvicultural and agricultural operations to the extent those operations are not pre-empted by state laws or regulations.

(Ord. 88-117-123, § 12; Ord. 94-964-700, § 5; Ord. 97-539-E, § 3; Ord. 2009-359-E, § 2; Ord. 2010-68-E, § 1)

**Sec. 360.702. - Collection of civil penalties; civil actions.**

Civil penalties imposed under Section 360.701 shall be payable to the Tax Collector immediately within seven days after imposition. Moneys received by the City, pursuant to this Part shall be deposited in the Environmental Protection Fund. An unpaid but owing fine may be collected in a civil action in the name of the City.

(Ord. 88-117-123, § 12)

**Sec. 360.703. - Service of citation.**

Citations or tickets for minor violations shall be personally served upon the person responsible for causing a minor violation. The staff of the Department shall have authority to serve such citations or tickets in the form described in Section 360.704. The staff person serving the citation or ticket shall obtain from the person so served a receipt indicating date and time of service; or the staff person shall annotate the citation accordingly if the person refuses to execute a receipt, and such annotation shall serve as a receipt. If the person responsible for causing a minor violation is unavailable to be served in person, then the Citation or ticket for minor violation shall be served by certified mail or by posting a copy in a conspicuous place at the location of the violation.

(Ord. 88-117-123, § 12; Ord. 97-539-E, § 3; Ord. 2010-68-E, § 1)

**Sec. 360.704. - Form of citation. (Form of citation may be different for Ch. 686)**

Citations or tickets for minor violations shall:

(a)  Be in writing, in the name of the City, indicating the Director of the Department as the issuing agency;

(b)  Set forth specifically the nature of the offense with reference to Section 360.701 and the relevant subsection, together with a reference to and explanation of the specific Board rule which has been violated; such reference and explanation should enable the alleged violator to know the charges against him in clear concise terms;

(c)  State the date and time served;

(d)  Specify the identity of the person and/or facility causing the offense;

(e)  Specify the identity of the person served with the citation or ticket;

(f)  Command the person or the owner or operator of a facility causing the violation to pay the Tax Collector a civil fine of $250;

(g)  Advise the person or the owner or operator of a facility causing the violation that if the fine is not paid to the Tax Collector within seven days of serving the citation or ticket, the City may proceed with a civil action to collect the civil penalty under Section 360.702, and that the person or owner or operator causing the offense shall be responsible for costs and attorney fees;

(h)  Be signed by the Department representative who has served the citation or ticket.

(Ord. 88-117-123, § 12; Ord. 97-539-E, § 3; Ord. 2010-68-E, § 1)

**PART 8. - OPEN BURNING** (deleted for purposes of Floating Structure ord)

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