

HAZARDOUS MATERIALS COST RECOVERY ORDINANCE

THE JURISDICTION OF, NEWAYGO COUNTY, MICHIGAN, ORDAINS:

Section 1: Intent and Purpose

The purpose of this article is to enable the jurisdiction to require financial reimbursement from those responsible for allowing hazardous materials to escape containment, which causes an emergency response on the part of the jurisdiction's agents, officers, and/or employees under Public Act 102 of 1990 (MCL 41.806a).

A significant potential exists for the occurrence of hazardous material emergencies requiring the response of law enforcement, Fire Department, emergency medical services, and emergency management resources. Such incidents can create a serious threat of personal injury, property damage, and environmental contamination. The control and abatement of such emergencies place a financial and operational burden upon local government. In order to protect the jurisdiction from incurring extraordinary expenses resulting from the utilization of municipal resources to respond to an incident involving hazardous materials, the Board authorizes the imposition of charges to recover reasonable and actual costs incurred by the jurisdiction in responding to calls for assistance in connection with a hazardous materials release.

Section 2: Definitions

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

- A. **Jurisdiction** shall mean the municipal governmental jurisdiction (city, village, or township) where a local government has been granted specific powers by the state to administer local affairs and enforce laws. This includes the jurisdiction's Board, Employees, and Agents.
- B. **Emergency Response** shall mean providing, sending and/or utilizing of law enforcement, firefighting, emergency medical services and emergency management resources by the jurisdiction or by a private industrial entity or corporation operating at the request or direction of the jurisdiction or State of Michigan for an incident resulting in a hazardous materials release or threatened release.
- C. **Hazardous Material** shall mean but is not limited to explosives, pyrotechnics, flammable compressed gas, flammable liquid, combustible liquid, oxidizing material, poisonous gas, poisonous liquid, poisonous solid, irritating material, etiologic material, radioactive material, corrosive material, liquefied petroleum gas, or any other hazardous material as defined in MCLA § 324.11101 et seq., Hazardous Waste Management.
- D. **Release** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment.
- E. **Building** shall mean any structure used or intended for supporting or sheltering any use or occupancy.
- F. **Vehicle** shall mean any mode of transportation used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats, aircraft, etc.

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- G. **Premises** shall mean any lot or parcel of land, exclusive of building and includes a parking lot, tourist camp, trailer camp, airport, stockyard, junkyard, wharf, pier, public road, and any other place or enclosure, however owned, occupied or used.
- H. **Owner** shall mean any person having a vested or contingent interest in the property, premises, container or vehicle involved in a hazardous material incident, including but not limited to any duly authorized agent or attorney, purchaser, devisee, or fiduciary of said person having said vested or contingent interest.
- I. **Responsible Party** shall mean the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle from which an incident arises involving the release or threatened release of a hazardous material.
- J. **Expenses of an Emergency Response** shall mean the direct and reasonable costs incurred by the jurisdiction, other assisting municipalities, corporations and individuals operating at the request or direction of the jurisdiction, when making an emergency response to a hazardous materials incident. Costs shall include but not be limited to providing law enforcement, firefighting, emergency medical services, emergency management, containment and abatement of all hazardous conditions at the scene of the incident. Costs shall also include but not be limited to such items as disposable materials and supplies used during the response to a hazardous material incident; the rental or leasing of equipment used for the specific response; replacement of equipment which is contaminated beyond reuse or repair during the response to a hazardous material incident; special consulting or technical services and laboratory costs; services and supplies purchased for any specific evacuation relating to a hazardous material incident; and any other costs reasonably associated with containment and cleanup. The expenses of an emergency response shall also include reasonable attorney fees and any cost incurred in collecting for those charges, costs and fees authorized by this ordinance.

Section 3: Duty and/or failure to remove and clean up

A. Duty to remove shall be the duty of the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle regarding which an incident arises which involves the release or threatened release of hazardous materials on or about said building, premises, property and/or vehicle to immediately contain and control such hazardous material and undertake and complete a total cleanup of the area in such a manner as to ensure that all leakage, spillage or other dissemination of hazardous material is fully removed and the area is fully restored to its condition prior to the placement, leakage, spillage or other dissemination of such hazardous material, the timing of this cleanup to be determined by the officer in charge.

B. Failure to remove and/or clean up. In the event the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle regarding which an incident arises which involves the release or threatened release of hazardous materials on or about said building, premises, property and/or vehicle fails to remove, in a timely manner, hazardous materials after an emergency response involving hazardous materials or comply completely with the above subsection, the jurisdiction shall have the right to enter onto said property and remove and conduct a cleanup of all such

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hazardous materials either by governmental employees or by contractors and agents of said government. Prior to engaging in such clean up, the jurisdiction shall make diligent efforts to notify the owner of its duty to abate the hazardous conditions. All costs associated with such containment, control, removal and clean-up are in addition to the costs associated in the following sections and are to be reimbursed in like manner.

Section 4: Liability for expense of emergency response

The Responsible Party shall be required to reimburse the jurisdiction for all expenses of the emergency response caused by the hazardous material incident.

Section 5: Charges Imposed Upon the Responsible Party

Where the jurisdiction's Fire Department responds to a call for assistance in connection with a hazardous materials release, actual costs incurred by the jurisdiction responding to such a call shall be imposed upon responsible parties. These costs may include but are not limited to:

- 400.00 A. ~~\$120.00~~ per hour, or a fraction thereof, for each pumper required, in the opinion of the officer in command, to stand by at the hazardous materials incident.
- 365.00 B. ~~\$90.00~~ per hour, or a fraction thereof, for each water tender required, in the opinion of the officer in command, to be utilized in responding to the hazardous materials incident.
- 175.00 C. ~~\$70.00~~ per hour, or a fraction thereof, for each additional municipal owned fire or rescue vehicle required, in the opinion of the officer in command, to be utilized in responding to the hazardous materials incident.
- 785 D. ~~All~~ personnel related costs incurred by the jurisdiction as a result of responding to the hazardous materials incident. Such costs may include, but are not limited to, wages, salaries, fringe benefits and insurance for full-time and part-time fire or rescue personnel, overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on call personnel. Such personnel related charges shall commence after the first hour that the Fire Department has responded to the hazardous materials incident, and shall continue until all personnel have concluded hazardous materials incident related responsibilities.
- F. Other expenses incurred by the jurisdiction in responding to the hazardous materials incident, including but not limited to, rental or purchase of machinery, equipment, labor consultants, legal and engineering fees, medical and hospitalizations costs, and the replacement costs related to disposable personal protective equipment, extinguishing agents, supplies, water purchased from municipal water systems and meals and refreshments for personnel while responding to the hazardous materials incident.
- G. Charges to the jurisdiction imposed by any local, State or Federal government entities related to the hazardous materials incident.
- H. Cost incurred in accounting for all hazardous material incident related expenditures, including billing and collections costs.

Section 6: Billing Procedures

- A. Upon receipt of the Fire Department's Chief Reporting of a fire or fire related response or other emergency response, the Department may recover from any or all responsible parties, individually, jointly and/or severally, all assessable costs in connection with such emergency or incident.

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- B. The Fire Chief or his/her designee shall determine the total assessable costs and shall determine whether to assess any, all, or part of such costs against any of the responsible parties.
- C. The Fire Chief shall follow internal jurisdictional processes for submittal of a detailed listing of all known expenses. These expenses shall be included on an invoice to the responsible party for payment. The invoice should demand full payment within thirty (30) days of receipt of the bill.
- D. Any additional expenses that become known to the Fire Chief following the transmittal of the bill to the responsible party shall be billed in the same manner on a subsequent bill to the responsible party.
- E. For any amounts due that remain unpaid after thirty (30) days, the jurisdiction may impose a late charge of one percent (1%) per month or fraction thereof.

Section 7: Failure to pay procedure to recover costs

Any failure by the person or corporation described in this article as liable or responsible for expenses of an emergency response to pay a bill within 30 days of mailing or service of the bill shall constitute a default on the bill. In the case of default, the jurisdiction shall have the right and power to add all emergency response costs to the tax roll and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against property or premises. The jurisdiction shall also have the right to bring action in a court of competent jurisdiction to collect emergency response costs if the jurisdiction deems such action to be necessary. The recovery of charges imposed under this ordinance does not limit liability of responsible parties under Local ordinance or State or Federal law, rules or regulations.

Section 8: Exemptions

The following property and services rendered by the Fire Department shall be exempt from the fees:

- A. Cases of undue hardship, to be determined by the jurisdiction's governing council / elected board
- B. Fire involving the jurisdiction's buildings and grounds
- C. Services performed under a mutual aid contract if approved by the Chief.

Section 9: Severability

Should any provision or part of the within ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, that shall not affect the validity or enforceability of the balance of this ordinance which shall remain in full force and effect.

Section 10: Effective Date:

This ordinance shall take effect on _____.

All ordinances or parts of ordinances in conflict herewith are hereby repealed

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Dated this ____ day of _____, 2026