

ORDINANCE NO. 124

AN ORDINANCE TO PROVIDE FOR HAZARDOUS MATERIAL SPILL COST RECOVERY

An Ordinance to establish charges for Township emergency services responding to an incident involving hazardous materials under Public Act 102 of 1990 (MCLA 41.806a) and to provide for methods for the collection of such charges.

THE TOWNSHIP OF CLAY ORDAINS:

SECTION 1. PURPOSE. In order to protect the Township from incurring extraordinary expenses resulting from the utilization of Township resources to respond to an incident involving the spill, release or discharge of hazardous materials, or the improper handling or storage of hazardous materials, the Township board shall recover from the responsible parties the reasonable and actual costs incurred by the Township in responding to calls for assistance in connection with hazardous materials release.

SECTION 2. DEFINITIONS

- A. **“Costs” and “Township Costs”** mean any and all expenses incurred by the Fire, Police and Public Works Departments and/or any other department hired by the Township to supply services to the Township, whether direct or indirect, and shall include, but not be limited to, expenses attributable to the responses, control or abatement of any hazardous materials release, including costs of equipment, operation and personnel, costs of materials utilized, fringe benefit costs, overhead costs, costs of meals for all personnel, costs involved in the incident, costs of specialist, medical expenses for exposures, injuries or illnesses resulting from the incident, costs of experts or other contract labor services not in full-time employment of the Township, costs incurred by fire departments requested to assist and all other costs incurred by the Township as a result of said incident.
- B. **“Facility”** means any area, place or property where a hazardous material has been released, deposited, stored or disposed of or otherwise comes to be located.
- C. **“Fire Department”** means any fire department rendering service to Clay Township.
- D. **“Hazardous Materials”** means any of the following:
 - 1. Substances or materials in quantity or form which, in the determination of Fire Chief of the fire department responding to the release of hazardous materials or his or her authorized representative, pose an unacceptable risk or danger to the public health, safety, or welfare, the environment, or property, and shall include, but not be limited to, such substances as chemicals,

explosives, radioactive materials, petroleum or petroleum products, gases, poisons etiologic (biologic) agents, flammables and corrosives.

2. Hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat., 2767, as amended.
 3. Hazardous substances as defined in Part 201 of Act No. 451 of the Public Acts of 1994 of the State of Michigan, as amended
 4. Hazardous waste as defined in Part 111 of Act No. 451 of Public Acts of 1994 of the State of Michigan, as amended.
 5. Petroleum as described in Part 213 of Act No. 451 of the Public Acts of 1994 of the State of Michigan, as amended.
- E. **“Person”** means an individual, sole proprietorship, partnership, joint venture, trust, firm joint stock company, corporation, limited liability company or any other legal entity.
- F. **“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the improper handling or storage thereof, of the abandonment or discharging of barrels, containers, or other receptacles containing a hazardous substance.
- G. **“Threatened Release”** means any circumstance that may reasonably be anticipated to cause a release.

SECTION 3. RESPONSIBILITY FOR ABATEMENT, CONTROL AND COSTS: USE OF OUTSIDE CONTRACTORS OR MUNICIPAL FORCES.

Any person who accidentally, negligently or intentionally causes or is responsible for any release, spill, or improper handling or storage of any hazardous materials in the Township shall be responsible and liable for the abatement, control, capture, removal and proper storage or disposal of such hazardous materials and for all costs associated therewith.

It shall be the duty of any responsible party to remove immediately hazardous materials released and undertake and complete a total cleanup of the area of the release in such a manner as to ensure that the hazardous materials are fully removed and the area is fully restored to its condition prior to the release of such hazardous materials, or to conditions or standards established by Michigan Department of Natural Resources pursuant to Act 307 of the Michigan Public Acts of 1982, as amended or other applicable law or environmental law or regulation.

Any responsible party who fails to comply completely with the provisions of this ordinance shall be liable to the city, its agents, contractors and employees for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the affected property.

In the event that any responsible party fails to remove immediately such hazardous material, the Township shall have the right to enter on to the property involved with the release and remove and conduct a cleanup of all hazardous materials either by City employees or by contractors and agents of the City.

Where the HazMat Unit is used for any aspect of the removal, cleanup, control or monitoring of any release or other incident involving hazardous materials, the responsible party shall be liable to the City for costs incurred in using the HazMat Unit.

SECTION 4. RECOVERY COSTS.

- a. The Township shall be entitled to recover all assessable costs in connection with a public safety or fire emergency incident from any responsible parties jointly or severally.
- b. The Township manager or his or her designee shall determine the total assessable costs and shall in consultation with other Township personnel involved in responding to a public safety or fire emergency incident determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered:
 - a. The total assessable costs;
 - b. The risk and public safety or fire emergency incident imposed on the city, its residents and their property;
 - c. Whether there was any injury or damage to person or property;
 - d. Whether the public safety or fire emergency incident required evacuation;
 - e. The extent the public safety or fire emergency incident required an unusual or extraordinary use of city personnel and equipment, and
 - f. Whether there was any damage to the environment.
- c. After determining to assess assessable costs against a responsible party, the Township treasurer shall mail an itemized invoice to the responsible party at its last known address. Such invoice shall be due and payable within thirty (30) days of the date of mailing and any amounts unpaid after such date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof that the amount due and any previously imposed late payment fee remains unpaid.
- d. In the event that said costs are not paid, the Township may take whatever collection steps may be deemed appropriate, including the placement of all such charges on the tax roll for said property and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against such property.
- e. If the responsible party fails to pay the Township for costs incurred within the thirty days of the date of the invoice sent by the Township to the responsible party, the Township may institute legal action to collect the costs due, including expenses, costs and reasonable attorney fees incurred to collect those costs.

SECTION 5. OTHER REMEDIES. The Township shall be entitled to pursue any other remedy or may institute any appropriate action or proceeding in a court of competent jurisdiction as permitted by law to collect assessable costs from a responsible party.

SECTION 6. SEVERABILITY. Should any provision or part of the within ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the remainder of this ordinance.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after publication in the Voice, a newspaper in general circulation within the Township of Clay. All ordinance or parts of ordinances in conflict are hereby repealed. This ordinance duly adopted on the _____ day of December, 2002 at a regular meeting of the Clay Township Board of Trustees.

Michael P. Pellerito
Clay Township Clerk

CERTIFICATION

The undersigned Clerk of the Township of Clay hereby certifies that the foregoing constitutes a true and complete copy of an Ordinance adopted by Clay Township Board of Trustees of the Township of Clay, County of St. Clair, Michigan at the meeting held on _____, 2002, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 27, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Michael P. Pellerito
Clay Township Clerk

I further certify that this Ordinance was published in The Voice Newspaper on _____, 2002.

Michael P. Pellerito
Clay Township Clerk