

ODESSA TOWNSHIP, IONIA COUNTY, MICHIGAN

**EMERGENCY RESPONSE AND HAZARDOUS MATERIALS COST
RECOVERY ORDINANCE**

Ordinance No. 29

An Ordinance to recoup costs associated with releases of hazardous substances under Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, MCL 324.20101 et seq., as amended, and to provide for the recovery of expenses resulting from the utilization of the Township of Odessa's resources to certain public safety and/or fire emergency incidents, and to recoup costs thereof pursuant to Act 33 of 1951, MCL 41.806a, as amended, to promote the health, safety, and general welfare.

THE TOWNSHIP OF ODESSA, IONIA COUNTY, MICHIGAN, ORDAINS:

Section 1: Title: This Ordinance shall be known and cited as the Odessa Township Emergency Response and Hazardous Materials Cost Recovery Ordinance.

Section 2: Definitions: Words used within this Ordinance shall be construed to have the same meaning as provided in Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, MCL 324.20101 *et seq* ("Part 201") unless otherwise defined or suggested by context.

- A. "Assessable Cost" means any and all expenses incurred by emergency services personnel and any other departments hired or contracted by Odessa Township (the "Township") to supply services within the Township, whether direct or indirect, and shall include, but not be limited to, expenses attributable to an Emergency Response, or to the control or abatement of any hazardous substances during a Hazardous Materials Response. Such assessable costs include the cost of equipment, operations and personnel, costs of materials utilized, fringe benefit costs, overhead costs, costs of meals for all personnel, costs involved in the incident, costs of specialists, medical expense for exposure, injuries, or illness resulting from the incident, cost of experts or other contract labor services not in full-time employment of the Township, costs incurred by the fire departments requested to assist, and all other costs incurred by the Township or the Township's contracted agencies and emergency services personnel as a result of said incident.
- B. "Designated Township Official" means any employee, contractor, agency, individual, person, or entity that provides emergency response services to the Township, which may include, but is not limited to, the Fire Chief or their designee of the Lake Odessa Fire Department or successor department.
- C. "Department" means the Lake Odessa Fire Department.

- D. "Emergency Services Personnel" means any personnel providing emergency police, fire protection, or emergency medical services to the Township.
- E. "Hazardous Material Response" means a response by emergency services personnel for the control or abatement of any hazardous substances as defined in Part 201.
- F. "Hazardous Substance" means a substance deemed a hazardous substance under Part 201, as determined by the designated Township official, which may include chemical compounds, hazardous wastes, or petroleum products, that if released within the Township, threaten to or will adversely impact the environment or human health and safety.
- G. "Emergency Response" means a response by emergency services personnel for any reason other than a Hazardous Material Response as defined herein.
- H. "Responsible Party" means any person, business, or legal entity, and the heirs, estates, successors, and assigns of such responsible person(s), that causes, contributes to, or is otherwise involved, including accidentally or unknowingly, in releasing Hazardous Materials as defined under Part 201 within the Township or causing an Emergency Response and the related cost recovery charges associated with receiving a direct benefit from the emergency services provided by the Township

Section 3: Emergency Response: Should Township emergency services personnel respond to any call requiring an Emergency Response as defined herein, the Township shall charge the responsible party a fee for all monetary costs incurred by the Township relating to the response. This Section and cost-recovery of fees shall only apply to Emergency Responses related to incidents with trains (e.g., fires or other emergency incidents) or incidents involving utility-infrastructure such as downed power lines or other non-HAZMAT public utility hazards. Such fees are in addition to any other penalties, obligations, or remedies provided by law.

1. Upon receipt of the Designated Township Official's report pertaining to an Emergency Response, the Township may recover from any responsible parties, individually, jointly and/or severally, all reasonable and assessable costs.
2. The Designated Township Official and the Odessa Township Clerk (the "Township Clerk") or their designee shall determine the total assessable costs and shall determine the costs associated with personnel involved in the Emergency Response, determine whether to assess any, all, or part of such costs against any of the responsible parties. The Township Clerk and the Department may maintain a list of associated costs to help them in assessing costs, such a list should be updated annually or at any other reasonable time in the Township Clerk's discretion, and which shall be considered a guideline in calculating costs to the responsible parties.
3. In making a determination of costs, the following factors shall be considered:
 - a) The total reasonable assessable costs;

- b) The risk the public safety or fire emergency incident that required the Emergency Response imposed on the Township and/or its response area, its residents, and their property;
 - c) Whether there was any injury or damage to a person or property;
 - d) Whether the Emergency Response required evacuation;
 - e) The extent to which the public safety or fire emergency incident required an unusual or extraordinary use of the Township personnel and equipment;
 - f) Whether there was any damage to the environment;
 - g) The existence and extent of negligence or fault on the part of the responsible party and;
 - h) Whether the Emergency Response involved, or the assessable costs were incurred for, the benefit of a resident of the Township.
4. After consideration of the factors above, the Township Clerk may allocate assessable costs among and between multiple responsible parties or may assess all or any portion of such costs as against any responsible party, regardless of whether a responsible party has other legal liability therefor or is legally at fault. These costs will be assessed to the responsible party according to Section 5 of this Ordinance.
 5. If the Township Clerk determines not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to other parties.

Section 4: Hazardous Materials Response—Part 201 Civil Action: Should a person, corporation, or other legal entity within the Township release or threaten to release any hazardous substance into the Township without authorization under applicable federal, state, or local law, the Township may pursue legal action under Section 20135 of Part 201 or otherwise authorized by law. The Township may request all remedies authorized by Part 201 to remedy a release or threat of release of hazardous substances within the Township.

Section 5: Billing and Collection: All fees authorized under this Ordinance are due and payable within thirty (30) days from the date of the Township's request for payment.

1. After determining to assess and recover assessable costs against a responsible party or parties and the amount of such assessment, the Township Clerk or their designee shall mail an invoice to each responsible party against whom recovery is sought at their last known mailing address. The invoice shall state that the payment shall be received and payable to the Odessa Township Treasurer (the "Township Treasurer"). The Township Clerk shall provide a copy of the invoice to the Township Treasurer's Office. Any request for payment from a responsible party must contain an itemized list of all expenses and their amounts.

2. All responsible parties are jointly and severally liable for a Township response to a emergency response even though the Township reserves the sole discretion to determine how it may request payment from all responsible parties.
3. A responsible party may appeal the fee in a request for payment by submitting an appeal in writing to the Odessa Township Supervisor (the "Township Supervisor") within 15 days after the recorded date of mailing, whether by United Postal Service, similar courier service, or electronic mail of the request for payment. Upon receipt of such a request, the Township Supervisor will place the responsible party on the agenda of a regularly scheduled Odessa Township Board (the "Board" or "Township Board") meeting. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified.
4. The Township Board will hear appeals and will determine whether to uphold, amend, or relieve a responsible party from a request from payment. A responsible party bears the burden of proof in all fee appeals.
5. If a responsible party shall appeal assessable costs pursuant to subsections (3) and (4) above, such costs, if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall be calculated retroactively, starting thirty (30) days after the original invoice from which such appeal was taken, unless the Odessa Township Board during such appeal hearing determines that there existed a meritorious and bona fide dispute and basis for appeal, in which event the Board may waive the late payment fee which accrued prior to the date of appeal and up to thirty (30) days thereafter.
6. The Township Board delegates the authority and responsibility for bills and collecting fees under this Ordinance to the Township Clerk. Bills that are not paid within thirty (30) days shall be assessed as a one percent (1%) late fee per month. The Township may proceed in a court of proper jurisdiction to collect unpaid amounts, as well as pursue any and all other remedies provided by law to collect those fees. The Township Board reserves the right to waive fees under this Ordinance in cases of hardship or other circumstances the Township deems appropriate.
7. The Township Treasurer shall have the right and power to add all cost recovery charges to the tax roll of the property of the responsible person(s) in the Township from which, upon which, or related to which the cost recovery charges were incurred 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 or premises. In addition, the Township Treasurer may collect any overdue amounts from the responsible person(s) in any other manner permitted by law, including the filing of a collection suit in a court of competent jurisdiction. Any overdue amounts shall bear interest at the rate set forth in the annual schedule of fees.

Section 6: Non-Exclusive Fees: The fees authorized by this Ordinance are not exclusive of any other charges, special assessments, and taxes that the Township may charge to recover the costs and expenses of providing emergency services personnel; rather, the fees set hereunder are

supplemental thereto. Additional costs may be recovered by the Township through general taxation or special assessments as provided by law.

Section 7: Exemptions: The following properties and services are exempt from cost recovery charges under this article:

1. Responding to a fire involving Township buildings, grounds, and/or property.
2. Responding to a fire or providing other emergency services that are provided and performed outside of the Township. Notwithstanding such exemption for services provided outside of the Township, the Township and other municipalities may adopt (an) ordinance(s) to impose fees for fire and emergency service runs within their respective territories under MCL 41.801 *et seq.*, as amended.

Section 8: Non-Applicability of Michigan's No-Fault Act: This ordinance provides authority to the Township to collect cost recovery charges for fire and emergency services provided by the Township, and within the Township, to a responsible person(s). No claim under this ordinance is for, or relates to, property damage(s). Michigan's No-Fault Act, as amended, MCL 500.3101 *et seq.*, does not apply to, conflict with, or preempt this ordinance.

Section 9: Severability: The provisions of this Ordinance are hereby declared to be severable and if any part is declared invalid for any reason by a court of competent jurisdiction it shall not affect the remainder of the Ordinance which shall continue in full force and effect.

Section 10: Repeal: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed including Township Ordinance 15 (Hazardous Materials Emergency Incidents) in its entirety.

Section 11: Effective Date: This Ordinance shall take effect immediately upon publication as required by law following adoption by the Township Board.

Roll Call Vote

YEAS: Williams, Bohrbacher, Barrone, Lombill & Secor

NAYS: none.

ORDINANCE DECLARED ADOPTED.

Gary P. Secor
Gary P. Secor, Odessa Township Supervisor

CERTIFICATION

I hereby certify that:

1. The above is a true copy of an Ordinance adopted by the Odessa Township Board at a duly scheduled and noticed meeting of that Township Board held on 11-16, 2023, pursuant to the required statutory procedures.
2. A summary of the above Ordinance was duly published in the Lakewood News newspaper, a newspaper that circulates within Odessa Township, on 11-11, 2023.
3. Within 1 week after such publication, I recorded the above Ordinance in a book of Ordinances kept by me for that purpose, including the date of passage of the Ordinance, the names of the members of the Township Board voting, and how each member voted.
4. I filed an attested copy of the above Ordinance with the Ionia County Clerk on 11-13, 2023.

ATTESTED:

Lisa K. Williams
Lisa K. Williams, Clerk
Odessa Township

ODESSA TOWNSHIP, IONIA COUNTY, MICHIGAN
EMERGENCY RESPONSE AND HAZARDOUS MATERIALS COST RECOVERY
ORDINANCE NO. 29

NOTICE OF ADOPTION

Please take notice that on 11-10, 2023, the Township Board of Odessa Township adopted Ordinance No. 29, which allows the Township to recoup costs associated with releases of hazardous substances within the Township. Copies of the Ordinance may be obtained from Lisa K. Williams, Odessa Township Clerk, at 3862 Laurel Drive, Lake Odessa, MI 48849.

The Ordinance has the following sections and catch lines: Section 1: Title; Section 2: Definitions; Section 3: Emergency Response; Section 4: Part 201 Civil Action; Section 5: Billing and Collection; Section 6: Non-Exclusive Fees; Section 7: Exemptions; Section 8: Non-Applicability of Michigan's No-Fault Act; Section 9: Severability; Section 10: Repeal; Section 11: Effective Date, which is immediately upon this publication.

Published by Order of the Township Board
Odessa Township, Ionia County, Michigan
Lisa K. Williams, Township Clerk
(616) 374-4237 ext. 10

Publication Date: 11-11, 2023