

Ordinance 07-02-20-01

Proposed Cost Recovery Ordinance

(a) Purpose of section. The purpose of this section is to enable Waterloo Township to require reimbursement from those individuals and property owners receiving direct benefit from emergency response of the police, fire, or emergency medical services provided by the township police department and/or any affiliated fire or emergency medical service provider, to the extent permitted by law, from those individuals, who by the nature of their acts, create an expense to the Township, and from those responsible for the leaking, spilling or escape of dangerous or hazardous substances or materials, thereby requiring cleanup and disposal by the township or its agents.

(b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dangerous or hazardous substance or material means any material or substance that has been identified by township, state or federal laws or regulations to be limited to such substances as chemicals and gases, explosives, radioactive materials, petroleum products or gases, poisons, etiologic (biologic) agents, flammables and corrosives, or substances that are obnoxious by reason of odor, spillage, leakage or other release from their containers. Specifically, hazardous substance includes hazardous chemicals as defined by the state department of public health and the state department of labor; hazardous materials as defined by the U.S. Department of Transportation; chemical materials and polluting materials as defined by the state department of natural resources; hazardous waste as defined by the state department of natural resources and hazardous materials as defined in the Comprehensive Environmental Response, "Superfund," as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 USC 9601. A dangerous or hazardous substance or material is considered released from its container, when in the determination of the Chief of Police or his authorized representative, it poses a direct danger or threat of harm to human or animal life, health or safety and welfare of the public or environment. A hazardous substance can also be a noxious odor that is determined by the Chief of Police or his authorized representative, to constitute a danger or threat to the public health, safety or welfare.

Emergency response means:

(1) The providing, sending and/or utilizing of police, firefighting, emergency medical and rescue services by the township, or by a private individual or corporation operating at the request or direction of the township, to an incident resulting in an accident involving a motor vehicle where one or more of the drivers were operating the motor vehicle under the influence of or while impaired due to the consumption of an alcoholic beverage or controlled substance or the combined influence of an alcoholic beverage and a controlled substance;

(2) An incident resulting in a traffic stop and arrest by a police officer when a driver was operating the motor vehicle while under the influence of or while impaired due to the consumption of an alcoholic beverage and/or controlled substance; or

(3) The providing, sending and/or utilizing of public service, police, firefighting or rescue services, including resuscitator service, to the scene of a fire, accident involving a motor vehicle, scene of a release of a hazardous substance, or scene of other emergency situation.

Expense of emergency response means the costs associated with the occurrence of an emergency response as set forth in this subsection. The expenses of making an emergency response, as set forth in this subsection, shall include the costs connected with the administration, abatement and mitigation provision and analysis of chemical tests, if applicable. These costs shall be set by board resolution.

(c) Liability; presumptions.

(1) The owner or lessor or operator of a fixed facility to which there is an emergency response by the township shall be presumed liable for the costs of an emergency response.

(2) Any person or vehicle owner/or the lessee who owned or operated a motor vehicle or other transporter, which operation results in an emergency response, shall be responsible and liable for the expenses of the emergency response.

(3) Any individual who is the object of an emergency response by the township shall be presumed liable for the costs of the emergency response.

(4) Any person is liable for the expense of an emergency response, if while under the influence or while impaired due to the consumption of an alcoholic beverage or controlled substance, or the combined influence of an alcoholic beverage and controlled substance, such person's operation of a motor vehicle proximately causes any incident resulting in emergency response.

(5) Presumptions are as follows:

a. For purposes of subsection (c)(4) of this section, a person is under the influence of an alcoholic beverage or controlled substance, or the combined influence of an alcoholic beverage and a controlled substance, when due to drinking alcohol the person's ability to operate a motor vehicle in a normal manner is substantially lessened or, because of drinking alcohol, a person's mental or physical condition is significantly affected and he is no longer able to operate a motor vehicle in a normal manner. Further, it shall be presumed that a person was operating a motor vehicle while under the influence of an alcoholic beverage if a chemical analysis of his blood, urine or breath indicates the amount of alcohol in his blood was in excess of 0.08 percent.

b. For purposes of subsection (c)(5) of this section, a person is operating while impaired, when due to the consumption of alcohol or a controlled substance, or the combined influence of an alcoholic beverage and a controlled substance, the person operates a motor vehicle with less ability than would an ordinary careful driver. The person's driving ability must have been lessened to the point that it would have been noticeable to another person. Further, it shall be presumed that a person was operating a motor vehicle while impaired if a chemical analysis of his blood, urine or breath indicated the amount of alcohol in his blood was in excess of 0.07 percent.

(6) The expense of an emergency response shall be a charge against the person liable for the expenses under this section. The charge constitutes a debt of that person and is collectible by the township for incurring those costs in the same manner as in the case of an obligation under a contract, express or implied.

(7) The township board of trustees shall, by resolution, adopt a schedule of the costs included within the expense of an emergency response. This schedule shall be available to the public from either the township clerk or the township department of public safety.

(d) Liability; hazardous or toxic substance or materials.

(1) It shall be the duty of any person and any other entity which causes or controls leakage, spillage or any other dissemination of a dangerous or hazardous substance or material to immediately remove such and clean up the area of such spillage in such manner that the area involved is fully restored to its condition before such occurrence. The department of public safety will inspect the site to make sure the cleanup is in compliance with local, state and federal guidelines.

(2) Any such person or entity who fails to comply with this section by failing to cleanup without delay a hazardous substance release shall be liable to and shall pay the township for its costs and expenses, including the costs incurred by the township of any party which it engages, for the complete abatement, mitigation, cleanup and restoration of the affected area.

(e) Cost recovery for hazardous conditions concerning dangerous substances.

(1) The Township shall be entitled to recover all costs and damages incurred in conjunction with emergency incidents involving the release or threatened release of hazardous/toxic materials or the creation of hazardous conditions concerning dangerous or hazardous materials or substances. Such costs and damages shall include, but not be limited to, those associated with incident abatement, cleanup and mitigation, including any related third-party costs, which are necessary to ensure the safety of the township and its populace and buildings.

(2) Such costs and damages shall be the responsibility of the individual to whom emergency response was provided or, if such emergency response involves motor vehicles or property, shall be the joint and several responsibility of the owner and/or operator, and/or the owner's or operator's insurance carrier, of the property, equipment, vehicle or container causing or contributing to any emergency incident or hazardous condition of extended duration.

(f) Civil liability. This section shall be construed to create responsibility and liability of a civil nature on the part of the individual to whom emergency response has been provided or, if such emergency response involves a motor vehicle or property, responsibility and liability of a civil nature on the part of the operator and/or owner, as well as to the appropriate no-fault insurance carrier. This section shall not be construed to conflict, contravene or enlarge or reduce any criminal liability or responsibility, including fines imposed by a judge on a driver for operating a motor vehicle while under the influence of an alcoholic beverage and/or controlled substance. Nor shall this section be construed to impose criminal sanctions based solely on this section as to the responsible party creating the need for an emergency response. The township board of trustees or its designee shall, within a reasonable time of receiving itemized costs incurred for emergency response, submit a bill for same by first class or personal service to a person or entity liable for these expenses as enumerated under this section. Such bill shall require full payment in 30 days from the date of billing. The township may proceed by suit in a court of appropriate jurisdiction to collect any monies remaining unpaid to the expiration of 30 days from billing and shall have any and all other remedies provided by law provided for the collection of such charges. In addition, if any person or entity fails to reimburse the township as provided and such person or entity is the owner of the affected property, the township shall have the right and power to add any and all costs of emergency response to the tax roll as to any such 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. This remedy is in addition to any other remedy available to the township allowed by law.

CLERKS CERTIFICATION

I, Michael E. Sadler, Clerk of the Township of Waterloo, a Michigan Township Corporation, do hereby certify that at a regular meeting of the Waterloo Township Board, held at the Waterloo Township Hall at 11120 Musbach Road in said Township at 7:30 p.m., Eastern Daylight Time, On the 20th day of February, 2007, this Ordinance was adopted and that the vote was as follows:

Those Voting Yes: Hannewald, Sadler, Parsons, Walz and Huttenlocher

Those Voting No: None

Michael E. Sadler
Waterloo Township Clerk

February 20th, 2007