

Chapter 102 – Cost Recovery

1. **Short Title:** This chapter shall be known and cited as the “Cost Recovery Ordinance”.

2. **Purpose.** The City of Troy finds that a significant and continuous potential exists for extraordinary response situations based upon prior events which have taken place in the City, including those involving specialized response resources, that have and will continue to place a substantial financial and operational burden upon police protection services, fire protection services, emergency medical services, public works services, and other emergency health and safety services. The City finds that this Ordinance is necessary to protect the City from excessive expense resulting from the utilization of City resources in response to defined extraordinary situations and to fairly allocate the costs resulting from incidents among those responsible for them. The City further finds that the use of municipal personnel for certain responses interferes with the provision of routine and necessary public services to the residents of the City. The City has also determined that in traffic accidents involving drivers who are operating under the influence there is a greater likelihood of personal injury and property damage. The City further finds that this Ordinance is necessary to authorize the imposition of charges and to establish a policy and set forth the methods by which the City will recover actual costs incurred in making extraordinary responses and providing services in connection with the same.

3. **Definitions.** The following terms, phrases, words, and their derivatives shall have the meaning given herein, unless the context otherwise requires:
 - A. **Accident, including natural disaster,** means an unforeseen or unexpected happening or occurring which of itself causes great harm or damage, or which creates the potential for great harm or damage to individuals and/or property, and which requires immediate and prudent securing and monitoring by the City and/or agents of the City, to reduce the potential for such damage, but not including an extraordinary response.

 - B. **Assessable costs** means those costs for services (including police, fire, rescue, emergency medical services, emergency or municipal personnel, public works, and any other health and safety services) at the scene of an extraordinary response, incurred by the City, or a private person, corporation, or other assisting governmental agency, operating at the request or direction of the City. The term *assessable costs* includes but is not limited to the costs of providing:
 - 1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the extraordinary response;

Chapter 102 – Cost Recovery

- 2) All salaries, wages, and compensation of responding, supervising, investigating, reporting, and testifying City personnel where such services are required by an extraordinary response, the investigation of an extraordinary response incident, or any prosecution or civil action brought in connection with such an incident. This shall include, but not be limited to the actual labor costs of the City (including without limitation: employee wages including overtime, fringe benefits, and administrative overhead, whether or not the services are provided by the City or by a third party at the request of the City, including, but not limited to any mutual aid association or party to an interlocal agreement);
- 3) All salaries, wages including overtime, and compensation of responding, supervising, investigating, reporting and testifying personnel of any assisting governmental agency, including, but not limited to, any mutual aid association or party to an interlocal agreement, or consultant or contractor acting at the request or direction of the City where such services are required by an extraordinary response, the investigation of any extraordinary response situation, or any prosecution and/or civil action brought in connection with such an incident.
- 4) Costs for the use of City owned vehicles and/or equipment, but only if the use of the vehicle and/or equipment would not have been necessary but for the extraordinary response situation.
- 5) Rental or leasing of equipment used specifically for the extraordinary response (such as, but not limited to: protective equipment or clothing, scientific and technical equipment);
- 6) The actual replacement costs for equipment that is contaminated beyond reuse or repair during an extraordinary response;
- 7) Decontamination of equipment contaminated during the extraordinary response;
- 8) Special technical services specifically required for the extraordinary response (such as costs associated with the time and efforts of technical experts or specialists);
- 9) Other special services specifically required for the extraordinary response;
- 10) Laboratory costs of analyzing samples taken during the extraordinary response;
- 11) Costs of cleanup, storage, or disposal of hazardous materials;

Chapter 102 – Cost Recovery

- 12) Costs associated with the services, supplies and equipment procured for a specific evacuation;
 - 13) Medical expenses incurred as a result of extraordinary response activities, including ambulance conveyance to a hospital;
 - 14) Service charges and interests;
 - 15) The cost of any type of chemical testing for blood alcohol content or for the presence of controlled substances and for videotaping of the driver, if applicable;
 - 16) Related administrative costs, which shall be fifteen percent (15%) of the actual cost charged by the City, accruing after the occurrence of an extraordinary response;
 - 17) Legal expenses that may be incurred as a result of the extraordinary response situation, including efforts to recover expenses pursuant to this Ordinance, attorneys fees, expert witness fees, litigation costs, court costs, charges, fines, or penalties to the City imposed by any court or other municipal, state or federal governmental entities;
 - 18) Costs incurred in accounting for the extraordinary response expenditure, including billing and collection costs.
- C. **Bomb threats** means the verbal or written threat of a bomb or other explosive device, which if discharged as threatened would violate a federal, state or local law.
- D. **Emergency assistance** means extraordinary response by emergency and/or other municipal personnel.
- E. **Emergency personnel** means police protection services, fire protection services, emergency medical services, public works services, other emergency health and safety services, and any other City personnel, consultant, or contractor provided by the City or by a private entity, corporation, expert, consultant, or other assisting governmental agency operating at the request or direction of the City or the State of Michigan at the request of the City, including but not limited to any mutual aid associations or party to an interlocal agreement.
- F. **Extraordinary response** means the providing, sending, and/or utilizing of emergency or municipal personnel to or at an incident of a serious and/or urgent threat to human life, public safety and welfare, or to real or personal property.

Chapter 102 – Cost Recovery

G. ***Extraordinary response situations*** means situations requiring extraordinary response by municipal personnel, rendered in response to:

- 1) Excessive and/or repeated requests for response to incidents which are determined by the Chief of Police or the Fire Chief to be non-hazardous or not dangerous to an individual or the public;
- 2) A dangerous or hazardous materials incident, emergency, or release;
- 3) An illegal fire;
- 4) A bomb threat;
- 5) A threat of harm to oneself or others;
- 6) A structure demolition;
- 7) Any building fire or other building matter that requires extraordinary response by emergency or municipal personnel;
- 8) Any motor vehicle accident that requires extraordinary response by emergency or municipal personnel;
- 9) Any motor vehicle fire that requires an extraordinary response by emergency municipal personnel;
- 10) Any confined space, trench rescue, or similar incident requiring extraordinary response by emergency or municipal personnel;
- 11) The providing, sending and/or utilizing emergency or municipal personnel by the City to an accident involving a motor vehicle where one or more of the drivers were operating the motor vehicle while under the influence of an alcoholic liquor or any controlled substance or the combined influence of an alcohol liquor and any controlled substance, or the making of a traffic stop and arrest by a police officer when the driver was operating a motor vehicle while under the influence of an alcoholic liquor or a controlled substance or a combination of both;
- 12) Any investigation by emergency or municipal personnel that results in the issuance of a complaint and arrest warrant for “Filing a False Police Report” or “Hindering and Obstructing a Police Officer by Providing False Identification”.
- 13) Abatement of any nuisance as included in the City Code of Ordinances or abatement of any other matter required to protect and maintain the health, safety and welfare of the City’s residents;

Chapter 102 – Cost Recovery

- 14) Any other extraordinary situation whereby extraordinary response was taken by the City which is above and beyond normal or routine emergency standards.
- H. ***Extraordinary use of municipal personnel*** means the use of emergency or municipal personnel at special events such as athletic events, religious-sponsored events, school functions, charitable events, or any private sector gatherings or events when the holders and/or sponsors of an event have not made pre-arrangements in writing with the City for use of emergency or municipal personnel. This term does not include those special events which are pre-arranged, and there is a separate agreement covering the costs of municipal personnel.
- I. ***Hazardous or dangerous material*** means those elements, substances, wastes or by-products, including but not limited to, combustible liquid, flammable gas, explosive flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable or reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, or materials similar to those listed, which are or could be potentially harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk of life, health or safety of persons or property, or to the essential balance of the environment as determined by the Fire Chief or his designee or the senior official of the City in charge at the scene. The term *hazardous materials* also includes hazardous materials defined by MCLA 286.452.
- J. ***Hazardous or dangerous materials incident or emergency*** means any occurrence, incident, activity, accident or emergency where a release of hazardous materials has occurred, or is reasonably imminent to occur, and where the Fire Chief or his designee has declared such activity, accident or emergency a hazardous or dangerous material incident or emergency.
- K. ***Illegal fire*** means a fire set, or determined to have been set, in violation of any federal, state or local law, and shall include, but not be limited to: an arson fire, a fire set in violation of a “No burning” ban or order, or a fire proximately caused by illegal fireworks. An illegal fire does not include an unintentional fire or a fire caused by an act of God (for example, a lightning storm).
- L. ***Municipal personnel*** means police protection services, fire protection services, emergency medical services, public works services, other emergency health and safety services, and other City personnel, consultants, or contractors provided by the City or by a private entity, corporation, expert, consultant, or other assisting governmental agency operating at the request or direction of the City, including but not limited to a mutual aid association and any parties to an interlocal agreement.

- M. **Release means** any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or dispensing of hazardous materials into the environment (including but not limited to: the air, soil, surface waters or groundwater, which causes danger or harm to the public health or environment), or the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous material.
- N. **Responsible party** means any individual, firm, corporation, partnership, association, commercial entity, consortium, joint venture, governmental entity or any other legal entity responsible for an extraordinary response situation. Any owner, tenant, occupant or party, including the estate, heirs, successors and assigns of that responsible party who is in control of real or personal property from which, onto which, or related to a hazardous materials release. Responsible party will also include the individual or entity which requests an extraordinary use of municipal personnel.
- O. **Operating under the influence** means the operation of a motor vehicle while under the influence of intoxicating liquor and/or controlled substance or while visibly impaired by intoxicating liquor and/or a controlled substance, or with unlawful alcohol content by weight of alcohol, regardless of whether such person is charged or convicted of any crime relating to the incident causing the extraordinary response.
- 1) It shall be presumed that a person who was less than twenty-one (21) years of age was operating a motor vehicle under the influence if chemical analysis of the driver's blood, breathe, or urine, indicates an alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breathe, or per 67 milliliters of urine. The term "any bodily alcohol content" means the presence of any alcohol within the driver's body which is due to consumption of intoxicating liquor other than consumption which was part of a recognized religious ceremony.
 - 2) It shall be presumed that a person who was operating a commercial motor vehicle was under the influence if chemical analysis of the driver's blood, urine or breathe indicates the presence of any amount of a controlled substance or that the alcohol content in the driver's blood, breathe, or urine contained 0.04 grams or more per 100 milliliters of blood, per 210 liters of breathe, or 67 milliliters of urine.
 - 3) Other than in subsections 1) and 2) of this definition, it shall be presumed that a person was operating a motor vehicle under the influence if chemical analysis of the driver's blood, breathe, or urine indicates the presence of any amount of a controlled substance or that the alcohol content in the driver's blood, breathe, or urine was in excess of 0.08 grams or more per 100 milliliters, per 210 liters of breathe, or 67 milliliters of urine.

Chapter 102 – Cost Recovery

- P. **Specialized response resources** means equipment, supplies, vehicles, and specially-trained personnel that may be utilized to provide extraordinary response services or mitigation in connection with a specialized response.
- Q. **Structure demolition** means the tearing down of a structure damaged by Fire, explosion, or by other means which must be properly demolished in order to protect public safety, in the opinion of the Fire Chief and/or the Director of Building and Zoning, or their designees.
- R. **Threat of harm to oneself or others** means the verbal or written threat of harm to oneself, to another or to another's property, which, if carried out, would be in violation of any federal, state or local law.

4. **Cost Recovery Authorization and Procedure.** The City may recover all assessable costs in connection with extraordinary response situations from any or all responsible parties, jointly or separately. The City may recover all assessable costs in connection with extraordinary use of municipal personnel from the person, entity or organization necessitating the extraordinary services. For all other extraordinary response situations, the City Manager, or his/her designee, shall determine the total assessable costs and shall, in consultation with other City personnel involved in responding to an extraordinary response situation, determine whether to assess all or part of such costs against any of the responsible parties. In making such a determination, the following will be considered:

- A. The total assessable costs;
- B. The risk that the extraordinary response situation imposed on the City residents and their property;
- C. Whether there was any injury or damage to person or property;
- D. Whether the extraordinary response situation required evacuation;
- E. The extent the extraordinary response situation required an unusual or extraordinary use of municipal personnel and equipment; and
- F. Whether there was any damage to the environment.

After consideration of the above listed factors, the City Manager may allocate assessable costs among responsible parties, including allocating all or some of such costs jointly and severally against all parties, rather than one responsible party, regardless of whether a responsible party has legal liability therefore or is legally at fault. If the City Manager determines not to assess all or part of

Chapter 102 – Cost Recovery

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.

5. Hazardous Materials Release.

- A. Duty to Remove.** It shall be the duty of the responsible party who causes or controls leakage, spillage or any other dissemination of dangerous or hazardous substances or materials to immediately remove such hazardous substances or materials and complete a cleanup of the area of the release to insure that the hazardous substances or materials are fully removed and the area is fully restored to pre-release condition.
- B. Failure to Remove.** In the event that the responsible party fails to immediately and completely comply with Section 5.A., the City, its employees, agents, contractors, or consultants, may enter the property where the release occurred and conduct a cleanup, at the cost of the responsible party.
- C. Charges Imposed Upon Responsible Party.** Where there is a hazardous materials release, which requires an extraordinary response by municipal personnel, all assessable costs incurred by the City may be imposed upon the responsible party.

6. Billing and Collection of Assessable Costs and Late Payment Fees.

- A.** Upon a determination to assess costs incurred under this Ordinance, the City will submit an itemized invoice, by first class mail or personal service, to each responsible party. Such invoice shall be due and payable within thirty (30) days after the date of mailing, and any amounts unpaid, including any previously imposed, shall pay a late payment fee equal to one and one-half (1½%) percent per month.
- B.** A determination not to assess costs pursuant to this Ordinance shall in no way limit, extinguish or constitute a defense to the liability of any responsible party to any third party.
- C.** If the responsible party appeals assessable costs pursuant to Section 7 below, 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 late payment fees shall apply thereafter.

7. Procedure for Appealing Assessable Costs.

- A.** Any responsible party who receives an invoice for assessable costs shall have the opportunity to meet with the City Manager, or his/her designee, to request modification of the assessable costs. The

Chapter 102 – Cost Recovery

responsible party shall request such a meeting in writing within seven (7) calendar days of the date of the invoice assessing the costs.

- B. If after the meeting with the City Manager or his/her designee, the responsible party contests the assessed charges; he or she may request an opportunity to appear before City Council to further request a modification of the assessable costs. A responsible party who desires to appear before City Council must first meet with the City Manager or his/her designee, as provided above, and shall file a written request to appear before City Council with the City Clerk within seven (7) calendar days of the meeting with the City Manager.
 - C. Upon receipt of a request to appear before City Council, the City Clerk will place the challenge to the assessed cost on the agenda of the next regularly-scheduled City Council meeting, as long as there are at least fourteen (14) calendar days after the date on which the responsible party files the request to appear.
 - D. The filed request to appear before City Council shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified. The responsible party has the burden of proving by a preponderance of relevant facts that the determination is erroneous in whole or in part. Any reasoning, basis or argument for modification of assessable costs not set forth in the request to appear before City Council shall be deemed waived by the responsible party. Failure to timely file a written request to appear before City Council shall constitute a waiver of the responsible party's right to appear before City Council and shall further constitute the responsible party's agreement to pay the assessable costs invoiced.
 - E. Once the responsible party has been given the opportunity to appear before it, City Council shall, within a reasonable time, affirm, reverse, or modify all or a portion of the payment of the assessable costs invoiced. Failure of the responsible party to appear before City Council on the appeal shall constitute a waiver of that party's objections to the assessable costs. The decision of City Council shall be final.
8. **Assessable Costs Constitute a Lien Upon Property.** Any assessable costs which have been assessed but not paid when due, including any late payment fees, shall constitute a lien upon the real property of the responsible party in the City, from which, upon which or related to which an extraordinary situation occurred. Such a lien shall be of the character and effect as the lien created by state statute for General Tax Law for City real property and shall include accrued interest and penalties. The City Treasurer shall verify on March 1 of each year and certify to the City Assessor the fact that such assessable costs are delinquent and unpaid. The City Assessor shall then

Chapter 102 – Cost Recovery

enter the delinquent amount on the next general ad valorem tax roll as a charge against the affected property, and the lien thereon shall be enforced in the same manner as provided and allowed by law for delinquent and unpaid real property taxes.

9. **Other Remedies.** In addition to the remedy set forth in Section 8 above, the City shall be entitled to pursue any other remedy or may institute any appropriate court action or proceeding in a court of competent jurisdiction as permitted by law to collect assessable costs from a responsible party.
10. **No Limitation of Liability.** The recovery of assessable costs pursuant to this Ordinance does not limit the liability of a responsible party under applicable federal, state or local law.
11. **Preemption by Federal or State Statute.** Nothing in this Ordinance shall be construed to prevent a federal or state statute from preempting this Ordinance if the federal or state statute provides an absolute defense to liability of a responsible party due to the acts of a third party and that statute expressly or impliedly provides the federal or state government with the authority to regulate the a specific area of the law, or the pervasiveness of federal or state regulation or the nature of the regulation demonstrates the need for exclusive regulation by the federal or state government, including, but not limited to NREPA, MCLA 323.101, et. seq. and CERCLA 42 USC 9601, et. seq.

(Enacted: 12-21-2009)