

Lyon Township  
Roscommon County, Michigan  
Ordinance No. 38

Adopted: 4-15-2020  
Effective: IMMEDIATELY

**HAZARDOUS MATERIALS COST RECOVERY ORDINANCE**

The Township of Lyon, Roscommon 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 emergency response for incidents occurring in Lyon Township as permitted by 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 Township 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 for responses to hazardous materials incidents in the Township.

**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.

1. **Township** shall mean Lyon Township, Roscommon County, Michigan.
2. **Emergency Response** shall mean providing, sending and/or utilizing of law enforcement, firefighting, emergency medical services and emergency management resources in Lyon Township, Roscommon County, Michigan by an emergency response entity including but not limited to the Lyon-Grant Fire Department, the Roscommon County Emergency Management Department, or a responding department of the State of Michigan; or by an authorized private industrial entity or corporation operating in the Township at the request of the Township or any of the above entities having emergency response authority in Lyon Township for an incident resulting in a hazardous materials release or threatened release.
3. **Hazardous Material** "Hazardous waste" is waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not

include material that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919. Hazardous Material includes "hazardous waste" and includes 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."

4. **Hazardous Materials Incident** is a release or threatened release of hazardous material in Lyon Township.
5. **Release** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment.
6. **Building** shall mean any structure used or intended for supporting or sheltering any use or occupancy.
7. **Vehicle** shall mean any mode of transportation used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats, aircraft, etc.
8. **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.
9. **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.
10. **Responsible Party** shall mean the owner, operator, occupant, actor 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.
11. **Expenses of an Emergency Response** shall mean the direct and reasonable costs incurred by the Township, other municipal entities, and corporations providing hazardous materials responses in the Township 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** The owner, operator, occupant, actor, or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle in which or which causes a 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 in which or which causes the release or threatened release of hazardous materials on or about said building, premises, vehicle, property, or upon a public road or highway; fails to remove, in a timely manner, hazardous materials after an emergency response involving hazardous materials or comply completely with the above subsection, the Township, its agents and/or assigns shall have the right to enter onto said property and remove and conduct a cleanup of all such hazardous materials either by governmental employees or by contractors and agents of said government. Prior to engaging in such clean up, the jurisdiction shall notify the owner of any building or premises of the duty to abate the hazardous condition(s) and the Township's ability to do so. 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 or parties shall be required to pay for all expenses of the emergency response caused by the hazardous material incident.

### **Section 5: Charges Imposed Upon the Responsible Party**

Actual costs incurred for a response as defined herein shall be imposed upon the responsible party or parties therefor. These costs shall be set by resolution of the Township Board which has the authority to change the same from time to time by resolution. The costs to be charged include but are not limited to:

- A. A mobilization fee for each pumper truck required; and
- B. An hourly rate equal to the approximate cost to the Township for the following:
  - i. An hourly rate charged per hour in 15 minute increments, rounded up so long as the officer in command deems it necessary for the use of each pumper truck during the release or threatened release and response, or to stand by at the hazardous materials incident.
  - ii. An hourly rate charge in 15 minute increments rounded up for each response vehicle including any command truck, water truck or any specialized vehicle or equipment needed which in the opinion of the officer in command, is required to respond to a hazardous materials incident.
- C. All personnel-related costs incurred 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.

- D. 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 hospitalization costs, and the replacement costs related to disposable personal protective equipment, extinguishing agents, supplies, specialized materials for absorption and/or elimination of hazardous material, water purchased from municipal water systems and meals and refreshments for personnel while responding to the hazardous materials incident.
- E. Charges to the Township imposed by any local, State or Federal government entities relative to a hazardous materials incident in Lyon Township.
- F. Cost incurred in accounting for all hazardous material incident-related expenditures, including collections costs, if any.

#### **Section 6: Billing Procedures**

- A. Lyon Township assigns the responsibility for accounting for and billing of costs to the Lyon-Grant Fire Department.
- B. The Fire Chief or his/her designee shall determine the total assessable costs for hazardous materials incident responses in Lyon Township; and shall determine whether to assess any, all, or part of such costs against any of the responsible parties.
- B. The Fire Chief shall follow internal processes for submittal of a detailed listing of all known expenses relative to a hazardous materials response incident and shall bill the responsible party (ies) for such costs. 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.
- C. 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.
- D. For any amounts due that remain unpaid after thirty (30) days, the Fire Department is authorized to impose a 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 charges imposed for responding to a hazardous materials incident in the Township 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 Township shall 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**

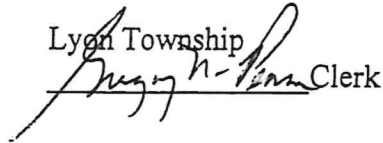
Township-owned buildings and premises are exempt from the billing and collection procedures in this ordinance. Other municipal buildings and premises in Lyon Township are exempt from the billing and collection procedures in this ordinance.

#### **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 is effective on the day after publication, after adoption by the Lyon Township Board.

Lyon Township  
  
Clerk