

---

**CHAPTER 127. EMERGENCY RESPONSE COSTS**

9.210. Definitions. For the purpose of their use in this Chapter, the following words, phrases and terms are defined as follows. Any word, phrase or term not so defined shall be considered to be defined in accordance with its common or standard definition.

(a) **Assessable Costs.** The costs and expenses incurred by the City (or a contracted third party or municipality working for or on behalf of the City) including but not limited to, the actual labor, personnel, equipment and material costs to the City, whether or not such services are provided by the City or by a third party independent contractor or municipality providing services to or on behalf of the City; service charges and interest; attorneys' fees; litigation costs; and any costs, charges, fines, or penalties to the City (or a contracted third party or municipality on behalf of the City) imposed by any local, state, or federal governmental entities. The actual labor, personnel, equipment and material costs to the City include without limitation employee wages; insurance costs; overtime; fringe benefits; administrative overhead; costs of equipment including depreciation; costs of equipment operation, materials, excavation, transportation, and disposal; costs of any contracted labor or materials; and any and all other labor and material costs.

(b) **Emergency Assistance.** Any emergency medical, public safety, police, fire and/or civil defense services.

(c) **Excessive Requests for Emergency Assistance.** Any request for emergency assistance made to a property, a particular location or commercial entity if that location, property or commercial entity has requested emergency assistance, of any type, more than three times in the preceding 30 calendar days.

(d) **False Alarm:**

(1) Any automated or manual device that is designed or operates to request or summon emergency police assistance which device is activated, intentionally or otherwise, in the absence of an actual need for emergency police assistance with the third and each subsequent false alarm in a calendar year. The determination that there was no actual need for police emergency assistance shall be made by the highest ranking emergency assistance person who responds to a false alarm.

(2) Any automated or manual device that is designed or operates to request or summon emergency fire assistance which device is activated, intentionally or otherwise, in the absence of an actual need for emergency fire assistance with the third and each subsequent false alarm in a calendar year. The determination that there was no actual need for emergency fire assistance shall be made by the highest ranking emergency assistance person who responds to a false alarm.

(e) **Hazardous Materials.** Those elements, substances, wastes, or their byproducts which are contained in the list of hazardous substances as adopted by the United States Environmental Protection Agency (the "EPA"); or which are contained in the list of toxic pollutants designated by Congress or the EPA; or which are defined as hazardous, toxic, pollutant, infectious, flammable, combustible, explosive, or radioactive by any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, as now or at any time hereafter in effect. Specifically included without limitation as federal and state laws, rules and regulations are Natural Resources and Environmental Protection Act, as amended, MCL 324.101 et seq.; the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. "9601 et seq.; the Federal Toxic Substances Control Act, as amended, 15 U.S.C. "2601 et seq.; the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. "6901 et seq.; the Federal Hazardous Material Transportation Act, as amended; the Federal Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; or any similar or successor statute or law, or rules and regulations of the EPA, or any other state or

federal department, Council, or agency, or any other agency or governmental Council or entity having jurisdiction (collectively, the "Environmental Laws"). Hazardous materials specifically include, without limitation, petroleum products, automotive anti-freeze, polychlorinated biphenyls and asbestos.

(f) Motor Vehicle. Any self-propelled or towed vehicle designed to be used or is actually used on the public streets, highways or roads to transport passengers or property and which is required to be registered for use upon the public streets, roads and highways of this State. For the purposes of this Ordinance, motor vehicle includes those vehicles owned by the government of the United States and any and all trailers or appurtenances to any motor vehicle.

(g) Motor Vehicle Accident. Any collision or contact involving one or more motor vehicles within the public road right-of-way (or sidewalk or public trail) or on private property which results in any damage to the motor vehicle(s) involved or other real property.

(h) Motor Vehicle Fire. Any instance in which a motor vehicle is destroyed by or suffers any damage as a result of fire.

(i) Release. Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing of a hazardous substance into the environment including, but not limited to, the air, soil, ground, ground water or surface water.

(j) Responsible Party.

(1) In connection with a release of hazardous materials, Responsible Party means: Any individual, firm, corporation, association, partnership, limited liability company, commercial entity, consortium, joint venture, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for a release of hazardous materials, either actual or threatened; or that is an owner, tenant, occupant, or party in control of property, real or personal, onto which or from which there is a release of hazardous materials.

(2) In connection with a failure of a utility line, Responsible Party means: Any individual, firm, corporation, association, limited liability company, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the maintenance or failure of the utility line.

(3) In connection with a motor vehicle accident or motor vehicle fire, Responsible Party means: The registered owner, the operator of the motor vehicle at the time of the motor vehicle accident or motor vehicle fire if different from the registered owner of the motor vehicle, any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, limited liability company, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the motor vehicle accident or the motor vehicle fire.

(4) In connection with a fire, Responsible Party means: Any individual, firm, corporation, association, limited liability company, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the fire, for the real property on which the fire occurred, or for the object which was damaged or destroyed by the fire.

(5) In connection with a water rescue attempt, Responsible Party means: Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, limited liability company, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the situation which necessitated the water rescue attempt.

(6) In connection with excessive requests for emergency assistance, Responsible Party means: Any individual, firm, corporation, association, partnership, commercial entity, consortium, limited liability company, joint

venture, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the excessive requests for emergency assistance; or for the real property, location, or commercial entity, and the heirs, estates, assigns or successors to any such entity to which emergency service personnel are summoned pursuant to the excessive requests for emergency assistance.

(7) In connection with the third and each subsequent false alarm in a calendar year, Responsible Party means: Any individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity, and their heirs, estates, assigns or successors, that is responsible, in whole or in part, for the false alarm; or for the real property, location, or commercial entity, and their heirs, estates, assigns or successors, to which emergency service personnel are summoned pursuant to the false alarm.

(k) Structure. Anything constructed or erected which has a permanent location on the ground or is attached to something having such location.

(l) Utility Lines. Any transmission or service line, cable, conduit, pipeline, wire, main or the like used in any way to provide, collect or transport water, sewage, electricity, liquid hydrocarbons, natural gas, or communication or electronic signals (including but not limited to telephone, computer, cable television and stereo signals or electronic impulses).

(m) Water Rescue Attempt. Any emergency response by City personnel (or anyone acting for or on behalf of the City) in connection with any emergency or perceived emergency, on, near, or caused by a body of water naturally open to the atmosphere. For purposes of this definition, "body of water" includes without imitation rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors of water, including a wetland, as defined by the Natural Resources and Environmental Protection Act, as amended, MCL 324.101 et seq.

#### 9.211. Assessment of Costs.

(a) All assessable costs associated with any of the actions or services described in subsections (1) through (8) below may be jointly and severally assessed by the City to any or all responsible parties:

- (1) Assessable costs incurred to halt, abate, remediate, clean up or remedy any release of any hazardous materials and any liabilities resulting therefrom;
- (2) Assessable costs incurred to extinguish or fight a fire at any nonresidential structure or vacant property, any demolition costs if the nonresidential structure must be demolished to protect the public safety following the fire, and any liabilities resulting therefrom;
- (3) Assessable costs incurred in connection with a utility line failure and any liabilities resulting therefrom;
- (4) Assessable costs incurred in connection with any water rescue attempt and any liabilities resulting therefrom;
- (5) Assessable costs associated with a motor vehicle accident or motor vehicle fire and any liabilities resulting therefrom;
- (6) Assessable costs associated with excessive requests for emergency assistance and any liabilities resulting therefrom;
- (7) Assessable costs incurred to extinguish or fight a fire at any residential structure, and demolition costs if the residential structure must be demolished to protect the public safety following the fire and any liabilities resulting therefrom where the fire was caused by illegal conduct or reckless behavior; and
- (8) Assessable costs associated with a false alarm and any liabilities resulting therefrom.

(b) Each responsible party shall reimburse the City for the assessable costs specified in any statement provided by the City to the responsible party within 30 days of the City sending such statement by first class mail to the responsible party's last known address. Any amounts unpaid after such date shall bear a late payment fee equal to

one and one-half percent (1.5%) per month or fraction thereof. If a responsible party shall appeal assessable costs pursuant to section 3 hereof, such costs, if upheld, in whole or in part, shall be due and payable as described in that section. Late payment fees shall also apply.

(c) Any assessable costs which become known to the City following the transmittal of a statement to the responsible party pursuant to this Chapter shall be billed in the same manner on a subsequent statement to the responsible party.

(d) The City Treasurer (or his/her designee) shall certify to the City Manager (or his/her designee) the total assessable costs incurred by the City (or by a third party independent contractor or municipality providing services or representing the City). The City Manager (or his/her designee) shall then decide whether to assess any or all of the costs against any or all of the responsible parties. In deciding whether to assess the costs against any or all of the responsible parties, the City Manager (or his/her designee) shall consider the following factors:

- (1) The total assessable costs incurred by the City;
- (2) The risks to the City, its residents, their property, or any other people or property which result from the situation which caused the City to incur assessable costs;
- (3) Any injuries or damage to people or property which resulted from a situation which caused the City to incur assessable costs;
- (4) Whether the situation which caused the City to incur assessable costs necessitated an evacuation;
- (5) Whether the situation which caused the City to incur assessable costs resulted in any damage to the environment.

(e) The City Manager (or his/her designee) may, after consideration of the factors listed in section 2(d), allocate the costs among and between the responsible parties. Any costs not allocated among or between responsible parties shall be a joint and several liability of each responsible party assessed costs pursuant to section 2(d), regardless of whether that responsible party has any other legal liability apart from this Chapter, and regardless of whether such person or entity is at fault.

(f) The City may charge any costs assessed pursuant to this Chapter to the insurer of any responsible party. The submission of an invoice for the assessed costs to an insurer does not in any way limit or extinguish the liability of a responsible party for the costs assessed pursuant to this Chapter until such time as the assessed costs are paid in full.

(g) If the City Manager (or his/her designee) or the City Council decides not to assess all or part of its costs against any responsible party, such decision shall not in any way extinguish or limit a responsible party's liability to other parties for any costs or damages of any kind arising from the incident or release.

#### 9.212. Notice and Right to Appear Provisions.

(a) Any responsible party who receives a statement of costs from the City assessed pursuant to this Chapter shall be given the opportunity to appear before the City Council to request a waiver or modification of the assessed costs. Any responsible party who desires to appear before the City Council shall file a written request with the City Clerk within 14 calendar days of the date of the statement of assessed costs. The responsible party shall be placed on the agenda of the next regularly scheduled or special City Council meeting which is at least 14 calendar days after the date on which the responsible party files with the City Clerk a request to appear. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the costs assessed pursuant to this Chapter should be modified or waived. Any reason, basis or argument for a modification or waiver of the assessed costs not set forth in the written request to appear shall be deemed waived by the responsible party. Failure to file a written request to appear within 14 days of the date of the statement of assessed costs shall constitute a waiver of the responsible party's right to appear before the City Council and the

responsible party's agreement to pay the assessed costs, which payment must be made within 30 days of the date of the statement sent to the responsible party.

(b) At the City Council meeting, any responsible party who has filed a timely written request to appear shall have the opportunity to address the City Council regarding the written request that the City Council modify or waive the assessed costs. The responsible party shall be limited, in addressing the City Council, to those reasons and bases set forth in that responsible party's written request to appear. The City Manager shall have the opportunity to address the City Council to explain the process by which the assessed costs were determined and allocated. The City Council, after hearing from the responsible party and the City Manager, shall review the assessed costs and make a final determination regarding the costs assessed to the responsible party. The City Council shall pass a motion or resolution detailing its final determination regarding the assessed costs. The City Clerk shall then send an updated statement of assessed costs to the responsible party, by first class United States Mail, with postage prepaid, to the last known address of the responsible party. The assessed costs shall be due and payable 30 days from the date of that statement. If the responsible party fails to pay the assessed costs within those 30 days, the City shall have available to it all remedies available under section 4, below.

9.213. Failure to pay; Procedure to Recover.

(a) Assessable costs assessed against a responsible party not paid when due, including late payment fees, shall constitute a lien upon the real property of the responsible party in the City to which the assessed costs were related. Such lien shall be of the same character and effect as the lien created by City Charter for City real property taxes and shall include accrued interest and penalties. The City Treasurer shall prior to March 1 of each year, certify to the City Assessor the fact that such assessable costs are delinquent and unpaid. The City Assessor shall then 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.

(b) In addition to the remedy set forth in section 4(a), the City 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.

(c) The recovery of assessable costs pursuant hereto does not limit the liability of a responsible party under applicable local, state or federal law.

(Ordinance No. 2002-05, 08-07-2002; Ordinance No. 2014-01, 09-02-2014)