

ORDINANCE 16

BERRIEN COUNTY, MICHIGAN

HAZARDOUS MATERIALS EXPENSE RECOVERY ORDINANCE

THE COUNTY OF BERRIEN, STATE OF MICHIGAN, ORDAINS:

SECTION 1

The County desires to protect itself from expenses resulting from responses to incidents involving hazardous materials. The County has authority under MCLA 41.806a to adopt an Ordinance authorizing the recovery of these kinds of expenses. The County has determined that adopting such an Ordinance is in the best interests of the public health, safety and welfare of the County.

SECTION 2

The following terms are defined as follows:

“Hazardous Materials” shall mean any materials classified as hazardous by any federal, state or local law, regulation, or authority, and shall include, but not be limited to any chemical that is a combustible liquid, flammable gas, radioactive material, explosive, flammable, poison, organic peroxide, oxidizer, pyrophoric, unstable reactive, or water reactive or any other material that can cause serious disease or injury to humans, property or the environment.

“Recoverable Expenses” shall mean, in connection with an Incident, all actual costs or expenses incurred by the County, including but not limited to each of the following:

1. Charges for each fire department vehicle, including but not limited to, pumpers, ladder trucks, tankers, rescue squads, brush units, command units and other vehicles. Hourly rates for these charges shall be established by resolution of the County Board.
2. Replacement costs for equipment that is contaminated or damaged beyond reuse or repair (such as turn-out gear or self-contained breathing apparatus).
3. All personnel-related expenses incurred by the County, including but not limited to wages, salaries, fringe benefits, and insurance for full-time and part-time personnel, overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on-call fire personnel. These personnel-related expenses will commence when the fire department has begun responding to the Incident and shall continue until all County personnel have concluded hazardous materials incident related responsibilities.
4. Expenses of decontaminating and cleaning equipment.
5. Technical consulting services specifically required as a result of the Incident, including but not limited to, technical experts or specialists not otherwise available to the County.
6. Laboratory costs of analyzing samples taken during the Incident.
7. Costs of cleanup, storage or disposal of the released Hazardous Material.

8. Medical and hospital expenses incurred as a result of the Incident.
9. Legal, engineering, accounting, billing, collection and other administrative expenses incurred as a result of the Incident, including but not limited to efforts to recover expenses pursuant to this Ordinance.

“Responsible Party” shall mean, in connection with an Incident, any individual or entity that participated in, or whose actions or inactions were a proximate cause of an Incident, and any individual or entity that is an owner, tenant, occupant or holder of any interest in real estate, buildings, equipment or other real or personal property onto which or from which Hazardous Materials were released.

SECTION 3

Recovery of Expenses:

All responsible Parties in connection with a Hazardous Materials Incident, shall be responsible to the County for the Recoverable Expenses relating to an Incident. This responsibility shall be in addition to any other penalties, obligations, or remedies provided by law. The Liability of Responsible Parties under this Ordinance shall be strict, joint and several, and without regard to fault.

SECTION 4

Billing and Collection Procedures:

After the conclusion of a Hazardous Materials Incident or periodically prior to the conclusion of the Incident, the Berrien County Sheriff’s Department (or an agent of) shall submit an itemized list of all known recoverable expenses to the County Coordinator, who shall prepare and send an invoice to all Responsible Parties for payment. The County Coordinator’s invoice shall demand full payment within 30 days after receipt of invoice. Any additional expenses that become known to the County after mailing the first invoice shall be billed in the same manner to the Responsible Parties. Any amounts unpaid after 30 days after the due date will bear a late charge of one percent (1%) per month, or fraction of a month, or the highest legal limit of interest permitted by law, whichever is less.

SECTION 5

Appeal Process:

Any Responsible Party may appeal the amounts listed in an invoice to the County Board. The appeal shall be filed in writing delivered to the County Coordinator not later than fifteen (15) days after the date the Responsible Party receives the invoice. The County shall give the appealing parties an opportunity to present evidence in support of their position. The appealing parties shall bear the burden of proof. After receiving all evidence deemed relevant by the County Board, the County Board shall make a decision on whether the expenses are properly recoverable under this Ordinance. An appeal to the County Board will not postpone or delay the applicable time periods for payment of any invoice issued under this Ordinance. The County Board shall use reasonable efforts to make a decision no later than sixty (60) days after hearing the appeal.

SECTION 6

Violations; Other Remedies:

A violation of this Ordinance shall be a municipal civil infraction. The County, Berrien County Sheriff's Department and Corporate Counsel shall each have the authority to issue municipal civil infraction citations for violations of this Ordinance. The County may pursue any other remedy or may institute any other appropriate action or proceeding to collect charges imposed under this Ordinance. The recovery of expenses imposed under this Ordinance does not relieve or limit liability of any person under any other local ordinance or state or federal law, rule or regulation.

SECTION 7

Severability:

The various parts, sections and clauses of this Ordinance are severable. If a court rules that any part of this Ordinance or any other County Ordinance is unconstitutional or invalid, the remainder of the Ordinance shall not be affected.

SECTION 8

Effective Date:

This Ordinance shall become effective fifty (50) days after publication in a newspaper of general circulation in the County.

ADOPTED: September 17, 1998