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**METAMORA TOWNSHIP ORDINANCE TO ESTABLISH  
CHARGES FOR EMERGENCY SERVICES RESPONDING TO A  
HAZARDOUS MATERIALS EMERGENCY INCIDENT**

An ordinance to establish charges for Township emergency services responding to an incident involving hazardous materials under Public Act 102 of 1990 (MCL 41.806a) and to provide methods for the collection of such charges.

The Township of Metamora, Lapeer County, Michigan ordains:

**Section 1: Purpose**

In order to protect the Township from incurring extraordinary expenses resulting from the utilization of Township resources to respond to an incident involving hazardous materials, the Township board authorizes the imposition of charges to recover reasonable and actual costs incurred by the Township in responding to calls for assistance in connection with a hazardous materials release.

**Section 2: "Hazardous Materials" defined**

"Hazardous Materials" are defined as any substance or combination of substances and/or material, whether solid, liquid, semi-solid, or gaseous, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a present or potential hazard to human health or the environment.

Hazardous materials shall include, but not be limited to, such substances as chemicals and gases, explosives, radioactive materials, petroleum or petroleum based products, poisons, biologic agents flammables, combustibles, hazardous wastes, or corrosives. The Fire Chief, or the Chief's designee, shall have reasonable discretion to determine whether any particular substance constitutes a hazardous material. The Fire Chief may rely upon the definitions of hazardous waste as may be amended from time to time in part III of the Natural Resources and Environmental Protection Act, MCL 324.11101, et seq, part 121 of the Natural Resources and Environmental Protection Act, MCL 324.12101, et seq. or liquid industrial waste as defined in part 121 of the natural resources and environmental protection act, MCL 324.12101, et seq, and title I of the 42 USC 9601, et seq, the Comprehensive Environmental Response Compensation and Liability Act.

**Section 3: "Release" defined**

Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment.

#### **Section 4: "Responsible party" defined**

Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental entity or any other legal entity that is responsible for a release of a hazardous material, either actual or threatened, or is an owner, tenant, occupant or party in control of property onto which or from which hazardous materials release.

#### **Section 5: Duty to Contain and Remediate**

It shall be the duty of any person or entity which directly or indirectly causes, contributes to, or allows the release, including spilling, leaking, emitting, discharging, escaping, or any other dissemination, of hazardous materials to immediately contain, remove and clean up the area of such release in such manner that the area involved is fully restored to its condition before such release occurred. The Township shall have no duty to contain, clean up or dispose of any such release but in emergency situations the Fire Chief, or the Chief's designee, shall have the authority to take whatever action is reasonably necessary to protect the health, safety, and welfare of the general public including providing for or arranging for the containment, removal or clean up of any hazardous materials.

#### **Section 6: Failure to Remove and Clean Up**

Any person or entity failing to comply with Section 5 hereof, where the Township has acted to protect the health, safety and welfare of the general public, shall be liable to and shall pay the Township for its costs and expenses, including the costs incurred by the Township to any party which it engages, for the complete containment and/or clean up of the hazardous material in any area affected by the hazardous material. Costs incurred by the Township shall include, but shall not be limited to, the following:

- A. All personnel-related costs incurred by the Township as a result of responding to the hazardous materials incident. Such costs may include, but are not limited to, wages, salaries and fringe benefits and insurance for full-time and part-time fire fighters; overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on-call fire fighters. 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 Township personnel have concluded hazardous materials incident-related responsibilities.
- B. Other expenses incurred by the Township in responding to the hazardous materials incident, including but not limited to, rental or purchase of machinery, equipment, labor, consultants, legal and engineering fees, and the replacement costs related to disposable personal protective

equipment, extinguishing agents, supplies, water purchased from municipal water systems and meals and refreshments for personnel while responding to the hazardous materials incident.

- C. Charges to the Township imposed by any local, state or federal government entities related to the hazardous materials incident.
- D. Costs incurred in accounting for all hazardous material incident-related expenditures, including billing and collection costs.

### **Section 7: Billing procedures**

Following the conclusion of the hazardous materials incident, the Fire Chief shall submit a detailed listing of all known expenses to the Township Treasurer, who shall prepare an invoice to the responsible party for payment. The Treasurer's invoice shall demand full payment within thirty (30) days of receipt of the bill. Any additional expenses that become known to the Township 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.

For any amounts due that remain unpaid after thirty (30) days, the Township shall impose a late charge of one percent (1%) per month or fraction thereof.

### **Section 8: Other remedies**

The Township may pursue any other remedy or may institute any appropriate action or proceeding in a court of competent jurisdiction to collect charges imposed under this ordinance. The recovery of charges imposed under this ordinance does not limit the liability of responsible parties under local ordinance or state or federal law, rule or regulation.

If such person or entity is the owner of real property affected or partially affected by the release of the hazardous materials, the Township shall have the right to add any and all costs of clean up and restoration to the tax roll of 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 said property.

### **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, the same shall not effect the validity or enforceability of the balance of this ordinance which shall remain in full force and effect.

**Section 10: Effective date**

This ordinance shall take effect immediately.

Foyed 9/15/03

**NOTICE OF PUBLIC HEARING  
METAMORA TOWNSHIP BOARD  
HAZARDOUS MATERIALS EMERGENCY INCIDENT  
ORDINANCE # 43**

Notice is hereby given that the Metamora Township Board will hold a public hearing on Monday, October 13, 2003 beginning at 7:00 p.m. at the Metamora Township Hall, 730 West Dryden Road, Metamora, Mi. 48455. The purpose of the hearing is to receive public comments on Ordinance #43 to establish Charges for Emergency Services responding to a Hazardous Materials Emergency Incident.

A complete copy of the text for the ordinance may be examined at the office of the Township Clerk, Mondays through Thursdays except holidays, during regular Township business hours.

Written comments may be sent to the Township Board at the address above, prior to the hearing. Oral comments will be taken during the hearing.

This notice is published pursuant to the requirements of Michigan Public Act 184 of 1943, as amended.

Marilyn Taylor, Clerk  
Township of Metamora

Publish: September 24, 2003

KOHL, HARRIS & NOLAN, P.C.

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March 6, 2001

David Best  
Township Supervisor  
METAMORA TOWNSHIP  
730 W. Dryden Road  
Metamora, MI 48455

Re: Hazardous Materials Ordinance

Dear Mr. Best:

Please be advised that I have reviewed the proposed Hazardous Materials Ordinance and offer the following comments. First, I would agree that this is a good idea from the Township's perspective. In reviewing this proposed ordinance, it would appear that this proposed ordinance would address issues most commonly confronted by the Fire Department. Such being the case, the language in the proposed ordinance with respect to with discretion of the Public Safety Director perhaps should be changed to list the Township Fire Chief as that person with the authority to take the necessary action to avert any potential disaster as encompassed by that ordinance.

Next, under the category of "Failure to Remove and Clean Up," I would add a clause at the end of the last sentence in that section which reads "as well as the actual cost of disposal of any such materials."

Other than some typographical changes, this appears to be a fairly good draft proposal. I would also suggest that this be forwarded to the attention of Metamora Township Planner David Birchler for his review. Perhaps a preamble should be added to this ordinance which identifies that this is not any sort of zoning ordinance, but simply an ordinance for the benefit of public health, safety, and welfare, at which point we would reference the appropriate Michigan statute giving the Township authority over such matters.

KOHL, HARRIS & NOLAN, P.C.

ATTORNEYS AND COUNSELORS AT LAW

David Best  
March 6, 2001  
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If Metamora Township wishes to pursue this ordinance further, please advise and we will take the appropriate action to bring about its enactment.

Should you have any questions or comments, please do not hesitate to contact me at your convenience.

Very truly yours,

KOHL, HARRIS & NOLAN, P.C.

*Michael J. Nolan /s/*  
Michael J. Nolan

MJN/gp

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