

CHAPTER 25: EMERGENCY RESPONSE COST RECOVERY

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ARTICLE I: COST RECOVERY PROCEDURES

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§ 25.101 PURPOSE.

The City Commission finds that a significant number of traffic arrests and traffic accidents in the City of Clio involve drivers who were operating a motor vehicle while under the influence of alcoholic beverages and controlled substances, or both. In addition, the City Commission finds that there is a greater likelihood of personal injury and property damage in traffic accidents involving drivers who were operating a motor vehicle while under the influence of alcoholic beverages or controlled substances, or both. As a result, additional operational and financial burdens are placed upon the city's Police Department and other city services by persons who are operating a motor vehicle while under the influence of alcoholic beverages or controlled substances, or both.

(Ord. 244, passed 11-2-92; amended by Ord. 285, passed 9-1-96, Codification Ordinance)

§ 25.102 DEFINITIONS.

For the purpose of §25.103 of this Code, the following definitions apply unless the context clearly indicates or requires a different meaning:

EMERGENCY RESPONSE.

(1) The providing, sending, or otherwise utilizing police or other city services by the city or by private individuals or corporations operating at the request or direction of the city, to an incident resulting in an accident involving one or more motor vehicles operated by one or more drivers who were impaired or under the influence of an alcoholic beverage or controlled substance, or both, or

(2) The providing, sending or otherwise utilizing police or other city services by the city or by private individuals or corporations operating at the request or direction of the city, to an incident resulting in a traffic stop and arrest of a driver who was operating a vehicle while impaired by or under the influence of an alcoholic beverage or controlled substance, or both.

EXPENSE OF AN EMERGENCY RESPONSE. The direct and reasonable costs incurred by the city or by a private person or corporation operating at the request or direction of the city in the course of emergency response to the incident, including the costs of providing police or other city services at

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the scene of the incident. These costs further include all of the salaries and wages of city personnel responding to the incident, all salaries and wages of city personnel engaged in the investigation, supervision and preparation of reports and all cost connected with the administration and preparation of all chemical tests of the driver's blood, breath or urine.

(Ord. 244, passed 11-2-92; amended by Ord. 285, passed 9-1-96, Codification Ordinance)

§ 25.103 LIABILITY FOR EXPENSES OF AN EMERGENCY RESPONSE.

(A) A person is responsible for the expense of an emergency response, if such person's operation of a motor vehicle causes the need for an emergency response.

(B) The operator of a motor vehicle is considered impaired when:

(1) While under the influence of an alcoholic beverage or controlled substance, or both, her or his physical or mental abilities are impaired to a degree that he or she no longer has the ability to operate a motor vehicle with the caution characteristic of a sober person of ordinary prudence, or

(2) A chemical analysis of her or his blood, urine or breath indicated that the amount of alcohol in her or his blood was in excess of seven one-hundredth of one percent (0.07%), or in excess of two one-hundredths of one percent (0.02%) if the motor vehicle operator is charged under the uniform traffic code, as amended.

(C) Upon being convicted of operating a motor vehicle while impaired or under the influence of an alcoholic beverage or controlled substance, or both, the person responsible for an emergency response will be charged for the expense of an emergency response based on actual costs incurred by the city. Upon notification by the Chief of Police of the conviction, the City Treasurer will submit a bill by first class mail or by personal service to that person. The charge constitutes a debt of that person and is collectible by the city in the same manner as in the case of an obligation under express or implied contract. Payment is due 30 days from the date of service. Any failure to pay after that date shall be considered a default. In that case, the city may commence any lawful means to recover such payments plus any other costs allowed by law.

(Ord. 244, passed 11-2-92; amended by Ord. 285, passed 9-1-96, Codification Ordinance)

ARTICLE II: PUBLIC SAFETY AND FIRE EMERGENCY RESPONSE COST RECOVERY

Section

- 25.201 Purpose
- 25.202 Definitions
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- 25.204 Billing and collection of assessable costs
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Cross-reference:

Hazardous materials regulations, see Ch. 40.

§ 25.201 PURPOSE.

In order to protect the city and the fire authority from extraordinary expenses resulting from the utilization of city or fire authority resources in response to certain public safety or fire emergency incidents, this article authorizes the imposition of charges to recover actual costs incurred by the city or fire authority in responding to such incidents, pursuant to the authority granted to cities by state law, being M.C.L.A. § 41.806(a).

(Ord. 324, passed 6-18-01)

§ 25.202 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

ASSESSABLE COSTS. Those costs for services incurred by the city for police, fire and emergency personnel in connection with a response to a public safety or fire emergency incident, including, but not limited to, the actual labor and material costs of the city (including, without limitation, employee wages, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal and costs of contracted labor) whether or not the services are provided by the city or by a third party on behalf of the city; service charges and interest; attorneys' fees, litigation costs and any costs, fines or penalties to the city imposed by any court or state or federal governmental entities.

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BOMB THREATS. 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. (M.C.L.A. § 750.411a.)

EMERGENCY ASSISTANCE. Emergency medical, public safety, police, fire and civil defense services.

EXCESSIVE REQUESTS FOR EMERGENCY ASSISTANCE. Any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five times in the preceding 30 days.

FALSE ALARM. Any automated or manual device designed to request or summon emergency assistance which device is activated intentionally or otherwise, in the absence of an actual need for emergency assistance. The determination that there was no actual need for emergency assistance shall be made by the most senior person responding to a false alarm. Provided, however, a false alarm shall not be deemed to have occurred if:

- (1) Caused by an act of God, i.e., a lightning storm; or
- (2) It originates from a motor vehicle alarm system.

HAZARDOUS MATERIAL INCIDENT OR EMERGENCY. Any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.

HAZARDOUS MATERIALS. Any materials which are potentially harmful to the environment or human or animal life, or which create an unreasonable or imminent risk to life, health or safety of person or property, or to the ecological balance of the environment as determined by the fire chief or the senior fire official in charge at the scene, including but not limited to hazardous substances as defined in Act 71 of Michigan Public Acts of 1995 (being M.C.L.A. §§ 324.20101 *et seq.*), as amended, and any other substances that have been classified by the local, state or federal government or any of their departments or agencies to be hazardous or toxic, i.e., elements, substances, wastes or by-products, including but not limited to, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos.

ILLEGAL FIRE. A fire set or determined to have been set in violation of a federal, state, or local law and shall include an arson fire and a fire set in violation of a "no burning" ban or order. An illegal fire does not include an unintentional fire or fire caused by an act of God, i.e., lightning storm.

MOTOR VEHICLE. Any self-propelled or towed vehicle designed or used on the public streets, roads and highways to transport passengers or property which is required to be registered for use upon such public streets, roads and highways and for the purposes hereof all trailers or appurtenances attached to any motor vehicle.

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PUBLIC SAFETY OR FIRE EMERGENCY INCIDENT.

- (1) Excessive requests for emergency assistance;
- (2) A false alarm;
- (3) A hazardous material incident or emergency;
- (4) An illegal fire;
- (5) Bomb threats;
- (6) Threats of harm to oneself or others;
- (7) A structure demolition; or
- (8) A utility line failure.

RELEASE. Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including, but not limited to the air, soil, groundwater and surface water.

RESPONSIBLE PARTY. Any individual or any individual's parent or legal guardian, in the case of a minor, any firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for a public safety or fire emergency incident, either actual or threatened, or is an owner, as defined in Act 71 of Michigan Public Acts of 1995 (being M.C.L.A. §§ 324.20101 *et seq.*), as amended, tenant, occupant or party in control of real and personal property from which, onto which or related to which there is a public safety or fire emergency incident, and their heirs, estates, successors and assigns.

STRUCTURE DEMOLITION. The tearing down of a structure damaged by fire which must in the opinion of the fire chief or his or her designee be promptly demolished following the fire to protect public safety.

THREATS OF HARM TO ONESELF OR OTHERS. The verbal or written threat of physical harm to oneself or another or another's property which if carried out would be a violation of federal, state, or local law.

UTILITY LINE FAILURE. The disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water or sanitary or storm sewage if the owner or party responsible for the maintenance of such utility line or party responsible for the utility line failure does not respond within one hour to a request to repair or correct such failure.
(Ord. 324, passed 6-18-01)

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§ 25.203 COST RECOVERY AUTHORIZATION AND PROCEDURE.

(A) The city may recover all assessable costs allowable by law in connection with a public safety or fire emergency incident from any or all responsible parties jointly or severally and as specifically allowed for under M.C.L.A. § 750.411a.

(B) The City Administrator or his or her designee shall determine the total costs for the public safety or fire emergency incident and shall in consultation with other city personnel involved in responding to a public safety or fire emergency incident determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered:

(1) The total assessable costs for bomb threats; emergency assistance; excessive requests for emergency assistance; false alarm; release of hazardous materials; creating a hazardous material incident or emergency; illegal fire or other public safety or fire emergency incident;

(2) The risk the public safety or fire emergency incident imposed on the city, its residents and their property;

(3) Whether there was any injury or damage to person, property or motor vehicle;

(4) Whether the public safety or fire emergency incident required evacuation;

(5) The extent the public safety or fire emergency incident required an unusual or extraordinary use of city personnel and equipment;

(6) Whether there was any damage to the environment and who is the responsible party;

(7) Whether structure demolition will be required;

(8) Whether the emergency incident was the result of a utility line failure; and

(9) Whether the emergency incident involved the making of threats of harm to oneself or others.

(C) After consideration of the factors in (B) immediately above, the City Administrator may allocate assessable costs among and between responsible parties, including allocating all or some of such costs jointly and severally against more than one responsible party regardless of whether a responsible party has other legal liability therefor or is legally at fault.

(D) If the City Administrator determines not to assess all or a portion of 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.

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(E) The City Commission shall adopt a cost recovery schedule for assessable costs which may be amended from time to time by resolution of the City Commission.
(Ord. 324, passed 6-18-01)

§ 25.204 BILLING AND COLLECTION OF ASSESSABLE COSTS.

After determining to assess assessable costs against a responsible party, a representative of the city will mail an itemized invoice to the responsible party at its last known address. Such invoice shall be due and payable within 30 days of the date of mailing and any amounts unpaid after such date shall bear a late payment fee equal to one percent (1 %) per month or fraction thereof that the amount due and any previously imposed late payment fee remains unpaid. If a responsible party shall appeal assessable costs pursuant to § 25.205 hereof, such costs, if upheld, in whole or in part, shall be due and payable 30 days from the date of determination of the appeal and any late payment fees shall apply thereafter.
(Ord. 324, passed 6-18-01)

§ 25.205 PROCEDURE FOR APPEALING ASSESSABLE COSTS.

Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the City Administrator or his or her designee to request a modification of assessable costs. The responsible party shall request in writing such meeting within seven calendar days of the date of the invoice assessing the assessable costs. If after meeting with the City Administrator or his or her designee the responsible party is still not satisfied, he or she may appear before the City Commission to further request a modification of assessable costs. A responsible party who desires to appear before the City Commission must first meet with the City Administrator or his or her designee as provided above and shall file a written request to appear before the City Commission with the City Clerk within seven calendar days of the date of the meeting with the City Administrator. Upon receipt of such request, the City Clerk will place the responsible party on the agenda of the next regularly scheduled City Commission meeting, which meeting is at least 14 calendar days after the date on which the responsible party files the request to appear. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified. Any reason, basis or argument for modification of assessable costs not set forth in the request to appear shall be deemed waived by the responsible party, unless the information presented is new matter that was unknown to the applicant at the time the request to appear before the Commission was made. Failure to timely file a written request to appear shall constitute a waiver of the responsible party's right to appear before the City Commission; and shall further constitute the responsible party's agreement to pay the assessable costs invoiced. After a responsible party has been given an opportunity to appear before it, the City Commission shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.
(Ord. 324, passed 6-18-01)

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§ 25.206 ENFORCEMENT OF ASSESSABLE COSTS.

Assessable costs assessed against a responsible party not paid when due shall entitle the governmental unit to take any steps allowed by law, including commencing civil litigation, to collect the same.

(Ord. 324, passed 6-18-01)

§ 25.207 OTHER REMEDIES.

In addition to the remedy set forth in § 25.206 above, 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.

(Ord. 324, passed 6-18-01)

§ 25.208 NO LIMITATION OF LIABILITY.

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

(Ord. 324, passed 6-18-01)