

HAZARDOUS MATERIALS INCIDENT COST RECOVERY ORDINANCE
ORDINANCE NUMBER 186, Effective July 8, 2004

The City of Wakefield hereby ordains:

PURPOSE: The City of Wakefield finds that a significant potential exists for Police, Fire Department, and Rescue Services to respond to incidents involving the release or threatened release of hazardous materials. Such incidents create a great likelihood of personal injury and/or property damage. The control and abatement of such incidents places a significant financial and operational burden upon police, fire fighting, and rescue services.

DEFINITIONS

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance it's most reasonable application.

"Emergency Response" means the providing, sending and/or utilizing of police, fire fighting, emergency medical, and rescue services by the City, or by a private industrial entity or corporation operating at the request or direction of the City or State of Michigan, for an incident resulting in a hazardous materials release or threatened release.

"Hazardous Material" means explosives, pyrotechnics, flammable compressed gas, flammable liquid, combustible liquid oxidizing material, poisonous gas, poisonous liquid, poisonous solid, irritating material, etiological material, radioactive material, corrosive material, liquefied petroleum gas, or any other hazardous material as defined in MCL 299.501.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Premises" means any lot or parcel of land, exclusive of buildings, and includes a parking lot, tourist camp, trailer camp, airport, stockyard, junk yard, wharf, pier, public roadway, and any other place of enclosure, however owned, used, or occupied.

"Owner" means any person having a vested or contingent interest in the property, premises, container, or vehicle involved in the hazardous materials incident, including but not limited to any duly authorized agent or attorney, purchaser, divisee, or fiduciary of said person having said vested or contingent interest.

"Vehicle" means any mode which is used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats, aircraft, etc.

"Expenses of an Emergency Response" means the direct and reasonable costs incurred by the City of Wakefield, or by a private person, corporation, or other assisting government agency, which is operating at the request or direction of the City, when making an emergency response to the hazardous materials incident, including the costs of providing police, fire fighting, rescue services, emergency medical services, containment, and abatement of all hazardous conditions at the scene of the incident. The costs further include all of the salaries and wages of City of Wakefield personnel responding to the incident, salaries and wage of City of Wakefield personnel engaged in the investigation, supervision, and report preparation regarding said incident, at the request or direction of the City of Wakefield, and all costs connected with the administration of the incident relating to any prosecution of the appearance of witnesses at any court proceedings in relation thereto. Costs shall also include, but not be limited to, such items as disposable materials and supplies used during the response to said incident, the rental or leasing of equipment used for the specific response, replacement of equipment which is special technical services and laboratory cost, services, and supplies purchased for any specific evacuation relating to said incident, and any other cost reasonably associated with The Emergency Services Clean-up.

DUTY TO REMOVE AND CLEAN UP; FAILURE TO REMOVE AND CLEAN UP

Duty to Remove: It shall be the duty of the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle regarding which an incident arises which involves the 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 insure 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.

Failure to Remove and 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 regarding which an incident arises which involves the release or threatened release of hazardous materials on or about said building, premises, property and/or vehicle, fails to remove in a time directed by the personnel authorized by the City Council, hazardous materials after an emergency response involving hazardous materials or comply completely with the above section, the City of Wakefield shall have the right to enter onto said property and remove and conduct a clean up 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 City of Wakefield shall make reasonable efforts to notify the owner of it's duty to abate said emergency. All costs associated with such containment, control, removal, and cleanup are in addition to the costs associated in the following sections and are to be reimbursed in like manner.

LIABILITY FOR EXPENSE OF AN EMERGENCY RESPONSE:

Person (s) Responsible: The owner, operator, occupant, or other person responsible for the operation, maintenance and/or condition of any building, premises, property, or vehicle regarding which an incident arises which involves the release or threatened release of hazardous materials on or about said building, premises, property and/or vehicle shall be required to reimburse the City of Wakefield for all expenses of an emergency response to said hazardous materials incident.

SEVERABILITY:

Charge Against Person: The expense of an emergency response shall be a charge against the person or corporation liable for the expenses under this Ordinance. The charge constitutes a debt of that person or corporation and is collectible by the City of Wakefield in the same manner as in the case of an obligation under contract, express, or implied.

Cost Recovery Schedule: The City of Wakefield shall, by Resolution, as soon as possible after an emergency response, adopt a schedule of the costs included within the expense of the emergency response. This schedule shall be available at the office of the City Clerk for inspection by the public.

Billing: The City of Wakefield may, within ten (10) days of receiving itemized costs, or any part thereof, incurred for an emergency response, submit a bill for these costs by first class mail or personal service to the person or corporation liable for the expenses as enumerated under this Ordinance. The bill(s) shall require full payment within thirty (30) days from the date of mailing or service of said bill upon the responsible person.

Failure to Pay: Procedure to Recover Costs: Any failure by a person or corporation described in this Ordinance as liable or responsible for expenses of an emergency response to pay said bill within thirty (30) days of mailing or service of the bill shall constitute a default on said bill. In the case of default, the City of Wakefield shall have the right and power to add all emergency response costs to the tax roll as incident, to any real estate owned by person or corporation responsible for cost, 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 or premises. The City of Wakefield shall also have the right to bring action in a court of competent jurisdiction to collect said costs if the City deems such action to be necessary.

NOTICE TO BE PUBLISHED:

The City Clerk shall publish this Ordinance in the manner required by law, including notice of the fact that a complete copy of this Ordinance is available at the office of the Clerk for inspection by the public at all times.

CONFLICTING ORDINANCES REPEALED:

Any and all other Ordinances inconsistent with the provisions of this Ordinance and any changes adopted thereto are, to the extent of such inconsistency, hereby repealed.

SEVERABILITY:

If any Section, Subsection, Clause, Paragraph or Provision of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such adjudication shall only apply to the said portion thereof adjudicated invalid, and the full remaining portions or parts of this Ordinance shall remain in full force and effect.


SAVINGS CLAUSE:

All proceedings pending, and all rights and liabilities existing, acquired, or incurred at the time this Ordinance consummated, under and according to the Ordinance in force at the time such proceedings are or were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution or proceedings, or prevent prosecution or proceeding hereinafter instituted under any Ordinance specifically or implied repealed by this Ordinance, and any changes thereto of any liabilities incurred or offenses committed before the effective date of the Ordinance, and all proceedings or prosecutions instituted after the effective date of this Ordinance, may be continued or instituted under and in accordance with the provisions of any Ordinance in force at the time of the liability incurred or commission of such offense.

WHEN EFFECTIVE:

This Ordinance shall be in effect in governmental units fifteen days (15) days after the publication of the Ordinance.


Richard W. Bolen, Mayor


Rosalie P. Zurakowski, City Clerk