

CHARTER TOWNSHIP OF SHELBY

MACOMB, MICHIGAN

ORDINANCE NO. 299

AN ORDINANCE TO AMEND CHAPTER 22, ARTICLE III TO PROVIDE FOR THE  
DEFINITION OF EMERGENCY INCIDENT AND THE RECOVERY OF COSTS FOR  
SAME; REPEALER, SEVERABILITY PENALTIES AND EFFECTIVE DATE

*IT IS HEREBY ORDAINED BY THE CHARTER TOWNSHIP OF SHELBY:*

Section 1. Article III, Chapter 22, Section 22-72 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby amended to add the following definitions in alphabetical order:

**Emergency Incident means any situation or condition where emergency services are needed or requested.**

Section 2. Article III, Chapter 22, Section 22-77 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby created to read as follows:

**The fire department shall have the ability to recover all costs for use of equipment, staffing, and supplies associated with emergency incidents and providing emergency services including, but not limited to, motor vehicle accidents, fire investigations, specialty rescue (i.e. confined space, water rescue, etc.) or any other dangerous situations. Such costs shall include, but are not limited to, those associated with incident abatement, mitigation, cleanup and stand-by, including any related third-party costs necessary to ensure the safety of the township and its populace. Any such cost shall be the responsibility of the owner and/or operator of the property, equipment, vehicle, or individual involved related to the fire department response. All assessments shall be paid within 30 calendar days, unless approved otherwise.**

Section 3. Article III, Chapter 22, Section 22-101 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby amended to read as follows:

~~*Hazardous or dangerous materials and substances means any substance, including but not limited to alcohol, gunpowder, dynamite, crude petroleum or any of its byproducts, fuel oils, pyroxylin, combustible finishes, and other commodities of a similar nature or quality and all other substances which constitute a fire hazard or pose a substantial present or potential hazard to the public health, safety or welfare, or endanger, cause or are capable of causing loss, injury or damage to persons, property or the environment.*~~

**Hazardous Material means any material(s) classified as hazardous by any federal regulation or legislation, state legislation or regulation, or any Township Ordinance including, but not limited to, the following:**

- (a) Any substance listed in the list of toxic pollutants in 40 CFR §401.15, as amended.
- (b) Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison, or radioactive material. As used in this Ordinance, the following terms shall have the following meanings:
- (i) CFR means the Code of Federal Regulations. The numbers immediately preceding and immediately following the initials CFR shall refer to the volumes, divisions and sections used to identify parts of the Code of Federal Regulations.
  - (ii) Compressed Gas means any substance regulated as a compressed gas by the United States Department of Transportation.
  - (iii) Explosive means any substance regulated as a Class A or Class 8 explosive by the United States Department of Transportation.
  - (iv) Flammable Liquid means any substance regulated as a flammable liquid by the United States Department of Transportation.
  - (v) Flammable Solid means any substance regulated as a flammable solid by the United States Department of Transportation.
  - (vi) Oxidizer means any substance regulated as an oxidizer by the United States Department of Transportation.
  - (vii) Poison means a liquid or gas that is life-threatening when mixed with air in small amounts and shall also include all those substances regulated as poison Class A by the United States Department of Transportation.
  - (viii) Radioactive Material means any substance required by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles.
- (c) Any explosive, pyrotechnics, flammable gas, flammable compressed gas, non-flammable compressed gas, flammable liquid, oxidizing material, any flammable material, poisonous gas, poisonous liquid, irritating material, gas under such pressure that an explosion hazard exists, radioactive material, corrosive material or liquified petroleum gas.
- (d) Any substance designated as a pollutant or hazardous substance

pursuant to the Federal Water Pollution Control Act.

- (e) Any element, compound, mixture, solution or hazardous substance designated by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- (f) Any hazardous waste having the characteristics identified under or listed pursuant to the United States Solid Waste Disposal Act, as amended.
- (g) Any pollutant listed pursuant to the Federal Water Pollution Control Act, as amended.
- (h) Any hazardous air pollutant listed pursuant to the Federal Clean Air Act, as amended.
- (i) Any hazardous air pollutant listed pursuant to the Federal Clean Air Act, as amended.

**Hazardous Material Incident.** Any occurrence, incident, activity or accident where a release of hazardous materials occurs or is reasonably imminent. A release shall be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, dumping, or disposing of a hazardous substance or material into the environment, including but not limited to the air, soil, groundwater and surface water.

*Intentionally caused fire emergency.* **NFPA 921- A fire that is intentionally ignited in an area or under circumstances where and when there should not be a fire.** A fire intentionally caused by the owner or occupant of property and/or structure which requires an emergency response by the fire department, police department and/or other emergency support agencies.

Section 4. Article III, Chapter 22, Section 22-103 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby amended to read as follows:

#### **SECTION 22-103.**

Persons responsible for costs. **Determination and Authorization**

All costs referred to in [section 22-102](#) shall be charged against and be the responsibility of the owner or operator of the property, equipment, vehicle or container causing, contributing, allowing or the persons failing to manufacture, keep, store, transport or otherwise handle or dispose of hazardous or dangerous materials or substances in a manner and by a method so as not to constitute a fire hazard or pose a substantial present or potential hazard to the public

health, safety or welfare, or to endanger or cause loss, injury or damage to persons, property or the environment, and, in the case of an intentionally caused fire emergency, the persons who proximately caused the fire and any other persons who are responsible for the actions of such persons. Any costs that result from a response to a utility line failure shall be the responsibility of the owner and/or operator of the utility line. ~~Such costs shall constitute a debt of the persons responsible and be collectible in the same manner as an obligation under an expressed or implied contract.~~

**The Township Fire Chief, designee or authorized agent acting on behalf of the Township, shall determine the total assessable costs and shall, in consultation with other Township personnel agents involved in the emergency services provided, 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:**

- **the extent to which the personnel and equipment of the Township or other assisting public entities were involved,**
- **the extent to which an act or omission of a responsible party was a proximate cause for the need for Emergency Services,**
- **and the ability of a responsible party to pay the total assessable costs.**

**In determining the assessable cost against a party, the Township Fire Chief, designee, or other authorized agent may rely on a report of services and the actual expenses incurred as prepared by Department personnel and/or agents involved in a response to the Emergency Incident and the amounts as set forth in the Macomb County Fire Chief's Cost Recovery Fee Schedule, as amended.**

**Assessable cost may be allocated among and between responsible parties, including allocating all or some of such costs, jointly and severally, against more than one responsible party.**

**If a determination is made not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or alter any liability a responsible party may have to the other responsible parties.**

Section 5. Article III, Chapter 22, Section 22-104 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby amended to read as follows:

#### Statement for Services Rendered

~~The fire department and/or police department shall submit a statement showing the costs associated with emergency services referred to in this division to the responsible person by first-class mail or personal service, and the amount of the fee charged pursuant to the provisions of this division.~~

**Billing and Collection of Assessable Costs.**

**The Township Treasurer, designee, authorized agent or contracted billing service shall prepare and mail an itemized invoice to each responsible party at his, her or its last known address, or to an appropriate insurance company or authorized agent acting on behalf of a responsible party or an insurer of a responsible party. The invoice shall demand full payment within thirty (30) days of billing.**

**The Township may charge any costs assessed pursuant to this Ordinance to the insurer of the responsible part. 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 Ordinance until such time as the assessed costs are paid in full.**

**The invoice shall be served on a responsible party by first class mail, registered mail or personal service. A responsible party shall be deemed served by first class mail on the date of mailing, by registered mail on the date of mailing or by personal service on the date of actual service on the responsible party.**

**The invoice shall advise the responsible party of the right to appeal and the time limits for doing so as provided in Section 22-106 of this ordinance. If a responsible party shall appeal assessable costs pursuant to Section 22-106 hereof, such costs, if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall apply thereafter.**

**Any additional expense that becomes known following the transmittal of the invoice to the responsible party shall be billed in the same manner on a subsequent invoice to the responsible party.**

**Any failure by a responsible party to pay an invoice within the time limits provided in this section shall be considered a default in payment; in which case the Township may commence a civil suit to recover the costs plus any additional costs or expenses allowed by law. In addition, the Township may pursue any other remedy or may institute an appropriate action or proceeding in a court of competent jurisdiction to collect the charges imposed under this ordinance together with costs and attorney fees.**

**If the Township Fire Chief or designee or the Township Board decides not to assess all or part of its costs against any responsibility, such decision shall not in any way extinguish or limit a responsible person's liability to other parties for any costs or damages of any kind arising from the release of the assessment.**

Section 5. Article III, Chapter 22, Section 22-106 of the Code of Ordinances, Charter Township of Shelby, Michigan, is hereby created to read as follows:

## **Appeal Procedure**

**Any responsible party who receives an invoice for assessable costs shall have an opportunity to request a modification of the assessable costs for the following claim: a hardship, a request for lower than minimum monthly payment or to dispute the charges in their entirety. The responsible party shall make such a request to the third-party billing company who shall then forward it to the Fire Chief for review within fourteen (14) calendar days from the date of service of the invoice.**

**Failure to file a timely written request for a modification of costs meeting with the Township shall constitute a waiver of the responsible party's right to same; and shall further constitute the responsible party's agreement to pay the assessable costs invoice.**

## **Section 6. SEVERABILITY**

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

## **Section 7. REPEALER**

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

## **Section 8. EFFECTIVE DATE**

This Ordinance shall be effective as of July 1, 2024.

### CERTIFICATION

I hereby certify the foregoing is a true and complete copy of Ordinance No. 299 duly adopted by the Board of Trustees of the Charter Township of Shelby at a Regular Meeting held on June 18, 2024, pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be made available as required by said Act.

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STANLEY T. GROT, Clerk

Introduction Date:	May 7, 2024
First Publication Date:	May 22, 2024
Adoption Date:	June 18, 2024
Second Publication Date:	July 1, 2024
Effective Date:	July 1, 2024