

ORDINANCE NO. 212

MOTOR VEHICLE ACCIDENT AND  
MOTOR VEHICLE FIRE COST RECOVERY ORDINANCE

AN ORDINANCE TO ALLOW ZEELAND CHARTER TOWNSHIP TO RECOVER COSTS INCURRED BY THE TOWNSHIP IN CONNECTION WITH MOTOR VEHICLE ACCIDENTS AND MOTOR VEHICLE FIRES, TO ALLOW THE RECOVERY OF COSTS ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION RESULTING FROM MOTOR VEHICLE ACCIDENTS AND/OR MOTOR VEHICLE FIRES, AND TO PROVIDE FOR THE ENFORCEMENT OF THIS ORDINANCE AND CERTAIN ADMINISTRATIVE PROVISIONS.

THE ZEELAND CHARTER TOWNSHIP, COUNTY OF OTTAWA, AND STATE OF MICHIGAN ORDAINS:

Section 1. Purpose. The Zeeland Charter Township finds that persons in and traveling through the Township historically have been involved in Motor Vehicle Accidents and/or Motor Vehicle Fires, which incidents negatively affected the health, environment, and welfare of some Township residents and real property located within the Township. In addition, the Township has found that it has incurred significant costs associated with Motor Vehicle Accidents and/or Motor Vehicle Fires and environmental contamination resulting therefrom. As a result of these determinations, the Township has adopted this Ordinance to allow the Township to recover costs incurred by the Township in connection with Motor Vehicle Accidents and/or Motor Vehicle Fires, including any resulting environmental contamination.

Section 2. Definitions. For the purpose of their use in this Ordinance, the following words and terms are hereinafter defined. Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

(a) Township: Zeeland Charter Township, Ottawa County, Michigan.

(b) Motor Vehicle Accident: Any collision or contact involving one or more Motor Vehicles within the public right-of-way or on private property which results in any damage to the Motor Vehicles involved or other real property.

(c) Motor Vehicle Fire: Any instance in which a Motor Vehicle is destroyed by or suffers any damage as a result of a fire.

(d) Motor Vehicle: Any self-propelled or towed vehicle designed or used on the public highways to transport passengers or property as defined in Section 90 of Act No. 300 of the Public Acts of 1949, as amended, being Section 257.79 of the Michigan Compiled Laws, which is required to be registered for use upon the public streets and highways of this State under Act No. 300 of the Public Acts of 1949, as amended, being Sections 257.1 to 257.923 of the Michigan Compiled Laws. For the purposes

of this Ordinance, Motor Vehicle includes those vehicles owned by the Government of the United States and any and all trailers or appurtenances to any Motor Vehicle.

(e) Release: ~~Any~~ spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing into the environment.

(f) Responsible Party: Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government 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 3. Assessment of Costs.

(a) All costs incurred by the Township to halt, abate, or remedy any Release of any hazardous, toxic, regulated, or injurious substance or waste which Release resulted, in part or in whole, from a Motor Vehicle Accident or Motor Vehicle Fire, including the abatement of any Release, from a source other than a Motor Vehicle when such Release was caused, in whole or in part, by a Motor Vehicle Accident or Motor Vehicle Fire may be jointly and severally assessed to those Responsible Parties involved in the Motor Vehicle Accident or Motor Vehicle Fire and those Responsible Parties who are the registered owners of the Motor Vehicle involved in the Motor Vehicle Accident or Motor Vehicle Fire.

(b) The Fire Chief or the Fire Chief's designee shall certify to the Township Clerk the total costs incurred by the Township pursuant to (a) above. The Township Board shall then decide whether to assess the costs against those Responsible Parties involved in the Motor Vehicle Accident or Motor Vehicle Fire and those Responsible Parties who are the registered owners of the Motor Vehicle involved in the Motor Vehicle Accident or Motor Vehicle Fire. In deciding whether to assess the costs, the Township Board shall consider the following factors:

(1) The total costs incurred by the Township, including but not limited to materials, equipment, manpower, ~~admi~~nistration, assistance from other sources, etc.;

(2) The risks to the Township, its residents, their property, or any other people or property which results from the Motor Vehicle Accident or Motor Vehicle Fire;

(3) Any injuries or damage to people or property which results from the Motor Vehicle Accident or Motor Vehicle Fire;

(4) Whether any evacuation was necessary;

(5) Whether any damage to the environment resulted from the Motor Vehicle Accident or Motor Vehicle Fire;

(6) Whether the Responsible Parties involved in the Motor Vehicle Accident or Motor Vehicle Fire are Township residents who pay taxes to the Township; and

(7) ~~Any~~ other factors deemed relevant by the Township Board.

(c) The costs assessed under this paragraph shall include, but not be limited to, the actual labor and material costs to the Township (including Yorkers' Compensation benefits; overtime; fringe benefits; administrative overhead; costs of the equipment operation, materials, excavation, transportation, disposal; costs of any contract labor or materials; and any other costs) associated with the abatement, mitigation, and cleanup, whether or not such services are provided by the Township or by a third party independent contractor on behalf of the Township. attorneys' fees, and any costs or charges to the Township imposed by any local, state, or federal governmental entities related to the Release.

~~Any~~ additional costs or expenses, including litigation expenses, which become known to the Township 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.

(d) The costs which are assessed pursuant to this paragraph shall be a joint and several liability of each Responsible Party against whom the Township has assessed expenses pursuant to Section 3(b) who caused, suffered to be caused, or in any way contributed to, such Release, regardless of whether that Responsible Party has any other legal liability therefore apart from this Ordinance, and regardless of whether such person is at fault. This Section specifically includes both the registered owner and the operator of any Motor Vehicle involved in a Motor Vehicle Accident or Motor Vehicle Fire if the Motor Vehicle registered owner and the Motor Vehicle operator are two different persons.

(e) The Township may charge any costs assessed pursuant to this Ordinance to the insurer of any Responsible Party. The submission of an invoice for the assessed costs to an insurer does not in any way limit or extinguish a Responsible Party liability for the costs assessed pursuant to this Ordinance until such time as the assessed costs are paid in full.

(f) If the Township Board decides not to assess its costs against any Responsible Party, such decision shall not, in any way, extinguish or limit a Responsible Person's liability for any costs or damages, of any kind, arising from the Release.

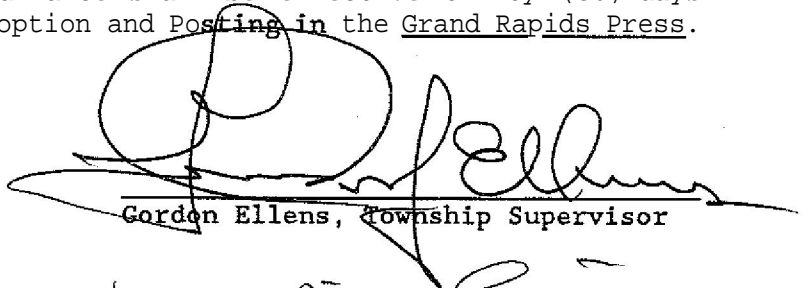
Section 4. Failure to Pay; Procedure to Recover. All costs assessed pursuant to this Ordinance shall be paid within thirty (30) calendar days of the date of the statement therefore, unless otherwise approved in writing by the Township Supervisor or an authorized representative of the Township Supervisor. Any responsible person who fails to pay the costs assessed pursuant to this Ordinance within thirty (30) calendar days of the date of the invoice therefore shall be considered in default. In the case of default, the Township Board may authorize the Township attorney to commence a civil action to recover the costs, plus a late payment penalty of one percent (1%) per month or part of a month during which the costs remains unpaid, together with its attorneys' fees and any other costs allowed by law.

Section 5. Severability and Captions. This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

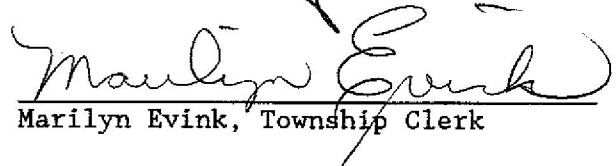
Section 6. Administrative Liability. No officer, agent, employee or member of the Township Board shall render himself or herself personally liable for any damage that may accrue to any person as a result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to this Ordinance.

Section 7. Repeal. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any provision of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 8. Effective Date. This Ordinance was approved and adopted by the Township Board of Zeeland Charter Township on March 21, 1994, after introduction and first reading on January 17, 1994, and after publication and posting following such first reading as required by Michigan Act 359 of 1947, as amended. This Ordinance shall be effective thirty (30) days after publication of a Notice of Adoption and Posting in the Grand Rapids Press.



Gordon Ellens, Township Supervisor



Marilyn Evink, Township Clerk

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CERTIFICATE

I. Marilyn Evink, Clerk for Zeeland Charter Township, Ottawa County, Michigan, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the Zeeland Charter Township Board, held on March 12, 1994. The following members of the Zeeland Charter Township Board were present at that meeting: Ellens, Evink, De Kleine, Berghorst, Timmer, Norman, Nykamp and the following members of the Zeeland Charter Township Board were absent: none. The Ordinance was adopted by the Township Board with members of the Board Ellesn, Evink, De Kleine, Berghorst, Timmer, Norman, Nykamp voting in favor, and members of the Board none voting in opposition to the Ordinance. Notice of Adoption and Posting was published in the Grand Rapids Press on March 1, 1994. An attested copy of the Ordinance was sent to the Ottawa County Clerk by first class mail, postage prepaid, on March 31, 1994.

  
Marilyn Evink

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LAW OFFICES OF  
**SCHOLTEN AND FANT**  
A PROFESSIONAL CORPORATION

MEMORANDUM

*Ordinance # 212*

TO: Gordon Ellens, Zeeland Charter Township Supervisor

FROM: Ronald A. Bultje/Linda S. Howell

DATE: March 31, 1994

RE: Environmental Response cost Recovery  
Ordinance and Liability

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During the Zeeland Charter Township Board meeting on February 21, 1994, you asked us to opine on the advisability of the Township participating to any significant degree in the clean-up of spilled hazardous materials. Specifically, you asked if the Township might be well advised to simply refuse to participate in any hazardous material clean-up, and instead to immediately call in the Michigan Department of Natural Resources in such an event. Your question was based upon your concern about the possible liability to which the Township could be exposed if it engaged in the clean-up of spilled hazardous materials.

We responded to your question at the March 21, 1994 Board meeting. The purpose of this memorandum is to confirm the verbal opinion we gave you at that time.

RESPONSIBILITIES

According to the Grand Rapids District Office of the MDNR, which District Office oversees Ottawa County, the Township is in fact the first responder for environmental emergencies, including such incidents as a tanker rollover which we understand was the reason the Township recently adopted its Motor Vehicle Accident and Motor Vehicle Fire cost Recovery Ordinance (the "Ordinance"). The Township is the first responder because the County does not have a hazardous materials ("Haz Mat") team. According to Ms. Heidi Hollenbach of the MDNR Grand Rapids District Office Emergency Response Division, the county has considered the formation of a Haz Mat team but the issue was shelved last year in connection with budget considerations. Both Muskegon County and Kent County have Haz Mat teams in place. The presence of a Haz Mat team at the county level relieves a local municipality of first responder status and responsibilities.

The primary responsibilities of an environmental emergency first responder are to notify the Pollution Emergency Alerting System ("PEAS") hotline of the incident and to take appropriate measures to confine and neutralize any constituent or hazardous materials released which pose a threat to the environment and neighboring populations. The Township, upon being informed of an

environmental incident, should contact the PEAS hotline at 1-800-292-4706. The hotline operates 24 hours per day. The hotline can provide additional information in the event of an emergency, including some technical support and references to other available services. Attached to this memo is a list of emergency response telephone numbers received from the MONR. When making the first contact with the PEAS hotline, the Township official can explain the situation to the PEAS hotline staffer who will assist the Township in determining what other entities must be notified of the environmental incident. The Chemtrec hotline (1-800-424-9300) can provide assistance in the initial identification of a hazardous substance.

Because the county does not currently have a Haz Mat team, and because the MDNR therefore considers the Township to be the first responder for environmental emergencies within its geographic boundaries, we believe the Township should at least be reasonably prepared to preliminarily handle spills of hazardous materials. We further believe that part of the Township's preparation to handle such incidents should be the adoption of the ordinance which the Board in fact recently adopted. In that regard, we understand that the Township was not inclined to adopt an ordinance which would allow it to recover its costs for cleaning up hazardous materials which were spilled in ways unrelated to motor vehicle accidents.

#### POTENTIAL LIABILITIES

A. Emergency Preparedness Act. Pursuant to the Michigan Emergency Preparedness Act, MCLA 30.401 et seq; MSA 4.824(11) et seq, the Township can appoint its own emergency coordinator and draft and adopt various policies to promote the health and safety of persons and property within the Township. However, any emergency coordinator appointed by the Township would serve under the direction of the Ottawa County Emergency Coordinator because the Township has less than 10,000 people. MCLA 30.409(2); MSA 4.824(19)(2).

The Emergency Preparedness Act specifically authorizes the Township to "provide for the health and safety of persons and property" and to "direct and coordinate the development of disaster plans and programs in accordance with the policies and plans established by the appropriate federal and state agencies and this act." MCLA 30.410(1) (b) and (c); MSA 4.824(20) (1)(b) and (c). Therefore, pursuant to the authority granted by the Emergency Preparedness Act, the Township can adopt ordinances which enact disaster preparations and plans and which appoint a coordinator to assist in the administration of those ordinances.

The Emergency Preparedness Act specifically provides that neither the state nor a political subdivision nor any agents or employees thereof nor volunteer disaster relief workers engaged in a disaster relief activity shall be liable for the death of or injury to persons, or for damage to property, as a result of such [disaster relief] activity. MCLA 30.411(3); MSA 4.824(21)(3).

This liability limitation is not available only in situations of wilful misconduct, gross negligence, or bad faith on the part of the employees or representatives of the political subdivision, or volunteer disaster relief workers. Any ordinance adopted by the Township for disaster relief or emergency preparedness should reference the Emergency Preparedness Act so that the Township can easily avail itself of this limitation on liability in the event of any property damage or personal injury arising out of an emergency response to an environmental incident.

B. The Governmental Immunity statute. Pursuant to the Michigan Governmental Immunity statute, MCLA 691.1407; MSA 3.996(107), the Township would be immune from any liability arising out of the actions of firefighters or other governmental employees responding to an environmental emergency absent reckless or grossly negligent training. The Michigan Court of Appeals has held that:

Although a city cannot be held liable for simple negligent training of its police force, the city's citizens do not have to endure a 'pattern' of past police misconduct before they can sue the city under section 1983. If a municipality completely fails to train its police force, or trains its officers in a reckless or grossly negligent manner so that future police misconduct is almost inevitable, the municipality exhibits a 'deliberate indifference' to the resulting violations of a citizen's constitutional rights. In such a case, the municipality may fairly be termed as acquiescing in and implicitly authorizing such violations. . . . The training and supervising of these police officers must be so inadequate and the resulting misconduct so probable, that the city can fairly be considered to have acquiesced in the probability of serious police misconduct.

Moore v Detroit, 128 Mich App 491, 503 (citations omitted). The holding in Moore can be extended to the training of firefighters pursuant to the Michigan Court of Appeals decision in Keiswetter v Petoskey, 124 Mich App 590, 595 (1983), wherein the Court of Appeals held that the training of firefighters involves a governmental function analogous to the training of police officers.

Therefore, pursuant to the Governmental Immunity statute and the Moore and Keiswetter opinions, the Township can establish immunity for the actions of its firefighters and other emergency relief workers so long as such emergency personnel receive training which is not so "grossly inadequate" as to constitute a "deliberate or conscious indifference" by the Township to the "inevitable consequences" of the officers' actions in a situation for which they have not been trained.

C. Michigan Environmental statutes. Michigan has many separate environmental statutes dealing with distinct areas of the environment such as water, air, inland lakes and streams and the like. One of the most prominent environmental statutes is the Michigan Environmental Response Act, also known as the Michigan



Polluters Pay Act or Act 307. MCLA 299.601 et seq.; MSA 13.32 et seq. The provisions of Act 307 specifically provide immunity for local units of government for costs or damages incurred as a result of "response activity taken in response to a release or threat of release (of hazardous material]." MCLA 299.612a (6); MSA 13.32(12a) (6). Act 307 limits this immunity in situations involving "gross negligence, including reckless, wilful, or wanton misconduct, or intentional misconduct by the state or local unit of government. " Id. This limitation mimics the Emergency Preparedness Act and the Governmental Immunity statute.

In the interests of time and money, we have not done an ~~ex~~haustive search of each of Michigan's environmental statutes to ascertain potential liability and to identify any governmental *immunity* provisions contained therein. We could do such an ~~ex~~haustive search if you so desire. In any event, we believe that the Township must bear in mind the general rule that liability will result if the Township's training of its firefighters is so inadequate or nonexistent as to make firefighter mistakes and/or misconduct virtually inevitable.

D. Available Information. Attached to the copy of this memorandum which we are sending to Fire Chief Gordon Van Haitsma is information regarding emergency response training available through the Michigan state Police Emergency Response Division. The Emergency Response training includes a first responder operations level and a course entitled "Haz Mat Response Team-Should You Have One?" This information includes a Schedule which shows the various programs that are offered in April through October 1994. Most of these programs are at a reduced cost for public sector individuals. This information, or updates thereon, can be received from the Michigan state Police Emergency Response Division/Training Section. Information should be solicited from Robin O'Dell at 517/482-7914.

A list of environmental response contractors authorized to work on Michigan Department of Transportation controlled medians and rights-of-way has been requested from MOOT but not yet received. The same will be forwarded upon receipt.

The Township may find the following guides useful: The NIOSH Pocket Guide to Chemical Hazards (1-800-35-NIOSH) and the US DOT Emergency Response Guidebook (1-800-832-5660). These guides will assist Township personnel to identify chemicals and the associated hazards through truck placard and labeling regulations of the United states Department of Transportation.

Finally, we have enclosed to Chief Van Haitsma a copy of a September, 1993 handbook from the Emergency Management Division of the Michigan Department of state Police. The handbook is entitled "Emergency Management & Hazard Training Curriculum Guide for Fiscal Year 1994."