

Cost Recovery Ordinance

An ordinance to provide procedures for recovering costs incurred by the Township for responses to deliberately caused fires, negligently caused fires, false alarms, response to vehicle accidents and other public safety incidents.

THE CHARTER TOWNSHIP OF MADISON ORDAINS:

Section 1. Purpose.

In order to protect the Township from extraordinary expenses resulting from the utilization of Township 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 Township in responding to such incidents.

Section 2. Definitions.

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

- a. *Assessable Costs* mean those costs for services incurred by the Township 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 Township (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 Township or by a third party on behalf of the Township; service charges and interest; attorneys' fees, litigation costs and any costs, charges, fines or penalties to the Township imposed by any court or state or federal governmental entities.
- b. *Bomb Threats* mean 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. *Emergency assistance* means emergency medical, public safety, police, fire and civil defense services.
- c. *Excessive Requests for Emergency Assistance* mean any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five (5) times in the preceding thirty (30) days.
- d. *False Alarm* means 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 (i) caused by an act of God, i.e., a lightning storm, (ii) it originates from a motor vehicle alarm system or (iii) has not occurred more frequently than three (3) times in a calendar month or four (4) times in a calendar year.

- e. *Hazardous Materials* mean those 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, which are or are potentially harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk to life, health or safety of persons or property, or to the ecological balance of the environment as determined by the fire chief or the senior fire official of the Township in charge at the scene.
- f. *Hazardous Material Incident or Emergency* means 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.
- g. *Illegal Fire* means 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., a lightning storm.
- h. *Motor Vehicle* means 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.
- i. *Motor Vehicle Accident* means an accident where equipment and tools are used for the extrication of a person or persons, or forced entry into a vehicle are required.
- j. *Negligently Caused Fire* means a fire, proximately caused by the negligence of an owner or occupier of property and / or structures, or any other person, which represents a direct and immediate threat to the public safety and requires immediate action to mitigate the threat.
- k. *Public Safety or Fire Emergency Incident* means:
 - 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 motor vehicle accident;
 8. A structure demolition;
 9. A utility line failure; or
 10. Damage to any Township water or sewer line.
- l. *Release* means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including, but not limited, the air, soil, groundwater and surface water.
 - m. *Responsible Party* means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a public safety or fire emergency incident or any owner, 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.
 - n. *Structure Demolition* means 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.
 - o. *Threats of Harm to Oneself or Others* mean 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.
 - p. *Utility Line Failure* means the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, ship, 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 does not respond within one (1) hour to a request to repair or correct such failure.

Section 3. Cost recovery authorization and procedure.

- a. The Township may recover all assessable costs in connection with a public safety or fire emergency incident from any or all responsible parties jointly or severally.
- b. The Township Supervisor or his or her designee shall determine the total assessable costs and shall in consultation with other Township 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;
 2. The risk the public safety or fire emergency incident imposed on the Township, its residents and their property;

3. Whether there was any injury or damage to person or property;
 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 Township personnel and equipment, and
 6. Whether there was any damage to the environment.
- c. No resident of the Township at the time of a response as described in section 2.a shall be responsible/ liable for the expense of the emergency response over and above the amount of any insurance available to said resident to pay for the emergency response except for deliberately or negligently caused fires. A resident of the Township who has such insurance shall either process a claim and assign benefits to the Township or shall provide the Township such information as may be necessary to permit the Township to file a claim.
 - d. After consideration of the factors in (b) immediately above, the Township Supervisor 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.
 - e. If the Township Supervisor determines not to assess all or a part 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.

Section 4. Billing and collection of assessable costs.

- a. After determining to assess assessable costs against a responsible party, the Township Treasurer shall mail an itemized invoice to the responsible party at its last known address. Such invoice shall be due and payable within thirty (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.
- b. To the extent that the responsible party which would cover all or any part of the cost assessed, the Township is empowered to bill the appropriate insurance carrier of any responsible party,
- c. If a responsible party shall appeal assessable costs pursuant to Section 3 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.

Section 5. Procedure for appealing assessable costs.

- a. Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the Township Supervisor or his or her designee to request a modification of assessable costs. The responsible party shall request in writing such meeting within seven (7) calendar days of the date of the invoice assessing

the assessable costs.

- b. If after meeting with the Township Supervisor or his or her designee the responsible party is still not satisfied, he or she may request an opportunity to appear before the Township Board to further request a modification of assessable costs. A responsible party who desires to appear before the Township Board must first meet with the Township Supervisor or his or her designee as provided above and shall file a written request to appear before the Township Board with the Township Clerk within seven (7) calendar days of the date of the meeting with the Township Supervisor.
- c. Upon receipt of such request, the Township Clerk will place the responsible party on the agenda of the next regularly scheduled Township Board meeting, which meeting is at least fourteen (14) calendar days after the date on which the responsible party files the request to appear.
- d. 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.
- e. Failure to timely file a written request to appear shall constitute a waiver of the responsible party's right to appear before the Township Board; and shall further constitute the responsible party's agreement to pay the assessable costs invoiced.
- f. After a responsible party has been given an opportunity to appear before it, the Township Board shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

Section 6. Assessable costs a lien upon property.

Assessable costs assessed against a responsible party not paid when due, including late payment fees, shall constitute a lien upon the real property of the responsible party in the Township, from which, upon which or related to which the public safety or fire emergency incident occurred. Such lien shall be of the same character and effect as the lien created by Township charter for Township real property taxes and shall include accrued interest and penalties. The Township treasurer shall prior to March 1 of each year, certify to the Township assessor the fact that such assessable costs are delinquent and unpaid. The Township assessor shall then enter the delinquent amount on the next general ad valorem tax roll as a charge against the affected property, and the lien thereon shall be enforced in the same manner as provided and allowed by law for delinquent and unpaid real property taxes.

Section 7. Other remedies.

In addition to the remedy set forth in Section 6 above, the Township 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.

Section 8. No limitation of liability.

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

Section 9. Severability.

Should any provision or part of this article be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision or part which shall remain in full force and effect.

Section 10. Effective Date.

This Ordinance shall become effective thirty (30) days after its adoption.

YEAS:

NAYS:

ABSENT:

Ordinance declared adopted on October 11, 2005.

Theodore C. Dusseau
Township Supervisor for the
Charter Township of Madison

CERTIFICATE OF ADOPTION AND PUBLICATION

I, Arnold Harper, the duly elected Clerk of the Charter Township of Madison certify that the foregoing ordinance is a true and correct copy of the ordinance enacted by the Township Board of the Charter Township of Madison on October 11, 2005 and published in the Adrian Daily Telegram, a newspaper circulated in the Charter Township of Madison on October 17, 2005.

Arnold Harper
Township Clerk for the
Charter Township of Madison