

ORDINANCE NO. 2017-1

Emergency Services Cost Recovery Ordinance

AN ORDINANCE TO PROTECT THE TOWNSHIP FROM EXTRAORDINARY EXPENSES RESULTING FROM THE UTILIZATION OF TOWNSHIP RESOURCES IN RESPONSE TO CERTAIN PUBLIC SAFETY, FIRE, OR EMERGENCY INCIDENTS OR CONDITIONS, AND TO AUTHORIZE THE IMPOSITION OF CHARGES AND THE METHODS FOR COLLECTION FOR RECOVERING REASONABLE AND ACTUAL COSTS INCURRED IN RESPONDING TO SUCH INCIDENTS OR CONDITIONS.

THE TOWNSHIP OF ELMWOOD, LEELANAU COUNTY, MICHIGAN, ORDAINS:

Section 1: Purpose

This ordinance is adopted for the purpose of establishing a method of recovering costs and expenses for certain services provided by the Township which result from the utilization of Township resources in response to certain public safety, fire, or emergency incidents or conditions. This ordinance is authorized by Michigan law, including, but not limited to MCL 41.181 and MCL 41.806a. Also, it is intent of the Township to encourage mutual aid between fire/EMS departments during emergencies by adopting the charges that have been set by the municipality that is providing assistance for any situation covered by this ordinance. Depending on the circumstances, the Township finds that it may not always be cost-effective for the Township to pursue collection of unpaid charges.

Section 2. Definitions.

For the purpose of this Ordinance, the following word, terms or phrases shall have the meanings as contained in this section, except where the context clearly indicates a different meaning:

- A. **ASSESSABLE COSTS.** Those costs for services incurred by the Township in connection with a response to a public safety, fire, or emergency incident or condition, 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, cost 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; and attorney's fees and litigation costs incurred by the Township related to the collection of assessable costs; provided, however, the Township shall not be reimbursed under this Ordinance more than once for any expense incurred by the Township.
- B. **COST RECOVERY SCHEDULE.** Periodically, the Township Board shall adopt, by resolution, a schedule of the costs incurred in providing Emergency Services related to an Emergency Incident. It shall be presumed that the costs listed in the schedule are reasonable costs incurred by the Township in responding to such Emergency Incident. This schedule shall be made available to the public during regular Township business hours.

- C. DEPARTMENT. The Elmwood Township Fire and Rescue Department.
- D. EMERGENCY INCIDENT. Any situation or condition where Emergency Services are needed or requested.
- E. EMERGENCY SERVICES. Services by the Township or another a public entity, which is acting within the Township, for the primary purpose of taking timely action to deal with events threatening health, safety, and security. Emergency Services include, but are not limited to, fire, EMS, and law enforcement agencies and cover prevention, preparedness, response, and recovery services or actions, including services or actions related to a hazardous material incident.
- F. EMS. This means Emergency Medical Services and includes providing immediate response, care, treatment, and/or transport of sick or injured persons.
- G. FALSE ALARM. A request for emergency assistance when there is no actual need for such assistance. Such request may be in any form and includes a request by telephone or any other method, including the activation of any automated or manual device designed to request or summon emergency assistance. The determination that there was no actual need for emergency assistance shall be made by the most senior person responding to the request.
- H. HAZARDOUS MATERIAL. Those elements, substances, wastes or by-products, including but not necessarily limited to, combustible liquids, flammable gases, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive or corrosive materials, which are: i) potentially harmful to the environment or human or animal life, including any material defined as hazardous by any state or federal law, rule or regulation, or ii) 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 fire Department in charge at the scene of hazardous material incident.
- I. HAZARDOUS MATERIALS 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.
- J. ILLEGAL FIRE. A fire intentionally or negligently set that is proximately caused because of a violation of a federal, state, or local law, including, without limitation, an arson fire and a fire set in violation of a burning ban, order, or ordinance. An illegal fire does not include a fire caused by act of nature.
- K. RESPONSIBLE PARTY. A responsible party is any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or other legal entity that (1) receives Emergency Services or whose employee or agent receives Emergency Services; (2) is contractually required to

indemnify a person or legal entity for charges related to Emergency Services, such as an insurance company; (3) any owner, tenant occupant or party in control of real and personal property from which, onto which, or related to which there is an Emergency Incident and their heirs, estates, successors and assigns and (4) any owner, tenant occupant or party in control of real and personal property that benefits from Emergency Services and their heirs, estates, successors and assigns. In circumstances where the Department provides emergency medical care and/or transport, the direct recipient of the services will constitute the responsible party. In the case of emergency medical care and/or transport being provided to a minor, the responsibility party shall be the parents or guardian of the minor. As used above, a responsible party shall be deemed to “receive” Emergency Services even when those Emergency Services are not directly rendered to the responsible party, but are rendered in relation to the responsible party. An example would be the rendering of Emergency Services in relation to a hazardous materials incident.

- L. STANDBY. Personnel and/or resources made available and dedicated to a specific event for the purpose of providing emergency service response or other agreed upon assistance. This does not include Department resources assigned to cover emergency responses within another jurisdiction under an established mutual aid agreement.
- M. TOWNSHIP. The Charter Township of Elmwood.
- N. UTILITY LINE FAILURE. The disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport water, sanitary sewage, storm sewage, electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses) where the failure presents a threat to public health or safety.

Section 3: Cost-Recovery Charges

The Township may recover all assessable costs in connection with Emergency Services rendered by Township from any or all responsible parties jointly or severally.

In addition to the examples provided in Section 1, Emergency Services include, by way of example and not limitation, specific responses or conditions as described below:

- A. Any Department response to a fire, whether ignited accidentally or intentionally, and includes but is not necessarily limited to the following:
 - Department containment and/or suppression of the fire in part or whole
 - Stabilization of the incident by Department resources
 - Activities resulting in damage or destruction of Department equipment beyond normal wear and tear
- B. Any Department response to an incident caused by a criminal act; i.e., DUI, intentional false alarm, arson, etc.
- C. Any Department response requiring containment, abatements or any safety measure in connection with any hazardous or toxic material release. Charges in

such case shall be made to the person responsible for the release, whether or not the release occurs on the property of the responsible party. The responsibility for the release includes releases caused by the person as well as any release from any vehicle, building, or other instrumentality, owned, occupied or utilized by the person, regardless of fault.

- D. Any Department response to a vehicle accident or traffic incident, including but not limited to the control of fires, spills, debris clean up, assistance to injured persons or ambulance crews, or the extrication of vehicle occupants using specialized tools or techniques.
- E. Any Department response for a hazardous materials incident or other hazardous condition requiring Department oversight and deployment of personnel and/or equipment to maintain public health and safety.
- F. Any Department response to a false alarm due to system malfunction or maintenance issue in excess of three (3) alarms in any consecutive twelve (12) month period.
- G. The provision of Department equipment or personnel for the purpose of providing standby fire, rescue, or emergency medical services necessary to support a non-emergency event/situation hosted by a for-profit organization. The Township Board may reduce or waive any charges for such services.
- H. The providing of medical care and/or transport by the Department to a medical care facility.
- I. Any Department response for a specialized rescue, disentanglement, or body recovery requiring Department oversight and/or deployment of Department personnel or equipment and the use of specialized tools, apparatus, or techniques for handling the specific incident. This includes high and low angle environments, confined spaces, below grade or trench incidents, heavy equipment or machinery, outside searches lasting longer than one (1) hour, ice or water rescue or recovery, and structural collapse.

A schedule of charges, to be known as the Cost Recovery Schedule, shall be established by resolution of the Township Board.

Section 4: Exemptions

The following properties and services are exempt from the charges authorized by this Ordinance:

- A. False alarms due to system malfunction or maintenance issue not exceeding three (3) alarms in any consecutive twelve (12) month period.
- B. Fires caused by railroad trains, which are the statutory responsibility of railroad companies.
- C. Fire involving Township buildings, grounds and/or property when the fire is not caused by the act or omission of an employee or agent of the Township.
- D. Fire or other emergency service performed outside the jurisdiction of the Township for which a signed Mutual or Automatic Aid agreement is in place, unless the municipality in which assistance is rendered has adopted an ordinance to impose or authorize the collection of fees for fire and emergency services as authorized by law.

Section 5: Determination and Authorization

The Township Supervisor, designee, or authorized agent acting on behalf of the Township, such as a third party billing agency, shall determine the total assessable costs and shall, in consultation with other Township personnel or agents involved in the services, 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, including active and standby status; 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 costs against a party, the Township Supervisor, 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 responding to the incident and the amounts as set forth in the Cost Recovery Schedule.

Assessable costs 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 other responsible parties.

Section 6. 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. Any amount due that remains unpaid thirty (30) days after the date of billing shall have imposed a late charge thereon at the rate of one percent (1%) per month, or fraction thereof, until 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 7 of this ordinance. If a responsible party shall appeal assessable costs pursuant to Section 7 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.

Section 7. Appeal Procedure.

Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the Township Supervisor or designee to request a modification of the assessable costs. The responsible party shall request such meeting in writing within fourteen (14) calendar days from the date of service of the invoice.

If after meeting with the Township Supervisor or 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 the assessable costs. A responsible party who desires to appear before the Township Board must first meet with the Township Supervisor or 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. Any such request 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 the assessable costs not set forth in the request to appear shall be deemed waived by the responsible party. Upon receipt of such a 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. 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 payment of the assessable costs invoiced.

Failure to file a timely written request for a meeting with the Township Supervisor or request to appear before the Township Board 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 invoiced.

Section 8. Lien.

When the incident or event requiring Department services involves real property, if the assessable costs, including any late payment fee or interest, assessed against a responsible party are not paid when due, said costs shall be a special assessment against the real property and shall, to the extent permitted by law, constitute a lien upon such real property in the same manner as property taxes and/or special assessments.

The Township Treasurer shall, prior to September 30 of each year, certify to the Assessor of the Township in which the subject real property is located the fact that such

assessable costs are delinquent and unpaid. Such Township Assessor is then authorized to enter the delinquent amount on the next general *ad valorem* property tax roll as a charge against the subject real property, and the lien thereon shall, to the extent permitted by law, be enforced in the same manner as provided by law for delinquent and unpaid real property taxes.

Section 9. Conflict with Natural Resources and Environmental Protection Act.

If there is any conflict between the provisions of this ordinance and the provisions of Part 201 of the Natural Resources and Environmental Protection Act [MCL 324.20101 *et seq.*] (NREPA), the provisions of the NREPA shall take precedence and the provisions of this ordinance in conflict therewith shall be deemed non-enforceable, but only to the extent necessary to avoid the conflict.

Section 10: Non-Exclusive Charge

The foregoing rates and charges do not limit the Township's authority to levy any form of tax or impose special assessments, as permitted by law. Also, general fund appropriations may be made to cover such additional costs and expenses of providing fire protection and other emergency services.

Section 11: Multiple Property Protection

When a particular fire protection or other emergency service rendered by the Township directly benefits more than one person or property, the owner of each property so benefited, and each person so benefited where property protection is not involved, is liable for the payment of the full charge for such service.

Section 12: Severability

If any provision or part of this ordinance is declared by any court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of any other provision or part, which shall remain in full force and effect.

Section 13: Effective Date

This ordinance shall become effective immediately following publication of this ordinance in the Leelanau Enterprise. Publication shall take place within thirty (30) days of the Elmwood Township Board of Trustees approval. All ordinances or parts of ordinances in conflict with this ordinance are repealed.