

**KASSON TOWNSHIP
COUNTY OF LEELANAU
STATE OF MICHIGAN**

ORDINANCE NO. 2013-01

**PUBLIC SAFETY AND FIRE EMERGENCY RESPONSE
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 OR FIRE EMERGENCY INCIDENTS, AND TO AUTHORIZE THE IMPOSITION OF CHARGES TO RECOVER REASONABLE AND ACTUAL COSTS INCURRED BY THE TOWNSHIP IN RESPONDING TO SUCH INCIDENTS.

THE TOWNSHIP OF KASSON ORDAINS:

Section 1. Short Title.

This ordinance shall be known and may be cited as the Kasson Township Public Safety and Fire Emergency Response Cost Recovery Ordinance.

Section 2. 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 ordinance, which is enacted pursuant, in part, to MCL 41.181 and MCL 41.806a, as amended, authorizes the imposition of charges to recover reasonable and actual costs incurred by the Township in responding to such incidents.

Section 3. Definitions.

For the purpose of this Ordinance, the following terms or phrases shall be defined to mean:

- A. Assessable Cost. 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, 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, litigation costs, charges, fines or penalties imposed on the Township by any court or state or federal governmental entity, except that the Township shall not be reimbursed under this Ordinance more than once for any expense incurred by the Township.

- B. Bomb Threats. The verbal or written threat of the use, placement or discharge of a bomb or other explosive device which if discharged as threatened would violate a federal, state, or local law.
- C. Cost Recovery Schedule. The Township board shall from time to time, by resolution, adopt a schedule of the costs incurred in responding to a public safety or fire emergency incident. It shall be presumed that the costs listed in such schedule are the true costs incurred by the Township in responding to such public safety or fire emergency incident. This schedule shall be made available to the public during regular Township business hours.
- D. Department or Fire department. The Cedar Fire department
- E. Emergency Assistance. Emergency means and/or refers to emergency medical, public safety, police, and fire and civil defense services.
- F. Excessive Requests for Emergency Assistance. Any request for emergency assistance made to a particular location of premises if such location or premises has requested emergency assistance more than 6 times in the preceding six months.
- G. False Alarm. Any request for emergency assistance made when the person making the request knows there is no actual need for emergency 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 a false alarm.
- H. Hazardous Substance or 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 Material Incident or Hazardous Material Emergency. 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 or determined to be set in violation of a federal, state, or local law, including, without limitation, an arson fire and a fire set in

violation of a “no-burning” ban, order, or ordinance. An illegal fire does not include a fire unintentionally caused or caused by an act of God.

- K. Motor Vehicle. Any self propelled or towed vehicle designed to be used on or used on the public streets, roads, and highways which is required to be registered for use upon such public streets, roads and highways, including any trailer or appurtenance attached to any motor vehicle.
- L. Public Safety or Fire Emergency Incident. A “public safety incident” or “fire emergency incident” means: (i) excessive requests for emergency assistance; or (ii) a false alarm; or (iii) a hazardous material incident or emergency; or (iv) an illegal fire; or (v) a bomb threat; or (vi) a threat of harm to oneself or others; or (vii) a structure demolition; or (viii) a utility line failure; (ix) a motor vehicle incident or accident, (x) a structure fire that requires the use of fire department equipment, manpower and/or extinguishing agents, (xi) any other fire that requires the use of fire department equipment, manpower, and/or extinguishing agents, including, without limitation, fires in open areas, fields, woods and forests, or (xii) any extraordinary event requiring emergency assistance, such as a train derailment, terrorist incident or hostage situation, or other standoff.
- M. Release. Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, leaching, dumping or disposing into the air, soil, groundwater, and/or surface water.
- N. Responsible Party. A responsible party is any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or legal entity that is 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.
- O. Structure Demolition. 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 public safety or fire emergency incident to protect public safety.
- P. Structure Fire. A fire that involves any building, outbuilding or similar structure. This would include any fire that involves something burning within the structure as well as any fire involving the structure itself including, without limitation, interior and exterior walls, roof and roof structures, structural members, substructural members, ceiling and floor structures, porches, decks and awnings.
- Q. Threat to Oneself or Others. A 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.
- R. Township. The Township of Kasson.

- S. 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: (i) the failure presents a threat to public health or safety; and (ii) the party responsible for the maintenance of such utility line does not respond promptly to a request to correct or repair such failure. A failure to respond to a request to correct or repair such failure within one hour is presumed to not be a prompt response.
- T. Water Rescue Attempt. Any emergency response by fire emergency services in connection with any emergency or perceived emergency, on, near or caused by a body of water naturally open to the atmosphere. For purposes of this definition, "body of water" includes without limitations: rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors of water including a wetland.

Section 4. Fire protection Area.

The Cedar Fire Department provides public safety and/or fire emergency services within the Township of Kasson and, pursuant to agreements with other fire departments and/or municipalities, to areas outside of Kasson Township (the Fire Protection Area). It is intended that the rights and procedures provided herein shall, to the extent permitted by law, extend and apply only to Kasson Township, and that same are an inseparable aspect of the services provided by the Township and its Fire department throughout the Fire Protection Area.

Section 5. 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 or agents 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 may 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 required evacuation;
 - (5) whether the public safety or fire emergency incident required an unusual or extraordinary use of Township personnel and equipment and the extent of that use;
 - (6) whether there was any damage to the environment; and
 - (7) the existence and extent of negligence or fault on the part of the responsible party.
- C. In order to determine the assessable costs against a party, the Township Supervisor or his or her designee shall rely on a report of the actual expenses incurred prepared by the Fire

Department personnel or agents involved in responding to the incident and the amounts as set forth in the cost recovery schedule.

- D. 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 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 any liability a responsible party may have to the other parties.

Section 6. Billing and Collection of Assessable Costs.

Once a determination has been made to charge assessable costs against a responsible party, the Township Treasurer shall prepare and mail an itemized invoice to each responsible party at his, her or its last known address. 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 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, 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.

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 his or her designee to request a modification of the assessable costs. The responsible party shall request in writing such meeting within fourteen (14) calendar days of the date of the invoice assessing the assessable costs.

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 the 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. 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 public safety or fire emergency incident involves real property, if the assessable costs, including any late payment fee, 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 March 1 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. Other Remedies.

Any failure by a responsible party to pay an invoice for a public safety or fire emergency incident within the time limits provided in Section 5 shall be considered a default, 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 to the foregoing, 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 10. 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 nonenforceable, but only to the extent to avoid said conflict.

Section 11. No Admission of Liability.

The payment of expenses determined to be due and owing under this ordinance does not constitute an admission of liability or negligence in any criminal action or any other action for damages.

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 on the day following publication of this ordinance in the Leelanau Enterprise.

At a regular meeting of the Board of Trustees of Kasson Township, held on July 1, 2013, adoption of the foregoing ordinance was moved by Julian and supported by Cruz.

Voting for: R. Noonan, B. Noonan, Cruz, Julia, + Lanham

Voting against: - None -

The supervisor declared the ordinance adopted.

Frederick K. Lanham
Township Supervisor
Traci J. Cruz
Traci J. Cruz
Township Clerk

CERTIFICATION

The foregoing is a true copy of Ordinance No. #2013-01 which was enacted by the Kasson Township Board of Trustees at a regular meeting held on July 1, 2013.

Traci J. Cruz
Township Clerk