

ALLENDALE CHARTER TOWNSHIP

COST RECOVERY ORDINANCE

ORDINANCE 1995-16 and Ordinance 2014-7

THE CHARTER TOWNSHIP OF ALLENDALE, COUTNY OF OTTAWA, AND THE STATE OF MICHIGAN  
ORDAINS:

**Section 1. Purpose.** Allendale Charter Township hereby finds that persons in and traveling through the Township historically have need, caused or contributed to the need for certain public safety and fire emergency services, which needs the situation s have negatively affected the health, environment, and welfare of some Township residence and real property located within the Township. In addition, the Township has found that it has incurred costs associated with the provision of these certain public safety and fire emergency services. 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 provision of these certain public safety and fire emergency services.

**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: Allendale Charter Township, Ottawa County, Michigan
- (B) Assessable Costs: The costs incurred by the Township including, but not limited to, the actual labor and material costs to the township (including, without limitation, employee wages, workers' compensation benefits, overtime, cost of equipment operation, materials, excavation, transportation, and disposal, costs of any contracted labor or materials, and any and all other costs, whether or not such services are provided by the township or by third party independent contractor on behalf of the township, service charges or interest, attorneys' fees, litigation cost, and any cost, charges, fines, or penalties to the township imposed by any local, state, or federal governmental entities.
- (C) Excessive Request for Emergency Assistance: Any request for emergency assistance (e.g. emergency medical assistance, public safety, police or sheriff services, or fire department services made for a particular location or commercial entity if that location or commercial entity has requested emergency assistance, of any type , more than five times in the preceding twelve (12) months.
- (D) False Alarm: Any device, automated or manual, that is designed to request or summon emergency assistance or emergency service personnel, including but not limited to fire, emergency medical and public safety personnel, which device is activated, intentionally or otherwise, in the absence of an actual need for emergency assistance. The determination that shall be made by most senior emergency service person which responds to the false alarm.
- (E) Fire Department Response: Means coming to the scene\_of a fire, spill, traffic, vehicular accident, hazardous condition, investigation in connection with a fire, spill, accident or hazardous condition.
- (F) Hazardous Materials: Those elements, substances, wastes, or by products thereof, including, but not limited to, petroleum products, automotive anti-freeze, polychlorinated biphenyl's, and

asbestos, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the EPA) or the list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious, flammable, combustible, explosive, or radioactive by any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance or material, as now or at any time hereafter in effect including without limitation, Michigan Act 307, as amended, MCLA 299.601 et seq. The Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. ss9601 et seq. The Federal Toxic Substance Control Act, as amended 15 U.S.C. ss2601 et seq. The Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. ss6901 et seq. The Federal Hazardous Material Transportation Act, as amended. The Federal Clean Air Act, as amended, The Federal Water Pollution Control Act, as amended. Or any other similar or successor statute or law, or rules and regulations of the EPA, or any other state or federal department, board, or agency, or any other agency or governmental board or entity having jurisdiction (collectively, the "Environmental Laws").

- (G) 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 Michigan Compiled Laws. For the purpose 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.
- (H) 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 vehicle(s) involved or other real property.
- (I) Motor Vehicle Fire: Any instance in which a motor vehicle is destroyed by or suffers any damage as a result of fire.
- (J) Release: Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing into the environment including, but not limited to, the air, soil, ground water and surface water.
- (K) Responsible Party:
  - (1) In connection with the release of Hazardous Materials Responsible Party means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity that is responsible, in whole or in part, for a release of Hazardous Materials, either actual or threatened, or is an owner, tenant, occupant, or party in control of property, real or personal, onto which or from which hazardous materials release and the heirs, estates, assigns or successors thereto;
  - (2) In connection with the failure of a Utility Line Responsible Party Means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the maintenance or failure of the utility line and the heirs, estates, assigns or successor thereto;
  - (3) In connection with a Motor Vehicle Accident or Motor Vehicle fire, means the registered owner, the operator of the motor vehicle at the time of the motor vehicle accident or motor vehicle fire

if different from the registered owner of the motor vehicle, and any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the motor vehicle accident or the motor vehicle fire and the heirs, estate, assigns or successors thereto.

- (4) In connection with a fire, responsible party means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the fire the real property on which the fire occurred, or the object which was damaged or destroyed by the fire and the heirs, estates, assigns or successors thereto.
- (5) In connection with a water rescue attempt, responsible party means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the situation which necessitated the water rescue attempt, and the heirs, estates, assigns or successors thereto.
- (6) In connection with excessive request for emergency assistance, responsible party means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the excessive requests for emergency assistance or for the real property, location, or commercial entity to which emergency service personnel are summoned pursuant to the excessive request for emergency assistance, and the heirs, estates, assigns or successors thereto.
- (7) In connection with false alarm, responsible party means: any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the false alarm or for the real property, location or commercial entity to which emergency service personnel are summoned pursuant to the false alarm and the heirs, estates, assigns or successors thereto.
- (L) Structure: Anything constructed or erected which has a permanent location on the ground or is attached to something having such location.
- (M) Utility Lines: Any transmission or service line, cable, conduit, pipeline, wire, main or the like used in any way to provide, collect or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer and cable television and stereo signals or electronic impulses), water or sewage.
- (N) Water Rescue Attempt: Any emergency response by township personnel in connection with any emergency, or perceived emergency, on or near or caused by a body of water, naturally open to the atmosphere including, without limitation, rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors of water, including wetland, as that term is defined by the Michigan Goemaere-Anderson Wetland Protection Act and an Inland Lake or Stream as that term is defined in the Michigan Inland Lakes and Streams Act.

### **Section 3. Assessment of Cost**

- (A) All assessable cost associated with any of the actions or services described in subsections 1 through 7 below which assessable cost are incurred by the township may be jointly and severally assessed to any or all responsible parties.
- (1) Cost incurred to halt, abate, remediate or remedy any release of any hazardous materials and any liabilities resulting therefrom.

- (2) Extraordinary cost (fire extinguishers, foam, ect.) incurred to extinguish or fight any fire in or at a structure, any demolition cost if the structure must be demolished to protect the public safety following the fire, and any liabilities resulting therefrom.
- (3) Any fire department response to a fire started by a property owner or person, such as a controlled burn, fire or open burning, which becomes uncontrolled.
- (4) Any fire department response to any open burning for which the fire department has been called to assist by the person or property owner starting or attending to it, whether or not the fire becomes uncontrolled after two (2) warnings with no permit issued.
- (5) Cost incurred in connection with a utility line failure and any liabilities resulting therefrom.
- (6) Cost incurred in connection with any water rescue attempt and any liabilities resulting therefrom.
- (7) Extraordinary cost (foam, fire extinguishers, ect. Associated with motor vehicle accident or motor vehicle fire and any liabilities resulting therefrom.
- (8) Cost associated with the excessive requests for emergency assistance and any liabilities resulting therefrom. And,
- (9) Cost associated with false alarm and any liabilities resulting therefrom after.
- (B) Any assessable costs, including litigation expenses, which become known to the township following the transmittal of a statement to the responsible party pursuant to this ordinance, shall be billed in the same manner on a subsequent statement to the responsible party.
- (C) The township treasurer or the treasurer's designee shall certify to the township supervisor and the fire chief the total assessable cost incurred by the township. The township supervisor and fire chief shall then decide whether to assess any, all, or part of the costs against any of the responsible parties, the township supervisor and fire chief shall consider the following factors:
  - (1) The total cost incurred by the township, including, but not limited to, materials, equipment, manpower, administration, assistance from other sources, ect.
  - (2) The risks to the township, its residents, their property, or any other people or property which results from the situation which caused the township to incur assessable cost.
  - (3) Any injuries or damage to people or property which resulted from the situation which caused the township to incur assessable costs.
  - (4) Whether the situation which caused the township to incur necessitated and evacuation.
  - (5) Whether the situation which caused the township to incur assessable cost resulted in damage to the environment.
  - (6) Any other factors deemed relevant by the township board.
- (D) The township supervisor and fire chief may, after consideration of the factors listed in subsection 3 © above, allocate the cost among and between the responsible parties. Any cost not allocated among or between parties shall be a joint and several liability of each responsible party assessed cost pursuant to section 3 © regardless of whether that responsible party has any other legal liability therefor apart from this ordinance, and regardless of whether such person is at fault.
- (E) The township supervisor and fire chief shall direct the township clerk to send a statement of cost assessed pursuant to this ordinance to all responsible parties so assessed. Such statement shall be dated and sent first class U.S. Mail, postage prepaid, to the last known address of each responsible party.

- (F) The township may charge any cost assessed pursuant to the ordinance to the insurer of any responsible party. The submission of an invoice for the assessed cost to an insurer, does not in any way limit or extinguish the liability of a responsible party for the cost assessed pursuant to this ordinance until such time as the assessed cost or damages are paid in full.
- (G) If the township board decides not to assess all or part of its costs against a responsible party, such decision shall not, in any way extinguish or limit a reasonable persons liability to other parties for any cost or damages, of any kind, arising from the release.

**Section 4. Exemption:** No charges shall be made against the township in connection with any responses or investigations. If the incidents requiring charges occur on property owned, maintained or used by the township, charges may be made against persons who may be determined responsible for the incident, except township officers, employees or volunteers.

**Section 5. Notice and right to Appear Provisions**

- (A) Any responsible party who receives a statement of costs assessed pursuant to this ordinance shall be given the opportunity to appear before the township board to request a modification of the assessed costs. Any responsible party who desires to appear before the township board shall file a written request to appear with the township clerk within fourteen (14) calendar days of the date of the statement of assessed costs. The responsible party will be placed on the agenda of the next regularly scheduled or special township board meeting, which meeting is at least fourteen (14) calendar days after the date on which the responsible party files with the township clerk its request to appear. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the cost assessed pursuant to this ordinance should be modified. Any reason, basis or argument for the modification of the assessed cost not set forth in the written request to appear shall be deemed waived by the responsible party. Failure to file a written request to appear within fourteen (14) days of the date of the statement of assessed cost shall constitute a waiver of the responsible party's right to appear before the township board and the responsible party's agreement to pay the assessed costs.
- (B) At the township board meeting, the responsible party shall have the opportunity to address the township board regarding its written request that the township board modify the assessed costs. The responsible party shall be limited, in its address to the township board, to those reasons and bases set forth in the responsible party's written request to appear. The township supervisor shall have the opportunity to address the township board to explain the process by which the assessed costs were determined and allocated. The township board, after hearing the responsible party and the township supervisor, shall review the assessed costs and make the final determination regarding the costs assessed to the responsible party. The township board shall pass a resolution detailing its final determination regarding the assessed cost. Upon passage of the resolution of the township board, there shall be no further modification of the assessed costs by the township. The assessed costs, as set forth in the township board's resolution, shall be due and payable thirty (30) days of the date of the resolution the township shall have available to it all remedies available under Section 5 below.

**Section 6. Failure to Pay: procedure to Recover:** The Township may pursue any responsible party under either subparagraph (A) or subparagraph (B) below, or both, without limitation as allowed by law.

- (A) All costs assessed pursuant to this ordinance shall be paid in full 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 party who fails to pay the cost assessed pursuant to this ordinance within thirty (30) calendar days of the date of the statement 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 cost, plus a late payment penalty of one percent (1%) per month or part of a month during which costs remains unpaid, together with its attorneys' fees and any other cost allowed by law.
- (B) In cases where services have been rendered to a property or property owner, the charges shall constitute a lien on the said property, including both real and personal property. If not paid within thirty (30) days after the same is due, the township treasure shall, prior to September 1 of each year certify to the tax assessing officer of the township the facts of such delinquency, whereupon the assessor shall enter the delinquent amount on the next general tax roll as a charge against the property, and the liens thereupon shall be enforced in the same manner as provided by and allowed by law for delinquent and unpaid taxes.

**Section 7. 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 the convenience only and shall not be considered a part of this ordinance.

**Section 8. 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 9. Repeal:** All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any provisions of this ordinance, are, to the extent of such conflict, hereby repealed.

**Section 10. Effective Date:** This ordinance was approved and adopted by the Township Board of Allendale Charter Township on July 10, 1995, after introduction and first reading on June 26, 1995, 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 Lakeshore Edition. Amendment was approved and adopted by the Township Board on April 14, 2014, after introduction and first reading on March 24, 2014, and after publication and posting following such first reading as required by Michigan Act 359 of 1947, as amended. This ordinance shall be effective after publication of a Notice of Adoption and posting in the Advance Newspapers.