

ORDINANCE NO. 2021 - 02**EMERGENCY SERVICES COST RECOVERY ORDINANCE**

An ordinance to protect the public health, safety, and general welfare of persons and property within Allendale Charter Township, Ottawa County, through the assessment and recovery of the expenses incurred in providing emergency assistance for fire services, to repeal any conflicting ordinances or parts of ordinances, and to provide an effective date of this ordinance.

THE CHARTER TOWNSHIP OF ALLENDALE, COUNTY OF OTTAWA, AND STATE OF MICHIGAN, ORDAINS AS FOLLOWS.

Section 1. Name. This Ordinance shall be known as the Allendale Charter Township Emergency Services Cost Recovery Ordinance.

Section 2. Purpose. This Ordinance is adopted to enable the Fire Department to bill for and collect cost recovery charges from Responsible Parties. It is the further purpose of the Ordinance to provide for funding of the Fire Department's fire protection and other emergency services which remain, in part, an at-large governmental expense based upon the general benefits derived by all those who live within or visit the Township.

Section 3. Definitions. The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- (a) *Township* means Allendale Charter Township, Ottawa County, Michigan.
- (b) *Assessable Costs* means 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, 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 a 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) *Call* means any request for service requiring the dispatch of the Fire Department's fire apparatus and/or personnel.
- (d) *Excessive Request for Emergency Assistance* means 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.

- (e) *False Alarm* means 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 there was no actual need for emergency assistance shall be made by the most senior emergency service person responding to a False Alarm.
- (f) *Fire Department* means the Allendale Charter Township Fire Department.
- (g) *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.
- (h) *Hazardous Materials* means 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 Environment 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 hereinafter 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; any other similar or successor statute, 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").
- (i) *Motor Vehicle* means any self-propelled or towed vehicle designed or used on the public highways to transport passengers or property as defined in section 79 of Public Act No. 300 of 1949 (MCL 257.79), which is required to be registered for use upon the public streets and highways of this state under Public Act No. 300 of 1949 (MCL 257.1 et seq.). For the purposes of this Ordinance, the term "Motor Vehicle" includes those vehicles

owned by the government of the United States and any and all trailers or appurtenances to any Motor Vehicle.

- (j) *Motor Vehicle Accident* means 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.
- (k) *Motor Vehicle Fire* means any instance in which a Motor Vehicle is destroyed by or suffers any damage as a result of a fire.
- (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 to, the air, soil, groundwater, and surface water.
- (m) *Responsible Party:*
 - (1) In connection with a Release of hazardous materials means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible, in whole or in part, for a Release of hazardous materials, either actual or threatened, or any 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 a failure of a Utility Line means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible, in whole or in part, for the maintenance or failure of the Utility Line, and the heirs, estates, assigns, or successors 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 responsible, in whole or in part, for the Motor Vehicle Accident or the Motor Vehicle Fire, and the heirs, estates, assigns or successors thereto.
 - (4) In connection with a fire means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity 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 means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity 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 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 a False Alarm means the 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.
- (n) *Structure* means anything constructed or erected which has a permanent location on the ground or is attached to something having such location.
- (o) *Utility Lines* means 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, water, sewage, or communication or electronic signals (including, but not limited to, telephone, computer and cable television and stereo signals or electronic impulses).
- (p) *Water Rescue Attempt* means any emergency response in connection with any emergency, or perceived emergency, on, 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 a wetland, as that term is defined by Part 303 of Public Act No. 451 of 1994 (MCL 324.30301 et seq.), and including an inland lake or stream, as those terms are defined in Act No. 451).

Section 4. Assessment of Cost.

- (a) All Assessable Costs associated with any of the actions or services described in subsections 1 through 9 below which Assessable Costs are incurred by the Township may be jointly and severally assessed to any or all Responsible Parties:

- (1) Costs incurred to halt, abate, remediate or remedy any release of any hazardous materials and liabilities resulting therefrom;
 - (2) Extraordinary costs (fire extinguishers, foam, etc.) 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) Costs incurred in connection with a utility line failure and any liabilities resulting therefrom;
 - (6) Costs incurred in connection with any water rescue attempt and any liabilities resulting therefrom;
 - (7) Extraordinary costs (foam, fire extinguishers, extrication, etc.) associated with motor vehicle accident or motor vehicle fire and any liabilities resulting therefrom;
 - (8) Costs associated with the excessive requests for emergency assistance and any liabilities resulting therefrom; and
 - (9) Costs 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 Fire Chief the total Assessable Costs 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, etc.;

- (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 Costs;
 - (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 Assessable Costs necessitated an evacuation;
 - (5) Whether the situation which caused the Township to incur Assessable Costs 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(c) 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 costs pursuant to section 3(c) 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 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 5. Cost Recovery Charges. The Township Board may establish, from time to time, by Resolution charges due and payable to the Township from the recipient of specified fire protection or other emergency services.

Section 6. Failure to Pay; Procedure to Recover.

The Fire Department may waive or pursue in civil court any unpaid Cost Recovery Charges, subject to the approval of the Township.

Section 7. Non-Exclusive Charge. The rates and charges that may be established by Resolution are not the only charges that may be made for the costs and expenses of providing fire protection and other emergency services. Charges may additionally be collected by the Township through general taxation after a vote of the electorate approving the same or by a special assessment established under the applicable Michigan statutes. General fund appropriations may also be made to cover such additional costs and expenses of providing fire protection and other emergency services.

Section 8. 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 9. 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 Assessable 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 costs assessed pursuant to this ordinance should be modified. Any reason, basis or argument for the modification of the Assessable Costs 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 Assessable Costs 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 Assessable 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 Assessable 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 Assessable Costs were determined and allocated. The Township Board, after hearing the Responsible Party and the

Township Supervisor, shall review the Assessable 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 Assessable Costs. Upon passage of the resolution of the Township Board, there shall be no further modification of the Assessable Costs by the Township. The Assessable 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 10 below.

Section 10. 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 remain 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 Treasurer 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 11. Severability. If any provision or part of this ordinance is declared invalid or unenforceable by a court of competent jurisdiction, the validity or enforceability of the balance of the ordinance is not affected and remains in full force and effect.

Section 12. Administrative Liability. No officer, agent, or employee of the Township or a member of the Township Board shall be rendered liable for any damage that may occur to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of duties and responsibilities pursuant to this ordinance.

Section 13. Effective Date. This ordinance was approved and adopted by the Township Board of the Charter Township of Allendale, Ottawa County, Michigan, on August 23, 2021, after introduction and a first reading on May 24, 2021, and publication after first reading as

required by Act 359 of the Michigan Public Acts of 1947, as amended. This Ordinance shall be effective immediately.

Adam Elenbaas
Allendale Charter Township Supervisor

Jody Hansen
Allendale Charter Township Clerk

CERTIFICATE

I, Jody Hansen, the Clerk for the Charter Township of Allendale, Ottawa County, Michigan, certify that the foregoing Emergency Services Cost Recovery Ordinance was adopted at a regular meeting of the Township Board held on August 23, 2021. The following members of the Township Board were present at that meeting:

Ms. Vander Veen; Mr. Murillo; Ms. Hansen; Ms. Kraker; Mr. Zeinstra; Mr. Vander Wall and Mr. Elenbaas. (7)

The following members of the Township Board were absent: None. (0)

The Ordinance was adopted by the Township Board with members of the Board: Ms. Vander Veen; Mr. Murillo; Ms. Hansen; Ms. Kraker; Mr. Zeinstra; Mr. Vander Wall and Mr. Elenbaas. (7) voting in favor and members of the Board: None (0) voting in opposition. The Ordinance or a summary of the Ordinance was published in the Grand Rapids Press on August 29, 2021.

Jody Hansen
Allendale Charter Township Clerk