

TYRONE TOWNSHIP ORDINANCE NO. 24 EMERGENCY RESPONSE COST RECOVERY

An ordinance establishing an emergency response cost recovery for the Township of Tyrone by adding the emergency response cost recovery charges provisions enacted under Act 33 of Public Acts of 1951 as amended, Public Act 102 of 1990 as amended (Compiled Laws 41.806(a) et seq., MCL 41.805; MCL 41.806(a) et. seq., MCL 29.1 et. seq.; MCL 42.15 et. seq.)

The Township of Tyrone, County of Livingston, State of Michigan ordains as follows:

This ordinance is adopted for the purpose of providing financial assistance to the Township of Tyrone for the provision of fire and emergency services through charging for direct benefits received for emergency services of police, fire, rescue, emergency medical services and emergency cleanup and hazmat services.

Charges by resolution the Township of Tyrone pursuant to Act 33 of Public Acts of 1951 as amended, Public Act 102 of 1990 as amended (Compiled Laws 41.806(a) et seq., MCL 41.805; MCL 41.806(a) et. seq., MCL 29.1 et. seq.; MCL 42.15 et. seq.) Hereby authorizes the collection of charges for specific emergency services. The emergency services to be covered and the actual amount of the charges shall be established by resolution of the Tyrone Township board from time to time. These charges shall be due and payable to the Township of Tyrone for the services as stated within said resolutions. The resolution may contain various category of charges for services such as, but not limited to, false alarms, fire inspection services, grass fires, rubbish fires, automobile fires, house fires, fires at commercial establishments, fires at industrial and manufacturing establishments, hotel or motel fires, aircraft fires, truck fires, forest fires, emergency rescue services, standby rescue or fire services for special events, resuscitator services, swimming pool services and other services including spills, release or discharge of hazardous materials, or the improper handling or storage of hazardous materials, and other services as may be specifically enumerated in the resolution. Categories of cost may also be established for services based on geographic location and residence status of the benefiting party.

EMERGENCY RESPONSE COST RECOVERY

Section 1-Definitions.

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

Assessable costs means the reasonable costs incurred by the township, or by a private person, corporation, or other assisting government agency, operating at the request or direction of the township, in connection with an emergency response. The term "assessable costs" includes, but is not limited to:

(1) The costs of providing police, fire, rescue, and emergency medical services at the scene of an emergency response.

(2) All salaries, wages, and compensation of responding, supervising, investigating, reporting, and testifying township personnel where such services are required by an emergency response, the investigation or an emergency response incident or any prosecution brought in connection with such an incident.

(3) All Salaries, wages, and compensation of responding, supervising, investigating, reporting, and testifying personnel of any assisting government agencies acting at the request or direction of the township where such services are required by an emergency response, the investigation or an emergency response incident or any prosecution brought in connection with such an incident.

(4) All costs, expenses, and fees, including actual expert witness and attorney fees, incurred in connection with the prosecution of the responsible party.

(5) The replacement cost of all disposable materials and supplies used in connection with an emergency response.

(6) The actual replacement cost of any equipment lost or rendered beyond reuse or repair during an emergency response.

Emergency response means the providing, sending, and/or utilizing of police, fire fighting, and/or medical and rescue services by the township, or by a private entity, corporation, or other assisting government agency operating at the request or direction of the township or the State of Michigan, to an incident presently of serious and urgent threat to human life, public safety and welfare, real, or personal property.

Responsible party means any person, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or other legal entity whose actions or inactions causes or contributes to an occurrence resulting in an emergency response, or any owner, tenant, occupant or party in control of real or personal property from which, on which, or related to which there is an emergency response and the heirs, estates, successors, ad assigns of such owners, tenants, occupants, or parties.

Specialized response resources means equipment, supplies, vehicles, and specially trained personnel that may be utilized to provide emergency response services or mitigation in connection with a specialized response.

Section 2-Findings and purpose.

The township finds that a significant and continuous potential exists for emergency response incidents, including those involving specialized response resources that will place a substantial financial and operational burden upon police, fire fighting, rescue, and emergency medical services. The township finds that this Chapter is necessary to fairly allocate the costs

resulting from such incidents among those responsible for them. The township further finds that this Chapter is necessary to establish policy and set forth the methods by which it may recover costs incurred in making emergency responses and providing services in connection with same, pursuant to State law, including Public Act 33 of 1951, being MCL 41.801 et. Seq.

Section 3-Liability for emergency response.

(a) The township may recover all assessable costs relating to an emergency response from any or all responsible parties jointly or severally.

(b) Properties and serviced that the township on an incident basis may exempt from the foregoing assessable costs are false alarms, emergency fire responses caused by railroad trains or involving municipal, school district, or State owned buildings, grounds, or property, and emergency fire and specialized response resources expended outside the territorial limits of the township under a mutual aid contract/agreement with another municipality.

(c) The township supervisor, or designee, shall determine the total assessable cost and shall, in consultation with other township personnel involved in responding to the emergency response for which cost recovery may be sought, determine whether to assess all or part of such costs against any responsible party. The factors considered in making such a determination include, but not limited to, the following:

- (1) The total assessable costs.
- (2) The risk the emergency response imposed on the township, its residents, and their property.
- (3) Whether there was an injury or damage to person or property, and the extent of such injury or damage.
- (4) The extent to which the emergency response required an unusual or extraordinary use of township personnel and equipment.
- (5) Whether there was any damage done to the environment and the extent of such damage.
- (6) Such other factors, as the township deems appropriate.

(d) Assessable costs may be allocated among and between responsible parties, including allocating all or some assessable costs jointly and severally against more than one responsible party, regardless of whether a responsible part has liability for those costs in addition to that imposed by this Article.

(e) A determination not to assess costs pursuant to this Ordinance shall in no way limit, extinguish, or constitute a defense to the liability of any responsible party to any third party.

Section 4-Billing and collection of assessable costs and late payment fees.

(a) Upon a determination to assess costs made pursuant to this Ordinance, the township or designee shall submit an itemized invoice, by first class mail or personal service, to each responsible party. Invoices for assessable costs will be due and payable within thirty (30) days of the date of mailing. Thereafter a late payment fee equal to one percent (1%) per month of the unpaid balance shall be

assessed, added to the total unpaid balance, and collected in the same manner as assessable costs.

(b) If a responsible party appeals an assessment of costs, and that assessment is upheld in whole or in part, the costs upheld shall be due and payable within thirty (30) days from the date of determination of the appeal and late payment fees shall thereafter apply as provided in subsection (a) of this section.

(c) The township may proceed by action in any court of competent jurisdiction to collect any assessable costs due and owing under the provisions of this Ordinance and it shall have all remedies provided by law in connection with the collection of same.

Section 5-Appeals of assessable costs to township supervisor.

(a) Any responsible party may appeal a determination and invoice of assessable costs as provided for in this section. Within fourteen (14) calendar days of the date of the invoice, the responsible party shall deliver, or cause to be delivered, a written request to meet with the township supervisor or designee. This request must include the current address and telephone number of the responsible party and specify all objections to the assessment determination. Any reason, basis, or argument challenging that determination which is not set forth in the request shall be deemed waived by the responsible party.

(b) Within fourteen (14) calendar days after receipt of a request satisfying the requirements of subsection (a) of this Section, the township will notify the responsible party of the time, date and place of a meeting at which that party's objections will be considered by the supervisor or designee. The responsible party's failure to attend this meeting will constitute a waiver of that party's objections to the assessment determination.

(c) The supervisor or designee may, at the conclusion of the meeting with the responsible party, or within a reasonable time thereafter, reduce, increase, set aside, or leave unchanged the determination of the assessable costs. Written notification of the decision made by the supervisor or designee will be mailed to the responsible party at the address provided by the responsible party.

Section 6-Appeals of township supervisor's decision to township board.

(a) The decision of the supervisor or designee to reduce, increase, or leave unchanged a determination of assessable costs may be appealed to the township board if the responsible party has fully complied with Section 5, above and files a written request for township board review with the township clerk not later than fourteen (14) calendar days after the date of the written notification of the decision sought to be appealed.

(b) Upon receipt of a request for township board review, the township clerk will place the appeal on the agenda of a regularly scheduled township board meeting which is at least fourteen (14) calendar days after the date the responsible party's request for township board review is received.

(c) On appeal of a determination of assessable costs to the township board the responsible party shall appear before the board in person or through a designated representative; limit objections only to those set forth in the written request as required by Section 5; and have the burden of proving, by

a preponderance of relevant facts, that the determination appealed from is erroneous in whole or in part.

(d) On appeal of a determination of assessable costs, the township board shall, within a reasonable time. Reverse, affirm, or modify the determination appealed from. The decision of the township board shall be final when made.

(e) The township clerk shall notify the responsible party of the township board's decision on appeal. The date of notification does not constitute the date of decision.

Section 7-Severability.

(a) If any section, subsection, clause, paragraph, or provision of this Chapter shall be adjudged invalid by a Court of competent jurisdiction, such adjudication shall only apply to the portion adjudicated invalid, and the remainder of this Chapter shall remain in full force and effect.

Section 8-Savings clause.

All proceedings pending and all rights and liabilities existing acquired, or incurred at the time this Article takes effect are hereby saved, and such proceedings may be continued and concluded under and according to the Ordinances in force at the time such proceedings are, or were, commenced. This Article shall not be construed to alter, affect, or abate any pending proceeding or prevent proceedings hereafter instituted under any ordinance in existence prior to the effective date of same. All proceedings instituted after the effective date of this Article for any liabilities arising before the effective date of this Article may be continued or instituted under and in accordance with the provisions of any ordinance in force at the time of the event giving rise to liability.

Section 9-Effective date.

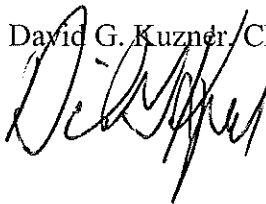
This ordinance shall become effective upon publication after final adoption.

ROLL CALL VOTE: Nagy, yes; Kuzner, yes; Byerly, yes; Kurtz, yes; Thompson, yes;
Morton, yes; Schmidt, yes.

CERTIFICATION

I, David G. Kuzner, Clerk of Tyrone Township, Livingston County, Michigan, do hereby swear this to be a true copy of the Emergency Response Cost Recovery Ordinance as adopted at a regular meeting of the Tyrone Township Board held on November 9, 2006, to which I add my signature and seal this 9th day of November, 2006.

David G. Kuzner, CMC



Date adopted: November 9, 2006
Publication date: November 18, 2006
Effective date: November 18, 2006