

Onota Township

Cost Recovery Ordinance

THE TOWNSHIP OF ONOTA, COUNTY OF ALGER, STATE OF MICHIGAN, ORDAINS:

SECTION 1. **Purpose.**

Onota Township hereby finds that persons in and travelling through the township historically have needed, caused or contributed to the need for certain public safety and fire emergency services, which needs and situations have negatively affected the health, environment, and welfare of some Township residents 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 the 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 and hereinafter defined. Any word or term not defined herein shall be considered defined in accordance with its common or standard definition.

- A. Township - Onota Township, Alger 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; fringe benefits; administrative overhead; costs of equipment; costs 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 a third party independent contractor on behalf of the Township, service charges or interest, attorneys' fees, litigation costs, and any costs, charges, fines, or penalties to the Township imposed by any local, state, or federal government entities.
- C. Excessive Requests 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 six (6) times in the preceding six (6) 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 there was no actual need for emergency assistance shall be made by the most senior emergency service person which responds to a False Alarm.
- E. Hazardous Materials - Those elements, substances, wastes, or byproducts thereof, including, but not limited to, petroleum products, automotive anti-freeze, polychlorinated biphenyls, and asbestos, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (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. §§9601 et seq., the Federal Toxic Substances Control Act, as amended, 15 U.S.C. §§2601 et seq., the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 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 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"*).

- F. Motor Vehicle - Any self-propelled or towed vehicle designed for use on the public highways to transport passengers or property (*as defined in Section 90 of PA 300 of the 1949, as amended, MCL section 257.79*) which is required to be registered for use upon public streets and highways of this State (*PA 300 of 1949; MCL § 257.1 to 257.923, as amended*). For the purposes of this Ordinance, Motor Vehicle includes vehicles owned by the United States Government as well as any & all trailers or appurtenances to any Motor Vehicle.
- G. 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.
- H. Motor Vehicle Fire - Any instance in which a Motor Vehicle is destroyed by or suffers any damage as a result of a fire.
- I. 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.
- J. Responsible Party:
 - (1) *In relation to a 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, wholly 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 relation to Failure of a Utility Line, Responsible Party means:* Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government or any legal entity that is responsible, wholly or in part, for the maintenance or failure of the Utility Line and the heirs, estates, assigns or successors thereto;
 - (3) *In relation to a Motor Vehicle Accident or Motor Vehicle Fire, Responsible Party 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 or any legal entity that is responsible wholly 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, Responsible Party means:* Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government or any legal entity that is responsible, wholly 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 relation to a Water or Ice Rescue Attempt, Responsible Party means:* Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government or any legal entity that is responsible, wholly or in part, for the situation which necessitated the Water Rescue Attempt and the heirs, estates, assigns or successors thereto;

(6) *In relation to Excessive Requests for Emergency Assistance, Responsible Party means:* The individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government or any legal entity that is responsible, wholly 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 Requests for Emergency Assistance and the heirs, estates, assigns, or successors thereto; and

(7) *In relation to a False Alarm, Responsible Party means:* The individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government or any legal entity that is responsible, wholly or in part, for the False Alarm or for the real property, location, or commercial entity where emergency service personnel were summoned to upon the False Alarm and the heirs, estates, assigns or successors thereto.

K. Structure - Anything constructed or erected which has a permanent location on the ground or is attached to something having such location.

L. 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 and/or any of its components, communication or electronic signals (*including, but not limited to, telephone, computer, cable television, stereo signals or other electronic impulses*), or water/sewage.

M. Water/Ice Rescue Attempt - Any emergency response by Township Personnel 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 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 Costs.**

A. All Assessable Costs (which include any liabilities resulting therefrom) associated with any of the actions, services, and/or events described in subsections (1) through (7). These Assessable Costs incurred by the Township may be jointly and severally assessed to any or all Responsible Parties.

(1) Hazardous Materials Release – actions to halt, abate, remediate or otherwise remedy;

(2) Fire in or at a structure resulting in extraordinary costs to extinguish or fight;

(3) Utility Line failure;

(4) Water/Ice Rescue Attempt;

(5) Accident and/or Fire involving a Motor Vehicle resulting in extraordinary costs;

(6) Excessive Requests for Emergency Assistance; and

(7) False Alarm.

- 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 Supervisor (or the Supervisor's designee) shall certify to the Township Board the total Assessable Costs incurred by the Township. The Township Board shall then decide whether to assess any, all, or part of the costs against any of the Responsible Parties. In deciding whether to assess any, all, or part of the costs against any of the Responsible Parties, the Township shall consider the following factors:
 - (1) Total costs incurred by the Township (including, but not limited to, materials, equipment, manpower, administration, assistance from other sources, etc.);
 - (2) Risks to the Township, its residents, their property, or any other people or property which caused the Township to incur Assessable Costs;
 - (3) Injuries or damage to people or property resulting from a situation which caused the Township to incur Assessable Costs;
 - (4) Evacuation - Whether the situation which caused the Township to incur Assessable Costs necessitated an evacuation;
 - (5) Environmental damage - Whether the situation which caused the Township to incur Assessable Costs resulted in any damage to the environment;
 - (6) Any other factors deemed relevant by the Township Board.
- D. After consideration of the six factors listed in subsection C above, the Township Board may allocate the costs among and between the Responsible Parties. Any costs not allocated among or between Responsible Parties shall be a joint and several liability of each Responsible Party assessed costs pursuant to Section C - regardless of (1) whether that Responsible Party has any other legal liability therefore apart from this Ordinance, and (2) whether such person is at fault.
- E. The Township Board shall direct the Township Clerk to send a statement of costs 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 costs assessed pursuant to this Ordinance to the insurer of any Responsible Party. The submission of an invoice for the assessed costs to an insurer does not in any way limit or extinguish the liability of a Responsible Party for the costs assessed pursuant to this Ordinance until such time as the assessed costs are paid in full.
- G. If the Township Board decides not to assess all or part of its costs against any Responsible Party, such decision shall not, in any way, extinguish or limit a Responsible Person's liability to other parties for any costs or damages, of any kind, arising from the Release.

SECTION 4. Notice and Right to Appear Provisions.

- A. Any Responsible Party who receives a statement of the 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 costs assessed pursuant to this Ordinance should be modified. Any reason, basis or argument for a modification of the assessed 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 assessed 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 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 that 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 a final determination regarding the costs assessed to the Responsible Party. The Township Board shall pass a resolution detailing its final determination regarding the assessed costs. 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 from the date of the resolution. If the Responsible Party fails to pay the assessed costs within thirty (30) days of the date of the resolution, the Township shall have available to it all remedies available under Section 5 below.

SECTION 5. Failure to Pay; Procedure to Recover. The Township may pursue any Responsible Party under either section A or B below, or both, without limitation as allowed by law.

- A. All costs assessed pursuant to this Ordinance shall be paid within 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 costs 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 costs, plus a late payment penalty of one percent (1%) per month or part of a month during which the costs remains unpaid, together with its attorneys' fees and any other costs 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 unpaid within thirty (30) days after the same is due, the 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 6. 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 convenience only and shall not be considered a part of this Ordinance.

SECTION 7. 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 8. Repeal. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any provision of this Ordinance, are, to the extent of such conflict, hereby repealed.

SECTION 9. Effective Date. This Ordinance was approved and adopted by the Onota Township Board on April 7, 2014. This Ordinance shall be effective thirty (30) days after publication of a Notice of Adoption in the Munising News *(as required by PA 359 of 1947, as amended)*.

The above Ordinance was offered for adoption by Sarah Redmond and was seconded by Susan Kerst, the vote being as follows:

YEAS: Terry Pihlainen, Sarah Redmond, Brian NAYS: *none* ABSENT/ABSTAIN: *none*
Bresette, Stephanie Bromley, Susan Kerst

I hereby declare that the above is a true copy of an ordinance adopted by the Onota Township Board at a regular meeting held on April 7, 2014, pursuant to the required statutory procedures.

Stephanie Bromley
Onota Township Clerk