

ORDINANCE NO., 77

COST RECOVERY ORDINANCE

AN ORDINANCE ADOPTED PURSUANT TO MICHIGAN PUBLIC ACT 33 OF 1951, AS AMENDED (MCL 41.801 ET SEQ) AND OTHER APPLICABLE PROVISIONS OF THE MICHIGAN STATUTES TO ALLOW NAPOLEON TOWNSHIP TO RECOVER COSTS INCURRED BY THE TOWNSHIP IN CONNECTION WITH THE PROVISION OF CERTAIN POLICE AND FIRE EMERGENCY SERVICES, AND TO PROVIDE FOR THE ENFORCEMENT OF THIS ORDINANCE AND CERTAIN ADMINISTRATIVE PROVISIONS.

THE TOWNSHIP OF NAPOLEON, COUNTY OF JACKSON, AND STATE OF MICHIGAN ORDAINS:

Section 1, **Purpose**: Napoleon Township hereby finds that persons in and traveling 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 provisions 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 defined. Any word or term not so defined shall be considered to be defined in accordance with its common or standard definition.

- (a) Township: Napoleon Township, Jackson County, Michigan.
- (b) Assessable Costs: The costs incurred by the Township, including but not limited to, the actual labor, equipment and material costs to the Township, 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 governmental entities. The actual labor, equipment and material costs to the Township include 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 labor and material costs. Napoleon Township labor and equipment costs shall be as established by Resolution of the Napoleon Township Board of Trustees and may be adjusted from time to time by Resolution.
- (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 five times in the preceding 30 calendar days.

(d) False Alarm: Any device, automated or manual, that is designed to requestor 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 highest ranking emergency service person who responds to a False Alarm.

(e) Hazardous Materials: Those elements, substances, wastes, or their byproducts, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA"); or which are contained in 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. Specifically included without limitation as Federal and State laws, rules and regulations are Act No. 307 of the Public Acts of 1982, as amended, MCL 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"). Hazardous Materials specifically include without limitation petroleum products, automotive anti-freeze, polychlorinated biphenyls and asbestos.

(f) 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 MCL 257.79, 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 MCL 257.1 to MCL 257.923. For the purposes 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.

(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 connection with 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, in whole or in part, for a Release of Hazardous Materials, either actual or threatened; or that is an owner, tenant, occupant, or party in control of property, real or personal, onto which or from which there is a Release of Hazardous Materials; and the heirs, estates, assigns or successors to any such entity.

(2) In connection with a 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 successors to any such entity.

(3) In connection with 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; 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, estates, assigns or successor to any such owner, operator or entity.

(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, for the real property on which the fire occurred, or for the object which was damaged or destroyed by the fire and the heirs, estates, assigns or successor to any such entity.

(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 to any such entity.

(6) In connection with Excessive Requests for Emergency assistance, Responsible Party 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 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 to any such entity.

(7) In connection with a False Alarm, Responsible Party 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 successor to any such entity.

(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 water, sewage, electricity, liquid hydrocarbons, natural gas, or communication or electronic signals (including but not limited to telephone, computer, cable television and stereo signals or electronic impulses).

(m) Water 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. For purposes of this definition, "body of water" includes without limitation rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors of water, including a Wetland, as defined by the Michigan Goemaere-Anderson Wetland Protection Act, as amended, and including an Inland Lake or Stream as defined in the Michigan Inland Lakes and Streams Act, as amended.

Section 3, Assessment of Costs:

(a) All Assessable Costs associated with any of the actions or services described in subsections (1) through (7) below may be jointly and severally assessed to any or all Responsible Parties:

- (1) Assessable Costs incurred to halt, abate, remediate or remedy any Release of any Hazardous Materials and any liabilities resulting therefrom;
- (2) Assessable Costs incurred to extinguish or fight a fire at any nonresidential Structure, any demolition costs if the nonresidential Structure must be demolished to protect the public safety following the fire, and any liabilities resulting therefrom;
- (3) Assessable Costs incurred in connection with a Utility Line failure and any liabilities resulting therefrom;
- (4) Assessable Costs incurred in connection with any Water Rescue Attempt and any liabilities resulting therefrom;
- (5) Assessable Costs associated with a Motor Vehicle Accident or Motor Vehicle Fire and any liabilities resulting therefrom;
- (6) Assessable Costs associated with Excessive Requests for Emergency Assistance and any liabilities resulting therefrom; and
- (7) Assessable Costs associated with a False Alarm and any liabilities resulting therefrom.

(b) Any Assessable Costs 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 his/her designee shall certify to the Township Supervisor or his/her designee the total Assessable Costs incurred by the Township. The Township Supervisor or his/her designee 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 Supervisor or his/her designee shall consider the following factors:

- (1) The total costs 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 result from the situation which caused the Township to incur Assessable Costs;
- (3) Any injuries or damage to people or property which resulted from a 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 any damage to the environment; and
- (6) Any other factors deemed relevant by the Township Supervisor.

(d) The Township Supervisor or his/her designee may, after consideration of the factors listed in subsection 3(c) above, 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 3(c), regardless of whether that Responsible Party has any other legal liability apart from this Ordinance, and regardless of whether such person is at fault.

(e) The Township Supervisor or his/her designee shall direct the Police Chief and Fire Chief to send reporting(s) to either the Township Clerk or a third party as designated by a Township Board Resolution. The Township Clerk or third party will be responsible for disbursement of claims pursuant to this Ordinance to all Responsible Parties so assessed. A claim statement shall be dated and sent First Class United States 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 Supervisor or his/her designee or 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 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 with the Township Clerk within 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 is at least 14 calendar days after the date on which the Responsible Party files with the Township Clerk a 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 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, which payment must be made within 30 days of the date of the statement sent to the Responsible Party.

(b) At the Township Board meeting, the Responsible Party shall have the opportunity to address the Township Board regarding the written request that the Township Board modify the assessed costs. The Responsible Party shall be limited, in addressing 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. The Township Clerk shall then send a statement of assessed costs to the Responsible Party, by first class United States Mail, with postage prepaid, to the last known address of the Responsible Party. The assessed costs shall be due and payable 30 days from the date of that statement. If the Responsible Party fails to pay the assessed costs within those 30 days, the Township shall have available to it all remedies available under Section 5 below.

Section 5, **Failure to Pay; Procedure to Recover**: To the extent allowed by applicable law, the Township may pursue any Responsible Party under either or both subsection (a) or subsection (b) below.

(a) Any Responsible Party who fails to timely pay the costs assessed pursuant to this Ordinance 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 per month or part of a month during which the costs remain unpaid, together with attorneys' fees and any other costs allowed by law.

Section 6, **Severability and Captions**: This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are 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. 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 be personally liable for any damage that may accrue to any person as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this Ordinance.

Section 8, **Repeal**: All resolutions or ordinances in conflict in whole or in part with any provision of this Ordinance.

Section 9, **Effective Date**: This Ordinance was approved and adopted by the Township Board of Napoleon Township on August 10, 2010. This Ordinance shall be effective 30 days after publication in the Brooklyn Exponent, a newspaper with general circulation in the Township, pursuant to the provisions of Act No. 191 of the Michigan Public Acts of 1939, as amended.

Denise Butler
Township Supervisor

Dan Wymer
Township Clerk

CERTIFICATE

I, Dan Wymer, the Clerk for the Township of Napoleon, Jackson County, Michigan, do hereby certify that the foregoing Cost Recovery Ordinance was adopted at a regular meeting of the Township

Board held on August 10, 2010. The following members of the Township Board were present at the meeting: Butler, Wymer and Stetler. The following members of the Township Board were absent: none. The Ordinance was adopted by the Township Board with members of the Board: Butler, Wymer and Stetler voting in favor and no members of the Board voting in opposition. The Ordinance was published in the Brooklyn Exponent on August 10, 2010.

Dan Wymer, Township Clerk