

**PORTLAND TOWNSHIP**

**PUBLIC SAFETY AND FIRE EMERGENCY RESPONSE  
COST RECOVERY ORDINANCE**

**ORDINANCE NO.100-9-11  
DATE ADOPTED 9-14-2011**

**PORTLAND TOWNSHIP, IONIA COUNTY, MICHIGAN ORDAINS:**

**SECTION 1:**

The Portland Township Code of Ordinances, Part 6, is hereby amended by adding Article 5, Portland Township Public Safety and Fire Emergency Response Cost Recovery Ordinance, which shall read as follows:

**Article 5: Public Safety and Fire Emergency Response Cost Recovery Ordinance**

**Section 6.5.01: Definitions**

**Assessable Costs** means those costs for service incurred by the Township in conjunction with response to a Public Safety or Fire Emergency incident, (including, but not limited to, the actual labor and material costs of the Township (including without limitation, employee wages, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal and costs of contracted labor) whether or not the services are provided by the Township or by a third party on behalf of the Township, service charges and interest; attorneys' fees, litigation costs and any costs, charges, fines or penalties to the Township imposed by any court or state or federal government entities.

**Bomb Threats** means the verbal or written threat of a bomb or other explosive device which if discharged as threatened, would violate a federal, state, or local law.

**Excessive Requests for Emergency Assistance** means any request for emergency assistance made to a particular location or premises if such location or premises has requested assistance more than five (5) times in the preceding thirty (30) days.

**False Alarm** means any automated or manual devices designated to request or summon emergency assistance whether such 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 incident commander responding

to a request or summon for emergency assistance. Provided, however, a false alarm shall not be deemed to have occurred if (i) it is caused by an act of God, i.e., a lightning storm, or (ii) it originates from a motor vehicle or building alarm system and (iii) it has not occurred more frequently than three (3) times in a calendar month or four (4) months in a calendar year.

**Hazardous Materials** means those elements, substances, wastes or by-products, including, but not limited to, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, which are or are potentially harmful to the environment or human or animal or property, or to the ecological balance of the environment as determined by the Portland fire chief (herein after fire chief) or the incident commander.

**Hazardous Material Incident or Emergency** means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.

**Illegal Fire** means, subject to the Township Burning Ordinance, a fire set or determined to have been set in violation of a federal, state, or local law and shall include an arson fire and a fire set in violation of a "no burning" ban or order. An illegal fire does not include an unintentional fire or fire caused by an act of God, i.e., a lightning storm.

**Motor Vehicle** means any self-propelled or towed vehicle designed or used on the public street, roads and highways to transport passengers or property which is required to be registered for use upon such public streets, roads and highways. For the purpose hereof, all trailers or appurtenances attached to any motor vehicle are considered a motor vehicle under this definition.

**Public Safety or Fire Emergency Incident** means such things as (i) excessive requests for emergency assistance, (ii) a false alarm, (iii) a hazardous material incident or emergency, (iv) an illegal fire, (v) bomb threats, (vi) threats of harm to oneself or others, (vii) demolition, (viii) a utility line failure or (ix) any other incident as deemed by the fire chief or incident commander.

**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.

**Responsible Party** means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible for a public safety or fire emergency incident or any owner, tenant, occupant, or

party in control of real and personal property from which, onto which or related to which there is a Public Safety or Fire Emergency Incident. Responsible Party shall include the heirs, estates, successors, and assigns or the entities named herein.

**Structure Demolition** means the tearing down of a structure damaged by fire, which must in the opinion of the fire chief or his or her designee be promptly demolished following the fire to protect public safety.

**Threats of Harm to Oneself or Others** means the verbal or written threat of physical harm to oneself or another's property, which if carried out, would be in violation of federal, state, or local law.

**Utility Line Failure** means the disabling of any transmission, distribution, or service line, cable, conduit, pipeline, wire or the like used to provide, collect, or transport electricity, natural gas, communication or electronic signals (including , but not limited to, telephone, computer, cable television, and stereo signals or electronic impulses), water or sanitary or storm sewage if the owner or party responsible for the maintenance of such utility does not respond within one (1) hour to a request to repair or correct such failure.

**Weapons of Mass Destruction** utilize biological agents, nuclear-radiological devices, incendiary devices, chemical agents and explosives to attempt or accomplish mass destruction through an attack or occurrence using a weapon of mass destruction device.

#### **Section 6.5.02: Cost Recovery Authorization and Procedure**

- (a) The Township may recover all Assessable Costs in connection with a Public Safety or Fire Emergency Incident from any or all responsible Parties jointly or severally.
- (b) The Fire Chief, Township Official or their designee (hereafter Public Safety Official) shall determine the total Assessable Costs (in amounts as established by resolution of the Township Board) and shall in consultation with other personnel involved in responding to a Public Safety or Fire Emergency Incident determine whether to assess any, all or part of such costs against any of the Responsible Parties. In making such determination, the following may be considered.
  - (1) The total Assessable Costs.
  - (2) The risk the Public Safety or Fire Emergency Incident imposed on the Township, its residents and their property.
  - (3) Whether there was any injury or damage to person or property.

- (4) Whether the Public Safety or Fire Emergency Incident required an unusual or extraordinary use of Township personnel and equipment.
  - (5) Whether there was any damage to the environment.
- (c) After consideration of the factors stated above, the Public Safety Official may allocate Assessable Costs among and between Responsible Parties, including allocating all or some of such costs jointly and severally against more than one Responsible Party regardless of whether a Responsible Party has other legal liability therefore, or is legally at fault.
- (d) If the Public Safety Official determines not to assess all or part of Assessable Costs against a Responsible Party, such determination shall not in any way limit or extinguish the liability of the Responsible Party to the Township.

**Section 6.5.03: Billing and Collection of Assessable Costs**

After determining Assessable Costs against a Responsible Party, the Township or its designee shall mail an itemized invoice to the Responsible Party at its last known address. Such invoice shall be due and payable within thirty (30) days of the date of mailing and any amounts unpaid after such due date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof that the amount due and any previously imposed late payment fee remains unpaid. If a Responsible Party shall appeal Assessable Costs pursuant to Section 6.5.04 hereof, such costs, if upheld, in whole or part or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall apply thereafter.

**Section 6.5.04: Procedure for Appealing Assessable Costs**

Any Responsible Party who receives an invoice for Assessable Costs shall have an opportunity to appeal to the Township Board to request a modification of Assessable Costs pursuant to the following procedure:

- (a) A Responsible Party who desires to appear before the Township Board shall file a written request to appear before the Township Board with the Township Clerk within seven (7) calendar days of the date of the invoice assessing the Assessable Costs. Upon receipt of such request, the Township Clerk shall place the claim of the Responsible Party on the agenda of the next regularly scheduled Township Board Meeting, which meeting is at least fourteen (14) calendar days after the date on which the Responsible Party files the request to appear. Any filed requests to appear shall specifically identify and explain all reasons why the Responsible Party believes the Assessable Costs shall be modified. Any reason, basis or argument for modification of Assessable Costs not set forth in the request to appear shall be

deemed waived by the Responsible Party. After a Responsible Party has been given an opportunity to appear before it, the Township Board shall promptly determine whether to confirm, modify, or void the payment of Assessable Costs involved.

- (b) Failure to timely file a written request to appear before the Township Board shall constitute a waiver of the Responsible Party's right to appeal and shall further constitute the Responsible Party's agreement to pay the Assessable Costs invoiced or as may have been modified, together with any late payment fee.

**Section 6.5.05: Assessable Costs a Lien Upon Property**

Assessable Costs assessed against a Responsible Party not paid when due, including late payment fees, shall constitute a lien upon the real property of the Responsible Party in the Township, from which, upon which, or related to, which the Public Safety or Fire Emergency Incident occurred. Such lien shall be the same character and effect as the lien created by the Township for Township real property taxes, and shall include accrued interest and penalties. The Treasurer shall, prior to March 1 each year, certify to the Assessor the fact that such Assessable Costs are delinquent and unpaid. The Assessor shall then enter the delinquent amount on the next general ad valorem tax roll as a charge against the affected property, and the lien thereon shall be enforced in the same manner as provided and allowed by law for delinquent and unpaid real property taxes.

**Section 6.5.06: Other Remedies**

In addition to the remedy set forth in Section 6.5.05 above, the Township shall be entitled to pursue any other remedy or may institute any appropriate action or proceeding in a court of competent jurisdiction as permitted by law to collect Assessable Costs from a Responsible Party.

**Section 6.5.07: No Limitation of Liability**

The recovery of Assessable Costs pursuant hereto does not limit the liability of a Responsible Party under applicable local, state or federal law.

**SECTION 2:**

Severability: Should any provision or part of this article be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision or part, which shall remain in full force and effect.

**SECTION 3:**

Effective Date: This ordinance shall be published within 30 days after the date of its final passage and adoption and will take effect 30 days after publication.

ADOPTED:

YEAS: 3

NAYS: 1

STATE OF MICHIGAN            )  
  )  
COUNTY OF IONIA            )

I, the undersigned, the duly qualified and acting Township Clerk of Portland Township, Ionia County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a regular meeting held on the 14<sup>th</sup> day of September, 2011.

Charlene Keilen, Portland Township Clerk