

TALLMADGE CHARTER TOWNSHIP

COST RECOVERY ORDINANCE

ORDINANCE NO. _____

THIS ORDINANCE ESTABLISHES COST RECOVERY PROVISIONS FOR THE TOWNSHIP, INCLUDING THE ASSESSMENT OF COSTS AND THE COLLECTION OF THOSE COSTS.

THE CHARTER TOWNSHIP OF TALLMADGE, COUNTY OF OTTAWA, AND STATE OF MICHIGAN ORDAINS:

Section 1. Purpose. Tallmadge Charter Township finds that persons in and traveling through the Township historically have needed, or have caused or contributed to the need for, certain public safety and fire emergency services. The need for these services have at times negatively affected the health, environment, and welfare of Township residents and real and personal property. 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 findings, the Township has adopted this Ordinance to allow the Township to recover costs it incurs in connection with 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 are defined as follows. Any word or term not defined below shall be considered to be defined in accordance with its common or standard definition.

- (A) **Township:** Tallmadge Charter Township, Ottawa County, Michigan.
- (B) **Assessable Costs:** The costs incurred by the Township providing Emergency Assistance response to Excessive Requests for Emergency Services, False Alarms, Fire Department Services, 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, 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 third party independent contractors on behalf of the Township). Assessable Costs also include service charges or interest, attorneys' fees, litigation costs, and any costs, charges, fines, or penalties imposed by any local, state, or federal governmental entities to the Township. Assessable Costs shall be established by Township Board resolution.
- (C) **Emergency Assistance:** Medical assistance, public safety response, law enforcement services, or Fire Department Services provided to a location in the Township on an emergency basis.
- (D) **Excessive Request for Emergency Assistance:** Any request for Emergency Assistance made for a specific street address in the Township if that street address has had Emergency Assistance of any type requested for it more than five times in the preceding 12 months.
- (E) **False Alarm:** Any device, automated or manual, that is designed to request or summon Emergency Assistance, which is activated, intentionally or otherwise, in the absence of an actual need for Emergency Assistance. The determination of a False Alarm shall be made by most senior emergency service person which responds to the request for Emergency Assistance.

- (F) Fire Department Services: Responding to the scene of a fire, Hazardous Materials spill, Motor Vehicle Accident or Fire, medical emergency, or Water Rescue Attempt, whether or not a False Alarm, and including investigation of any of the above.
- (G) 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 Section 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 Sections 257.1 to 257.923. For the purpose of this Ordinance, Motor Vehicle includes those Motor Vehicles owned by the government of the United States and any and all trailers or appurtenances to any Motor Vehicle.
- (H) Motor Vehicle Fire: Any instance in which a Motor Vehicle is destroyed by or suffers any damage as a result of fire.
- (I) Person: Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity, including any heirs, estates, assigns, or successors of any of the above.
- (J) Responsible Party:
- (1) In connection with the failure of a Utility Line, Responsible Party means: any Person responsible, in whole or in part, for the maintenance or failure of the Utility Line.
 - (2) In connection with a Motor Vehicle Fire, Responsible Party means the registered owner of the Motor Vehicle, the operator of the Motor Vehicle at the time of the Motor Vehicle Fire, and any Person responsible, in whole or in part, for the Motor Vehicle Fire.
 - (3) In connection with a fire, Responsible Party means: any Person responsible, in whole or in part, for the fire or the real property on which the fire occurred or the personal property that was damaged or destroyed by the fire.
 - (4) In connection with a Water Rescue Attempt, Responsible Party means: any Person responsible, in whole or in part, for the situation which necessitated the water rescue attempt, and any heirs, estates, assigns, or successors of the Person.
 - (5) In connection with Excessive Request for Emergency Assistance, Responsible Party means: any Person responsible, in whole or in part, for the Excessive Requests for Emergency Assistance or for the street address to which Emergency Assistance is summoned pursuant to the Excessive Request for Emergency Assistance.
 - (6) In connection with a False Alarm, Responsible Party means: any Person responsible, in whole or in part, for the False Alarm or for the street address to which Emergency Assistance is summoned pursuant to the False Alarm.
- (K) Structure: Anything constructed or erected which has a permanent location on the ground or is attached to something having a permanent 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, communication, water, sewage, or electronic signals (including, but not limited to, telephone, computer, cable television, stereo signals, or electronic impulses).

(M) Water Rescue Attempt: Any emergency response by Township personnel in connection with any emergency, or perceived emergency, on or 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 wetlands and an inland lake or stream as these terms are defined in the Michigan Natural Resources and Environmental Protection Act, Michigan Act 451 of 1994, as amended.

Section 3. Assessment of Cost.

- (A) All Assessable Costs may be jointly and severally assessed to any or all Responsible Parties. Assessable Costs include all of the following, as applicable:
- (1) Extraordinary cost (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 from those actions;
 - (2) Any Fire Department response to a fire started by a property owner or other Person, such as a controlled burn or open burning, which becomes uncontrolled, and any liabilities resulting from those actions;
 - (3) Any Fire Department response to any open burning for which the Fire Department has been called to assist by the property owner or other Person starting or attending it, whether or not the fire becomes uncontrolled, after two warnings with no permit issued, and any liabilities resulting from the response;
 - (4) Costs incurred in connection with a Utility Line Failure and any liabilities resulting therefrom;
 - (5) Cost incurred in connection with any water rescue attempt and any liabilities resulting from the attempt;
 - (6) Extraordinary costs (foam, fire extinguishers, etc.) associated with a Motor Vehicle Fire and any liabilities resulting from the incident;
 - (7) Costs associated with the Excessive Requests for Emergency Assistance and any liabilities resulting from those requests; and
 - (8) Costs associated with False Alarms and any liabilities resulting from the alarms.
- (B) Any 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 or the Fire Chief the total Assessable Costs incurred by the Township. The Township Supervisor or Fire Chief shall then decide whether to assess any, all, or part of the costs against any of the Responsible Parties. The Township Supervisor or 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 Persons or property which resulted from the situation which caused the Township to incur Assessable Costs;
 - (3) Any injuries or damage to Persons 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 also necessitated an evacuation;
- (5) Whether the situation which caused the Township to incur Assessable Costs resulted in damage to the environment; and
- (6) Any other factors deemed relevant by the Township Supervisor or Fire Chief.
- (D) The Township Supervisor or Fire Chief may, after consideration of the factors listed above, allocate the Assessable Costs among and between the Responsible Parties. Any cost not allocated among or between Responsible Parties shall be a joint and several liability of each Responsible Party regardless of whether that Responsible Party has any other legal liability apart from this Ordinance, and regardless of whether such Responsible Party is at fault.
- (E) The Township Supervisor or Fire Chief shall direct the Township Clerk to send a statement of Assessable 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 so assessed.
- (F) The Township may charge any Assessable Costs 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 way limit or extinguish the liability of a Responsible Party for the cost 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 Assessable Costs against a Responsible Party, that decision shall not in any way extinguish or limit a Responsible Party's liability to other Persons for any cost or damages, of any kind, arising from the incident.

Section 4. Exemption. No charges shall be made against the Township in connection with this Ordinance. If an incident 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 5. 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 14 calendar days of the date the statement of assessed costs was mailed to the Responsible Party. The Responsible Party will be placed on the agenda of the next regularly scheduled or special Township Board meeting, which meeting is at least 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 cost assessed pursuant to this Ordinance should be modified. Any reason, basis, or argument for the modification of the assessed cost 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 the statement of assessed costs was mailed to the Responsible Party shall constitute a

waiver of Responsible Party's right to appear before the Township Board. The Responsible Party shall then be liable to pay the assessed costs.

- (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 the Responsible Party's written request to appear. The Township Supervisor or Fire Chief 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 or Fire Chief, shall review the assessed costs and make the final determination regarding the costs assessed to the Responsible Party. The Township Board, minus the Township Supervisor if involved in initially determining the assessed costs, shall pass a resolution detailing its final determination regarding the assessed cost. Upon passage of the resolution of the Township Board, there shall be no further modification of the assessed costs by the Township. The Township shall have available to it all remedies available under this Ordinance to collect the assessed costs.

Section 6. 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. All costs assessed pursuant to this Ordinance shall be paid in full 30 calendar days after the statement or the resolution of the Township Board was mailed to the Responsible Party, unless otherwise approved in writing by the Township Supervisor or an authorized representative of the Township Supervisor.

- (A) Any Responsible Party who fails to timely pay the cost 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 costs remains unpaid, together with attorneys' fees and any other cost allowed by law.
- (B) In cases where services leading to Assessable Costs have been rendered to real property within the Township, the costs assessed by the Township shall constitute a lien on that real property. If the assessed costs are not timely paid per this Ordinance, 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 tax assessing officer shall enter the delinquent amount on the next general tax roll as a charge against the real property, and the delinquent amount shall be enforced and collected in the same manner as allowed by law for real property taxes.

Section 7. 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 8. Administrative Liability. No Township 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 9. Repeal. All resolutions or ordinances in conflict in whole or in part with any provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 10. Effective Date. This Ordinance was approved and adopted by the Township Board of Tallmadge Charter Township on _____, after introduction and first reading on _____, and after publication and posting following such first reading as required by Michigan Act 359 of 1947, as amended. This Ordinance shall be effective 30 days after publication of a Notice of Adoption and Posting in the Ottawa Advance.

James Van Ess, Township Supervisor

Lenore Cook, Township Clerk

CERTIFICATE

I, Lenore Cook, Clerk for the Charter Township of Tallmadge, Ottawa County, Michigan, certify that the foregoing Tallmadge Charter Township Cost Recovery Ordinance No. _____ was adopted at a regular meeting of the Township Board held on _____, 2019. The following members of the Township Board were present at that meeting: _____
_____. The following members of the Township Board were absent: _____. The Ordinance was adopted by the Township Board with members of the Board: _____
_____ voting in favor and members of the Board: _____ voting in opposition. A Notice of Adoption of the Ordinance was published in the Ottawa Advance on _____, 2019.

Lenore Cook, Township Clerk