

TOWNSHIP OF OLIVE
COST RECOVERY ORDINANCE

ORDINANCE NO. 14

AN ORDINANCE TO PROVIDE FOR THE RECOVERY OF COSTS AND EXPENSES BY THE TOWNSHIP OF OLIVE RESULTING FROM THE UTILIZATION OF THE DEWITT AREA EMERGENCY SERVICES AUTHORITY AND OTHER AGENCIES IN CERTAIN EVENTS.

THE TOWNSHIP OF OLIVE ORDAINS:

Recovery of Costs and Expenses

Sec. 1. Definitions.

Assessable Costs – means those costs and expenses for services incurred by the Township in connection with a response by the DeWitt Area Emergency Services Authority and other agencies to an emergency incident or other covered event. Costs shall be determined using actual costs identified on itemized statements furnished the Township by the Authority.

Authority – means the DeWitt Area Emergency Services Authority, created by a Joint Emergency Services Agreement, pursuant to Act 7 of the Public Acts of Michigan of 1967, Ex. Sess., as amended (MCL 124.501, et seq.).

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

Drug or Alcohol Case – A case where abuse of drugs or alcohol is determined to have contributed to the cause of an emergency response on behalf of the Township of Olive by the DeWitt Area Emergency Services Authority or another agency.

Emergency Assistance – means fire protection of real and personal property and emergency medical support services, including responses to events involving motor vehicles.

Excessive Requests for Emergency Assistance – means any request for emergency assistance made to a particular location if requests for emergency assistance at that location have occurred more than four (4) times in the preceding sixty (60) days.

False Alarm – means any automated or manual device or communication designed to request or summon emergency assistance whether such device or communication is activated intentionally or otherwise, in the absence of an actual need for emergency assistance. What constitutes a “false alarm” instead of an actual emergency shall be determined by the on-scene commander or supervisor at the event or incident which caused the response. A false alarm will

not be considered as an assessable cost under this ordinance until three (3) such occurrences have issued from the same source during the preceding six (6) month period.

Fire Chief – means the officer holding that title within the Authority.

Fire Run – means any response by the Authority or another agency to a dispatched request for service as related to a structure, premises, motor vehicle, trailer, or equipment.

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, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, which are, or are potentially, harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk to life, health, or safety of persons or property, or to the ecological balance of the environment as determined by the fire chief or 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 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 or lack of issued permit. An illegal fire does not include an unintentional fire or fire caused by an act of God, i.e., a lightning storm.

Mutual Aid Event – means assistance provided by the Authority to a requesting governmental entity outside of the territorial boundaries of the Township of Olive. A mutual aid event is limited to assistance provided to a requesting governmental entity that is a party to the Mutual Aid and Indemnity Agreement of which the Authority is a signatory.

Public Safety or Fire Emergency Incident – means such things as (i) excessive requests for emergency assistance, (ii) a drug or alcohol case, (iii) a hazardous material incident or emergency, (iv) an illegal fire, (v) bomb threats, (vi) threat of weapons of mass destruction, (vii) threats of harm to oneself or others, (viii) structure demolition, (ix) a utility line failure, (x) false alarms, or any other incidents as determined by the fire chief or incident commander.

Release – means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, dumping or disposing into the environment, including, but not limited to, the air, soil, groundwater, surface water, and drainage system.

Responsible Party – means any individual, business, firm, corporation, association, partnership, commercial entity, joint venture, or other legal entity causing a public safety incident, fire run or other covered incident or event. “Responsible Party” also means any owner, tenant, occupant, or party in control of real and/or personal property from which, onto which, or related to which there is a Public Safety or Fire Emergency incident or event. Furthermore, “Responsible Party” includes heirs, estates, successors in interest and assigns of the entities above described.

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

Township - means the Township of Olive, a municipal corporation in Clinton County, Michigan.

Threat of Harm to Oneself or Others - means the oral or written threat of physical harm to oneself, another person, or property which, if carried out, would be a 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, petroleum products, 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 line does not respond within one (hour) to a request to repair or correct such failure.

Weapons of Mass Destruction (WMD) - biological agents, nuclear-radiological devices, incendiary devices, chemical agents and explosives used to attempt or accomplish mass destruction through an attack or occurrence.

Sec. 2. Cost Recovery Procedure.

(a) The Fire Chief, or his/her designee, shall determine when a Public Safety or Fire Emergency Incident, or other event as described in the definitional section of this ordinance has occurred, giving rise to potential assessable costs charged against a responsible party. In making such a determination, the Fire Chief shall consult with the Township Supervisor or Township Clerk.

(b) If it is determined that a Public Safety or Fire Emergency Incident, or other event under this ordinance has occurred, and costs can be properly assessed, the Township shall initiate the procedure to bill the costs to all responsible parties. The costs shall be a debt obligation of a responsible party. If more than one responsible party is identified, the costs are to be considered a debt to the Township which is the joint and several responsibility of the identified parties.

(c) The assessed costs will be those determined by the Authority.

(d) An individual, or other legal entity, who is not at fault for the emission of hazardous material due to its cause by a third party, shall be entitled to defend on that basis against the liability for assessed costs.

(e) A responsible party may seek contribution from another liable person.

Sec. 3. Cost Recovery Under Mutual Aid Agreement Event.

(a) If the Authority responds to a mutual aid event as a "responding governmental entity" under the existing Mutual Aid and Indemnity Agreement, the records kept by the Authority shall determine all costs incurred associated with the response and apportioned to the Township.

(b) If it is determined that the Authority responded to an emergency event pursuant to the Mutual Aid and Indemnity Agreement of which the Requesting Governmental Entity seeks reimbursement for itself or for the Township, the Township shall provide the Requesting Governmental Entity an itemization of the Township's associated costs for that event. Reimbursement for costs incurred will be determined by the Requesting Governmental Entity, based on actual reimbursement and the Township's pro rata share of the amount recovered.

Sec. 4. Billing and Collection of Assessable Costs.

(a) After determining the assessable cost(s) against the responsible party or parties pursuant to Section 2, the Township Treasurer shall mail an itemized invoice to the responsible party(s) at the last known address. The amount invoiced shall be due and payable within sixty (60) days of the date of mailing. An appeal of the assessable costs taken by a responsible party shall toll the time for payment until such time as the appeal is heard and decided.

Sec. 5. Procedure for Appealing Assessable Costs.

(a) *Introduction* – A responsible party who receives an invoice for assessable costs under this Ordinance shall have an opportunity to appeal to the Township Supervisor or his/her designee to request vacation or modification of the costs.

(b) *Procedure for Appeals* - The person or entity appealing the assessed costs shall make the request in writing directed to the Township Supervisor. The request must be received by the Township Supervisor at his or her business address within 14 days of the date of the invoice. The Township Supervisor shall schedule a meeting with the appellant within 7 days of the date the request is received. If the Township Supervisor is unavailable during the time stated, the meeting shall occur at the next date convenient to both parties within 30 days of the invoice date.

(c) *Appeals to Township Board* – If the responsible party is not satisfied with the decision of the Township Supervisor the responsible party can request a review by the Township Board. The request must be made in writing and delivered to the Township Clerk no later than 7 days after the meeting with the Township Supervisor. The reasons for requesting a review must be stated in the request.

The Township Board shall schedule a hearing on the request for review at a regularly scheduled meeting to be held within the next 30 days. The Township Board will give the responsible party reasonable opportunity to indicate its reasons for objections to the assessed costs. The Township Supervisor will be given the opportunity to respond to the responsible party's argument. The Township Board will then render a final decision on the matter.

Sec. 6. Assessable Costs a Lien upon the Property

Assessable costs levied against a Responsible Party are for those services authorized by Section 6a. of Act No. 33 of Michigan Public Acts of 1951, (MCL 41.806a) and if not paid when due, shall constitute a lien upon the real property of the Responsible Party within the Township at which, or related to which, the Public Safety or Fire Emergency Incident occurred. The lien shall be the same character and effect as the lien created by the statute for real property taxes and shall include accrued interest and penalties. The Township Treasurer shall, prior to March 1 of each year, certify to the Township 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.

Sec. 7. No Limitation on Responsible Party Liability.

The billing and recovery of assessable costs against a responsible party does not limit the liability of the party under other applicable theories of recovery as authorized by local, state, or federal laws.

Sec. 8. Severability.

Should any provision or section of this Ordinance be held invalid by a court of competent jurisdiction, the holding shall not be construed as affecting the validity of any of the remaining provisions or sections.

Sec. 9. Effective Date.

This Ordinance takes effect December 23, 2003, which is 30 days after its publication in the Clinton County News.

TOWNSHIP OF OLIVE

BY:


EARL T. BARKS, SUPERVISOR

SEAL OF THE

TOWNSHIP OF OLIVE

BY:


GAIL A. WATKINS, CLERK