**CHARTER TOWNSHIP OF GENESEE, GENESEE COUNTY, MICHIGAN**

**ORDINANCE NO. 621**

AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE 493 WITH AN UPDATED AND COMPREHENSIVE COST RECOVERY ORDINANCE AND TO PROVIDE FOR THE ADMINISTRATION THEREOF

THE CHARTER TOWNSHIP OF GENESEE ORDAINS:

SECTION 1 - TITLE

The ordinance codified herein shall be known and may be cited as the Cost Recovery Ordinance.

# SECTION 2 - PURPOSE

Pursuant to authority granted by Michigan law, including but not limited to MCL 41.181 and MCL 41.806(a), this chapter is adopted for the purpose of providing reimbursement to the township for cost and expenses of certain emergency responses provided by the Charter Township of Genesee and to provide for the enforcement of this ordinance. Also, it is the intent of the Township to encourage mutual aid between fire/EMS departments during emergencies.

# SECTION 3 - DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning .

# ASSESSABLE COSTS.

* 1. Those costs incurred by the township and individuals operating at the request or direction of the township as a result of responding to a public safety, fire, or emergency incident or condition. These costs shall include reasonable charges for the use of the fire equipment and vehicles, fire fighting and containment materials used at the scene of the incident, the salaries and wages including fringe benefits of the township personnel responding to, investigating, and preparing reports concerning the incident and reasonably related costs. These costs shall also include charges for any disposable supplies and materials used during the incident, the rental or leasing of any special equipment, the replacement cost of any township supplies and equipment damaged, lost, or destroyed as a result of the incident, reimbursement for any special consulting, technical service, or laboratory cost, and any costs associated with the preparation for or actual evaluation of the area surrounding the incident. The expense of any emergency response shall also include any costs and fees incurred in collecting those charges, costs, and fees authorized by this chapter.
	2. The direct and reasonable costs incurred by the township or by a private person or corporation operating at the request or direction of the township in the course of emergency response to the incident, including the costs of providing police, firefighting, and emergency medical rescue services at the scene of the incident.

These costs further include all of the salaries and wages of township personnel responding to the incident, all salaries and wages of township personnel engaged in investigation, supervision, and report preparation, all costs connected with the administration and preparation of all chemical tests of the driver (including blood, breath or urine) and all costs related to any prosecution of the person causing the incident.

1. EMERGENCY RESPONSE. The providing, sending, or utilizing of fire fighting, emergency medical, rescue, or related services and personnel by the township, or by any other municipality, corporation, or individual operating at the request or direction of the township, to or at an incident which threatens the public health, safety, welfare, or property within the township.
2. FALSE ALARM. Any automated or manual devices designed to request or summon emergency assistance in which the 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 public safety person responding to a false alarm. Provided, however, a FALSE ALARM shall not be deemed to have occurred if:
	1. Caused by an act of God, e.g., a lightning storm; or
	2. It originates from a motor vehicle alarm system.
3. HAZARDOUS MATERIAL. Any material that poses an unreasonable risk to the health and safety of the public, animal life, environment, or emergency personnel if not property controlled during handling, storage, manufacture, processing, packaging, use, disposal, or transportation and shall include, but not be limited to, explosives, pyrotechnics, flammable gas, flammable compressed gas, nonflammable compressed gas, flammable liquid, combustible liquid, oxidizing material, poisonous gases, poisonous liquid, poisonous solid, irritating material, etiological material, radioactive material, corrosive material, or liquefied petroleum gas.
4. ILLEGAL FIRE. A fire set or determined to have been set in violation of a federal, state, or local law or township ordinance 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, e.g., lightning storm.
5. OWNER. The record titleholder or their purchaser by contract, or a person or corporation having vested or contingent interest in the premises, container, building, or vehicle in question.
6. 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.
7. RESIDENT.
	1. Any person having legal residency within the Charter Township of Genesee. Residency may be established by voter registration or similar public record maintained by the township or by the County of Genesee, State of Michigan, or any agency or department of the United States Federal Government.
	2. The term RESIDENT shall also include any individual, firm, partnership, or corporation owning real property within the Charter Township of Genesee subject to the ad valorem public safety millage.

# RESPONSIBLE PARTY.

* 1. A responsible party is any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or other legal entity that (1) receives Emergency Services or whose employee or agent receives Emergency Services; (2) is contractually required to indemnify a person or legal entity for charges related to Emergency Services, such as an insurance company; (3) any owner, tenant occupant or party in control of real and personal property from which, onto which, or related to which there is an Emergency Response provided and their heirs, estates, successors and assigns and (4) any owner, tenant occupant or party in control of real and personal property that benefits from Emergency Services and their heirs, estates, successors and assigns.
	2. In circumstances where the Department provides emergency medical care and/or transport, the direct recipient of the services will constitute the responsible party. In the case of emergency medical care and/or transport being provided to a minor, the responsibility party shall be the parents or guardian of the minor. As used above, a responsible party shall be deemed to "receive" Emergency Services even when those Emergency Services are not directly rendered to the responsible party but are rendered in relation to the responsible party. An example would be the rendering of Emergency Services in relation to a hazardous materials incident.

# SECTION 4 - LIABILITY FOR EXPENSES OF AN EMERGENCY RESPONSE.

1. Unless specifically exempted from liability, the property owner, occupant, or operator of real or personal property are all individually liable to the township for the expense of an emergency response. The property owner remains liable for reimbursing the township for any cost incurred in response to an incident involving his/her/its property even though the owner has, by agreement, imposed on an occupant or operator the duty to guard against, insure against, or indemnify the property owner from any of the charges, costs, or fees encompassed by this chapter.
2. When a particular response by the Fire Department directly benefits more than one person or property, the owner of each property so benefitted, and each person so benefitted where property protection is not involved shall be jointly and severally liable for the payment of the full fee for such service hereinbefore outlined. The apportionment of costs among and between recipients of emergency services, interpretation, and application of this subsection is hereby delegated to the Township Fire Chief and/or Township Supervisor in consultation therewith, subject only to the appeal procedures set forth in SECTION 8.
3. The Township may recover all assessable costs in connection with Emergency Services rendered by Township from any or all responsible parties jointly or severally .
4. If a determination is made not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or alter any liability a responsible party may have to other responsible parties.
5. The Township Supervisor, designee, or authorized agent acting on behalf of the Township, such as a third-party billing agency, shall determine the total assessable costs and shall, in consultation with other Township personnel or agents involved in the services, determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered: the extent to which the personnel and equipment of the Township or other assisting public entities were involved, including active and standby status; the extent to which an act or omission of a responsible party was a proximate cause for the need for Emergency Services; and the ability of a responsible party to pay the total assessable costs. In determining the assessable costs against a party, the Township Supervisor, designee, or other authorized agent may rely on a report of services and the actual expenses incurred as prepared by Department personnel and/or agents involved in responding to the incident.

SECTION 5- EMERGENCY SERVICES

Emergency Services include, by way of example and not limitation, specific responses or conditions as described below:

1. Any Department response to a fire, whether ignited accidentally or intentionally, and includes but is not necessarily limited to the following:
	1. Department containment and/or suppression of the fire in part or whole
	2. Stabilization of the incident by Department resources
	3. Activities resulting in damage or destruction of Department equipment beyond normal wear and tear.
2. Any Department response to an incident caused by a criminal act; i.e., DUI, intentional false alarm, arson, etc.
3. Any Department response requiring containment, abatements or any safety measure in connection with any hazardous or toxic material release. Charges in such case shall be made to the person responsible for the release, whether or not the release occurs on the property of the responsible party. The responsibility for the release includes releases caused by the person as well as any release from any vehicle, building, or other instrumentality, owned, occupied or utilized by the person, regardless of fault .
4. Any Department response to a vehicle accident or traffic incident, including but not limited to the control of fires, spills, debris clean up, assistance to injured persons or ambulance crews, or the extrication of vehicle occupants using specialized tools or techniques.
5. Any Department response for a hazardous materials incident or other hazardous condition requiring Department oversight and deployment of personnel and/or equipment to maintain public health and safety. ·
6. Any Department response to a false alarm due to system malfunction or maintenance issue in excess of three (3) alarms in any consecutive twelve (12) month period.
7. The provision of Department equipment or personnel for the purpose of providing standby fire, rescue, or emergency medical services necessary to support a nonemergency event/situation hosted by a for-profit organization. The Township Board may reduce or waive any charges for such services.
8. The providing of medical care and/or transport by the Department to a medical care facilit y.
9. Any Department response for a specialized rescue, disentanglement, or body recovery requiring Department oversight and/or deployment of Department personnel or equipment and the use of specialized tools, apparatus, or techniques for handling the specific incident. This includes high and low angle environments, confined spaces, below grade or trench incidents, heavy equipment or machinery, outside searches lasting longer than one (1) hour, ice or water rescue or recovery, and structural collapse.

# SECTION 6- EXEMPTIONS FROM LIABILITY.

The following properties and services are exempt from the charges authorized by this Ordinance:

1. Traffic accidents, vehicle fires, and medical assistance responses where the individual(s) receiving the benefit of the response is a resident of the Township of Genesee on the date of the response.
2. False alarms due to system malfunction or maintenance issue not exceeding three (3) alarms in any consecutive twelve (12} month period.
3. Fires caused by railroad trains, which are the statutory responsibility of railroad companies.
4. Fire involving Township buildings, grounds and/or property when the fire is not caused by the act or omission of an employee or agent of the Township.
5. Fire or other emergency service performed outside the jurisdiction of the Township for which a signed Mutual or Automatic Aid agreement is in place, unless the municipality in which assistance is rendered has adopted an ordinance to impose or authorize the collection of fees for fire and emergency services as authorized by law.

# SECTION 7- BILLING AND COLLECTION OF ASSESSABLE COSTS. LIEN ON PROPERTY

1. The township shall cause a written bill to the responsible party to his or her last known mailing address, or to the appropriate insurance company or authorized agent acting on

behalf of a responsible party or an insurer of a responsible party for the expenses of the relevant emergency response to be issued as soon as practical after the incident. The bill shall be due and payable within 30 days from the date of mailing.

1. The invoice shall indicate that any amount due that remains unpaid thirty (30) days after the date of billing shall have imposed a late charge thereon at the rate of one percent (1%) per month, or fraction thereof, until paid in full.
2. The invoice shall advise the responsible party of the right to appeal and the time limits for doing so as provided in Section 8 of this ordinance. If a responsible party shall appeal assessable costs pursuant to Section 8 hereof, such costs, if upheld, in whole 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.
3. Any additional expense that becomes known following the transmittal of the invoice to the responsible party shall be billed in the same manner on a subsequent invoice to the responsible party.
4. · Any failure by a responsible party to pay an invoice within the time limits provided in this section shall be considered a default in payment, in which case the Township may commence a civil suit to recover the costs plus any additional costs or expenses allowed by law.
5. Additionally, in such a case involving real property, a lien may be placed upon the relevant property for the amount of the expenses, which lien may be collected in the same fashion and manner as real property taxes are collected within the township.
6. Notwithstanding the foregoing, the township shall be empowered to maintain proceedings in any court of competent jurisdiction to collect the expenses of an emergency response as a matured debt of the township.

Section 8 - APPEAL.

1. Any party aggrieved by a charge or an apportionment of charges authorized in this chapter may appeal the charge or its apportionment as follows:
	1. Within the time period for which a bill is payable the party shall file a written request with the Township Clerk setting forth specific reasons alleging why the charge is improper.
	2. The Clerk shall notify the aggrieved party in writing of the time, place, and date the Township Board will hold a hearing on the appeal.
	3. The Township Board may grant relief on appeal if it finds:
		1. The service provided was given as the result of false information or false alarm not caused by the party to whom service was provided.
		2. The charges assessed do not comply with the township schedule of charges or that the apportionment of said charges is in some fashion inappropriate.
		3. The individual assessed is responsible for paying the township wide ad valorem public service millage.
		4. For other good cause with sufficient proof to satisfy the Township Board.
2. The Township Board may extend the time for payment for a reasonable period of time not to exceed 1 year.
3. Failure to file a timely written request for a meeting with the Township Supervisor or request to appear before the Township Board shall constitute a waiver of the responsible party's right to same; and shall further constitute the responsible party's agreement to pay the assessable costs invoiced.

# SECTION 9 - COST RECOVERY SCHEDULE OF CHARGES.

The Genesee Township Board of Trustees shall, by resolution, adopt and periodically amend a schedule of fees and costs included within the expenses of an emergency response.

Section 10 - NON-EXCLUSIVE CHARGE

The foregoing rates and charges do not limit the Township's authority to levy any form of tax or impose special assessments, as permitted by law. Also, general fund appropriations may be made to cover such additional costs and expenses of providing fire protection and other emergency services.

# SECTION 11- SEVERABILITY

The provisions of this ordinance are hereby declared to be severable . If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

# SECTION 12 - REPEAL

Specifically Ordinance 493, and all ordinances or parts of ordinances in conflict herewith are hereby **repealed.**

# SECTION 13 - PUBLICATION & EFFECTIVE DATE

This Ordinance shall be published in a newspaper of general circulation within the Charter Township of Genesee, Genesee County, Michigan, and shall become effective immediately upon second publication.

# SECTION 14 - INSPECTION

A copy of this Ordinance may be inspected at the Township Clerk's Office at the Genesee Township Hall, 7244 N. Genesee Rd ., Genesee, Ml 48437 during regular business hours.

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We hereby certify that the foregoing Ordinance was adopted on the Second Publication by the Township Board of Trustees on April 6 , 2022.

First Reading: March 15 , 2022

Pu blicati on: Mar ch 2 3 , 20 2 2

Second Reading: Mar ch 25 , 2022

Pu blicati on : April 6 , 2022

6a oo, Townsh ip Supervisor

Wayne G. sit es, Township Clerk