

**ORONOKO CHARTER TOWNSHIP
COUNTY OF BERRIEN
STATE OF MICHIGAN**

ORDINANCE NO. 69

AN ORDINANCE TO REPEAL THE PROVISIONS OF ORONOKO CHARTER TOWNSHIP ORDINANCE NO. 54, AND TO ADOPT A NEW ORDINANCE AS SET FORTH HEREAFTER TO PROVIDE FOR RECOVERY OF COSTS EXPENDED BY ORONOKO CHARTER TOWNSHIP FOR HAZARDOUS MATERIAL EMERGENCY SERVICES.

CHARTER TOWNSHIP OF ORONOKO, BERRIEN COUNTY, MICHIGAN, ORDAINS:

SECTION 1: TITLE

This Ordinance shall be known and cited as the Oronoko Charter Township Hazardous Material Expense Recovery Ordinance.

SECTION 2: PURPOSE

In order to protect the Township from incurring extraordinary expenses resulting from the utilization of Township resources in response to certain emergency situations that immediately threaten public safety, health and property, which result from responses to incidents involving Hazardous Materials, this Ordinance authorizes the imposition of charges to recover actual costs incurred by the Township in responding to such incidents. The Township has determined that adopting such an ordinance is in the best interest of the public health, safety and welfare of the Township.

SECTION 3: DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of the terms used in this Article shall be as follows:

Hazardous Material shall mean any materials classified as hazardous by any federal, state or local law, regulation or authority, and shall include but not be limited to any chemical that is combustible, liquid, flammable gas, radioactive material, explosive, flammable, poisonous, organic peroxide, oxidizer, pyrophoric, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, or any other material that can cause serious disease or injury to humans, property or the environment, 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 police chief of the Township in charge at the scene.

Hazardous Material Incident or Emergency means any occurrence, incident, activity, accident or emergency where a Release of Hazardous Material occurs or is reasonably imminent that requires immediate intervention by fire department personnel to prevent, mitigate or stop an actual Release from occurring or continuing, and which represents a situation that immediately threatens the public safety, health and property, and where the Fire Chief or his or her designee has so declared such activity, accident or emergency a Hazardous Material Incident or Emergency.

Public Safety or Fire Emergency Incident means (i) a Hazardous Material Incident or Emergency.

Recoverable Expenses shall mean, in connection with a Public Safety or Fire Emergency Incident, all actual costs or expenses incurred by the Township, including, but not limited to, each of the following:

1. Charges for each fire department vehicle, including but not limited to, pumpers, ladder trucks, tankers, rescue squads, brush units, command units and other vehicles including Berrien Springs Oronoko Police Department vehicles. Hourly rates for these charges shall be established by resolution of the Township Board from time to time.
2. Charges incurred by the Township for equipment and personnel not owned by or employed by Township, but requested by the Fire Chief or incident commander for the purpose of mitigating the Hazardous Material Incident or Public Safety or Fire Emergency Incident.
3. Replacement cost for equipment that is contaminated or damaged beyond reuse or repair (such as turn - out gear or self-contained breathing apparatus).
4. All personnel - related expenses incurred by the Township, including but not limited to wages, salaries, fringe benefits, and insurance for full - time and part - time personnel, overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on - call fire personnel. These personnel - related expenses will commence when the fire department has begun responding to the Hazardous Material Incident or Public Safety or Fire Emergency Incident, and shall continue until all Township personnel have concluded the Hazardous Material Incident or Public Safety or Fire Emergency Incident related responsibilities.
5. Expenses of decontaminating and cleaning equipment.

6. Technical consulting services specifically required as a result of the Incident, including but not limited to, technical experts or specialists not otherwise available to the Township.
7. Laboratory costs of analyzing samples taken during the Hazardous Material Incident or Public Safety or Fire Emergency Incident.
8. Costs of cleanup, storage and disposal of Released Hazardous Material including any fines or penalties levied against the Township which may be imposed by any court or state or federal government entity.
9. Medical and hospital expenses incurred as a result of the Hazardous Material Incident or Public Safety or Fire Emergency Incident.
10. Legal, engineering, accounting, billing, collection and other administrative expenses incurred as a result of the Public Safety or Fire Emergency Incident or Hazardous Material Incident, including but not limited to efforts to recover expenses pursuant to this Ordinance.

Release shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, leaching, dumping or disposing into the environment, including, but not limited to the air, soil, groundwater and surface water, whether intended or accidental.

Responsible Party means in connection with a Public Safety or Fire Emergency Incident, any individual or entity that participated in, or whose actions or inactions were a proximate cause of a Public Safety or Fire Emergency Incident, and any individual or entity that is an owner, tenant, occupant or holder of any interest in real estate, buildings, equipment or other real or personal property onto which or from which Hazardous Material was released. Responsible Party further includes 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 a real and personal property from which, onto which or related to which there is a Public Safety or Fire Emergency Incident and their heirs, estates, successors or assigns.

SECTION 4: DECLARATION

This Ordinance shall be invoked when the Fire Chief or his or her designee or incident commander from the fire department declare the incident is a Public Safety or Fire Emergency Incident.

SECTION 5: RECOVERY OF EXPENSES

All Responsible Parties in connection with a Public Safety or Fire Emergency Incident shall be responsible to the Township for the Recoverable Expenses relating to the Public Safety or Fire Emergency Incident. This responsibility shall be in addition to any other penalties, obligations, or remedies provided by law. The Responsible Party will nonetheless not be liable for the recovery of expenses if it would not be liable under the provisions of MCL 324.20126(4).

SECTION 6: BILLING AND COLLECTION PROCEDURES

After the conclusion of a Public Safety or Fire Emergency Incident or periodically prior to the conclusion of such incident, the Fire Chief and the Berrien Springs Oronoko Police Chief shall submit an itemized list of all known Recoverable Expenses to the Township Clerk who shall prepare and send an invoice to all Responsible Parties for payment, by U.S. First Class Mail and by certified mail to their last known address. Such mailing shall include a copy of this Ordinance. Such invoice shall be due and payable within thirty (30) days of the date of mailing and any amounts unpaid after such date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof on the amount due and any previously imposed late payment fee that remains unpaid. Any additional expenses that become known to the Township after mailing the first invoice shall be billed in the same manner to the Responsible Parties.

SECTION 7: APPEAL PROCESS

Any Responsible Party may appeal the amounts listed in an invoice to the Township Board. The appeal shall be filed in writing delivered to the Township Clerk no later than thirty (30) days after the date the Township Clerk mails the invoice. The Township shall give the appealing parties an opportunity to present evidence in support of their position. Upon receipt of such request, the Township Clerk will place the Responsible Party on the agenda for the next regularly scheduled Board meeting and shall notify the Responsible Party of the date and time of said meeting not less than seven (7) calendar days before said meeting. Any filed request to appeal shall specifically identify and explain all reasons why the Responsible Party believes the assessed costs should be modified. Failure to timely file a written request to appeal shall constitute a waiver of the Responsible Party's right to appeal before the Township Board. After a Responsible Party has been given an opportunity to appear before it, the Township Board shall within thirty (30) days determine whether to confirm, modify or rescind the assessed costs.

SECTION 8: RECOVERABLE EXPENSES A LIEN ON PROPERTY

Recoverable Expenses assessed against a Responsible Party not paid when due, including late payment fees, shall constitute a lien upon the real property, if any, 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 of 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 Township shall, prior to March 1st of each year, certify the fact that such Recoverable Expenses are delinquent and unpaid. The Township shall then enter a 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. In addition to the remedy set forth 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 Recoverable Expenses from a Responsible Party.

SECTION 9: VIOLATIONS

A violation of this Ordinance shall be a misdemeanor with the penalties as established by state law.

SECTION 10: SAVINGS CLAUSE

If any portion of this Ordinance or the application thereof shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or the applications of the Ordinance, which can be given effect without the invalid portions or applications providing that such remaining portions or applications are not determined by said court to be inoperable, and to this end this Ordinance is declared to be severable.

SECTION 11: EFFECTIVE DATE

This Ordinance shall take effect upon publication of its enactment as required by statute.

SECTION 12: PUBLICATION OR POSTING

The Township Clerk shall certify to the adoption of this Ordinance and cause the same to be posted or published as required by law.

SECTION 13: REPEAL

From and after the effective date of this Ordinance, the provisions of Oronoko Charter Township Ordinance No. 54 are repealed.

MOTION TO ADOPT ORDINANCE

Proposed by Board member: Clerk Suzanne Renton

Supported by Board member: Trustee August Zielke

Roll Call:

Ayes: Trustee Marc Kerlikowske, Treasurer Kendall Hill, Clerk Suzanne Renton, Trustee Philipp Riess, Trustee August Zielke, Trustee Dorothy Hildebrand, Supervisor Ernest Hildebrand.

Nays: None.

Abstain: None.

Absent: None.

ORDINANCE DECLARED ENACTED

The foregoing Ordinance was enacted by the Oronoko Charter Township Board of Trustees, Berrien County, State of Michigan on the 8th day of June, 2010 and approved by its Supervisor and Clerk on said date.

ORONOKO CHARTER TOWNSHIP

By: _____
Ernest Hildebrand, Supervisor

and

By: _____
Suzanne Renton, Clerk

First Reading: May 11, 2010

Second Reading: June 8, 2010

Publication of Notice: June 16, 2010

ORDINANCE NO. 69 WAS FIRST PUBLISHED IN THE JOURNAL ERA ON THE 2nd DAY OF JUNE 2010, AFTER FIRST BEING INTRODUCED. SAID ORDINANCE WAS THEREAFTER PUBLISHED IN THE JOURNAL ERA, AFTER ENACTMENT ON THE 16th DAY OF JUNE 2010. SAID ORDINANCE IS IMMEDIATELY EFFECTIVE ON THE 16th DAY OF JUNE 2010, THE DAY OF PUBLICATION.

A TRUE COPY OF THIS ORDINANCE MAY BE OBTAINED FOR PURCHASE AT REASONABLE COST, OR FOR INSPECTION, AT THE ORONOKO CHARTER TOWNSHIP HALL, LOCATED AT 4583 EAST SNOW ROAD, BERRIEN SPRINGS, MICHIGAN, DURING NORMAL BUSINESS HOURS OF 8:30 A.M. TO 5:00 P.M., MONDAY THROUGH FRIDAY, EXCLUDING HOLIDAYS.