

ORDINANCE NO. 2008-05

**COST RECOVERY ORDINANCE**

AN ORDINANCE TO AMEND THE SAUGATUCK TOWNSHIP CODE OF ORDINANCES FOR THE ASSESSMENT AND RECOVERY OF THE EXPENSES INCURRED IN PROVIDING EMERGENCY ASSISTANCE FOR THE HEALTH, SAFETY AND WELFARE OF SAUGATUCK TOWNSHIP RESIDENTS BY RESTATING THE CHARGE FOR EMERGENCY SERVICES IN ARTICLE III OF CHAPTER 16.

THE TOWNSHIP OF SAUGATUCK, COUNTY OF ALLEGAN, STATE OF MICHIGAN, ORDAINS:

Section 1. **Restatement of Article III of Chapter 16.** Article III of Chapter 16 of the Saugatuck Township Code of Ordinances shall be restated in its entirety as follows.

**ARTICLE III. COST RECOVERY**

Section 16-56. **Purpose.** Saugatuck Township hereby finds that in order to protect the Township and its general populace from extraordinary costs associated with providing for police, fire fighting, rescue, and emergency medical services within the Township limits, it has become necessary to charge certain costs for providing these services. The Township finds that this legislation is necessary to fairly allocate the costs among those responsible for them; to establish a policy and set forth the methods by which it may recover costs incurred in making emergency responses and providing such response services; and to provide for the health, safety and welfare of its residents.

Section 16-57. **Definitions.** Unless the context explicitly indicates otherwise, the meaning of the terms used in this article shall be as follows:

(a) The Township. “The Township” refers to Saugatuck Township, County of Allegan, State of Michigan, only.

(b) Assessable costs. “Assessable costs” means the direct and reasonable costs incurred in connection with a response to a public safety or fire emergency incident within the Township. These costs include all salaries, wages, or fringe benefits of the Township personnel responding to the incident; salaries, wages, or fringe benefits of the Township personnel engaged in the investigation, supervision and report preparation regarding the incident; all salaries, wages, or fringe benefits of the personnel of assisting governmental agencies or any other private or public entities operating at the request, direction, or on behalf of the Township in response to the incident; salaries, wages, or fringe benefits of the personnel of the Saugatuck Township Fire District (“Fire District”); and all costs connected with the administration of the incident relating to any prosecution of the person(s) responsible, including those relating to the production and appearances of any witnesses. Additional costs may include, but are not limited

to, the rental or leasing of equipment for a specific response, replacement of equipment which is destroyed or contaminated in the response, laboratory costs and equipment, medical expenses incurred as a result of response activities, and any legal expenses that may be incurred as a result of an emergency response including efforts to recover expenses pursuant to this ordinance.

(c) Emergency assistance. “Emergency assistance” means any response by medical, public safety, police, fire or civil defense services to respond to an emergency incident.

(d) Emergency incident. “Emergency incidents” include the following:

- (1) excessive requests for emergency assistance;
- (2) a false alarm;
- (3) a hazardous material incident or emergency;
- (4) an illegal fire;
- (5) threats of harm;
- (6) a structure demolition or utility line failure;
- (7) water rescue attempts; or
- (8) any other incident where emergency medical, public safety, police, fire or civil defense services are necessary.

(e) Excessive request for emergency assistance. “Excessive request” means any request for emergency assistance made for a particular location or premises if emergency assistance has been provided to that location or premises more than five (5) times in the preceding thirty (30) days.

(f) False alarm. “False alarm” means the intentional or non-intentional activation of an automated or manual device which was designed to request of summon emergency assistance when there was no need for emergency assistance, and any request for emergency assistance when the requesting person or entity knew or should have known that there was no actual need for such assistance. The determination that there was no actual need for emergency assistance shall be made by the Chief of the Fire District or by the most senior official of the Fire District responding to the false alarm. A false alarm shall not include any response to a request for emergency assistance which was caused by an act of God.

(g) Hazardous materials. “Hazardous materials” means any explosive, pyrotechnic, compressed gas, flammable liquid, flammable solid, combustible liquid, oxidizing material, poisonous gas, poisonous liquid, poisonous solid, etiological material, radioactive material, corrosive material or liquefied petroleum gas and also includes, but is not limited to, any of the following:

- (1) Any material listed in the list of toxic pollutants found in 40 CFR..401.15, *et seq.*, as amended, or under any other federal law or regulations;
- (2) Any material regulated as a class A or class B explosive by the United States Department of Transportation, pursuant to 49 CFR 173.5;
- (3) Any flammable liquid or solid regulated by the United States Department of Transportation, pursuant to 49 CFR 171.1,*et seq.*;
- (4) Any material designated as a hazardous material by the Secretary of the United States Department of Transportation through regulations found at 49 CFR..171.1, *et seq.*;
- (5) Any material deemed a “hazardous substance” as defined by 1994 PZ 451, Part 207, Subsection 20101(n), MCL ..324.20101(n);
- (6) Any material designed a hazardous material by state or federal law or regulations;
- (7) Any hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to section 7 of the Toxic Substance Control Act; and
- (8) Any otherwise non-hazardous material which becomes a potential hazard to vehicular or pedestrian traffic.

(h) Hazardous material incident or emergency. “Hazardous material incident or emergency” means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent, as determined by the Chief of the Fire District or the most senior official of the Fire District responding to the incident.

(i) Illegal fire. “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. An illegal fire does not include a fire caused by an act of God.

(j) Release. “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.

(k) Responsible party. “Responsible party” means any individual, firm, corporation, association, partnership, government entity or other entity responsible for an emergency incident or assistance or 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 incident or assistance and their heirs, estates, successors and assigns.

(l) Structure demolition. “Structure demolition” means the tearing down of a structure damaged by fire which must in the opinion of the Chief of the Fire District or the most senior official of the Fire District responding to the incident be promptly demolished following the fire to protect public safety.

(m) Threat of harm. “Threat of harm” means the verbal or written threat of physical harm to oneself, another, or another’s property which if carried out would be a violation of federal, state or local law.

(n) Utility line failure. “Utility line failure” means the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, natural gas, communication or electronic signals, or water, sanitary or storm sewage if the owner or party responsible for the maintenance of such utility line does not respond within one (1) hour to a request to repair or correct such failure.

(o) Vehicle “Vehicle” means any motorized or self-propelled means of transportation including, but not limited to, automobiles, ATV’s, railroad engines and other cars, boats, helicopters, planes, and/ or other aircraft, and all trailers, vehicles, or other appurtenances attached to any vehicle.

(p) Water Rescue. “Water rescue” means any emergency incident on a body of water where emergency medical, public safety, police, fire or civil defense services are necessary. Bodies of water include rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors/ collections of water.

**Section 16-58. Township’s Assessable Costs.**

(a) The Township may recover all of its assessable costs incurred in connection with any emergency assistance provided within its boundaries from any or all responsible parties jointly and severally.

(b) The Township manager or, in his or her absence, a board member or Township officer designated by the board as its representative in this matter (“board’s designee) shall determine the Township’s total assessable costs and shall in such emergency incidents determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determinations, the following shall be considered:

- (1) total assessable costs:
- (2) any risk the incident imposed on the Township, its residents and their property;
- (3) the risk of injury or damage to persons or property;
- (4) any evacuation required because of the incident;

- (5) any unusual or extraordinary use of the Township personnel or equipment; and/ or
- (6) any damage to the environment

(c) After the consideration of the factors listed in (b) immediately above, the Township manager or the board's designee 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 or is legally at fault.

(d) Whether the Township manager or the board's designee determines to assess all, part or none of the 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 or any other person, corporation, partnership, government entity or any other entity.

**Section 16-59. Fire District's Assessable Costs.**

(a) The Fire District may recover all its assessable costs incurred in connection with any emergency assistance provided within the Township boundaries from any or all responsible parties jointly and severally.

(b) The Chief of the Fire District or, in his or her absence, a board member or official of the Fire District designated by the board as its representative in this matter ("board's designee") shall determine the Fire District's total assessable costs and shall determine whether to assess any, all or part of such costs against any of the responsible parties.

(c) The Chief of the Fire District or the board's designee may allocate assessable costs amount 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 or is legally at fault.

(d) Whether the Chief or the board's designee determines to assess all, part or none of the assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to the Fire District, the Township, or any other person, corporation, partnership, government entity or any other entity.

**Section 16-60. Billing and Collection of Assessable Costs.**

After determining to assess assessable costs against a responsible party, an itemized invoice shall be sent to the responsible party at the party's 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 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 remain unpaid. If a responsible party shall appeal assessable costs pursuant to Section 7 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.

**Section 16-61. Procedure for Appealing Assessable Costs.**

(a) Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the Township or the Fire District, depending on what entity assessed the costs. The initial meeting shall be with the Township manager or board's designee and/ or the Chief or board's designee to request a modification of assessable costs. The responsible party shall request in writing such a meeting within seven (7) calendar days of the date of the invoice assessing the assessable costs.

(b) If after this initial meeting any responsible party is still not satisfied, he or she may request an opportunity to appear before the Township board and/or the board of the Fire District to further request a modification of assessable costs. A responsible party who desires to appear before the Township board and/ or the Fire District board must have had an initial meeting as provided above and then shall make a written request to appear before the Township board or Fire District board within seven (7) calendar days of the date of this meeting. Upon receipt of such request, the responsible party will be put on the agenda of the next regularly scheduled Township board and/ or Fire District board meeting, which meeting must be held within twenty-one (21) calendar days of the date on which the responsible party files the request to appear.

(c) Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should 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. Failure to timely file a written request to appear shall constitute a waiver of any argument the responsible party may have had that the party is not liable for the assessable costs invoiced. After a responsible party has been given an opportunity to appear before it, the city board and/ or Fire District board shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

**Section 16-62. Assessable Costs a Lien upon Property.**

Costs assessed against a responsible party not paid when due, including a late 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 emergency incident occurred. Such lien shall be of the same character and effect as the lien for Township 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 Township 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. The Fire District is responsible for alerting the Township treasurer of any delinquent, unpaid assessable costs.

**Section 16-63. Other Remedies.**

In addition to the remedy set forth in Sections 4 and 5 above, the Township and the Fire District 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 16-64. 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 16-65. 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 2. Effective Date.**

This ordinance amending the Saugatuck Township Code of Ordinances was approved and adopted by the Township Board of the Township of Saugatuck, Allegan County, Michigan, on December 3, 2008 and it is ordered to take effect 30 days after publication in the Commercial Record, a newspaper having general circulation in the Township, pursuant to the provisions of Act No. 246 of the Public Acts of 1945, as amended.

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William W. Wester,  
Township Supervisor

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Jane Wright,  
Township Clerk

**CERTIFICATE**

I, the Clerk for the Township of Saugatuck, Allegan, County, Michigan, certify that the foregoing Saugatuck Township Cost Recovery Ordinance was adopted as a regular meeting of the Township Board held on December 3, 2008. The following members of the Township Board were present at that meeting: Wester, Wright, Knikelbine, Roerig, Jarzembowski. The following members of the Township Board were absent: None. The Ordinance was adopted by the Township Board with members of the Board Wester, Wright, Knikelbine, Roerig, Jarzembowski voting in favor and members of the Board None voting in opposition. Notice of Adoption of the Ordinance was published in the Commercial Record on –December 11, 2008.

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Jane A. Wright  
Saugatuck Township Clerk