

TOWNSHIP OF FRANKENLUST
COUNTY OF BAY, MICHIGAN
ORDINANCE 64-E

FIRE AND EMERGENCY SERVICES COST RECOVERY ORDINANCE

An Ordinance to establish cost recovery charges for certain Township emergency services; to provide methods for collection of such fees; to provide for exemptions therefrom; and to repeal all ordinances or parts of ordinances in conflict herewith.

THE TOWNSHIP OF FRANKENLUST ORDAINS:

SECTION 1. TITLE

This Ordinance shall be known as the Frankenlust Township Fire and Emergency Services Cost Recovery Ordinance.

SECTION 2. PURPOSE

This Ordinance is adopted to authorize the Township to bill for and collect cost recovery charges from those receiving direct benefits from the fire protection and other emergency services provided by the Township. It is the further purpose of the ordinance to provide for reasonable and necessary reimbursement to the Township for fire protection and other emergency services which remain, in part, an at-large governmental expense based upon the general benefits derived by all property owners within the township.

SECTION 3. DEFINITIONS

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

- a. *Assessable Costs* mean those costs for services incurred by the Township in connection with a response to a public safety or fire emergency incident, including, but not listed to, the actual labor and materials costs of the Township (including, without limitation, employee wages, Workers Compensation benefits, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal and costs of contracted labor) whether or not the services are provided by the Township or by a third party on the request of the Township; service charges and interest; attorney's fees, litigation costs and any cost, charges, fines or penalties to the Township imposed by any court or state or federal governmental entities.

- b. *Bomb Threats* mean the verbal or written threat of a bomb or other explosive device which if discharged as threatened would violate a federal, state, or local law.
- c. *Emergency Assistance* means any request for emergency medical, public safety, police, fire or emergency preparedness services.
- d. *Excessive Requests for Emergency Assistance* mean any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five (5) times in the preceding thirty (30) days.
- e. *False Alarm* means any automated or manual device designed to request or summon emergency assistance which 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 person responding to a false alarm. Provided, however, a false alarm shall not be deemed to have occurred if (i) caused by an act of God, i.e., a lightning storm, (ii) it originates from a motor vehicle alarm system or (iii) has not occurred more frequently than two (2) times in a calendar month or three (3) times in a calendar year.
- f. *Fire Chief* means the Chief operational and administrative officer of the Frankenlust Township Fire Department, or in his/her absence, the firefighter in command of an incident.
- g. *Fire Department* means the Frankenlust Township Fire Department, created by the Township Board of the Township of Frankenlust.
- h. *Hazardous Materials* mean 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, antifreeze, 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.
- i. *Motor Vehicle* means any self-propelled or towed vehicle designed or used on the public streets, roads and highways to transport passengers or property which is required to be registered for use upon such public streets, roads and highways and for the purposes hereof all trailers or appurtenances attached to any motor vehicle.
- j. *Motor Vehicle Accident* means when a motor vehicle strikes or collides another vehicle, a stationary object, a pedestrian, or an animal.
- k. *Negligently Caused Fire* means a fire, proximately caused by the negligence of an owner or occupier of property and/or structures, or any other person, which

represents a direct and immediate threat to the public safety and requires immediate action to mitigate the threat.

l. *Public Safety or Fire Emergency Incident* means:

1. Structure fire
2. Vehicle fire
3. Grass, brush or debris fire or bonfire:
 - i. which could be set with a permit, but for which a permit has not been obtained.
 - ii. which becomes uncontrolled regardless whether or not a permit was obtained.
 - iii. not authorized or permitted by Township ordinance.
4. Trash or Rubbish fire
5. Motor vehicle accident
6. Water/Ice rescue
7. False alarm
8. Bomb threat
9. Structure demolition
10. Excessive requests for emergency assistance
11. Hazardous material incident or emergency
12. Utility line failure

m. *Responsible Party* means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental 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 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 and assigns.

n. *Structure Demolition* means the tearing down of a structure damaged by fire which must in the opinion of the fire chief be promptly demolished following the fire to protect public safety.

o. *Structure Fire* means a fire originating in and burning any part or all of any residential, commercial or industrial buildings, shelter, or other structure.

p. *Township* means the Township of Frankenlust, its board of trustees, supervisor and officers.

q. *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, ship, natural gas, 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 part responsible for the maintenance of such utility line does not respond within one (1) hour to a request to repair or correct such failure.

r. *Water/Ice Rescue* means any emergency response by Township personnel in connection with any emergency, or perceived emergency, on, near or caused by a body of water. For purposes of this definition, "body of water" includes without limitation; rivers, lakes, streams, creeks, impoundments, estuaries, springs, wells, or other collectors of water, including a Wetland, as defined by the Michigan Natural Resources and Environmental Protection Act, as amended.

SECTION 4. EXEMPTIONS

The following properties and services shall be exempt from the reimbursement of charges:

- a. Incidents involving federal, state, county, township, village and other governmental real estate and/or property;
- b. Fires caused by railroad trains which are the specific statutory responsibility of a railroad company to the extent state statutes exempt them from liability;
- c. Fire or other emergency services performed outside the jurisdiction of the Township under mutual aid contract with an adjoining unit of government.

SECTION 5. COST RECOVERY AUTHORIZATION AND PROCEDURE

The Township may recover all assessable costs in connection with a public safety or fire emergency incident from any or all responsible parties. The Township shall be authorized to collect fees for fire and emergency services according to the Frankenlust Township cost recovery fee schedule, adopted by the Township Board, and available to the public from the Township Clerk's Office.

The Fire Chief shall determine the total assessable costs and shall in consultation with other Township personnel involved in responding to a public safety or fire emergency incident 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:

1. The total assessable costs;
2. The risk the public safety or fire emergency incident imposed on the Township, its residents and their property;
3. Whether there was any injury or damage to person or property;
4. Whether the public safety or fire emergency incident required evacuation;

5. The extent the public safety or fire emergency incident required an unusual or extraordinary use of Township personnel and equipment;
6. Whether there was any damage to the environment; and
7. The existence and extent of negligence or fault on the part of the responsible party.

No resident of the Township at the time of a response as described in section 2.a shall be responsible/liable for the expense of the emergency response over and above the amount of any insurance available to said resident to pay for the emergency response except for deliberately or negligently caused fires, violations of Ordinance 82, Open Burning, false alarms, excessive requests for emergency assistance, or while engaging in any illegal activity, including but not limited to, driving under the influence of alcohol and/or drugs. A resident of the Township who has such insurance shall either process a claim and assign benefits to the Township or shall provide the Township such information as may be necessary to permit the Township to file a claim.

After consideration of the factors in (b) immediately above, the Fire Chief 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 therefor apart from this ordinance or is legally at fault.

If the Fire Chief determines not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to other parties.

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 from any of the charges, cost or fees encompassed by this Ordinance.

A recipient or beneficiary of any of the enumerated fire emergency services set forth in this Ordinance by or on behalf of the Frankenlust Township Fire Department shall be responsible for payment to Frankenlust Township for the actual cost of providing such services in accordance with this Ordinance, including, but not limited to, costs incurred for the incident abatement, mitigation, clean-up, mutual aid, and stand-by for the scene or incident.

SECTION 6. BILLING AND COLLECTION OF ASSESSABLE COSTS

After determining to assess assessable costs against a responsible party, the Township Treasurer, designee, authorized agent, or contracted billing service shall prepare and mail an itemized invoice to the responsible party at its last known address,

or to an appropriate insurance company or authorized agent acting on behalf of a responsible party or an insurer of a responsible party. The invoice shall demand full payment within thirty (30) days of billing. 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.

The invoice shall be served on a responsible party by first class mail, registered mail or personal service. A responsible party shall be deemed served by first class mail on the date of mailing, by registered mail on the date of mailing or by personal service on the date of actual service on the responsible party.

The invoice shall advise the responsible party of the right to appeal and the time limits for doing so as provided in Section 7 of this ordinance. If a responsible party shall appeal assessable costs as determined in Section 5 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.

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.

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. In addition, the Township may pursue any other remedy or may institute an appropriate action or proceeding in a court of competent jurisdiction to collect the charges imposed under this ordinance together with costs and attorney fees.

SECTION 7. APPEAL PROCEDURE

Any responsible party who receives a statement of costs assessed pursuant to this Ordinance shall have the opportunity to appeal the costs to the Township Board. The responsible party who wishes to appeal any assessable costs shall file an appeal with the contracted billing service or Township Clerk. The appeal will be reviewed by the Dispute Review Committee comprised of the Fire Chief, the Township Board Liaison to the Fire Department, and Incident Commander for the public safety or fire emergency incident in dispute, or another designee that was also involved in the incident in such case the Fire Chief was in the role of the Incident Commander. The Dispute Review Committee will make a written recommendation to the Township Board for action on the dispute. The appeal will stay all payments due until the Township Board decides the appeal. The appeal will be placed on the agenda of the next regularly scheduled Township Board meeting. The Township Board will consider the request and the recommendation of the Dispute Review Committee and will make a determination regarding the assessable costs in the case appealed. The Township Board will also determine the date that any or all assessable costs involved in the appeal will become due. Only one appeal to the Township Board is permitted per service.

SECTION 8. ASSESSABLE COSTS A LEIN UPON PROPERTY

When the incident or event requiring Department services involves real property, if the assessable costs, including any late payment fee or interest, assessed against a responsible party are not paid when due, said costs shall be a special assessment against the real property and shall, to the extent permitted by law, constitute a lien upon such real property in the same manner as property taxes and/or special assessments.

The Township Treasurer shall, prior to September 30 of each year, certify to the Assessor of the Township in which the subject real property is located the fact that such assessable costs are delinquent and unpaid. Such Township Assessor is then authorized to enter the delinquent amount on the next general ad valorem property tax roll as a charge against the subject real property, and the lien thereon shall, to the extent permitted by law, be enforced in the same manner as provided by law for delinquent and unpaid real property taxes.

SECTION 9. CONFLICT WITH NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT.

If there is any conflict between the provisions of this ordinance and the provisions of Part 201 of the Natural Resources and Environmental Protection Act [MCL 324.20101et seq.] (NREPA), the provisions of the NREPA shall take precedence and the provisions of this ordinance in conflict therewith shall be deemed non-enforceable, but only to the extent necessary to avoid the conflict.

SECTION 10. INTERPRETATIONS

The apportionment of costs among and between recipients of emergency services, interpretation, and application of this Ordinance is hereby delegated to the Fire Chief subject only to the appeal procedures set forth in Section 7 hereof or by a court of competent jurisdiction.

SECTION 11. APPLICABILITY OF CHARGES REGARDLESS OF OUTCOME

The assessable costs and charges under this Ordinance shall be applicable regardless of the results or outcome of services provided by the Fire Department or through contracted party with regard to the particular fire, rescue service, or other emergency involved.

SECTION 12. 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 13. MULTIPLE PROPERTY PROTECTION

When a particular fire protection or other emergency service rendered by the Township directly benefits more than one person or property, the owner of each property so benefited, and each person so benefited where property protection is not involved, is liable for the payment of the full charge for such service.

SECTION 14. SEVERABILITY

If any provision or part of this ordinance is declared by any court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of any other provision or part, which shall remain in full force and effect.

SECTION 15. REPEAL

Ordinance 64, and all *Emergency Service Cost Recovery*, and all amendments thereto including 64A-D in their entirety, and all resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 16. USE OF FEES PAID OR COLLECTED

Any and all fees paid or collected pursuant to this Ordinance shall be deposited in the Emergency Services Fund. All fees paid or collected pursuant to the Ordinance that are deposited in the Emergency Receiving Fund on an annual basis in the last month of the Township's fiscal year shall be designated for the Fire Department expenditures approved by the Frankenlust Township Board.

SECTION 17. EFFECTIVE DATE

This ordinance shall, upon adoption, be published in a newspaper circulated within the Township of Frankenlust, Bay County, Michigan, and shall take effect immediately upon publication. This ordinance shall take effect upon its publication following its adoption by the Township Board.
(ord. no 64E eff. August 29, 2019)

SECTION 18. ADOPTION

The above ordinance was adopted at a regular meeting of the Township Board on the 13th day of August, 2019.