

ORDINANCE NO. 03-28-2015
Keeler Township

EMERGENCY RESPONSE AND COST RECOVERY ORDINANCE

An Ordinance, To Establish Cost Recovery and Collection of Charges, for Emergency Response and Demands for Services Involving Hazardous Materials, Hazardous Conditions, Deliberate Fires, and Negligent Fires in the Township of Keeler and any other area services are rendered by the Keeler Township Fire & Rescue.

THE TOWNSHIP OF KEELER, VAN BUREN COUNTY, MICHIGAN, ORDAINS:

Section 1: TITLE

This ordinance shall be titled and known as Ordinance No. 03-28-2015, the *Emergency Response and Cost Recovery Ordinance*.

Section 2: PURPOSE AND AUTHORITY

In order to protect the Township of Keeler from extraordinary expenses resulting from the utilization of the Keeler Township Fire & Rescue resources in response to certain public safety or fire emergency incidents and demands for services; the Township of Keeler authorizes the imposition of charges to recover reasonable and actual costs incurred by the Keeler Township Fire & Rescue. Such costs shall include, but not be limited to those associated with incident abatement, mitigation, and clean-up including any related third party cost necessary to ensure the safety of the township and its populace.

Any such cost shall be the responsibility of the owner and/or operator of the property, equipment, vehicle, or container causing or contributing to a dangerous or hazardous condition including but not limited to pollution of the environment. All charges shall be paid within 30 calendar days unless approved otherwise.

This ordinance has been adopted and is ordained by the Keeler Township Board of Trustees pursuant to the authority contained in the following public acts as amended; to wit: Public Act 102 of 1990 (MCL 41.806a); Public Act 712 of 2002 (MCL 28.754); and, Public Act 175 of 1927 (MCL 769.1f).

Section 3: DEFINITIONS

The following terms or phrases shall be defined to mean:

- a. *Assessable Cost*. Those costs for services incurred by the Keeler Township Fire & Rescue in connection with a response to a public safety incident, emergency assistance, false alarms, or requested service. Included, but not limited, are costs of labor and material the Township (including, without limitation, employee wages, fringe benefits, administrative overhead, cost of equipment, cost of equipment operation, cost of materials, cost of transportation, cost of material disposal, and cost of contracted labor) whether or not the services are provided by the Township or by a third party on behalf of the Township; service charges and interest; attorney's fees, litigation costs, charges, fines, or penalties to the Township imposed by any State, or Federal governmental entities whether a court, administrative agency or otherwise.

- b. *Bomb Threats.* The verbal or written threat of a bomb or other explosive device which if discharged as threatened would violate Federal, State, or local laws.
- c. *Charge Against Person.* The cost of an emergency response shall be a charge against the person liable for the costs under this ordinance. The charge constitutes a debt of that person and is collectible by the Township for incurring those costs in the same manner as in the case of an obligation under a contract, expressed, or implied. A person may be an individual, company, corporation, partnership, agency or other entity however described and more fully described as a "Responsible Party" below.
- d. *Cost Recovery Schedule.* The Keeler Township Board shall from time to time adopt truck/equipment/labor rate resolutions that set forth a schedule of the costs incurred in making an emergency response. It shall be presumed that the costs listed in this schedule are the true cost incurred by the Township and represent the "costs of an emergency response or requested service." This schedule shall be available to the public from Keeler Township Clerk or by the Keeler Township Fire & Rescue's Fire Chief. If a cost is incurred but not listed it shall be charged as the cost becomes known.
- e. *Emergency Assistance.* Is a request for emergency medical, fire, civil defense, or other emergency services whether placed by a person however described.
- f. *False Alarms.* Any automated or manual devices designed to request or summon emergency assistance where a device is activated intentionally or otherwise, in absence of an actual, need for emergency assistance. The most senior person responding to a false alarm shall make the determination that there was no actual need for emergency assistance. Provided, however, a false alarm shall not be deemed to have occurred if (i) caused by an act of God, i.e. lightning storm, (ii) it originates from a motor vehicle alarm system or (iii) has not occurred more frequently than (3) three times in a (6) six month period.
- g. *Hazardous Substance or Materials.* For the purpose of this Ordinance, hazardous substance and/or materials include, but are not necessarily limited to, a chemical that is a combustible liquid, a flammable gas, an explosive, a flammable or organic peroxide, an oxidizer, a pyrophoric, an unstable reactive or water reactive substance, petroleum and/or petroleum by-products, a flammable solid, a poisonous or infectious material, a radioactive material, a corrosive, or any other material that may be defined as hazardous by the US Department of Transportation, by the laws of the State of Michigan, or by the local Police agency(s) i.e. controlled substance home-made labs and chemicals (i.e. Meth labs).
- h. *Hazardous Material Release.* A release of hazardous substance or material shall be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, dumping, or disposing of a substance or material into the environment, building, or motor vehicle.
- i. *Illegal Fire.* A fire set or determined to have been set in violation of Federal, State, or local Law and shall include an arson fire and fire set in violation of a "no-burning" ban, order, or ordinance. An illegal fire does not include an unintentional fire or a fire caused by an act of God (i.e. lightning storm).

- j. Motor Vehicle. A motor vehicle shall include a self-propelled or towed vehicle designed or used on the public streets, roads, and highway and for the purpose hereof all trailers or appurtenances attached to any motor vehicle.
- k. Fire Chief. The Chief operational and administrative officer of the Keeler Township Fire & Rescue, or in his/her absence, the senior Fire officer in charge at the time of the incident responding.
- l. Keeler Township Fire & Rescue. The Keeler Township Fire & Rescue created by the Keeler Township Board which shall likewise be known by the acronym "KTFR".
- m. Public Safety or Emergency Incident. A situation where the Keeler Township Fire & Rescue is dispatched to an emergency situation. This may include, but not limited to, false alarm, hazardous material incident, emergency or release, illegal fire, bomb threats, threats to oneself or other, utility line failure, and methamphetamine laboratory (meth lab) or other controlled substance incidents. This section shall not apply to a residential structure where the origin of the incident cannot be determined as intentionally caused by the person or persons intended to be assessed.
- n. Responsible Party. A responsible party is any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any legal entity that is responsible for a release of a hazardous material, either actual or threatened, or as an owner, controlled substance manufacturer, tenant, occupant, or party in control of the property, onto which or from which hazardous material is released or stored or the owner, possessor or party in control of the hazardous substance immediately prior to the said release, or incident. This section shall not apply to a residential structure where the origin of the incident cannot be determined as intentionally caused by the person or persons intended to be assessed.
- o. Threats to Oneself or Others. Verbal or written threat of physical harm to oneself or another or another's property which if carried out would be a violation of Federal, State, or Local law shall be the basis to charge the person making the threat with the cost incurred in responding.
- p. Utility Line Failure. The disabling of any transmission or service line, cable, conduit, pipeline, wire, or the like used to provide, collect, or transport natural gas or communication or electronic signals (including, but limited to, telephone, computer, cable television and stereo signals or electronic impulses) if the owner or party responsible for the maintenance of such utility line does not respond within one (1) hour to a request to correct or repair such failure.

Section 4: CHARGES IMPOSED UPON RESPONSIBLE PARTY

When the Keeler Township Fire & Rescue responds to a call for emergency assistance in connection with a situation, as described above, actual costs incurred by it in responding to and mitigating such incident shall be imposed upon the responsible party, including but not limited to:

- a. A fee at the prevailing rate for the equipment, materials, supplies, apparatus, and other items required, in the opinion of the officer in command, to respond and be present and/or to stand by at the scene of the emergency response. For each hour or fraction thereof that the equipment, materials, supplies, apparatus, and other items is used or is required at the site by the officer in command, an additional hourly or fraction of an hourly sum shall be charged.

- b. All personnel related costs incurred by the Keeler Township Fire & Rescue as a result of responding to and mitigation of emergency response or demands for services. Such costs may include, but are not limited to, wages, salaries, fringe benefits, insurance, and other costs which may be a part of the Keeler Township usual and customary established cost for personnel incurred at the person's hourly rate. Such personnel related charges shall commence at the time the Keeler Township Fire & Rescue personnel is dispatched to the emergency incident and shall continue until all personnel have concluded their related responsibilities.
- c. Other expenses incurred by the Keeler Township Fire & Rescue in responding to and mitigating an emergency incident, including, but not limited to, rental or purchase of machinery, equipment, labor, consultants, legal and engineering fees, and replacement costs related to disposable personal protection equipment, extinguishing agents, supplies, charges for emergency response teams of other governmental agencies, meals, refreshments for personnel working the scene of an emergency incident and all like and similar incidental costs arising from said emergency response and mitigation.
- d. Any and all charges to the Keeler Township imposed by any local, State, or Federal entities related to the emergency response incident or service provided.
- e. The cost of repair or replacement of any apparatus, equipment, protective clothing, or material damaged, destroyed, consumed as a result of the response and mitigation activities.
- f. Cost incurred in accounting for all hazardous material incident related expenditures to include billing and collections costs, actual attorney fees incurred and all related costs associated with collection of said expenditures including court costs, witness fees, and expert fees incurred in support thereof.

Section 5: COST DETERMINATION

The foregoing described costs shall be determined in accordance with a resolution established by the Keeler Township Board. Where applicable, the costs shall be the actual expense of the Keeler Township Fire & Rescue. With respect to apparatus use charges, the Keeler Township Board shall establish a use charge for each separate piece of apparatus and equipment. Said use charges shall from time to time be established by further resolution of the Keeler Township Board. In the event of an emergency response, the most current prevailing apparatus and equipment charge schedule shall be applied. A cost incurred but not listed in a resolution shall not prevent it from being charged if actually incurred.

Section 6: BILLING PROCEDURE

Following conclusion of an emergency response incident meeting the requirements of this ordinance, the Fire Chief or the Chief's agent shall submit a detailed listing of all known expenses to the Keeler Township Clerk. The Clerk shall prepare an invoice to the responsible party for payment. The Clerk's invoice shall demand full payment within thirty (30) days from the bill date. Any additional expense that becomes known following the transmittal of the bill to the responsible party shall be billed in the same manner on a subsequent bill to the responsible party. Any amount due that remains unpaid thirty (30) days after the date of billing shall have imposed a late charge thereon at the maximum rate allowed by law until said account shall be paid in full.

Section 7: OTHER REMEDIES

Any failure by the responsible person for the costs of an emergency response, to pay the bill within thirty (30) days of service shall be considered in default. In case of default, the Keeler Township Board may commence civil suit to recover the costs plus any additional costs or expenses allowed by law. In addition to the foregoing, the Keeler Township Board may pursue any other remedy or may institute an appropriate action or proceeding in court of competent jurisdiction to collect the charges imposed under this Ordinance together with costs and attorney fees.

Section 8: SEVERABILITY

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance, which shall remain in full force and effect.

Section 9: EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its publication. Upon its effective date, this Ordinance supersedes and repeals prior Ordinances.

Motion offered by Barb Fisher and supported by Carl Davis

Roll Call Vote: Yes: Fisher, Davis, Fleischauer, and Kays

 No: None

 Absent: Tom Landis

ORDINANCE NO. 03-28-2015 DECLARED ADOPTED Published in The Herald Palladium on 03-28-2015, Effective date is 04-28-2015.

I hereby certify the foregoing constitutes a true and complete copy of the ordinance adopted by the Keeler Township Board of Trustees, County of Van Buren, Michigan, at a special meeting held on the 28th day of March, 2015.

Date: March 28, 2015

Carl F. Davis Clerk,
Keeler Township