

ORDINANCE NO. 135  
Bloomingdale Township

EMERGENCY RESPONSE COST RECOVERY ORDINANCE

AN ORDINANCE ADOPTED PURSUANT TO MICHIGAN PUBLIC ACT 33 OF 1951, AS AMENDED (MCL 41.801 ET SEQ) AND OTHER APPLICABLE PROVISIONS OF THE MICHIGAN STATUTES TO ALLOW BLOOMINGDALE TOWNSHIP TO RECOVER CERTAIN COSTS INCURRED BY THE TOWNSHIP IN CONNECTION WITH THE PROVISION OF CERTAIN FIRE EMERGENCY SERVICES, AND TO PROVIDE FOR THE ENFORCEMENT OF THIS ORDINANCE AND CERTAIN ADMINISTRATIVE PROVISIONS.

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

**Section 1: TITLE**

This ordinance shall be titled and know as Ordinance No. 135, the Emergency Response Cost Recovery Ordinance.

**Section 2: PURPOSE AND AUTHORITY**

Bloomingdale Township hereby finds the Township has incurred extraordinary costs associated with certain public safety and fire emergency services related to utility line failures and hazardous material releases. As a result of these determinations, the Township has adopted this Ordinance to allow the Township to recover costs incurred by the Township in connection with utility line failures and hazardous material releases.

This ordinance has been adopted and is ordered by the Bloomingdale Township Board of Trustees pursuant to the authority contained in the following public act 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**

For the purpose of their use in this Ordinance, the following words and terms are defined. Any word or term not so defined shall be considered to be defined in accordance with its common or standard definition.

(A) **Township:** Bloomingdale Township, Van Buren County, Michigan.

(B) **Assessable Costs:** The costs incurred by the Township, including but not limited to, the labor, equipment and material costs whether or not such services are provided by the Township or by a third party independent contract or on behalf of the Township; service

charges or interest; attorney fees; litigation costs; and any costs, charges, fines, or penalties to the Township imposed by any local, state, or federal governmental entities. The labor, equipment and material costs to the Township include without limitation employee wages; Workers' Compensation benefits; overtime; fringe benefits; administrative overhead; costs of equipment; costs of equipment operation, materials, excavation, transportation, and disposal; costs of any contracted labor or materials; and any and all other labor and material costs. Bloomingdale Township labor, equipment, and material costs may be as established by the Fire Chief or by Resolution of the Bloomingdale Township Board of Trustees and may be adjusted from time to time by Resolution.

**(C) Hazardous Materials:** Those elements, substances, wastes, or their byproducts, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA"); or which are contained in the list of toxic pollutants designated by Congress or the EPA; or which are defined as hazardous, toxic, pollutant, infectious, flammable, combustible, explosive, or radioactive by any other Federal, State, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, as now or at any time hereafter in effect. Specifically included without limitation as Federal and State laws, rules and regulations are Act No. 307 of the Public Acts of 1982, as amended, MCL 299.601 et seq.; the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. "9601 et seq.; the Federal Toxic Substances Control Act, as amended, 15 U.S.C. "2601 et seq.; the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. "6901 et seq.; the Federal Hazardous Material Transportation Act, as amended; the Federal Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; or any similar or successor statute or law, or rules and regulations of the EPA, or any other state or federal department, board, or agency, or any other agency or governmental board or entity having jurisdiction (collectively, the "Environmental Laws"). Hazardous Materials specifically include without limitation petroleum products, automotive anti-freeze, polychlorinated biphenyls and asbestos.

**(D) 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.

**(E) Responsible Party:**

(1) In connection with a Release of Hazardous Materials. Responsible Party means: Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for a Release of Hazardous Materials, either actual or threatened; or that is an owner, tenant, occupant, or party in control of property, real or personal, onto which or from which there is a Release of Hazardous Materials; and the heirs, estates, assigns or successors to any such entity.

(2) In connection with a failure of a Utility Line, Responsible Party means: Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible, in whole or in part, for the maintenance or failure of the Utility Line; and the heirs, estates, assigns or successors to any such entity.

**(F) Utility Lines:** Any transmission or service line, cable, conduit, pipeline, wire, main or the like used in any way to provide, collect or transport water, sewage, electricity, liquid hydrocarbons, natural gas, or communication or electronic signals (including but not limited to telephone, computer, cable television and stereo signals or electronic impulses).

#### **Section 4: ASSESSMENT OF COSTS**

(A) All Assessable Costs associated with any of the actions or services described in subsections (1) and (2) below may be jointly and severally assessed to any or all Responsible Parties:

(1) Assessable Costs incurred to halt, abate, remediate or remedy any Release of any Hazardous Materials and any liabilities resulting therefrom;

(2) Assessable Costs incurred in connection with a Utility Line failure and any liabilities resulting therefrom;

(B) Payment of Services. The fire chief or his designee shall determine the total assessable costs and submit the Township's bill to the responsible party. Bills shall be sent by first class mail. All bills rendered for charges shall be payable within 30 days of the mailing of the billing.

(C) Collection of Charges. Bills not paid within 30 days of the mailing of the billing shall be considered a default. In case of a default, the Township may commence a civil suit or take any other actions permitted at law or in equity to recover the assessable costs. If legal action is taken to collect an amount owed pursuant to this ordinance, the Township shall be entitled to recover the cost of such legal action from the person responsible, including reasonable and actual attorneys' fees.

(D) The Township may charge any costs assessed pursuant to this Ordinance to the insurer of any Responsible Party. The submission of an invoice for the assessed costs to an insurer does not in any way limit or extinguish the liability of a Responsible Party for the costs assessed pursuant to this Ordinance until such time as the assessed costs are paid in full.

**Section 5: APPEAL PROCEDURE**

A responsible party who receives a bill under this Ordinance may request a meeting with the fire chief or his designee to appeal all or part of the assessable costs. The person shall requires a meeting in writing within 14 calendar days of the date of the invoice. The fire chief or his designee shall have authority to affirm, modify or waive the assessable costs. Failure to file a timely written request of appeal constitutes a waiver of the right to relief and further constitutes an agreement to pay the assessed costs.

**Section 6: SEVERABILITY**

This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are declared to be severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this Ordinance.

**Section 7: EFFECTIVE DATE**

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

Motion offered by FRITZ and supported by Johnson

Roll Call Vote: Yes: FRITZ, JOHNSON, LITZKE, LISOWSKI, Sommertfeld  
No: NONE

**ORDINANCE DECLARED ADOPTED:**

I hereby certify the foregoing constitutes a true and complete copy of the ordinance adopted by the Bloomingdale Township Board of Trustees, County of Van Buren, Michigan, at a regular meeting held on the 16<sup>th</sup> day of December, 2020

Date: 12/16/2020

Judy Little  
Bloomingdale Township Clerk