

ORDINANCE 2012 #1  
EMERGENCY RESPONSE COST RECOVERY

AN ORDINANCE TO RECOVER COSTS FOR THE DEPLOYMENT OF PUBLIC SAFETY SERVICES INCURRED BY THE TOWNSHIP OF DECATUR

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

Section 1: Purpose

Pursuant to the provision of MCL 41.806a, and in order to protect the Decatur-Hamilton Fire Department and Decatur-Hamilton Quick Response from extraordinary expenses resulting from responding to the result of any of the following illegal activities, the Township of Decatur authorizes the imposition of charges to recover reasonable and actual costs incurred by the Decatur-Hamilton Fire Department and/or Decatur-Hamilton Quick Response in responding to such incidents.

Section 2: Definitions

*Assessable costs* means those costs for services incurred in connection with a response to an illegal activity that results in Fire Department and/or Quick Response responding. Such costs include, but are not limited to response time, equipment usage, handling and/or disposal of hazardous materials, legal investigations, attorneys' fees, litigation costs, and any costs, charges, fines or penalties to the Fire Department and/or Quick Response imposed by any court or state or federal governmental entities.

*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.

*Charge against person* means the costs of an emergency response charged against the person liable for the costs under this Ordinance. The charge constitutes a debt of that person and is collectible by Decatur Township for the Fire Department and/or Quick Response, for incurring those costs, in the same manner as in the case of an obligation under a contract, expressed or implied.

*Cost recovery schedule.* The Administrative Board(s) of the Decatur-Hamilton Fire Department and/or the Quick Response shall be responsible for developing the *cost recovery schedule* and shall provide and update this information to the Township as well as any FOIA requests.

*Hazardous materials* means those elements, substances, wastes or by-products, including, but not limited to items used for the manufacture of methamphetamine, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, 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 or qualified safety official. Including any other material that may be defined as hazardous by the U.S. Department of Transportation or by any other federal laws, or the laws of the State of Michigan.

*Hazardous material incident or emergency* means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the administrator of the Public Health Code or his/her designee, or the fire chief or his/her designee has so declared such activity, accident or emergency a hazardous material incident or emergency, including the clean-up costs of a methamphetamine site.

*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 an unintentional fire or fire caused by an act of God, i.e. a lightning storm.

*Responsible party* means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for the public safety or fire emergency incident; or the release of a hazardous material, either actual or threatened; or as the owner, tenant, occupant or party in control of real and personal property to which there is a public safety or fire emergency incident or from which or onto which hazardous material is released, or the owner, possessor or party in control of the hazardous substance immediately prior to said release, and their heirs and beneficiaries, successors and assigns.

*Structure demolition* means the tearing down of a structure damaged by fire, which must in the opinion of the fire chief or his/her designee, or the State building inspector, be promptly demolished following the fire to protect public safety.

### Section 3: Liability for expenses

Decatur Township may pursue cost recovery fees for emergency responses, extra services, or special services requested, provided or otherwise demanded by an individual, business, or other entity concerning property or an incident situated in the Township rather than the Township and its population as a whole. A list of such services is defined in Section 2 of this Ordinance and the *assessable costs* as determined by the Administrative Board(s) of the Decatur-Hamilton Fire Department and/or Quick Response.

### Section 4: Charges imposed upon responsible party

When the Decatur-Hamilton Fire Department and/or Quick Response responds to a call for emergency assistance in connection with a situation as described in the definition of *assessable costs* in Section 2 hereof, actual costs incurred shall be imposed upon the responsible party, including, but not limited to:

*Any and all charges* to Decatur Township by any local, state or federal entity, or the Administrative Board(s) of the Decatur-Hamilton Fire Department and/or Quick Response, related to the emergency response incident or service provided.

*The cost of repair or replacement* of any apparatus, equipment, protective clothing or materials damaged, destroyed, or consumed as a result of the response and mitigation activities.

*The costs incurred* in accounting for all hazardous material incident-related expenditures to include billing and collection costs and to include 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 authorization and determination

The costs described in this Ordinance shall be determined as the *assessable costs* as set by the Administrative Board(s) of the Decatur-Hamilton Fire Department and Quick Response in addition to any actual costs incurred as stated in Section 4.

#### Section 6: Billing and collection of assessable costs

The Administrative Board(s) of the Decatur-Hamilton Fire Department and Quick Response shall be responsible for preparing an itemized billing for Decatur Township. Decatur Township Clerk shall then prepare an invoice to the responsible party or entity for payment, and shall mail the itemized invoice to the responsible party at his/her or its last known address and/or to the prosecuting attorney as indicated in criminal cases. Such invoice shall be due and payable within thirty (30) days of the date of the mailing. If a responsible party shall appeal assessable costs pursuant to Section 7 hereafter, such costs if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of the determination of the appeal.

#### Section 7: Procedure for appealing assessable costs

Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the Administrative Board(s) of the Decatur-Hamilton Fire Department and/or Quick Response, or their designated representative, along with the Supervisor of Decatur Township, to request a modification of the assessable costs. The responsible party shall request in writing such meeting within ten (10) calendar days of the date of the invoice for the assessable costs – written request shall be sent to the Township Clerk. If after said meeting, the responsible party is still not satisfied, he/she may request an opportunity to appear before the Township Board - written request shall be sent to the Township Clerk within seven (7) calendar days of aforesaid meeting. At this meeting, the Township Board may request the presence of a Fire/QR Administrative Board designated representative to be present. Any written requests 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 requests shall be deemed waived by the responsible party. Failure to timely file a written request to appear, or failure to appear before aforesaid Board(s) shall constitute a waiver of the responsible party's appealing rights herein provided. After a responsible party has been given an opportunity to appear before aforesaid Board(s), the aforesaid Board(s) shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

#### Section 8: Default in Payment

Any failure by the responsible party for the assessable costs of an emergency response to pay the invoice for same within the time period provided in Section 7 shall be considered

a default. In case of default Decatur Township may commence a civil lawsuit to recover such costs, plus any additional costs, or expenses for attorney fees and court costs which are allowed by law.

Section 9: Assessable costs and expenses

Assessable costs and expenses assessed against a responsible party not paid when due, including additional attorney fees and court costs allowed by law, to obtain a judgment against the responsible party shall constitute a lien upon the real property of the responsible party in Decatur Township from which, upon which, or related to which, the public safety or fire emergency incident occurred. Said lien may be enforced by the placement of a Special Assessment on the real property taxes of the responsible party's property. The Decatur Township Treasurer shall certify to the county treasurer the amount of such lien and same shall be entered as a Special Assessment on the next real property tax roll as a charge against the affected real 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.

Section 10: 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 11: Severability

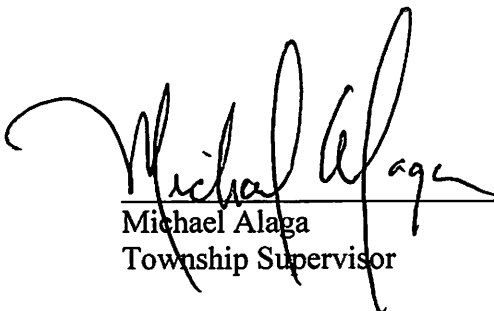
Sections of this Ordinance shall be deemed severable and should any section, clause or provision of this Ordinance be declared to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be invalid.

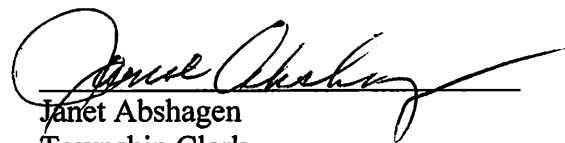
Section 12: Coverage Area

This Ordinance covers all Decatur Township areas outside the Village of Decatur legal boundaries. The Village of Decatur's Ordinance #186 covers properties located within the village.

Section 13: Effective Date

This Ordinance duly adopted on March 8, 2012 at the regular meeting of the Decatur Township Board will become effective May 1, 2012. Legal publication in accordance with the provisions of the Act governing same.

  
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Michael Alaga  
Township Supervisor

  
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Janet Abshagen  
Township Clerk