

**CHARTER TOWNSHIP OF AUSABLE
IOSCO COUNTY, MICHIGAN
ORDINANCE 115**

**PUBLIC SAFETY AND FIRE EMERGENCY
RESPONSE COST RECOVERY ORDINANCE**

AN ORDINANCE TO PROVIDE FOR THE RECOVERY OF EXPENSES RESULTING FROM THE UTILIAZION OF THE CHARTER TOWNSHIP OF AUSABLE’S RESOURCES IN RESPONSE TO CERTAIN PUBLIC SAFETY AND/OR FIRE EMERGENCY INCIDENTS, PURSUANT TO THE AUTHORITY OF PUBLIC ACT 33 OF 1951, AS AMENDED (*MCL41.801, et seq.*) AND TO PROVIDE METHODS FOR COLLECTING THOSE CHARGES.

THE CHARTER TOWNSHIP OF AUSABLE ORDAINS:

Section 1. Purpose of Ordinance.

The purpose of this ordinance is to authorize the Charter Township of AuSable to recover costs incurred by it in responding to certain public safety or fire emergency incidents, and to provide for the procedure by which such recovery shall occur.

Section 2. Definitions.

For the purposes of this ordinance:

- a. “Department” or “Fire Department” means the Charter Township of Oscoda’s Fire Department.
- b. “Assessable costs” means those costs for services incurred by the Charter Township of AuSable in connection with a response to a public safety or fire emergency incident based on, but not limited to, the actual labor and material costs of the Charter Township of AuSable (including, without limitation, employee wages, 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 Charter Township of AuSable or by a third party on behalf of the Charter Township of AuSable; service charges and interest; attorney’s’ fees, litigation costs, and any costs, as may be assessed against any property owner which may be billed at the applicable standard insurance rate, plus any other costs reasonably incurred as in the determination of the Township Superintendent, or any other person designated by written resolution of the Board of Trustees.
- c. “Emergency assistance” means emergency medical, public safety, police, fire and civil defense services.
- d. “Excessive requests for emergency assistance” means any requests and/or repeated calls for emergency assistance, by either the Oscoda Township Fire Department and/or the Oscoda Township Police Department, to a particular location or premises, on a repeated basis, within an unreasonable time-frame.
- e. “Hazardous materials, waste or materials” means 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, anti-freeze, polychlorinated biphenyls and asbestos, which

are or are potentially harmful the environment or human or animal life, or which post an unreasonable or imminent risk to lives, health or safety of persons or property, or to the ecological balance of the environment as determined by the Fire Chief or the senior Fire Official of the Charter Township of Oscoda in charge at the scene.

- f. "Illegal fire" means a fire set or determined to have been set in violation of federal, state, or local law and shall include without limitation 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, e.g., a lightning storm. Additionally, any fire shall constitute an illegal fire, if in fact said fire is not by way of permit.
- g. "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, ground water and surface water.
- h. "Responsible party" means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government 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 or 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.

Section 3. Fire Protection Area

The Oscoda Fire Department provides public safety and/or fire emergency services to the Charter Township of Oscoda and has entered into a fire protection contract to provide these services to other areas. At present, these other areas include the Charter Township of AuSable, and thirty-nine (39) sections of the Township of Wilber, all in Iosco County, Michigan.

Section 4. Cost Recovery Authorization and Procedure

- a. Upon receipt of the Fire department Chief's report pertaining to a public safety or fire emergency, the Charter Township of AuSable may recover from any responsible parties, individually, jointly and/or severally, all reasonable and assessable costs. Nothing in this Ordinance shall restrict the Charter Township of AuSable from billing insurance companies in response to structure fires, and requesting reimbursement for various foam agents used in the extinguishment of such fires. Additionally, in response to motor vehicle accidents, any hazardous material clean-up that is required, the cost of same, shall be passed onto the insurance company of the vehicles involved. Additionally, if there is a response to a motor vehicle accident that requires the utilization of the jaws of life, and where there is the expenditure of man power needed to protect a person or persons, then these costs shall be passed onto the relevant party and/or that particular party's automobile insurance company. Also any costs incurred as a result of any utility line failure and/or any gas leaks, which require the fire and/or police department to stand by and/or assist, shall be passed onto, for purposes of collection, that particular company.
- b. The Charter Township of AuSable Superintendent or his or her designee shall determine the total assessable costs and shall, in consultation with the Charter Township of Oscoda 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. The Charter Township of AuSable Superintendent may maintain a list of associated costs to help him or her in assessing

costs for public safety or a fire emergency, which list should be updated annually or at any other reasonable time in the Superintendent's discretion, and which shall be considered a guideline in calculating costs to the responsible parties. Upon the request of the particular party involved, an appeal of the determination of the Charter Township of AuSable Superintendent in this matter may be made to the Charter Township of AuSable Board, whereupon it shall make a determination as to whether or not any costs should be recovered, and if so, if the amount requested is reasonable.

- c. In making a determination of costs, the following shall be considered:
 - I. The total reasonable assessable costs;
 - II. The risk the public safety or fire emergency incident imposed on the Charter Township of AuSable and/or its response area, its residents and their property;
 - III. Whether there was any injury or damage to a person or property;
 - IV. Whether the public safety or fire emergency incident required evacuation;
 - V. The extent to which the public safety or fire emergency incident required an unusual or extraordinary use of Charter Township of Oscoda personnel and equipment;
 - VI. Whether there was any damage to the environment;
 - VII. The existence and extent of negligence or fault on the part of the responsible party and;
 - VIII. Whether the public safety or fire emergency incident involved, or the assessable costs were incurred for the benefit of a resident of the Charter Township of AuSable.
- d. After consideration of the factors in Section 4-B, above, the Charter Township of AuSable Superintendent may allocate assessable costs among and between multiple responsible parties or may assess all or any portion of such costs as against any responsible party, regardless of whether a responsible party has other legal liability therefor or is legally at fault.
- e. If the Charter Township of AuSable Superintendent 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.

Section 5. Billing and Collection of Assessable Costs

After determining to assess and recover assessable costs against a responsible party or parties and the amount of such assessment, the Charter Township of AuSable Superintendent shall submit such a determination to the Charter Township of AuSable Treasurer or his or her designee, who shall mail an invoice to each responsible party against whom recovery is sought at his or her last known mailing 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 remains unpaid, and/or the legal maximum. If a responsible party shall appeal assessable costs pursuant to Section 6 below, 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 be calculated retroactively from the 30th day after the original invoice from which such appeal was taken, unless the Charter Township of AuSable Board during such appeal hearing determines that there existed a meritorious and bona fide dispute and basis for appeal, in which event the Board may waive the late payment fee which accrued prior to the date of appeal and up to 30 days thereafter.

Section 6. Procedure for Appealing Assessable Costs

Any responsible party who receives an invoice for assessable costs shall have an opportunity to appear before the Charter Township of AuSable Board to request a modification of assessable costs. A responsible party who desires to appear before the Charter Township of AuSable Board must first meet with the Charter Township of AuSable Superintendent. Upon receipt of such request, the Charter Township of AuSable Superintendent will place the responsible party on the agenda of a regularly scheduled Charter Township of AuSable Board meeting. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified.

Section 7. Assessable Costs a Lien Upon Property

Assessable costs assessed against a responsible party not paid when due, including late payment fees, shall constitute a lien upon any real property owned or in which an interest is held by a responsible party within the Charter Township of AuSable, and from, upon or pertaining to which property the public safety or fire emergency incident occurred. Such lien shall be of the same character and effect as the lien created by the Township Charter for real property taxes and shall include accrued interest and penalties. The Charter Township of AuSable Treasurer shall prior to March 1 of each year certify to the Assessor of the Charter Township of AuSable the fact that such assessable costs are delinquent and unpaid. The Charter Township of AuSable or Charter Township of AuSable 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.

Section 8. Other Remedies

In addition to those rights and remedies set forth in this Ordinance, the Charter Township of AuSable 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 another responsible party.

Section 9. No Limitation of Liability

The recovery of assessable costs pursuant hereto does not limit the liability of a responsible party under other applicable local, state or federal law.

Section 10. Severability

Should any provision or part of this Ordinance be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall be deemed a distinct, separate and severable part of this Ordinance and shall not affect the validity or enforceability of any other provision or part hereof, all of which shall remain in full force and effect.

Section 11. Refusal of Service

Nothing in this Ordinance shall authorize the Fire Chief or any Charter Township of Oscoda personnel to refuse or delay fire service to any person, firm, or corporation that has not paid for service or that owes for previous services.

Section 12. Effective Date; Publication; Recording

This ordinance shall take effect immediately upon its publication. This ordinance shall be published once, in full, in a newspaper of general circulation within the boundaries of the Charter Township of AuSable, and qualified under state law to publish legal notices, within thirty (30) days after its publication. The Township Clerk shall immediately record this ordinance in the Township Ordinance Book, and the Township Supervisor and the Township Clerk shall authenticate the record by their official signatures on the record.

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the Charter Township of AuSable Board of Trustees at a regular meeting held on the _____ day of _____, _____.

I further certify that the following Board members were present at the meeting: _____, _____, and the following Board members were absent: _____.

I further certify that the Board member _____ moved for adoption of the ordinance, and the motion was supported by the Board member _____.

I further certify that the following Board members voted upon roll call vote for the adoption of the ordinance: _____, and the following Board members voted against the adoption of the ordinance: _____.

Adopted and approved this _____ day of _____, _____, by the Charter Township of AuSable Board of Trustees.

The Township Supervisor declared this ordinance adopted.

Dated: _____

Kevin Beliveau
Charter Township of AuSable Supervisor

Date: _____

Kelly Graham
Charter Township of AuSable Clerk