

ORDINANCE NO. 186
EMERGENCY RESPONSE COST RECOVERY

AN ORDINANCE TO RECOVER COSTS FOR THE DEPLOYMENT OF PUBLIC SAFETY SERVICES INCURRED BY THE VILLAGE OF DECATUR FROM THE UTILIZATION OF VILLAGE RESOURCES IN RESPONSE TO EMERGENCY INCIDENTS, MOTOR VEHICLE ACCIDENTS, AND HAZARDOUS INCIDENTS.

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

Section 1: Purpose.

Pursuant to the provision of MCL 41.806a, and in order to protect the village from extraordinary expenses resulting from the utilization of village resources in response to certain public safety or fire emergency incidents, demands for services, and/or criminal activity, as defined and set forth in Section 2 hereof, the Village of Decatur MI authorizes the imposition of charges to recover reasonable and actual costs incurred by the village in responding to such incidents.

Section 2: Definitions.

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

Animal recovery means the costs associated with the recovery of animals, whether by request of the animal owner or caretaker or by initiative of public safety personnel, which have run away and/or have to be restrained for the safety of any persons or another animal. The term “animal” as used herein, shall refer to dogs, cats, or any other animal that resides with the owner or other individual who is a caretaker, or on any other property owned or rented by the animal’s owner or by the individual who is a caretaker.

Assessable costs mean those costs for services incurred by the village in connection with a response to a public safety incident, emergency assistance, and excessive requests for emergency assistance, false alarms, or other requested extraordinary service. Such costs include, but are not necessarily limited to, the actual labor and material costs of the village (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 village or by a third party on behalf of the village; service charges and interest; attorneys’ fees, litigation costs and any costs, charges, fines or penalties to the village 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 the village 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 village council shall from time to time adopt 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 costs incurred by the village and represent the “costs of an emergency response or requested service.” This schedule shall be available to the public from the village clerk, the department of public works, or the police department.

Department of public works means the public works department created by the village council.

Emergency assistance means any request for emergency medical, public safety, public works, police, fire and civil defense services.

Excessive requests for emergency assistance means 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.

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 three (3) times in a calendar month or four (4) times in a calendar year.

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 official of the village in charge at the scene. 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.

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.

Police Chief means the chief operational and administrative officer of the police department, or in his/her absence, the senior police officer in charge at the time of response.

Police Department means the police department created by the village council.

Public safety or fire emergency incident means

- (i) excessive requests for emergency assistance,
- (ii) a false alarm,
- (iii) a hazardous material incident or emergency,
- (iv) an illegal fire,
- (v) bomb threats,
- (vi) threats of harm to oneself or others,
- (vii) a structure demolition, or
- (viii) a utility line failure,
- (ix) any other incident requiring extraordinary utilization of village resources.

Public works director means the head of the department of public works for the village.

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, groundwater and surface water.

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 a 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.

Responsible party, extra services means any person, business or other entity that requests, requires or is provided extra services or special services.

Responsible party, under the influence means any person that is liable for the costs of an emergency response if that person, while under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, proximately causes any incident resulting in an emergency response. A person is under the influence of an intoxicating liquor or a controlled substance, or the combination of an intoxicating liquor and a controlled substance, when his/her physical or mental abilities are impaired to a degree that he/she no longer has the ability to operate a motor vehicle with the caution characteristic of a sober person or ordinary prudence if determined by a police officer after said officer has conducted an investigation consistent with his training. Further, it shall be presumed that a person was operating a motor vehicle while under the influence of an intoxicating liquor if a chemical analysis of his/her blood, urine or breath indicates that the amount of alcohol in his/her blood was in excess of the state's legally established limits of impaired or operating while intoxicated.

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 village's building inspector, be promptly demolished following the fire to protect public safety.

Threats of harm to oneself or others mean the verbal or written threat of physical harm to oneself or another individual or another's property, which if carried out would be a violation of federal, state or local law.

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, 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 party responsible for the maintenance of such utility line does not respond within one (1) hour to a request to repair or correct such failure.

Village resources means those human individuals responding, supplies, equipment and purchased or engaged resources of the department of public works, police department, Decatur-Hamilton Fire Department and Quick Response Unit needed in response to emergencies and demands for services defined herein.

Section 3: Liability for expenses.

The village may pursue cost recovery fees for emergency response, 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 Village of Decatur MI rather than the village and its population as a whole. A list of such services is defined in Section 2 of this Ordinance and in the schedule of fees as set forth in the Cost Recovery Schedule as adopted from time to time by Resolution of the Village Council of the Village of Decatur MI.

Section 4: Charges imposed upon responsible party.

When the village 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 by the village in responding to and mitigating such incident shall be imposed upon the responsible party, including, but not limited to:

- (1) 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. Such fee shall be for each hour or fraction thereof that the equipment, materials, supplies, apparatus, and other items are used or are required at the site by the officer in command.
- (2) All personnel-related costs incurred by the police department or the department of public works as a result of responding to and mitigating an 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 village’s allowed usual and customary established rates for full-time and part-time personnel, whether incurred at regular or overtime rates. Such personnel related charges shall commence at the time village personnel are dispatched to the emergency incident and shall continue until all personnel have concluded their related responsibilities.
- (3) Other expenses incurred by the village 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.
- (4) Any and all charges to the village imposed by any local, state or federal entity, or the Decatur-Hamilton Fire Administrative Board or the Decatur-Hamilton Quick Response Administrative Board, related to the emergency response incident or service provided.
- (5) 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.
- (6) 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, determination, and procedure.

(a) The costs described in this Ordinance shall be determined in accordance with a Resolution establishing a Schedule of Fees by the village council. Where applicable, the cost shall be the actual expenses to the police department, department of public works and the village. With respect to apparatus/equipment use charges, the village council shall establish a use charge for each separate piece of apparatus or equipment. Said use charges shall from time to time be established by further resolution of the village council. In the event of an emergency response, the most current prevailing apparatus/equipment schedule fee charge shall be applied.

(b) The village manager or his/her designee shall determine the total assessable costs and shall in consultation with other village personnel and entities 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 village, 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 village personnel and equipment, and
- (6) whether there was any damage to the environment.

(c) After consideration of the factors in (b) immediately above, the village manager 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 therefore or is legally at fault.

(d) If the village manager 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.

(e) Any assessable cost shall be subject to approval by the village council.

Section 6: Billing and collection of assessable costs.

Following conclusion of an emergency response incident meeting the requirements of this Ordinance, the police chief or the department of public works director, or his/her designee shall submit a detailed listing of all known expenses to the village manager or his/her designee. The village manager or village clerk shall 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. Such invoice shall be due and payable within thirty (30) days of the date of 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 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 village manager or his/her designee to request a modification of 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. If after meeting with the village manager or his/her designee the responsible party is still not satisfied, he/she may request an opportunity to appear before the village council to further request a modification of assessable costs. A responsible party who desires to appear before the village council must first meet with the village manager or his/her designee as provided above and shall file a written request to appear before the village council with the village clerk within seven (7) calendar days of the date of the meeting with the village manager. Upon receipt of such request, the village clerk will place the responsible party on the agenda of the next regularly scheduled village council meeting, and shall immediately notify the responsible party to appear at such meeting. Any filed request to appear 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 request to appear shall be deemed waived by the responsible party. Failure to timely file a written request to appear, or failure to appear before the village council on the appealed date, 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 the village council, the village council 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 the village 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 the village, 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 village 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: Effective Date. This Ordinance shall become effective the 1st day of December, 2011.

Adopted by the Village Council of the Village of Decatur, Michigan on this 7th day of November, 2011.