

ORDINANCE NO. 2020-03

COST RECOVERY ORDINANCE

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

THE TOWNSHIP OF PORT SHELDON, COUNTY OF OTTAWA, AND STATE OF MICHIGAN, ORDAINS AS FOLLOWS.

Section 1. Purpose. Port Sheldon Township finds that persons in and traveling through the Township historically have needed, caused, or contributed to the need for certain public safety and fire emergency services, which needs and situations have negatively affected the health, environment, and welfare of some Township residents and real property located within the Township. In addition, the Township has found that it has incurred costs associated with the provision of public safety and fire emergency services. 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 the provision of these certain public safety and fire emergency services to the fullest extent permitted by law.

Section 2. Definitions. For the purpose of their use in this Ordinance, unless their context specifically indicates otherwise, the following words and terms are defined. Any word or term not defined shall be considered to be defined in accordance with its common or standard definition.

(a) Township: Port Sheldon Township, Ottawa County, Michigan.

(b) Assessable Costs: The costs incurred by the Township in connection with, or to allow the Township to respond to, any safety event, any vehicular accident, fire, or other emergency incident or event, including, but not limited to, the actual labor and material costs to the Township (including, without limitation, employee wages; Workers' Compensation benefits; fringe benefits; administrative overhead; costs of equipment; costs of equipment operation, including depreciation; costs of materials; costs of transportation; costs of material disposal; costs of any contracted labor; and any and all other costs), whether or not such services are provided by the Township or by a third party independent contractor on behalf of the Township; service charges or interest; attorneys' fees; litigation costs (including but not limited to filing fees, transcript fees, expert fees and witness fees); and any costs, charges, fines, or penalties to the Township imposed by any local, state, or federal governmental entities.

(c) Emergency Assistance means any medical, police, rescue, public safety, fire, fire alarm, public utility, civil defense, or other services deemed appropriate by Township personnel to respond to any event or incident to which the Township may respond.

(d) Excessive Requests for Emergency Assistance: Any request for emergency assistance (e.g. emergency medical assistance; public safety, police, or sheriff services; or fire department services) made for a particular location or commercial entity if that location or commercial entity has requested emergency assistance, of any type, more than two times in the proceeding 30 calendar days, or more than three times in a calendar year.

(e) Facility: Any area, place, or property where a Hazardous Substance in excess of the concentrations which satisfy the requirements of MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213 of the Natural Resources and Environmental Protection Act (NREPA), has been released, deposited, disposed of, or otherwise comes to be located, and for which cleanup necessary to satisfy the NREPA cleanup criteria have not been completed.

(f) False Alarm: Any device, automated or manual, that is designed to request or summon emergency assistance or emergency service personnel, including but not limited to fire, emergency medical, and public safety personnel, 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 emergency service person which responds to a False Alarm.

(g) Hazardous Materials: Those elements, substances, wastes, chemicals, compounds, ingredients, or byproducts of the same, including but not limited to petroleum products, automotive anti-freeze, polychlorinated biphenyls, and asbestos, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA") or 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 subsequently in effect (collectively, the "Environmental Laws"). The Environmental Laws include, without limitation, the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. (NREPA), 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.

(h) Motor Vehicle: Any self-propelled or towed vehicle designed or used on the public highways to transport passengers or property as defined in Section 90 of Act No. 300 of the Public Acts of 1949, as amended, being Section 257.79 of the Michigan Compiled Laws, which is required to be registered for use upon the public streets and highways of this State under Act No. 300 of the Public Acts of 1949, as amended, being Sections 257.1 to 257.923 of the Michigan Compiled Laws. For the purposes of this Ordinance, Motor Vehicle includes those vehicles owned by the Government of the United States and any and all trailers or appurtenances to any Motor Vehicle.

(i) Motor Vehicle Accident: Any collision or contact involving one or more Motor Vehicles within the public right-of-way or on private property which results in any damage to the Motor Vehicle(s) involved or other real property.

(j) Motor Vehicle Fire: Any instance in which a Motor Vehicle is destroyed by or suffers any damage as a result of a fire.

(k) Release: Means release as defined in Part 201 of NREPA, and includes any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including but not limited to the air, soil, ground water and surface water.

(l) Responsible Party:

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

(2) In connection with a failure of a Utility Line or injury or damages related to, or arising from, or otherwise involving, a Utility Line or Facility, Responsible Party means: Any individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible, in whole or in part, for the maintenance, operation, or failure of the Utility Line, or the injury or damage arising from, to or related to the Utility Line, and their heirs, estates, or successors.

(3) In connection with a Motor Vehicle Accident or Motor Vehicle Fire, Responsible Party means: The registered owner, the operator of the Motor Vehicle at the time of the Motor Vehicle Accident or Motor Vehicle Fire if different from the registered owner of the Motor Vehicle, and any individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity

responsible, in whole or in part, for the Motor Vehicle Accident or the Motor Vehicle Fire, and their heirs, estates, or successors.

(4) In connection with a fire, Responsible Party means: Any individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible, in whole or in part, for the fire, the real property on which the fire occurred, or the object which was damaged or destroyed by the fire, and their heirs, estates, or successors.

(5) In connection with Excessive Requests for Emergency Assistance, Responsible Party means: The individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity that is responsible, in whole or in part, for the Excessive Requests for Emergency Assistance, including without limitation any owner, tenant, occupant, or party in control of all or a portion of the real property or Structure to which emergency service personnel are summoned pursuant to the Excessive Requests for Emergency Assistance, and their heirs, estates, or successors.

(6) In connection with a False Alarm, Responsible Party means: The individual, firm, corporation, limited liability company, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity that is responsible, in whole or in part, for the False Alarm or for the real property, location, or commercial entity to which emergency service personnel are summoned pursuant to the False Alarm, and their heirs, estates, or successors.

(m) Structure: Anything constructed or erected which has a permanent location on the ground or is attached to something having such location.

(n) Utility Lines: Any transmission or service line, cable, conduit, pipeline, wire, tower, structure, satellite dish or connection, turbine, facility, main, or the like used in any way to provide, collect, or transport electricity, natural gas, petroleum products, communication or electronic signals (including, but not limited to, telephone, computer and cable television and stereo signals or electronic impulses), power, water, or sewage.

Section 3. Assessment of Costs.

(a) All Assessable Costs which are incurred by the Township and associated with any of the actions or services described in subsections (1) through (6) below may be jointly and severally assessed to any or all Responsible Parties. These Assessable Costs include:

(1) costs incurred to halt, abate, remediate, or remedy any spills or discharges onto a public or private road or property of non-hazardous materials and any resulting liabilities;

(2) costs incurred to extinguish, respond to, or fight a fire of any type or origin, any demolition costs if a Structure damaged by fire must be demolished to protect the public safety following the fire, and any resulting liabilities;

(3) costs incurred in connection with a Utility Line failure or event and any resulting liabilities;

(4) costs associated with a Motor Vehicle Accident or Fire and any resulting liabilities;

(5) costs associated with Excessive Requests for Emergency Assistance and any resulting liabilities; and

(6) costs associated with a False Alarm and any resulting liabilities.

(b) Assessment of Costs for Hazardous Substance Events. It shall be the duty of any person or entity who causes or controls leakage, spillage, or any other Release of dangerous or Hazardous Materials to take such action as called for by Part 201 of the NREPA, and any other applicable statute, rule, or regulation, whether local, state, or federal, and to take such abatement, mitigation, clean up, and/or restoration of the affected area as may be called for by that legal authority. Any such person or entity who fails to comply with this section by failing to cleanup, mitigate, and remediate without delay any such Release of Hazardous Material shall be liable to and shall pay the Township for all of its costs and expenses, including the costs incurred by the Township or any party whom the Township engages, for the complete abatement, mitigation, cleanup, and restoration of the affected area to the fullest extent permitted by law. It is intended by this section that liability shall extend to the fullest extent permitted by law, and the Township shall be authorized and entitled to recover from, all persons or entities, from whom any statute, rule, or regulation permits recovery.

(c) Any Assessable Costs, including litigation expenses (including but not limited to filing fees, transcript fees, attorney fees, expert fees, and witness fees), which become known to the Township following the transmittal of a statement to the Responsible Party pursuant to this Ordinance shall be billed in the same manner on a subsequent statement to the Responsible Party.

(d) The Township Treasurer or the Treasurer's designee shall certify to the Township Supervisor the total Assessable Costs incurred by the Township pursuant to subsection (a) above. The Township Supervisor shall then decide whether to assess any, all, or part of the costs against any of the Responsible Parties. In deciding whether to assess any, all, or part of the costs against any of the Responsible Parties, the Township Supervisor shall consider the following factors:

(1) The total costs incurred by and resources expended by the Township, including but not limited to materials, equipment, manpower, administration, assistance from other sources, etc.;

(2) The risks to the Township, its residents, their property, or any other people or property, which risks result from the situation which caused the Township to incur Assessable Costs;

(3) Any injuries or damage to people or property which resulted from the situation which caused the Township to incur Assessable Costs;

(4) Whether the situation which caused the Township to incur Assessable Costs necessitated an evacuation;

(5) Whether the situation which caused the Township to incur Assessable Costs resulted in any damage to the environment;

(6) Whether any Responsible Party was a resident of the Township;

(7) Any other factors deemed relevant by the Township Board.

(e) The Township Supervisor may, after consideration of the factors listed in subsection 3(d) above, allocate the Assessable Costs among and between the Responsible Parties. Any Assessable Costs not allocated among or between Responsible Parties shall be a joint and several liability of each Responsible Party assessed costs under this Ordinance, regardless of whether that Responsible Party has any other legal liability therefore apart from this Ordinance, and regardless of whether the Responsible Party is at fault, subject to (in events involving Hazardous Materials) the provisions of the NREPA.

(f) The Township Supervisor shall direct the Township Clerk to send a statement of costs assessed pursuant to this Ordinance to all Responsible Parties so assessed. Such statement shall be dated and sent by First Class United States Mail, postage prepaid, to the last known address of each Responsible Party.

(g) The Township also 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.

(h) If the Township Supervisor or the Township Board, as the case may be, decides not to assess all or part of the Assessable Costs against any Responsible Party, such decision shall not, in any way, extinguish or limit a Responsible Party's liability to other parties for any costs or damages of any kind.

(i) Cost Recovery Fee Schedule: The Township Board shall from time to time adopt a schedule of the rates/costs incurred in responding to incidents requiring Emergency Assistance. The schedule may not include all costs that the Township incurs for a given event, or all costs recoverable pursuant to this Ordinance, depending upon the facts and circumstances related to each event or incident. It shall be presumed that the costs listed in this schedule are the true costs incurred by the Township in responding to a

public safety, fire or other event which involved Emergency Assistance. This schedule shall be available to the public from the Township Clerk.

Section 4. Notice and Right to Appear Provisions. Any Responsible Party who receives a statement of costs assessed pursuant to this Ordinance shall be given the opportunity to appear before the Township Board to request a modification of the assessed costs. Any Responsible Party who desires to appear before the Township Board shall file a written request to appear with the Township Clerk within 14 calendar days of the date of the statement of assessed costs. The Responsible Party will be placed on the agenda of the next regularly scheduled or special Township Board meeting, which meeting is at least 14 calendar days after the date on which the Responsible Party files with the Township Clerk a request to appear. Any filed request to appear shall specifically identify and explain all reasons why the Responsible Party believes the costs assessed pursuant to this Ordinance should be modified. Any reason, basis, or argument for a modification of the assessed costs not set forth in the written request to appear shall be deemed waived by the Responsible Party. Failure to file a written request to appear within 14 calendar days of the date of the statement of assessed costs shall constitute a waiver of the Responsible Party's right to appear before the Township Board, and shall further constitute the Responsible party's agreement to pay the assessed costs.

Section 5. Failure to Pay; Procedure to Recover. The Township may pursue any Responsible Party under either subparagraph (a) or subparagraph (b) below, or both, without limitation as allowed by law.

(a) All costs assessed pursuant to this Ordinance shall be paid within, 30 calendar days of the date of the statement therefore, unless otherwise approved in writing by the Township Supervisor or an authorized representative of the Township Supervisor. Any Responsible Party who fails to pay the costs assessed pursuant to this Ordinance within 30 calendar days of the date of the statement therefore shall be considered in default. In the case of default, the Township Board may authorize the Township attorney to commence a civil action to recover the costs, plus a late payment penalty of one percent per month or part of a month during which the costs remains unpaid, together with the Township's attorneys' fees and any other costs allowed by law.

(b) In cases where services have been rendered to a property or property owner, the charges shall constitute a lien on that property, including both real and personal property if allowed by law. If not paid within 30 days after the same is due, the Township Treasurer shall, prior to September 1 of each year, certify to the Township Assessor the facts of such delinquency. The Assessor shall then enter the delinquent amount on the next general tax roll as a charge against the property, and the liens thereupon shall be enforced in the same manner as provided by and allowed by law for delinquent and unpaid taxes.

Section 6. Severability and Captions. 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. Further, if there is any

conflict between the provisions of this Ordinance and the provisions of Part 201 of NREPA, the provisions of the NREPA shall take precedence, and the provisions of this Ordinance in conflict shall be deemed non-enforceable, but only to the extent to avoid the conflict.

Section 7. Administrative Liability. No officer, agent, employee, or member of the Township Board shall be personally liable for any damage that may accrue to any person as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this Ordinance.

Section 8. No Limitation of Liability. The recovery of Assessable Costs pursuant to this Ordinance does not limit the liability of a Responsible Party under applicable local, state, federal, or any other applicable law, rule, or regulation. The Township 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 a Responsible Party.

Section 9. Non-Exclusive Charge. The foregoing rates, fees, and charges shall not be exclusive of the charges that may be made by the Township for the costs and expenses of maintaining a fire department and/or emergency response services, but shall only be supplemental thereto. Monies may additionally be collected by the Township through general taxation after a vote of the electorate approving the same or by a special assessment established under the pertinent Michigan statutes. General fund appropriations may also be made to cover such additional costs and expenses.

Section 10. Repeal. All resolutions, ordinances, orders, or parts of any of them, in conflict in whole or in part with any provision of this Ordinance, are, to the extent of such conflict, repealed.

Section 11. Effective Date. This Ordinance was approved and adopted by the Township Board of Port Sheldon Township on November 12, 2020. This Ordinance shall be effective 30 days after publication of a notice of adoption in a newspaper of general circulation in the Township.

Howard Baumann
Township Supervisor

Teresa De Graaf
Township Clerk

CERTIFICATE

I, Teresa De Graaf, Clerk for Port Sheldon Township, Ottawa County, Michigan, certify that the foregoing Ordinance was adopted at a regular meeting of the Port Sheldon Township Board, held on November 12, 2020. The following members of the Township Board were present at that meeting: Howard Baumann, Teresa De Graaf, Rachel Frantom, Bill Monhollon and Gerald Smith and the following members of the Township Board were absent: None. The Ordinance was adopted by the Township Board with members of the Board Baumann, De Graaf, Frantom, Monhollon and Smith voting in favor, and members of the Board None voting in opposition to the Ordinance. Notice of Adoption was published in the Holland Sentinel on November 18, 2020.

Teresa De Graaf