

2001 EMERGENCY COST RECOVERY ORDINANCE

TOWNSHIP OF BAINBRIDGE

BERRIEN COUNTY, MICHIGAN

Ordinance No. 36

Adopted: March 5, 2001

Published: March 14, 2001

Effective: April 13, 2001

An ordinance to provide for the collection of fees to defray the cost to Bainbridge Township for fire protection services and hazardous materials cleanup rendered for health and safety of persons and for the protection of real and personal properties located in Bainbridge Township; to prescribe penalties for violations hereof, to provide for the enforcement and collection of said fees, to provide for the repeal of all ordinances or parts of ordinances in conflict herewith; this ordinance being enacted in accordance with Act 101 of PA 1978 (MCL 41.801 et seq) and Act 246 of PA 1945 (MCL 41.101 et seq).

SECTION 1

Title and Purpose

This ordinance shall be known and may be cited as the Cost Recovery For Emergency Services Ordinance. The purpose of this ordinance is to enable Bainbridge Township to require reimbursement from those individuals and property owners receiving direct benefits from emergency fire protection service for fire suppression and hazardous materials cleanup.

SECTION II

Definitions

- a. "Person" means an individual, partnership, firm, corporation, company or association.
- b. "Cost of service" means the cost associated with the occurrence of an emergency response by a fire department or emergency cleanup effort. Those expenses include the cost connected with the administration, abatement and mitigation provision and an analysis of chemical tests if applicable.
- c. "Dangerous or hazardous material" is defined as any material or substance that has been identified by township, state or federal laws or regulations to be limited to such substances as chemicals and gasses, explosives, radioactive materials, petroleum products or gasses, poisons, etiologic (biologic) agents, flammable and corrosives, or obnoxious by reason of odor, spilled, leaked, or otherwise released from their container.

Specifically, hazardous substance includes hazardous chemicals as defined by the Michigan Department of Public Health and the Michigan Department of Labor;

hazardous materials as defined by the U.S. Department of Transportation; chemical materials and polluting materials as defined by the Michigan Department of Natural Resources, hazardous waste as defined by the Michigan Department of Natural Resources and hazardous materials as defined by the Comprehensive Environmental Response, "Superfund", as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 USC 9601. A dangerous or hazardous substance or material is considered released from its container, when, in the determination of the Director of the Department of Public Safety or his authorized representative, it poses a direct danger or threat of harm to human or animal life, health, or safety and welfare of the public or environment. A hazardous substance can also be a noxious odor that is determined by the Director of the Department of Public Safety, or his authorized representative, to constitute a danger or threat to the public health, safety or welfare.

Unrecycled waste oil is a hazardous substance which may cause health and environmental problems.

SECTION III

Emergency Service Cost

The Township of Bainbridge presently provides fire protection for real and personal properties located therein by contract with several other municipalities. The fire departments providing fire protection bills or assesses the costs and expenses of response and services to Bainbridge Township. Bainbridge Township, in turn, passes those costs on to the person receiving the benefit of the those services.

Further, emergency service response units may also pass costs for services on to Bainbridge Township for the cleanup of hazardous materials which costs will be forwarded to the person or persons responsible for the incurrence of said costs and/or responsible property owners.

SECTION IV

Liability Presumptions

- a. The owner and/or lessor and/or operator of a fixed facility to which there is an emergency response shall be presumed liable for the costs of an emergency response.
- b. Any person or vehicle owner/or the lessee who owned or operated a motor vehicle or other transporter, which operation results in an emergency response, shall be responsible and liable for the costs and expenses of the emergency response.
- c. Any person who is the object of an emergency response shall be presumed liable for the costs of the emergency response.

SECTION V

Liability: Hazardous or Toxic Substance or Materials

It shall be the duty of any person and any other entity which causes or controls leakage, spillage or any other dissemination of dangerous or hazardous substances or materials, to immediately

remove such and clean up the area of such spillage in such manner that the area involved is fully restored to its condition before such occurrence.

SECTION VI

Cost Recovery for Emergency Response

- a. Bainbridge Township shall be entitled to recover all cost of service and damages incurred in conjunction with emergency incidents involving the release or threatened release of dangerous or hazardous/toxic materials or the creation of hazardous conditions concerning dangerous or hazardous materials or substances. Such costs and damages shall include, but not be limited to, those associated with incident abatement, cleanup and mitigation, including any related third party costs, which are necessary to ensure the safety of the Township and its populace and buildings.
- b. Such costs of service and damages shall be the responsibility of the individual to whom emergency response was provided or, in the event said emergency response involves motor vehicles or property, shall be the joint and several responsibility of the owner(s) and/or operator(s) and/or the owner's or operator's insurance carrier, of the property, equipment, vehicle or container causing or contributing in any emergency incident or hazardous condition of extended duration.

SECTION VII

Civil Liability

This ordinance shall be construed to create responsibility and liability of a civil nature on the part of the individual to whom emergency response has been provided or, in the event said emergency response involves a motor vehicle or property, responsibility and liability of a civil nature on the part of the operator and/or owner, as well as the appropriate insurance carrier.

This ordinance shall not be construed to conflict, contravene or enlarge or reduce any criminal liability or responsibility, including fines imposed by a judge on a driver for operating a motor vehicle. Nor shall this ordinance be construed to impose criminal sanctions based solely on this Ordinance as to the responsible party creating the need for an emergency response.

The Bainbridge Township Board or its designee shall within a reasonable time of receiving itemized costs of service incurred for emergency response, submit a bill for same by first class mail or personal service to a person or entity liable for these expenses as enumerated under this ordinance. Said bill shall require full payment in thirty (30) days from the date of billing.

The Township may proceed by suit in a court of appropriate jurisdiction to collect any monies remaining unpaid at the expiration of thirty (30) days from billing and shall have any and all other remedies provided by law provided for the collection of said cost of service.

In addition if any person or entity fails to reimburse the Township as provided and such person or entity is the owner of the affected property, the Township shall have the right and power to add any and all costs of service for emergency response to the tax roll as to any such property, and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against said property. This remedy is in addition to any other remedy available to the Township allowed by law.

SECTION VIII

Repeal of Conflicting Provisions

All resolutions, ordinances or parts thereof in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

SECTION IX

Severability of Invalid Provisions

If any provision of this ordinance shall be held invalid, its invalidity shall not effect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

SECTION X

Savings Clause

All suits, proceedings, or prosecution, whether civil or criminal, for causes arising, or acts done or committed prior to said amendment, may be commenced, maintained and/or prosecuted as if said amendment had not been made.

SECTION XI

Effective Date

This ordinance shall take effect on the date of publication pursuant to MCL 42.22, which publication shall take place within thirty (30) days from the date of adoption and shall be in a local newspaper of general circulation.

I hereby certify the foregoing is a true and correct copy of the Emergency Service Cost Recovery Ordinance for Bainbridge Township, Berrien County, Michigan, duly adopted on the 5th day of March, 2001.

Debra A. Grieser, Clerk
Bainbridge Township

A motion that said "Cost Recovery for Emergency Service Ordinance" be enacted was made by James Lull, and supported by Donald Baiers, at a regular meeting of the Bainbridge Township Board on the 5th day of March, 2001.

The names of the Township Board members and their votes are as follows:

NAME	YES	NO
Patricia Hiler-Molter	X	
James Lull	X	
Debra Grieser	X	
Donald Baiers	X	
John Yetzke	X	

I hereby certify that the forgoing ordinance was published in The Tri-City Record, Watervliet, Michigan, on the 14 day of March, 2001.

Debra A. Grieser, Clerk
Bainbridge Township