

KIMBALL TOWNSHIP

AN ORDINANCE TO AMEND KIMBALL
TOWNSHIP ORDINANCE NO. 156

KIMBALLTOWNSHIP, ST. CLAIR COUNTY, MICHIGAN, ORDAINS:

AN ORDINANCE TO AMEND ORDINANCE 156 TO ESTABLISH FEES AND CHARGES FOR KIMBALL TOWNSHIP FIRE DEPARTMENT SERVICES BY RESOLUTION OF THE TOWNSHIP BOARD INCLUDING HAZARDOUS SUBSTANCE RELEASES AND OTHER GENERAL OR INCIDENTAL EMERGENCY SERVICES, TO PROVIDE METHODS OF COLLECTION OF SUCH CHARGES, INCLUDING LIEN RIGHTS IN THE NATURE OF SPECIAL ASSESSMENTS AND EXEMPTIONS THEREFORE, TO DEFINE CERTAIN TERMS AND TO IMPOSE A DUTY TO REPORT, CONTAIN AND CLEAN-UP CERTAIN DANGEROUS CONDITIONS OR HAZARDOUS SUBSTANCE RELEASES, AND TO IMPOSE COSTS FOR REPOSES THERETO, TO PROVIDE FOR THE SEVERABILITY OF THE PROVISIONS HEREOF AND AN EFFECTIVE DATE.

THE TOWNSHIP OF KIMBALL ORDAINS:

SECTION 1. Purpose.

This Ordinance is adopted for the purpose to recover costs and expenses to Kimball Township for the operation of a Fire Department from those receiving the benefit of Emergency Services response. It is for the further purpose of imposing a duty to report, contain and clean-up certain dangerous conditions or hazardous substance releases.

This Ordinance establishes that the Township Board has authority to establish cost-recovery charges for the Fire Department and other emergency services under the authority of the Police and Fire Protection Act, Public Act 33 of 1951, as amended, (MCL 41.801, et seq.) and cost recovery provisions under the Motor Vehicle Code, Act 300 of 1949, as amended, (MCL 257.1, et seq.), the Code of Criminal Procedure, Act 175 of 1927, as amended (MCL 760.1 et seq.), and the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended (MCL 324.101 et seq.) To the fullest extent allowed by law, the Township Board has authority to set the rates for charges and user fees by Resolution under the authority of these Acts.

SECTION 2. Title.

This Ordinance shall be known as the Kimball Township “Cost Recovery” Ordinance.

SECTION 3. Definitions.

The following terms, phrases, words and their definitions shall have the meaning set forth unless the context otherwise requires:

A. Emergency Service. Means a response by the Fire Department, or other responders on behalf of the Township to an emergency incident, or to a call for assistance.

B. Emergency Service Fee. This shall mean the cost incurred by the Township as a result of providing emergency services including police, fire, or other support services to a person or entity including but not limited to the following:

1. Officer expenses incurred by the Township, other public officials, or bodies, third parties engaged by the Township in responding to the incident. Costs and expenses shall include cost of equipment, operations, personnel, materials used and other expenses including without limitation employee wages, fringe benefits, administrative overhead, costs of equipment including depreciation.
2. Costs and expenses incurred by the Township in providing the emergency service or attempting to collect a fee including legal and engineering fees, litigation costs and expenses, supplies used directly or indirectly in the incident.
3. Costs incurred in accounting for emergency services including billing and collection costs.
4. Costs associated with deployment, including costs associated with dispatch and return of emergency resources.

C. Hazardous substance means one or more of the following:

1. A chemical or other material which is or may become injurious to the public health, safety, or welfare or to the environment.
2. "Hazardous substance" as defined in the comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. 9601 et. seq., including any amendments.
3. "Hazardous waste" as defined in the Hazardous Waste Management Act, Act No. 451 of the Public Acts of 1994, as amended, being sections 324.11101 to 324.11152, including any amendment thereof from time to time.
4. "Hazardous material" as defined in the Fire Prevention Code, Act 2007 of 1941, being section 29.1 et seq. definitions of the Michigan Compiled Laws.

D. Non Resident. Means a person or entity that does not have a primary residence in Kimball Township, own real property in the Kimball Township, or have a principal office or place of business within Kimball Township.

E. Permitted Release means on or more of the following:

1. A release in compliance with an applicable, legally enforceable permit issued under State law.
2. A lawful and authorized discharge into a permitted waste treatment facility.
3. A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. 9601, et. seq., including any amendment thereof from time to time.

F. Person means any person or other legal entity.

G. Responsible Party means any individual, firm, corporation, limited liability company, or any other legal entity responsible in whole or in part for causing the need for emergency service, or any person receiving emergency services, or any owner, tenant, occupant, or party in control of real and personal property from which, onto which, or related to which, there is an emergency response incident and service provided. All the foregoing parties are jointly and severally responsible. The Township may proceed against any or all such persons, or entities.

H. Release includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discharging of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:

1. A release that results in exposure to persons solely within a workplace, with respect to a claim that these persons may assert against their employers.
2. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.
3. A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, Chapter 1073, 68 Stat. 919, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of the Atomic Energy Act of 1954, Chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product, or special nuclear material from any processing site designated under section 102 (a) (1) Title I or 302 (a) of Title III of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7912 and 7942.

4. If applied according to label directions and according to generally accepted agricultural and management practices, the application of a fertilizer, soil conditioner, agronomical applied manure, or a pesticide, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in the Fertilizer Act of 1975, Act No. 451 of the Public Acts of 1994, as amended, being sections 324.8501 to 324.8516, including any amendment thereof from time to time, and pesticide has the meaning given to that term in the Pesticide Control Act, Act No. 451 of the Public Acts of 1994, as amended, being sections 324.8301 to 324.8336, including any amendment thereof from time to time.

- I. Recipient means a person and/or property that has received or is deemed to have received a benefit from a response by Kimball Township. The owner (s) of property that is a recipient shall also be deemed to be a recipient. The person or persons named in the Township tax rolls shall be presumed to be the owner or owners in addition to any other person, if any. Any person, to whom or for whom, or property to which or for which a response is made, shall be deemed to have received a benefit from such response for purposes of this Ordinance.

SECTION 4. Liability for Emergency Service Fee.

Emergency Service Fees shall be assessed against any responsible party or parties when Kimball Township has deployed any emergency resources. The Fees shall be established by the Township Board by Resolution.

SECTION 5. Responsible Parties and Charges.

A. Responsible Parties and Charges. The Township may bill Assessable Fees and Costs to the fullest extent allowed by law. The Responsible Parties shall include, but shall not be limited to, all natural persons, estates, corporations, entities, or other parties, who cause the need for the provision of service by the Township which gives rise to Assessable Costs as set forth in the Schedule of Assessable Costs as adopted by resolution of the Kimball Township Board of Trustees from time to time. Any party determined by the Fire Chief to be a Responsible Party for such services shall be liable for the full payment for such services rendered. A party is a Responsible Party regardless of whether the recipient of emergency police or fire services acknowledges the need for such services and whether or not the Responsible Party is criminally prosecuted or civilly sued. Parents and or guardians shall be responsible for the payment for Assessable Costs incurred as a result of such conduct by their minor children or wards.

B. Attorney Fees. To the extent allowed by law, in the event that the Township incurs any attorney fees relative to the collection of amounts billed, whether as part of filing a lawsuit or otherwise, and whether or not the billing is for a hazardous release or threat thereof, the actual reasonable attorney fees and other costs of collection shall be due and owing to the Township.

SECTION 6. Services Giving Rise to Assessable Costs.

Assessable Costs shall be those associated with the Schedule of Services Giving Rise to Assessable Costs, as set forth in this Ordinance or as adopted from time to time by the Township Board. All parties determined by the Fire Chief to be Responsible Parties shall be jointly and severally assessed for Assessable Costs incurred by the Township which shall include, but not be limited to, materials, equipment, manpower, administration, and assistance within the fire department, from other departments of the Township, or outside sources or contractors, injuries or damages to people or property which result from the situation which caused the Township to provide fire protection and other emergency services and any other factors deemed relevant by the Township Board.

Services giving rises to assessable costs shall include but are not limited to:

- (a) Costs incurred to halt, abate, or remedy any spill, containment, or release of any hazardous materials and any liabilities resulting from such.
- (b) Cost incurred to extinguish or fight a fire including, but not limited to, overhauling equipment, fire extinguishers and foam.
- (c) Any demolition costs if a structure must be demolished to protect public safety following a fire, and any liabilities resulting from such.
- (d) Costs incurred in connection with any water, ice, confined space, trench, high angle, or technical rescue or recovery.
- (e) Costs associated with any motor vehicle accident, extrication of individuals from a vehicle or motor vehicle fire, including but not limited to spill cleanup; foam; fire extinguishers; and any liabilities resulting therefrom.
- (f) Costs associated with fraudulent requests for emergency assistance, including but not limited to intentionally dishonest and/or prank calls and requests for response made under false pretenses.
- (g) Costs associated with false alarms in excess of three (3) times in any three hundred sixty five (365) day period.
- (h) Costs associated with Intentional False Alarm. Any person intentionally reporting a false alarm, known to be false by the person reporting the same, shall be liable for the actual costs of the response.
- (i) Any Assessable Costs, including litigation expenses, which become known to the Township following the transmittal of a statement to the Responsible Party pursuant this article, which shall be billed in the same manner on a subsequent statement to the Responsible Party.

- (j) Costs associated with department response and operations at scenes resulting from activities that violate state, federal, or local laws or ordinances including but not limited to: illegal dumping of waste, arson, use of illegal fireworks, response required because of conduct or activities of a Responsible Party who is under the influence of intoxicating substances, such as operating a motor vehicle under the influence of intoxicants and/or illegal drugs.
- (k) Costs associated with use of departmental equipment and personnel for the furtherance of private enterprise, a private business or for-profit corporation.
- (l) Costs incurred in connection with responsible parties' willful obstruction or delay in any emergency services in the enforcement of any rule or regulation pursuant to this article.
- (m) Costs associated with any motor vehicle accident or other Emergency Response under provisions under the Motor Vehicle Code, Act 300 of 1949, as amended, (MCL 257.1, et seq.), the Code of Criminal Procedure, Act 175 of 1927, as amended (MCL 760.1 et seq.), the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended (MCL 324.101 et seq.)
- (n) Costs incurred in connection with or as a result of gross negligence.
- (o) Emergency Services provided for any accident, or fire involving, or related to any motor vehicle, trailer, aircraft, boat, snow mobile, water craft, or other vehicles owned or operated by a non-resident of the Kimball Township.
- (p) Emergency response to any fire which could be set with a permit, but for which a permit was not obtained.
- (q) Emergency response to any fire which could be set with a permit, but which becomes uncontrolled regardless of whether a permit was obtained.
- (r) Emergency response provided to any non-resident of the Township within the areas of the Township opened to the public, such as parks, roads, highways and places of business.
- (s) Emergency response to an illegal fire under federal, state or local law. Charges under this subsection are payable by the responsible party causing in whole, or in part, or responsible in whole, or in part for such illegal fire.
- (t) Emergency response to an activity, event, or incident in violation of federal, state, or local laws involving the illegal use of fireworks, or malicious destruction of property.
- (u) Emergency response to an activity, event, or incident involving threats of harm to oneself, or another, or another's property which if carried out, would be a violation of federal, state, or local law.

- (v) Utility line failure for response involving stand-by, disabling of any transmission or service line, cable, conduit, pipeline, wire, or the like used to provide, collect, or transport electricity, natural gas, water, sewer, communication, or electronic signals (including but not limited to telephone, computer, cable, television, or other electronic impulses, if the owner, or party responsible for the maintenance of such utility line does not respond, or employing personnel to the scene within for such failure.
- (w) Any emergency service response to a particular location, if an emergency response has occurred at such particular location in excess of three times within the current quarter of a calendar year. Particular location shall mean the entire area of land occupied by a business, including structures, parking areas and other improved areas utilized, or otherwise legally owned. In a case of a single family home, or condominium it shall mean the dwelling unit, any accessory structure, such as sheds or garages and any other property in which an ownership interest exists. In the case of an apartment complex, particular location shall refer to all areas of the apartment complex for owners, and the dwelling unit rented and common areas which may be occupied without special permission in the case of renters.
- (x) Costs and fees associated with hazardous substances, material responses and confined space entry rescue.
- (y) Costs associated with Mutual Aid Responses or Responses by Other Units. To the extent allowed by law, Services furnished to or by Kimball Township pursuant to a Mutual Aid Agreement or other similar arrangement.
- (z) Other Responses. Other responses not specifically enumerated above shall be charged a reasonable charge and fees as established by Resolution of the Township Board.

SECTION 7. Invoice for Emergency Services.

The Fire Department shall prepare an invoice for emergency services pursuant to the fees as defined in the fee schedule set by the Township Board by resolution, shall be delivered by first class mail to any person, or persons responsible for the emergency service fee. The invoice is due and payable within thirty (30) days of the date of mailing, or delivery. The notice shall generally identify the location of the emergency service response and provide a brief summary of the incident, incident report or other applicable identification for the person to identify the services provided.

SECTION 8. Other remedies.

Kimball Township shall be entitled to pursue any other remedy, or may institute appropriate action or proceedings in a court of competent jurisdiction to collect the invoice and costs from a responsible party for Emergency Services.

SECTION 9. No limitation of liability.

The recovery of accessible cost pursuant hereto does not limit the liability of a responsible party under applicable local, state or federal law to the City, or to any other person, or entity.

SECTION 10. Duty to Report, Contain and Clean-up_Spills and_Hazardous Conditions.

It shall be the duty of any person who causes a hazardous condition or release of a hazardous substance, or a threat of a release, or who owns controls or who is responsible for a hazardous substance that is released or threatens to be released to contain, remove and clean-up the same and the area of such spillage or hazardous condition, or release in such manner that no person or property is harmed, and so that the area involved is fully restored to its condition prior to such happening; said person shall also have a duty to immediately report the leakage, spillage, hazardous condition or release to the Township. It shall also be the duty of any person who causes a fire, or who owns, controls, or is responsible for real or personal property on fire, or threatened to be on fire, to immediately report the same and to remove debris caused thereby and remove the same so that the area is likewise restored after the fire is extinguished.

Penalty: A violation of this Section is designated a Municipal Civil Infraction. The Township Fire Chief, or designee may issue a Notice of Violation or Municipal Civil Infraction citation as authorized under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended and other applicable laws for provisions of the Act.

SECTION 11. Failure to Contain and Clean-up.

Any such person who fails to comply with Section 10 shall, in addition to any other liability, be liable to and shall pay the Township for its cost and expenses, including any cost incurred by the Township to engage any other party, to provide for the complete containment, abatement, cleanup, and restoration of the affected area and assistance to persons within that area. Costs incurred by the Township shall include, but shall not necessarily be limited to, the following: actual labor costs of Township personnel, including worker compensation benefits, fringe benefits, administrative overhead, cost of equipment, operation, cost of materials obtained by the Township, the cost of any contract labor and materials, the cost of responding emergency vehicles; in addition, the cost of any of the above supplied by other units pursuant to mutual aid agreements or otherwise, shall be charged by Kimball Township and computed in the same manner as Kimball Township labor, etc., (whether or not any mutual aid unit or other unit otherwise waives charges for the same), unless an actual charge is imposed by such other unit, in which case it shall be up to the other unit to bill for its services. Provided, however, any of the costs and charges provided for in this Section, that arise from a response involving hazardous substances, shall be deemed to be furnished by the unit furnishing the same and no charge shall be made by Kimball Township pursuant to this Ordinance unless by or with the consent of such other unit. The charges provided for by this Section shall be in addition to any other charges provided for herein.

SECTION 12. Time for Payment, Collections and Lien Upon Property

A. Debt and Special Assessment Lien. All of the foregoing charges shall be due and payable within 30 days from the date the billing is received or other notice of the billing is given to the recipient, whichever is first. A lien in the nature of a special assessment is hereby immediately attached to any real or personal property at which or for which there was a response, and the same shall continue until the charges are paid. Delinquent payments shall bear nine percent (9%) interest per annum from the due date until paid or added to the tax roll.

B. Collection Remedies Non-Exclusive. The Township may proceed in a court of appropriate jurisdiction by suit to collect any monies remaining unpaid and shall have any and all other remedies provided by law for the collection of said charges. No remedy is exclusive.

C. Special Assessment Amount Determined. Without constituting an election of remedies, in the event that the owner or person in possession of the same fails to pay the bill submitted. The Township may provide any person of record or in the possession of any real estate to which a lien has attached, with notice of its intention to specially assess the amount of the billing against the premises; the notice shall contain a description of the premises, an itemized billing, reference to a proposed special assessment roll with the proposed assessment which shall include the cost of the hearing, notice, preparation of the special assessment roll and any other reasonable enforcement costs; at least 15 days' notice of a hearing shall be given. Notice may be given by mail and publication or by personal service. At the hearing, any interested party may challenge the correctness and reasonableness of the billing, the total intended assessment, and the notice of hearing. The Township Board, after the hearing with any written or verbal comments or objections, shall then determine the reasonableness and accuracy of the bill and the proposed assessment including costs and whether or not there has been substantial compliance with this Ordinance. The amount properly assessable against said premises shall then be determined, and shall be immediately payable. If not paid within 35 days, the Township Board shall then confirm the special assessment roll, with any corrections or changes, and upon confirming the special assessment roll, the Township Board shall direct the Treasurer to collect the same, with warrant attached, in the same manner as a delinquent general property ad-valorem tax and to add the same to the general tax roll as a delinquent assessment.

SECTION 13. Enforcement and Penalties:

Municipal Civil Infraction: In addition to costs for Emergency Services, the Township Fire Chief, or designee may issue a Notice of Violation or Municipal Civil Infraction citation as authorized under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended and other applicable laws for provisions of this Act that are designated as a Municipal Civil Infraction.

Notice Violation: The sanction for a notice violation shall be payable at the Violation Bureau through the Township Treasurer's office at the Kimball Township Municipal Office.

A. The notice violation offense shall be \$100, plus other allowable costs under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended and other applicable laws.

B. The notice violation offense which is a second offense shall be \$ 250.00 plus other allowable costs under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended and other applicable laws.

C. The notice violation offense which is a third offense or any subsequent repeat offense shall be \$ 500.00 plus other allowable costs under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended and other applicable laws.

D. **Municipal Civil Infraction:** The sanction for a municipal civil infraction shall be payable at the Court. Notice shall be provided pursuant to the Municipal Civil Infraction Statute Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended, and other applicable laws.

SECTION 14. Non-Exclusive Charge

The rates and charges set by the Township Board by resolution shall not be exclusive of the charges that may be made by the Township for the costs and expenses of maintaining a fire department, but shall only be supplemental thereto. Charges 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 Michigan statutes pertinent thereto. General fund appropriations may also be made to cover such additional costs and expenses. To the extent that State or Federal law or other Township Ordinances or contracts impose additional or higher rates and charges, if any, or other or additional liability, the additional rates and charges or higher rates and charges, and liability therefore pursuant to other law, such as Act 451 of the Public Acts of 1994, as amended, being sections 324.20101 to 324.20141, including any amendment thereof from time to time, shall continue and the same shall be due and owing pursuant thereto, with credit given for any rates and charges paid pursuant to this Ordinance, if any. This Ordinance shall not be construed as a limitation or waiver or such other law, such as Act 451 of the Public Acts of 1994, as amended, being sections 324.20101 to 324.20141, including any amendment thereof from time to time. In the event any charge herein is declared void or unreasonable, a reasonable charge shall be determined and imposed in lieu thereof.

SECTION 15. Appeals

A. Time for Appeal. Any person aggrieved by a charge may appeal the charge within one within thirty (30) days from the date the billing is received or other notice of the billing is given, whichever is first, to the recipient, by filing with the Township Clerk, the appeal, setting forth the reasons for the appeal.

B. Chief Review. The appeal shall be referred to the Fire Chief to review for resolution.

C. Hearing. If unresolved, the Clerk shall notify the appellant, in writing, of the time, place and date the Township Board will hold a hearing on appeal before the Township Board at Open Meeting.

- D. Basis of the Appeal. The Board may grant relief on appeal for any following reason, and impose reasonable conditions thereto, only upon submission of evidence to support the claim:
1. The charge is exempt.
 2. For other good cause with sufficient proof.
- E. Relief. The Board may grant financial relief from the charges by extending the time for payment for a reasonable period of time, or under extreme hardship, to grant partial or total relief from the obligation. Hardship shall be determined based upon the following:
1. Net income;
 2. Number of dependents;
 3. Available and non-available assets;
 4. Age and/or incapacity;
 5. Extreme hardship may be determined on the basis of the above, together with any other unusual circumstances.
 6. The Board may use Real Property Tax Poverty Exemption guidelines as a basis for its decision.
- F. Insurance Coverage. Where there is insurance coverage available, the appellant must provide evidence of denial of insurance coverage, before other resolution as stated above. If there is a dispute as to coverage, and relief is otherwise justified, the Township may require an assignment of the insured rights as a condition of granting relief.

SECTION 16. Severability

Should any word, provision or part of the within Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance which shall remain in full force and effect; provided however in the event that any change provided for herein is voided or otherwise unenforceable, a reasonable charge for such services is hereby imposed.

SECTION 17. Construction

The Township Board shall interpret the provisions of this Ordinance. This Ordinance is a companion to Ordinances No. 154 and No. 155 and shall be construed consistent with those Ordinances to the extent possible and in the event of a conflict, the higher or stricter standard or charges and costs shall apply.

SECTION 18. Effective Date

This Ordinance Amendment is effective 30 days after publication as required by law.

SECTION 19. Geographic Area.

This Ordinance is for every geographic zone within the Township.

Certification

I, Robert Hand, Clerk of the Township of Kimball, do hereby certify that this is a true and correct copy of Ordinance No. 156 as presently amended, and effective. Ordinance No. 156 was amended and replaced Ordinance 156 was lawfully adopted and published as required by law.

Robert Hand, Clerk
Kimball Township

Date: _____