

A Regular Meeting of the Otsego City Commission was held on Monday, April 5, 2021.

The meeting was called to order by Mayor Pro-Tem Withee at 7:00 p.m. with the following Commissioners present: Lauri Krueger and Dustin McNees. Absent: Mayor Trobeck & Brent Milhiem. Also present: Fire Chief Weber.

The audience joined the Commission in the Pledge of Allegiance.

Commissioner Krueger moved to excuse Mayor Trobeck and Commissioner Milhiem, seconded by Commissioner McNees. CARRIED.

The March 15, 2021, Regular and Special Meeting Minutes were approved as submitted.

REMARKS FROM THE AUDIENCE REGARDING AGENDA ITEMS

None.

I. PRESENTATIONS:

A. ALLEGAN COUNTY COMMISSIONER – GALE DUGAN
Commissioner Dugan gave an update on the County’s most recent activities.

II. PUBLIC HEARING:

III. PLANNING AND ZONING:

IV. ORDINANCES:

A. SECOND READING AND ADOPTION OF ORDINANCE #167 – COST RECOVERY ORDINANCE

Mayor Pro-Tem Withee offered Ordinance #167 for a second reading and adoption. Fire Chief Weber was in attendance to answer questions of the Commission.

Commissioner McNees moved to adopt Ordinance No. 167 – Cost Recovery Ordinance, seconded by Commissioner Krueger.

AN ORDINANCE TO AMEND THE OTSEGO CITY CODE OF ORDINANCES TO PROVIDE COST RECOVERY FOR CERTAIN EMERGENCY RESPONSE SERVICES AND TO REPEAL ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH

THE CITY OF OTSEGO ORDAINS:

CHAPTER 30: EMERGENCY SERVICES

ARTICLE I. IN GENERAL

Secs. 30-1–30-30. - Reserved.

ARTICLE II. - RECOVERY OF CERTAIN EMERGENCY RESPONSE COSTS

DIVISION 1. - CHARGES FOR CERTAIN EMERGENCY RESPONSE SERVICES

Sec. 30-31 – Purpose.

This division is adopted to defray some costs incurred in providing certain emergency response services. It is not the purpose of this division to provide complete reimbursement of funding for the Otsego Fire Department.

Sec. 30-32 – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) Alarm system means a fire detection system, intrusion or holdup device designed or arranged to signal the presence of any fire hazard, intrusion or holdup of any residential, commercial or business property. Excluded from this definition are single-family residence battery-operated smoke or heat detectors.
- (2) Alarm user means any person on whose premises an alarm system is maintained except for alarm systems on motor vehicles. If, however, an alarm system on a motor vehicle is connected with an alarm system at a premises, the person using such system is an alarm user. Also excluded from this definition and from the coverage of this article are persons who use alarm systems to alert or signal persons within the premises in which the alarm system is located; however, systems using a flashing light or beacon designed to signal persons outside the premises, shall be within the definition of an alarm system and shall be subject to this article.
- (3) Assessable costs mean those charges and fees incurred by the city as a result of assistance provided by the police or fire department or by a third party on behalf of the city in connection with a fire department response to an incident including, but not limited to, the actual labor and material costs (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, legal fees, collection costs, etc.) provided.
- (4) Emergency response means the following actions or services provided by the city, or by a private individual or corporation operating at the request or direction of the city:
 - a. Extinguishing or fighting any fire occurring on or at a structure, vehicle, or any other fire occurring on public or private property.
 - b. Any incident requiring a response by the city that involves any public or private utility property and requires city equipment or personnel to remain at the incident to protect health, safety, and welfare of the public until the utility provider responds to the incident and takes corrective measures, lasting greater than one hour.
 - c. The extrication of an individual(s) from a vehicle involved in an accident.

- d. Extinguishing or fighting any vehicle fire.
 - e. Any response to a false alarm at a property in excess of once in a calendar year. This includes, but is not limited to: fire, medical, burglary, panic, hold-up, and other types of alarms.
- (5) False alarm means the activation of an alarm system through mechanical failure, malfunction, improper installation, negligence or the intentional activation of the alarm system without reasonable and legitimate need or cause by the person or their employees and agents using an alarm system. False alarm does not include an alarm caused by meteorological or geological conditions or by disruption or disturbance of telephone or other communication systems.
- (6) Person responsible means the owner, operator, and/or person in charge of or person in possession of the structure, property or vehicle to which the emergency response is directed, including any private contractor, such as alarm companies requesting or initiating such a response. This also includes the person or persons who require rescue of a technical nature, and/or who cause extrication, rescue, or hazardous materials response to be needed.
- (7) Vehicle means all motor vehicles (including but not limited to, cars, trucks, semi tractors, motorcycles, and trailers), trains, aircraft, or watercraft.

Sec. 30-33 – Charges.

- (1) The assessable costs of an emergency response shall be charged against the person(s) responsible. If there is more than one person responsible, liability shall be joint and several and the city may bill any or all persons responsible, however the city may not collect more than the total amount owed. Liability for charges assessed under this division shall not be dependent upon fault or negligence. The charge constitutes a debt of the person(s) responsible and shall be collectible by the city in the same manner as an obligation under a contract.
- (2) The costs included within the expense of an emergency response shall be set from time to time by the city commission by resolution.

Sec. 30-34 – Exemptions.

- (1) The following circumstances shall not constitute a false alarm:
- a. An alarm activated by damage to public utility lines when the affected public utility corroborates that the damage to such lines caused the alarm.
 - b. An alarm caused by storm, tornado, or other violent condition beyond the control of the person whose property is served by the alarm.
- (2) The city is exempt from all charges authorized by this division.

Sec. 30-35 – Billing.

The city manager or his/her designee shall submit a bill for the expense of an emergency response by first class mail or personal service to the person responsible for the expense as enumerated under this division. The bill shall require full payment within 28 days from the date of service.

Sec. 30-36 – Failure to pay charges.

Any failure by a person responsible to pay a bill issued under this division within 28 days of the date of billing shall be considered a default. In case of a default, the city may commence a civil suit or take any other actions permitted at law or in equity to recover the expenses of an

emergency response. If legal action is taken to collect an amount owed pursuant to this division, the city shall be entitled to recover the cost of such legal action from the person responsible, including reasonable and actual attorneys' fees.

Secs. 30-37 – 30-50 – Reserved.

DIVISION 2 – FIRES ON PUBLIC PROPERTY AND INCIDENTS INVOLVING HAZARDOUS MATERIALS AND SUBSTANCES

Sec. 30-51 – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) Emergency response means the providing of services by the city, or by a private individual or corporation operating at the request or direction of the city, in response to:
 - a. A fire or threat of fire occurring on public property; or
 - b. An incident involving hazardous materials or hazardous substances occurring on public or private property.
- (2) Expense of an emergency response means the actual or reasonably calculated costs incurred by the city, or by a private person or corporation operating at the request or direction of the city, when making an emergency response.
- (3) Hazardous material means hazardous material as defined in the Fire Prevention Code, Act No. 207 of the Public Acts of Michigan of 1941 (MCL 29.1), as amended.
- (4) Person responsible means the owner, operator or person in charge of or person in possession of the property or vehicle to which the emergency response is directed and person whose actions or inactions caused or contributed to causing the incident which necessitated the emergency response.
- (5) Vehicle means all motor vehicles (including but not limited to cars, trucks, semi tractors, motorcycles, and trailers), trains, aircraft, or watercraft.

Sec. 30-52. – Purpose of division.

This division is adopted to defray the *costs* of emergency responses. It is not the purpose of this division to provide full funding for the fire department.

Sec. 30-53 – Liability for expense; responsibility for payment of charges.

The expense of an emergency response shall be charged against the person responsible. If there is more than one person responsible, liability shall be joint and several. With the exception of liability for fires intentionally set, liability for charges assessed under this division shall not be dependent upon fault or negligence. The charge constitutes a debt of the person responsible and is collectable by the city in the same manner as in the case of an obligation under a contract, express or implied.

Sec. 30-54 – Exemptions.

- (1) The following persons responsible shall be exempt from the charges authorized by this division for an emergency response which does not involve hazardous material or a hazardous substance:
 - a. Persons responsible who are bona fide residents of the city; and

- b. Persons responsible who require or necessitate an emergency response which does not exceed \$500.00.

(2) The city shall be exempt from all charges authorized by this division.

Sec. 30-55 –Billing.

The city manager or his/her designee shall submit a bill for the expense of an emergency response by first class mail or personal service to the person responsible for the expense as enumerated under this division. The bill shall require full payment within 28 days from the date of service.

Sec. 30-56 –Failure to pay charges.

Any failure by a person responsible to pay a bill issued under this division within 28 days of the date of billing shall be considered a default. In case of a default, the city may commence a civil suit or take any other actions permitted at law or in equity to recover the expenses of an emergency response. If legal action is taken to collect an amount owed pursuant to this division, the city shall be entitled to recover the cost of such legal action from the person responsible, including reasonable and actual attorneys' fees.

Secs. 30-57 - 30-70 – Reserved.

DIVISION 3 – INCIDENTS INVOLVING DRIVERS OPERATING MOTOR VEHICLES UNDER THE INFLUENCE

Sec. 30-71 – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) Emergency response means:

- a. The providing, sending or utilizing of police, firefighting, emergency medical and rescue services by the city, or by a private individual or corporation operating at the request or direction of the city, to an incident resulting in an accident involving a motor vehicle where one or more of the drivers were operating the motor vehicle while under the influence of an alcoholic beverage or controlled substance or the combined influence of an alcoholic beverage and controlled substance; or
- b. An incident resulting in a traffic stop and arrest by a police officer when a driver was operating the motor vehicle while under the influence of an alcoholic beverage or controlled substance.

(2) Expense of an emergency response means the direct and reasonable costs incurred by the city, or to a private person or corporation operating at the request or direction of the city, when making an emergency response to the incident, including the costs of providing police, firefighting and rescue services at the scene of the incident. These costs further include all of the salaries and wages of the city personnel responding to the incident, all salaries and wages of the city personnel engaged in investigation, supervision and report preparation, and all costs connected with the administration and provision of all chemical tests of driver's blood, and prosecution of the person causing the incident.

Sec. 30-72 – Purpose of division.

The city finds that a significant number of traffic arrests and traffic accidents in the city involve drivers who operate a motor vehicle while under the influence of alcoholic beverages or controlled substances. In addition, the city finds that in traffic accidents involving drivers who were operating motor vehicles while under the influence of alcoholic beverages or controlled substances there is a greater likelihood of personal injury and property damage. As a result of these determinations, a greater operational and financial burden is placed upon the city's police, firefighting, rescue and other services by persons who are operating a motor vehicle while under the influence of alcoholic beverages or controlled substances.

Sec. 30-73 – Liability for expense.

Any person is liable for the expense of an emergency response if, while under the influence of an alcoholic beverage or controlled substance, or the combined influence of an alcoholic beverage and controlled substance, such person's operation of a motor vehicle proximately causes any incident resulting in an emergency response.

Sec. 30-74 – Presumptions.

For the purpose of this division, a person is under the influence of an alcoholic beverage or controlled substance, or the combined influences of an alcoholic beverage and 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 of ordinary prudence. Further, it shall be presumed that a person was operating a motor vehicle while under the influence of an alcoholic beverage 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 0.07 percent.

Sec. 30-75 – Responsibility for payment of charges.

The expense of an emergency response shall be a charge against the person liable for the expenses under this division. The charge constitutes a debt of that person and is collectible by the city for incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

30-76 – Cost recovery schedule.

The city commission shall, by resolution, adopt a schedule of the costs included within the expense of an emergency response. This schedule shall be available to the public from either the city clerk or the police department.

30-77 – Billing.

The chief of police or city treasurer, or his/her designee, may, within ten days of receiving itemized costs, or any part thereof, incurred for an emergency response, submit a bill for these costs by first class mail or personal service to the person liable for the expenses as enumerated under this division. The bill shall require full payment in 28 days from the date of service.

30-78 – Failure to pay charges.

Any failure by the person described in this division as liable for the expenses of an emergency response to pay the bill within 28 days of service shall be considered a default. In case of default, the city may commence a civil suit to recover the expenses and any costs allowed by law.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Effective Date. This ordinance shall take effect upon the latter of publication or the passage of twenty (20) days' time following its final adoption in accordance with the City Charter.

Passed and approved on the 5th day of April, 2021, with the following vote:

YEAS: Commissioners: Stacey Withee, Laurie Krueger, & Dustin McNeas.

NAYS: Commissioners: None.

ABSTAIN: Commissioners: None.

ABSENT: Commissioners: Cyndi Trobeck & Brent Milhiem.

ORDINANCE ADOPTED.

V. REQUESTS:

VI. AGREEMENTS:

VII. RESOLUTIONS:

VIII. APPOINTMENTS:

IX. DISCUSSION ITEMS:

MANAGER'S REPORT

None.

COMMUNICATIONS

None.

REMARKS FROM THE AUDIENCE

Fire Chief Weber gave an update on COVID and vaccinations in Allegan County. County Commissioner Dugan commented that Allegan County now has a Mobile Vaccine Unit.

COMMISSIONERS' COMMENTS

Commissioner Krueger – she thanked County Commissioner Dugan and Fire Chief Weber, and everyone for attending the meeting.

Commissioner McNeas – he thanked County Commissioner Dugan and Fire Chief Weber for their reports and updates. He thanked the Otsego Rotary Club; his Dad-Mike Bosch, President of the Rotary Club; and the volunteers for a fantastic Easter Egg Hunt. He thanked everyone for attending.

Mayor Pro-Tem Withee – she commented that fun was had by all at the Easter Egg Hunt. She thanked County Commissioner Dugan and Fire Chief Weber for their reports and their contributions at the meeting.

ADJOURN

The meeting was adjourned on a motion by Commissioner McNees, seconded by Commissioner Krueger. CARRIED – 7:15 p.m.

Angela M. Cronen, MMC
City Clerk