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SUBJECT: ORDINANCE #2012-1 (EMERGENCY AND FLOOD MITIGATION TAX)

ADOPTED DATE: FEBRUARY 21, 2012

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**ORDINANCE NO. 2012-1**

**AN ORDINANCE TO ESTABLISH AND REGULATE A COUNTY PROPERTY TAX FOR  
EMERGENCIES CAUSED BY NATURAL DISASTERS AND TO PROVIDE FUNDS  
FOR FLOOD MITIGATION PROJECTS UNDER THE HOME RULE CHARTER  
OF CASS COUNTY, NORTH DAKOTA**

BE IT ORDAINED BY THE COUNTY COMMISSION  
OF CASS COUNTY, NORTH DAKOTA:

**EMERGENCY AND FLOOD MITIGATION PROPERTY TAX**

**PURPOSE:**

The purpose of this Ordinance is to facilitate the accumulation of funds to be used for purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature, or for the engineering, land and structure purchase, construction, operation, and maintenance of flood control measures. It is also the purpose of this ordinance to provide for the financing of emergency expenditures and flood control measures through a process and manner that is different from and supersedes that provided in North Dakota Century Code 57-15-28 and 57-15-06.7(22).

**HISTORY:**

Recent history of the county shows the area is hard hit by flooding that frequently causes extreme measures to be taken to protect and repair county infrastructure to the extent that in 2009, 2010, and 2011 the county, state, and federal governments passed disaster declarations. The combination of emergency procedures before and during the events and repairs following the events over the past three years has resulted in substantial expenditures. The county has depleted their emergency fund because of the costs for emergency procedures and needs to build up funds to handle future emergencies and to provide dollars to fund mitigation projects to reduce the need for emergency procedures and the resulting damage from future floods.

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**AUTHORITY:**

The county is operating under a Home Rule Charter approved by the voters of Cass County on November 1, 1994 with 57.75% positive votes. Paragraph 2 of Article 2, Home Rule, Powers of County, reads in part that the County has the power to:

“Control its finances and fiscal affairs; appropriate money for its purposes, and make payment of its debts and expenses; subject to the limitation of Article 9, levy and collect taxes, excises, fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations subject to Article 9.”

Article 9 of the Home Rule Charter deals with revenue authority and Section 2 Limitations, Subsection 1, reads in part:

“No ordinance or resolution may be adopted by the Board of County Commissioners levying property taxes in excess of 75 mills in total until referred by the Board of County Commissioners for approval by the electorate at any regular county election.”

The tax levied to fund the “Emergency and Flood Mitigation Fund” will be set by the Cass County Commission annually as they prepare their annual budget and will fall within the 75 mill levy authority in Article 9 of the Home Rule Charter. The county commission will determine the mitigation projects and reserve required in the Emergency and Flood Mitigation Fund levy during their annual budget process. The process for levying taxes, the allowable expenditures, and the reserve balance is different from and supersedes that provided in North Dakota Century Code 57-15-28 and 57-15-06.7(22).

**DEDICATION OF TAX PROCEEDS:**

1. The proceeds of the tax levy for the Emergency and Flood Mitigation Fund, which is imposed pursuant to the Cass County Home Rule Charter, shall be solely utilized for purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature, or for the engineering, land and structure purchase, construction, operation, and maintenance of flood control measures, including the matching of dollars provided by other grant sources.

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2. Emergency and Flood Mitigation funds expended within incorporated cities: The County Commission may consider requests for flood risk reduction and recovery funding from cities within Cass County. The city will be responsible for planning and engineering costs associated with the project. Plans and specifications should be prepared by a professional engineer registered within the State of North Dakota. The city should also be able to demonstrate that other revenue sources for the project have been actively sought out. The preferred funding split is that City funds match the County tax proceeds on a 1:1 basis. Other funding splits may be considered by the Commission on a case by case basis to allow consideration to be given to unique circumstances and the ability of the City to pay 50% of the local cost share.

County sales tax funds expended outside of incorporated cities: The County Commission may also consider flood risk reduction and recovery projects recommended by the County Engineer or requested by townships, neighborhood groups, or individuals for areas within and outside of the diversion perimeter. Special assessments may be considered as a local match to County tax funds. Funds may be expended for projects that provide benefit to Cass County residents but are physically constructed outside of the County boundaries such as retention projects. Funds may also be spent to assist property owners upstream and downstream from the diversion channel in offsetting diversion project impacts.

**EFFECTIVE DATE:**

This Ordinance shall take effect after its passage, approval, and publication.

**SEVERABILITY:**

Should any section, provision or part of the ordinance be adjudged invalid or unconstitutional, such adjudication should not affect the validity of the ordinance as to the remainder or any section, provision or part thereof not adjudged invalid or unconstitutional.

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APPROVED:

ss/Scott Wagner  
Scott Wagner, Chairman  
Board of Commissioners of the  
County of Cass

ATTEST:

ss/Michael Montplaisir  
Michael Montplaisir  
Cass County Auditor

(SEAL)

First Reading: January 17, 2012  
Second Reading: February 21, 2012  
Final Passage: February 21, 2012  
Publication: January 23, 2012

HISTORICAL REFERENCE DATE: FEBRUARY 21, 2012