

Chapter 7-2

PUBLIC SAFETY EMERGENCY RESPONSE COST RECOVERY

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Section 7-02-01 TITLE, PURPOSE, AUTHORITY TO ESTABLISH A MITIGATION COSTS SCHEDULE AND RECOVERY PROCEDURE.

- A. In order to protect the City from extraordinary expenses resulting from the utilization of City resources in response to certain public safety or fire emergency incidents, this ordinance, entitled Public Safety Emergency Response Cost Recovery, authorizes the imposition of charges to recover costs incurred by the City in responding to such incidents.
- B. The City of Boise shall initiate mitigation costs for the delivery of emergency services by the fire department for personnel, supplies, and equipment to the scene of emergency incidents by authorizing the recovery of such costs in the amounts set forth in a duly adopted fee schedule, as amended, for the services of the fire department. The rate of mitigation costs shall be based on actual average costs of the services and that which is usual, customary, and reasonable (UCR) as shown in a duly adopted fee schedule or related fire department document.
- C. The mitigation cost shall be charged or billed to the responsible party. In some circumstances, a responsible party may be charged or billed directly or, where representing an add-on cost of the claim for damages of the vehicles, property and/or injuries, mitigation costs may be charged or billed to the insurance coverage of the owner of a vehicle, owner of property, or other responsible parties where an authorized agent of the City, County, State, or a court of competent jurisdiction determines the owner, owners, and/or responsible party or parties is/are at fault, allocating all or some of such costs jointly and severally.
- D. The fire department may promulgate rules or regulations and from time to time may amend, revoke, or add to rules and regulations, not inconsistent with this Chapter, as the Fire Chief may deem necessary or expedient in respect to billing for these mitigation costs or the collection thereof.

Section 7-02-02 DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

False alarm means any automated or manual device designed to request or summon emergency assistance which, in the absence of an actual need for emergency assistance, the device is activated maliciously or due to a malfunctioning or improperly maintained or operated fire alarm or fire protection system. The determination that there was no actual need for emergency assistance shall be made by the most senior ranking fire personnel responding to a false alarm. A false alarm shall not be deemed to have occurred if caused by (i) an act of God, such as earthquakes, tornadoes, floods, or other extraordinary circumstances determined by the fire chief, or his or her respective designee to be clearly beyond the control of the alarm user, (ii) it originates from a motor vehicle alarm system or (iii) has not occurred more frequently than once per address in a calendar year, whether it is a residence or a commercial building, unless the false alarm response is the result of a failure to notify the system monitoring company or Ada County Dispatch when working on or testing fire protection equipment system or when work in any capacity in a building which shall constitute a false alarm in the first instance.

Hazardous substance or hazardous materials mean those elements, substances, wastes or by-products, including, but not limited to, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, which are potentially harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk to life, health or safety of persons or property, or to the ecological balance of the environment as determined by the fire chief or the senior fire official of the City in charge at the scene. The term includes any “hazardous substance” defined in the Hazardous Substance Emergency Response Act as set forth in Title 39, Chapter 71, Idaho Code.

Hazardous material incident or emergency means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.

Illegal fire means a fire caused or set or determined to have been caused or set in violation of a federal, state, or local law and shall include an arson fire and a fire set in violation of a “no burning” ban or order. An illegal fire does not include an accidental and unintended fire or fire caused by an act of God, i.e., a lightning storm, but does include a fire resulting from grossly negligent or reckless conduct as well as an intentionally set fire.

Mitigation costs mean those costs for services incurred by the City in connection with a response to a public safety or fire emergency incident, including, but not limited to, the actual labor and material costs of the City (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) whether or not the services are provided by the City or by a third party on behalf of the City; service charges and interest; attorneys' fees, litigation costs, and any costs, charges, fines, or penalties to the City imposed by any court or state or federal governmental entities.

Public safety or fire emergency incident means (i) a false alarm, (ii) a hazardous material incident or emergency, (iii) an illegal fire, (iv) rescue emergency, or (v) a utility line failure.

Release means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including, but not limited to, the air, soil, groundwater, and surface water.

Rescue emergency means a public safety or fire emergency incident resulting from a person or persons knowingly entering any area that has been closed to the public by competent authority for any reason, where such closure is posted by sign, barricade, or other device, and an emergency response such as a search for or rescue of such person results from the entry. For example, a rescue emergency would arise when the Boise River is flowing at a cubic foot per second level such that an authorized State, County, or City official declares the river closed to floating or rafting, the entry points are signed or otherwise posted as closed, and a person ignores the closure and a search and/or rescue results from the entry.

Responsible means to cause, either through negligence, recklessness, or intentional act, a public safety or fire emergency incident.

Responsible party means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a public safety or fire emergency incident or any owner, tenant, occupant or party in control of real and personal property from which, onto which, or related to which there is a public safety or fire emergency incident and, unless not permitted by law, includes their heirs, estates, successors and assigns.

Utility line failure means the interruption of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect, or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water, or sewage.

Section 7-02-03 BILLING AND COLLECTION OF MITIGATION COSTS, PROCEDURE

- A. The City may recover all mitigation costs in connection with a public safety or fire emergency incident from any or all responsible parties jointly or severally. The Fire Chief or Police Chief or his or her designee shall, consistent with a duly

adopted fee schedule, as amended, determine the total mitigation costs and shall, in consultation with other City personnel involved in responding to a public safety or fire emergency incident determine whether to assess any, all or part of such costs against any of the responsible parties.

- B. In making such determination, the following non-exclusive list of factors shall be considered, although no single factor or absence thereof will be determinative of whether mitigation costs are assessable:
- (1) the total mitigation costs;
 - (2) the risk the public safety or fire emergency incident imposed on the City, its residents and their property;
 - (3) whether there was any injury or damage to person or property;
 - (4) whether the public safety or fire emergency incident required evacuation;
 - (5) the extent the public safety or fire emergency incident required an unusual or extraordinary use of City personnel and equipment; and
 - (6) whether there was any damage to the environment.
- C. After consideration of the factors in subsection B immediately above, the Fire Chief or Police Chief or his or her designee may allocate mitigation costs among and between any responsible parties, including allocating all or some of such costs jointly and severally against more than one responsible party regardless of whether a responsible party has any other legal liability.
- D. If the Fire Chief or Police Chief or his or her designee determines not to assess all or a portion of mitigation costs against a responsible party, such determination shall not in any way limit, reduce, or extinguish the liability of the responsible party to any other parties.
- E. After determining to assess mitigation costs against a responsible party, the Fire Chief or Police Chief or his or her designee shall mail an itemized invoice to the responsible party at its last known address. Such invoice shall be due and payable within thirty (30) days of the date of mailing and, as permitted by Idaho Code § 28-22-104(1) or other applicable section, any amounts unpaid after such date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof that the amount due and any previously imposed late payment fee remains unpaid. If a responsible party shall appeal the claim of mitigation costs by requesting a hearing, such costs, if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall apply thereafter.

Section 7-02-04 HEARING PROCEDURE

- A. Any responsible party who receives an invoice for mitigation costs shall have an opportunity to meet with the Fire Chief, Police Chief, or his or her designee to request a modification of mitigation costs. The responsible party shall request in writing such meeting within ten (10) calendar days of the date of mailing of the

invoice assessing the mitigation costs. If after meeting with the Fire Chief, Police Chief, or his or her designee, the responsible party is still not satisfied, he or she may request a hearing before a hearing officer. Any responsible party aggrieved by the determination of being a responsible party and/or the assessment of mitigation costs who desires a hearing before a hearing officer must first meet with the Fire Chief, Police Chief, or his or her designee as provided above before requesting a hearing on the same.

- B. Any responsible party aggrieved by the determination of being a responsible party and/or the assessment of mitigation costs who desires a hearing shall submit the request in writing to the Boise City Clerk within thirty (30) calendar days of the date of mailing of the itemized invoice. Upon receipt of the written request for hearing, the City Clerk shall, within ten (10) days or sooner if deemed necessary by the Fire Chief or Police Chief, present the itemized invoice of mitigation costs to the hearing officer for consideration. The hearing officer shall fix a time, date, and place for hearing the determination of being a responsible party and/or the assessment of mitigation costs and/or any protests or objections thereto. Appointment of and proceedings before the hearing officer shall be consistent with Boise City Code § 5-01 to the extent such are not inconsistent with this ordinance. A request for hearing shall not prevent the City from pursuing the claim by means of other lawful process including small claims or civil litigation.

Section 7-02-05 OTHER REMEDIES

In addition to the remedy set forth above, the City 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 mitigation costs from a responsible party.

Section 7-02-06 NO LIMITATION OF LIABILITY

The recovery of mitigation costs pursuant hereto does not limit the liability of a responsible party under applicable local, state, or federal law.

Section 7-02-07 SEVERABILITY

Should any provision or part of this article be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision or part which shall remain in full force and effect.

(Ord-9-17 Amended 3/21/17; 6817, Enacted, 06/28/2011)