

ARTICLE III – NON-EMERGENCY RESPONSE COST RECOVERY – LIFT ASSISTANCE AND NON-EMERGENCY RESPONSES

50-185. FINDINGS AND PURPOSE.

The city's fire, ambulance, and emergency response personnel must always be prepared and available for emergencies within the city and beyond. Utilization and deployment of such personnel for non-emergency calls to residential living facilities that are compensated to maintain staff to assist their residents is a drain on city resources, which at times has caused delays in responses to true emergencies. Lift assists and non-emergency ambulance transports are regularly being provided by the city's emergency responders at such residential living facilities for multiple residents. The city's residents should not bear the cost or potential liability for non-emergency services at facilities that charge their residents for living space that also includes on-site staff, or at facilities that represent themselves as independent living communities but have residents with limited ambulatory capabilities or who require custodial care as defined in the International Fire Code. Therefore, it shall be the policy and practice of the city to assess a service fee for the responses defined herein for non-emergency patient lift assists and providing other non-emergency services for residents at residential living facilities.

50-186. DEFINITIONS.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) ASSISTED-LIVING FACILITY. An assisted living establishment licensed by the state and any other residential setting that provides assisted-living services for remuneration to three or more persons who reside in such residential setting and are not related to the owner of the residential setting and includes a home, an apartment, or a Facility; ASSISTED-LIVING does not include a home, an apartment, or a building in which (i) casual care is provided at irregular intervals or (ii) a competent person residing in such home, apartment, or building provides for or contracts for his or her own personal or professional services if no more than 50% of the persons residing in such home, apartment, or building receive such services.
- (2) FACILITY. Any of the communal residential living facilities defined in this division, including but not limited to assisted-living facilities, independent living facilities, and nursing care facilities.
- (3) INDEPENDENT LIVING FACILITY. A residential living facility that markets itself to senior citizens as providing, or actually provides or offers, staff to serve its residents in a communal living environment for 24 hours per day, hospitality services, and/or convenient access to dining, medical care, hospitality services, and/or entertainment.

(4) LIFT ASSIST. A response by the city's Fire Department to assist in physically moving a person at a Facility who does not require emergency medical treatment or transportation.

(5) NON-EMERGENCY RESPONSE. A response by the city's Fire Department to a 9-1-1 or non-emergency call for personal physical assistance that does not require professional medical attention on an emergency basis, in the sole judgment of Fire Department personnel, such as calls for lift assistance, transportation to a medical Facility or care center for non-emergency medical treatment, or other health care calls more appropriately addressed to a nurse, personal care attendant, private transportation or Facility employee. The Fire Department may expand upon this definition through the issuance of bulletins or internal orders that provide specific examples of different types of non-emergency responses that will be deemed to fit this definition.

(6) NURSING CARE FACILITY. A Facility licensed as a nursing home, nursing center, convalescent center, extended care facility, or similar facility by the state pursuant to the requirements of the Public Health Code, or a Facility or long-term care Facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than 24 consecutive hours to persons residing at such Facility who are ill, injured, or disabled.

(7) RESPONSIBLE PARTY. Any firm, corporation, association, partnership, commercial entity, consortium, joint venture, or any other legal entity owning a Facility, receiving the benefit of a lift assist or other non-emergency response.

50-187. NON-EMERGENCY RESPONSE COST RECOVERY.

(A) The city shall charge a fee to a Facility for a non-emergency response at that Facility.

(B) Based upon the assessment undertaken by the commanding officer of an emergency response unit dispatched to a Facility and that officer's determination that no emergency medical condition or emergency medical necessity exists, and when the staff or resident of the Facility still desires that the emergency response personnel complete a lift assist of a resident or otherwise transport a resident, the officer shall characterize the incident as a non-emergency response in the incident report.

(C) (1) The fee for providing a lift assist or other non-emergency response may be revised in the city's annual appropriations ordinance. The initial fee shall be \$350/non-emergency transportation and \$500/non-emergency lift assistance.

(2) The fee shall be reasonably calculated to recover some or all of the costs to or incurred by the city, as determined by the city's Finance Director based on information designed to recover the city's approximate costs in each response circumstance, including but not limited to maintenance costs of vehicles and equipment; fuel costs; insurance costs; staffing or personnel labor costs (including, without limitation, fringe benefit costs calculated using a multiplier); training costs; administrative costs (established using a percentage factor); housing costs for personnel and vehicles; supplies and equipment costs; costs of equipment operation and maintenance; costs of materials; transportation costs;

costs of material disposal; depreciation costs; damaged equipment costs; costs associated with outside contractors, independent consultants, and others engaged by the city or assisting the city; attorney fees; litigation costs; any costs, charges, fines, or penalties to the city imposed by any court or state or federal governmental entities; and any other costs associated with any response or service provided by fire and emergency response personnel. These costs also include, without limitation, the cost of all city personnel responding to the incident or providing the service and all city personnel engaged in any related investigation, supervision, and report preparation. In no event, however, shall the fee exceed the full costs incurred by the city less any reimbursement received by the city from other sources.

(D) The city's Fire Department shall maintain records in connection with services provided pursuant to this division, and shall forward the records to the city treasurer for invoicing.

(E) In making the determination whether to assess the fee authorized by this section, the following factors shall be considered and at least one must be deemed to warrant cost recovery by the city due to the expense that would otherwise be incurred by the taxpayers:

- (1) Whether there was any injury or damage to persons or property;
- (2) Whether the incident in question could or should have been addressed by the Facility without city intervention or assistance;
- (3) The total costs above and beyond routine costs, including but not limited to overtime costs, extraordinary time for personnel on the scene, unusual equipment mobilization, utilization of private personnel or agencies to assist with the response, and utilization of assistance from other public agencies;
- (4) Whether the response caused or contributed to any delay in responding to other emergency or non-emergency calls for service;
- (5) The risk the incident imposed on the city, its residents, and their property;
- (6) Whether the incident required an unusual or extraordinary use of city personnel and equipment.

50-188. BILLING, DELINQUENCY, AND COLLECTION.

(A) Notice of the imposition of a fee under this division shall be sent to the Responsible Party of the Facility where the non-emergency response occurred; provided that, with respect to business premises, the owner, manager, or chief administrative agent regularly assigned and employed on the premises at the time of the occurrence shall be presumed to be the appropriate person to receive the notice, unless the city is notified otherwise.

(1) The City Finance Department, or its designee, is authorized to send the notice, along with an invoice, to collect the fee established by this division, and shall be responsible for the billing and collection of amounts due and owing, including the right to contract for billing and collection (subject to the approval of the city council).

(2) The assessment may be to any or all Responsible Parties jointly or severally.

(B) Any bill or invoice for the fee imposed pursuant to this division shall be due and payable by the deadline established on the invoice, which shall not be less than 30 days from the date of mailing. The invoice shall include notice of the appeal procedure established in this division. If a Responsible Party submits a written appeal, the fees or costs, if upheld in whole or in part, shall be due and payable 30 days from the date of determination of the appeal.

(C) Any Responsible Party for the cost of a lift assist who fails to pay such fee when due, or any portion thereof, shall pay to the city a penalty for each month of delinquency as established in the city's annual appropriations ordinance. However, delinquency penalties shall be tolled and waived during an administrative appeal pursuant to this division.

(D) Upon the occurrence of a delinquency, the city or its agent for billing and collection shall send to the Responsible Party or entity the following: a copy of each delinquency notice sent to the person who had been paying the charges or some other notice sufficient to inform the owner or owners that the charges have become delinquent; and a notice that the unpaid charges may create a lien on the premises receiving or benefitting from the service for the amount of the delinquency and any and all charges which subsequently become delinquent.

(E) The city may file suit against the Responsible Party or Facility in a civil action to recover amounts due pursuant to this division plus reasonable attorney's fees and costs associated with preparation of, filing, and prosecution of the suit, which may also include equitable and injunctive relief requests for the court to address the responsible person and/or entity's recurring use of city resources in the manner described in this division.

(F) The city shall have a lien against the real property of the Facility to secure payment. If the invoice remains unpaid after 60 days (excluding tolling periods), the amount of the invoice may be placed upon the tax roll, and shall be subject to the same penalties, interest, and collection procedures that are applicable to delinquent taxes. The city shall add interest at a rate of 6% per annum on all liens filed against properties for delinquent fees imposed pursuant to this division. Enforcement of the lien to collect fees assessed under this division shall not be the exclusive means of collection, and the city may collect such fees in any manner permitted by law.

50-189. WAIVERS; APPEALS.

(A) In the event the Fire Chief, or designee, determines that the city's assessment or determination regarding the non-emergency nature of a response was in error or there were other mitigating facts which the commanding officer did not possess at the time of the response, the Fire Chief, or designee, may waive imposition of the applicable fee.

(B) Any Facility subject to a fee under this division may, within 21 days after issuance of the notice and invoice, appeal to the Fire Chief in writing at the address listed on the notice or invoice for submission of appeals. The written appeal should include the appellant's reasoning why the determination of a non-emergency response should be reconsidered.

Reasons such as cost or policy determinations shall not constitute sufficient reasons to warrant reversal of the non-emergency determination, and appeals should be limited to (1) establishing mistaken on-scene information which, had accurate information been provided at the time, would have warranted a determination that the response was actually emergent in nature, or (2) establishing that the fee assessed to the Facility should have been reduced by amounts paid to the city for the response from other sources, if payments from other sources resulted in the city receiving revenue that exceeded its actual costs as calculated pursuant to the criteria set forth in this division. The Fire Chief or his/her designee will impartially review all information provided with the appeal and issue a final decision in writing to the appellant within 60 days. Unless an appeal is properly and timely submitted in accordance with this subsection, any fee assessed under this division will be deemed final.

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