

ORDINANCE NO. O-2019-99

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, ESTABLISHING A PROGRAM TO CHARGE MITIGATION RATES FOR THE DEPLOYMENT OF EMERGENCY AND NON-EMERGENCY SERVICES BY THE TYLER FIRE DEPARTMENT FOR SERVICES PROVIDED/RENDERED FOR THE TYLER FIRE DEPARTMENT; AND AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE VIII, "FIRE PREVENTION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY ESTABLISHING MITIGATION RATES RELATED TO BILLING SERVICES IN CONNECTION WITH MOTOR VEHICLE INCIDENTS AND OTHER EMERGENCY AND NON-EMERGENCY INCIDENTS AT WHICH THE FIRE DEPARTMENT PROVIDES SERVICES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, as part of its regular duties and responsibilities, the Tyler Fire Department provides emergency services in connection with motor vehicle incidents and other emergency incidents; and

WHEREAS, the emergency and non-emergency services response activity to incidents continues to increase each year; Environmental Protection requirements involving equipment and training, and Homeland Security regulations involving equipment and training, creating additional demands on all operational aspects of the Tyler Fire Department services; and

WHEREAS, the Tyler Fire Department has investigated different methods to maintain a high level of quality of emergency and non-emergency service capability throughout times of constantly increasing service demands, where maintaining an effective response by the Fire Department decreases the costs of incidents to insurance carriers, businesses, and individuals through timely and effective management of emergency situations, saving lives and reducing property and environmental damage; and

WHEREAS raising real property tax to meet the increase in service demands would not be fair when the responsible party(s) should be held accountable for their actions; and

WHEREAS, the Tyler City Council desires to implement a fair and equitable procedure by which to collect said mitigation rates and establish a billing system in accordance with applicable laws, regulations and guidelines; and

WHEREAS, the Fire Department now seeks the services of Fire Recovery USA, LLC, to perform billing services in connection with the emergency services provided by the Fire Department.

WHEREAS, a list of Fire Recovery USA, LLC fees is set forth in an Exhibit "A" attached to the Agreement; and

WHEREAS, by authorizing the City Manager to execute an Agreement with Fire Recovery USA, LLC for billing services, the City Council is also authorizing and is approving the proposed Mitigation Fees list contained in Exhibit "A" of the Agreement; and

WHEREAS, the City Council has established miscellaneous regulations relating to fire safety in Tyler City Code Chapter 6, Article VIII., and

WHEREAS, in order to provide appropriate notice to the public and consistent with the City of Tyler's normal procedure for codifying fees by ordinance, it is important to adopt the emergency services fees specified in the Agreement by codifying such rates in the City Code; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS;

PART 1: The Tyler City Council shall initiate mitigation rates for the delivery of emergency and non-emergency services by the fire department for personnel, supplies and equipment to the scene of emergency and non-emergency incidents as listed in "EXHIBIT A". The mitigation rates shall be based on actual costs of the services and that which is usual, customary and reasonable (UCR) as shown in "EXHIBIT A", which may include any services, personnel, supplies, and equipment and with baselines established by addendum to this document. Exhibit "A" is attached hereto and is hereby incorporated herein. Such rates shall be officially established in Tyler City Code Chapter 6, as set forth in PART 6 herein.

PART 2: It is the intent of the City Council that the Mitigation Rates lists in Exhibit A will increase by 1.5% annually or based on the annual percentage increase in the Consumer Price Index (CPI), as developed by the Bureau of Labor Statistics of the U.S. Department of Labor, whichever is more. Rate adjustments are intended to occur on the anniversary date of this Ordinance to keep the Tyler Fire Department's cost recovery program in conformity with increasing operating expenses, but any changes in rates shall be officially adopted by Ordinance amendments to Tyler City Code Chapter 6.

PART 3: A claim shall be filed to the responsible party(s) through their insurance carrier.

PART 4: The Tyler City Council may make rules or regulations and from time to time may amend, revoke, or add rules and regulations, not consistent with this Ordinance, as it may deem necessary or expedient in respect to billing for these mitigation rates or the collection thereof.

PART 5: It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in accordance with all legal requirements, and the Codified Ordinances of the City Council.

PART 6: That Tyler City Code Chapter 6, "Buildings and Structures", Article VIII, "Fire Prevention", is hereby amended by adding a new Section 6-131 to read as follows:

Sec. 6-131. Schedule of Mitigation Rates for Fire Department Emergency and Non-Emergency Services

**MITIGATION RATES
BASED ON PER HOUR**

The mitigation rates below are average "billing levels", and are typical for the incident responses listed, however, when a claim is submitted, it will be itemized and based on the actual services provided.

These rates are based on actual costs using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance). Labor rates include an average department's actual burdened labor costs and not just a firefighter's wage. These include wages, retirement, benefits, workers comp, etc.

NOTE: Under the Agreement, it is intended for the Mitigation Rates List in Exhibit "A", and as codified in this Section, to increase by 1.5% annually or based on the annual percentage increase in the Consumer Price Index (CPI), whichever is more. It is also recommended that any rate adjustments occur on the anniversary of adoption of this Ordinance. However, any increases or adjustments to the rates in this Section shall require official action by the City Council.

The following mitigation rates for emergency and non-emergency services are established as follows:

a. Motor Vehicle Incidents

1. Level 1 - \$494.00

Provide hazardous materials assessment and scene stabilization. This will be the most common "billing level". This occurs every time the Fire Department responds to an accident/incident.

2. Level 2 - \$562.00

Includes Level 1 services as well as clean up and material used (sorbents) for hazardous fluid clean up and disposal. This will be billed at this level if the Fire Department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident/incident.

3. Level 3 - Car Fire. \$687.00

Provide scene safety, fire suppression, breathing air, rescue tools, hand tools, hose, tip use, foam, structure protection, and clean up gasoline or other automotive fluids that are spilled as a result of the accident/incident.

b. Add-On Services

1. Extrication - \$1,483.00

Includes heavy rescue tools, ropes, airbags, cribbing, etc. This charge will be added if the Fire Department has to free/remove anyone from the vehicle(s) using any equipment. This Level will not be billed if the patient is simply unconscious and Fire Department is able to open the door to access the patient. This Level is to be billed only if equipment is deployed.

2. Creating a Landing Zone - \$454.00

Includes Air Care (multi-engine company response, mutual aid, helicopter). This Level will be billed any time a helicopter landing zone is created and/or is utilized to transport the patient(s).

3. Itemized Response. Each incident may be billed as an independent event with custom mitigation rates, for each incident using, itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus, per personnel, plus products and equipment used.

4. Additional Time on Scene

Engine billed at \$455 per hour.

Truck billed at \$568 per hour.

Miscellaneous equipment billed at \$341.

c. Hazmat

1. Level 1 - \$796.00

Basic Response: Claim will include engine response, first responder assignment, perimeter establishment, evacuations, set-up and command.

2. Level 2 - \$2,842.00

Intermediate Response: Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, set-up and command, Level A or B suit donning, breathing air and detection equipment. Set-up and removal of decon center.

3. Level 3 - \$6,707.00

Advanced Response: Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, first responder set-up and command, Level A or B suit donning, breathing air and detection equipment and robot deployment. Set-up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene. Includes 3 hours of on scene time - each additional hour @ \$336.00 per HAZMAT team.

c. Additional Time on Scene (for all levels of service)

Engine billed at \$455 per hour.

Truck billed at \$568 per hour.

Miscellaneous equipment billed at \$341.

(Ord. No. 0-2019-99; 11/13/19)


Sections 6-132 through 6-149 Reserved.

PART 7: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 8: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished

by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Nov. 15th, 2019.

PASSED AND APPROVED this 13th day of November, A. D., 2019.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY