

EXHIBIT NO. _____

22
6-14-08

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~~6-10-08~~

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 3, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: ORDINANCE TO ESTABLISH A FEE FOR HAZARDOUS MATERIALS
INCIDENT RESPONSES

ISSUE: Consideration of an ordinance to establish fees for small-scale and less dangerous hazardous materials incidents mitigated by the Alexandria Fire/EMS Department (AFD).

RECOMMENDATION: That City Council pass the ordinance on first reading on June 10, 2008 and set it for public hearing, second reading and final passage on June 14, 2008.

BACKGROUND: For over 20 years, the AFD has had a Hazardous Materials (Hazmat) Response Team, which was launched after the Commonwealth of Virginia initiated a state-wide program in the mid-1980s. In 1988, the VDEM contracted with the AFD to provide hazardous material response services to areas throughout the northernmost jurisdictions in the Commonwealth. The AFD, through the VDEM, has recovered costs associated with Level 3 Hazmat response calls. These incidents involve materials which are highly toxic or dangerous and, as a result, are not normally handled using the resources of a local fire department. In addition, these incidents require technically trained individuals using specialized chemical protective clothing and other equipment not normally carried as part of the standard fire department equipment complement. Level 3 Hazmat calls are the only incidents from which the City routinely recovers costs through the Commonwealth.

DISCUSSION: The proposed ordinance would establish fees based on those imposed by the Virginia Department of Emergency Management (VDEM) and charged to individuals or entities discharging oil or chemicals onto waters, lands, or storm drains. The Fire Department proposes invoicing responsible parties for Hazmat incidents that are less dangerous and not classified as Level 3, as these incidents also result in substantial costs to the Department each fiscal year. These fees would be charged to any person or entity discharging, causing, or permitting the discharge of gases, liquids (including ethanol), or solids into Commonwealth waters, lands, or storm drain systems or to any operator of any facility, vehicle, or vessel from which there is a discharge.

The AFD responds to approximately 80 Hazmat calls each year, and 30 of these calls are projected to be billable. Approximately two-thirds of the calls are classified as residential and investigative responses; these calls will not result in billings for AFD services and will not be affected by the proposed Hazmat fee ordinance. The other third involve commercial establishments, which will be invoiced for AFD services; however, for the majority of these calls, AFD bills will be forwarded to the insurers of the affected commercial establishment (approximately 95% of the revenue is expected to be generated from insurance companies).

In all 50 states, state laws mandate that drivers carry liability insurance, and most insurers have provisions to cover costs associated with fire and rescue response services. Also, most commercial building and property liability insurance policies have provisions for Hazmat spills and/or releases, which will help reduce the impact on the local business community in Alexandria. AFD will review and approve all invoices, including bills for co-payment, before they are sent to business/property owners.

This is a fair source of revenue that should be tapped, and the revenue generated will help to offset the use of Fire/EMS resources that are required to contain and mitigate Hazmat incidents. These incidents are expected to occur six to eight times each month during FY 2009.

FISCAL IMPACT: The FY 2009 approved budget adopted by City Council on May 5, 2008 includes AFD estimated revenues totaling \$15,400 based on rates approved by the VDEM that were in effect last fall. Since that time, VDEM has submitted a new fee schedule, and it is likely that revenues will increase to at least \$21,000. A precise revenue projection is difficult to provide, since the extent of any Hazmat incident and the resulting mitigation effort will vary by situation.

STAFF:

Adam K. Thiel, Fire Chief

John North, Battalion Chief, Special Operations

James Lynch, Administrative Services Division Chief, Alexandria Fire Department

Virginia Lester, Fiscal Officer, Alexandria Fire Department

Introduction and first reading: 06/10/08
Public hearing: 06/14/08
Second reading and enactment: 06/14/08

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Article J (SERVICE CHARGE FOR CITY AMBULANCE SERVICE), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT), of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 3-2-134 (HAZARDOUS MATERIALS INCIDENT RESPONSE FEES), and by making a conforming amendment to the catchline of the said Article J.

Summary

The proposed ordinance establishes a service charge for Level I and Level II Hazardous Materials Incident Responses. The service charge is based on the City's costs of responding, as determined pursuant to the emergency response cost recovery schedule published by the Virginia Department of Emergency Management. Under current law, costs for Level III Responses recovered through the Virginia Department of Emergency Management.

Sponsor

Staff

Adam Thiel, Fire Chief
John W. North, Battalion Chief
Ignacio B. Pessoa, City Attorney

Authority

City Charter § 2.07

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Article J (SERVICE CHARGE FOR CITY AMBULANCE SERVICE), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT), of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 3-2-134 (HAZARDOUS MATERIALS INCIDENT RESPONSE FEES), and by making a conforming amendment to the catchline of the said Article J.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article J, Chapter 2, Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is, amended and reordained adding thereto a new Section 3-2-134, and by amending the catchline, to read as follows:

Article J Service Charges for City Ambulance and Hazardous Materials Incident Response Services

[The following is all new language]

Section 3-2-134 Hazardous materials incident response charges.

(a) The following words and phrases, when used in this section, shall have the meanings set out below:

(1) Hazardous materials: Any substance that, because of its quantity, concentration or physical or chemical characteristics, possesses a significant present or potential hazard, according to federal, state and/or local standards or regulations, to human health and safety, or to the environment, if released from its intended container or abandoned.

(2) Hazardous materials incident or incident: Any incident that involves the release from its intended container or abandonment of any hazardous material, which incident has the potential to harm persons, property or the environment.

(3) Level I Hazardous Materials Incident Response: An incident response requiring recovery, containment or mitigation as a result of a release or abandonment of hazardous materials, utilizing resources from the City of Alexandria.

(4) Level II Hazardous Materials Incident Response: An incident response requiring recovery, containment or mitigation as a result of a release or abandonment of hazardous materials, utilizing resources from the City of Alexandria and one or more mutual aid jurisdictions.

(5) Responsible Party: All persons, jointly and severally, involved in the ownership, possession or transportation of any hazardous material that is released or abandoned in a

1 hazardous materials incident, and all persons, jointly and severally, who otherwise cause
2 a hazardous materials incident in the City.
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4 (b) For each Level I and Level II Hazardous Materials Incident Response, there is hereby
5 imposed on the responsible party a service charge equivalent to the City's costs of response, as
6 determined pursuant to the then current emergency response cost recovery schedule published by
7 the Virginia Department of Emergency Management. The funds received shall be paid into the
8 general fund of the city to aid in defraying the cost of providing hazardous materials incident
9 response services by the fire department and other agencies of the City.
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11 (c) No charge shall be imposed on a natural person in the following instance:
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13 (1) Such person is involved in the hazardous materials incident solely for his or her
14 private, noncommercial purposes related to his or her own residential real property or
15 private personal property (other than a motor vehicle licensed for operation on public
16 streets and highways), was not involved in the incident as the employee, agent or servant
17 of any business, and receives or is to receive no compensation for any services involving
18 the hazardous materials incident, and
19

20 (2) The hazardous materials involved in the incident are in a form, quantity,
21 concentration and container ordinarily and lawfully available for sale as consumer
22 products to members of the general public.
23

24 (d) Nothing in this section shall be deemed to relieve a responsible party of liability for
25 actual and/or additional response costs, damages, penalties, fines, forfeitures, prosecution,
26 injunction or other remedies pursuant to law, nor to affect the city's cost recovery through the
27 Virginia Department of Emergency Management for Level III Hazardous Materials Incident
28 Responses.
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30 Section 2. That this ordinance shall be effective July 1, 2008.
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33 WILLIAM D. EUILLE
34 Mayor
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36 Introduction: 06/10/2008
37 First Reading: 06/10/2008
38 Publication:
39 Public Hearing:
40 Second Reading:
41 Final Passage:
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ORDINANCE NO. 4550

AN ORDINANCE to amend and reordain Article J (SERVICE CHARGE FOR CITY AMBULANCE SERVICE), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT), of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 3-2-134 (HAZARDOUS MATERIALS INCIDENT RESPONSE FEES), and by making a conforming amendment to the catchline of the said Article J.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article J, Chapter 2, Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is, amended and reordained adding thereto a new Section 3-2-134, and by amending the catchline, to read as follows:

Article J Service Charges for City Ambulance and Hazardous Materials Incident Response Services

Section 3-2-134 Hazardous materials incident response charges.

(a) The following words and phrases, when used in this section, shall have the meanings set out below:

- (1) Hazardous materials: Any substance that, because of its quantity, concentration or physical or chemical characteristics, possesses a significant present or potential hazard, according to federal, state and/or local standards or regulations, to human health and safety, or to the environment, if released from its intended container or abandoned.
- (2) Hazardous materials incident or incident: Any incident that involves the release from its intended container or abandonment of any hazardous material, which incident has the potential to harm persons, property or the environment.
- (3) Level I Hazardous Materials Incident Response: An incident response requiring recovery, containment or mitigation as a result of a release or abandonment of hazardous materials, utilizing resources from the City of Alexandria.
- (4) Level II Hazardous Materials Incident Response: An incident response requiring recovery, containment or mitigation as a result of a release or abandonment of hazardous materials, utilizing resources from the City of Alexandria and one or more mutual aid jurisdictions.
- (5) Responsible Party: All persons, jointly and severally, involved in the ownership, possession or transportation of any hazardous material that is released or abandoned in a hazardous materials incident, and all persons, jointly and severally, who otherwise cause a hazardous materials incident in the City.

(b) For each Level I and Level II Hazardous Materials Incident Response, there is hereby imposed on the responsible party a service charge equivalent to the City's costs of response, as determined pursuant to the then current emergency response cost recovery schedule published by the Virginia Department of Emergency Management. The funds received shall be paid into the general fund of the city to aid in defraying the cost of providing hazardous materials incident response services by the fire department and other agencies of the City.

(c) No charge shall be imposed on a natural person in the following instance:

(1) Such person is involved in the hazardous materials incident solely for his or her private, noncommercial purposes related to his or her own residential real property or private personal property (other than a motor vehicle licensed for operation on public streets and highways), was not involved in the incident as the employee, agent or servant of any business, and receives or is to receive no compensation for any services involving the hazardous materials incident, and

(2) The hazardous materials involved in the incident are in a form, quantity, concentration and container ordinarily and lawfully available for sale as consumer products to members of the general public.

(d) Nothing in this section shall be deemed to relieve a responsible party of liability for actual and/or additional response costs, damages, penalties, fines, forfeitures, prosecution, injunction or other remedies pursuant to law, nor to affect the city's cost recovery through the Virginia Department of Emergency Management for Level III Hazardous Materials Incident Responses.

Section 2. That this ordinance shall be effective July 1, 2008.

WILLIAM D. EUILLE
Mayor

Final Passage: June 14, 2008