

ORDINANCE NO. 2022-04

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, OF THE CITY OF TEXAS CITY, TEXAS,, AMENDING TITLE IX: GENERAL REGULATIONS; CHAPTER 96 (FIRE PREVENTION AND PROTECTION; FIREWORKS) OF THE CODE OF ORDINANCES, TO ADD SECTION 96.03 HAZARDOUS MATERIALS RESPONSE COST RECOVERY), AUTHORIZING THE IMPOSITION OF FEES TO RECOVER COSTS ACTUALLY INCURRED IN RESPONDING TO CERTAIN HAZARDOUS MATERIALS EMERGENCY INCIDENTS; DESCRIBING COST RECOVERY PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL REMEDIES AND A RIGHT TO APPEAL; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE; DISPENSING WITH THE CHARTER REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the City Commission of the City of Texas City, Texas has investigated and determined that the increasing costs of conducting adequate hazardous materials response operations and services in the City of Texas City, Texas, including those services required to respond to these extraordinary and dangerous occurrences, impairs the City's ability to provide all necessary City services; and

WHEREAS, the City Commission finds that it would be advantageous and beneficial to the City and its citizens to authorize the recovery of costs actually incurred by the City in responding to hazardous materials incidents to better protect the public health, safety and welfare and to protect and preserve public funds and tax dollars; and

WHEREAS, the City Commission desires to assess fees that compensate the City for its costs in providing such services; and

WHEREAS, the City Commission finds that the fees established herein are levied solely for the purpose of defraying the costs of the hazardous materials response and equipment for which the fees are assessed.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to the Code of Ordinances, Chapter 96 (Fire Prevention and Protection: Fireworks) to Add Article 96.03 (Hazardous Materials Response Cost Recovery). Chapter 96 (Fire Prevention and Protection: Fireworks) of the City's Code of Ordinances is hereby amended to add Article 96.03 (Hazardous Materials Response Cost Recovery) as set forth below:

CHAPTER 96.03. HAZARDOUS MATERIALS RESPONSE COST RECOVERY

(A) This section authorizes the imposition of fees to recover costs actually incurred by the City in responding to hazardous materials incidents to protect the City from extraordinary expenses resulting from the use of City resources in response to such incidents.

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

Assessable costs mean those costs for services incurred by the City in connection with a response to a hazardous materials 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.

City means the City of Texas City, County of Galveston, State of Texas

Costs mean all reasonable and necessary expenses that are incurred by the City as a direct result of the hazardous materials response. In general, allowable costs are response costs that are eligible, reasonable, necessary and allocable to the response.

Emergency assistance means emergency medical, public safety, police, fire or other City department services.

Excessive requests for emergency assistance means any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five (5) times in the preceding thirty (30) days.

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 or 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 environment as determined by the fire chief or the senior fire official of the City in charge at the scene.

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.

Hazardous materials incidents—Exceptions means the authority to recover costs under this section shall not include costs incurred for actual fire suppression service which is normally or usually provided within the municipality by its fire department or its authorized agents.

Jurisdiction means the City of Texas City and contracted, obligated or mutual response municipalities.

Pollutant or *contaminant*, as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction or physical deformations), in such organisms or their offspring. This term also includes petroleum, crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under sections 101(14)(A) through (F) of CERCLA.

Potentially responsible party (PRP) means any person who may be liable under section 107 of CERCLA for a release or threatened release of hazardous substances or pollutants or contaminants.

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.

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 their heirs, estates, successors and assigns.

(C) It shall be the duty of any person and any other entity which causes or controls leakage, spillage or any other dissemination of dangerous or hazardous substances or materials to immediately remove such substances and materials and clean up the area of such spillage in such a manner that the area involved is fully restored to its condition before such occurrence. The fire marshal or assistant fire marshal, or members of the fire department will inspect the site to ensure that the cleanup is in compliance with local, state, and federal guidelines.

(D) The City may recover all assessable costs in connection with a hazardous materials incident from any or all responsible parties, jointly or severally.

(E) The fire chief or his or her designee shall determine the total assessable costs and shall in consultation with other city personnel involved in responding to the hazardous materials incident

determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered:

- (1) The total assessable costs,
 - (2) The fees set forth in the cost recovery fee schedule established and maintained pursuant to Section (F) below,
 - (3) The risk the incident imposed on the City, its residents, and their property,
 - (4) Whether there was any injury or damage to person or property,
 - (5) Whether the incident required evacuation,
 - (6) The extent the incident required use of city personnel and equipment, and
 - (7) Whether there was any damage to the environment.
- (a) After consideration of the factors in section (E) immediately above, the fire chief or his or her designee may allocate assessable costs among and between 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 other legal liability therefore or is legally at fault.
- (b) If the fire chief or his or her designee determines not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to other parties.

(F) The fire chief or his or her designee is authorized and directed to establish and maintain a cost recovery fee schedule reflecting the reasonable costs of responding to a hazardous material incident, and the fees stated therein shall not exceed the City's actual cost in responding to a public safety or fire emergency incident. A copy of the cost recovery fee schedule shall at all times be maintained on file with the fire department and shall have the same legal effect as if adopted by ordinance of the City Commission.

(G) After determining to assess assessable costs against a responsible party, the finance director shall mail an itemized invoice to the responsible party at its last known address or to the responsible party's insurer at the insurer's address if provided. Such invoice shall be due and payable within thirty (30) days of the date of mailing and 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 assessable costs pursuant to section (H), 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.

(H) Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the fire chief or his or her designee to request a modification of assessable costs. The responsible party shall request in writing such meeting within ten (10) calendar days of the date of the invoice assessing the assessable costs. If after meeting with the fire chief or his or her designee the responsible party is still not satisfied, he or she may request

an opportunity to appear before the City Commission to further request a modification of assessable costs. A responsible party who desires to appear before the City Commission must first meet with the fire chief or his or her designee as provided above and shall file a written request to appear before the City Commission with the city secretary within ten (10) calendar days of the date of the meeting with the fire chief.

Upon receipt of such request, the city secretary will place the responsible party on the agenda of the next regularly scheduled City Commission meeting, which meeting is at least fourteen (14) calendar days after the date on which the responsible party files the request to appear. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified. Any reason, basis or argument for modification of assessable costs not set forth in the request to appear shall be deemed waived by the responsible party.

Failure to timely file a written request to appear shall constitute a waiver of the responsible party's right to appear before the City Commission and shall further constitute the responsible party's agreement to pay the assessable costs invoiced. After a responsible party has been given an opportunity to appear before it, the City Commission shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

(I) In addition to the remedy set forth in section (G) 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 assessable costs from a responsible party.

(J) All costs and expenses incurred under this section shall be collectable by the City in the same manner as in the case of an obligation under a contract, express or implies. Any failure by the person or responsible party to pay the invoice within thirty (30) days of service shall be considered in default. In case of default, the city may commence civil suit to recover the costs and expenses of the response and court costs and attorney fees incurred in the collection of such debt.

(K) This article shall be construed to impose a responsibility and liability of a civil nature on the part of the operator of the motor vehicle and shall not be construed to conflict, contravene, enlarge or reduce any criminal liability or responsibility including fines and costs which may be imposed by a judge on an operator of a motor vehicle convicted of any criminal action arising from the incident precipitating the emergency response.

(L) The recovery of assessable costs pursuant this article does not limit the liability of a responsible party under applicable local, state or federal law.

SECTION 3: Penalty. Any person, firm, corporation or entity violating or refusing to comply with any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding two thousand dollars (\$2000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not

preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it under local, state and federal law.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 5: Savings/Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of such ordinances shall remain in full force and effect.

SECTION 6: That the Charter requirement for reading the Ordinance on three (3) separate days has been dispensed by a majority vote to the City Commission.

PASSED AND ADOPTED this 16th day of March 2022.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney