

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 2.20 of the Lincoln Municipal Code relating to
2 the Fire and Rescue Department by adding new sections numbered 2.20.160, 2.20.170, 2.20.180,
3 2.20.190 and 2.20.200 to identify and establish fees for specific services performed by the Fire and
4 Rescue Department.

5 WHEREAS, the addition of certain fees will allow users of certain services performed
6 by the Fire and Rescue Department to assume more of the responsibility for funding the Department
7 and allowing the City of Lincoln to continue to provide a broad range of rescue services.

8 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

9 Section 1. That Chapter 2.20 of the Lincoln Municipal Code be amended by adding a
10 new section numbered 2.20.160 to read as follows:

11 **2.20.160 Definitions.**

12 The following definitions shall apply in the interpretation and enforcement of this chapter.

13 **Abatement** shall mean any emergency response to prevent, mitigate, or remedy the actual
14 or potential consequences of a hazardous materials release.

15 **Hazardous material** shall mean any substance that, because of its quantity, concentration,
16 or physical or chemical characteristics, poses a significant present or potential hazard, according to
17 federal, state, and/or local standards and regulations, to human health and safety or to the
18 environment if released during the course of normal handling, transportation, use, or storage.

19 **Hazardous materials incident** shall mean any incident involving the release, abandonment,
20 discharge, or deposit of any hazardous material from its intended container or process which, unless
21 otherwise provided herein, has the potential to harm persons, property, or the environment.

22 **Responsible person** shall mean any or all of the persons listed in subsection 2.20.170(c).

1 Lift Assist shall mean a response by Lincoln Fire and Rescue personnel to assist in
2 physically moving a person who does not require emergency medical transportation in an assisted
3 living facility as defined in Lincoln Municipal Code Section 27.02.020 and/or nursing care facility
4 as defined in Lincoln Municipal Code 27.02.150.

5 Section 2. That Chapter 2.20 of the Lincoln Municipal Code be amended by adding a
6 new section numbered 2.20.170 to read as follows:

7 **2.20.170 Hazardous Materials Clean-up Cost Recovery.**

8 (a) Due to the harmful effects of hazardous materials, a hazardous materials incident is
9 hereby declared to be a nuisance.

10 (b) The Fire and Rescue Department is authorized to provide for the emergency, temporary
11 abatement of any hazardous materials release in the City.

12 (c) Any of the following described persons shall be liable to the City for the payment of
13 costs incurred by the City as provided herein:

14 (1) The person or persons whose accidental, negligent, or willful act or omission
15 proximately caused such release, abandonment, discharge, or deposit; or

16 (2) The person or persons who owned or had custody or control of the hazardous
17 materials at the time of such release, abandonment, discharge, or deposit without regard to fault or
18 proximate cause; or

19 (3) Any person or persons who owned or had custody or control of the container that
20 held the hazardous materials at the time of, or immediately prior to, the hazardous materials release,
21 without regard to fault or causation; or

22 (4) Any person who owned or was in possession of the property on which or from
23 which the hazardous materials release occurred, without regard to fault or causation; or

24 (5) Any person who, by contract or otherwise, arranged for the disposal, treatment,
25 or transport of the hazardous materials without regard to fault or causation, if the hazardous
26 materials release occurred during disposal, treatment, or transport; or

1 (6) Any person who accepted hazardous materials for transport, without regard to fault
2 or causation, if the hazardous materials release occurred during transport.

3 (d) (1) The fees for responding to a hazardous materials incident by the Fire and Rescue
4 Department shall be charged under a schedule of usual, customary, and reasonable fees adopted by
5 resolution of the City Council which may be amended from time to time by resolution of the City
6 Council. In addition to any fees established by schedule, the Department may charge for the actual
7 costs of any equipment, supplies, or materials consumed or destroyed in the response to a hazardous
8 materials incident.

9 (2) A responsible person shall pay the City the costs of abatement incurred by the
10 Lincoln Fire and Rescue Department under subsection 2.20.170(d)(1) within sixty (60) days of the
11 date a bill is issued for those costs. Payment as required by this section shall not prevent or affect
12 the City's ability to collect the costs of abatement incurred by other City Departments or agencies
13 for the same incident.

14 (3) If a responsible person fails to make full payment to the City as required by
15 subsection 2.20.170(e)(2), then the City may enforce that payment obligation against the
16 responsible person in a debt action.

17 (4) In any action or proceeding to enforce the obligations of a responsible person
18 under this section, the prevailing party shall be awarded its attorney's fees reasonably incurred in
19 the prosecution or defense of the action or proceeding.

20 (5) Upon entry of a second or subsequent civil judgment for hazardous materials
21 abatement within a five-year period finding that a person or persons is responsible for a hazardous
22 materials release with respect to his, her, or its property, the court shall order that person to pay
23 treble the costs of abatement.

24 (6) The authority and remedies established in this section are in addition to any other
25 remedy and authority established by any federal, state, or local law and resort to any lawful remedy
26 shall not constitute an election that waives the right to pursue any other remedy permitted by law.

1 Section 3. That Chapter 2.20 of the Lincoln Municipal Code be amended by adding a
2 new section numbered 2.20.180 to read as follows:

3 **2.20.180 Abatement is Discretionary.**

4 Nothing in this chapter shall create a right in any person to compel or a duty in the City to
5 abate any hazardous materials release. Enforcement of this chapter by the City constitutes discre-
6 tionary action.

7 Section 4. That Chapter 2.20 of the Lincoln Municipal Code be amended by adding a
8 new section numbered 2.20.190 to read as follows:

9 **2.20.190 Motor Vehicle Extrication Cost Recovery.**

10 (a) The City shall charge a fee for services provided by the Fire and Rescue Department in
11 connection with its extrication of people from motor vehicles by using hydraulic or electric power
12 tools.

13 (b) (1) The fee for providing extrication services by the Fire and Rescue Department shall
14 be charged under a schedule of usual, customary, and reasonable fees adopted by resolution of the
15 City Council which may be amended from time to time by resolution of the City Council.

16 (2) In any action or proceeding to enforce the obligations of a person receiving
17 extrication services, the prevailing party shall be awarded its attorneys' fees reasonably incurred in
18 the prosecution or defense of the action or proceeding.

19 (c) The foregoing fee shall be charged to any person or persons for whom the Fire and
20 Rescue Department provides vehicle extrication services.

21 Section 5. That Chapter 2.20 of the Lincoln Municipal Code be amended by adding a
22 new section numbered 2.20.200 to read as follows:

23 **2.20.200 Lift Assist Cost Recovery.**

24 (a) The City shall charge a fee to assisted living facilities and nursing care facilities for
25 services provided by the Fire and Rescue Department in connection with its providing a lift assist
26 to any person.

1 **(b) (1) The fee for providing lift assist services by the Fire and Rescue Department shall**
2 **be charged under a schedule of usual, customary, and reasonable fees adopted by resolution of the**
3 **City Council which may be amended from time to time by resolution of the City Council.**

4 **(2) In any action or proceeding to enforce the obligations of a responsible facility**
5 **under this section, the prevailing party shall be awarded its attorneys' fees reasonably incurred in**
6 **the prosecution or defense of the action or proceeding.**

7 Section 6. That this ordinance shall take effect and be in force from and after passage
8 and publication in one issue of a daily or weekly newspaper of general circulation in the City,
9 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2012: _____ Mayor
--