

ORDINANCE NUMBER 11-06

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MARICOPA, ARIZONA, AMENDING THE CITY CODE BY ADDING CHAPTER 3, SECTION 124 REGARDING USER FEES FOR HAZARDOUS MATERIAL INCIDENTS AND PROVIDING FOR SEVERABILITY AND THE EFFECTIVE DATE THEREOF.

WHEREAS, incidents and emergencies resulting in the release of hazardous materials into the environment can cause significant harm to the community and its residents; and

WHEREAS, the equipment and training required to respond to such incidents and emergencies create additional demands on all operational aspects of Fire and Emergency Services; and

WHEREAS, all property owners and occupants do not present an equal risk to the community; and

WHEREAS, the City Council believes it is in the best interest of the citizens of the City of Maricopa to implement a fair and equitable procedure for distributing the cost of effective and timely management of hazardous materials incidents and emergencies; and

WHEREAS, user fees for hazardous materials emergency incidents, except when the incident is the result of legal, non-commercial activities, provide such a procedure; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, AS FOLLOWS:

SECTION 1. That the following language shall be added to the City Code as Section 3-124 "User Fees for Hazardous Material Incidents":

(a) Definitions.

- 1) Hazardous Materials mean those elements, substances, wastes or by-products that are defined as such by the City of Maricopa Fire Code or materials whose unintentional release is 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 ecological balance of the environment as determined by the fire chief or the senior fire official of the City in charge at the scene, in accordance with the City Code. These materials include, but are 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.

- 2) Hazardous Material Incident 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.
- 3) Responsible Party means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a Hazardous Material 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 Hazardous Material Incident and their heirs, estates, successors and assigns.

- (b) A user fee is hereby established for the delivery of Fire Department and other City services, personnel, supplies, and equipment to the scene of Hazardous Material Incidents. The user fee and any penalties shall be the same as established by resolution of the Council pursuant to Sec 3-123 of the City Code.
- (c) A notice of user fee shall be sent to the Responsible Party by U.S. Mail or by any other method that provides evidence of receipt, representing an add-on cost of the claim for damages of the property, vehicles, clean up, and/or injuries. The claim costs shall be sent to the insurer of the Responsible Party.
- (d) In the event the Responsible Party believes an error was made in the assessment of the user fee, the Responsible Party may file a written statement setting forth fully the grounds for their appeal with the city manager within thirty (30) days from the date of the notice sent pursuant to Section 3-124(c). If the appeal does not state a valid basis or is untimely, the city manager shall dismiss, upon written determination, the appeal in whole or in part before scheduling a hearing. For any part of the appeal that is not dismissed, the city manager will conduct a hearing within ten (10) business days of receipt of the appeal and may resolve the appeal based on the merits. The city manager shall issue a written decision to the Responsible Party within five (5) business days of the hearing, which shall be delivered to the Responsible Party via certified U.S. Mail or other verifiable delivery methodology. The decision of the city manager shall be the final administrative remedy available under this Article.

(e) The following entities, properties and services shall be exempt from the foregoing charges:

- 1) Residents and residential property owners, when the incident or emergency is the result of legal and non-commercial activities.
- 2) Incidents involving City buildings, grounds and/or property.
- 3) Incidents involving buildings or property, which is owned or operated by other governmental agencies.
- 4) Services performed outside the jurisdiction of the City of Maricopa under a mutual aid contract with another municipality or governing agency.

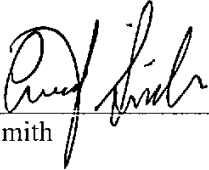
SECTION 2. To the extent of any conflict between other City Ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing City Ordinance, Resolution or regulation except as expressly set forth herein.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. This Ordinance shall become effective thirty (30) days from the date of adoption by the City Council for the City of Maricopa.

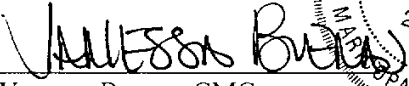
PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 21st day of June, 2011.

APPROVED:



Anthony Smith
Mayor

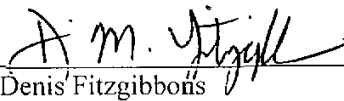
ATTEST:



Vanessa Bueras, CMC
City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney