



## RISK MANAGEMENT INFORMATION CHARGING FOR FIRE CALLS

### Authority to Charge for Fire Calls

For many years, the authority to charge for fire calls has been unclear. However, in 2003, the Minnesota Legislature passed legislation giving cities express authority to impose fees for emergency services, including fire protection. A city's ability to charge fire fees involves an interplay between three statutes. Minn. Stat. § 415.01, subd. 2, allows cities to charge for emergency services by passing an ordinance that specifies the amount and manner of the charge. The exact text is as follows:

*A city may exercise the power under sections 366.011 and 366.012 relating to charges for emergency services only if the city adopts an ordinance authorizing the manner and amount of charging for those services.*

#### **Highlight**

Minn. Stat. § 415.01, subd. 2, allows cities to charge for emergency services by passing an ordinance that specifies the amount and manner of the charge.

Minn. Stat. §§ 366.011 and 366.012 apply to towns. Under Minn. Stat. § 366.011, a town can impose fees for fire protection services provided by or contracted for by the town. If the charge is not paid, the town can use any means available to private parties to collect it or may certify the unpaid charge with the county auditor for collection with taxes to any real property within the state. Minn. Stat. § 366.012 explains the process for certifying charges with the county auditor. By its terms, Minn. Stat. § 415.01, subd. 2 give cities these same powers.

In 2005, the Legislature amended Minn. Stat. §§ 366.011 and 366.012 to specifically give towns, and thereby cities, the authority to certify the unpaid charge to the auditor of any county in the state in which the person who received fire protection services owns real property. The county auditor is responsible for remitting to the city all charges collected on behalf of the city. Therefore, a city can certify unpaid fees regardless of where the property is located in the state.

An important note to remember is that fire services generally include not only fire fighting, but first responders as well. Any ordinance authorizing fire service charges should define fire services broadly enough to include both of these activities.

### Contractual Issues in Collecting Charges

While this law clarifies a long-standing question about city authority, collecting these fees may be complicated in some situations by a 1959 Attorney General opinion that applied contract law to the

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Consult your attorney for advice concerning specific situations.

provision of fire services; the opinion stated that there should be a request for service before the city has an enforceable claim against the property for reimbursement.<sup>1</sup> When a homeowner calls the city for services, the homeowner likely agrees to pay the fee, especially if the city publicizes that it charges a fee.

The situation is less clear if someone other than the property owner contacts the fire department. Ignoring such fires could be dangerous to nearby property and persons; accordingly, for public safety reasons a fire department would generally not stand by while a building burns. Even in these situations, a city could avoid contractual problems by using implied contract theory. The elements of an implied contract are (1) a benefit conferred by one party to another (2) appreciation of that benefit by the receiving party and (3) acceptance of that benefit when retention without payment is inequitable.<sup>2</sup> Most citizens have an expectation of fire service if a city has a fire department. Moreover, a city can show in the vast majority of cases that preventing property from burning down is a benefit to the property owner.

### **Providing Service to Property Outside of the City**

Many cities contract with towns or other cities to provide fire protection, requiring the city fire department to provide service outside of the city. These contracts typically authorize cities to bill the recipient of the fire protection service who lives outside the city. Cities have the authority to use any means available to private parties to collect unpaid charges, regardless of where the property is located.<sup>3</sup> Minn. Stat. § 415.01, subd. 2, also gives cities the ability to certify for collection with taxes the unpaid fire charges on property located outside of city limits that is anywhere within the state. This statute states that cities may exercise the “power under sections 366.011 and 366.012 relating to charges for emergency services.”<sup>4</sup> One of these powers is certifying unpaid fire charges. With the 2005 amendment, the Legislature did not limit a city’s authority to certify unpaid charges to property within a city’s borders.

### **Different Rate Structures**

Fire departments often respond to car fires, sometimes to non-residents of the city, or to another entity covered by a fire protection contract. Cities have inquired whether they can charge higher rates for these calls. Unequal fees implicate several constitutional concerns. The Supreme Court ruled in *Mem’l Hosp. v. Maricopa County*, that denial of “basic necessities of life” impedes the constitutional right to travel.<sup>5</sup> Fire protection might be a basic necessity and unequal charges may be a form of denying this basic necessity. Additionally, higher taxes and more stringent licensing requirements imposed on non-residents have run afoul of both the Constitution’s equal protection

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<sup>1</sup>A.G. Op. 688-a (Oct. 6, 1959).

<sup>2</sup>8 Durnell Minn. Digest, *Contracts* § 2.05a (5<sup>th</sup> ed. 2003).

<sup>3</sup>Minn. Stat. § § 366.011, 415.01, subd. 2.

<sup>4</sup>Minn. Stat. § 415.01, subd. 2.

<sup>5</sup>*Mem’l Hosp. v. Maricopa County*, 415 U.S. 250 (1974) (denying non-residents free non-emergency medical care violated the right to travel).

and commerce clauses.<sup>6</sup> Because of the possible constitutional implications resulting from different rates, it is probably preferable to have a uniform policy when charging for fire calls.

## Policy Considerations

Since this law was enacted, several cities have passed ordinances charging fire fees and more are considering this option. Aside from the concerns mentioned above, cities should consider the following issues before charging fire protection fees. First, the city should consider whether charging fire fees is the best choice. Some citizens may argue that the mechanisms for collecting and enforcing property taxes are already in place and that paying for fire services out of general revenue may be a better option than charging for fire calls.

Second, the city should decide whether it is prepared to collect charges when the fee is not covered by insurance. Some insurance policies will only pay if the property owner has an obligation to the city. If the city only collects fees in limited instances, the insurance company could argue that the property owner does not really have an obligation to the city. Furthermore, if the city aggressively attempts to collect fees from persons having insurance but looks the other way for persons not having insurance, the city could be committing insurance fraud.

Third, if the city decides to charge fire fees, the statutes do not limit the amount of fees a city may charge. However, as is usually true for city fees, the fee should be reasonably related to the city's cost in providing the service.

Finally, keep in mind that all fire fee collections belong to the city, not the fire relief association or fire department, and should be deposited in the city's accounts.

## Model Ordinances

- Ordinance A: This is the basic model ordinance. The city will use all practical and reasonable means to collect the unpaid charge and may certify the amount to the auditor in any county in which the service recipient owns real property.
- Ordinance B: The city charges the town or other city, rather than the individual, for fire services pursuant to a Fire Protection Contract. The fees would have to be specified in the Contract.

12/07

### Learn More

Read more about response distance requirements, selection and election, job duties, codes of conduct, and more firefighter topics in:

*HR Reference Manual*

It's available at [www.lmc.org](http://www.lmc.org).

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<sup>6</sup> *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869 (1985) (taxing non-residents at higher rate than residents violated equal protection clause); *State v. Kolla*, 672 N.W.2d 1 (Minn. Ct. App. 2003) (charging higher state license fee to non-residents violated commerce clause); 9 McQuillin, *Municipal Corporations*, § 26.48 (3<sup>rd</sup> ed. Revised 1995).

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE ESTABLISHING FEES**  
**FOR EMERGENCY PROTECTION FIRE SERVICES**

[Ordinance A: The basic model ordinance.]

THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, MINNESOTA DOES  
ORDAIN:

**SECTION ONE: PURPOSES AND INTENT**

This ordinance is adopted for the purpose of authorizing the City of \_\_\_\_\_ to charge for fire service as authorized by Minn. Stat. §§ 366.011, 366.012, and 415.01.

**SECTION TWO: DEFINITIONS**

- (A) “Fire service” means any deployment of fire fighting personnel and/or equipment to extinguish a fire or perform any preventative measure in an effort to protect equipment, life, or property in an area threatened by fire. It also includes the deployment of fire fighting personnel and/or equipment to provide fire suppression, rescue, extrication, and any other services related to fire and rescue as may occasionally occur.
- (B) “Fire service charge” means the charge imposed by the City for receiving fire service.
- (C) “Motor vehicle” means any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It includes semi trailers. It does not include snowmobiles, manufactured homes, all terrain vehicles, or park trailers.
- (D) “Fire protection contract” means a contract between the City and a town or other city for the City to provide fire service.
- (E) “Mutual aid agreement” means an agreement between the City and a town or other city for the City’s fire department to provide assistance to the fire department of a town or other city.

**SECTION THREE: PARTIES AFFECTED**

- (A) Owners of property within the City who receive fire service.
- (B) Anyone who receives fire service as a result of a motor vehicle accident or fire within the City.
- (C) Owners of property in towns or cities to which the City provides fire service pursuant to a fire protection contract.

**SECTION FOUR: RATES**

[insert rate schedule]

**SECTION FIVE: BILLING AND COLLECTION**

- (A) Parties requesting and receiving fire services may be billed directly by the City. Additionally, if the party receiving fire services did not request services but a fire or other

situation exists which, at the discretion of the fire department personnel in charge requires fire service, the party will be charged and billed. All parties will be billed whether or not the fire service is covered by insurance. Any billable amount of the fire charge not covered by a party's insurance remains a debt of the party receiving the fire service.

- (B) Parties billed for fire service will have \_\_\_\_ days to pay. If the fire service charge is not paid by that time, it will be considered delinquent and the City will send a notice of delinquency.
- (C) If the fire service charge remains unpaid for 30 days after this notice of delinquency is sent, the City will use all practical and reasonable legal means to collect the fire service charge. The party receiving fire service shall be liable for all collection costs incurred by the City including, but not limited to, reasonable attorney fees and court costs.
- (D) If the fire service charge remains unpaid for 30 days after the notice of delinquency is sent, the City Council may also, on or before October 15 of each year, certify the unpaid fire service charge to the county auditor in which the recipient of the services owns real property for collection with property taxes. The county auditor is responsible for remitting to the city all charges collected on behalf of the city. The City must give the property owner notice of its intent to certify the unpaid fire service charge by September 15.
- (E) False alarms will [or won't] be billed as a fire call.

#### SECTION SIX: MUTUAL AID AGREEMENT

When the City fire department provides fire service to another fire department pursuant to a Mutual Aid Agreement, the billing will be determined by the Mutual Aid Agreement.

#### SECTION SEVEN: APPLICATION OF COLLECTIONS TO BUDGET

All collected fire charges will be city funds and used to offset the expenses of the City fire department in providing fire services.

#### SECTION EIGHT: EFFECTIVE DATE

The ordinance shall become effective \_\_\_\_\_.

Passed by the Council this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor

Attested: \_\_\_\_\_  
Clerk

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE ESTABLISHING FEES**  
**FOR EMERGENCY PROTECTION FIRE SERVICES**

[Ordinance B: The city charges the town or other city, rather than the individual, for fire services, pursuant to a Fire Protection Contract.]

**THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, MINNESOTA DOES ORDAIN:**

**SECTION ONE: PURPOSES AND INTENT**

This ordinance is adopted for the purpose of authorizing the City of \_\_\_\_\_ to charge for fire service as authorized by Minn. Stat. §§ 366.011, 366.012, and 415.01.

**SECTION TWO: DEFINITIONS**

- (A) “Fire service” means any deployment of fire fighting personnel and/or equipment to extinguish a fire or perform any preventative measure in an effort to protect equipment, life, or property in an area threatened by fire. It also includes the deployment of fire fighting personnel and/or equipment to provide fire suppression, rescue, extrication, and any other services related to fire and rescue as may occasionally occur.
- (B) “Fire service charge” means the charge imposed by the City for receiving fire service.
- (C) “Motor vehicle” means any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It includes semi trailers. It does not include snowmobiles, manufactured homes, all terrain vehicles, or park trailers.
- (D) “Fire protection contract” means a contract between the City and a town or other city for the City to provide fire service.
- (E) “Mutual aid agreement” means an agreement between the City and a town or other city for the City’s fire department to provide assistance to the fire department of a town or other city.

**SECTION THREE: PARTIES AFFECTED**

- (A) Owners of property within the City who receive fire service.
- (B) Anyone who receives fire service as a result of a motor vehicle accident or fire within the City.
- (C) Owners of property in towns or cities to which the City provides fire service pursuant to a fire protection contract.

**SECTION FOUR: RATES**

[insert rate schedule]

#### SECTION FIVE: BILLING AND COLLECTION

- (A) Parties requesting and receiving fire services will be billed directly by the City of \_\_\_\_\_ within \_\_\_\_ days of the fire service. Additionally, if the party receiving fire services did not request services but a fire or other situation exists which, at the discretion of the fire department personnel in charge requires fire service, the party will be charged and billed. All parties will be billed whether or not the fire service is covered by insurance. Any billable amount of the fire charge not covered by a party's insurance remains a debt of the party receiving the fire service.
- (B) Parties billed for fire service will have \_\_\_\_ days to pay. If the fire service charge is not paid by that time, it will be considered delinquent and the City will send a notice of delinquency.
- (C) If the fire service charge remains unpaid for 30 days after this notice of delinquency is sent, the City will use all practical and reasonable legal means to collect the fire service charge. The party receiving fire service shall be liable for all collection costs incurred by the City including, but not limited to, reasonable attorney fees and court costs.
- (D) If the fire service charge remains unpaid for 30 days after the notice of delinquency is sent, the City Council may also, on or before October 15 of each year, certify the unpaid fire service charge to the county auditor in which the recipient of the services owns real property for collection with taxes. The county auditor is responsible for remitting to the city all charges collected on behalf of the city. The City must give the property owner notice of its intent to certify the unpaid fire service charge by September 15.
- (E) False alarms will [or won't] be billed as a fire call.

#### SECTION SIX: MUTUAL AID AGREEMENT

When the City fire department provides fire service to another fire department pursuant to a Mutual Aid Agreement, the billing will be determined by the Mutual Aid Agreement.

#### SECTION SEVEN: BILLING PROCEDURE FOR FIRE PROTECTION CONTRACTS WITH TOWNS OR OTHER CITIES

When the City fire department provides fire service to another fire department pursuant to a Fire Protection Contract, the billing will be determined by the Contract.

#### SECTION EIGHT: APPLICATION OF COLLECTIONS TO BUDGET

All collected fire charges will be city funds and used to offset the expenses of the City fire department in providing fire services.

SECTION NINE: EFFECTIVE DATE

The ordinance shall become effective \_\_\_\_\_.

Passed by the Council this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor

Attested: \_\_\_\_\_  
Clerk