

## Chapter 2.20

### FIRE AND RESCUE DEPARTMENT

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#### **2.20.010 Fire Chief; Appointment; Duties Generally.**

The Mayor shall appoint, with approval of the City Council, the Fire Chief, who shall be a member of the unclassified service of the city. The Director of the Fire and Rescue Department shall be known as the Fire Chief, who shall have at least five years experience in a responsible post with a fire-fighting and fire-prevention organization. The Fire Chief shall be directly responsible to the Mayor and shall:

- (a) Have control and management of all matters relating to the Fire and Rescue Department, its officers and members, and shall have the care, custody and control of all fire fighting equipment and apparatus and other property and apparatus belonging to the Fire and Rescue Department, together with all records belonging to the Fire and Rescue Department;
- (b) Devote full time to the prevention and extinguishment of fires in the City of Lincoln and managing the City's emergency medical services program;
- (c) Except as otherwise provided in the personnel code, Chapter 2.76, have authority to make rules and regulations covering the conduct of members of the Fire and Rescue Department and the performance of Fire and Rescue Department functions, provided, that such rules and regulations

insofar as they pertain to matters covered by the personnel code, Chapter 2.76, shall be consistent with and limited by the provisions of that code;

(d) Annually report to the Mayor and City Council all incidents by fire that may have taken place in the city during the preceding fiscal year, with the causes thereof as well as they may be ascertained, and the number and description of the buildings destroyed and citizens injured together with the names of the owners or occupants and the amount of loss, insurance, and property involved;

(e) Cause to be kept a full and complete record of all transactions in said department of complaints against members and the judgment of the Chief thereon, a record of the time lost by members, and a record of all property placed in his charge, and such other records as shall be required by the business of the Fire and Rescue Department;

(f) Together with the chief officers of the Fire and Rescue Department, be subject to duty call at all times, both day and night;

(g) Have control and management of the city ambulance program and shall have care, custody, and control of all records, equipment, and apparatus as may belong to the Fire and Rescue Department, or as may be assigned to the city ambulance program. The Fire Chief shall allow access to such records by the public in a manner consistent with the laws of the State of Nebraska;

(h) On an annual basis, which coincides with the City's fiscal year, issue a set of financial statements prepared in accordance with generally accepted accounting principles for the activity of the EMS Enterprise Fund. These financial statements will be audited by an independent certified public accounting firm in conformance with generally accepted auditing standards and the standards applicable to the financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The income statement shall be in sufficient detail to provide information on the sources of revenue, including but not limited to major sources of reimbursement from the federal government, private insurance reimbursement and private payments.

(i) Comply with requests by the City's financial auditors to evaluate the number of incidents, transports, and collection rates.

(j) Cause to be maintained, for each emergency ambulance dispatch or response, a report which includes dispatch and other relevant information. (Ord. 19965 §2; December 16, 2013: prior Ord. 19817 §1; December 17, 2012: Ord. 18170 §3; April 28, 2003: Ord. 17739 §1; October 2, 2000: Ord. 17670 §2; May 15, 2000: Ord. 15385 §1; January 8, 1990: P.C. §2.22.010: Ord. 11347 §4; April 28, 1975: Ord. 10033 §16; February 1, 1971: Ord. 7279 §1; August 22, 1960).

#### **2.20.020 Police Powers.**

All members of the Fire and Rescue Department shall, during the time of fire or great public danger, have and exercise the powers and duties of police officers and shall have full power and authority to arrest all persons guilty of any violation of the city ordinances or laws of the state. (Ord. 18170 §4; April 28, 2003: prior Ord. 15385 §2; January 8, 1990: P.C. §2.22.020: Ord. 7279 §2; August 22, 1960).

#### **2.20.030 Uniform and Badge; Regulations.**

The Chief shall make suitable regulations under which the officers and members of the department shall be required to wear some appropriate uniform and badge. (Ord. 15385 §3; January 8, 1990: P.C. §2.22.030: Ord. 3489 §27-1008; July 6, 1936).

#### **2.20.040 Preservation of Property.**

The Chief, or officer in command, shall have power to cause the removal of any property, whenever it shall become necessary for the preservation of such property from fire, or to prevent the spreading of fire, or to protect adjoining property. (Ord. 15385 §4; January 8, 1990: P.C. §2.22.040: Ord. 3489 §27-1011; July 6, 1936).

#### **2.20.050 Destruction of Property to Control Fire.**

The Chief or officer in command may direct firefighters to cut down and remove any building, erection, or fence for the purpose of checking the progress of any fire; and the Chief shall have power to raze or destroy or cause to be razed or destroyed any building or erection for the purpose of extinguishing or checking the progress of an existing fire. (Ord. 19817 §2; December 17, 2012: prior Ord. 15385 §5; January 8, 1990: P.C. §2.22.050: Ord. 3489 §27-1012; July 6, 1936).

#### **2.20.060 Firefighters to Protect Department Property.**

It shall be the duty of all members of the Fire and Rescue Department to prevent all persons not belonging to the department from entering any house or business, or handling any apparatus belonging to the department, without permission. (Ord. 19817 §3; December 17, 2012: prior Ord. 18170 §5; April 28, 2003: Ord. 15385 §6; January 8, 1990: P.C. §2.22.060: Ord. 3489 §27-1014; July 6, 1936).

#### **2.20.070 Badges; Members Leaving Department.**

Every member of the Fire and Rescue Department, when on duty, shall wear a suitable badge or other identification, furnished by the city, and any member who shall lose or destroy the badge shall be required to pay the cost of replacing it; and when any member shall leave the department, he or she, shall immediately deliver said badge, and all other property belonging to the city, to the designated officer. (Ord. 19817 §4; December 17, 2012: prior Ord. 18170 §6; April 28, 2003: Ord. 15385 §7; January 8, 1990: P.C. §2.22.070: Ord. 3489 §27-1016; July 6, 1936).

#### **2.20.080 Authority of Fire Chief at Fires and Other Emergencies.**

The Fire Chief or Fire Officer in command, as may be in charge at the scene of a fire or other emergency involving the protection of life or property, shall have the power and authority to direct such operation as may be necessary to extinguish or control any fire, perform any rescue operation, provide emergency medical services including transport, investigate the existence of suspected or reported fires, gas leaks, or other hazardous conditions or situations or take any other action necessary in the reasonable performance of their duty. In the exercise of such power, the Chief or Fire Officer in command may prohibit any person, vehicle, vessel, or thing from approaching the scene and may remove or cause to be removed or kept away from the scene any vehicle, vessel or thing which may impede or interfere with the operation of the Fire and Rescue Department, and, in the judgment of the Chief or Fire Officer in command, any person not actually and usefully employed in the extinguishing of such fire or the preservation of property in the vicinity thereof. (Ord. 19817 §5; December 17, 2012: prior Ord. 18170 §7; April 28, 2003: Ord. 17739 §2; October 2, 2000: Ord. 15385 §8; January 8, 1990: P.C. §2.22.090: Ord. 12085 §1; September 6, 1977).

**2.20.090 Interference with Fire and Rescue Department; Misdemeanor.**

Any person who obstructs the operation of the Fire and Rescue Department in connection with extinguishing any fire, or other emergency, or disobeys any lawful command of the Chief or officer of the Fire and Rescue Department who may be in charge at such a scene, or any part thereof, or any police officers assisting the Fire and Rescue Department, shall be guilty of a misdemeanor. (Ord. 18170 §8; April 28, 2003: prior Ord. 15385 §9; January 8, 1990: P.C. §2.22.100: Ord. 12085 §2; September 6, 1977).

**2.20.100 Tampering with Fire Equipment; Prohibited.**

No person shall molest, tamper with, damage or otherwise disturb any apparatus, equipment or appurtenance belonging to or under the supervision or control of the Fire and Rescue Department without authority from the Chief or his authorized representative so to do. (Ord. 18170 §9; April 28, 2003: prior Ord. 15385 §10; January 8, 1990: P.C. §2.22.110: Ord. 12085 §3; September 6, 1977).

**2.20.110 Removal of Fire Hydrants or Fire Appliances Prohibited.**

No person shall remove, tamper with, or otherwise disturb any fire hydrant or fire appliance except members of the Fire and Rescue Department for the purpose of extinguishing fire, training purposes, recharging, or making necessary repairs by the Fire and Rescue Department or by permission of the Fire Chief. Whenever a fire appliance is removed as herein permitted, it shall be replaced or reinstalled as soon as the purpose for which it was removed has been accomplished. (Ord. 18170 §10; April 28, 2003: prior Ord. 15385 §11; January 8, 1990: P.C. §2.22.120: Ord. 12085 §4; September 6, 1977).

**2.20.120 Fire Barriers.**

The Fire Chief or other officer of the Fire and Rescue Department in charge at the scene of an emergency shall have the authority to place ropes, guards, barricades or other obstructions across any street, alley, place or private property in the vicinity of such operation so as to prevent accident or interference with the lawful efforts of the Fire and Rescue Department to manage and control the situation and to handle fire apparatus. (Ord. 18170 §11; April 28, 2003: prior Ord. 15385 §12; January 8, 1990: P.C. §2.22.130: Ord. 12085 §5; September 6, 1977).

**2.20.130 Tampering with Barriers; Prohibited.**

No person, except a person authorized by the Fire Chief or a public officer acting within the scope of their public duties, shall remove, unlock, destroy, tamper with or otherwise molest in any manner any lock, gate, door, barricade chain, enclosure, sign, tag or seal which has been lawfully installed by the Fire and Rescue Department or by its order or under its control. (Ord. 18170 §12; April 28, 2003: prior Ord. 15385 §13; January 8, 1990: P.C. §2.22.140: Ord. 12085 §6; September 6, 1977).

**2.20.140 Obstruction of Fire Protection Equipment.**

No person shall place or keep any post, fence, vehicle, growth, trash, storage or other material or thing near any fire hydrant, Fire and Rescue Department connection, or fire protection system control valve that would prevent such equipment or hydrant from being immediately discernible or in any other manner deter or hinder the Fire and Rescue Department from gaining

immediate access to said equipment or hydrant. (Ord. 18170 §13; April 28, 2003; prior Ord. 15385 §14; January 8, 1990: P.C. §2.22.150: Ord. 12085 §7; September 6, 1977).

### **2.20.150 Hydrant Use Approval.**

No person shall use or operate any hydrant or other valve installed on the water system intended for use by the department for fire suppression purposes and which is accessible to any public highway, alley, or private way open to or generally used by the public, unless such person first secures a permit from the Department of Public Works and Utilities. This section does not apply to the use of a hydrant or other valves by a person employed by and authorized to make such use by the water system which supplies water to such hydrant or other valves. (Ord. 19816 §5; December 17, 2012; prior Ord. 15385 §15; January 8, 1990: P.C. §2.22.160: Ord. 12085 §8; September 6, 1977).

### **2.20.160 Definitions.**

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

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

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

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

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

**Lift Assist** shall mean a response by Lincoln Fire and Rescue personnel to assist in physically moving a person who does not require emergency medical transportation in an assisted living facility as defined in Lincoln Municipal Code Section 27.02.020 and/or nursing care facility as defined in Lincoln Municipal Code 27.02.150. (Ord. 19754 §1; August 8, 2012).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The authority and remedies established in this section are in addition to any other remedy and authority established by any federal, state, or local law and resort to any lawful remedy shall not constitute an election that waives the right to pursue any other remedy permitted by law. (Ord. 19754 §2; August 8, 2012).

#### **2.20.180 Abatement is Discretionary.**

Nothing in this chapter shall create a right in any person to compel or a duty in the City to abate any hazardous materials release. Enforcement of this chapter by the City constitutes discretionary action. (Ord. 19754 §3; August 8, 2012).

#### **2.20.200 Lift Assist Cost Recovery.**

(a) The City shall charge a fee to assisted living facilities as defined in Lincoln Municipal Code Section 27.02.020 and nursing care facilities as defined in Lincoln Municipal Code Section 27.02.150 for services provided by the Fire and Rescue Department in connection with its providing a lift assist to any person.

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

(2) In any action or proceeding to enforce the obligations of a responsible facility under this section, the prevailing party shall be awarded its attorneys' fees reasonably incurred in the prosecution or defense of the action or proceeding. (Ord. 19754 §5; August 8, 2012).

**2.20.210 Appeal.**

(a) Any person or persons subjected to a fee for services under 2.20.170 or 2.20.200 shall have the right to appeal that fee to the City Council by filing an appeal with the Fire and Rescue Department.

(b) Any appeal shall be taken by filing with the City Clerk, within 30 days of receiving a bill for said services, a written statement setting forth the grounds for the appeal.

(c) All appeals shall be accompanied by an appeal filing fee of \$25.00.

(d) The council shall set a time and place for hearing on such appeal and written notice of such hearing shall be given to the appellant no less than 10 days prior to the date of the hearing. The appellant, or his or her attorney, may present evidence in support of the appeal.

(e) The council shall render a decision within thirty days after the hearing. The decision and order of the council on such appeal shall be final. (Ord. 19754 §6; August 8, 2012).