

ORDINANCE NO. 2017-02

AN ORDINANCE OF ELMORE COUNTY ENTITLED "EMERGENCY RESPONSE COST RECOVERY ORDINANCE" TO PROVIDE A PROGRAM ESTABLISHING AND IMPLEMENTING CHARGES FOR EMERGENCY SERVICE RESPONSE AND RESCUE WHERE THE INCIDENT PROMPTING EMERGENCY RESPONSE IS THE RESULT OF NEGLIGENCE OR AN INTENTIONAL WRONGFUL ACT; SETTING FORTH THE PURPOSE, CREATING THE AUTHORITY TO ESTABLISH THE MITIGATION COSTS SCHEDULE AND RECOVERY; SETTING FORTH GENERAL PROVISIONS INCLUDING THE DEFINITION OF KEY TERMS; ESTABLISHING A BILLING SYSTEM AND PROCEDURE; ESTABLISHING A DISPUTE RESOLUTION AND HEARING PROCEDURE; PROVIDING FOR OTHER REMEDIES WITHOUT LIMITING LIABILITY OF THE RESPONSIBLE PARTY OR PARTIES UNDER OTHER LAW; PROVIDING FOR A SEVERABILITY CLAUSE; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the emergency services and rescue response activity to incidents continues to increase each year; Extrication and search and rescue services involve equipment and training, creating additional demands on all operational aspects of the Elmore County ("County") "Extrication" and "Search and Rescue" Departments; and

WHEREAS, the Extrication and Search and Rescue Departments have investigated different methods to maintain a high level of quality of emergency service capability throughout times of constantly increasing service demands and fiscal exigency; and

WHEREAS, where maintaining effective response by the Extrication and Search and Rescue Departments decreases the costs of incidents to insurance carriers through timely and effective management of emergency situations, saving lives and reducing property damage; and

WHEREAS, the County desires to implement a fair and equitable procedure through which to recoup costs (mitigation cost) and shall establish a billing system in accordance with applicable laws, regulations and guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE ELMORE COUNTY BOARD OF COMMISSIONERS:

A new ordinance, be and the same is hereby enacted to read as follows:

Section 1. AUTHORITY TO ESTABLISH A MITIGATION COSTS SCHEDULE AND RECOVERY.

A. In order to protect the County from extraordinary expenses resulting from the utilization of County resources in response to certain vehicle extrication and search and rescue incidents,

this ordinance, entitled the "Emergency Response Cost Recovery Ordinance," authorizes the imposition of charges to recover costs incurred by the County in responding to such incidents.

B. The County shall initiate mitigation costs for the delivery of search and rescue and/or vehicle extrication services by the Extrication and Search and Rescue Departments of the County for personnel, supplies, and equipment to the scene of emergency incidents. The list of emergency service incidents and the rate of mitigation costs, which shall be based on estimated costs of the services, and which are usual, customary, and reasonable, shall be established following notice, hearing and adoption of the fees by a resolution of the Board of County Commissioners ("Board"), all pursuant to Idaho Code § 63-1311A, which may include any services, personnel, supplies, and equipment necessary to accomplish such mission.

C. The mitigation cost shall be charged or billed to the responsible party, representing an add-on cost of the claim for damages of the vehicles, property and/or injuries. The claim for mitigation costs may be charged or billed to the insurance coverage of the owner of a vehicle, owner of property, or other responsible parties where an authorized agent of the County, County, or State, or a court of competent jurisdiction determines the owner, owners, and/or responsible party or parties is/are at fault, allocating all or some of such costs jointly and severally. In some circumstances, a responsible party may be charged or billed directly.

D. The Extrication and Search and Rescue Departments of the County may promulgate rules or regulations and from time to time may amend, revoke, or add to rules and regulations, not inconsistent with this Section, and as approved by the Board, as may be necessary or expedient in respect to billing for these mitigation costs or the collection thereof.

Section 2. DEFINITIONS.

Unless the context specifically indicate otherwise, the meaning of the terms used in this article shall be as follows:

Mitigation costs mean those costs for services incurred by the County in connection with a response to a search and rescue or extrication incident, including, but not limited to, the actual labor and material costs of the County (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 County or by a third party on behalf of the County; service charges and interest; attorneys' fees, litigation costs, and any costs, charges, fines, or penalties to the County imposed by any court or state or federal governmental entities.

Search and rescue or extrication incident means the response to (i) the search and recovery of a missing, lost, injured or stranded per person, (ii) rescue emergency or (iii) vehicle extrication or vehicle rollover, pursuant to a request from the County Sheriff's Office Dispatch.

Rescue emergency means a search and rescue or extrication incident resulting from a person or persons knowingly entering an area that has been closed to the public by competent authority for any reason, where such closure is posted by sign, barricade, or other device, and an emergency response such as a search for or rescue of such person results from the entry.

Responsible means to cause, either through negligence, recklessness, or intention act, a public safety, extrication or search and rescue emergency incident.

Responsible party means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a search and rescue or extrication 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 search and rescue or extrication incident and, unless not permitted by law, includes their heirs, estates, successors and assigns.

Section 3. BILLING AND COLLECTION OF MITIGATION COSTS, PROCEDURE.

A. The County may recover all mitigation costs in connection with a search and rescue or extrication incident from any or all responsible parties jointly or severally. The County Manager of Search and Rescue or the County Manager of Extrication, as applicable, or his or her designee, shall, consistent with the fees schedules adopted by the Board by resolution, determine the total mitigation costs and shall, in consultation with other County personnel involved in responding to a search and rescue or extrication incident determine whether to assess any, all or part of such costs against any of the responsible parties.

B. In making such determination, the following non-exclusive list of factors shall be considered, although no single factor or absence thereof will be determinative of whether mitigation costs are assessable:

- (1) the total mitigation costs;
- (2) the risk the search and rescue or extrication incident imposed on the County, its residents and their property;
- (3) whether there was any injury or damage to person or property; and
- (4) the extent the search and rescue or extrication incident required an unusual or extraordinary use of County personnel and equipment.

C. After consideration of the factors in subsection B immediately above, the County Manager of Search and Rescue or the County Manager of Extrication, as applicable, or his or her designee may allocate mitigation costs among and between any 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 any other legal liability.

D. If the County Manager of Search and Rescue or the County Manager of Extrication, as applicable, or his or her designee determines not to assess all or a portion of mitigation costs against a responsible party, such determination shall not in any way limit, reduce, or extinguish the liability of the responsible party to any other parties.

E. After determining to assess mitigation costs against a responsible party, the County Manager of Search and Rescue or the County Manager of Extrication, as applicable, or his or her designee, shall mail an itemized invoice to the responsible party at its last known address. Such invoice shall be due and payable within thirty (30) days of the date of mailing and, as permitted by Idaho Code § 28-22-104(1) or other applicable section, 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 the claim of mitigation costs by requesting a hearing, 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.

Section 4. HEARING PROCEDURE.

A. Any responsible party who receives an invoice for mitigation costs shall have an opportunity to meet with the County Manager of Search and Rescue or the County Manager of Extrication, as applicable to request a modification of mitigation costs. The responsible party shall request in writing such meeting within ten (10) calendar days of the date of mailing of the invoice assessing the mitigation costs. The failure to request such meeting within such time period shall extinguish the responsible party's appeal rights with the County. If after meeting with the County Manager of Search and Rescue or the County Manager of Extrication, as applicable, the responsible party is still not satisfied, he or she may request a hearing before the Board. Any responsible party aggrieved by the determination of being a responsible party and/or the assessment of mitigation costs who desire a hearing before the Board must first meet with the County Manager of Search and Rescue or the County Manager of Extrication, as applicable, or his or her designee as provided above before requesting a hearing on the same.

B. Any responsible party aggrieved by the determination of being a responsible party and/or the assessment of mitigation costs who desires a hearing with the Board shall submit the request in writing to the County Clerk within fifteen (15) calendar days of the date of the meeting with the County Manager of Search and Rescue or the County Manager of Extrication, as applicable. Upon receipt of the written request for hearing, the County Clerk shall present the itemized invoice of mitigation costs to the Board along with the request for a hearing for the Board's consideration. The failure to request an appeal with the Board within such time period shall extinguish the responsible party's appeal rights with the County. The Board shall fix a time, date, and place for hearing the determination of the responsible party and/or the assessment of mitigation costs and/or any protests or objections thereto. Appointment of and proceedings before the Board shall be made through the County Clerk's Office. A request for hearing shall not prevent the County from pursuing the claim by means of other lawful process including small claims or civil litigation.

Section 5. OTHER REMEDIES.

In addition to the remedy set forth above, the County 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 mitigation costs from a responsible party.

Section 6. NO LIMITATION OF LIABILITY.

The recovery of mitigation costs pursuant hereto does not limit the liability of a responsible party under applicable local, state, or federal law.

Section 7. SEVERABILITY.

Should any provision or part of this article be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision or part which shall remain in full force and effect.

Section 8. REPEAL OF CONFLICTING ORDINANCES. Any ordinance of Elmore County, Idaho in conflict with the terms of this Ordinance is hereby repealed to the extent of such conflict.

Section 9. EFFECTIVE DATE. This Ordinance shall take effect and be in force after its passage, approval and publication as required by law. In lieu of publication of the entire Ordinance, a summary thereof in compliance with Idaho Code § 31-715A may be published.
Dated this 11th day of August, 2017.



ELMORE COUNTY BOARD OF COMMISSIONERS

By: *Albert Hofer*
Albert Hofer, Chairman

By: *Wesley R. Wootan*
Wesley R. Wootan

By: *Franklin Corbus*
Franklin Corbus, Commissioner

ATTEST:

Barbara Steele
Barbara Steele, Elmore County Clerk

Date(s) of publication: