

ORDINANCE NO. 1040-10

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LAWNSDALE, CALIFORNIA,
ADDING CHAPTER 9.32 TO THE LAWNSDALE MUNICIPAL CODE
ESTABLISHING AN EMERGENCY RESPONSE
COST RECOVERY PROGRAM**

SUMMARY: This ordinance authorizes the city to recover costs for emergency services provided in connection with intentional wrongful conduct.

WHEREAS, the City Council has the authority to adopt regulations to protect the public health, safety, general welfare, and convenience of its citizens; and

WHEREAS, the City Council seeks to discourage drivers from operating motor vehicles while under the influence of alcohol and/or drugs; and

WHEREAS, the City Council seeks to encourage the safe and responsible use of public streets; and

WHEREAS, the City Council finds and determines that intentional wrongful conduct by persons who operate motor vehicles including, but not limited to, those persons driving while intoxicated, impose a burden upon City services above and beyond the regular services normally required for law enforcement; and

WHEREAS, the City Council finds and determines that persons who willfully conduct themselves in a manner which imposes an extraordinary burden on the public resources by requiring an emergency response by the sheriff's department, fire department, paramedics and other emergency public services should bear a share of the costs of the emergency services; and

WHEREAS, the City Council finds and determines that an Emergency Response Cost Recovery Program, as authorized pursuant to Government Code Sections 53150 through 53159, is of the utmost importance to the promotion of the general welfare and safety of the people of Lawnsdale because it is designed and intended to encourage safe and responsible conduct by requiring people to pay part of the cost to the City for responding to emergency incidents caused by intentional wrongful conduct.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAWNSDALE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 9.32, entitled "Emergency Response Cost Recovery Program" is added to the Lawnsdale Municipal Code to read, in its entirety, as follows:

"Chapter 9.32 Emergency Response Cost Recovery Program

- 9.32.010 Findings.**
- 9.32.020 Establishment of emergency response cost recovery program.**
- 9.32.030 Definitions.**
- 9.32.040 Payment to the city for an emergency response.**
- 9.32.050 Items recoverable for emergency response incidents.**
- 9.32.060 Collection of items recoverable for emergency response incidents.**
- 9.32.070 Appeal process.**

Section 9.32.010 Findings.

The City of Lawndale finds and declares the following:

1. The city seeks to discourage drivers from operating motor vehicles while under the influence of alcohol and/or drugs.
2. The city seeks to encourage careful and responsible conduct by persons using public streets.
3. Driving under the influence of alcohol and/or drugs is intentional wrongful conduct.
4. Intentional wrongful conduct by persons who operate motor vehicles imposes a burden upon city services above and beyond the regular services normally required for law enforcement.
5. Persons who willfully conduct themselves in a manner which imposes an extraordinary burden on the public resources by requiring an emergency response by the sheriff's department, fire department, paramedics and other emergency public services should bear a share of the costs of the emergency services.
6. The establishment of an Emergency Response Cost Recovery Program is of the utmost importance to the promotion of the general welfare and safety of the people of the city because it is designed and intended to encourage safe and responsible conduct by requiring such persons to pay part of the cost to the city for responding to emergency incidents caused by their intentional wrongful conduct.

Section 9.32.020 Establishment of Emergency Response Cost Recovery Program.

There is hereby established an Emergency Response Cost Recovery Program (hereinafter the "Program") in accordance with California Government Code Sections 53150-53159, as may be amended from time to time, as described herein, to allow for the collection of emergency response costs from:

1. Any person whose negligent operation of a motor vehicle, while under the influence of an alcoholic beverage and/or any drug, proximately causes any incident resulting in any emergency response; and
2. Any person whose intentional wrongful conduct in connection with the operation of a motor vehicle proximately causes any incident resulting in an emergency response; and
3. Any person convicted of making a false police report; and

4. Any unauthorized person who enters into an area that is closed to the public or any person who drives onto a road that is covered by water which results in an emergency response to search for or rescue the person.

Section 9.32.030 Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases hereinafter set forth shall have the meanings given them in this Section:

"DUI" means the operation of a motor vehicle while under the influence of more than the legal limit for alcohol and/or any drug.

"DUI Suspect" means any person who operates a motor vehicle and, when so operating, is subject to the law and any duty imposed by law in the operation of said motor vehicle and who does so over the legal limit and under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug.

"Program Manager" means the lieutenant or captain assigned to the Program by the Lawndale Sheriff's Department.

"Emergency Response Incident" means a situation proximately caused by a person that results in an emergency response including those incidents listed in Section 9.32.040 below or any incident wherein costs can be recovered as authorized by law. This definition is not limited to traffic accidents by DUI suspects and includes such acts as the abandonment of a vehicle over active railroad tracks by a DUI suspect. On the other hand, an incident is more than a simple DUI arrest that does not require an emergency response, such as where a DUI suspect's car is involved in an accident with only minor damage and no injuries. (*California Highway Patrol v. Superior Court* (2006) 135 Cal.App.4th 488, 500, 504.)

Section 9.32.040 Payment to the city for an emergency response.

A. A motorist arrested for DUI will be billed only if all of the following criteria are met:

1. A person is driving under the influence. A person is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, when as a result of drinking an alcoholic beverage or using a drug, or both, his or her physical or mental abilities are impaired to a degree that he or she no longer has the ability to operate a motor vehicle with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances; and

2. Negligent operation of a motor vehicle is evidenced by either a collision or the commission of a moving violation as defined under the Vehicle Code, Sections 21100, *et seq.*; and

3. The incident evidenced by an accident or a moving violation was proximately caused by driving under the influence of alcohol and/or drugs; and

4. The incident necessitated an emergency response, which entailed the use of emergency lights and siren by police or fire units responding to the incident.

B. A person who makes a false police report will be billed only if the following criteria are met:

1. The person is 18 years of age or older; and
2. The person is convicted of making a false police report, in violation of Section 148.3 of the Penal Code; and
3. The false police report proximately causes an appropriate emergency response.

C. A person will be billed for the following conduct:

1. Subject to paragraphs (3) and (4) below, a person who enters into an area that is closed to the public will be billed only if the following criteria are met:

a. The person intentionally, knowingly and willfully enters into an area that is closed or has been closed to the public by competent authority for any reason, or an area that a reasonable person under the circumstances should have known was closed to the public. Posting a sign, placing a barricade, a restraining or retaining wall, roping off an area, or any other device is sufficient indication that an area is closed to the public due to danger of injury, for the public's safety, or for any other reason; and

b. An emergency response is required to search for or rescue the person, or if the person was operating a vehicle, any of his passengers, plus the expense for the removal of any inoperable vehicle.

2. Subject to paragraphs (3) and (4) below, a person who drives onto a road that is covered by water will be billed only if the following criteria are met:

a. The person drives a vehicle on a public street or highway that is temporarily covered by a rise in water level, including ground water or overflow of water, and that is barricaded by any of the means described in subdivision (C)(1) above, because of flooding, and

b. An emergency response is required to remove from the public street or highway, the driver, or any passenger in the vehicle that has become inoperable.

3. Unless otherwise provided by law, this subsection (C) shall apply to all persons, regardless of whether the person is on foot, or is operating a motor vehicle, bicycle, all-terrain vehicle, or any other vehicle of any description.

4. This section (C) shall not apply to any person who is authorized by the landowner, lessor, or manager of the closed area, to be in the closed area, and further shall have no application to any federal, state, or local government official who is in the closed area as part of his or her official duty, nor to any public utility performing services consistent with its public purpose, nor to any person acting in concert with a government authorized search or rescue. A person who was attempting to rescue another person or an animal shall not be liable for expenses of an emergency response under this subsection (C).

Section 9.32.050 Items recoverable for emergency response incidents.

The city may bill persons violating Section 9.32.040 an amount not to exceed twelve thousand dollars (\$12,000), or any additional amount subsequently authorized by Government Code Section 53155, but only for the direct costs to the city of the particular Emergency Response Incident including, but not limited to:

1. Costs of materials used by officers during the response to the Emergency Response Incident, including laboratory fees, costs of repairing or replacing city property used, damaged or destroyed due to the person's actions.

2. The salary costs for the time spent by officers, at a rate established by the city, for time spent on activities such as: traveling to and from the incident scene, obtaining medical assistance, investigating the cause of the incident, removing vehicles, conducting sobriety tests, transporting the person from the scene and booking him or her and performing chemical tests on the person, time spent during the arrest and detention of the person, time spent writing customarily required reports (including all accident and reports that are a consequence of the incident) and the follow-up investigation necessary to complete those reports.

3. No amount will be charged for an incident that does not require an emergency response such as where a DUI suspect's car is involved in an accident with only minor damage and no injuries.

Section 9.32.060 Collection of items recoverable for emergency response incidents.

A. Before any sum for an Emergency Response Incident is sought by the city from a person, the city shall provide, through its Finance Department Director (or his or her designee), written notice via personal delivery, overnight express or certified U.S. mail, return receipt requested, to the person at his or her last known address explaining the basis behind the city's determination that the enforcement procedures herein apply to the incident allegedly caused by the person. That notice shall further provide, in substantially the following form, the following:

"If you desire to contest these charges for any reason, please contact me immediately in writing within thirty (30) calendar days of the date of this letter for a hearing concerning your responsibility for these charges. Through this hearing, you can appeal this determination, but YOU MUST RESPOND WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS LETTER OR YOU WILL WAIVE YOUR RIGHT TO CONTEST THIS DETERMINATION and the city will proceed to collect this sum from you as authorized by law, including Government Code Sections 53154 and 53159. You may also contact this office within thirty (30) calendar days of this letter to arrange a suitable payment plan to be secured by a promissory note."

B. If no response to the above notice is received from the person within the period provided above, the city will treat the emergency response costs as a civil debt of that person which is collectible by the city in the same manner as a contract

obligation. Therefore, the city need not wait until there is a conviction before billing the person, unless otherwise provided for in this Code or by law. However, if the person responds to the above notice within the time provided and contests the costs assessed against him or her in any way, then the city shall utilize the appeal procedure set forth under Section 9.32.070, below, for any determination by the city that is not agreed upon by the city and the person, including the appropriate payment plan, if any, or time for payment requested by the person.

C. If the emergency response cost bill is not paid within sixty (60) days after the initial bill is mailed by the city or if arrangements are not made for partial payment during the sixty (60) day period, the bill will be considered delinquent and may be referred to a collection agency.

D. If the person refuses to pay the city or its collection agency, the city may pursue recovery as provided by law. This action should generally not be initiated until after any pending criminal charges have been adjudicated.

1. As an alternative, in all appropriate cases, the city will seek to have payment of the bill imposed as a condition of probation as permitted by law.

2. As an alternative, in all appropriate cases, where the person has not made restitution, the city will request the Department of Motor Vehicles to place a hold on the person's vehicle registration as permitted by law.

E. When applicable, if a person whom the city believes is subject to emergency response cost recovery is acquitted of the subject criminal charges after a trial or if those charges against the person are dismissed for lack of evidence, the city will, upon receipt of written proof of the foregoing acquittal or dismissal, immediately cease any and all collection efforts for any unpaid sums and refund any amount collected from that person.

Section 9.32.070 Appeal process.

A. Any person receiving a bill under this policy may appeal the bill to the Program Manager within thirty (30) calendar days of the billing date by filing with the Finance Department Director (or his or her designee) a written notice of appeal. After an appeal is made, the Program Manager will review the bill to determine if the person meets each of the criteria set forth in this Program and applicable law to support being charged for the incident and, if so, the Program Manager will also review the bill for accuracy. If the bill is found to be in error in any respect, then the bill will be corrected, or if appropriate, cancelled. The decision of the Program Manager shall be rendered within seven (7) business days of the receipt of the written notice of appeal. Any bill still in dispute after being appealed to the Program Manager may then be appealed to the city manager.

B. Any person aggrieved by the decision of the Program Manager shall have the right to appeal the bill to the city manager by filing with the city clerk within five (5) business days after the decision of the Program Manager, a written notice of appeal setting forth the grounds thereof. The city manager, or a designated representative, shall schedule the time and place for a hearing on the contested bill within ten (10) business days following the filing of an appeal with the city clerk. The appellant shall be given notice of said hearing at least ten (10) business days

prior to the hearing date. Said notice may be by personal service, overnight express or by certified mail, return receipt requested.

C. At the time and place set forth in said notice, or at any time to which the matter may be continued by the mutual consent of the parties, the city manager, or a designee who has no prior involvement in the matter, shall hear the applicant and all witnesses together with any proper documentary evidence offered in support of the appeal. The city manager, or a designee, shall at the conclusion of the hearing make findings of fact based upon the evidence submitted and determine whether grounds exist for amending or canceling the bill. If, from the totality of the evidence presented, the city manager, or a designee, finds grounds exist for the amendment or cancellation of the bill, the amendment or cancellation thereof shall be ordered. If, following the hearing, the city manager, or a designee, determines from the totality of the evidence presented that no proper grounds exist for the amendment or cancellation of the bill, the appellant shall be ordered to pay the bill in full within thirty (30) days from that date.

D. The foregoing action taken by the city manager, or a designee, shall be final and conclusive."

SECTION 2. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at the City Hall and the United States Post Office, Lawndale Branch.

PASSED, APPROVED, AND ADOPTED this 19th day of April, 2010.

ATTEST:

Harold E. Hofmann, Mayor

State of California)
County of Los Angeles) SS
City of Lawndale)

I, Paula Hartwill, City Clerk of the City of Lawndale, California, do hereby certify that the City Council duly introduced the foregoing Ordinance No. 1040-10 at its regular meeting held on the 5th

day of March, 2010, and duly approved and adopted said ordinance at its regular meeting held on the 19th day of April, 2010, by the following roll call vote:

AYES: Hofmann, Rudolph, Pullen-Miles, Osborne
NOES: None
ABSENT: Ramsey
ABSTAIN: None

Paula Hartwill, City Clerk

Date

APPROVED AS TO FORM:

Tiffany J. Israel, City Attorney