



POLICY MANUAL

Daily Operations - Miscellaneous Cost Recovery Program

Revised: 08-29-96

Code: 1 – 14 – 10

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10.0 Purpose: Establish for the Clovis Fire Department the process, criteria and procedures for the implementation and maintenance of a cost-recovery program.

10.01 Scope: All Fire/EMS Personnel

10.02 POLICY

It is the policy of the Clovis Fire Department to recover, where appropriate and pursuant to California law, the costs of providing fire suppression, emergency medical and rescue services, hazardous material response and mitigation, investigations or other related services. Generally the Fire Department shall actively pursue the collection of funds expended as a result of an emergency or other incident caused by a negligent or unlawful act.

The Fire Chief and the Department's Administrative Staff shall review each case and make the final determination to authorize the cost recovery process where appropriate. In those cases where the court has directed cost recovery, the Department shall comply.

10.03 AUTHORITY

The specifics of incident cost-recovery are contained in each enabling statute or administrative law. Since they are constantly subject to change, full copies of the current codes are included herein. They will be updated as revisions occur. In order to fully comprehend the scope, limitations and legislative intent of the codes, it will be necessary to study their content and legislative history, as well as applicable court decisions. Specific cost-recovery procedures are allowed in the following areas (enabling codes are identified):

1. Fires, medical emergencies, rescues or other responses involving possible negligent or unlawful acts, including violations of applicable fire prevention codes and ordinances.

- A. Health and Safety Code Sections 13009, 13009.1
- B. Penal Code Sections 1203.1L (Terms of Probation) (Assessments)
- C. Civil Code Section 1714.1 (Liability of parents)
- D. [Appendix 1]



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10.03 AUTHORITY (Cont.)

These would include, but are not limited to the following (when there is an indication of negligence or a criminal violation):

- A. Incendiary Acts (juveniles and/or adults) CFIRS Section E-4, codes 11-18
 - B. Misuse of Heat of Ignition CFIRS Section E-4, Codes 30-39
 - C. Misuse of Material Ignited CFIRS Section E-4, Codes 40-49
 - D. Mechanical Failure or Malfunction CFIRS Section E-4, Codes 50-59
 - E. Construction, Design or Installation Deficiencies CFIRS Section E-4, Codes 60-69
 - F. Operational Deficiencies CFIRS Section E-4, Codes 70-79
 - G. Malicious False Alarm
 - H. Utility and Railroad Caused Fires
 - I. Fire Prevention Code/Ordinance Violations resulting in response by this Department to abate the hazard. (Could include repeat inspections required due to refusal to comply).
2. Emergency responses resulting from the negligent operation of any vehicle, boat, vessel or aircraft by any person under the influence of alcohol and any drug or the combined influence of alcohol and any drug.
- A. Government Code Sections 53150-53158 inclusive [Appendix 3]
3. Emergency responses and/or mitigation procedures resulting from the negligent or unlawful release, or threat of release, of any hazardous substance (defined in Health & Safety Code Section 25316 or in Labor Code Section 6382). The scope and authority for cost recovery in the area of hazardous materials generally falls into one of four categories:
- A. General hazardous material incidents, including those involving transportation and on-fixed facilities.
 - 1. Health & Safety Code Section 13009.6
 - 2. [Appendix 2]
 - B. Hazardous materials incidents involving fixed facilities regulated under the provisions of Chapter 6.95 of the Health & Safety Code. (Bureau of Hazardous materials)
 - 1. Health & Safety Code Sections 25514-25515.2
 - 2. Health & Safety Code Sections 255540, 25541
 - 3. [Appendix 2.]



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10.03 AUTHORITY (Cont.)

- C. Hazardous material incidents involving “midnight dumping” of barrels, drug wastes, or release situations without an identifiable responsible party. Within the parameters of the legislation, State funds (up to \$5,000 per incident) are available through the Emergency Reserve Account of the Toxic Substances control Division of the Department of Health Services.
 - 1. Health & Safety Code Section 25354
 - 2. [Appendix 2.B]
- D. Federal Environmental Protection Agency (EPA) reimbursement through Comprehensive Environmental Response Compensation and Liability Act (CERCLA) funds.
 - 1. [Appendix 2B]
- 4. Civil witness fees---reimbursement.
 - A. Government Code Section 68097.1 and .2

10.04 LIMITATIONS

Costs recoverable under the provisions of the code sections outlined above generally include the following:

- 1. Direct costs of incident response and mitigation---including apparatus, personnel, supplies and equipment.
- 2. Direct costs incurred in investigating and documenting the incident.
- 3. Direct costs incurred in accounting for the incident and in pursuing the cost-recovery process.
- 4. In some cases, City of Clovis and Fire Department administrative costs are recoverable, based on a percentage of the direct costs.

The determination of recoverable costs must be made on a case-by-case basis, according to the applicable code sections. Apparatus and personnel costs shall be calculated, based on actual time incurred as a result of the incident. Personnel rates shall be calculated to include benefits.



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10.05 APPROPRIATE CLAIMS

1. All Clovis Fire Department Personnel, apparatus and equipment actual suppression time (including recovery).
 - A. From CFIRS Report
 - B. Incidents involving multiple agencies will require coordinated claims processing, with itemized billing by each agency.
2. All contract labor used directly on the incident.
3. All services and supplies purchased with City and or State funds and consumed on the incident.
4. All rented equipment.
5. All costs to repair tools and equipment damaged over and above “normal wear and tear” while used on the incident. Includes repair of rented equipment.
6. Replacement values of tools and equipment lost or damaged beyond repair when such loss or damage is a direct result of the incident. Includes replacement of rented equipment.
7. All time involved in investigating the cause, documenting the incident, and pursuing the cost recovery process.
8. Costs incurred as the result of operating the Emergency Operation Center (EOC)-- those directly attributable to the incident.
 - A. California Division of Forestry/US Forest Service (CDF/USFS) Cost Apportionment Policy
9. Any costs to the City and /or State arising out of the performance of mutual aid and use of California Office of Emergency Services equipment.
10. Any other costs which are a direct result of the reimbursable activity.

Note: All claims entered on an Incident Cost Analysis (Exhibit 1) must be supported by appropriate documentation, i.e., CFIRS Report, receipts, activity records, etc. All incident related time and activities, apparatus, equipment and supplies expended must be documented. *Photocopies are not acceptable* for Federal Disaster Assistance claims.



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10.06 INAPPROPRIATE CLAIMS

1. Department Personnel and equipment when only indirectly assigned to the incident. This includes, but is not limited to, such personnel as fire lookouts, administrators, and specialists whose activities are not directly involved with the incident.
2. Normal Wear-and-tear repair costs for hand tools, automotive equipment, chain saws, pumps and similar equipment.
3. Separate operational costs for miscellaneous support equipment such as radios, light plants, battery chargers, fire camp ranges, and similar equipment except when such equipment must be rented by the City and/or State or is covered by agreement.
4. Services, assistance, equipment or supplies which may have been used on the incident but were furnished at no cost to the City and/or State.
5. Supplies and materials which may have been ordered against an incident but were not used may not be included in the billing.
6. Items returned from an incident after retrograde or demobilization which are unused or usable.
7. Any claim for which there is no supporting documentation.

10.07 RESPONSIBILITY

It shall be the responsibility of the Bureau of Fire and Life Safety to administer the cost-recovery program, its processes and procedures. Assistance with claims resulting from hazardous materials incidents shall be provided by the Hazardous Materials Team. Accurate records of recoverable incidents, submitted claims and funds collected shall be maintained, with the assistance of the Department Administrative Staff.

The Bureau shall function as a legal liaison between the Fire Department, the City Attorney, the District Attorney and Probation Department and the courts in the area of civil and criminal complaints with associated cost recovery demands.



10.08 PROCEDURE

A Chief Officer, with the input and assistance of the responsible Company Officer, shall make the determination to initiate the cost-recovery process according to the criteria contained within this policy. While this determination is not binding upon the Department for recovery demands, it shall initiate the process to ensure the gathering and documentation of both evidence of the incident cause and the costs incurred by the Department.

The cause of the incident, as well as any contributory factors, must be determined and documented. Witness statements, the identification, collection and preservation of any physical evidence of the cause, and the identification of the person(s) responsible, are all important factors in documenting the incident and later being able to prove a case in court. While the degree of proof required differs between criminal and civil proceedings, (*criminal*---"beyond a reasonable doubt"; *civil*--- "with reasonable certainty" or "a preponderance of evidence")¹

proper investigation and documentation is required on every incident involving possible negligent or criminal acts, including those determined to be cost-recoverable.

For incidents involving misdemeanor violations (can be either criminal or negligent acts) citations (Notice to Appear) should be issued. While it is not always necessary to issue a Notice to Appear in order to pursue cost-recovery, it is normally preferred.

When a citation is issued as the result of a cost-recoverable incident, the issuing officer shall:

1. Notify the Bureau---immediately following the incident during normal business hours.
2. Forward the *all copies* of the citation to the Bureau, along with all supporting documentation.
3. The Bureau will file the court copy of the citation through the Police Department.

¹ Criminal---Penal Code Section 1096, Evidence Code Section 501
Civil---Bruck V. Adams, 259 CAL AD 585, 1968



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10.08 **PROCEDURE** (Cont.)

For suspected or possible felony violations, the on-duty Fire Investigator or a Police Officer shall be notified immediately. In addition, the Fire Investigation Team may be utilized, when necessary, to assist the Incident Commander in determining and documenting the origin, cause and contributing factors of an incident. However, these are the responsibilities of the Incident Commander and it will not always be necessary (or possible) to involve the Fire Investigation Team in on-scene investigation activities on all cost-recoverable incidents.

In the event of incidents involving suspected person(s) under the influence, a memo should be forwarded, along with the Incident Report to the Bureau with the following information:

1. Incident number, date and call time.
2. Location.
3. Law enforcement agency investigating and it's incident number.
4. Investigating Officer's name.
5. Suspect's name, address, date of birth, driver's license number and State.
6. A brief description of the suspected violation(s).
7. Police Department Reports, DUI, etc.

The recovery of civil witness fees, as allowed in the Government Code will be handled by the Fire Investigation Team as a portion of its function in tracking incident related subpoenas involving civil actions.

In order to prove the elements of an incident's costs "with reasonable certainty" or "a preponderance of evidence" as required by State law, all incident activity and associated costs must be accurately documented. The "Incident Cost Analysis" described herein (Exhibit 1) shall serve as the basis for cost documentation and to ensure timely initiation of the cost-recovery process. This report will be used to compile cost information for those incidents requiring a Clovis Fire Department response in which funds expended are recoverable.



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10.08 **PROCEDURE** (Cont.)

The Incident Cost Analysis is an accounting of all incident costs and is derived primarily from the Incident Report. Therefore, it is vitally important that all incident related activities, as described previously, be documented on the Incident Report. All associated activities related to a recoverable incident must be documented on an Incident Report Supplement. When completed, the Incident Report, as well as all other records, reports, documentation and evidence pertaining to the incident shall be forwarded to the Fire Bureau for processing.

The Deputy Fire Marshal with the assistance of the Administrative Staff shall gather the necessary information to complete the documentation and Incident Cost Analysis. The Deputy Fire Marshal shall review all documents, records and reports for content, accuracy and completeness.

The reports will then be forwarded, along with the Deputy Fire Marshal's recommendation, to the Fire Department Command Team for their determination on whether or not to proceed with the cost recovery process. Once the determination has been made to proceed, the appropriate procedure as outlined below shall be initiated to collect recoverable expenditures.

10.09 **COST COLLECTION**

The cost recovery process will involve one of three recovery modes---criminal, civil or State/Federal assistance. The mode will depend primarily on the type of incident, its circumstances and the legal requirements and criteria contained in the code sections outlined previously.

Civil

Civil cost-recovery procedures shall primarily involve all incidents not processed criminally in which a responsible party has been identified. However, there are exceptions and a certain amount of flexibility in determining which recovery process to follow. The civil cost-recovery process shall involve the following procedures:

1. ***Letter of Demand (Exhibit 3)***

A letter of Demand shall be sent to those believed to be liable. The letter will detail the suspected cause, the legal authority for cost-recovery and the total amount expended as the result of the incident. In addition, a copy of both the Incident Report (CFIRS) and the Incident Cost Analysis shall be included.



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10.09 COST COLLECTION (Cont.)

2. ***Tort Claims***

In the event of non-compliance with the conditions of the Letter of Demand within a reasonable time period, civil tort claim procedures shall be implemented.

- A. Small Claims---amounts less than \$5,000.
- B. Civil Suit---Court proceedings to be initiated by City Council.

Criminal

Incidents resulting in an arrest or the issuance of a citation will normally require criminal cost-recovery procedures. In such cases the Bureau shall submit the necessary reports, along with the Incident Cost Analysis, to the District Attorney and/or Probation Department, or the court for consideration during the adjudication process. [Example of Letter to Court--- Appendix 2]

In case of criminal proceedings, including citations being adjudicated at the Municipal Court level, time is normally of the essence in initiating, reporting and completing the cost-recovery process. This is due to the restrictive time constraints placed on law enforcement agencies under the provisions afforded defendants by our legal system of “due process.”

Therefore, it is especially important when initiating the process as the result of incidents potentially recoverable through criminal proceedings that all investigation documentation, incident and cost reporting be completed and submitted in a timely manner.

State or Federal Assistance

The Emergency Reserve Account for hazardous materials incidents administered by the California Department of Health Services makes funds available for reimbursement to local agencies for certain types of hazardous materials incidents. (Up to \$5,000 per incident). Due to the specific reporting and claim processing requirements involved, please refer to the Emergency Reserve Account section of this document.



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10.09 COST COLLECTION (Cont.)

Most importantly, State ratification must be accomplished prior to the expenditure of funds for clean-up and the required “Emergency Response Incident Report” must be completed.

The Specific requirements for receiving reimbursement from the Federal EPA through CERCLA are contained in that section. Emergency Reserve Account and EPA reimbursements shall be the combined responsibility of the Hazardous Materials Team and the Bureau.

10.10 RECEIPT OF FUNDS

Payments received as the result of the cost-recovery process shall be deposited in the General Fund of the City of Clovis. Accounting for payments and the statuses of claims shall be the combined responsibility of the Bureau and the Administrative Staff. When payments are received, a copy of the warrant and notice of payment (or check and invoice) are to be forwarded to the Bureau for processing and filing.

In addition to normal accounting procedures utilized by the Administrative Staff, the Bureau shall maintain a cost-recovery progress report on each incident involving cost-recovery. This report will document the current status of the cost-recovery claim. Upon receipt of payment in full, the Cost-Recovery Progress Report shall be completed by the bureau (within ten (10) days),. The incident file will then be marked closed and retained for the appropriate period prescribed by law.

10.11 EXHIBIT EXCERPTS

1. ***Health and Safety Code Section 13009***
Fire Suppression and Rescue or Emergency Medical Costs; Liability; Collection.
2. ***Health and Safety Code Section 13009.6***
Hazardous Substance Release or Threat; Expenses of Emergency Response; Persons Liable and Charges Recoverable.



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10.11 EXHIBIT EXCERPTS (Cont.)

- 2.A Memo From State of California Department of Health, Toxic Substances Control Division.
- 2.B **Health and Safety Code Section 25354**
Reserve Account for Emergencies.
- 3. **Government Code Section 53150, etc.**
Negligent Operation of Motor Vehicle; Influence of Alcoholic Beverage or Drugs; Intentional Wrongful Conduct; Liability.
- 4. **Civil Code Section 1714.1**
Liability of Parents and Guardians for Willful Misconduct of Minor.
- 5. **Penal Code Section 1203.1**
Probation; Suspension of Sentence; Imprisonment; Fines; Conditions; Modifications.
- 5.A **Penal Code Section 1714.1**
Liability of Parents and Guardians for Willful Misconduct of Minor.

10.12 EXHIBIT #1 THROUGH #5

See following five (5) pages.



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EXHIBIT #1

INCIDENT COST ANALYSIS

Incident Number: _____ Date of Incident: _____

Time: _____

Location: _____

INCIDENT COSTS:

<u>Human Resources</u>	<u>Number</u>	<u>Hours</u>	<u>\$ Cost</u>	<u>Total</u>
Battalion Chief	_____	_____	_____	_____
Captain	_____	_____	_____	_____
Engineer	_____	_____	_____	_____
Firefighter	_____	_____	_____	_____
Investigator	_____	_____	_____	_____
Other	_____	_____	_____	_____

Total Resource Costs.....\$ _____

<u>Equipment</u>	<u># of Miles</u>	<u>Hours</u>	<u>Hour Rate</u>	<u>\$ Cost</u>	<u>Total</u>
Engine	_____	_____	_____	_____	_____
Brush Engine	_____	_____	_____	_____	_____
Sedan	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____

Total Equipment Cost.....\$ _____

Total Incident Cost\$ _____

Signature
(8-29-96)



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EXHIBIT #2

3 July, 1996

Judge John Gallagher
Clovis Municipal Court
1011 Fifth Street
Clovis, CA 93612
(209) 299-4964

Regarding: (**Case Number & Name**)

Dear Judge Gallagher:

On June 13, 1996 at 1302 hours this Department responded to a fire which resulted from a reported negligent act. Pursuant to Health and Safety Code Sections 13009 and 13009.1, this Department hereby respectfully requests consideration for a judgment assessment against the responsible party for recovery of its suppression and administrative costs.

Costs in the amount of \$371.86 are detained on the attached Fire Cost Analysis report. A copy of the Incident Report is also attached for your information.

If the defendant is found guilty and an assessment for costs is made, payment should be in the form of a check made out to the *City of Clovis* and addressed as follows:

Attention: Accounts Receivable
City of Clovis Fire Department
633 Pollasky Avenue
Clovis, CA 93612

Thank you for your consideration. Please contact my office if further information is required or if we may be of assistance.

Respectfully Submitted,

Jim Schneider, Fire Chief
Michael A. Johnson, Fire Marshal
Clovis Fire Department Investigation Bureau

cc: City Attorney or District Attorney
(8/29/96)



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EXHIBIT #3

Addressee _____

Date _____

Subject: Incident Response and Damage Cost Recovery

Dear _____:

Attached are the Incident Cost Analysis and Incident Report documenting an emergency response by this Department. This incident, identified as: (*Type of Incident*) _____ # _____, Incident Date_ Response Time _____, required a total expenditure of \$ _____ in response, mitigation, investigation and documentation activities.

This incident has been determined to be the result of _____

Section(s) _____ of the California (*Name of Code*)__ Code provide(s) for the recovery of costs expended as the result of such incidents, when caused by negligent and/or unlawful acts.

Therefore, demand is hereby made for the sum identified above. A check made payable to the *City of Clovis* should be mailed to Clovis Fire Department, 633 Pollasky Avenue, Clovis, CA 93612. Payment is due in full within 30 days. After 30 days, interest will accrue and we will pursue collection.

Sincerely,

Jim Schneider, Fire Chief

Michael A. Johnson, Fire Marshal
Clovis Fire Department

Attachments

(8/29/96)



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EXHIBIT #4

EMERGENCY RESPONSE INCIDENT REPORT

Date of Cleanup _____

Contractor _____

Contractor's Representative _____

Time of Contractor's Arrival _____ Time of Equipment Arrival _____

Description of Extent of Contamination _____

Soil _____

Water _____

Air _____

Other _____

Description of Cleanup Procedures Used _____

Equipment Utilized			Labor Utilized		
Description	Arrival Time	Depart Time	Job Classification	Arrival Time	Depart Time
Materials Utilized			Materials Utilized		
Description	Number of Units		Description	Number of Units	

(Use Additional Sheets for the Above Information if Needed)

Quantity of Hazardous Materials Removed (identification procedures, lab results if available)



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Registered Hauler Utilized _____ Hauler # _____

Material Transported to _____ Manifest # _____

Time and Date Job was Completed _____

Current Status of Site _____

Report by _____ Agency _____



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EXHIBIT #5

CLEANUP WORK LOG

Department of Health Services
Toxic Substances Control Division

State Duty Officer _____ EREER# _____

Date of Incident _____ Time _____

Descriptive Location _____

Address _____ Zip Code _____

Description of Incident _____

Substances Released _____

Quantity _____

Characteristics of Released Substance(s) _____

Responsible Party

Name	Address	Phone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

If a Department of Health Services Contractor **is not used** complete the information in this box

Estimated Cost of Cleanup _____

Contractor Utilized _____

Justification of Contractor Choice _____

Description of Initial Mitigation Measure (evacuation, crowd control, substance identification)



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Report by _____

Title _____

Agency _____

I certify that this release or spill required immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances.

Signature _____

Agency _____