

TO: Mayor and Members of the City Council

VIA: James C. Hardy, City Manager

FROM: Craig Courtin, Chief of Police
Jon Froomin, Captain

DATE: April 3, 2006

SUBJECT: Driving Under the Influence Emergency Cost Recovery Ordinance

RECOMMENDATION

It is recommended the City Council introduce by title and waive further reading of the attached ordinance defining when and how the City will seek reimbursement from individuals for emergency response costs arising from incidents they cause while driving under the influence (DUI) of drugs and/or alcohol.

EXECUTIVE SUMMARY

California Government Code Section 53150 authorizes public agencies to recover costs arising from an emergency response to an incident involving a person operating a motor vehicle while under the influence of alcohol or drugs, or the combined influence of alcohol and drugs. The attached ordinance is intended to define when it is appropriate to seek reimbursement as permitted by this law and how the reimbursable costs will be calculated. The proposed ordinance also contains provisions for enforcement and collection proceedings.

BACKGROUND

The City has charged a driving under the influence cost recovery fee for over thirteen years. Until recently the Police Department was collecting this fee from individuals who were arrested for driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs. Collection took place when those arrested requested a vehicle release after their vehicle was towed following their arrest. The current fee is \$162.70. The Police Department was advised by the City Attorney that the practice required revision due to recent court rulings. The attached ordinance has been drafted to comply with the recent court decisions by more clearly defining when an emergency cost may be recovered and what should be included in that charge.

ANALYSIS

Government Code Sections 53150 through 53159 establish the statutory framework allowing public agencies to recover emergency response costs from persons who intentionally or negligently cause incidents requiring an emergency response. Section 53150 defines the circumstances in which a person driving a motor vehicle may be

liable for the expense of an emergency response, and Section 53156, subdivision (a) (hereafter Section 53156(a)) defines “expense of an emergency response.”

Section 53150 provides:

Any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident.¹

Section 53156(a) defines “expense of an emergency response” as:

...reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising because of the response to a particular incident. Reasonable costs shall include the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident.”

As originally enacted, Section 53155 limited a person’s liability for emergency response expenses to \$500 for a particular incident. (Added by Stats. 1985, ch. 337, §1.) In 1986, the Legislature amended Section 53155, increasing the liability limit to \$1,000 per incident. (As amended by Stats. 1986, ch. 1112, §1.) Effective January 1, 2005, the liability limit is \$12,000 per incident. (§53155, as amended by Stats. 2004, ch. 51, §1.)

In November 2005, the Police Department was advised by the City Attorney that claims had been filed against a number of cities in the Bay Area by individuals who were contending that they had been impermissibly billed for emergency response costs because the costs arose from DUI arrests. The contention was that arrests did not constitute, per Government Code Section 53150, an “incident.” Trial court decisions issued in cases arising from these claims resulted in holdings that a traffic stop alone and arrest for driving under the influence was an insufficient basis for emergency cost recovery. These court decisions held that costs were recoverable only if a separate emergency existed, such as a collision. Based on this information, the Police Department discontinued its cost recovery practice.

¹ Similarly, Sections 53151 and 53152 hold operators of civil aircraft and boats liable for the expense of an emergency response to a DUI incident or an incident resulting from the operator’s intentionally wrongful conduct. Section 53153 sets out presumptions for determining when a person is under the influence.

On January 4, 2006, California Court of Appeal, First District, ruled on this issue. In CHP v. Superior Court of Alameda County (Allende) (2006) Cal.App. LEXIS 3, the court held that based on the plain language of Government Code Section 53150, "incident" necessarily means something more than the negligent operation of a motor vehicle while under the influence of an intoxicant. As used in Section 53150, an incident is any event that proximately causes an emergency response by a public agency. Although an accident is not necessary to trigger the right to reimbursement, an ordinary arrest, even for driving under the influence of alcohol or drugs, is not sufficient.

The court also held that an appropriate emergency response to an incident includes the cost of providing police services at the scene, including, among other possible items, salary costs related to ensuring public safety at the scene of the incident, obtaining appropriate medical assistance, removing vehicles, investigating the cause of the incident, conducting field sobriety tests, and if appropriate arresting and detaining the subject.

Reimbursement may also be obtained for time spent away from the scene by responding public agency personnel, provided the response is reasonable and arises from the "incident." Salary costs may be recovered for time spent traveling to and from the scene, transporting the subject from the scene, booking the subject, performing chemical tests, writing customarily required reports (including all accident and DUI-related reports that must be completed as a consequence of the incident), and performing follow-up investigation necessary to complete the reports. All of these activities directly arise because of the response to the "incident," and must be performed regardless of whether there is a prosecution for a violation of the DUI laws. Time spent by responding personnel on activities that are not customarily required as a consequence of investigating and mitigating a DUI incident are not eligible for reimbursement. Salary costs incurred after a subject is booked are not recoverable as expenses of an emergency response. Such costs, including the cost of an officer's time testifying against a DUI defendant, arise from a decision to prosecute the defendant. These costs are not recoverable under Sections 53150 and 53156(a).

Based upon the appellate court ruling in Allende, the Police and Fire Departments have collaborated with the City Attorney to draft the attached proposed ordinance for charging individuals for emergency response to applicable driving under the influence cases. A sample cost recovery form is attached as Exhibit "A." The Police Department will be responsible for completing the form based upon the number of specified emergency units responding to the incident and the actual hours spent on the scene. The cost calculation considers personnel costs, including salary and benefits and the cost of equipment.

In compliance with the law and the recent case decisions, individuals will only be charged an emergency cost recovery fee when the incident involves more than a basic traffic stop and ordinary arrest. Examples of incidents that may result in a charge include, but are not limited to, the following: Traffic collisions in which an emergency response is necessary and a driver is determined to be under the influence or the

response of emergency medical personnel is necessary to care for a driver who is determined to be under the influence.

ALTERNATIVES

Based upon the information contained in this report, the following options are available.

1. Approve the ordinance and charge individuals based on current local case law.
2. Discontinue the practice of cost recovery in driving under the influence cases.

Staff recommends Alternative 1.

Attachments: Sample Format for Cost Recovery Bill
Proposed City Ordinance