July 22, 1994

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

COLLECTION OF EMERGENCY RESPONSE COST RECOVERY FEES

The Mayor and City Council, during budget deliberations on June 23, 1994, approved a proposal intended to generate up to six hundred thousand dollars ($600,000.00) for transfer to the budget of the Office of the City Attorney. The source of this funding for the City Attorney's budget was identified as fees generated from motorists arrested for driving under the influence of alcohol (DUI).

Legal constraints preclude the recovery of costs associated with routine police and fire services. Under the law, only the cost of emergency services can be recovered. A time-honored rule of law (the "Fireman's Rule") prohibits liability for costs of routine police and fire services. The general rule in California is "the expense of capture, detention, and prosecution of persons charged with crime is to be borne by the county." Napa State Hospital v. Yuba County, 138 Cal. 378, 381 (1903). The Ninth Circuit agrees "the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service." City of Flagstaff v. Atchison, Topeka & Santa Fe Railway Company, 719 F.2d 322, 323 (9th Cir. 1983). A government entity may only recover the costs of law enforcement and other emergency services if there is a specific statute authorizing recovery. County of San Luis Obispo v. Abalone Alliance, 178 Cal. App. 3d 848, 859 (1986).

California Government Code sections 53150-53158 provide the statutory authority for recovery of emergency service expenses from drivers who, while under the influence of alcohol or drugs, cause "any incident resulting in an appropriate emergency response." It is well settled that for purposes of this statute, incident means accident. Recovery is limited to one thousand dollars ($1,000) from any one person for a particular incident. (Gov't Code Section 53155.)

The City presently has a cost recovery program in effect which was established pursuant to this statutory authority. On

September 12, 1988, the City Council adopted the Emergency Response Cost Recovery Program (Resolution No. 271847) authorizing cost recovery from drivers under the influence who cause an incident. Our program is similar to that of the City of San Jose which was referred to in Council discussion. Since our program has been in effect, the City has never recovered more than $35,000 according to the Police Department. The Police Department's Fiscal Management Unit keeps statistics on cases, costs, and revenues recovered.

A review of the program in 1990 revealed that administrative costs (for example, identifying and billing drunk drivers) almost completely offset the amounts recovered; consequently, the program was eliminated. The program was reinstated in 1992 only after improved efficiencies due to introducing the computer-aided dispatch system.

While the City Council's proposal to generate additional revenue for transfer to my budget is laudable, it is not feasible for the previously stated reasons. My previously approved budget is substantially less than I need to provide legal services and this proposal will not generate any additional funds.

As a result of my reduced budget, and the apparent lack of the needed additions to it, I have instructed my staff to prepare a work plan (see attached) which will of necessity include reduced legal services.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachment
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