

**City of Piedmont
COUNCIL AGENDA REPORT**

DATE: March 1, 2010

FROM: John M. Hunt, III – Captain/Interim Chief of Police

SUBJECT: **RESOLUTION ESTABLISHING PROCEDURES, FEES AND CHARGES FOR THE RECOVERY OF PUBLIC SAFETY COSTS FOR EMERGENCY RESPONSE DIRECTLY RELATED TO DRIVING UNDER THE INFLUENCE INCIDENTS.**

RECOMMENDATION:

By motion, approve the attached resolution establishing procedures, fees and charges for the recovery of public safety costs for emergency response directly related to driving under the influence incidents.

BACKGROUND:

The State Legislature through the adoption of Sections 53150 through 53159 of the California Government Code has provided authority for a public agency such as the City to recover the expenses incurred by the City relating to emergency response involving negligent operation of a motor vehicle relating to 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.

POLICE CHIEF'S COMMENTS:

I recommend Council approve the aforementioned resolution. As discussed during the 2009/10 budget sessions when these fees were added to the police department's fee schedule, we average approximately six (6) accidents a year that involve DUI drivers. Upon adoption of this resolution the city could start collecting fees from these drivers. Currently, we have four (4) pending collections.

A Resolution of the City Council of the City of Piedmont
Establishing Procedures, Fees and Charges
For the Recovery of Public Safety Service Costs for Emergency Responses

Whereas, intentional wrongful conduct by persons operating motor vehicles while under the influence imposes a burden upon City services above and beyond regular service required for law enforcement and emergency response, and those persons should bear a share of that extra burden; and

Whereas, the State Legislature through the adoption of Sections 53150 through 53159 of the California Government Code has provided authority for a public agency such as the City to recover the expenses incurred by the City relating to emergency response involving negligent operation of a motor vehicle relating to influence of an alcoholic beverage or any drug; and

Whereas, the City periodically provides emergency responses that qualify pursuant to Government Code Sections 53150 through 53159 of the California Government Code at the expense of the taxpayers of Piedmont, and it is in the best interests of the City and its taxpayers to recover those expenses as provided by State law; and

Whereas, by this Resolution the City Council adopts the necessary policies and procedures to recover such emergency response expenses as authorized by the provisions of Government Code Sections 53150 through 53159.

RESOLVED: That the City Council of Piedmont does RESOLVE as follows:

1. That the City of Piedmont shall implement policies and procedures pursuant to California Government Code Sections 53150 through 53159 to provide for the recovery of the expense of any emergency response by City personnel relating to negligent operation of a motor vehicle caused by the influence of an alcoholic beverage or any drug as more specifically set forth in such Government Code Sections.
2. That Policy 515 of the Piedmont Police Department Policy Manual, a copy of which is attached hereto and incorporated herein, is hereby approved.
3. In addition thereto, the following procedures are hereby adopted:
 - A. A motorist arrested for driving under the influence of alcohol and/or drugs (DUI) pursuant to California Vehicle Code Sections 23152-23153, as amended, will be billed for emergency response if all of the following criteria are met:

- (1) Driving under the influence of alcohol and/or drugs is evidenced by objective symptoms observed by the arresting officer, or a blood, breath, or urine test above the legally proscribed limit; and
- (2) Negligent operation of a motor vehicle is evidenced by either an accident or the commission of a moving violation as defined under California Vehicle Code Sections 2200 et seq., as amended; and
- (3) The incident evidenced by either an accident or the commission of a moving violation was proximately caused by driving under the influence of an alcoholic beverage and/or drug; and
- (4) The incident necessitated an emergency response by peace officers and/or paramedics.

B. The City will bill motorist only for the direct costs to the City of an emergency response, upon the filing of appropriate charges by the District Attorney.

C. The City will treat the emergency response costs as a civil debt of the motorist which is collectible by the City in the same manner as a contractual obligation.

D. If the emergency response cost bill is not paid within thirty (30) days after the initial bill is mailed by the City, or no other arrangements are made for partial payment during the thirty (30) day period, the bill will be considered delinquent and a small claims court proceeding may be initiated. If a judgment is rendered against the motorist, the judgment may be referred to a collection agency, or may be referred California department of Motor Vehicles requesting suspension of the motorist's driving privileges until the judgment is satisfied.

E. As an alternative, the City may seek to have payment of the bill imposed as a condition of sentence or probation.

F. Fees and charges for the provision of public safety emergency response services shall be as set forth on Exhibit A attached hereto, which may be revised by City Council Resolution at any time.

G. Fees and charges for the provision of public safety emergency response services shall calculated using an Emergency Response Financial Recovery Worksheet set forth on Exhibit B attached hereto.

Cost Recovery for Emergency Response to Driving Under the Influence

515.1 PURPOSE AND SCOPE

Any person whose operation of a motor vehicle while under the influence of drugs or alcohol, proximately causes any incident resulting in an appropriate emergency response, places a financial burden on the citizens of Piedmont for the costs of said emergency response. It will be the policy of the Piedmont Police Department, in cooperation with the Piedmont Fire Department, and the Piedmont Finance Department to seek Cost Recovery for Emergency Response to Driving Under the Influence, as authorized in Government Code sections 53150 through 53159.

515.2 DEFINITIONS

Definitions used in this policy will be those outlined in Government Code sections 53150 through 53159.

Cost recovery under this section does not apply to the cost of routine enforcement contacts that result in a DUI arrest. Typically, cost recovery will occur ONLY when an emergency response was reasonably required, based upon the totality of the circumstances known to the department at the time of the incident.

515.3 RESPONSIBILITIES

In those cases requiring only a DUI investigation, and in any case where the DUI and Collision investigation are completed by different officers, the officer investigating the Driving Under the Influence case will be responsible for completion of the City of Piedmont Emergency Response Financial Recovery Worksheet for all Police Department personnel who responded to the incident.

The on-duty Watch Commander or Sergeant will be responsible for confirming the information in and completeness of the worksheet and approving it. S/he will make a copy of the worksheet for the Police Department case file and will forward the original to the Operations Division Captain.

The Operations Division Captain will forward the completed worksheet to the Finance Department.

The Piedmont Fire Department will be responsible for completion of the City of Piedmont Emergency Response Financial Recovery Worksheet for all Fire Department personnel who responded to the incident.

The on-duty Fire Department supervisor will be responsible for confirming the information in and completeness of the worksheet and approving it. S/he will make a copy of the worksheet for the Fire Department case file and will forward the original to the Fire Chief or his/her designee.

The Fire Chief or his/her designee will forward the completed worksheet to the Finance Department.

Piedmont Police Department

Policy Manual

Cost Recovery for Emergency Response to Driving Under the Influence

The Finance Department will be responsible for confirming receipt of worksheets from both emergency response departments. The Finance Department will use the information provided on the worksheets to determine the responsible party's liability to the City of Piedmont, and will instigate appropriate billing process(es) against the responsible party for recovery of the debt, up to a maximum amount of \$12,000 per incident.

Driving Under the Influence Accident Fee Schedule

These fees apply to a situation where an accident is the reason for a response and there is a subsequent DUI arrest. These fees are based on actual firefighter, paramedic and/or police response. Back-up units and sergeant review are included in fee calculations. Fees are calculated on an Emergency Response Financial Recovery Worksheet.

OFFICER(S) TIME:	Varied (actual hours x actual salary per hour)
SERGEANT REVIEW:	Varied (actual hours x actual salary per hour)
FIREFIGHTERS TIME:	Varied (actual hours x actual salary per hour)
PARAMEDICS TIME:	Varied (actual hours x actual salary per hour)
CHEMICAL TEST FEE:	Actual costs of blood draw if conducted



C i t y o f P i e d m o n t



Emergency Response Financial Recovery Worksheet

Financial Recovery Type: DUI Emergency Response PCO 12.9 (Party)
 Other (explain):

Date: _____ Time: _____ File #: 20 -

Responsible Party Information:

Name	D.O.B.	ID #	Phone
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Address _____ City _____ State _____ Zip Code _____

Brief Description of Incident (list nature of incident, how responsibility determined, BAC test/results, etc.):

Emergency Responder Time Accounting:

Other Direct Expenses⁴:

	\$
	\$
	\$
TOTAL DUE	\$

Completed By:

Supervisor Approval:

¹ Duties examples: Response, Traffic Control, Fire Suppression, Rescue, Medical Aid, Investigation, Transportation, Report Writing, Clean-up, etc.

² TO BE CALCULATED BY FINANCE DEPARTMENT

³ TO BE CALCULATED BY FINANCE DEPARTMENT

⁴ Direct Expenses examples: Supplies used, Damaged City Property, etc.

**CALIFORNIA CODES
GOVERNMENT CODE
SECTION 53150-53159**

53150. 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.

53151. 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 any boat or vessel 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.

53152. 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 civil aircraft caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes an incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident.

53153. For purposes of this article, 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, boat or vessel, or aircraft with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances. For purposes of this article, the presumptions described in Sections 23152 and 23155 of the **Vehicle Code** shall apply.

53153.5. (a) Any person 18 years of age or older who is convicted of making a false police report, in violation of Section 148.3 of the Penal Code, and that false police report proximately causes an appropriate emergency response by a public agency, is liable for the expense of the emergency response made by the responding public agency to the incident.

(b) A public agency shall be entitled to satisfaction of any judgment for expenses pursuant to this article after any victims or other persons injured by the incident are compensated for their injuries and any liens held by a medical provider are satisfied.

53154. The expense of an emergency response shall be a charge against the person liable for expenses under this article. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied, except that liability for the expenses provided for in this article shall not be insurable and no insurance policy shall provide or pay for the expenses.

53155. In no event shall a person's liability under this article for the expense of an emergency response exceed twelve thousand dollars (\$12,000) for a particular incident.

53156. As used in this article:

(a) "Expense of an emergency response" means 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 the 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.

(b) "Public agency" means the state and any city, county, municipal corporation, district, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

(c) "Intentionally wrongful conduct" means conduct intended to injure another person or property.

53157. Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this article, or any evidence derived from the testimony, admission, or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same incident.

53158. It is not the intent of the Legislature, in enacting this article, to occupy the field of recovery of the expense of an emergency response by a public agency, nor is it the intent of the Legislature to preempt local regulations or to otherwise limit the remedies available to any public agency to recover the expenses of an emergency response to any incident not involving persons who operate a motor vehicle, a boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug. It is the intent of the Legislature that the recovery of the expenses of an emergency response under this chapter shall supplement and shall not supplant any other provisions of law relating to the recovery of those expenses.

53159. (a) As used in this section, the following terms have the following meanings:

(1) "Expenses of an emergency response" means those reasonable and necessary costs directly incurred by public agencies, for-profit entities, or not-for-profit entities that make an appropriate emergency response to an incident, and include the cost of providing police, firefighting, search and rescue, and emergency medical services at the scene of an incident, and salaries of the persons who respond to the incident, but does not include charges assessed by an ambulance service.

(2) "Public agency" means the state and any city, county, municipal corporation, or other public authority that is located in whole or in part in this state and that provides police, firefighting, medical, or other emergency services.

(b) Any person who intentionally, knowingly, and willfully enters into any 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, is liable for the expenses of an emergency response required to search for or rescue that person, or if the person was operating a vehicle, any of his or her passengers, plus the expenses for the removal of any inoperable vehicle. 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.

(c) A person who drives a vehicle on a public street or highway that is temporarily covered by a rise in water level, including groundwater or overflow of water, and that is barricaded by any of the means described in subdivision (b), because of flooding, is liable for the expenses of any emergency response that is required to remove from the public street or highway, the driver, or any

passenger in the vehicle that has become inoperable on the public street or highway, or the vehicle that has become inoperable on the public street or highway.

(d) Unless otherwise provided by law, this section shall apply to all persons, regardless of whether the person is on foot, on skis or snowshoes, or is operating a motor vehicle, bicycle, vessel, watercraft, raft, snowmobile, all-terrain vehicle, or any other boat or vehicle of any description.

(e) This section 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 section.

(f) Expenses of an emergency response are a charge against the person liable for those expenses pursuant to subdivision (b) or (c). The charge constitutes a debt of that person and may be collected proportionately as specified in subdivision (g). The debt shall apply only to the person who intentionally, knowingly, and willfully enters the closed area, and not to his or her family, heirs, or assigns. The parent or parents of a minor child who has violated subdivision (b) or (c) may be responsible for the debt.

(g) The debt may be collected proportionately by the public agencies, for-profit entities, and not-for-profit entities that incur the expenses. The liability imposed under this section shall be in addition to, and not in limitation of, any other liability, fines, or fees that are imposed by law.

(h) An insurance policy may exclude coverage for a person's liability for expenses of an emergency response.