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Administration
Fire Suppression
Fire Investigation
Fire Training
Fire Prevention
Special Operations

MEMORANDUM

May 19, 2022

To: Bob Harrison
City Manager

From: Aaron Markham
Fire Chief

Re: Cost Recovery Follow-up

Mr. Harrison,

This memorandum is a follow-up report on the cost recovery item that was proposed to City Council during a study session in late December of 2021. At that time council requested staff bring back more information in May of 2022, as to the feasibility of such a program for the fire department. Ryan Bleek from the legal department was assigned to assist with a potential ordinance change that would be required to implement such a program. During his research of cost recovery code provisions and policies from other jurisdictions in Washington State, he wasn't able to find any that sought recovery for incidents that were not explicitly identified as eligible for cost recovery by statute, except for the one Riverside Fire Authority resolution that was provided by EF Recovery (EFR). He researched the relevant case law and the RCWs that EFR claims support their broad interpretation of cost recovery authority and came up with the following findings:

A city may not impose taxes or fees unless granted explicit or implicit authority by statute or the Washington Constitution, and if there is doubt as to whether such authority exists, then it must be assumed that it does not. *Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn. 2d 359, 374, 89 P.3d 217, 225 (2004). A city may, when granted the authority, impose nontax "regulatory fees." *Id.* at 552 (internal quotations omitted). The distinction between a tax and a regulatory fee is an important one, because otherwise a city could avoid "constitutional limitations on taxes by simply charging its citizens a '**fire department fee**' or a 'police fee.' *Id.*

The legislature has authorized cities to impose cost recovery fees for "extraordinary costs incurred . . . in the course of protecting the public from actual or threatened harm resulting from the hazardous materials incident," and "the actual costs associated with the cleanup or removal of hazardous waste and other hazardous materials, including debris or vehicle operating fluids, when responding to a vehicle accident on private or public property, including public roadways." RCW 4.24.314; RCW 35.103.060.

By enumerating the specific instances where a city has the authority to charge regulatory fees for the protection from, and the cleanup and removal of, hazardous waste and other hazardous materials, the City's ability to collect regulatory fees is likely limited to these narrow instances. If the legislature intended for a city's general police power under the Constitution to include broad authority to charge for fire department regulatory fees, then it would not have been necessary for the legislature to enumerate the above regulatory fees.

*We will provide all-risk emergency and non-emergency services to our community
We are committed to serving with courage and compassion as stewards of public trust
We shall leave a positive and genuine impact on all who call upon us*

It is our opinion that implementation of a cost recovery fee schedule outside of the specific parameters of a true hazardous material response incident is not supported by the Revised Code of Washington. The question then becomes whether or not it is worth the administrative time and effort to collect fees in such instances. The fire department is already a part of the South East Washington Special Operations Group (formally known as the Tri-County Hazardous Materials Response Group) that has a mechanism in place to reimburse departments involved in a significant hazardous material response should one occur within the jurisdictional boundaries of the team. For that reason, any benefit derived from cost recovery efforts would likely not be worth the required administrative time.