

City of

Merced Fire Department

Merced, California



June 2022

FIRST RESPONDER FEE FEASIBILITY STUDY



AP TRITON
VISION • INNOVATION • SOLUTIONS

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Our sincere appreciation is extended to each of you

Merced Fire Department & City of Merced

Derek Parker, *Fire Chief*

Stephanie Dietz, *City Manager*

Janet German, *Management Analyst*

Tom England, *Deputy Chief*

***and each of the firefighters, officers, and support staff who
daily serve the citizens and visitors of Merced.***

INTRODUCTION

In October 2021, the City of Merced awarded a contract to AP Triton, LLC to conduct a Fire Department First Responder Fee Feasibility Study.

Intent & Scope of the Project

This study's primary intent was to complete a comprehensive analysis and assessment of the feasibility of developing alternatives to provide additional revenue to support the operation of the Merced Fire Department. Triton has developed the following study, which includes the development of a fee to recover the costs, or a portion thereof, of providing first responder emergency medical response services to the community by the fire department. The completed analysis is intended to provide an option for the City of Merced to consider in creating additional revenue to offset the costs resulting from increased demand for EMS-related services. Triton's final report includes findings and proposed first responder services solutions as follows:

- A summary of all data and insight from the initial review of the Merced Fire Department's current service delivery system.
- A fully developed description and analysis of proposed changes or additions to revenue opportunities related to the Department's EMS service delivery system.

Triton has provided a list of findings and recommendations for both administrative and operational consideration and review.

Section I: OVERVIEW OF THE FIRE DEPARTMENT & EMS SYSTEM

THE CITY OF MERCED

The Merced Fire Department (MFD) has a long history of dedicated service to the Merced Community and this dedication continues today. The Department was established in 1873 and currently provides fire, rescue, and emergency management services for the citizens and visitors of the City of Merced.

The MFD operates out of five strategically located fire stations and responded to 11,230 calls for service during the 2020 calendar year. The Department employs 63 public safety members and 3 support personnel.

City History

The City of Merced's commercial and industrial districts were established by 1875 with hotels, stables, small stores, warehouses, and industrial buildings behind the railroad tracks. Merced also had three distinctive residential districts within a few years, a street light system, and a water system, and in 1889 the city incorporated and by 1890 the city reached a population of 2,009 (City of Merced 2015). Transportation continued to have a major impact on the City of Merced when the San Francisco and San Joaquin Valley Railroad established a right-of-way through the city. After the turn of the century, growth and development slowed and residential development was limited to large 10 to 20 acre lots with large homes to the east of the city. The Yosemite Valley Railroad was constructed between 1905 and 1907 and located off the end of Main Street in the present-day Westgate Shopping Center, which brought new jobs to the City, a demand for goods and services, and a surge of commercial and residential development that took place prior to World War I. Around the 1920's Merced's residential districts expanded to the west near the Yosemite Valley railroad tracks and by the 1930's the population increased to 7,066. The opening of the Yosemite Highway (Highway 140) in 1926, the city further expanded with the increase in vehicle traffic and automotive-related businesses.

Merced continued to grow through the 1940s with the nearby airports and Merced Airfield (Castle Air Force Base). After World War II, the city expanded again and began developing their first zoning ordinance and redevelopment projects. By 1960, the City grew to 20,000 people and the Merced Junior College was established, the Merced Mall opened, and new single-family residential expanded. Soon after, the city adopted their first general plan in 1968, which foresaw the need for the University of California campus in the Valley. The 1960's also brought the construction of Highway 99, which divided downtown Merced into three distinct subareas: north Merced, central Merced, and south Merced, south of Highway 99. The City's population reached 37,000 by 1980 and an urban growth boundary was established that directed growth to the north and south to avoid prime agricultural lands and areas subject to high flood levels to the City's east and west. Again, the city grew through the 1980s and 1990s with residential construction and the population reached 55,608 (City of Merced 2015). It was not until the recession in 1990 that slowed the growth of the preceding decade. Around the same time, the city completed growth studies and directed growth to occur primarily north of northeast around Lake Yosemite. In 1995, the Lake Yosemite area was selected as the site for the present-day UC Merced campus and approximately 10 years later the campus opened in 2005. The city grew again after the second economic recession and by 2010 annexed another 3,800 acres of new residential, commercial, and industrial land, opened another hospital, and grew to a population of approximately 90,971. The City of Merced had steady economic growth in the following decade following the 2008 Recession, but in the initial years the City's downtown suffered as it lost retail and real estate value. This was a result of both the recession and the closure of the Castle Air Force Base in 1995 (Collins 2020). The city recovered with continuing development and primarily from the expansion of the UC Merced campus – the fastest growing public research university in the Country. The expansion of the university and the redevelopment in the city was largely accomplished through a public-private redevelopment effort to double the UC Merced campus by 2020 (known as Merced 2020). The expansion of the UC Merced campus resulted in a positive impact on the city, and this is visible with the development of a Downtown Center across from the City Hall that has moved hundreds of jobs into the city. The City has also focused on revitalization of the downtown through key redevelopment projects at historic downtown landmarks: the Tioga Apartments, the Manzier Theatre, and the El Capitan Hotel (Klein 2018). According to the City, the building industry did not slow down during the ongoing (2020- 2021) pandemic but continued to complete development projects through 2020 and into 2021. There were 1,974,217 square feet of construction added in 2020, 600,000 square feet more than 2019 (City of Merced 2021). The total number of building

permits was 3,727, and in 2020, the City processed the most single-family dwelling permits (723) and multi-family building permits (20) completed in the last decade. There were also 389 multi-family units added last year (City of Merced 2021). This growth has resulted in jobs, additional income, and new housing and businesses in the city.

Population & Demographics

The City of Merced was reported by the CA Department of Finance, May 7, 2021, to have a population of 90,971 and a county-wide population of 284,836. Merced is the largest city in Merced County and is the county seat. With a 2021 population of 90,971, it is the 101st largest city in California and the 410th largest city in the United States. Merced is currently growing at a rate of 0.67% annually and its population has increased by 7.40% since the most recent census, which recorded a population of 78,958 in 2010. Spanning over 23 square miles, Merced has a population density of 3,651 people per square mile.

The average household income in Merced is \$63,265 with a poverty rate of 29.31%. The median rental costs in recent years comes to \$1,005 per month, and the median house value is \$237,500. The median age in Merced is 29.4 years, 27.9 years for males, and 31 years for females.

Population Characteristics

According to the most recent American Community Survey, (ACS), the racial composition of Merced is:

Figure 1: Population Characteristics

Race	Percentage
White	53.70%
Asian	11.75%
Black or African American	5.41%
Native American	0.90%
Native Hawaiian/Pacific Islander	0.08%
Other Races	23.73%
Two or More Races	4.43%

Merced Adults and Income

There are 58,236 adults in Merced, 8,327 of whom are seniors.

Figure 2: Merced Adults

Age Dependency	Ratio
Age Dependency	65.6%
Old Age Dependency Ratio	16.7%
Child Dependency Ratio	48.9%
Female (41,232)	50.65%
Male (40,797)	49.35%

Figure 3: Income

Type	Median	Mean
Households	\$45,232	\$63,265
Families	\$50,013	\$68,446
Married Families	\$72,168	\$88,680
Non-Families	\$29,341	\$45,961

OVERVIEW OF THE MERCED FIRE DEPARTMENT

MFD Organizational Structure

Governance & Lines of Authority

The City of Merced is a Mayor / Council / City Manager form of Governance with one Mayor and one Councilmember for each of the six districts. The City Manager reports to the Council and the department heads report to the City Manager.

Figure 4: City of Merced Organization Chart

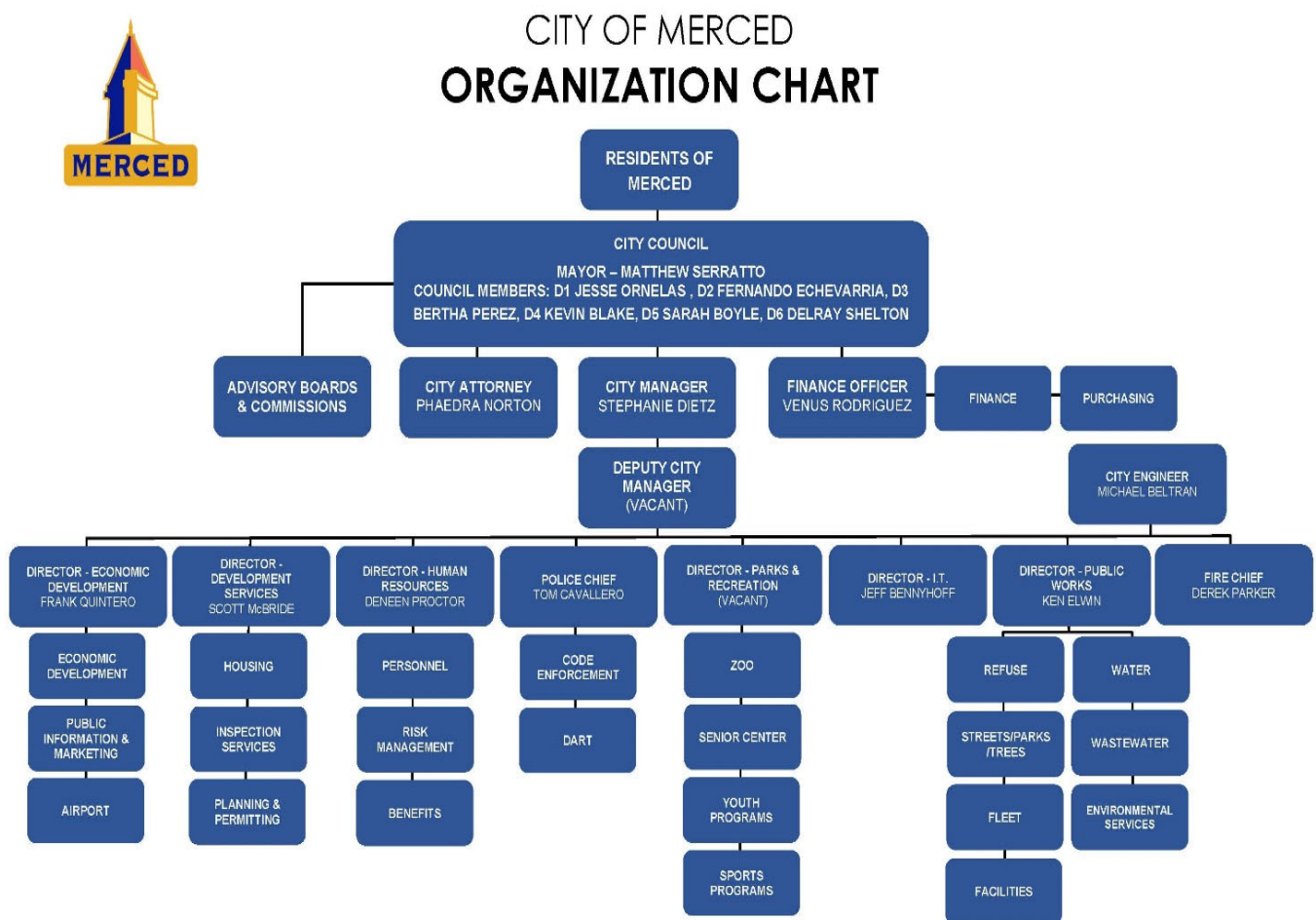
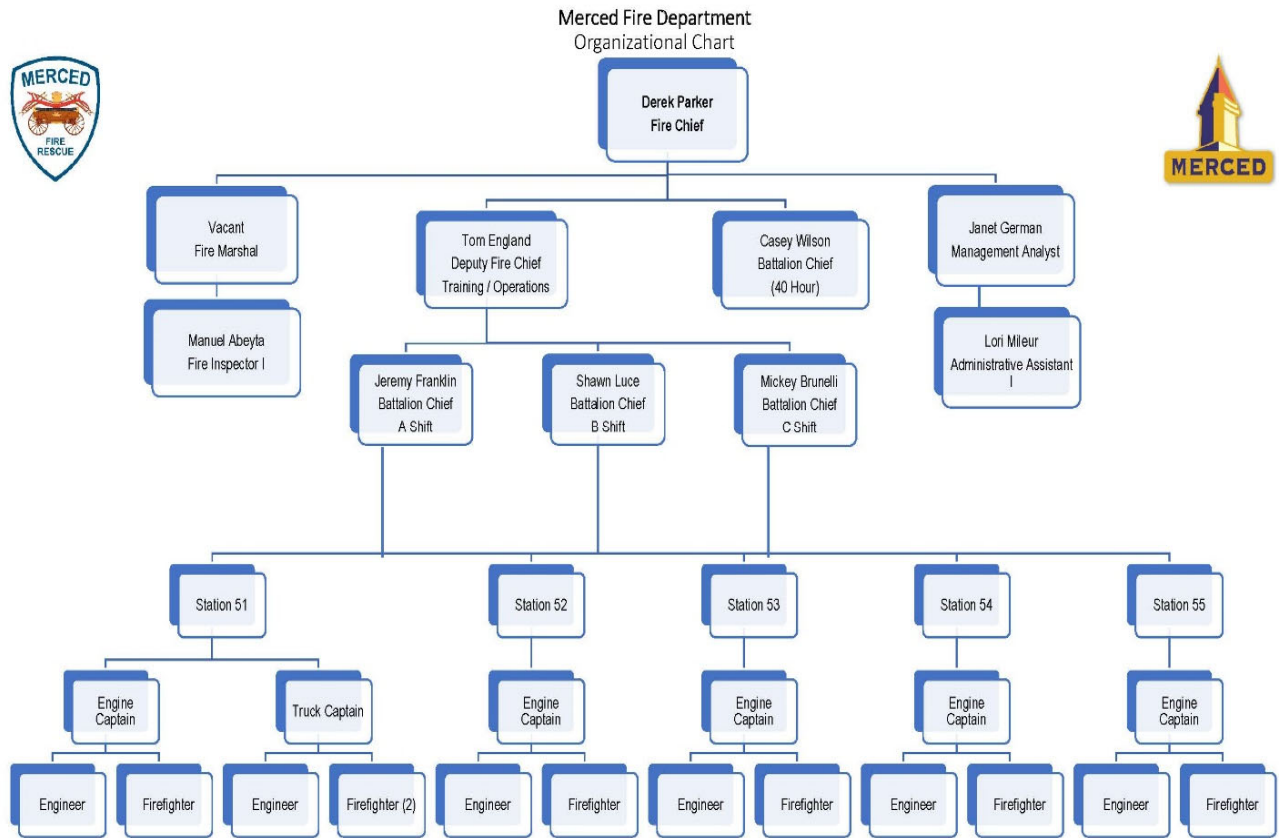


Figure 5: Merced Fire Department Organization Chart

General Operations

The Merced Fire Department operates out of five strategically located fire stations and in 2021, MFD responded to 12,084 calls for service. Organizational success is based on a safe working environment, equitable treatment, the opportunity for input, and recognition of the workforce's commitment and sacrifice. The size and structure of an organization's staffing are dependent upon the specific needs of the organization. Organizational priorities should correlate to the community. This section provides an overview of MFD's current staffing configuration, particularly in delivering emergency medical services during the 2021 calendar year. The Department has two full time Paramedics. All other operations staff are Emergency Medical Technicians (EMTs). The Department operates five fire engines and one ladder truck out of the stations. MFD also has two State OES engines.

Daily minimum staffing levels are as follows:

- 1 Battalion Chief
- 6 Captains
- 6 Engineers
- 6 Firefighters

Emergency Communications

Merced Police Department is the primary Public Safety Answering Point (PSAP) and dispatch for Merced Fire. Emergency Medical Dispatch (EMD) Services are transferred to Riggs Ambulance Dispatch for instructions to the public.

Fire Suppression & Special Operations

Merced Fire Department (MFD) operates out of five fire stations that are strategically located throughout the City of Merced. The fire suppression delivery system responds from a five-fire engine, one ladder truck platform. A Command officer is also included in the response. The MFD also provides special operations of swift water rescue, extrication, confined space rescue, and trench rescue services.

Emergency Management

Emergency Management is provided by the County of Merced, with the City of Merced as a partner agency. The County has an Emergency Operations Plan with the City of Merced, which is contained in Annex F.

Fire Prevention & Public Education

The Department's fire prevention efforts include fire safety inspections in buildings to ensure fire code compliance for fire and life safety, and public education programs.

Other Programs & Services

MFD provides Basic Life Safety to the community and its visitors and employs two full-time Paramedics.

FINANCIAL OVERVIEW

City of Merced

General Fund Revenues and Expenditures

AP Triton reviewed historical budget documents to provide a financial overview for the most recent five fiscal years. A summary of citywide General Fund revenue and expenditures is provided below.

Figure 6: Citywide General Fund Overview

	FY 17/18	FY 18/19	FY 19/20	FY 20/21 Budget	FY 21/22 Budget
Revenue	\$40,197,218	\$43,335,683	\$46,637,631	\$43,910,574	\$46,960,703
Expenditures	\$39,734,935	\$41,737,870	\$41,943,276	\$43,905,405	\$46,580,272
Surplus/(Deficit)	\$462,283	\$1,597,813	\$4,694,355	\$5,169	\$380,431

FY 17/18 – 19/20 Revenues are actuals, Expenditures are budgeted

As with most municipalities, taxes are the primary source of General Fund revenue, and personnel related costs represent the majority of expenditures. For FY 2021/22 the salaries expenditure summary line item represents 75% of the total appropriations, excluding transfers out.

The FY 2021/22 budget indicates an estimated General Fund Reserve balance of \$13,974,083, which is exactly the City's Reserve Policy target of 35% of operating expenditures. This is a healthy reserve and a good example of prudent financial planning.

Financial Review of the Merced Fire Department

Revenue

MFD receives a significant amount of direct revenue. The table below illustrates revenues by source.

Figure 7: MFD Revenues By Source – All Funds

Expenses	FY 17/18 Actual	FY 18/19 Actual	FY 19/20 Actual	FY 20/21 Budget	FY 21/22 Estimate
General Fund:					
Grants	\$25,736	\$24,905	\$40,826	-	-
Special Fire Dept Svc	\$475,902	\$386,852	\$91,484	-	-
Prevention Charges	\$229,982	\$256,444	\$222,781	\$155,964	\$236,403
Medical 1 st Responder	\$18,927	\$30,932	\$23,949	\$31,588	\$23,602
Inspection Fees	-	-	-	-	\$330,000
Admin Reimb-CFD	\$45,667	\$54,265	\$62,975	\$74,869	\$94,561
Admin Reimb-Meas C	\$231,958	\$298,469	\$319,873	\$304,930	\$330,426
Interdept-Develop Svc	-	-	\$81,353	\$107,244	\$34,161
Interdept-Water Sys	\$341,440	\$379,111	\$390,485	\$398,294	\$406,260
Miscellaneous	\$20,609	\$66,613	\$36,025	\$20,655	\$26,600
Other Revenues ¹	\$8,012,548	\$8,398,760	\$9,073,185	\$9,308,540	\$9,478,383
Total General Fund:	\$9,402,769	\$9,896,351	\$10,342,936	\$10,402,084	\$10,960,396
Measure C	\$2,520,113	\$2,642,884	\$2,634,733	\$2,617,420	\$3,038,994
Measure Y	-	-	-	\$179,996	\$1,064,016
Community Facilities Dist.	\$395,572	\$419,954	\$531,751	\$629,947	\$816,667
CIP Fund	-	-	-	\$950,027	\$950,027
Total MFD Revenue:	\$12,318,454	\$12,959,189	\$13,509,420	\$14,779,474	\$16,830,100

¹This represents the allocation from the City's General Fund

Beyond the City's General Fund allocation, the largest revenue is comprised of Measure C and Measure Y receipts. Measure C is a one-half cent sales tax approved by the voters, which became effective on April 1, 2006. According to the Comprehensive Annual Financial Report, the majority of Measure C funds are expended for Police and Fire services. This measure sunsets in 2026.

Measure Y is a Commercial Cannabis Business Tax for up to \$25 per square foot of cultivation space, or 10% of gross receipts. This measure was passed by voters in June 2018. Revenues are expected to increase in future years as more cannabis businesses are slated to open. Twenty percent (20%) of this revenue is allocated to Fire service.

The difference between MFD's direct revenues and total operating expenditures is bridged by a contribution from the City's General Fund. This is reflected as the "Other Revenues" of the General Fund categories in Figure 3 above.

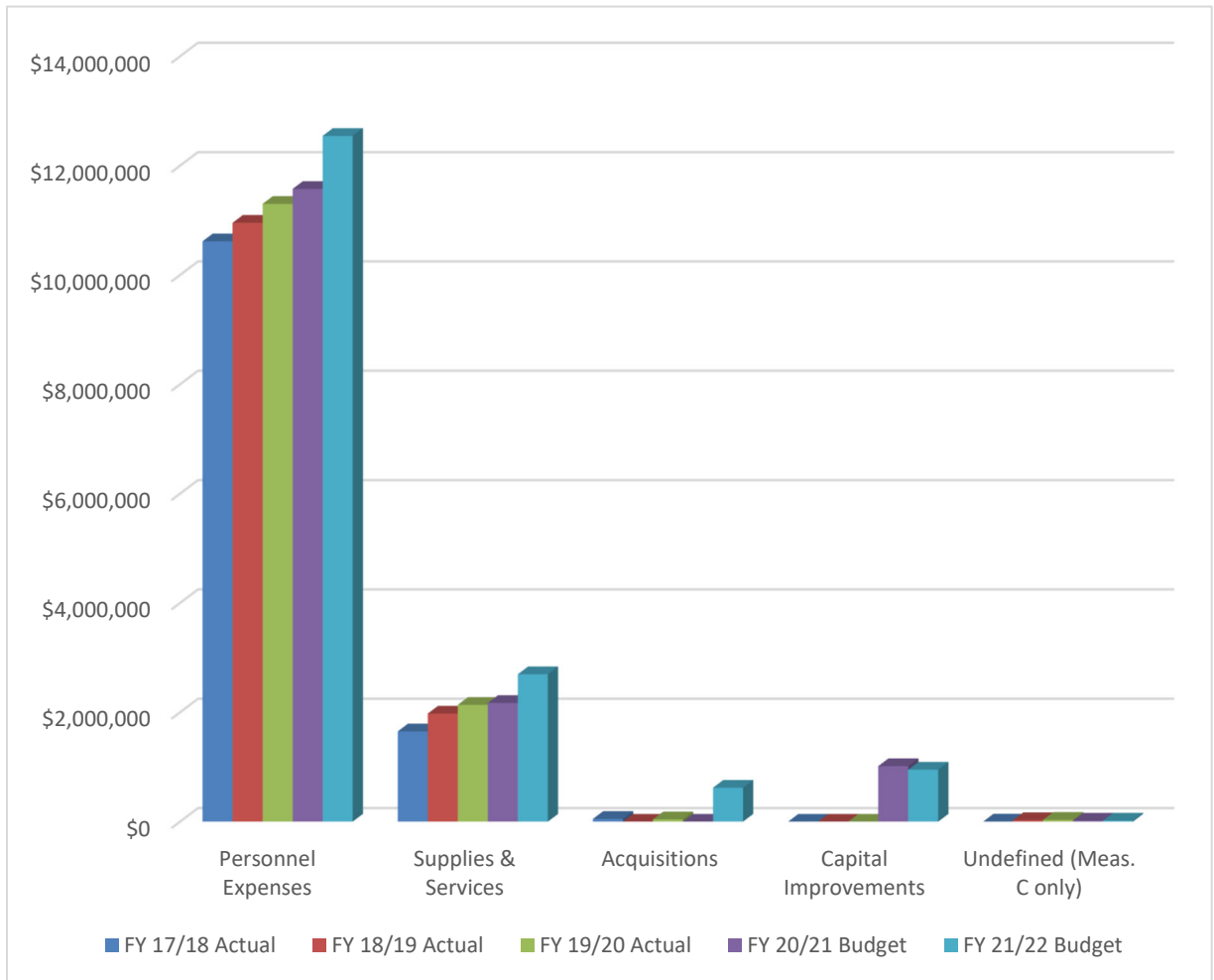
Expenditures

As noted in the citywide overview, the majority of the Fire Department expenses are also related to personnel costs. For FY 2021/22, Personnel Expenses represent 79% of the total Department expenditures across all funds, excluding capital improvements. A summary of the Department's expenditures by category is provided below.

For purposes of presentation, we have classified expenditures as either recurring or non-recurring. Recurring includes items that are anticipated on an annual basis and are usually quantifiable. Conversely, non-recurring items are items that may not occur annually or are not easily quantifiable.

Figure 8: MFD Expenditures by Category – All Funds

Expenses	FY 17/18 Actual	FY 18/19 Actual	FY 19/20 Actual	FY 20/21 Budget	FY 21/22 Budget
Personnel Expenses	\$10,616,911	\$10,954,837	\$11,301,510	\$11,574,983	\$12,544,843
Supplies & Services	\$1,650,972	\$1,976,915	\$2,137,041	\$2,171,748	\$2,696,536
Total Recurring Expenses:	\$12,267,883	\$12,931,752	\$13,438,551	\$13,746,731	\$15,241,379
Acquisitions	\$50,003	-	\$41,530	-	\$620,956
Capital Improvements	-	-	-	\$1,015,027	\$950,027
Undefined (Meas. C only)	\$568	\$27,437	\$32,339	\$17,716	\$17,738
Total Non-Recurring Exp:	\$50,571	\$27,437	\$73,869	\$1,032,743	\$1,588,721
Total MFD Expenditures:	\$12,318,454	\$12,959,189	\$13,512,420	\$14,779,474	\$16,830,100

Figure 9: MFD Expenditures by Category (graph)

OVERVIEW OF EMS OPERATIONS

MFD has provided first responder Emergency Medical Services for years, representing more than 71% of the Department's service demand in 2021. All response units provide medical first response at the Basic Life Support (BLS) levels, supplemented by Advanced Life Support (ALS) levels by the Fire Chief (Monday through Friday, eight hours/day) and one line Battalion Chief assigned to a shift. All frontline units are staffed with Emergency Medical Technicians (EMTs) and equipped and capable of providing BLS and, based on the availability of the two paramedics, ALS.

Dispatch & Communications

Dispatch is a function of the Police Department as in a dual dispatcher role. The Police primary PSAP functions as the fire and police dispatch, with Emergency Medical Dispatch (EMD) calls transferred to the private ambulance service.

Section II:

EMERGENCY MEDICAL SERVICES CAPABILITIES & ADMINISTRATION

MERCED FIRE DEPARTMENT EMS CAPABILITIES

Merced Fire Department responds to emergency medical services (EMS) incidents with the current line staff assigned to stations each day. The minimum staffing is three per engine, three for the truck with an occasional fourth person on the truck when staffing is full strength. This is augmented by one Battalion Chief / Paramedic (shift) that covers ALS on their assigned shift and the Fire Chief / Paramedic who responds when available Monday – Friday during business hours. MFD also has two full-time state licensed Paramedics.

EMS Training and Certifications for Fire Department Staffing

All Fire Department safety staff are CPR and EMT trained. The Department participates in 900 hours of EMS training per year.

EMS Training & Continuing Medical Education

Training Staff

MFD has a medical director (physician), who provides training based on the continuous Quality Improvement (CQI) results and Continuing Education Units (CEUs) needed in current trends and issues. Training Division and EMS Coordinator oversee this training.

Initial & Ongoing EMS Training

All safety staff come into the Department as trained EMTs and are CPR-certified. They are required to keep up the certifications as required by the EMS agency. The Paramedics also keep up the training and CEU's need to recertify their licenses. EMS training is ongoing and focused.

THE HEALTHCARE PAYER MIX

The sustainability of the healthcare system is dependent upon the payer mix within any given geographic location. Understanding how the payer mix impacts reimbursements will allow us to determine the value of the system. Once the payer demographics are determined, an estimate of reimbursement can be made. There are four basic cost centers for reimbursement: Medicare, Medi-Cal, Private Pay (uninsured), and Commercial Insurance. Depending upon the demographic, each cost center will have a different percentage of participants. The number of system users from each cost center will determine the total reimbursement that can be realized. However, the percentage of each cost center does not determine the multiplier for the system. If the four cost centers are equal (25% each), that does not suggest that 25% of the calls for EMS will come from each category. As we age, our health begins to deteriorate with time, and as a result, this smaller percentage of the general population tends to have a higher percentage of users within the system.

With respect to First Responder Fees, there are really only two categories that offer providers the opportunity for reimbursement—Private Pay and Insured.

Private Pay

Those who do not meet the threshold needed for receiving Medi-Cal and who do not have commercial insurance comprise the private pay payer mix. Because this group includes a wide range of the population, it will include those who have a very limited income as well as those who have well above average income levels. In the past, the most common demographic was those who were either employed by smaller companies who did not provide insurance to their workers or those who were self-employed. As a result, this payer mix comprises a combination of those who can afford to pay the full amount of the ambulance transportation costs and first responder fees, as well as those who cannot afford to pay any part of the fee. Within those parameters are those who can afford to make payments, as well as agreements to take a settlement for a partial amount. Because this group comprises such economic diversity as a combined group, it is typical to see an aggregate reimbursement rate equal to 1 to 2% of the full collection for this payer mix. However, with the implementation of the ACA and Covered California, this demographic is continuing to transition to the insured category. How this will impact the overall collection rate is still unknown, as many of the plans through Covered California have higher deductibles.

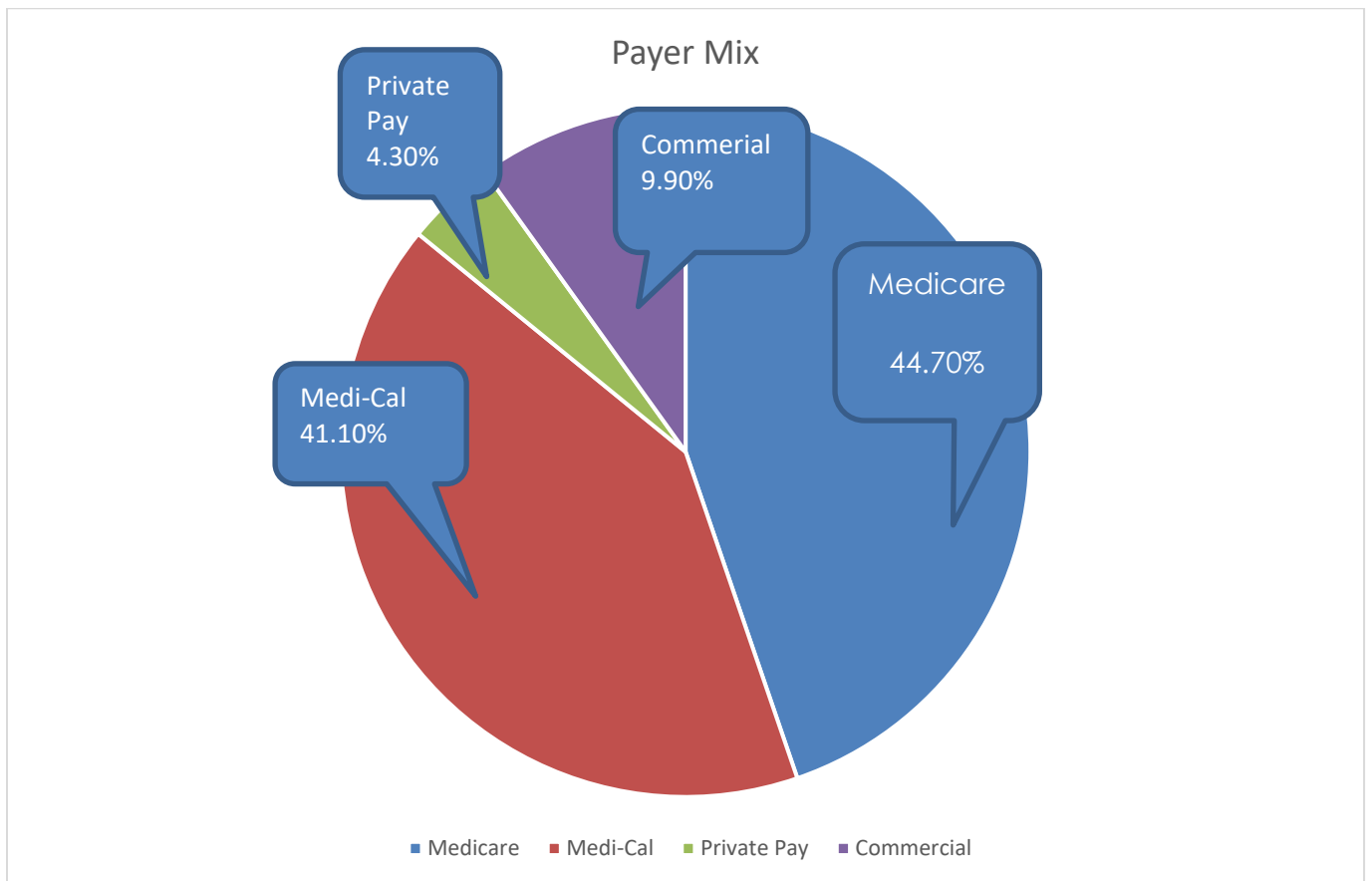
Insured

Those who have medical insurance, either through employment, private purchase, or other means, comprise the insured payer mix. Most medical insurances cover the cost associated with pre-hospital emergency service (PHEMS). For some insurance providers, there is a deductible or co-pay, however, most insurance services waive this when the patient receives services that originated through the 9-1-1 system. Private insurance typically does not dispute the fees charged for ambulance transportation and first response. For this reason, reimbursement is nearly 100%.

Medi-Cal/Medicare

Currently, neither Medi-Cal nor Medicare will pay the cost for first responder services as they are not a covered benefit. Medicare is actively involved in implementing the new Emergency Triage, Treatment, and Transport (alternative destinations) program (ET3). ET3 is a pilot program that attempts to look at opportunities where patients who would normally be transported to an emergency department can be serviced in a manner other than transport. While there are many places where this is already being done, the difference is that the Centers for Medicare and Medicaid Services (CMS) is now looking at reimbursement to those providers for not transporting. The current emergency transport system nationwide recovers costs from transport. Thus, any non-transport results in no payment and is considered uncompensated care. Therefore, the system has created an incentive to transport even though there may not be a critical need. Currently, there are minimal opportunities in California to participate, and eligibility is by application with a 25% trial study in each state. This is a very exciting opportunity for many first responder agencies.

As more people who previously were uninsured are enrolled in the Covered California program, the percentage of people who will secure some form of health care coverage will increase. This should reduce the number of uninsured "private pay" households but, at the same time, could increase the minimum deductibles that go along with these types of insurance policies through the statewide exchange.

Figure 10: City of Merced Payer Mix (FY 19/20)

REVENUE SOURCES

Current Revenue Sources

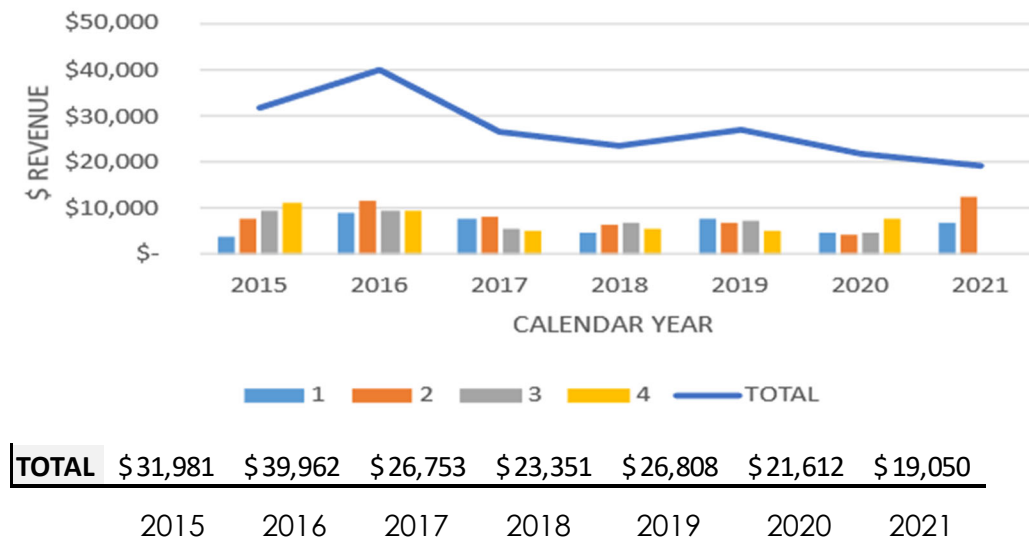
Before alternative revenue sources can be addressed, current revenue sources must be evaluated. As ambulance transport is provided by a third-party contractor, MFD does not obtain revenue from patient transports.

Currently, a "Fire Responder Fee" is assessed and collected based on the Exclusive Operating Area (EOA) for Emergency Ambulance Service - September 2019 that states: "Contractor shall agree to provide first responder fee that will bill a set fee for all first responder events where there is an ambulance transport and pass the net collected amount per event (less billing costs) to the first responder agency. The fee to be billed will be \$125.00 per transport. The Contactor will use prudent and normal industry billing standards for billing the fees. The method for invoicing, collecting, and distributing the fees shall be stated in the proposal."

Staff has shown that these First Responder fees are inconsistent and unverifiable (see Figure 11). Providing only the following revenue:

Figure 11: Payment History of LEMSA Mandated Fees

Riggs Ambulance First Responder Payment History by Quarter



This revenue source has not kept pace with the cost of providing first responder EMS services through the Merced Fire Department, nor allowed MFD to grow the ALS program. Therefore, evaluation of additional revenue sources is prudent. Currently, the City of Merced has a City Fees and Charges Resolution outlining a variety of fees for services provided. In order to address the costs of EMS services, the City has the option of adding a fee/charge specific to these services. This could come in the form of an alternative revenue source such as a "First Responder Fee," which would allow the City to recover costs the City incurs for providing those additional medical first responder services in conjunction with the third-party transport provider.

First Responder Fee Background

The concept of charging fees for services that are provided to the public but are not considered part of the services paid by the tax base is nothing new for the fire service. Fire agencies typically charge for services such as plan checks for new or remodeled buildings, sprinkler systems, and the inspections associated with these types of services. The fees aid in cost recovery of providing such services. The concept of charging for the response to PHEMS is not as common. Most cities, counties, and special districts routinely collect taxes for their fire services agencies. Generally, those taxes are collected to provide for the prevention, mitigation, and control of nuisance and out of control fires that threaten the community, but do not cover PHEMS. Because fire stations are located throughout the community, they provide a strategically located pool of trained personnel equipped and well-suited to provide response to PHEMS.

Firefighters at the Basic Life Support (BLS) and Advanced Life Support (ALS) levels have proven to be the cornerstone of EMS in cities, counties, and throughout the nation. Providing these strategically based Firefighters who are trained EMTs and Paramedics comes with a cost, which is commonly referred to as the cost of readiness. As the cost of readiness has been determined to be the most expensive component of providing EMS, the ability of the ambulance provider, either public or private, to provide 100% of the PHEMS response is not a cost-effective approach to the EMS system.

On the other hand, a well-developed, robust EMS system, which includes the transport component, will enhance the overall delivery of PHEMS to the community and improve patient outcomes. Providing this added-value service has often been assumed to be part of the services provided by the fire department.

The Warren 9-1-1 Act (AB 424) requires that when a person calls 9-1-1, they can request police, fire, and rescue services. As a result, Police Officers and Firefighters are required to be trained in CPR. Even today, the Act does not mandate that the request for services includes ambulances or that Firefighters provide medical services. As discussed above, the tax dollar allocated to fire agencies is for the prevention, control, and mitigation of out of control and nuisance fires that threaten the community. When an individual develops a medical condition that requires the use of the 9-1-1 or the PHEMS system, the likelihood that the condition will threaten the well-being of the community as a whole is minimal. As such, the response to the person requesting PHEMS is at the cost to all taxpayers and is a service for which those tax dollars were not intended. The impact to the taxpayer for the response to the PHEMS call has now impacted resources for the core mission of protecting the community; however, it is neither practical nor morally responsible for the fire department to cease response to PHEMS calls. This is particularly true when recognizing the benefit to the overall well-being of the common good of the community. It is practical though, and in some cases required (precedence for fire service Fire District Act of 1987), to consider cost recovery for those services that are not provided for or supported by the tax dollar. The taxpayer is not responsible for the use of the fire agency for medical care.

Because PHEMS is not usually considered part of the services provided from the collection of tax dollars, it is acceptable and legal to charge for those PHEMS services on a cost recovery basis. Governmental entities are allowed to conduct cost recovery programs and allowed under Federal and State regulations to include those costs associated with providing those services.

Those associated costs include the direct cost of services and the indirect costs of services. Direct costs are those costs that are directly related to providing the services. These include the Firefighters dispatched, along with the apparatus and supplies used to provide the services. Indirect costs are those costs associated with supporting those services such as supervision, maintenance, Finance, Human Resources, training, etc. Many of these indirect costs are internal services which are shared services between divisions within the fire department, or the local government if the fire department is a department within the local government structure. In either circumstance, the costs associated for providing these services must be calculated in a manner that justifies the charges. These charges are not intended to create a profit margin; they are intended to create a cost recovery system for supporting the EMS system.

The benefits of initiating a First Responder Fee (FRF) are numerous, with the most obvious being the rapid influx of revenue. With new revenue comes new opportunities for supporting and increasing services to the community being served. These opportunities can range from increased staffing, purchase of new equipment, expanded training, increased salaries, bonuses, or educational incentives for higher levels, or expanded licensure such as moving from BLS services to ALS services. It should be noted that all this new revenue comes with little to no change in the current delivery of services. In other words, the current delivery model will likely not require any changes. There may be some administrative changes or modifications to initiate an FRF, but those changes would be considered a direct cost of providing the services and thus be included in the charges for cost recovery.

There are numerous agencies across the state that have implemented First Responder Fees for service. There is no requirement to be an ALS provider, nor is there any requirement to be an ambulance transporter. First Responder Fees are not subject to LEMSA approval. The following agencies are just some of those which have established a FRF within their jurisdictions:

- Montclair
- La Habra Heights
- Corona
- Pine Valley
- Loma Linda

- Kirkwood
- San Bernardino
- Sunshine Summit
- San Ramon
- Folsom
- San Rafael
- Sanger
- Novato
- Albany
- Beverly Hills
- Glendale
- Burbank
- Sacramento Metro
- Cosumnes
- Moraga Orinda
- Huntington Beach
- Anaheim
- Costa Mesa
- Fountain Valley
- Contra Costa
- Chula Vista

These agencies have instituted fees that range from between \$300 to \$825 per response, with many additional agencies considering the implementation of FRF within the coming fiscal year.

Applying a simple methodology of the rough average of \$300 for each Merced Fire Department medical incident to the 8,176 EMS calls (estimate for 21/22), the value of the FRF is estimated to be \$2,542,800. Neither Medicare nor Medi-Cal reimburse for first responder services; therefore, if we apply the FRF to the commercial insurance only we can assess the value at \$361,778 annually.

There are several ways in which to bill for FRF services. One is to apply the fee to the City of Merced response area, in the ambulance rate as a line item in the ambulance bill. Although this is a very simple method, it can be somewhat challenging to both get the provider to carve out the fee from the explanation of benefits (EOB) but is also a very common way in which this type of fee is managed. The advantages to this option are that the rate is established city-wide. It is applied to the ambulance bill and can either be distributed to the City/FD by the ambulance provider or can be deposited into a fund that is distributed by the EOA administering authority based on whatever methodology has been agreed to.

This is very common throughout the state for first responder ALS services and is commonly referred to as FRALS. There is no requirement that this fee be applied only to ALS response. Another option is for each agency to determine if they want to institute an FRF. Providers who choose to institute an FRF for those services would establish a rate and bill for those services on their own, separate from the ambulance bill. This would allow each provider the option to bill for this service or not. It also allows each provider the ability to set their own rate for services as well as their own collection policies for those services.

First Responder Fees

Alternative revenue sources should be considered as just that: alternatives. The first thing to be completed is to create the most sustainable revenue structure possible, using standard billing and collection practices. After that, add additional revenue to supplement when possible. This includes MFD going to an all-ALS platform which will be a direct service improvement to the residents and guests of the City.

First Responder Fees (FRF) are those user fees that can be charged for the response of an engine, truck, or squad unit to medical calls. When calculating the costs of services for first response to an EMS incident, it is common to see first responder costs above \$300 per incident and up to \$825 or more for many fire departments of similar size and structure to MFD. These rates tend to range across California from \$275–\$850, based on the size and demographics of the respective service area. These fees, at the lower level, could yield a potential \$696,595 annually for the Merced Fire Department.

Billing & Collections Practices

Billing Policy

Should the City of Merced elect to adopt a First Responder Fee, establishing a billing policy is one of the primary steps needed to get the most monetary value from the system. When a service is provided, there is an assumption that there will be a charge for that service. There are numerous factors that will determine what is included in the patient billing policy. The more aggressive the policy, the more potential there is to collect revenue. There will also be a finite number of calls for service in a given period. While there will be fluctuations in call volume, significant or seasonal changes in service demand are predictable. Therefore, reimbursement for some services based upon the number of calls is relatively established and forecastable.

It should be noted that an increase in call volume does not necessarily reflect a direct correlation to an increase in revenue. The areas of the billing policy which will determine revenue are the collection policy, documentation accuracy, the billing provider's level of effort, and understanding the payer mix.

Collection Policy

The collection policy is the most significant aspect of the collection process affecting the revenue stream. The Federal regulations that control billing require that every patient receive a bill for services rendered. This is to prevent what is known as “cherry-picking,” where only specific groups of patients are billed. How aggressive an agency is with the collection of those bills is a matter of business philosophy. Most private ambulance companies—and hospitals for that matter—have extremely aggressive collection policies, while many public providers, like fire departments, are much less aggressive in this aspect.

The reason for this disparity is simple: the private sector is in the business of generating profit. For these companies, sending a patient for collection or placing them on a rigorous payment plan is a standard operating procedure. Conversely, in the public sector, there are political considerations and public relations concerns that must be addressed because most patients will also be taxpayers. A simple formula to consider is this: once the collection effort reaches a point where the return in either money or political consequences is less than the monetary gain, then the collection process should cease.

Documentation

The documentation provided by the transport provider in the Electronic Patient Care Reporting (ePCR) will play a significant role in the collection rate achieved by MFD. One area that is often overlooked is the proper training of personnel in the documentation process. This is necessary to ensure ePCRs accurately reflect the actual assessment and treatment provided. These actions will then capture the correct reimbursement rate. It is important to note that many calls that should be billed and paid are often found not to meet any reimbursement criteria and remain unpaid.

Billing Contractor's Level of Effort

The billing contractor plays a major role in the collection rate. The level of effort demonstrated by the billing contractor directly correlates to the collections received. There are two common ways public providers conduct billing for EMS or First Responder Fees. The first is to use an outside third-party billing company that conducts all billing on behalf of the provider. Their ability to collect depends on several factors—the most significant being the billing policy. A relaxed or vague billing and collection policy will result in less collection of revenue. When a city chooses to use an outside billing company, that expense should be included in the direct costs of the services.

Most billing companies base their fees on a percentage of the amount they collect, although some may charge based upon a fixed rate for each bill submitted. Should a provider have a billing and collection policy that allows a reduced amount to be collected, the biller will likely charge a higher percentage rate to meet its profit margin.

It should be understood that although there is a fixed and finite amount of money that is available in the EMS system, there are numerous variables that influence a provider's ability to collect that revenue. Establishing policies, training of personnel, and close monitoring of the delivery system will pay forward in collecting revenue. The advertised percentage of collections by billing companies is nearly irrelevant because it does not address all the facets of successful billing.

Section III: EMS OPERATIONS IN MERCED FIRE DEPARTMENT

OPERATIONAL STAFFING & DISTRIBUTION

Organizational success is based on a safe working environment, equitable treatment, the opportunity for input, and recognition of the workforce's commitment and buy in. The size and structure of an organization's staffing are dependent upon the specific needs and revenue of the organization. Organizational priorities should correlate to the community. This section provides an overview of MFD's current staffing configuration, particularly in delivering emergency medical services.

EMS Staffing Levels

The EMS delivery system is basically the same as the fire delivery system, meaning the engine crew of one Captain, one Engineer, and one Firefighter are the EMS first responders. The Department has two Paramedics that augment the BLS delivery system when available. A Shift Captain is the part-time EMS Coordinator augmented by others, including the Fire Chief as necessary. ALS (two paramedics) are available as follows: one Paramedic (Shift Battalion Chief) covers his shift for ALS calls and one Paramedic (Fire Chief) covers when available Monday – Friday 0800-1700. The Medical Director is a contractor and is also available for the Department's needs and CQI issues.

EMS Staffing Distribution

All EMS staffing is on a shift basis, with the exceptions of the Fire Chief, who works an administrative schedule, and the Medical Director who is on contract.

Theoretical Calculation for Required EMS Staffing

Focusing specifically on future Paramedic staffing, the Department requires six Paramedics per shift to fully staff apparatus. Based on the average sick and vacation hours taken per EMT in 2020, the following relief factors are calculated.

Figure 12: Theoretical Relief Factor Calculation

Description	Vacation	Sick	Combined
Relief Factor	1.15	1.06	1.13

The combined leave factor was multiplied by the number of personnel needed to cover one 24-hour position.

EMS Operational Staff Scheduling Methodology

MFD utilizes the 48/96 staffing schedule. Based on research, the City may consider the safety implications relating to the schedule. Research suggests more extended periods of off-duty time allows for the complete restoration of healthy sleep patterns.

EMS Hiring, Mentorship, & Retention

According to the U.S. Bureau for Labor Statistics, Paramedic demand is expected to grow by at least 6% over the next ten years. The need for additional Paramedics is considered higher than all other occupations.

The MFD hiring and training model has created an employment approach that hires intelligent, motivated, and committed Firefighters and Firefighter/Paramedics. In addition to the challenges associated with recruitment, Paramedic candidates must meet extensive minimum requirements.

Labor Agreements

The Memorandum of Understanding (MOU) between and for the City of Merced and the International Fire Fighters Association Local #1479 is valid through June 30, 2024. This outlines the fully loaded costs of fire personnel.

Current Wages & Benefits

The following figure indicates the fully encumbered costs of MFD Firefighter/Paramedic positions. Under the future MOU between the City and Local 1479, the base salaries of Firefighter/Paramedics will be 10% higher than the base salaries of Firefighters without the Paramedic certification.

Figure 13: Fully Encumbered Firefighter/EMT/Paramedic Positions

Position	Amount
Fire Chief (Paramedic)	\$259,573
Battalion Chief (Paramedic)	\$206,483
Captain (EMS Coordinator)	\$177,683
Firefighter (EMT)	\$125,969

HISTORICAL SERVICE DELIVERY & PERFORMANCE

A fire department must consistently evaluate its current and past performance to determine if it meets both internal and community expectations and standards, and to conduct future planning. An indicator of success is the balance of resources to the utilization of services. If the need for emergency service response exceeds the Fire Department's resources, then response time and other performance standards may be negatively impacted.

Incident Data Sources

Merced Fire Department provided Triton with EMS data from MFD's CAD records. The following figure shows the EMS incident records for 2021. The difference between dispatched and actual EMS incidents (818 incidents) results from a reclassification of the actual type of incident, such as a lift assist or being canceled enroute.

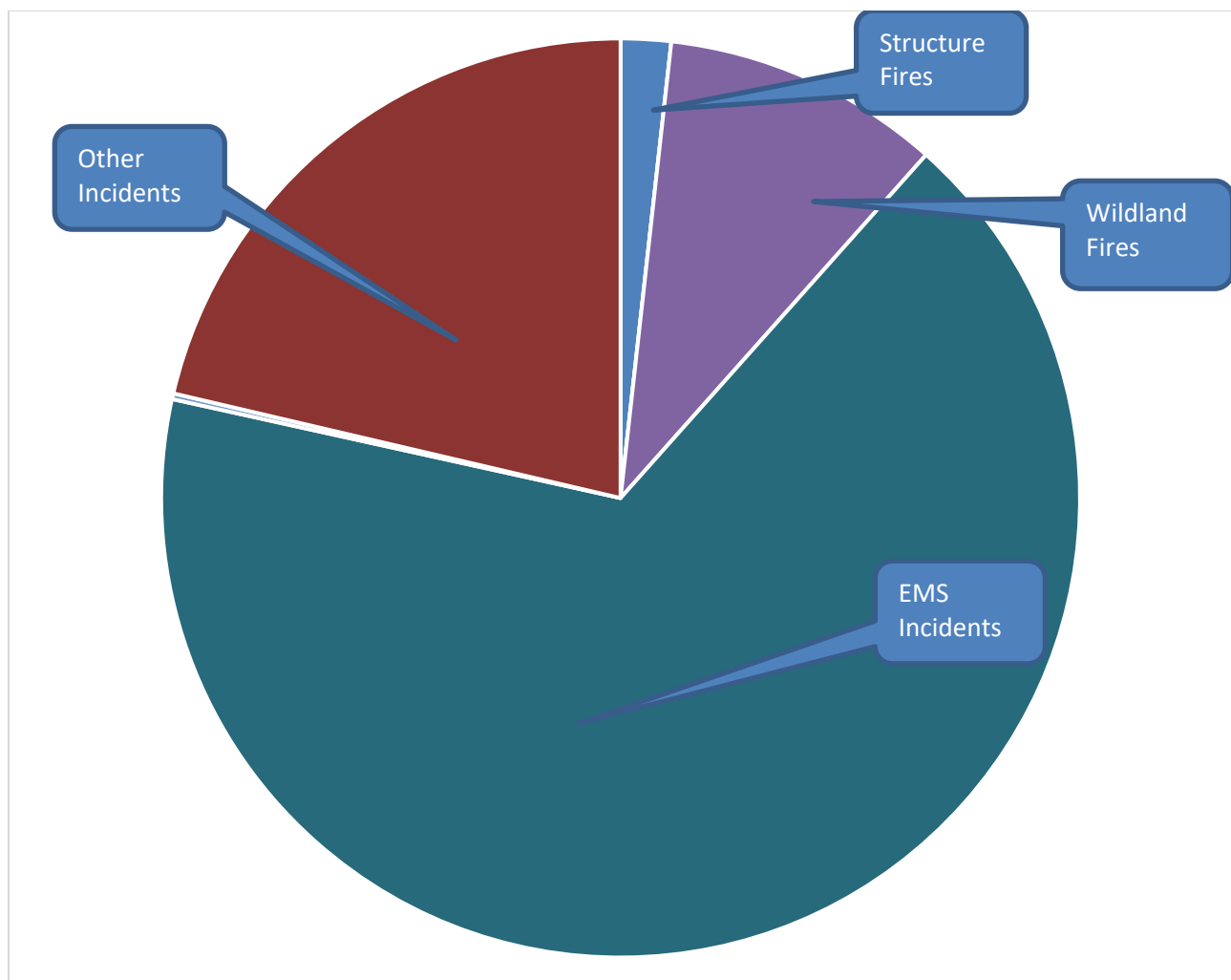
Figure 14: MFD EMS Incident Data Source (2021)

Year	EMS Dispatched per CAD Records	Actual EMS Incidents
2021	8,176	7,358

Service Demand

Service demand or system response workload is an important factor in determining the number of resources (stations, apparatus, and personnel) needed to provide the desired level of service. Higher service demands can tax resources and can result in diminished response time performance.

It must be noted that many EMS systems studied by AP Triton throughout the United States saw a decline in service demand. This was due to the COVID-19 pandemic, which was likely the case in Merced during 2020. The pandemic saw a period of time of office workers staying home, restaurants and bars closed, domestic travel restricted, entertainment venues closed, and people staying home. There was real fear of contact with others. The next figure illustrates responses by type for the year 2021. Emergency medical incidents are the most common at 64% of the total.

Figure 15: MFD Responses by Type (2021)

Section IV: FINDINGS, OBSERVATIONS & RECOMMENDATIONS

FINDINGS, OBSERVATIONS, & RECOMMENDATIONS

This section of the report contains various findings with the specific intent of providing the Merced Fire Department with recommendations that have been developed to improve the effectiveness, efficiency, and long-term sustainability of MFD's EMS delivery system.

EMS Administrative Functions

Financial Issues

- The City of Merced Fire Department is not receiving the first responder fee that is included in the EOA contract with the LEMSA and Riggs Ambulance Service. We do not know the terms of that agreement.
- The millions of dollars in fines that the County is collecting for non-compliance of the response times should be shared with the fire departments as their response and scene time is greater because of the delay in ambulance response.

First Responder Fees

These current fees provided by contract through the EOA exclusive operating area contract via Riggs Ambulance have proven to be inconsistent with the guidelines provided by the County EMS agency. It is nearly impossible for MFD to budget revenue from this fee as it has varied from month to month and year to year. This should not be the case as the EMS call volume has been consistent within a few hundred per year.

AP Triton has conducted numerous transport and First Responder Fee studies throughout California and the United States. Based on this experience, Triton is confident that the addition of a First Responder Fee could potentially generate over \$374,627 in increased revenue as discussed in pages 36-40 of this report.

Fire Operations Division Staffing & Infrastructure

- Emergency medical calls represent the highest demand for service in the City of Merced Fire Department.
- The EMS Operations portion of the Fire Department is currently supervised by an Captain position with assistance from other command staff, an administrative support position, the Medical Director, and CQI Nurse.
- There are mandatory and substantial legal and regulatory requirements necessary to effectively manage the EMS administrative functions in an organization the size of MFD.

Training & Continuing Medical Education

- When developing their respective training schedules, there appears to be coordination between the EMS Division and the Training Division staff.
- Fire crews attend on-duty in-service training and also attend classes on overtime shifts.

EMS Quality Improvement

- The Merced Fire Department's EMS Division has developed a well-written and comprehensive EMS Quality Improvement (QI) Plan that addresses numerous elements of the EMS delivery system.

EMS Operations & Deployment

The Merced Fire Department currently staffs five engines and one truck company 24 hours per day, seven days per week. The frequency of requests for EMS-related service is not consistent throughout the day. The workload is much greater during the day than at night.

Projected Financial Impact to Implement a First Responder Fee

Cost of Providing EMS first response as an Added Value to the System

Once calculated, the actual cost of providing EMS as an “added value” to the system can be startling, especially considering that tax dollars were not designed to cover the cost of providing this service. The actual cost of providing EMS by the MFD's First Responder system is approximately **\$4,492,365** annually.

Salary for Engines/Truck

Using the fully encumbered personnel costs provided by the Department, a rate for service will be broken down based on department-wide costs along with a cost per EMS incident. While the Department currently has two Paramedics and all EMTs staffing the engines and truck, the cost breakdown captures the cost of 100% firefighter staffing as this would reflect the maximum cost for these positions.

MFD uses all engine companies as the primary First Responder. There is currently only one truck company which is second due in their district. Using the following FY 20/21 budgeted personnel costs, we can illustrate the total costs:

Figure 16: MFD Operations General Fund Costs, Projected (Adjusted Budget) FY 21/22

Expenses	FY 21/22 Projected
Salaries & Wages	\$6,269,320
Benefits	\$3,375,789
Total Salaries & Benefits:	\$9,645,109
Services – External	\$1,345,220
Services – Internal	\$1,351,316
Material & Supplies	\$98,899
Capital Out Lay	\$88,567
Total MFD Suppression:	\$12,529,111

Figure 17: Calculation of Hourly Personnel Cost Based on FY 21/22 Adopted Budget

Expenses	FY 21/22 Projected
Salaries & Wages	\$6,269,320
Benefits	\$3,375,788
Total Salaries & Benefits:	\$9,645,109
Staffed Units – 24/7	6
Hours per Day	24
Number of Days	365
Total Hours	52,560
Hourly Rate – Personnel Costs	\$183.51

Other Associated Costs Directly Related to EMS

The Merced Fire Department commits other resources to its EMS response. The following is a list of these additional resources.

Figure 18: Other Costs Directly Related to EMS Responses, FY 21/22

Expenses	FY 21/22 Projected
EMS Supplies	\$14,865
Fuel & Repairs for EMS	\$164,746
ePCR	\$18,540
Computer Costs	\$18,725
Training Costs	\$57,535
Gear & Equipment Costs	\$388,465
Medical Director	\$24,078
Insurance	\$119,321
Paramedic additional cost for 2	\$64,893
Depreciation of Response Units	\$697,242
Replacement Fund Annual Cost	\$98,290
Total Other EMS Related Costs	\$1,666,700

Dispatch is provided by Merced Police Department (MPD) at no cost to the Fire Department. The figures for dispatch are an estimated cost for MPD to dispatch fire incidents.

Figure 19: Allocation of Dispatch Costs to EMS Responses

Expenses	FY 21/22 Projected
Total Dispatch System Costs Fire Only (estimated)	\$1,301,952
Number of Calls (estimated)	11,586
Cost per Call (estimated)	\$112
Number of EMS Calls Dispatched	8,176
Dispatch Costs Attributable to EMS Fire Responses	\$915,712 (Estimated)

Determining the Actual Cost of Service

The average time for this calculation is based on CAD data for all EMS incidents. This includes items such as response time, time on scene assisting transport provider and patient or patient's family, assisting law enforcement, and returning to quarters. Experience has shown in other studies that First Responder personnel will spend an additional 30 to 40 plus minutes per call performing indirect tasks required for each EMS incident. These ancillary tasks include, at a minimum, incident reports, clean up, equipment/apparatus readiness, restocking of supplies, and drills/training, including recertification requirements.

There is a cost associated with creating and sending the invoices for the services provided. This cost is calculated at 12% of the charges for service.

Figure 20: Calculation of Total Cost of First Responder Services Per EMS Incident

Expenses	FY 21/22 Projected
Total Number of EMS Responses (minus cancelled)	7,358
Total Hours Committed to EMS Response	3,145
*Additional Hours for Report Preparation (@ 30 min/incident)	4,088
EMS Training Hours	553
Total EMS Related Hours	7,786
Average Company Hourly Rate	\$183.51
Costs of Providing EMS Services	\$1,428,809
Other EMS Related Costs	\$1,666,700
Dispatch Costs	\$915,712
Total Costs to Provide EMS Services	\$4,011,222
Billing and Administration Costs @ 12%	\$481,324
Total Costs	\$4,492,545
Cost Per EMS Incident to Provide Services	\$610.57

*Additional hours provided by MFD

Calculated Rate for First Responder Fee for Merced Fire Department

Using all the information available as noted previously, a calculated rate of \$610.57 for each EMS response will, when applied to the historical percentages received from potential payers of such fees, produce an estimated **\$379,287** in cost recovery for First Responder Services as shown below:

Figure 21: Calculation of Estimated Revenue from First Responder Fee Billings

Description	Amount
Total Calculated Cost of Providing First Responder Fee Services (including new billing fees)	\$4,492,365
Cost per Incident for Providing First Responder Services (total calculated cost divided by 7,358 EMS incidents)	\$610.57
Estimated Collections Based on Per Incident Rate	
Private Pay (7,358 total EMS incidents x 4.30% Payer Mix x 12% collection = 38 private pay incidents x \$610.57 cost per incident)	\$23,202
Commercial Insurance (7,358 total EMS incidents x 9.90% Payer Mix x 100% collection = 729 commercial insurance incidents x \$610.57 cost per incident)	\$445,106
Potential Collection from First Responder Fees at 80%	\$379,287

Calculated Impact of the Treat and Release Fee

The State of California acknowledges there is a cost associated with responding to a patient who does not want or need to be transported to the hospital. As such, the State Medi-Cal system compensates providers who respond to Medi-Cal beneficiaries who are not transported. Known as a Treat and Release (T&R) or Treat Non-Transport, the State pays the BLS rate for these responses. While Medicare does not pay for these services, most, if not all, commercial insurers readily pay these fees. In one case, a major commercial insurance provider has established a fixed rate of compensation in these circumstances. While the overall impact of these fees is minimal compared to the overall system revenue, it is important to recognize that there is revenue that can, and should, be collected from these encounters. This additional revenue added to the overall compensation for the system will reduce the impact on the taxpayers for the EMS services.

Assuming that we use the same FRF hourly rate as the T&R base rate and apply the additional charges such as oxygen, monitor, etc., the Department could see an additional \$10,000 in revenue.

Summary

When evaluating a department's fees for service, the ultimate goal should be to achieve 100% cost recovery or cost neutrality for the benefit of the taxpayer. In doing this, the Department is placed in a stronger financial position than if they are providing a service that requires subsidy from the General Fund. The leadership of the City and the MFD are acting prudently and responsibly by considering the implementations of First Responder Fees for services. By undertaking these actions, they are not only monitoring the financial impacts that healthcare has on the Department's operations, but they are also safeguarding the taxpayer's investment into their fire response system as well.

There are three basic components that drive a system's ability to be cost neutral: call volume, payer mix, and rates for service. For the most part, the only ability a provider has to influence cost recovery is to adjust rates or lower costs.

In most cases, it is impractical, and in some cases impossible, to lower costs as a mechanism to meeting cost recovery. The two primary methods to reduce cost are to decrease the personnel cost and reduce or modify deployment. Lowering personnel costs is often difficult due to contractual obligations between the Department and the labor groups. Therefore, a common method to secure cost recovery of Department EMS-related operating expenses is to develop and assess an FRF.

RECOMMENDATIONS

The following section includes a list of recommendations that Triton believes would contribute to improving the ability of the City to recover additional costs related to the provision of EMS first responder services by the Fire Department.

Financial Issues

Triton recommends the following to be considered by the City:

Emergency Medical Services

The Contract for the EOA held by Riggs Ambulance and the County of Merced, states (on page 25 of the RFP):

4.18 First Responder/PSAP Training and Coordination First Responder Fees

“Contractor shall agree to provide first responder fee that will bill a set fee for all first responder events where there is an ambulance transport and pass the net collected amount per event (less billing costs) to the first responder agency. The fee to be billed will be \$125.00 per transport. The Contractor will use prudent and normal industry billing standards for billing the fees. The method for invoicing, collecting, and distributing the fees shall be stated in the proposal.”

However, the contract does not specify how that \$125 First Responder Fee is being collected and how the City of Merced Fire Department can hold the contractor accountable for revenues. As stated in Figure 11, the revenue has varied from a high of \$40,000 to a low of \$19,000. This equates to a high transport volume of 320 for the \$40,000 and a low of 152 transports for the \$19,000 revenue. It is hard to believe that Riggs Ambulance transported only 152 patients, based upon the 7,358 EMS Incidents in the City of Merced in 2021. While we do not know the verbiage of the contract (the contract copy made available has the language blacked out), we can assume a few things: 1) the \$125 per call is only applied to non-Medicare and Medi-Cal transports, leaving Private Pay and Commercial Insurance being assessed the \$125 fee. Per the payer mix, the 38 Private Pay and 729 Commercial Insurance transports would amount to approximately \$95,000 of potential revenue to the MFD. The other assumption is that the fee is not being correctly applied to the transports appropriately.

First Responder Fees

- The City of Merced should consider and accept the First Responder Fee study as provided by AP Triton.

- The City should consider implementing the First Responder Fee as identified in this study and determine an FRF rate that is appropriate and acceptable, after considering all aspects of the impact to the City. A preliminary assessment indicates a First Responder Fee of approximately \$610.57 per call could be charged that, when applied to the commercial insurance portion of the payer mix and using an 80% collection factor, would result in approximately \$379,287 in additional revenue to the agency.
- The FRF calculation should be reviewed at least every three years to ensure the rate remains appropriate.
- A public education campaign should be designed, focusing on seniors, high risk, and other at-risk users of the system, to make the public aware of the need for this user fee.
- Educational information should be made available to the County Board of Supervisors and the City Council to be able to respond to questions from their respective constituents.
- Provide training to field personnel as to why the FRF is being implemented.
- Provide field personnel with appropriate talking points and responses to potential questions from patients and family members when questioned about the FRF.

Valuation & Rate Study

- To provide an accurate estimate of the total revenue possible, the City of Merced may wish to ask the County of Merced to conduct a complete valuation and rate study to clearly define the actual costs of services to the transport provider including the formula used in determining the fire responder fees that the contract states.
 - This should include a study of all direct, indirect, and ancillary costs to ensure the rates comply with any applicable standards, regulations, and Proposition 26.
- Consider hiring an outside firm to review the County of Merced Cost Reports to ensure the City is receiving its maximum allowable reimbursement.

Billing & Collection System

- The City should evaluate the capacity of its administrative staff to determine if the FRF billing and collection system can be performed in-house. Should the evaluation reveal the capacity is not sufficient, there are several third-party contractors that provide those services for a fee.
- The City is encouraged to adopt a billing and collection policy applicable to all medical related responses.
- The City should consider adopting a liberal waiver policy for those with an inability to pay.
- The City should ensure that a component of the billing process be an annual billing increase based on applying the most recent increase in the Consumer Price Index (CPI).

CONCLUSION

Sixty-four percent of the Merced Fire Department responses are related to EMS incidents. Allocating the costs of the response division of the agency results in total costs to provide this service in excess of \$4,492,545.

The City of Merced Fire Department has an opportunity to increase revenues to offset the costs of providing first responder EMS service with its fire apparatus and personnel. Implementing a First Responder Fee assessment may provide an estimated additional \$379,287 in revenue with the use of a third-party billing service. If the City can provide the billing, the net revenue increases, further offsetting the costs of providing EMS First Responder services. (Note: billing is a specialty with thousands of codes and processes to deal with. This should only be taken on if expertise is available in the City.) The County of Merced should conduct a System Valuation and Actual Costs Study of the transport provider to determine the cost of service and the method used to figure the fire responder fees.

Section V: APPENDICES

APPENDIX A: CONSTITUTIONAL PROVISIONS AND CASE LAW

(NOTE: the following are relevant constitutional provisions and case law. This does NOT constitute a formal legal opinion of this office.)

In sum, a general law city or county may exercise its police power authority under the California Constitution to charge a fee for its emergency response services, provided that the imposition of the fee does not conflict with general law. In this connection, the municipal cost recovery rule is part of the general law of the state and precludes any local government entity, including a city or county, from imposing a fee to recover the expense of providing emergency response services, absent statutory authority to impose such a fee. Hence, legislation may be appropriate to authorize a general law city or county to impose that fee.

If a city or county holds a charter, then the entity may impose that fee pursuant to the charter. In addition to police power authority under Section 7 of Article XI, a city that operates under a charter adopted pursuant to Section 5 of Article XI of the California Constitution possesses home rule authority that allows that city to make and enforce all ordinances and regulations with respect to municipal affairs, subject only to the restrictions and limitations contained in its charter. The charging of fees for an emergency response is directly related to the conduct of the business affairs of a city and to the operation of municipal service. Therefore, the imposition of these fees addresses a municipal affair, and that a charter city ordinance or regulation imposing such a fee would supersede conflicting general law.

The municipal cost recovery rule, as general state law, will not bar a charter city from imposing a fee to recoup the expense of providing emergency response, such as an ambulance response to a motor vehicle accident. Rather, the municipal cost recovery rule would bar only those cities not operating under a charter—that is, general law cities—from imposing such a fee.

City or County: Police Power

The State Constitution, as specified in Section 7 of Article XI, authorizes a city or county to make or enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with federal law, subject to two exceptions: 1. That it is local to the city or county, and 2. That it is not in conflict with general laws of state.

The general proposition is that a city or county may impose a fee as an incident to the exercise of the police power, even in the absence of statutory authority to impose the fee (see *In re Ackerman* (1907) 6 Cal. App. 5, 16).

Barring a general law to the contrary, a city or county may properly impose a fee for a service it provides, as a valid exercise of its police power under Section 7 of Article XI of the California Constitution. A general law limitation on the ability of a local government entity to impose fees to recover the expense of a public service is **the municipal cost recovery rule**, also known as the free public services doctrine, which is a common law rule of tort that prohibits a government entity from recovering the costs of public services from a tortfeasor absent statutory authorization (*Walker County v. Tri-State Crematory* (Ga. App. 2007) 643 S.E.2d 324, 327).

Municipal Cost Recovery Overview

The municipal cost recovery rule was adopted in this state when the court of appeal in *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 858-859 (hereafter *Abalone Alliance*) concluded that the County of San Luis Obispo could not recover, in tort, the costs of implementing a police blockade during the protest of a proposed nuclear power plant. In reaching its decision, the court cited the seminal case *City of Flagstaff v. Atchison, Topeka and Santa Fe Ry. Co.* (9th Cir. 1983) 719 F.2d 322 (hereafter *City of Flagstaff*) (*Abalone Alliance*, supra, at p. 858). In *City of Flagstaff*, the Ninth Circuit Court of Appeals, applying Arizona law, held that the municipal cost recovery rule prevented the city from recovering from the defendant railroad the fire, police, and other emergency costs incurred in evacuating a large area of the city after railroad cars containing petroleum derailed (*City of Flagstaff*, supra, at pp. 323-324). The *Abalone Alliance* court quoted the holding in *City of Flagstaff* that, "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" (*Abalone Alliance*, supra, at p. 858).

Courts applying this doctrine have left one avenue open to governments that seek to recover the costs of providing public services. That exception requires the existence of a provision that specifically authorizes the government to seek recoupment of the particular costs in question. As stated by the court in *Air Florida*, "it is within the power of the government to protect itself from extraordinary emergency expenses by passing statutes or regulations that permit recovery from negligent parties" (*Air Florida*, supra, at p. 1080). Therefore, the municipal cost recovery rule will not bar a local government from recovering the cost of its emergency response services if the fee is authorized by statute.

To summarize, a city or county may exercise its police power authority under the California Constitution to charge a fee for its emergency response services, provided that the imposition of the fee does not conflict with general law. In this connection, the municipal cost recovery rule is part of the general law of the state and precludes any local government entity, including a city or county, from imposing a fee to recover the expense of providing emergency response services, absent statutory authority to impose such a fee.

Charters

In addition to police power authority under Section 7 of Article XI, a city that operates under a charter adopted pursuant to Section 5 of Article XI of the California Constitution possesses home rule authority that allows that city to make and enforce all ordinances and regulations with respect to municipal affairs, subject only to the restrictions and limitations contained in its charter. This home rule doctrine dictates that, with regard to municipal affairs, municipal law takes precedence over conflicting general law (*Ransome Crummey Co. v. Bennett* (1918) 177 Cal. 560, 567). However, a charter city is bound by general state law in conflict with a municipal law if the intent and purpose of the state law is to address a matter of statewide concern to the exclusion of municipal regulation (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 584-585). Thus, the authority of a charter city under Section 5 of Article XI over its municipal affairs raises the issue of whether a charter city may, notwithstanding the municipal cost recovery rule, act under that authority to impose a fee to recover the expense of emergency response services.

Generally speaking, the term “municipal affairs” has reference to the internal business affairs of the city (*City of Walnut Creek v. Silveira* (1957) 47 Cal. 2d 804, 811). Furthermore, the provision of municipal services, such as the establishment and operation of municipal hospitals, whether in a proprietary or governmental capacity, is within the sphere of municipal affairs (*Beard v. City and County of San Francisco* (1947) 79 Cal.App.2d 753, 755). The charging of fees for an emergency response is directly related to the conduct of the business affairs of a city and to the operation of municipal service. Therefore, the imposition of these fees addresses a municipal affair, and that a charter city ordinance or regulation imposing such a fee would supersede conflicting general law. Thus, the municipal cost recovery rule, as general state law, will not bar a charter city from imposing a fee to recoup the expense of providing emergency response, such as an ambulance response to a motor vehicle accident. Rather, the municipal cost recovery rule would bar only those cities not operating under a charter—that is, general law cities—from imposing such a fee.

Similarly, a fee imposed by a charter city to recover the cost of emergency response by the city police directly relates to the internal business affairs of the city, as well as to the operation of municipal service. The imposition by a charter city of fees for a police response to an emergency addresses a municipal affair, and would prevail over conflicting general law, including the municipal cost recovery rule. Thus, the municipal cost recovery rule would not bar a charter city from imposing a fee to recoup the expense of a response by the city police department to an emergency, such as a motor vehicle accident.

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