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TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON DECEMBER 13, 2016
FROM:	LYNNE LIVINGSTONE MANAGING DIRECTOR NEIGHBOURHOOD, CHILDREN AND FIRE SERVICES and MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	COST RECOVERY FOR LONDON FIRE DEPARTMENT ATTENDANCE AT STRUCTURE FIRES

RECOMMENDATION

That, on the recommendation of the Managing Director, Neighbourhood, Children & Fire Services and the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following report **BE RECEIVED** for information, it being noted that Civic Administration does not recommend implementing fees for London Fire Department attendance at structure fires due to various risk, financial and public safety concerns.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None

BACKGROUND

As part of the approval of the 2016-2019 London Fire Department Operating Budget on March 10, 2016, Council resolved that:

Civic Administration BE DIRECTED to investigate and report back to the Community and Protective Services Committee, in 2016, with respect to opportunities for, and the viability of, cost recovery for Fire-related responses through property owners' insurance.

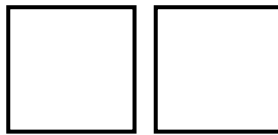
The purpose of this report is to fulfill this obligation to provide information related to the recovery of costs associated with attendance at structure fires through property owners' insurance.

DISCUSSION

Cost Recovery for Fire Services in London

The *Fire Protection and Prevention Act, 1997* (FPPA) authorizes a municipality to establish a fire department. The City has established a fire department, and it is continued and regulated under By-law F-6. The FPPA also provides that where a municipality establishes a fire department, it shall provide fire suppression services.

The London Fire Department (LFD) delivers both fire suppression and fire prevention and education services to the city of London. LFD's operating budget totals approximately \$56 million in 2016. An additional \$4 million is included in LFD's capital budget for 2016 to support vehicle, equipment and fire station lifecycle maintenance and replacement. Historically the Department has not charged a fee for attending most emergency incidents (e.g. fires, motor vehicles collisions, etc.). Instead, the costs incurred in the LFD budget associated with attendance at these incidents (e.g. firefighters, supplies, vehicles, etc.) are financed largely through the property tax levy rather than user fees. However, the LFD does impose charges for certain responses. Fees for services performed by the LFD are currently limited to:



- Attendance at motor vehicle collisions involving non-residents of London;
- Response to incidents on the 401 & 402 highways, the costs of which are set by the Province of Ontario and billed to the Ministry of Transportation (MTO);
- False alarms that meet the criteria of the False Alarm By-law;
- Various permits, searches and reports; and,
- Certain inspections such as recall inspections, business license inspections, etc.

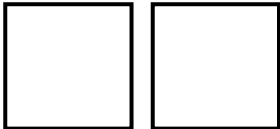
Section 14 of By-law F-6 also provides that the City may recover the costs of “prevention of fires; boarding up or barricading buildings, structures or things; retaining a private contractor; renting special equipment not normally carried on a fire apparatus; preserving property; preventing a fire from spreading; preventing damage to equipment owned by or contracted to the City; making safe an incident or property.”

Appendix A summarizes the current 2016 Fire Services user fees approved by Council. Revenues from these user fees (excluding inspection fees, which are recorded in Development and Compliance Services’ budget) totaled approximately \$113,000 in 2015, a relatively small component of the LFD’s approximately \$56 million annual operating budget.

Notwithstanding these very limited circumstances in which a fee is imposed for the services performed by the LFD, virtually all of the LFD’s operating and capital budget requirements are financed through the property tax levy. There are a number of principles supporting the recovery of these costs through the property tax levy rather than through a user pay model, including:

- The time spent by the LFD responding to calls for service is relatively small in proportion to the time spent on standby awaiting calls for service. The cost of this standby time is significant, as personnel costs in particular are incurred regardless of whether firefighters are responding to incidents or not. It would be unfair to recover the annual costs associated with this standby time solely from those who place calls for service during a particular year. In other words, it would be problematic to implement user fees to recover the costs associated with having the Fire Department available but not actively responding to requests for service. Implementing a user pay system for fire services may be more appropriate in a municipality that utilizes a volunteer fire service. In these municipalities, firefighters are compensated for training, which occurs once per week, as well as on a per call basis. Accordingly, the operating costs associated with these fire services are significantly less.
- As alluded to above, the majority of the LFD’s costs (e.g. personnel, vehicles, equipment, etc.) are fixed in nature. Labour costs, which account for approximately 95% of the LFD operating budget, do not fluctuate according to the number of calls for service, although vehicle movements/alarms do use fuel and result in vehicle maintenance and repair. Therefore, it is most appropriate to recover these largely fixed costs with a stable, consistent revenue stream such as the property tax levy. Conversely, it would be inconsistent with best financial management practices to utilize a variable source of funding (e.g. user fees that are dependent on the number of calls for service that occur annually) to finance a significant portion of costs that are primarily fixed.
- The LFD’s mandate is to reduce the number of fires within the City of London through proactive fire prevention and education efforts. Relying on user fees as a source of revenue – particularly those associated with responding to calls for service for structure or vehicle fires – is contrary to the LFD’s mandate.
- Charging fees for a Fire Department’s response to fires introduces a potential public safety risk in that property owners may become reluctant to call the Fire Department in an emergency situation for fear of incurring a fee. This may lead to individuals attempting to extinguish fires on their own, which is extremely dangerous and could result in serious injuries and further damage to the premises or other properties.
- Protective services such as Police and Fire are viewed as core services of a municipality that are appropriately supported by the property tax base.

For these reasons, among others, the London Fire Department’s operations are primarily financed through the property tax levy. As Council’s direction was to investigate cost recovery for Fire-related responses through property owners’ insurance, the balance of this report will focus on the recovery of costs related to responding to structure fires.



Legislative Authority to Impose a Fee or Charge for Services

Section 391(1) of the *Municipal Act, 2001* provides a municipality with the legislative authority to impose a fee or charge for services provided by it:

“Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons,

- (a) for services or activities provided or done by or on behalf of it;*
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and*
- (c) for the use of its property including property under its control.”*

It should also be noted that Section 394 of the *Municipal Act, 2001* outlines a number of restrictions regarding the imposition of fees/charges. For example, Section 394(1)(a) indicates that fees or charges cannot be imposed if they are based on, are in respect of, or are computed by reference to the income of a person, however it is earned or received.

Many smaller volunteer and composite fire departments, as well as a few larger municipalities such as Kitchener, Oshawa and Guelph, have exercised their authority under Section 391(1) of the *Municipal Act, 2001* to implement user fees to recover the cost of providing Fire Service response to structure fires. In order to recover these costs through user fees, the fees would first need to be established and included in the municipality’s fees and charges by-law.

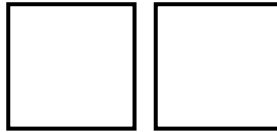
Municipal Scan

To determine the extent that Ontario municipalities have implemented charges for responding to structure fires, the LFD surveyed municipalities with full-time and composite fire departments throughout the province. The feedback of the municipalities that responded is summarized in Figure 1 below.

Figure 1: Experience of Selected Ontario Municipalities

Municipality	Population (2011)	Invoices Residents for Structure Fires?	If Yes, Uses a Third Party Service to Facilitate?	Approximate Annual Recovery (net of Third Party Fees)	Annual Recovery per 10,000 Residents
Toronto	2,615,060	No			
Ottawa	883,391	No			
Mississauga	713,443	No			
Markham	301,709	No			
Vaughan	288,301	No			
Kitchener	219,153	Yes	Yes	\$25,000	\$1,141
Windsor	210,891	No			
Burlington	175,779	No			
Oshawa	149,607	Yes	Yes	\$52,000	\$3,476
Barrie	135,711	No			
St. Catharines	131,400	No			
Guelph	121,688	Yes	Yes	\$15,000	\$1,232
Brantford	93,650	No			
North Bay	53,651	Yes	Yes	\$20,000	\$3,728
Cornwall	46,340	Yes	Yes	TBD – newly implemented	N/A
St. Thomas	37,905	Yes	Yes	TBD – newly implemented	N/A

For the municipalities in the table above that have implemented a charge for responding to structure fires, it was noted that the fees are not imposed unless they will be recoverable through the owner’s property insurance policy. Therefore, if the property owner does not have insurance coverage, the fee is not charged.



Cost Recovery for Structure Fires through Property Insurance

Property insurance policies vary from provider to provider, but many include provisions for reimbursement of fees charged to the policyholder by Fire Departments for attending a fire at the insured premises. Policies integrate the cost for this coverage into the total premium for the policy.

Insurance policies generally limit the amount of the fee to the direct costs of the providing the fire suppression service. Most insurance policies also include an upset limit for these charges – typically \$2,000-\$5,000 on most residential policies. The fees are typically determined in relation to the Ministry of Transportation (MTO) rate for emergency vehicle response plus any consumable supplies used in the fighting of the fire. Insurers generally consider the salaries of full-time firefighters as non-claimable as their salaries are not directly related to responding to a particular fire, however any overtime directly related to the call would be recoverable.

There are two models for administering this type of cost recovery program – contracting with a third party service or utilizing internal resources to facilitate.

Third Party Service

Civic Administration is aware of at least two companies offering to administer the cost recovery process on behalf of municipalities. The service model for both organizations is believed to be very similar.

The third party service provider collects and files the insurance claims with the policyholder's insurance company on behalf of the municipality based on incident reports provided by the Fire Department. They also collect the insurance proceeds and remit the funds to the municipality, net of their administration fee (generally 30% of the proceeds).

These third party service providers have the benefit of employing staff with extensive experience and network of contacts in the insurance industry, which may facilitate more efficient and effective recovery of claims.

It should be noted that through consultation with municipalities who have contracted with a third party to recover these costs through insurance claims, there is often administrative work to be performed by municipal/Fire Department staff up-front to prepare and consolidate the necessary reports and supporting information prior to submission by the contracted third party service. The range of staff involvement varied from department to department. Those fire departments reporting lesser involvement are significantly smaller, so it is understandable that any associated workload would be less than a larger fire department. One municipality claims that one FTE is devoted to the program. So while the third party manages the interactions with insurance companies, municipal and Fire Department staff are not entirely relieved of all administrative effort in order to facilitate the cost recovery process.

Additionally, at least one third party service provider only collects fees from those who have insurance coverage. This may be problematic given the provisions of the *Municipal Act, 2001* with respect to imposing fees and charges. Section 394(1)(a) indicates that fees or charges cannot be imposed if they are based on, are in respect of, or are computed by reference to the income of a person, however it is earned or received. It would appear then that under the Act a fee or charge cannot be imposed based on whether an individual expects insurance proceeds to cover the fee.

Recovery Using Internal Resources

The Corporation's Risk Management group currently pursues claims with insurance companies for other areas of the Corporation (e.g. auto accidents, damage to City property, etc.). Expanding Risk Management's mandate to include a structure fire cost recovery program would require an additional 0.5 FTE to administer the program. This model would eliminate the 30% commission retained by the third party service and allow 100% of the insurance proceeds to remain with the City. It is estimated that the cost of adding this 0.5 FTE would be \$42,000/year, noting that the addition of this resource is not included within the approved 2016-2019 Multi-Year Budget. As will be discussed later, the range of revenue estimates based on other Fire Departments' experience vary greatly.

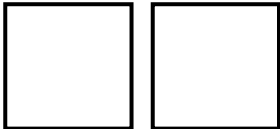
The primary non-financial benefit of an internal model for recovering the cost of attendance at structure fires is the development of further knowledge and expertise in this area.

As noted previously, any fee would need to be imposed for attendance at all structure fires, regardless of whether the property owner has insurance coverage or not, in accordance with Section 394(1)(a) of the *Municipal Act, 2001*.

Benefits and Challenges of Cost Recovery for Structure Fires through Property Insurance Policies

The following table outlines the various benefits and challenges associated with recovering the costs of fire department response to structure fires through property insurance policies:

Benefits
<ul style="list-style-type: none">Provides an opportunity to recover a portion of Fire Department costs through an alternative funding source, alleviating the requirement to recover that portion of costs through the property tax levy. This would be consistent with the fee-for-service principle of a user-pay model of cost recovery.
Challenges
<ul style="list-style-type: none">Imposing a fee exclusively on a group of people who are insured against those costs may be problematic. As previously noted, Section 394(1)(a) of the <i>Municipal Act, 2001</i> prescribes that fees or charges cannot be imposed if they are based on, are in respect of, or are computed by reference to the income of a person, however it is earned or received. It is arguable that insurance monies are income to a person, and therefore the City cannot collect a fee on the basis that a person is insured against such costs. The fee instead should be imposed for attendance at all structure fires, regardless of whether the property owner has insurance coverage or not. Doing so could result in a significant financial burden for those vulnerable individuals who are not insured against these charges.The invoicing of insurance companies for Fire Department charges may result in the insurers analyzing every operational element of the Fire Department's response to structure fires in order to avoid paying the claims. While the Fire Department may have acted entirely in accordance with standard operating procedures, it may be time-consuming and costly to justify this to insurers.Similarly, charging property owners for responding to structure fires may also increase the risk of legal action against the Fire Department, as property owners and insurers might attempt to challenge the fee imposed and the corresponding level of service provided by the Fire Department.In order to process claims with insurance companies, the property owner's insurance information must be obtained after the incident. Such an event can be a difficult and potentially traumatic experience for the property owner, and the requirement to provide insurance information could be an additional stressor. This would also be a difficult request for Fire Department personnel to make at that time. It should also be noted that property owners are not obligated to divulge their insurance information to Fire Department or other municipal personnel, which could complicate cost recovery efforts through property insurance.Other municipalities who have implemented this model have cautioned about the length of time it takes to recover claims that have been submitted. They have indicated that it is not unusual for claims to be processed 6 to 9 months or more after those corresponding costs have been incurred responding to a structure fire.Insurance companies are not obligated to provide any particular level of coverage for Fire Department charges as a component of property insurance policies. Therefore, the limits for this coverage could be reduced, or the coverage eliminated entirely, at the insurers' discretion. This would have a significant impact on municipalities that are reliant on this coverage for cost recovery purposes. Alternatively, insurers could increase premiums to offset an increase in costs related to Fire Department charges, thereby increasing the cost of insurance for property owners.



Financial Impact of Implementing User Pay Cost Recovery for Structure Fires

The municipal survey showed that the municipality closest in size to London using a third party provider to recover the costs of responding to structure fires is Kitchener, with the other municipalities having implemented this model being much smaller than London. To normalize the experiences of the responding communities, their reported annual cost recoveries were converted to an annual recovery per 10,000 residents (see Figure 1). It should be noted that the third party service provider retains a 30% commission, so the gross recovery amounts reported in Figure 1 would be higher. Alternatively, a similar program could be managed internally resulting in the City retaining 100% of the proceeds. However, an additional 0.5 FTE at an estimated cost of \$42,000/year would be required, thereby reducing the gross recovery by that amount. Figure 2 below provides the range of estimated annual cost recovery for London using high and low estimates based on the experience of the responding municipalities, as well as the average of the responding municipalities. As previously noted, other municipalities generally do not charge the applicable fees in the event that the property owner does not have insurance coverage. As a result, the amounts in Figure 2 would be slightly higher if the costs of responding to all structure fires were invoiced regardless of whether the homeowner has property insurance coverage.

Figure 2: Projected Cost Recovery (based on London’s population of 381,000 residents)

	Low	High	Average
<u>Gross</u> Estimated Annual Cost Recovery	\$62,000	\$203,000	\$130,000
<u>Net</u> Estimated Annual Cost Recovery (net of 30% third party service provider administrative fee)	\$43,000	\$142,000	\$91,000
OR			
<u>Net</u> Estimated Annual Cost Recovery (net of \$42,000 cost to administer program internally)	\$20,000	\$161,000	\$88,000

An analysis using actual LFD costs and structure fire data was also performed, which yielded a comparable range of estimated annual cost recovery.

It should be emphasized that any recovery of LFD costs through a user pay model would not be an incremental source of funding, as the same costs cannot be recovered twice through both the property tax levy and user fees. Instead any costs recovered from user fees would be offset by a corresponding reduction in LFD costs financed through the property tax levy.

It is also important to note that implementing fees for response to structure fires would not result in a consistent, reliable pattern of cost recovery from year-to-year. The amount recovered would be entirely dependent on the number of structure fires in a given year. Figure 3 shows that between 2008 and 2015, the total number of structures fires ranged between 162 and 295.

Figure 3: 2008 – 2015 Summary of Structure Fires

	2008	2009	2010	2011	2012	2013	2014	2015
Number of Residential Structure Fires	231	162	177	173	168	131	135	148
Total Number of Structure Fires	295	207	210	218	215	162	176	181

The LFD has placed a greater emphasis on fire prevention and education in recent years, and the number of residential structure fires has dropped from 231 in 2008 to 148 in 2015, noting that there were only 131 in 2013. It is hoped that the number of structure fires will continue to trend lower in future years. The goal of the LFD is to reduce fires, which is contrary to relying on them as funding source.

SUMMARY

The London Fire Department does not currently impose a fee for attendance at structure fires. Instead, the costs incurred in the LFD budget associated with attendance at these incidents are largely financed by the property tax levy. There are numerous reasons supporting the recovery of these costs through the property tax levy, including but not limited to:

- Recovery of the LFD’s largely fixed costs with a stable, consistent revenue stream, such as the property tax levy, rather than a more variable source of funding such as user fees;
- Avoiding a conflict between the LFD’s mandate to reduce the number of fires through prevention and education, and being reliant on the number of fires that occur as a source of funding for costs that will generally be incurred regardless of the number of fires that occur;
- Reducing the risk of citizens attempting to extinguish a fire on their own in an attempt to avoid a fee/charge associated with requesting the assistance of the LFD.

However, some municipalities in Ontario have implemented charges for Fire Department response to structure fires, which are often recovered by the municipality through provisions in the property owner’s insurance policy. This process can be facilitated either through internal resources or by contracting with a third party specializing in this service. Based on the experience of other municipalities who have implemented this model as well as an analysis of London-specific costs and structure fire data, it is estimated that London could recover in the range of \$43,000 to \$142,000 of costs annually for responding to structure fires, although this figure is subject to significant uncertainty and variability and it could take several years to achieve this level of recovery. There are also a number of legal, risk, and financial concerns that have been outlined in this report related to recovery of costs through property insurance policies. Due to these concerns, and the limited estimated amount that could be recovered annually, Civic Administration does not recommend implementing a fee for London Fire Department attendance at structure fires at this time.

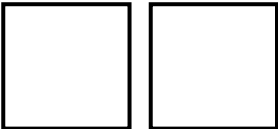
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- C.
- Doug Drummond – Financial and Business Services

Lynn Marshall – City Solicitor’s Office

Jason Wills – Risk Management

Gwen Francis, Lori Hamer, David Lazenby, Brian McLaughlin – London Fire Department



Appendix A

Current Fire Services Fees and Charges

Service/Activity	2016 Approved Fee
<u>Fire & Rescue Services</u>	
Fire Fighting	
i) Highway/Local Vehicle Incidents:	
First Hour (Per vehicle)	\$450.00
Additional 1/2 hour or part thereof	\$225.00
Flat fee for responding where services not required	\$450.00
ii) Hazardous Materials Incidents (per hour)	\$700.00
one hour minimum	plus consumables
iii) Open Burn Inspection	\$225.00
Training	
Recruit application	\$100.00
<u>Fire Prevention & Education</u>	
Fire Prevention	
i) Fire Inspections/Licencing:	
File Search Letter	\$34.00
Information Inspection/Report/Letter	
Up to 10,000 square feet	\$171.00
Every 10,000 square feet thereafter	\$84.00
Response report	\$36.00
Fire Investigation Report	\$160.00
Re-inspection for Non-compliance	\$75.00
Display Fire Works inspection / permit	\$269.00
Exemptions:	
a) Victoria Day fireworks display by the Fanshawe Optimists;	
b) Canada Day fireworks displays by the East London and River East London Optimist Clubs, Byron Optimists, City of London - Celebrate London Committee, and the Community Council of White Oaks;	
c) Lambeth Harvestfest fireworks display by the Lambeth Harvestfest Committee; and	
d) New Year's Eve fireworks display held by the City of London in Victoria Park	
<u>Fire Prevention & Education (cont'd)</u>	
Pyrotechnic inspection / permit	\$246.00
Open Air Burn Permit (Part 4)	\$70.00
False Alarms:	
Non notified false alarm	\$700.00
4th or more to the same building in one month (each)	\$700.00
6th or more to the same building in any calendar year (each)	\$700.00
ii) Training and Lectures	\$100.00
iii) Fire Safety Course (Public Education)	\$100.00

- NOTES:**
- Section 14 of By-law F-6 also provides that the City may recover the costs of “prevention of fires; boarding up or barricading buildings, structures or things; retaining a private contractor; renting special equipment not normally carried on a fire apparatus; preserving property; preventing a fire from spreading; preventing damage to equipment owned by or contracted to the City; making safe an incident or property.”
 - In the event of a spill of a pollutant during a fire, the City can act under s. 100 of the *Environmental Protection Act* to obtain compensation from the owner of the pollutant that has been discharged, for all reasonable cost and expense incurred in cleanup of the pollutant.