

# **Criminal Penalties and Recovering Fees for Negligent Actions**

**Government Performance and  
Financial Management Committee**

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# Overview



## Footing the Bill: The Free Public Services Doctrine (Municipal Cost Recovery Rule)

*Can the City recover costs from a negligent actor for the public services rendered because of the negligent actor's wrongdoing?*



# The Hypothetical Scenario



- A gas company employee accidentally cuts a gas line, resulting in responses by police and fire.
- No City buildings, automobiles, or other property are harmed.





# The City's Response



The City dispatches Dallas Police Department (DPD) officers to control traffic and secure the scene, and Dallas Fire-Rescue (DF-R) firefighters and paramedics respond to the gas line.



# Resources Expended



## Costs to Taxpayers

- As a result of the negligence of the gas company's employee, the City must expend public resources to respond to the emergency.



# Recovery of Costs for Emergency Response



**Can the City seek to recover costs expended in responding to the emergency caused by the negligent actor?**

*The Dallas City Council could adopt an ordinance that would allow for recovery of costs expended in responding to an emergency.*





# The Law on Municipal Recovery



## Would the City ultimately prevail?

*Most states apply the “Municipal Cost Recovery Rule,” also called the “Free Public Services Doctrine.”*

- A public body cannot recover the costs of rendering emergency services necessitated by a negligent actor's conduct.
- Costs incurred for wages, salaries, overtime, and other benefits of police, fire, and sanitation services are not recoverable.
- Cases filed by states and local municipalities against negligent actors have consistently been dismissed.



# No Authority in Texas to Recover Costs



- **Is there any legal authority in Texas that allows for recovery of these costs?**

- No Texas courts have addressed this issue.
- There is no statutory authority that allows the City to file claims against negligent actors.

Any legal authority would be based upon the City's home rule authority.





# Public Policy Considerations



- Police and fire might be accused of favoring more potentially lucrative accidents and events.
- Officials could be accused of over staffing personnel at scenes to obtain greater recoveries.
- People may not report a gas line cut if they might be subject to civil or criminal penalties.



# Criminal Liability



## Can the City make the negligent actions of cutting a gas line a criminal violation?

- Yes
- According to the Texas Penal Code, a person is criminally negligent when the person ought to be aware or should be aware of the risk surrounding such conduct.



# Criminal Liability



## Can the City criminally charge a company for the negligent actions of their employees?

- Yes.
- If the conduct constituting an offense is performed by the agent acting on behalf of the corporation, association, company, or other business entity and within the scope of the agent's office or employment.



# Criminal Liability



**If the City criminalizes the negligent actions of cutting a gas line, would the City have to prove the intent of the company or its agent in committing the negligent act?**

- No.
- If the City adopts an ordinance criminalizing the cutting of a gas line, it would be a Class C fine only offense, which has a maximum fine amount of \$500.00. Therefore, no culpable mental state would be required.





# Conclusion



Based on the current law, the City could adopt an ordinance allowing for monetary recovery in responding to emergencies. Additionally, the City could criminally charge a negligent employee or company when the employee should have been aware of the risks associated with such conduct.



# QUESTIONS

