

PRESS RELEASE

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FOR IMMEDIATE RELEASE

*CITY ATTORNEY ISSUES LEGAL OPINION TO MAYOR, CORPORATION COUNSEL
AND CITY COUNCIL DEMONSTRATING THAT MAYOR'S STORMWATER FEE IS AN
ILLEGAL TAX*

Fall River – City resident and Attorney Will Flanagan has challenged Mayor Robert Correia on the validity of his newly implemented stormwater “fee.” On August 15, 2008, Mayor Robert Correia approved Section 74-140 of the Revised Ordinances of the City of Fall River. Section 74-140 establishes a stormwater fee that charges Fall River homeowners and businesses for their impermeable surfaces. “Mayor Correia has deemed the storm water charge a valid fee, however a closer look at the construction and application of Section 74-140 resembles an illegal tax,” stated Attorney Flanagan.

The Massachusetts Constitution does not grant independent powers to cities and towns to tax its inhabitants, however municipalities can impose fees for the use of municipal services provided the fees meet specific criteria. Flanagan said, “The law is quite direct in providing the analysis that distinguishes whether a municipal monetary charge is an impermissible tax or a permissible fee.” The Massachusetts Supreme Judicial Court has held that valid municipal fees share common traits that distinguish them from taxes. They are charged in exchange for a particular governmental service, which benefits the party paying the fee in a manner not shared by other members of society. They are paid by choice, in that the party paying the fee has the option of not using the governmental service and thereby avoiding the charge, and the charges are not collected to raise revenue but to compensate the governmental entity providing the services for its expenses.

“In this case, the paying party does not receive an exclusive particularized benefit and the storm water charge is not being paid by choice,” Flanagan stated. Under the current Ordinance there is no means for a property owner to avoid the charge. “Section 74-140 removes a property owner’s right to choose and holds him or her hostage by providing a cost for stormwater runoff despite the fact that a resident’s property may not contribute any water to the treatment facility,” Attorney Flanagan stated.

Flanagan is also calling for an analysis of the cost of administering the Combined Sewer Overflow in conjunction with the compensation the City of Fall River has received from

its property owners. Section 74-140 does establish a dedicated Stormwater Fund in the city budget dedicated to the expenses of stormwater management. The Stormwater Fund cannot be used to increase revenue for the general fund however its main purpose must be to compensate the City of Fall River for its expenses in administering the Combined Sewer Overflow project.

“I call upon the Mayor to do what is just. Either move to have Section 74-140 repealed or have Section 74-140 redrafted to mirror the language of our Supreme Judicial Court. Anything less will be an injustice to our city and its people,” said Flanagan.

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