




MEMORANDUM

TO: Mayor and Council

FROM: Alex Gale, Interim Officer, Office of Real Estate Services (ORES) 

DATE: June 20, 2018

SUBJECT: Disposition of Public Easements and Rights-of-Way

City Code Chapter 14-11, Article 1 addresses the disposition of public easements and rights-of-way. Upon application by a private party, this code section defines the procedure utilized to either relinquish the public's interests and rights in either an easement or right-of-way, or allow a private party to encumber (either permanently or temporarily) an easement or right-of-way owned by the City.

On August 28, 2014, City Council approved Resolution 20140828-090 directing the City Manager to develop recommendations for modifications of this section of the code to capture the value of the release of public easements by the City, enhance consistency, and make other improvements across all divisions of the code section. The recommendations were to consider the public benefit to the City, the manner by which the City initially acquired the easement, and the scope of easement releases to ensure administrative efficiency and ensure that future projects (i.e. projects not currently in the development process) fairly compensate the City for the release of the public easement. As rights-of-way are a type of easement, they would also fall within the scope of the directive.

In order to address the issues raised in Resolution 20140828-090 and develop appropriate recommendations, the ORES held stakeholder meetings and engaged Matrix Consulting Group, a third-party consulting firm familiar with City of Austin practices, processes, budget and laws. The consultant conducted staff interviews, collected data, performed costs analyses, and reviewed their recommendations with departmental staff. A survey of comparable, fast-growing cities by ORES staff revealed that, on average, Austin's fees were lower than peer cities. The full study is attached.

Current Fees

Regarding fair market value, an applicant currently wishing to vacate right-of-way must pay an application fee of \$1,000 and compensate the City for the fair market value of the right-of-way as established by a third-party appraisal procured by the City. The City pays for the cost of the appraisal and the required public notices. An applicant wishing to have an easement released

must pay an application fee of \$435. The applicant is not required to compensate the City for the value of the easement and thus an appraisal is not procured.

When vacating right-of-way, in the event utilities occupy the area to be vacated the City retains a public utility easement to accommodate the presence of the utilities. The retention of a public utility easement over the area to be vacated significantly diminishes its fair market value, typically between 85-95%. In the Central Business District, some applicants have benefitted substantially from a financial standpoint by utilizing the right-of-way vacation process in tandem with the easement release process. This is best illustrated with the following example:

An applicant applies for a right-of-way vacation of an alley downtown. The fair market value of the alley would be \$500,000 but for the presence of utilities and thus the retention of a public utility easement by the City. The 90% reduction in fair market value resulting from the public utility easement results in the applicant compensating the City \$50,000 to purchase the alley. The developer subsequently re-routes the utilities that were in the alley and then submits an easement release application for the public utility easement. As the applicant is not required to compensate the City for the value of the public utility easement to be released, the net result is that the applicant purchases the \$500,000 alley for \$50,000.

This 'loophole' has largely been resolved via an evolution in the appraisal methodology we now instruct our appraisal consultants to employ with respect to valuing right-of-way. However, it remains the case that the City is not compensated for the value of the easements it releases.

Regarding the fees the City charges to recover the costs associated with processing encroachment agreements, the fees have not increased since the inception of encroachment agreements in 2013. In the case of license agreements, easement releases and right-of-way vacations, the fees have not increased in over a decade.

The Matrix Consulting Group study revealed that in FY18, assuming no changes to the current fee structure, the City is projected to recover approximately 18% of the costs associated with processing the aforementioned applications. Of the four services, the City undercharges for each one which results in an annual subsidy to fee payers of over a half-million dollars (\$536,119).

Recommendations

ORES recommends the following in order to recover costs and enhance consistency:

- value areas to be vacated and easements that will be retained, be it either permanent or temporary in nature;
- require compensation based on fair market value for easements being released (if associated with a right-of-way vacation);
- require applicants to pay for the cost of appraisals and any required public notification; and
- increase the fees charged for the various services.

	Current Fee	Recommended Fee
Right of Way Vacations	\$1,000	\$10,000
Easement Release	\$435	\$1,100
License Agreements	\$425	\$3,000
Encroachment Agreement	\$1,000	\$8,000

Please note that ORES's draft FY18-19 budget submittal incorporates these recommended fee increases. Please feel free to contact me at 512-974-1416 if you have any questions.

cc: Spencer Cronk, City Manager
Sara Hensley, Interim Assistant City Manager

Attachment: Matrix Consulting Group "Cost of Services (User Fee) Study"

Office of Real Estate Services Cost of Services (User Fee) Study

CITY OF AUSTIN, TEXAS

FINAL REPORT



April 2018

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1. EXECUTIVE SUMMARY

The report, which follows, presents the results of the Cost of Services (User Fee) Study conducted by the Matrix Consulting Group for the Office of Real Estate Services within the Land Management Services Department.

1 PROJECT BACKGROUND AND SCOPE OF WORK

The Matrix Consulting Group analyzed the cost of service relationships that exist between fees for service activities related to encroachments, easement releases, license agreements, and right-of-way vacations. The results of this Study provide a tool for understanding current service levels, the cost and demand for those services, and what fees for service can and should be charged.

2 GENERAL PROJECT APPROACH AND METHODOLOGY

The methodology employed by the Matrix Consulting Group is a widely accepted “bottom up” approach to cost analysis, where time spent per unit of fee activity is determined for each position within a Department or Division. Once time spent for a fee activity is determined, all applicable Division and Department costs are then considered in the calculation of the “full” cost of providing each service. The following table provides an overview of the cost components used to establish the “full” cost of providing services included in this Study:

Table 1: Cost Components Overview

Cost Component	Description
Direct	Fiscal Year 18 Budgeted salaries, benefits and allowable expenditures.
Indirect	Division and departmental administration / management and clerical support, along with Citywide overhead as calculated by the City through their Cost Allocation Plan.

Together, the cost components in the table above comprise the calculation of the total “full” cost of providing any particular service, regardless of whether a fee for that service is charged.

The work accomplished by the Matrix Consulting Group in the analysis of the proposed fees for service involved the following steps:

- **Staff Interviews:** The project team interviewed Office of Real Estate staff regarding their needs for clarification to the structure of existing fee items, or for addition of new fee items that are not listed on the current fee schedule.
- **Data Collection:** Data was collected for each permit / service, including time estimates and volume of activity. In addition, all *projected* costs and *budgeted* staffing levels for FY 18 were entered into the Matrix Consulting Group's analytical software model.
- **Cost Analysis:** The full cost of providing each service included in the analysis was established.
- **Review and Approval of Results with Departmental Staff:** Unit and Department management have reviewed and approved these documented results.

A more detailed description of user fee methodology, as well as legal and policy considerations are provided in subsequent chapters of this report.

3 CURRENT COST RECOVERY

When comparing FY18 fee-related budgeted expenditures with fee-related revenue generated in FY17 the Office of Real Estate Services is under-recovering its costs by approximately \$536,000 and recovering about 18% of its fee-related costs annually. The following table outlines these results:

Table 2: Cost Recovery Based on Fee-Related Revenue & Expenditures

FY17 Fee Related Revenue ¹	FY18 Projected Annual Cost	Surplus / (Deficit)	Cost Recovery Percentage
\$117,955	\$654,074	\$(536,119)	18%

As Table 2 indicates, the Office of Real Estate Services is recovering approximately 18% of its costs. The detailed documentation of the Study shows an undercharge for every service reviewed. Overall, the Office of Real Estate Services is providing an annual subsidy to fee payers for services included in this analysis.

The display of the cost recovery figures shown in this report are meant to provide a basis for policy development discussions among Department management, and do not represent a recommendation for where or how the Department should take action. The setting of the "rate" or "price" for services, whether at 100 percent full cost recovery or lower, is a policy decision to be made only by City Council, often with input from Department staff and the community.

¹ This is the total revenue for fee-related services and has been calculated utilizing workload and volume statistics provided by the Department along with current fee information.

4 CONSIDERATIONS FOR COST RECOVERY POLICY AND UPDATES

The Matrix Consulting Group recommends that the Department use the information contained in this report to discuss, adopt, and implement a formal Cost Recovery Policy, and also to implement a mechanism for the annual update of fees for service.

1 Adopt a Formal Cost Recovery Policy

The Matrix Consulting Group strongly recommends that the Department adopt a formalized, individual cost recovery policy for Office of Real Estate Services. Whenever a cost recovery policy is established at less than 100% of the full cost of providing services, a known gap in funding is recognized and may then potentially be recovered through other revenue sources.

The typical cost recovery level for encroachment and easement services is between 80-100% and is based on the Matrix Consulting Group's experience in analyzing local government operations across the United States and reflects the *typical* cost recovery levels observed by local adopting authorities. The cost recovery percentage represents the proportion of fee-related revenue to fee-related costs, and do not include non-billable or non-fee related services or activities.

The Office at Real Estate Services, at a cost recovery level of 18%, is significantly below the low-end of the cost recovery range seen for these types of services. In recent years, more local jurisdictions have adopted formal cost recovery policies at the department / division level. The Matrix Consulting Group considers a formalized cost recovery policy for various fees for service an industry Best Management Practice.

2 Adopt an Annual Fee Update / Increase Mechanism

The purpose of a comprehensive update is to completely revisit the analytical structure, service level estimates and assumptions applied in previous studies, and to account for any major shifts in cost components or organizational structures. The Matrix Consulting Group believes it is a best management practice to perform a complete update of a Fee Assessment every 3 to 5 years.

In between comprehensive updates, the City could utilize published industry economic factors such as CPI or other regional factors to update the cost calculations established in the Study on an annual basis. The City could also consider the use of its own anticipated labor cost increases such as step increases, benefit enhancements, or cost of living raises. Utilizing an annual increase mechanism would ensure that the City receives appropriate fee and revenue increases that reflect growth in costs.

2. LEGAL FRAMEWORK AND POLICY CONSIDERATIONS

A “user fee” is a charge for service provided by a governmental agency to a public citizen or group. In the State of Texas, the “user fee” must bear a reasonable relationship to the cost of providing the service or regulating the behavior, and there must be an authority to level the fee. This is based on *Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App. – San Antonio 1924 aff’d Comm’n of Appeals of Texas, Section A, 277 S.W. 89, 1925). Additionally, fees that generate revenue in excess of what a city needs to operate the program which the fee is charged can be found by a court to be considered an unauthorized tax. Therefore, it is essential to draw a nexus between the fully loaded cost of providing a service and the fee that is being charged for that service.

1 GENERAL PRINCIPLES AND PHILOSOPHIES REGARDING USER FEES

Local governments are providers of many types of general services to their communities. While all services provided by local government are beneficial to constituents, some services can be classified as globally beneficial to all citizens, while others provide more of a direct benefit to a specific group or individual. The following table provides examples of services provided by local government within a continuum of the degree of community benefit received:

Table 3: Services in Relation to Benefit Received

“Global” Community Benefit	“Global” Benefit and an Individual or Group Benefit	Individual or Group Benefit
<ul style="list-style-type: none"> • Police • Park Maintenance 	<ul style="list-style-type: none"> • Recreation / Community Services • Fire Suppression / Prevention 	<ul style="list-style-type: none"> • Building Permits • Planning and Zoning Approval • Site Plan Review • Engineering Development Review • Facility Rentals

Funding for local government is obtained from a myriad of revenue sources such as taxes, fines, grants, special charges, user fees, etc. In recent years, alternative tax revenues, which typically offset subsidies for services provided to the community, have become increasingly limited. These limitations have caused increased attention on user fee activities as a revenue source that can offset costs otherwise subsidized (usually) by the general fund. In Table 5, services in the “global benefit” section tend to be funded primarily through voter approved tax revenues. In the middle of the table, one typically finds a mixture of taxes, user fee, and other funding sources. Finally, in the “individual / group benefit” section of the table, lie the services provided by local government that are

typically funded almost entirely by user fee revenue.

The following are two central concepts regarding the establishment of user fees:

- **Fees should be assessed according to the degree of individual or private benefit gained from services.** For example, the processing and approval of a land use or building permit will generally result in monetary gain to the applicant, whereas Police services and Fire Suppression are examples of services that are essential to the safety of the community at large.
- **A profit-making objective should not be included in the assessment of user fees.** In fact, Texas laws require that the charges for service be in direct proportion to the costs associated with providing those services. Once a charge for service is assessed at a level higher than the actual cost of providing a service, it can be considered a tax.

Therefore, it is commonly accepted that user fees are established at a level that will recover up to, and not more than, the cost of providing a particular service.

2 GENERAL POLICY CONSIDERATIONS REGARDING USER FEES

Undoubtedly, there are programs, circumstances, and services that justify a subsidy from a tax based or alternative revenue source. However, it is essential that jurisdictions prioritize the use of revenue sources for the provision of services based on the continuum of benefit received.

Within the services that are typically funded by user fees, the Matrix Consulting Group recognizes several reasons why City staff or the Council may not advocate the full cost recovery of services. The following factors are key policy considerations in setting fees at less than 100 percent of cost recovery:

- **Limitations posed by an external agency.** The State or an outside agency will occasionally set a maximum, minimum, or limit the jurisdiction's ability to charge a fee at all. An example includes time spent copying and retrieving public documents.
- **Encouragement of desired behaviors.** Keeping fees for certain services below full cost recovery may provide better compliance from the community. For example, if the cost of a permit for changing a water heater in a residential home is higher than the cost of the water heater itself, many citizens will avoid pulling the permit.
- **Effect on demand for a particular service.** Sometimes raising the "price"

charged for services might reduce the number of participants in a program. This is largely the case in Recreation programs such as camps or enrichment classes, where participants often compare the County's fees to surrounding jurisdictions or other options for leisure activities.

- **Benefit received by user of the service and the community at large is mutual.** Many services that directly benefit a group or individual equally benefit the community as a whole. Examples include Recreation programs, Planning Design Review, historical dedications and certain types of special events.

The Matrix Consulting Group recognizes the need for policies that intentionally subsidize certain activities. The primary goals of a User Fee Study are to provide a fair and equitable basis for determining the costs of providing services and assure that the City is in compliance with State law.

Once the full cost of providing services is known, the next step is to determine the "rate" or "price" for services at a level which is up to, and not more than the full cost amount. The City Council is responsible for this decision, which often becomes a question of balancing service levels and funding sources. The placement of a service or activity within the continuum of benefit received may require extensive discussion and at times fall into a "grey area". However, with the resulting cost of services information from a User Fee Study, the City can be assured that the adopted fee for service is reasonable, fair, and legal.

3. USER FEE STUDY METHODOLOGY

The Matrix Consulting Group utilizes a cost allocation methodology commonly known and accepted as the “bottom-up” approach to establishing User Fees. The term means that several cost components are calculated for each fee or service. These components then build upon each other to comprise the total cost for providing the service.

The general steps utilized by the project team to determine allocations of cost components to a particular fee or service are:

- Develop time estimates for each service included in the study;
- Calculate the direct cost attributed to each time estimate;
- Distribute the appropriate amount of indirect cost components to each fee or service.

The results of these allocations provide detailed documentation for the reasonable estimate of the actual cost of providing each service. The following sections highlight critical points about the use of time estimates and the validity of the analytical model.

1 TIME ESTIMATES

One of the key study assumptions utilized in the “bottom up” approach is the use of time estimates for the provision of each fee related service. Utilization of time estimates is a reasonable and defensible approach, especially since experienced staff members who understand service levels and processes unique to the City of Austin developed these estimates.

The project team worked closely with Office of Real Estate staff in developing time estimates with the following criteria:

- Estimates are representative of average times for providing services. Estimates for extremely difficult or abnormally simple projects are not factored into this analysis.
- Estimates reflect the time associated with the position or positions that typically perform a service.
- Estimates provided by staff are reviewed and approved by the division / department, and often involve multiple iterations before a Study is finalized.

- Estimates are reviewed by the project team for “reasonableness” against their experience with other agencies.
- Estimates were not based on time in motion studies², as they are not practical for the scope of services and time frame for this project.

The Matrix Consulting Group agrees that while the use of time estimates is not perfect, it is the best alternative available for setting a standard level of service for which to base a jurisdiction’s fees for service.

2 FULLY BURDENED HOURLY RATES

Fully burdened hourly rates were developed using direct and indirect costs. For each Office of Real Estate staff position, the following hourly rate sub-categories were used to calculate the fully burdened hourly rate:

- **Direct Cost:** This category represents the cost associated with direct salary and benefits for each position. This cost factor also takes into account the amount of productive or billable hours available for each position involved in fee-related services.
- **Contractuals & Commodities Overhead:** This category represents cost associated with services and supplies. Expenditures associated with non-fee related services were excluded from this calculation.
- **Unit Overhead:** This category represents cost associated with internal staff support within a unit. These positions typically exist to provide support to other staff within the unit such as Administrative Assistants, Managers, Supervisors, etc.
- **Departmental Overhead:** This category represents costs associated with departmental administrative support such as employee relations and budgeting.
- **Citywide Overhead:** This category represents costs associated with central services such as communications and technology, and liability support.

These fully burdened hourly rates along with time estimates were the basis for calculating the full cost associated with fees / permits included in this Study.

² Time and motion studies include using a stopwatch to identify the exact amount of time taken for each process specific to a service. These studies require several months of time data collection and put a large burden on staff availability and resources.

4. FEE STUDY RESULTS

The motivation behind a cost of services (User Fee) analysis is for the Department to maintain services at a level that is both accepted and effective for the community, and also to define and revise current fee policies and allow for better management of these services.

Discussion of results in this report are intended as a summary of extensive and voluminous cost allocation documentation produced during the Study. The full analytical results were provided to Departmental staff separately

It should be noted that the results presented in this report are not a precise measurement. In general, a cost of service analysis takes a "snapshot in time", where a fiscal year of adopted budgeted cost information is used to determine the full cost of providing permit related services.

1 FEE SCHEDULE MODIFICATIONS

In discussions with Office of Real Estate staff, there was only one modification made to the fee schedule. The current fee schedule did not include License Agreements; however, the Office of Real Estate services processes those applications and lists it on their website. Therefore, the project team added the fee to the official Fee Schedule for the Office of Real Estate Services

2 DETAILED RESULTS

The Office of Real Estate Services collects fees for easements, license agreements, encroachments, and street / alley vacations. The total cost calculated for each permit includes direct staff costs, direct material costs (where applicable), and Departmental and Citywide Overhead. The following table details the fee title / name, current fee, total cost, and surplus or deficit associated with each permit processed by the Office of Real Estate Services.

Table 4: Total Cost Per Unit Results

Fee Name	Current Fee	Total Cost Per Unit	Surplus / (Deficit) per Unit
Easement Releases	\$435	\$1,096	\$(661)
License Agreements	\$425	\$3,037	\$(2,612)
Permanent Encroachments in Public Right-Of-Way	\$1,000	\$7,893	\$(6,893)
Street / Alley Vacations	\$1,000	\$9,881	\$(8,881)

All of the fees being charged by the Office of Real Estate Services are under-recovering. Overall, the average per unit cost recovery for the Office is 19%. The largest source of under-recovery for the Division is \$8,800 for a Street / Alley Vacations.

3 ANNUAL REVENUE IMPACTS

The Office of Real Estate Services is currently under-recovering its fee-related costs by approximately \$536,000. The following table shows the annual workload volume for FY 17, projected revenue, projected annual cost, and associated annual deficit.

Table 5: Annual Results

Fee Name	Annual Volume	Revenue at Current Fee	Annual Cost	Annual Surplus / (Deficit)
Easement Releases	108	\$46,980	\$118,333	\$(71,353)
License Agreements	127	\$53,975	\$385,650	\$(331,675)
Permanent Encroachments in Public Right-of-Way	9	\$9,000	\$71,039	\$(62,039)
Street / Alley Vacations	8	\$8,000	\$79,052	\$(71,052)
TOTAL		\$117,955	\$654,074	\$(536,119)

As the table above shows, the Office of Real Estate Services is under-recovering by approximately \$536,000 or recovering only 18% of its fee-related costs. The primary source of this under-recovery is the License Agreements, which accounts for approximately \$331,000 of the \$535,000 under-recovery or approximately 62% of the deficit.

5. CONCLUSION

The Office of Real Estate Services engaged the Matrix Consulting Group to determine the total cost of services provided to its citizens and businesses for Encroachment and Easement related services, the Matrix Consulting Group employed both a widely accepted and defensible methodology, as well as the experience and input of City staff to complete the necessary data collection and discussion to complete the analysis. Department management can now use this information to make informed decisions and set its fees to meet the fiscal and policy goal objectives of the City.

Overall, the results of this study indicate that the City is recovering approximately 18% of its costs related to easement and encroachment services. The City should review all circumstances and policy factors and raise fees where feasible. For fees that the City chooses to subsidize, policies should be established to outline target recovery percentages.