

**Austin Parks and Recreation Department
Financial Services Division
Finance Committee Presentation
May 10, 2021**



General Legal Framework Austin Process

- ▶ Austin's process for setting fees:
- ▶ Program determines if fee is needed, and if so, how much can we charge. Amount usually determined by fee study (formal ones are usually done by outside experts, informal can be done with assistance from Budget Office).
- ▶ **Annual adoption of the Ordinance Setting Fees and Charges** – part of budget process.
<http://www.cityofaustin.org/edims/document.cfm?id=158460>
- ▶ New Programs developed after budget may require amendments to fee ordinance.

Austin's Home Rule Police Power



- A **home rule city** may do anything authorized by its charter & not specifically prohibited or preempted by the Texas Constitution, state, or federal law.
- City may regulate a range of local activities to promote the general welfare of the city's residents.
- Austin's home rule police power authorizes a fee if the fee is regulatory and the amount is based on the cost of the regulation.

User Fees

- ▶ User fees are payments given in return for a government provided benefit.
- ▶ **4 criteria:**
 - ▶ Paid in exchange for a particular government service which benefits the party paying the fee in a manner not shared by other members of society.
 - ▶ Paid by choice - the party paying the fee has the option of not utilizing the government service and can therefore avoid the charge.
 - ▶ Paid to compensate the government entity providing the services for its expenses and not to raise revenue.
 - ▶ Based on actual costs to the city for expenses funded by the fee.

User Fee Examples

- Fees for swimming
- Park rentals
- After-school programs at recreation centers



General Legal Framework for User Fees

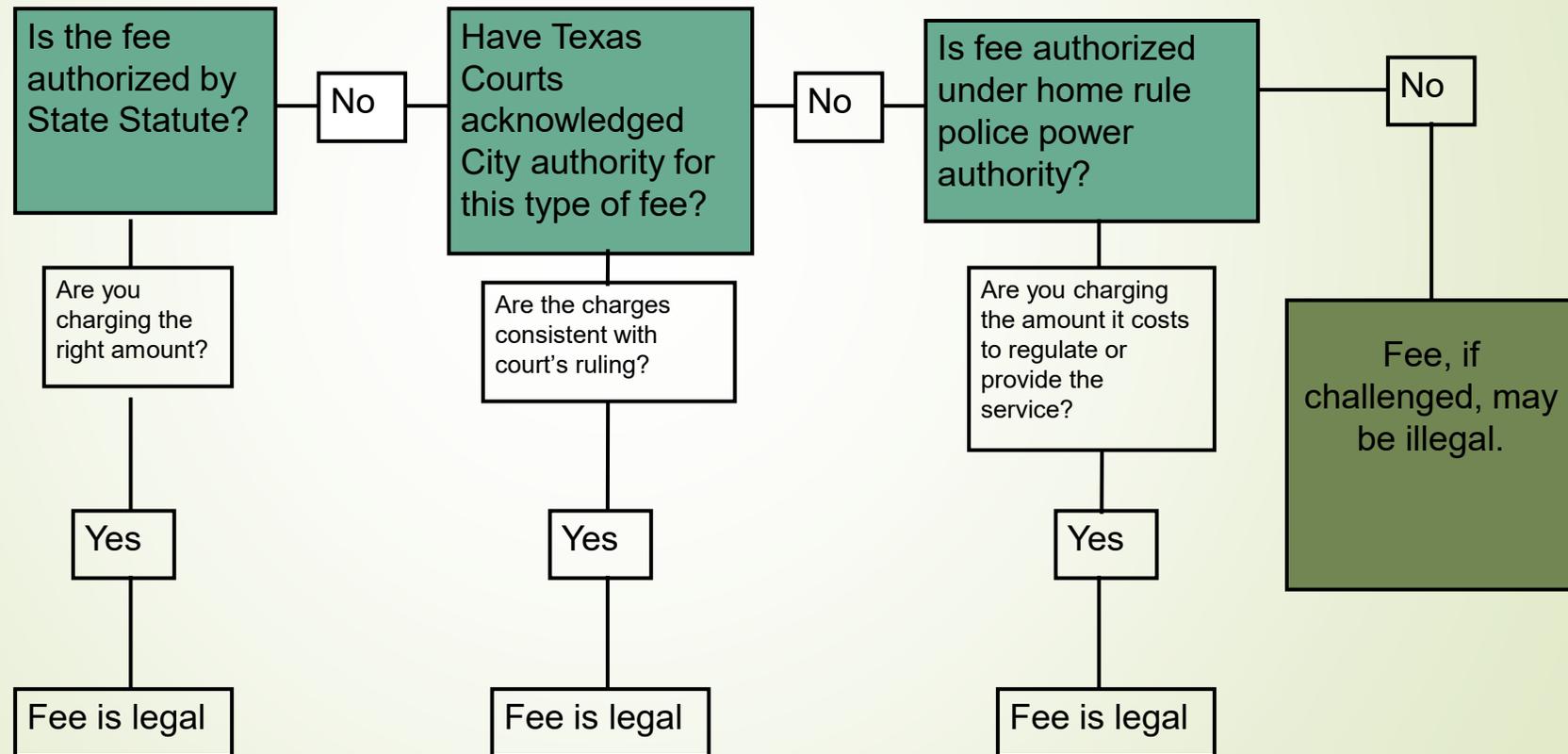
- All cities assess a variety of fees and it is legal to do that.
- The Texas Constitution prohibits cities from assessing unauthorized taxes.
- Fees that generate revenue in excess of what is needed to operate the program can be found by a court to be unauthorized taxes.
- No prohibition on charging more to outside of city users of services unless the amount is in excess of the cost to provide the service.

All Fees Must Have A Clear Legal Basis

- The City may charge a fee if the legal basis for the fee is sound and Council has approved it. The legal basis for a fee is sound if it is supported by at least 1 of the following:
 - State Statute allows it.
 - It is recognized by the Court or an Attorney General Opinion.
 - Home Rule Authority supports it.



If there is legal authority for a fee, the City can assess the fee



Example:

Concession Fee

(Loc. Gov't Code Sec. 331.006)



State statute permits the city to sell / lease concessions or privileges for amusements, stores, gas stations and other concerns consistent with the operation of a public park.

- Example: The Parks and Recreation Department has new application and use concession fees for Swim, Yoga, Martial Arts instructors, personal fitness trainers, triathlon trainers, dog trainers, paddle boarding and other vendors etc.

Courts can find fees to be illegal taxes if:

- ▶ The fees are:
 - ▶ in excess of the amount set by state law; **or**
 - ▶ In excess of the amount needed to provide the service; **or**
 - ▶ In excess of the cost to regulate an activity.

Basis for Challenge to User Fees

City alleged to charge more than the cost of regulating – therefore generating revenue for the City.

Revenue

- ▶ The word “**revenue**” means the amount of money which is **excessive** and more than reasonably necessary to cover the cost of regulation, and not that which is necessary to cover cost of inspection and regulation. Effectively, “**revenue**” is like “**profit**” and the City is not a **profit-making enterprise**.

Regulation

- ▶ The word “**regulation**” means to **control, govern, or direct by rule** or to subject to guidance or restriction or to bring or reduce to order, or to correct by control or to adjust with reference to some standard or purpose. A court will apply this definition to a proposed fee to determine if it is raising excess revenue or regulating the good or service.

Recap

- ✓ If a fee is set by statute, must charge what is set by that statute.
- ✓ If a law governs how to calculate a fee (such as open records act, utility regulations), must comply with those laws to calculate the fees
- ✓ Cities cannot charge unauthorized taxes.
- ✓ Fees that bring in more money than it costs to regulate an activity can be unauthorized taxes.
- ✓ To determine if a user fee is calculated properly, best practice is fee study.

