

A GUIDE TO REVENUE ADMINISTRATION FOR SMALL CITIES

INSTITUTE OF URBAN STUDIES • THE UNIVERSITY OF TEXAS AT ARLINGTON



A GUIDE TO REVENUE ADMINISTRATION

FOR SMALL CITIES

By: STANLEY E. WILKES, JR.

Research By: KAY W. CECIL

Edited By: DAVID W. TEES

INSTITUTE OF URBAN STUDIES
THE UNIVERSITY OF TEXAS AT ARLINGTON
SEPTEMBER, 1981

Publication of this report is made possible by funds available under the Texas Community Service and Continuing Education Program (Title I, HEA 1965) administered by the Coordinating Board, Texas College and University System.

Cover artwork by Barbara Bramman

FOREWORD

Commencing with California's passage of Proposition 13, cities and towns throughout the nation have been compelled to re-examine their reliance on traditional revenue sources. Whether or not there has in fact been a universal "taxpayer revolt", the economic conditions of the past few years have caused both city officials and the public at large to seek relief from the increasing burden of the property tax.

Believing that an analysis of other municipal revenue sources, whether existing or potential, might benefit Texas cities and towns, the Institute of Urban Studies obtained a grant under Title I of the Higher Education Act which is the funding basis of this manual. The purposes of the project were to identify non-tax revenue sources and to produce a tool to assist small city administrators in developing those alternative sources of revenue suitable to their particular communities.

The project was initiated and the survey of cities was designed and conducted by Kay W. Cecil, who was at the time Local Government Financial Management Coordinator at the Institute. The manual was written by Stanley E. Wilkes, Jr., an Arlington attorney who has over twenty years of experience in municipal law.

Acknowledging that there are no easy solutions to complex problems, the Institute of Urban Studies publishes this manual with the belief that it can be useful to small cities in their efforts to provide continuing good service to the citizens of Texas.

RICHARD L. COLE
DIRECTOR
INSTITUTE OF URBAN STUDIES

PREFACE

The challenge of the 1980's for cities is to continue governmental service at a level satisfactory to their citizens despite inflation and increasingly scarce resources. Recent history reflects a clear message from the taxpayer: Taxes in general and the property tax in particular are not an unlimited source of funds for public purposes. To meet this challenge, city officials must become more efficient in the use of existing financial resources and more innovative in designing and implementing programs to cultivate alternative revenue sources.

In mid-1980 Ms. Kay Cecil, who was at the time on the research staff of the Institute of Urban Studies, the University of Texas at Arlington, conceived of a project which might assist officials of small Texas cities in enhancing non-tax revenue sources. The project was designed to survey revenue sources and practices of cities in 23 states, to review the legal authority of Texas cities to pursue the reported revenue sources, and to provide small cities with a device for analyzing the non-tax revenue potential available to them. This manual is the product of those efforts.

The manual was prepared under the sponsorship of the Institute of Urban Studies. The author is indebted to several members of the Institute staff who assisted in the project at its various stages: Ms. Cecil; Jackie James, Research Assistant; Frank Anderson, Assistant Director for Research; David W. Tees, Assistant Director for Training and Services; and, Richard L. Cole, Director of the Institute. In addition, the project would not have been possible without the cooperation of officials from the 101 cities responding to our survey. Finally, I wish to thank my secretary, Ms. Gayle Quinn, for her assistance in manuscript preparation.

The material contained herein is not presented as representing, nor does it necessarily represent, the official position of any agency of government participating in this study or of The University of Texas System. The opinions and conclusions expressed are those of the author, who alone accepts full responsibility for them.

STANLEY E. WILKES, JR.

Arlington, Texas
September, 1981

TABLE OF CONTENTS

	<u>Page</u>
FOREWORD.....	iii
PREFACE.....	v
TABLE OF CONTENTS.....	vii
I. REGULATORY FEES AND SERVICE CHARGES AS A REVENUE SOURCE.....	1
II. A LOOK AT REVENUE PRACTICES.....	3
III. LEGAL PRINCIPLES AFFECTING NON-TAX REVENUES.....	9
IV. BUILDING AN ADMINISTRATIVE FEE STRUCTURE.....	15
V. DIRECTORY OF REVENUE SOURCES.....	27
A. TAXATION	
Occupation Taxes.....	29
Room Occupancy Tax.....	31
B. REGULATION	
Animals.....	33
Amusements and Recreation.....	36
Building Construction & Related Activities..	40
Businesses and Occupations.....	49
Food and Food Service.....	54
Health Care Facilities and Services.....	58
Motor Vehicles.....	61
Planning, Zoning and Development.....	64
Public Accommodations and Facilities.....	69

	<u>Page</u>
C. SERVICES AND ENTERPRISES	
Public Records.....	71
Health Care Facilities & Services.....	75
Recreation.....	76
Use of Public Property.....	82
Waste Collection & Processing.....	90
Water Service.....	95
APPENDIX A - Activity Locator.....	99
APPENDIX B - Business Activities Regulated by the State of Texas.....	105
APPENDIX C - Tabulations of Survey Responses	
C-1 Financial Management Practices.....	115
C-2 License, Permit & Service Fee Practices.....	118
C-3 Revenues by Source as a Percentage of Total Operating Costs.....	120

I.

REGULATORY FEES AND SERVICE CHARGES
AS REVENUE SOURCES

Inflation continues to devour scarce resources in the treasuries of local governments. Suffering from the same inflationary crunch, the public demands tax relief. The dilemma of elected officials and city administrators is one of "making ends meet" while maintaining an acceptable level of urban services. Much has been written and said during this time of financial crisis for local governments concerning the availability of alternative revenue sources. Many public officials feel duty-bound to extract the last drop of blood from the proverbial turnip.

There is no magic solution to the revenue plight of cities and towns. There may be, however, a measure of financial relief which is worth pursuing -- a few more drops from the public "turnip", if you please -- in the form of license, permit and service fees and charges. Most cities and towns are currently providing a variety of urban services, the costs of which are paid primarily from ad valorem and sales tax revenues. The purposes of this manual are to catalog revenue sources currently available to cities under Texas law, some familiar and others largely neglected, and to provide guidance in considering their local adoption.

Specifically, the manual consists of a summary of current law and practice for Texas cities in collecting of license and permit fees and user charges for typical urban services. The manual is designed to aid the administrator of a small Texas city in locating hidden revenue sources in existing programs. In addition, it lists a variety of sources for fees and charges for governmental services which a city might wish to provide if the funds for providing such services were available. Finally, it is intended to suggest methods for evaluating urban programs and activities as potential revenue sources.

Chapter II contains a summary of responses to a survey of cities in Texas and other states concerning licenses, permits and user fees. Some legal principles affecting revenue sources are discussed in Chapter III. Chapter IV suggests methods for evaluating the adequacy of these types of fees and charges. The main body of the manual, Chapter V, is a summary of revenue sources. The manual is intended to serve as both a reference for general administrators and an aid to regulatory and service personnel in making their efforts more productive.

II.

A LOOK AT REVENUE PRACTICES

Cities across our nation generate revenues from virtually every conceivable governmental activity. One hundred and one American cities have responded to an inquiry concerning the nature and extent of their revenues from license and permit fees and user charges. This publication is based on the survey response, including data from 21 Texas cities. Many of the reported revenue sources are not available to Texas cities because of the limitations of Texas law. However, since this publication is directed to small Texas cities and towns, no attempt has been made to review revenue sources not authorized by Texas law.

The survey inquiry addressed two areas: Financial management practices, in light of revenue limitations; and, practices of the cities concerning licenses, permits, and the levy and collection of service and user fees and charges. The survey responses are tabulated in Appendix C.

Financial Management Practices

Despite the tax limitation movement of the late 1970's, less than a third of the cities reported that they were operating under limitations imposed within the past five years as a result of either state or local tax referendum. Approximately one in four reported a reduction in property taxes in

the past three years. A substantial majority stated that they had used common productivity measures -- e.g., employee performance evaluation, goals and objectives in budgeting -- during the same period. Over a third of the respondents have reduced city services. Less than half of the answering cities indicated they have found alternate revenue sources from the private sector. About 46% have transferred some urban functions to other levels of government, and almost 75% have entered into joint service contracts with other units of government. Over half of the cities report the use of volunteer personnel in lieu of paid employees in some activities. Predictably, the survey does not reveal any dramatic new devices for financial management.

Revenue Sources

Taxes: Taxes represent the major source of city revenues, averaging over 40% of operating revenues for all cities, and over 50% for Texas cities. Property taxes represent, on the average, over 25% of revenues to Texas cities. Fifteen of the cities responding to the survey are in California. Not surprisingly, since the reporting period covered the implementation of Proposition 13, there was a dramatic reduction in property tax revenues to the California cities. But from all reporting cities, including California, only 23 (approximately 24%) experienced a reduction in taxes during the three-year period. While property tax revenues as a percentage of total

revenues among California cities was significantly lower in 1979, after Proposition 13 than in 1978, the percentage was, almost without exception, larger in 1980 and in some cases a larger percentage than in 1978. The same pattern is indicated for Texas cities and for all reporting cities with regard to both taxes and property taxes -- i.e., they represented a lower percentage of total revenues in 1979 than 1978, but increased again in 1980. Considering successive increases or decreases in percentage over the three-year period as a "trend", four out of 21 Texas cities reported an upward trend and four reported a downward trend. Of all reporting cities, 17 stated upward and 21 reported downward trends in the percentage of all taxes to total revenues. Property taxes as a percentage of all revenues, as a three-year trend, was more distinct: Up in only one Texas city, but down in eight; and, nationwide, up in 11 cities and down in 30.

License and Permit Fees: The survey indicates that license and permit fees are a more significant source of revenues to non-Texas cities (averaging over 3.5 percent of total revenues) than to Texas cities (about 1.5 percent). Only one Texas city reported an upward three-year trend in such fees as a percentage of total revenues, while a third (seven cities) reflect a downward trend. Nationwide, 16 cities report upward patterns, and 29 downward. Only a little more than half the responding cities state that their fees and charges recapture the direct and indirect costs of administration. Perhaps this

is attributable to the fact that only a third have a policy for the regular review of licenses and permits.

Service and User Fees: Because of the great variety of service activities provided by cities, the survey questionnaire could not anticipate all types of such activities. Therefore, this reporting of responses is based upon all reported service revenues, exclusive of sanitation and utility operations. For Texas cities, non-utility service charges represent approximately six percent of total operating revenues. For all cities, the percentage is slightly less (5%). The three-year pattern is of an increasing percentage in 27 cities and a decreasing percentage in 17. Only 42% of reporting cities have a policy for regular review of charges. Major considerations in establishing charges are the effects of pricing on demand for services and on the ability of the poor and the elderly to pay for services.

Conclusion

The survey results suggest several conclusions: (1) Despite the so-called "taxpayer revolt", taxes remain a major source of revenues, the portion of total revenues represented by taxes not having significantly changed during the period of 1978-80. (2) License and permit fees do not represent a significant source of revenues and probably would not become so, even if maximized by regular review and adjustment to recover current costs. (3) Cities are sensitive to the effects on public demand of increases in service and user fees.

Why, then, should a city administrator spend time and effort on a review of license, permit and service fees? First, because a sound revenue base is built of small blocks, not hewn out of a single mass. To the extent that an activity or service becomes financially self-supporting, dollars and cents are made available for those governmental services which generate no revenues. Second, any review of charges and practices should offer the occasion for a city's policy makers to re-appraise the purpose of each activity -- the need to continue, terminate, expand or reduce the level of the activity. Finally, the review process can and should be a useful instrument in the hands of administrators, affording the opportunity for improved management in addition to increased revenues. The chapters which follow are intended to guide the reader through the review process.

III.

LEGAL PRINCIPLES AFFECTING NON-TAX REVENUES

The traditional source of funds for financing local government in Texas is the property tax, with the local sales tax a development of the past two decades. There are several reasons for this. A city or town is restrained from exploiting other potential revenue sources by political considerations: that is, the tapping of a new revenue source simply may not be acceptable to the electorate or powerful local interests. Equally important is the fact that local governments do not have unlimited legal authority to pursue the entire universe of possible money sources. Moreover, cities and towns are not "equal" in the legal scheme of things -- i.e., some municipalities may be precluded by law from developing revenue sources that are available lawfully to others. In short, there are legal considerations which are important in determining the availability to a given city of a particular revenue source.

General Law vs. Home Rule

First, there is the distinction between general law and home rule cities. A general law city may exercise only those powers specifically authorized by grant from the legislature, and those powers necessarily implied from such a grant. A home rule city, on the other hand, is authorized to exercise any powers of local self government not specifically prohibited by

or in conflict with state law. Moreover, there are two categories of general law cities: (1) Those incorporated under Chapter 1 of Title 58 relating to cities and towns; and, (2) those incorporated under Chapter 11 of Title 58 relating to towns and villages. Since most enabling legislation for general law cities does not differentiate between those two categories, general law cities are treated in this manual as a single category. Therefore, prior to the initiation of any new revenue generating program, a general law city should consult its legal counsel to confirm its authority to do so.

State vs. Local Concerns

Any town or city, whether general law or home rule, acts in two capacities: (1) As a political subdivision of the state; and, (2) as a unit of local government serving purely local needs. As a political subdivision of the state, a city government is an arm, extension or instrumentality of the state, intended to carry out at the local level a specified function which is of statewide concern. In this capacity the local government performs a non-discretionary, often largely clerical role. In contrast, the city as a local government, while wholly a "creature of the state", has primarily a local purpose. It may, within limits but generally as a matter of local discretion, adopt its own structure, enact its own laws, and chart its own destiny, in the main without financial support from the state. The overriding legal principle to be understood

by cities, their officials and citizens, however, is that the municipal corporation is a creature of the state and is subject to its laws. What may seem reasonable and for the public good, at the local level, is subordinate to what is legally possible as defined by the state.

State or Federal Pre-emption

Because a city or town is a creation of the state, it is subject to the power of the state to withdraw or withhold from the city's control the power to act in a given area. This is commonly called a "pre-emption" by the state. The doctrine of pre-emption has several facets. A city may not regulate or control an activity, the regulation of which has been reserved to the state. Where there is no clear pre-emption, and the state has allowed concurrent regulation, a city may not engage in regulatory activities which are in conflict with those of the state. Finally, a city may not prohibit an activity that is regulated by the state. Similarly, the federal government has pre-empted many areas of governmental activity.

Unfortunately, the areas of pre-emption are not always well defined. In addition, the fact of regulation by another level of government does not always preclude regulatory action or responsibility at other governmental levels. To illustrate: The use of the airways for electronic transmission is controlled by the Federal Communications Commission (FCC), a total federal pre-emption. The licensing of motor vehicles is

conducted by the state, pre-emptively. The control of land use by zoning is generally delegated to cities and towns. But environmental pollution control is a regulatory activity shared by the federal government (EPA), the state (e.g., Water Quality Commission, Department of Health) and local government (Health and Sanitation Department).

Taxation vs. Regulation

A city or town cannot exercise powers of taxation beyond those specifically vested in it by the state. Therefore, it is important to distinguish between taxation, which has as its primary purpose the generation of revenue, and regulation, which may generate revenues but cannot have revenue generation as its primary purpose. In other words, a city or town, when engaging in a regulatory activity may generally, unless otherwise prohibited or limited by law, recover the reasonable cost of regulation. This is an appropriate revenue for the city or town, but, such revenues cannot lawfully exceed the reasonable cost of such regulation. Chapter IV is a discussion of the manner in which appropriate fees and charges may be developed.

Conflicts with State Law

A city or town, whether general law or home rule, cannot enact a law that is in conflict with state law. If the state constitution or statutes clearly authorize or prohibit municipal legislation on a subject, the presence of conflict is obvious. But often, where there is no clear-cut statement of

municipal authority, conflict with state law is difficult to determine. A common test of conflict is found in the penalty for violations of the law. A city governing body cannot enact an ordinance prescribing a criminal penalty of more than a \$200. fine. If there is a state law regulating the same activity and prescribing a penalty in excess of \$200, the state has effectively pre-empted the regulation of that activity. When a city enacts an ordinance prescribing a penalty for an offense which is also a violation of state law, but the city-prescribed penalty differs from the statutory penalty, the city ordinance is void because it is in conflict with state law.

Enumeration of Powers

Article 1015, V.T.C.S., is an enumeration of the powers of a city or town incorporated under Chapter 1 of Title 28. Article 1146, V.T.C.S., is a rather abbreviated enumeration of powers of city government under the aldermanic form provided in Chapter 11 of Title 28. Article 1175, V.T.C.S., is an enumeration of the powers of government under home rule. Because of the occasional exercise by the Legislature of its pre-emptive powers, the enumeration of powers in these articles is not reliable in every case. In addition, specific grants of authority to cities and towns are found in hundreds of statutes dealing with a variety of subjects.

Ordinance Standards

Any attempt to regulate must obviously be supported by

ordinance authority. No charges can be made for regulation - e.g., license and permit fees -- unless the charges have been established by ordinance or state law. For this reason, a city or town engaging in regulatory activities should insure that the regulatory ordinance: (1) Clearly describes the regulated activity and specifies ascertainable standards of performance -- i.e., the ordinance must apprise the public of the standards of conduct necessary for compliance with the ordinance; and (2) prescribes fees which are reasonable in relation to the city's administrative cost of regulation.

BUILDING AN ADMINISTRATIVE FEE STRUCTURE

License and Permit Fees

The structure of some revenue sources is established by state law. For example, a city or town levying an occupation tax may not so do in an amount greater than one-half the state tax on the same occupation. Similarly, a license or permit fee may be established by state law. In cases such as these, municipal governing bodies have no discretion in fixing the amounts to be charged. In most areas of city regulatory activity, however, the governing body may by ordinance establish the amount of a license or permit fee or user charge.

A city council, in prescribing regulatory fees and charges, should be guided by one extremely important principle: The fee or charge must not be primarily for the purpose of generating revenues. At the point where a regulatory fee or charge exceeds the reasonable cost of administering a regulatory measure, it becomes taxation of the regulated activity and is void and unenforceable. In the area of taxation, the courts have held consistently that cities and towns have no inherent powers. In short, unless the tax is expressly authorized by state law, it is unlawful.

But the power to regulate includes the necessarily implied power to recover the reasonable cost of regulation. It is in

this area that many cities and towns overlook potentially lucrative revenue sources. They lack a system for structuring the administrative costs of regulation and for maintaining the system so as to recapture real costs. This chapter suggests some factors to be considered in arriving at the reasonable cost of engaging in regulatory activities.

How, then, does a city establish fees which are the "reasonable" costs of administration? One approach, perhaps a common one, is to determine what other municipalities of comparable size charge for the same activity. While this avenue is a relatively simple one, it assumes that the other cities are similar, if not identical, in efficiency of administration and characteristics of the regulated activity. A more precise approach is the analysis of time, effort and resources, both human and material, necessary to conduct the regulatory activity.

While the tasks required to administer a regulatory ordinance may vary in duration and difficulty, even within one category of regulation, a city or town can structure its administrative costs using its financial reports to review past experience and its budget to plan for future activity. Utilizing these financial tools, a city or town can arrive at "reasonable" charges for a given period of time. Thereafter, increases in costs of operation will identify the need for adjustments in charges.

Service and User Charges

Many expenses of a city are attributable to service activities which are not related to regulatory functions. Libraries, parks and recreation, utilities, fire and police, among traditional municipal services, all involve certain expenses which can be recovered from those who benefit from the services.

The decision to impose or not to impose a service or user charge is affected by the philosophy of the city. The levy of a user charge is typically justified by the argument of benefit -- i.e., those persons who use and benefit from a city service or facility should pay for it. The opposing view is that a city has a moral obligation to furnish services to all. In this day of shrinking tax dollars and urban service cutbacks, a compelling argument can be made in support of greater reliance on user fees and charges:

1. The cost of specific services and facilities should be borne by their users, and not by the public generally.
2. Even though they may be out of reach of the city's taxing power, persons benefiting from a service should be required to help pay for it.
3. Using a service for which there is a charge should be a matter of free choice of the individual -- i.e., if a person chooses not to utilize the offered service, he does not have to pay for it.
4. A self-supporting service provides relief to an overburdened tax fund.

A number of cities and towns engage in "enterprise" activities which are intended, in part, to generate revenues. A discussion of enterprise activities by public or private contract is outside the scope of this manual. However, it is appropriate to review a number of enterprise-related revenue sources, both traditional and innovative, which may be available to a municipality.

Service and facility user fees fall generally into two categories. (1) There are charges which by law or as a matter of policy are "breakeven" charges. For example, the charges for reproduction of public records are required by the Open Records Act to be the "actual cost" for the service. (2) Some service fees and charges may generate revenues which substantially exceed the cost of providing the service. Municipal utility systems, for example, frequently generate sufficient revenues to pay all system costs as well as support other "soft" services of the city. Service facilities financed by revenue bonds typically must generate revenues sufficient to cover operations, maintenance and debt service costs. Unless prohibited by law, they may also produce revenues over and beyond such costs. The limitations on charges for such services, then, arise from considerations of public demand and ability to pay: Will increased charges discourage users, thereby reducing revenues? Will increased charges deprive potential user groups, such as the poor and elderly, of needed services? And,

will increased charges become politically unacceptable, prompting discontent with government?

The building of a fee structure for service and enterprise activities, therefore, should include consideration of the following factors:

1. Operations and maintenance - The process for cost calculation is described in the section called "Cost Analysis", which follows.
2. Debt service - These costs are established by the financing scheme used to pay for capital facilities.
3. Legal, political and social limitations.

Cost Elements

Administrative costs typically include the following elements:

Direct personnel costs (salaries and wages)
 Indirect personnel costs (fringe benefits)
 Office (shelter) overhead
 Equipment expense
 Supplies and materials
 Administrative (supervisory) overhead
 Contract services

While these elements may not correspond exactly with the elements of every city's financial documents, they are fairly representative of cost categories related to administrative activities.

Direct Personnel Cost: This element would consist of the salary or wages of each person engaged directly in the specific activity: (1) The clerk who receives and processes the application for permit, license, or service; (2) the inspector who reviews the application and examines, in or outside the office, the subject of regulation or the person who delivers or performs the "service"; and, (3) the person who

issues the license or permit and collects and accounts for the fee or charge. The cost of a single permit, license, or service would necessarily be a pro-rated share of the total payroll costs of personnel performing specific tasks -- i.e., a percentage of the payroll cost attributable to a single activity.

Indirect Personnel Cost: Indirect personnel costs would generally include the cost to the city of the fringe benefit "package" for the personnel described above. This package may include social security and retirement plan costs, health and medical benefits, and similar types of employee benefits. In an organization of more than a few employees, it is usually possible to calculate and express the fringe benefit package as a percentage of direct payroll cost -- i.e., salaries and wages. As with the direct payroll costs, these indirect costs must be pro-rated to calculate the portion attributable to a single regulatory task.

Office Overhead: Office overhead means the cost of providing "shelter" to the activity -- i.e., a place to work. This element includes the cost of office space (rent or building cost), utilities, and maintenance. If the building which houses the activity is municipally owned, the cost of the building applied to its expected life would provide an annual cost per square foot which can be pro-rated to the activity (as above) and to the office area devoted to the activity.

Equipment Expense: This element of cost could include office equipment and motor vehicles used in the activity. In addition there may be instruments or devices which the city may obtain specifically for the purpose of ordinance enforcement, such as the laboratory and testing equipment necessary to control environmental pollution, or for the purpose of providing the particular service. Often, data processing equipment is used to keep track of ordinance enforcement or service activities. Each of these items has an ascertainable cost and a useful life which are pro-ratable to the particular task.

Supplies and Materials: The usual regulatory or service effort includes the use of supplies and materials for the office and in the field which are expended in such effort. Paper, printing costs, gasoline, etc., are examples of expenses which may be

included in the calculation of these costs.

Administrative Overhead: Some time and expense is attributable to the supervision of city activities by immediate supervisors, department heads and other administrators. In addition, any single city program receives administrative assistance from its personnel, financial and other supporting units. While this type of cost may appear remote from the direct regulatory or service effort, some portion of these costs may be appropriately attributed to the processing and issuance of a single license or permit, or the providing of a single service, particularly if the organization is relatively large and the support functions are complex. General administrative and support costs attributable to an enforcement office or or service activity typically are stated as a percentage of the over-all city cost for general administration and support services.

Contract Services: Many cities and towns contract with persons or entities outside the city organization for a variety of services essential to regulation or service. Particularly in small communities, much of the expertise used in these efforts may have been purchased by contract. For example, most small towns do not have a full-time engineering staff. Rather, they obtain from consultants a variety of engineering services related to ordinance enforcement, such as the review of plats, drainage plans, and other land development matters. Contract expenses, which are often charged to the municipality on an hourly basis, can be readily allocated to a single task. These costs should be recovered during the administrative process.

Activity Cost Analysis

If one person, office or department of a city government is charged with all duties relating to the enforcement of a particular regulatory measure or the delivery of a particular service, city financial documents should provide gross numbers useful for an analysis of administrative costs. It is unlikely, however, that any one person devotes total work time to a single

activity. Therefore it is necessary to divide the activity into parts to estimate its true cost. An analysis of the activity might proceed like this:

1. Each employee who is engaged in the activity lists all of the licenses and permits which he or she has any part in processing or all service which he or she helps to provide.
2. Each employee so engaged states, for each single license or permit or service, the average amount of time he or she spends on all tasks directly related to it. This figure should be stated in tenths of an hour.
3. The hourly pay rate of each employee is calculated, and the fringe benefit cost (per hour) is added to it. This calculation provides the total hourly personnel cost of each employee.
4. The personnel cost per hour of each employee is then multiplied by the time in 2 above. The sum of these calculations for all employees involved in processing a single license, permit or service constitutes the first element in calculating an appropriate fee to charge.
5. A similar allocation of the other cost factors described above, related to a single transaction, results in a fair approximation of the amount which may reasonably be charged as an administrative fee.

Review of the Fee Structure

A review of license, permit and service fees includes a consideration of tangible, quantifiable factors such as the cost of the activity and the amount of revenue it produces. In addition, there are other factors which should be considered, including applicable law, the interests of affected persons and groups, and community needs and desires. In fee review, an administrator might seek answers to the following questions:

1. How much does the activity cost? A cost analysis, as described in this chapter, should answer this question.
2. How much revenue does the activity generate? The various financial and activity reports of a city should provide an answer to this inquiry.
3. Does the revenue justify the expense? This is a policy question typically answered by the governing body.
4. Should the fee be increased? This also is a policy question which provokes other questions: Does the law allow fee increases? Will the public accept fee increases? Input from special interest groups and the general public usually aid in this determination.
5. Is there a continuing need for the activity? An alternative to increasing fees may be to discontinue the activity. Again, this question suggests others: Can the activity legally be terminated? What will be the political and social consequences of terminating the activity?
6. Is there some other means of achieving the same objective? Are there other forces at work which produce the same result at lesser cost?

Obviously these questions are not capable of complete answers. But the effort to answer, however, fragmentary, should prepare the administrator to make recommendations to the governing body and should assist the councilman in making a sound and rational decision.

Maintenance of the Fee Structure

During inflationary times, the fact that a city has developed a structure of fees and charges which reflects current costs, does not insure that the municipality will recover its actual costs over the long term. On the contrary,

regular periodic comparison of costs to fee structure is essential if the city is to maintain a "breakeven" position.

Of the cities responding to our survey, only 35% stated that they had a policy for regular periodic review of license and permit fees, and only 42% review service and user charges regularly. While there are many influences on revenues from these sources, the fact that such revenues, as a percentage of total operating costs, actually declined during a period of generally increasing costs substantiates the conclusion that many cities do not keep their fee structures "up to date".

It would be impractical to engage in a detailed cost analysis on an annual basis. But an effective fee structure can be maintained by performing the detailed analysis once every four to five years. Annually, the fee structure can be reviewed for incremental adjustments -- i.e., once a sound fee base is established by analysis, fees can be revised upward or downward each year based upon changes in the total operating costs of the city departments from year to year.

Regular periodic review of fees and charges is often hampered by the fact that they are "hidden" in a myriad of different ordinances, each of which must be amended in order to maintain a current, cost-effective fee structure. One solution to this problem is a "fee ordinance". Essentially, this is a process of keeping all of the fees in one place -- an ordinance which is a schedule of fees, referenced to all other ordinances

which prescribe fees. When an ordinance is enacted, creating a new activity, it amends the fee ordinance by reference to it. In this manner, when fee adjustments are required only the fee ordinance need be amended.

V.

DIRECTORY OF REVENUE SOURCES

Following are summaries of revenue-producing activities which are used by Texas towns and cities, with references to state laws which relate to many of the activities. The revenue source activities are divided into three groups:

A. TAXATION - Since the purpose of this manual is to identify non-tax revenue sources, only occupation taxes and the hotel room tax are summarized. Because of constitutional and statutory restrictions, the occupation tax is a limited source of revenues. The hotel-motel occupancy tax is a well-publicized source of city revenues which can be used for limited purposes.

B. REGULATION - Some activities are both regulatory and service oriented. This group contains summaries of those activities which are wholly or primarily for the purpose of regulation pursuant to the police powers of municipalities.

C. SERVICE/ENTERPRISE - The activities listed in this group are for the benefit of purchasers and/or users of services and facilities offered by the city or town.

Following many of the activity groups are lists of typical activities. These lists were compiled from reported activities of cities of varying size, and are not intended to suggest that the charging of such a fee would in every case be lawful. The legality of any given activity will depend on the characteristics of the town or city proposing to engage in such activity. Rather, the listing is made to inform the reader of the great variety of fee sources which might be considered.

A. TAXATION

ACTIVITY GROUP: OCCUPATION TAX

Introduction: A casual reading of the general law, Article 1015, V.T.C.S., for example, would leave the impression that a town or city has broad power to levy occupation taxes. However, Article VIII, Section 1 of the Texas Constitution provides that "the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one-half on the tax levied by the State for the same period on such profession or business". In addition, the Legislature has provided that no city may levy an occupation tax unless it is specifically permitted to do so by the Legislature (Tax Code, Section 101.008). Because of these limitations, the occupation taxes now available to cities and towns are few in number. They are summarized below.

ACTIVITY: COIN-OPERATED MACHINES - MUSIC, SKILL OR PLEASURE

Statutory Reference: Taxation-General,
Section 13.01 et seq., V.T.C.S.

Section 13.02 of this act authorizes a state occupation tax of \$15.00 per year per coin-operated machine the purpose of which is music, skill or pleasure. Section 13.14 authorizes a city to levy an occupation tax of one-half the state rate. Section 16 of Article 13.17 authorizes an annual license fee, which is graduated, based upon the number of machines owned by the applicant, from \$200.00 to \$500.00. It

further authorizes cities to charge a license fee in an amount not to exceed one-half the license fee of the state.

The 67th Legislature, Regular Session, amended Article 13.02 to increase from \$15.00 to \$1,500.00 the amount of annual tax imposed on coin-operated machines that show motion pictures.

The license and tax at the State level is administered by the Texas Vending Commission. Service-type coin-operated machines such as food and beverage vending machines are specifically excluded from the act.

ACTIVITY: DEALERS IN PISTOLS

Statutory Reference: Tax Code, Chapter 191,
Subchapter B

This provision prescribes a \$10.00 annual state occupation tax and authorizes a city tax equal to one-half that amount. Dealers are required to keep a record of pistols and sale transactions for examination by law enforcement officers. Since the record must be maintained to satisfy State requirements, there is no additional burden on the dealer by the imposition of the local tax.

ACTIVITY: BILLIARD TABLES

Statutory Reference: Tax Code, Chapter 191
Subchapter D

This provision prescribes a state tax of \$5.00 per billiard table annually, and authorizes cities and towns to tax at one-half the state tax. In addition, a city may ban, prohibit, regulate, supervise, control or license persons operating billiard tables and may charge a fee not to exceed \$10.00 annually per table. Religious, charitable or educational organizations and coin-operated billiard tables regulated under Chapter 13 are exempt from this provision.

ACTIVITY: HOTELS/MOTELS

Statutory Reference: Article 1269j-4.1, V.T.C.S.

This act authorizes a room tax on hotel and motel rooms of not more than four (4%) percent of the consideration paid by the room occupant to the hotel. Revenues from this occupancy tax are dedicated, by the Act, to the following uses:

- (1) The acquisition of convention center facilities and related parking.
- (2) The furnishing of facilities, personnel, materials for registration of convention delegates.
- (3) Promotional and tourist advertising of the city.
- (4) Promotion and encouragement of the arts.
- (5) Historical preservation and restoration, and
- (6) The pledge of tax revenues to the construction of civic centers, museums, libraries, and certain recreational facilities.

B. REGULATION

ACTIVITY GROUP: ANIMALS

Introduction: Primarily of historical interest are these provisions of Article 1015, V.T.C.S., authorizing cities, among other things, to prevent or regulate the driving of animals through the city streets and prohibiting the breeding of large animals within the city. These measures reflect the rural tradition of Texas municipalities, and were intended primarily to insure the safety of streets and public places. More recent laws, based on health considerations, mark the trend toward urbanization.

ACTIVITY: DOGS, REGULATION

Statutory Reference: Article 1015 (15), V.T.C.S.

This article, applicable to general law cities authorizes cities and towns to prohibit the running at large of dogs, authorizes their destruction, and the levying of a tax on animals.

The "tax" provided by this article should probably be treated as a license, with the amount thereof commensurate with the administrative costs of processing the same. There is other, more specific statutory authority for this type of regulation.

* * * * *

ACTIVITY: DOGS, QUARANTINE

Statutory Reference: Article 1015 (2), V.T.C.S.,
Article 1175(28), V.T.C.S.

These statutes authorize cities to adopt by ordinance necessary quarantine laws.

* * * * *

ACTIVITY: DOGS AND CATS, RABIES CONTROL

Statutory Reference: Article 4477-6a, V.T.C.S.

Governing bodies of general law and home rule cities are authorized to appoint an officer to act as the local health authority, the act provides that the city may require an owner to pay costs of quarantine and disposition of affected animals. The act prohibits the city from licensing an animal that is not vaccinated in accordance with the terms of the act.

This act is a statutory basis for the imposition by cities and towns of reasonable fees for the impoundment, quarantine, vaccination and disposition of dogs and cats. Section 2.02 of the act specifically authorizes cities and towns to adopt the provisions of this act and the standards established by the Texas Board of Health pursuant to the act or to adopt ordinances equal to or more stringent than the act and the State regulations. These measures may include a requirement of registration and/or restraint of each dog and cat found within the city.

<u>ACTIVITY</u>	<u>COMMENT</u>
Kennel License	To regulate health and sanitation conditions at dog kennels.
Dog or Cat License	To regulate keeping, vaccination of dogs and cats as authorized by Article 4477-6a, V.T.C.S. cited above.
Impoundment Fee (Small Animals)	To cover costs of pick-up and boarding of impounded animals.
Impoundment Fee (Livestock)	To cover costs, as for small animals, but allowing for greater expense of handling large animals.
Adoption Fee	To cover costs of boarding and necessary treatment prior to adoption.
Vaccination Fee	To cover costs of rabies vaccination, if provided by city-retained veterinarian.
Rabies Observation Fee	To cover boarding costs and services of qualified person making observation.
Euthanasia Fee	To cover costs of painless disposition of animals.

 ACTIVITY GROUP: AMUSEMENTS AND RECREATION

Introduction: Early enabling legislation empowered municipalities to regulate spectator-type amusements which were characteristic of the times, such as traveling shows, circuses, carnivals, menageries and "the exhibition of natural and artificial curiosities" (see Article 1015, Paragraphs 37 and 38, and Article 1175, paragraph 22). Early laws, since repealed, impose occupation taxes on these types of activity and in some cases impose an admissions tax. Today, there is less basis for regulation of spectator amusements at the local level.

Those recreational activities which are proprietary services of a municipality involving user fees rather than regulation are addressed in the section of this chapter on service and enterprise activities.

 ACTIVITY: AMUSEMENT CENTERS, COIN MACHINES

Statutory Reference: Taxation-General,
Chapter 13

(See Occupation Taxes.)

 ACTIVITY: BILLIARDS

Statutory Reference: Taxation-General,
Chapter 19

(See Occupation Taxes.)

 ACTIVITY: BOATING

Statutory Reference: Parks and Wildlife Code,
Section 31.092

Cities and towns may regulate lakes within their corporate limits or owned by them, but may not impose or collect fees for registration or inspection of boats. This regulatory activity is reserved to the state. This prohibition does not prohibit a city from collecting launch fee, docking fees, entry fees, or other recreational fees imposed for the use of facilities.

 ACTIVITY: CARNIVALS, CIRCUSES

Statutory Reference: Article 1015(37), (38), V.T.C.S.

While the cited statute provides that a city is empowered to tax this activity, no tax is authorized. Licensing measures should address health, sanitation and fire safety considerations.

 ACTIVITY: FIREWORKS

Statutory Reference: Article 9205, V.T.C.S.

Manufacturers, distributors, jobbers and retailers of fireworks are licensed by the State, but a permit is required from local fire prevention officials for the display of Class A fireworks. (Class A fireworks is that which is used for fireworks demonstrations performed by pyrotechnics experts.) The statutes specifically provides for concurrent regulation by cities, including either prohibition or regulation.

 ACTIVITY: MASSAGE

Statutory Reference: Article 2372w, V.T.C.S.

Cities and towns may regulate sexually oriented commercial activities such as massage parlors in-

cluding the requirement of permits and the charging of fees therefor. The statute specifically provides that permit fees shall not exceed the actual cost of processing.

* * * * *

ACTIVITY: OUTDOOR CONCERTS

Statutory Reference: Articles 9002, 9003, V.T.C.S.

Both of the statutes cited above apply to mass gatherings, such as music concerts held outside incorporated cities, leaving to local regulation similar activities within cities. They address health and sanitation, fire and public safety, traffic control and similar considerations, as well as the financial ability of the promoter to conduct the activity and assurances of performance in accordance with the promotion of the event. The statutes are appropriate models for a city ordinance on the same subject. Such an ordinance should impose fees designed to recover the city's cost of administration based on the considerations listed above.

<u>ACTIVITY</u>	<u>COMMENT</u>
Tent Permit	To enforce fire and building code requirements for places of assembly.
Health Permit	To enforce standards for rest-rooms, food service activities.
Fireworks permit	For Class A demonstrations.
Activity Permit	To cover cost of investigating permit application, including financial capability of the promoter, access and traffic control to activity site.

Comment: Notwithstanding the apparent authority of general law and home rule cities to exercise the police power in the regulation of amusements and recreation, the following activities are substantially regulated by state law, indicating significant pre-emption by the State.

<u>ACTIVITY</u>	<u>STATUTORY REFERENCE</u>
BOXING	Article 8501-1, V.T.C.S.
CAMPS AND CAMPING	Article 44471, V.T.C.S.
FISHING	Parks and Wildlife Code, Chapter 46
HUNTING	Parks and Wildlife Code, Chapter 42
MOTION PICTURE THEATRES	Articles 178-179c, V.T.C.S.
WRESTLING	Article 8501-1, V.T.C.S.

 ACTIVITY GROUP: BUILDING CONSTRUCTION AND RELATED ACTIVITIES

Introduction: The establishing of standards for building construction, such as plumbing, electrical and fire safety regulations, traditionally has been reserved to local jurisdictions. Only plumbers, among the major building trades, are subject to state licensing. Most municipalities adopt and adhere to uniform codes which provide a basic framework for requiring licenses and permits and levying fees. Statutory enumerations of municipal powers -- i.e., Articles 1015 and 1175, are not explicit regarding the powers of cities to regulate construction activities. Generally, statutory support for local regulatory activities is found in the broader language of these articles authorizing measures to preserve the public health, safety and welfare.

ACTIVITY: BUILDING INSPECTION, GENERALLY

Statutory Reference: Article 1067, V.T.C.S.,
Article 1175(25), V.T.C.S.

Article 1067 is primarily authority for fire zone restrictions. It authorizes city councils to regulate frame building construction within designated areas of the city.

Article 1175(25) authorizes the governing body to designate fire zones and to prescribe the kind and character of buildings or structures to be located in fire zones. The same articles are the statutory basis for the removal of dilapidated buildings.

* * * * *

ACTIVITY: BUILDING - MOVING

Statutory Reference: Article 1015(23), V.T.C.S.,
Article 1175(18), V.T.C.S.

1015(23) authorizes general law cities to regulate obstructions on public thoroughfares. 1175(18) specifically authorizes home rule cities "to regulate and control the removal of buildings or other structures over and upon the streets or avenues" of the city. If house moving activities are limited to routes following state and federal numbered highways under state jurisdiction, state regulation would prevail.

* * * * *

ACTIVITY: BUILDING DEMOLITION

Statutory Reference: Article 1015(24), V.T.C.S.,
Article 1175(25), V.T.C.S.,
Article 1015n, V.T.C.S.

These statutes authorize local governing bodies to cause the demolition and removal of delapidated buildings and to assess the expenses thereof to the property owner.

Many cities have adopted substandard housing ordinances which contain the procedural elements of due process necessary to avoid the unlawful deprivation of private property by a city. Article 1015n prescribes the elements of an ordinance requiring the demolition or repair of substandard buildings.

* * * * *

ACTIVITY: ELECTRICITY

Local regulation of electrical installations and devices is based upon a city's health and fire safety powers. By the terms of Article 1446d, V.T.C.S., cities are prohibited from issuing permits for apartments and condominiums which are not separately metered, pursuant to Public Utility Commission rules.

* * * * *

ACTIVITY: ENERGY CONSERVATIONStatutory Reference: Article 1175(35), V.T.C.S.

Cities may require buildings to be built in accordance with energy conservation standards prescribed by a local building code.

This statute authorizes a city to go a step beyond public safety considerations to prescribe, in its building code, minimum standards for construction which may not bear directly on public safety but which are calculated to benefit the public by conserving scarce energy resources.

ACTIVITY: ELEVATORSStatutory Reference: Article 6145a, b and c, V.T.C.S.

This act provides for state approval of designs for elevator safety devices. Since it does not address installation, such regulation is left to local control.

ACTIVITY: MANUFACTURED HOUSINGStatutory Reference: Article 5221f, V.T.C.S.

The Manufactured Housing Standards Act places control of this activity under the Commissioner of the Texas Department of Labor and Standards. The Act specifically provides that no permit, license or fee shall be required for the transportation of manufactured housing other than that required by the Texas Department of Highways and Public Transportation. The Act does state that the Department of Labor and Standards may contract with cities for inspection and may distribute to cities an installation fee of \$15.00 if inspection is made by a city pursuant to a contract with the state.

ACTIVITY: PLUMBING - GENERALLYStatutory Reference: Article 1076, V.T.C.S.,
Article 1077, V.T.C.S.,
Article 1108, V.T.C.S.

These statutes authorize cities to regulate taps into city sanitary sewer systems as well as related plumbing connections.

ACTIVITY: PLUMBING - LICENSINGStatutory Reference: Article 6243-101, V.T.C.S.

This act provides for licensing by the State Board of Plumbing Examiners. The act specifically exempts plumbing activities in cities of less than 5,000 unless the governing body of the city has enacted an ordinance consistent with the state licensing act. Cities of over 5,000 population must adopt rules consistent with the act.

ACTIVITY: SIGNSStatutory Reference: Article 1175(24), V.T.C.S.,
Article 6674v-1, V.T.C.S.

Article 1175(24) authorizes home rule cities to license, regulate, control and prohibit signs and billboards within the city.

Article 6674v-1 gives the Highway Commission authority to license signs on primary road systems, state and federal numbered highways. However, the act specifically provides that local permits are authorized if they are administered in accordance with state standards.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Construction</u>	
Building Permits	Permit required for construction, enlargement, alteration, repair, replacement, improvement, conversion, demolition, or removal of a structure.
Concrete Contractor's License	For any person in the business of constructing, reconstructing, or repairing of any street, sidewalk, setback, curb, driveway or gutter.
Home Repair License	Licensing of any person engaged in the business of addition, improvement, remodeling, repair, or replacement to an existing single-family or duplex dwelling or to the fixtures, land or other permanent structures that are part of the premises on which the dwelling is located (e.g. driveways, swimming pools, garages, landscaping, fences, roofs, floor covering, and central heat and air-conditioning, etc.).
Street Excavation Permit	Permit required for any person making a cut or excavation in or under the surface of any public street.
Right-of-Way Construction Permits	Permit required for construction between roadways and property lines.
Fence Contractor's License	For any person in the business of installing, constructing, erecting, servicing, repairing or altering of fences.
Fence Permit	For erection or installation of fence.
House Moving Contractor's License	License required for any person who moves houses, buildings, or other structures.

<u>ACTIVITY</u>	<u>COMMENT</u>
House Mover's Permit	For the moving of a building or structure on any public street, alley, highway or other public way.
Demolition Permit	For the demolition of any building.
Grading Permit	Permit required for the undertaking of any land-disturbing activity on one acre or more.
<u>Electricity</u>	
Licenses - Electrical Contractor Master Electrician Journeyman Electrician Maintenance Electrician Residential Specialist Electrician	For any person making any installation, repair, alteration, addition or change to an electrical system or equipment.
Electrical Permit	Permit required for any installation, extension, alteration or general repair of any electrical system.
Temporary Electrical Permit	Permit required for temporary installation of electrical systems. Permit usually given to construction projects.
Building Maintenance Operator's Exam Fee	Fee charged for required exam to be taken and passed prior to applying for licensing in the city.
<u>Elevators</u>	
Elevator Contractor's License	To make any installation, repair, alteration, addition or change to elevator systems or equipment.
Elevator Specialist Electrician's License	License required to make any repair, alteration, addition or change to an existing electrical system or equipment in the city.

<u>ACTIVITY</u>	<u>COMMENT</u>
Elevator, Escalator, or Dumbwaiter Permit	Permit required for the erection, construction, installation, or alteration of any elevator, escalator, or dumbwaiter.
Elevator Contractor's Exam Fee Elevator Specialist Electrician's Exam Fee	Fee charged for required exam to be taken and passed prior to applying for licensing in the city.
<u>Heating</u>	
Air Heating Contractor's License	License required for any person in the business of installing, repairing, or replacing any forced air type warm air furnace.
Forced Air Heating Permits	Permit required for any heating contractor to install or replace a heating device or any ductwork pertaining to a heating device.
<u>Plumbing</u>	
Plumbing Contractor's License - Master Journeyman Apprentice	License required for any person in the business of installing, repairing, or replacing plumbing, plumbing fixtures, or appliances.
Gas Fitter Contractor's License	License required for any person who contracts to do gas fitting or the installation of gas appliances and equipment.
Plumber's and Gas Fitter's Permit	Permit required for any plumbing contractor to install any plumbing or sanitary equipment that is directly or indirectly connected into any water or sewer system within the city or operated by the city.

<u>ACTIVITY</u>	<u>COMMENT</u>
Sewage Service Connection Permit	Permit required for any person desiring to connect into the city's sewer system.
Temporary Plumbing Permit	Permit required for temporary installation of plumbing system. Permit usually given to construction projects.
<u>Signs</u>	
Sign Electrician's License	
Sign Electrician's Exam Fee	
Sign Permit	Permit required to construct, erect, alter in size or shape, add to, remove, or change words on any sign or part of a sign.
Billboard Advertising Permit	Permit required for the use of billboards for advertising.
Sign Lighting Permit	Permit required for any illuminated sign to be erected, constructed, extended, converted, replaced, demolished, or altered by changing words. A separate sign permit is required for each sign.
<u>Miscellaneous</u>	
Blaster's License	License required for any person using explosives within the city.
Barricade Permit	Permit required for the use of public property during the erection, construction, alteration, repair, or demolition of any building or structure.
Grading Permit	Permit required for the undertaking of any land-disturbing activity on one acre or more.

<u>ACTIVITY</u>	<u>COMMENT</u>
Demolition Permit	Permit for the demolition of any building.
Overhang Permit (Curtains, Awnings, Canopies)	Permit required before any wood or collapsible canvas awning, curtain, or canopy can be erected on, attached to, suspended from or supported by any building or structure, or extended over or across any public sidewalk or street.

Comment: Notwithstanding the apparent authority of general law and home rule cities to exercise the police power in the regulation of building construction and related activities, the following activities are substantially regulated by State law, indicating significant pre-emption by the state.

<u>ACTIVITY</u>	<u>STATUTORY REFERENCE</u>
MANUFACTURED HOUSING STANDARDS	5221f
HIGHWAY BEAUTIFICATION SIGNS	6674v-1
RESIDENTIAL SERVICE CONTRACTS	Article 6573b

ACTIVITY GROUP: BUSINESSES AND OCCUPATIONS

Introduction: Article 1015 authorizes general law cities to tax all trades, professions, occupations and callings, unless prohibited by the Texas Constitution. Article 1175 authorizes home rule cities to license any lawful business, occupation or calling susceptible to the control of the police power. These broad statements should not be construed as empowering cities to regulate all manner of business activity. In fact, the State has reserved to itself regulatory authority over numerous trades, occupations and businesses.

ACTIVITY: FIREWORKS, MANUFACTURE OR SALE

(See page 37).

* * * * *

ACTIVITY: GOING-OUT-OF-BUSINESS SALE

Statutory Reference: Article 9011, V.T.C.S.

This statute refers to the sale of goods, wares or merchandise on representation that the sale is in anticipation of the termination of a business at its present location. The merchant is required to file a sworn itemized inventory with the assessor and collector of taxes of the city or county having jurisdiction, together with a \$2.00 filing fee. The statute specifies the contents of the inventory. The tax official is then required to issue a permit valid for a period of 120 days. After that period, the permit may be renewed by the filing of an updated inventory and the payment of an additional \$2.00

permit fee. The assessor-collector's responsibility under this act is a duty imposed by state law, and no ordinance is required to implement this regulation.

* * * * *

ACTIVITY: GASOLINE MOBILE SERVICE UNITS

Statutory Reference: Article 9201, V.T.C.S.

This act prescribes uniform rules for the storage and dispensing of fuels from above-ground and mobile units. The act provides for local enforcement under rules of the State Board of Insurance.

* * * * *

ACTIVITY: TAXIS, BUSES AND PASSENGER CARRIERS FOR HIRE

Statutory Reference: Article 1015(36), V.T.C.S.,
Article 1175(21), V.T.C.S.,
Article 6698, V.T.C.S.

The first two statutes cited above are general authority for cities and towns to regulate the use of motor vehicles for hire. Article 6698 prohibits city registration of motor vehicles, but authorizes cities and towns to levy and collect a permit fee or street rental charge in an amount not to exceed two (2%) percent of gross receipts per annum for the operation of motor vehicles transporting passengers for hire, other than motor vehicles operating under Railroad Commission or ICC permits or certifications.

* * * * *

ACTIVITY: LAWN SPRINKLER CONTRACTORS

Statutory Reference: Article 8751, V.T.C.S.

The act provides for the state to license irrigators or installers of lawn sprinkler systems, but Section 14 of the act provides that cities may regulate this activity and collect inspection fees therefor.

* * * * *

ACTIVITY: BURGLAR ALARM AND SECURITY SERVICES

Statutory Reference: Article 4413(29bb), V.T.C.S.

State law provides for licensing of burglar alarm and security services by the Department of Public Safety. Licensees under this law are not required to obtain licenses or permits from a city. However, the act specifically provides that a city may collect reasonable charges for use of central alarm installations located in a police station.

* * * * *

ACTIVITY: SEXUALLY ORIENTED ACTIVITIES

Statutory Reference: Article 2372w, V.T.C.S.

Under this act cities may regulate the location and density of sexually oriented activities named in the act and may prohibit the same near schools, churches, residential neighborhoods and other land uses which the city deems to be inconsistent with the operation of such activities. A city may charge a permit fee for such an activity, not to exceed the actual cost of processing the permit application. The activities covered by the act are: "Massage parlors, nude studios, modeling studios, love parlors, and other similar commercial enterprises where the major business is the offering of a service which is intended to provide sexual stimulation." The act does not provide for the regulation of the following:

- (1) Bookstores, movie theatres, or businesses licensed to sell alcoholic beverages,
- (2) Businesses operated by licensed psychologists, physical therapists, athletic trainers, cosmetologists, or barbers,
- (3) Licensed physicians or chiropractors.

<u>ACTIVITY</u>	<u>COMMENT</u>
Parking Lot License	For any business that operates a parking lot where motor vehicles are parked for a fee.
Electronic Repair License	For any person operating an electronic repair business (e.g., televisions, radios, tape players, etc.).
Jewelry Auction Permits	For each public auction of jewelry, diamonds, or other precious or semi-precious stones, watches, clocks, gold, silverware or plated ware, stationery, glassware, porcelain, bric-a-brac or like articles.
Pushcart Vendor's Permit	For anyone selling food products from a pushcart.
Pawn Broker's License	For any person operating as a pawn broker.
Wood Vendor's License	For all dealers selling fuel wood in the city.
Christmas Tree Sales License	For any person selling Christmas trees in the city.
Itinerant or Transient Merchant's License	For any itinerant or transient merchant operating in the city.
Distressed Goods Sale License	For any sale of distressed goods.
Tree Service Contractor's License	For any person in the business of servicing trees within the city.
Junk Collector's License	For any person in the business of collecting junk.
Rug and Carpet Cleaner's License	For any person that cleans rugs or carpets for profit.
Residential Sale License	For each residential, garage, or yard sale.

<u>ACTIVITY</u>	<u>COMMENT</u>
Bottled Water License	For any bottled water works business.
Dry Cleaning License	For the operation of any dry cleaning business within the city.
Collection Agency License	For each agency dealing in the collection of money operating with the city.
Booking Agency License	For each booking agency operated within the city.
Ticket Broker's License	For each ticket broker operating within the city.

ACTIVITY GROUP: FOOD AND FOOD SERVICE

Introduction: State law would appear to give cities broad authority to regulate the preparation and handling of food products and the delivery of food services. There are however, many instances of apparent state pre-emption of local regulation regarding certain food products.

ACTIVITY: FOODS, GENERALLY

Statutory Reference: Article 4425, V.T.C.S.

This article authorizes the designation of a city health officer, who is delegated enforcement responsibilities by other state laws.

* * * * *

ACTIVITY: FOOD HANDLER, CERTIFICATION

Statutory Reference: 4476-10, V.T.C.S.

State law requires health certificates of all persons handling foods. Section 6 of this act states that the provisions of the act do not alter the authority of incorporated cities to enact ordinances on the subject of sanitation at facilities where food and drink are handled.

* * * * *

ACTIVITY: FOOD MANUFACTURER

Statutory Reference: Article 4476-5, V.T.C.S.

This act, the Food, Drug and Cosmetics Act, specifies that federal action under its food and drug laws bars state action under similar provisions. Generally, this area is pre-empted by both federal and state regulation.

* * * * *

ACTIVITY: FOOD VENDING MACHINES

Statutory Reference: Taxation-General,
Article 13.03

Food and beverage vending machines are exempt from the occupation tax provisions of State law.

* * * * *

ACTIVITY: BEVERAGES, ALCOHOLIC

Statutory Reference: Texas Alcoholic Beverage Code,
Section 11.38,
Section 61.36,
Section 109.32

There is no broad grant of regulatory powers to cities with regard to the sale of alcoholic beverages. Section 11.38 provides that a city may levy and collect a fee not to exceed one-half of the State fee for each permit granted by the State, subject to certain exceptions contained in this section. Section 61.36 provides that a city may levy and collect a fee not to exceed one-half of the State fee for each license subject to exceptions contained in this section. Section 109.31 provides that a city may prohibit the sale of liquor in all or part of its residential areas, by charter enactment. (This provision obviously applies only to home rule cities.) Section 109.32 authorizes cities by charter or ordinance to prohibit the sale of beer in residential areas and to regulate the hours of sale.

* * * * *

ACTIVITY: CAFES, CAFETERIAS, RESTAURANTS AND CATERERS

Statutory Reference: Articles 4476-9 and 4476-10, V.T.C.S.

These statutes constitute the basis for city health inspection of food service facilities including cleanliness of dishes, napkins, etc. 4476-10 requires certification of food handlers. (See "FOOD HANDLER" above.)

* * * * *

ACTIVITY: MEAT PROCESSING

Statutory Reference: Article 1015(5), V.T.C.S.,
Article 1175(19), V.T.C.S.

These articles indicate authority of general law and home rule cities to inspect meat processing activities. An attorney general opinion states that home rule cities may inspect outside the corporate limits under 1175(19) but that general law cities may not do so. Article 4476-7, the Meat and Poultry Inspection Act, places primary responsibility for regulation in the state, and substantially pre-empts the field.

<u>ACTIVITY</u>	<u>COMMENT</u>
Food Establishment	Permit required for operation of food service establishment, indicating health standards have been met.
Food Handlers	Permit indicating person handling food has complied with health requirements.
Mobile Food Vending	Permit or license to use public streets for food vending purposes.
Alcoholic Beverage Sales	Permit and license fees - not more than one-half of the state fees.

Comment: Notwithstanding the apparent authority of general law and home rule cities to exercise the police power in the regulation of food products and services, the following activities are substantially regulated by state law, indicating significant pre-emption by the State.

<u>ACTIVITY</u>	<u>STATUTORY REFERENCE</u>
BAKERIES	Article 4476, V.T.C.S. Article 4476-1, V.T.C.S. Article 4476-1a, V.T.C.S. Article 4476-5, V.T.C.S.
BUTCHERS	Article 4476-7, V.T.C.S.
DAIRIES, MILK PROCESSING	Article 165-3, V.T.C.S. Article 4474, V.T.C.S. Article 4474a, V.T.C.S.
EGGS	Agriculture Code, Chapter 132
FRUIT	Agriculture Code, Chapters 91, 93-95, 102
POULTRY AND FOWL	Article 4476-7, V.T.C.S.
PRODUCE	Agriculture Code, Chapters 161, 168
FOOD VENDING MACHINES	TAX-GEN, Article 13.03

 ACTIVITY GROUP: HEALTH CARE FACILITIES AND SERVICES

Introduction: While municipalities have extensive authority to engage in the operation of hospitals and other health care facilities, the regulation of privately operated facilities has generally been pre-empted by the State. A city may have regulatory responsibility for those activities in the areas of health and fire safety, but duplication of the State's regulations should be avoided.

ACTIVITY: HOSPITALS

Statutory Reference: Article 4437f, V.T.C.S.

This law, the Hospital Licensing Act, provides that the state is the licensing authority for hospitals. The state may require local approval of private hospitals, but any fees collected in the licensing process belong to the state. Cities may nevertheless collect those fees levied for building, fire and health code enforcement.

* * * * *

ACTIVITY: CONVALESCENT HOMES

Statutory Reference: Article 4442c, V.T.C.S.

This act provides that the state is the licensing authority for convalescent homes. However, by the terms of this law, the state agency is directed to coordinate its activities with a city which sees fits to supplement the state program of regulations with further regulations to meet local conditions. The state agency is authorized to use the consultation services of local agencies whenever possible and to cooperate with local public health officials, including the delegation to local authorities of the

power to make inspections and recommendations to the licensing agency. This statute expressly provides that all license fees belong to the state. Cities may nevertheless collect those fees levied for building, fire and health code enforcement.

* * * * *

ACTIVITY: CHILD CARE

Statutory Reference: Human Resources Code, Article 11.003

The code provides that cities have responsibility with regard to regulation of child care facilities. An attorney general opinion states that cities have the power to license child care institutions, but the respective powers of cities and the State Department of Human Resources are independent. Human Resources Code Article 42.044 provides that the State may call on cities for inspection assistance within their "authorized fields".

* * * * *

ACTIVITY: FOSTER CARE PERSONS WITH PHYSICAL OR MENTAL LIMITATIONS

Statutory Reference: Article 4442c, Section 9, V.T.C.S.

This act provides that the State may delegate its inspection function to local public health officials. By implication a city would be authorized to recover its reasonable costs of inspection of such foster care facilities.

* * * * *

ACTIVITY: AMBULANCES

Statutory Reference: Article 4590b, V.T.C.S.

Permits for emergency or other ambulances are issued by the state, but the statute provides for application to be made to the health officer of a political subdivision. According to the case law, other local regulations are permitted.

Private ambulance services are dependent on the use of public streets to conduct business. At least one

ordinance has been upheld by the courts which required a certificate of convenience and necessity, permits, insurance and a performance bond, imposed a street rental charge, and regulated user rates. In addition the ordinance required proof of financial responsibility and fitness to operate the service.

<u>ACTIVITY</u>	<u>COMMENT</u>
Health Care Facilities	Inspection and permit processing fees under health, building and fire code regulations.
<u>Ambulances</u>	
- Certificate of Convenience and Necessity	Administrative costs of preparing, investigating, reviewing and publishing certificate application.
- Vehicle Permit	Costs of periodic inspection of emergency vehicles to determine adequacy of equipment.
- Street Rental	Charge for use of public streets for private enterprise.

ACTIVITY GROUP: MOTOR VEHICLES

Introduction: In Texas the licensing, registration, sale and distribution of motor vehicles is generally reserved to the state, despite the language of the municipal enabling acts specifically authorizing cities to regulate, license and in some cases tax the operation of certain vehicles within the city. The state has pre-empted the entire field of registration and licensing of motor vehicles, other than certain carriers for hire.

ACTIVITY: ABANDONED MOTOR VEHICLES

Statutory Reference: Article 6687-9, V.T.C.S.

The Abandoned Motor Vehicle Act prescribes the method of disposition of abandoned vehicles and authorizes a local police department to reimburse itself from the proceeds of sale of vehicles for its expenses for auction, towing and preserving and storing the vehicle and the giving of notice of auction.

ACTIVITY: BUSES

Statutory Reference: Article 6698, V.T.C.S.
(See Taxis and Buses under Businesses.)

ACTIVITY: LOAD LIMITS

Statutory Reference: Article 670ld-11, V.T.C.S.

This act authorizes cities to regulate the movement and operation of over-weight and over-sized vehicles. However, this regulation is limited to public streets not a part of State or Federal system, because Article 670la provides that no fee, permit or license may be required by a city for over-weight or over-sized vehicles on state highways within a city.

* * * * *

ACTIVITY: PARKING LOTS AND GARAGES

Statutory Reference: Article 1175e, V.T.C.S.

This act is authority for home rule cities to acquire and operate parking lots and garages or to regulate the use and establish charges for these facilities when leased by the city to private operators.

* * * * *

ACTIVITY: WRECKERS

Statutory Reference: Article 6698, V.T.C.S.

While Article 6698 pre-empts the regulation of motor vehicles generally by local governments, there is case law authority to the effect that this act does not preclude cities from requiring wrecker permits and levying permit fees.

Comment: Notwithstanding the apparent authority of general law and home rule cities to exercise the police power in the regulation of motor vehicles, the following activities are substantially regulated by State law, indicating significant pre-emption by the State.

<u>ACTIVITY</u>	<u>STATUTORY REFERENCE</u>
MOTOR VEHICLE DEALERS	Article 4413(36), V.T.C.S.
REGISTRATION AND LICENSING	Article 6698, V.T.C.S.
INSPECTION	Article 670ld Article XV
LOAD LIMITS	670la
OIL WELL EQUIPMENT	670ld-16
MOBILE HOMES	670l-1/2

 ACTIVITY GROUP: PLANNING, ZONING AND DEVELOPMENT

Introduction: In a city or town which is experiencing growth, substantial time and expense may be used in support of development activities. Often the public expense of such activities is borne by the taxpayer. An analysis of planning, zoning and development costs can provide a basis for shifting the financial burden of these activities from taxpayers generally to the developers and users of the improvements.

ACTIVITY: AIRPORT ZONING

Statutory Reference: Article 46e-1, et seq., V.T.C.S.

The Airport Zoning Act provides for the granting of permits, variances, etc., in a manner similar to that of conventional zoning.

ACTIVITY: CONDOMINIUMS

Statutory Reference: Article 1301a, V.T.C.S.

The Planning and Zoning Commission may adopt rules and regulations which are supplemental to the State Condominium Act with regard to condominium regimes. However, the county clerk may record condominium plats without other approval.

ACTIVITY: FLOOD PLAIN DEVELOPMENT

Statutory Reference: Article 8280-13, V.T.C.S.

Cities are authorized by this act to regulate or restrict flood plain development including the adoption of rules and regulations for flood plain control. This Act applies to cities participating in the Federal Flood Insurance Program.

ACTIVITY: PLATTING

Statutory Reference: Article 974a, V.T.C.S.

This act contemplates the review and processing of subdivision plats by the local platting authority, either the city council or planning commission.

ACTIVITY: STREETS - ABANDONMENT

Statutory Reference: Article 1016, V.T.C.S.

The governing body is authorized to abandon and vacate any street or alley by formal petition of all abutting property owners.

ACTIVITY: STREETS - IMPROVEMENT

Statutory Reference: Article 1175(16)(17), V.T.C.S.
Article 1105b, V.T.C.S.

Cities are authorized to make street improvements and to levy assessments against abutting owners for the costs of such improvements in accordance with procedures provided in the statute.

ACTIVITY: STREETS - LIGHTING

Statutory Reference: Article 1221-1240, V.T.C.S.

Incorporated cities and towns over 5,000 population may engage in assessment procedures to recover the cost of street lighting systems in a manner similar to that provided for street improvement assessments.

* * * * *

ACTIVITY: ZONING

Statutory Reference: Article 1011a-1011k, V.T.C.S.

This zoning enabling legislation prescribes the procedures for the processing of changes in zoning designations.

<u>ACTIVITY</u>	<u>COMMENT</u>
Flood Plain Development Permit	Permit required for building on a designated flood plain.
Flood Plain Fill Request Filing Fee	Filing fee charges for submitting a request for filling a flood plain.
Waterway Development Permit	Permit required for the development of land crossed by or adjacent to a waterway.
Fee for Vacating Streets, Alleys, or Easements	Fee charged for filing applications to vacate streets, alleys or easements.
Easement Release Application Fee	Application fee charged to property owners requesting release of a public easement.
Special Permit Application Fee	Fee charged for processing an application for a special permit for certain types of development as designated by the city.

<u>ACTIVITY</u>	<u>COMMENT</u>
Landmark Sign Request Fee	Fee charged to cover the administrative costs of processing an application for a landmark sign.
Subdivision Vacation Fee	Fee charged to developers submitting an application for subdivision vacation to the city.
Zoning Postponement Fee	Fee charged to a zoning applicant requesting postponement, rehearing or reconsideration of a case by the city.
Zoning Sign Fee	Fee charged to zoning change applicants so that a 'Request For Zoning Change' sign can be placed on the affected property.
Zoning Change Request Fee - Based on Size of Acreage	Fee charged to all persons petitioning for a change in zoning, fee charged according to the size of requested area.
Board of Adjustment Filing Fee	Fee charged for the filing of an appeal of a building officer's decision to board of adjustment, purpose of the revenue is to defray the expense of legal publications, accumulating engineering data and other administrative costs accompanying case preparation.
Rezoning Fee	Fee charged for the review of rezoning or change in zoning requests.
Site Plans	Fee charged for the review of site plans of subdivisions.
Preliminary Plat Review - By Lot - By Acre	Fee charged for the city to review subdivision preliminary plat.

<u>ACTIVITY</u>	<u>COMMENT</u>
Final Plat Review - By Acre - By Lot	Fee charged for the review of the final plat.
Subdivision Minor Plat Adjustment Fee	Fee charged for any minor adjustments to be made to plats.
Planned Unit Development Application and Final Plat Review Fee	Fee charged for the processing of preliminary and final applications for city consideration of a planned unit development.
Master Plan Review Fee	Fee charged to developer to ensure that the proposed plat or development is in accordance with the city's master plan.
Annexation Review Fee	Fee charged for the review of an annexation request.
Regulatory Sign	Fee charged to developer for the installation of a regulatory sign.
Street Identification Sign	Fee charged to developers for the installation of a street identification sign.
Stop Sign on the Same Pole as Street Identification Sign	Fee charged to developer for the installation of combined stop /street identification sign.
Stop Sign	Fee charged to developer for the installation of stop signs.
Parking Setback Engineering Fee	Fee required to remove the curb on any street, avenue, or alley. Usually used in order to build a set-back parking area.
Service-Inspection and Supervision of Paving Construction Fees	Fees charged for engineering, inspecting, and supervising costs provided by the city for each paving project.
City Survey Fee	Fee charged for a city survey - i.e., survey required before any person may build next to public property to ensure that no encroachment occurs.

ACTIVITY GROUP: PUBLIC ACCOMMODATIONS & SERVICE FACILITIES

Introduction: Regulation of public accommodations and facilities pertains primarily to protection of the public health and safety. State health regulations cover a wide range of activities in this area. However, cities and towns may adopt additional regulations so long as they are consistent with state law and the fees are reasonably related to the costs of enforcement.

ACTIVITY: HOTELS AND MOTELS

Statutory Reference: Article 4477-1, V.T.C.S.

4477-1 contains minimum health and sanitation standards. Section 23(a) provides that home rule cities may adopt more stringent ordinances pertaining to hotel and motels.

* * * * *

ACTIVITY: PUBLIC PLACES

Statutory Reference: Article 4477, V.T.C.S.

Article 4477 is the Sanitary Code for Texas. It authorizes local health authorities to impose quarantines for the control and management of contagious diseases and to impose local regulations therefor consistent with state law.

* * * * *

ACTIVITY: MESSAGE FACILITIESStatutory Reference: Article 2372w, V.T.C.S.

This act authorizes regulation of the location of message facilities and the requirement of permits, and the levy of permit fees by both general law and home rule cities.

Because many "massage parlor" ordinances have been held unconstitutional, great care should be taken in regulating this particular activity. State law preempts regulation of the activity when practiced by certain licensed vocations -- e.g., physicians, chiropractors, physical therapists, barbers and cosmetologists; and, certain facilities -- e.g., health care facilities.

ACTIVITY

- Inspection of water supply.
- Inspection of sewage disposal system.
- Inspection of facilities.
- Inspection of swimming pool.
- Licensing of massage establishments.
- Licensing of massagers.

C. SERVICES AND ENTERPRISES

ACTIVITY GROUP: PUBLIC RECORDS

Introduction: Any city government has certain duties and responsibilities with regard to the maintenance of records, whether imposed by state law or implicit in the activities of the local body. The Open Records Act is the principal statute regulating the disclosure of records to the general public. It provides for the recovery by the city of its costs to reproduce records for public use. In addition to the reproduction of printed materials, a city is also authorized to recover its costs for records in other forms -- e.g., photostatic and computer-stored data.

ACTIVITY: RECORDS - GENERALLYStatutory Reference: Article 6252-17a, V.T.C.S.

In addition to describing the types of records required to be produced for public examination, this law, the Open Records Act, provides that a city by ordinance must prescribe reasonable charges for the production of records of the city clerk. It further requires the State Board of Control to publish a schedule of reasonable charges for such services. Section 11 of the act permits the record-keeping authority to require any person requesting the production of records at significant expense to post a bond for payment of the costs.

* * * * *

ACTIVITY: RECORDS OF BIRTHS AND DEATHS

Statutory Reference: Article 4477, V.T.C.S., Rule 36a

This act makes each city of 2,500 or more population a registration district and designates the city secretary as the local registrar. Registration fees are prescribed by statute, and the local registrar is directed to charge the same fee as that charged by the State for the same or similar record.

ACTIVITY: ACCIDENT REPORTS

Statutory Reference: Article 6701d, V.T.C.S.,
Section 47 and 49

These provisions establish a State fee for reports and certifications of \$2.00 each and provide that cities may require reports in addition to those required by the state.

<u>ACTIVITY</u>	<u>COMMENT</u>
Certified Copy of Birth Certificate	Fee charged for purchase and certification of birth certificate.
Certified Copy of Death Certificate	Fee charged for the purchase and certification of a death certificate.
Fee For Copy of Driver's Record	Fee charged to citizens requesting a copy of their driving record.
Police Report Sold to Public	Fee charged for each copy of a police report which is sold to the public.
Accident Report Sales	Fee charged for each copy of a traffic accident report which is sold to the public.

ACTIVITYCOMMENT

Reproduction and Certification Charge	Fee charged for the copy and certification of city documents.
Certificate of Taxes Paid Fee	Fee charged for a certification that real or personal property taxes have or have not been paid.
Graphic Service Fees	Fee charged for blue-line, sepia, film positive, color xerox or other special reproductions.
Planimetric Maps Topographical Maps Sale of City Maps Liquor Zone Maps Base Maps Zoning Maps Land Use Maps	Fees charged for the purchase of maps of various sizes and formats.
Photo Mosaic Photo Transparencies Aerial Photos	Fees charged for the purchase of photos of various sizes and formats.
Sale of Community Renewal Publications	Fee charged for the purchase of various community renewal publications.
Sale of City History Book	Fee charged for a history book on the city.
Sale of Engineering Publications	Fees charged for various publications prepared by the engineering department and made available to the public.
Sale of Fire Department Publications/Documents	Fee charged for copies of various fire department documents.
Creek Ordinance	Fee charged for a copy of the city creek ordinance.
Sale of City Ordinances & Code Books	Fees charged for various city ordinances and technical code books.

<u>ACTIVITY</u>	<u>COMMENT</u>
Zoning Ordinance Fee	Fee charged for a copy of the city zoning ordinances.
Development Plan: Expressway & Arterial	Fee charged for a copy of the city's expressway and arterial development plan.
Planned Unit Development Ordinance	Fee charged for a copy of the city planned unit development ordinance.
Statistical Abstract	Fee charged for a copy of the statistical abstract of the city.
Subdivision Ordinance	Fee charged for a copy of the city subdivision ordinance.

ACTIVITY GROUP: HEALTH CARE FACILITIES AND SERVICES

Introduction: Municipalities have extensive authority to engage in the operation of hospitals and other health care facilities.

ACTIVITY: HOSPITALS

Statutory Reference: Article 4437e, V.T.C.S.

4437e provides that both general law and home rule cities may create a hospital authority. The city has a duty to charge sufficient rates for services to pay the costs of operation and maintenance as well as debt service on the financing of facilities.

ACTIVITY: COMMUNITY CENTERS FOR MENTAL HEALTH/MENTAL RETARDATION SERVICES

Statutory Reference: Article 5547-203, V.T.C.S.

A city may establish a center for mental health /mental retardation services pursuant to this act and may charge service fees to non-indigents, as prescribed by the center's board of trustees, sufficient to cover the costs of its operations.

ACTIVITY: AMBULANCES

A city may operate its own emergency ambulance service, which has been held to be neither a public utility nor a common carrier. A city-operated ambulance service is a governmental function which is not waived by the Texas Tort Claims Act.

ACTIVITY GROUP: RECREATION

ACTIVITY: BOATING

Statutory Reference: Texas Parks and Wildlife Code,
Section 31.092

Cities and towns may charge launch fees, docking fees, entry fees, or other recreational fees imposed or collected for the use of lake facilities owned or operated by the city.

ACTIVITY: GOLF

Statutory Reference: Article 1269j-4.1, V.T.C.S.,
Article 1015c, V.T.C.S.

Cities are authorized to build and operate golf courses as proprietary activities, and to pay for them out of proceeds of the hotel occupancy tax.

ACTIVITY: PARKS AND PLAYGROUNDS

Statutory Reference: Article 6080, V.T.C.S.,
Article 6081, V.T.C.S.,
Article 6081d, V.T.C.S.,
Article 6081e, V.T.C.S.,
Article 6081f, V.T.C.S.,
Article 1015(32), V.T.C.S.,
Article 1015c, V.T.C.S.,
Article 1175(15), V.T.C.S.

Cities and towns have abundant authority to acquire, improve, maintain and operate public parks and playgrounds, including the right and authority to grant concessions to private operators and to fix and collect reasonable charges for public use of facilities.

ACTIVITY: SWIMMING

Statutory Reference: Article 1268b, V.T.C.S.,
Article 1015c-2, V.T.C.S.

Cities are authorized to build and operate swimming pools and to lease the same for operation by third parties.

ACTIVITY: TENNIS

Statutory Reference: Article 1269j-4.1, V.T.C.S.

Cities may build and operate tennis facilities and finance them with hotel occupancy tax revenues.

ACTIVITY: RECREATIONAL FACILITIES - GENERALLY

Statutory Reference: Article 1015c, V.T.C.S.

Cities and towns, general law and home rule, are authorized to build and purchase parks, pools, golf courses, club houses, ballparks, fairgrounds, exhibition buildings, and airports through revenue bonds.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Golf Fees</u>	
Golf Reservation Fee	Fee charged for making a reservation at a city golf course.
Golf Clubhouse Rental	Fee charged for rental of the clubhouse at a city golf course.
Green Fee Surcharge For Capital Improvements	Surcharge added to the green fee for each round of golf played to support capital improvements to city golf facilities.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Annual Membership Fees</u>	
Individual 3 or More Members Senior Individual Over Age 65 Husband and Wife Junior Individual Under Age 18 School Golf Team	Fee charged to use city golf facilities.
<u>Green Fees</u>	
18 Holes	
9 Holes	
Senior Citizens	Reduced fee charged for senior citizens.
Handicapped Citizens	Reduced fee charged for handicapped citizens.
Early Bird Round Fee	Reduced fee charged for round of golf played during designated morning hours.
<u>Golf Cart Fees</u>	
Electric Cart	
Hand Cart	
Use of Private Golf Cart	Fee charged for the use of private golf carts on city golf courses.
<u>Pro Shop Fees</u>	
X % Annual Gross Sales	Percentage the city receives from the annual gross sales of merchandise at city golf courses.
X % of Gross Concession Sales	Percentage the city receives from vendors who operate food and drink concessions at city golf facilities.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Swimming Fees</u>	
Municipal Pool Concessions	Percentage of gross sales that the city receives from vendors who provide food and drink at municipal swimming pools.
Adult Fee	For admission to pool.
Children's Fee	
Swimming Class Fee	
Special Parties (Per Person Fee)	
Special Fee for Senior Citizens	
Special Fee for Handicapped Citizens	
Swim Ticket Discount Fee	Reduced fee charged for purchase of multiple swim tickets for use at the city's swimming pools.
Learn to Swim Fee	Reduced fee charged for beginning swim classes held at city swimming pools.
<u>Parks and Playgrounds Fees</u>	
Charge for Baseball or Softball Field	Fee charged for the use of city baseball or softball fields.
Charge for Use of Lights	Fee charged for the use of lights during night play on city softball or baseball fields.
Mobile Concessions Percentage	Percentage of gross annual sales that the city receives from vendors in return for the right to supply food and drink at city park and recreation functions.

<u>ACTIVITY</u>	<u>COMMENT</u>
Sale of Food, Drinks and Miscellaneous Items	Percentage the city receives from the sale of food, drinks, and miscellaneous items by vendors who operate at city recreation centers.
<u>Tennis</u>	
Tennis Court Rental Fee	
Tennis Class Fee (Per Person)	
Locker Rentals	
Special Fee for Senior Citizens	
Special Fee for Handicapped	
League Fee (Per Person)	
Tournament Fee (Per Person)	
Tennis Facility Memberships	
X % From Sale of Merchandise, Etc.	Percentage that the city receives from the sale of merchandise, racquet stringing, concessions and lessons at tennis facilities.
<u>Racquetball</u>	
Court Rental Fees	
Senior Citizens Fee	
Handicapped Fee	
<u>Park Entry Charges and Fees</u>	
Admission/Car	
Admission/Pedestrian	
Campsite	
- With Electrical Hook-Up	
- Without Electrical Hook-Up	

<u>ACTIVITY</u>	<u>COMMENT</u>
Group Picnic Area Reservation Fee	Fee charged for the rental of city park picnic area and/or clubhouse.
Sail Boat Rental Canoe Rental Boat Rental	Fee paid to city in return for the right to rent for use on city lakes.
Boat Stall Rental	Fee charged for the rental of boat stalls on city lakes.
Boat Race Fee	Fee charged per boat for the right to participate in organized races.
<u>Miscellaneous</u>	
Firing of Glazed Articles (Per Inch)	Fee charged for firing of glazed articles at the city's arts and craft facilities, cost per inch.
Art and Craft Fees	Fees charged to participants in arts and crafts classes held at city recreation center facilities.
Rental of Equipment to be Used in Rec Center	Fee charged to persons renting equipment in the recreation center. (e.g. PA system, record player, piano).
Equipment Set-Up Fees	Set-up fees charged at the city's recreation centers for special meetings and other events.

 ACTIVITY GROUP: USE OF PUBLIC PROPERTY

Introduction: Most cities and towns are engaged in some types of activities in which public property is used by private individuals for their own benefit to the exclusion of the general public. In some cases the activity is financed by revenue bonds and therefore fees must be charged. In other instances the imposition of a user charge may be appropriate but has never been levied by the city.

ACTIVITY: AIRPORTS

Statutory Reference: Article 46d-1 through 46d-22, V.T.C.S. Article 1269h, V.T.C.S.

The Municipal Airports Act authorizes cities operating airports to engage in the servicing of aircraft and providing of services for the comfort and accommodation of travelers including the sale of supplies, good and commodities. These enterprises may be done by contract of up to 40 years' duration. Cities are specifically authorized to fix charges, rentals and fees with regard to airport activities.

ACTIVITY: AUDITORIUMS, CIVIC CENTERS AND SIMILAR FACILITIES

Statutory Reference: Article 1269j-4.1, V.T.C.S.

Cities may own and operate a wide variety of public facilities designed for public assembly which may be leased by the city to an operator or operated by the

city. In either case, user fees and charges are essential to such operations. Some of the facilities authorized by this law are:

Civic Centers	Museums
Auditoriums	Libraries
Opera Houses	Other City Buildings
Music Halls	Golf Courses
Exhibition Halls	Tennis Courts
Coliseums	Other Recreational Facilities

Comment: Two additional statutes relate to civic center authorities -- i.e., Article 1269j-4.5 and 1269j-4.6. These acts authorize creation by the city of a civic center authority as a separate legal entity and further authorize cities to contract with such authorities.

ACTIVITY: PUBLIC MARKETS

Statutory Reference: Article 1015(31), V.T.C.S.

The owning and operating of public market places are among the oldest municipal functions specifically reflected by state law.

ACTIVITY: MINERALS

Statutory Reference: Natural Resources Code, Chapter 71

This chapter of the Natural Resources Code authorizes cities to enter into mineral leases and prescribes the procedures for doing so, including the authority to enter into pooling agreements.

ACTIVITY: STREETS - GENERALLY

Statutory Reference: Article 1015(23), V.T.C.S.,
Article 1016, V.T.C.S.,
Article 1175(18), V.T.C.S.,
Article 1085b, V.T.C.S.,
Article 1181, V.T.C.S.

The power to regulate and control the use of public streets is one of the fundamental grants by the Legislature to local bodies. Article 1085b specifically authorizes cities to engage in the rental of streets for private use "on such terms and for such consideration as the city may prescribe", so long as such use does not interfere with its public purposes.

* * * * *

ACTIVITY: STREETS - FRANCHISES

Statutory Reference: Article 1015(29), V.T.C.S.,
Article 1175(12), V.T.C.S.,
Article 1181, V.T.C.S.,
Article 1446c, V.T.C.S.,
Article 1422, V.T.C.S.,
Tax Code, Chapter 182,
Subchapter B

The above cited statutes constitute the basic grants of authority for cities to franchise the use of public streets for electric, gas, telephone, telegraph, and similar utility purposes.

Comment: The review of utility regulation and fees is beyond the scope of this manual.

* * * * *

ACTIVITY: SALE OF SURPLUS PROPERTY

Statutory Reference: Article 5421c-12, V.T.C.S.

This statute prescribes the procedures for the sale of surplus real property owned by a city or town, together with the exemptions to such procedural requirements.

* * * * *

ACTIVITY: SIGNS - IN RIGHT-OF-WAY

Statutory Reference: Article 6697a, V.T.C.S.

Article 6697a authorizes political subdivisions to place "advisory safety or useful directional information signs" along public rights-of-way for revenue purposes.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>General</u>	
Grazing Land Fee	Fee charged for lease of city land for grazing purposes.
Farmer's Market Daily Stall Rental Fee	Fee charged to producers and dealers for the use of stalls at the city's farmer's market.
Sale of Computer Services	Fee charged for the use of city's data processing services (computer software and hardware).
Concessions From Vending Machines in City Buildings	Commission received from vending companies for the placement of vending machines in various locations on city-owned property.
Pay Telephone Concessions (Phones Located on Public Property)	Commission received from the telephone company for telephone installations at various locations on city-owned property.
Snack Bar Concessions	Percentage of gross receipts the city receives from the snack bar concession in city hall or other city-owned buildings.
<u>Library Charges & Fees</u>	
Deposit Card Fee	Deposit fee charged to out-of-town or temporary residents who want to check out books.

<u>ACTIVITY</u>	<u>COMMENT</u>
Record or Cassettes Tape Rental Fee	Fee charged for the rental of library owned phonograph records or cassette tapes.
Late Return Fees	Fee charged to individuals who borrow library materials and return the items after due date.
Lost Material Fee	Fee charged anyone losing or damaging library materials.
Replacement of Lost Card Fee	Fee charged to replace a lost library borrower's card.
Temporary Card Fee	Fee charged for the issuance of a temporary library borrower's card.
Photocopy Fees	Fee charged to library patrons for each photocopy made.
Messenger Fees	Fees charged for library employees to make house calls to patron's homes to pick up overdue materials not returned.
Missing Transaction Card Fee	Fee for loss of transaction card used to record the due date of each item borrowed.
Reserve Card Fee	Fee charged for the privilege of having a book held in reserve until picked up.
<u>Auditorium Charges & Fees</u>	
Auditorium Rental	Flat Charge
	Morning Only Rental
	All Day Rental - Not to Exceed 8 Hours
	Afternoon Only - Not to Exceed 4 Hours
	Night Only - Not to Exceed 4 Hours

<u>ACTIVITY</u>	<u>COMMENT</u>
Commission to City if User Charges an Admission Fee	Percentage the city receives of all admission fees collected when user of city auditorium or stadium charges an admission fee to any event.
Add'l Charge When There Are Multiple Performances a Day	Additional fee charged to organization that rents auditorium for 2 or more performances a day.
Out of Town Commercial Users Rental Charge	Fee charged to out-of-town users of auditorium for commercial events.
Religious Users Rental Charge	Fee charged to users of auditorium for religious event.
Trade Shows and Conventions Users Rental Charge	Fee charged to users of auditorium for trade shows or conventions.
Organization That Rents Bldg 50 or More Times Per Year	Reduced fee charged to organization that rents auditorium 50 or more times per year.
Rental of Meeting Rooms	Fee charged to individual or organization renting meeting rooms.
Concession Commissions	Percentage of gross revenues remitted to the city in return for the right to operate concession stands.
Catering Fees	Fee charged to all organizations which serve or cater a meal within the auditorium facilities.
Catering Commissions	Percentage of gross revenues remitted to city in return for right to cater activities at the auditorium.
Sale of Beer Commissions	Percentage the city receives from the sale of beer in the city's stadium, auditorium or other facility.

<u>ACTIVITY</u>	<u>COMMENT</u>
Vending Machine Commissions	Percentage the city receives from the operation of vending machines in the city's stadium, auditorium or other facility.
Fee For Use of Stadium Flood Lights	Fee charged for use of flood lights at city stadium.
Parking Fee at Auditorium or Stadium	Fees charged for parking spaces to be made available to the public during events scheduled at city stadium or auditorium.
Rental of Adjacent Trailer Park	Fee charged for the use of trailer park adjacent to city auditorium, coliseum, fairgrounds, or other building.
Public Address System Charge	Fee charged for the use of the public address system at city auditorium, stadium or other place of public assembly.
Rental of Kitchen Facilities	Fee charged for the use of kitchen facilities at city auditorium or coliseum.
Stadium Insurance Fees	Fee charged to users of city stadium for the cost of providing public liability insurance.
Rental of Equipment Used In Auditorium	Fee charged to users who rent equipment for use in the auditorium or city facilities.
Rental of Telephones	Fee charged to building lessees for the use of telephones located within the auditorium or coliseum facility.
Rental of Electricity	Fee charged to auditorium lessees for the use of electricity in the facility.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Sales Fees</u>	
Percentage Fees - Novelties - Programs - Photographs	Percentage that the city receives from persons or organizations selling novelties, programs or photographs within any city auditorium or coliseum.
Sale of Tickets	Percentage that the city receives from persons or organizations selling tickets in any city facility (auditoriums, stadiums, recreation centers, etc.).
<u>Street Rental</u>	
Loading Dock on Public Property Permit	Fee charged to owners of loading docks for the utilization of city space.
Use of Pipeline on Public Property Permit	Fee charged to owners of pipelines for the utilization of public property.
Overhead Pedestrian-Way on Public Property Permit	Fee charged to owners of overhead pedestrian-ways for the utilization of public property.
Pneumatic Tube on Public Property Permit	Fee charged for the use of pneumatic tubes on public property.
Chilled Water Lines on Public Property Permit	Fee charged for the use of chilled water lines on public property.

ACTIVITY GROUP: WASTE COLLECTION AND PROCESSING

ACTIVITY: SOLID WASTE - GENERALLY

Statutory Reference: Article 1015(3)(12), V.T.C.S.
 Article 1175(34), V.T.C.S.
 Article 4477-7, V.T.C.S.

These laws, including the Solid Waste Disposal Act (Article 4477-7), authorize cities to own, operate and regulate landfills and other solid waste disposal facilities.

* * * * *

ACTIVITY: INDUSTRIAL WASTE

Statutory Reference: Article 4477-7, V.T.C.S.

Industrial solid waste activities are licensed by the state or county unless the city is situated in two or more counties.

* * * * *

ACTIVITY: SANITARY SEWER SERVICE

Statutory Reference: Article 1076, V.T.C.S.

This Act requires cities to pass ordinances regulating sewers and plumbing.

Statutory Reference: Article 1086, V.T.C.S.

This article confers power on cities to make sanitary sewer improvements, including an assessment procedure to be initiated on petition of two-thirds of the abutting owners.

Statutory Reference: Article 1175, V.T.C.S.

This article authorizes home rule cities to own or operate sewage plants, to exercise eminent domain powers for such purpose, and to require connections to the system.

Statutory Reference: Article 1108, V.T.C.S.

This article authorizes general law cities to own and operate sanitary sewer systems and to adopt rules and regulations for the operation thereof.

Statutory Reference: Article 1110e, V.T.C.S.

This law is authority for both general law and home rule cities to make sanitary sewer improvements including the exercise of assessment powers.

* * * * *

ACTIVITY: SEPTIC TANKS

Statutory Reference: Article 4477-1, V.T.C.S.
 Water Code, Article 26.031

Under Article 4477-1, home rule cities may adopt more stringent standards for septic tanks and private water systems than those private sewage systems than those prescribed by the state. Under the Water Code provisions, the Texas Water Commission may delegate its licensing function to cities, in which case the license fees are payable to the city. The Commission establishes the amount of fees.

Statutory Reference: Water Code, Articles 26.171-26.177

These provisions authorize user charges and connection fees and prescribe the criteria for establishing such charges. Cities of over 5,000 population must establish pollution control and abatement programs, and such programs are authorized in smaller cities. The case law indicates that this act does not authorize cities, on their own initiative, to regulate private sewage facilities by licensing.

<u>ACTIVITY</u>	<u>COMMENT</u>
Sanitary Landfill Permit	Permit required for the operation of a sanitary landfill.
Small Sewage Treatment System Permit	License required for the construction, extension, or alteration of any small sewage treatment system.
Septic Sanitation Service License	License required for any person who cleans and services privy vaults, septic tanks, and unsewered pit privies.
Septic Tank Cleaning License	License required for any business that cleans any type of septic tank or sewage disposal system.
Lake Sanitation Permit	Permit required for the installation of septic tank systems within a certain distance of any body of water adjacent to or in the city.
Percolation Test Permit	Permit required for a percolation test to be performed before installation or construction of a septic tank or small sewage treatment plant.
Incinerator Permit	Permit required for the operation of an incinerator in the city.

Refuse Collection

Residential (Alley-Curbside and Special Pick-up)
Commercial Refuse Collection

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Weed Removal</u>	
Mowing Fee	Fee charged for the mowing of property when it has been declared a health hazard.
Hauling, Labor, Clean-Up Charges	Fee charged to property owners for the removal of weeds, rubbish and other objectionable materials.
<u>Landfill Charges</u>	Based on weight Based on cubic yards Based on vehicle size
<u>Sewer Charges</u>	
Residential Sewage Charge	
Commercial Sewage Charge	
Industrial Sewage Charge	
Sewer Approach Main Charge	Fee charged for the installation of sewer lines and other facilities required to extend service from the existing sewer system to the property needing service.
Septic Tank Waste Disposal Fee	Fee charged for the disposal of septic tank waste from packing treatment plants into the city's sewer system.
Wastewater Tap Fee	Fee charged to property owners for connecting into the city's sewer system.
Sewer Hook-Up Charge - Additional Residential	Fee charged for the connection of an additional living unit when the residential property is already connected to the city sewer system.

<u>ACTIVITY</u>	<u>COMMENT</u>
Sewer Hook-Up Charge - Additional Commercial	Fee charged for the connection of each additional commercial unit when the commercial property is already connected to the city sewer system.
Inspection Charge For Commercial Sewer Hook-Up	Fee charged for the inspection of commercial hook-ups to the city sewer system.
Sewer Non-Participating Connection Fee	Fee charged to a property owner who does not financially participate in the expenses of extending the city's sewer line to his property. Owner must pay normal hook-up fees.
Sewer Participating Connection Fee	Fee charged to a property owner who financially participates with the developer or another organization in extending the city's sewer line to his property. Owner does not have to pay normal hook-up fees.

ACTIVITY GROUP: WATER SERVICE

ACTIVITY: WATER SYSTEMS

Statutory Reference: 1015(30)(43), V.T.C.S.
Article 1175(15)(19), V.T.C.S.
Article 1108, V.T.C.S.
Article 1109, V.T.C.S.

These statutes authorize general law and home rule cities to purchase, construct and operate water systems including the extension of the same outside the corporate limits and to contract for such services.

ACTIVITY: WATER RATES

Statutory Reference: Article 1446c, V.T.C.S.

The Public Utility Regulatory Act specifically states that there is no pre-emption of rates or service by city-owned water utilities.

ACTIVITY: IRRIGATION

Statutory Reference: Article 8751, V.T.C.S.

Licensing of irrigators is reserved to the state but this article specifically provides that cities may impose inspection requirements and charge fees therefor.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Sales Charges & Fees</u>	
Residential Water Sales	Fee charged for residential consumption of water.
Commercial Water Sales	Fee charged for the commercial consumption of water.
Industrial Water Sales	Fee charged for industrial consumption of water.
Water Tap Fee	Fee charged to property owners for connecting into the city's water system.
Bulk Water Sales	Charge for sale of bulk amounts of treated water to contractors or others.
Raw Water Sales	Fee charged for the sale of untreated water.
Sale of Lake Water For Use In Oil Drilling Exploration	
Water Approach Main Charge	Fee charged for the installation of water lines and other facilities required to extend service from the existing water system to the property needing service.
Meter Damage/Broken Seal Repair Charges	Fee charged for repair when a meter is tampered with or damaged.
Service Initiation Fee	Fee charged for service initiation of new, transfer or reconnect customers.

<u>ACTIVITY</u>	<u>COMMENT</u>
<u>Connection Charges</u>	
After Hours Fee	Fee charged to customers requesting service connection or transfer after normal working hours or same day service after designated cutoff time.
Water Hook-Up Charge - Additional Residential	Fee charged for the connection of an additional living unit to residential property already connected to the city water system.
Water Hook-Up Charge - Additional Commercial	Fee charged for the connection of an additional commercial unit to commercial property already connected to the city water system.
Water Non-Participating Connection Fee	Fee charged to a property owner who does not financially participate in the expenses of extending the city's water line to his property. Owner must pay normal hook-up fees.
Water Participating Connection Fee	Fee charged to a property owner who financially participates with the developer or another organization in extending the city's water line to his property. Owner does not have to pay normal hook-up fees.
Water Meter Reconnect Charge	Fee charged for the reconnection of water service to a customer whose water service was disconnected for non-payment of water bill.

APPENDIX A

ACTIVITY LOCATOR

<u>Activity</u>	<u>Page</u>
Abandoned vehicles.....	61
Abandonment, street.....	65
Accident reports.....	72
Airports	
Zoning.....	64
Operation.....	82
Alcoholic beverages.....	55, 106
Ambulances	
Operation.....	75
Regulation.....	59, 60
Amusement center, coin-machine..	29, 36
Animals.....	33
Auditoriums.....	82, 86
Bakeries.....	57
Barbers.....	106
Barricades.....	47
Beauty shops.....	106
Beverages, alcoholic.....	55, 106
Billiard tables.....	30
Birth records.....	72
Blasting.....	47
Boating	
Regulation.....	37
Services.....	76, 81
Boxing.....	39, 107
Buildings	
Demolition.....	41, 45
Inspection.....	40, 44
Moving.....	41, 45
Burglar alarm service.....	51
Buses.....	50, 61
Butchers.....	57
Cafes, cafeterias.....	56
Camps, camping.....	39
Carnivals.....	37
Carriers for hire.....	50
Cars, junk.....	61
Catering.....	56
Cats.....	34
Child care.....	59

<u>Activity</u>	<u>Page</u>
Circuses.....	37
Civic centers.....	82, 86
Coin-operated machines	
Amusement.....	29, 106
Vending.....	57, 107
Community center, MH/MR.....	75
Concerts, outdoor.....	38
Condominiums.....	64
Convalescent homes.....	58
Dairies.....	57
Dealers in pistols.....	30
Demolition, buildings.....	41, 45
Development	
Generally.....	64
Flood plain.....	65, 66
Dogs.....	33
Eggs.....	57
Electricity.....	41, 45
Elevators.....	42, 45
Energy conservation.....	42
Fireworks.....	37, 108
Fishing.....	39
Flood plain.....	65
Food	
Handler.....	54
Manufacturer.....	55
Service.....	56
Vending machines.....	55, 57
Foster care.....	59
Fowl.....	57
Franchises.....	84
Fruit.....	57
Garages, parking.....	62
Garbage.....	90, 92
Gasoline, mobile service.....	50
Going out of business.....	49
Golf.....	76, 77, 83
Health care.....	75
Hospitals	
Operation.....	75
Regulation.....	58

<u>Activity</u>	<u>Page</u>
Hotels	
Occupancy tax.....	31
Regulation.....	69
Housing, manufactured.....	42, 48
Hunting.....	39
Industrial waste.....	90
Irrigators.....	50, 95
Junk cars.....	61
Landfills.....	90
Lawn sprinklers.....	50
Libraries.....	85
Lighting, streets.....	66
Load limits, vehicles.....	62
Manufactured housing.....	42, 48
Markets, public.....	83
Massage facilities.....	37, 70
Meat processing.....	56
Mental health, community center.....	75
Milk processing.....	57
Minerals, sale.....	83
Motels	
Occupancy tax.....	31
Regulation.....	69
Motion picture theaters.....	39
Motor vehicles	
Abandoned.....	61
Dealers.....	63
Load limits.....	62
Registration.....	63
Occupancy tax, hotel/motel.....	31
Occupation tax	
Generally.....	29
Billiard tables.....	30
Coin-operated machines.....	29
Dealers in pistols.....	30
Outdoor concerts.....	38

<u>Activity</u>	<u>Page</u>
Parking garages.....	62
Parking lots.....	52, 62
Parks.....	76, 79
Passenger carriers.....	50
Pistols, dealers.....	30
Platting.....	65
Playgrounds.....	76, 79
Plumbing.....	43, 46
Poultry and fowl.....	57
Produce.....	57
Public markets.....	83
Public places, quarantine.....	69
Public records	
Accident.....	72
Birth.....	72
Death.....	72
Generally.....	71
Quarantine	
Animals.....	34
Public places.....	69
Rabies control.....	34
Records	
Accident.....	72
Birth.....	72
Death.....	72
Public, generally.....	71
Recreation facilities.....	77
Restaurants.....	56
Sales	
Abandoned vehicles.....	61
Going out of business.....	49
Surplus property.....	84
Sanitary sewer.....	90, 93
Security services.....	51
Septic tanks.....	91
Sexually oriented activities.....	51
Signs	
In street right-of-way.....	68, 85
Regulation.....	43, 47, 48
Solid waste.....	90, 92
Sprinklers, lawn.....	50

<u>Activity</u>	<u>Page</u>
Streets	
Abandonment.....	65
Franchises.....	84
Generally.....	84
Improvements.....	65
Lighting.....	66
Rental.....	89
Surplus property, sale.....	84
Swimming pools, operation.....	77, 79
Taxis.....	50
Tennis.....	77, 80, 83
Vending machines.....	29, 57
Waste	
Industrial.....	90
Liquid.....	90
Solid.....	90
Water service.....	95, 96
Weed control.....	93
Wreckers, regulation.....	62
Wrestling.....	39, 113
Zoning.....	66

APPENDIX B

BUSINESS ACTIVITIES REGULATED BY
THE STATE OF TEXAS

The State of Texas, through its administrative agencies, engages in the regulation of a number of businesses, occupations and professions. In some cases regulation is pre-emptive -- i.e., the Legislature has reserved to the state and withheld from local government the right to regulate. In other cases regulatory authority is shared by both levels of government. The following is a listing of state-regulated activities or the state agency primarily responsible for the exercise of regulatory authority.

The Sunset law is designed to eliminate those agencies and activities no longer required by public policy. The Legislature regularly changes the names, structures and functions of administrative agencies. Any user of this appendix should be aware of these possible changes.

The statutory references, unless otherwise indicated, are to Vernon's Texas Civil Statutes. The user should also be aware that specific regulatory measures typically include not only the referenced statutes but also administrative rules and regulations which are published by and available from the regulating agency.

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Accountants	State Board of Public Accounting	41a
Agricultural Products	Department of Agriculture	Agriculture Code
Alcoholic Beverages	Alcoholic Beverage Commission	Alcoholic Beverage Code
Amusement Machines	Amusement Machine Commission	Tax-Gen. Ch. 13
Antifreeze Manufacture	Department of Agriculture	165-6
Architects	Board of Architectural Examiners	249a
Attorneys	State Bar of Texas	304 to 320a-1
Auctioneers	Department of Labor & Standards	8700
Auto Club Services	Secretary of State	1528d
Bail Bondsmen	County Bail Bond Board (in each county)	2372p-3
Barber Shops & Schools	State Board of Barber Examiners	8407a
Beauty Shops	Cosmetology Commission	8451a
Beehives	State Entomologist	Agriculture Code Chapter 131

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Boilers	Department of Labor & Standards	5221c
Boxing	Department of Labor & Standards	8501-1
Burial Associations	State Board of Insurance	Insurance Code Chapter 14
Business Schools	Texas Education Agency	Education Code Chapter 32
Chauffeurs	Department of Public Safety	6687b
Child Care	Department of Human Resources	Human Resources Code, Ch. 42
Chiropractors	Chiropractic Examiners Board	4512b
Cigarette & Tobacco Sales	Comptroller of Public Accounts	Tax-Gen. 7.01-7.41
Coin-Operated Machines	Comptroller of Public Accounts	Tax-Gen. 13.14
Commercial Driver Training	Department of Public Safety	4413(29e)
Controlled Substances, Manufacturers, Dis- tributors	Department of Public Safety Department of Health Resources	4476-15

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Crabmeat Processing	Department of Health Resources Parks & Wildlife Department	4476-8
Credit Unions	Credit Union Department	2461-1.01 et seq.
Dentists, Dental Hy- genists, Technicians, Labs	Board of Dental Examiners	4543 et seq.
Egg Handlers	Department of Agriculture	Agriculture Code Chapter 132
Embalmers, Funeral Directors	State Board of Morticians	4582b
Employment Agencies	Department of Labor & Standards	5221a-7
Engineers	State Board of Registration of Professional Engineers	3271a
Fire Extinguishers & Alarms	State Board of Insurance	Insurance Code, 5.43-1
Fireworks, Manufacture, Distribution & Sales	State Fire Marshal	9205
Flower Dealers, Nurseries	Department of Agriculture	Agriculture Code Chapter 121

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Freight Carriers	Railroad Commission	911b
Fruit Dealers, Wholesale	Department of Agriculture	Agriculture Code Ch. 91-104
Fur Buyers, Trappers, Processors	Parks & Wildlife Department	Parks & Wildlife Code, Ch. 71
Gas & Oil Drilling	Railroad Commission	Natural Resources Code
Grain Storage	Department of Agriculture	5577b
Hearing Aid Dispensers	Board of Examiners in the Pilling and Dispensing of Hearing Aids	4566-1.01 et seq.
Homes For the Aged, Infirmary	Department of Health Resources	4442c
Hunting & Fishing	Parks & Wildlife Department	Parks & Wildlife Code
Insurance Adjusters, Agents, Companies	State Board of Insurance	Insurance Code
Investment Advisors	State Securities Board	581-1 et seq.
Irrigators	Board of Irrigators	8751

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Junk Dealers - Auto	Department of Highways & Public Transportation	6687-9
Junk Dealers - Metals	Department of Public Safety	9009
Landscape Architects	Board of Architectural Examiners	249c
LP-Gas Dealers, Transporters	Railroad Commission	Natural Resources Code, Ch. 113
Loan Companies	Consumer Credit Commissioner	5069-3.01 et seq.
Manicurists	State Board of Barber Examiners Cosmetology Commission	8407c 8451a
Milk & Milk Products	Department of Agriculture	Agriculture Code and 165-3
Motor Vehicle Dealers, Distributors, Manufacturers	Motor Vehicle Commission	4413(36)
Nurses, Registered	Board of Nursing Examiners	4513 et seq.
Nurses, Vocational	Board of Vocational Nurse Examiners	4528c
Nursing Home Administrators	Board of Licensure for Nursing Home Administrators	4442d

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Optometrists	Optometry Board	4552-1.01 et seq.
Passenger Carriers	Railroad Commission	911a
Pawnbrokers	Consumer Credit Commissioner	5069-51.01 et seq.
Pest Control - Horticulture	Department of Agriculture	Agriculture Code Ch. 71-78
Pest Control - Structural	Structural Pest Control Board	135b-6
Pharmaceutical Manufacturer	State Board of Pharmacy	4542a
Pharmacies & Pharmacists	State Board of Pharmacy	4542a-1
Physical Therapists	Board of Physical Therapy Examiners	4512e
Physicians	State Board of Medical Examiners	4498
Pistol Dealers	Comptroller of Public Accounts	Tax-Gen. 19.01(7)
Plumbers, Plumbing Contractors	State Board of Plumbing Examiners	6243-101
Podiatrists	State Board of Podiatry Examiners	4567a et seq.

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Polygraph Examiners	Polygraph Examiners Board	4413 (29cc)
Private Investigators & Security	Board of Private Investigators and Private Security Agencies	4413 (29bb)
Psychologists	State Board of Examiners of Psy- chologists	4512c
Public Surveyors	State Board of Registration for Public Surveyors	Natural Resources Code, Ch. 22
Real Estate Brokers & Salesmen	Real Estate Commission	6573a
Residential Service Companies	Real Estate Commission	6573b
Savings & Loan Asso- ciations	Savings & Loan Commissioner	852a
Security Brokers, Dealers, Salesmen	State Securities Board	581
Seed, Wholesalers, Retailers	Department of Agriculture	Agriculture Code Chapter 61
Social Psychotherapists	Board of Examiners in Social Psychotherapy	4512F

BUSINESS ACTIVITIES REGULATED BY THE STATE OF TEXAS		
ACTIVITY	REGULATORY AGENCY	STATUTE
Solid Waste	Department of Health Resources	4477-7
Vegetable Dealers, Wholesale	Department of Agriculture	Agriculture Code Ch. 91, 21, 101-104
Vending Machines (Amusements)	Amusement Machine Commission	4413 (41) Tax-Gen. Ch. 13
Veterinarians	State Board of Veterinary Medical Examiners	7465a
Warehouses	Department of Agriculture	5568 et seq.
Waterwell Drillers	Department of Water Resources	7621e
Weighers, Public	Department of Agriculture	5680 et seq.
Wrestling	Department of Labor & Standards	8501-1

SURVEY RESPONSE - FINANCIAL
MANAGEMENT PRACTICES

CITIES INDICATING THE FOLLOWING CONDITIONS OR PRACTICES (% is of cities answering affirmatively, of all answering cities):	RESPONDING CITIES	
	ALL %	TEXAS %
Have had state property tax referendum in past 5 years	40.0	-
State referendum passed (in states hold- ing referendum)	65.0	-
Have had city property tax referendum in past 5 years	11.5	33.3
City referendum passed (in cities holding referendum)	45.5	42.9
City has used these productivity measures in last 3 years:		
-- Employee performance evaluation	81.2	76.2
-- Goals and objectives in budget preparation	75.8	60.0
-- Capital investments to reduce manpower	54.7	66.7
City has instituted new financial manage- ment practices in the last 3 years:		
-- To decrease delinquencies	53.2	63.2
-- Other	51.4	60.0

CITIES INDICATING THE FOLLOWING CONDITIONS OR PRACTICES (% is of cities answering affirmatively, of all answering cities):	RESPONDING CITIES	
	ALL %	TEXAS %
Have reduced taxes in last 3 years:		
-- Property	23.7	38.1
-- Sales	3.7	-
-- Income	1.6	-
-- Other	10.1	-
Have reduced city services	38.1	28.6
Have increased price of services:		
-- Water	75.0	71.4
-- Sewer	79.3	81.0
-- Electricity	48.7	57.1
-- Other	85.9	100.0
Have found alternative revenue services:		
-- Foundation funding	14.1	10.5
-- Local business funding	25.3	15.8
-- Other funding	45.1	29.4
Have used other administrative measures:		
-- Reviewed how city services meet citizen needs and expectations	72.6	81.0
-- Compared performance with other cities of similar size	69.1	81.0

CITIES INDICATING THE FOLLOWING CONDITIONS OR PRACTICES (% is of cities answering affirmatively, of all answering cities):	RESPONDING CITIES	
	ALL %	TEXAS %
-- Transferred functions to other levels of government	45.9	33.3
-- Reviewed cost of services	88.7	95.0
-- Entered into joint service-delivery arrangement with another government	74.5	57.1
Contracted for service with another government or private sector	58.6	47.6
Decentralized activities to smaller area -- e.g., neighborhood service center	58.6	14.3
Used volunteers rather than city employers	53.6	47.6
Consolidated governmental units	5.1	9.5

SURVEY RESPONSE - LICENSE, PERMIT,
AND SERVICE FEE PRACTICES

CITIES INDICATING THE FOLLOWING CONDITIONS OR PRACTICES (% is of cities answering affirmatively, of all answering cities):	RESPONDING CITIES	
	ALL %	TEXAS %
Reported city has policy for reviewing licenses and permits regularly	34.9	20.0
Reported city has established enforcement procedures to ensure licensing or permit registration	79.1	71.4
Reported enforcement procedures are exer- cised on a regular basis	92.4	100.0
Reported city has policy for reviewing service fees and charges regularly	42.2	56.3
Reported problems in administering service fees and charges:		
-- Governing body refusal to set fees high enough to cover administrative costs	47.2	40.0
-- Difficulty in estimating citizen demand for the service	52.7	42.1
-- Revenues less than estimated	54.8	55.0
-- Citizen resistance to change from free service to charges	50.6	52.6
-- Charge discontinued due to illegality or doubtful legality	24.1	15.8
-- Delinquent or non-payment of charges	56.2	60.0

CITIES INDICATING THE FOLLOWING CONDITIONS OR PRACTICES (% is of cities answering affirmatively, of all answering cities):	RESPONDING CITIES	
	ALL %	TEXAS %
Reported factors considered in estab- lishing fee and charge structures		
-- Whether pricing to cover costs will discourage use	84.6	90.0
-- Impact on low income users	76.3	75.0
-- Impact on elderly, fixed incomes	76.1	75.0
-- Identification of user group	37.7	41.2
Reported charges for low-income or the elderly:		
-- Exemption from charge	35.7	40.0
-- Reduced charge	55.4	52.9
Reported fees and charges sufficient to recover cost of service:		
-- Direct cost	55.3	60.0
-- Direct and indirect costs	55.0	41.6

REVENUES BY SOURCE AS A PERCENTAGE
OF TOTAL OPERATING COSTS

	ALL TAXES	PROPERTY TAXES	LICENSE & PERMIT FEES	NON-UTILITY SERVICE CHARGES*
TEXAS CITIES - 1978				
High	78.90	41.05	5.27	14.36
Low	13.13	7.03	0.34	0.44
Average	53.54	28.24	1.50	6.26
# Cities Reporting	20	20	20	17
TEXAS CITIES - 1979				
High	77.44	45.38	5.18	14.63
Low	13.16	7.00	0.38	0.59
Average	54.55	28.06	1.52	6.52
# Cities Reporting	20	20	20	17
TEXAS CITIES - 1980				
High	72.12	43.34	5.01	16.92
Low	12.26	6.13	0.39	0.25
Average	52.26	25.88	1.43	5.96
# Cities Reporting	21	21	21	18
CITIES OUTSIDE TEXAS-1978				
High	87.35	82.14	16.25	40.87
Low	3.27	1.19	0.37	0.01
Average	41.89	21.25	3.59	5.06
# Cities Reporting	73	71	73	70
CITIES OUTSIDE TEXAS-1979				
High	85.63	85.63	16.45	33.68
Low	2.49	1.10	0.36	0.01
Average	40.01	18.39	3.65	5.11
# Cities Reporting	74	72	74	71

REVENUES BY SOURCE AS A PERCENTAGE
OF TOTAL OPERATING COSTS

	ALL TAXES	PROPERTY TAXES	LICENSE & PERMIT FEES	NON-UTILITY SERVICE CHARGES*
CITIES OUTSIDE TEXAS-1980				
High	86.23	81.91	16.94	29.09
Low	2.23	0.95	0.27	0.01
Average	42.34	19.15	3.81	5.20
# Cities Reporting	73	70	73	71
ALL REPORTING CITIES-1978				
High	87.35	82.14	16.25	40.87
Low	3.27	1.19	0.37	0.01
Average	44.39	22.79	3.14	5.30
# Cities Reporting	93	91	93	87
ALL REPORTING CITIES-1979				
High	85.63	85.63	16.45	33.68
Low	2.49	1.10	0.36	0.01
Average	43.11	20.49	3.20	5.38
# Cities Reporting	94	92	94	88
ALL REPORTING CITIES-1980				
High	86.23	81.91	16.94	29.09
Low	2.23	0.95	0.27	0.01
Average	44.56	20.70	3.28	5.35
# Cities Reporting	94	91	94	89