



City of Palo Alto

Finance Committee Staff Report

(ID # 9664)

Report Type: Action Items

Meeting Date: 10/16/2018

Summary Title: User Fee Cost Recovery Policy and Police/CSD Fees

Title: Staff Recommends That the Finance Committee Recommends That the City Council Approve the Updated User Fee Cost Recovery Policy and Discuss Police and Community Services Department Fees

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the Finance Committee recommend the City Council to

1. Adopt an update to the User Fee Cost Recovery Level Policy (Attachment A) to include language clarifying certain types of fees are not subject to state laws limiting fees to cost recovery.
2. Review and provide feedback on augmenting the City's Municipal Codes in association with either removing obsolete, or updating existing, Police Department fees from the Municipal Fee Schedule.

Background

User Fee Cost Recovery Level Policy

The City Auditor's Office issued an audit on April 17, 2017 the Community Services Department (CSD) Fee Schedule Audit, which included a review of CSD's procedures around municipal fee setting. The full audit report can be found: <https://www.cityofpaloalto.org/civicax/filebank/documents/56884>. The audit objectives were to determine if CSD fees recover an adequate level of costs of providing service and appropriately subsidize various City programs depending on the level of benefit to the community versus the individual in accordance with the City's current User Fee Cost Recovery Level Policy. The City Auditor's Office found that the department's cost recovery level guidelines, consisting of four cost ranges, are not aligned with the City's User Fee Cost Recovery Level Policy and recommended to revise the current Policy to clarify categories of fees that are not subject to state laws limiting those fees to cost recovery. Given this audit recommendation, staff examined and made updates to the current User Fee Cost Recovery Level Policy. Details

on these proposed changes can be found in the Discussion section below, as well as in Attachment A.

Police Department Fees

At the May 16th, 2018 meeting, the Finance Committee noted that some of the Police Department (PD) fees may be outdated and recommended examining existing fees to determine whether certain fees need to be updated or even deleted. Staff examined existing PD fees, and findings are presented in the Discussion section below.

Discussion

User Fee Cost Recovery Level Policy

The City provides a variety of services and programs to the public that benefit the entire community, including individuals and local businesses. The City’s fee-based services and programs must adhere to the City’s User Fee Cost Recovery Level Policy, which was adopted by the City Council on May 18, 2015 ([CMR #5735](#)). Table 1 below summarizes the three levels of cost recovery allowed under the current policy.

Table 1: Current User Fee Cost Recovery Levels

Cost Recovery Level Group	Cost Recovery Percentage Range	Policy Considerations
Low	0% - 30%	<ul style="list-style-type: none"> No intended relationship between the amount paid and the benefit received Fee collection would not be cost effective and/or would discourage compliance with regulatory requirements No intent to limit the use of the service Public at large benefits even if they are not the direct users of the service Affordability of service to low-income residents The service is heavily supported through donations
Medium	30.1% - 70%	<ul style="list-style-type: none"> Services which promote healthy activities and educational enrichment to the community Services having factors associated with the low and high cost recovery levels
High	70.1% - 100.0%	<ul style="list-style-type: none"> Individual users or participants receive most or all of the benefit of the service Other private or public sector alternatives provide the service The use of the service is specifically discouraged The service is regulatory in nature

Current policy aligns with the requirements outlined in the State Constitution. Specifically, Propositions 13, 218, and 26 have placed both substantive and procedural limits on local governments’ ability to impose fees and charges. Collectively, these state constitutional amendments provide safeguards against taxes being imposed without a vote of the people.

Proposition 26 in particular contains a general articulation of the cost of service principle and includes a requirement that the local government

bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. (California Constitution, Article XIII C, Section 1).

Certain types of fees, such as fines, penalties and/or late charges, or any charge imposed for entrance to or use of, as well as the purchase, rental, or lease of local government property, are exempted from the provision quoted above and not required to be based on actual costs of providing service. Instead, these types of fees are more typically governed by local market rates, reasonableness and potentially other policy factors. Certain fees, primarily found in CSD activities, such as facility rental fees, golf course greens fees for example, fall into this category, where fee rates are more appropriately set based on local market rates. Consequently, these fees are not bound to certain cost recovery levels and can even have rates that are higher than the full cost recovery level, if appropriate. As outlined in the audit, currently CSD applies the criteria in Table 2 as a general guideline to determine an appropriate cost recovery level.

Table 2: CSD Fee Cost Recovery Guideline

Cost Recovery Level Group	Programs and Services
Low	<ul style="list-style-type: none"> • Programs targeted at low-income or special needs populations • Human Services programs • Programs supported by Friends groups • Facility rentals by non-profit partners • Classes aimed at teaching an essential life-skill or a skill aimed at increasing safety, such bike safety • Programs aimed at decreasing teen stress such as participating in the Mitchell Park Teen Center
Medium	<ul style="list-style-type: none"> • Group classes, camps and workshops • Sports league registrations • Field and facility rentals for programs providing services to majority Palo Alto residents
High	<ul style="list-style-type: none"> • Private lessons for residents • Facility rentals for private events for residents
Very High	<ul style="list-style-type: none"> • Private lessons for non-residents • Facility rentals for private events for non-residents & for-profit entities • Golf course greens fees • Birthday parties and other private special event packages

Staff recommends updating the Policy to include a provision to clarify the category of fees that are exempted from state laws limiting rates to full cost recovery. This update will bring the City's municipal fee policy in alignment with the City Auditor's recommendation, as well as the

full scope of services and programs the City offers. Proposed changes to the cost recovery levels are shown below in Table 3. For details, refer to the Attachment A.

Table 3: Proposed User Fee Cost Recovery Levels

Cost Recovery Level Group	Cost Recovery Percentage Range	Policy Considerations
Low	0.0% - 30.0%	<ul style="list-style-type: none"> No intended relationship between the amount paid and the benefit received Fee collection would not be cost effective and/or would discourage compliance with regulatory requirements No intent to limit the use of the service Public at large benefits even if they are not the direct users of the service Affordability of service to low-income residents
Medium	30.1% - 70.0%	<ul style="list-style-type: none"> Services which promote healthy activities and educational enrichment to the community Services having factors associated with the low and high cost recovery levels
High*	70.1% - 100.0+%*	<ul style="list-style-type: none"> Individual users or participants receive most or all of the benefit of the service Other private or public sector alternatives provide the service The use of the service is specifically discouraged The service is regulatory in nature

*Certain types of fees, such as fines, penalties and/or late charges, or any charge imposed for entrance to or use of, as well as the purchase, rental, or lease of local government property, are not bound by state laws that limit to full cost recovery.

Police Department Fees

At the May 16th, 2018 meeting, the Finance Committee directed staff to review existing Police Department (PD) fees to determine if some of the fees can be considered obsolete and deleted from the Municipal Fee Schedule.

Per the Finance Committee’s direction, staff examined existing PD fees specifically. Staff first reviewed to determine which fees have not been charged in recent years and assessed if fees may be considered obsolete. After this review, staff has identified 14 fees that have not had any activity over the past 5 years. From these fees, staff has grouped them into ones that are recommended for deletion and ones that are recommended for further review and possible deletion or adjustment in the future. It is important to note that a number of these fees were

added through changes to the City’s Municipal Code; therefore, deleting these fees would also require removing relevant Municipal Code sections. Attachment B outlines the two groups of fees. Those that staff recommends to be deleted as they are no longer necessary are listed in Table 4 below.

There are a number of other fees that staff identified as being potentially obsolete or needing to be updated for a number of reasons. A complete list of these fees with staff recommendation can be found in Attachment B. Any potential implications of making adjustments need to be researched further, and staff will return to the Finance Committee with more concrete recommendations as part of the annual Municipal Fee Schedule update process in May, 2019.

Table 4: Obsolete Police Department Fees

Fee Title	Last Transaction	Annual # of Transaction (Past 5 years)	Municipal Code Section
Hot Tub Sauna - Employee (New)	Unknown	0	4.56.060
Hot Tub Sauna - Employee (Renewal)	Unknown	0	4.56.070
Hot Tub Sauna – New	Unknown	0	4.56.030
Hot Tub Sauna - Renewal	Unknown	0	4.56.040
Hot Tub Sauna - Sale or Transfer of Interest	Unknown	0	4.56.140
Mechanical Amusement Device Establishment	Unknown	0	4.10.120
Billiard Room (non-refundable)	Unknown	0	4.52.020
Bowling Alley (non-refundable)	Unknown	0	4.52.020
Carnival	Unknown	0	4.52.020
Circus	Unknown	0	4.52.020
Rodeo – New	Unknown	0	4.10.070
Bingo Establishment	4-6 years ago	0	4.51.160
Bingo Employee – New	4-6 years ago	0	4.51.160
Bingo Employee - Renewal	4-6 years ago	0	4.15.160

Resource Impact

Based on discussions with the Finance Committee and the City Council, any changes to fee rates for existing fees, such as potentially establishing a lower Special Event Permit fee rate for residents and/or non-profit organizations will have an impact on associated fee-based revenues. These potential changes and their impacts are anticipated to be discussed through the development of the FY 2020 Operating Budget and FY 2020 Municipal Fee Schedule. The

elimination of the fees discussed above is not anticipated to have impacts on current fee revenue, since they are not currently being charged.

Policy Implications

Recommendations in this staff report are consistent with existing City policies. Updates to the User Fee Cost Recovery Level Policy is still in accordance with Proposition 26 since recommended changes simply clarifies category of fees that are exempt from the requirement where the amount of new or increased fees and charges is no more than necessary to cover the reasonable cost of the City service, and the manner in which those costs are allocated to a payor bears a fair and reasonable relationship to the payor's burden on, or benefits received from, such a City service.

Environmental Review

Updating the User Fee Cost Recovery Level Policy, Municipal Codes, and the Municipal Fee Schedule do not constitute a project as defined in Public Resource Code Section 21065 for the purpose of the California Environment Quality Act.

Attachments:

- Attachment A - User Fee Cost Recovery Level Policy
- Attachment B - Police Department Fees

USER FEE COST RECOVERY LEVEL POLICY

BACKGROUND

The City provides a variety of services to the public which benefit the entire community or individual residents or businesses. For certain services such as regulatory fees, arts and science classes, or recreational classes, the City has partially or fully recovered the cost for providing these services, which would have been otherwise paid from the General Fund.

Propositions 13, 218, and 26 have placed both substantive and procedural limits on cities' ability to impose fees and charges. Collectively these constitutional amendments provide safeguards against taxes being imposed without a vote of the people.

POLICY STATEMENT

It is the policy of the City of Palo Alto to set Municipal Fees based on cost recovery levels in lieu of fully subsidizing fee-related activities with General Fund dollars. The cost recovery levels are reflective of the following policy statements.

1. Community-wide vs. Private Benefit: Funding services such as Police patrol services only through taxpayer dollars is appropriate for services that benefit the entire community. When the service or program provides a benefit to specific individuals or businesses such as the issuance of building permits, it is expected that individuals or businesses receiving that benefit pay for the costs to provide that service.

2. Service Recipient vs. Community Benefit: For regulated activities such as development review and Police issued permits, it is appropriate that the service recipient such as an applicant of a building permit pay for the permit although the community at large benefits from the regulation.

3. Consistency with City Goals and Policies: City policies and City Council goals related to the community's quality of life are factors in setting cost recovery levels. For example, fee levels can be set to promote healthy habits, facilitate environmental stewardship, or discourage certain actions (e.g. false alarms).

4. Elasticity of Demand for Services: The level of cost recovery can affect the demand for services. A higher level of cost recovery could ensure the City is providing services such as recreational classes or summer camps for children and youth without over stimulating a market with artificially low prices. Such low prices, which are a reflection of a high General Fund subsidy, may result in waiting lists and attract participants from other cities; however, high cost recovery levels could negatively impact the demand for such services from low income individuals, special needs individuals, and seniors.

5. Availability of Services from the Private Sector: High cost recovery levels are generally sought in situations where the service is available from other sources in order to preserve taxpayer funds for other General Fund funded City services. Conversely, services that are not available from other sources

Staff Report #9664 - Attachment A

and are typically delivered when residents experience an emergency typically have low or zero cost recovery levels.

Based on these policy statements, the table below overlays certain cost recovery levels grouped in low (0.0% to 30.0%), medium (30.1% to 70.0%), and high (70.1% to 100.0+%) cost recovery percentage ranges. It is important to note that these groupings provide policy guidance and are not absolute. Some policy statements may weigh more heavily than others, which may result in a different cost recovery level grouping for particular fees. For example, fees for recreational activities are expected to be set in general at the medium cost recovery level; however, fees for recreational activities for which there is a high demand may have a high cost recovery level due to high enrollment levels per class.

Additionally, while state laws limit most categories of fees to the reasonable cost of providing the service, certain types of fees, such as fines, penalties and/or late charges, or any charge imposed for entrance to or use of, as well as the purchase, rental, or lease of local government property, are not bound by those laws that limit to full cost recovery. Instead, these types of fees are more typically governed by local market rates, reasonableness and other policy driven factors. Therefore, these fees can potentially have rates higher than the full cost recovery level.

It is important to note that Municipal fees are reviewed annually by the Finance Committee and subsequently by the City Council as part of approval of the Municipal Fee Schedule.

Table 1: User Fee Cost Recovery Levels

Cost Recovery Level Group	Cost Recovery Percentage Range	Policy Considerations
Low	0.0% - 30.0%	<ul style="list-style-type: none"> No intended relationship between the amount paid and the benefit received Fee collection would not be cost effective and/or would discourage compliance with regulatory requirements No intent to limit the use of the service Public at large benefits even if they are not the direct users of the service Affordability of service to low-income residents
Medium	30.1% - 70.0%	<ul style="list-style-type: none"> Services which promote healthy activities and educational enrichment to the community Services having factors associated with the low and high cost recovery levels
High*	70.1% - 100.0+%	<ul style="list-style-type: none"> Individual users or participants receive most or all of the benefit of the service Other private or public sector alternatives provide the service The use of the service is specifically discouraged The service is regulatory in nature

*Certain types of fees, such as fines, penalties and/or late charges, or any charge imposed for entrance to or use of, as well as the purchase, rental, or lease of local government property, are not bound by state laws that limit to full cost recovery.

Recommended for Deletion

Fee Subgroup	General Recommendation	Fee Title *	Last Transaction	Palo Alto Statute
POL - Adult Entertainment	Delete recommended due to obsolescence, outdated and no longer used.	Billiard Room (non-refundable)	Unknown	4.52.020
		Bingo Employee - New	4-6 years ago	4.51.160
		Bingo Employee - Renewal	4-6 years ago	4.15.160
		Bingo Establishment	4-6 years ago	4.51.160
		Bowling Alley (non-refundable)	Unknown	4.52.020
		Carnival	Unknown	4.52.020
	Circus	Unknown	4.52.020	
	Delete recommended due to obsolescence and high risk to City liability potentially resulting in collecting this permit.	Mechanical Amusement Device Establishment	Unknown	4.10.120
POL - Hot Tub / Sauna	Delete recommended due to obsolescence or overlap with other permit.	Hot Tub Sauna - Employee (New)	Unknown	4.56.060
		Hot Tub Sauna - Employee (Renewal)	Unknown	4.56.070
		Hot Tub Sauna - New	Unknown	4.56.030
		Hot Tub Sauna - Renewal	Unknown	4.56.040
		Hot Tub Sauna - Sale or Transfer of Interest	Unknown	4.56.140
POL - Rodeo	Delete recommended due to obsolescence, outdated and no longer used.	Rodeo - New	Unknown	4.10.070

Recommended for Further Review

Fee Subgroup	General Recommendation	Fee Title *	Last Transaction	Palo Alto Statute
POL - Adult Entertainment	Move recommended to another department that regulates more business that is related to this function than police does.	Closing-out Sale	4-6 years ago	4.34.020
		Closing-out Sale Renewal (Two Maximum)	4-6 years ago	4.34.020
POL - Massage Establishment	Consolidate/Update Recommended due to overlapping requirements with state permits.	Massage Establishment - New	2017	4.54.040
		Massage Establishment - Non-Certified (New)	Unknown	None
		Massage Establishment - Non-Certified (Renewal)	2018	None
		Massage Establishment - Renewal	2018	4.54.040
		Massage Establishment - Sale or Transfer of Interest	Unknown	4.54.150
		Massage Establishment - Sole Proprietor (New)	Unknown	None
		Massage Establishment - Sole Proprietor (Renewal)	2018	None
		Massage Practitioner - Non-Certified (New)	2018	None
		Massage Practitioner - Non-Certified (Renewal)	2018	None
		Massage Technician - New	2018	None
		Massage Technician - Renewal	2018	None
POL - Miscellaneous	Update: Non-Profits have to follow the same process/rules as For-Profits. Certain updates can reduce liability, for example having a "do not solicit" list and performing a background check for all businesses, including non-profits.	Solicitation for Commercial Purpose	2018	4.32.020
		Solicitor Employee (Under Master License)	Unknown	4.10.055
		Solicitor/Peddler Master License	2018	4.10.055
POL - Taxicab	Update in progress, this permit is also covered county-wide, and under a state senate bill so the city needs to align ordinance. The Code Enforcement Officer is currently working on this with the Attorney's Office.	Taxicab - Driver	2018	4.42.220
		Taxicab - Master License (New)	2018	None
		Taxicab - Master License (Renewal)	2018	None
		Taxicab - Vehicle Inspection for Each Vehicle	2018	None
		Taxicab Driver - Replacement or Transfer Fee	2018	None