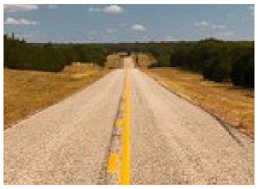

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Rightly Managing the Municipal Right of Way?

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Key Points

- Texas municipalities levied more than $543 million in right of way fees in 2017.
- Between 2008 and 2017, over $5.1 billion in fees has been taken from Texans and spent largely on projects unrelated to maintaining the right of way.
- The right of way fee does not benefit local citizens; instead it benefits local government officials and special interests by adding significant costs to consumers.

What do you call a charge for one service frequently used to pay for something completely different? For the municipal governments of Texas, that would be the municipal right of way fee, which bears a striking resemblance to a tax.

According to the Public Utility Commission of Texas, the "right of way" is defined as the "area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest" (Public Utility Commission of Texas). In other words, the local government is charging citizens for the use of their own property whether it is employed for electric, telecommunications, gas, or other service lines.

For quite some time, many municipal governments have gathered tens of millions of dollars per year in the name of providing these services to their constituents. Since 2008, over $5.1 billion in right of way fees (also known as franchise fees) have been levied against the people of Texas. In Houston alone, the total was expected to surpass $185 million in FY 2017.

The metaphor used to describe right of way fees by those that levy them is "rent" paid for space under or above ground where service lines are installed (Texas Municipal League). However, Sec. 283.001 of Texas' Local Government Code states that right of way fees are to be "consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way" and provide "fair and reasonable compensation for the use of a public right-of-way." When municipalities have charged residents to use lines running through either their own property or property owned collectively by themselves and their neighbors, and the money is used for projects unrelated to the cost of managing the rights of way, then

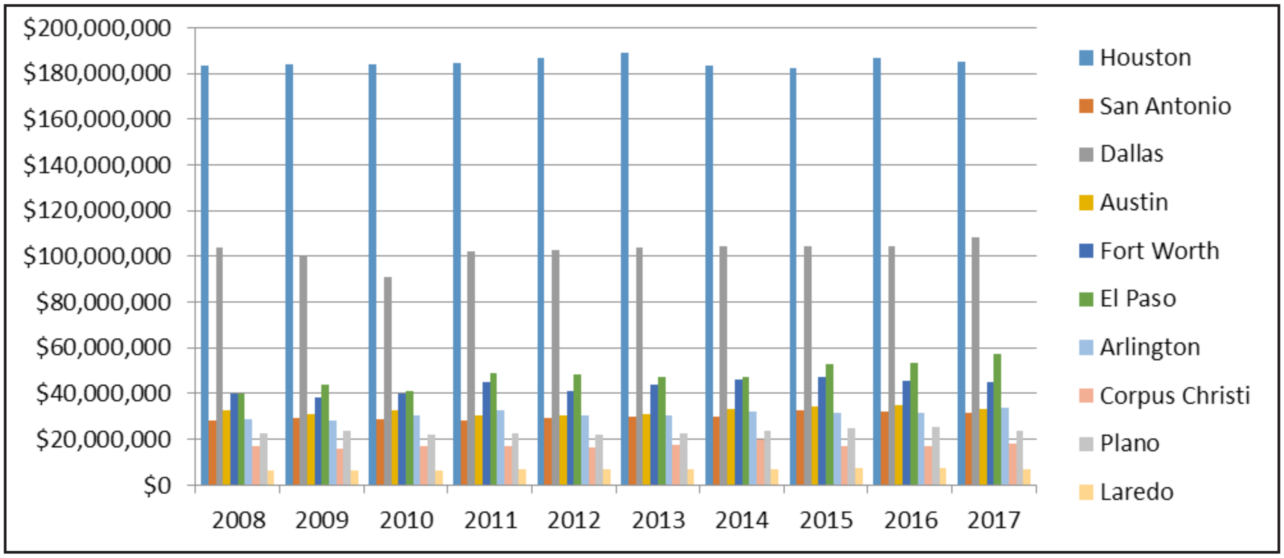
Table 1: Right of way fees collected by Texas' 10 largest cities (2008-2017)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total 2008-2017
Houston	$183,153,695	$184,221,688	$183,858,504	$184,410,797	$186,643,531	$189,030,298	$183,443,845	$182,482,306	$186,633,388	$185,222,635	$1,849,100,687
San Antonio	$28,386,813	$29,299,815	$28,976,795	$28,100,000	$29,539,419	$29,656,534	$30,045,328	$32,977,929	$31,949,513	$31,554,998	$300,487,144
Dallas	$103,823,134	$100,074,542	$90,999,559	$102,352,196	$102,475,420	$103,604,847	$104,541,298	$104,460,800	$104,316,937	$108,517,391	$1,025,166,124
Austin	$32,838,832	$30,850,800	$32,513,604	$30,517,389	$30,289,277	$31,152,211	$33,421,211	$34,221,758	$34,716,000	$33,187,000	$323,708,082
Fort Worth	$39,715,763	$38,390,140	$39,787,303	$44,966,726	$41,376,609	$43,933,111	$45,947,016	$47,461,691	$45,460,014	$44,893,608	$431,931,981
El Paso	$40,122,253	$43,815,255	$41,285,513	$48,980,745	$48,645,835	$47,112,246	$47,430,115	$52,752,159	$53,661,247	$57,144,610	$480,949,978
Arlington	$28,925,283	$28,293,626	$30,369,380	$32,702,318	$30,618,948	$30,430,911	$32,006,202	$31,824,946	$31,688,955	$34,019,814	$310,880,383
Corpus Christi	$17,272,515	$16,071,288	$17,054,727	$16,970,857	$16,576,842	$17,406,612	$20,017,765	$17,227,587	$17,073,956	$18,092,744	$173,764,893
Plano	$22,628,847	$23,586,444	$21,886,667	$22,770,635	$21,895,025	$22,455,606	$23,469,220	$24,643,020	$25,407,682	$23,755,531	$232,498,677
Laredo	$6,478,582	$6,499,106	$6,387,908	$6,707,418	$6,785,388	$6,739,515	$7,114,403	$7,231,329	$7,255,403	$7,036,290	$68,235,342
TOTAL	$503,345,717	$501,102,704	$493,119,960	$518,479,081	$514,846,294	$521,521,891	$527,436,403	$535,283,525	$538,163,095	$543,424,621	$5,196,723,291

Source: Online Municipal Budgets

continued

***Figure 1.** Right of way fees for the 10 largest cities in Texas (2008-2017)*



Source: Online Municipal Budgets

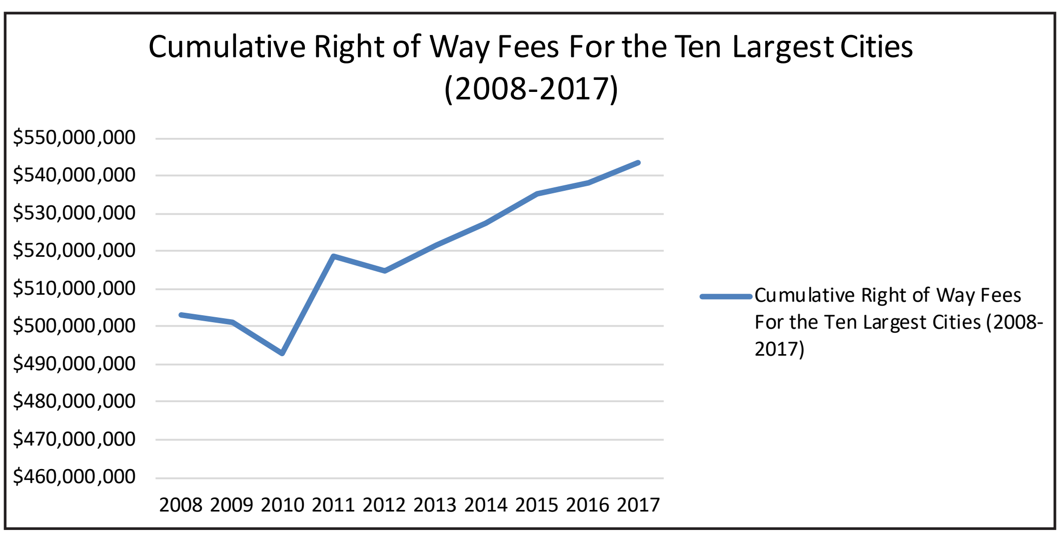
the billions of dollars accumulated in right of way fees over the past 10 years far exceeds what is "consistent with the burdens" and "fair and reasonable compensation."

In reality, the vast majority of the funds are not applied toward management of the rights of way at all. Rather, most of the fees are deposited in a general fund and then re-routed toward a plethora of unrelated projects.

In Plano, right of way fees over the past 10 years have amounted to $232,498,677. The budget for fiscal year 2016-17 named three primary sources of revenue for the city of Plano's General Fund: property taxes, sales taxes, and all other revenues. Franchise fees make up part of the "all other revenues" category. As displayed in Table 1, franchise fees collected in Plano in 2017 amounted to $23,755,531.

Where were these general revenue funds spent? Some were spent on creating "an additional eighty-six (86) new full-time positions and two (2) part-time positions" for the city, as well as on projects "to allow for the placement of two treadmills and the addition of two stationary bikes for the gym" at the Plano-Richardson Training Center and a "Kennel Attendant in the Animal Services Department" (Office of the City Manager).

***Figure 2.** Right of way fees for the 10 largest cities in Texas (2008-2017)*



Source: Online Municipal Budgets

Over the last five years, the cumulative figure for right of way fees gathered across the state has steadily increased, rising from $514,846,294 in 2012 to $543,424, 621 in 2017. The trend is unlikely to change anytime soon. While Sec. 283.055 of Texas' Local Government Code states that "On an annual basis, an affected municipality may provide notice to the commission to decline all or any portion of any increase in the per category across line rates," this option has been underutilized, resulting in the rising costs displayed in Table 1.

A fee appropriately imposed will charge beneficiaries for a good or service that provides utility and, in turn, allocate the funds generated toward the payment for that service. This fee fails to do so.

In a time when citizens are facing the increasing "Californiazation of Texas" on multiple fronts as local municipalities seek to exact and expand regulations in cities across the state, it begs the question: is this what Texas is about (Fikac and Baugh)? The Texas model, established on free enterprise, economic prosperity, and the individual liberty that forged the foundation of the state, invariably stands for something more. ✯

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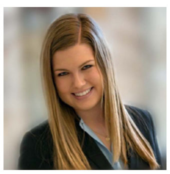
About the Author



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Prior to joining the Foundation, Bill served as the Deputy Commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office. Before he worked at the GLO, he was a legislative and media consultant, working with groups like Citizens for a Sound Economy and Putting Children First. Bill also served as the Deputy Assistant Commissioner for Intergovernmental Affairs for Commissioner Rick Perry at the Texas Department of Agriculture, as a legislative aide to Rep. John Culberson in the Texas House of Representatives, and as an analyst for the Texas Senate Committee on Education.

*This report was prepared with the help of **Kent Cho**, former research associate for the Center for Economic Freedom at the Texas Public Policy Foundation.*

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