

# City of Yorktown

## Administration and collection of fees, fines and miscellaneous revenues

Local governments assess, administer and collect a wide variety of fees, fines and other revenue. Laws, whether local, state or federal, dictate many of the fees, fines and other revenue that local governments can assess and collect.

In some cases, the law also stipulates the manner in which collections must be accounted for. For example, separate records of collections of state court costs must be maintained. A separate bank account is not required but the governmental entity should account for the state court costs collected as liabilities and not revenues, because the money does not belong to the entity, except for the service or collection fees. If a separate fund is maintained for the court costs, the money collected is a liability of that fund. If a separate fund is not maintained, the money collected is a liability of the general fund.

**Exhibit 6-1** lists the city of Yorktown's total estimated revenues of \$1,306,800 for the 2005-2006 fiscal. More than half, or \$890,550, is accounted for in the general fund and the remainder is accounted for in six special funds.

**Exhibit 6-1**  
**Budgeted 2005 – 2006 Revenues**  
**City of Yorktown**

Revenue Category	Fiscal 2005 Budgeted Revenue	Description
Property Tax	\$240,000	Ad Valorem Tax
Sales Tax	\$145,000	Sales tax
Other Tax	\$2,400	Hotel/Motel, Occupation & Amusement
Franchise Tax	\$115,000	Gross Receipts fees
Water-Wastewater	\$407,000	Water-wastewater
Sanitation- User fee	\$265,000	Trash removal with tax
Other User fees	\$17,050	Permits, inspections, library, R.V rental, pavilion, cemetery, county fires
Court costs, fees and fines	\$38,600	
Interest	\$38,750	Reserve fund, fire department, other
Other income	\$38,000	Fire department, municipal clerk salary, refunds, insurance dividends, other

*Source: City of Yorktown 2005 Budget.*

### **Franchise fees**

Franchise fees are often mistakenly thought to be taxes. Franchise fees are charges, also called street rental fees, that cities require of privately owned utilities—generally electric, water, gas, cable and telecommunication companies as well as some other businesses—for the use of the city's rights-of-way and easements. Cities control the use of their streets, alleys and public ways and can prohibit their use by private business interests. Utilities often must use city-owned property such as roads, medians and land to provide their services to customers. Utilities compensate cities for the use of city property by paying franchise fees.

The amount of the franchise fee is generally a percentage of the utility's gross receipts. In Texas, gas and water utilities may be required to pay a city up to 2 percent of the gross receipts of the sale of gas and water within the city limits. However, a city may negotiate a higher rate if the rate is established by agreement, not by an ordinance. Cities may charge franchise fees on either the base rate of gas or the cost of gas, or both. The base rate stays the same each month and covers operating expenses and a return on investment. The cost of gas is another charge that gas companies may levy to recoup their additional expenses, depending on the volatility of the price of gas that they provide to customers.

In 1999, the Texas Legislature amended the Public Utilities Regulatory Act to implement a competitive retail electric market allowing retail consumers to select their own electric providers. Section 39.051, Utilities Code, provides that by 2002 each electric utility must have separated its business activities into three district units: power generation, transmission and distribution, and retail. The legislation went into effect in 2002, and not only made changes that deregulated most electric utilities in Texas but also changed the way in which franchise fees could be charged. Traditionally, cities and electric utilities operated under a franchise agreement for a period of years that governed the amount the utility would pay, typically stated as a percentage of the utility's gross receipts on service provided within the city limits.

Since the 2002 deregulation, the franchise fee has been based upon the kilowatt-hours that a utility delivered to customers located within a city's boundaries in 1998. The total franchise fees for 1998 are divided by the total kilowatt-hours for that year to arrive at a franchise fee per kilowatt-hour rate. That rate is applied to current kilowatt-hours used by all customers within a city to arrive at the franchise fees due to the city.

Telecommunications franchise fees have also been affected by recent legislative changes. The 1999 Texas Legislature gave cities and telecommunications providers the option to continue their franchise agreements or ordinances that were executed before January 12, 1999. Upon the expiration of a franchise agreement or ordinance that a city or telecommunications provider has not chosen to terminate, cities will then fall under the same conditions of those cities that did not continue under their preexisting franchise arrangements.

The Public Utility Commission of Texas (PUC) determines the franchise fees paid by telecommunications providers to cities in Texas. The PUC establishes access line rates for each city, and every telecommunications provider operating within a city must report quarterly to the PUC the number of lines it has in the city. An access line corresponds to a single end-user, and access lines may be residential, business and database, each with its own rate. The telecommunications providers remit their franchise fees to cities directly.

Cable companies are another common source of franchise fees. The Federal Communications Commission has jurisdiction over cable systems. The 1992 Communications Act limits the franchise fee to no more than 5 percent of a cable system's annual gross revenue from subscribers within a city's limits.

The city of Yorktown currently receives franchise fees from its providers of electricity, telephone, cable, telecommunications and gas. The primary provider of electricity and related franchise fees is American Electric Power. The primary provider of telephone service and related franchise fees is Southwestern Bell. The primary provider of natural gas and related franchise fees is CenterPoint Energy. Several cable and telecommunications companies serve the city. Specific details regarding contracts and franchise fee agreements were not available at the time of the review, nor were budgeted revenues for each category of franchise fee.

Cities that have private garbage collection can also charge franchise fees for the use of city roads. No specific statute authorizes this franchise fee, but it is generally considered to fall under a city's right to regulate the use of city streets.

Solid waste removal is contracted out to Waste Management of Texas, Inc of San Antonio and billed to the customers with the water/wastewater bill. The fiscal 2005 budgeted receipts are \$250,000. The city retains 10 percent of the amount collected and the remainder is remitted to Waste Management. The average residential collection fee is \$19.21 per month, with \$1.92 remaining with the city.

**Exhibit 6-1** reveals data from a survey of some surrounding cities.

**Exhibit 6-2  
Solid Waste Survey  
July 2006**

	Yorktown	Refugio	Nixon	Runge	Karnes City	Goliad	Stockdale
Monthly fee	\$19.21	\$20.94	\$13.94	\$18.00	\$13.98	\$19.25	\$9.40
City's Administrative Fee	\$1.91	\$3.00	\$2.75	\$4.00	\$2.50	\$1.75	\$0.94

*Source: Cities of Yorktown, Refugio, Nixon, Runge, Karnes City, Goliad and Stockdale utility departments*

## ***City-owned utilities-water/wastewater***

Water and wastewater service has long been considered to be a natural monopoly. The infrastructure costs are usually prohibitively high for multiple competitors, and it is inefficient to have duplicate pipes and storage and treatment facilities.

The U.S. Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) regulate water and wastewater systems in Texas. The EPA sets standards, and TCEQ enforces those standards and sets its own standards for the design, operation and maintenance of public water systems.

The city currently operates its own water/wastewater treatment facility. Because waterworks is a primary source of revenue, the pricing of the service is a critical issue. Water/wastewater is accounted for with an enterprise fund, which is typically used when operations are financed and operated in a manner similar to private business enterprises. Usually, the intent is to recoup all or a portion of the costs of providing a service. Some cities even use this fee to supplement the general fund.

The 2004 comprehensive annual financial report shows that the water/wastewater fund's experienced a net operating loss for that year of \$23,753. Income collected totaled \$411,301 while the related expenses totaled \$435,054. A large cash and investment balance permitted the transfer of \$43,000 to the general fund. The water/wastewater fund's total net loss for fiscal 2004 was \$65,238.

Net operating income/loss	(\$23,753)
Non operating revenue	\$1,515

Transfer to general fund            (\$43,000)  
 Total net income/loss            (\$65,238)

The 2005-2006 water/wastewater fund's budgeted revenues total \$407,000 while the budgeted expenses total \$478,100. The result is an expected loss of \$71,100. Of this loss, \$65,850 is from the wastewater service and the remaining \$5,250 loss is from potable water sales.

Water/wastewater rates do not vary between commercial and residential properties. They do, however, vary by volume of usage and location. The price of the first 2,000 gallons of water varies with meter size, but additional 1,000 gallons are assessed the same fee. In addition, residents outside the city limits are charged double. Yorktown's rate system is show in **Exhibit 6-3**.

**Exhibit 6-3**  
**City of Yorktown**  
**Water Rates as of July 10, 2006**

Minimum monthly billing based on meter size	Inside city limits		Outside city limits	
	First 2000 gallons	Additional 1000 gallons	First 2000 gallons	Additional 1000 gallons
¾ inch meter	\$8.50	\$1.50	\$17.00	\$3.00
1 inch meter	\$10.00	\$1.50	\$20.00	\$3.00
2 inch meter	\$12.50	\$1.50	\$25.00	\$3.00

*Source: City of Yorktown Utility Department.*

Yorktown charges a single amount for wastewater, \$16.50, regardless of consumption, location or type of facility. Yorktown has considered increasing this amount to \$17.50, but has yet to do so.

Most cities also assess fees for water and wastewater tapping and connecting. Yorktown homeowners are not assessed any charge for service hook-up. Renters are assessed a \$75 hook-up fee.

A supervisor and two additional employees operate the Water/Wastewater Department. Meter readers record the amount of water used in a logbook and this information is manually entered into a computer. This data is used to generate the monthly billing that contains water, wastewater and solid waste. The average consumption for a family is between 7,000 and 8,000 gallons. According to the utility supervisor, the average residential monthly bill is \$56.80.

**FINDING**

**Yorktown's waterworks enterprise fund services are under-priced, resulting in annual net operating losses.**

The water/wastewater operations function as an enterprise fund and as such should be self-sustaining. Enterprise funds should be operated as a business with prices set accordingly. Yorktown's waterworks fund operated at a net loss during fiscal year 2004 and is expected to operate at a net loss again in fiscal 2005.

Failure to set a fair price for these services equal to the cost of providing them will have one of two results. The first is a steady depletion of the fund's cash and investment accounts until such time as they are depleted. The second is to unfairly burden property tax payers. At some point, this revenue must be supplemented. While the water/wastewater customers may in fact be the same as the property tax payers, this is not always the case. Renters pay water/wastewater based

on usage but do not directly pay property taxes. Some homeowners qualify for exemptions such as homestead, disability, age related, etc, thereby reducing their property tax burden. Others do not. Additionally, some institutional properties (prisons, hospitals, schools, churches, government) & businesses are property tax exempt. By artificially shifting the burden to another source of revenue, the true costs are distorted and may be supplemented by inappropriate parties. Texas Municipal League publishes self-reported water and waste water rates annually. A comparison of Yorktown and its peer cities shows that Yorktown has relatively low water/wastewater rates for its average residential user (**Exhibit 6-4**). Data for East Bernard was not available, as that city contracts out for its water service.

**Exhibit 6-4**  
**Water / Wastewater Rate Survey**  
**Yorktown and Peer Cities**

City	Inside City Limits 5,000 Gallons	Inside City Limits 10,000 Gallons	Outside City Limits 5,000 Gallons	Outside City Limits 10,000 Gallons	Wastewater Fee Inside City 5000 Gallons	Wastewater Fee Inside City 10,000 Gallons
<b>Yorktown</b>	<b>\$13.00</b>	<b>\$20.50</b>	<b>\$26.00</b>	<b>\$41.00</b>	<b>\$16.50</b>	<b>\$16.50</b>
<b>Goliad</b>	\$19.40	\$34.80	29.09	\$52.59	\$9.00	\$17.00
<b>Refugio</b>	\$14.15	\$20.65	\$20.23	\$29.98	\$17.95	\$21.20
<b>Average of Texas Cities Population of 2001 to 5,000</b>	\$23.51	\$37.41	unavailable	unavailable	\$23.51	\$37.51

*Source: Cities of Yorktown, Goliad and Refugio  
Texas Municipal League 2006 Water/Wastewater survey.*

Yorktown’s water and wastewater rates compare favorably with Goliad and the average small Texas city.

**RECOMMENDATION:**

**Appoint citizens committee to consider the most equitable manner to adjust water and wastewater rates.**

The 2004 CAFR shows that the water/wastewater fund experienced a net operating loss for that year of \$23,753. Income collected totaled \$411,301 while the related expenses totaled \$435,054. A 5.775 percent increase in total revenue or decrease in expenses would have permitted the operations to break even. This type of pricing would be a more accurate portrayal of the cost of services.

A plan to increase rates to bring in additional revenue should take into consideration how each segment of the community will be affected. The city may choose to allocate this increase in any way it deems fair between water and wastewater, so long as the end result is an overall revenue increase of at least 5.775 percent.

**FISCAL IMPACT**

**Assuming that Yorktown only wishes to break even with its waterworks fund, an increase of 5.775 percent would result in recovery of the \$23,753 loss (\$411,301 x .0577).**

<b>Recommendation</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>
Appoint citizens committee to consider the most equitable manner to adjust water and wastewater rates.	\$23,753	\$23,753	\$23,753	\$23,753	\$23,753

**FINDING**

**Yorktown does not charge a water meter deposit to homeowners.**

Currently, Yorktown charges a \$75 water meter deposit to renters only. Homeowners are not required to make a meter deposit for service. A survey of surrounding cities revealed that Yorktown is unique in this practice. While some of the surrounding cities charged different rates, all required some sort of deposit from homeowners as shown in **Exhibit 6-5**.

**Exhibit 6-5  
Water Meter Survey  
July 2006**

	<b>Yorktown</b>	<b>Runge</b>	<b>Karnes City</b>	<b>Stockdale</b>	<b>Goliad</b>	<b>Nixon</b>	<b>Cuero</b>	<b>Refugio</b>
<b>Renters</b>	\$75	\$90	\$125	\$75	\$100	\$100	\$50	\$50
<b>Homeowners</b>	n/a	\$90	\$125	\$50	\$100	\$100	\$50	\$50
<b>Other</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$15 connect fee

*Source: Cities of Yorktown, Runge, Karnes City, Stockdale, Goliad, Nixon, Cuero and Refugio utility departments*

Receipt of a deposit from homeowners would provide additional security for the payment of the last month’s water/wastewater bills should the resident move. In the event of an unpaid bill, a deposit would be applied to the outstanding amount and the balance forwarded to the resident. The purpose of the deposit is to provide insurance against bad debts, not to provide any real source of income.

**RECOMMENDATION:**

**Require water meter deposit of homeowner.**

The purpose of deposit requirements is to reduce the likelihood of the city being left with a bad debt should the resident fail to pay their bill for any reason. If the resident pays the final bill in full, the initial deposit must be returned. Therefore, it is not a true sense of income, but only a safeguard against potential losses.

**FISCAL IMPACT**

This recommendation can be implemented with existing resources.

**FINDING**

**Yorktown does not have a policy that governs transfers from the waterworks system to the general fund.**

City-owned utilities have discretion to transfer funds from the enterprise system to the general fund for as much as they please. No state or federal law limits this action. A city may transfer money to reimburse the general fund for expenses that it incurs, such as utility billing provided by

a city's finance department. A city can also transfer money to compensate for the utility's use of city-owned right-of-ways, which would be paid for by franchise fees if the utility were privately held.

Clear and accessible financial information is important for citizens to actively engage in government and understand and trust city operations. Although it is not illegal or even improper to transfer funds from an enterprise fund to a city's general fund, it can distort both funds' financial picture. Transfers can keep the burden on city taxpayers artificially low, and they can cause the rates that utility system users pay to be higher than if the system operated on a break-even level, with allowances made for future needs.

Bond-rating companies recognize the advantage of transfers, but they favor limitations. Excessive transfers can affect a city's bond credit rating if the rating company concludes that the city will have difficulty meeting its obligations. A lower bond rating results in higher interest that the city must pay for its bonds.

#### **RECOMMENDATION:**

**Adopt a policy that governs transfers from the waterworks system to the general fund.**

The policy can be as simple as an internal management policy or a city council resolution or ordinance stating the city's position regarding transfers. For instance, if it is determined that the administrative staff spend 21 percent of their time on water/wastewater related issues, an appropriate policy might stipulate that 21 percent of their collective salaries and benefits be reimbursed from the water/wastewater fund. Policies could also consist of sophisticated formulas designed to compensate the city for its indirect and other costs in supporting the enterprise fund.

A consistently followed policy could enhance the waterworks fund's credit rating and contribute to the stability of the city's finances. Bond credit rating companies will favorably view a board-adopted policy governing transfers, and the policy will help clarify the city's finances.

#### **FISCAL IMPACT**

This recommendation can be implemented with existing resources.

## ***User fees, licenses and permits***

A user or service fee is a fee charged to those who benefit from services that a city provides, such as the use of municipal airports or parks and recreation facilities. It can be an important source of revenue for municipalities. A municipality may charge a user fee to recoup the reasonable cost of regulating an activity, such as the operation of a city community center. A city may also decide to offer the activity as a public service and recover only part of the fee.

Appropriate fees and charges (license fee, permit fee or user charge) cannot be imposed unless established by city ordinance or state law. City ordinances should have a concise description of the activity and stipulate standards of performance. The ordinance should also set and include reasonable fees for the administrative costs that the city incurs for the regulation of that activity.

Cities can aid their decision-making by answering some basic routine questions when reviewing and determining license, permit and service fees. Stanley E. Wilkes, Jr., in *A Guide to Revenue Administration for Small Cities*, suggests administrators answer the following questions when evaluating fees:

- how much does the activity cost?;
- how much revenue does the activity generate?;
- does the revenue justify the expense?;
- should the fee be increased?;
- is there a continuing need for the activity?; and
- is there some other means of achieving the same objective?

The primary user fees collected by Yorktown are animal control fees, brush chipping, building permits, electric licenses and permits, plumbing fees, library services, pavilion rental and recreational vehicle (RV) park rental. Most user fees are only accepted in the Utility Department.

The Streets Department assesses the animal control fees, driveway charges and brush chipping fees, which are then paid at the utility office. The Police Department issues accident reports only after the fee has been paid to the utility department. Likewise, building and electrical fees, pavilion and RV rentals are paid to the utility office. The only exception to this is the library fees.

The library collects minimal fees for overdue books, postage, photocopies and color copies. These funds are remitted to the utility office once the balance reaches \$30. Receipts are issued to customers upon request and all fees are displayed on a fee notice at the front desk.

Currently, the city charges a flat rate of \$25 plus \$3 per day for the impounding of dogs. Vaccinations are an additional \$8.

RV park spaces may be rented for \$15 per day, \$55 per week or \$220 per month. The park contains seven spaces and provides electricity, water and sewer. Pavilion rental is available for \$25.

## **FINDING**

**Yorktown does not have a governmental service fee ordinance or summary schedule of fees.**

Yorktown's various city permit, license and user fees can be found throughout the pages of numerous city ordinances, many of which can no longer be located. A summary fee schedule, however, is not available for quick access. Fees are reviewed and updated as deemed necessary by officials.

In order to ensure that a city will, at the minimum, recoup costs for each of the services it offers, many cities develop a fee structure and review fees on a regular basis. Although some cities find that doing the review is difficult and time-consuming because the various permit charges and fees are found throughout a city's code of ordinances, which is generally a voluminous publication, the benefits can be substantial.

A governmental service fee ordinance or schedule of fees lists fees together as a quick reference guide. By having all the charges in one easy-to-access location, employees need not flip through pages and books of ordinances. This prevents appropriate charges from being missed and not collected. The fee schedule could also serve as a reference for citizens who request the information.

## **RECOMMENDATION:**

**Create a governmental service fee ordinance or summary schedule of fees.**

The fee schedule should be as comprehensive as possible, and it should cross reference the city ordinance that established or last changed the fee. It will require revisiting city charges frequently to stay up-to-date with changes in law as well as with city needs. As new fees or fee adjustments are approved, amendments should be made to the fee ordinance.

### **FISCAL IMPACT**

This recommendation can be implemented with existing resources.

## ***Court costs, fines and fees***

Municipal courts impose court costs, fines and fees on violators of city ordinances and state laws that fall under their jurisdiction. Court costs and fees are designated by statute to fund various programs at both the state and local level. Fines are a monetary punishment assessed by a judge or jury. All criminal court costs, fees and fines are assessed upon deferral or conviction.

Court costs and fees consist of mandatory state fees, mandatory local fees and optional local fees. The largest mandatory state fee, consolidated court costs, is collected by the municipal courts and used to support 14 state funds. In addition, the state usually requires a jury reimbursement fee, state traffic fee, and judicial support fee.

Section 133.058 , Local Government Code, provides that the state allows cities to retain a 10 percent service fee for some mandatory state fees collected if they remit the *State Criminal Costs and Fees* city quarterly report to the Comptroller and the accompanying money in a timely manner. The Comptroller has audit authority over court costs. Section 133.059 of the Code provides that the Comptroller has audit authority over court costs.

Article 103.0031, Code of Criminal Procedure, allows cities to enter into collection contracts with a third party for collections of debts and accounts receivable such as unpaid fines, fees, court costs, etc. When such accounts are delinquent for more than 60 days and have been referred to a vendor for collection, a 30 percent collection fee can be added to the amount owed. Some court costs that a city retains must be used for specific purposes and others must go to the city's general fund to be used in any manner. Local optional fees are permitted by statute and may be collected by judges, court clerks or other local officials. Some of these fees require authorization by local ordinance. In general, fines remain with the local government, with the exception of child safety seat and seat belt fines and may be used for whatever purpose the government deems necessary.

Some court costs that a city retains must be used for specific purposes and others must go to the city's general fund to be used in any manner. Local option fees are permitted by statute and may be collected by judges, court clerks or other local officials. Some of these fees require authorization by local ordinance. In general, fines remain with the local government, with the exception of child safety seat and seat belt fines and may be used for whatever purposes the government deems necessary.

The following is a partial list of predominantly local court costs that may be applicable in criminal violations and which may have financial implications for cities:

*Arrest Fees:* Article 102.011 Texas Code of Criminal Procedures requires a defendant convicted of a felony or misdemeanor to pay a \$5 fee if a peace officer issues a written notice to appear in court for a defendant's violation of a traffic law, municipal ordinance or penal law of this state, or for making an arrest without a warrant. Where a peace officer executes or processes an issued

arrest warrant or *capias*, a \$50 fee must be paid by the defendant. Section 133.104 Local Government Code, provides that if a state officer provides these services, the court must send 20 percent to the state.

*Child Safety Fund:* Cities with less than 850,000 in population may charge up to \$5 for violations of ordinances, regulations or orders if the city has adopted such pertaining to motor vehicle parking violations. The money collected goes to the child safety fund. The child safety fund's other source of revenue comes from tickets for violations that occur in a school-crossing zone or for motorists that unlawfully pass a school bus. The 2001 Legislature removed a population restriction for these violations. Now a city of any size must impose a \$25 court cost for the specific violations outlined in the Code of Criminal Procedure, Article 102.014. All proceeds in the child safety fund are used for school-crossing guard programs if the city operates them. If the city does not operate a school-crossing guard program, the money in the fund may either be put in an interest-bearing account or used for programs that enhance child safety, health or nutrition. The Comptroller has audit authority over this fund.

*Child Safety Seat and Seat Belt Violations:* A driver of a motor vehicle may be fined between \$100 and \$200 for allowing a child less than four years of age or less than 36 inches tall to ride in a car without a child safety seat. A driver may also be charged \$100 to \$200 for allowing children at least four years old but younger than 17 to ride anywhere in a vehicle without a seat belt. These fines are split equally between the state and the city and should be remitted annually. There is no restriction on a city's use of its share.

Anyone 15 years of age or older, including the driver, may be charged \$25 to \$50 for riding in the front seat without a safety belt. Since 2002, these fines are now retained locally.

*Failure to Appear or Pay:* Cities may contract with the Texas Department of Public Safety (DPS) to deny renewal of the driver's license of a person who fails to appear for a complaint or citation or who fails to pay a judgment ordering payment of a fine and cost. To renew the license, the person must pay the court costs and fines due in addition to the Failure to Appear or Pay fee. This database is known as OMNI. The fee is \$30, \$20 of which is sent to the state. The vendor that maintains the DPS database receives \$6 of the fee and cities retain the remaining \$4. The failure to appear or pay fee encourages violators to appear in court and pay their debts to the court. The money, however, will not be collected until the violator has to renew his or her license, which may not be for several years after the original violation.

*Municipal Court Security Fund:* A municipality may, by ordinance, create a municipal court security fund to purchase security equipment and to pay for security services and training. A convicted defendant must pay \$3 towards this fund.

*Municipal Court Technology Fund:* A municipality may, by ordinance, create a municipal court technology fund to purchase technological enhancements for the court. A convicted defendant must pay up to \$4 towards this fund.

*Time Payment Fee:* The court must impose this fee anytime a convicted defendant does not fully pay all fines, court costs or restitution due on or after the 31st day after the date of judgment. The fee is \$25 per conviction as stated in Local Government Code 113.103. If the court has consolidated several charges onto one court order, only one time payment fee would be due, but if the charges are separated into multiple court orders, the time payment fee would be due on each court order not satisfied within 31 days. The court must send half of the time payment fee to the state, and the other half is retained locally with no restriction on its use.

*Traffic Costs:* Municipal courts must charge a \$3 court cost for misdemeanors that fall under the Rules of the Road, Transportation Code, Title 7, Subtitle C. The use of this local court cost is unrestricted. Additionally, fines collected under the act, ranging from \$1 to \$200, must be used to construct and maintain city roads, bridges and culverts and to enforce traffic laws.

*Driving Record Fee:* Code of Criminal Procedure, Article 45.0511 permits municipal courts to require a defendant to pay \$10 for a copy of a driving record when the defendant requests a driving safety course or a motorcycle operator training course dismissal. These funds are later remitted to the Department of Public Safety, just as if the defendant had procured his driving record himself.

A 2001 legislative amendment to the Texas Code of Criminal Procedure, Article 103.0031, allows cities to enter into collection contracts with a third party where a 30 percent collection fee can be added to the delinquent amount the defendant owes.

By statute, the municipal court keeps minutes of court proceedings, issues processes and performs other duties such as:

- providing clerical/administrative support for the judiciary;
- providing official records of all case transactions, as well as fines and fees collected, for each term of court;
- depositing fines and fees collected in the city treasury;
- keeping a record of all fines, fees, court costs and restitution collected by the court;
- overseeing the records retention requirements for municipal court records;
- reporting monthly court statistics to the State Office of Court Administration;
- administering the oath to a person swearing to a complaint before the municipal court or any matter pertaining to a duty of the court and to issue a subpoena, if requested;
- keeping a record of each case involving a moving violation on highways;
- reporting the conviction or forfeiture of bail to the Department of Public Safety (DPS);
- forwarding the court records to the appellate court when a defendant appeals;
- recording bond forfeiture cases on the civil docket;
- sending a copy of any emergency protection order to an absent victim of family violence; and
- notifying various agencies (especially state agencies) of specific court dates.

The city of Yorktown maintains one municipal court. The judge and a clerk, both of who work part time for the city and the remaining time for DeWitt County's precinct two justice of the peace court, staff it. By interlocal agreement, the city and county share the facility and staff and related expenses. The city pays half of the clerk's salary with full benefits while the county pays the other half of the clerk's salary plus rent and utilities of the facility. The judge's salary and benefits are paid primarily by the county as a regular employee. He received a monthly contract amount from the city for his services as municipal court judge. Both the judge and the clerk train once a year at the Texas Municipal Court Education Center (TMCED).

The TMCED offers assistance for court administration to municipal courts and its employees including judges, clerks, prosecutors, bailiffs and warrant officers. It offers assistance in the forms of seminars, courses, publications and certifications. The certification program for municipal court clerks is available in levels 1, 2 and 3. Study guides are available for each of these certifications. The level one certification focuses on the correct processes and procedures for a municipal court. It covers the duties and procedures of a clerk before, during and after a

trial. The level two certification includes financial management, records and case flow management. Level 3 certification includes office management and more of the level two elements.

The court hears only class C misdemeanors such as simple assault, public intoxication, disorderly conduct, truancy, traffic citations and building code violations. Whenever a citation is issued, a defendant is also given a pretrial hearing date at least 10 days later. The defendant can choose defensive driving, deferred disposition, pay the fine or to attend the pretrial hearing. At this hearing, the defendant may enter a plea of innocent and request a trial. The judge estimates that they hold three to six of these trials each year. If the defendant does nothing, a certified letter is sent to the defendant. If the defendant still does not respond a failure to appear citation is issued. A warrant list, or defendants who have not pleaded, and a *capias profine* list, defendants who pleaded before the court, are sent to the Police Department once a month.

Yorktown assesses a \$5 fee for issuing a written notice to appear in court for a traffic violation. The city also assesses an additional \$50 fee whenever an arrest warrant of any kind is issued, whether *capias profine* or failure to appear. A *capias profine* warrant is one that issued strictly for failure to pay a fine or fee. In addition to state required fees, the city has elected to impose a municipal court technology fee and a courthouse security fee. Any defendant who elects to pay their fee out over time is assessed the \$25 time payment fee. The city does collect the \$10 driving records fee to procure driving records on behalf of defendants.

The city does not contract with a collection agency for the collection of past due accounts nor does it utilize any statutorily permitted collection techniques. Article 103.0031 of the Code of Criminal Procedures allows cities to enter into collection contracts with a third party where a 30 percent collection fee can be added to the delinquent amount the defendant owes.

The state allows cities to retain 10 percent of the amount collected for some fees if they remit the *State Criminal Costs and Fees* city quarterly report to the Comptroller and the accompanying money in a timely manner. Time payment fees, failure to appear fees, motor vehicle weight violations and peace officer fees are excluded from this 10 percent service fee retention.

Most court costs are to be reported quarterly, and are due on the last day of the month following the calendar quarter. **Exhibit 6-6** shows the forms and schedules that are required to be remitted by all local governments to the Texas State Comptroller.

**Exhibit 6-6**  
**Municipal Court Costs, Fees and Fines**  
**Remittance Schedule for Yorktown**

Court Cost Report	Frequency	Requirement
Criminal Court Costs and Fees	Quarterly	Always required
Child Safety Seat and Seat Belt Violations	Annually	Always required
Excess Highway Fines	Quarterly	Zero reports not required

*Source: Texas State Comptroller.*

The forms, along with instructions, are available on the comptroller's Web site at <[www.window.state.tx.us/taxinfo/taxforms/40-forms.html](http://www.window.state.tx.us/taxinfo/taxforms/40-forms.html)>. Timely remittance of the criminal court costs and fees allow counties to retain a 10 percent service fee on many items and 5 percent on the state traffic fee. **Exhibit 6-7** details the remittance of Yorktown's Criminal Court Costs and Fees report to the state.

**Exhibit 6-7**  
**City of Yorktown**  
**Criminal Court Costs, Fines and Fees Remittances**

Collection Time	Total Collected	Possible Service Fee	Timely Remittance and Retained Service Fee
1 <sup>st</sup> quarter 2003	\$2,972.41	\$297.24	YES
2 <sup>nd</sup> quarter 2003	\$ 680.06	\$ 68.00	YES
3 <sup>rd</sup> quarter 2003	\$434.21	\$43.42	NO
4 <sup>th</sup> quarter 2003	\$1,568.77	\$128.94	NO
1 <sup>st</sup> quarter 2004	\$2,915.28	\$228.65	NO
2 <sup>nd</sup> quarter 2004	\$2,881.79	\$229.26	YES
3 <sup>rd</sup> quarter 2004	\$2,315.00	\$213.44	NO
4 <sup>th</sup> quarter 2004	\$4,077.45	\$338.39	NO
1 <sup>st</sup> quarter 2005	\$4,103.02	\$322.61	NO
2 <sup>nd</sup> quarter 2005	\$2,521.76	\$204.69	NO
3 <sup>rd</sup> quarter 2005	\$3,537.32	\$272.21	NO
4 <sup>th</sup> quarter 2005	\$4,145.30	\$339.67	NO
1 <sup>st</sup> quarter 2006	\$6,516.20	\$504.34	NO
2 <sup>nd</sup> quarter 2006	\$3,993.39	\$312.04	YES *
		\$3502.90	

\* Remitted timely but failed to retain service fee. Comptroller refunded.  
Source: Texas State Comptroller.

**FINDING**

**Yorktown has frequently submitted late its court costs, fees and fines, resulting in loss of service fee and compliance.**

Remittance of the quarterly criminal court costs, fees and fines is due the last day of the month following the end of the quarter. For example, the first quarter fees are due April 30<sup>th</sup>. Yorktown has been consistently late in remitting these fees to the state, thereby disqualifying Yorktown from the service fee it might otherwise retain. It has been two years since one of these reports has been filed on time.

The lost service fees total since 2003 is \$2,596.36. Most cities the size of Yorktown could find many uses for this revenue. These funds must eventually be remitted whether or not the service fee is retained. Failure to do so could result in the withholding of a cities monthly sales tax allocation.

Additionally, Yorktown has yet to remit its 2005 Child Safety Seat and Seat Belt Report. Transportation Code, Section 545.412 – 545.413 requires that this report be submitted whether or not there are funds to be remitted. While failing to do so does not result in any loss of revenue for this city, it does result in lack of compliance with state law.

**RECOMMENDATION:**

**Remit court costs, fees and fines by due date.**

Cities will receive service fee credit on a prorated basis for partial remittance of funds on a timely basis. Therefore, any city that cannot meet the report deadline may send a check for the estimated

remittance, with the report to follow later. Overpayments will be refunded and prorated service fee will be credited

**FISCAL IMPACT**

**The average quarterly service fee since 2003 has been \$250.21. Assuming this trend would continue, the fiscal impact of this recommendation would be approximately \$1000 per year.**

Recommendation	2005-06	2006-07	2007-08	2008-09	2009-10
Remit court costs, fees and fines by due date.	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000

**FINDING**

**Yorktown pays reimbursement expenses to its municipal court jurors not required by state law.**

For fiscal 2005, Yorktown has budgeted \$600 for jurors in the municipal court. All potential jurors who answer their summons receive \$6 for answering the call or \$15 if actually selected. The city will summon 20 potential jurors each time and actually select six to serve on a jury. Misdemeanor defendants request trial by jury three to six times per year.

Texas state law does not require municipal courts to pay juror reimbursement expenses. Government Code 61.001 addresses reimbursement of expenses for jurors of district, criminal district, county, and justice courts. Municipal court reimbursement of juror expenses should be addressed thoroughly by city ordinance. The \$4 juror reimbursement fee now required of misdemeanor offenses is remitted to the state for juror reimbursement to counties for district, county, and justice of the peace courts. Cities must fund any jury reimbursement without assistance.

The TMCED reports that although it is not rare for cities to pay reimbursement expenses to jurors, it recommends that they not do so because it is not required and because difficulty arises when municipal court jurors donate their reimbursement. Government Code 61.003 allows justice, county and district court jurors to choose among different funds to donate, such as to the Compensation to Victims of Crime and the Child Welfare funds. If not properly addressed in city ordinance, the city has no authority to retain declined jury payments and must remit them to the state. However the state has no statutory authority to designate these fees to a specific fund, so the donations are deposited in the state’s General Revenue Fund.

**RECOMMENDATION:**

**Discontinuing paying reimbursement expenses to municipal court jurors.**

**FISCAL IMPACT**

**Fiscal year 2005-2006 budgeted \$600 for juror reimbursement. Assuming that this is the usual amount spent each year, discontinuing this practice would save Yorktown \$600 per year.**

Recommendation	2005-06	2006-07	2007-08	2008-09	2009-10
Consider discontinuing paying reimbursement expenses to municipal court jurors.	\$600	\$600	\$600	\$600	\$600

## **FINDING**

### **Yorktown does not utilize any statutorily permitted collection techniques.**

Chapter 103 of the Code of Criminal Procedures authorizes cities to contract with a vendor for the collection of fees that are 60 days past due. An additional collection fee of 30% is added to any balance remaining even after partial credit for time served or community service. One of the most often-used collection firms in Texas is McCreary, Veselka, Bragg & Allen, P.C. Dewitt County currently has a contract with them to pursue its delinquent court costs, fees and fines. The judge has recommended that the city pursue a similar contract but no such agreement has been reached.

Authorized by Chapter 706 of the Transportation code, the Failure to Appear Program is administered by the DPS. It is a voluntary program designed to assist cities and counties in the collection of violations. Local governments must contract with DPS for this service. DPS in turn has contracted with OmniBase Services of Texas for automation of the program.

Defaulters are notified, both by letter and upon attempting renewal, that renewal of their driver's license has been denied. Additionally, driver's licenses may be checked for compliance during routine traffic violations. Although this is not an arrest mechanism in and of itself, the officer will frequently tell drivers that they need to take care of this situation. A \$30 fee is added to their previously accessed court costs, fees and fines to pay for this service. Of that fee, \$20 is remitted to the state, \$6 is remitted to OmniBase, and \$4 is retained locally. The Failure to Appear Program is most effective with class C misdemeanors.

### ***Best Practice: Montgomery County, OmniBase Program***

Montgomery County commissioners court agreed to investment \$15,000 for a part time employee to administer the Omnibase program. According to Montgomery County Collections Director Nadine Jenkins, that investment has returned \$246,000 in previously uncollected fees and fines.

As of April 11, 2006, Yorktown had \$16,071 in outstanding cases and \$42,646 in delinquent *capias profine* warrants from the last 20 months.

## **RECOMMENDATION:**

### **Implement statutorily permitted court collection techniques.**

The private collection firm conservatively estimate an increase in misdemeanor collections from their efforts of 20 percent to 25 percent. Registration with the failure to appear program would increase collections further.

## **FISCAL IMPACT 1**

A conservative 20 percent collection of delinquent court costs, fees and fines could yield \$8,529 (\$42,646 x .20). The majority of this is likely to be collected the first year of implementation, with declining amounts thereafter. Five-fifteenths is assumed for the first year, four-fifteenths for the second and so forth.

Regular annual collections are likely to increase as well before they become delinquent. Assuming that revenues remain at the 2004 CAFR level of \$46,868 and assuming half are collected timely and half become delinquent, contracting with an outside collection firm could yield an additional \$4,687 (\$46,868 x .5 x .2) per year. When the \$4,687 is added to the

delinquent collections that will decline each year, the city would realize additional revenues of \$7,530 in the first year.

<b>Recommendation</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>
Implement statutorily permitted court collection techniques.	\$2,843	\$2,274	\$1,706	\$1,137	\$569
	<u>+ \$4,687</u>	<u>+ \$4,687</u>	<u>+ \$4,687</u>	<u>+ \$4,687</u>	<u>+ \$4,687</u>
	\$7,530	\$6,961	\$6,393	\$5,824	\$5,256