



# FINANCIAL POLICIES FOR IMPOSED FEES, FINES, AND ASSET FORFEITURES

The Basis for Building Trust with the  
Public and Fair Treatment of All Citizens

BY SHAYNE C. KAVANAGH



## ABOUT THE AUTHOR

**SHAYNE C. KAVANAGH** is the Senior Manager of Research for the Government Finance Officers Association.

## ACKNOWLEDGEMENTS

We'd like to thank the following individuals for their review of this manuscript:

**JAIME BOSCARINO**, Finance Director/Treasurer, City of Thousand Oaks

**DOUG FARMEN**, CFO/Finance Director, City of Centennial, CO

**ANNE P. HARTY**, CPA, Chief Financial Officer, Finance, City of Rock Hill

**JAKE KOWALSKI**, Public Finance Analyst, GFOA

**KATIE LUDWIG**, Senior Manager, GFOA

**MIKE MUCHA**, Deputy Executive Director / Director, Research and Consulting, GFOA

**KIMBERLY OLIVARES**, Chief Performance Officer, City of Austin, Texas

**TAMMY QUEEN**, Director of Finance, City of Kansas City, Missouri

**TOM RAGUZ**, CPFO, Deputy City Administrator/ Finance Director, City of Brooklyn, Ohio

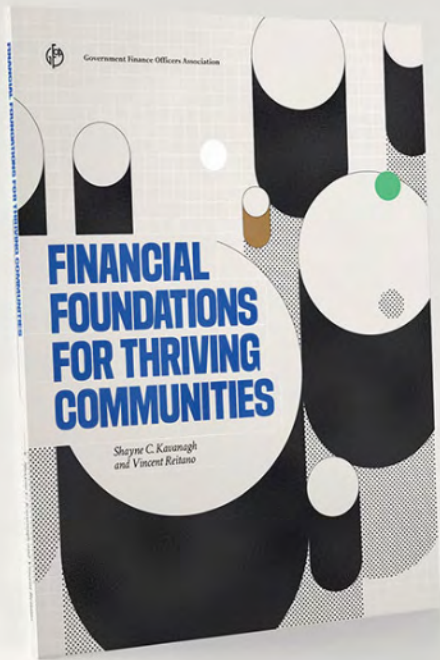
We'd like to thank the following people for their advice and consultation on preparing this report:

**SARAH SCHIRMER**, Deputy Director, PFM's Center for Justice & Safety Finance

**DAVID EICHENTHAL**, Managing Director, PFM Group Consulting LLC



The Government Finance Officers Association (GFOA) represents approximately 20,000 public finance officers throughout the United States and Canada. GFOA's mission is to promote excellence in state and local government financial management. GFOA views its role as a resource, educator, facilitator, and advocate for both its members and the governments they serve and provides best practice guidance, leadership, professional development, resources and tools, networking opportunities, award programs, and advisory services.



## ABOUT FINANCIAL FOUNDATIONS FOR THRIVING COMMUNITIES

Created by GFOA, the Financial Foundations Framework helps facilitate collaboration and support for public policies and programs. Organized into five pillars, the Framework shows you how to improve your financial position now and create a strong foundation for a thriving community over the long-term.

Each pillar includes different leadership strategies and/or institutional design principles. Understanding that local governments cannot order people to collaborate, leadership strategies help inspire pride and public support for a strong financial foundation. Institutional design principles, meanwhile, are the “rules of the road.” They provide the context for leadership strategies and ensure continuity of good financial practices through changes in leadership.

To learn more, visit [gfoa.org/financial-foundations](https://gfoa.org/financial-foundations).

**A** local government’s revenue system needs to treat people fairly to maintain the public’s trust. Trust is needed for local government to help communities become better places to live, work, and play over the long term for all citizens.\* Trust is the second of the five “pillars” of GFOA’s *Financial Foundations for Thriving Communities*, which provides a comprehensive framework for financial decision-making (see Exhibit 1). Fair treatment is another pillar of *Financial Foundations*. However, there is evidence that imposed fees, fines, and asset forfeitures are revenue sources that have the potential to be used *unfairly* and, thereby, *reduce citizens’ trust* in government, even if these revenues are not a large part of the budget.†

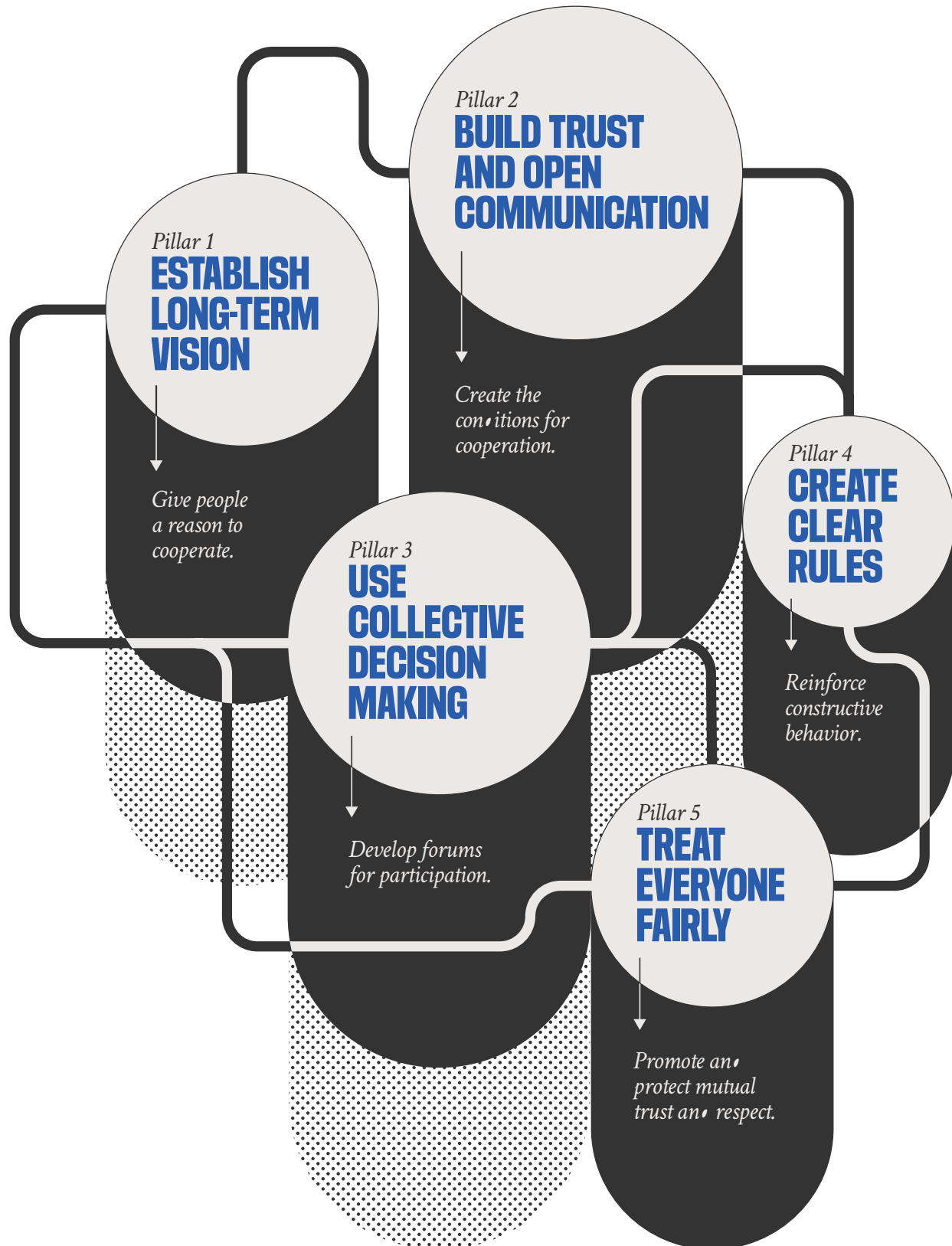
Fortunately, the fourth pillar of *Financial Foundations*, “create clear rules,” shows us how to make sure that imposed fees, fines, and asset forfeitures are used fairly and don’t reduce trust. Clear rules come in the form of a financial policy to address topics such as: when a fine, an imposed fee, or an asset forfeiture is appropriate and when it is not; collection practices; and acceptable uses of the revenue derived from these tools. Establishing rules for such issues helps ensure fair treatment and cost-effective public management.

In this paper, we will describe how you can create a financial policy for imposed fees, fines, and asset forfeitures. The next section provides a rationale for a policy for these revenue sources, and the remaining sections describe the elements of such a policy. Appendix 1 contains a template you can use to develop your own policy.

\* By “citizen,” we mean people who share a common civic identity. This is the “self” in self-government. It also means participation in the creation and receipt of public goods. This is the “government” in self-government. This definition is courtesy of Valerie A. Lemmie, Director of Exploratory Research at the Kettering Foundation, and is based on research on democracy in local communities performed by the Kettering Foundation.

† This evidence will be explored in detail in the rest of this paper.

## EXHIBIT 1 – Financial Foundations for Thriving Communities





## THE RATIONALE FOR A POLICY

Imposed fees, fines, and asset forfeitures have characteristics distinct from other revenue sources that local governments use. These distinctions are helpful for understanding why a policy is needed and for developing policy guidance.

**Imposed Fees.** Generally, fees raise revenues and recover at least part of the cost of a service that a citizen uses. “Imposed” fees differ from other fees in that the citizen does not have much, if any, discretion on when to use the service that generates the fee or how much to use. With other user fees, the user decides whether to use the service or how much to use. Imposed fees differ from licenses in that a license gives the citizen a right to engage in the activity authorized by the license.

**Fines.** Unlike fees, fines should not be used to raise revenues. Rather, fines are meant to punish transgressors and deter potential transgressors.

**Forfeitures.** Forfeitures are when a citizen’s private property is confiscated. Similar to a fine, forfeitures are used as a deterrent or punishment. Unlike fines, the resource taken from the citizen may not be monetary—a citizen might forfeit other types of property. The standards for how much of a citizen’s property might be subject to forfeiture for a given transgression are not well defined.

Next, are reasons why a local government should adopt a policy on imposed fees, fines, and asset forfeitures.

First, many local governments have found their traditional tax sources constrained.<sup>1</sup> This has caused governments to rely more on fees.<sup>2</sup> However, some services are better suited to fees than others. As this “low-hanging fruit” is picked, governments may be pressured to produce revenue from services that are not as well suited to a fee-for-service model.<sup>3</sup> This could cause local governments to rely more on fines, imposed fees, and/or forfeitures as revenue-raising tools, a role for which they are not well suited. For example, consider the civil unrest in Ferguson, Missouri, that received national attention in 2014. Some observers pointed to the oversized role of public safety and court fees and fines in the city’s budget as a factor in the unrest.<sup>4</sup> The contention was that the city’s public safety and municipal court system was focused on raising revenue and not on providing fair treatment under the law. This led Ferguson residents to distrust government and law enforcement.<sup>5</sup>

Above, people line up to take part in an amnesty program to clear up outstanding misdemeanor arrest warrants on August 7, 2013, in Ferguson, Missouri. For those living on the economic margins, the consequences of even a minor criminal violation can lead to a spiral of debt, unpaid obligations, unemployment and even arrest.

AP PHOTO/JEFF ROBERSON

Though forfeitures weren't a central issue in Ferguson, reliance on forfeitures as a revenue source can reduce citizens' trust in government. Enabling legislation for forfeitures often establishes a lower standard for seizing assets than a court judgment (e.g., a criminal conviction). Asset seizures aren't held to the same "innocent-until-proven-guilty standard" that underpins the justice system. This has resulted in abuse of asset forfeitures.<sup>6</sup> A policy helps a local government maintain the use of fines, imposed fees, and forfeitures for legitimate purposes and avoid the risks of using them as revenue-raising tools.

The second reason for a policy is that imposed fees, fines, and forfeitures can have disproportionately large impacts on a community's vulnerable citizens. Traditionally, taxes have been aligned with some ability to pay. The connection is obvious with income taxes. For property taxes, property values are an indicator of wealth (even if an imperfect one). The connection between the ability to pay and sales taxes is not as strong,<sup>7</sup> but the amount a citizen pays in taxes is proportional to what they spend on taxable goods/services.

The connection between the ability to pay and the cost is inverted with fines, imposed fees, and forfeitures. For citizens of an average income or greater, many fines or imposed fees are insignificant and perhaps no more than a nuisance. For other citizens, a fine, imposed fee, or forfeiture can be life-altering. For example, a 2019 study showed that about 40% of adults said they would be *unable* to cover a \$400 emergency with personal savings.<sup>8</sup> Presumably, in the wake of the COVID-19 pandemic, this percentage has not increased. Given that fairness and the ability to pay has been a cornerstone of the tax system, a system of fines, imposed fees, and forfeitures that disproportionately punishes the less wealthy seems out of step with tradition. Though it may not be practical to charge fines and imposed fees in proportion with a citizen's wealth/income, a policy still can promote the principles of fairness and the ability to pay across all revenues.


The third reason for a policy is that fines, imposed fees, and forfeitures can worsen the problems government services are meant to solve. For example, consider citizens that come in contact with the justice system. National studies suggest that between 60% and 90% of all criminal defendants are eligible for court-appointed counsel because they are indigent.<sup>9</sup> Other studies suggest that as many as 80% of incarcerated individuals were unemployed in the year before going to prison.<sup>10</sup> However, a system of court fees and fines expects these individuals to make

financial payment to the local government. Predictably, these individuals can't pay the fees and fines, which can result in more contact with the court system (e.g., to appear for hearings on the debt). This increases the cost to administer the justice system and does little to advance the cause of justice. In the worst case, unpaid fines and fees could be turned over to a collection agency and/or the defendant could be put in jail, making it harder for him or her to get credit, employment, or housing. This could make it harder for people to do what's needed to reduce the likelihood of re-offending. A policy establishes the intent of the government to consider the potential for these consequences when administering a system of fines, imposed fees, and forfeitures.

In short, imposed fees, fines, and forfeitures can have the following consequences.

- Alter the lives of citizens for the worse by imposing a fee on those least able to pay.
- Reduce citizen's trust in local government by making the local government appear unfair and capricious.
- Drive up the cost of government by worsening the conditions that increase demand for government services.

A policy makes an *institutional* commitment to using imposed fees, fines, and forfeitures fairly. Let's explore the elements that can be included in a policy, starting with imposed fees.



**Fines, imposed fees, and forfeitures can worsen the problems government services are meant to solve.**



## IMPOSED FEES

A fee is intended to reimburse the government for the cost of providing a service. A fee is reasonable for a utility service, like water, sewer, or garbage collection. It is also reasonable for an elective service, like taking part in a recreation program or building an addition on a home (and obtaining permits).

Fees become questionable when a service is not elective. An example is ambulance fees for transporting an injured motorist to the hospital. Indeed, the government incurs the cost of providing this service because of the injured motorist. That speaks in favor of charging the fee. However, the citizen would prefer to not have been in need of this service and is charged when they are most vulnerable.

Court fees are a type of imposed fee that has been scrutinized for reasons described earlier in this paper. Local governments that have curtailed or eliminated court fees include Alameda County, California; the City and County of San Francisco, California; Dallas County, Texas; City of Nashville, Tennessee; and Ramsey County, Minnesota.<sup>11</sup>

Let's review policy elements that could help clarify the best use of imposed fees.

### State Law is the Floor, But it's Also Not Necessarily Ceiling

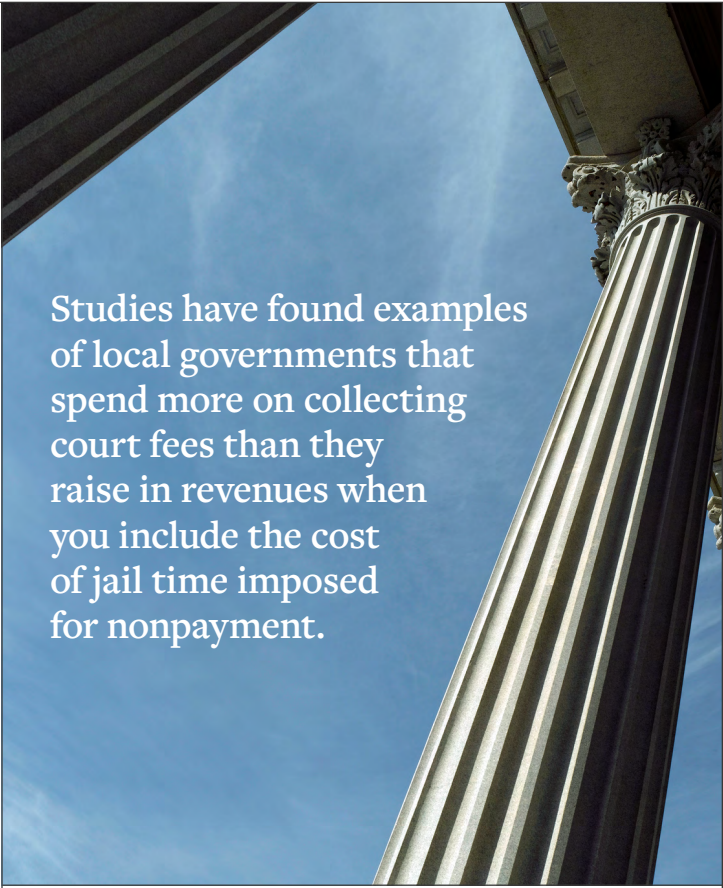
State laws often impose requirements on how localities can administer imposed fees, fines, and asset seizures. A local financial policy should acknowledge these limits and honor them. At the same time, a policy should recognize that local governments can and should set higher financial standards according to what state law calls for.

### Criteria for Charging a Fee for a Service

A policy can guide when it is appropriate to charge a fee. There are two basic criteria:

- The cost and benefit of a service can be attributed to a specific user.
- The use of the service by one user reduces the value of the service for the next user.

One might add a third criterion: Use of the service is voluntary or the user can decide how much to use and when.



Studies have found examples of local governments that spend more on collecting court fees than they raise in revenues when you include the cost of jail time imposed for nonpayment.

For example, an adult basketball league offered by a recreation department is a service that meets these criteria. The people playing in the league cause the government to incur the cost, and they get the benefit of the service. Also, every person that joins the league reduces the potential playing time of the people already in the league.<sup>12</sup> Of course, a basketball league is voluntary for the players. Compare this to our earlier examples of ambulance fees and court fees.

- An ambulance fee is not voluntary. There is a public benefit in having emergency response available for people facing a personal health crisis.
- There is a public benefit to a well-functioning court system. If it were up to the defendant, he/she would probably not want to be involved with the court system. Therefore, it must be to someone's benefit to require the defendant to interact with the court system. That beneficiary is the general public.

A policy can direct local government to check the services it provides against these criteria to decide if a fee makes sense. There may be cases where it does not make sense to charge a fee, other cases where cost recovery is a reasonable goal, and cases where partial subsidization with general tax revenue is best.

## Collection

A policy should address cost-effective collection as a criterion for setting an imposed fee. Imposed fees often are plagued by poor collection rates. For example, one analysis of four county governments showed a 20% to 25% collection rate for court fees and fines.<sup>13</sup> Another county had worse collection rates: 9% average collection rate over 5 years.<sup>14</sup> This is not because these governments were not trying to collect. Nonpayment of court fees often carries serious penalties, including jail time. The problem is that collection of these imposed fees is impractical because those being charged the fees can't afford to pay them.

Poor collection rates mean that money spent on administering these imposed fees provides a poor return on investment. Attempts to improve collection rates can result in worse outcomes. For example, if unpaid fees are turned over to a collection agency, it might harm a citizen's credit score, making it harder for that person to find housing, get a job, etc. Collection agencies might use methods that don't represent how a government should treat its citizens.

However, the less obvious costs of collection can be worse. For example, it is not uncommon for people who can't afford a court fee to be required to spend time in jail. The cost of keeping someone in jail usually far outweighs any revenue from the fee. Studies have found examples of local governments that spend *more* on collecting court fees than they raise in revenues when you include the cost of jail time imposed for nonpayment.<sup>15</sup> Even if the local government isn't losing money on the court fees, many find that cost of collection is high. There are other examples of how failing to pay an imposed fee requires the citizen to interact with the justice system, thereby driving up the cost of the justice system. Examples include unpaid bail or the effect of debt on recidivism.<sup>16</sup> These interactions often cost more than the revenue the fee would raise. These financial consequences of collection represent a misallocation of resources.

Fortunately, a financial policy can help. First, the policy should require that the cost of collection be considered when deciding whether to charge an imposed fee. The cost of collection should be low for a fee to be considered viable. Further, the policy should direct that the full cost of collection be considered, such as the cost to administer nonfinancial sanctions (e.g., the cost of jail time associated with unpaid fees).

Second, a policy could address acceptable collection practices. For example, can a collection agency be used? When can a collection agency be used? Once a debt is sent to a collection agency, it is often hard to change the amount owed. This means it might be hard to reduce the amount owed if the debt is causing financial consequences of collection, as described earlier. Acceptable collection processes in a policy should include policies for a write-off of uncollectible debts resulting from unpaid fees. The policy template in Appendix 1 includes sample language.

Also, are there collection practices that should be prohibited? For example, research suggests that governments would be wise to prohibit the use of additional jail time as a penalty for unpaid court fees.

Third, a policy could scale the imposed fees to affordable levels. For example, one city chose to limit ambulance fees to the amount recoverable from a motorist's

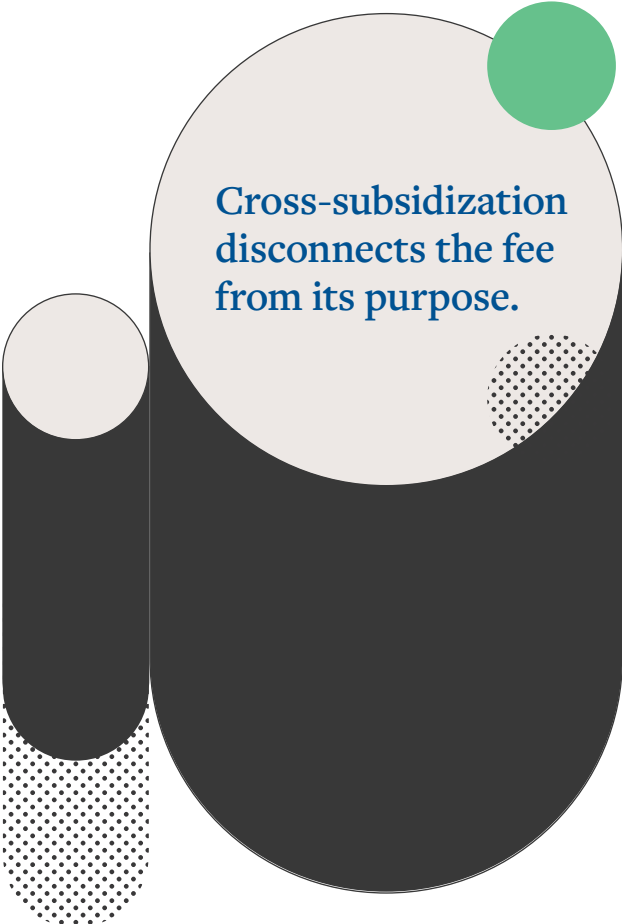
insurance, so there is no out-of-pocket costs. Or a policy could define a process to waive or adjust fees for hardship cases. For example, one county requires judges to ask about a person's ability to pay at any hearing over alleged nonpayment of fees and prohibits punishment of people who lack the means to pay.<sup>17</sup> One city provides an application for people to request financial aid for fees they cannot afford.<sup>18</sup> A policy could allow for establishing payment plans for overdue amounts. Appendix 1 includes language for payment plans and adjusting amounts due.

### Use of Fee Revenue

A principle in the administration of public sector user fees is to be wary of "cross-subsidization" or using the revenue gained from charging a fee for one service to fund a different service. For example, revenue raised from selling water should not be used to pave the streets, even though both are a "public works" function. Cross-subsidization disconnects the fee from its purpose. This might distort decision-making about the fee. For example, if the water rate were loaded with street paving costs, the people who use more water would be unfairly paying the costs for people who use roads.

Cross-subsidization is potentially more distorting with imposed fees. In our water example, ratepayers could find ways to use less water to avoid paying the inflated rates. By definition, people subject to imposed fees do not have that option. For example, one county was cross-subsidizing its law library with fees for civil litigation and a surcharge levied against convicted criminal defendants. This county had fees three times higher than the neighboring county, and the library fund had accumulated a balance of over \$1.8 million. The county had a second law library with many of the same functions. (It was estimated the county could save \$500,000 by combining the two libraries.)<sup>19</sup> It is doubtful that the misallocation of resources would have occurred if the library was not cross-subsidized by the imposed fees.

A financial policy should prohibit cross-subsidization with imposed fees. Some states may have legal limitations on how fee revenues can be used. A policy should acknowledge these limits.



**Cross-subsidization disconnects the fee from its purpose.**



## FINES

A fine punishes someone who breaks a rule or deters them from breaking the rule. Many of the same problems that apply to imposed fees apply to penalties. Fortunately, financial policies can help. We'll review the same policy elements as we did for imposed fees but will review concerns particular to fines.

### Criteria for Charging a Fine

Fines are often effective for dissuading people from undesirable behaviors, like breaking the speed limit while driving a vehicle. However, fines may be ineffective or counterproductive in other circumstances. Here are considerations that might be included in a policy to guide when a fine is or is not appropriate.

→ **Is the person who violates the rule being punished in another way besides the fine?** For example, in criminal justice, it is not uncommon for violators to get a fine *and* jail time or a fine *and* have their driver's license suspended. Jail time or a suspended license might make it harder to pay the fine (the violator can't work), not to mention the personal hardship imposed on the violator.

→ **Does the fine discourage or prevent access to services that are important for the violator to use?** Fines could be counterproductive if they discourage or prevent a violator from using a service that would create a larger benefit for the community than the application of the fine creates. A good example is library services. Many libraries are reconsidering (and eliminating) fines because fines tend to prevent the least wealthy citizens from using libraries, yet these citizens are the people who could benefit from libraries. For example, one city found that nearly half of patrons who were prevented from using the library due to fines for late return of library materials lived in the city's two poorest neighborhoods.<sup>20</sup> This means that the tax money spent on providing library services was not creating the best value for the city because people who could have benefited from these services couldn't use them. The library fines were causing a loss in the benefit created by the general tax revenue that supported the library.

→ **Is there a better way to achieve the intended result?** When fines are used as punishment, they seek to remediate a situation that has already

gone wrong. A policy could encourage a local government to explore ways to prevent the situation from going wrong in the first place. An example is homelessness. In some communities, there are fines in place to discourage behaviors associated with homelessness, like vagrancy. It is safe to say that these fines are often not effective for deterring homelessness, and there seems little point in punishing it. Some cities had much success with preventative (no fine) approaches, including ending homelessness for some groups of people (e.g., veterans).<sup>21</sup>

- **Can the fine be collected for an acceptable cost?** This is an issue for any fine, so it will be discussed in detail in the next section.
- **Are the fines being fairly enforced?** Is the collection of the fine resulting in a disparate impact on any community or segment of the population?

### Ability to Pay and Acceptable Collection Practices

A financial policy should consider the cost of collection and acceptable collection practices for fines.

First, successful collection will be a function of the violator's ability to pay the fine. The ability to pay is also a question of fairness and proportional punishment. A fine of a given amount will have more impact on a poor person than a rich one. Economists call this the "decreasing marginal utility of money." This means, for example, an extra \$10,000 per year in income will mean more to someone making \$30,000 per year than to someone making \$300,000 per year. Similarly, a \$300 fine will be a greater penalty to the person making \$30,000 per year.

A policy should address the ability to pay. An ideal solution would be a sliding scale, where the size of the fine would depend on the violator's income. Methods for such a scale have been proposed for judicial fines<sup>22</sup> but have not been widely implemented. If a sliding scale is not practical, there are alternatives.

\* Depending on the amount of the fine that is waived for a donation.

† Department, division, program, etc.



### What About Repeat Offenders?

Because fines are meant to discourage certain behaviors, it is reasonable to ask if waiving or reducing fines could encourage people who might be prone to repeat offenses. Statisticians have found a phenomenon called the Pareto Principle (sometimes known as the 80/20 Rule). This is a common situation where a few observations cause a large part of the effect. Applied to fines, this means that a small number of people are probably creating a disproportionately large part of the problem that a fine is meant to address. So rather than addressing the problem with a blanket solution (fines applied equally to everyone), consider if there are ways to deal directly with repeat offenders, such as limiting the number of fine waivers a person can receive. Also, because fines often don't cover the cost of enforcement (assuming the fine can be collected), a local government might find it is cost effective to spend money upfront to help the repeat offender avoid offending again rather than trying to correct the problem afterward. For example, the City of Austin's Downtown Austin Community Court has programs for the chronically homeless to get them housed and keep them housed.<sup>24</sup> Individuals experiencing homelessness can have accumulated fines and/or fees reduced or eliminated by agreeing to participate in the Community Court's programs. Even better, the Community Court is part of the City's Homelessness Outreach Street Team to proactively engage with individuals experiencing homelessness to help them before they get involved with the justice system.<sup>25</sup>

A policy could grant discretion to authorized staff to waive or reduce fines based on hardship, including guidance about how that discretion should be applied. See Appendix 1 for an example of this in the GFOA policy template.


Because relying on staff discretion could lead to inconsistent treatment of citizens, a policy could describe certain conditions under which fees will be always be waived. This ensures that the citizens most in need of relief from a fine would be treated consistently. For example, a policy for court fees could state that if someone is appointed legal counsel because they are indigent, then justice system fines will automatically be removed or reduced. In another example, a city developed a policy to define indigency at incomes equal to or less than twice the federal poverty level. People meeting these criteria would be eligible for relief from fines that don't involve appointed legal counsel. Participation in programs like food stamps, Temporary Assistance for Needy Families (TANF), Women, Infants and Children (WIC), Medicaid, Section 8, or disability could also be used as indicators of a person's eligibility for relief.

A policy could call for alternatives to monetary fines be made available. For example, one city allowed food donations in lieu of paying fines. This could be a way for people to pay off fines at a discount, and it helps the local community food bank. Another city provided community service as an alternative to a monetary fine. However, local governments must take care that alternatives aren't cost ineffective. For example, if a full-time staff person has to supervise the person performing community service, then perhaps the local government would be better off waiving the fine. Another example is a county government that allowed people to "work off" penalties by spending time in jail. The cost to house people in jail is substantial, and the impact on civil liberty and a person's life should not be discounted.<sup>23</sup>

### Use of Fine Revenue

A distinction between fines and fees is that fees are meant to cover at least some of the costs of providing a service while fines are primarily intended as punishment or deterrence. If the organizational unit imposing the fine experiences financial benefits from the fine, then they may be incentivized to issue more fines. This warps the purpose of a fine.

A policy should define the local government's intent that fines are not to be used as revenue-raising or cost recovery tools. The policy should state that the budget of the organizational unit that issues the fine shall not be set in relation to the amount of fine revenue expected in the upcoming budget year. The policy should prohibit the budget or spending of that organizational unit from going up as a result of issuing more fines. Instead, revenues from the fine should be accounted for as general revenue. If state law requires that fine revenues be accounted for in a special revenue fund, the policy should require that the use of the money be planned through the regular budget process, just like any other revenue (while respecting whatever limits exist on the use).



**A policy should define the local government's intent that fines are not to be used as revenue-raising or cost recovery tools.**



## ASSET FORFEITURES

Asset forfeitures are confiscation of an individual's private property without that individual necessarily being convicted of a crime or having legal judgment made against them (as in a civil case). For example, homes, vehicles, money, etc., can be seized upon arrest. The American system of justice is "innocent until proven guilty." Further, the Fifth Amendment of the Constitution states, "nor shall private property be taken for public use, without just compensation." Asset seizure seems to go against these principles. Furthermore, in some cases, the asset doesn't have to be owned by the arrestee to be seized. An asset that the arrestee was using but owned by someone else could be subject to seizure.

A policy can help make sure asset forfeitures are handled fairly.

### The Standard for Asset Forfeiture

Just because a government can legally seize someone's assets doesn't mean they should. There is precedent for local governments to set higher financial standards for themselves than is provided for in enabling state or federal legislation. Financial policies, in essence, are about local governments creating more well-defined, more stringent, and better rules for themselves than

can be found in enabling legislation. For example, state laws often allow local governments to issue more debt than they can afford. Many GFOA members set their local debt policies to limit themselves to lower amounts of debt. Similarly, a local policy should follow state and federal law for asset forfeitures but could also set higher standards for engaging in asset seizures. Here are examples of guidance that a policy could offer:

- Assets seized will be held in escrow until a legal judgment is made (e.g., conviction in a criminal case). If the defendant is found innocent, assets will be returned. The policy might provide for a maximum length of the escrow. So if no judgment has been reached, then the assets are returned. This is consistent with the constitutional right to a swift trial.
- Define the minimum charges necessary to justify asset seizure. For example, perhaps minor possession of drugs is not enough grounds.
- Prohibit seizing assets owned by people who are not being charged with any crime.
- The defendant must have counsel (appointed or private) in all forfeiture cases.

→ The specific assets seized must have a direct connection to a convicted offense, and law enforcement must be able to show the connection. For example, one city’s policy specifically states that “a large amount of money standing alone is insufficient to establish the probable cause required to make a seizure.”

### Use of Proceeds from Asset Forfeitures

Similar to penalties, if an organizational unit that has the power to seize assets benefits financially from seizing assets, then they have an incentive to do more of it. First, a policy should define that asset forfeiture is not a revenue-raising tool. One city has a policy that states: “the potential for revenue should never compromise the effective investigation of criminal offenses, officer safety, or any person’s due process rights.”

Next, the policy should call for the use of proceeds from asset seizures to be planned through the regular budget process, like any other revenue. Many times, asset forfeiture funds have legal restrictions on how they can be used. This can lead people to believe that asset forfeiture proceeds should be exempted from the budget process. However, this can result in bad, financially unsustainable decision-making. For example, in one city, vehicles seized from asset forfeitures were slipping into the city’s motor pool because they weren’t being evaluated as part of the financial planning process. These vehicles then had to be maintained (adding unbudgeted costs), and the users of those vehicles were expected to replace the vehicles with new vehicles when the useful life of the seized vehicle expired (adding more costs). Eventually, the city’s motor pool ran out of money, requiring the city to end the practice of seized vehicles slipping into the motor pool.

Generally, having “special” pools of money that are exempted from the rigors of the budget process multiplies the potential for wasteful, superfluous spending (like the vehicle pool) that is not aligned with the priorities of the governing board.

Finally, as we discussed for fines, if the organizational unit that seizes the assets gets to use the assets as they see fit, it creates an incentive to seize more assets. For example, one investigation into the practice found evidence that seizures are sometimes guided by “wish lists,” where the value of the asset, the ease with which it is liquidated, or its utility for the agency seizing the assets may be criteria in deciding when to seize assets and which assets to seize.<sup>26</sup>



## CONCLUSION

Imposed fees, fines, and asset forfeitures are important tools for local government. However, like any tool, they can be misused. When these revenue sources are misused, they can reduce citizen’s trust in local government, seriously harm the lives of disadvantaged citizens, and worsen the problems that public services are intended to solve. A financial policy provides boundaries on imposed fees, fines, and asset forfeitures to make sure these tools are used properly.

# APPENDIX 1 – POLICY TEMPLATE

[Download](#)

GFOA Policy Template | Fees, Fines, and Asset Forfeiture Policy



## Fee Policy

*This policy template provides the fundamental elements of a user fee policy. You should customize this policy to fit the needs of your government, including adding details to cover issues specific to important fees that your government charges. Also, consider periodically reviewing your policies. For example, you might review policies once per year to assure you are in compliance with your policies.*

### Why a Fee Policy is Important

Fees support [name of your gov't]'s ability to provide services to the public. Fees raise revenue to cover the cost of providing a service. Different public services have different characteristics that effect [name of your gov't]'s ability to charge fees in fair, equitable, and cost-effective manner. [name of your gov't] shall follow all applicable state laws governing fees and a local fee policy provides additional guidance to make sure [name of your gov't]'s system of fees is fair, equitable, and cost-effective.

### Criteria for Charging a Fee and Cost Recovery Goals

Not all public services are a good fit with a fee-for-service approach. For some services that do fit a fee-for-service approach, there may be a case for collecting less than the full cost of providing the service.

Staff shall develop and recommend to the [name of governing board] the public services that will have user fees and the cost recovery goals for these public services.

Staff shall recommend fees and cost recovery goals based on characteristics of the service. Characteristics that suggest a fee is appropriate and where higher cost recovery may be justified include:

- **Customer receives all or most of the value from the service.** Public services often benefit both the entire community and the specific individual receiving the service. In cases where all or most of the value of a service accrues to the individual, greater cost recovery should be the goal.
- **Similar to private sector service.** [name of your gov't] should not subsidize public services that have important similarities to services also available from the private sector.
- **[name of your gov't] needs to limit demand.** If the charge is too low, people may use too much.
- **The service is regulatory.** Some private activities are regulated by [name of your gov't]. Individuals that undertake those activities should pay the cost of the regulation.

Characteristics that suggest lower cost recovery goals include:

- **Difficult collection.** It may be impractical to charge a fee. If so, collection would cost more than collected revenue.
- **Emergency service.** The service is provided in an emergency and not planned by the user.
- **Service is not optional and costs fall on vulnerable populations.** The user does not have a choice in whether to use the service or how much of the service to use. The cost of a fee for the service would be borne by vulnerable populations, like people in poverty.
- **Creates the wrong incentives.** If a fee is too high it might discourage people from using a service or following a regulation.

Here are examples of services with high cost recovery goals [you may insert specific services you'd like to establish as high-cost recovery. Examples might be municipal utilities and building permits].

Government Finance Officers Association

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## Fee Policy

*This policy template provides the fundamental elements of a user fee policy. You should customize this policy to fit the needs of your government, including adding details to cover issues specific to important fees that your government charges. Also, consider periodically reviewing your policies. For example, you might review policies once per year to assure you are in compliance with your policies.*

### Why a Fee Policy is Important

Fees support [name of your govt]'s ability to provide services to the public. Fees raise revenue to cover the cost of providing a service. Different public services have different characteristics that effect [name of your govt]'s ability to charge fees in fair, equitable, and cost-effective manner. [name of your govt] shall follow all applicable state laws governing fees and a local fee policy provides additional guidance to make sure [name of your govt]'s system of fees is fair, equitable, and cost-effective.

### Criteria for Charging a Fee and Cost Recovery Goals

Not all public services are a good fit with a fee-for-service approach. For some services that do fit a fee-for-service approach, there may be a case for collecting less than the full cost of providing the service.

Staff shall develop and recommend to the [name of governing board] the public services that will have user fees and the cost recovery goals for these public services.

Staff shall recommend fees and cost recovery goals based on characteristics of the service. Characteristics that suggest a fee is appropriate and where higher cost recovery may be justified include:

- **Customer receives all or most of the value from the service.** Public services often benefit both the entire community and the specific individual receiving the service. In cases where all or most of the value of a service accrues to the individual, greater cost recovery should be the goal.
- **Similar to private sector service.** [name of your govt] should not subsidize public services that have important similarities to services also available from the private sector.
- **[name of your govt] needs to limit demand.** If the charge is too low, people may use too much.
- **The service is regulatory.** Some private activities are regulated by [name of your govt]. Individuals that undertake those activities should pay the cost of the regulation.

Characteristics that suggest lower cost recovery goals include:

- **Difficult collection.** It may be impractical to charge a fee. If so, collection would cost more than collected revenue.
- **Emergency service.** The service is provided in an emergency and not planned by the user.
- **Service is not optional and costs fall on vulnerable populations.** The user does not have a choice in whether to use the service or how much of the service to use. The cost of a fee for the service would be borne by vulnerable populations, like people in poverty.
- **Creates the wrong incentives.** If a fee is too high it might discourage people from using a service or following a regulation.

Here are examples of services with high cost recovery goals [you may insert specific services you'd like to establish as high-cost recovery. Examples might be municipal utilities and building permits].



## Review of Fees

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Fees will be regularly reviewed and updated by the department responsible for administering the fee, working in conjunction with the finance department. This will ensure that fees keep pace with changes in the cost of providing a service.

A comprehensive analysis of a service's costs, the level of service provided, the means by which it is provided, and the fees charged should be made at least every five years. This should result in a recommendation to the [name of governing board] for any changes to the fee structure.

In the interim, each year the Finance Director and the department that administers the fee in question shall recommend to the [name of governing board] any adjustments to fees that may be necessary to keep up with known cost increases or that may be need for the service to meet its cost recovery goals.

## Use of Fee Revenue

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The revenues from fees should be used to offset the cost of providing the service that generated the fee. The revenues should not be used to support unrelated services.

**Policy Adopted on:** [insert date]

**Policy Last Reviewed on:** [insert date]



## Fines Policy

*This policy template provides the fundamental elements of a fine policy. You should customize this policy to fit the needs of your government, including adding details to cover issues specific to important fines that your government charges. Also, consider periodically reviewing your policies. For example, you might review policies once per year to assure you are in compliance with your policies.*

### Why a Fines Policy is Important

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Fines provide a disincentive for a person to engage in illegal or undesirable behavior. However, fines can also have unintended consequences and may not always be cost-effective. [name of your govt] shall follow all applicable state laws governing fines and a local fee policy provides additional guidance to make sure [name of your govt]'s system of fines are effective for their intended purpose, cost-effective, and do not have additional consequences outside of their intent.

### Criteria for Applying a Fine

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Fines are not appropriate in all circumstances. The criteria below suggest circumstances when a fine may not be an appropriate tool.

- The violator is already being subjected to other penalties, especially where that penalty has financial consequences for the violator.
- The fine or potential for a fine may discourage the violator from using critical public services. This is important where the public is better served when the public service is used.
- The fine is an ineffective disincentive and government effort would be better spent on more effective ways to address the underlying problem.
- The fine is unlikely to be collectable for an acceptable cost.

### Collection Practices

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The collection practices and policies for fines shall be substantively similar to the policy for user fees, including the availability of payment plans and making accommodations for hardship.

### Use of Fine Revenue

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The goal of fines should not be to raise revenue. Therefore, the budget of the organizational unit that assesses or collects a fine shall not be set in relation to expected fine revenue. Also, the organizational unit that generates the fine should not realize financial benefit from assessing a greater number of fines. To the extent possible, revenue generated from fines shall be considered a general revenue. In cases where the revenue from fines can be only be used for certain legally prescribed purposes, that revenue will still participate in the normal budget process to ensure it is put towards its highest and best allowable use.



## Review of Fines

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Fines will be regularly reviewed and updated by the department responsible for administering the fine, working in conjunction with the finance department. The review should be used to ensure the fine remains consistent with this policy. A review should take place at least every five years. This should result in a recommendation to the [name of governing board] for any changes to the fine structure.

In the interim, each year the Finance Director and the department that administers the fine in question shall recommend to the [name of governing board] any adjustments to fines that may be necessary to keep the fine consistent with the goals of this policy.

**Policy Adopted on:** [insert date]

**Policy Last Reviewed on:** [insert date]



## Asset Forfeiture Policy

*This policy template provides the fundamental elements of an asset forfeiture policy. You should customize this policy to fit the needs of your government. Also, consider periodically reviewing your policies. For example, you might review policies once per year to assure you are in compliance with your policies.*

### Why an Asset Forfeiture is Important

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Asset forfeiture is a tool for enforcing laws. [name of your govt] shall follow all applicable laws governing asset forfeiture. This policy provides additional guidance to make sure [name of your govt]'s use of asset forfeiture is fair and equitable.

### State Law and Asset Forfeiture

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In all cases, [name of government] will follow state laws that govern asset forfeiture. However, [name of government] also recognizes that state law constitutes a minimum standard. This policy prescribes additional standards above and beyond state law that [name of government] is committing itself to follow.

### Additional Standards for Asset Forfeiture

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[name of government] and its staff will observe the following standards for engaging in asset seizures.

- Assets seized will be held in escrow until the outcome of a formal legal judgment (e.g. conviction in a criminal case). If the defendant is found innocent, assets will be returned. In no case shall assets be held longer than one year.
- Assets will not be seized for any crime less serious than a felony.
- Assets that are the legal property of someone other than the person being charged with the crime may not be seized.
- The defendant must have counsel (appointed or private) in all forfeiture cases.
- The specific assets seized must have direct connection to the crime the defendant is accused of.

### Use of Proceeds from Asset Forfeiture

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Foremost, the potential for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

The budgets of the organizational unit that seizes an asset shall not be set in relation to expected asset seizures. Also, the organizational unit that seizes assets should not realize financial benefit from seizing more assets. To the extent possible, revenue asset seizure shall be considered a general revenue. In cases where the revenue from seizures can be only be used for certain legally prescribed purposes, that revenue will still participate in the normal budget process to ensure it is put towards its highest and best allowable use.

**Policy Adopted on:** [insert date]

**Policy Last Reviewed on:** [insert date]

## END NOTES

- <sup>1</sup> Some examples of these reasons include statutory tax limitations on local governments imposed by state governments and stagnation of the median income (which these tax sources are derived from).
- <sup>2</sup> For example, from 2007 to 2012, user charges were the only category of revenue to experience growth among 112 of the largest cities in the U.S., on average. This is based on research conducted by the Lincoln Institute of Land Policy. See Lincoln Institute of Land Policy. (2015, May 7). "Cities' Increasing Reliance on Fees as Other Revenues Fall." Lincoln House Blog. Retrieved from <https://www.lincolnst.edu/news/lincoln-house-blog/cities-increasing-reliance-fees-other-revenues-fall>.
- <sup>3</sup> Fees are usually most appropriate for services where the beneficiary of the service is primarily the person who uses the service and where the service is elective. This is discussed in more detail in Chapter 13 in Shayne Kavanagh and Vincent Reitano. *Financial Foundations for Thriving Communities*. Government Finance Officers Association: Chicago, Illinois. 2019.
- <sup>4</sup> "Investigation of the Ferguson Police Department," U.S. Department of Justice, Civil Rights Division, 2015.
- <sup>5</sup> Maciag, M. (2014, August 22). "Skyrocketing Court Fines Are Major Revenue Generators for Ferguson." *Governing*.
- <sup>6</sup> A good overview of this topic is available in Barry Friedman. *Unwarranted: Policing Without Permission*. Farrar, Straus and Giroux. 2017.
- <sup>7</sup> Sales taxes are actually regressive when compared to total income because wealthier people tend to spend less of their income on taxable goods and services.
- <sup>8</sup> "Report on the Economic Well-Being of U.S. Households in 2018." Board of Governors of the Federal Reserve System. May 2019.
- <sup>9</sup> Caroline Wolf Harlow, "Defense Counsel in Criminal Cases," U.S. Department of Justice, Bureau of Justice Statistics, 2000.
- <sup>10</sup> A 2018 Brookings Institution study found that among individuals aged 18 to 64 who were sentenced to at least one year in prison, approximately 80 percent were unemployed in the year before incarceration. Adam Looney and Nicholas Turner, "Work and opportunity before and after incarceration," Brookings Institution, 2018.
- <sup>11</sup> David R. Eichenthal. "The Cost of Collection: Rethinking Criminal Justice Fees and Fines as a Revenue Source." *Government Finance Review*. April 2020.
- <sup>12</sup> Of course, you need some minimum number of people to make the league viable.
- <sup>13</sup> Data collected by the PFM Center for Justice and Safety Finance. [Cjsf.pfm.com](http://Cjsf.pfm.com)
- <sup>14</sup> David R. Eichenthal. "The Cost of Collection: Rethinking Criminal Justice Fees and Fines as a Revenue Source." *Government Finance Review*. April 2020.
- <sup>15</sup> See Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison. "The Steep Costs of Criminal Justice Fees and Fines." Brennan Center for Justice. 2019. Also see Mathilde Laisne, Jon Wool, and Christian Henrichson. "Past Due: Examining the Cost and Consequences of Charging for Justice in New Orleans." Vera Institute of Justice. January 2017.
- <sup>16</sup> For an example of bail, see Mathilde Laisne, Jon Wool, and Christian Henrichson. "Past Due: Examining the Cost and Consequences of Charging for Justice in New Orleans." Vera Institute of Justice. January 2017. Probation is discussed in Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison. "The Steep Costs of Criminal Justice Fees and Fines." Brennan Center for Justice. 2019.
- <sup>17</sup> <https://www.aclu.org/cases/fuentes-v-benton-county>
- <sup>18</sup> This for recreation fees, but the same logic could be applied to imposed fees: <http://www.austintexas.gov/page/austin-parks-and-recreation-department-financial-aid>
- <sup>19</sup> A private study performed by PFM.
- <sup>20</sup> Emma Bowman. "We Wanted Our Patrons Back—Public Libraries Scrap Late Fines To Alleviate Inequity." NPR. November 30, 2019.
- <sup>21</sup> Dan Heath in *Upstream: The Quest to Solve Problems Before They Happen*. (Avid Reader Press. 2020) describes how the City of Rockford, Illinois, ended homelessness for veterans with a preventative approach and has made substantial progress on reducing homelessness for all people.
- <sup>22</sup> Sharon Brett and Mitali Nagrecha. "Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform." Criminal Justice Policy Program: Harvard Law School. September 2019.
- <sup>23</sup> In fact, GFOA found at least one case where a county government was required by a lawsuit to change its practice of threatening jail time or forcing manual labor on people unable to afford court fees and fines. <https://www.aclu.org/cases/fuentes-v-benton-county>
- <sup>24</sup> <https://www.austintexas.gov/news/community-court-reduces-offenses-addresses-homelessness>
- <sup>25</sup> <https://www.austintexas.gov/department/homeless-outreach-street-team>
- <sup>26</sup> Shelia Dewan. "Police Use Department Wish List When Deciding Which Assets to Seize." The New York Times. November 9, 2014.



Government Finance Officers Association (GFOA) represents approximately 20,000 public finance officers throughout the United States and Canada. GFOA's mission is to promote excellence in state and local government financial management. GFOA views its role as a resource, educator, facilitator, and advocate for both its members and the governments they serve and provides best practice guidance, leadership, professional development, resources and tools, networking opportunities, award programs, and advisory services.