

Washoe County Technology fee increase Planning and Business License

Washoe County staff requested that the District Attorney's Office review the proposed technology fee policy and proposed fees. DA Office staff has opined that the County cannot impose any fee unless authorized by State Law and/or County Code. DA staff researched State Law to find any statutes which would enable the County to impose a technology fee. NRS 354.790 enables any local government to charge an additional fee "for providing service to customer in expeditious or convenient manner".

NRS 354.790 Additional fee for providing service to customer in expeditious or convenient manner.

1. Except as otherwise provided by specific statute, a local government may charge, in addition to the fee otherwise imposed for a service provided by the local government, a reasonable fee for providing the service in an expedited manner or in a manner that is expeditious or convenient to the customer.
2. The fee authorized pursuant to subsection 1 must not exceed 5 percent of the fee otherwise imposed.
3. As used in this section, "local government" has the meaning ascribed to it in NRS 354.474.

The key provisions from this statute are two-fold:

1. Fee increases must not be restricted (i.e., limited) or prohibited by another statute. DA staff believes this includes any County Code restricting or prohibiting fees.
2. Any fee increase must not exceed 5% of the original fee.

Based on this guidance, I suggest that our technology fee policy be modified to incorporate the key provisions of NRS 354.790. The policy must also clearly articulate the benefits bestowed by the new program for permit and license holders. For example, the policy should stress the efficiency and convenience benefits with the new program when compared to our current platforms. Additionally, each agency should evaluate its respective fees and the proposed technology fee in relation to NRS 354.790.

In addition to the provisions of NRS 354.790, our technology fee working group needs to consider the ruling of the Nevada Supreme Court in the Clean Water Coalition v. M Resort et als case. The Court provided a three part test for any fee to not be considered a tax:

1. Applies to the direct beneficiary of a particular service;
2. Is allocated directly to defraying the costs of providing that service; and,
3. Is reasonably proportionate to the benefit received.

Technology Fee Policy

The first part of this document outlines my reasoning to support a technology fee for permits and licenses in the context of NRS 354.790 and the three part test. The chart on the next page illustrates a feature of the license/permit program and the benefits provided to our permit and license customers.

A percentage based technology fee provides the proportional benefit from item three of the three part test. More complex or review intensive permits are currently charged a higher fee. This fee reflects each agency's processing and review requirements for the permit application. Higher fees equate to higher levels of processing and review. In general, larger projects require more plan review and inspections and the fees reflect this.

A "low cost" permit currently requires less processing and review, and a "higher cost" permits means that a greater fee is collected to offset the greater amounts of processing and review. So, whether the license/permit

program exists or not, a customer pays more for the additional services required for complex or review intensive permits.

The flat fee proposed for licenses reflects the same general amount of processing and review given to each license type. In other words, licenses are generally equal in terms of processing and review, with individual applicants (not the license type) requiring more attention, processing or review.

License/permit program feature	Benefit to customer (NRS 354.790 & three part test)	
	Permits	Licenses
1. Submit documents electronically	All application material (application, site plans, etc.) submitted electronically, saving costs of 3 to 7 paper copies of all submitted material	Required supporting documentation (e.g, fictitious name, State certifications) can be submitted electronically, or the program can verify electronically with other agency databases that the documentation is valid
	Clerk enters paper applications into program, allowing electronic review and approval	Save as for planning
2. Access to central customer information	Repeat customers validate customer information and do not need to re-enter valid information into application	Multi-jurisdictional customers are entered a single time into the program. Jurisdictions can share and update customer information, and generate jurisdiction specific renewals or requests
3. On-line application	Customer can apply on-line and submit all required documents electronically, saving time preparing paper applications and visits to County's business office	Save as for planning
4. Electronic plan review and approval	Plans and application material are routed electronically to reviewing agencies, which review the application on line. Required corrections are sent by e-mail to the customer, who completes and submits the revisions electronically. Final approvals are done on-line with electronic customer notification	License applications are electronically submitted to reviewing agencies. Final approvals are done on-line with electronic customer notification
5. Electronic scheduling of inspections	Customers can make required inspection appointments on-line	Same as for planning
6. Real time application status	Customers can check on the status of their application on-line, with real time results and updates	Save as for planning
7. Consolidated payment	The varying permit application and review fees are consolidated into a single charge. The customer pays one fee, which is distributed by the program to the appropriate agencies. Payments can be made on-line or in person	Multi-jurisdictional license fees and/or inspection fees can be consolidated into a single charge. The customer pays one fee to include any additional agency review fees. Fees are distributed to each appropriate agency or jurisdiction. Payments can be made on-line or in person

Technology Fee, Planning and Business License

This next part of this document contains my evaluation of the Washoe County planning and business license fees and the proposed technology fee in relation to NRS 354.790.

PLANNING FEES

The proposed technology fee is 4% of fees charged by the Planning & Development Division for development applications. The technology fee will be based on the total cost to the customer of the development application (permit). The proposed 4% fee falls within the 5% fee limitation imposed by NRS 354.790. I could find no other limitations or restrictions on planning related fees within NRS or County Code. Therefore, I believe that the working group can recommend the proposed 4% technology fee for planning related applications.

BUSINESS LICENSE FEES

The proposed technology fee is a flat \$8 fee for each business license application or renewal. Quarterly licenses will be charged \$2 on initial application and for each quarterly renewal. For this evaluation, I grouped business licenses into four major license categories:

1. Public utilities providing electric energy service or telecommunication service (cannot be included in the proposed technology fee)
2. Gaming licenses (cannot be included in the proposed technology fee)
3. General business licenses (can be included, but total revenue is limited to \$22,000)
4. Liquor licenses (can be included, but total revenue is limited to \$8,602 – but may be allowed up to \$17,646)

Public utilities providing electric energy service or telecommunication service

License fees for public utilities are governed through NRS 354.59883 through 354.59889 (NRS extract attached). NRS 354.59883(3)(b) limits the total amount of fees collected from these two types of public utilities to no more than 5% of the utility's gross revenue. County Code provided for a tiered approach to collect license fees from these two types of utilities and the County now currently collects the maximum 5% of gross revenue. Since State statute caps the revenue to be charged from these utilities and the County is already collecting that maximum fee, I believe that these public utility license fees cannot be included in the proposed technology fee.

Gaming licenses

NRS 463.390 establishes the gaming license fees which may be charged by the County (NRS extract attached). The County's current gaming license fees mirror the amounts reflected in NRS 463.390. The County collects gaming license fees from all gaming establishments in the County, regardless of jurisdiction. Gaming license revenue from gaming establishments within the Cities of Reno and Sparks is divided between the City (75%) and the County (25%). The County retains all gaming license revenue from gaming establishments located in the unincorporated County.

NRS 463.395 (NRS extract attached) restricts the amount of "license fee or tax imposed by a local government for conducting, carrying on or operating any gambling game, slot machine or other game of chance". Based on this NRS provisions, I believe that the gaming license fees cannot be included in the proposed technology fee.

General business licenses

NRS 354.5989 limits the annual revenue allowed to be collected by a local jurisdiction with any fee increase for a business license (NRS extract attached). County general business license fees are based on either a flat fee for an initial application or for a special type of license (e.g., a temporary event) or a flat fee based on reported gross receipts. Therefore, the County's fees are subject to the provisions of NRS 354.5989(2).

Using the City of Reno's business license fee schedule as a template, I calculated the revenue increase allowed pursuant to NRS 354.5989(2). I believe that the NRS allows the County to increase fees to accommodate the technology fee; however, the total general business license revenue generated from the technology fee must not exceed \$22,000.

FY 2013-2014 general business license calculations:

Business license revenue for year ended June 30, 2013			\$ 717,353
Business license revenue for year ended June 30, 2012 (base year)		\$ 666,654	
Adjustments to base year			
Western CPI for calendar year ending in 2012	2.2%		
Governor's certified population estimate percent increase; July 2011 – July 2012	1.1%		
Total adjustment		3.3%	
Total adjustment to base year		\$ 22,000	
Adjusted business license revenue for the year ended June 30, 2013			\$ 688,654
Amount over allowable maximum			\$ 28,699

Imposing the technology fee would prohibit the County from any other general business license fees, at least for FY 2013-2014. In January 2014, both the 2013 Western CPI and the Governor's certified population estimate for July 2012 thought July 2013 should be available, and the allowable revenue can be re-calculated based on the reported FY 2012-2013 of \$ 717,353. There may, or may not, be more allowable revenue available.

Liquor licenses

The County is enabled to regulate the sale of intoxicating liquor through the provisions of NRS 244.350 (NRS extract attached). However, this NRS section does not address the fixing of liquor license fees. The establishment of such fees is, therefore, regulated within NRS 354.5989 as treating the liquor license similar to a business license. County liquor license fees, therefore, are subject to the provisions of NRS 354.5989(2).

FY 2013-2014 liquor license calculations:

Liquor license revenue for year ended June 30, 2013			\$ 251,619
Liquor license revenue for year ended June 30, 2012 (base year)		\$ 260,663	
Adjustments to base year			
Western CPI for calendar year ending in 2012	2.2%		
Governor's certified population estimate percent increase; July 2011 – July 2012	1.1%		
Total adjustment		3.3%	
Total adjustment to base year		\$ 8,602	
Adjusted business license revenue for the year ended June 30, 2013			\$ 296,265
Amount under allowable maximum			\$ 17,646

Based on the above calculations, at a minimum the County would be able to collect \$8,602 from liquor licenses with the proposed technology fee. It also appears that the County could collect as much as \$17,646 and still comply with the NRS limitations. As with general business licenses, the NRS allowable revenue should be re-calculated for FY 2013-3014.

PUBLIC UTILITIES PROVIDING ELECTRIC ENERGY SERVICE OR TELECOMMUNICATION SERVICE

NRS 354.59883 Limitations on fees applicable to public utilities: Adoption of ordinance imposing or increasing fee prohibited under certain circumstances. A city or county shall not adopt an ordinance imposing or increasing a fee:

1. If that ordinance would alter the terms of any existing franchise agreement between the city or county and a public utility.
2. That applies to any public utility which does not derive revenue from customers located within the jurisdiction of the city or county.
3. If, after the adoption of the ordinance:
 - (a) Any part of a fee to which the ordinance applies will be based upon any revenue of a public utility other than its revenue from customers located within the jurisdiction of the city or county.
 - (b) The total cumulative amount of all fees the city or county imposes upon a public utility to which the ordinance applies will exceed:
 - (1) Except as otherwise provided in subparagraph (2), 5 percent of the utility's gross revenue from customers located within the jurisdiction of the city or county.
 - (2) For a public utility that sells or resells personal wireless services, 5 percent of its gross revenue from the first \$15 charged monthly for each line of access for each of its customers whose place of primary use is located within the jurisdiction of the city or county.

NRS 354.59885 Limitations on fees applicable to public utilities: Submission of certain information by public utility before commencement of service; quarterly statements of revenue required; identification of customers provided to public utility; information included in bill. If a city or county adopts an ordinance imposing or increasing a fee:

1. Each public utility to which the ordinance applies or which intends to derive revenue from customers located within the jurisdiction of the city or county shall, not later than 60 calendar days after the effective date of the ordinance or 30 calendar days before the public utility begins to provide electric energy, gas or a telecommunication service to those customers, whichever occurs later, provide to the city or county:
 - (a) An acknowledgment that the public utility is operating or intends to operate within the jurisdiction of that city or county; and
 - (b) The date when the public utility began or intends to begin to derive revenue from customers located within the jurisdiction of the city or county.
2. In addition to the requirements of subsection 1, each public utility to which the ordinance applies shall, not later than 30 calendar days after the end of each calendar quarter, provide to the city or county a statement of the amount of revenue the public utility derived during that calendar quarter from the sale of electric energy, gas or a telecommunication service to each of its customers located within the jurisdiction of that city or county.
3. The city or county shall, at no charge, provide to each public utility to which the ordinance applies any information that is necessary to identify each customer that is affected by the fee imposed or increased by the city or county, including the address of each customer. If the public utility requests the city or county to provide the information in a specific form, the city or county may charge a fee for the cost of providing the information in that form.
4. Upon receipt of the information that the city or county is required to provide pursuant to the provisions of subsection 3, the public utility may indicate on the bills that it sends to its customers the fee that is imposed or increased by the city or county.
5. A public utility that indicates the fee on the bills it sends to its customers pursuant to the provisions of subsection 4:
 - (a) Shall be deemed to have complied with the provisions of this section and NRS 354.59887; and
 - (b) Is not liable to the city or county for any damages for the failure to comply with the provisions of this section and NRS 354.59887,
if it reasonably relies upon the information that it receives from the city or county pursuant to the provisions of subsection 3.

NRS 354.59887 Limitations on fees applicable to public utilities: Rate; quarterly payments; collection; penalties and interest on delinquent amounts; apportionment among customers of public utility. If a city or county adopts an ordinance imposing or increasing a fee:

1. The entire amount of any fee to which the ordinance applies must be:

(a) Imposed at the same rate upon each public utility that provides similar services within the jurisdiction of the city or county; and

(b) Paid by the public utility to the city or county in legal tender of the United States or in a check, draft or note that is payable in legal tender of the United States.

2. The city or county:

(a) Shall require each public utility to which the ordinance applies to pay quarterly the fees imposed upon it that it has collected from its customers.

(b) May, to the extent it determines that it is impracticable to collect from a public utility to which the ordinance applies any of the fees imposed upon the public utility, collect any of those fees directly from the customers of the public utility located within the jurisdiction of the city or county in proportion to the amount of revenue the public utility derives from each of those customers.

(c) May, except as otherwise provided in this paragraph, assess combined penalties and interest of not more than 2 percent per month of the delinquent amount of any fee to which the ordinance applies. If a city annexes any land, it may not assess any penalties or interest pursuant to this paragraph regarding any fee imposed for the operation of a public utility within the annexed land during any period:

(1) Before the effective date of the annexation; or

(2) More than 30 days before the city provides the public utility with notice of the annexation,

Ê whichever occurs later.

(d) May provide, by ordinance, that the fees imposed upon the public utility may be collected from a governmental entity of the State if that entity is a customer of the public utility.

3. A public utility to which the ordinance applies shall, except for any fees collected by the city or county pursuant to paragraph (b) of subsection 2, collect the aggregate of all its fees imposed by the city or county directly from its customers located within the jurisdiction of the city or county in proportion to the amount of revenue the public utility derives from each of those customers. The fees may be shown on a customer's bill individually or collectively.

4. A public utility to which the ordinance applies shall not collect from a customer any penalties or interest assessed pursuant to paragraph (c) of subsection 2.

NRS 354.59888 Limitations on fees applicable to public utilities: Errors concerning billing for certain fees or designation of place of primary use; notification by customers of certain public utilities.

1. If a customer of a public utility that sells or resells personal wireless services believes that the amount of a fee imposed pursuant to NRS 354.59881 to 354.59889, inclusive, or the designation of a place of primary use is incorrect, the customer may notify the public utility in writing of the alleged error. The notice must include:

(a) The street address for the place of primary use of the customer;

(b) The account number and name shown on the billing statement of the account for which the customer alleges the error;

(c) A description of the alleged error; and

(d) Any other information which the public utility may reasonably require to investigate the alleged error.

2. Within 60 days after receiving a notice sent pursuant to subsection 1, the public utility shall review the records which the public utility uses to determine the place of primary use of its customers.

3. If the review indicates:

(a) That the alleged error exists, the public utility shall correct the error and refund or credit the customer for the amount which was erroneously collected for the applicable period, not to exceed the 24 months immediately preceding the date on which the customer notified the public utility of the alleged error.

(b) That no error exists, the public utility shall provide a written explanation to the customer who alleged the error.

4. A customer may not bring a cause of action against a public utility that sells or resells personal wireless services for fees incorrectly imposed pursuant to NRS 354.59881 to 354.59889, inclusive, unless the customer first complies with this section.

NRS 354.59889 Limitations on fees applicable to public utilities: Change of fees.

1. A city or county shall not change any of its fees except through the adoption of an ordinance which provides that the change does not become effective until at least 90 days after the city or county complies with the provisions of subsection 3 of NRS 354.59885.

2. The cumulative amount of any increases in fees imposed by a city or county during any period of 24 months must not exceed 1 percent of the gross revenue of any public utility to which the increase applies from customers located within the jurisdiction of that city or county.

GAMING LICENSES

NRS 463.390 Quarterly fee for county license; penalty for late payment.

1. Any natural person, firm, association, corporation, partnership, limited partnership or limited-liability company desiring to conduct, operate or carry on any gambling game, slot machine or any game of chance must, upon proper application to the sheriff if there is no county license department or to that department of the county wherein it is proposed that the slot machine, game or games be conducted or operated, be issued a license for each particular device or game or slot machine under the following conditions and regulations:

(a) The natural person, firm, association, corporation, partnership, limited partnership or limited-liability company so applying must furnish a complete description of the particular room and premises in which the applicant desires to carry on or conduct the slot machine, device or game, together with the location of the building, its street number, if any, and any other information by which it may be definitely and readily located and recognized.

(b) The applicant must state definitely the particular type of slot machine or the particular game or device which the applicant desires to carry on or conduct in the room and premises, and the slot machine, game or device must be specifically described in and entered upon the license.

(c) Card games, that is, stud and draw poker, bridge, whist, solo, and panguingui for money, must be licensed independently of other games mentioned in this section, regardless of locality or population, at the rate of \$25 per table per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable 3 months in advance.

(d) A license fee of \$50 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance, must be paid to the sheriff or county license department for each license issued for a game or device except for slot machines and games as otherwise provided for in this section. For each money slot machine the license fee is \$10 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance. When a combination of units are operated by one handle, the license fee is \$10 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance, for each unit paying in identical denominations operated thereby.

(e) The license entitles the holder to carry on or operate the specific slot machine, game or device for which the license is issued in the particular room and premises described therein, but not any other slot machine, game or device than that specified therein, or the specified slot machine, game or device in any other place than the room and premises so described, for a period of 3 months next succeeding the date of issuance of the license.

2. The licensee is entitled to operate two or more slot machines, games or devices in the same room by paying the license fee provided for in this section for each slot machine, game or device and otherwise complying with the terms of this section.

3. Except as otherwise provided in subsection 4 or NRS 463.400, any person failing to pay any license fees due to a county at the times respectively provided in this chapter must pay in addition to the license fees a penalty of not less than \$50 or 25 percent of the amount due, whichever is the greater, but not more than \$1,000 if the fees are less than 10

days late and in no case more than \$5,000. The penalty must be collected as are other charges, license fees and penalties under this chapter.

4. A county may waive all or part of any penalty due pursuant to subsection 3 if the board of county commissioners issues a written finding that the license fees were not paid in a timely manner as a result of circumstances beyond the licensee's control.

5. Where the operator of a slot machine route is contractually responsible for the payment of license fees for a particular establishment which holds a restricted license, the operator is also responsible for the payment of any penalties imposed for late payment of those license fees. In such a case, the owner of the establishment is not responsible for the payment of any penalties so imposed.

NRS 463.395 Limitations on amount of fee for license or rate of tax imposed by local government.

1. The license fee or tax imposed by a local government for conducting, carrying on or operating any gambling game, slot machine or other game of chance must not exceed:

(a) The amount, if charged per person, establishment, game or machine; or

(b) The rate, if charged according to revenue,

which was in effect for that purpose on or before April 27, 1981.

2. If on that date the local government:

(a) Was in existence, had a population of less than 2,000 and was not collecting or authorized by ordinance to collect such a fee or tax, the local government may impose such a fee or tax in an amount approved by the Nevada Tax Commission which is not greater than the largest fee or tax imposed by a local government of the same kind. The fee or tax must not be increased.

(b) Was in existence, had a population of less than 2,000, and was authorized to collect but was not collecting such a fee or tax, the local government may impose such a fee or tax in an amount not greater than that authorized by ordinance.

(c) Was collecting a fee or tax which is afterward held to be invalid, the local government may impose a new fee or tax no greater in amount of estimated revenue to be derived than the fee or tax held invalid.

GENERAL BUSINESS LICENSES AND LIQUOR LICENSES

NRS 354.5989 Limitations on fees for business licenses; exceptions.

1. A local government shall not increase any fee for a business license or adopt a fee for a business license issued for revenue or regulation, or both, except as permitted by this section. This prohibition does not apply to fees:

(a) Imposed by hospitals, county airports, airport authorities, convention authorities, the Las Vegas Valley Water District or the Clark County Sanitation District;

(b) Imposed on public utilities for the privilege of doing business pursuant to a franchise;

(c) Imposed in compliance with the provisions of NRS 711.670 on video service providers for the privilege of doing business pursuant to chapter 711 of NRS;

(d) For business licenses which are calculated as a fraction or percentage of the gross revenue of the business;

(e) Imposed pursuant to NRS 244.348, 268.0973, 268.821 or 269.182; or

(f) Regulated pursuant to NRS 354.59881 to 354.59889, inclusive.

2. The amount of revenue the local government derives or is allowed to derive, whichever is greater, from all fees for business licenses except:

(a) The fees excluded by subsection 1, for the fiscal year ended on June 30, 1991; and

(b) The fees collected for a particular type of business during the immediately preceding fiscal year ending on June 30 that a local government will not collect in the next subsequent fiscal year,

is the base from which the maximum allowable revenue from such fees must be calculated for the next subsequent fiscal year. To the base must be added the sum of the amounts respectively equal to the product of the base multiplied by the percentage increase in the population of the local government added to the percentage increase in the Consumer Price Index for the year ending on December 31 next preceding the year for which the limit is being calculated. The amount so determined becomes the base for computing the allowed increase for each subsequent year.

3. A local government may not increase any fee for a business license which is calculated as a fraction or percentage of the gross revenue of the business if its total revenues from such fees have increased during the preceding fiscal year by more than the increase in the Consumer Price Index during that preceding calendar year. The provisions of this subsection do not apply to a fee:

(a) Imposed in compliance with the provisions of NRS 711.670 on video service providers for the privilege of doing business pursuant to chapter 711 of NRS;

(b) Imposed pursuant to NRS 244.348, 268.0973, 268.821 or 269.182; or

(c) Regulated pursuant to NRS 354.59881 to 354.59889, inclusive.

4. A local government may submit an application to increase its revenue from fees for business licenses beyond the amount allowable pursuant to this section to the Nevada Tax Commission, which may grant the application only if it finds that the rate of a business license of the local government is substantially below that of other local governments in the State.

5. The provisions of this section apply to a business license regardless of the fund to which the revenue from it is assigned. An ordinance or resolution enacted by a local government in violation of the provisions of this section is void.

6. As used in this section, "fee for a business license" does not include a tax imposed on the revenues from the rental of transient lodging.

NRS 244.350 Sale of intoxicating liquors: Licensing and regulation by county liquor board; exceptions.

1. The board of county commissioners and, in a county whose population is less than 700,000, the sheriff of that county, constitute a liquor board. The liquor board may, without further compensation, grant or refuse liquor licenses, and revoke those licenses whenever there is, in the judgment of a majority of the board, sufficient reason for revocation. The board shall elect a chair from among its members.

2. Except as otherwise provided in this section, the liquor board in each of the several counties shall enact ordinances:

(a) Regulating the sale of intoxicating liquors in their respective counties.

(b) Fixing the hours of each day during which liquor may be sold or disposed of.

(c) Prescribing the conditions under which liquor may be sold or disposed of.

(d) Prohibiting the employment or service of minors in the sale or disposition of liquor.

(e) Prohibiting the sale or disposition of liquor in places where, in the judgment of the board, the sale or disposition may tend to create or constitute a public nuisance, or where by the sale or disposition of liquor a disorderly house or place is maintained.

3. In a county whose population is 700,000 or more, the liquor board shall refer any petition for a liquor license to the metropolitan police department. The department shall conduct an investigation relating to the petition and report its findings to the liquor board at the next regular meeting of the board.

4. All liquor dealers within any incorporated city are exempt from the effect of this section, and are to be regulated only by the government of that city.

5. The liquor board may deny or refuse to renew the license of a person who has willfully violated the provisions of NRS 369.630 more than three times in any 24-month period.

6. The liquor board shall not deny a license to a person solely because the person is not a citizen of the United States.

7. The Legislative Counsel Bureau is exempt from the provisions of this section with respect to the purchase and sale of souvenir wine pursuant to NRS 218F.430.