



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 18, 2012 REPORT NO: 12-048
ATTENTION: Budget and Finance Committee
Agenda of April 25, 2012
SUBJECT: FY 2013 Recommended Library Department User Fee Adjustments
REFERENCE: None

REQUESTED ACTION:

Approve proposed user fees for Fiscal Year 2013.

STAFF RECOMMENDATION:

Approve proposed user fees for Fiscal Year 2013.

SUMMARY:

The City's User Fee Policy 100-05, which was adopted by the City Council on March 10, 2009, provides guidelines for establishing a comprehensive user fee schedule and requires that the full cost of services be identified and all fees be categorized according to the level of cost recovery. The Policy requires all existing fee levels be in line with service costs to ensure that all reasonable costs incurred in the provision of services are being recovered. Per the User Fee Policy, a comprehensive user fee study shall be conducted every three years. The last comprehensive user fee study was conducted in Fiscal Year 2009.

The User Fee Policy stipulates three categories of cost recovery: user fees with 100% cost recovery (Category I), user fees with less than 100% cost recovery (Category II), and penalties and fines (Category III). This report groups the recommended user fee adjustments into these three categories.

The cost recovery calculations are based on direct and indirect costs for all fees in order to accurately calculate the cost of providing services. Direct costs are those that can be fully attributed to providing a specific service. An example of a direct cost is the staff time spent performing tasks related to a specific service and includes employee salary and benefits. Indirect costs include allocated central support service costs (IT, risk management, fleet assignment and usage fees, etc.), departmental support costs, and the full cost associated with staff providing the service.

Approved by voters in 2010, Proposition 26 amends articles XIII A and XIII C of the California Constitution to provide that a levy, charge or exaction of any kind imposed, increased or extended by a local government is a tax unless an exception applies. Exceptions to Proposition 26 include user fees; government service or product fees; regulatory fees; government property entrance fees; fines and penalties imposed by a court or local government; property development impact fees; and assessments and property related fees governed by Proposition 218. All user fee adjustments recommended in this report have been reviewed by the City Attorney's Office for compliance with Proposition 26 (Attachment).

Administrative Regulation 95.25 provides that the Library Director shall have the authority to establish fees for the use of library facilities and services, subject to the approval of the City Council. The Library Department has reviewed its fines and fees and is proposing to decrease the Non-Resident Library Card Fee from \$30 annually to \$28 annually and eliminate ten additional fees. The change is based on a calculation of per capita cost of library services.

Total adopted FY 2012 General Fund budget for the Library Department is \$37,202,217. Total budgeted General Fund revenue is \$1,212,707. Total revenue generated for FY 2011 was \$1,217,360; of this, \$900,720 was from 31 fines and fees.

FISCAL CONSIDERATIONS:

The Non-Resident Library Card Fee is a Category I fee, which is a user fee that is determined to have 100% cost recovery. This fee was last revised in 2003 and is based on a calculation of total annual Library operating expenditures per capita for San Diego residents. The \$28 per capita expense for San Diego Public Library is well below the \$40 median per capita expenditure for library services of 9 comparable cities nationwide in a recent Independent Budget Analyst benchmarking report. Only Dallas and Phoenix had lower expenditures per capita for library services.

For the purpose of this fee, non-residents are persons who live outside the State of California, and who either do not own property in San Diego, or are not stationed with the armed forces in San Diego. California residents outside of San Diego are not charged the fee due to stipulations in the State Education Code (Title 1, Division 1, Part 11, Chapter 1.5, Articles 1 – 4, Sections 18010 – 18032), which encourages Universal Borrowing throughout California. The San Diego Public Library receives funding annually from California's Public Library Fund (PLF), which falls under this code. Participating libraries in Universal Borrowing agree to loan materials to any resident of California.

The fee has minimal impact on Library revenues, with only \$360 collected in FY 2011 for 12 non-residents of California.

The Library is proposing to discontinue Test Monitoring, which had been provided for a \$20 fee. Most requests are actually for "Test Proctoring" which requires Library staff to remain with the test taker through the entire test process and is not feasible with Library staffing levels.

In addition, the Library Department has thoroughly reviewed its schedule of fines and fees and found fees that are outdated under current practice; these fees are proposed for removal from the schedule. Five fines in the category of "Lost/Damaged Materials" will be eliminated as the materials (e.g. pictures, pamphlets) are no longer circulated. Three fees for patron self-service photocopying have been discontinued since the service is provided by an outside vendor at no cost to the Library. Furthermore, Messenger Services related to Inter-Library Loans are no longer required.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

In addition to the public noticing for City Council meetings on fines and fees revisions, the Library notifies the public of revised fees through our web site, newsletters, information at each library location, borrowing rules listed on the library card application, and special methods such as bookmarks.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

At their April 4, 2012 regular meeting, the Board of Library Commission reviewed and accepted the proposed revisions to the Library's Fee Schedule. Other key stakeholders for the revised Non-Resident Library Card Fee are non-California residents and the projected impact for reducing the fee from \$30 to \$28 annually is minimal. Only 12 cards were purchased in Fiscal Year 2011.



| Deborah L. Barrow
Department Director

Attachment

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: April 16, 2012
TO: Deborah L. Barrow, Director, San Diego Public Library
FROM: City Attorney
SUBJECT: Proposition 26 Review of Proposed Library User Fees for FY 2013

INTRODUCTION

Under Council Policy 100-05, general fund departments are required to conduct comprehensive user fee studies every three years. These fee studies ensure City departments identify and recover all reasonable and allowable costs incurred in providing government services.

Financial Management staff has asked participating departments to obtain an opinion on the legality of their proposed user fee adjustments and additions from the Office of the City Attorney in light of Proposition 26. Approved by the voters in 2010, Proposition 26 amends articles XIII A and XIII C of the California Constitution to provide that a levy, charge, or exaction of any kind imposed, increased, or extended by a local government is a tax unless an exception applies. Exceptions to Proposition 26 include user fees; government service or product fees; regulatory fees; government property entrance fees; fines and penalties imposed by a court or local government; property development impact fees; and assessments and property-related fees governed by Proposition 218.¹

Each Proposition 26 exception involves its own legal standard for determining the amount of a legally permissible fee. Under article XIII C, section 1(e)(1)(2)(3) of the California Constitution, which discusses some of the exceptions to Proposition 26, no fee may exceed the reasonable cost of providing the service. However, such fees should reimburse the government entity for all reasonable direct and indirect expenses incurred. *United Business Commission v. City of San Diego*, 91 Cal. App. 3d 156, 166 (1979). As noted in *United Business Commission*, “. . . the

¹ For a fuller discussion of Proposition 26, see City Att’y MOL No. 11-3 (Mar. 4, 2011), “Proposition 26 and Its Impact on City Fees and Charges.”

municipality need only apply sound judgment and consider ‘probabilities according to the best honest viewpoint of informed officials’ in determining the amount of the fee.” *Id.* This Office has advised City staff to explain the link between the cost and the service provided and justify all fee calculations based on a study of the costs associated with the fee for Council’s consideration and approval. Therefore, depending on the particular type of fee and individual department activities, staff for each City department developed their proposed user fee adjustments using the comprehensive Citywide method developed by Financial Management and Comptroller staff.²

We have reviewed a detailed summary of the San Diego Public Library Department’s cost recovery calculations as described in Exhibit A and proposed fee adjustments as described in Exhibit B. Our Proposition 26 analysis of each fee is discussed below.

DISCUSSION

As shown in Exhibit B, the Library is proposing one change to its existing user fees: a decrease in the fee for library cards for non-residents from \$30 to \$28. There is also a proposed citywide fee for photocopies of \$.25 per page that will be addressed in a separate memorandum. This citywide fee will be an increase from the fee currently charged at the City’s libraries for photocopying.

Proposition 26 does not apply to fees that are not being modified, as long as the authority for the fee has not expired or been rescinded. The fee schedule currently in use by the Library was approved by the City Council on May 4, 2009, by Resolution No. R-304810, effective July 1, 2009. The authorization of these fees did not include an expiration date, and these fees remain in place until withdrawn or changed by the City Council.

As discussed above, Proposition 26 contains several exceptions that cover many of the fees typically imposed by government. These exceptions include fees charged in order to receive a specific benefit or privilege (User Fee) or a specific government service or product (Service Fee). For User Fees and Service Fees, the exception applies as long as the fee charged does not exceed the reasonable cost of providing the benefit or service involved. Voter approval is not required for these types of fees because the fees are limited to the actual administrative cost of providing the service and only those who receive the service or product are charged.

Non-Resident Library Card Fee

The Library currently charges out-of-state residents \$30 per year for a library card. This fee is based on the per capita cost to provide library services to City residents. The Library is proposing to change the fee from \$30 to \$28 to match the per capita cost. This charge falls under

² The method was approved by Financial Management and the Comptroller and provided to the departments by Financial Management. The number (budget item) used to apportion rates (overhead and load) against direct cost is the responsibility of each department based on the contents and knowledge of their individual department activities. This Office did not independently verify or recalculate the numbers provided or the validity of the methodology.

Deborah L. Barrow, Director, San Diego Public Library

April 16, 2012

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either the User Fee category as a charge imposed for a specific benefit conferred or privilege granted directly to the payor, or under the Service Fee category as a fee for a specific government service or product provided directly to the payor. In both cases, for a fee to fit within the exception, the benefit or service must not be provided to those not charged, and the fee must not exceed the reasonable costs to the local government of conferring the benefit, granting the privilege, or providing the service. Cal. Const. art. XIII C, §§ 1(e)(1) and 1(e)(2).

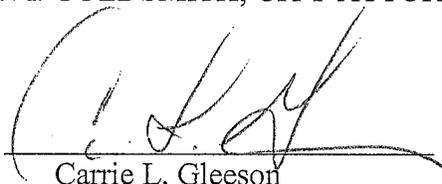
This fee is not charged to all library patrons, but only to those who are not residents of California. As a participant in the state's universal lending program, the City's library patrons have access to library resources throughout the state, and the City has access to state funds specifically directed to support the operation of free public libraries in the state. *See* Cal. Educ. Code §§ 18010-18013, 18030. Accordingly, through the payment of local and state taxes, California residents pay for and have privileges at public libraries throughout the state. Non-residents, on the other hand, have not paid to support the public library system in California, and the charging of a fee based on the per person cost of providing library services is appropriate. *See* 61 Op. Cal. Att'y Gen. 512 (1978). With this fee, both resident and non-resident users pay for the privilege of borrowing materials and accessing the services the Library offers. As such, the fee comes within the User Fee and Service Fee exceptions.

CONCLUSION

The non-resident library card fee falls within the Service Fee and/or User Fee exceptions to the definition of a "tax" under Proposition 26. Accordingly, we conclude that the fee does not violate the provisions of Proposition 26.

JAN I. GOLDSMITH, CITY ATTORNEY

By



Carrie L. Gleeson
Deputy City Attorney

CLG:als:amt

Attachments: Exhibits A and B

cc: Mark Leonard, Director, Financial Management

MS-2012-12

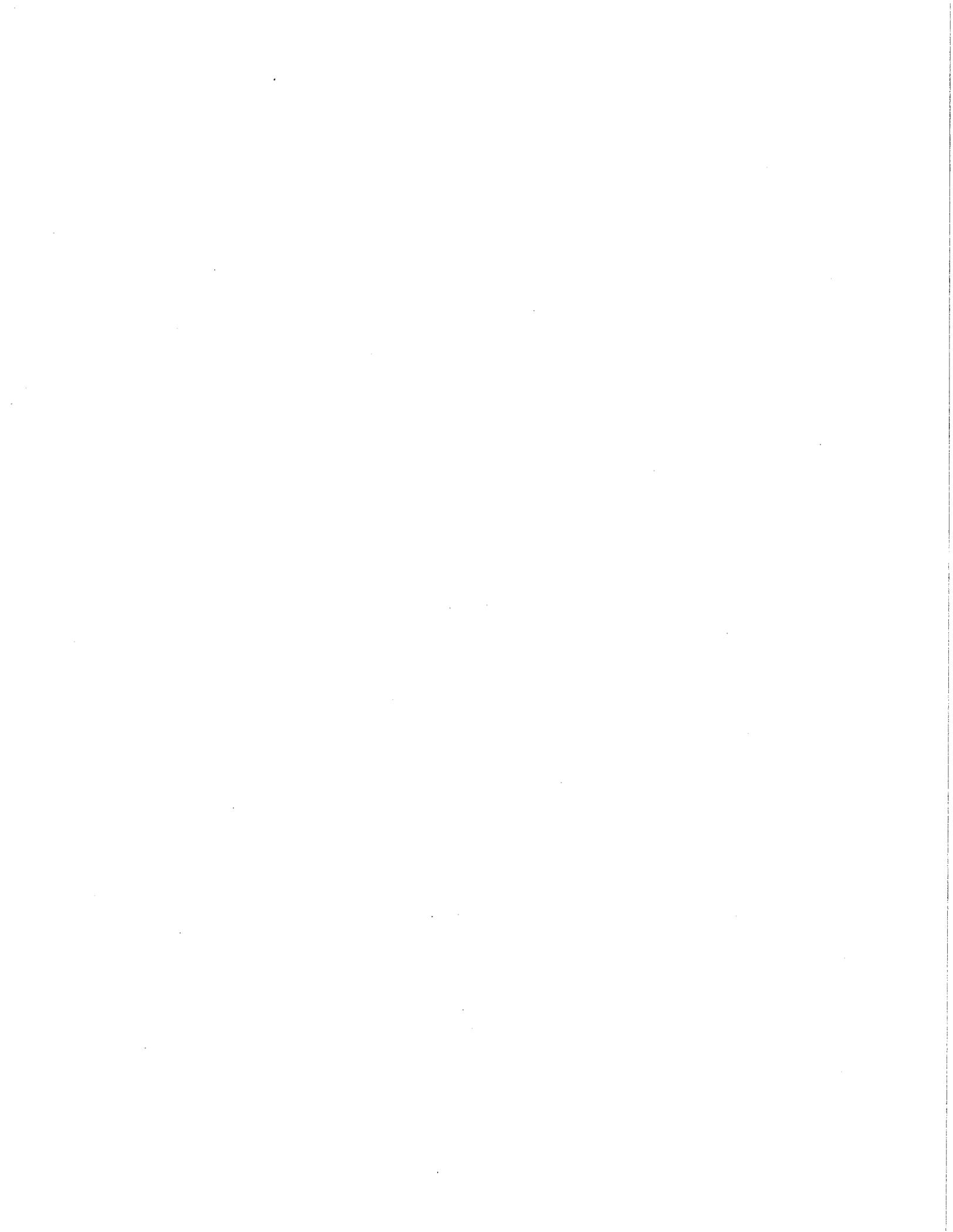


Exhibit A

Fiscal Year 2013 Proposed User Fee Adjustments

Cost Recovery Calculations

Exhibit B

Fiscal Year 2013 Proposed User Fee Adjustments

Department Summary

Attachment I: Proposed FY 2013 User Fee Adjustments Summary

Department	Fee Title	Unit of Measurement	Current Fee	Proposed Fee	Proposed Cost Recovery %
Library	Lost/Damaged Materials - Pictures Mounted	Per Item	\$ 1.00	Eliminated	n/a
	Lost/Damaged Materials - Pictures Unmounted/Envelopes	Per Item	\$ 0.50	Eliminated	n/a
	Lost/Damaged Materials - Printed Music	Per Item	\$ 1.00	Eliminated	n/a
	Lost/Damaged Materials - Pamphlet	Per Item	\$ 0.25	Eliminated	n/a
	Lost/Damaged Materials - Pamphlet Envelopes	Per Item	\$ 0.50	Eliminated	n/a
	Photocopy Fee - Computer Printing	Per Page	\$ 0.15	Eliminated	n/a
	Photocopy Fee - Black/White Copies	Per Page	\$ 0.15	Eliminated	n/a
	Photocopy Fee - Color Copies	Per Page	\$ 1.00	Eliminated	n/a
	Miscellaneous - Messenger Collection Fee	Per Message	\$ 2.00	Eliminated	n/a
	Miscellaneous - Non-Resident Library Card Fee	Per Card Per Year	\$ 30.00	\$ 28.00	100%
	Miscellaneous - Test Monitoring	Per Test	\$ 20.00	Eliminated	n/a

Library Department - Estimated Revenue Variation of Proposed Fee Adjustments (Rounded to the Thousand): \$ -

Note: All fees shown above, with the exception of the Non-Resident Library Card Fee, are proposed to be eliminated as these services are no longer provided by the Library Department.