

MEMORANDUM OF LAW

DATE: January 10, 1996

TO: Conny M. Jamison, City Treasurer

FROM: City Attorney

SUBJECT: User Fee Charge

QUESTIONS PRESENTED

You have informed us that the Internal Revenue Service ("IRS") now imposes a "user fee" upon a taxpayer who wishes to either enter into, restructure, or reinstate an installment agreement with the IRS. You asked us to opine on the following three questions:

1. May the City Treasurer charge a "user fee" similar to that imposed by the IRS for those who wish to enter into, restructure, or reinstate an installment agreement with the City?
2. If the answer is yes, does the City Treasurer need approval from City Council to establish a user fee or may she act unilaterally?
3. Finally, what paperwork or process must the City Treasurer follow to establish such a fee?

BRIEF ANSWER

1. The City Treasurer may establish a user fee so long as the fee is reasonable and proportionately representative of costs incurred by the department.
2. Implementation of such a fee must be approved by the City Council.
3. The procedures the City Treasurer must follow to establish new fees for current services are outlined in Administrative Regulation 95.25. The City Treasurer must also file form FM-53.

DISCUSSION

1. A FEE MAY BE ESTABLISHED BUT IT MUST BE REASONABLE AND PROPORTIONATELY REPRESENTATIVE OF COSTS. A local agency may prescribe, revise, and collect charges for the services furnished by the enterprise. Cal. Govt. Code Section 54344. However, a fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged. A fee which does exceed such cost may be considered a special tax. *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 281 (1993); *Carlsbad Municipal Water*

Dist. v. QLC Corp., 2 Cal. App. 4th 479, 485 (1992); Cal. Govt. Code Section 50076.

In addition, fees, charges, and rates must be reasonable, fair, and equitable in nature and proportionately representative of the costs incurred by the regulatory agency. *United Business Comm'n v. City of San Diego*, 91 Cal. App. 3d 156, 165 (1979). In fixing the fee, it is proper and reasonable to take into account not only the expense merely of direct regulation, but all of the incidental consequences that may likely subject the public to cost (i.e., indirect costs). *United Business Comm'n v. City of San Diego*, 91 Cal. App. 3d at 165.

2. APPROVAL BY CITY COUNCIL IS REQUIRED. As noted above, a fee generally refers to the exaction for the costs of providing a particular service to the public. See, e.g., Cal. Fin. Code Sections 24003, 26003.

Council Policy 100-5, attached for your information, states that fees to recover costs for performing special services to the public may be assessed to recover actual costs and overhead for the service performed. The City Manager is authorized to adjust fee structures, once those fees have been approved and enacted by the Council, in order that the fees continue to reflect full cost recovery.

3. PROCEDURES FOR ESTABLISHING FEES. The procedures the City Treasurer must follow to establish new fees for current services are outlined in Administrative Regulation 95.25, entitled "Processing New and Revised Fees and Charges for Current Services," attached for your information. The Treasurer also must file form FM-53, which is also attached. In addition, for your information, a copy of Administrative Regulation 3.20, entitled "Processing Requests for Council Action for Approval of a Resolution or Ordinance," which includes forms CM-1472 and 1472a, is attached.

CONCLUSION

The City Treasurer may establish a user fee for those debtors who wish to enter into, restructure, or reinstate an installment agreement with the City. However, the fee must be reasonable and proportionately representative of costs incurred by the department. The City Council must approve the establishment and imposition of a fee.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb:190(x043.2)

Attachments

ML-96-4