

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: April 17, 2012

TO: Elizabeth Maland, City Clerk

FROM: City Attorney

SUBJECT: Proposition 26 Review of Proposed City Clerk 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 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

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.”

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 City Clerk 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

The City Clerk's Office proposes adjustments to two fees described in Exhibit B and the elimination of a fee. The fee adjustments are intended to recover the actual cost of providing the service to those who receive the service or product. The proposed adjustments will: (1) reduce the fee for providing a compact disc of entire City Council meeting from \$7.55 to \$7.45; and (2) increase the fee to provide the City Charter from \$11.50 to \$12.05.³ The City Clerk also proposes eliminating the fee to provide a cassette tape recording of a selected item of a City Council meeting because that service will be discontinued. The elimination of a fee does not require a Proposition 26 analysis.

Proposition 26 contains several exceptions that cover many 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). In both cases, the fee may not exceed the reasonable costs to the local government of conferring the benefit or service. These fees are not taxes requiring voter approval because the fees are limited to the actual administrative cost of providing the benefit or service and only those who receive the service pay the fee.

Compact Disc of Entire City Council Meeting

This is a fee charged to provide a compact disc of a City Council meeting. The City Clerk's Office proposes decreasing this fee from \$7.55 to \$7.45. The fee is being adjusted due to a recalculation of the labor load rate. This fee is imposed to provide a benefit or service directly to the payor and the fee is intended to cover the reasonable cost to the City to provide the compact disc.

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.

³ These fees were approved by the City Council on April 20, 2009, by San Diego Resolution R-304807, effective July 1, 2009.

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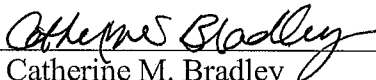
City Charter

The City Clerk's Office currently provides a printed copy of the City Charter for \$11.50. Based on a recalculation of the labor load rate for printing the Charter, this fee must be increased to \$12.05 to recover the cost of providing this product and service. This fee is imposed to provide a benefit or service directly to the payor and the fee is intended to cover the reasonable cost to the City to provide a printed version of the City Charter.

CONCLUSION

The City Clerk proposes adjusting its fees to provide: (1) a compact disc of a City Council meeting; and (2) a printed version of the City Charter. These fees provide a benefit or service directly to the payor and are calculated to recover the reasonable cost to provide the service. Accordingly, the fees fall within the Service Fee and User Fee exceptions under Proposition 26 and are not a tax subject to voter approval.

JAN I. GOLDSMITH, CITY ATTORNEY

By 
Catherine M. Bradley
Chief Deputy City Attorney

CMB:sc:als:amt

Attachment: Exhibits A and B

cc: Mark Leonard, Director, Financial Management

MS-2012-11

Exhibit A

Fiscal Year 2013 Proposed User Fee Adjustments

Cost Recovery Calculations

Exhibit B

Fiscal Year 2013 Proposed User Fee Adjustments

Department Summary

FY 2013 User Fee Analysis - Proposed Fee Adjustments

Department	Fee Title	Unit of Measurement	Current Fee	Current Cost Recovery %	Proposed Fee	Proposed Cost Recovery %	
City Clerk							
	City Council Meeting Recording - Cassettes - Selected Item	Per Item	\$ 28.40	104%	n/a	n/a	
	City Council Meeting Recording - Compact Disk (CD)	Per Item	\$ 7.55	101%	\$ 7.45	100%	
	City Charter	Per Copy	\$ 11.50	95%	\$ 12.05	100%	
	City Clerk - Estimated Revenue Variation of Proposed Fee Adjustments:					\$ 24	