

**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.

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).

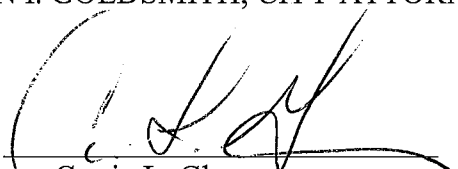
This fee is not charged to all library patrons, but only to those who are not residents of California. As a participant in the state's universal lending program, the City's library patrons have access to library resources throughout the state, and the City has access to state funds specifically directed 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

User Fee Departmental Cost Recovery Calculations

Department: Library Dept No: 1713 Fee Title: Non-Resident Library Card Load Rate: 17.6%
 Preparer/Contact: MXSaunders Date: 09/28/11 Fee Legal Authority: City Council Overhead Rate: 68.4%
 Fee Description: Out of State Residents are charged \$30 for an annual San Diego Public Library card. The fee is based on the per capita expense for San Diego residents.

PE Costs	A	B	DIRECT COSTS				INDIRECT COSTS			I	J
			C	D	E	F	G	H			
JOB CLASS and CLASS CODE	HOURLY SALARY RATE	LABOR HOURS PER SERVICE OCCURRENCE	LABOR COST (HOURLY RATE x HOURS)	ESTIMATE D HOURLY FRINGE	FRINGE COST (EST HOURLY FRINGE x HOURS)	DIRECT COSTS (LABOR COST + FRINGE)	LABOR LOAD (LABOR COST x LOAD RATE)	DEPT/CITY OVERHEAD (LABOR COST + DEPT/CITY OVERHEAD)	FRINGE LOAD (FRINGE x LOAD RATE)	TOTAL COSTS (DIRECT COSTS + LABOR LOAD + OVERHEAD + FRINGE LOAD)	
			(A x B)		(D x B)	(C + E)	(C x load rate %)	((C + G) x OH %)	(E x load rate %)	(F + G + H + I)	
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Notes: Annual Expenditures by Library Department for FY11 = \$36,714,745 / 1,311,882 (population) = \$27.99
 Out of State Residents are charged \$30 for an annual San Diego Public Library card. The fee is based on the per capita expense for San Diego residents.

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 %
Library	Lost/Damaged Materials - Pictures Mounted	Per Item	\$ 1.00	n/a	n/a	n/a
	Lost/Damaged Materials - Pictures Unmounted/Envelopes	Per Item	\$ 0.50	n/a	n/a	n/a
	Lost/Damaged Materials - Printed Music	Per Item	\$ 1.00	n/a	n/a	n/a
	Lost/Damaged Materials - Pamphlet	Per Item	\$ 0.25	n/a	n/a	n/a
	Lost/Damaged Materials - Pamphlet Envelopes	Per Item	\$ 0.50	n/a	n/a	n/a
	Photocopy Fee - Computer Printing	Per Page	\$ 0.15	n/a	n/a	n/a
	Photocopy Fee - Black/White Copies	Per Page	\$ 0.15	n/a	n/a	n/a
	Photocopy Fee - Color Copies	Per Page	\$ 1.00	n/a	n/a	n/a
	Miscellaneous - Messenger Collection Fee	Per Message	\$ 2.00	n/a	n/a	n/a
	Miscellaneous - Non-Resident Library Card Fee	Per Card Per Year	\$ 30.00	107%	\$ 28.00	100%
	Miscellaneous - Test Monitoring	Per Test	\$ 20.00	n/a	n/a	n/a

Library Department - Estimated Revenue Variation of Proposed Fee Adjustments: \$ -

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.