

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: April 16, 2012
TO: Gail R. Granewich, City Treasurer
FROM: City Attorney
SUBJECT: Proposition 26 Review of Proposed City Treasurer 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.

We have reviewed a detailed summary of the City Treasurer'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.

Residential Permit Fees

San Diego Municipal Code section 86.2013 authorizes the City Council to set residential parking permit fees. These fees may not exceed the administrative cost of the residential parking permit program.

In 1990, the City Council set residential parking permit fees at \$14.00 for a one year residential parking permit (one year permit); \$7.00 for a residential parking permit for six months or less (half-year permit); and \$3.50 for a temporary residential parking permit (temporary permit). San Diego Resolution No. R-276232 (July 30, 1990).

City staff's comprehensive user fee study shows the administrative cost of issuing a residential parking permit has increased since 1990. The fee for a half-year permit should be \$13.00 and the fee for a temporary permit should be \$12.00. The administrative cost of issuing parking permits is the same, but the fees for the half-year and temporary permits are lower than a one year permit because no mailing costs are involved.

The cost of the half-year and temporary parking permits would be increased to reflect actual administrative costs as mandated by San Diego Municipal Code section 86.2013. The amended permit fees are not a "tax" under Proposition 26 because two exceptions apply: the "user fee" exception and the "government service or product" exception.

The user fee exemption relates to a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

Similarly, the government service or product exception permits the imposition of a fee for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

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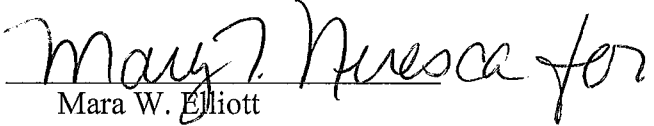
Those who purchase a residential parking permit are receiving the privilege of parking in an area restricted to those who pay a fee based on the administrative cost incurred by the City in issuing the permit. Likewise, it can be argued that one who purchases a residential parking permit is paying for a government service (the issuance of a parking permit) received directly by the purchaser.

Voter approval is not required because the residential parking permit fees are not taxes. They are limited to the actual administrative cost of the residential parking permit program and only those who benefit from the program are charged.

CONCLUSION

The permit fees proposed by the City Treasurer fall within the user fee and government service/product exceptions to Proposition 26 and are based on actual administrative cost. Accordingly, this Office concludes the proposed residential parking permit fees are likely exempt from the definition of "tax" contained in Proposition 26.

JAN I. GOLDSMITH, CITY ATTORNEY

By 
Mara W. Elliott
Deputy City Attorney

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Attachment: Exhibits A and B

cc: Mark Leonard, Director, Financial Management

MS-2012-9

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 %
Treasurer	Residential Parking Permit Fee	Per Half-Year Permit	\$ 7.00	53%	\$ 13.00	98%
	Residential Parking Permit Fee	Per Temporary Permit	\$ 3.50	28%	\$ 12.00	96%

Treasurer - Estimated Revenue Variation of Proposed Fee Adjustments: \$ (4,283)