Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: September 7, 2012

TO: Chris Gonaver, Environmental Services Department Director

FROM: City Attorney

SUBJECT: Proposition 26 Analysis of Proposed Adjustments to Various Existing Fees and Establishment of New Fees Charged by the Environmental Services Department

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INTRODUCTION

The Environmental Services Department (ESD) is proposing increasing certain fees, establishing some new fees, and eliminating certain fee exemptions associated with Miramar Landfill (Landfill) operations and City residential refuse collection operations. These proposals are aimed at more fully recovering the costs of City services and the use of City property. Our Office has been asked to analyze the Proposition 26 (Prop 26) implications of these proposals.

QUESTIONS PRESENTED

1. Would increasing, or adding a CPI escalator to, "Weighed Load" disposal fees trigger Prop 26?

2. Would adjusting "Clean Green/Clean Wood" disposal fees up and/or down trigger Prop 26?

3. Would establishing a fee for depositing clean fill dirt at Miramar Landfill trigger Prop 26?

4. Would eliminating the exemption from all Landfill fees for waste delivered by nonprofit organizations to Miramar Landfill for disposal trigger Prop 26?

5. Would establishing a fee for the use of City-owned recycling and greenery waste containers and associated services trigger Prop 26?

SHORT ANSWERS

1. It is likely that "Weighed Load" disposal fees, including the application of a Consumer Price Index (CPI) inflator, are either outside the scope of Prop 26's definition of a "tax," because they are not "imposed" by local government, or fall within one or more exceptions to the definition of a "tax." While Prop 26 probably would not limit these fees to cost-recovery amounts, the People's Ordinance still operates to restrict disposal fees on non-residential refuse to the full ascertainable cost of disposal. SDMC § 66.0127(c)(4). Thus, any increase in disposal fees, including applying a CPI escalator, would need to bear that restriction in mind.

2. Likewise, fees charged at the Landfill for acceptance of clean green wastes and clean wood scraps are probably not restricted by Prop 26 for the reasons set forth above. Because these wastes are not "disposed," it is arguable these fees are not limited by the cost-recovery restrictions in the People's Ordinance either.

3. Charging market rate based fees for the acceptance of clean fill dirt at the Landfill would not run afoul of Prop 26 or the People's Ordinance for the same reasons stated in answer no. 2 above.

4. Eliminating the disposal fee and AB 939 recycling fee exemptions for nonprofit organizations that dispose of waste to the Landfill probably does not trigger Prop 26 for the reasons stated in answer no.1 above. However, nonprofit charitable organizations meeting certain criteria are not subject to the Refuse Collector Business Tax.

5. It is likely that fees for the use of City containers and associated container services are either outside the scope of Prop 26's definition of a "tax," because they are not "imposed" by local government, or fall within one or more exceptions to the definition of a "tax." If approved containers are readily available from the private sector, they are probably not "imposed," in which case the fees would not be limited to cost-recovery. If they are not readily available elsewhere, then they might be "imposed." But, so long as the fees do not exceed the reasonable costs to the City of providing the containers and associated services, the fees are probably not taxes under Prop 26.

ANALYSIS

I. FEES CHARGED TO CUSTOMERS AT THE MIRAMAR LANDFILL

Given that the first four questions presented all relate to fees charged to customers of the Miramar Landfill, we begin with a brief overview of those fees. The City owns and operates the Miramar Landfill under a 50-year lease with the Department of the Navy. The Landfill provides capacity and associated services for the disposal, recycling, and/or processing of solid waste delivered by residents, businesses and the military both from within and outside of the City. The City charges a variety of fees to customers who deliver waste to the Landfill for disposal, recycling, or processing. Disposal fees are fees charged to accept and bury solid waste at the Landfill. In addition to disposal fees, the City also charges fees on green wastes accepted for

processing, special handling fees for hard to handle wastes, administrative fees for special customer support, and fees for greenerycommodities produced at the Landfill, such as wood chips, mulch, and compost.

Landfill fees are charged pursuant to San Diego Municipal Code (SDMC) section 66.0129, as limited by section 66.0127(c)(4) of the People's Ordinance, and in accordance with the Fee Schedule and Regulations for the Miramar Landfill (Landfill Fee Schedule) adopted periodically by City Council resolution. SDMC § 66.0129(d). Disposal fees are based on the actual weight of waste delivered to the Landfill for disposal (Weighed Load Disposal Fees), except for waste delivered in passenger vehicles and the like, which are charged flat rates based on the measured average net tonnage for each class of vehicle. Weighed Load Disposal Fees were last increased in July 2009 and, unlike other Landfill fees, are not currently subject to a periodic, automatic adjustment based on changes in the Consumer Price Index. The Landfill Fee Schedule also provides for certain exemptions and discounts from fees, such as discounts for clean green wastes, yard wastes and wood scraps, and exemptions for waste generated in the City by nonprofit charitable organizations. Like the establishment of fees, exemptions and discounts also are subject to City Council authorization. SDMC § 66.0129(d), (e).

II. PROPOSITION 26

Prop 26 was adopted by the voters in November 2010. As of the date of this memorandum, there is only one published appellate court case interpreting Prop 26, and it provides little guidance regarding the proposed fees. However, Prop 26 is a constitutional amendment which expands the revenue-raising restrictions placed on state and local governments by the constitutional amendments adopted by Propositions 13, 62, and 218. Cases interpreting those propositions and the state statutes implementing them[1] are instructive in analyzing Prop 26.

Since the enactment of Proposition 218, all "taxes" imposed by local government are either general taxes or special taxes. Cal. Const. art. XIII C, § 2(a). Special taxes are taxes imposed f or a specific purpose, as distinguished f romgeneral taxes which are imposed for general governmental purposes. Cal. Const. art. XIII C, § 1(a), (d). Given that the various fees under consideration here are assessed for specific purposes and are not to be used for general governmental purposes, each would be analyzed as a special tax.

Local governments may not "impose, extend, or increase" any special tax without a two-thirds vote of the electorate. Cal. Const. art. XIII C, § 2(d). Prop 26 added a broad definition of "tax" to the State Constitution. *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982, 995-996 (2012). A tax is "any levy, charge, or exaction of any kind *imposed* by a local government," unless it falls within one of the following seven exceptions:

[1] Proposition 218 Omnibus Implementation Act, Gov't Code §§ 53750, *et seq.*

(1) A fee[2] for a benefit or privilege provided directly to the fee payer that is not provided to those not charged and that does not exceed the reasonable cost of providing the benefit or privilege;

(2) A fee for a service or product provided directly to the fee payer that is not provided to those not charged and that does not exceed the reasonable cost of providing the service or product;

(3) A fee for reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, audits, and administrative enforcement and adjudication;

(4) A fee for entrance to or use of government property or the purchase, rental, or lease of property;

(5) A fine or penalty imposed by the judiciary for a violation of law;

(6) A charge imposed as a condition of property development; and

(7) Assessments and property-related fees imposed pursuant to proposition 218.

Cal. Const. art. XIII C § 1(e)(emphasis added).

Under Prop 26, the City bears the burden of proving that the fee is not a "tax," that the amount charged is no more than necessary to cover reasonable costs, and that the allocation of those costs among fee payers bears a fair or reasonable relationship to the fee payer's burdens on, or benefits received from, the local government activity.[3] *Id*.

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[2] For purposes of this memo, "fee" is used to describe all manner of levies, charges or fees.

[3] A reasonable relationship is shown where a fee is designed to distribute the financial burden of the system in proportion to the contribution of each user to the problem. *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 284 (1993). But,"[t]he question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors." *California Farm Bureau Federation v. State Water Resources Control Board*, 51 Cal. 4th 421, 438 (2011); *Griffith,* 207 Cal. App. 4th at 997. In determining the existence of a reasonable relationship, the courts have recognized that different classes of users may contribute more or less to the problem or impact the system in different ways. *SDG&E v. San Diego Air Pollution Control District*, 203 Cal. App. 3d 1132, 1146-47 (1988). Hence different fees may be appropriate for different classes of users. Mathematical precision is not required in allocating costs, and the allocation method chosen need not be the best method, but it must reflect a fair or reasonable basis for distributing costs among the users. What is fair or reasonable may include consideration of the overall goals and purposes of the public agency in operating the system. *Id.* at 1147-48; *Griffith,* 207 Cal. App. 4th at 997. So long as fees restricted by cost-recovery rules f ollow these guidelines and revenues, including any surpluses which may accrue, are not used for general governmental purposes, the fee would not constitute a tax. *California Farm Bureau Federation,* 51 Cal. 4th at 438; *Griffith,* 207 Cal. App. 4th at 997.

The first three exceptions are limited to cost-recovery fees. Other exceptions, such as (4) above, do not contain language limiting the fee to cost recovery. Based on the rules of statutory interpretation and the fact that entrance to or use of government property is typically voluntary, we believe it is reasonable to conclude that Prop 26 is not intended to limit fees under exception (4) to cost recovery. City Att'y MOL No. 2011-3, p. 9 (Mar. 4, 2011); *Valley Vista Services, Inc. v. City of Monterey Park*, 118 Cal. App. 4th 881, 888-89 (2004) ("If the language of a statute is clear, we should not add to or alter it to accomplish a purpose which does not appear on the face of the statute or from its legislative history.").

We also believe that Prop 26 does not apply retroactively to existing local fees and charges. *See* Proposition 26 § 1 Findings and Declaration of Purpose; *Strauss v. Horton,* 46 Cal. 4th 364, 470 (2009); Ballot Pamphlet, General Elec. (Nov. 2, 2010) Legislative Analyst's Analysis pp. 58-59; City Att'y MOL No. 2011-3, p. 1 (Mar. 4, 2011). Thus, absent an adjustment, a pre-existing fee would not be impacted by Prop 26.

Considering that a fee must be "imposed" in order to constitute a tax under Prop 26, it is useful to examine the meaning of that term first. In a previous memo, we explained that "impose" implies "an exertion of force by government action," such as a tax levied by local ordinance.[4] In contrast, it is arguable that a charge incurred voluntarily as part of a negotiated agreement with a public agency or for the voluntary use of a government service readily available from the private sector would not be imposed so long as the payment is meaningfully voluntary. City Att'y MOL 2011-3, p. 2 (Mar. 4, 2011); *see also* League of California Cities Proposition 26 Implementation Guide April 2011, p. 22. For example,

> Where a private market co-exists with the provision of the same services by local government, it is arguable that charges for the services provided by local government are not "imposed." Although these charges may be established by the governing body of the local agency, the services are not provided pursuant to a statutory obligation. In these circumstances, if they are provided in competition with the same or similar services provided by others, and if the recipients of the service have a choice to receive the service or not, then rate-payors are protected from excessive rates by market forces, or their own power to meet their needs in other ways.

League of California Cities Proposition 26 Implementation Guide, April 2011, p. 22.

[4] A tax is a monetary charge "imposed upon individuals who will enjoy no peculiar benefit from its expenditure and who are not responsible for the condition to be corrected." *Dublin,* 14 Cal. App. 4th at 281.

III. INCREASING "WEIGHED LOAD" DISPOSAL FEES AND ADDING A CPI ESCALATOR

Fees charged for disposal of solid waste at the Landfill arguablyare not a tax because they are not "imposed." The Landfill is one of two landfills within City limits and one of four landfills within the Countyof San Diego (County) which are open to the public for the disposal of solid waste. All these other landfills, as well as a number of transfer stations within the Countywhich also accept solid waste fromthe public for disposal, are privately owned and operated. Further, the City is not required either by State law or its Charter to own or operate a municipal landfill. *See* Cal. Pub. Res. Code §§ 40059(a), 49300, 49400. Therefore, the City is under no statutory obligation to provide landfill services, these services are provided in competition with private sector landfill services and transfer station services available to the public, and customers have the choice to use the Landfill or not. Thus, it is arguable that fees charged to Landfill customers for the disposal of solid waste are not "imposed" and do not fall within the scope of Prop 26.

Even if disposal fees charged at the Landfill are deemed "imposed" so as to bring them within Prop 26, a credible argument can be made that such fees fall within the 4th exception. That exemption applies to a fee for entrance to or use of government property. It goes without saying that customers who dispose of their waste at the City's Landfill are using government property, since disposed waste is permanently buried. Note that Prop 26 does not limit fees for use of government property to the recoveryof reasonable costs.[5]

In addition, disposal fees charged to Landfill users might fall within Prop 26 exception number (2). That exemption applies to (i) a fee for a service or product provided directly to the fee payer (ii) that is not provided to those not charged and (iii) that does not exceed the reasonable cost of providing the service or product. Part (i) is satisfied because disposal services are provided directlyto Landfill users who choose to dispose of their solid waste at the Landfill. As to part (ii), some disposal services are provided to certain Landfill customers who do not pay disposal fees,[6] primarily nonprofit charitable organizations and communityclean-up groups granted fee exemptions by the City Manager (Mayor) under SDMC section 66.0129(e). The annual waste tonnage delivered by these non-paying customers is negligible, having averaged about 8,000 tons per year out of the total average waste disposed of about 1,000,000 tons per year for the five fiscal years fromFY06 - FY11. As long as these subsidies are not funded from higher fees charged to other customers (aside from the General Fund), we believe part (ii) could be satisfied. *See* League of California Cities Proposition 26 Implementation Guide, April 2011, pp. 15-16. Finally, part (iii)

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[5] Even though Prop 26 may not limit disposal fees at the Landfill to cost recovery, the People's Ordinance does. It provides that fees for the "disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal. SDMC § 66.0127(c)(4). Nonresidential Refuse is all privately generated refuse other than residential refuse collected under the People's Ordinance. SDMC § 66.0127(a)(3). Were it not for the cost recovery restrictions in the People's Ordinance, a credible argument could be made that Landfill disposal fees could be set at market rates under Prop 26. *See* League of California Cities Proposition 26 Implementation Guide, April 2011, p. 22.

[6] Note that non-paying customers do not include the Navybecause, although eligible Navywaste receives free disposal, the disposal fee waiver is in lieu of rent payments under the Landfill Lease.

requires a showing of the estimated costs of service[7] and that the allocation of those costs among fee payers bears a fair or reasonable relationship to the payer's burdens on, or benefits from, the service activity.[8] *California Farm Bureau Federation v. State Water Resources Control Board*, 51 Cal. 4th 421, 438 (2011); *Griffith*, 207 Cal. App. 4th at 996. So long as disposal fees are structured accordingly, part (iii) would be satisfied.

Finally, Prop 26 does not expressly address scheduled fee adjustments made to account for inflation, such as by the application of a formula based on changes in the CPI. However, the statutes implementing Proposition 218, which are useful in interpreting Prop 26, do not prohibit the use of scheduled fee escalators. *See* Cal. Gov't Code § 53750(h). Because Landfill disposal fees are most likely outside the scope of Prop 26, i.e., they are not "imposed," or fit within exception (4), i.e., use of government property, the application of a CPI escalator probably would not run afoul of Prop 26.

In sum, Landfill disposal fees probably are not restricted by Prop 26. Nevertheless, the People's Ordinance still operates to limit disposal fees on non-residential refuse to the full ascertainable cost of disposal. SDMC § 66.0127(c)(4). Thus, any increase in disposal fees, including the application of a CPI escalator, would need to bear that restriction in mind.

IV. MAKING UPWARD OR DOWNWARD ADJUSTMENTS TO "CLEAN GREEN/CLEAN WOOD" FEES CHARGED AT MIRAMAR LANDFILL

Fees are also charged on clean green materials/yard wastes and clean wood scrap wastes separated from trash that is destined for disposal ("Clean Greens"). Clean Greens qualify for discounted rates in order to encourage the separation of these wastes from trash so they can be recycled into products such as mulch, wood chips, and compost and then sold for re-use. *See* Fee Schedule and Regulations for the Miramar Landfill section II.G.

Revenues from Clean Greens fees historically have been significantly less than the costs of recycling these wastes into usable products. Plus, even though the same fee is charged for all clean green wastes and clean wood scraps, wood scraps are less costly to process. Proposed upward and downward adjustments to these fees would more accurately reflect processing costs and more fully recover those costs.

The analysis applicable to Landfill disposal fees discussed above is equally applicable to these proposed fee adjustments. In other words, increases and decreases in these fees likely are not restricted by Prop 26 for the reasons set forth in section III above[9] and, because these wastes are not "disposed," it is arguable they are not limited by the cost-recovery restrictions in the People's Ordinance either.

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[7] The estimated costs of service include not only all the direct costs, but also all the indirect costs of providing the service. *United Business Com. v. City of San Diego,* 91 Cal. App. 3d 156, 165-66 (1979).

[8] See footnote no. 3 for a discussion of the reasonable relationship standard.

[9] Note that the second exception to Prop 26 is probably less likely to be applicable to fees for clean greens and clean wood because City residents are not charged any fees to deliver these wastes to the Landfill.

V. ESTABLISHING A NEW FEE FOR ACCEPTANCE OF CLEAN FILL DIRT AT THE LANDFILL

The Landfill requires clean fill dirt for use as daily cover and for resurfacing of the tipping decks. Not all the clean fill dirt needed is available from Landfill operations. Thus, the City accepts clean fill dirt, which meets the City's requirements, on an as-needed basis from private construction sites with excess fill. Currently, the City does not charge to accept clean fill. SDMC § 66.0129(e)(2)(C); *see* Fee Schedule and Regulations for the Miramar Landfill section II.G. At least five private companies within the County of San Diego (County) also accept clean fill dirt. They all charge to accept it, with fees ranging from around $3 per ton to around $19 per ton.[10]

The analysis applicable to Landfill disposal fees, set forth in section III above, is equally applicable to fees for acceptance of clean fill dirt at the Landfill. In other words, it is arguable these fees would be outside the scope of Prop 26 on the ground they are not "imposed" because the City has no obligation to take clean fill dirt at the Landfill, accepts it only on an as-needed and if-suitable basis, and customers can choose among several private sector operations in the County which accept clean fill dirt. Even if deemed "imposed," these fees probably would fall within the 4th exception to a tax under Prop 26 because they would be fees for use of government property. That exception does not include a cost-recovery limitation to the amount of the fees.[11]

Further, it is arguable clean fill dirt fees would not be limited by the cost-recovery restrictions in the People's Ordinance. The People's Ordinance provides that fees "for disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal." SDMC § 66.0127(c)(4). Nonresidential Refuse is all refuse that is not residential refuse collected under the People's Ordinance. SDMC § 66.0127(a)(3). Refuse is:

> [A]ny mixture of putrescible and nonputrescible solid and semi-solid wastes, including garbage, trash, residential refuse as defined herein and in Section 66.0127 of this Code, industrial and commercial solid and semi-solid wastes, vegetable or animal solid and semi-solid wastes, and other solid and semi-solid wastes destined for disposal sites.

SDMC § 66.0102. Clean fill dirt is defined as "clean earthen material" and "clean, sandy/clayey soils" which do not contain large rocks, concrete, asphalt, shot rock, organic debris, trash, or other specified contaminants such as VOCs, pesticides, and PCBs. Clean fill dirt is simply clean soil. So, it does not appear to fall within the definition of "refuse" under the People's Ordinance.

In sum, charging market rate based fees for the acceptance of clean fill dirt at the Landfill would likely not run afoul of Prop 26 or the People's Ordinance.

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[10] Data supplied by ESD staff via email dated August 8, 2012.

[11] Clean fill fees conceivably could fall within the 2nd exception for a fee for service, which is limited to cost-recovery. But, since clean fill is sometimes accepted for free and ESD may want flexibility to charge nothing if the Landfill is in need of clean fill, we would not recommend relying on the 2nd exception. Nor do we believe it would be necessary, given the first two bases upon which these fees could be justified as true fees and not taxes.

VI. ELIMINATING THE FEE EXEMPTION FOR NONPROFIT ORGANIZATIONS

Pursuant to SDMC section 66.0129(e)(2) and the Landfill Fee Schedule, nonprofit organizations engaged in recycling or resource recoveryoperations that significantly reduce waste disposed at the Landfill are exempt from payment of Landfill fees (disposal or processing fees, AB 939 recycling fees, and the Refuse Collector Business Tax) on solid waste, generated from their operations within the City, that they dispose of at the Landfill. Presently, twelve such organizations are approved for fee exemptions.[12]

The elimination of this subsidy would increase the fees paid by these nonprofits from $0 per ton to the aggregate of (i) the applicable disposal or processing fee and any special handling or administrative fees, and (ii) the AB 939 recycling fee, plus if applicable, (iii) the $8 per ton Refuse Collector Business Tax (RCBT) imposed pursuant to SDMC section 31.0306.

We believe the analysis in section III above on increases to Weighed Load disposal fees is equally applicable to the elimination of the disposal/processing fee subsidy (including any special handling or administrative fees) and the elimination of the AB 939 fee subsidy. Eliminating those subsidies essentially operates as a fee increase to the nonprofit organizations. However, the subsidy elimination for those fees is most likelyoutside the scope of Prop 26 because the fees are not "imposed," i.e., nonprofits can avoid the fees by taking their waste to private facilities in the City or County. Alternatively, the subsidy elimination fits within at least one exception to the definition of a tax, e.g., use of government property.

However, ESD may not begin charging nonprofit charitable organizations the RCBT. Pursuant to SDMC section 31.0201, no business tax may be levied on any charitable organization which is organized and conducted exclusively for charitable purposes and not for private gain or profit. SDMC § 31.0201(a). The RCBT is a business tax. SDMC §§ 31.0301(c); 31.0306(b), (e), (g). So, organizations that satisfythe above criteria would remain exempt from the RCBT, even if the exemption fromdisposal/processing fees and AB 939 recycling fees were eliminated.

VII. ESTABLISHING NEW FEES FOR CITY RECYCLING AND GREENERY CONTAINERS AND ASSOCIATED SERVICES

Effective January 1, 2008, the Cityestablished a cost recovery, user fee for City-owned replacement trash containers (black bins). The City purchases trash, recycling, and greenery containers from a private vendor under a long-term contract, which are made available for use by City refuse collection customers. City-provided containers remain City property. The City provides the first black bin at no charge to each newly constructed residential unit eligible for City refuse collection services. Thereafter, customers are responsible for providing additional

[12] Data supplied by ESD.

and replacement trash containers at their own expense. Customers have the option to obtain trash containers from the City or from other sources, such as home improvement stores, so long as the container is one of the City-approved models.[13] Only customers who choose to obtain additional or replacement trash containers from the City are charged the fee.[14]

In contrast, the City provides multiple recycling containers (blue bins) all at no charge to customers and one greenery container (green bin) at no charge to those customers who receive greenery collection services on (pilot) automated yard waste collection routes. A new fee for recycling and greenery containers to match the fee for trash containers would likely fall outside the scope of Prop 26.

As we explained in prior opinions, the City is not obligated to furnish automated containers to its customers for storage of their refuse pending collection.[15] So, provided that approved recycling and greenerycontainers are readily available from private sector sources, it is arguable that the proposed fees for recycling and greenerycontainers are not "imposed" under Prop 26 and thus are outside its scope altogether because customers can acquire approved containers elsewhere and not pay the fee.

Even if these fees are deemed imposed, they probably fall within exception (2) to Prop 26. That exception excludes from the definition of tax a fee for a service or product provided directly to the fee payer that is not provided to those not charged and that does not exceed the reasonable cost of providing the service or product. Cal. Const. Art. XIII C § 1(e)(2). Replacement and additional recycling and greenerycontainers would not be provided to those not charged. Thus, so long as the container fee does not exceed the reasonable costs to the City of providing the containers, those fees are likely not taxes under Prop 26.

CONCLUSION

Fees charged for disposal of solid waste, for processing of clean green wastes and wood wastes, and for acceptance of clean fill dirt at the Miramar Landfill are probably outside the scope of Prop 26 because those fees arguably are not "imposed" by local government. The City has no statutory obligation to operate a landfill and customers have readily available private sector alternatives to dispose of their trash. In other words, customers can choose to use the Landfill and pay the City fees or use any of a number of alternative options and avoid the fees.

Even if these fees are deemed "imposed," a credible argument can be made that they fall within one or more of the exceptions to the definition of a tax. For example, these fees arguably all constitute fees for the use of government property, which are expressly not taxes under Prop 26.

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[13] San Diego Resolution No. 303202 (Dec. 5, 2007); Waste Management Regulation No. ESD-001 Revised effective Jan. 1, 2008.

[14] The City also provides delivery services upon request and non-warranty container repair services to customers who obtain containers from the City, for which it charges cost-recovery fees as well.

[15] City Att'y MOL No. 2007-17 (Oct. 16, 2007) p.2; City Att'y Report 2005-13 (June 13, 2005) p. 5.

As another example, these fees arguably are fees for government services. Although characterization solely as a fee for service would limit all the fees to cost recovery, the other characterizations above would not. Regardless, fees for *disposal* of non-residential refuse are limited by the People's Ordinance to the full ascertainable cost of disposal. Likewise, based on the same rationale, fees for the use of City automated containers are probably not taxes under Prop 26.

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/s/ Grace Lowenberg

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