



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: April 18, 2012 REPORT NO: 12-053

ATTENTION: Budget and Finance Committee  
Agenda of April 25, 2012

SUBJECT: FY 2013 Recommended City Clerk Department User Fee Adjustments

REFERENCE: None

REQUESTED ACTION:

Approve proposed user fees for Fiscal Year 2013.

STAFF RECOMMENDATION:

Approve proposed user fees for Fiscal Year 2013.

SUMMARY:

The City's User Fee Policy 100-05, which was adopted by the City Council on March 10, 2009, provides guidelines for establishing a comprehensive user fee schedule and requires that the full cost of services be identified and all fees be categorized according to the level of cost recovery. The Policy requires all existing fee levels be in line with service costs to ensure that all reasonable costs incurred in the provision of services are being recovered. Per the User Fee Policy, a comprehensive user fee study shall be conducted every three years. The last comprehensive user fee study was conducted in Fiscal Year 2009.

The User Fee Policy stipulates three categories of cost recovery: user fees with 100% cost recovery (Category I), user fees with less than 100% cost recovery (Category II), and penalties and fines (Category III). This report groups the recommended user fee adjustments into these three categories.

The cost recovery calculations are based on direct and indirect costs for all fees in order to accurately calculate the cost of providing services. Direct costs are those that can be fully attributed to providing a specific service. An example of a direct cost is the staff time spent performing tasks related to a specific service and includes employee salary and benefits. Indirect costs include allocated central support service costs (IT, risk management, fleet assignment and usage fees, etc.), departmental support costs, and the full cost associated with staff providing the service.

Approved by 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. All user fee adjustments recommended in this report have been reviewed by the City Attorney's Office for compliance with Proposition 26 (Attachment).

The Office of the City Clerk provides customers audio recordings of City Council Meetings upon request. Prior to 2003, City Council Meetings were recorded on audio cassette tapes. In 2003, the office shifted to a CD-Rom recording methodology. Thus, a separate fee structure existed for the two types of recording media, with a higher fee listed when a request was made for an item-specific copy since such an undertaking involves labor costs.

**Cassette Tape Fee:** Although the office cannot completely eliminate cassette based services since meetings were captured on cassette tapes through 2002 and there are still internal requests for this material, this proposed action would eliminate the more expensive labor-involved item-specific service for cassette tapes.

**CD-Rom Fee:** The proposed action lowers the cost of the item-specific CD due to the recalculation of the labor load rate for FY 2012.

**City Charter Fee:** The recalculation of labor rates for Print Shop for FY 2012 resulted in an increase in the cost of the City Charter. While the City Clerk provides online access of the City Charter, the printed version is still provided as an option for those who do not have computer access.

#### FISCAL CONSIDERATIONS:

Category I: User fees that are determined to have 100% cost recovery.

	Current Fees	Proposed Fees
Item-Specific Cassette Tapes	\$28.40	No Longer Available
Item-Specific CD-Rom	\$ 7.55	\$7.45
City Charter	\$11.50	\$12.05

In both FY 2011 and FY 2012 YTD, there were no item-specific cassette tapes sold to the external customers.

In FY 2011 7 CD-Roms were sold and in FY 2012 YTD there have been 2 CD-Roms sold to external customers.

In both FY 2011 and FY 2012 YTD, there were no City Charter's sold to external customers.

Category III: Penalties and fines.

Penalties and fines associated with the Office of the City Clerk, are tied to State and local law and are not being considered for modification with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Noticing in the Council Docket, posting in the Clerk's office and CAB building.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Citizens of San Diego – all internal and external customers who access information pertaining to local government.

A handwritten signature in black ink, reading "Elizabeth Maland", written over a horizontal line.

Elizabeth Maland  
City Clerk

Attachment



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

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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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>2</sup> 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.

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

Elizabeth Maland, City Clerk

April 17, 2012

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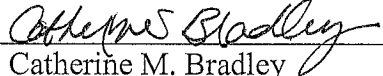
City Charter

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**

**Department:** City Clerk      **Dept No:** 1152      **Fee Title:** To record entire City Council meeting on a compact disk      **Load Rate:** 18.2%  
**Preparer/Contact:** Tridae Hughes      **Date:** 10/3/2011      **Fee Legal Authority:** AR 95.25      **Overhead Rate:** 7.6%  
**Fee Description:** In response to requests from the public, compact disk (CD) recordings of the entire City Council meeting.

Notes: Revenue code is 422246.

## A

18.8%  
63.8%

Notes: Revenue code is 422243.



**Exhibit B**

**Fiscal Year 2013 Proposed User Fee Adjustments**

**Department Summary**

# Attachment I: Proposed FY 2013 User Fee Adjustments Summary

Department	Fee Title	Unit of Measurement	Current Fee	Proposed Fee	Proposed Cost Recovery %
<b>City Clerk</b>					
	City Council Meeting Recording - Cassettes - Selected Item	Per Item	\$ 28.40	Eliminated	n/a
	City Council Meeting Recording - Compact Disk (CD)	Per Item	\$ 7.55	\$ 7.45	100%
	City Charter	Per Copy	\$ 11.50	\$ 12.05	100%
City Clerk - Estimated Revenue Variation of Proposed Fee Adjustments (Rounded to the Thousand):			\$	-	