



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 18, 2012 REPORT NO: 12-054

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

SUBJECT: FY 2013 Recommended Financial Management (Citywide) 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 City's 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).

PROPOSED CITYWIDE USER FEES:

There are common services provided by various departments throughout the City that have historically been charged at different amounts based on the department providing the service. In an effort to improve cost recovery and standardize the amount charged for these common services, Financial Management is requesting the addition of three Citywide fees all related to public requests for information: a computer services fee, a paper copy fee and a portable document format (PDF) copy fee. Each proposed fee is briefly discussed below.

Citywide Computer Services Fee

The proposed Citywide computer services fee is a new fee that would establish a consistent charge associated with compiling, extracting, and programming data in response to a request for a public record as allowed under the Act. Cal. Gov't Code § 6253.9.

There are two types of electronic documents available to the public under California Government Code section 6253.9: (1) identifiable records that are not exempt and are kept in an electronic format; and (2) electronic documents compiled, extracted, or created by staff using a program.

In the first instance, California Government Code section 6253.9 requires a local agency to produce an identifiable, non-exempt public record in an electronic format when the requested document is kept in an electronic format and the requestor wants the document in electronic format. In such case, the cost of duplication is limited to the direct cost of producing a copy of the record in an electronic format.

In the second instance, the information is produced at regularly scheduled intervals and is requested at a time when it is not slated for production, or the information is stored electronically but may not be accessed unless City staff compiles the information; extracts the information; or creates a program that will allow staff to retrieve the sought-after information. In either case, the Act allows the City to require the requestor to bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record. The proposed fee allows the City to recover its production costs.

The new Citywide computer services fee is proposed as a \$0.70 per minute fee charged to those who request computer services that require data compilation, extraction, or programming to

produce a copy of a record. The requestor would be required to pay a 50% deposit of the estimated charge before services are performed. The remainder would be paid upon completion of services. The labor cost is based on the combined average hourly rate of pay of an Information Systems Analyst I and a Deputy City Clerk.

Citywide Paper Copy Fee

The California Public Records Act permits a local agency to charge a person who requests an agency record for the direct cost of duplication. Cal. Gov't Code § 6253(b). The direct cost of duplication is the cost of running the copy machine and operating it. *North County Parents Organization for Children with Special Needs v. the Department of Education*, 23 Cal. App. 4th 144, 148 (1994). Direct costs do not include the ancillary tasks associated with the retrieval, inspection, and handling of the file from which the copy is extracted. *Id.*

Departments within the City have established inconsistent copying fees. For example, the Library charges \$0.20 per copy while the City Clerk charges \$0.25 per copy. A proposed Citywide copy fee would ensure that all departments charge the same copy fee.

Financial Management performed a study to determine the amount that each department should charge to make a copy. The proposed \$0.25 per page fee is based on copier costs as described in the contract between the City and Sharp Business Systems; the 20 seconds it would take for a Deputy City Clerk and Administrative Aide II to make a copy based on their average hourly rates; and the \$0.01 cost for a sheet of paper.

Citywide PDF Fee

The City often provides a PDF copy by electronic mail (e-mail) to those who request public records. This requires a City employee to scan the requested record using the copy machine; to send the PDF to his or her e-mail account; and to then electronically mail the PDF to the requestor. As is the case with the proposed copy fee, the City may recover its cost under California Government Code section 6253(b), which allows public entities to recover from the requestor the direct cost associated with duplication. Cal. Gov't Code § 6253(b); *North County Parents Organization for Children with Special Needs v. the Department of Education*, 23 Cal. App. 4th 144, 148 (1994). The creation of a PDF involves the same resources as the creation of a copy and, therefore, a \$0.25 per page fee is proposed.

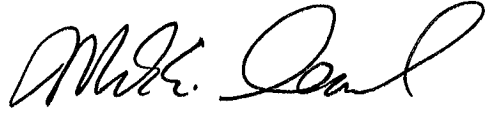
FISCAL CONSIDERATIONS:

The Citywide User Fees presented for approval were developed and intended to be Category I fees as defined by the User Fee Policy. However, due to rounding, these fees are slightly below 100% cost recovery. The below table provides detailed information on the amount and cost recovery percentages of the proposed Citywide User Fees:

Fee Title	Unit of Measurement	Current Fee	Proposed Fee	Proposed Cost Recovery %
Citywide Computer Services Fee	Per Minute	\$ -	\$ 0.70	96%
Citywide Paper Copy Fee	Per Page	\$0.20 - \$0.25	\$ 0.25	95%
Citywide PDF Copy Fee	Per Page	\$ -	\$ 0.25	99%

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None



Mark Leonard
Department Director

Attachment

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: April 16, 2012
TO: Mark Leonard, Director, Financial Management
FROM: City Attorney
SUBJECT: Proposition 26 Review of Proposed Citywide 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 Financial Management 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.

Citywide Computer Services Fee

The Citywide computer services fee would establish a consistent charge associated with compiling, extracting, and programming data in response to a request for a public record as allowed under the Public Records Act (Act). Cal. Gov't Code § 6253.9.

There are two types of electronic documents available to the public under California Government Code section 6253.9: (1) identifiable records that are not exempt and are kept in an electronic format; and (2) electronic documents compiled, extracted, or created by staff using a program.

In the first instance, California Government Code section 6253.9 requires a local agency to produce an identifiable, non-exempt public record in an electronic format when the requested document is kept in an electronic format and the requestor wants the document in electronic format. In such case, the cost of duplication is limited to the direct cost of producing a copy of the record in an electronic format.

In the second instance, the information is produced at regularly scheduled intervals and is requested at a time when it is not slated for production, or the information is stored electronically but may not be accessed unless City staff compiles the information; extracts the information; or creates a program that will allow staff to retrieve the sought-after information. In either case, the Act allows the City to require the requestor to bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record. The proposed fee allows the City to recover its production costs.

The Citywide computer services fee is a \$.70 per minute fee charged to those who request computer services that require data compilation, extraction, or programming to produce a copy of a record. The requestor would be required to pay a 50% deposit of the estimated charge before services are performed. The remainder would be paid upon completion of services. The labor

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.

cost is based on the combined average hourly rate of pay of an Information Systems Analyst I and a Deputy City Clerk.

This fee is not a tax under Proposition 26 because it falls under the user fee and government service/product exceptions. 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. Accordingly, voter approval is not required because the fee is limited to the actual administrative cost of producing the requested record.

Citywide Paper Copy Fee

The Act permits a local agency to charge a person who requests an agency record for the direct cost of duplication. Cal. Gov't Code § 6253(b).³ City departments have established inconsistent copying fees. The Library, for instance, charges \$.20 per copy, and the City Clerk charges \$.25 per copy. A Citywide copy fee would ensure that all departments charge the same copy fee.

Financial Management performed a study to determine the amount each department should charge to make a copy. The \$.25 per page fee is based on copier costs as described in the contract between the City and Sharp Business Systems; the 20 seconds it would take for a Deputy City Clerk and Administrative Aide II to make a copy based on their average hourly rates; and the \$.01 cost for a sheet of paper.

This fee is not a tax under Proposition 26 because it falls under the user fee and government service/product exceptions. The copy fee relates to a charge imposed for a City service and product provided directly to the requestor that is not provided to those who do not pay. Further, the \$.25 fee does not exceed the City's reasonable cost of making and providing the requested copy.

Citywide PDF Fee

The City often provides a PDF copy by electronic mail (e-mail) to those who request public records. This requires a City employee to scan the requested record using the copy machine; to send the PDF to his or her e-mail account; and to then electronically mail the PDF to the requestor.

³ The direct cost of duplication is the cost of running the copy machine and operating it. *North County Parents Organization for Children with Special Needs v. the Department of Education*, 23 Cal. App. 4th 144, 148 (1994). Direct costs do not include the ancillary tasks associated with the retrieval, inspection, and handling of the file from which the copy is extracted. *Id.*

Mark Leonard, Director, Financial Management

April 16, 2012

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The creation of a PDF involves the same resources as the creation of a copy. The City may recover its cost under California Government Code section 6253(b), which allows public entities to recover from the requestor the direct cost associated with duplication. Cal. Gov't Code § 6253(b); *North County Parents Organization for Children with Special Needs v. the Department of Education*, 23 Cal. App. 4th 144, 148 (1994).

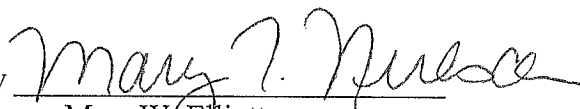
Financial Management applied the same analysis to PDF since the effort and costs are the same. Accordingly, this fee is not a tax under Proposition 26 because it falls under the user fee and government service/product exceptions. The PDF fee relates to a charge imposed for a City service and product provided directly to the requestor that is not provided to those who do not pay. Further, the \$.25 fee does not exceed the City's reasonable cost of making and providing the requested PDF.

CONCLUSION

The proposed Citywide fees 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 fees are exempt from the definition of "tax" contained in Proposition 26.

JAN I. GOLDSMITH, CITY ATTORNEY

By



Mara W. Elliott

Deputy City Attorney

MWE:als:amt

Attachment: Exhibits A and B

MS-2012-8

Exhibit A

Fiscal Year 2013 Proposed User Fee Adjustments

Cost Recovery Calculations

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 %
Citywide	Citywide Computer Services Fee	Per Minute	\$ -	\$ 0.70	96%
	Citywide Paper Copy Fee	Per Page	\$ -	\$ 0.25	95%
	Citywide PDF Copy Fee	Per Page	\$ -	\$ 0.25	99%

Citywide - Estimated Revenue Variation of Proposed Fee Adjustments (Rounded to the Thousand): \$ -