



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 18, 2012 REPORT NO: 12-052
ATTENTION: Budget and Finance Committee
Agenda of April 25, 2012
SUBJECT: FY 2013 Recommended Treasurer 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 Residential Parking Permit Program is authorized by California Vehicle Code § 22507 and San Diego Municipal Code §§86.2001 through 86.2016. The Program is intended for residential areas that are severely impacted by vehicle congestion and non-resident/commuter parking. The advantage of this program is that on-street parking is available for residents only, and not for long-term commuter parkers, which may be flooding a residential district. Establishment of a permit area is community driven, requiring majority consent of the affected residents.

FISCAL CONSIDERATIONS:

Current permit fees are:

- Half-year permit - \$7.00
- Temporary permit - \$3.50

The proposed permit fees are:

- Half-year permit - \$13.00
- Temporary permit - \$12.00

These proposed fees represent between 96-98% recovery of the costs to operate the permit program. This will enable the department to recover costs associated with providing a permitting service to the public. These costs are estimated to be \$11,275 per year.

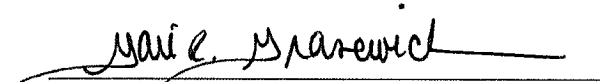
PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Upon approval of the proposed fee changes, all affected stakeholders will be notified by mail 30 days prior to the permits expiring. Additionally, fee increase notifications will be posted on the Parking website and the call center recording will be updated to reflect the new fees.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

There are currently five (5) residential parking permit districts: Hillcrest, College, Barrio Logan, Clairemont Mesa and Cortez Hill. The average number of Half-year permits issued annually is 1,100 and the average number of Temporary permits issued annually is 550. The overall impact to stakeholders will be minimal as the majority of permits issued are Annual, which average 6,200 a year. The annual fee of \$14.00 is not changing for Fiscal Year 2013.



Gail R. Granewich
City Treasurer

Attachment



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.

Gail R. Granewich, City Treasurer

April 16, 2012

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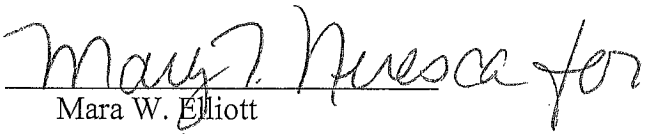
Those who purchase a residential parking permit are receiving the privilege of parking in an area restricted to those who pay a fee based on the administrative cost incurred by the City in issuing the permit. Likewise, it can be argued that one who purchases a residential parking permit is paying for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

MWE:als:amt

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

Attachment I: Proposed FY 2013 User Fee Adjustments Summary

Department	Fee Title	Unit of Measurement	Current Fee	Proposed Fee	Proposed Cost Recovery %
Treasurer	Residential Parking Permit Fee	Per Half-Year Permit	\$ 7.00	\$ 13.00	98%
	Residential Parking Permit Fee	Per Temporary Permit	\$ 3.50	\$ 12.00	96%

Treasurer - Estimated Revenue Variation of Proposed Fee Adjustments (Rounded to the Thousand): \$ (4,000)