



BPC Policy No. 106

SUBJECT: COST RECOVERY USER FEE POLICY

PURPOSE: To provide general guidelines for establishing and maintaining a comprehensive user fee schedule to ensure that the District adequately recovers costs for the provision of services, benefits, or privileges (Services) in an efficient, legal and accountable manner.

POLICY STATEMENT: The San Diego Unified Port District (District) provides Services that provide special benefit to individuals, businesses, and entities and shall ensure that reasonable costs associated with providing the Services are recovered.

DEFINITIONS:

User Fees are fees imposed in return for a specific benefit conferred, privilege granted, or service provided directly to the payor of the fee that is not provided to those not charged. User Fees are not imposed for the purpose of raising revenue. Examples of Services which may be assessed user fees are Leases, Tidelands Use and Occupancy Permits, Right of Entry Permits, In Water Hull Cleaning Permits, Appealable Coastal Development Permit, environmental review, and others.

Cost Recovery is recouping all costs associated with a particular Service provided by an agency. A fee may not exceed the estimated reasonable cost of providing the Service for which the fee is charged. Fees must be reasonable, fair and equitable and proportionally representative of the costs incurred by the District. Costs qualify for cost recovery if they are necessary to provide the Service and the cost would not occur if not for the need to provide the Service. Cost recovery has three important rationales: (a) improving government efficiency and complying with the San Diego Unified Port District Act (*Harbors & Navigation Code* Appendix 1, Section 36); (b) maintaining equity considerations in regard to the provision of Services; and, (c) financial stability.

Direct Costs are the costs incurred directly by providing a specified Service. These costs include staff time spent providing the Service, and any costs that can be traced directly to the production of a given Service or product.

Third Party Direct Costs are external costs incurred directly for a specified Service. These costs include but are not limited to attorney fees and consultant fees that may be necessary to perform the specified Service.

Indirect Costs are the incidental costs that are incurred by the District as a result of providing the Service not directly accountable or associated with the production of a

Service. Indirect costs include department overhead such as operating expenses and internal administrative costs as well as District-wide overhead costs.

Project, as used in the Policy, generally refers to projects, entitlements, activities, events, or actions related to which individuals, businesses, or entities may request Services from the District and should be interpreted broadly in accordance with the Policy Statement above.

Routine Services, generally refers to short-term agreement renewals with substantially the same terms, basic project reviews, simple access agreements, and other routinely provided services with minimal staff processing.

PROCEDURE:

1. Cost Recovery Calculation

Departments with user fees shall determine the full cost of providing the Service based on direct and indirect costs. Indirect costs shall include department overhead and District-wide overhead (i.e., support services from Human Resources, Financial Services, Business Information & Technology Services, etc.).

Departments with user fees shall be responsible for developing cost recovery calculations for their respective user fees in accordance with the cost recovery levels in this policy.

2. Determination of Cost Recovery Levels

User fees will be set at full cost recovery and in accordance with the Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments. Legal limitations on charging fees, such as document production pursuant to the Public Records Act (*Government Code* §6250, *et seq.*) shall be adhered to and are not subject to this policy.

Additionally, the following economic and policy considerations shall be considered when setting cost recovery levels as follows:

- The nature of the Services shall be considered when setting fees.
- Fee amounts shall be proportional and reasonably related to the costs associated with providing the Service. The full cost should consist of both direct and indirect costs and should be included within the fee amount. Indirect costs shall be captured for each department.
- Fee amounts should be sensitive to the “market” for similar Services as well as to smaller, infrequent users of the Service.
- A flat fee shall be established for a bundle of Routine Services that collectively require minimal staff time to process (up to three hours total).

This bundled fee is intended to aid small businesses and facilitate minor projects. The bundled fee shall not apply if Board action is required.

3. Third Party (External) Direct Costs

Third party direct costs will be recovered in addition to the user fees outlined in the user fee schedule. Third party out of pocket costs include, but are not limited to, attorney fees, consultant fees, etc. required for the review and processing of projects pursuant to the California Environmental Quality Act (CEQA) and through the California Coastal Commission (CCC). These may include, but are not limited to, the preparation and certification of CEQA documents by the Board of Port Commissioners (Board), the preparation and approval of Port Master Plan Amendments by the Board and the CCC, the preparation and issuance of Appealable Coastal Development Permits by the Board or, if appealed, the CCC, and any other third-party expenses arising out of the entitlement process in the District's determination. Third party direct costs also include the costs associated with defending and indemnifying the District against potential third party challenges arising from the CEQA and/or CCC review process.

4. Annual Review

User fees may be updated annually to include an escalation based on Los Angeles Consumer Price Index (CPI) until the next comprehensive user fee study is undertaken. CPI will be based on the index change from the prior calendar year.

5. Frequency of User Fee Cost Studies

A comprehensive user fee study and review of this policy shall be conducted every five years. While an annual review is necessary to determine whether fees should be updated according to the policy, a comprehensive annual user fee study may not be cost-effective because of its labor and time-intensive nature.

6. Availability of User Fee Information to Public

The Cost Recovery User Fee Schedule shall be made available to the public through the Office of the District Clerk.

7. User Fee Waivers

Discretionary waivers may be requested by project applicants and granted or denied, in whole or in part, in the sole discretion of the District. Partial or full user fee waivers that are in a total amount less than or equal to \$50,000 may be granted in the sole discretion of the Executive Director or their designee and, if granted shall be publicly noticed monthly. Partial or full user fee waivers in a total amount greater than \$50,000 may only be granted in the sole discretion of the

Board of Port Commissioners at a public hearing.

All discretionary waivers granted whether by the Executive Director or the Board of Port Commissioners at a public hearing must meet one or more of the following criteria listed in subsections (a) through (e) inclusive:

- a) Projects providing a service for the public good and not intended by project applicant to generate net revenue and for which applicant is a 501(c)(3) federally tax-exempt entity. For illustrative purposes only, this may include, for example: free services provided on District terminals for ship crews; blood donation activities; free health services.
- b) Projects that directly support the District's operations and Federal Strategic Port designation or port security needs, and for which the project applicant is a government entity. For illustrative purposes only, this may include, for example: projects of the U.S. military, U.S. Customs and Border Protection, or law enforcement agencies.
- c) Scientific and academic research projects that directly support or promote the District's environmental initiatives. For illustrative purposes only, this may include, for example: marine biology research, water and air quality research.
- d) Projects and solicitations that are requested or initiated by the District, to fulfill the District's environmental or community partnership initiatives/vision, or to provide a service or improvement necessary to the District's operations, or if necessary to position the District competitively to secure business opportunities for the District, unless otherwise specified in the solicitation. For illustrative purposes only, this may include, for example: easements allowing provision of needed utilities to District property, utility relocation, projects by government agencies providing services to District, relocation of tenants requested by District, and/or solicitations of new business by the District.
- e) District sponsored events approved by the Board of Port Commissioners pursuant to Policy No. 771 Tidelands Activation Program.
- f) Projects for the benefit of an entire community when the project applicant is a federal, state, or local government agency, or a Joint Powers Authority (JPA) and the government agency or JPA reciprocally waives or credits its fees in an amount substantially equal to the user fees incurred by the District for the project and/or the project applicant and the District have agreed to otherwise, pursuant to a specific finance agreement such as a Memorandum of Understanding or other arrangement.

8. User Fee Dispute Resolution

- a) Any Person as defined in San Diego Unified Port District Code Section 0.11 who disagrees with any user fee incurred by the District may, within sixty (60) calendar days of receipt of a District statement/invoice, submit to the Executive Director or their designee, in writing, in a form prescribed by the District, a list setting forth each disputed user fee item including the date the fee was incurred, the amount of the fee and the description of the work performed which was the basis of the user fee. The list shall also contain all reasons why the Person believes the user fee imposed is improper or excessive.
 - 1. If the total disputed user fees are paid, the District's work on the application or project will continue during the time of the dispute resolution process, unless the Person disputing the user fees requests that the work cease.
 - 2. If the total disputed user fees are not paid, the District's work on the application or project will be suspended until the dispute resolution process is finalized at the highest level of review set forth in this policy and any required payment is received.
- b) If the amount of disputed user fees is \$50,000 or less, the disputed fee list and reasons therefore will be reviewed by the Director(s) or their designee of the department incurring the disputed user fee(s) within fifteen (15) calendar days of receipt of the list of disputed user fees. After review, the Director(s) shall sustain the disputed amount of user fees in their entirety, reduce the amount of disputed user fees, or remove the disputed amount of user fees. The Director(s) or their designee shall set forth in writing the reasons for their decision which shall be provided to the Person disputing the user fees within ten (10) calendar days after review is completed. The Director(s) or their designee decision shall be the final level of administrative review.
- c) If the amount of disputed user fees is in excess of \$50,000, the disputed fee list and reasons therefore will be reviewed by a three-member panel of District employees selected by the Executive Director or their designee in their sole discretion. The three-member panel shall review the disputed fee list and reasons for the fee dispute within fifteen (15) calendar days of receipt of the list of disputed user fees. After review, the three-member panel shall sustain the disputed amount of user fees in their entirety, reduce the amount of disputed user fees, or remove the amount of disputed user fees in their entirety. The three-member panel shall set forth in writing the reasons for its decision which shall be provided to the

Person disputing the user fees within ten (10) calendar days after review is completed. The decision of the three-member panel shall be the final level of administrative review.

- d) An appeal to the decision in b) and c) above can be filed with the Executive Director within ten (10) days of the original decision. The Executive Director or their designee has discretion to consider an appeal. An applicant can only file an appeal to the Executive Director once a year.

RESOLUTION NUMBER AND DATE: 2023-068, dated August 8, 2023 (Supersedes BPC Policy No. 106, Resolution 2014-166, dated August 12, 2014; Resolution 2013-108, dated June 11, 2013)