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June 10, 2010

REPORT TO THE COMMITTEE ON RULES,
OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

COUNCIL POLICY 100-03 AND MAYOR/CITY COUNCIL TOT ALLOCATIONS

INTRODUCTION

On June 18, 2007, Mayor Jerry Sanders issued a memorandum stating that each Council District would be responsible to “manage and account” for its own Transient Occupancy Tax (TOT) allocations, including contracting with each non-profit organization. On December 6, 2007, the Budget and Finance Committee heard a report from the City Attorney and the Purchasing and Contracting department regarding the TOT program. Based on the issues raised at this meeting, the Committee referred the matter to the Independent Budget Analyst (IBA) for analysis.

On April 16, 2008, the Budget and Finance Committee considered amending Council Policy 100-03 after receiving and hearing the IBA’s Report Number 08-34. In a unanimous vote, the Committee directed the Mayor’s staff and the IBA to draft an update of Council Policy 100-03 to create a separate or augmented process for Councilmember TOT allocations. The Committee specified that the updates should include an established application process that meets legal requirements without being burdensome, and a minimum funding amount that addresses management workload while still enabling many groups to receive funding.

On March 24, 2010, this Office issued a memorandum providing legal guidance regarding the Mayor and City Council Districts’ practice of allocating TOT funds without going through the application and evaluation process outlined in Council Policy 100-03. The City Attorney concluded that the current practice of allowing individual Council members to make individual allocations without an application procedure was contrary to the express language of Council Policy 100-03.

DISCUSSION

If the City Council does not wish to use the process set out in Council Policy 100-03 for expenditure of the Special Promotional Program funds set forth in budget line item "*Mayor and City Council Allocations*," then the Council may either waive the Council Policy and designate how it desires to spend the funds or it may amend Council Policy 100-03 to provide for a different process for allocations.

I. Waiver Process

The City Council may waive any Council Policy. If a Councilmember desired to fund a group which did not meet the requirements of Council Policy 100-03, then the Councilmember should:

1. Docket the item for discussion by the full Council.
2. After Council discussion, the Councilmember should make a motion to:
(a) waive Council Policy 100-03; (b) approve the contract for funding; and
(c) state how the contract is intended to advance the City's economy by promoting the City as a visitor destination in the national and international marketplace.

An affirmative vote of five Councilmembers would be required to waive the Council Policy. This process can be used for all funding set forth in the budget line item "*Mayor and City Council Allocations*" and would not require any changes to current Council Policy 100-03.

II. Amendment of Council Policy 100-03

The Council could amend Council Policy 100-03 to change the current process for funding determinations. Whether and how to amend Council Policy 100-03 is a policy determination. The Budget and Finance Committee considered proposed changes to the Council Policy on December 6, 2007 and April 16, 2008. Several options were discussed at these Committee meetings. Recommendations made by the IBA in its Report 08-34 included:

1. Establish a minimum funding amount
2. Create an eligibility list for recipient groups
3. Require that recipient groups first go through the established application process
4. Limit Council allocations to contract augmentations

The rationale for these options and other discussions are fully set forth in the IBA's report which is attached hereto for the Committee's reference. Consistent with the request by Council President Hueso and Councilmember Lightner as set forth in their March 26, 2010 memorandum, upon specific policy direction from this committee, this Office will advise on proposed changes to Council Policy 100-03 to ensure consistency with the Charter and other applicable laws.

CONCLUSION

Expenditure of funds set forth in the budget line item "*Mayor and City Council Allocations*" of the Special Promotional Programs Budget must be made in accordance with Council Policy 100-03. If the City Council does not wish to use the process set out in Council Policy 100-03, then the Council may either, waive the Council Policy and designate how it desires to expend the funds for Special Promotional Programs, or it may amend Council Policy 100-03 to provide for a different process for determining which groups are funded.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By 

Paul F. Prather
Deputy City Attorney

PFP:jdf:sc

Attachments:

1. IBA Report Number 08-34
 2. City Attorney Memorandum to Mayor and Councilmembers dated March 24, 2010
- RC-2010-21

ATTACHMENT 1: IBA REPORT NUMBER 08-34

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: April 9, 2008

IBA Report Number: 08-34

Budget Committee Date: April 16, 2008

Item Number: 2

City Council Transient Occupancy Tax Allocation Process

OVERVIEW

On June 18, 2007 the Mayor issued a memo to the City Council stating that each Council office will assume the responsibility to manage and account for Council district TOT allocations, including the administration of the contract with each recipient organization. Separately, the City Attorney's Office has raised a question as to whether the regulations set forth in Council Policy 100-03 applied to Mayor and City Council allocations. These issues were presented at the Budget and Finance Committee on December 6, 2007, and subsequently referred to the IBA.

This report examines each of these issues in turn. Overall, we believe that contract administration for Council TOT allocations should be used as a management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. We defer to the Mayor, as an administrative function, to determine where this contract administration should most appropriately be performed. However, in the past there has been a degree of operational difficulty associated with administering Council TOT allocations, and this report presents several options that may facilitate a more efficient process in the future. We request further direction regarding the development and implementation of a suitable process for Council TOT allocations.

We further believe that all recipients of TOT funds should be held to a common set of standards and that all TOT allocations should be governed by a single policy. Currently, Council Policy 100-03 sets forth the policies and regulations pertaining to TOT funds that are allocated for promotion related purposes, pursuant to Municipal Code requirements. A revision to this Council Policy may be warranted to ensure that all recipient groups are subjected to the appropriate set of requirements, while at the same time streamlining the allocation process.

FISCAL/POLICY DISCUSSION

The Transient Occupancy Tax (TOT) Fund receives five cents of the City's 10 ½ cent TOT levy. San Diego Municipal Code specifies that of this amount, four cents are to be used solely for the purpose of promoting the City, while one cent may be used for any purpose the City Council may direct. The remaining 5 ½ cents of the City's TOT levy are deposited directly into the General Fund to be used for general government purposes.

Council Policy (CP) 100-03 governs the use of TOT funding that is allocated for promotional purposes. Under the guidelines established by CP 100-03, the City allocates TOT funding for purposes such as arts & cultural programs, economic development and capital improvements. In addition, beginning in FY 2002 the Mayor and each City Council Member received a TOT allotment to be used for discretionary purposes.

On June 18, 2007 the Mayor issued a memo to the City Council stating that each Council office will assume the responsibility to manage and account for their TOT allocations, including the administration of the contract with each recipient organization. The memo suggested that the City's existing application for Special Promotional funding be used as a guideline for Council allocations, and encouraged the Council to work with the City Attorney to develop an appropriate contracting process.

In addition, the City Attorney has raised a question as to whether the Mayor and Council TOT allocations are covered by the regulations set forth in CP 100-03. This concern arose from questions in the past about the applicability of certain requirements to these allocations. Such applicability is unclear, as Mayor and Council allocations are not specifically mentioned in CP 100-03. These issues were heard at the Budget and Finance Committee on December 6, 2008, and subsequently referred to the IBA for additional analysis. We address each of these issues separately.

Contract Administration

In prior years, contract administration for Council TOT allocations was primarily handled by the Commission for Arts and Culture. The Council district could allocate TOT funding in two ways: augment an existing contract, or make an independent allocation to a group of the district's choosing. Augmenting an existing contract usually entailed increasing the amount of funding allocated to a group that already under contract with the City to receive TOT funds. For independent allocations the Commission would attempt to contact the recipient group and inform them of the contract requirements, including documentation that needed to be submitted.

This process for administering independent allocations created certain operational difficulties for Arts and Culture. Some of the groups who received Council TOT allocations may not have gone through the formal application process established by CP 100-03, and thus were not always aware of the requirements. According to the

Commission, this increased the staff time requirements associated with these contracts, and resulted in a greater workload for Arts and Culture staff, who would need to work extensively with these groups in order to obtain much of this required documentation. The process also strained the Commission's focus on providing excellent customer service.

While we recognize these past difficulties, as a policy matter we believe that contract administration for Council TOT allocations should be used as a critical management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. The allocation of TOT funds requires that certain procedures be followed and documentation be produced by recipient organizations. These requirements have been established to protect the City from liability and to ensure the transparent and proper use of TOT funds. The Mayor should retain the responsibility for contract administration in order to maintain the necessary checks and balances over the use of public funds, and ensure that contract requirements are applied consistently across the City.

As an administrative function, the Mayor will have the authority to ultimately determine where in the City organization this function will most appropriately be located. However, we are sensitive to the difficulties that existed in the past, and we do not wish to re-create a similar situation. In addition, we are aware of the strained resources and limited staffing with which the City currently operates. We feel that much of the difficulty in administering these contracts may be alleviated by implementing certain parameters on Council TOT allocations. As much of the difficulty in the past has revolved around obtaining the required documentation from recipient groups, these options aim to ensure that groups receiving Council TOT allocations are aware of the requirements and have the ability to meet them. These options are outlined below.

1. Establish a minimum funding amount – small TOT allocations significantly increase the work load related to contract administration, as each contract comes with a host of requirements. Establishing a minimum funding amount would ease this workload by limiting the number of contracts that must be administered, and would help to ensure that groups or events receiving funding are large enough to be able to meet these requirements.
2. Create an eligibility list for recipient groups – as suggested by the City Attorney's Office, this option would entail creating a standing list of groups or events that are eligible for Council TOT allocations. Criteria for getting on the list – such as having proof of insurance or status as a non-profit on file – could be developed to ensure that the required documentation is available.
3. Require that recipient groups first go through the established application process – through the application process, potential recipient groups would need to produce

the required documentation. If groups are not awarded funding, they would still be eligible to receive independent Council TOT allocations. If funding is awarded through the application process, Council districts would still have the option of augmenting the contract to increase the funding amount.

4. Limit Council allocations to contract augmentations – this option would allow for increased funding to groups who are already awarded funding through the application process. It would not allow for independent Council allocations.

We realize that implementing any one of these options may somewhat reduce the Council's discretion as to which or how many groups could receive TOT funding. However, we propose that these or other options be discussed as a means of achieving a more efficient, functional process. We request from the Council further direction regarding the development and implementation of a suitable and efficient process for Council TOT allocations.

Application of Council Policy 100-03

Council Policy 100-03 governs the use of TOT funds that are allocated as part of the four cents required by the Municipal Code to be used for promotional purposes. The Council Policy establishes the City's policy with regard to the use of TOT revenues for promotional purposes, and lays out the requirements pursuant to the TOT application process. For convenience, a summary of these requirements, which can be found in Attachment A to CP 100-03, is attached to this report.

The IBA believes that all recipients of TOT funds, whether pursuant to the four cent requirement or otherwise, should be held to a uniform set of standards and requirements. The regulations included in CP 100-03 were put in place in order to protect the City from liability, and ensure the transparent and proper use of City funds. It would be inappropriate to impose those requirements on one group of funding recipients and not on others. If these regulations are deemed to be proper and necessary, then they should be applied globally. We feel that it may be appropriate to revise CP 100-03 to ensure that it applies to all TOT allocations.

We do recognize that in the past the multitude of requirements in CP 100-03 have been problematic for some of the groups receiving Council TOT allocations, particularly for smaller groups or those run by community volunteers. Furthermore, the insurance requirements included in the standard TOT funding contracts may be prohibitively burdensome for certain groups.

It should be noted that the Policy has not been updated for some time, and it is unclear to what extent the requirements currently in place are necessary or appropriate. A comprehensive review of CP 100-03 may be warranted to ensure that recipient groups are subjected to the appropriate set of requirements needed to protect the City from liability

and ensure the proper use of City funds, and at the same time streamline the allocation process. Such a review may also ease some of the challenges associated with Council TOT allocations. The IBA would be happy to work with Council Districts and the appropriate City departments, including the City Attorney's Office and Risk Management, to evaluate and propose appropriate revisions to Council Policy 100-03.

CONCLUSION

The IBA believe that contract administration for Council TOT allocations should be used as a management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. As an administrative function, the Mayor will have the authority to ultimately determine where in the City organization this function should most appropriately be located. However, the IBA is sensitive to the difficulties that have existed in the past with administering Council TOT contracts, and we recommend that the Council consider implementing one or more of the proposed options, or other measures that may ease these operational difficulties in the future and lead to a more efficient allocation process. We request further direction regarding the development and implementation of a suitable and efficient process for Council TOT allocations.

We further believe that all recipients of TOT funds should be held to a common set of standards and be governed by a single policy. A comprehensive review of Council Policy 100-03 may be warranted to clarify that all TOT allocations are covered by a uniform set of regulations, and to ensure that recipient groups are subjected to the appropriate set of requirements, while at the same time streamlining the allocation process. The IBA would be happy to work with Council Districts and the appropriate City departments to bring forward a proposed revision to Council Policy 100-03.

[SIGNED]

Tom Haynes
Fiscal & Policy Analyst

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

**Summary of TOT Application Process Requirements
Per Attachment A of Council Policy 100-03**

General Requirements

- Programs and events must be open to the public
- Must be a legally constituted nonprofit corporation
- Majority of activities must take place within City limits and/or benefit City residents
- Applicants may only submit one application, and can only receive funding under one category
- No funding will be provided for any religious or political activity
- Organizations must adhere to the City's EOC policy

Funding Requirements

- Expenses must be incurred and paid by an organization before release of City funding
- Expenses must be incurred during the FY for which the program is funded
- Funding may not be used for alcoholic beverages
- Funding may not be used for travel, meals, lodging or entertainment, except as otherwise provided. Waivers may be provided with certain conditions
- Funding will only be used for annual operating expenses, and not for capital or equipment outlay, or for awards, trophies, gifts, uniforms or reserves
- Matching funds may be required
- Organizations should possess a minimum three-year track record of operations

Request for Funds/Agreements

- City will provide advance notification of application process to a wide distribution of potential eligible organizations
- Late applications will not be accepted
- If an organization charges fees, application must include disclosure of all such fees
- Organizations must be legal entities in good standing
- Written agreements are required that specify the services or functions to be performed, nature of payment or reimbursement, and financial reporting requirements

Performance Reporting

- Performance reporting is required of all funding recipients
- Organizations must provide a Final Performance Report each year, detailing progress toward meeting goals and objectives outlined in contract's scope of service
- The Final Performance Report shall also include a Statement of Compliance, and be submitted within 90 days of the end of the fiscal year.

Financial Disclosure

- Organizations receiving \$500,000 or more, if more than 10% of annual budget, must include salary and wage ranges for each job classification, including executive salaries and benefits packages
- Organizations receiving less than \$500,000 may voluntarily comply with these disclosure requirements

ATTACHMENT

- Organizations receiving \$10,000 or more are required to submit a financial disclosure within 90 days of the end of the fiscal year. The financial disclosure shall include:
 - Statement of expenditure of City fund by program
 - Statement of revenues and expenditures and a balance sheet of all funds received
- Organizations that receive \$75,000 or more must prepare and submit audited financial statements within 150 days of the end of the fiscal year

ATTACHMENT 2: CITY ATTORNEY MEMORANDUM TO
MAYOR AND COUNCILMEMBERS
DATED MARCH 24, 2010.

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: March 24, 2010
TO: Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: Council Policy 100-03 and Mayor/City Council TOT Allocations

This memo provides legal guidance regarding the Mayor and City Council Districts' practice of allocating Transient Occupancy Tax [TOT] funds without going through the application and evaluation process outlined in Council Policy 100-03 [Policy 100-3].

TOT allocations are governed by Policy 100-03. The purpose of Policy 100-03 is to "provide a set of uniform guidelines, conditions, and criteria governing the application for, and granting of, TOT funds to private non-profit organizations for the purpose of supporting their ongoing expenses and/or their sponsorship of special events." In addition, Policy 100-03 provides for an application and evaluation process, and requires that all TOT allocations be made by written agreement. Council Policy 100-03, pp. 3, 8.

For the past several years, the Arts, Culture, and Community Festivals section of the Special Promotional Programs portion of the City of San Diego Budget has included the line item: *Mayor and City Council Allocations*. For example, the Fiscal Year 2010 budget included line item number 147 in an amount of \$220,000 for *Mayor and City Council Allocations*. Although not specified in the budget or any FY 2010 resolution, the Comptroller allocates \$20,000 of the \$220,000 to a fund for the Mayor and the remaining \$200,000 is allocated equally to funds designated for each of the eight Council Districts.

Prior to 2007, the Commission for Arts and Culture processed contracts awarded with funds from the *Mayor and City Council Allocations* line item. On June 18, 2007, Mayor Jerry Sanders issued a memorandum stating that each Council District would be responsible to "manage and account" for their own TOT allocations, including contracting with each non-profit organization.

According to current practice, Council Districts either allocate funds from the *Mayor and City Council Allocations* line item to: (1) augment TOT contracts awarded to nonprofit organizations that have gone through the Commission for Arts and Culture's application and evaluation process; or (2) award stand-alone contracts to nonprofit organizations that have not gone through any application or evaluation process.

The current practice is contrary to the express language of Policy 100-03. The funds allocated to the line item *Mayor and City Council Allocations* are TOT funds and therefore fall under Policy 100-03. Policy 100-03 provides that funding can only be granted through the application, recommendation, and City Council approval process set forth therein. These procedures help ensure the uniform application of the guidelines, conditions, and criteria for granting applications. There are no exceptions in Policy 100-03 allowing the Mayor or City Councilmembers to fund organizations without going through the Policy's process. Any allocations made in violation of the Policy may be subject to legal challenge and could expose the City, and possibly individual City Councilors, to claims of arbitrariness or favoritism in the expenditure of City funds.

If the City Council wishes to develop alternative procedures for the Mayor and Council District allocations, it may do so by amending Policy 100-03. However, if the City Council chooses to amend the policy to allow for district by district allocations, we would recommend further legal review and analysis to ensure that any such amendments comport with the Charter and applicable Municipal Code requirements. Otherwise, all expenditure of funds allocated to the line item *Mayor and City Council Allocations* must be made through the Commission for Arts and Culture's application process.

JAN I. GOLDSMITH, City Attorney

By



Paul F. Prather
Deputy City Attorney

PFP:als

Attachments:

Council Policy 100-03

Mayor's Memo, dated June 18, 2007

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: TRANSIENT OCCUPANCY TAX
POLICY NO.: 100-03
EFFECTIVE DATE: September 12, 2005

BACKGROUND:

HISTORY OF TOT RATES

ORDINANCE NUMBER	EFFECTIVE DATE	TOT RATE
O-9033	June 9, 1964	4%
O-9767	April 1, 1968	5%
O-11077	June 5, 1973	6%
O-16286	January 1, 1985	7%
O-17108	August 1, 1988	8%
O-17154	June 1, 1989	9%
O-18078	August 1, 1994	10.5%

On June 6, 1994, the City Council adopted Ordinance No. O-18078 N.S. increasing the Transient Occupancy Tax (TOT) rate from 9% to 10.5% effective August 1, 1994. The ordinance specifically provides that the additional 1.5% tax is to be allocated to the General Fund for general government purposes as the City Council so designates.

On February 24, 1998, the City Council adopted Resolution Numbers R-289773 and R-289774, outlining recommendations to enhance and streamline application requirements and clarify category definitions for the TOT policy. Consequently, recommendations detailed in City Manager Reports 97-175, 97-188, and 98-13 have been utilized in the development of this revised Council Policy on TOT.

MISSION STATEMENT:

The purpose of Transient Occupancy Tax (TOT) is to advance the City's economic health by promoting the City of San Diego as a visitor destination in the national and international marketplace; supporting programs that increase hotel occupancy and attract industry, resulting in the generation of TOT and other revenue; developing, enhancing, and maintaining visitor-related facilities; and supporting the City's cultural amenities and natural attractions.

PURPOSE:

Consistent with the Mission Statement, the purpose of this policy is to:

1. Provide funding for the promotion of tourism and support of cultural programs and visitor-related facilities.
2. Provide guidance to the City Manager in the preparation of the annual budget submittal to the Mayor and City Council.
3. Provide a set of uniform guidelines, conditions, and criteria governing the application for, and granting of, funds to private non-profit organizations for the purpose of

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

supporting their ongoing operational expenses and/or their sponsorship of special events.

4. Provide continuing financial support to those projects where financial commitments of the City are in place, as part of the debt service requirements associated with capital improvements of visitor-related facilities.
5. Provide limitations on future Transient Occupancy Tax rate increases levied by the City of San Diego.

UTILIZATION OF REVENUES:

As stated in Municipal Code Sections 35.0128 - 35.0133:

1. Four cents must be used solely for the purpose of promoting the City.
2. One cent can be used for any purpose the City Council may direct.
3. Five and one-half cents is deposited in the General Fund for general government purposes as the City Council may provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

POLICY:

1. Increases to the TOT Rate Future increases to TOT shall be limited to a rate that is no greater than the average rate, excluding the highest and lowest rate cities, at that time, of the 15 following major cities: *Atlanta, Boston, Chicago, Denver, Honolulu, Houston, Las Vegas, Los Angeles, Miami Beach, New Orleans, New York, San Francisco, Santa Fe, Seattle, Washington D.C.* The City Council shall limit any tax increases if the hotel occupancy rates in the City of San Diego are less than 70% for two consecutive calendar years.
2. Funding of Private Non-Profit Organizations for Operational Expenses or Sponsorship of Special Events In order to assist the City Council in receiving and acting upon requests for funding by private non-profit organizations, general TOT application processes have been established and are reflected on Attachment A.

Eligible programs fall into one of the following major categories:

ECONOMIC DEVELOPMENT

To promote the City as a visitor destination and advance the City's economy by increasing tourism and attracting industry.

SAFETY AND MAINTENANCE OF VISITOR-RELATED FACILITIES

To provide supplemental funding for public safety and the maintenance of visitor-related facilities.

CAPITAL IMPROVEMENTS

To provide funding for the renovation, construction and expansion of visitor-related facilities and projects.

ARTS, CULTURE AND COMMUNITY FESTIVALS

To enhance the economy and contribute to San Diego's reputation as a cultural destination by nurturing and maintaining art and culture institutions of national and international reputation; by supporting programs and projects that provide access to excellence in culture and the arts for residents and visitors; and by funding programs and events which enrich the lives of the people of San Diego and build healthy, vital neighborhoods.

MAJOR EVENTS

To provide funding for the attraction and production of major events and conventions that generate Transient Occupancy Tax and other revenues.

3. Application Processes
- Applications are required for organizations requesting funding within the 1) Economic Development and 2) Arts, Culture, and Community Festivals categories. The Economic Development category includes the 1) Citywide and 2) Economic Development and Tourism Support subcategories. The Citywide Economic Development application process is administered by the Financial Management Department. This funding category supports programs that promote the City as a visitor destination and advance the City's economy by increasing tourism and attracting industry on a citywide basis. The Economic Development and Tourism Support subcategory provides funding for non-profit, tax-exempt organizations to produce regionally significant programs, services and events that promote tourism, attract business, and create employment. The Economic Development and Tourism Support application process is administered by the Community and Economic Development Department.

The Arts, Culture, and Community Festivals category contains three subcategories: 1) Organizational Support Program; 2) Festivals and Celebrations Program; and 3) Neighborhood Arts Program. The Commission for Arts and Culture administers these application processes. The Organizational Support Program subcategory provides annual, ongoing, general operating support for nonprofit, tax exempt arts and culture organizations with an emphasis on the delivery of programs and services that impact San Diego's quality of life and tourism. The Festivals and Celebrations Program provides project support to community-based festivals, parades, and other celebrations, with an emphasis on projects which promote neighborhood pride and community reinvestment. The Neighborhood Arts Program funds projects that make arts and culture activities more available and accessible in San Diego neighborhoods and encourage people of diverse backgrounds and ages to share their heritage and culture.

Recommended funding levels for all categories and specific program funding for Citywide Economic Development, Safety and Maintenance of Visitor-Related Facilities, Capital Improvements, and Major Events will be made by the Office of the City Manager.

All funding recommendations are provided to the City Council for consideration and final approval as part of the annual budget process.

Organizations may only submit one TOT application to the City. An organization cannot apply for, or receive funding from, more than one category or subcategory of TOT. Applicant organizations must determine which one TOT category or subcategory best matches their program. City administrative staff can assist organizations in making that determination. All organizations must comply with the requirements and conditions outlined in Attachment B.

If necessary, prior to the beginning of the application process for each fiscal year, an informational report shall be presented annually to the Natural Resources & Culture (NR&C) Committee that will identify organizations funded by Citywide Economic Development that were not in compliance with their contractual agreement with the City in the past fiscal year. Appeals to the NR&C Committee can be made by any organization regarding compliance issues, and potential impacts on future allocations. A report on compliance issues for organizations funded within the Arts, Culture, and Community Festivals category or the Economic Development and Tourism Support subcategory will be presented to the respective review panels, if necessary.

4. Funding for debt service requirements/annual lease payments related to capital improvements of visitor-related facilities.
Funding is provided for debt service for projects that contribute to a balance of community cultural, recreational, and promotional programs, designed to enhance the well-being of the community and promote the City as a world-class visitor destination. Funding may include, but is not limited to the following:
 - a. Balboa Park/Mission Bay Park Improvements
Financial support will be provided for improvements to Balboa Park and Mission Bay Park consistent with adopted master plans (refer to Resolution No. R-271992).
 - b. Funding for the Extension of the San Diego Trolley
Funding will be provided for annual lease payments for debt issued for the City's share of trolley extension costs as matching funds to qualify for State and Federal funding required to implement extension of the San Diego Trolley as called for in the Regional Transportation Plan (refer to Ordinance Numbers O-16947 and O-17942).
 - c. Convention Center Complex
Funding will be provided for annual debt payments and other expenses related to the expansion of the Convention Center onto the adjacent surface parking lot.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

- d. PETCO Park
Funding will be provided for annual debt payments and other expenses related to PETCO Park.
The adoption of this policy is not intended to be and shall not constitute an irrevocable commitment by the City Council to allocate monies for this purpose. Such a commitment may be made only at the time the annual budget ordinances are adopted.

Attachment A
General Requirements and Conditions

HISTORY:

“Funding of Private Organization for Operational Expenses or Sponsorship of Special Events”

Adopted by Resolution R-183022 03/09/1965

Amended by Resolution R-191654 09/21/1967

Amended by Resolution R-211279 08/08/1974

Amended by Resolution R-218061 04/05/1977

Amended by Resolution R-220777 05/01/1978

Amended by Resolution R-222451 12/19/1978

Amended by Resolution R-254157 05/11/1981

Amended by Resolution R-272990 03/06/1989

Retitled to “Transient Occupancy Tax” with inclusion of Policies 100-04, 100-11 and

100-13 by Resolution R-279227 01/06/1992

Amended by Resolution R-280380 07/21/1992

Amended by Resolution R-284044 06/06/1994

Amended by Resolution R-284698 10/03/1994

Amended by Resolution R-286076 07/17/1995

Amended by Resolution R-286991 03/04/1996

Amended by Resolution R-289773 02/24/1998

Amended by Resolution R-289774 02/24/1998

Amended by Resolution R-300814 09/12/2005

ATTACHMENT A General Requirements and Conditions

A. General

1. City funding support for private nonprofit organization operational expenses and for special events will be established so as to contribute to a balance of community cultural, recreational, and promotional programs designed to enhance the well-being of the community.
2. The functions or services to be provided by a private nonprofit organization must be of such nature that the interests of the City are better served by an agreement with a private nonprofit organization than by the performance of the services or functions by the City.
3. Programs or special events supported by the City must be open to the public.
4. It is the policy of the City to encourage similar organizations to operate in a coordinated and cooperative manner. If the City funds an “umbrella” organization for federated support of similar activities, then the City will not independently fund other organizations which should properly be part of the “umbrella” organization.
5. The City will only provide funding support to a legally constituted nonprofit corporation completely directing and in complete control of its own affairs through its own officers or members. Support for special events must also be directed to a sponsoring nonprofit corporation. The majority of the activities of the applicant organization must take place within the San Diego City limits and/or benefit City residents. A representative of the City designated by the City Manager shall conduct liaison with the corporation and shall be permitted to attend meetings of the board of directors of such organizations, as deemed appropriate by the City Manager.
6. Organizations may only submit one TOT application to the City. An organization cannot apply for, or receive funding from, more than one category or subcategory of TOT. Applicant organizations must determine which one TOT category or subcategory best matches their program. City administrative staff can assist organizations in making that determination.
7. The City will not provide funding support to a private nonprofit organization for the conduct of any religious or political activity.
8. The City will only provide funding support to a private nonprofit organization that, in the conduct of its activities and affairs, adheres to the City’s Equal Opportunity Contracting Program. The organization must not discriminate against any person because of sex, race, color, creed, national origin, physical handicaps, age, or sexual orientation.
9. The City Council retains the prerogative to waive any policy or requirement herein contained. Council may also impose such other conditions on City support to private nonprofit organizations, as it deems appropriate.

B. Funding

1. Expenses must be both incurred and paid by an organization before the City will release funding to the organization, except as otherwise may be provided.
2. Expenses must be incurred during the City's fiscal year (July 1 - June 30) for which the program is funded, except as otherwise may be provided.
3. City funds may not be used for alcoholic beverages. In addition, City funds may not be used for travel, meals, lodging, or entertainment expenses, except as otherwise may be provided. Waivers to this provision will be considered for expenditures within the Economic Development Program categories. Organizations receiving waivers may use City funds for travel, meals, or lodging within the following parameters:
 - a. Travel – when use of public air carrier transport is required in order to perform the contractual scope of services to the City, City funds may be applied toward the equivalent of coach airfare only. City funds may not be applied toward any upgrades.
 - b. Meals – when provision of meals is required in order to perform the contractual scope of services to the City, City funds may be applied toward a maximum of \$50 per day per person for meals (excluding sales tax and a maximum 15% gratuity, which are also eligible expenses). This daily maximum is further limited by meal, as follows: \$10, \$15, and \$25 are the maximum City funds that can be applied toward breakfast, lunch, and dinner, respectively, per person. If alcoholic beverages are consumed with meals, they may not be paid for with City funds. In the event that meals are provided to individuals who are not members of the funded organization within the scope of a business development meeting, documentation containing the purpose of the meeting, the benefit to the City, and a list of attendees must be provided to the City in order for City funding to be utilized.
 - c. Lodging – when out-of-town lodging is required in order to perform the contractual scope of services to the City, City funds may be applied toward the equivalent of the cost of a standard room in a business class hotel, or toward the conference rates of the host hotel when attending a conference.
 - d. Sponsorships – the City acknowledges the business requirement of event sponsorships by promotional organizations in order to market San Diego as a convention destination in a highly competitive market, and to attract businesses to the region. The primary objective of a funded organization's participation in such events is to gain exposure for San Diego and secure access to important decision makers representing prominent convention groups and businesses. Financial sponsorship of such events is an acceptable application of City funds. If alcoholic beverages are consumed during event sponsorships, they may not be paid for with City funds.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

4. City funds will be used only to assist an organization in its annual operating program or in its sponsorship of special events. City funding will not be used for capital or equipment outlay, for the purchase of awards, trophies, gifts, or uniforms, nor for the buildup of reserves.
5. Matching fund requirements will be determined by the appropriate application process as called for in the specific funding guidelines within each funding category, if applicable.
6. Organizations requesting funds should possess, at a minimum, a three-year track record of operations. Annual requests for funding may be for one-time events or projects, though applicant organizations must have a three-year history.

C. Request for Funds

1. It is the City's intent to provide advance notification of the annual application process to a wide distribution of potential organizations that may be eligible for funding. Requests by private nonprofit organizations shall be supported by appropriate documentation and in accordance with the submission schedule as prescribed by the City Manager and promulgated in a procedural guide. Late submissions will not be accepted.
2. One-time special event requests must be accompanied by the same documentation outlined in paragraph C.1. above, except that financial data may be confined to the special event. A disclosure of the full-year fiscal status of the sponsoring organization will not normally be required.
3. If an organization charges fees for admission to or participation in an event, the organization's request for funding must include a disclosure of all such fees.
4. Initial requests for funding must, additionally, be accompanied by documents that evidence the existence of the organization as a legal entity in good standing. Such documents shall be determined by the City Manager and promulgated in a procedural guide.

D. Evaluation of Requests

1. All requests for support by private nonprofit organizations will be referred to the appropriate review panel for each funding subcategory application process for analysis and subsequent recommendations to the Mayor and City Council. These subcategories include Festivals and Celebrations, Organizational Support, Citywide Economic Development and Economic Development and Tourism Support. All requests will be reviewed and evaluated in the light of the criteria of this Council Policy.

E. Agreements

1. No expenditure may be made out of any appropriation until a written agreement setting out the terms and obligations of the parties has been consummated. The agreement will specify in detail the services or functions to be performed, the nature of the payment or reimbursement schedule, and the financial reporting requirements.

2. All agreements will provide that the City may withhold funds from the contracting organizations and terminate its entire obligation upon notice to the organization if the organization violates any of the terms of the agreement, or for other good cause shown not related to a violation of the terms of the agreement. The City Manager shall thereafter advise the City Council of the notification of termination made to the organization.
3. Compliance with the terms and conditions of agreements shall be determined by the City Manager.

F. Performance Reporting

Performance reporting shall be required of all funding recipients. Organizations receiving funding shall provide the Contract Administrator, each year, a Final Performance Report detailing the organization's progress towards meeting the goals and objectives outlined in the contract's scope of services. The Contract Administrator may require additional documentation to substantiate the information. The report shall also include a Statement of Compliance signed by the executive director or other chief executive officer of the organization, certifying that the organization has complied with the terms of the City's agreements. This information must be submitted within ninety (90) days of the end of that fiscal year.

G. Financial Disclosure

1. Any organization receiving \$500,000 or more of TOT funding, when that funding represents more than 10 percent of the organization's annual budget, must include in their applications salary and wage ranges for each of their job classifications, including actual executive salaries and benefits packages applicable for the contract period, during the annual budget process each fiscal year. Organizations receiving less than \$500,000 may voluntarily comply with these disclosure requirements.
2. Financial disclosure information shall be required of all funding recipients receiving \$10,000 or more in City funds. Organizations receiving funding shall provide the Contract Administrator, each year, copies of true, accurate and complete financial disclosure documentation evidencing the financial status of the organization's last complete fiscal year within ninety (90) days of the end of that fiscal year. All organizations receiving funding in the amount of \$10,000 or more shall submit the following documents:
 - a) A statement of the expenditure of City funds by program to be identified in the same expenditure classifications as contained in the City funded final budget approved through the application process and compared with the budgeted amounts.
 - b) A statement of revenues and expenditures and a balance sheet of all funds received by the organization.

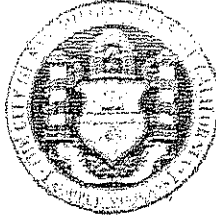
CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

3. If City funding is \$75,000 or greater, audited financial statements, including items a and b above, must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent Certified Public Accountant, in accordance with generally accepted auditing standards (GAAS) and submitted to the Contract Administrator within one hundred-fifty (150) days of the end of that fiscal year. The Contract Administrator may grant extensions of up to thirty (30) days to these deadlines when deemed necessary, upon written request by the funded organization.
4. An organization receiving funding support will permit the City to inspect all books and records at any time and to perform or require audits the City reasonably desires. City shall periodically monitor records of contracting organizations.

H. Compliance with General Requirements and Conditions

1. Failure to comply with the City's terms and conditions could result in the suspension of any current remaining funding, at the discretion of the Contract Administrator.
2. All organizations must be in good standing at the time of application for future funding. Non-compliance with any terms and conditions could result in the disqualification of funding requests for future fiscal years, until such time as organization comes into full compliance.



OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO

MEMORANDUM

DATE : June 18, 2007
TO : Honorable Council President Peters & Members of the City Council
FROM : Mayor Jerry Sanders
SUBJECT: City Council TOT Funds

The FY08 budget passed by the City Council on June 11 increased the Transient Occupancy Tax allocation from \$10,000 to \$25,000 per City Council district. The Special Promotional Funds budget includes Mayor and City Council's Allocations Fund. The Mayor and each Council office can choose to spend these funds on arts and culture related programs, events or organizations. The Allocations Fund is allocated from Transient Occupancy Taxes which is governed by Council Policy 100-03. This policy states that funds may only be awarded to non-profit organizations. Since these funds are disbursed at the discretion of the Councilmember, each Council Office will have the responsibility to manage and account for these funds and the organizations that receive these dollars.

The City has an application it requires of organizations that receive Special Promotional Funds. This guarantees our process is transparent and provides for accountability as organizations submitting an application understand the terms and conditions of entering into a City contract. We would suggest as you administer your own disbursement of these funds you may want to use the application as a guideline in order to protect your office and the City from any liability.

In addition, it is the City's standard operating procedure to require a contract for services with each recipient organization. I encourage you to work with the City Attorney to disburse funding through the appropriate contracting process.


JERRY SANDERS
Mayor