

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: TRANSIENT OCCUPANCY TAX
POLICY NO.: 100-03
EFFECTIVE DATE: December 12, 2023

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 of San Diego (City) Council adopted Ordinance O-18078 (New Series) increasing the Transient Occupancy Tax (TOT) rate from 9% to 10.5% effective August 1, 1994. The ordinance allocates the additional 1.5% tax to the General Fund and the City Council has designated it for general government purposes.

MISSION STATEMENT:

The purpose of TOT is to advance the City's economic health by:

- promoting the City as a visitor destination and place of creativity, innovation, and entrepreneurship in the national and international marketplace;
- supporting programs that increase hotel occupancy as well as attract and retain base-sector businesses and entrepreneurs, resulting in the generation of TOT and other revenue;
- funding *development* of visitor-related facilities; and
- supporting the City's artistic and cultural amenities, and natural attractions.

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PURPOSE:

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

- funding for the promotion of tourism and enhancement of the economy, artistic and cultural programs, and visitor-related facilities;
- guidance to the Mayor in preparing of the annual budget submittal to the City Council;
- guidance on achieving the annual Penny for the Arts goal created by the City Council when it approved San Diego Resolution R-307760 (Oct. 25, 2012);
- a process for the City Council to recommend using a specified portion of TOT revenue as described in San Diego Municipal Code (Municipal Code) section 35.0128(b);
- general guidelines by which the City will accept and evaluate the applications for TOT funding; and
- 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; and provide guidance on evaluating future TOT rate increases levied by the City.

UTILIZATION OF REVENUES:

Collection of TOT revenue is governed by Municipal Code sections 35.0103 through 35.0108. All TOT revenues collected must be used as stated in Municipal Code sections 35.0128 through 35.0133.

Municipal Code section 35.0103 imposes 6% in TOT, and the utilization of that 6% is detailed in Municipal Code section 35.0128. Section 35.0128(b) provides that one-sixth of that TOT, or 1 cent per dollar, shall be utilized as follows:

One-sixth (1/6) of all revenue collected by the City and remaining after payment of one-sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund. Money shall be expended from this fund only by an ordinance appropriating part or all of the fund for any purpose the City Council may direct, including, but not limited to, promotion of the City.

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POLICY:

Italicized terms used in this policy have the same definitions as provided in the Municipal Code.

1. Future Increase to TOT

Future increases to the TOT shall be limited to no greater than the average TOT rate 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, and Washington D.C., excluding the highest and lowest rate cities, at the time of evaluation. The City will not increase the TOT if the average hotel occupancy rate in the City for the last two years, at the time of evaluation, was less than 70%.

2. TOT Funding Priorities

This policy sets out five qualified priority areas for distribution of TOT funds to individuals and entities for general operational support, as well as projects and events that build the social, artistic, cultural, recreational, and economic life of San Diego. General application requirements and conditions are reflected in Attachment A.

These priority areas align with the purpose of TOT, and include:

ECONOMIC DEVELOPMENT

To promote San Diego as a visitor destination, and place of innovation and entrepreneurship in the national and international marketplace; to support programs that increase hotel occupancy and attract and retain base-sector businesses and entrepreneurs.

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 *development* of visitor-related facilities and projects.

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ARTS, CULTURE, AND COMMUNITY FESTIVALS

To enhance the economy and strengthen the arts, cultural, and creative sectors; to contribute to San Diego's national and international reputation as a creative, cultural destination; to provide funding for tax-exempt nonprofit organizations and the Commission for Arts and Culture in an effort to meet the Penny for the Arts goal; to provide access to excellence in culture and the arts for residents and visitors; to enrich the lives of the people of San Diego; and to build healthy, vital neighborhoods.

MAJOR EVENTS

To provide funding for the attraction and production of major events and conventions that generate TOT and other revenues for the City.

Applicants should apply for the most relevant priority area; however, the City acknowledges that many projects and activities may contribute to more than one of these priority areas.

The award of TOT funding must be memorialized in a written agreement between the City and the recipient.

3. TOT Funding Application Processes

ECONOMIC DEVELOPMENT AND ARTS, CULTURE, AND COMMUNITY FESTIVALS

Applications are required for individuals and entities requesting TOT funding within two priority areas: (a) Economic Development; and (b) Arts, Culture, and Community Festivals. Applicants and activities eligible for funding under those priority areas are specified below.

- a. The Economic Development priority area supports activities that promote tourism and enhance San Diego's economic health and position as a center for economic innovation and entrepreneurship. This priority area provides funding to tax-exempt, nonprofit organizations, including eligible nonprofit institutions of higher education, for significant programs or projects in support of base-sector businesses and entrepreneurs that contribute to, or enhance San Diego's reputation; or to tax-exempt nonprofit organizations for significant programs or projects promoting San Diego as a tourism destination resulting in the generation of hotel room night occupancy.

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The Economic Development Department, or other department designated by the Mayor, administers the application process and develops initial funding recommendations that are submitted to the Mayor for development of final funding recommendations to the City Council.

- b. The Arts, Culture, and Community Festivals priority area includes four categories:
- 1) Organizational Support Program: This category provides general operational support to tax-exempt, nonprofit organizations, for the delivery of activities and programming that positively impact San Diego's quality of life and tourism and provide direct access and increased opportunities for excellence in culture and the arts;
 - 2) Creative Communities San Diego: This category provides project support for tax-exempt nonprofit organizations to deliver dynamic projects in San Diego neighborhoods that: engage diverse communities in arts, culture, and creativity; and contribute to a more accessible and sustainable creative ecosystem;
 - 3) City Artist: This category provides support to individual *artists* and groups of *artists*, as they work to advance their artistic practice and expand their creative capacities to deepen the impact of their work as innovators and creative contributors to San Diego's arts, cultural, and creative sectors, and thus, promote a more dynamic and creative San Diego; and
 - 4) Impact: This category supports excellence, innovation, and creativity within the San Diego arts, cultural, and creative sectors through targeted City funding initiatives in alignment with the City's arts and cultural strategies and priorities. Depending on the initiatives within the Impact category, eligible applicants may include tax-exempt nonprofit organizations and *artists*.

The Department of Cultural Affairs, or other department designated by the Mayor, administers each of these application processes and develops initial funding recommendations that are submitted to the Mayor for development of funding recommendations to the City Council.

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4. In 2012, the City Council adopted a “Penny for the Arts” goal to increase arts and culture funding from the City’s TOT. The goal included restoring arts and culture funding levels to 9.52% of annual TOT revenue by 2017. The City Council remains committed to fulfilling the “Penny for the Arts” goal.

9.52% of annual TOT revenue is equal to the 1 cent per dollar TOT allocation described in Municipal Code section 35.0128(b) (1¢ TOT). The Council may direct the use of this 1¢ TOT for any purpose, subject to the Mayor’s budget authority outlined in Charter section 69.

The City Council will provide the Mayor with a recommendation, via the City Council’s annual budget priorities resolution, regarding the use of the 1¢ TOT. As part of its annual recommendation, the City Council may request to use 1¢ TOT as a mechanism to bridge the funding gap for arts and culture funding, or for other purposes. Any combination of TOT revenue that meets the Penny for the Arts goal is acceptable.

The City Council requests the Mayor to provide an itemized accounting for how the 1¢ TOT is allocated in the annual proposed budget, explain how those allocations meet the goals of this Council Policy and the City Council’s recommended use of the 1¢ TOT and detail any related adjustments to these funds proposed within the May revised budget, including whether the Mayor has allocated any surplus revenue toward this recommendation.

If the TOT rate is increased in the future, the percentage of annual TOT revenue that constitutes the Penny for the Arts goal, as well as the 1¢ TOT, must be updated to reflect the accurate proportion of total TOT revenues.

5. The Mayor will make funding recommendations for the SAFETY AND MAINTENANCE OF VISITOR-RELATED FACILITIES, CAPITAL IMPROVEMENTS, and MAJOR EVENTS priority areas.
6. Funding recommendations for all priority areas are subject to the Mayor’s recommended appropriation levels based on available TOT funds.
7. The Mayor will provide funding recommendations to the City Council for consideration and final approval as part of the annual budget process. All applicants receiving specific funding must comply with the requirements and conditions outlined in Attachment A. The City’s contract administrator, as necessary, will monitor compliance issues for applicants funded within the Arts, Culture, and Community Festivals and the Economic Development priority areas.

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8. Funding for debt service requirements and annual lease payments related to capital improvements of visitor-related facilities is provided 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.

This policy is not intended to be and shall not constitute an irrevocable commitment by the City Council to allocate monies for any specific purpose. Such a commitment may be made only at the time the annual appropriation ordinance is 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

Amended by Resolution R-313710 – 10/04/2021

Amended by Resolution R-315257 – 12/12/2023

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ATTACHMENT A: General Requirements and Conditions (If not specifically designated for an individual or entity, then these requirements and conditions apply to both individuals and entities.)

1. General Eligibility

To be eligible for funding, applicants must:

- a. Demonstrate alignment with the purpose of TOT funding for the priority area and category, if applicable, in which it applies.
- b. Meet the funding category eligibility criteria stated in this Council Policy and any additional requirements consistent with this Council Policy as specified in the applicant guidelines for the category to which it applies.
- c. For entities, demonstrate proof of incorporation within the United States and be registered with California Secretary of State, if applicable for the category in which the entity applies.
- d. For entities, demonstrate proof of nonprofit, tax-exempt status under sections 501(c)(3) or (6) of the Internal Revenue Code at the time of application, if applicable for the category in which the entity applies. Project producers may apply through fiscal sponsors as called for in the specific applicant guidelines under certain categories within the Arts, Culture, and Community Festivals priority area.
- e. For entities, have at least two full and consecutive years of operating with its own independent governing board, if applicable for the category in which it applies.
- f. For individuals, reside within the City limits for at least two consecutive years, be at least 18 years old, and not be enrolled as a full-time student.
- g. For entities, be headquartered in the City to receive general operational support. Within the Arts, Culture, and Community Festivals priority area, an entity seeking general operational support must have a mission statement clearly focused on the development, production, service, or presentation of arts and cultural activities and programming in the City.

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- h. Maintain principal offices in San Diego county to receive project support, with an exception for arts service organizations with offices in San Diego county and primary headquarters in California, if applicable for the category in which it applies.
- i. Demonstrate proof that the funded project will take place within the City . Within the Economic Development priority area, only entities within the City may benefit from a TOT-funded program or project implemented by an eligible entity located within the limits of San Diego county; however, TOT-funded marketing and advertising may be directed outside of San Diego county.
- j. Have a clear presentation that is open to the public, or meaningful and accessible engagement component for projects, activities, and programming within the funding period. While presentations and participation must be open to the public generally, they may reach specific audiences or charge a fee as long as such restrictions do not discriminate on the bases described in Section 2(q) below.
- k. Receive funds from only one priority area of TOT. And, within the Arts, Culture, and Community Festivals priority area, if an entity receives funds from the Organizational Support Program category, it may not also receive funds from the Creative Communities San Diego category; however, an entity may receive additional funds from the Impact category as long as each application is for a distinctly different project and purpose. Within the Economic Development priority area, only one application may be submitted in total.
- l. Have no outstanding financial obligations or debts of any kind to the City.

2. General Exclusions and Ineligibility

The City does not provide TOT funding support for:

- a. Inherently religious activities: worship, instruction, or proselytization.
- b. Lobbying, including activities in lobbying, including activities intended to influence the outcome of elections or influence government officials regarding pending legislation, either directly or through specific lobbying appeals to the public.
- c. Voter registration drives and related activities.

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- d. Re-granting.
- e. Any elementary or secondary schools, school districts, colleges, or universities, except that eligible nonprofit educational institutions of higher learning may apply under the Economic Development priority area for significant programs or projects in support of base sector business and entrepreneurs.
- f. Tuition for academic study.
- g. Capital outlay for construction, purchase, or improvement of facilities, or capital outlay for purchase of equipment, unless specified as eligible in applicant guidelines for a funding category.
- h. Contests and competitions including gifts, prizes, and awards.
- i. Travel, lodging, and transportation costs, unless specified as eligible in applicant guidelines for a funding category.
- j. Food, alcohol, or beverages for hospitality or entertainment functions.
- k. Projects where fundraising is the primary purpose of the project.
- l. Contributions and donations to other individuals or entities.
- m. Cash reserves and endowments.
- n. Fines and penalties, accumulated deficits, and debt reductions.
- o. Current City employees and their immediate families.
- p. Other government entities other than eligible institutions of higher learning as noted in Section 2(e) above.
- q. Applicants or activities that discriminate against any person on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability.

Additional exclusions, consistent with this Council Policy, may be specified in applicant guidelines for the category in which an applicant applies.

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3. Applications

- a. Funding applications will only be accepted online, except that accommodations may be made upon request for those with disabilities.
- b. It is the City's intent to provide advance notification of the application process to a wide distribution of potential individuals and entities that may be eligible for funding. Applications must be supported by appropriate documentation, and in accordance with the submission schedule as prescribed by the Mayor and promulgated in the applicant guidelines.
- c. The City will not accept or consider submissions submitted after any applicable cut-off time or date.
- d. Entity applications for funding must be accompanied by documents that demonstrate the existence of the applicant as a legal entity in good standing, as designated by the Mayor and promulgated in the applicant guidelines.
- e. Matching fund requirements will be determined by the appropriate application process as called for in the specific applicant guidelines within each priority area and category, if applicable.

4. Evaluation of Applications

- a. To assess and recommend funding under this Council Policy, departments evaluating applications for the Economic Development and Arts, Culture, and Community Festivals priority areas, will create a review and evaluation process that is consistent with this Council Policy.
- b. Unsuccessful applicants are encouraged to seek feedback from City staff on their application.

5. Funding Agreements

- a. All successful applicants are required to enter into a written agreement with the City setting out the terms and conditions before any funds are released. The agreement will specify in detail the services or functions to be performed, the nature of the payment or payment schedule, and the financial reporting requirements.
- b. Eligible expenses must be both incurred and paid by the recipient, and proof provided to the City, before the City will release funding to the recipient, except as otherwise may be provided.

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- c. Expenditures must be incurred during the City's fiscal year (July 1 – June 30) for which the recipient receives funding, except as otherwise may be provided.
- d. All agreements will provide that the City may withhold funds from the contracting recipients and terminate its entire obligation upon notice to the recipient if the recipient violates any of the terms of the agreement, or for other good cause shown that is not related to a violation of the terms of the agreement, including any determination by the Mayor or City Council to reappropriate or reprogram such funds. The Mayor shall thereafter advise the City Council of any termination notice made to the recipient. All awarded funds not utilized by recipient in accordance with the terms of the applicable written agreement, will revert back to the City for any appropriate use.
- e. The City's contract administrator shall determine compliance with the terms and conditions of agreements.

6. Mandatory Reporting

- a. Performance reporting shall be required of all funding recipients.
- b. Recipients may be required to deliver quarterly reports, or a mid-year report to the City's contract administrator detailing their progress in meeting the agreed upon scope of services.
- c. Recipients must also deliver a final performance report to the City's contract administrator detailing their success in meeting the agreed upon scope of services. The City's contract administrator will not approve the recipient's final invoice, or release payment for such invoice, until the recipient has submitted, and the City's contract administrator has approved, recipient's final performance report. The report shall also include a statement of compliance certifying that the recipient has complied with the terms and conditions of their written agreement with the City.

7. Financial Disclosure

- (a) Recipients receiving TOT funding must submit copies of true, accurate, and complete financial disclosure documentation evidencing the financial status of the recipient's last complete fiscal year as follows:

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- i. Recipients receiving TOT funds of \$10,000 or more, but less than \$75,000, within a single fiscal year must submit required financial disclosure documentation with their final performance report within 30 days of the end of the fiscal year. Such financial disclosure documentation must include a statement of activities for that fiscal year, and a statement of financial position for that fiscal year. Upon written request by the recipient, and in the sole discretion of the City's contract administrator, the recipient may be granted up to 60 additional days to comply with this requirement.
- ii. Recipients receiving TOT funds equaling \$75,000 or more within a single fiscal year, in addition to the documents required above, must submit the following:
 - A. Recipients with an operating budget under \$2 million must submit a financial review of the recipient's most recently completed fiscal year conducted by an independent certified public accountant within 150 days of the end of that fiscal year. The financial review must be prepared in accordance with generally accepted accounting principles.
 - B. Recipients with an operating budget of \$2 million or more must submit audited financial statements of the recipient's most recently completed fiscal year conducted by an independent certified public accountant within 150 days of the end of that fiscal year. The audit must be prepared in accordance with generally accepted auditing principles.

Upon written request by the recipient, and in the sole discretion of the City's contract administrator, the recipient may be granted up to 60 additional days to comply with this requirement.

- iii. Recipients receiving TOT funds in the amount of \$500,000 or more within a single fiscal year, when that funding represents more than 10% of the recipient's annual budget, must submit, in addition to the documents required above, salary and wage ranges for each of its job classifications, including actual executive salaries and benefits packages.

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- (b) Recipients must permit the City to inspect all financial documents and records at any time, and perform or require any audits the City reasonably desires. The City shall periodically monitor the records of recipients. As with all documents submitted to the City, the financial documents discussed above are subject to the California Public Records Act.

8. Compliance with General Requirements and Conditions

- a. All applicants must be in good standing as determined by the City's contract administrator during the application phase.
- b. Failure to comply with the terms and conditions of the written agreement could result in the suspension of any current remaining funding, at the discretion of the City's contract administrator.
- c. Non-compliance with any terms and conditions of the written agreement could result in being disqualified from reapplying to or contracting with the City for future fiscal years until the recipient comes into full compliance.