

RULES JUN 13 2012 #1

THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: June 7, 2012 REPORT NO: 12-074

ATTENTION: Committee on Rules, Open Government and Intergovernmental Relations

SUBJECT: City Council Funding of Arts, Culture and Community Festivals with Discretionary Transient Occupancy Tax Allocation

REQUESTED ACTION: Approve the recommendation.

STAFF RECOMMENDATION: Approve the new Council Policy for City Council Funding of Arts, Culture and Community Festivals with Discretionary Transient Occupancy Tax Allocation and forward to the City Council with direction to the City Attorney to prepare a resolution approving the Council Policy.

SUMMARY:

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*." These funds are used at the discretion of the Mayor and City Council Offices on an annual basis.

Annual City Council discretionary TOT funding levels are subject to the amount of Transient Occupancy Tax [TOT] allocated to each Councilmember in a given fiscal year as part of the annual budget process. In Fiscal Year [FY] 2012, \$20,000 was allocated to the Mayor's Office and \$25,000 was allocated to each Council Office. The Proposed FY 2013 funding level for each Council Office has been increased to \$40,000.

On June 18, 2007, Mayor Jerry Sanders issued a memorandum stating that, since these funds are disbursed at the discretion of the Councilmembers, each Council District should be responsible for managing and accounting for his/her own TOT allocations awarded to non-profit organizations. At that time, the current practice allowed Council Districts to allocate funds from the *Mayor and City Council Allocations* budget line item to: (1) augment TOT contracts awarded to non-profit organizations that had gone through the City of San Diego Commission for Arts and Culture's [Commission's] application and evaluation process; or (2) award stand-alone contracts to non-profit organizations that had not gone through any application or evaluation process [Stand-Alone Contracts].

On March 24, 2010, the City Attorney issued a memorandum relating to the Stand-Alone Contracts and opined that they were contrary to the express language of Council Policy 100-03. The City Attorney also stated that there are no exceptions in Council Policy 100-03 allowing the Mayor or City Council Members to fund non-profit organizations that have not gone through the application/evaluation process contemplated in that Policy. As such, Council TOT funding of non-profit organizations outside of such process was suspended.

It is the purpose of this new policy [New Policy] to establish 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 operational expenses and/or their sponsorship of special events at the discretion of each Councilmember during the fiscal year.

### POLICY DISCUSSION

During the past several months, Council Administration has worked with the City Attorney's Office and the Office of the IBA to develop a new Council Policy and an application process that will allow Council the ability to award Arts, Culture and Community Festivals [ACCF] funds to non-profit organizations that did not receive funds from the Commission as a result of either being ineligible, or failing, to apply to the Commission and go through its evaluation process..

The process for awarding funding under the New Policy has been modeled after Council Policy 100-06, which outlines the process and criteria to be used by City Council Offices to award Community Projects, Programs, and Services funds to non-profit organizations or agencies. Under this process, Council District Offices and Council Administration are responsible for much of the substantive contract administration with Mayoral staff still required to fulfill certain administrative roles.

Under the New Policy to fund ACCF, organizations must meet the following requirements:

1. Be a legally recognized non-profit and/or tax-exempt status entity.
2. Be financially solvent and submit the most current Internal Revenue Service [IRS] Form 990 at the time of application.
3. Disclose all sources of funding to the organization, including all funding for the specific project request.
4. Enter into an agreement with the City that delineates the responsibilities of the organization with respect to the use of funds awarded and stipulating that all expenses shall be documented in accordance with the terms of said agreement.

Other funding requirements include:

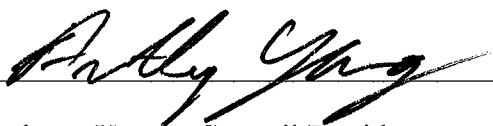
- ACCF funding must be approved by Council resolution
- Funds are not permitted to be used for food, beverages or travel. Funds shall not be used for any private purpose, political, religious or fundraising activities

- ACCF funding should be considered a one-time resource, and planned uses should be one-time in nature, to avoid service interruptions or employee impacts if funding is discontinued
- Council Offices should encourage applicants to seek matching funds outside of ACCF funding, but it is not a requirement to have matching funds
- Each Council District shall recommend funding recipients based on its review of the application materials and supporting documentation from all applicants that have complied with the requirements
- There is a proposed minimum funding amount of \$1,500
- Information pertaining to each award of ACCF funding under this New Policy shall be posted on the City's website including, but not limited to, the name of the recipient organization, the amount of the award, the Council District making the award, and the designated use of such funds (which use was specifically authorized by Council).
- Expenditures must occur in the same fiscal year in which funds are awarded
- Funding will only be authorized on a reimbursement basis only


Organizations will be encouraged to apply for funds through the Commission's annual application process.

### CONCLUSION

Over the past several months, Council Administration has worked with the City Attorney's Office and the IBA to develop a process that would allow Council Offices to use ACCF funds to contract with non-profit organizations. Under this process, Council District Offices and Council Administration would be responsible for much of the substantive contract administration, therefore, minimizing any burden on Mayoral staff.



Anthony Young, Council President



Lori Witzel, Director, Council Administration

### Attachments(s):

- 1) Draft Council Policy
- 2) City Attorney memorandum dated 3/24/2010

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

SUBJECT: CITY COUNCIL FUNDING OF ARTS, CULTURE AND  
COMMUNITY FESTIVALS WITH DISCRETIONARY TRANSIENT  
OCCUPANCY TAX ALLOCATION  
POLICY NO.: [       ]  
EFFECTIVE DATE: \_\_\_\_\_, 2012

PURPOSE:

It is the purpose of this policy to establish a set of uniform guidelines, conditions and criteria governing the application for, and granting of, funds to private nonprofit organizations for the purpose of supporting their ongoing operational expenses and/or their sponsorship of special events at the discretion of each Councilmember during the fiscal year.

Annual funding levels are subject to the amount of Transient Occupancy Tax [TOT] allocated to each Councilmember in a given fiscal year.

POLICY:

It is the policy of the City Council that:

1. The aggregated, proposed funding level for annual allocations for Arts, Culture and Community Festivals [ACCF] from TOT for the Mayor and Council Offices is included each year in the Special Promotional Programs section of the Mayor's Proposed Budget.
2. Funding for ACCF from each Councilmember's annual allocation of TOT may be provided to private nonprofit organizations that produce programs, projects and events that (i) provide access to excellence in culture and the arts for residents of, and visitors to, San Diego, and (ii) enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
3. Funds are not permitted to be used for food, beverages, and travel. Funds shall not be used for any private purpose, political, religious or fundraising activities.
4. ACCF funding should be considered a one-time resource, and planned uses should be one-time in nature, to avoid service interruptions or employee impacts if funding is discontinued.

5. ACCF funding is not permitted to be utilized for administrative expenses related to the Council District.
6. Each grant of ACCF funding to a private nonprofit organization must be done by Council resolution.
7. The allocation of ACCF funding under this Policy shall be posted on the City's website, including the name of the recipient organization, the amount of funding, the Council District from which funds were allocated, and the designated use of such funds that was authorized by Council.

#### PROCEDURE TO AWARD FUNDS:

1. Funding allocations for nonprofit organizations:
  - a. Types of Funding Allowed:
    - i. Organizational Support: Funds may be awarded to provide annual, ongoing, general operating support for nonprofit, tax-exempt arts and culture organizations that emphasize delivering programs and services that positively impact quality of life and tourism in San Diego.
    - ii. Project/Event Support: Funds may be awarded to provide support for community-based festivals, parades and other celebrations, with an emphasis on projects and events which promote neighborhood pride and community reinvestment.
  - b. Each Council District shall recommend funding recipients based on its review of application materials and supporting documentation from all applicants that have complied with the requirements herein, including the requirements in the application.
  - c. Council Offices are encouraged to group recommended allocations for approval at a meeting of City Council.
  - d. Council Offices should encourage applicants to seek matching funds outside of ACCF funding. The availability of matching funds is to be considered by the Council District when considering an application for funding.
2. Funding Eligibility: To be eligible for ACCF funding, each nonprofit organization must:
  - a. Be a legally recognized nonprofit and/or tax-exempt status entity.
  - b. Be financially solvent and submit the most current Internal Revenue Service [IRS] Form 990 at time of application.

- c. Disclose all sources of funding to the organization; including all funding for the specific project request. Private funding may be listed as "Private Funding." The source of private funds does not have to be identified.
  - d. Enter into an agreement [Funding Agreement] with the City that delineates the responsibilities of the organization with respect to the use of funds awarded and stipulating that all expenses shall be documented in accordance with the terms of the Funding Agreement.
  - e. Acknowledge that all documents related to the funding request, including application materials, the Funding Agreement and expenditure documentation are a matter of public record and as such, may be provided to members of the public.
  - f. Recognize that submission of an application for funding does not guarantee in any way that an organization will receive funding.
  - g. Demonstrate that the majority of its activities take place within the San Diego City limits and/or benefit City residents.
3. Application: Each organization requesting funding must submit the standard Arts, Culture and Community Festivals Application to the Council District from which it is requesting funds.
- a. The application and supporting documentation must comply with all requirements herein, as well as those enumerated in the application and its instructions.
  - b. A request for funding and subsequent allocation may not be less than \$1500.
  - c. Applicant organizations must adequately describe how they will use any awarded ACCF funds and how that use will fulfill the purpose stated in this Council Policy. It must be clear from this description that each program, project or event to be supported by any awarded ACCF funding will be open to the public.
  - d. Applicant organizations must notify Council Districts if they have submitted multiple funding requests for the same (or any other) project to any other Council District or to the City's Commission for Arts and Culture.
  - e. Applicant organizations must disclose all prior funding received from the City in the last three years, including a brief description of how those funds were used, the amount of funds received and the source of funding.
  - f. A Council District may not ask for less documentation than what is required under this Council Policy, the standard application, and the application instructions, but may ask for more documentation at its discretion.

- g. An organization may not apply to receive funding for an event or program which has already occurred, nor any goods, supplies or materials which have already been purchased.

4. Execution of Funding Agreement:

- a. Funds will only be provided on a reimbursement basis. Funds will not be reimbursed without the documentation required under the Funding Agreement.
- b. Organizations must submit the required reimbursement documentation within sixty (60) days of expenditure, and no later than thirty (30) days after the end of the City's fiscal year.
- c. Funding is awarded by fiscal year only. Expenditures must occur in the fiscal year in which funds are awarded. Requests for reimbursement for expenditures made outside of the fiscal year in which funding is allocated will not be processed.
- d. If an organization is delinquent in providing the documentation required for ACCF funding under this Policy, or any other City program or Policy, funding will not be guaranteed.
- e. The Funding Agreements under this program will be administered by the Mayor or his/her designee, with assistance from Council Administration.
- f. If the recipient organization chooses to give written recognition for the funding received, it shall recognize the City of San Diego, not individual Council Members nor individual Council Districts.

HISTORY:

"City Council Funding of Arts, Culture and Community Festivals with Discretionary Transient Occupancy Tax Allocation"

Adopted by Resolution R-[        ] – \_\_/\_\_/2012

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

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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

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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.*

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**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.

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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.

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- 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

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**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.

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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.



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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.

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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.

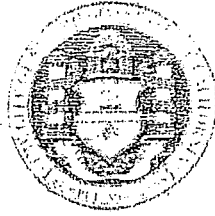
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3. If City funding is \$75,000 or greater, audited financial statements, including items a and b above, must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent Certified Public Accountant, in 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

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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