

CITY OF LOS ANGELES

CALIFORNIA

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Council File No.



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December 12, 2014

To All Interested Parties:

The City Council adopted the action(s), as attached, under Council File No. 13-0933, at its meeting held December 10, 2014.



City Clerk
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ARTS, PARKS, HEALTH, AGING AND RIVER AND AUDITS COMMITTEE REPORT relative to expenditure plans, Arts Development Fee (ADF) Program Administrative Guidelines, collections, and disbursements in connection with the ADF Program.

Recommendations for Council action:

1. INSTRUCT the Department of Cultural Affairs (DCA) to:
 - a. Submit final expenditure plans reflecting current discussions with all Council Districts for funds expiring at the end of the 2014 calendar year to the City Council for review and approval.
 - b. Report to the Council on an annual basis with expenditure plans for all Council Districts, and include any updates and adjustments to expenditure plans that may be necessary and have been approved by the affected Council District.
 - c. Provide to each Council Office on a quarterly basis the amount of Arts Development Fees collected and how these fees are being expended, and include the quarterly meeting schedule in the Administrative Guidelines.
 - d. Submit to Council on an annual basis a status report on ongoing public arts projects relative to the Public Works Improvements Arts Program.
 - e. With the assistance of the City Attorney, update letters of agreements and certificates of deposits which guarantee the construction of an art project in the Developer-Led Program.
 - f. Conduct an analysis to determine the amount of additional Arts Development Fees generated upon adjustment of the Consumer Price Index.
 - g. Report to the Arts, Parks, Health, Aging and River (APHAR) Committee in 30 days in regard to Recommendation No. 1f.
2. APPROVE the DCA's new Arts Development Fee (ADF) Program Administrative Guidelines as detailed in Attachment A of the November 25, 2014 DCA report, attached to the Council file.
3. APPROVE the public art project commitments and associated findings in connection with a total of \$1,730,903.64 in arts development fees identified in the Fiscal Year 2014-15 ADF Expenditure Plan & Fee Status Report as detailed in Attachment B of the November 25, 2014 DCA report, attached to the Council file.

Fiscal Impact Statement: The Chief Legislative Analyst (CLA) reports that approval of the recommendations contained in its November 25, 2014 report, attached to the Council file, will not have a fiscal impact to the General Fund. The DCA reports that it recovers an 18 percent administrative fee which provides partial reimbursement of eligible staff time devoted toward the implementation of Arts Development Fee-funded projects. The DCA states that it intends to request additional staff to implement the program as part of the City's annual Budget process. According to DCA, available Arts Development Fees are sufficient to complete the majority of art projects but

DCA, available Arts Development Fees are sufficient to complete the majority of art projects but grant funds will be used as-needed to complete projects.

Community Impact Statement: None submitted.

Summary:

On December 1, 2014, the Arts, Parks, Health, Aging and River and Audits Committees considered November 25, 2014 CLA and DCA reports relative to expenditure plans, Arts Development Fee (ADF) Program Administrative Guidelines, collections, and disbursements in connection with the ADF Program. According to the CLA, on November 20, 2013, Council approved Motion (Huizar- O'Farrell - Cedillo; Council File No. 13-0933) instructing the CLA, with the assistance of various City departments and in consultation with the City Attorney, to report with recommendations and a draft Ordinance to update the process for collecting and disbursing funds relative to the Arts Development Fee.

As part of its consideration of the Motion, the Council also adopted recommendations from the Budget and Finance Committee to instruct the CLA to review options to expand the use of the Arts Development Fees (Council File No. 13-0933). The CLA, City Attorney, and DCA met to discuss the status of unexpended Arts Development Fees, expenditure plan development for projects located in all Council Districts, and any necessary recommendations and/or Ordinances to effectuate expenditure plans and expand use of the funds.

The CLA then stated that according to the DCA, it has:

- a. Met with all Council Districts to develop and finalize expenditure plans for \$1.3 million in fees that will expire in December 2014.
- b. Developed Arts Development Fee Program Administrative Guidelines to provide a framework for the development and implementation of expenditure plans in the future.

The recommendations contained in the November 25, 2014 CLA report primarily address the Arts Development Fee Paid-In Program (Paid-In Program). The report also contains additional recommendations to ensure that developers comply with the requirements of the Arts Development Fee Developer-Led Program (Developer-Led Program) and effectuate reports to Council for the Public Works Improvement Art Program (PWIAP). Developers who participate in the Developer-Led Program receive a credit and are exempt from paying the Arts Development Fee. The Paid-In Program and the Developer-Led Program are administered by the DCA, and the originating department uses funds for the PWIAP for the public arts project administered by the DCA.

The City established the Arts Development Fee Trust Fund (Trust Fund) based on the California Mitigation Act. In 1988, the Arts Development Fee program was established by Ordinance No. 164243 for the purpose of mitigating the additional burden that private development places on the City's existing art and cultural services, facilities, and community amenities, among other items (Council File No. 85-1794). The amount of the fee will not exceed \$1.57 per gross square foot of any structure or one percent of the valuation of the project, whichever is lower, as determined by the Department of Building and Safety. The DCA reports that the Arts Development Fee Program complies with the tenets of a 1991 Nexus Study and the Cultural Master Plan. At this time, the fee is assessed on commercial development such as office buildings, retail establishments, warehouses, and hotels. Housing developments, religious institutions, and schools are exempt.

If the Council desires to alter the reach of the Arts Development Fee to cover more than the current types of properties, further research will be required, including legal review by the City Attorney. Allowable uses for the expenditure of Arts Development Fees include acquisition or placement of publicly accessible works of art, acquisition or construction of arts or cultural facilities, provision of arts and cultural services, and restoration or preservation of existing works of art. Examples of allowable permanent public art include sculpture, murals, photographs, film, holographic and video projections. Examples of allowable temporary projects include performing arts, literary arts, media arts (including film and video), lectures, presentations and training relative to arts and culture, and tours, and performances.

There are two options used to fund art projects on private developments: 1) the Developer-Led Program, and 2) the Paid-In Program. For the Developer-Led Program, a developer designs and constructs an artistic or cultural amenity as part of its development. For the Paid-In Program, developers are required to pay a fee to the City which, in turn, is used to fund an art project. For the Developer-Led Program, the DCA obtains a letter of credit or a certificate of deposit to ensure that a developer will construct the required art project. Similarly, the PWIAP requires that one percent of the cost for a City capital project be set aside to fund an art component and that these funds be deposited into the Arts and Cultural Facilities and Services Trust Fund. The DCA indicates that it will prepare an annual status report on PWIAP projects and will submit to Council for review.

On October 28, 2013, the Budget and Finance Committee also considered the Motion and requested that the report include additional information related to the Arts Development Fee. The Committee requested that the CLA review options to expand the use of the Arts Development Fee. Specifically, Committee requested the DCA to report in regard to:

- a. Changing the fee allocation process for off-site art to be in line with the process for onsite art; specifically in regards to performing arts as opposed to visual arts. In response, the DCA stated that the fee allocation process is the same for off-site art and on-site art, and is outlined in the proposed Administrative Guidelines which describe the overall structure of the Arts Development Fee Program. The City Attorney has confirmed that Arts Development Fees may be used for visual and performing arts.
- b. The extent legally permissible, review options to allow fee revenue for visual and performing arts in addition to physical arts within a specific radius of development. The City Attorney advises that fee revenue may be used for visual and performing arts in addition to physical arts as long as a reasonable relationship between the development and the proposed art project is demonstrated. The DCA will work with each Council District to utilize fees to construct art projects within the Council District from which they were generated to ensure the needs of the Council District are being addressed.
- c. Review feasibility of using funds for citywide arts programs including arts education programs to benefit everyone in the City including those in the development projects. In conjunction with the City Attorney, the DCA reviewed the use of Paid-In Program fees to support citywide arts programs including arts education programs. The City Attorney has confirmed that the DCA may utilize Arts Development Fees for these purposes provided.

The CLA went on to state that in regard to the use and expenditure of funds, the City Attorney previously advised the DCA that since the Municipal Code is based on the State Mitigation Fee Act, the City must demonstrate a reasonable relationship between the development project and the

impact of the fee. In addition, the language in the Municipal Code states that such "artistic facilities, services and community amenities will be available to the development project and its future employees." Therefore, in 2007, the City Attorney recommended that the fee's permitted use be focused on a one-block geographical radius around the Developer Paid-In Program projects. The City Attorney also offered to review and advise on any proposals to spend fees on projects that were beyond the one block radius by examining in each circumstance the nexus between the source of the fee and the project. As a result, the DCA found it difficult to expend the funds and funds have accrued.

Subsequently, the City Attorney worked with City stakeholders, including the DCA, to define new parameters for the expenditure of funds. Consistent with the 1991 Nexus Study, the City Attorney has indicated that as long as a reasonable relationship between the development and the project is demonstrated and that the services are available to future development employees, a wider geographic parameter can be consistent with the law on a case by case basis and does not require a new Ordinance. Due to this interpretation, the DCA has met with all Council Districts to discuss and finalize expenditure plans for \$1.3 million portion of unexpended Arts Development Fees that are scheduled to expire unless Council makes certain findings. The DCA will meet with Council Districts in the near future to discuss and develop expenditure plans for the balance that do not require Council to make findings at this time. In future years, the DCA will meet annually with Council Districts to develop and discuss expenditure plans which will be transmitted to the City Council for approval. The DCA will also meet with Council Districts throughout the year to incorporate any changes in the following year's expenditure plan. In addition, the DCA states that interest funds and savings from completed projects will be used for projects provided that the reasonable relationship requirement is met. The DCA reports that it will transmit expenditure plans for the \$1.3 million in expiring fees to Council under separate cover in the near future prior to expiration.

Finally, the CLA stated that the DCA has prepared Administrative Guidelines which provide a framework for the implementation of the Arts Development Fee. The Administrative Guidelines provide an enumeration of the allowable permanent and temporary art projects, the organizational structure of the DCA which implements the program, arts provider selection procedure, and articulate the requirement that a reasonable relationship exists between the use of the fee and the type of development on which the fee is imposed. The Administrative Guidelines also note that the Arts Development Fee Program must comply with the tenets of the 1992 Cultural Masterplan, which includes equity in the arts, youth and education, and cultural infrastructure.

After further consideration and having provided an opportunity for public comment, the two Committees moved to recommend approval of the recommendations A through F as contained in the November 25, 2014 CLA report and Recommendation Nos. 1 and 2 as contained in the November 25, 2014 DCA report, as detailed in the above recommendations. Additionally, the Committees moved to recommend instructing the DCA to report to the APHAR Committee in 30 days in regard to Recommendation F in the CLA report. This matter is now submitted to Council for its consideration.

Respectfully Submitted,

ARTS, PARKS, HEALTH, AGING AND RIVER COMMITTEE

A handwritten signature in blue ink, appearing to read "M. J. O. Z. A.", is written over the typed name of the committee.

MEMBER VOTE

O'FARRELL: YES

LABONGE: YES

BUSCAINO: YES

CEDILLO: YES

PRICE: ABSENT

AUDITS COMMITTEE



MEMBER VOTE

MARTINEZ: YES

PARKS: ABSENT

BLUMENFIELD: YES

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12/1/14

ADOPTED

DEC 10 2014

LOS ANGELES CITY COUNCIL

FORTHWITH

-NOT OFFICIAL UNTIL COUNCIL ACTS-