

CITY OF LOS ANGELES

CALIFORNIA



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November 25, 2014

Los Angeles City Council
c/o City Clerk's Office
Room 395, City Hall
Los Angeles, CA 90012

Attention: Mr. Adam Lid, Office of the City Clerk

**ARTS, PARKS, HEALTH, AGING AND RIVER COMMITTEE & AUDITS COMMITTEE:
REQUEST FOR REVIEW AND APPROVAL OF THE DEPARTMENT OF CULTURAL AFFAIRS
ARTS DEVELOPMENT FEE (ADF) PROGRAM ADMINISTRATIVE GUIDELINES AND FY14-15
ADF EXPENDITURE PLAN & FEE STATUS REPORT**

This report and its attachments are submitted in response to instructions adopted by the City Council by motion (CF# 13-0933), and address recommendations provided by the City Controller (CF# 14-0464). This report and its attachments also serve as supplemental information to the Chief Legislative Analyst (CLA) report regarding the ADF program.

In addition, under new program guidelines submitted herein, this report identifies and commits \$1,730,903.64 in arts development fees toward eligible public art projects throughout the City. Due to the date of collection of the majority of these fees, Los Angeles Municipal Code Section 5.346, et al, which is based on the State Mitigation Fee Act, requires the Department and City Council approve a set of findings for these fees before December 31 of this year. As such, DCA prioritized the commitment of these "Priority Fees" in this report.

Almost 25 years after the establishment of the Arts Development Fee (ADF) Program, the updates and recommendations being presented to the City Council and Mayor for consideration provide the City of Los Angeles with a renewed opportunity strengthen its investment in the creation and support of high quality, publicly accessible art and cultural activities that make our communities more livable, enhance the quality of life of our residents, attract new visitors to our region and generate local economic activity.

RECOMMENDATIONS

That the City Council, subject to the approval of the Mayor:

1. **APPROVE** the Los Angeles Department of Cultural Affairs' new Arts Development Fee (ADF) Program Administrative Guidelines (Attachment A).
2. **APPROVE** the public art project commitments and associated findings relative to a total of \$1,730,903.64 in arts development fees identified in the FY2014-15 ADF Expenditure Plan & Fee Status Report (Attachment B).

BACKGROUND

The Arts Development Fee (ADF) Program was established by ordinance in 1988, revised in 1991, and codified in Los Angeles Municipal Code Section 91.107.4.6 and the Los Angeles Administrative Code Section 5.346. The ADF Program complies with the California Mitigation Fee Act and adheres to the tenants of a Nexus Study and a Cultural Master Plan adopted in 1992 by City Council.

The ordinance requires private developers of non-residential development projects valued over \$500,000, to pay an arts fee or complete an arts projects equivalent to the value of the arts fee. If the developer chooses to pay the arts fee, the amount is based on square foot rate calculation or one percent of the valuation of the project designated on the permit, or whatever is lower, as determined by the Department of Building and Safety.

From 1991 to 2007, arts development fees were used by Department of Cultural Affairs to support a variety of arts and cultural activities. In 2007, a restriction was placed on the use of arts development fees that limited the expenditure of the fee to a one-block geographic radius of the related private development project that generated the fee. This restriction severely limited the Department's ability to effectively deploy these resources and resulted in the accumulation of a large cash balance in the Arts Development Fee Trust Fund.

On July 23, 2013 Councilmember Huizar and Councilmember O'Farrell co-presented a motion (CF 13-0933), which was further modified by Committee, instructing the Chief Legislative Analyst (CLA) and DCA, with the assistance of the City Attorney, to report back regarding updates to the Arts Development Fee Program, including changes to the amounts collected and the process for collecting and disbursing funds, as well as recommendations for expanding the types of projects generating arts development fees and expanding the allowable use of fees collected.

On April 11th, 2014 City Controller Ron Galperin released an audit of the City's Percent for Art Programs. The audit identified significant issues related to "paid-in" arts development fees, most notably the accumulation of a large cash balance in the ADF Trust Fund.

In response to the City Council motion and the City Controller's audit, from May, 2014 to November 2014, the Department of Cultural Affairs participated in working group meetings with the Mayor's Office, City Attorney, CLA, CAO and other relevant City agencies to address the instructions and recommendations referenced above. As a result of these meetings, it was determined that DCA would develop new administrative guidelines for the purpose of clarifying the goals, allowable uses,

geographic parameters, expenditure and artist selection procedures, and other administrative matters associated with the ADF Program.

ARTS DEVELOPMENT FEES PROGRAM ADMINISTRATIVE GUIDELINES

The new ADF Program Administrative Guidelines (Attachment A) have been developed with the assistance of the City Attorney and the Office of the CLA. These new guidelines are intended to ensure the administration of “paid-in” arts development fees remains in compliance with the State Mitigation Fee Act and the Los Angeles Administrative Code, while removing the former “one-block radius” restriction that has limited the use of these arts-dedicated resources.

These new guidelines provide the City with a renewed opportunity to strengthen its investment in the creation and support of high quality, publicly accessible art and cultural activities that make our communities more livable, enhance the quality of life of our residents, attract new visitors to our region and generate economic activity.

Key provisions of the ADF Administrative Guidelines include the following:

- Arts development fees can be used to support the acquisition or placement of art, the acquisition or construction of arts or cultural facilities, the provision of arts and cultural services, or the restoration or preservation of existing works of art. In addition, arts development fees can support traditional permanent public art, such as sculpture and murals, as well as temporary public art, such as cultural community festivals, and performing arts or placed-based arts and cultural initiatives.
- The use of arts development fees are no longer limited to a one-block geographic radius restriction. However, DCA must establish a “reasonable relationship” for each proposed arts development fee-supported project that demonstrates the relationship between the use of the fee and the development that generated the fee. In order to meet this reasonable relationship:
 - Fees must be used to support free and accessible public art, which also must be made available to the future employees located at the original development that generated the fee.
 - Fees must support public art projects consistent with the City’s Cultural Masterplan, per the 1992 Nexus Study.
 - Fees can be “pooled” or “clustered” together in order to assemble adequate public art project funding, as long as a reasonable relationship to each development generating the fee can be demonstrated.
 - The reach or scope of a proposed public art project informs the geographic radius from which private arts development fees can be used. For example, a Citywide festival that draws regional visitors may be supported by fees generated by

developments located throughout the City. However, a local mural project in a residential community may only be supported by fees generated by a by a private development in closer proximity to the location of the mural. In either case, a reasonable relationship determination will need to be made.

- DCA will work with City Council offices and the Mayor's office throughout the fiscal year to develop and implement ADF supported public arts projects. For reporting purposes, each fiscal year the DCA will develop an ADF expenditure plan and status update report. The report will be transmitted to City Council for its review and any necessary approvals.
- DCA will select artists and arts organizations for arts development fee project and program commissions using a variety of standard methods including; Request for Proposals (RFPs), Request for Qualifications (RFQs), Direct Commission and "Artist of Record" Commission (for artwork restoration projects), and Nomination-based selection.
- DCA may retain up to an 18% administrative fee for ADF supported public art projects to support staff costs, similar to the 1% for Public Art program.
- Interest earnings must accrue and be used in tandem with the original arts development fee collected.

The new administrative guidelines will allow for the effective and transparent deployment of these art-dedicated resources citywide. The administrative guidelines also articulate the types of projects that can be supported while ensuring that these resources remain consistent with the intent of the original ordinance.

SUMMARY OF THE FY2014-15 ADF EXPENDITURE PLAN & FEE STATUS REPORT

In response to the Controller audit referenced above, and at the recommendation of the City Attorney, the Department of Cultural Affairs developed an FY2014-15 ADF Expenditure Plan and Fee Status Report (ATTACHMENT B) in addition to the administrative guidelines.

The FY2014-15 ADF Expenditure Plan & Fee Status Report provides an accounting of **\$7,905,781** in unspent arts development fees, listed by the Council District in which the associated private development that generated the fee is located. Of this total, the report identifies and commits \$1,730,903.64 in arts development fees toward eligible projects and provides associated findings required by the State Mitigation Fee Act. Due to the date of collection of the majority of the \$1,730,903.64 in fees, the State Mitigation Fee requires that the City Council approve a set of findings for these fees before December 31 of this year. As such, DCA prioritized the commitment of these "Priority Fees" in the report.

The chart below provides a breakdown of committed arts development fees and uncommitted arts development fees by City Council District:

Council District	Priority Fees (Committed Fees)	Uncommitted Fees	Total
CD1	\$75,766.49	\$582,560.88	\$658,327.37
CD2	\$36,855.10	\$286,167.70	\$323,022.80
CD3	\$88,592.15	\$370,037.74	\$458,629.89
CD4	\$113,183.56	\$542,105.85	\$655,289.41
CD5	\$46,374.77	\$339,444.71	\$385,819.48
CD6	\$37,598.46	\$406,877.25	\$444,475.71
CD7	\$186,766.72	\$300,697.50	\$487,464.22
CD8	\$68,006.49	\$222,273.29	\$154,266.80
CD9	\$441,542.07	\$753,176.99	\$1,194,719.06
CD10	\$23,131.93	\$239,859.92	\$262,991.85
CD11	\$0.00	\$369,758.21	\$369,758.21
CD12	\$21,562.09	\$189,266.08	\$170,641.43
CD13	\$354,450.91	\$581,048.46	\$935,499.37
CD14	\$183,897.39	\$717,766.22	\$901,663.61
CD15	\$53,175.54	\$359,887.19	\$413,062.73
	\$1,730,903.64	\$6,174,877.92	\$7,905,781.56

Consistent with the proposed administrative guidelines, the Department worked closely with each City Council office to develop project commitments for the \$1,730,903.64 in arts development fees (labeled "Priority Fees" above).

As part of the development of proposed ADF funded projects, DCA identified five public art project typologies for consideration, including: Permanent Public Art; Temporary Public Art; Arts Corridors; Cultural Facilities; and, Public Art Conservation. The investment of ADF funding in these areas will allow for the immediate activation of the street life of the City, creation of new public artworks in parts of the city where there is very little publicly accessible art, improvement of the visual identities of communities, and provide free, outdoors and publically accessible arts activities to communities and the users of private development sites. \$581,048.46

IMPLEMENTATION AND STAFFING

As a result of the ADF Program lying relatively dormant for the last seven years, DCA is not currently authorized staffing resources sufficient to manage and administer the deployment of this ADF Program funding. For the current fiscal year, DCA plans to begin implementation of the proposed projects associated with the project commitments totaling \$1,730,903.64, utilizing existing staff and filling one authorized vacant position.

Of the proposed \$1,730,903.64 in project commitments, up to \$311,562.66, or an 18% administrative fee, is available to be used to support staffing resources, leaving a balance of \$1,419,340.98 available directly for public art projects and programs.

In an effort to plan for the increased workload associated with the oversight and management of the remaining ADF resources totaling \$6.17 million, DCA has requested two additional full-time positions and two part-time positions as part of its FY2015-16 Budget Submittal, which can similarly be funded by the allowable 18% administrative fee. DCA requests consideration of these positions in the upcoming City budget deliberation process.

In addition, the Department has various streamlined processes in place for the implementation of a wide variety of public art projects. For example, DCA currently has existing pre-qualified lists of artist and arts organizations available to perform arts related services. Similarly, the Department's recently established mural program and registration process can support the creation of new murals and conservation of existing murals. DCA will also rely on existing contract templates to expedite the delivery of public art projects citywide.

FISCAL IMPACT

There is no impact on the City's General Fund, as it relates to this report.



DANIELLE BRAZELL
General Manager

DB: mr/ff

Attachments: A - ADF Program Administrative Guidelines
 B - FY2014-15 ADF Expenditure Plan & Fee Status Report

Cc: Doane Liu, Deputy Mayor, City Services
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