

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: March 21, 2014

TO: Honorable Members of the Budget and Finance Committee and the
Arts, Parks, Health, Aging and River Committee

FROM: Gerry F. Miller
Chief Legislative Analyst

Council File: 13-1469
Assignment No: 13-12-1077

Zoo Department Business and Marketing Plan and Memorandum of Understanding with the Greater Los Angeles Zoo Association

SUMMARY

The Memorandum of Understanding for Marketing/Public Relations and Site Rentals/Catering (MOU; Attachment) between the Zoo Department (Zoo) and the Greater Los Angeles Zoo Association (GLAZA) (C.F. 13-0600-S119) was originally introduced to Council during the 2013-14 Budget deliberations. The Mayor's Proposed 2013-14 Budget for the Zoo assumed that the MOU would be ratified by Council. On May 23, 2013, Council approved a recommendation from the Office of the Chief Legislative Analyst (CLA) to consider the MOU in greater detail and make a final determination by June 30, 2013 as to whether the MOU should be implemented or deferred until the Los Angeles Zoo Strategic Business and Marketing Plan Fiscal Year 2014-15 through Fiscal Year 2016-17 (Plan) was submitted to Mayor and Council for approval.

On June 24, 2013, the Budget and Finance Committee considered the CLA report, dated June 21, 2013, which further analyzed the MOU and recommended that Council: (1) reject the MOU and all other agreements, whether new or previously existing, until the Plan has been submitted to Council; and (2) authorize the Zoo to expend funds for marketing, advertising and public relations on its own. In addition, the CLA recommended the Zoo to retain a larger portion of LA Zoo membership revenues and consider the possibility of contracting directly for concession, site rentals and catering, rather than allowing GLAZA to do so. The Committee sent the matter to Council with the following options:

- A. Defer the ratification of the MOU and all other agreements for 60 days until the Plan was submitted to Council along with similar instructions recommended by the CLA, including membership revenue retention and consideration of direct concession contracting; or
- B. Approve the MOU with no further instructions to the Zoo or other relevant departments.

On June 28, 2013, the Council received and filed the Budget and Finance Committee Report with the above options relative to the proposed MOU. Due to the fact that the Committee Report was not acted upon, the MOU remained in effect, including the ratification clause that required the Zoo to submit its Plan to the Council no later than November 1, 2013 and that Council approve the Plan and ratify the MOU no later than December 31, 2013. On November 1, 2013, the Zoo submitted a three-year Plan (2014-15 through 2016-17).

On December 9, 2013, the Arts, Parks, Health, Aging and River (APHAR) and Budget and Finance Committees jointly considered the Plan and City Administrative Officer report which recommended that Council: (1) Approve the Plan; and (2) Ratify the MOU. In its consideration, the Committees instructed the CLA to further analyze the Plan and make recommendations for any amendments, if necessary, to both the Plan and the MOU with GLAZA. The deadline to ratify the MOU was changed to March 31, 2014. An amendment to the MOU, executed on December 26, 2013 by the Zoo and GLAZA, has reflected this change (Attachment B).

DISCUSSION

Pursuant to Committee instructions, our Office reviewed the MOU and Plan and coordinated with the City Attorney to recommend the following revisions based on previous Committee instructions:

- A. The City shall have the right to terminate the MOU should GLAZA not achieve the following milestones as they compare to Fiscal Year 2013-14 actual revenues:
- 5 percent annual increase of the Zoo's paid attendance
 - 11 percent annual increase of the Zoo's total admission revenue
 - 10 percent increase of the Zoo's other earned revenue from concessions
 - Dollar amount of membership revenues as projected in the Plan

Upon reconciliation of each fiscal year's actual amounts and within 60 days of the end of the fiscal year, should GLAZA not achieve the milestones above, a plan to cure the shortfall should be prepared by the CLA, CAO, Zoo and GLAZA and reported to Council within 90 days. From that time, GLAZA will have six months to cure the shortfall, and if not mitigated, the City will have the right to terminate the contract.

- B. GLAZA and the Zoo to report to the Arts, Parks, Health, Aging and River Committee every six months on performance metrics listed above with regards to the Business and Marketing Plan, including demographic information, concessions revenue updates, special event details (number of events, event costs, and profit/loss information), and any further details regarding any improvements to Zoo revenue based on GLAZA marketing.
- C. Should total revenues (including admissions, concessions and membership) surpass the estimates defined in the Exhibit B of the MOU, the Zoo and GLAZA shall receive their respected amounts as listed in the Exhibit B of the MOU, with any remaining amounts to be allocated to the Zoo Department. If revenues are below what has been estimated in the Exhibit B of the MOU, the Zoo shall receive its share as specified first, and GLAZA shall retain the remainder only up to the amount specified in the Exhibit B of the MOU.
- D. The City shall have the right at any time to review GLAZA documentation regarding marketing, promotions, and advertising expenses.

- E. In Exhibit B of the MOU, all GLAZA funding sources are to be guaranteed each year of the MOU regardless of revenue status, with allocations from the "Zoo Assistance Fund" to be the last source of funding for marketing and advertising and only used if projected revenues are not achieved. If revenues are achieved, the "Zoo Assistance Fund" shall not contribute to marketing and advertising expenses.

Because there are inconsistencies and updated projections between the Plan and MOU, we recommend that the MOU be revised and made consistent with the figures projected in the Plan. In addition, we recommend that the Zoo Department be instructed to release a Request for Proposals (RFP) for the concessions at the Los Angeles Zoo, including, but not limited to retail, food services, catering, concession machines, stroller/wheelchair rentals, and trams and report to Council with a status update within 90 days. This agreement has not been sent out to RFP since 1997. We further recommend that the Zoo and GLAZA report to Council within 90 days with a detailed budget of the Zoo's membership program, including revenues and expenditures for the previous five years. This will assist the Zoo in determining the amount of additional membership revenue the Department can realize. With additional funds from revised concession and/or membership agreements, we recommend that the Zoo consider establishing a capital improvement fund for improvements and projects specified in the Plan.

Our office also recommends that the Zoo delete the General Fund subsidy from the Plan since this is an annual budget decision to be determined by the Mayor and Council. And lastly, we recommend that the Zoo incorporate GLAZA's financial contributions into the Plan since its contributions are a significant part of the Zoo's budget.

All recommendations are summarized on pages six and seven of this report.

Business and Marketing Plan

The Los Angeles Administrative Code (LAAC) Section 22.711 states that the Zoo shall prepare and submit to the Mayor and City Council, at least every five years, a Marketing Plan and Business Plan which shall contain marketing and financial projections for a maximum period of five years. The Zoo has submitted a three-year plan spanning from Fiscal Year (FY) 2014-15 through FY 2016-17. The Plan does not take into account the first year of the MOU (this current FY 2013-14), and it extends to FY 16-17 which is one year beyond the term of the MOU. The Plan does assume that the MOU will be ratified and the GLAZA will achieve various milestones, including, but not limited to, the following:

- Investment of over \$2 million annually for marketing and public relations (a portion of which is derived from additional revenue as a result of an increase in paid admission prices)
- More than \$6 million of new funding for the Zoo from higher admission, concessions and membership revenue due to the projected attendance increase
- Five percent annual increase of the Zoo's paid attendance
- 11 percent annual increase of the Zoo's total admission revenue
- Increase of the Zoo's other earned revenue from concessions and membership by 21 percent over the three-year term of the MOU

In addition to GLAZA achieving the deliverables and milestones above, the Plan assumes that: (1) the construction schedule for the Rainforest of the Americas exhibit is no longer repeatedly delayed; and (2) the City supports the Zoo with an annual General Fund contribution of ten percent of the Zoo's operating budget (approximately \$2 million). This allocation is an annual policy decision set forth by the Mayor and City Council and has not been approved to date. Therefore, we recommend that the Plan be revised to eliminate the General Fund subsidy.

Should attendance and revenue not increase as projected, it is unclear where all the funding for the marketing and advertising program will be generated from since the MOU relies on the increase in attendance, and related admissions, membership and concessions revenue, to fund the marketing activities. In addition, each year of the MOU relies on the previous year to build upon. If attendance projections are not achieved in the first year, the following year's revenue projections will need adjustments. It should be noted that the Plan projects revenues from admission, membership and concessions as lower amounts than reported in the MOU. The CAO's Mid-Year (Third) Financial Status Report (FSR), dated February 26, 2014, reports that GLAZA has revised revenue projections downward by \$310,853, and new projections are reflected in the Plan. While these new projections are reported, there is no information as to how this will affect future year marketing.

In terms of the overall Plan and how it relates to the MOU, it is very difficult to conform a March 2013 MOU that was issued six months before the Plan was developed. For that reason, we recommend that the City Attorney be requested, with the assistance of the Zoo, to revise the MOU to reflect current projected numbers consistent with the Business and Marketing Plan. In addition, we also recommend that in Exhibit B of the MOU, all GLAZA funding resources should be guaranteed each year of the MOU regardless of revenue status, with allocations from the "Zoo Assistance Fund" to be the last source of funding for marketing and advertising and only used if projected revenues are not achieved. If revenues are achieved, the "Zoo Assistance Fund" shall not contribute to marketing and advertising expenses.

To protect the Zoo from financial instability, our office recommends that if revenues are below what has been estimated in the Exhibit B of the MOU, the Zoo shall receive its share as specified first, and GLAZA shall retain the remainder only up to the amount specified in the Exhibit B of the MOU. Conversely, should total revenues (including admissions, concessions and membership) surpass the estimates defined in the Exhibit B of the MOU, the Zoo and GLAZA shall receive their respected amounts as listed in the Exhibit B of the MOU, with any remaining amounts to be allocated to the Zoo Department.

The Plan discusses GLAZA's fundraising programs which contribute significantly to Zoo operations, special events, education programs and capital projects. However, the specific dollar amounts that GLAZA contributes are not defined. As previously stated, our office recommends that GLAZA's contributions to the Zoo be included in the Plan since they are a substantial part of the Zoo's operating budget.

FY 13-14 Zoo Attendance and Budget

The Zoo reports that attendance for FY 13-14 is down by approximately five percent with admission revenue down by 13 percent. In addition, concessions and membership revenues are lower than expected this year. The FSR predicts a year-end revenue shortfall of \$902,000 primarily due to a \$1.19 million shortfall in admissions, concessions and membership receipts. While GLAZA has revised its revenue projections, it has not clarified how the shortfall will affect the marketing budget for this and future years, and, ultimately, how this will affect Zoo revenue as a whole.

Concessions and Membership Agreements

Both the Concessions and Membership Agreements are not addressed in the subject MOU and remain separate agreements. However, in considering the ways in which the Zoo could generate additional revenue, which is the primary goal of the subject MOU, the Concessions and Membership Agreements should be reviewed periodically.

The current Operating Agreement between the City and GLAZA gives GLAZA the authority to operate LA Zoo concessions through February 2016, with the option for GLAZA to subcontract the activities pursuant to a Request for Proposals process meeting all City requirements. GLAZA has outsourced concessions to Volume Services America, a joint venture with CenterPlate Service Systems (Concessionaire) for the professional operation of all concessions, to include, retail, food services, catering, concession machines, stroller/wheelchair rentals, trams, etc. According to the Concessions MOU, the Concessionaire will pay to GLAZA an annual commission based on various percentages of each concession component (food services, stroller/wheelchair rentals, etc.). Of this annual commission amount, GLAZA remits ten percent of Gross Commissionable Revenue (total gross revenue, less in-house catering) to the Department, and GLAZA retains three percent of Gross Commissionable Revenue as a contract administration fee. The Zoo currently receives approximately \$1 million per year under this agreement.

GLAZA has not released an RFP for the concessions since 1997. The Operating Agreement allows GLAZA to operate concessions through February 2016. Therefore, the Zoo has ample time to explore the idea of contracting for concessions directly and release an RFP to test the concessions market and determine the best financial option for the City. In 2009, the Controller released the "Audit of Revenues and Expenditures at the Los Angeles Zoo" (C.F. 09-1458) and recommended that the Zoo perform a cost benefit analysis to determine the feasibility of directly contracting for concession services. In January 2011, the Zoo responded to this recommendation and reported that the Zoo did not believe that a cost benefit analysis should have been conducted at that time since the Zoo was undergoing tremendous construction and was challenged to meet its operational requirements. As construction has slowed at the Zoo, this is an optimal time to explore this option.

GLAZA administers the membership program and retains 25 percent of membership revenues for administrative costs. GLAZA then remits 25 percent of membership revenues to the Department annually. The remainder of membership revenues would normally be deposited into the City's Zoo Enterprise Trust Fund (ZETF) unless the Zoo Director and GLAZA enter into an MOU requiring GLAZA to perform services for the Department. The most recent membership agreement reflects that the Zoo Director has instructed GLAZA to spend the balance of the membership revenues on

Publication Costs and a Volunteer Program. In order to allow for analysis, it would be beneficial for the City to see a complete budget for membership revenues (both GLAZA's 25 portion and the remaining 50 percent), including total revenues and expenditures. Our office recommends that the Zoo retain more membership revenue to be allocated towards capital projects and Zoo improvements as prioritized in the Plan.

CONCLUSIONS

Since 1963, GLAZA, a California non-profit charitable corporation, has been an integral partner to the Zoo and the City and remains committed to improving and marketing the Zoo. GLAZA's primary responsibility is to seek and provide financial support and raise a negotiated yearly amount for the LA Zoo's annual operating budget and funding needs for capital improvements, under the terms and conditions of an operating agreement. As a non-profit, GLAZA is a non-City entity that receives and administers public funds. For that reason, transparency should be a requirement in that the public should have to ability to review receivables and expenditures, including special event revenue and the use of the Zoo-controlled department funds that are not included as part of the City's overall Budget process.

The MOU can be a viable and financially beneficial partnership between the City and GLAZA. However, should the attendance and revenue projections not be achieved, the Zoo should be guaranteed protection from financial loss and alternate financial options should be defined. The agreement should be a collaborative effort between the City and GLAZA to ensure that the Zoo attains financial independence by continuing to develop and upgrade the overall Zoo experience in order to realize annual increases in attendance and revenues.

RECOMMENDATIONS

General Recommendations

That the Council:

1. Instruct the Zoo Department to release a Request for Proposals (RFP) for the concessions at the Los Angeles Zoo, including, but not limited to retail, food services, catering, concession machines, stroller/wheelchair rentals, and trams and report to Council with a status update within 90 days.
2. Instruct the Zoo Department, with the assistance of the Greater Los Angeles Zoo Association (GLAZA), to provide a detailed report on the LA Zoo membership program, including total revenues and expenditures for the previous five years.
3. Request the City Attorney to update all Memoranda of Understanding and all other expired agreements between the City and GLAZA, to include the appropriate ratios between paid ticket admission prices and membership prices, City's ability to review all documentation relative to each agreement, and conformance between each agreement and the Business and Marketing Plan.

Memorandum of Understanding

Should Council decide to ratify the Memorandum of Understanding (MOU) for Marketing/Public Relations and Site Rentals/Catered Events, the following recommendations should be adopted:

4. Request the City Attorney to include the following requirements in the MOU:
 - A. The City shall have the right to terminate the MOU should GLAZA not achieve the following milestones as they compare to Fiscal Year 2013-14 actual revenues:
 - 5 percent annual increase of the Zoo's paid attendance
 - 11 percent annual increase of the Zoo's total admission revenue
 - 10 percent increase of the Zoo's other earned revenue from concessions and membership
 - Dollar amount of membership revenues as projected in the Plan

Upon reconciliation of each fiscal year's actual amounts and within 60 days of the end of the fiscal year, should GLAZA not achieve the milestones above, a plan to cure the shortfall should be prepared by the CLA, CAO, Zoo and GLAZA and reported to Council within 90 days. From that time, GLAZA will have six months to cure the shortfall, and if not mitigated, the City will have the right to terminate the contract.
 - B. GLAZA and the Zoo to report to the Arts, Parks, Health, Aging and River Committee and the Budget and Finance Committee every six months on performance metrics listed above with regards to the Business and Marketing Plan, including demographic information, concessions revenue updates, special event details (number of events, event costs, and profit/loss information), and any further details regarding any improvements to Zoo revenue based on GLAZA marketing.
 - C. Should total revenues (including admissions, concessions and membership) surpass the estimates defined in the Exhibit B of the MOU, the Zoo and GLAZA shall receive their respected amounts as listed in the Exhibit B of the MOU, with any remaining amounts to be allocated to the Zoo Department into a newly established account for Zoo capital projects and improvements. If revenues are below what has been estimated in the Exhibit B of the MOU, the Zoo shall receive its share as specified first, and GLAZA shall retain the remainder only up to the amount specified in the Exhibit B of the MOU.
 - D. The City shall have the right at any time to review documentation regarding marketing, promotions, and advertising expenses.
 - E. In Exhibit B of the MOU, all GLAZA funding source amounts to be guaranteed each year of the MOU regardless of revenue status, with allocations from the "Zoo Assistance Fund" to be the last source of funding for marketing and advertising and only used if projected revenues are not achieved. If revenues are achieved, the "Zoo Assistance Fund" shall not contribute to marketing and advertising expenses.

- F. Adopt the MOU as amended.
- 5. Request the City Attorney and Zoo Department, with the assistance of the CLA and CAO, to revise the MOU to reflect current projected numbers consistent with the Business and Marketing Plan.

Business and Marketing Plan

That the Council:

- 6. Instruct the Zoo Department to revise the Business and Marketing Plan to:
 - A. Delete the General Fund subsidy;
 - B. Retain more membership revenue by revising the Operating Agreement and/or outstanding MOUs for the Volunteer Program and Publication Program and deposit said revenues into a newly established account for Zoo capital projects and improvements.
 - C. Request the Controller to establish a new account under the Zoo Enterprise Trust Fund – Special Fund Appropriations titled “Zoo Capital Improvement and Maintenance.”
 - D. Incorporate GLAZA’s financial contributions into the Business and Marketing Plan.
 - E. Adopt the Business and Marketing Plan as amended.



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Attachment: MOU for Marketing/Public Relations and Site Rentals/Catering

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