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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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# City Council Transient Occupancy Tax Allocation Process

## OVERVIEW

On June 18, 2007 the Mayor issued a memo to the City Council stating that each Council office will assume the responsibility to manage and account for Council district TOT allocations, including the administration of the contract with each recipient organization. Separately, the City Attorney's Office has raised a question as to whether the regulations set forth in Council Policy 100-03 applied to Mayor and City Council allocations. These issues were presented at the Budget and Finance Committee on December 6, 2007, and subsequently referred to the IBA.

This report examines each of these issues in turn. Overall, we believe that contract administration for Council TOT allocations should be used as a management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. We defer to the Mayor, as an administrative function, to determine where this contract administration should most appropriately be performed. However, in the past there has been a degree of operational difficulty associated with administering Council TOT allocations, and this report presents several options that may facilitate a more efficient process in the future. We request further direction regarding the development and implementation of a suitable process for Council TOT allocations.

We further believe that all recipients of TOT funds should be held to a common set of standards and that all TOT allocations should be governed by a single policy. Currently, Council Policy 100-03 sets forth the policies and regulations pertaining to TOT funds that are allocated for promotion related purposes, pursuant to Municipal Code requirements. A revision to this Council Policy may be warranted to ensure that all recipient groups are subjected to the appropriate set of requirements, while at the same time streamlining the allocation process.

## FISCAL/POLICY DISCUSSION

The Transient Occupancy Tax (TOT) Fund receives five cents of the City's 10 ½ cent TOT levy. San Diego Municipal Code specifies that of this amount, four cents are to be used solely for the purpose of promoting the City, while one cent may be used for any purpose the City Council may direct. The remaining 5 ½ cents of the City's TOT levy are deposited directly into the General Fund to be used for general government purposes.

Council Policy (CP) 100-03 governs the use of TOT funding that is allocated for promotional purposes. Under the guidelines established by CP 100-03, the City allocates TOT funding for purposes such as arts & cultural programs, economic development and capital improvements. In addition, beginning in FY 2002 the Mayor and each City Council Member received a TOT allotment to be used for discretionary purposes.

On June 18, 2007 the Mayor issued a memo to the City Council stating that each Council office will assume the responsibility to manage and account for their TOT allocations, including the administration of the contract with each recipient organization. The memo suggested that the City's existing application for Special Promotional funding be used as a guideline for Council allocations, and encouraged the Council to work with the City Attorney to develop an appropriate contracting process.

In addition, the City Attorney has raised a question as to whether the Mayor and Council TOT allocations are covered by the regulations set forth in CP 100-03. This concern arose from questions in the past about the applicability of certain requirements to these allocations. Such applicability is unclear, as Mayor and Council allocations are not specifically mentioned in CP 100-03. These issues were heard at the Budget and Finance Committee on December 6, 2008, and subsequently referred to the IBA for additional analysis. We address each of these issues separately.

### Contract Administration

In prior years, contract administration for Council TOT allocations was primarily handled by the Commission for Arts and Culture. The Council district could allocate TOT funding in two ways: augment an existing contract, or make an independent allocation to a group of the district's choosing. Augmenting an existing contract usually entailed increasing the amount of funding allocated to a group that already under contract with the City to receive TOT funds. For independent allocations the Commission would attempt to contact the recipient group and inform them of the contract requirements, including documentation that needed to be submitted.

This process for administering independent allocations created certain operational difficulties for Arts and Culture. Some of the groups who received Council TOT allocations may not have gone through the formal application process established by CP 100-03, and thus were not always aware of the requirements. According to the

Commission, this increased the staff time requirements associated with these contracts, and resulted in a greater workload for Arts and Culture staff, who would need to work extensively with these groups in order to obtain much of this required documentation. The process also strained the Commission's focus on providing excellent customer service.

While we recognize these past difficulties, as a policy matter we believe that contract administration for Council TOT allocations should be used as a critical management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. The allocation of TOT funds requires that certain procedures be followed and documentation be produced by recipient organizations. These requirements have been established to protect the City from liability and to ensure the transparent and proper use of TOT funds. The Mayor should retain the responsibility for contract administration in order to maintain the necessary checks and balances over the use of public funds, and ensure that contract requirements are applied consistently across the City.

As an administrative function, the Mayor will have the authority to ultimately determine where in the City organization this function will most appropriately be located. However, we are sensitive to the difficulties that existed in the past, and we do not wish to re-create a similar situation. In addition, we are aware of the strained resources and limited staffing with which the City currently operates. We feel that much of the difficulty in administering these contracts may be alleviated by implementing certain parameters on Council TOT allocations. As much of the difficulty in the past has revolved around obtaining the required documentation from recipient groups, these options aim to ensure that groups receiving Council TOT allocations are aware of the requirements and have the ability to meet them. These options are outlined below.

1. Establish a minimum funding amount – small TOT allocations significantly increase the work load related to contract administration, as each contract comes with a host of requirements. Establishing a minimum funding amount would ease this workload by limiting the number of contracts that must be administered, and would help to ensure that groups or events receiving funding are large enough to be able to meet these requirements.
2. Create an eligibility list for recipient groups – as suggested by the City Attorney's Office, this option would entail creating a standing list of groups or events that are eligible for Council TOT allocations. Criteria for getting on the list – such as having proof of insurance or status as a non-profit on file – could be developed to ensure that the required documentation is available.
3. Require that recipient groups first go through the established application process – through the application process, potential recipient groups would need to produce

the required documentation. If groups are not awarded funding, they would still be eligible to receive independent Council TOT allocations. If funding is awarded through the application process, Council districts would still have the option of augmenting the contract to increase the funding amount.

4. Limit Council allocations to contract augmentations – this option would allow for increased funding to groups who are already awarded funding through the application process. It would not allow for independent Council allocations.

We realize that implementing any one of these options may somewhat reduce the Council's discretion as to which or how many groups could receive TOT funding. However, we propose that these or other options be discussed as a means of achieving a more efficient, functional process. We request from the Council further direction regarding the development and implementation of a suitable and efficient process for Council TOT allocations.

#### Application of Council Policy 100-03

Council Policy 100-03 governs the use of TOT funds that are allocated as part of the four cents required by the Municipal Code to be used for promotional purposes. The Council Policy establishes the City's policy with regard to the use of TOT revenues for promotional purposes, and lays out the requirements pursuant to the TOT application process. For convenience, a summary of these requirements, which can be found in Attachment A to CP 100-03, is attached to this report.

The IBA believes that all recipients of TOT funds, whether pursuant to the four cent requirement or otherwise, should be held to a uniform set of standards and requirements. The regulations included in CP 100-03 were put in place in order to protect the City from liability, and ensure the transparent and proper use of City funds. It would be inappropriate to impose those requirements on one group of funding recipients and not on others. If these regulations are deemed to be proper and necessary, then they should be applied globally. We feel that it may be appropriate to revise CP 100-03 to ensure that it applies to all TOT allocations.

We do recognize that in the past the multitude of requirements in CP 100-03 have been problematic for some of the groups receiving Council TOT allocations, particularly for smaller groups or those run by community volunteers. Furthermore, the insurance requirements included in the standard TOT funding contracts may be prohibitively burdensome for certain groups.

It should be noted that the Policy has not been updated for some time, and it is unclear to what extent the requirements currently in place are necessary or appropriate. A comprehensive review of CP 100-03 may be warranted to ensure that recipient groups are subjected to the appropriate set of requirements needed to protect the City from liability

and ensure the proper use of City funds, and at the same time streamline the allocation process. Such a review may also ease some of the challenges associated with Council TOT allocations. The IBA would be happy to work with Council Districts and the appropriate City departments, including the City Attorney's Office and Risk Management, to evaluate and propose appropriate revisions to Council Policy 100-03.

## CONCLUSION

The IBA believe that contract administration for Council TOT allocations should be used as a management tool for fiscal oversight, and be performed by City staff that have professional expertise in contract administration. As an administrative function, the Mayor will have the authority to ultimately determine where in the City organization this function should most appropriately be located. However, the IBA is sensitive to the difficulties that have existed in the past with administering Council TOT contracts, and we recommend that the Council consider implementing one or more of the proposed options, or other measures that may ease these operational difficulties in the future and lead to a more efficient allocation process. We request further direction regarding the development and implementation of a suitable and efficient process for Council TOT allocations.

We further believe that all recipients of TOT funds should be held to a common set of standards and be governed by a single policy. A comprehensive review of Council Policy 100-03 may be warranted to clarify that all TOT allocations are covered by a uniform set of regulations, and to ensure that recipient groups are subjected to the appropriate set of requirements, while at the same time streamlining the allocation process. The IBA would be happy to work with Council Districts and the appropriate City departments to bring forward a proposed revision to Council Policy 100-03.

**[SIGNED]**

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**[SIGNED]**

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Attachment