

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 12, 2014

To: Ron Galprin, Controller  
200 N. Main Street  
City Hall, Suite 300  
Los Angeles, CA 90012

From: Joe Smoke, Acting General Manager  
Department of Cultural Affairs



**Subject: Report Back on the Controllers Audit of the Department of Cultural Affairs 1% for Art Programs**

The Department of Cultural Affairs has reviewed the Controllers Audit of the department's 1% for Art Programs and welcomes the report. The report correctly characterizes the challenges the Department has faced since 2007 to specifically deploy the arts-dedicated development fees.

The department appreciates the Controller's collaborative approach in working with DCA, the City Attorney's Office and Chief Legislative Analyst to develop a path to use the arts development fees with greater flexibility for the public benefit. This increased flexibility will expand the department's ability to support publically accessible art and cultural programming in Los Angeles.

DCA looks forward to implementing the Controller's five (5) key recommendations, which are:

- 1) The Department of Cultural Affairs should solicit feedback from developers – and from local stakeholders and arts community representatives to better improve assessment, collection, and programming;
- 2) The method used to calculate the Arts Development Fee (ADF) rate per square foot is supposed to be adjusted annually based on the Consumer Price Index (CPI), but has not been updated since the program's inception more than 22 years ago. The CPI has risen 58% in that time. Adjusting the fees could generate substantially more revenues for public art programs.
- 3) For developer-led projects, the Department of Cultural Affairs requires either a letter of credit or a certificate of deposit, with the City as beneficiary, to essentially guarantee the developer's promise to incorporate 1% of a project's permit valuation as on-site art. This process, along with the forms used, needs to be evaluated and more consistently applied.
- 4) The Department of Cultural Affairs should submit regular plans for the use of all PWIAP and ADF funds to the Cultural Affairs Commission, the Mayor and the City Council for review and approval.

5) An accounting system must be put in place to properly allocate interest earnings.

Below is a brief summary of the actions the department has taken or will take to implement these recommendations. The summary is provided as an Audit Action Plan that describes the actions the department has taken or will take to implement both the 5 key recommendations and the other key findings presented in the Controller's Accountability Plan.

**Recommendation No.1: The Department of Cultural Affairs should solicit feedback from developers – and from local stakeholders and arts community representatives to better improve assessment, collection, and programming.**

The Department understands there are many different stakeholders relative to the Arts Development Fee Program. Since the release of the Controller's report on April 11, 2014, the department has met twice with the Office of the City Attorney to concur on a new legal interpretation of the way ADF funds can be deployed. One of those meetings included representatives from the Chief Legislative Analyst's Office. The City Attorney's new determination for the use of the fees provides more flexibility for how the department can use the fees to support publicly accessible art and cultural programming. The City Attorney has also recommended that a larger, intra-departmental working group be established to further develop the ADF Program parameters.

The department has begun drafting new administrative guidelines, in concurrence with the City Attorney's Office. The new guidelines will codify how the paid-in ADF funds may be spent, including resolving any discrepancies in the relevant sections of the Administrative Code and Municipal Code related to the type of arts services and programs for which the ADF funds can be used, as well as the cultural-geographic parameters of usage.

Once the new guidelines have been drafted, the department will survey each Council Office to determine how or if ADF funds might be used for arts-related district priorities. DCA has already sent letters to each Council Office anticipating this process.

The department is also committed to convening at least one focus group with developers experienced with the Arts Development Fee program, local stakeholders and representatives from the arts community. The department would prefer to begin this effort once the new guidelines are drafted and a new General Manager for the Department is on board.

**Recommendation No. 2: The method used to calculate the Arts Development Fee (ADF) rate per square foot is supposed to be adjusted annually based on the Consumer Price Index (CPI), but has not been updated since the program's inception more than 22 years ago. The CPI has risen 58% in that time. Adjusting the fees could generate substantially more revenues for public art programs.**

The department acknowledges that the ADF rate per square foot calculation has not been adjusted annually based on the Consumer Price Index (CPI). To comply with the Municipal Code, that department recently performed an impact analysis of

updated ADF fee rates. The ordinance requires that a developer pay an arts fee equal to 1% of the projects permit valuation, or a set per-square-foot-rate, whichever is less. The impact analysis revealed that adjusting the per-square-foot rate by an updated CPI rate would not necessarily generate substantially more revenues for public art programs because, in most cases, the 1% cap rate would be lower than the higher per-square-foot rate.

The department presented these findings to the City Attorney's Office and the Chief Legislative Analyst at a recent meeting. The City Attorney's Office is considering the appropriate methodology for updating the ADF rate structure. DCA will present this information and associated recommendations to City Council and the City Administrative Officer to evaluate whether the 1% cap should be reassessed.

**Recommendation No. 3: For developer-led projects, the Department of Cultural Affairs requires either a letter of credit or a certificate of deposit, with the City as beneficiary, to essentially guarantee the developer's promise to incorporate 1% of a project's permit valuation as on-site art. This process, along with the forms used, needs to be evaluated and more consistently applied.**

The department has reviewed the language in the developer-led Arts Development Fee Introduction and Sample Documents, including the template for the financial collateral instruments provided by developers, and the Letter of Agreement entered into with developers to begin a developer-led art project.

The department is proposing to update project deliverable and project completion dates and terms in the Letter of Agreement template to ensure developer-led art project deadlines and requirements are met and enforced. Additionally, the department proposes to update the language in the standard template for the Letter of Credit and Certificate of Deposit to state: "*Payable to the City of Los Angeles Department of Cultural Affairs*". DCA will present these proposed changes to the City Attorney for review and approval.

**Recommendation No. 4: The Department of Cultural Affairs should submit regular plans for the use of all PWIAP and ADF funds to the Cultural Affairs Commission, the Mayor and the City Council for review and approval.**

The Department has been working with the City Attorney's Office to expand the use of the paid-in fees. Once the expanded uses have been framed, the department will survey each Council Office to determine how or if district arts priorities may be supported. From this research, citywide, regional and neighborhood expenditure plans will be developed and presented to City Council for consideration.

The Public Works Improvements Arts Program funds are retained and spent directly by the originating department on the public art projects administered by the Department. Accordingly, expenditure reports for the PWIAP projects are generally included in the overall construction project reports prepared by the initiating department. However, DCA will prepare an annual "status report" on the public art projects underway for the Cultural Affairs Commission, Mayor's Office, and City Council to review. The Department will work with the Chief Administrative Officer to determine the appropriate methodology for presenting this information to City Council.

**Recommendation No. 5: An accounting system must be put in place to properly allocate interest earnings.**

The department is working with the City Attorney's Office to determine how to allocate the interest income earned on the fund balance. The City Attorney will also provide legal advice on the eligible uses and restrictions associated with the interest income. Once a determination has been made, the department will present the information and associated recommendations to City Council and the City Administrative Officer.

Please contact Felicia Filer at (213) 202-5547 if you have any questions or require additional information.

Attachments: Audit Action Plan Chart

Audit Action Plan					
CONTROLLER'S AUDIT RECOMMENDATIONS	PAGE	MAYOR / COUNCIL ACTION REQ'D	DEPARTMENT ACTION REQ'D	RESPONSE AND IMPLEMENTATION STATUS	ESTIMATED TIMELINE
<b>SECTION I. ARTS DEVELOPMENT FEE DEVELOPER PAID-IN PROJECTS</b>					
1. Cultural Affairs Management should solicit feedback from Developers to understand how they view the City's Arts Development Fee program and consider their input when revising any related ordinances.	31		Department of Cultural Affairs (DCA)	The Department has been working with the City Attorney's Office to develop new ADF guidelines. The City Attorney has suggested a working group be established to further develop the ADF parameters. The department is also interested in convening a focus group that would include developers experienced with the ADF program and relevant stakeholders. However, the department would prefer to move forward with this effort once a new General Manager is in place.	September 15, 2014
2. Cultural Affairs Management and City Council should consider reviewing and resolving any discrepancies in the relevant sections of the Administrative Code (Paid-In Fees) and the Municipal Code (Developer-Led Credits) which dictate the services and programs for which the fees and credits can be utilized.	31	City Council	DCA	Cultural Affairs and the Office of the City Attorney are working together to develop new Administrative guidelines, that will describe the types of programs and services for which the fees can be used. In addition, Council introduced a motion requesting the CLA to report back with recommendations to update the amounts collected and the process for collecting and disbursing funds. The department is working with the CLA on a report back to Council.	June 18, 2014
3. Cultural Affairs Management and City Council should consider developing a "Cluster" Model, which would allow the Department to group Arts Development Fees that fall within a reasonable distance from the development site and administer them in a consolidated manner.	31	City Council		The department and Office of the City Attorney are working together to develop new Administrative guidelines, that will include a "cluster" model as well as explore a cultural, regional and/or geographical nexus approach for how the fees can be used.	June 18, 2014
4. Cultural Affairs Management should determine, in conjunction with the City Attorney, how to address the high cash balance in Fund #516 so that the accumulated Arts Development Fees and interest are used to fund publicly accessible art projects and/or cultural programs in a more timely manner.	31		DCA	The department and Office of the City Attorney are working together to develop new Administrative guidelines, that will include a provision for how to address the interest balance in the fund.	June 18, 2014
5. Cultural Affairs Management should complete and submit the required quarterly and annual reports to City Council which detail the activities in Fund #516 to allow for a timely discussion among policy makers to determine how any unused Arts Development Fees should be reallocated.	31		DCA	Once the administrative guidelines are approved by Council, the Department will develop an expenditure plan, in conjunction with Council Offices. Upon which time, the reporting requirements will be established with City Council, and the Mayor's Office to determine metrics-based assessments.	June 18, 2014
6. Cultural Affairs Management should, in consultation with the Controller's Office, immediately establish a method to attribute interest earnings that is consistent with the Administrative Code.	33		DCA	The Department is working with the City Attorney's Office to determine how to treat the interest income earned on the fund balance.	June 18, 2014
7. Cultural Affairs Management should consider a method which will allow the interest from multiple sites to be leveraged so larger art projects can be made available throughout the City.	33		DCA	The department and Office of the City Attorney are working together to develop new Administrative guidelines, that will include a "cluster" model approach for how the fees can be used.	June 18, 2014
8. Cultural Affairs Management should establish adequate controls to ensure that interest credited to Fund #516 is attributed in a timely manner, in accordance with the established methodology.	33		DCA	The Department is working with the City Attorney's Office to determine how to credit the interest income earned on the fund balance.	June 18, 2014
9. Cultural Affairs Management should evaluate the results of the Pilot Program.	34		DCA	The evaluation of the pilot project has been completed. The findings will be used to inform the new administrative guidelines.	June 18, 2014
10. If the Pilot Program is deemed successful, Cultural Affairs Management should work with the CAO to consider allocating a portion of the Paid-In Development Fees to the Grants Administration Division's annual budget to provide funding to organizations that provide services within the (revised) allowed radius of the development generating the fee.	34		CAO	The department believes the CAO may not recommend allocating ADF funds to the Grants Division until the City Attorney provides an interpretation of allowable ADF deployment .	August 15, 2014

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11. Cultural Affairs Management should comply with the Municipal Code and provide the updated fee rates to City Council for consideration.	36		DCA	The Department has performed an impact analysis of the updated ADF fee rates. The analysis is currently under review by the City Attorney and Chief Legislative Offices, and the findings will be forwarded to City Council with recommendations.	July 15, 2014
12. Cultural Affairs Management should work with the City Administrative Officer and City Council to evaluate whether the 1% cap should be reassessed.	36		DCA	The Department has performed an impact analysis of an updated 1% Cap rate. The analysis is currently under review by the City Attorney and Chief Legislative Offices and will be forwarded to City Council with recommendations.	July 15, 2014
13. Cultural Affairs Management should review the fields in the Developer Paid-In Development Database, and work with ITA to modify and eliminate redundant options in order to simplify reporting.	37		DCA	Cultural Affairs has reviewed the fields in the Paid-in Development database and reduced the number of fields from 8 to 6 to eliminate redundancies. The department still wants to work with ITA to improve project tracking and to develop new efficiency metrics.	Completed - April 2014
<b>SECTION II. ARTS DEVELOPMENT FEE DEVELOPER-LED PROJECTS</b>					
14. Cultural Affairs Management should on a monthly basis, generate a report of active projects which lists the anticipated completion dates and the financial collateral instrument expiration dates to ensure the deadlines have not passed, and notify Developers with approaching deadlines to ensure program requirements are enforced.	40		DCA	The department has added the anticipated project completion dates and financial security expiration dates, to its monthly reports to ensure project deadlines are enforced.	June 18, 2014
Cultural Affairs Management should:  15. a) Obtain formal approval from the City Attorney for a standard agreement template that is consistent with City contracts, and determine the approval process for the individual agreements and related financial collateral instruments.  b) Consider collecting a financial collateral instrument from the Developer, only when they fail to complete the art component. The certificate of occupancy should be withheld until either the art component is completed or until the Developer has provided the City with an acceptable financial collateral instrument.	41		DCA	The department will review this recommendation at a future meeting with the City Attorney's Office, and the working group, and prepare recommendations for Council consideration and approval.	July 15, 2014
16. Cultural Affairs Management should instruct the Developers to designate the City of Los Angeles, Department of Cultural Affairs, as the beneficiary of the selected financial collateral document.	41		DCA	The department is proposing to update the language in the introductory documents it gives to developers regarding the beneficiary listed in the selected financial collateral and the Letter of Agreement. The proposed changes will be reviewed and approved by the City Attorney's Office.	June 18, 2014
17. Cultural Affairs Management should review the fields in the Developer-Led Database to limit excessive options and work with ITA to modify and eliminate redundant options.	42		DCA	Cultural Affairs has reviewed the fields in the Developer-led database and reduced the fields from 24 to 11 to eliminate redundancies. However, the department wants to work with ITA to improve project tracking and to develop new efficiency metrics.	Completed - April 2014
<b>SECTION III. PUBLIC WORKS IMPROVEMENT ARTS PROGRAM</b>					
18. Cultural Affairs Management should submit an annual plan for the use of all PWIAP funds to the Cultural Affairs Commission, Mayor and Council for review and approval.	44		DCA	The department will prepare an annual "status report" on the public art projects underway for the Cultural Affairs Commission, Mayor's Office and City Council to review and, will work with the Chief Administrative Officer to determine the appropriate methodology for presenting this information to City Council. The Department is prepared to begin this reporting next fiscal year.	September 1, 2014

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<b>SECTION IV. ADDITIONAL OBSERVATION</b>					
19. Cultural Affairs Management should revise the Developer-Led and PWIAP guidelines to require staff to compare the art component plan against the development construction costs to ensure it will only be used for materials and labor exclusively for the project, and not to finance incremental construction costs of the development/project.	47		DCA	The Department will work with the Office of the City Attorney to update the language in the guidelines for the ADF and PWIAP programs to articulate this requirement.	September 15, 2014