



Date: November 9, 2015

To: Mayor and Members of the City Council

From: Charles Parkin, City Attorney *CP*
Patrick H. West, City Manager *T.M.*

Subject: **Procedures for Implementation of Divide by Nine**

With new members of the City Council since the issuance of the April 30, 2013 memo on Divide by Nine appropriations (copy attached), and with the broader uses of Divide by Nine appropriations that the City Council has authorized, we provide the following updated procedures to be used to remain in compliance with the City Charter (Charter) and Long Beach Municipal Code (Municipal Code). These procedures are designed to retain the exclusive appropriation authority given to the City Council, acting as a body, by the Charter and to protect individual Councilmembers and the City Administration and its Departments from unintentionally violating either the Charter or the Municipal Code. In essence, the process must avoid a single Councilmember giving expenditure direction to staff or making expenditure decisions, or staff taking direction, which would be in violation of Section 208 of the Charter. The procedures, summarized below, address recent direction from the City Council. The attachment issued by the City Administration provides detailed processes to support these procedures.

Procedures for Implementation of Divide by Nine

1. Must be for existing projects/programs - A Divide by Nine appropriation can be allocated and spent if the appropriation is allocated to an existing capital/infrastructure project/program or a one-time enhancement to an existing operating project/program previously approved by the City Council, acting as a body, through the annual budget process or other Council action. Departments provide options for Council Districts to choose, recommending specific projects/programs in the areas of interest to the Council District. The recommended projects/programs must be within the resources and administrative capacity of the Department to successfully implement when considered with other departmental responsibilities. The project/program must cover the full cost of implementation, including project management. The City Administration will periodically bring forward budget adjustments for City Council approval that list the Council District, the Department(s) the funds go to, and the specific recommended projects/programs.
2. Explicit approval required for new projects/programs - Proposed appropriation allocations to functions that are not existing capital or infrastructure projects/programs must be explicitly approved by the City Council via approval of a City Council motion brought forward by the Council District so that staff can have authorized City Council direction to implement and reprioritize its operations and projects/programs.

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3. Only Departments can authorize and make expenditures - Only the Department to which the appropriation has been allocated can authorize and make expenditures from the appropriation. This includes requesting costs of services, invoices, selection of vendors, and payment to vendors.
4. Allocation and Spending must occur timely - Divide by Nine funds must be allocated to Departments for specific projects/programs within the fiscal year of the appropriation, and for operations, must be spent by the Departments in the fiscal year of appropriation, but no later than the end of the following fiscal year for capital or infrastructure program items. Ideally, Divide by Nine funds will be allocated by the City Council by the beginning of the calendar year to allow time to implement the program/project.

Should you have any questions, we are available at your convenience.

CP PTW

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ATTACHMENTS

CC: LAURA L. DOUD, CITY AUDITOR
TOM MODICA, ASSISTANT CITY MANAGER
ARTURO SANCHEZ, DEPUTY CITY MANAGER
JYL MARDEN, ASSISTANT TO THE CITY MANAGER
DEPARTMENT HEADS



City of Long Beach
Working Together to Serve

Memorandum

Date: August 30, 2013

To: Mayor and Members of the City Council

From: Charles Parkin, City Attorney and Patrick H. West, City Manager *PH West*

Subject: Considerations for a "Divide by Nine" Appropriation

Should the City Council approve a "Divide by Nine" appropriation, we recommend the following be considered with the approval consideration:

➤ **Procedures for Allocation of City Council Discretionary Items Will Ensure Charter Compliance**

Procedures for any "Divide by Nine" allocation must continue to comply with City Charter requirements in a manner similar to what City Council did with earlier appropriations. If a "Divide by Nine" appropriation is made by City Council as part of their decisions, there are three key recommendations to avoid City Charter issues. The intent of the recommended procedures is to help ensure that there is not inadvertent non-compliance with the City Charter by either a Councilmember or the City Administration. In essence, the process seeks to avoid creating the impression that a single Councilmember may be giving expenditure direction to staff or making expenditure decisions or that staff is taking that direction. The key recommendations that should be implicitly or explicitly incorporated in any City Council motion are:

- All expenditures for capital or infrastructure maintenance items are to be for recommendations originated by City staff consistent with normal capital and maintenance programming and decisions for the respective district. If staff provides multiple options, Councilmembers may choose from them.
- Any operations expenditures are to be for programs originated and recommended by staff that already exist and are consistent with the needs of the City and respective district. If staff provides multiple options, Councilmembers may choose from them.
- "Divide by Nine" funds may be used for any other capital, infrastructure maintenance or operational items not originally recommend by staff, as long as the items are for a public purpose and individually approved by motion of the City Council.

Should you have any questions, we are available at your convenience.

Cc: Suzanne Frick, Assistant City Manager
John Gross, Director of Financial Management

Procedures and Detailed Processes for Divide by Nine for Capital Infrastructure

The following procedures are designed to retain the exclusive appropriation authority given to the City Council, acting as a body, by the City Charter (Charter) and to protect individual Councilmembers and the City Administration and its Departments from unintentionally violating either the Charter or the Long Beach Municipal Code (Municipal Code). In essence, the process must avoid a single Councilmember giving expenditure direction to staff or making expenditure decisions, or staff taking direction, which would be in violation of Section 208 of the Charter. The procedures address recent direction from the City Council. Unless explicitly approved by the City Council, Divide by Nine projects/programs must be existing projects/programs previously approved by the City Council as projects/programs regularly used by the City Manager Departments (Departments) to carry out the general projects/programs of the City.

Overview

1. **Must be for existing projects/programs** - A Divide by Nine appropriation can be allocated and spent if the appropriation is allocated to an existing capital/infrastructure project/program or a one-time enhancement to an existing operating project/program previously approved by the City Council, acting as a body, through the annual budget process or other Council action. Departments provide options for Council Districts to choose, recommending specific projects/programs in the areas of interest to the Council District. The recommended projects/programs must be within the resources and administrative capacity of the Department to successfully implement when considered with other departmental responsibilities. The project/program must cover the full cost of implementation, including project management. The City Administration will periodically bring forward budget adjustments for City Council approval that list the Council District, the Department(s) the funds go to, and the specific recommended projects/programs.
2. **Explicit approval required for new projects/programs** - Proposed appropriation allocations to functions that are not existing capital or infrastructure projects/programs must be explicitly approved by the City Council via approval of a City Council motion brought forward by the Council District so that staff can have authorized direction to implement and reprioritize its operations and projects/programs.
3. **Only Departments can authorize and make expenditures** - Only the Department to which the appropriation has been allocated can authorize and make expenditures from the appropriation. This includes requesting costs of services, invoices, selection of vendors, and payment to vendors.
4. **Allocation and Spending must occur timely** - Divide by Nine funds must be allocated to Departments for specific projects/programs within the fiscal year of the appropriation, and for operations, must be spent by the Departments in the fiscal year of appropriation, but no later than the end of the following fiscal year for capital or infrastructure program items. Ideally, Divide by Nine funds will be allocated by the beginning of the calendar year to allow time to implement the program/project.

Details

Authorized Projects/Programs

Expenditures from the Divide by Nine appropriation can be made if they are for an existing capital infrastructure project/program or, optionally, an existing operational project/program that has been recommended by the Department through a list of recommended capital infrastructure projects/programs, and is consistent with the Department's current operations and available resources. The expenditure cannot result in an explicit or implicit operating commitment for subsequent fiscal years.

Process for Selecting Projects/Programs

After City Council appropriates general funding for Divide by Nine, the City Manager's Office will coordinate a process where Departments will provide options for projects/programs to the City Council Offices. The City Council Offices may choose the projects/programs from these lists. Once the project/program has been selected and agreed to, the City Manager's Office will prepare an Approved Project List of the projects that includes the scope of work, projected timeline, and cost, including program administration expenses and overhead. The list will be the documentation for the movement of budget from the temporary holding account where it was placed at budget adoption, to the department providing the project/program. The City Administration will periodically bring forward budget adjustments for City Council approval that will list the Council District, the department(s) the funds go to, and the specific recommended projects/programs. After the budget adjustments are approved by City Council, the Department is then obligated to provide that project/program per the details on the Approved Project List. Projects/Programs can be changed by way of a change to the Approved Project List and corresponding City Council approved budget adjustment, but cannot be changed after the end of the first fiscal year (year of appropriation) or after any funding or effort has been put into the project/program. The City Manager's Office, in conjunction with the Budget Office, will use the lists to continuously track remaining unallocated Divide by Nine funds at a Council District level.

Managing Expenditures

Departments are responsible for managing the Divide by Nine projects/programs and meeting the terms contained on the Approved Project List. Generally, project management will be performed by contract project managers as in-house staff resources are not sufficient to manage these projects in addition to the projects in the CIP or existing programming. While unallocated Divide by Nine funds will be continuously monitored, expenditures for specific projects/programs will not normally need to be tracked separately from normal departmental expenditures. This is because of the administrative cost involved in that tracking and because Departments are responsible for delivering the project/program as agreed to with the City Council Offices. Where a Department believes a project is particularly costly or costs are uncertain, actual expenditures may be used and the Approved Project List must make clear that additional Divide by Nine funds will be responsible for any cost overruns (or credited for cost savings). Tracking expenditures should only be done in unusual circumstances and if Divide by Nine funds are to be used for any overage or credited for any underage, and must be stated in the Approved Project List.

Timeframes

Divide by Nine funds must be allocated to a Department within the same fiscal year as the appropriation. Operating funds must be spent by the Department within that same fiscal year; proposed expenditures for capital or infrastructure should also be spent within that same fiscal year, as the projects/programs are not intended to be major or unique, which require long timeframes or unique resources.

Participatory Budgeting

Divide by Nine funds are available for project/program expenditures for Participatory Budgeting in Council Districts. The allowed uses follow the same rules and requirements as any Divide by Nine expenditure. To ensure conformance with the Charter requirements, each Council District should prepare a list of allowed projects/programs that participants may select from based on options provided by Departments and that the Council District recommends to be considered. Once a Council District has selected the list of projects/programs to be considered, the Department should provide a description of each project and an estimated cost, including project administration and overhead. The project will be included on the Approved Project List with the City Manager's Office, who then temporarily receives the allocation until decisions are made by the Council Districts, through the Participatory Budgeting process, as to what the expenditures are for. The allocation is then distributed to the Departments who are actually responsible for implementing the individual projects/programs. Community recommendations for projects/programs not on the recommended list provided by Departments, should be reviewed by the respective Departments for ability to successfully manage the project and cost prior to the Council District allowing participants to vote on the projects/programs. The City Attorney's Office should evaluate the legality of proposed projects/programs if they are not standard programs/projects conducted by a Department. Administrative costs of participatory budget meetings and any associated management will be factored into the total project costs.

City Council Approval Required for Projects/Programs Not Meeting Criteria

Proposed allocations for Divide by Nine that do not meet the criteria identified above must be individually approved by the City Council via a motion brought forward by the Council District, inclusive of proposed Participatory Budgeting items, if not previously approved by a Department. If proposed expenditures need to be considered for approval by the City Council, they should be reviewed by staff and the City Attorney to ensure that any issues are identified in advance of presentation to the City Council and can be addressed in the City Council recommended motion.

Examples – Projects/Programs that Do NOT require additional City Council Approval via Motion

- Specific street and sidewalk improvements - if Department recommends them, they are within available resources, and existing vendor contracts allow improvements to be included as an add-on.
- Facility improvements - if Department recommends them, they are within available resources, and existing vendor contracts allow improvements to be included or preparing bid specifications and bidding does not disrupt normal operations.
- One-time expansion or extension of an existing recreation project/program to a specific park - if the Department recommends it and it is within available resources.

Examples – Projects/Programs that DO require additional City Council Approval via Motion

- Projects/Programs that are not currently provided or are beyond administrative resources to handle without significant disruption to normal operations.
- Projects/Programs that, in the past, have gone to the City Council for consideration prior to implementation, e.g., any aspect of a business improvement district or specific economic development projects/programs.