Date: December 10, 2020

To: Mayor and Members of the City Council

From: Charles Parkin, City Attorney
Laura Doud, City Auditor
Thomas B. Modica, City Manager

Subject: Legislative Department Procedures for Purchases, Payments, and Personnel Transactions

Attached is the first compilation of Legislative Procedures. They have been issued in various documents since 2013 and are now consolidated. This compilation also puts in writing a few new items that have added over the last two years. All the procedures have been implemented previously, including the previously not formally documented behest procedures and donation procedures. These procedures have been designed over the years to make it easier for City Council to comply with City Charter and Code and other requirements and to make it more difficult to inadvertently not comply.

Over the years, the involvement of City Council districts in funding events, identifying community projects, and requesting sponsorships for community priorities has grown. The State and local legal requirements for spending City funds, requesting sponsorships, personnel and other actions are complex. It has been important to support the Mayor and City Council by providing clear policies and procedures for compliance with these transactions that involve the Legislative Department. Formal policies were issued in 2013 and again in 2019. With the addition in FY 20 of Special Advertising and Promotion (SAP) funding for community events, and the recent onboarding audit, it was important to consolidate and update the requirements for Legislative Department spending and personnel transactions into one document for ease of compliance.

The attached procedures clarify and consolidate procedures for purchases and expenditures by the Legislative Department and are designed to minimize City and City Council Office liability exposure and prevent violations of the City Charter (Charter), including Sections 207, 208, 1704, and 1705, and Long Beach Municipal Code (LBMC) Purchasing Regulations.

**Topics Covered**

The following topics are covered in the procedures:

- Workflow for Purchases and Payments
- Office Operating Budget
- Personnel Transaction Processing
- Port Sponsorships and Grants
- Council District Priority Funding (Divide by Nine)
  - General Procedures
  - Securing Appropriations
  - Existing City Projects, Programs or Activities
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- New Projects, Programs and Activities
- Contributions
- Special Events
- State of the District and State of the City Events
- Participatory Budgeting
  - Behests

Legal Compliance

Specifically, these procedures ensure compliance with the Charter, the LBMC, and City regulations as summarized below:

- To comply with City Charter Sections 1704 and 1705, only the City Council, acting as a body, has appropriation authority, and appropriations may only be spent for the purposes authorized by the City Council.
- To comply with Charter Section 208, neither a Councilmember nor the Mayor (or his/her staff) can direct City departmental staff, and cannot negotiate or execute (or have any other role in) City contracts or purchases, or manage City projects, programs or events, unless for normal Council District Office operations not otherwise provided by the City.
- To comply with Charter Section 207, the Mayor’s Office (Administration Bureau) is responsible for overall purchase and expenditure management for both the Mayor’s Office and City Council Districts. The Mayor’s Office, while not having authority of what expenditures are made by Council Districts, has approval authority for purchases and expenditures to ensure compliance with City requirements.
- City purchasing procedures and guidelines per the LBMC and City regulations must be followed.

These procedures incorporate the interim procedures for special events issued on February 26, 2019 and update and replace the “Divide by Nine” procedures issued in November 9, 2015 and on August 30, 2013.

If you have any questions about these procedures, please contact City Manager Tom Modica, at (562) 570-5091, Finance Director John Gross, at (562) 570-6427, or Budget Manager Grace H. Yoon, at (562) 570-6408.

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ATTACHMENT: LEGISLATIVE DEPARTMENT PROCEDURES FOR PURCHASES, PAYMENTS AND PERSONNEL TRANSACTIONS (FINAL R1)

cc:  DOUGLAS P. HAUBERT, CITY PROSECUTOR
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     DEPARTMENT HEADS
Legislative Department Procedures for Purchases, Payments, and Personnel Transactions

Purpose

These procedures are designed to minimize City and City Council Office liability exposure and prevent violations of the City Charter and Municipal Code, including Charter Sections 207, 208, 1704, 1705, and the Municipal Code City Purchasing Regulations.

Organization of These Procedures

These procedures for purchases and expenditures are organized into the following areas:

- Workflow for Purchases and Payments (Page 1)
- Office Operating Budget (Page 2)
- Personnel Transaction Processing (Page 2)
- Port Sponsorships and Grants (Page 2)
- Council District Priority Funding (Divide by Nine) (Page 3)
  - General Procedures (Page 3)
  - Securing Appropriations (Page 4)
  - Existing City Projects, Programs or Activities (Page 4)
  - New Projects, Programs and Activities (Page 5)
  - Contributions (Page 5)
  - Special Events (Page 5)
  - State of the District and State of the City Events (Page 8)
  - Participatory Budgeting (Page 8)
- Behests (Page 9)

Workflow

All purchases, payments and personnel transactions must be routed through the Mayor’s Office for approval to ensure conformance with purchasing, expenditure and personnel procedures. In accordance with Section 207 of the City Charter, the Mayor must act as the administrative head of the Legislative Department. As a result, the Mayor’s Office, while not having authority as to what expenditures are made by Council Districts, has approval authority of purchases and expenditures for the purpose of ensuring compliance with City requirements.
Office Operating Budget

- The Council District or Mayor’s Office Operating Budget (Office Operating Budget) may be used for normal costs of office operations and for constituent communications and information, including constituent community meetings or state of the district/city events. Tables or individual tickets at events may be purchased from the Office Operating Budget if for personal use by a Councilmember or personal use by staff for office related purposes or for constituents for their information purposes.

- Unspent Office Operating Budget at the end of each fiscal year, net of any savings target, will be added to each respective Council District Priority Funds if the City Council approves the addition through a budget adjustment council letter that will be prepared by the Budget Office. Any budget shortfall in an Office Operating budget will be recovered by the City through a budget adjustment deducting from the budget in the following year.

- Purchases and expenditures must follow City rules and regulations, ensuring price quotations are secured, preventing unauthorized signing of contracts, ensuring required use of existing blanket purchase orders, and following appropriate approval paths.

- Office Operating Budgets cannot be used to fund City special events such as parades or festivals, contributions to 501(c)(3)s or event promoters.

- Office Operating Budgets cannot be used for political or election-related purposes.

Personnel Transaction Processing

All Legislative Department personnel transactions including hiring, promotions, pay changes, and terminations (for any reason) shall be processed through the Mayor’s Office, to ensure compliance with the City Charter, the Long Beach Municipal Code and associated regulations.

Port Sponsorships and Grants

- Consistent with the Port’s Community Sponsorship Program Policy and Guidelines, Port sponsorships and Port grants may be used to fund special events or projects of interest to Council Districts.

- Council Districts may request the Port to provide monetary support (i.e., behested payment) to a City Department or a private party for a special event or project in which the Council District is interested. Council Districts may not themselves submit sponsorship or grant applications to the Port and the Port may not award a sponsorship or grant to a Council District.

- If allowed by the Port’s guidelines for sponsorships and grants, a City Department may apply for a Port sponsorship or grant to help fund an event or project that is to be conducted by the department and is consistent with the department’s approved budget and operations. However, if such an event or project is not already included in the City’s budget or is inconsistent with the City Department’s operations and/or City Council’s approved priorities, then the Council District must obtain City Council
approval of the event or project through the special event procedures described herein prior to the City department applying for the Port sponsorship or grant.

The applicant for the sponsorship or grant (e.g., a City department or a private party) has the responsibility for meeting the Port’s terms and conditions of the sponsorship or grant.

**Council District Priority Funding (Divide by Nine)**

**General Procedures**

- Council District Priority Funding ("Priority Funding") is provided through a general appropriation in the budget. One-ninth of the appropriation is available to each Council District for general purposes as identified by the City Council. Any expenditures must also be within constraints imposed by the funding sources, e.g., the Special Advertising and Promotion Fund.
- Expenditures of Priority Funding may only occur after a Council District proposed project, program, event or activity is explicitly approved by the City Council as an item on a City Council agenda. Council approval must be secured to protect the Council District and to ensure compliance with the City Charter and City Municipal Code.
- To minimize the possibility of a Council District violating the Charter or making unauthorized purchases or contractual arrangements, Council Districts may not be involved in the selection of vendors, nor with managing or directing City staff regarding an event.
- Priority Funding may not be used for Council District operations that should be funded from an Office Operating Budget. For example, Council District Priority Funding may not be used for constituent gatherings or meetings for communication purposes (except for an annual State of the District).
- Any project or program funded by Priority Funds cannot result in any significant diversion of City resources from existing City Council priorities without the specific direction of the City Council. Departments are required to slow or defer implementation of such a project or program if implementation adversely impacts priorities previously set by the City Council in the budget or by previous actions.
- Departments have a goal of establishing a fixed cost to a Council District for a program or project. That cost should include overhead and administrative time. If a fixed price is provided, actual costs will not be tracked. However, if a department determines that costs are too unpredictable to predict in advance, costs will be tracked, and a Council District will be charged any additional costs or provided a refund depending on the actuals.
- At the end of a fiscal year, any unallocated Priority Funds for a Council District will be carried-over to the next fiscal year. Any funds carried-over into the new year are all subject to the purposes identified by the City Council for the most recent General Fund appropriation of Council District Priority Funds.
- The City Manager's Office, in conjunction with the Budget Office, will track any unallocated Priority Funds by Council District.
Securing Appropriations

- When initially appropriated by the City Council, Priority Funds go into a temporary account and must always be transferred to the Department responsible for expending the funds by way of a City Council action via a City Council letter appropriating the funds for a specific purpose (i.e. specific project, program, or event).

- A Council District or the Mayor’s Office must notify and discuss as appropriate with the Special Events and Filming Office (SEF) any special event or use of Priority Funding (such as a gift or donation) that goes through SEF.

- The description accompanying any proposed appropriations funded by Priority Funding must be sufficient to allow the City Council to understand what the item is, and who and what will be involved. The description must provide enough detail so it can be implemented by the department that receives the appropriation without the need for involvement or additional description by the Council District. This avoids any subsequent confusion and ensures that the Council District gets the program or activity that is intended and has been approved by the City Council.

- Proposed use of Priority Funding for existing projects and programs that have been agreed to by departments and are consistent with these City Council guidelines will be placed on the City Council Agenda (usually consent) by the City Manager, as needed, using a City Council Letter as “Proposed Enhancement to Existing Projects and Programs” for approval of the appropriations to be transferred to the appropriate Departments for those enhancements.

- The City Council Letter presented to the City Council for a contribution for any special event conducted by a 501(c)(3) or a promoter, must clearly identify the 501(c)(3) or the promoter. The promoter contribution agreement must be reviewed and approved by SEF and the City’s Risk Management Bureau and this review/approval information must be in the City Council letter. These City Council Letters must always be on the regular agenda. City Council Letters requesting the use of Priority Funding must also be on the regular agenda.

- The City Council appropriation for matching funds for local summer concerts will be managed by SEF.

- Two Council letters may be needed for approval for appropriations for Participatory Budgeting. The first letter is similar to any Council Letter requesting authorization to use Priority Funding. If the first letter, however, is not able to list all the potential projects (because they have not yet been identified), a second letter will be needed to get City Council approval to appropriate funds for the final project list.

Funding Existing City Projects, Programs or Activities

- Priority Funding may be used to supplement an existing City program or activity if the use is approved in advance by the relevant Department and it does not create an explicit or implicit operating commitment for subsequent fiscal years. These items may be included in the “Proposed Enhancement to Existing Projects and Programs” Council Letters brought to the City Council by the City Manager’s Office.
Council Districts should contact the City Manager’s Office (the Assistant to the City Manager), once an agreement is reached with the appropriate department. Council Districts are responsible for providing the description to the City Manager’s Office (who will then advise the Budget Office).

Funding New Projects, Programs and Activities

A proposed new project or program must be brought to the City Council by the appropriate Council District as a mid-year budget adjustment item on the regular agenda. No major staff work on the new item will be undertaken until the City Council has approved the item.

Funding a Contribution (Not a Special Event)

- Priority Funding may be used for a contribution (does not need to be charitable) if there is a public purpose/benefit involved.
- Any contribution, gift, or grant over $1,000 in funding for a “public works project” must comply with applicable prevailing wage and Department of Industrial Relations (DIR) registration requirements, and there must be a written agreement with the recipient acknowledging intent to comply and specifying verification and management procedures satisfactory to the City that ensures there is compliance with those requirements.
- Normal City Council approval processes for Priority Funding apply, and, in addition, the Council Letters must include:
  - The public purpose provided;
  - A reasonable description of the recipient including whether the recipient is a 501(c)(3), a promoter, a neighborhood association, an individual, etc.; and
  - If funding is for a public works project valued at over $1,000, there must be an explanation as to how prevailing wage requirements will be met and the Council Letter must include a requirement for a written agreement with the recipient that requires compliance with prevailing wage requirements and associated reporting and oversight prior to any transfer of funds.
- Funding of the contribution will be made through SEF.
- If the contribution is for an event, then the procedures for funding Special Events must be followed.

Funding Special Events

There are two ways for a City Council District to provide funding for a special event: either through SEF conducted events or by a contribution to a City-approved private sponsor for the event. Special events cannot be funded using a Council District or Mayor’s Office Operating Budget.
Special Events Conducted by SEF

- Any special event conducted by SEF must have specific Council approval in advance of any significant work, and any expenditures or commitments, even if there is no plan to use Priority Funding. The approval process is the same whether or not Priority Funding is used. Approval authorizes the use of City staff and identifies any City funding and backup funding and describes the event so that City Council understands what the event is they are considering approving.

- **Council Districts must discuss with SEF, in advance of any planning or commitments, the desired special event, to determine whether SEF will be able to conduct that event within the specified conditions and funding.**

- A project memo describing the event should be prepared by the Council District and provided to SEF to ensure there is a clear understanding of what is desired. The project memo should identify what the special event will be, what will be provided, when the event will take place, and the fixed or estimated cost. The project memo should exist prior to requesting approval of the City Council for the specific event; the project memo, or a summary of it, should be included in the City Council Letter.

- SEF will manage all aspects of the event, including negotiating and executing all contracts and agreements with vendors.

- SEF will treat newly requested special events on a first-come, first-served basis in terms of available resources and capacity. If SEF does not have adequate staff or other resources to conduct the event, or there are other issues that cannot be resolved, SEF may decline to conduct the event, unless the City Council subsequently directs the specific event as a higher priority than other SEF functions and events.

- SEF will determine, in its sole discretion, the funding requirements for an event and may guarantee a fixed cost or may require costs be funded based on actual costs. When the fixed cost option is used (the normal situation), the actual cost is not tracked. However, with the fixed cost option, if the event does not occur, the funding will be returned and if there is a major scope change, a new cost may be agreed to.

- SEF will include all its costs including overtime and costs of outside vendors inclusive of external event management but will not charge for SEF overhead (administrative fee) or for non-overtime SEF hours of work. Public safety costs will be included in the event costs and will be based on the specific event and the circumstances of the event.

- SEF may procure insurance for a single event, or for events in general, and may charge the event an appropriate cost for insurance.

- Specific artists or special service providers deemed essential to the special event may be identified in the description of a special event or program. Use of specific artists or special service providers depend on SEF staff being able to procure any needed purchasing exemption and to successfully negotiate a suitable contract.

- A 501(c)(3) or private party may contribute funds to an event conducted by SEF, but such a contribution must be made at the sole determination of the 501(c)(3) or the private party, and the contribution may not specify conditions (other than that the funds are to be used for the predefined special event). Donated funds will not be returned or refunded unless the event is cancelled. Contributions raised by Councilmembers
may also be made to SEF and must follow all FPPC reporting and ethical requirements.

- If the proposed budget for a special event assumes contributions, but the amount is not certain, the project memo must specify how the project is to be funded if the contributions are short of the budget (typically the shortfall would be funded from Priority Funding).

- A Council District that proposes a special event must agree to pay any unfunded costs and the associated City Council approval motion must identify the expected funding sources, including identification of the source of any potential cost overruns or shortfalls from other funding sources.

- For City Council’s appropriations for Summer Concert Matching Funds, SEF will determine how to expend those funds, ensuring there is the required match (which may be from Priority Funding through an appropriate City Council approval process that provides funds to SEF).

**Special Events Conducted by a Private Party (or Parks, Recreation and Marine)**

- A “private party” means a 501(c)(3), an event promoter, an established neighborhood group or association, or the Parks, Recreation and Marine (PRM) Department (for purposes of specifying procedures, usually for a small park concert).

- A special event by a private party may be supported by the City through a contribution made by SEF. Support for a private event cannot be through a contract for services.

- The following conditions must be met:
  - A 501(c)(3) must have a current registration with the State and must have an appropriate solicitation permit (both verified by SEF).
  - To receive City funds, the private party must have received an associated special event permit. The permit is not needed for City Council approval, but funding is conditioned on the permit having been issued.

- The private party must provide a reasonably complete description of the event in advance of City Council approval and indicate they have acquired or will acquire a special event permit. The description or summary of the event must be included in the approved City Council Letter along with a statement that funding is conditional on the acquiring of an appropriate special events permit.

- A Councilmember may suggest to a 501(c)(3) that it conduct an event. A Councilmember may also suggest to a promoter that the promoter conduct an event. A Councilmember may also make a recommendation to the City Council to contribute funding to a 501(c)(3) or a promoter for a special event (following these procedures). However, in order to avoid endangering the tax-exempt status of the 501(c)(3) or the tax deductibility of any contributions to the 501(c)(3), or an FPPC violation by a Councilmember, a Councilmember (or his/her staff) may not direct or attempt to direct a 501(c)(3) to conduct an event. A Councilmember (or his/her staff) may not direct or attempt to control how a promoter runs an event, or what vendors or sponsors it uses for an event.
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- If a Councilmember or his/her staff engage in fundraising for an event, they must comply with FPPC “behest” procedures (currently applies to any voluntary contribution over $5,000, but the Council District is responsible for being aware of the current limit). The FPPC procedures are also applicable to fundraising by a Councilmember for a special event, whether or not given directly to a 501(c)(3) or promoter. Council Districts may not directly accept contributions for an event.

Funding Annual State of the District and State of the City Events

- An annual State of the District or State of the City event is considered a normal communications event. Such an event may be funded by any combination of Office funds, donations, or Priority Funding. By definition, these events are considered a normal and expected City event; as a result no specific City Council approval is required, unless Priority funding is utilized to help fund. If Priority funding is used, normal special event procedures for Priority Funding approval are to be followed.

- If the total cost of a proposed State of the District event is more than $1,000 (or a State of the City event costs more than $9,000), SEF is required to manage the special event aspect of the event. SEF will select an event manager and coordinate as appropriate with the Convention and Visitors Bureau (CVB). Special event procedures described herein apply, except that City Council approval is not required unless Priority Funding is used for the event.

- If there is an event where a Councilmember or the Mayor speak, but the speech is not the primary purpose of the event, or the event is not primarily about the governmental activities of the District or City, then the event does not fall under the procedures of this “State of...” section and would be considered a normal special event.

Funding Participatory Budgeting

- A participatory budget project is a hybrid project that consists of both an extension of normal Council District Office Operation functions and a set of Priority Funding projects. As a result, it can be complicated to administer and may be time consuming.

- The constituent participation portion of a participatory budget process is an extension of normal Office Operations and as such, that portion may be funded from the Office Operating Budget (though it is not required to be funded that way). The projects themselves must be funded with Priority Funding.

- The selection and hiring of any vendors by a Council District to assist with the constituent participation process must be done through normal City purchasing methods (as with any District Office Operations expenditures).

- Departments will work with Council Districts for a participatory budgeting event(s), but it is at the discretion of each department as to how much time the department can afford to make available, including the time required to estimate project costs, without significantly impacting other priorities. Council Districts should keep in mind the potential large time commitment and complexity of identifying and approving a potential project when selecting potential projects for constituents to consider. Expanding or supplementing existing projects instead of creating new ones may be a better option for a participatory budget process as it allows departments to better
indicate if they can provide costing and implement the projects. City staff will not
normally be available to attend participatory budgeting meetings with residents.

- Subsequent to decisions on the projects wanted, Council District staff is responsible
  for ensuring that a City Council Letter has been prepared and submitted that would
  provide funding for each specific project. Council District staff is also responsible for
  informing the appropriate department(s) which projects have been approved in the
  participatory budget process.

  Subsequent to approval of individual projects by the City Council, implementation of
  the projects is a responsibility of the appropriate operating departments.

Behests

Council members who fundraise or otherwise solicit (i.e., "behest") payments (e.g.,
money, goods or services) from an individual or organization to be given to another
individual or organization (including the City) may be required by State regulation to
report the payment. Generally, a payment is considered "behested" and subject to
reporting if all the following are true:

- It is made at the request, suggestion, or solicitation of, or made in cooperation,
  consultation, coordination, or in concert with a Councilmember;
- It is made for a legislative, governmental or charitable purpose; and
- It does not otherwise qualify as a gift to a Councilmember, or a contribution
  (made for an election-related activity) to a Councilmember.

State law (the Political Reform Act) requires the reporting of behested payments if they
total $5,000 or more in a calendar year from a single source. Council members are
required to report behested payments within 30 days of the date they are made. To
report a behest, FPPC File Form 803 must be filled out by the Council member and filed
with the City Clerk.

A behest (i.e., request) by a Council member for donations (including donations of labor
money, equipment, materials, or services) for the benefit of the City (or to improve or
benefit any City-owned property), must be discussed with the City Manager’s Office
prior to the request being made or the acceptance of the behest from a third party to
ensure compliance with all City procedures and requirements, including the issuance of
any required building or other permits, liability waivers, insurance, or other
considerations. In some circumstances, a behest may also require approval by the City
Council at a regular Council meeting before a donation is accepted. A behest made in
violation of these procedures is at risk of being determined under FPPC regulations to
be a direct gift to the individual Council member requesting it, rather than a donation to
the City.

If acceptance of a behest is approved by the City Manager (or the City Council as a
body), the individual Council member making the behest is still required to report
payments of money, goods or services totaling $5,000 or more on FPPC Form 803.
Consultation with the City Attorney’s office prior to accepting or soliciting any behest is suggested in order to avoid FPPC violations.