

Memo

To the City Council and other concerned parties.

May 24, 2010 RE: City Council Agenda May 26, 2010 Item No (8) 08-2762



Stinky Sausage

As body parts, like policies, are mixed from different times and different places on the same or different bodies, the process of making sausage or policy can be ugly. When incomplete, the product smells and tastes bad as 08-2762 does now.

Good Policy will work for the City and work for the Nonprofits and for the residents of the City of Los Angeles serviced by the Nonprofit leasing space from the City of Los Angeles for the public good.

An example of the inadequacy of process is contained in the rapidity and inconsistencies between the taped records of the April 20th. 2010 joint meeting indicating a market value on the City's leased space at 50 cents per month and the written record at 25 cents. Another example is the quietness of this file since 2008, and then the sudden full court press through Committee to Council in late April without adequate study, focus, or analysis of ideas, and no evidence for what constitutes market value of leased space.

Taxation without Representation is Tyranny

In general, Council Members represent the 4,000,000 residents of LA. When it comes to money, there is a potential for conflict between a Council Member's fiduciary responsibility for a balanced City Budget and the social contract between the City and its' neediest residents.

Policy that affects the public good could be evolved in consultation with the up to date and regulated nonprofit entities who administer that "public good" on behalf of the City. It is a fallacy of logic that any day is the last to act (on May 19th the Council File indicated May 26th was the last day to act) because of the expiration of contracts, as many facilities have been operating without contracts for years.

How many sizes fit all?



Once adopted this policy will have the force of law for all non profits leasing or

purchasing City buildings in the future as well as now. Some, such as Barnsdall have

deed restrictions. Some cultural entities earn limited income from services provided and are part of the basic character that defines the City of Los Angeles. Others serve the neediest of our residents and serve to diffuse street level tensions. Some are purely charitable. Some serve a principle and some serve civic betterment. Perhaps policy should provide for variations for three basic classes of nonprofit providers of the public good.

BACSAC recommendation

Move that a working group be quickly established to include 10-20 community nonprofit representatives with adequate time and background in public policy to work with the appropriate City Departments under the aegis of the APHA Committee with a fast-track mandate to create (good sausage) leasing policies returned to the City Council within 120 days.

Table of Unintended Consequence

There will be a table presented that shows the intent of the policy recommendation, the possible unintended adverse consequences, questions to be answered, and preliminary ideas to reconcile the policy. Depending on case by case exemption to bad policy is unwise.

This table is based upon the April 16th Letter from CAO and CLA to Council and begins an analysis of Attachment 1 and 2 which is the Subject of the proposed policy for Council Vote on May 26, 2010

Item	Proposed Policy	Questions	Unintended Consequence	Possible Resolution
Attachment II A	Requires public benefit test of job creation for poor or low skilled workers for lowering of lease rental to nonprofit AND requires 10 times lease waiver be demonstrated in service delivery to low and moderate income.	Do Cultural nonprofits provide a public benefits? Are there other public benefits of educational nature?	Vast amount of compliance paperwork to substantiate for the City what is already defined more broadly in IRS Code Sections.	Require an annual inspection of tax returns via www.guidestar.org . At the least change AND to OR. Create peer panel review standards at 5 year intervals.
Att I A	Requires II A above		See above	Require broader definition of "a public purpose for the City."
Att I D	Require IIA above		See above	See above
Att I B and E	These Terms require reports of IRS status and FULL plans be submitted before lease is entered into.	Does the public benefit from nonprofit operational flexibility?	These requirements can dictate inflexibility and inability to increase public good when opportunity presents itself. In addition, one time report does not allow for monitoring of dysfunction.	Require annual updates to status , broad plans, staffing, and scheduling. Eliminate the word "fully" as restrictive.
Att I F	Requires written consent for ANY incidental sublease revenue	Is occasional art center gallery rental revenue included?	This requirement can create the need for additional levels of staffing to document and control small incidental revenue	Amend this provision to take effect above \$25,000 year in incidental sublease revenue.

Att I F	...“should the services not meet the expectations of the City, the City may terminate the agreement with 30 days written notice;”	Why 30 versus 90 days? How are expectations defined?	Political considerations or considerations of favoritism may one day dictate termination. This makes nonprofit fundraising impossible.	Eliminate vague and ambiguous language. Provide a notice and cure mechanism before eviction.
Att I I	Lease agreements...reviewed by the “Municipal Facilities Committee”	What is this Committee and who are the members and how are they appointed or elected?	Again possible politics triumphing over the public good.	
Att I J	Fair market...or a rate that reflects other factors.... All utility costs and the provision of meters.	What other factors could raise the rate above “fair market”? Is fair market limited to John Chavez’s calculations or to the oral testimony which is double that or to some other later calculation?	Services required by the City’s ownership of land and buildings may become too costly to provide. As there is NO BRIDGE to Fair Market rent, some nonprofits of great value to the City as providers of public good may be eliminated. As there is no evidence supporting what fair market is, it is an arbitrary value. Utility and Maintenance costs for Cultural nonprofits may be over 100k and are unsustainable in the public interest.	Deem it to be \$3.00/foot for the next ten years to be reviewed at that point with no exceptions. Implement fair market rent leases on an escalating basis from 20% or 60 cents per foot/year, ramping up, over 5 years. Cap first year total of non profit participation in all utility and maintenance costs at 50% of actual increasing by 10 per cent year. Make minimum lease term 10 years.
Att I K	Council Member Subsidy subject to Attachment II and cumbersome means test.		This could drag on, get political, or never get done.	Simplify the language, the task, and the eligibility.
Att I L	Limited to 2 subsidies per nonprofit.	Does JAC and BAC sharing one building count as one or two entities?	This could cause inconsistent public policy. For example, the Barnsdall Park Council approved Master Plan calls for concentration in a Board of Overseers for administrative	A limitation on concentration would be more appropriate by dollar volume of revenue for 10 years and then review.

			efficiency.	
Att I M	This provision makes term of lease co-terminus with Councilmember's term of office.	Why?	This could make fundraising impossible and might cause corruption and favoritism.	Eliminate this provision. This appeared to have happened in the Joint Meeting on 4/20/10.
Att I N	Financially responsible for: Security Custodial Interior and Exterior Maintenance Repairs and Landscaping Another 30 day termination clause.	What part of these expenses is attributable to one building which is part of a City owned campus? What work must be performed by City Workers and what part can be done by volunteers?	This could put the total costs of performing the public good up to 150k/year for 100 centers on average, saving the city rent of about 1 million and costing the "public good" borne by those who can least afford to pay 15 million. In addition, the 30 day eviction could become politically motivated as it depends on the subjective value called "good condition".	<ol style="list-style-type: none"> 1. Allow volunteer labor for most maintenance and repairs. 2. Have landlord do all major repairs and upgrades. 3. Have City pay anything over the first \$1,000 for installation of meters. 4. Provide campus security and landscaping services, charge nonprofit only for additional services.
Att I q	Insurances	Can a non profit insure the City against Fire?		