

## DEPARTMENT OF CULTURAL AFFAIRS

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Department of Cultural Affairs (“DCLA”) is proposing to amend Title 58 of the rules of the city of New York by adding a new chapter 2 that would make permanent the emergency rule governing DCLA’s Cultural Development Fund.

**When and where is the hearing?** DCLA will hold a public hearing on the proposed rule. The public hearing will take place at **11:00 a.m. on May 10, 2024**. The public hearing will only be held online.

- Join through Internet – Desktop app:

To register for the hearing via your browser either click on the following URL link or copy and paste it into your browser’s address bar. Then follow the prompts to register. Once completed, you will receive a confirmation email with instructions and the link needed to join the hearing. Please note, you will only be allowed access to the hearing if you have registered by the deadline. This is the link to register:

<https://us02web.zoom.us/meeting/register/tZUqde6oqDwoGtUr-hM274nYqm3hfTmJgSZm>

On the day of the hearing please utilize the confirmation email you received. You can choose your preferred method of joining. Both video and / or audio (phone dial-in) access will be provided in the confirmation email.

Please note that upon accessing the hearing, you will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Any questions or issues with registration or hearing access, can be sent to [rules@culture.nyc.gov](mailto:rules@culture.nyc.gov).

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DCLA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [rules@culture.nyc.gov](mailto:rules@culture.nyc.gov).
- **Mail.** You can mail comments to the New York City Department of Cultural Affairs, Office of the General Counsel, 31 Chambers Street, 2nd floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Cultural Affairs, Office of the General Counsel, at 212-298-8789.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must register to speak by May 3, 2024 and include your name and affiliation.

You can register at this link: <https://us02web.zoom.us/meeting/register/tZUqde6oqDwoGtUr-hM274nYqm3hfTmJgSZm>. If you have any difficulty signing up, please email [rules@culture.nyc.gov](mailto:rules@culture.nyc.gov). While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

**Is there a deadline to submit comments?** Yes, you must submit comments by May 10, 2024.

**What if I need assistance to participate in the hearing?** For questions or requests regarding accessibility or accommodations, please contact Sara Cobb, DCLA’s Disability Service Facilitator, at [disabilityfacilitator@culture.nyc.gov](mailto:disabilityfacilitator@culture.nyc.gov) or call (212) 298-8779. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by April 26, 2024.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel and may be requested by email at [rules@culture.nyc.gov](mailto:rules@culture.nyc.gov).

**What authorizes DCLA to make this rule?** Sections 387, 388, 1043, and 2503 of the City Charter and authorize DCLA to make this proposed rule.

**Where can I find DCLA’s rules?** DCLA’s rules are in Title 58 of the Rules of the City of New York.

**What rules govern the rulemaking process?** DCLA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043(b) of the City Charter. This notice also extends for an additional sixty days the effectiveness of 2024 RG 005 (Rules Relating to Cultural Development Fund Grant Award Program), a rule adopted an emergency basis, to afford an opportunity for notice and comment and to adopt a final rule as required by section 1043(i)(2) of the City Charter.

### **Statement of Basis and Purpose**

The Cultural Development Fund (“CDF”) is the New York City Department of Cultural Affairs’s (“DCLA,” or “the Department”) competitive, peer-evaluated grant process designed to support a broad, multidisciplinary group of diverse New York City-based nonprofit organizations that provide arts and cultural services across the five boroughs. The CDF is managed by the

Department's Program Services Unit under the supervision of the Commissioner of the Department and executive staff, and currently administers grant awards to more than 1,000 New York City-based arts and culture nonprofit organizations.

On February 5, 2024, DCLA promulgated an emergency rule pursuant to section 1043(i) of the Charter to facilitate the distribution of CDF funds for fiscal year ("FY") 2024. That rule is currently in effect. DCLA now aims to make its emergency rule permanent, as well as incorporate some additional changes.

The annual CDF grant process provides broad City support for the cultural community, encompassing all creative disciplines, audiences, and geographies of New York City.

Each year, applications are reviewed, evaluated, and scored by members of the cultural community, whom the Department recruits to serve as paid panelists. In FY24, the panelists brought their expertise and perspectives to review approximately 650 applications, which were submitted by the May 9 deadline. An additional 646 organizations, who received a multi-year CDF award in FY23, submitted renewal applications by the June 27 deadline.

The Department used the panelists' scores to determine which applicants would receive grants. Each recipient's baseline award was determined in accordance with the minimum and maximum award associated with the FY24 budget category of that recipient. The published criteria, guidelines, and other Administration priorities further explained in the Department's emergency rule and FY24 guidelines were used to arrive at the final grant awards.

The proposed rule contains nine sections, as follows:

- Section 2-01 would establish definitions for key terms.
- Section 2-02 would establish the applicant eligibility standards, which generally limit applicants to arts or culture nonprofit institutions.
- Section 2-03 would establish the application requirements, including that the application be complete and for an eligible project.
- Section 2-04 would establish the project eligibility standards, which would include that the project takes place in New York city and comes within or addresses one of four Department priority areas.
- Section 2-05 would provide that, in addition to the priority areas set forth in Section 2-04, projects may be eligible for funding pursuant to "Create NYC Initiatives," derived from the Department's 2017 Create NYC Plan.
- Section 2-06 would provide that the Department would oversee a competitive panel review process to evaluate CDF applications. This section would additionally set parameters for the make-up of the panels, the role of the panelists, and the eligibility requirements to serve as a panelist.
- Section 2-07 would establish eligibility requirements for single and multi-year awards and outline the procedure for scoring and funding applications. Specifically, this section would

require that each CDF application be assigned to a panel for review and scoring based on three evaluative criteria. This section would also establish the Department's role in determining the minimum score threshold, as well as the criteria the Department will use for any adjustments to such awards.

- Section 2-08 would establish the materials required for all applications, the additional documentation required from applicants with a fiscal sponsor or conduit, as well as the additional requirements for organizations with a primary mission beyond arts and culture.
- Section 2-09 would establish steps for grant administration and legal guidelines, including requirements for grant agreements, a prohibition on conflicts of interest, payment information for awards, the appeal process, and grantee evaluations.

This rule is authorized by New York City Charter sections 388, 389, 1043, and 2503.

New material is underlined.  
[Deleted material is in brackets].  
Asterisks (\*\*\*) indicate unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

**Section 1: Title 58 of the Rules of the City of New York is amended by adding a new chapter 2, to read as follows:**

## **Chapter 2: Cultural Development Fund**

### **§ 2-01 Applicability and Definitions**

For purposes of this chapter and any application for a Cultural Development Fund grant award submitted to the Department, the following terms have the following meanings:

**Accessibility.** The term “accessibility” means the degree to which an environment, service, product, or program allows access and eliminates barriers to participation by diverse or underrepresented communities, especially people with disabilities.

**Applicant.** The term “applicant” means an organization applying for CDF funds.

**Audience.** The term “audience” means any people who benefit from an applicant’s programs and activities.

**City.** The term “city” means the city of New York.

**Cultural Development Fund.** The term “Cultural Development Fund” or “CDF” is the citywide arts and cultural services grant award program administered in accordance with this chapter.

**Cultural Institutions Group.** The term “Cultural Institutions Group” has the same meaning set forth in section 2507 of the New York city charter.

**Department.** The term “Department” means the New York city department of cultural affairs.

**Disability.** The term “disability” has the same meaning set forth in section 8-102 of the administrative code of the city of New York.

**Guidelines.** The term “guidelines” means the materials published by the Department for each CDF application cycle used to administer the CDF program.

### **§ 2-02 Applicant Eligibility**

(a) To be eligible for an award pursuant to section 2-07 of this chapter, the applicant must:

(1) Be a nonprofit arts or cultural organization or a nonprofit organization that includes an arts or culture component as part of its mission;

(2) Demonstrate successful delivery of arts and cultural services in New York City for the two consecutive years immediately preceding the fiscal year for which the applicant is applying for CDF funds;

(3) Be based in New York city, as determined by the organization's address identified on internal revenue service ("IRS") Form 990, IRS § 501(c)(3) letter, and other publicly available information;

(4) Demonstrate administrative and programmatic operations within one or more of the five boroughs;

(5) Possess a unique Federal Employer Identification Number (EIN);

(6) Be certified as tax exempt under IRS Code § 501(c)(3), or be an incorporated nonprofit that uses a Department-approved, New York state incorporated, tax-exempt fiscal sponsor, provided that only nonprofit organizations may be eligible, regardless of whether they use a fiscal sponsor;

(7) Be incorporated in New York state as a nonprofit organization at least three years prior to the fiscal year for which the applicant is applying for CDF funds; and

(8) Be in compliance with the most recent annual state and federal filing requirements for nonprofit organizations, including New York State Charities Bureau filings.

(b) The following entities are not eligible applicants:

(1) Unincorporated individual artists or artist collectives;

(2) Limited liability companies, benefit corporations, limited partnerships;

(3) Parent-teacher associations and related organizations;

(4) Nonprofit organizations without IRS § 501(c)(3) tax-exempt status that do not utilize an eligible fiscal sponsor;

(5) Nonprofit organizations with chapters, offices, branches, or general activity in New York city but that are administratively based outside of New York city;

(6) Members of the Department's Cultural Institutions Group;

(7) Programs administered by New York city, New York state, or federal agencies;

(8) Branches of, or program of or administered by, the New York Public Library system, the Brooklyn Public Library system, or the Queens Public Library system;

(9) Degree-granting institutions, including schools, colleges, and universities, provided, however, that organizations affiliated with such institutions that are independently incorporated nonprofits and meet all other application criteria set forth in subdivision (a) of this section may be eligible and should contact the Department for further guidance;

(10) Applicants without a history of providing services in arts and culture as well as related income and expenses in the last two years; and

(11) Applicants that have previously received CDF funds but have failed to comply with the Department's grant reporting requirements at any time in the past five fiscal years.

### **§ 2-03 Application Requirements**

(a) Applications for CDF funds must include one proposed project that conforms to the requirements set forth in section 2-04 of this chapter, and include the required materials described in section 2-08. If such applicant is awarded CDF funds by the Department, such proposed project will form the scope of service in the grant agreement between the Department and the applicant.

(b) Applicants must submit the Department's application form, which includes a description of the project, and provide other relevant information about the proposed project and the applicant, including the applicant's ability to compensate artists for their work.

### **§ 2-04 Project Qualifications**

(a) A proposed project for CDF funds must:

(1) Include an artistic or cultural activity of acceptable quality as determined by the panels described in section 2-06 of this chapter;

(2) Take place in New York city during the fiscal year for which the applicant is seeking CDF funds;

(3) Be within the applicant organization's artistic, cultural, administrative, and fiscal capacity as determined by the panelists; and

(4) Incorporate a diverse funding stream that includes at least one of the following: individual donations, earned income, foundation and corporate support, or other government support.

(b) The proposed project must include an arts or cultural activity that comprises or addresses one of the priority areas described in this subdivision:

(1) Artistic dialogue, such as: creating a forum for new or previously created works for public presentation during the grant period; supporting of informed cultural public discourse; or engaging multiple genres or disciplines;

(2) Preservation projects, such as projects working to preserve: New York city’s rich cultural heritage; the cultures of New York’s diverse populations; public access to historic artifacts or sites relevant to New York city; or archival cultural materials for public access;

(3) Services to an artistic or cultural field or creative community, such as: professional training within an artistic or cultural discipline; skills or professional training for cultural workers; or supportive services to organizations serving a discipline;

(4) Arts education, such as: ongoing or sequential arts programs for children, youth, or other targeted audiences; cultural activities in schools, including programs related to curricula; in-school artist residencies; or arts programs for children and adult learners at cultural organizations; or

(5) Projects that promote sciences and the humanities, such as projects that promote: communication of cultural knowledge or practices to individuals or communities; exploration of environmental and natural sciences; or the heritage of an ethnic group in New York city.

(c) Projects that are not eligible for CDF funds include:

(1) Non-arts activity, including but not limited to physical fitness, social services, or general education services such as college preparation or homework help;

(2) Any activity funded by a City Council initiative administered by the Department;

(3) Activities that do not provide access to the public;

(4) Strategic planning, including capacity building;

(5) Fundraising events and receptions;

(6) Construction or renovation of facilities, including the purchase of equipment;

(7) Lobbying or government advocacy efforts.

## **§ 2-05 Create NYC Initiatives**

Notwithstanding subdivisions (a) and (b) of section 2-04 of this chapter, and subject to availability as indicated in the guidelines for the fiscal year for which the applicant is applying for CDF funds, funding may be provided for initiatives developed from recommendations of the Department’s 2017 cultural plan (“Create NYC Initiatives”), or any subsequent cultural plan, including, but not limited to the Language Access Fund (the “LAF”) and the Disability Forward Fund (the “DF”). To be considered for funding pursuant to a Create NYC Initiative, the applicant must describe its initiative-related activities in the project proposal in accordance with the guidelines.

## **§ 2-06 Competitive Panel Review**



(a) The Department will organize and oversee a competitive panel review process to evaluate CDF applications in accordance with section 2-07 of this chapter.

(b) Such panels will be comprised of no fewer than two panelists.

(c) Employees of the Department may not serve as panelists but may consult and administer the evaluation of projects by the panelists.

(d) Panelists must be practicing artists in New York city or administrators in the fields of arts and culture, or New York city community leaders, civic leaders, educators, or government officials or their staff.

(e) The weight assigned to the evaluative criteria are published in the guidelines and are subject to change to achieve the purposes of the CDF.

(f) Only panelists may assign scores to the applications. Scores determined by panelists, including final average scores, are not subject to change by the Department.

### **§ 2-07 Scoring and Fund Allocation**

(a) Eligibility for single year awards. Applicants that did not receive a CDF grant award in any of the three fiscal years immediately preceding the fiscal year for which the applicant is applying for CDF funds are eligible only for a single-year award. The Department's guidelines may provide additional guidance governing limitations of awards for these applicants.

(b) Eligibility for multi-year awards. Applicants that received a CDF grant award in the fiscal year immediately preceding the fiscal year for which the applicant is applying for CDF funds are eligible for a three-year award, provided, however, that such applicant must submit a renewal application each year of such award, such application must comply with section 2-03 of this chapter, and such application must demonstrate continued eligibility. The renewal application will not be subject to panel review.

(c) Scoring and award determination. CDF funds will be awarded in accordance with the following steps:

(1) Step one. Each application will be assigned to a panel. Panelists determine and assign a final score to each assigned application according to a methodology developed by the Department and designed to provide consistent scoring across the panels. The methodology to score applications will use the following evaluative criteria: the benefit of the proposed project to the public; the applicant's fiscal and administrative capacity to execute the proposed project; and overall project quality and excellence.

(2) Step two. The Department will determine the minimum final award score needed to receive an award based on the available CDF budget for the relevant fiscal year. The Department may designate in its guidelines different applicant budget categories describing ranges of applicants' budgets and provide a different award amount to each such category. Applicants

assigned a final panel score at or above the minimum award score will receive, at a minimum, the minimum award provided for in their budget category.

(3) Step three. The Department's guidelines may provide for a process to adjust awards above the minimum award, or to provide an award for applicants that did not meet the minimum award score, for each budget category in consideration of the following factors:

(A) The total amount of funding appropriated for the CDF program;

(B) The percentile in which the applicant's panel score ranks compared to that of all other funded applicants;

(C) The applicant's operating budget for the fiscal year for which the applicant is applying for CDF funds or relevant prior years as determined by the Department;

(D) For applicants that were awarded funds prior to fiscal year 2023, how the award amount determined in paragraph (2) of this subdivision compares to the award amount for any year prior to fiscal year 2023;

(E) Whether the application furthers agency priorities by meeting at least one of the following criteria, which may be further defined by the Department in its guidelines: prioritizing funding in underserved boroughs or other geographic areas, including cultural deserts; the impact of a proposed decrease in the CDF funding awarded to an applicant as compared to funding awarded to such applicant in a prior fiscal year; and any temporary increase in programmatic expenses associated with the completion of a city-funded capital investment for such applicant organization; and

(F) Whether Create NYC Initiatives awards as described in section 2-05, are available.

(d) Allowable expenses. CDF awards may only be used for project expenses, including programmatic operating expenses, such as staff salaries, space rentals, insurance costs, or any other costs incurred to realize the organization's proposed project.

## **§ 2-08 Application Materials**

(a) Materials required for all applications. An applicant's CDF application must include the following documents:

(1) Background materials, in a single file of no more than 10 pages, that describe the applicant's arts and cultural public engagement over at least the past two years, as well as any other programs, press or marketing materials, letters of recommendation, curricula, testimonials, and artist biographies the applicant elects to include;

(2) A copy of the applicant's IRS § 501(c)(3) determination letter, except as provided in paragraph (3) of subdivision (b) of this section; and

(3) A copy of each of the applicable financial documents required by the Department, as described in the guidelines.

(b) Applicants with a fiscal sponsor or conduit. In addition to the materials set forth in subdivision (a) of this section, applicants applying with a fiscal sponsor or conduit must also submit the following documents:

(1) Proof of incorporation as a nonprofit organization in New York state. Acceptable forms of documentation include a New York state incorporation certificate and board of regents charter under section 216 of the education law;

(2) A letter from the fiscal sponsor indicating that it has agreed to act as a fiscal sponsor; and

(3) In lieu of the applicant's IRS § 501(c)(3) determination letter, a copy of the fiscal sponsor's IRS § 501(c)(3) determination letter.

(c) Organizations with a primary mission beyond arts and culture. In addition to the materials set forth in subdivisions (a) and (b) of this section, as applicable, applicants with a primary mission not related to arts and culture must also submit a full organizational budget on a template provided by the Department, as may be updated from time to time by the Department.

(d) Additional documentation. The Department may request additional information from an applicant after an application has been submitted.

## **§ 2-09 Grant Administration and Legal Guidelines**

(a) Grant agreement. If an applicant is awarded funds, the Department will prepare a grant agreement based on the project proposed in the application. An officer, director, or member of the applicant who has been granted signatory authority by the applicant's bylaws or other valid corporate document must sign such grant agreement to receive such funds. The grant agreement must specify that an applicant receiving CDF funds shall:

(1) Comply with all pertinent New York city, New York state, and federal laws, including the Americans with Disabilities Act, New York state human rights law, and New York city human rights law;

(2) Maintain appropriate insurance, as required by the Department and described in the guidelines; and

(3) Credit the Department's support in all programs, brochures, flyers, posters, announcements, or similar printed or electronic matter relating to projects funded by the Department.

(b) Conflicts of interest. A CDF grant award may be rescinded at the sole discretion of the Department because of an actual conflict of interest or to avoid the perception of a conflict of interest. An applicant may appeal the rescission of an award in accordance with subdivision (d) of this section.

(c) Payment.

(1) An applicant's grant agreement must include a payment schedule that is based on the services provided and associated costs.

(2) Funds will not be available until after the adoption of the city's budget for the fiscal year for which the applicant has applied. Notification of final award amounts will be sent after the start of the grant period.

(3) Final payment is contingent on submission and Department approval of a final report demonstrating that the project was completed. Such final report must be submitted on a form provided by the Department. If modifications to the city budget require the reductions of awards, such reductions may be taken against any outstanding payments. Final payment is also contingent upon completion of any other reporting required by the grant agreement. Applicants that do not comply with such reporting by the deadlines required by the Department may have their award rescinded and be ineligible for future funding, as described in paragraph (11) of subdivision (b) of section 2-02 of this chapter. An applicant may appeal the rescission of an award in accordance with subdivision (d) of this section.

(4) While applicants must apply for project-related public services (rather than general operating support), funds received can be allocated to any project-related operating costs of the grantee organization (such as staff salaries, space rentals, etc.) other than capital expenditures, fundraisers, or government advocacy efforts, provided the projected services have been delivered as described.

(d) Appeal of rescission. An applicant may request a feedback call within 21 days of receipt of a notification letter from the Department, which includes the determination of the applicant's CDF award. Following a feedback call, the Department will provide the applicant the Department's appeal form. Applicants must submit the form within 14 days of receipt of the appeal form. The commissioner will determine any such appeal within 60 days. The determination of the commissioner will be a final agency determination.

(e) Grantee evaluation

(1) Information regarding the upcoming funded activities of each applicant awarded a grant must be provided to the Department on a regular basis, and staff from the Department must be invited to view funded activities for the purpose of monitoring to assure funds are spent in accordance with the terms of the grant agreement.

(2) An organization's performance record may be a determining factor when considering future funding.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Rules Relating to Cultural Development Fund Grant Award Program (Permanent Rule)

**REFERENCE NUMBER:** 2024 RG 024

**RULEMAKING AGENCY:** Department of Cultural Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Senior Counsel

Date: April 5, 2024

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Rules Relating to Cultural Development Fund Grant Award Program  
(Permanent Rule)**

**REFERENCE NUMBER: DCLA-2**

**RULEMAKING AGENCY: Department of Cultural Affairs**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

April 5, 2024  
Date