

RESOLUTION NO. 13-12

**A Resolution of the Scientific and Cultural Facilities District
Pertaining to Defining Tier II Audited Paid Attendance**

WHEREAS, the enabling legislation creating the Scientific and Cultural Facilities District, C.R.S. §§32-13.101-112 describes the public origin of the funds to be distributed and the public expectations for their use, as emphasized by the bolded language herein; and

WHEREAS, C.R.S. §32-13-107(3)(b)(I)(A) requires that to be eligible for SCFD Tier II funds, an organization must be a 501(c)(3) nonprofit and have as its **primary purpose** “to provide for the enlightenment and entertainment of the **public** through the production, presentation, exhibition, advancement or preservation of art, music, theater, dance, zoology, botany or natural history or shall be an agency of local government that has such primary purpose;” and

WHEREAS, C.R.S. §32-13-107(3)(b)(I)(B) requires that “any such facility shall have its principal office within the district, shall conduct the majority of its activities within the state of Colorado, and shall **principally benefit the residents of the district**,” and

WHEREAS, C.R.S. §32-13-107(3)(b)(I)(D) requires that to receive such funds an organization “shall have been in existence, operating and **providing service to the public** . . .” for at least five years; and

WHEREAS, C.R.S. §32-13-106(2)(k) states that “[I]n determining such eligibility, the board may take into consideration the applicant’s financial and organizational capacity to expend tax dollars **to serve the public** and achieve the mission of the organization;” and

WHEREAS, C.R.S. §32-13-107(3)(b)(II)(A) states that the distribution of the public funds allocated to Tier II to the benefit of the public “be based upon a formula to be applied annually which gives equal weight to the annual operating income of such facilities and the annual paid attendance at such facilities;” and

WHEREAS, C.R.S. §32-13-103(6) defines paid attendance as “total paid attendance at all programs as verified by annual audit reports;” and

WHEREAS, the SCFD Board of Directors defines “annual audit reports” as those reports based on agreed upon procedures, conducted by auditors, that include analysis, detail testing using sampling procedures, recorded contemporaneously through commercial software ticketing or admission tracking systems, and ticketless attendance verified through sign-in sheets, written confirmations sent prior to events such as school assemblies, or similar methods of tracking attendance, to reported attendance figures; and

WHEREAS, §32-13-106(2)(d) authorizes the SCFD Board of Directors to engage staff to assist the Board in its duties and develop such procedures and instructions to implement board policy; and

WHEREAS, SCFD staff has historically applied a multi-part test to assist organizations and staff in identifying qualified paid attendance; and

WHEREAS, historically the following types of attendance have been deemed non-qualifying: free events, group tours or performances unless a per-person payment is made and is tracked pursuant to agreed

upon criteria, certain fundraising or special events, volunteer activities, free outreach programs, and social events; and

WHEREAS, due to significant changes in technology and organizational practices since 1988, and the public expectation that an organization's share of public tax dollars will be based on criteria directly related to serving the public, the Board of Directors desires to develop policy further clarifying implementation of the legislative language with respect to qualifying paid attendance; and

WHEREAS, the Board of Directors issued public notice of this proposed policymaking process and afforded an opportunity for public comment at its regular monthly board meetings on September 26th and October 24th, 2013;

THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT AS FOLLOWS:

Section 1. Commencing in distribution year 2014, for purposes of applying the statutory funding formula, only attendance at programs and activities that are focused on the **organization's mission**, and on the primary purpose for which the organization is eligible to receive SCFD funds, may be counted towards the funding formula. Additionally, the program or activity must involve an attendee's meaningful engagement in the organization's IRS tax exempt purpose and its SCFD statutory primary purpose in order to be counted as paid attendance and factored into the distribution formula set forth in C.R.S. §32-13-107(b)(II)(A).

Section 2. To confirm qualifying attendance, all **four** of the following **must be met**:

- 1) the program or activity must be **mission-based**; and
- 2) the program or activity must be one for which the organization normally **charges a fee** to participate; and
- 3) a per-person payment to participate in the program or activity was made to the organization as evidenced by **traceable, contemporaneous documentation**; and
- 4) the program or activity must be **open to the general public** without restriction or limitation by invitation, such that anyone who wishes to purchase a ticket or admission may do so.

Commencing in application year 2014, organizations will be required to sign an affidavit verifying that all four parts of the test have been satisfied for each program or activity for which paid attendance has been reported. An organization may be required to demonstrate and document how and why a program or activity meets each requirement of the four-part test.

Section 3. Attendance may be counted for an event, program or activity only if its fundamental nature involves active implementation of, and engagement in, the organization's mission and the statutory primary purpose for which the organization is eligible to receive SCFD funds. Attendance may not be counted if the scientific or cultural purpose of the event, program or activity is secondary. The Internal Revenue Service, in its Form 990 instructions, states that "Fundraising events and activities only incidentally accomplish an exempt purpose. The sole or primary purpose is to raise funds to finance the organization's exempt activities. . ." Therefore, **attendance at a fundraising program** or activity shall **not** be counted as qualified paid attendance.

Section 4. Documentation regarding paid attendance must have been created, or independently verified, contemporaneously with the event and must be produced upon the request of an auditor or SCFD staff member; documentation created retroactively may not be considered.

Section 5. Attendance may **not** be counted for events that are **private and not open to the public**, e.g., weddings, birthday parties, corporate retreats, etc., as these require an invitation or are restricted to specific attendees, even if those events are held during normal operating hours and full access to facilities and amenities is provided.

Section 6. Attendance **may be counted** for programs or activities that are delivered or **operated directly** by the SCFD recipient organization, or in **collaboration** with another SCFD recipient organization, pursuant to a written agreement providing for the specific allocation of attendance between or among collaborating SCFD recipients.

Section 7. Attendance may **not** be counted for fairs, festivals, conventions or similar events at which a Tier II organization may have a booth, table or other presence, regardless of whether attendees have paid an admission or other fee.

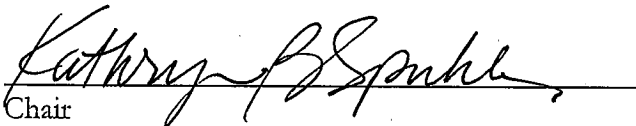
Section 8. Attendance may **not** be counted for admission to, or participation in, an event, exhibit or program or performance that is **ordinarily offered free** to the public. However the payment, whether paid by the patron, visitor, or other funding source, **may** be counted as a donation or contribution to the organization.

Section 9. An attendee who pays to participate in multiple aspects of a single performance, single lecture, single event or exhibit, e.g. pre- or post-performance events conducted on a single day, **shall be counted only once as a single paid attendee**. This does not include educational activities - see Section 10 for details on educational activities.

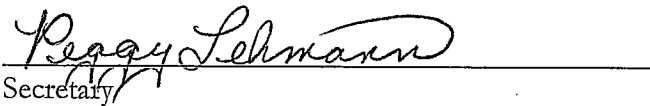
Section 10. An attendee who is **enrolled in a class or workshop** that takes place on different days requiring multiple visits to a class location (or locations) and provided that the class content is consistent with the core mission of the organization shall be **counted as a single paid attendee for each visit to the organization or class location**.

Under the provisions of this policy, SCFD staff shall apply these guidelines in reviewing an organization's reported attendance to determine whether the attendance shall be included or excluded. Staff may request additional information from the scientific or cultural organization before making its determination.

Introduced and approved at a regular meeting of the Board of Directors of the Scientific and Cultural Facilities District, the 24 day of October, 2013.


Chair

ATTEST:


Secretary

