

April 4, 1986

REPORT TO THE HONORABLE

DEPUTY MAYOR AND CITY COUNCIL

REGARDING ITEM S408 OF THE DOCKET OF MARCH 17, 1986

REGARDING ITEM 150 OF THE DOCKET OF APRIL 7, 1986

Under direction of March 10 and 17, 1986, this office was asked to review the "Arts Plan for The City of San Diego 1986: Part 1" which is proposed as part of the supporting documents for The City of San Diego's grant application to the California Arts Council for a grant under the State/Local Partnership Program.

Since your meeting of March 17, 1986, the Arts Plan has undergone several revisions, the latest of which is designated as "Draft 3." To assist the Council in assessing the Arts Plan, this report reviews both plans for purposes of compliance with the duties and functions of the Public Arts Advisory Board, a San Diego City Charter 43(a) Advisory Board.

We have repeatedly stressed that as an advisory board, PAAB's role is limited to "consult and advise" and may not involve itself in administrative, legislative or regrating activities. City Attorney Memoranda of Law, December 10, 1984, January 2, 1985 and September 16, 1985. Therefore the Arts Plan must be reviewed against these restrictions that prevent the usurpation of Council and managerial authority through direct involvement with City departments.

Tested against these restrictions, we have found the following problem areas in the Arts Plan and its latest revision:

1. Goal A, now Need A, concerns itself with the funding and support for the arts. Under Objectives A, Responsibilities 2., the original Arts Plan provided for PAAB to select two (2) of its members to serve on COMBO's Community Advisory Panel. No such authority exists either in San Diego Municipal Code section 26.07 or Charter section 43(a) for an advisory board to graft some of its members to another organization. Hence such a responsibility is beyond the authority of the board and should be deleted. This language does not appear in Draft 3.
2. At Objectives A, Timeline and Funding, PAAB proposes "an evaluation" of the City's role in providing support to the arts. As an advisory body, PAAB must necessarily consider support sources but there is a

distinct difference between a review board that contemplates direction and evaluation and an advisory board. As pointed out in our September 16, 1985 Memorandum of Law, while the process of a review and advisory board is similar, the advisory board's recommendations may be adopted or ignored. An "evaluation" necessarily implies findings on the effectiveness of a program that may or may not be adopted by the City. San Diego Municipal Code section 26.07 C.

3. Under Goal A, Objectives D, PAAB proposes to "develop new sources of private funding and support for the arts." Section 26.07 C. charges PAAB with the development of legislation to provide incentives to the private sector to include art in private developments, but does not provide for the direct solicitation of private funding. Draft 3 modifies this language to mimic the ordinance.
4. Goal B, now Need B, has been objected to as a duplicate function of other entities. This goal simply addresses the need for "adequate facilities" for the artistic community. Art, unlike Athena, does not spring full grown from the artist. Inherent in encouraging programs for public performances and public exhibition (Section 26.07 C.2.) is the adequate area to develop and display the end product. Hence this goal is within the charge of PAAB.
5. Goal C, now Need C, refers to the Percent for Art Ordinance. (San Diego Municipal Code section 26.07.1 et seq.). While correctly described in the original guidelines, Draft 3 on page 13 refers to the fund as a percentage of the Capital Improvement Budget. The correct description is an amount equivalent to one (1) percent of the Capital Outlay Fund. San Diego Municipal Code section 26.07.3
6. Goal D, now Need D, under Objectives B of developing neighborhood performances indicates PAAB responsibility "by contracting for services." PAAB has no authority to contract for services. It can recommend only and not enter into contractual obligations. This language is avoided in Draft 3.
7. Goal E, now Need E, proposes assistance in providing information services which has been questioned. Our Memorandum of Law of September 16, 1985 not only

approved of this concept, it specifically found appropriate the funding of "San Diego Art Awakening" that is referenced on page 21 of the original Arts Plan.

8. Goal F, now Need F, regarding recommendations for technical and management assistance is implicitly authorized by Section 26.07 C.2. as initial development of programs to promote public performances and exhibitions. We note that both Art Plans refer to "hosting" various organizations. Such "hosting" to the extent it involves expenditures must be done by the City with expenditures properly authorized since PAAB has no direct expenditure authority.
9. Goal G, now Need G, seeks to establish an international cultural exchange program, especially with Mexico. Since art knows no geographical boundary, this is a proper pursuit for PAAB as contemplated in Section 26.07 C. However, the original Arts Plan at Goal G, Objectives C places responsibility on PAAB "to establish a liaison with appropriate international cultural agencies." As an advisory board, PAAB is not the contact authority for international exchanges. As phrased in Draft 3, this responsibility is substantially modified to have PAAB work with appropriate departments to develop contacts and study exchange programs. Such identification is necessary to making recommendations while the direct contact implied by "establish a liaison" of the original Arts Plan is not.

With the modification of the Arts Plan to conform to the above comments, PAAB's role in the implementation of the plan will be consistent with its obligations under San Diego Municipal Code section 26.07.

Respectfully submitted,
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