

MEMORANDUM OF LAW

DATE: September 18, 1985

TO: Chuck Sexton, General Manager, Convention and  
Performing Arts Center

FROM: City Attorney

SUBJECT: Potential Conversion of Plaza Hall to City  
Office Space

In August 1985 we met and discussed the fact that the Plaza Hall portion of the Convention and Performing Arts Center may be converted in the near future to office space. You asked this office to review and report back to you with regard to potential legal problems involving such a conversion. You provided us with lists showing use permits which have already been issued for Plaza Hall as well as a list of events which are "tentatively" scheduled to use Plaza Hall. The question is: "What potential legal liability will the City incur if it converts Plaza Hall to office use?"

There are only two executed contracts for utilization of Plaza Hall after December 31, 1985. The two executed contracts are for January 11 and 12, 1986, and for March 9 through 17, 1986. A review of the two executed contracts indicates that they are enforceable contracts and the City would probably be liable for damages if we attempted to unilaterally terminate the contracts. It may be feasible, of course, to attempt to mutually agree on a termination of the two executed use permits. Apparently, however, there is no intent to commence the conversion to office use until after March 17, 1986.

With regard to the approximately one hundred events tentatively scheduled for the period February 1986 through November 1988, it is our conclusion that, in the absence of any written contract, the City is not bound by the purely tentative discussions which have occurred to date with regard to such events. Apparently the process used by your office is to allow sponsors of various future events to place a "hold" on various Convention and Performing Arts Center facilities up to several years in advance. However, no contract is entered into and no fees are paid to the City until a date comparatively near the event date. It appears that no specific fees are even mentioned in correspondence relating to tentative future events.

The California Statute of Frauds is contained in the California Civil Code, Section 1624, and reads as follows:

Sec. 1624. Statute of frauds

The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

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It is my understanding that the present proposed schedule for conversion of Plaza Hall to City office space contemplates necessary construction commencing after August 10, 1986. There is, of course, no certainty that conversion will commence on that date or any other date pending review and approval of the conversion concept by the City Council. However, assuming an August 10, 1986 conversion date, it does not seem likely, in view of the above discussion, that the City will incur any liability, especially if you, at the earliest possible date, inform the various proposed future users of the facilities of the pending conversion. It is recommended in connection with such notice that you ascertain potential alternate facilities for the various activities originally proposed for Plaza Hall and inform the

promoters of such potential alternative facilities.

Attached for your review and potential use is a draft notice which could be used as a model for letters to be sent to the various promoters. Prior to sending such letters it seems appropriate to give the City Council or the appropriate Council Committee notice of your intent and secure its approval.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:715.7(x043.2)

Attachment

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