

THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: October 1, 2008 REPORT NO: 08-136

ATTENTION: Council President and City Council  
Docket of October 7, 2008

SUBJECT: Amendments to San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

REFERENCE: 1) Summary of Changes by City Attorney  
2) City Attorney Digest (O-2009-21)  
3) Ordinance (O-2009-21)  
4) Strikeout Ordinance (O-2009-21)

REQUESTED ACTION:

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

STAFF RECOMMENDATION:

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

SUMMARY:

The establishment of the City of San Diego Commission for Arts and Culture (Commission) by a 1989 ordinance is codified in Chapter 2, Article 6, Division 7 of the San Diego Municipal Code. The Commission's purpose is to serve in an advisory capacity to the Mayor and City Council on promoting, encouraging and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

Fifteen diverse volunteers comprise the Commission and include arts and culture patrons, business leaders, professionals including lawyers and financial management experts, community activists, design experts, and artists. Through effective public policy, advocacy, strategic partnerships and funding, the Commission supports non-profit organizations, neighborhood arts programs, festivals, public art, cultural tourism and innovative programming which all contribute to the quality of life, the economy and the vibrancy of San Diego. The Commission administers the Allocations Programs, through which Transient Occupancy Tax funds support over 100 local non-profit organizations through a rigorous, review process which addresses fiscally sound and accountable management practices and encourages the highest quality of arts and culture offerings. The Commission's Public Art Program provides the process through which the City commissions original works of art to be integrated into new capital improvement projects and through which eligible private developments are required to include art or cultural space.

As active participants in the ongoing, Citywide efforts to control spending, increase cash flow, create efficiencies and accurately document City-owned assets, the Commission was motivated to examine and evaluate, over a three-year span, the accuracy and effectiveness of Chapter 2, Article 6, Division 7 of the San Diego Municipal Code, hereinafter referred to as "SDMC 26.0701 et. seq."

The evaluation revealed that, during the 19 years since the Commission was established, a significant gap has formed between the contemporary work of the Commission and what SDMC 26.0701 et. seq. currently reflects. In addition to developing a range of amendments designed to remedy that gap, the Commission identified two fundamental shortcomings in SDMC 26.0701 et. seq. and is proposing remedial amendments:

1. Absence of duties and functions of the Executive Director and Commission staff.

SDMC 26.0701 et.seq. does not currently distinguish the duties and functions of the Executive Director nor of the Commission staff. In contrast, the San Diego Municipal Code sections which establish the Ethics Commission (added 6-5-2001) and the City of San Diego Commission on Gang Prevention and Intervention (added 4-7-2006) do specify the roles and work of the Executive Directors and staff of each.

Additionally, SDMC 26.0701 et.seq. does not currently distinguish between the fiduciary responsibilities of the Commission, a board of appointed volunteers, and the Executive Director, a City employee. For greater fiscal accountability, the Executive Director should be the recognized fiduciary agent for the management of the public funds allocated to the Commission by the Mayor and City Council each year.

2. No steward for the City's art collection has been formally assigned over the span of nearly a century.

Since its establishment in 1989, the Commission has voluntarily assumed the role of the steward for the City's art collection. The City owns 1,144 diverse works of portable and fixed art acquired through a variety of methods over the past 99 years. The oldest artwork in the City's collection is Irving Gill's 1909 Horton Plaza Fountain and the most recent artwork to be accessioned into the City's art collection is Sarah Lejeune's 2008 public artwork for the South Belmont Comfort Station in Mission Beach. Early on, donations were the primary source of the City's art acquisitions. During the 1930s, the Works Progress Administration/Federal Arts Project yielded a significant number of artworks that came under the care of the City. In the late 1980s, the City passed a policy encouraging the inclusion of original, commissioned artwork into capital improvement projects, and, as recently as 2004, the City Council amended Council Policy 900-11 to require the expenditure of 2% for public art in the City's eligible capital improvement projects.

When an agency acquires art, it also assumes the responsibility for caring for that art. Beginning 19 years ago, the Commission began funding and conducting, through both paid consultants and unpaid interns, comprehensive surveys of the City's art collection in order to record the type, location and condition of the City's art assets. To date, three such surveys have been completed. In addition, the Commission has applied for,

received and administered numerous grants from private foundations and federal agencies such as The Getty Foundation and the National Endowment for the Arts for the purpose of funding professional conservation surveys of selected artworks and funding the conservation of other selected artworks.

The Commission also engages experts in the field of art collections management whenever possible. One of the Commission's advisory subcommittees, the Public Art Committee, includes a volunteer museum registrar who provides professional, practical advice to the Commission on the methods and practices of recording a collection of artworks. A current member of Commission staff holds a Masters degree in Museum Studies and has extensive experience as an art appraiser.

The City Council's approval of the requested action outlined above is anticipated to result in:

- Updated duties and functions that accurately reflect the contemporary work of the Commission;
- Delineation of the duties and functions of the Executive Director and Commission staff;
- Clarification that the Executive Director, not the Commission, acts as the City's fiduciary agent in the management of the public funds allocated to the Commission by the Mayor and City Council each year;
- Formal establishment of a steward for the City's art collection, a role the Commission has been fulfilling unofficially for 19 years;
- Resources and labor saved through the establishment of the Commission as the single point of contact for the oversight of the City's art collection including processing art donations and loans, deaccessioning, maintenance, repair, conservation, operation, storage and exhibition of the City's art assets;
- Improved customer service for art donors, lenders and borrowers;
- An increase in the quality and, therefore, the value of the City's art collection;
- Accurate documentation of the City's art assets;
- Adherence to the standards of the Governmental Accounting Standard Board (GASB 34) and the City's *2004 Public Art Master Plan*;
- Clarified conflict of interest requirements for Commissioners;
- Clarified appointment methods, terms and qualifications for Commissioners.

#### FISCAL CONSIDERATIONS:

No costs will be incurred by approval of the proposed amendments. However, it is anticipated that the amendments may lead to improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets.

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On June 25, 2008, the Committee on Rules, Open Government, and Intergovernmental Relations of the City Council voted to recommend approval of the staff recommendation and to refer this item to the City Council for consideration with additional "clean up" to the SDMC 26.0701 et.

seq. amendments by the City Attorney. The City Attorney's recommendation for "clean up" language is attached.

San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture was added 5-15-1989 by O-17298 N.S. Amended, added and/or renumbered 4-20-1992, by O-17757 N.S.; 4-10-2000, by O-18786 N.S.; 5-17-2004, by O-19280 N.S.

#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 18, 2008, the Commission voted to recommend to the Mayor and City Council approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On April 7, 2008, the Policy Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On May 3, 2007, the Public Art Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

In addition, the research and development of the proposed amendments engaged the following individuals, groups and organizations:

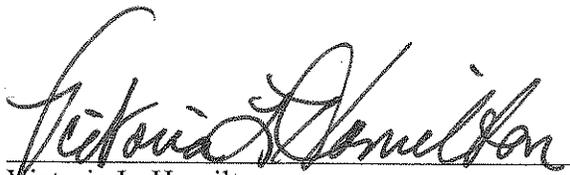
- Deputy Chief of Community and Legislative Services
- City Attorney's staff
- Director, Major Gifts and Philanthropy Planning
- Executive Director, Commission for Arts and Culture and staff
- Visual Arts Librarian and Manager of the Library Department's Visual Arts Program
- Grants & Gifts Business Process Reengineering (BPR) Team
- Ethics Commission staff
- Purchasing and Contracting Department staff
- Other municipal governments nationwide
- National Public Art Network of Americans for the Arts

#### KEY STAKEHOLDERS AND PROJECTED IMPACTS:

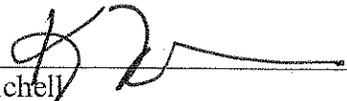
Key stakeholders include the Commission, the Executive Director and Commission staff as well as elected officials, City staff and San Diego's citizenry. Projected impacts may include improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets. Increased labor associated with educating City staff about any new or amended duties and functions assigned to the Commission, the Executive Director and Commission staff may be possible.

The City's requirements, adopted in 2004, for the inclusion of art and/or cultural space in eligible private developments are not materially changed by these proposed amendments.

None of the proposed amendments shall be construed to limit or abridge the powers or exclusive jurisdiction of the City's Library Department over its Visual Arts Program.



Victoria L. Hamilton  
Executive Director, Commission for Arts  
and Culture



Kris Michell  
Deputy Chief for Community and  
Legislative Services