

September 12, 2013 City Arts Commission Agenda Items

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4) APPROVAL OF MINUTES – August 8, 2013

The following are largely comments on the minutes, rather than suggested changes. Where changes are suggested, the affected passages from the draft minutes are shown in *italics* with the suggested changes highlighted in ~~strikeout~~ underline format.

Page 2:

I am baffled by the first two paragraphs on page 2. They refer to and quote an email received on August 11, which is *after* the meeting, but refer to it as if it were known and read at the August 8 meeting. That seems logically impossible to me, and I think the minutes should reflect what actually happened *at* the meeting. If the email is discussed and read into the record at the present meeting, it should be part of the September 12 minutes, not the August 8 minutes.

As to what happened at the August 8 meeting, I seem to recall Commissioner Boller reading from a paper a statement of what she wanted a certain passage in the July 11 minutes to say and handing the paper to City staff, followed by the Library Services Director saying she would have to review the audio recording to see if the statement was correct. I personally feel the “audio minutes” of every meeting should be routinely posted to the meeting webpage for all to review, and I find it rather extraordinary that staff would claim a right to “overrule” the wording a Commissioner suggests before the remainder of the Commission even had a chance to consider whether they wanted to adopt the proposed wording or not. Although I believe that in this case staff’s description of the July 11 events is more accurate than former Commissioner’s recollection, staff serves the Commission, not the other way around, and any disagreement between staff’s and the Commission’s interpretation of events should be adequately reflected in the minutes of meeting at which the changes to staff’s draft language are approved.

In the present case, the question at hand is what the Library Services Director Cowell told Commissioner Boller with regard to the latter’s wish to abstain from the July 11 vote on going forward with creating a Sculpture in the Park Coordinator position. Ms. Boller wanted to abstain from voting because she wanted to be able to apply for the position, and believes she was told she could not abstain. My recollection, in agreement with staff’s version, is that Ms. Cowell told Ms. Boller not that she could not abstain, but rather that even if she did abstain she would still not be eligible for the position. What Ms. Cowell was alluding to was the California Government Code [Section 1090](#) provision which makes it illegal for public officials (including appointed commissioners) to be in any way connected with the creation or award of a contract in which they are financially interested. That law is sufficiently strict that for multimember boards such as the City Arts Commission, even a complete recusal of a member from all discussions of the matter is insufficient. Had Ms. Boller wished to serve as a paid Sculpture in the Park Coordinator, she would have had to have resigned from the Commission prior to participating in any discussions, even about the desirability of creating such a position.

Page 3:

I thought the handling of the *Public Arts Coordination and Site Management Services* RFP was highly irregular, and probably violated the noticing requirements of the Brown Act. The agenda did not adequately inform the public that formulation of the RFP was going to be discussed, nor that a subcommittee was going to be created to review the proposals received. Instead the agenda implied only that the Commission was going to hear a generic presentation from staff about the City's "purchasing processes."

Page 4:

- Paragraph 3 under Item 3: "**Commissioner** Smith asked Chair for clarification ..."

Page 5:

- First line: "That information is forwarded to staff for **downloading uploading** to the Library's website."
- Second paragraph from end: I had to leave the August 8 meeting to attend the Planning Commission meeting at 6:30 p.m., so I am pleased to see the question of routinely inviting public comment on each agenda item as it is discussed (as is done at City Council meetings) will be considered at a future Arts Commission meeting. In preparation for that, the Commissioners may wish to read a letter on this subject from California open government expert Terry Francke appended to an April 25, 2013 [news article](#) at *CalCoastNews.com*. Mr. Francke believes the Brown Act gives the public a legally enforceable right to comment on each item *after* it has been introduced for discussion by staff, or the body, and that meetings in which such comment is not invited violate the act's restriction of restrictions to those reasonably necessary to achieve the Act's overarching purpose of orderly, open public discussion: "*We are confident that a court would find that a rule forcing citizens to address the Board on an agenda item before it is given its explanatory introduction by the staff member or other person presenting it is not "reasonable" within the meaning of the Brown Act. This practice does not permit an informed comment to the board, since the agenda itself often provides no clue as to the content of a proposal or report to be provided under a given agenda item. ... Even when the agenda attaches a good deal of introductory material ... it can be anticipated that there will be an oral introduction as well, providing background and other explanations and adding emphasis to selected points. Forcing public comment to precede these presentations effectively denies the public the opportunity to react to them.*"

Page 6:

- Item C.1: "Art in Public Spaces this was never the official name of this **committee** Ad Hoc Committee ..." [??]

5.A. CONSENT CALENDAR

1. Cultural Arts Activities

The report refers to the City's "Cultural Arts Division." It might be helpful to receive an update on the current status of that division. The City administration consists of "departments" (with "directors") with "divisions" (usually with "managers") within them. According to the [current budget](#) (pages 266 and 267 of the [Budget Detail](#)), "Cultural & Arts" is a division within the "Library Services" department, with allocated funding of \$120,044.84, however it does not appear to have any staff assigned to it. With the retirement of Cynthia Cowell, the City Manager and Board of Library Trustees are currently in the process of appointing a new Library Services Director. At this point it seems unclear if this might trigger changes to the status and management of the Cultural Arts Division.

3. Financial Report

It is good to see this detail, although it may not be immediately apparent how this fits into the bigger picture of the \$120,044 cited above.

5.B. ITEMS FOR REVIEW AND POSSIBLE ACTION

1. Discussion and possible action on relocation of Uprooted II sculpture.

Since, per the August 8 minutes, local architect Bill Ficker requested this discussion, I hope he has been notified and will be able to participate.

5.C. MONTHLY REPORTS

It should be obvious to the Commission that it is impossible for the public to comment intelligently on these reports before having heard them.