

## April 28, 2014, City Arts Commission Agenda Item Comments

These comments on the Special Meeting of the Newport Beach City Arts Commission are submitted by: Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

### ***Item IV.A. Formation of an Ad Hoc Arts Master Plan Committee***

In the absence of any other information, [this item](#) seems to be a continuation of [Item V.B.3](#) (“Master Arts & Culture Plan for the City of Newport Beach”) from the [April 17, 2014](#), Regular Meeting agenda, in which, after describing “*the Arts Orange County Master Arts & Culture Plan*,” the [staff report](#) said:

*“As a first step, the Arts Orange County Master Arts & Culture Plan recommends that the Arts Commission appoint a Steering Committee as an Ad Hoc Sub Committee to guide the actions of the plan and make strategic decisions.”*

In acting upon this item I hope the Commission will bring clarity to it by considering the following points:

1. What exactly is the “Arts Orange County” Master Arts & Culture Plan? What exactly does the plan entail?
2. Has \$35,000 been awarded to Arts OC for developing the plan? If so, who made that decision and what funds are being used?
3. Is there a commitment for Arts OC to deliver a completed plan to the City Council by November of this year?
4. How does the Arts Orange County Master Arts & Culture Plan relate to the Commission’s own efforts to develop an Arts Master Plan for Newport Beach?
5. What exactly will the proposed Steering Committee’s function be?
6. Will the Steering Committee conduct its deliberations openly, pursuant to the Brown Act?
7. What will be the end product of the Steering Committee’s effort?
8. Who will oversee implementation of the final plan if it is approved by the City Council?
9. If approved, will Arts OC be able to participate in a plan it has developed or whose development it guided?

Regarding the [Brown Act](#) point, my understanding is that no matter how it is created or composed, if the Arts Master Plan Steering Committee plans to do anything other than explore and formulate a recommendation to bring back to the entire Commission for consideration, then *all* its meetings need to be open and noticed. For example, if the Steering Committee provides advice or guidance **to** Arts OC on behalf of the Commission, then at least in my view they are themselves a “[legislative body](#)” subject to all the provisions of the Brown Act. Such openness is necessary to ensure, as the Act requires, that the public fully know what influence the Commission had in formulating the plan Arts OC will ultimately bring to the City Council. More generally, rigorous openness is necessary to ensure that what results from governmental action will be a plan of the people, and not the plan of an outside consultant influenced by unknown outside interests, including his own.

It might be noted that the Harbor Commission has recently set an excellent example of open participatory public policy making in its creation of two purely advisory short-term subcommittees to explore and make recommendations back to the full Commission on implementing Council policy suggestions ([Multiple Vessel Mooring System](#) and [Water Taxi Ad-Hoc Committees](#)). In creating these committees the Harbor Commission insisted they comply with the Brown Act (that is, all meetings and deliberations are noticed and public) even though as ad hoc, sub-quorum, strictly advisory committees they were not legally required to do so. This has worked well, has produced considerable public participation, and does not seem to have been a burden on City staff.

Beyond that, in considering the above matter, the following history of this issue, in which the City Council and City staff seem to have repeatedly acted upon significant arts matters and initiatives without seeking advice from the City Arts Commission, may be helpful:

The genesis of the Arts Orange County Master Arts & Culture Plan effort seems to be the City Council's [March 26, 2013](#), adoption (links to videos of most past Council meetings are unfortunately not currently available) as [Item 16](#) -- without consulting the City Arts Commission - of the new [Council Policy I-13](#) ("*Public Arts and Cultural Facilities Fund*") dedicating a portion of developer fees as "*a funding source for the acquisition and maintenance of permanent art structures and installations in public places throughout the City including support of capital construction programs and cultural facilities (collectively referred to herein as "Public Art").*" Although it is not clear from the written [minutes](#), my recollection is Mayor Curry emphasized the funds would be used to develop *permanent* art infrastructure as opposed to supporting ephemeral activities.

The just released proposed Newport Beach [City Budget](#) detail for Fiscal Year 2014-15 indicates on page 26 (page 43 of the [302 page PDF](#)) that the fund established by Policy I-13 received no revenue in FY2013-14, but is expected to receive a \$390,436 injection in FY2014-15 (the Fund's share of an anticipated \$19M public benefit fee from The Irvine Company's San Joaquin Plaza development), of which \$100,000 will be earmarked for capital improvement projects in FY2014-15.

Policy I-13 does not explicitly establish, or even reference, an Arts Master Plan to guide the expenditure of the fund, but it seems to have inspired the City Manager to have proposed, again without consulting the City Arts Commission, as part of Item SS2 at Council's [May 28, 2013](#), budget Study Session the allocation of roughly \$100k towards the creation of an "*Arts and Culture Master Plan*," apparently to be developed by a consultant hired through a Request for Proposals / Qualifications process. Details are on [Slide 13](#) and [Slide 14](#) of that day's PowerPoint presentation. Again the video of the meeting is not readily accessible, but as the [minutes](#) reflect, at least one Council member, Nancy Gardner, cautioned that the City Arts Commission was also developing an Arts Master Plan for Newport Beach, and expressed the hope the two efforts would be coordinated ([page 174](#), paragraph 5 from end). It might again be noted that based on the earlier Council comments, the new Council-directed Master Plan was assumed to be focused on capital investment projects related to Policy I-13, such as City participation in the Balboa Village Theatre renovation, which Rick Stein of Arts OC had promoted on [page 173](#).

It is not obvious from any documents readily accessible to the public if City staff actually went through a formal [Request for Qualifications / Proposals](#) process to select an outside contractor to develop the Policy I-13 (?) "*Arts and Culture Master Plan*" proposed by the City Manager on May 28, 2013, or has yet signed a contract for it, but as alluded to in the Arts Commission [staff report](#) cited at the beginning of this comment, as Item SS2 at the April 8, 2014, City Council Study Session (available in [video](#)), and again without consulting the City Arts Commission, Rick Stein of Arts OC was introduced as the winner of a \$35,000 proposal to develop and complete that plan by November, 2014, with the features outlined in the Library Services Director's [PowerPoint presentation](#).

The preceding summarizes, as best I understand it, the genesis of the Arts Orange County Master Arts & Culture Plan proposal, but given the City Arts Commission's [Charter Section 712\(b\)](#) power and duty to "*Recommend to the City Council the adoption of such ordinances, rules and regulations as it may deem necessary for the administration and preservation of fine arts, performing arts, historical, aesthetic and cultural aspects of the community,*" it deeply concerns me that after the Commission's considerable efforts to develop parts of its own Arts Master Plan for Newport Beach, City staff would have, without consulting the Commission, proposed, scoped and selected (as detailed above) an outside consultant to prepare a separate plan for the City.

#### ***Item IV.B. Boards, Commissions and Committees Training***

In addition to suggestions for efficient and effective meetings, I hope the training will at least mention the statutorily required ethics training that seems to be barely alluded to in the [Handbook](#) (which has, incidentally, never been reviewed or approved by the City Council).

The [ethics training](#) touches on such matters as the impropriety of a Commissioner participating in the development of a program in which that Commissioner later may wish to participate as a contractor or beneficiary – a matter that has caused some confusion and embarrassment in the past and which will certainly be relevant again in developing the Arts Orange County Master Arts & Culture Plan for expending a windfall of development fees, and perhaps other funds, on activities Commissioners may wish to participate in.

Regarding effective meetings, I hope the training will emphasize that the Brown Act does *not*, as is commonly misunderstood, restrict the way in which the public can interact with the Commission on agenda topics. Instead it sets a minimum standard, ensuring that public comment will not be shut out completely, and that "favored" speakers will not be allowed. But any "more liberal" format that complies with the [minimum rules](#) is [explicitly allowed](#). What the Brown Act *does* require is that the topics to be discussed by or with a majority of the Commission be clearly spelled out on [an agenda](#), and conducted at a noticed [public meeting](#).

In that connection, I hope the training will emphasize the value to all concerned, whether it is legally required or not, for the public's business (whether by the full Commission or by a committee) to be conducted in public -- and perhaps offer suggestions for attracting a larger, more involved and more interactive audience.