



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Jeff Ruster

**SUBJECT:** SEE BELOW

**DATE:** February 21, 2008

Approved

*Paul Krutz*

Date

*2/21/08*

**COUNCIL DISTRICT:** #5

**SUBJECT: OPTIONS FOR MEXICAN HERITAGE PLAZA, INCLUDING MEXICAN HERITAGE CORPORATION, FOR RULES COMMITTEE DISCUSSION AND DIRECTION**

## RECOMMENDATION

That the Rules and Open Government Committee review the three options presented within the body of this memorandum and provide direction to staff in making final recommendations regarding the Mexican Heritage Plaza (MHP) and Mexican Heritage Corporation (MHC) for discussion and action at the March 18, 2008 evening City Council meeting. Based on the February 25, 2008, Community Outreach Meeting to be held at the Mexican Heritage Plaza a supplemental memo may be provided.

## OUTCOME

Committee direction based on consideration of options in this memorandum will result in staff preparing final recommendations for the City Council action at the March 18, 2008 evening City Council meeting. This could include seeking more detailed information concerning transition, implementation, or budget impacts.

The recommendation options in this memorandum are consistent with the MHP consultant findings that recommend a financially responsible and sustainable model based on key design parameters and outcomes that incorporate the following concepts:

- A vision that responds to the community's input in a fiscally responsible manner
- A balance between commercial and community interests
- A mix of programming securing local and regional audiences
- Provision for City funding that is benchmarked and performance based
- A concept that is attractive to individual and institutional donors
- Establishment of an on-going community engagement mechanism

## **BACKGROUND**

At the Rules and Open Government Committee meeting of January 30, 2008 the following reports were presented for discussion in addition to MHC's request for an additional \$300,000 to keep their organization operational through the end of FY 2007-08:

- "Assessment of Optimal Uses and Sustainability of the Mexican Heritage Plaza, San José, California" by Maribel Alvarez, Ph.D. conducted and written in collaboration with Tom Borrup, Community Cultural Development, for discussion;
- the Appendix report "Analysis of the Operations and Maintenance Agreement between the City of San José and the Mexican Heritage Corporation" by Strategic Philanthropy Advisors, LLC; and
- the "Response by Mexican Heritage Corporation (MHC) to Consultant's Report" dated January 16, 2008 from MHC.

The findings of the consultants reports were accepted by the Committee endorsing the MHP consultants' recommendation for the vision that:

- The Mexican Heritage Plaza should be a "Community Cultural Center" with a new non-profit organizational model.

The MHP consultant acknowledged that in order for the City to achieve a new non-profit organizational model that the City for a transition period may need to assume portions of MHP maintenance and utilities (M&U) services and also facility leasing and event services. (See Attachment)

Staff was directed to return to Rules on March 5, 2008 with specific options with the requirement to release the memorandum no later than February 22, 2008 in order to have the contents available for stakeholder review and as background for the Community Outreach Meeting to be held on February 25, 2008 from 5:00 to 7:00 p.m. at the MHP. As referenced in the Recommendation, a supplemental memo may be provided prior to the March 5, 2008 Rules meeting to capture the community response to the options described in this memorandum.

## ANALYSIS

The following provides details on the three options developed by staff as a result of the Rules Committee meeting discussion. The options are based on a framework derived from the MHP consultant report that includes three operating functions important to MHP's success. They are:

- **Facility Maintenance and Utilities Function**
  - ✓ Staff sufficient for MHP operating hours from 8:00 a.m. to 10:00 p.m.
  - ✓ Basic facility maintenance and occupancy expenses
  - ✓ Security staff
  
- **Facility Leasing and Event Services Function**
  - ✓ Market venue and book space
  - ✓ Manage master calendar
  - ✓ Deliver event services, billing and collections
  - ✓ Develop and oversee new lease-rate schedule
  - ✓ Designed to be self-financing for special services billed to event
  - ✓ Consider funding for reduced or subsidized facility use
  
- **Proactive Programming Function**
  - ✓ Proactive presenter, produce of cultural programs
  - ✓ Promote MHP as a Community Cultural Center
  - ✓ Balance neighborhood and regional programs
  - ✓ Balance commercial and community activities
  - ✓ Diversified funding base

Option #2 presents a transition strategy to the Recommended Option presented in the Assessment of Optimal Uses and Sustainability Study referenced above. In both Options #1 and #2 consideration is given to transition MHC as the current operator of MHP and to remain as an active community non-profit with programming opportunities at MHP and within the community.

Options #1 and #2 do not contemplate City funding in response to MHC's request for \$300,000 for emergency one-time funding for the period April 1, 2008 – June 30, 2008. These options, however, do contemplate a still to-be-determined amount to assist in transitioning MHC from the current role as MHP operator. Option #3 includes supporting MHC's emergency funding request for \$300,000, in addition to other funding considerations.

### **Option #1 CITY SERVING AS FACILITY OPERATOR WITH REACTIVE PROGRAMMING**

- **Maintain An Accessible, Active Plaza Facility with City Serving as Facility Operator,**
- **Providing Facility Maintenance & Utilities (M&U), and**
- **Facility Leasing & Event Services.**

➤ **“Reactive” Cultural Programming Occurs through Facility Leasing and Resident Arts Partners (RAPs) Activities, to include the MHC.**

This option will maintain an accessible, active, professionally run MHP, while stopping short of the full vision of a “community cultural center” operated by a new non-profit organizational model. In this option, the City on a long-term basis serves as Facility Operator, providing for M&U Services and Facility Leasing and Event Services, building on recent General Services Department experience with Event Services at City Hall. Cultural/community programming occurs through the RAPs and in a reactive manner as groups come forward to lease space at the MHP. MHC would transition and become another RAP.

This Option #1 has the following key elements for consideration:

1. **Maintenance and Utilities Services to Be Provided by the City:** The City, starting on April 1, 2008 assumes ongoing responsibility through the General Services Department for the M&U of MHP at an annual estimated cost of \$450,000 (escalating over time with actual staff, services, utilities costs) with a one-time transition cost not to exceed \$115,000 for the remainder of FY 2007-08, April through June. The City will operate the MHP and make sure it is available to the public from 8:00 a.m. to 10:00 p.m. seven days a week.
2. **Facility Leasing & Event Services to Be Provided By the City:** The City, starting on April 1, 2008 would assume responsibility to provide MHP Facility Leasing Services and Event Services, building on experience of the General Services Department with leasing the City Hall Rotunda and Plaza. The annual cost to the City would be \$360,000 (escalating with staff costs over time), with a one-time transition cost not to exceed \$100,000 for the remainder of FY 2007-08, April through June. Lease/event revenues, anticipated to be \$300,000-\$500,000 annually, are expected to offset these City costs. An Enterprise Fund could be established, from net revenues, to be used to support reduced rate or free facility use. The City will honor the current rate structure and facility bookings and over a 12-month period establish transparent facility leasing procedures and updated rates for RAP, non-profit and commercial use. The City in addition to honoring existing rental agreements will; establish the requirements for scheduling calendar dates; build staff and functional capacity; and manage all related fees and charges, including the collection of fees.

The General Services Department has commenced an initial assessment regarding the types of usage and capacity for single and simultaneous events at the MHP. As their assessment progresses and General Services better understands the nature of the historical and proposed programming at MHP, they will be able to provide a more in-depth assessment of the various uses at the Plaza.

3. **Mexican Heritage Corporation Transition and Stabilization:** For this Option (and Option #2 that follows) the City and MHC would voluntarily agree to terminate the existing Operations and Maintenance (O&M) Agreement and negotiate a new

relationship tied to benchmarks for performance that provides City support to MHC while the organization is in transition. MHC would focus their efforts on the Mariachi Festival including the associated year-round programming opportunities, music and dance education, the activities of Los Lupenos and other community activities. Key points of this transition are as follows:

- a) City and San José Redevelopment Agency \$100,000 funding support for marketing efforts to ensure the continuation of the Mariachi Festival by MHC this year. The MHC would also be eligible to apply for the City's competitive "Festival, Parades and Celebration" grant program.
- b) consider options for MHC to repay the City's loan. One option may be for the City and MHC to enter into a challenge grant whereby the outstanding loan balance is reduced by \$1 for each \$1 raised by MHC. Currently the outstanding balance on the \$650,000 interest free loan is \$500,000. Paying off the balance of the loan would allow MHC to remove the Letter of Going Concern from their audited financial statements, making them more competitive in securing philanthropic funds;
- c) provide an opportunity for MHC to remain at the MHP as a Resident Arts Partner (RAP) with options to rent at City-established RAP rates both office space and facility use space for a period of time to be determined;
- d) for the period April 1, 2008 – June 30, 2009 provide funding to MHC to support their transition as described within this option. This allows MHC the time to restructure their organization and to implement a new refocused mission. The actual amount of funding would be based on the development of a proforma budget by MHC as agreed to and reviewed by the City. This funding would be provided in installments through the transition period and would be conditioned upon certain fund raising and other performance benchmarks to be defined, as appropriate, for the March 18 presentation to City Council; and
- e) technical assistance to be funded by the City for MHC based on the MHC current organizational capacity assessment that identifies the need for technical assistance with their non-profit operations in an amount not to be determined for recommendation by City Council at the March 18, 2008 meeting.

#### **Option #2 TRANSITION TO NON-PROFIT COMMUNITY CULTURAL CENTER**

- **Transition to Community Cultural Center with New Organizational Model.**
- **City on a Transitional Basis Provides Services for Maintenance & Utilities, and**
- **Facility Leasing & Event Services.**
- **"Reactive" Programming Occurs During Transition as in Option #1.**
- **Steering Committee Convened to Develop Strategic Plan for "Proactive" Programming, including Funding/Operations Plan, with Option for a New Facility Programmer and/or New Facility Operator.**

This option anticipates and transitions toward the full vision of a Community Cultural Center with a new nonprofit model, as recommended by the City's MHP consultant. This option has the same requirement to transition MHC as detailed in Option #1 above. In this scenario,

however, the City provides Facility Operator services (M&U, Leasing & Event Services) on a *transitional* basis. A Steering Committee could be convened by a credible non-governmental entity to develop a specific Strategic Plan to achieve the vision of a Community Cultural Center with a proactive cultural programming function.

The transition will require a specific, robust, realistic Strategic Plan and most likely a two- to five-year transition period. Achieving the full Community Cultural Center vision is an opportunity for the community that cannot be led by the City; the City's role has been and will continue to be significant in building the MHP facility and helping ensure that the facility is clean, maintained, safe and accessible for the public in a basic way. This sets a valuable stage for financially sustainable and proactive cultural programming at the MHP.

City staff sees opportunity for a credible, neutral nongovernmental organization to convene a leadership team to develop a Strategic Plan for the Community Cultural Center function and possibly begin initial execution of the Plan. The Strategic Plan would outline specific objectives and approaches to re-build community connection and financial support of the Plaza, diversify funding sources (to include a mix of individual support, institutional philanthropy, earned income, corporate grants/sponsorship), and realize quality ongoing programming. The Steering Committee would also propose the governance and board composition for the new non-profit operator. The Steering Committee would also reach out to other potential supporters of MHP, include large corporation and retailers to discuss and develop strategies for marketing of MHP. The nongovernmental convening organization could be the sponsor of this planning process, or Philanthropic sponsorships could be sought. Strategic Plan team members would serve for a specific period of time to develop the Plan and initiate its execution.

After a period of time, the City with input from the Advisory Committee, could conduct a Request for Proposals (RFP) to select an entity or entities to provide the services for

- a) M&U, and/or
- b) Facility Leasing and Event Services, and/or
- c) Proactive Cultural Programming and the promotion of MHP as a Community Cultural Center.

### **Option #3 MHC AS OPERATOR WITH INCREASED CITY FUNDING SUPPORT**

- **Mexican Heritage Corporation Retained as MHP Operator with Additional City One-time Funds for FY 2007-08 of \$300,000.**
- **Increase in ongoing annual funding from \$413,000 to \$511,000 (M&U plus "Basic Facility Staff Costs") Upon Evidence that MHC Has Addressed Organizational Capacity Issues, Diversified Funding Sources, Expenses and Revenues Aligned and Strengthened Community Engagement and Support.**

With this option the MHC remains as the MHP operator with the annual fiscal year amount of \$413,783 for operations and maintenance increased to \$511,000 and City one-time funds in the amount of \$300,000 appropriated for FY 2007-08. This option could only be achieved if the

City provides additional funding to MHC for their current year shortfall and MHC develops a budget that is sustainable that requires no additional City funding or annual emergency one-time funds in the future.

### **EVALUATION AND FOLLOW-UP**

It is expected at the March 18, 2008 meeting City Council will take action regarding MHP including the preferred option and related budgetary implications for the recommendations identified at the March 5, 2008 Rule Committee meeting.

These actions will include systems for on-going evaluation and follow-up, including benchmarking steps and performance measures. In addition, City Council will act on all the recommendations requiring regular reporting by staff regarding the progress and results of any recommendations.

### **PUBLIC OUTREACH, INTEREST AND PROCESS FOR COMMENTS**

The public has been significantly engaged in this process with the consultant study including individual interviews, focus groups and community group contacts. In addition, Mayor Chuck Reed and Councilmember Nora Campos hosted a Community Visioning Session in August 2007 that was attended by more than 180 individuals. Both consultant teams were in attendance at this session to observe the public interaction including ideas posted

On January 11, 2008 City Manager Debra Figone released an Information Memo regarding the status of the consultants' work regarding both the MHP and MHC, and also advising the Mayor and City Council of MHC's request for additional 07-08 funding. This memo was sent out to the email list generated by the Community Visioning Session as well as other interested individuals. In addition, the memo listed a City web page where comments should be sent, as well as identified a staff member with phone number to contact with questions. The "Response by Mexican Heritage Corporation (MHC) to Consultant's Report" dated January 16, 2008 from MHC was also sent out via email to this same group.

At the January 30, 2008 Rules and Open Government Committee meeting there was public input. Additional public input is expected at the February 25, 2008 Community meeting planned as detailed below.

This memorandum will be sent to the email list generated from the Community Visioning Session including additions that have been made to the list.

This document will be posted on the City's website for the March 5, 2008 Rules and Open Government Committee meeting. Comments can be sent to: [mexicanheritage@sanjoseca.gov](mailto:mexicanheritage@sanjoseca.gov) or [mexicanheritageplazacomment@sanjoseca.gov](mailto:mexicanheritageplazacomment@sanjoseca.gov)

In addition, a draft of the MHC Organizational Capacity Consultant Assessment will be released prior to the February 25, 2008 Community Outreach Meeting. The finding and

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recommendations presented in this Draft do not necessarily reflect a position of the City. It is anticipated that MHC's response to this draft report will be released upon receipt by the City. A presentation of the Consultant's report and MHC response will be forthcoming at the March 5, 2008 Rules and Open Government Committee meeting.

**KEY DATES FOR RELATED MEETINGS**

- February 25, 2008      Community Outreach Meeting**  
At the Mexican Heritage Plaza from 5:00 to 7:00 p.m.  
**Expected Outcome:** Community input on options and factors for successful transition.
- March 5, 2008            Rules and Open Government Committee**  
Discussion of options in Staff Memo.  
**Expected Outcome:** Direction to prepare final recommendations
- March 18, 2008        City Council Meeting; Evening Session**  
Council takes action based on Rules Committee direction to staff and staff Recommendations Memo back to Council.  
**Expected Outcome:** Council will take action regarding MHP including the preferred option and related budgetary implications for the recommendations identified at the March 5, 2008 Rule Committee meeting.

**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, San José Redevelopment Agency, Budget Office and General Services.

**CEQA**

Not a project.



**JEFF RUSTER**  
Deputy Director  
Office of Economic Development

For questions please contact Mignon Gibson at (408) 535-8171

Attachment: Additional Topics Related to the Mexican Heritage Plaza and Mexican Heritage Corporation

**Attachment:**

**Additional Topics Related to the Mexican Heritage Plaza and Mexican Heritage Corporation**

This attachment has been prepared in order to provide detail regarding items or questions that have resulted in the presentations and discussions regarding the MHP and MHC.

**Definition of Operations and Maintenance (O&M) and Introduction of Maintenance and Utilities (M&U)**

Operations and maintenance (O&M) is a phrase that has been used to reference various agreements that the City has with non-profit cultural institution operators. Often these agreements are titled "Operations and Maintenance Agreements", but there are a variety of elements that can be used in describing either operations or maintenance with each facility, due to their unique differences, having the definition applied differently.

To create greater clarification, General Services is suggesting that the phrase "Maintenance and Utilities" (M&U) be adopted to specifically apply to only maintenance and utilities without any programming, events, development and management or operational elements included.

**Emergency Funding Policy**

On October 30, 2007 City Council adopted as Item 5.2 the proposed Grants Policy and Emergency Grants Policy and Procedure. Under this policy, a non-profit is eligible to submit an application for emergency funding if it meets certain criteria that includes; "Has not received emergency financial assistance from the City within the three years prior to the date of application". In April 2007, the City provided MHC one-time emergency funding in the amount of \$175,000 to allow MHC to continue to operate the Plaza through June 2007. The MHC's current request for \$300,000 could be considered as a second time within the three-year period that MHC is requesting emergency funding.

**Status of City \$650,000 Interest Free Loan to Mexican Heritage Corporation**

To date MHC has either paid or been credited with \$150,000 of the \$650,000 interest free loan; \$500,000 is outstanding. Per the Fourth Amendment to the Loan Agreement, the loan repayments have been deferred for FY 2007-08. MHC's repayment schedule resumes in FY 2008-09 at \$50,000 each year until FY 2013-14 when a payment of \$100,000 is due. A final payment in FY 2014-15 of \$150,000 due.

Concepts regarding restructuring the loan includes a possible "challenge grant" where for any new additional dollars raised by MHC the City would agree to forgive an equal amount.

### **Reimbursement Request by MHC for \$1,000,000 for the State Grant Improvements**

In their presentation at the January 30, 2008 Rules Committee meeting, MHC raised the idea that the City should reimburse MHC \$1,000,000 for the \$1,000,000 improvements made at the MHP with the State Grant funding. The project to implement these improvements include the RDA providing a Project Manager to coordinate the efforts, and RDA funding to assist with the cash flow needed for the project since the State Grant funds were reimbursement based. The City as the property owner early in the grant request process had to agree to allow the request to go forward to the State, but to also accept the improvements.

Staff does not support the idea of paying MHC for State Grant-related funding with the City Attorney's Office finding that there is no basis for this reimbursement claim. It should be noted that the Children's Discovery Museum (CDM) received the same level of State Grant funds and actually provided additional donated funds in excess of \$600,000 as the CDM developed their State Grant related project.

### **The San José Redevelopment Agency Retail Pad; Current Efforts and Recommendations**

At the MHP site there is an area along Story Road of about 10,000 square feet that is the property of the San José Redevelopment Agency (RDA). This parcel was not transferred to the City when the MHP was transferred. The agreement details that the RDA or City will in the future provide for this component.

The MHC has applied for an additional State Grant and been awarded \$100,000 for the purpose of planning this parcel. City and RDA staff met recently and discussed that in order to develop this site with the MHC's vision of a three-story structure with retail, classroom and housing mix, a budget of \$20,000,000 to \$30,000,000 would be needed.

### **Naming Rights; Status of MHC Proposal and Staff Recommendations**

The concept of selling naming rights has been raised by MHC as one method that would generate funds for their organization. To date the City has not received a detailed proposal to consider.

City Council Policy 7-5 "Naming Rights of City-Owned Land and Facilities" as revised on November 23, 1993 is applicable to this situation.

Staff does not recommend pursuing these efforts at this time until the future of the MHP is resolved including the long term management of the facility.

### **Electronic Sign; Status of MHC Proposal and Staff Recommendations**

The MHC has also expressed an interest in developing an electronic sign, via a private vendor, in exchange for the vendor having the right to sell advertising on the sign that would eventually amortize their investment--at which time the sign would become the asset of MHC for the purpose of selling advertising as a revenue stream.

No specific details or proposal has been provided by MHC other than the concept expressed above.

San José's sign ordinance currently does not permit electronic or animated signs so if this idea were to be pursued the sign ordinance would need to be amended. There are also the issues of the content of the advertising, the quality of the sign and requirement for operations including maintenance, utility and programming costs.

Staff does not recommend pursuing these efforts at this time until the future of the MHP is resolved including the long-term management of the facility.

### **Charging for Parking; Status of Situation and Staff Recommendations**

Section 29 Parking of the O& M Agreement between the City and MHC details that "any rates and charges to be imposed upon patrons of the Facilities for parking during special events shall be approved in advance by City's Director. Except as otherwise approved by the Director, the members of the public patronizing the Facilities shall be permitted to use the Facilities' parking spaces free of charge as space allows".

Based on the agreement MHC can request to charge for parking. There is currently no formal request for the City to respond to. MHC has asserted that on occasion they have charged for parking with good results and that they have gone somewhere in the City to get a permit to allow this to occur. Staff is researching this situation and has asked for additional information from MHC. Using the parking lot for a use other than parking would require a City permit.

### **Ability to Program Multiple Activities at the MHP Site to Maximize Use and Potential Income**

The MHP site has been discussed as having some challenges in allowing multiple users due to the proximity of the facilities and their various uses which could result in different groups encroaching on each other, sound impacting other users or parking not being adequate.

Should a new operator such as the City program the site, every effort would be made to maximize the use of the facility by calendaring compatible activities. General Services Department acknowledges that due to facility characteristics, there are some inherent challenges in booking simultaneous events at the site. Nonetheless, General Services also sees potential to

generate significantly more lease/event revenue at the site (potentially double 2006-2007 levels) with responsive staffing and accessible website information.

### **Interest in Corporate Support for the Plaza**

The consultant's report on MHC's organizational capacity explains that most of the corporate support generated by MHC has been marketing sponsorships tied to the Mariachi Festival. While this is significant and valuable, commercial sponsorships of MHP events without counterbalancing support from other philanthropic funders can make community members feel like a commercial audience targeted for sales rather than a community served by the MHP. Certainly, there is more opportunity to book corporate events at the MHP and, with a sustained vision and viable operating plan, opportunity to pursue corporate grant support of the MHP activities. A balance between commercial and community feel and interests is essential for long-term success.