

Attachment 1

Casa Loma Governance and Operations

Date:	June 11, 2010
To:	Executive Committee
From:	City Manager

RECOMMENDATIONS

The City Manager recommends that the following actions be added to the list of commitments the City requires from Kiwanis Club of Casa Loma as set out in recommendation 2 of the attached report:

- Kiwanis Club of Casa Loma recommends to the Mayor a new Chair of the Casa Loma Board; and
- the Management Agreement be amended to clarify that the Mayor has the unilateral right to replace the Chair of the Casa Loma Board with another member of the Board at any time.

COMMENTS

The Chair of the Casa Loma Board is a key position that strongly influences the relationship between the Kiwanis Club of Casa Loma (KCCL) and the City. The current Chair is a Kiwanian and was the Chair of the previous Board of Trustees of Casa Loma under the previous license agreement and has for many years directed the staff who work at Casa Loma. The Mayor has requested that KCCL recommend another Board member to replace the current Chair as the City has lost confidence in the ability of the Chair to lead the Board and Casa Loma Administration in the implementation of the Management Agreement due to the following:

- I. Letters from the Chair advising that Casa Loma is not able to meet the requirements of the Agreement indicate that activities to implement the Strategic Vision are viewed as beyond the "normal" requirements of the Board and Administration. In contrast, the City views these activities as the primary purpose of the new governance model. The Chair and CEO continue to operate under the old regime and have not fully engaged in the new direction.
- II. Casa Loma is facing serious financial difficulties that put the achievement of the Strategic Vision at risk. Discussion of these matters at the Board did not take place until late in 2009. This undermines the purpose of having a joint board that participates actively in the decision-making process when matters as serious as the ability to meet its objectives are not brought to the Board early.
- III. The Chair sets the Board schedule and agenda and leads discussion. The schedule for 2010 does not include a meeting after October 2010. This indicates it is unlikely that Casa Loma

will meet the requirement in the Agreement for approval of the 2011 budget prior to December 31, 2010.

- IV. The Chair has moved to a quarterly schedule for Board meetings even though there are serious issues for the Board to discuss. The Board met in January and was scheduled to meet again in April. However, the Chair indefinitely postponed this meeting pending the outcome of the Mayor's request to KCCL. On the urging of the General Manager of Economic Development and Culture, the Board met on May 23, 2010. Since the Board's authority cannot be delegated to the Chair or any committee, it is difficult to understand how Casa Loma can move forward when the Board isn't active for such a long period of time. The Board is not being actively engaged in the decision-making process and infrequent Board meetings limit City citizen appointees, City staff and Councillors from having meaningful input.
- V. More than a year ago, the City offered to include Casa Loma for infrastructure grants, however, there was no response from the Chair. The Chair has not brought forward any significant alternative revenue suggestions to compensate for reduced revenues that would alleviate some of the financial pressure on Casa Loma, nor has Casa Loma staff brought forward any new revenue opportunities, nor has there been any meaningful opportunity for the Board to discuss these matters. As a result of the failure to address the financial issues, Casa Loma has had to rely on using the CLIF to cover operating deficits. Although the Management Agreement permits draws from the CLIF to supplement cashflows to resolve an uneven income stream in unusual circumstances, continual use to the CLIF for operations is not in accordance with the intent of the Agreement.
- VI. In January 2010 City staff offered to strike a joint staff working group to find creative solutions to the serious issues facing Casa Loma. The CEO advised that the matter had been taken out of her hands. Several months passed before this offer was brought to the Board and even after the Board agreed to strike the working group, there has been little action to make it happen.
- VII. At its meeting on November 23, 2009, the Chair ordered the City ex officio members to leave the meeting so that the voting members could discuss undisclosed matters. The Casa Loma CEO, also an ex officio member, was not asked to leave the meeting. This was a clear violation of the terms of the Agreement. The City Manager so advised the Chair of Casa Loma in a letter dated December 9, 2009.
- VIII. At the Board meeting of September 22, 2008, the Board was asked to approve the Conflict of Interest Policy. The Policy as presented by the Chair contained a clause that exempted Keel Cottrelle LLP from any conflict. The Chair did not identify to the Board that he was a partner in this firm and that he himself was acting as legal counsel to Casa Loma on a fee for service basis. The Chair did not identify his interest in the Policy and did not refrain from voting on its approval.
- IX. In January 2009, the Vice Chair was asked to sign invoices in the amount of approximately \$118 thousand for payment to Keel Cottrelle and noted that the invoices included payment

for work done by the Chair. This issue was raised at the Board and a sub-committee was struck to review whether payments should be made and what further course of action was necessary. The Board decided to pay the invoices, change the Policy, and hire another law firm, the Chair's previous law firm and past legal counsel to Casa Loma. The Board did not undertake a competitive procurement process in retaining either firm.

The Chair has acted contrary to the terms of the Agreement, which he negotiated on behalf of KCCL, has failed to take action in a timely manner, has not engaged the Board in the serious issues facing Casa Loma, and has not started up the joint working group to turn the situation around. The ability of the Chair to modify his leadership style to fit the new participative governance model, accept assistance when offered and needed, and take swift action to move toward implementation of the new Strategic Vision is in question.

Authority to Appoint an Alternate Chair

The terms of the Management Agreement provide that the Mayor shall appoint the Chair of the Casa Loma Board on the recommendation and advice of the President of KCCL. There is no provision in the Agreement for removing the Chair. However, as a general principle, the power to make an appointment carries with it the power to remove the appointee. In this situation, the Mayor's power to appoint is subject to a process whereby the President of KCCL submits a recommendation to the Mayor. The intent of this provision was that the parties would agree upon the appointee. The Mayor is not, however, bound to accept the nomination and recommendation of the President and could, following consideration of the President's nominee, choose a different appointee. Similarly, with respect to removal of the Chair, it follows that if the Mayor must follow a process to appoint the Chair, then he must follow a similar process to remove the Chair. Accordingly, the power to remove the Chair is also subject to the advice and recommendation of the President of KCCL, however, the Mayor may choose to disregard that advice and recommendation and choose to revoke the appointment.

It is expected that any attempt to revoke the appointment of the Chair will be met with resistance and that KCCL will take legal action to dispute the Mayor's authority to do so.

Conclusion

The Mayor met with the KCCL President on March 2, 2010 to discuss these issues and requested that KCCL recommend an alternate to serve as Chair for the balance of the term. KCCL disputes the Mayor's authority to revoke the appointment of the Chair and to appoint an alternate and has not brought forward an alternative nomination.

KCCL has suggested that the City has a "defined strategy to diminish what has been accomplished in the first year of the Strategic Plan and to sow the seeds of doubt regarding the successful outcome of the balance of the plan". In addition, the Chair has informed all members of the Casa Loma Board of the dispute regarding his position as Chair and accused the City of orchestrating a plan designed to cause Casa Loma to fail. The Chair informed the Board at its last meeting that the Board's Executive Committee had decided not to submit any more reports to the City until the dispute over the Chair was resolved.

The actions of the Chair have not been consistent with the terms of the Agreement and have not supported or advanced the collaborative relationship between the City and the Board in moving toward accomplishing the Casa Loma Strategic Vision.