

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk 

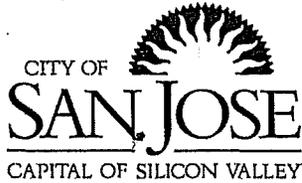
SUBJECT: MONUMENT POLICY

DATE: 02-24-10

RECOMMENDATION

As recommended by the Community and Economic Development Committee on February 22, 2010 and outlined in the attached memo previously submitted to the Community and Economic Development Committee:

- (a) Adopt a resolution by the City Council approving a Council Policy to establish criteria and guidelines for the consideration and installation of monuments on City property. The policy will give guidance for installation of monuments on parks, plazas and certain other types of City property.
- (b) Adopt a resolution by the Redevelopment Agency Board requiring the Agency to conform to the City's Monument Policy, as adopted and modified from time to time.



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Paul Krutko
John Weis

SUBJECT: MONUMENT POLICY

DATE: February 11, 2010

COUNCIL DISTRICT: City-Wide
SNI: ALL

RECOMMENDATIONS

It is recommended that the Community and Economic Development Committee approve for City Council consideration:

- (a) That the City Council adopt a resolution approving a Council Policy to establish criteria and guidelines for the consideration and installation of monuments on City property. The policy will give guidance for installation of monuments on parks, plazas and certain other types of City property.
- (b) That the Redevelopment Agency Board adopt a resolution requiring the Agency to conform to the City's Monument Policy, as adopted and modified from time to time.

OUTCOME

Approval of the Monument Policy will establish criteria and guidelines for monuments on City property and ensure a consistent approach to the evaluation and placement of monuments that recognize people or events that the City wishes to recognize.

BACKGROUND

Over the past several years, the City has been approached by a variety of community members and organizations with requests to place monuments on City property. No comprehensive policy exists to guide the Administration in determining which monuments may be installed on City property. For that reason, an interdepartmental team including: the Office of Cultural Affairs; Parks, Recreation and Neighborhood Services; General Services; and the City Attorney's Office convened to develop policies, criteria and guidelines for the installation of permanent monuments in parks and other public areas within the City of San Jose.

CED COMMITTEE

2/11/10

Approval of Monument Policy

Page 2

ANALYSIS

The placement of monuments and memorials on public property at the request of private parties raises difficult First Amendment issues that have been the subject of litigation over the years. However, a recent United States Supreme Court case provided some clarity in this area, allowing staff to develop a workable, constitutional policy.

The Supreme Court has held that a city may place permanent monuments in city parks to commemorate events or persons of significance to the city as a form of government speech, without losing control over the selection process of which monuments would be placed on city property, as long as proper guidelines are in place and the city follows those guidelines. The City Attorney worked with staff to prepare the attached draft Council Policy based upon the holding of the Supreme Court in that case.

The draft Monument Policy conforms to Section 4.01.010 of the San Jose Municipal Code:

- 4.01.010 General authority of City Manager:
 - A. The City Manager is authorized to accept, on behalf of the City, any monetary gift or a gift of goods or personal property or an in-kind gift of services in an amount or with a value of one hundred thousand dollars or less.
 - B. All monetary gifts shall be placed in the gift trust fund immediately upon the City Manager's acceptance.

Furthermore, the draft Monument Policy:

- Establishes the topics that the City will consider appropriate for recognition with a public monument, and criteria for approval of any monument proposal.
- Establishes that the City Manager may approve or deny monument proposals and may enact administrative guidelines and procedures to implement the Monument Policy, including without limitation, designation of locations deemed amenable to monuments.
- Establishes that the City Manager shall also designate the lead Department for monuments located on City property.
- Establishes a City review process for proposed monuments. This review process involves applicable City commissions, and requires that in order to proceed the applicable commission must find that the proposed monument meets criteria related to:
 - Significance of the person, group, or event to San Jose;
 - No duplication of existing monument themes;
 - Community outreach and support;
 - Support from representatives of the person, group, or event being recognized;
 - Relationship of the topic to the proposed location;
 - Quality of design and compatibility with uses at the proposed location; and
 - Committed funding for design, fabrication, installation, and maintenance.

CED COMMITTEE

2/11/10

Approval of Monument Policy

Page 3

- Specifies that donation of funding will be encouraged rather than the donation of actual monuments.
- Unless otherwise agreed by City Council, places responsibility with the donor for cost of design, fabrication, installation and maintenance to ensure adequate care for any monument on City property.
- Authorizes the City Manager to enact administrative guidelines and procedures to implement this Policy, including designation of locations deemed appropriate to monuments.
- Specifies that donated monuments proposed as public art shall be managed by the City's Office of Cultural Affairs through the standard public art process.
- Specifies that monuments deemed Public Art will be coordinated with the Arts Commission through its Public Art Committee. Further, the findings and recommendations of the Public Art Committee shall be coordinated with the appropriate Commission.

Additionally, nothing in the draft Monument Policy supersedes the Council Revenue Generating Policy (No. 1-17) and therefore all donations of funding for monuments must be in compliance with that Policy. This Policy establishes guidelines for City Departments in the development of partnerships to aid in revenue generation, fundraising and sponsorships.

EVALUATION AND FOLLOW-UP

The review and acceptance of monuments will be reported as part of the annual Budget Process.

POLICY ALTERNATIVES

Alternative #1: Prohibit the creation of monuments on City property.

Pros: Prohibition of monuments on City property would provide clear and unequivocal guidance to members of the public who offer monuments and commemoration of people and events that they would like the City to recognize.

Cons: There may be specific individuals and events that should be recognized for their contributions to San Jose and the region.

Reason for not recommending: An outright prohibition on monuments would lose an opportunity to recognize outstanding individuals and events significant to the growth and character of our region.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

This memorandum will be posted on the City's website for the February 22, 2010 meeting of the Community and Economic Development Committee (CEDC) and, subject to CEDC action, may be referred to a future Council agenda.

COORDINATION

This item has been coordinated with the following: Parks, Recreation and Neighborhood Services; General Services; the Redevelopment Agency; the Manager's Budget Office; Planning Department; Department of Public Works; and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Economic Development Strategy's vision of San Jose as a unique creative and cultural center of Silicon Valley and as the world's most livable big city, with diverse and distinctive qualities of life.

COST SUMMARY/IMPLICATIONS

Any monuments built or accepted by the City of San Jose will have ongoing maintenance costs that should be factored into the cost of the monument. All funding for the construction and maintenance of monuments under this Policy, unless otherwise appropriated by Council, will be from private donations to be budgeted and appropriated through the Gift Trust Fund. There is no line item for the purpose of maintaining monuments identified in OCA's or any other department's annual budget.

CED COMMITTEE

2/11/10

Approval of Monument Policy

Page 5

CEQA

Not a Project. The installation of each monument will be subject to environmental review as appropriate once the details of each proposed monument are known. It is anticipated the installation of most monuments would be categorically exempt under CEQA.



PAUL KRUTKO

Chief Development Officer



JOHN WEIS

Assistant Executive Director,
Redevelopment Agency

For questions, please contact BARBARA GOLDSTEIN, PUBLIC ART DIRECTOR
at (408) 277-5144, ext 27.

Attachment

City of San José, California

COUNCIL POLICY

TITLE: MONUMENT POLICY	PAGE 1 of __	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY
Council Action:

Section I: Purpose and Introduction

The City may, from time to time, decide to install permanent outdoor Monuments on City property to provide the City's commemoration of persons or events of note, or to otherwise convey the City's position on various topics ("referred to as "Government Speech").

By placing Monuments on City property, the City intends only to engage in government speech and does not intend to open a public forum for free speech activity.

The purpose of this Policy is to establish criteria and guidelines for the consideration and installation of Monuments outdoors in parks or plazas deemed by the City to be appropriate to serve as the site for a Monument. In doing so, the City recognizes the following considerations:

- Monuments can convey a powerful connection between San José and its history and in some instances its future.
- It is therefore important that the placement of Monuments be limited to circumstances of the highest community-wide importance, both to maintain the significance of such Monuments and to minimize conflicts with the active and variable use of public spaces.

Notwithstanding the foregoing, the City may decide, in its sole discretion, to reject a proposal for a Monument and/or may determine the appropriate site for any and all City monuments.

Section II. Monument Definition

“Monuments” are markers, statues and other similar permanent installations to express Government Speech, as further described in this policy, and which are installed by the City on City property, or which are accepted by the City and installed on City property with City permission. Monuments may be in various forms including statues, fountains, or gardens among other forms of monuments as determined by the City.

Monuments must be of City approved materials, size, design and specifications, with a goal toward simplifying their review and long-term care.

Section III. Government Speech on Monuments

City's Government Speech Topics

The City may install or accept City-approved Monuments on City property as a form of “Government Speech” as City recognition of significant events or people or to provide information from the City on topics approved by the City, as set forth below:

- The contributions of individuals or groups who made a substantial impact upon the City of San Jose or Santa Clara County;
- The City's position on topics of interest to the community, as determined by City Council;
- The history of San Jose, California, or of the United States;
- Historical or cultural influences on San Jose;
- Native flora, fauna and wildlife of San Jose and the greater Bay area;
- Local innovation or creativity that has contributed to San Jose's growth and prosperity; or
- Other criteria selected by City Council and set forth in an amendment to this Policy.

The City shall not place Monuments on City property which have the purpose of promoting, favoring or inhibiting any religion or which would appear to a reasonable person that the City is promoting, favoring, or opposing a religion.

Section IV. Administration

The City Manager may approve or deny monument proposals and may enact administrative guidelines and procedures to implement this Policy, including without limitation, designation of locations deemed amenable to Monuments. The City Manager shall also designate the lead Department for Monuments located on City property.

Notwithstanding that certain City property is operated or managed by a private operator pursuant to an agreement, the evaluator of the Monument and the final decision maker shall be the City and not the private operator or manager. The Director of the lead Department shall coordinate with the Director of Public Art with regard to any Monument that is primarily Public Art, as further described below.

Section V. Donated and Private Funding of Monuments

The City encourages private donations to the City to support various City programs and City operations, which may include without limitation, the cost of acquisition, installation and maintenance of Monuments on City property. The City prefers to receive private donations in the form of funds that may be used by the City to review, design, fabricate, acquire, install and/or maintain Monuments, rather than the donation of a completed Monument.

However, the City may from time to time, at City's sole option, consider accepting a completed Monument as a form of Government Speech, provided that the Monument meets the City's approved Government Speech topics and also meets all of the other criteria set forth in this Policy and in any related administrative guidelines or procedures. After City's acceptance of a Monument and subject to City's explicit approval of installation of the Monument upon City property, title to the Monument shall vest with City and the City may remove, relocate and shall otherwise have sole control over the Monument.

While the City appreciates donations of Monuments to the City, the City is under no obligation to accept any donated Monument even if the Monument meets all of the criteria set forth in the Policy. The City's decision to accept a donated Monument may also depend upon the cost to the City or Redevelopment Agency of design, fabrication, installation and maintenance of the Monument and site considerations, among other factors.

The City may, at its option, decide for budgetary reasons to prioritize Monuments where the City expects to receive donated funding to cover the cost of design, fabrication, installation and maintenance of the Monument. Unless otherwise agreed by City Council, the donor of a proposed Monument is responsible for providing the City with funds to cover the cost of review, design, fabrication, installation and maintenance to ensure adequate care for the Monument.

Section VI. Review Process

The City Manager or his or her designee shall provide the initial screening of Monument proposals to determine if the proposed Monument complies with the provisions of this Policy including without limitation, to evaluate the suitability of

the proposed Monument site, if any. The City Manager (or his or her designee) shall decide whether to forward the proposal for further review or to decline further City consideration of the proposed Monument based upon considerations consistent with this Policy. If the City Manager's decision is to conduct further review of the proposal, the City Manager or his or her designee, shall refer the proposal to the appropriate department for consultation with the City commission most closely associated with the proposed site of the Monument. If there is a doubt regarding the appropriate commission, the City Manager shall determine the appropriate commission for review of the proposal.

The department shall prepare a report for consideration by the commission, and coordinate with other departments such as the Office of Cultural Affairs and the Department of Public Works. The commission shall review the proposed Monument to make an advisory recommendation to the City Manager regarding the Monument based upon the factors set forth in this Policy and the Review Criteria set forth below.

City shall have final approval of a City project to design and construct a Monument, or to accept a donated Monument. The City Manager shall consider the commission recommendation and make a final determination regarding the proposed Monument and whether to approve the Monument or to seek City Council approval of the Monument if the cost or value of the Monument exceeds City Manager authority level. (Currently Municipal Code Section 4.01.010 authorizes the City Manager to accept donations up to and including \$100,000 in estimated value. The City Manager's authority level for contracts or projects paid for by the City, including review, design, construction and/or installation of monuments, will depend upon the particular circumstances as determined by the San Jose Municipal Code and City Charter.)

All required environmental review shall be approved by the City's planning department before the City commits to installing a Monument. The Monument shall be consistent with adopted City master plans and adopted Redevelopment Agency master plans unless those plans are amended as a part of the review process.

Notwithstanding the foregoing, the City may decide, in its sole discretion, to reject a proposal for a Monument and/or may determine the appropriate site for any and all City Monuments.

Additional Review Process if a Monument is Primarily an Original "Work of Art"

The Director of Public Art shall recommend and advise the City Manager, whether a proposed Monument is primarily an original "work of art". A "work of art" is defined as a monument that is designed by and crafted by or under the

supervision of a professional artist. A Monument that is deemed primarily a "work of art" shall be considered "public art" and shall become part of the City's Public Art Program inventory.

For Monuments determined to be primarily Public Art, the Office of Cultural Affairs through its Public Art Program shall:

- Coordinate the review of Monuments that are Public Art with the Arts Commission through its Public Art Committee. The Public Art Committee shall review and make recommendations regarding the Monument as to proposed site, artistic merit, durability and maintainability and consistency with this Policy. Further, the Office of Cultural Affairs shall coordinate with the appropriate Commission regarding the findings and recommendations of the Public Art Committee.
- Coordinate with the lead Department and with the Department of Public Works, the inspection, design, location, and other logistical components of Monuments that are Public Art.
- Prepare and monitor all necessary records and documentation of Monuments that are Public Art.
- Oversee the maintenance of Public Art Monuments.

Application to Redevelopment Agency Funded Monuments

This Policy shall apply to the Redevelopment Agency of San Jose. The Agency shall coordinate with the lead City Department and shall obtain the City Manager's approval pursuant to this Policy prior to designing or planning for any Monument to be located on City property, and prior to entering into discussions regarding donations for Monuments to be located on City property. The Redevelopment Agency shall also consult with the lead City Department and obtain City Manager approval prior to the design, fabrication or installation of any Monuments on Redevelopment Agency property which is intended to be transferred to the City. Notwithstanding the foregoing, nothing in this Policy shall require the Redevelopment Agency to make payments for maintenance of Monuments to the extent such payments are prohibited by law. The Redevelopment Agency shall also obtain City Council approval of any proposed Monument that exceeds the City Manager's authority level, prior to entering into discussions regarding donations or prior to commencement of design, fabrication or installation of any Monument.

Section VII. Review Criteria

A proposed Monument must conform to the approved Government Speech topics. Also, a Monument must be made of durable materials, able to withstand the elements for a minimum of 50 years with minimum maintenance, shall be made of materials resistant to vandalism and graffiti as much as is reasonably

possible, shall be of a scale, materials, color and style appropriate and consistent with aesthetics of the proposed location of the Monument and such other reasonable factors as City Manager determines.

The City may decline to approve or to accept a Monument for any lawful reason.

Monument proposals shall be considered by the applicable (or most appropriate) City commission associated with the proposed location for the Monument. That commission shall make a recommendation to the City Manager for approval or disapproval based on consistency with this Policy and as further described in the Review Process below. The City Manager may accept or deny the recommendation from the commission as further provided in the review process below.

The City shall only proceed with the design, fabrication, and installation of a Monument after completion of the review process and the conclusion is to move forward. In reviewing a proposed monument, the relevant Departments, the applicable City Commission and City Manager shall review the proposal based upon the criteria set forth in this Policy including the following:

- A. Whether the person, group or event being memorialized deemed by the City to have made a significant enough contribution to merit a Monument of the scale, cost and visibility of the proposed Monument.
- B. The Monument does not duplicate existing Monument themes. Multiple monuments for similar or related groups shall be avoided.
- C. The Monument proposal has been through community outreach conducted by the group or person suggesting that the City install the Monument, the installation and maintenance of the Monument can be accommodated within the work plan of the responsible Department. Outreach should inform the community that this Policy only authorizes one Monument to honor a particular event, person or topic.

The community outreach should be consistent with the outreach conducted for similar City projects. City Council Policy 6-30 discusses outreach for land use projects and that policy may provide guidance in developing community outreach for a Monument proposal.

- D. The proposed Monument is not objectionable to the persons or community that the Monument is intended to honor.
- E. The proposed site in the park or plaza for the Monument is related to the underlying purpose of the Monument or the site in the park or plaza has been designated in a master plan or other approval of the City Council or City Manager as a particularly appropriate site for a proposed Monument.

- F. The Monument has been designed by or under the direct supervision of a qualified professional in the art or design field, and provides a quality, scale, and character commensurate with the location, circulation, and use patterns of the City property.

Qualified professionals include registered architects, engineers, landscape architects and artists who can demonstrate professional recognition in the form of public commissions or permanent public installations. The City may solicit input from art and design professionals such as artists, architects, landscape architects, planners or urban designers in making this determination. Monuments shall not displace the intended function and or use of said property, as articulated in adopted master plans or similar City documents.

- G. There is a committed and verifiable funding source for the review, design, fabrication, installation and maintenance of the Monument before proceeding to incur City costs and staff time.

Suggestions that the City recognize a significant event, person or other approved topic by means of a Monument, will be more favorably received if the advocates for the Monument provide the City with funds that cover the cost of review, design, fabrication and installation, and an adequate endowment to cover the cost of the Monument's maintenance as determined by City. While less desirable, the City may consider accepting an agreement from a group to maintain a Monument in perpetuity and in accordance to City Standards rather than a cash endowment; however, this will require the City to incur additional effort and cost, including without limitation, compliance with the City's public-private competition policy. In any Monument maintenance agreement, the City will require an up-front endowment or deposit to cover at least one year's maintenance of the Monument to protect the City against future default. Notwithstanding the City's decision to enter into a maintenance agreement, the Monument remains City property and City's Government speech and the City may remove the Monument at any time and for any reason.

The following additional criteria and factors shall be considered in evaluating a site (which must be within a park or plaza) for a proposed Monument:

- Due to the unique features, limited capacity and uses of the Municipal Rose Garden, Plaza de Cesar Chavez, the Japanese Friendship Garden, and the Trail Network, these facilities will not be considered for use as monument sites. Streets and other public rights-of-way also shall not be considered for use as monument sites, except to honor City employees who have died in the line of duty, as further provided below.

- Monuments may be considered in Neighborhood Parks of more than five acres and that have at least one Community Serving Amenity as defined in the City's approved master strategic plan for parks and community facilities. Monuments in Neighborhood Parks should have a connection to the neighborhood through history, individual or group contributions and accomplishments, or similar factors.

Section VIII. Public Right of Way

The public right of way shall not be considered as a site for Monuments, except that the City may honor City employees who die or have died in the line of duty while serving the City, by placing a memorial plaque at or near the location of each employee's death. The City's Director of Transportation is authorized to install memorial plaques in the public right-of-way to commemorate City employees who have died in the line of duty while serving the City if each of the following conditions exists:

1. The property owner adjacent to the location of the proposed memorial plaque has been consulted on the placement of the memorial. In the event the property owner does not agree to the proposed location, the City will attempt to locate a nearby alternative location.
2. The memorial plaque must be flat and level with the sidewalk, and placed behind the curb.
3. The memorial plaque must not interfere with the public use of the sidewalk or right-of-way area.

Section IX. Other Policies

Nothing in this Policy is intended to supersede or limit any other City Council Policy including without limitation, the City's Naming Policy (City Council Policy 7-5), Community Identification Policy (City Council 9-3) or the City's Revenue Generating Policy (City Council Policy 1-17).

This Policy does not cover temporary installations on City property, nor does this Policy limit the City's ability to place signage or plaques on City property to provide donor or sponsor recognition, public information regarding a City project, or to place historical markers or to provide other information to the public. City Departments may enact administrative guidelines regarding plaques or signage for donor or sponsor recognition in a manner consistent with Policy 1-17.