



Memorandum

TO: MAKING GOVERNMENT WORK
BETTER COMMITTEE

FROM: Paul Krutko

SUBJECT: SEE BELOW

DATE: 03-03-06

Approved

Date

COUNCIL DISTRICT: City-Wide

**SUBJECT: UPDATE ON RESPONSE TO PUBLIC ART PROGRAM
AUDIT RECOMMENDATIONS**

The Office of Cultural Affairs (OCA) responded to the final draft of “*An Audit of the Public Art Program*” on May 11, 2005 and reported to the Making Government Work Better Committee on May 16, 2005. The following document is an update on OCA’s progress on each recommendation of the Audit outlining actions that have occurred and strategies to address the remainder of the recommendations. Although the Public Art audit did not review the Redevelopment Agency’s (RDA) compliance with the current Art in Public Places Ordinance or with Resolution 3606, the Agency has submitted a response that is attached to this memo. In addition, as the Office of Cultural Affairs (OCA) has addressed the audit recommendations it has included the Redevelopment Agency in its discussions.

In 2005-06, OCA was integrated into the Office of Economic Development. The 2005-06 OCA workplan included the development of a new five-year (2006-2010) Public Art Masterplan. This Masterplan has been initiated and the planners’ scope of services includes a full response to the Public Art Audit. The planners are currently conducting research including meetings with City staff, community members, arts and business leaders. They will develop a draft report that will include recommendations for revised Art in Public Places Ordinance and Resolutions by the end of October. This draft report will be presented to the City Council for review adoption.

Recommendation #1: Notify the Arts Commission when eligible construction projects do not receive a public art allocation.

The City Manager’s Office is now presenting a full report to the Arts Commission on projects that are eligible and ineligible for a public art allocation. Ineligible projects include an explanation of why they are ineligible.

Recommendation #2: Better define public visibility and eligible capital projects for purposes of identifying all construction projects that should receive a two percent art allocation.

Both OCA staff and the Public Art Master Planners have begun conversations with City and RDA staff regarding the definition of eligibility. It is anticipated that the Public Art ordinance and guidelines, for both City and RDA projects, will be amended to refine the definition of eligibility.

Recommendation #3: Submit for City Council consideration a proposal to allow art allocations to be increased in the event of increased project budgets beyond specific percentage or dollar amount.

This recommendation is a very sensitive issue at a time when construction costs are rising quickly. OCA staff has met with the City Managers Office to discuss the impact of increasing the art allocation with the increase of project budget costs and no resolution has yet been reached. While increasing the public art budget because of an increase in construction costs may not be the appropriate trigger mechanism, one significant concern is for public art projects that are integrated into capital construction. These projects are impacted by the same construction increases that affect base building costs and subject to the choices between value engineering or increased costs. OCA anticipates that the Public Art Master Plan will address this issue in the Public Art ordinance and guidelines for both City and RDA projects.

Recommendation 4: Require departments to coordinate with the Public Art Program Director prior to proposing any public art allocation reductions.

OCA staff is working more closely with the CIP Action Team and the City Service Areas, and attending CIP team meetings, in order to monitor CIP projects and coordinate the public art allocations.

Recommendation #5: Develop a means to track and monitor administrative cost information for each individual public art project.

OCA, including OCA's new Analyst, is working with the CIP Action Team to refine tracking of Public Art administrative costs.

Recommendation #6: Track and report information on pooled public art project funds to the City Council and the City Manager's Budget Office.

OCA is working with its new Analyst and with the CIP Action Team to refine its tracking of pooled public art project funds.

The following progress has been made in developing a tracking system for pooled public art project funds:

- OCA has initiated a spreadsheet that shows each public art project and its multiple sources of funding;
- OCA has begun discussions with Finance and the CIP Action Team to develop a report in FMS that will allow projects with multiple funding to be reported in one report;
- OCA will work with the City Manager's Office to integrate pooled projects, allocations and expenditures in the CIP reports, and a means to regularly report this to the Council.

Recommendation #7: Ensure public art task forces are established for all eligible art projects and report any exception in its Quarterly reports to the Arts Commission.

Public art task forces have been established for all new projects. OCA includes detailed information on community involvement in all of its memos to the Arts Commission and to City Council.

Recommendation #8: Establish guidelines for community members in the public art process and communicate those guidelines to potential and current public art task force members.

Staff has begun to refine its guidelines for community involvement based on comments received from active community members and the Public Art Committee. The Public Art Master Planners are also reviewing OCA's community involvement process with a view toward assisting in the development of community guidelines.

Recommendation #9: Report accurate information regarding meeting participants in its quarterly reports.

OCA has developed a new database that allows it to report accurate information on community participation in its quarterly reports.

Recommendation #10: Develop a benchmark for community participation and develop a strategy to improve community participation.

Following the recommendations of the Making Government Work Better Committee to improve service delivery, OCA's Public Art Program has focused on linking its community involvement process to that of its partner agencies' CIP projects, working through community organizations and consulting with City Council members to reach out to likely stakeholders for involvement in the Public Art Task Force process. This has resulted in improved community participation and raised the quality of community interactions.

In addition, OCA is developing more significant means of involving community members in an ongoing way:

- Development of a community public art hand book;
- Development of a self-mailer about the Public Art Program that solicits community involvement and can be distributed at community events;
- Development of public art maps;
- Development of public art presentations in community venues by both staff and Arts Commissioners;
- A partnership with Artsopolis to create interactive public art maps linked to OCA's web page;
- Creation of informative collateral material to accompany public art projects;
- Integrating with the City's Capital Project web page to enable community members to learn about public art projects and to volunteer for Public Art Task Force membership.

Staff will monitor the impact of these community outreach tools and develop benchmarks for successful community involvement.

Recommendation # 11: Include in its quarterly reports to the Arts Commission performance measures on its efforts to groom local artists for public art commissions.

The Public Art Program's quarterly reports now include information on its efforts to groom local artists. Specific performance measures have not yet been developed.

PAUL KRUTKO

Director, Office of Economic Development

APPENDIX A: SAN JOSE REDEVELOPMENT AGENCY RESPONSE TO AUDIT

GERALD A. SILVA
CITY AUDITOR

HARRY MAVROGENES
EXECUTIVE DIRECTOR

SEE BELOW

January 30, 2006

**SUBJECT: REFERRAL OF AN AUDIT OF THE PUBLIC ART PROGRAM
REPORT RECOMMENDATIONS**

Redevelopment Agency staff has reviewed the 11 approved audit recommendations of the Audit of the Public Art Program. Although the audit did not include a specific review of the Redevelopment Agency's participation in the program, it should be noted that the Redevelopment Agency has had an extensive public art commitment over the years and has funded and implemented a wide variety of public art projects in collaboration with the Office of Cultural Affairs. These include public art in both public projects as well as private development projects.

In regards to the specific recommendations contained within the audit, the following response is submitted.

Recommendation #1: Notify the Arts Commission when eligible construction projects do not receive a public art allocation.

The Redevelopment Agency follows the public art requirements in the Municipal Code Title 22; Public Art Ordinance No. 24265 and the Redevelopment Agency Board Resolution No. 3606 regarding public art.

The Director of Project Management attends the monthly Arts Commission meetings and regularly reports on Redevelopment Agency projects and activities to the Commission. Redevelopment Agency staff and OCA staff have monthly meetings to coordinate both public and private funded public art projects. The Agency Capital budget and potential eligible public art projects are reviewed at these meetings. Subsequently, OCA staff informs the Arts Commission of current and new public art projects funded with Redevelopment Agency and/or private developer funding.

In line with the recommendation of the audit, Redevelopment Agency staff will work with the Office of Cultural Affairs staff to create a more formal process to insure that a

proper identification of eligible and ineligible construction projects is provided to the Arts Commission based on the existing adopted public art ordinance and Resolution No. 3606, plus any modification resulting from the new Public Art Master Plan currently in development. The Redevelopment Agency's FY2005-06 Capital Budget was approved on September 13, 2006. Agency staff has been meeting monthly with OCA staff to discuss eligible projects and a listing of eligible projects will be reviewed with the Arts Commission in early 2006.

The Office of Cultural Affairs plans to update the Public Art Master Plan and its related implementing ordinances during the next year. After the Public Art Master Plan is updated and then approved by City Council & the Redevelopment Agency Board, staff will implement the public art program based on the revised, approved actions of the Redevelopment Agency Board.

Recommendation #2: Better define public visibility and eligible capital projects for purposes of identifying all construction projects that should receive a two percent art allocation.

We agree with the OCA response. The current public art master plan and implementing ordinances need to be revised to better define what is eligible and ineligible for public art funding. The municipal code allows the City Manager and the Redevelopment Agency Executive Director to determine projects that are not deemed eligible "if the anticipated public visibility and/or public traffic usage of the capital improvement project is too minimal to warrant expenditure of funds for works of art." This language is vague and leaves too much room for interpretation, especially for public infrastructure projects and community group generated priorities for neighborhood projects.

Recommendation #3: Submit for City Council consideration a proposal to allow art allocations to be increased in the event of increased project budgets beyond specific percentage or dollar amount.

At present, the amount of public art funding is established at the time project funds for the design phase is appropriated. The resolution language also states "In the event the proposed budget for an ECP (Eligible Construction Project) increases as a result of deliberate decision to change the size or nature of the ECP (i.e. a conscious, approved scope change), the art allocation shall be increased proportionally and the corresponding appropriations shall occur." The resolution language does not require increasing the public art allocation if project budgets increase for reasons such as increased construction costs at the bidding stage.

We believe the Public Art allocation should not be increased from this initial allocation unless there is a scope change directed by the Redevelopment Agency Board during the design phase. Budget revisions at any later time are usually driven by construction

issues that should not otherwise change the character of the Project, such as increased bid cost or unforeseen condition arising during construction. The Redevelopment Agency will follow any change in policy that is approved by the Agency Board.

Recommendation 4: Require departments to coordinate with the Public Art Program Director prior to proposing any public art allocation reductions.

NOT APPLICABLE - Reduction of public art funding has not occurred with Redevelopment Agency projects.

Recommendation #5: Develop a means to track and monitor administrative cost information for each individual public art project.

NOT APPLICABLE– This is an OCA matter.

Recommendation #6: Track and report information on pooled public art project funds to the City Council and the City Manager’s Budget Office.

Because the expenditure of Agency funds is restricted by state law, and the expenditure of bond proceeds also has restrictions, OCA should also track and report the expenditure of Agency funds to the Agency.

Recommendation #7: Ensure public art task forces are established for all eligible art projects and report any exception in its Quarterly reports to the Arts Commission.

NOT APPLICABLE– This is an OCA matter.

Recommendation #8: Establish guidelines for community members in the public art process and communicate those guidelines to potential and current public art task force members.

NOT APPLICABLE– This is an OCA matter.

Recommendation #9: Report accurate information regarding meeting participants in its quarterly reports.

NOT APPLICABLE– This is an OCA matter.

Recommendation #10: Develop a benchmark for community participation and develop a strategy to improve community participation.

NOT APPLICABLE– This is an OCA matter. The Redevelopment Agency has used the OCA public art process for all public and private projects, even though Resolution 3606 enables the Agency to use a different system if the Agency desires.

Recommendation # 11: Include in its quarterly reports to the Arts Commission performance measures on its efforts to groom local artists for public art commissions.

NOT APPLICABLE – This is an OCA issue.

Redevelopment Agency staff looks forward to the upcoming OCA update of the Public Art Master Plan and clarification of eligibility criteria and resolution of differences in the old Master Plan and the adopted public art ordinance. Agency staff was invited to participate in the public art master plan consultant selection process in November 2005. Agency staff will actively work with OCA staff on this important plan and ordinance update in 2006.

HARRY S. MAVROGENES
Executive Director

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