Summary Title: Percent for Art Policy

Title: Capital Projects Percent for Art Policy Exemption and Planning Procedures

From: City Manager

Lead Department: Community Services

Recommendation
Staff recommends to the Policy and Services Committee that the language in the Percent for Art Policy be expanded and clarified to clearly state that project managers for all projects with any visual impact contact the Public Art Commission Liaison to determine whether or not a project is exempt from the policy.

Staff also recommends that if a project is within 100 feet of an existing public artwork, the Public Art Commission (“Commission”) office must be contacted to make certain that the new construction does not violate the Visual Artists Rights Act of 1990 (“VARA”) and ensure that the artwork is protected and accounted for in the scope of the project.

Background
The City of Palo Alto introduced the current Percent for Art policy in September 2005 (CMR: 309:05), which designates 1 percent of the construction budget in all municipal projects for artwork. The Commission, through the Division of Arts & Sciences, has managed and overseen the art selection and completion of these projects. However, due to the somewhat vague nature of the current Percent for Art policy language pertaining to project exceptions, several projects have been “self-exempted” from the Percent for Art process by their project managers without the input or concurrence of the Division of Arts and Sciences. In reviewing the scope of some of the projects that have been exempted from contributions to the Percent for Art program, staff recommends that policy be put in place to ensure that project managers contact the Commission liaison, Elise DeMarzo, to determine whether or not a percent for art component is appropriate for that project, or if accommodations need to be made for existing artworks within or near the construction site. If an exemption is appropriate, the Director of Community Services must concur.

Discussion
The current Percent for Art policy has no specific procedure for application for official exemption from the policy. Staff recommends the insertion of specific language (attachment A) instructing any project manager seeking an exemption to get written confirmation of said
exemption from the staff liaison to the Commission. The exemption from the Percent for Art process or the initiation of that process should occur soon after the project is assigned to a project manager to ensure that the artwork can be adequately and thoughtfully integrated into the design of the project, rather than appearing as an afterthought.

The second policy issue facing the Art in Public Places collection is the impact of capital projects on existing works of art. Under VARA, artists are protected from the removal, relocation or degradation of artworks carrying their name. This protection applies to murals, sculpture and land art. Recently, the erection of photovoltaic collection panels surrounding a sculpture by Gene Flores at the Municipal Services Center necessitated the relocation of the artwork to Greer Park. In addition, the repaving of the Art Center courtyard and removal of a sculpture by David Bottini has also brought the VARA issue to the attention of the Commission.

Staff recommends that CIP project managers contact the Commission office as soon as they find out that there is a mural, sculpture or other artwork within 100 feet of their construction site. This will give the Commission office time to ensure that the artwork is protected and that construction at the site will not compromise the artwork. If artwork must be relocated, the project manager must work with the Commission office to cover associated costs and follow legal protocols.

The Public Art Commission has discussed the expansion of the percent for art policy to include some private development projects. Staff is currently refining a recommendation that could come to Policy and Services in the coming months. The policy recommendations will be in line with many comparable California cities that have implemented similar policies. Having the procedures for inclusion and exemption clarified first will make the possible expansion of the percent for art policy smoother.

**Resource Impact**

A change in the policy would increase the number of Percent for Art projects throughout the City of Palo Alto and increase the amount available to the Commission for public art. Although an exact dollar amount can not be estimated at this time, the removal of some exemptions would not raise project costs more than the 1 percent of the construction costs currently allowable under the Percent for Art policy. There were a couple of recent projects identified that were “self-exempted”, such as the pedestrian crosswalk at El Camino Real and Stanford Ave, the San Antonio Road traffic medians, the new restroom facilities being installed in various parks, and the Art Center, which would have totaled approximately $74,000 for public art. The scope of the Art Center project, however, has recently been adjusted to include a percent for art element.

Inclusion of a policy, protecting the existing Art in Public Places collection, will enable the City to well manage issues arising in connection with alleged VARA violations and ensure that the City’s investment in public art is cared for and thereby reduce repair or relocation costs.
Policy Implications
This process is consistent with policy G-2 of the Governance section, “Use advisory bodies and ad hoc committees to assist City Staff and the City Council on policy issues”. The expansion of art exhibitions into the public realm is consistent with Community Services section policy C-23, “Explore a way to expand the space available in the community for art exhibitions, classes and other cultural activities.”

Attachments:
• Attachment A - Percent for Art Policy (DOC)

Prepared By: Elise DeMarzo,
Department Head: Greg Betts, Director, Community Services
City Manager Approval: James Keene, City Manager
POLICY AND PROCEDURES 1-45/CSD Effective: September 2005

ART IN CITY CAPITAL IMPROVEMENT PROJECTS

POLICY STATEMENT
As a policy the City will budget one percent (1%) of its construction costs to include public art for City capital improvement projects that have an external visual impact on the surrounding environment by altering a site through new construction or reconstruction. The Public Art Commission, through its staff liaison, will work with the appropriate City departments (which may include but are not limited to Planning, Public Works, Utilities, and Community Services) to identify and select the appropriate projects and artists.

PROJECTS INCLUDED AS POTENTIAL SITES
City capital improvement projects that have a visual impact on the surrounding environment by significantly changing or altering a site with the addition of a substantial new construction or reconstruction are potential sites for an art component. Contact the Public Art Commission office early in the design phase to initiate the public art process.
Examples of projects may include but are not limited to:
• New buildings such as libraries, public safety buildings, community centers, parking garages and lots, transit stations, performing art center, new restrooms or small structures.
• Parks, medians and plazas
• Gateways entering and existing at the City boundaries
• Bridges, walls and tunnels

PROJECTS EXCLUDED FROM CONSIDERATION AS POTENTIAL SITES
City capital improvement projects with minor or no visual exterior impact are excluded from consideration. To receive an exemption to the Percent for Art policy, contact the Public Art Commission office during the design phase to obtain written confirmation to the project manager that the project (or portions thereof) is exempt.
Examples of excluded projects may include but are not limited to:
• Any improvements, upgrades, and/or repair to existing systems such as irrigation, mechanical or electrical, and projects where the significant portion of the work is placed in underground locations, such as the Electric Utility undergrounding projects and the Water Utility, Gas Utility or Wastewater Utility rehabilitation and augmentation projects.
• Any installation of a new system such as irrigation, mechanical or electrical, and projects where the significant portion of the work is placed in underground locations, such as the storm drain and electric undergrounding projects and water, gas or wastewater rehabilitation and augmentations projects.
• Projects with no design or construction, such as studies associated with capital projects.
• Customer connection projects associated with the utility meters and equipment for electric, water, and gas services to customers for which customers are charged for replacement in-kind due to maintenance of roofing, heating systems, painting.
• Projects that include grant funding from other agencies.
the services. It is not the intention of the procedure to cause an increase in connection fees to customers.
• Projects designed and constructed to protect and guard the security of City Utility facilities.
• Projects associated with software, hardware and other IT related products.
• ADA compliance
• Seismic retrofitting
• Open space maintenance projects such as trail and erosion repair
• Parking lot repair or reconstruction
• Annual street maintenance and sidewalk replacement projects
• Any project of a temporary nature such as construction fencing and signage, vehicle or equipment replacement.
• Projects for which funding is provided through government, non-profit, or private grants are excluded unless identified for the specific and restricted purpose of the creation of artwork.

PROCEDURE FOR IDENTIFYING AND SELECTING PROJECTS
A. The staff liaison to the Public Art Commission working with the Infrastructure Management Committee and appropriate City departments will first identify projects that have a visual impact on the surrounding environment, significantly changing or altering a site with the addition of substantial new construction.
B. Identified projects that merit further consideration will be presented to the Public Art Commission. Consideration will include, but not be limited to:
• Significant visual impact on the surrounding environment
• Safety and security of the project and the public
• Maintenance costs over time
C. Projects selected to include public art and submitted during the regular budget process will include one percent (1%) of the project construction budget for art. The project manager will determine the one percent budget derived from the construction estimates, excluding the contingency and design budget. The one percent (1%) will be based on the initial CIP budget and adjusted if the CIP budget is later increased through the annual budget process. If the CIP budget is later decreased, the art contract shall be adjusted as much as allowed depending upon the status of the art design and/or fabrication. Establishing a budget at the initial creation of the CIP allows the artist to be hired at an early stage of design so that the art can be better incorporated with the design.
D. The Finance Committee will review and recommend to the City Council the financing of any public art element in any Infrastructure Management project costing over $20 million and all projects that may impact the General Fund.
E. Every effort should be made to identify and select projects in a timely manner.

PROCEDURE FOR IDENTIFYING AND SELECTING ART WORKS
Once the City Council has approved the Capital Improvement Project (CIP), the designer/architect is selected by the City’s Project Team and purchasing staff. When the...
design work for the project has begun, the staff liaison to the Public Art Commission and the Project Manager will develop the RFP for artwork in consultation with the selected designer/architect. The art budget will be derived from the 1% of the construction budget of the project, excluding the contingency and design budget. The one percent (1%) will be subject to change during the design phase with the determination of final cost estimates for construction. The RFP will include, but not be limited to:

- Artist’s timeline beginning with the project design phase.
- Any restrictions and requirements of the project as defined by staff and/or project manager.
- Artist’s responsibilities to the project in regards to time and involvement with the project manager and project team.

A. Selection of the artist will include input from the appropriate City department representative as well as the Public Art Commission. Selection of the artist will occur according to the procedures outlined in the City's Purchasing Manual.

B. Artists’ submittals will be reviewed by a selection panel composed of representatives of the Public Art Commission, staff liaison to the Public Art Commission, appropriate City department representative, project manager, and architect/designer. Considerations in selecting the proposed work of art will include:

- Safety and security
- Maintenance and repair to the work of art
- Appropriateness to the purpose of the site

C. The Public Art Commission will recommend the selected artist and artist’s proposal to the City.

D. The selected artist will work with the appropriate department(s) and project manager as noted in the RFP and contract.

E. Every effort should be made to conduct the artist selection and contract process in a timely manner to optimize coordination during the project’s construction phase.

OWNERSHIP AND MAINTENANCE

The City of Palo Alto owns and maintains all art in City projects and has sole fiscal and legal responsibility for the artworks and the maintenance of the works. This includes all artworks in utility projects, separate from the structures. It is mandatory that project managers with existing art, including murals, sculpture or land art, within their project site or within 100 feet of their project site contact the Public Art Commission office immediately to insure the proper legal procedures are followed for the protection of the (VERIFY WHO PAYS FOR PROTECTION AND MOVING?). A comprehensive inventory of all art shall be maintained and updated by the City and be made available for review.

NOTE: Questions and/or clarification of this policy should be directed to the Public Art Commission Liaison with the Community Services Department.