



**CITY OF SOUTH PASADENA
PUBLIC ART COMMISSION
REGULAR MEETING AGENDA
March 24, 2021 at 6:30 p.m.**

South Pasadena Public Art Commission Statement of Civility

As your elected governing board, we will treat each other, members of the public, and city employees with patience, civility and courtesy as a model of the same behavior we wish to reflect in South Pasadena for the conduct of all city business and community participation. The decisions made tonight will be for the benefit of the South Pasadena community and not for personal gain.

NOTICE ON PUBLIC PARTICIPATION & ACCESSIBILITY

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the special meetings of the Public Art Commission will be conducted remotely and held by video conference. The meeting will be broadcast live on the City's Public Art Commission website and can be viewed by joining Zoom via this link: <https://us02web.zoom.us/j/84234630117>

Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chambers will not be open for the meeting. Commission members will be participating remotely and will not be physically present in the Council Chambers.

The Public Art Commission welcomes public input. If you would like to comment on an agenda item, members of the public may submit their comments in writing for the Public Art Commission consideration, by emailing comments or questions to PublicArtComments@southpasadenaca.gov or by calling (626) 403-7720 and leaving a **3-minute** voicemail message to be played during the meeting. Public comments must be received **by 12:00 p.m. on Wednesday, March 24, 2021** to ensure adequate time to compile and post. Please provide: 1) your name; and 2) agenda item for the comments/questions. All comments/questions received will be distributed to the Commission for consideration and will also be posted on the City's website prior to the meeting.

IMPORTANT NOTE: Members of the public may access the meeting to observe the meeting's proceedings; however, at this time, there is no live, real-time participation by members of the public.

- CALL TO ORDER:** Phung Huynh, Chair
- ROLL CALL:** Phung Huynh, Chair
Kris Kuramitsu, Vice-Chair
Steven Wong
Jeffrey Burke
Annalee Andres
- COUNCIL LIAISONS:** Mayor Pro-Tem Michael Cacciotti
- STAFF PRESENT:** Kanika Kith, Planning Manager

APPROVAL OF AGENDA

Majority vote of the Commission to proceed with Commission business.

PUBLIC COMMENTS AND SUGGESTIONS

(Time limit is three minutes per person)

If you wish to address the Public Art Commission on items not on the agenda and within the subject-matter jurisdiction of the Public Art Commission, members of the public may submit their comments in writing to PublicArtComments@southpasadenaca.gov or by calling (626) 403-7720 and leaving a 3-minute voicemail message to be played during the meeting. Public comments must be received **by 12:00 p.m. on Wednesday, March 24, 2021** to ensure adequate time to compile and post. Please make sure to indicate: 1) your name; and 2) stating it is for general public comments/suggestions.

The public should be aware that the Public Art Commission may not discuss details or vote on non-agenda items. Your concerns may be referred to staff or placed on a future agenda.

COMMUNICATIONS

- 1. City Council Liaison Communications**
- 2. Commissioner Communications**
- 3. Staff Liaison Communications**

PRESENTATION

- 4. Anti-Bias Club Presentation**

Recommendation
Receive and file.

ACTION/DISCUSSION

5. Artist Rights – California Art Preservation Act

Recommendation

Continue to April 28, 2021 meeting.

6. City’s Cable Channel Ad-Hoc Committee

Recommendation

Fill one vacancy.

7. Incorporation of Public Arts in Development Project Review

Recommendation

Discuss and provide direction.

CONSENT

8. Minutes from Special March 8, 2021 Meeting

Recommendation

Approve

ADJOURNMENT

9. Adjourn to the regular Public Art Commission meeting scheduled for April 28, 2021 at 6:30 PM.

PUBLIC ACCESS TO AGENDA DOCUMENTS

The complete agenda packet may be viewed on the City’s website at:

<https://www.southpasadenaca.gov/government/boards-commissions/public-art-commission>

Meeting recordings will be available for public viewing after the meeting. Recordings will be uploaded to the City’s YouTube Channel no later than the next business day after the meeting.

The City’s YouTube Channel may be accessed at:

https://www.youtube.com/channel/UCnR169ohzi1AIewD_6sfwDA/featured

ACCOMMODATIONS



The City of South Pasadena wishes to make all of its public meetings accessible to the public. If special assistance is needed to participate in this meeting, please contact the City Clerk's Division via e-mail at CityClerk@southpasadenaca.gov or by calling (626) 403-7230. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities. Notification at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

I declare under penalty of perjury that I posted this notice of agenda on the bulletin board in the courtyard of City Hall at 1414 Mission Street, South Pasadena, CA 91030, and on the City's website as required by law.

03/19/21

Date



Name

BLACK LIVES MATTER MURAL

ANTI-BIAS CLUB AND ZACH BROWN



PURPOSE OF BLM MURAL

- The purpose of the mural is to serve not only as a celebration of Black people and social justice, but as a tool to educate people about the value of a fully integrated and diverse society and a reminder to continue antiracist work.
- We want to highlight Black strength, power, and pride in this mural and it will be solely representing Black people.
- Additionally, the mural will showcase the diversity and intersectionality of the Black community.
- The BLM mural will display the connection and continuance of the abolition movement, Civil Rights movement, Black Power movement, and BLM movement through famous figures of those respective movements and the everyday protestors of today.
- We also want to showcase famous Black artists and musicians to represent Black pride and expression.
- Instead of depicting victims of racism and police brutality, the mural aims to show the resiliency and spirit of Black people, and will thus not display George Floyd, Breonna Taylor, or any other Americans murdered by police.
- Lastly, we hope to connect these struggles for equal rights to South Pasadena and our local history of racism through symbolism of sun rays to represent the legacy of a “Sundown town.”

ARTIST SELECTION PROCESS

- After receiving applications from various artists, our group reviewed each application and narrowed it down to our top three choices.
- We then interviewed each of the three candidates, which consisted of them presenting their credentials, followed by us asking them a series of questions.
- Phung, Dr. Sawyer, and two local BLM activists London and Farhen were invited to these interviews for support and to ask questions.
- After a thorough deliberation, the five of us made the final selection.
- The artist we chose was Zach Brown.



PEOPLE HIGHLIGHTED IN THE FOREGROUND

- From left to right:
 - Sojourner Truth
 - Nina Simone
 - John Lewis
 - London Lang
 - Ruby Bridges
 - Nelson Mandela
 - Mae C. Jemison
 - Farhen James
 - James Baldwin
 - Langston Hughes
 - Harriet Tubman
 - Malcolm X



PEOPLE IN THE BACKGROUND

- From left to right:
 - Angela Davis
 - Patrisse Cullors
 - Ida B Wells
 - Biddy Mason
 - Bayard Rustin
 - Marsha P Johnson





- Red: Man painting portrait on the wall.
- Green: Children listen to Sojourner Truth read to them as they do each others hair.
- Dark Blue: Nina Simone sings to the crowd accompanied by a man playing a Djembe.They are joined by dancers who move in celebration.
- Yellow:A crowd gathers for a march/ protest.Where various members of various groups and times come together.We see a pride flag, an “i am a man” sign, a BLM sign. John Lewis in his iconic brown trench coat and backpack walks hand and hand with Ruby Bridges.
- Purple: Pride Flag; One man helps another man up who has been knocked to the ground.
- Green:A woman stands over a cook pot. It steams and she has a pleased expression on her face.
- Light Blue: Langston Hughs and James Baldwin sit at a typewriter.



- From left to right (some of the many instances of symbolism in this mural):
 - Drum
 - Records: music by Black musicians
 - Trumpet
 - Banjo: Invented by Black People
 - I am a man: from the Memphis sanitation strike
 - Pride Flag: Represents intersectionality and inclusivity
 - Books written Black authors
 - Broken Cage and Bird: Represents Maya Angelou
 - Empty figure: Interactive aspect of the mural; You would stand in that spot to be apart of the mural



COMMUNITY INVOLVEMENT

- Our group of five and Zach met the with the rest of our Anti-Bias club where we got feedback and input for the mural design.
 - This has been some of their feedback:
 - “It looks cool, makes me want to look into and learn about the people in the mural.”
 - “I like the incorporation of the lgbtq+ community!!”
 - “It has many aspects to it which makes you want to keep looking.”
 - “It really gives power over the discriminatory history of South Pas.”

Thank You!

Please let us know if you have any questions, comments, or concerns!



Public Arts Commission Agenda Report

ITEM NO. 5

DATE: March 24, 2021
TO: Public Arts Commission
FROM: Kanika Kith, Planning Manager
SUBJECT: Artist Rights – California Art Preservation Act

Recommendation

It is recommended that the Commission continue this item to the next meeting.

Discussion

The California Art Preservation Act was presented to the Commission on September 24, 2020 and October 23, 2020. At the September meeting, Commissioner Burke provided an introduction of the item and shared resources regarding best practices for an artist friendly city. At that meeting, the Commission continued the discussion to the October meeting to have additional time to review the materials.

At the October 2020 meeting, the Commission discussed the recommendations for best practices for public arts projects, and requested the City Attorney to review the document and to attend a future meeting to discuss with the Commission.

At the special March 8, 2021 meeting, Commissioner Burke informed staff that the Commission was waiting for comments from the City Attorney. Staff followed up with the City Attorney and was informed that she received the documented provided by Margaret Lin but was waiting for direction from Ms. Lin. Staff informed the City Attorney that the Commission would like her attendance at the meeting to discuss the recommendation together. Staff is waiting for confirmation of her availability.

If the City Attorney attends this meeting, staff recommends that the Commission discuss and continue this item to April to provide time for Ms. Lin to work on a draft with the Commission for Council's consideration in May. If the City Attorney cannot attend this meeting, staff will request a reservation for attendance at the next meeting in April.

Attachments:

1. Best Practices for Public Art
2. Copyright Ownership for Public Art

Item No. 5

ATTACHMENT 1

Best Practices for Public Art

STATEMENT OF PURPOSE:

Proposed Best Practices For Public Art Projects

Throughout the United States, agencies and organizations have been using art to expand constituents' experience of the public realm. With so many entities involved in managing public art projects in varying manners, the Public Art Network (PAN) [Council](#) and [Americans for the Arts](#) (AFTA) established these Best Practices out of a desire to establish a baseline for public art practices. The starting place, or baseline stage, must provide general principles that are equally relevant and agreeable to administrators, artists and other public art professionals. Once established, the baseline will provide a framework for more in-depth conversations to tease out the more complex underlying issues.

This more detailed exchange will clarify instances where different players in the public art field have diverse interests or specific pressures dictating their particular viewpoint. By parsing and articulating these diverse perspectives, the baseline principles will be annotated to provide a multi-dimensional look at public art practices.

These Best Practices are specifically drafted with discourse in mind. It is true that enforcement at this point can only be achieved through peer opinion, but Best Practices Standards will be a great resource for both developing and maturing programs. Administrators, artists and other public art professionals will be able to point to clear Best Practice Standards that have been developed and approved on a national level designed specifically to assist in the development, drafting and execution of public art policy at the local level.

In sum, our goals are:

1. To approve Best Practices recognized as the national standard by AFTA/PAN.
2. Disseminate the approved Best Practices through AFTA's outreach and [supportive communication](#) from Robert L. Lynch, President and CEO of AFTA.
3. Programs that adopt and follow these Best Practices will be recognized by AFTA/PAN.
4. A committee comprised of PAN Council members and general members shall meet regularly to discuss and draft annotated language to accompany these Best Practices.
5. Communications to AFTA/PAN membership regarding amendments and developments in the Best Practices will be regularly disseminated to the AFTA membership and public art community.

DEFINED TERMS

Administrator: includes public art administrators, public art program representatives, art consultants, developers and any other person or team working on behalf of a commissioning body or entity.

Agreement: includes any written agreement pertaining to the planning, design, development, fabrication, delivery and/or installation of an Artwork, including but not limited to letters of intent (LOIs), memoranda of understanding (MOUs), commission agreements, contracts and construction agreements.

Artist: includes individual artists as well as artist teams.

Artwork: unless otherwise restricted by the language of the particular statement, and excluding ancillary deliverables such as budgets and maintenance manuals, “Artwork” includes any permanent and/or temporary work as defined in the scope of work of an Agreement.

PROPOSED BEST PRACTICES FOR PUBLIC ART PROJECTS

1. Administrators should clearly represent the scope and budget of project in Calls for Artists and communications.
2. Artists should truthfully represent their role and the nature of past work when presenting portfolios.
3. Artists should design to available budgets and propose what they can realistically deliver within budget, especially during design competitions.
4. Administrators/Consultants should not ask Artists to appropriate or use designs proposed by other Artists in a competition (e.g. cherry pick from among other competitors). Nor should Artists use other Artists’ ideas or concepts proposed during a competition.
5. Any organization or entity commissioning Artwork should pay Artists for design proposals.
6. Administrators should ensure a legal and fair process for developing projects and selecting Artists.
7. All organizations and entities commissioning Artwork should consider their process for developing projects and selecting Artists in light of the principles in Americans for the Arts [Statement on Cultural Equity](#).
8. As reasonably possible and consistent with existing privacy policies and legal requirements, Agencies should protect Artists’ private information.
9. Arts professionals should be involved in the Artist selection process.
10. Administrators/Consultants should not receive money from Artists being considered or awarded a project.

11. To avoid actual conflict or the appearance of impropriety, real or perceived conflicts of interest should be disclosed, and impacted decision-makers should abstain from involvement in the process.
12. All projects should have a written Agreement that includes a clear articulation of: scope of work, budget and schedule. *
13. All parties should have time to read and understand agreements prior to signing, and may seek legal and/or business counsel.
14. Agreements should clearly articulate the process by which project changes are approved and any changes should always be made in writing.
15. If substantial redesign of a contracted artwork or an entirely new proposal is requested, due to no fault of the Artist, the Artist should be compensated.
16. Realistic life span of an Artwork should be mutually agreed by all parties and written into the Agreement.
17. Artists should choose appropriate materials for artwork based on the expected life. Care should be taken when integrating components into the Artwork that are not warranted for the minimum warranty period required in the Agreement. Attention should be paid to integrated components that may void underlying warranties.
18. Artist warranties should not exceed two years.
19. With regard to manufacturer warranties for integrated components, Artists should be required to only pass along those warranties provided by the manufacturer.
20. Where reasonable, obtainable insurance is required by law, municipal policy and/or in an Agreement, Administrators should work with Artists to assess the true cost of this insurance so that Artists can budget. As only licensed professionals can obtain professional liability and/or errors and omission progressive insurance, Artists who are not licensed professionals should have this requirement waived. However, Agreements may require licensed sub-contractors carry professional liability or errors and omissions insurance.
21. Administrators should not ask Artists to take on unreasonable or inappropriate liability.
22. Artists should have Agreements with their subcontractors, and include all relevant requirements of the prime contract in the sub-contract Agreement.*
23. Project payment schedule should meet the cash flow needs of the Artwork schedule of deliverables.
24. Artists should retain copyright to their Artwork. However, Artists should expect to grant license to the contracting agency or ultimate owner for reasonable use of images of the Artwork for publicity, educational, and reasonable promotional purposes upon which the parties agree.
25. Artists and commissioning bodies and/or owners should provide reciprocal credit for their respective roles in commissioned Artworks.
26. Maintenance and conservation plans should be discussed and mutually agreed

upon and Artists should prepare a detailed and feasible maintenance and conservation plan.

27. Commissioning bodies and/or ultimate owners should have collection management policies in place and notify Artists of these policies.
28. If an Artwork is damaged, Administrators should make a good faith effort to consult the Artist about repairs. Administrators are not obligated to work with Artists to make repairs, but should use best conservation practices.
29. If Visual Artist Rights Act (VARA) rights are waived, Agreements should nonetheless provide that, in the event of damage, alteration, or destruction of an Artwork that is not remedied to Artist's satisfaction, or relocation without Artist's approval, if the Artist believes the Artwork no longer represents his/her work, the Artist should have the right to remove his/her name from the Artwork.

*Look at the PAN [resources](#) available on the Americans for the Arts website for sample documents.

Item No. 5

ATTACHMENT 2

Copyright Ownership for Public Art



ArtConverge White Paper:

COPYRIGHT OWNERSHIP FOR COMMISSIONED ART

By Sarah Conley Odenkirk

A. THE CHALLENGE

Ownership of copyrights has become a hot topic in public art commissions as the value and importance of public art collections in both public and private contexts is more widely recognized. Historically, copyright remains with the artist even after a project is installed. But, in an effort to preclude future challenges or liabilities, lawyers representing commissioning parties are more frequently drafting commission agreements to require a full assignment and transfer of copyrights as well as a blanket waiver of Visual Artist Rights Act (VARA) rights (and in California, California Arts Preservation Act (CAPA) rights as well). Not only is this recognized as a violation of best practices in the public art field, but it is not necessary in order to provide the owner of the public art with legal protection. In fact, owning the copyright may very well create unintended liabilities and ultimately damage the ability of developers and public art programs to realize the maximize potential of their public art commissioning opportunities.

Best Practices Dictate That Artists Retain Copyright Ownership

In 2017 the Public Art Network Council of the Americans for the Arts adopted a 29-point statement outlining the most important best practices to be followed in the field of public art. This document can provide a helpful basis for conversations and the construction of policies, procedures and contracts. One of the best practices listed is that artists should retain copyright to their artwork.¹ Currently, the Council

¹ “Artists should retain copyright to their Artwork. However, Artists should expect to grant license to the contracting agency or ultimate owner for reasonable use of images of the Artwork for publicity, educational, and reasonable promotional purposes upon which the parties agree.” Best Practices as published by Americans for the Arts online at <https://www.americansforthearts.org/by-program/networks-and-councils/public-art-network/tools-resources/public-art-administrators>.

and other public art professionals are in the process of annotating these best practices, so look for updates in the near future.

Tools To Bridge The Disconnect Between Art And The Law

Having tools to assist in constructing an acceptable and functional structure for public art commissions is crucial in building impactful programs at every level. One valuable tool is that of *communication*. Open and respectful communication is crucial for all contract negotiations, and particularly helpful when all parties should be working toward the same outcome.

Another effective tool to be employed at the beginning of any conversation about commission contract language is *empathy*. Commissioning Parties are concerned with liability and efficient expenditure of public, donor, or investor funds. Artists are concerned with building and maintaining sustainable careers and being treated respectfully. Commissioning Parties approach most issues from an objective standpoint that puts the financial interests and well-being of the community or company front and center. Artists, no matter how business-savvy, tend to focus on creative expression and aesthetic impact. Ultimately, creative and aesthetic considerations are what makes artistic interventions powerful and able to touch a diverse audience. Most lawyers try to keep personal feelings out of the work of drafting contracts, but passion and engagement is a crucial component to creating good art. This is where the nexus of art and law can expose a disconnect in the different thinking processes of lawyers and artists. Luckily, the goals of Commissioning Parties and Artists need not be mutually exclusive. Using good communication and empathy, both parties will be able to better negotiate mutually satisfactory contract language and sustainable public art programs.

B. THE COMMISSIONING PARTY PERSPECTIVE

Commissioning Parties Worry About Future Liabilities

As we deploy empathy to consider the position of Commissioning Parties, an important question to ask is: Why, contrary to best practices, do lawyers want to include blanket waivers of rights and copyright transfers in the commission agreements in the first place? They are almost certainly not planning to go into business exploiting the works for gift shop profits (though that is another potential concern in some cases). Generally, the answer is that waivers and transfers are an easy and expeditious way to ensure that Owners need not advise Artists of what happens to the artwork in the future, and Artists cannot raise any objections down the road to the way in which the art is treated, exploited, maintained, relocated removed or destroyed. The fear of possible future liability can be heightened in the public context by the fact that many municipalities commissioning work are self-insured. Thus, government attorneys tend to be especially highly motivated by the quest to reduce potential municipal liabilities, present and future. Ultimately, it is

hoped that requiring blanket waivers and transfers will nip in the bud any potential future challenges from artists and definitively ensure that Artists do not create other duplicate works for another client down the road. Unfortunately, this stance may unwittingly create other potential concerns.

Owners Must Be Prepared To Manage And Protect The Copyrights

When a copyright is transferred to an artwork, the owner (Commissioning Party or otherwise) also acquires the administrative burden that comes with the ownership of intellectual property rights. Proper intellectual property management dictates that copyrights should be registered with the Library of Congress. Proof of registration is the only way to access potential remedies in the event of third party infringements. Failure to register the copyrights will prevent the owner from pursuing any enforcement actions and could result in squandering the intellectual property and damaging the reputation of the artist. It is both disrespectful to the artist and the artwork and a waste of individual, company or taxpayer resources to require the waivers and transfers solely to prevent future issues with the artist while neglecting to properly manage and defend, if necessary, the intellectual property assets.

Copyright Transfer Does Not Include or Negate Moral Rights

Pursuant to the terms of the Visual Artists Rights Act (VARA) found at §106A of the Copyright Law, even if copyright ownership is transferred pursuant to a signed writing, the moral rights granted by VARA are not transferrable and last for the life of the author. Additionally, a number of states also have state law equivalents to VARA which either match or exceed the protection offered under VARA. In order to avoid future liability based on state or federal moral rights legislation, commission agreements often contain a waiver of these rights. Again, best practices dictate that when moral rights are waived, there should be some replacement language included in the agreement which provides for reasonable notice to the artist of any impending plans to remove, relocate or destroy an artwork.² Rather than hinder the process of commissioning and maintaining public art, recognition of sensible and administrable rights should clarify what each party can reasonably expect in the future with regard to how the artwork and Artist will be treated.

The Big Picture

The attorneys advising art programs need to be especially cognizant of the way that contract terms impact the overall reputation and character of the program.

² "If Visual Artist Rights Act (VARA) rights are waived, Agreements should nonetheless provide that, in the event of damage, alteration, or destruction of an Artwork that is not remedied to Artist's satisfaction, or relocation without Artist's approval, if the Artist believes the Artwork no longer represents his/her work, the Artist should have the right to remove his/her name from the Artwork." Best Practices as published by Americans for the Arts online at <https://www.americansforthearts.org/by-program/networks-and-councils/public-art-network/tools-resources/public-art-administrators>.

Choosing to take a hardline approach might create more certainty with regard to liability issues and sound good to owners and oversight bodies relatively uninformed on art-specific issues. But fostering a program that is viewed as not friendly to artists can have long term effects on the ability of that program to attract the best talent and curate the best public art collection. Taking a softer approach that focuses on what the Commissioning Party actually needs and letting the Artists retain the rest, broadcasts a very different approach. Showing that a company or community is enlightened about artists' concerns will set the stage for not only a better public art collections, but allow for broader support of the increasingly popular (and necessary) public-private collaborations: using art as a means to promote community engagement; diversifying into temporary and performance-based works; and embedding artists as residents in other private and municipal programs to support creative thinking in a variety of sectors.

C. THE ARTIST PERSPECTIVE

Artists Need To Be Free To Create Derivative Works

If the empathy is to be employed in the opposite direction to take into account the Artists' perspective, Commissioning Parties will need to consider the nature of working as an Artist. Artists, who build sustainable careers working in the public art arena, need to be free to create works in different locations and settings over time. These works will, in many cases, have a common theme, thread or style that identifies the work as that of the particular artist. When copyright is assigned or transferred, one of the rights included is the right to create derivative works. By transferring ownership of the copyright, an artist potentially jeopardizes his or her ability to create works that could be considered derivative and this could negatively impact the artist's ability to work in the field.³ Lawyers need to understand that this is a legitimate concern for artists. Artists should not be asked to simply trust that the Commissioning Party or owner will act reasonably in the future. Generally speaking, a simple assurance from the Artist that the commissioned work is a unique artwork and will not be exactly duplicated elsewhere will serve to adequately protect the Commissioning Party's interests and needs.

Public Art Budgets Are Mostly Not Big Enough To Warrant Copyright Transfer

Another concern with requiring waivers and copyright transfers is the shift in project esprit that this creates. Often the commission budgets are not enough to justify the transfer of the artwork itself *and* the copyright. Generally, there is barely enough money in the budgets to pay for the fabrication of the artwork and allow for a modest artist fee. Adding a requirement that the intellectual property assets be

³ Though less likely, it could also cut off an artist's ability to take advantage of the popularity of a public art piece by creating merchandise derivatives of the original work. Generally speaking, municipalities are not in the business of creating, marketing and distributing merchandise, but this may be an issue appropriately considered at the outset of the contracting process. If merchandising is in fact a viable opportunity, it could be one shared by the parties to everyone's mutual benefit. Of course, if the artist has an international reputation, the negotiation power lies with the artist who will likely not want to share merchandising rights or profits with the municipality.

transferred with no additional compensation feels exploitative and does not engender good feelings on projects that should feel unreservedly mutually-beneficial. Leveraging the power differential between Commissioning Parties and Artist to change the rules and expand the historic scope public art commissions by forcing Artists to also transfer their copyrights could be seen as overreaching. It could also diminish the ability of a public art program to establish a reputation as an artist-friendly collaborator. Again, considering the big picture, everyone wins when there is a collective effort to construct an artist-friendly ecosystem, which in turn enhances the creative economy for everyone.

D. THE ANSWER

Limited Waivers and Licenses Can Address All Concerns

A Commissioning Party need not own the copyrights to a public art project in order to have assurances that it can freely manage its public art collection without burdensome requirements to obtain the artist's permission. The best way to accomplish this is through limited licenses and waivers. Normally, Commissioning Parties want the freedom to reproduce two-dimensional images of the artwork for educational, marketing and promotional purposes;⁴ and to have the freedom to address maintenance, conservation and removal or relocation issues that come up from time to time. The best way to obtain this type of enduring flexibility is to create a limited, perpetual license as well as a waiver of moral rights with replacement language that establishes a base level respect for the artist and the artwork. One example of effective language to address intellectual property and moral rights issues is as follows:

INTELLECTUAL PROPERTY OWNERSHIP

a. **General.** Except as provided in this Agreement, Artist retains all copyrights and other intellectual property interests in the Artwork and in the Design, drawings, sketches, prototypes and other materials for the Artwork. Artist may place a copyright notice on the Artwork and may, at Artist's option, register the copyright with the Library of Congress.

b. **Reproductions.** Artist hereby grants to Owner the non-exclusive right to make, and to authorize the making of, photographs and other two-dimensional reproductions of the artwork for any Owner-related purposes, including, but not limited to educational, advertising, marketing, public relations, promotion, any documentation of Owner's art collection or other noncommercial purposes in print or electronic media. This license does not include the right to create three-dimensional works or to reproduce the Artwork for merchandising purposes. Any rights to reproduce the work three-dimensionally or to merchandise the Artwork must be established pursuant to a separate agreement with the Artist.

⁴ If they intend to make images or derivative works for sale, then the use of the artwork then falls into a different category of commercial use for which a separate agreement is advisable and the artist should be additionally compensated.

MAINTENANCE, REPAIR AND RESTORATION. For the lifetime of the work, which for purposes of this Agreement is defined as no less than _____ (____) years, Owner will be responsible for the routine inspection and maintenance of the Artwork in accordance with the Maintenance Manual. Owner shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Artwork will be made. It is the policy of Owner to consult with Artist regarding repairs and restorations undertaken during Artist's lifetime when practicable. In the event the Owner wishes to have Artist personally undertake or supervise repairs, Owner agrees to pay Artist a reasonable fee for such supervision to be negotiated at the time. In the event that Owner makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option, to have Artist's association with the Artwork severed. All repairs and restorations, no matter who performs them, shall be made in accordance with professionally recognized principles of conservation and in accordance with the Maintenance Manual.

MODIFICATION, DESTRUCTION OR REMOVAL OF ARTWORK.

a. Owner shall notify Artist in writing of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork including removal or relocation of the Artwork that might result in the Artwork being destroyed, distorted or modified. The Owner shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The Owner shall make a reasonable effort to maintain the integrity of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the Owner, the Artist may disavow the Artwork or have the Artwork returned to the Artist at the Artist's expense.

b. The Artwork may be removed or relocated or destroyed by the Owner should the Artist and the Owner not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed ninety (90) days after written notice to the Artist. During the ninety (90) day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

c. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the Owner may authorize the removal or relocation of the Artwork without the Artist's permission. In the alternative, the Owner may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in compliance with such codes, laws or regulations.

d. If the Owner reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of the Owner's failure to maintain the Artwork as required under this Agreement, the Owner may authorize the removal of the Artwork without the prior approval of the Artist.

e. Owner shall have the right to donate or sell the Artwork at any time. Before exercising this right, Owner, by written notice to Artist at Artist's last known address, agrees to give Artist the opportunity to purchase the Artwork for the greater of the Contract Amount or the amount of any offer which Owner has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Site, clean-up of the Site and delivery to Artist. Artist shall have thirty (30) days from the date of Owner's notice to exercise the option to purchase the Artwork.

f. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act ("VARA") and, if applicable, the California Art Preservation Act (CAPA), to the extent that any portion of this Agreement is in

direct conflict with VARA and/or CAPA rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict with VARA and/or CAPA.

If you have further questions or concerns about this topic or other art law matters, please do not hesitate to contact Sarah Conley Odenkirk at sarah@artconverge.com or call 310.990.9581.



Public Arts Commission Agenda Report

ITEM NO. 6

DATE: March 24, 2021
TO: Public Arts Commission
FROM: Kanika Kith, Planning Manager
SUBJECT: **City's Cable Channel Ad-Hoc Committee**

Recommendation

Fill one vacancy

Discussion

At the special meeting on March 8, 2021, the Commission indicated that there is one vacancy for the Ad-Hoc Committee for promoting arts through the City's Cable Channel. Staff recommends that the Commission appoint a Commissioner to join Commissioner Burke in the Ad-Hoc Committee.



Public Arts Commission Agenda Report

ITEM NO. 7

DATE: March 24, 2021
TO: Public Arts Commission
FROM: Kanika Kith, Planning Manager
SUBJECT: **Incorporation of Public Arts in Development Project Review**

Recommendation

Discuss and provide direction.

Discussion

At the Design Review Board meeting of March 4, 2021, the Board expressed a desire to explore approaches for encouraging private development projects to incorporate public arts on-site prior to obtaining approval for development from the Board.

Under the current process, projects subject the Public Art Development Fee Program are reviewed and approved by the Public Art Commission after the development project is approved by the Planning Commission, Cultural Heritage Commission, or Design Review Board. After a project is approved for development, the applicant may provide public art on-site at 1% of the total building valuation or pay an in-lieu fee 1.5% of the total building valuation into the Public Art Development Fee Program. If the applicant provides the public art on-site, then the project would come before the Commission for consideration and approval. If the applicant pays the in-lieu fee, the project would not come before the Commission.

Staff would like direction from the Commission about the Design Review Board desire to explore means for encouraging development projects to incorporate public arts on-site. If the Commission is interested, staff will inform the Design Review Board at their meeting on April 1, 2021 and we can explore options for collaboration between this Commission and the Design Review Board.

Background

On October 17, 2018, the City Council approved Ordinance No. 2325 to establish a Public Art Development Fee Program. The following projects are subject to Public Art requirements:

- Residential developments of four or more units with a building valuation exceeding \$500,000 as determined by the Building Official; and
- Commercial and industrial building projects with a building valuation exceeding \$500,000 as determined by the Building Official; and

- Remodeling projects of existing commercial or industrial buildings, when the remodeling has a building valuation exceeding \$250,000 as determined by the Building Official; and
- Remodeling projects of residential buildings of four or more units or complexes of four or more units, whether exterior or interior, when the remodeling has a building valuation exceeding \$250,000 as determined by the Building Official.

Developments or modifications of these projects are exempted from Public Art requirements:

1. Affordable housing
2. Performance arts facilities
3. Museums
4. Private non-profit and institutional uses
5. Interior remodel or tenant improvements of any type
6. National disaster repairs or rebuilding required by code

Projects that are subject to the Public Art Development Fee will be required to allocate a percentage of the total building valuation towards the following:

- 1% for on-site installation of approved site-specific public artwork, cultural, or artistic facilities equal to or exceeding the value of the contribution amount; or
- 1.5% in-lieu fee to the City's Public Art Fund.

Projects to be funded from the Public Art Fund shall consist of artwork placed in public places or incorporated into public buildings, art education programs, art display programs or performances, or the allocation of space such as a civic gallery or theater space.

**MINUTES OF THE SPECIAL MEETING OF THE
PUBLIC ART COMMISSION
OF THE CITY OF SOUTH PASADENA
CONVENED THIS 8th DAY OF MARCH 2021 5:30 P.M.
CITY COUNCIL CHAMBERS
1414 MISSION STREET**

CALL TO ORDER/ROLL CALL	<p>The special meeting of the Public Art Commission (Commission) was convened at 5:32 P.M.</p> <p>Commissioners present: Annalee Andres, Jeffrey Burke, Steven Wong, Kris Kuramitsu (Vice-Chair), Phung Huynh (Chair)</p> <p>Council Liaison: Michael Cacciotti</p> <p>Staff present: Kanika Kith, Planning Manager and Malinda Lim, Associate Planner</p>
APPROVAL OF AGENDA	Unanimously approved (5 ayes, 0 noes)
PUBLIC COMMENTS AND SUGGESTIONS (ITEMS NOT ON THE AGENDA)	None.
ACTION/DISCUSSION ITEMS	
1. PUBLIC ART COMMISSION REORGANIZATION	<p>Commissioner Burke nominated Commissioner Huynh as Chair. Motion seconded by Commissioner Kuramitsu. Motion carried unanimously (5 ayes, 0 noes).</p> <p>Commissioner Burke nominated Commissioner Kuramitsu as Vice-Chair. Motion seconded by Commissioner Huynh. Motion carried unanimously (5 ayes, 0 noes).</p>
2. APPROVAL OF THE 2021 WORK PLAN	<p>The Commission discussed the items on the work plan. Commissioner Burke mentioned he provided a copy of the Best Practices for Public Art and Copyright Ownership for Public Art to Planning Manager Kith which she distributed to the Commission prior to the meeting. The Commission had concerns that they would not be able to complete the Artist Rights/Artist Friendly City objective by the end of quarter 1 and asked it be moved to quarter 2.</p> <p>Commissioner Burke had concerns regarding the Civic Center Art Gallery because there was no funding or discussion about it and was contingent on the 2020/2021 fiscal year budget. The Commission decided collectively to move the selection of a curator for the Civic Center Art Gallery to quarter 2. Commissioner Wong stated that it might be premature to select a curator when there isn't a set date the Civic Center will reopen.</p> <p>The Art Resources Inventory, Art Resources Gap, and Promotion of Arts and Culture were changed from quarter 2 to ongoing. Commissioner Burke stated he would like to find out more about utilizing the City's cable channel before pursuing it further.</p>

	Commissioner Burke moved to approve the work plan with the changes discussed and Commissioner Andres seconded the motion. Motion carried unanimously (5 ayes, 0 noes).
CONSENT ITEMS	
3. NOVEMBER 16, 2020 MEETING	Vice-Chair Kuramitsu moved to approve the minutes and Commissioner Burke seconded the motion. Unanimously approved (5 ayes, 0 noes)
COMMUNICATIONS	
4. CITY COUNCIL LIAISON COMMENTS	Council Liaison Cacciotti shared that the Commission is required to take a roll call vote on action items.
5. COMMISSIONER COMMENTS	<p>Commissioner Burke thanked Commissioner Wong for being Chair in the past year, welcomed Commissioner Andres, and felt discouraged that this was the first Public Art Commission meeting since November 2020.</p> <p>Chair Huynh thanked Commissioner Wong for his leadership, welcomed Commissioner Andres, and shared that Commissioner Wong is the new director of the Vincent Price Art Museum.</p> <p>Commissioner Wong thanked the Commissioners and invited the Commission to visit the museum when it reopens.</p> <p>Commissioner Andres thanked the Commission for their warm welcome and stated she looks forward to promoting arts and culture in the city.</p>
6. STAFF LIAISON COMMENTS	Planning Manager Kith assured the Commission that the regular meeting of March 24, 2021 will occur and will reach out to the City Attorney pertaining to public art best practices and copyrights.
ADJOURNMENT	By consensus, the Commission adjourned the meeting at 6:19 P.M.

Approved By:

Phung Huynh
Chair