



**CITY OF SOUTH PASADENA  
PUBLIC ART COMMISSION**

**AGENDA**

**SPECIAL MEETING  
THURSDAY, SEPTEMBER 14, 2023 AT 6:30 P.M.**

**AMEDEE O. "DICK" RICHARDS JR. COUNCIL CHAMBERS  
1424 MISSION STREET, SOUTH PASADENA, CA 91030**

**South Pasadena Public Art Commission Statement of Civility**

*As your appointed 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**

The South Pasadena Public Art Commission Meeting will be conducted in-person from the Amedee O. "Dick" Richards, Jr. Council Chambers, located at 1424 Mission Street, South Pasadena, CA 91030.

The Meeting will be available:

- In Person Hybrid – City Council Chambers, 1424 Mission Street
- Via Zoom - **Webinar ID: 823 1334 6757**

To maximize public safety while still maintaining transparency and public access, members of the public can observe the meeting via Zoom in one of the three methods below.

1. Go to the Zoom website, <https://zoom.us/join> and enter the Zoom Meeting information; or
2. Click on the following unique Zoom meeting link:  
<https://us02web.zoom.us/j/82313346757>; or
3. You may listen to the meeting by calling: +1-669-900-6833 and entering the Zoom Meeting ID listed above.

**CALL TO ORDER:** Kris Kuramitsu, Chair

**ROLL CALL:** Kris Kuramitsu, Chair  
Annalee Andres, Vice-Chair  
Jeffrey Burke  
Delora Piazza  
Steven Wong

**APPROVAL OF AGENDA**

Majority vote of the Commission to proceed with Commission business.

**PUBLIC COMMENTS AND SUGGESTIONS**

The Public Art Commission welcomes public input. If you would like to comment on an agenda item, members of the public may participate by means of one of the following options:

Option 1: Participate in-person at the City Council Chambers, 1424 Mission Street, South Pasadena.

Option 2: Participants will be able to “raise their hand” using the Zoom icon during the meeting, and they will have their microphone un-muted during comment portions of the agenda to speak for up to 3 minutes per item.

Option 3: Email public comment(s) to [PlanningComments@southpasadenaca.gov](mailto:PlanningComments@southpasadenaca.gov). Public Comments received in writing will not be read aloud at the meeting, but will be part of the meeting record. Written public comments will be uploaded online for public viewing under Additional Documents. There is no word limit on emailed Public Comment(s). Please make sure to indicate: 1) Name (optional), and 2) Agenda item you are submitting public comment on. 3) Submit by no later than 12:00 p.m., on the day of the Commission meeting.

NOTE: Pursuant to State law, the Commission may not discuss or take action on issues not on the meeting agenda, except that members of the Commission or staff may briefly respond to statements

**PUBLIC COMMENT**

**1. Public Comment – General (Non-Agenda Items)**

**PRESENTATION**

**2. Overview and Discussion of Copyright and Other Legal Issues Related to Public Art Programs – City Attorney Roxanne Diaz**

**DISCUSSION ITEM**

**3. Creative Crosswalks/Bulb-outs**

Recommendation

Receive presentation and provide comments.

**ADMINISTRATION**

4. City Council Liaison Communications
5. Ad Hoc Committee Communications
  - Update on Public Art Policy Handbook
6. Commissioner Communications
7. Staff Liaison Communications

**ADJOURNMENT**

8. Adjourn to the regular Public Art Commission meeting scheduled for October 25, 2023 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>

**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](mailto: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.*

9/14/23

Date

*Mackenzie Goldberg*

Mackenzie Goldberg, Assistant Planner



# Public Art Commission Agenda Report

ITEM NO. 2

**DATE:** September 14, 2023

**TO:** Public Art Commission

**FROM:** Alison Becker, Community Development Deputy Director

**PREPARED BY:** Roxanne Diaz, City Attorney

**SUBJECT:** Overview and Discussion of Copyright and Other Legal Issues  
Related to Public Art Programs

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## **Recommendation**

It is recommended that the Public Art Commission discuss and receive and file this agenda report.

## **Background**

Public art can take shape in a variety of ways and forms. Traditional components of a public art program may include the commissioning of original artwork, purchasing existing artwork or the display of temporary artwork. The implementation process to procure such works is generally pursuant to a “call for artists” or a “request for proposals.” Included in this process is a requirement that the artist enter into a contract with the city related to the purchase, installation, display and removal of the artwork. It is at the contract stage where certain legal issues arise related to the ownership of the artwork as well as matters related to removal and in some cases destruction of the artwork. The City Attorney’s office will provide the Commission with an overview of the legal framework as well as a discussion of the legal issues that generally arise when contracting with artists for their work.

## **Analysis**

### ***Overview of Legal Framework***

The most common legal issues between artists and cities related to public art revolve around the ownership of the work and the waiver of certain rights provided to artists known as “moral rights.”

With respect to the ownership of artwork, the Copyright Act of 1976 (“Copyright Act”) protects original works of authorship, including pictorial, graphic and sculptural artwork. This includes but is not limited to graphic art, paintings, sculptures, illustrations, drawings and more. Under the Copyright Act, the artist has exclusive rights to do and authorize any of the following: (i) reproduce the copyrighted work; (ii) distribute the

copyrighted work (i.e. sell or distribute); (iii) create derivative works (i.e. prepare new works based on the protected work such as merchandise, etc.); and (iv) display the copyrighted work. The duration of the copyright in the work is generally the life of the artist, plus 70 years.

The federal Visual Artists Rights Act of 1990 (“VARA”) was enacted as an amendment to the Copyright Act and protects an artists’ “moral rights” of attribution and integrity of visual art of a recognized stature. The term “visual art” is defined as a painting, drawing, print or sculpture. VARA states that a visual artist has the right to prevent any intentional distortion, mutilation, or other modification of their work which would be prejudicial to his or her honor or reputation and in the case of works of a recognized stature, the artist may prevent its destruction. VARA also provides the artist with the right to claim ownership of their work as well as the right to prevent the use of his or her name as the author of any work of visual art which he or she did not create. Works created under a pseudonym are not protected under VARA.

The California Art Preservation Act (“CAPA”) is somewhat similar to VARA. CAPA provides that no person, except the artist’s heirs, beneficiaries, devisees, or personal representatives, can intentionally commit or allow any physical defacement, mutilation, alteration, or destruction of fine art. The term “fine art” is defined as an original painting, sculpture or drawing, or an original work of art in glass, of recognized quality. CAPA also provides that an artist has the right to claim authorship, or disclaim authorship for a just and valid reason, to his/her artwork. Under the legal doctrine of preemption (whereby a state law is considered invalid if it conflicts with, or is otherwise inconsistent with, or impedes federal law), VARA is the primary authority for an artist’s moral rights during an artist’s lifetime. However, after an artist dies, unlike VARA, CAPA will continue to apply for 50 years following the artist’s death and is generally enforceable by the beneficiaries of the artist.

### ***Legal Issues: Ownership and Waiver of Moral Rights***

When an artist sells an artwork, the artist still retains the copyright to the work as well as their moral rights and the purchaser is the owner of the tangible work. Accordingly, in the event of a sale, the “title” of an artwork passes to its buyer, but the copyright and moral rights do not — they remain with the artist.

That said, the artist may transfer the copyright of an artwork to the purchaser. With respect to the artists’ moral rights, the artist may not transfer those rights but the artist may waive those rights. The transfer of the copyright and the waiver of moral rights must be done in writing.

When a city purchases artwork for its public art collection, the question of whether the City should obtain the copyright of the artwork will often arise. While cities across the state differ in approach, there may be times when a city does negotiate for the transfer of the copyright. Examples include but are not limited to, circumstances when the

artwork will be part of a merchandising program or other signature program of a city and the city desires to commercialize the artwork. If the copyright is not obtained, depending on the goals or the use of the artwork, the city should obtain assignment or other licensing rights to artwork.

With respect to the waiver of moral rights, the general approach among cities is to require an artist to waive their moral rights under VARA and CAPA. While the provisions of VARA and CAPA cover numerous scenarios, the waiver of those provisions provides cities with the ability to respond to situations that are somewhat unique to cities. This may include, for example, unintentional damage to the work such as a vehicle that crashes into artwork, the lack of budget related to the maintenance and/or storage of the artwork, new visions for the property on which artwork is located or a desire to no longer display the artwork. That said, depending on the City's purpose for the acquisition of the artwork (permanent, temporary, etc.), there are times when modifications are made to a complete waiver such as providing notice to the artist and allowing the artist to reclaim their artwork. It is has been my experience that cities have no desire to intentionally distort or modify artwork in such a manner that is prejudicial to the reputation of the artist. Rather, the waiver allows a city discretion and flexibility in managing its public art program.

The City Attorney's office will be present at the Public Arts Commission to further elaborate on the matters discussed in this report and answer questions from the Commission.



# Public Art Commission Agenda Report

ITEM NO. 3

**DATE:** September 14, 2023

**TO:** Public Art Commission

**FROM:** Alison Becker, Community Development Deputy Director

**PREPARED BY:** Mackenzie Goldberg, Assistant Planner

**SUBJECT:** **Creative Crosswalks/Bulb-outs Discussion**

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## **Recommendation**

It is recommended that the Public Art Commission review and discuss South Pas Active Streets' presentation and provide feedback regarding options to incorporate art on street safety improvements.

## **Discussion**

The City's Slow Streets Program is intended to provide space for residents to safely walk and ride, and to support local business' use of outdoor space for dining and other operations. The program is accomplished by installing temporary traffic equipment along selected streets. In residential areas, the program includes the installation of temporary striping, signage, curb extensions using reflective delineators, and bicycle lanes using short-term paint/tape. In addition to the listed elements, the commercial areas include the use of temporary parklet structures, furniture, and planters.

In addition to enhancing safety, street improvements provide an opportunity for designing and installing works of art in the public-right-of-way that reflect the special character of a neighborhood. The Public Art Commission is responsible for providing policy recommendations on public art projects and programs, including but not limited to artwork placed in public places or incorporated into public buildings, art education programs, or art display programs or performances. As such, it is within the Commission's purview to explore approaches for encouraging Slow Streets projects to incorporate high-quality public art. Further, it aligns with the Commission's Annual Workplan to identify potential public sites for public art installations.





## Specific Language Recommendations for Public Art Policy

### Selection Criteria for Artists

The following criteria shall be referenced and applied by the Public Art Commission throughout all selection processes:

**Qualifications:** Artists shall be selected based on their qualifications as demonstrated by past work and the appropriateness of their concepts to the project. Of highest priority are the design capabilities of the artist and the inherent quality of artwork.

**Artistic Excellence:** Arts and the public art shall demonstrate a mastery of skills and techniques, communication of unique vision or perspective and professional approach to process and presentation and a significant body of work.

**Media, Style and Diversity:** All forms of public art shall be considered, subject to any requirements set forth by the project solicitation. Artists whose artworks are representative of all schools, styles and tastes shall be considered. The program shall also strive for an equitable distribution of artworks throughout the City.

**Appropriateness to site:** Artwork designs shall be appropriate in scale material, form and content for the immediate social and physical environments to which they relate.

**Durability:** Consideration shall be given to structural and surface integrity, permanence and protection of the proposed artwork against theft, vandalism, weathering, excessive maintenance, repair costs and extreme weather events. Durability shall be defined in relation to the intended lifespan of the project, varying according to whether the artwork is intended to be installed permanently or temporarily.

**Historic Significance:** If the proposed artwork includes an historic element, it shall reflect the history of and character of the Southern California region.

**Visual Access:** The proposed artwork will be readily visible to the public and meet the location requirements of the project.

**Community Values and Relation to the Space:** While free artistic expression shall be encouraged, consideration must be given to the appropriateness of works of art in the context of local community and social values. The proposed artwork should work well in relation to the space where it is to be placed and reflect the values of the community.

**Public Liability:** Safety conditions or factors that may bear on public liability should be considered in selecting an artist or artwork.

**Maintenance:** The proposed art/element will not require extraordinary maintenance and the maintenance plan addresses vandalism, weathering, natural disaster, and the life of the artwork.

**Location:** The proposed location of the art and/or element(s) is in a public place that is appropriate to accommodate the size and scale of the proposed art and/or elements, has and can reasonably accommodate any necessary supporting infrastructure, and follows applicable City Code requirements.

## Artists' Call Processes

Three selection methods are available for artist selection: open, invitational, and direct (sole source). In most cases, the open method, which invites all artists to submit qualifications or proposals for a project, will be used. Invitational or direct selections may be appropriate for projects with extremely aggressive schedules, where there is a community consensus around an artist or list of artists to be considered, or where a high-level of experience or a specific type of experience is required for the project.

**Open selection:** provides an opportunity for any qualified artist to submit qualifications or proposals and is therefore the preferred method of selection (see RFQ/RFP section below). Typically, a written notice is issued summarizing the project, qualifications sought, proposal requirements, panel composition, and project schedule. Open selections are strongly encouraged for large projects or projects of significance to the city. After a review of submitted materials, and a follow-up interview for finalists, an artist is selected for the commission. Where there is an on-going need for artists for a certain category of project, a shortlist may be assembled and will remain active for a fixed period of time.

**Limited selection:** involves assembly of a shortlist of qualified artists who are invited to submit their qualifications for review. Members of the selection panel and/or Public Art Program staff place artists on the invitation list based on their qualifications. A limited selection process is best utilized for projects with small budgets that cannot support the cost of an open selection process or where very specific artist qualifications are sought.

**Direct selection:** (identification of one artist without review of others/sole source) should only be used for small projects where selection costs need to be contained or when an artist is uniquely qualified for the project at hand. Use of the direct selection method must be justified in writing and approved by the City Manager.

## RFQs and RFPs

A Request for Qualifications (RFQ) should be used when seeking an artist to participate in the design of a project, especially when the artist is to collaborate with an architect or other designer. Artists are asked to submit letters of interest, visual representations and descriptions of past work, and other relevant materials. Finalists may be interviewed before the final selection is made, or may be asked to prepare initial concepts or design proposals. In that case, artists should be compensated for their services for a fixed fee.

A Request for Proposals (RFP) is appropriate where the design of the project is completed or where the project parameters are very well defined. RFPs can stimulate interest and provide a competitive edge for artists who do not have extensive experience in public art.

RFQs and RFPs typically contain the following information:

- Site photographs
- Summary of site or project history
- Goals for the project
- Scope of work for artist services
- Selection process and artist selection panel composition
- Criteria for evaluating submittals and finalists
- Eligibility, including any geographical residency restrictions
- Budget, especially fees the commissioned artist may expect to receive for design and fabrication

- Submittal requirements, including proposal requirements
- Deadline date and time, as well as address for hand-delivery or mailing of submittal
- Estimated schedule
- Contact information should the artist have questions

### **Artwork Selection Criteria and Processes**

The Public Arts Commission typically serves as the Artist Selection Panel for public art acquisitions. The process for evaluation is as follows:

- Artwork must be consistent with the guidelines for the Public Art Program.
- Artwork should be of exceptional quality and enduring value as determined by the Public Art Commission.
- Strong preference is given to artwork that is unique or of a limited edition.
- Permanently sited artwork must relate to the architectural, historical, geographical, and/or sociocultural context of the site.
- Funding and documentation for installation and future maintenance must be provided.
- As applicable, the artwork must meet City structural, building, right-of-way, electrical, and other codes for safety.
- As applicable, the artwork must meet Federal Americans with Disabilities Act requirements.
- Artwork must be durable and in good condition.
- Existing artwork must have provenance information establishing clear title.

### **Special Panel**

In some circumstances, such as high profile public art projects in the community, the PAC may invite a special Panel to review submissions. In such cases, artist proposals shall be considered by the Panel and a final choice(s) will be presented to the PAC for acceptance.

These types of selection panels can be formed to provide additional community input, specialist input and other important perspectives for the public art selection process. The PAC, together with City Staff, shall decide if a special panel is needed and confirm the use of a special panel through a majority vote of the PAC.

Artist Selection Panels will be comprised of a combination of 3-5 professional artists, arts and design professionals, and community representatives or stakeholders. Panels must include at least one professional visual/public artist, one community member, and one arts professional.

**Professional visual/public artists:** Persons working professionally as artists, preferably who have experience with the type of projects for which a selection is being made.

**Arts Professionals:** Persons working in the arts professionally (including but not limited to curators, arts administrators, and educators) who are:

- Knowledgeable about contemporary artists (local, regional, and national), including those of diverse ethnic and cultural backgrounds and gender expressions
- Informed on the subject of artists participating in art in the urban environment, and art's use as an urban design tool
- Familiar with the requirements/restrictions imposed by design collaborations.

**Community representatives or stakeholders:** Persons who are:

- Knowledgeable about the concerns of the community in which the project is being developed
- Committed to the arts as a part of community development
- Responsive to the artistic, ethnic and socio-economic diversity of the community

Each panelist has one vote, and no panelist has the right of veto. If a consensus cannot be reached by the panel, then a majority vote carries the decision. The panel has the right to make no selection if there is no proposal judged to be of sufficient merit. The panel will forward its decision to the PAC for final consideration.

The Public Art Program staff or their appointee shall serve as a non-voting resource for each selection and will keep records of the panel deliberations and decisions. The PAC may also appoint non-voting advisors and consultants to provide guidance and advice related to the project. Advisors do not vote.