



**CITY OF SOUTH PASADENA
PUBLIC ART COMMISSION
REGULAR MEETING AGENDA
April 28, 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://zoom.us/j/95382565629?pwd=bHJKc2M5QVA1YWdFWnUzdWs3SW1qQT09>

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, April 28, 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: Margaret Lin, Manager of Long Range Planning and Economic Development

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, April 28, 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.

ACTION/DISCUSSION

1. City’s Cable Channel Ad-Hoc Committee

Recommendation

It is recommended that the Commission elect a member to join Commissioner Burke on the Cable Channel Ad-hoc Committee to help expand media programming on the City’s cable channel.

2. Incorporation of Public Arts in Development Project Review

Recommendation

It is recommended that the Commission review and discuss the City’s Public Art Development Fee Ordinance.

3. Artist Rights/Artist Friendly City

Recommendation

It is recommended that the Commission review and discuss the best practices for public art projects provided by the Public Art Network and Americans for the Arts.

4. Resolution of Diversity and Inclusivity

Recommendation

It is recommended that the Commission review and discuss the resolution affirming the City's commitment to diversity and inclusivity.

CONSENT

5. Minutes from Regular March 24, 2021 Meeting

Recommendation

It is recommended that the Commission review and approve the minutes.

COMMUNICATIONS

6. City Council Liaison Communications

7. Commissioner Communications

8. Staff Liaison Communications

ADJOURNMENT

9. Adjourn to the regular Public Art Commission meeting scheduled for May 26, 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.

Margaret Fin

04/22/21

Date

Name



Public Arts Commission Agenda Report

ITEM NO. ____

DATE: April 28, 2021

TO: Public Arts Commission

FROM: Joanna Hankamer, Director of Planning and Community Development
Margaret Lin, Manager of Long Range Planning and Economic Development

SUBJECT: City's Cable Channel Ad-Hoc Committee

Recommendation

Fill one vacancy

Discussion

During the March 24, 2021 meeting, the Commission continued this item so that staff could provide an update on the status of the City's cable channels prior to determining whether the Ad Hoc Committee vacancy would need to be filled.

Since the meeting staff has determined that there are ongoing connection issues with the City's cable channels. However, staff is working on remedying these issues and will notify the Commission when the channels are working again. Therefore staff recommends that the Commission appoint another member to work with Commissioner Burke on the Ad Hoc Committee.



Public Arts Commission Agenda Report

ITEM NO. ____

DATE: April 28, 2021

TO: Public Arts Commission

FROM: Joanna Hankamer, Director of Planning and Community Development
Margaret Lin, Manager of Long Range Planning and Economic Development

SUBJECT: **Incorporation of Public Arts in Development Project Review**

Recommendation

Review and discuss the City's Public Art Development Fee Ordinance to explore opportunities to encourage development of public art on-site instead of the use of the in-lieu fee.

Discussion

At the Design Review Board (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.

The approval process for the Public Art Development Fee Program (Program) is a multi-step process that involves the Public Art Commission and either the Planning Commission, Cultural Heritage Commission or Design Review Board, depending on which body has decision-making authority over the development review. Ordinance No. 2325, establishing the Program, states that public art projects developed on site must submit an application for Public Art Concept Review with the Public Art Commission prior to the associated entitlement review for the development project. The Public Art Commission's concept review shall be provided to the entitlement review bodies for consideration during the approval process. Following the entitlement approval, applicants are required to submit an application for Final Public Art Approval; and building permits shall not be issued until final approval has been granted by the Public Art Commission.

In an effort to incorporate more public art and create a more robust Program, Ordinance No.2325 may be amended. The following table provides a few options for the Commission's consideration and serves as a starting point for the Commission's discussion.

Public Art Development Fee Requirements	Options for Consideration
New development projects with a building valuation exceeding \$500,000 or remodeling projects exceeding \$250,000 are subject to the Program	<ul style="list-style-type: none">• Requiring projects based on the amount of square footage instead of building valuation• Reducing the building valuation amount for projects subject to the Program
Affordable housing projects are exempt from the Program	<ul style="list-style-type: none">• Not exempting affordable housing projects

Public Art Development Fee Requirements	Options for Consideration
	<ul style="list-style-type: none"> Only exempting the portion of the project that is affordable and requiring the non-affordable portion of the project to be subject to the Program
<ul style="list-style-type: none"> 1.5% in-lieu fee to the City's Public Art Fund 	<ul style="list-style-type: none"> Increasing the in-lieu fee to 2% to incentivize the development of public art onsite

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.

Next Steps:

Based on the Commission discussion, staff will develop a draft amendment to the ordinance and public outreach plan for the Commissions consideration.

Attachment: Public Art Development Fee Ordinance

ORDINANCE NO. 2325

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,
ADDING DIVISION 36.390 (“PUBLIC ART PROGRAM”)AND
CHAPTER 36.395 (“PUBLIC ART DEVELOPMENT”) TO
ARTICLE III OF CHAPTER 36 OF THE SOUTH PASADENA
MUNICIPAL CODE REGARDING THE ESTABLISHMENT OF A
PUBLIC ART PROGRAM AND CORRESPONDING ART
DEVELOPMENT**

WHEREAS, the South Pasadena City Council (City Council) recognizes that public art and cultural resources can enhance the quality of life for individuals that live, work, and play within the City of South Pasadena (City); and

WHEREAS, City-owned facilities provide an opportunity to engage the public with art and provide public art opportunities; and

WHEREAS, the City Council wishes to demonstrate their commitment towards creativity and innovation by providing opportunities and support for public art; and

WHEREAS, the creation of a Public Art Program will enhance the general welfare of the community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Division 36.390 (“Public Art Program”) is added to Article III (Site Planning and General Development Standards”) of Chapter 36 (“Zoning”) of the South Pasadena Municipal Code to read as follows:

Division 36.390 Public Art Program

- 36.390.010 Purpose.**
- 36.390.020 Definitions.**
- 36.390.030 Public Art Work at City-owned Facilities.**
- 36.390.040 Establishment of Public Art Program Fund.**
- 36.390.050 Use of Funds.**
- 36.390.060 Artwork Review Process.**
- 36.390.070 Ownership of Art.**

36.390.010 Purpose.

The purpose of the Public Art Program is to promote cultural experiences, increase economic development, and enhance the general welfare and quality of

life in the community. The Public Art Program will achieve this purpose through the exhibition of high quality artwork and the creation of programs that promote art to the general public.

36.390.020 Definitions.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. "Artwork" means an original creation of physical art by an artist; and includes but is not limited to a fountain, mobile, mosaic, mural, painting, sculpture, or tapestry. Artwork may be realized through mediums including but not limited to bronze, ceramic tile, concrete, stained glass, steel, or wood. An artwork shall not include objects that are mass-produced with a standard design; signage; or landscape gardening.
- B. "Building Valuation" means the value computed by the Building Official using the latest Building Valuation Data as set forth by the International Conference of Building Officials.
- C. "Development Project" means a new residential development of four or more units, a new commercial and industrial building project with a Building Valuation exceeding \$500,000 as determined by the Building Official, any remodeling project of an existing commercial or industrial building, and any residential building of four or more units or complex of four or more units when the non-exempt portion of the remodeling project has a Building Valuation exceeding \$250,000 as determined by the Building Official.
- D. "Public Art Development Fee" means a fee paid to the City's Public Art Fund by a development project applicant in an amount equal to one and a half percent of the total Building Valuation for the project excluding land acquisition off-site improvement expenses, interior improvements, parking facilities, and public facilities.
- E. "Public Art" means any artwork installed on private property in a publicly accessible location as established by the Public Art Program or artwork displayed on City-owned facilities.
- F. "Publicly Accessible" means located on an area open to the general public and clearly visible from an adjacent public property such as a sidewalk or street.

36.390.030 Public Artwork at City-owned Facilities.

City-owned facilities that are publicly accessible during regular business hours or are visible from the public right of way are eligible for the display of public artwork. Any art proposed to be donated or installed in or on City-owned facilities will be reviewed by the Public Art Commission.

36.390.040 Establishment of a Public Art Program Fund.

The City's Finance Director shall establish a depository hereunder for the Public Art Development Fee within a designated Public Art Fund specifically for said fees to account for any fees for the Public Art Program paid pursuant to this Chapter. The Public Art Fund shall be accounted for separately and shall not be used for general governmental purposes. The Public Art Fund shall be maintained by the City Finance Director, and shall be allocated as follows:

- A. Eighty percent (80%) solely for project costs including fees for design, acquisition, commissioning, placement, installation, exhibition, improvement, maintenance, and insurance of public artwork.
- B. Twenty percent (20%) for administrative costs including project administration, staff time, artist-selection, design, drawing, maquette, community education, insurance, maintenance, curatorial services, identifying plaques, documentation, and publicity.

36.390.050 Use of Funds.

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

36.390.060 Artwork Review Process.

The Public Art Commission, as appointed by the City Council, shall review procedures for the selection of locations of public art displays, art to be purchased or commissioned for display, review and approval of proposed public art work, and for the selection of public performers on behalf of the City's Public Art Program.

36.390.070 Ownership of Art.

All artwork purchased or created from the Public Art Fund shall become the property of the City upon acceptance by the City Council.

SECTION 2. A new Division 36.395 ("Public Art Development") is added to Article III (Site Planning and General Development Standards") of Chapter 36 ("Zoning") of the South Pasadena Municipal Code to read as follows:

Division 36.395	Public Art Development
------------------------	-------------------------------

- | | |
|-------------------|--|
| 36.395.010 | Percentage for Public Art for Development Projects. |
| 36.395.020 | Exempt Projects. |
| 36.395.030 | Allocation. |
| 36.395.040 | Satisfaction of Requirement. |

- 36.395.050 Public Art Consultant**
- 36.395.060 Public Art Concept Approval Process.**
- 36.395.070 Public Art Final Approval Process.**
- 36.395.080 Ownership and Maintenance Plan of On-Site Public Art.**
- 36.395.090 Removal or Alteration of Public Artwork on Private Property.**

36.395.010 Percentage for Public Art for Development Projects.

Every new residential development of four or more units and every new commercial and industrial building project with a Building Valuation exceeding \$500,000 will be required to provide public artwork or dedicate funds to support public art. The Public Art Program shall also apply to any remodeling project of existing commercial or industrial buildings and any residential building of four or more units or complex of four or more units, when the remodeling has a Building Valuation exceeding \$250,000.

36.395.020 Exempt Developments.

The following developments or modifications, alterations, and additions to the developments are exempt from this chapter: affordable housing, performing arts facilities, museums, private non-profit and institutional uses, interior remodel or tenant improvements, seismic reinforcement, and rebuilding necessitated by a natural disaster.

36.395.030 Allocation.

The valuation of the percentage for Public Art development, as provided for in Section 36.395.010 above, shall be based on a percentage of the building cost in an amount equal to one percent (1%) or more of the total Building Valuation for the project if the project is being built on-site and one and a half (1.5%) if the developer will be paying the public art development fee in lieu of providing public art on-site, excluding land acquisition off-site improvement expenses, interior improvements, parking facilities, and public facilities.

36.395.040 Satisfaction of Requirement.

Development projects subject to the Public Art Program may satisfy the requirement through:

- a) Installation of approved site-specific public artwork, cultural, or artistic facilities equal to or exceeding the value of the contribution amount; or
- b) Payment in lieu of the one and a half percent development fee to a new Public Art Fund
 - i. Payment of the public art development fee will be collected in two installments; 1) fifty-percent (50%) of the total public art development fee shall be collected prior to issuing the building

permits and 2) fifty-percent (50%) of the total public art development fee shall be collected prior to final inspection or issuing the certificate of occupancy.

- c) No final approval, such as final inspection or a certificate of occupancy, for any development project subject to this chapter shall be granted or issued unless and until full compliance with the Public Art Program is achieved.
- d) The applicant must certify that any artwork donated or purchased is free and clear of all liens, claims, encumbrances, and restrictions. The applicant must also certify that no portion of the artwork has been exported from its country of origin in violation of laws of that country in effect at the time of export, nor imported into the United States in violation of United States laws and treaties at the time of import. The applicant must represent and warrant that no tax laws, laws of inheritance, or other laws or regulations applicable to the artwork have been broken. The applicant agrees to indemnify, defend, and hold harmless the City from and against any and all claims, damages, loss, and expenses relating to the break or alleged break of any of the applicant's obligations, representations, or warranties herein, and relating to the claims of third parties or challenging the title to the artwork or any intellectual rights or copyright for the artwork transferred and conveyed to the City.

36.395.050 Public Art Consultant.

For public art projects developed on site, the developer must contract the services of a professional art consultant experienced in working with municipal art programs for any public art project valued at more than \$25,000 (if not paid in lieu).

36.395.060 Public Art Concept Approval Process.

For public art projects developed on site, prior to the associated entitlement review for a development project an application for public art concept review shall be submitted to the Public Art Commission and shall include:

- a) Completed Public Art Application; and
- b) Preliminary sketches, photographs, or other documentation to provide sufficient clarity of the nature of the proposed artwork; and
- c) Preliminary plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development, including compatibility with the character of the adjacent conforming developed parcels and existing neighborhood if necessary to evaluate the proposal; and

- d) A narrative statement to be submitted to demonstrate that the artwork will be displayed in an area open and freely available to the general public; and
- e) A maintenance plan describing the required maintenance and costs to preserve the artwork in good condition.

The Public Art Commission's concept review shall be provided to the entitlement review body(ies) for consideration during the approval process.

36.395.070 Public Art Final Approval Process.

For public art projects developed on site, following the entitlement approval process for a development project, an application for final public art approval shall be submitted to the Public Art Commission and shall include:

- a) Completed Public Art Application; and
- b) Finalized sketches, photographs, or other documentation to provide sufficient clarity of the nature of the proposed artwork; and
- c) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs; and
- d) Written agreement executed by or on behalf of the artist who created or is creating the artwork which expressly waives their rights under the California Art Preservation Act or other applicable laws; and
- e) Finalized plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development, including compatibility with the character of the adjacent conforming developed parcels and existing neighborhood if necessary to evaluate the proposal; and
- f) A narrative statement to be submitted to demonstrate that the artwork will be displayed in an area open and freely available to the general public at least ten hours each day, or otherwise are publicly accessible in an equivalent manner based on the characteristics of the artwork or its placement on the site; and
- g) A maintenance plan describing the required maintenance and costs to preserve the artwork in good condition.

Completed applications shall be submitted to staff for the Public Art Commission's review and approval. Building permits shall not be issued until final approval has been granted by the Public Art Commission.

36.395.080 Ownership and Maintenance Cost of On-Site Public Art.

Any artwork associated with the Public Art Program that is included on site for an applicant's project shall remain on the property of the applicant; the obligation to provide all maintenance to preserve the artwork in good condition will remain with the owner of the site. Maintenance of artwork shall include without

limitation, preservation of the artwork in good condition, protection of the artwork against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by the City Attorney. Prior to placement of an approved artwork, the applicant and owner of the site shall execute and record a covenant in a form approved by the City for maintenance of the artwork. Failure to properly maintain the artwork is hereby declared a public nuisance. In addition to all remedies provided by law, in the event the real property owner fails to maintain the artwork, upon reasonable notice, the City may perform necessary repairs, maintenance or secure insurance, and the costs therefore shall become a lien against the real property.


36.395.090 Removal or Alteration of Public Artwork on Private Property Public artwork installed on private property to satisfy the Public Art Development requirement shall not be removed or altered without the prior approval of the City Council. In addition to any other applicable penalty, violation of this section may render the property owner liable for payment of the one and a half percent development fee to the Public Art Fund and may result in revocation of the occupancy permit issued for the subject development project. Prior to any imposition of the one percent development fee to the Public Art Fund or occupancy permit revocation pursuant to this section, the City shall afford the property owner notice and an opportunity for a hearing.

SECTION 3. SEVERABILITY. If any provision, section, paragraph, sentence or word of this ordinance, or the application thereof to any person or circumstance, is rendered or declared invalid by any court of competent jurisdiction, the remaining provisions, sections, paragraphs, sentences or words of this ordinance, and their application to other persons or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

SECTION 4. CEQA. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. Section 15378(b)(5) as an agency organizational or administrative activity that produces no physical changes to the environment.

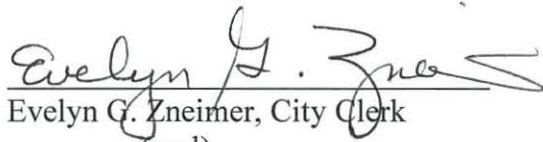
SECTION 5. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its final passage, and within fifteen (15) days after its passage, the City Clerk of the City of South Pasadena shall certify to the passage and adoption of this ordinance and to its approval by the Mayor and City Council and shall cause the same to be published in a newspaper in the manner required by law.

PASSED, APPROVED, AND ADOPTED ON this 17th day of October, 2018.


Richard D. Schneider, M.D., Mayor

ATTEST:

APPROVED AS TO FORM:


Evelyn G. Zneimer, City Clerk
(seal)


Teresa L. Highsmith, City Attorney

Date: 10/17/2018

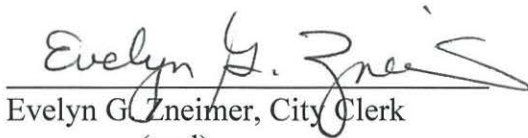
I HEREBY CERTIFY the foregoing ordinance was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 17th day of October, 2018, by the following vote:

AYES: Cacciotti, Joe, Khubesrian, Mahmud, and Mayor Schneider

NOES: None

ABSENT: None

ABSTAINED: None


Evelyn G. Zneimer, City Clerk
(seal)



Public Arts Commission Agenda Report

ITEM NO. ____

DATE: April 28, 2021

TO: Public Arts Commission

FROM: Joanna Hankamer, Director of Planning and Community Development
Margaret Lin, Manager of Long Range Planning and Economic Development
Andrew L. Jared, Assistant City Attorney

SUBJECT: Artist Rights/Artist Friendly City – California Art Preservation Act

Recommendation

It is recommended that the Commission:

1. Review and discuss artist rights and the California Art Preservation Act; and
2. Provide direction to staff regarding other cities that have integrated similar best practices.

Executive Summary

In response to the Commission's request to consider best practices to establish an Artist Friendly City, the City Attorney's Office has reviewed the white paper titled "Copyright Ownership for Public Art" and the "Proposed Best Practices for Public Art Projects" from the Public Art Network Council and Americans for the Arts. Assistant City Attorney Andrew Jared has determined that the list of best practices are generally lawful. Prior to presenting the list of best practices for City Council's consideration, staff will review and evaluate public art programs from other cities to provide additional context how other cities have implemented similar best practices.

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 art 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 requested that the City Attorney attend the next meeting to discuss the item further.

During the March 24, 2021 meeting, Assistant City Attorney Andrew Jared attended the Commission meeting and provided a general overview of the "Proposed Best Practices for Public Art Projects" (from Public Art Network Council and Americans for the Arts), and "Copyright Ownership for Public Art" (Sarah Conley Odenkirk, ArtConverge, Law Corporation) and heard commission discussion of such.

Following the Commission discussion, a motion was made to continue the item to the next meeting to provide the City Attorney's Office with time to identify any issues with the best practices for public art projects provided by the Public Art Network and Americans for the Arts.

City Attorney Review

The Office of the City Attorney has reviewed the documents provided and has the following comments.

The "Best Practices" document provides a series of non-binding statements to promote cooperation and collaboration between artists and cities. The document is not in a form to be binding on either party in its current form. The best practice issues identified in items 1 through 29 of the document provide good topics for discussion of how to frame a local policy or ordinance regarding the rights and responsibilities for public arts projects. A summary of the issues presented in the Best Practices document is presented in Table 1 below. Comments have been provided as to some items. No issue stood out as unlawful under California law. The items are all essentially policy decisions the City Council could address.

The document titled "ArtConverge White Paper: Copyright Ownership for Commissioned Art", by Sarah Conley Odenkirk, provides a summary and position on the issues of copyright law and public art projects. ArtConverge was a private law firm that provided legal representation related to art law. Since January 1, 2021, the firm appears to have ceased operation with Ms. Conley joining a different entertainment and intellectual property firm.

Though the document is titled as a "white paper" it should be noted that this was not prepared by or for the City of South Pasadena, nor has it been identified as having been prepared by or for any other governmental entity. The Office of the City Attorney has not verified – nor does it dispute— the statements made in the document, and has not conducted independent legal analysis of all issues presented or researched the current state of the law of each statement presented.

The white paper discusses the traditional requirements cities often demand of artists to waive their rights under the Visual Artists Rights Act (VARA) and California Arts Preservation Act (CAPA). It suggests that this practice may not be best practice for cities. The white paper claims that the current system's shortcomings are twofold. First, that it places the burden of owning and protecting the copyright on the city, in that the burden of registering the copyright with the Library of Congress is placed on the city. If this is not done, then the city cannot access potential copyright remedies. While true, this appears to be a limited burden on the city. Moreover, such minor obligation could be placed as an administrative task of the artist as part of the commission for part of the fee. The second purported shortcoming noted is that the waiver of moral rights makes it unclear how artists and their art will be treated in the future. From a legal perspective this is not developed as a legal argument and we provide no analysis of such as it is a policy issue.

The white paper proposes that instead of a traditional waiver of the artists copyright/moral rights, a limited perpetual license that would allow the City to make 2-D reproductions (i.e., photos, etc., for promotion), but not 3-D reproductions (i.e., scale models) of an artwork. Under such license, maintenance would be done "in accordance with professionally recognized principles of conservation". It proposes that the city would have to notify the artist of alterations, make reasonable efforts to maintain integrity of work, remove/relocate with 90 day notice, but can do so immediately if the art is in imminent harm, or there are changes in the building code or if zoning laws/regulations cause the artwork to be conflict with such laws. In large, these are policy decisions which could be agreed to by a public agency. However, we would urge caution in removing waiver of any/all claims arising from the alteration of the artwork and

VARA/CAPA. We recommend that a city balance artists rights with liability concerns, whereas the position of the white paper appears to value artists rights ahead of such public liability.

The concern over cities being impacted by VARA and CAPA, and therefore requesting a waiver, is not without merit. A recent case held that both the Visual Artists Rights Act of 1991 and the California Arts Preservation Act prevented the modification or destruction of certain works of art without the consent of the artist. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470). While the facts of that case are unique, it underscores that the issues presented – on both sides of the city/artist contractual relationship —are not theoretical or esoteric but indeed very much a live issue for cities.

Table 1-- Summary of best practices proposed by Public Art Network and Americans for the Arts

Public Art Network and Americans for the Arts	Notes
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.	

Public Art Network and Americans for the Arts	Notes
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.	Contractual/policy decision issue.
16. Realistic life span of an Artwork should be mutually agreed by all parties and written into the Agreement.	Silent as to obligations of parties during such life span of artwork.
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.	Depending on type of work and contractual relationship, may reduce ability of city to enforce contract.
19. With regard to manufacturer warranties for integrated components, Artists should be required to only pass along those warranties provided by the manufacturer.	Same as 18.
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.	Professional liability insurance has limited application. Commercial General Liability insurance is typically required of all contractors.
21. Administrators should not ask Artists to take on unreasonable or inappropriate liability.	Cities are prohibited from imposing their own liability onto contractors.
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.	In general, good point. May be issues under California Public Contracting requirements.

Public Art Network and Americans for the Arts	Notes
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.	Policy decision for City Council.
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.	Including life span of art and annual costs to maintain, conserve, repair, and authority for the City to remove.
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.	Appears to allow city to make best efforts to repair. Effect on city depends on “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.	

Policy Development and Next Steps

Staff is requesting that the commission provide feedback about other jurisdictions’ public art programs. Staff will be evaluating other jurisdictions’ public art programs to understand how other cities may have incorporated many of these best practices. Staff will bring their findings back to the Commission for review and discussion at a future meeting.

Attachments:

1. “Statement of Purpose: Proposed Best Practices for Public Art Projects”, from Public Art Network and Americans for the Arts, 2016.
2. “ArtConverge White Paper: Copyright Ownership for Public Art”, by Sarah Conley Odenkirk, ArtConverge, Law Corporation

ATTACHMENT 1

Statement of Purpose: Proposed Best Practices for Public Art Projects, from Public Art Network and Americans for the Arts, 2016 (https://www.americansforthearts.org/sites/default/files/pdf/2016/by_program/networks_and_councils/pan/tools/Best%20PracticesFINAL6.2016.pdf)

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

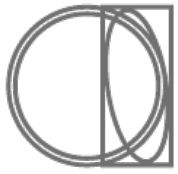
upon and Artists should prepare a detailed and feasible maintenance and conservation plan.

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.

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. ____

DATE: April 28, 2021

TO: Public Arts Commission

FROM: Joanna Hankamer, Director of Planning and Community Development
Margaret Lin, Manager of Long Range Planning and Economic Development

SUBJECT: **Resolution of Diversity and Inclusivity**

Recommendation

Review and discuss the resolution affirming the City's commitment to diversity and inclusivity.

Discussion

During the March 24, 2021 meeting, the Commission requested a discussion regarding diversity and inclusivity be brought to a future agenda for discussion.

Background

On December 21, 2016, the City Council adopted a resolution affirming the City's commitment to diversity and inclusivity. On August 5, 2020, the City Council approved Resolution 7673 reaffirming the City's commitment to diversity and to safeguarding the civil rights, safety and dignity of all residents. The resolution reaffirms that public policy of the City to be inclusive and to respect the inherent worth of every person, without regard to a person's race, color, religion, national origin, sex, gender identity, immigration status, disability, housing status, economic status, political affiliation, or cultural practices. Acts of discrimination and crimes motivated by hatred toward a person's affiliation with any protected classification, their viewpoint or its expression have no place in our community and will not be tolerated by the City.

Attachment: Resolution of Diversity and Inclusivity

RESOLUTION NO. 7673

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,
AFFIRMING THE CITY OF SOUTH PASADENA'S
COMMITMENT TO DIVERSITY AND TO SAFEGUARDING
THE CIVIL RIGHTS, SAFETY AND DIGNITY OF
ALL OF OUR RESIDENTS**

WHEREAS, on December 21, 2016, the City adopted Resolution 7491, asserting the City of South Pasadena belief that diversity of backgrounds, perspectives, and experiences of the American people – native and immigrant – makes our nation, communities, bonds between neighbors, and economies richer and stronger; and

WHEREAS, the City of South Pasadena supports citizens' rights under the First Amendment to peacefully protest and to express their viewpoint, without fear of reprisal; and

WHEREAS, the City of South Pasadena will not tolerate hate crimes of any kind, including, but not limited to, actions taken to repress or intimidate the expression of the viewpoints of others; and

WHEREAS, the City of South Pasadena does not tolerate hate crimes, harassment, or assault, and believes each person is naturally and legally entitled to live a life without harassment, discrimination, persecution, or assault, whether perpetrated by individuals, groups, businesses, or governments; and

WHEREAS, the City of South Pasadena will oppose any attempts to undermine the safety, security, and rights of members of our community and will work proactively to ensure the rights and privileges of everyone in the City, regardless of race, ethnicity, religion, country of birth, immigration status, disability, gender, sexual orientation, or gender identity; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City of South Pasadena reaffirms the public policy of the City to be inclusive and to respect the inherent worth of every person, without regard to a person's race, color, religion, national origin, sex, gender identity, immigration status, disability, housing status, economic status, political affiliation, or cultural practices. Acts of discrimination and crimes motivated by hatred toward a person's affiliation with any protected classification, their viewpoint or its expression have no place in our community and will not be tolerated by the City.

SECTION 2. The City Clerk of the City of South Pasadena shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

PASSED, APPROVED AND ADOPTED ON this 5th day of August, 2020.

DocuSigned by:
Robert S. Joe
975EDBC2431E4C9

Robert Joe, Mayor

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:
Evelyn G. Zneimer, Esq.
340B68F46F964F8...

Evelyn G. Zneimer, City Clerk
(seal)

DocuSigned by:
Teresa L. Highsmith
3657EFA936854DF...

Teresa L. Highsmith, City Attorney

I HEREBY CERTIFY the foregoing resolution was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 5th day of August, 2020, by the following vote:

AYES: Cacciotti, Khubesrian, Schneider, Mahmud, and Mayor Joe

NOES: None

ABSENT: None

ABSTAINED: None

DocuSigned by:
Evelyn G. Zneimer, Esq.
340B68F46F964F8...

Evelyn G. Zneimer, City Clerk
(seal)

**MINUTES OF THE SPECIAL MEETING OF THE
PUBLIC ART COMMISSION
OF THE CITY OF SOUTH PASADENA
CONVENED THIS 24th DAY OF MARCH 2021 6:30 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 6:32 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, Malinda Lim, Associate Planner, Andrew Jared, Deputy City Attorney</p>
APPROVAL OF AGENDA	<p>The Commission requested that the Anti-Bias Club Presentation be moved before public comments. Unanimously approved (5 ayes, 0 noes)</p>
PRESENTATION	
<p>1. ANTI-BIAS CLUB PRESENTATION</p>	<p>The South Pasadena High School Anti-Bias Club provided a presentation regarding the selected artist (Zach Brown) and design for the Black Lives Mural project. Mr. Brown provided an example of what the mural would like painted and a visual simulation of the mural on the wall. The Commission praised the Club’s efforts and the mural design. Commissioner Burke requested to see the webpage that would be created for the mural prior to making recommendation to the City Council. Commissioner Wong expressed seeing acknowledgements on the mural as well as the webpage. Commissioner Andres inquired about alternative locations that were considered. Vice-Chair Kuramitsu commented that it would be good to have additional community engagement during the process to make the mural for more community buy in. Commissioner Wong stated that he would like to see a South Pasadena Police Department painting day for the mural and suggested that a graffiti protective coating be added and included in the maintenance plan. Commissioner Burke commented that Mr. Brown should retain the copyright of the mural and requested that any agreement between the artist and the City be passed through the Commission first. Planning Manager Kith clarified that the item was not an action item and would need to be brought back to the Commission for approval at the next meeting.</p> <p>Commissioner Burke commented that a future mural could depict diversity, inclusion and anti-hate in light of the recent violence in Florida. Chair Huynh requested that a diversity equity inclusion framework be brought back to the Commission for discussion.</p>

COMMUNICATIONS	
PUBLIC COMMENTS AND SUGGESTIONS (ITEMS NOT ON THE AGENDA)	Andrew Bernstein provided a prerecorded presentation regarding the Kobe Bryant mural by Jonas Never that he commissioned for 1020 Mission Street. Commissioner Burke clarified that he had suggested that Mr. Bernstein provide a presentation of the mural as it is outside of the purview of the Commission. Commissioner Wong questioned whether art on private property that is visible from the public should be added to the purview of the Commission in the future.
2. CITY COUNCIL LIAISON COMMENTS	Council Liaison Cacciotti shared that there is a new grant opportunity through the Santa Monica Mountains Conservancy for Monarch butterfly conservation projects; the NREC voted not to remove trees from the parkway, discussed upcoming earth day events, and considered a ban on gas powered leaf blowers; extended an invitation to the Commissioners to attend a tour of the Gold Line extension to view the artwork at each station; meeting with residents regarding possible projects in the Edison right-of-way; and email from a resident regarding parklets on Mission Street.
3. COMMISSIONER COMMENTS	None.
4. STAFF LIAISON COMMENTS	Planning Manager Kith shared that there is a survey on the Planning webpage regarding Accessory Dwelling Units.
ACTION/DISCUSSION ITEMS	
5. ARTIST RIGHTS - CALIFORNIA ART PRESERVATION ACT	Commissioner Burke provided some background regarding the Artist Friendly City, best practices, and the issues with copyrights from the California Art Preservation Act. Deputy City Attorney Jared provided a general overview of his review of the documents that were provided. Commissioner Burke asked if the City Attorney's office could provide guidance on the best practices document as a framework for adoption by the City Council as an Artist Friendly City. Deputy City Attorney Jared stated that the language is too ambiguous and would not be implementable. Chair Huynh stated her support for the best practices and suggested that it could serve as a framework for future projects and contracts. Deputy City Attorney Jared clarified that Commissions would not review the contracts. Commissioner Burke stated that the best practices could be used by the City as guiding principles for agreements. Chair Huynh made a motion, seconded by Commissioner Wong, to continue the item to the next meeting to provide the City Attorney with time to identify any issues with the proposed best practices (5 ayes, 0 noes).
6. CITY'S CABLE CHANNEL AD HOC COMMITTEE	Chair Huynh asked if there were any commissioners interested in joining Commissioner Burke on the Ad Hoc Committee. Planning

	<p>Manager Kith clarified that the City currently utilizes YouTube to stream recorded public meetings and are not broadcasted on the cable channel at the moment. Commissioner Burke suggested to have the item continued to the next meeting for staff to provide an update on the status of the cable channels.</p>
<p>7. INCORPORATION OF PUBLIC ARTS IN DEVELOPMENT PROJECT REVIEW</p>	<p>Planning Manager Kith stated that the Public Art Program does not require applicants to present to the Commission until after they received approval from the Design Review Board and asked if the Commission would like to consider more collaboration with the Design Review Board. The Commission agreed that greater collaboration is preferable. Planning Manager Kith stated that she would share this with the Design Review Board and the item would be brought back to the Commission for further discussion.</p>
<p>CONSENT ITEMS</p>	
<p>8. MARCH 8, 2021 MEETING MINUTES</p>	<p>Commissioner Burke moved to approve the minutes and Chair Huynh seconded the motion. Unanimously approved (5 ayes, 0 noes)</p>
<p>ADJOURNMENT</p>	<p>By consensus, the Commission adjourned the meeting at 6:26 P.M.</p>

Approved By:

Phung Huynh
Chair