



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep

SUBJECT: ENVIRONMENTAL & WATER
UTILITY CAPITAL PROJECTS
AND PUBLIC ART

DATE: 3/26/2018

Approved

Date

3/26/18

RECOMMENDATION

1. Accept the City Auditor's report on the Status of Open Audit Recommendations as of December 31, 2017;
2. Direct the staff to return to Council with:
 - a. An explanation of how public art is funded currently;
 - b. An explanation of nexus requirements between source of funds and resulting art;
 - c. An update on implementation of the *Public Art NEXT!* Master Plan to date;
 - d. Recommendations on how the *Public Art NEXT!* Master Plan might be funded in addition to or instead of a percent-for-art on capital improvement projects;
3. Delay consideration on the City Auditor's recommendation to eliminate the public art requirement for underground ratepayer-funded capital projects until after the Council has been presented with and had time to consider the information requested in Recommendation #2; and
4. Consider restoring/increasing funding General Fund support for the Office of Cultural Affairs and public art concurrently with Recommendation #3, above.

BACKGROUND

In 2012 the City Auditor conducted an audit of Environmental Services and recommended that, "The Administration should consider recommending that the City Council amend the public art ordinance to eliminate the public art requirement for certain ratepayer-funded capital projects, including those related to underground utilities and the wastewater treatment plant." The Council at that time accepted the report. It seems however, in the intervening 5-6 years, the recommendation has never been brought back before Council for deliberation.

In June of 2017, for reasons unrelated to the City Auditor's recommendation, the Council amended the public art ordinance to exempt Regional Wastewater Facility capital improvement projects from the percent-for-art requirement. Coincidentally, this action implemented half of the

City Auditor's recommendation but left the part about "underground utilities" unfulfilled. The City Auditor brings her status-update on open-audit-recommendations before Council now with a special emphasis on eliminating the percent-for-art requirement on underground utilities, specifically on sanitary sewer, storm sewer, and water utility capital funds.

In the City Auditor's recommendation to exempt underground utilities from the percent-for-art requirement, she argues that the City can better apply those revenues to the more-than-\$200-million storm and sewer infrastructure backlog the City currently faces. According to the City Auditor, our adopted 2018-2022 Capital Improvement Program allocates \$2.2 million to public art from the sanitary sewer, storm sewer, and water utility capital funds.

The Administration disagrees with the City Auditor's recommendation and considers this recommendation closed, as the Council exempted the Regional Wastewater Facility from the percent-for-art requirement and did not act on underground utilities. Additionally, the Administration cites a history of reduction in funding for public art: a reduction from a 2% for art requirement to a 1% requirement on capital improvement projects, and the exemption of the RWF, which eliminated \$2.8 million of public art funding or 40% of the forecasted budget over the next five years. The Administration warns that adopting the City Auditor's recommendation would cut an additional \$443,000 from public art over the next five years and beyond.

Review of the 2018-2022 Adopted Capital Improvement Program indicates that the five-year total of citywide construction projects that presumably provides the one-percent funding to public art per amounts to \$1,860,333,223. One percent of this is \$18,603,332.

In their memos arguing their points, both the City Auditor and the Administration refer to the cities of San Francisco and San Diego, among others, for seemingly opposing propositions. The Administration reminds this Council that, "Cities like San Francisco, Seattle, and San Diego not only use percent funding from Environmental Services, but are leaders in the nation in recycling, proper water use and re-use, and educating their residents in a creative and artistic way about these processes."

The City Auditor points out that, "Other jurisdictions, including San Francisco and San Diego, limit the impacts on ratepayers of their percent for public art policies by specifically exempting underground utilities, as well as aboveground pipes and similar projects."

ARGUMENT

It is a good time to be an advocate of public art in San José. Whereas funding for the arts are unfortunately the among first things to be cut during times of economic hardship, recent efforts by the Office of Cultural Affairs in enlivening our public spaces with artworks such as Daily tous les jours' Musical Swings and the Burning Man Project's Sonic Runway, Ursa Mater, and Tara Mechani, have demonstrated the value of public art in enhancing public life, attracting tourism, and creating a sense of place. If we wish to continue on the path to becoming a world-class city worthy of a future "Grand Central Station of the West", major corporate investment, and host-city status of major sporting events like the College Football Playoff or the FIFA World Cup, then the City must continue to invest in the Office of Cultural Affairs. World-class cities are cities with soul, and excellent public art goes a long way in making a place soulful.

However, this Council cannot effectively fund the Office of Cultural Affairs, and by extension public art, when it is not clear and transparent how the present funding mechanism impacts public art. The City's Public Art Ordinance requires that "The city's adopted annual capital improvement budget shall include funds for the acquisition of public artwork, in amounts not less than one (1) percent of the total amount budgeted for the city's capital improvement projects in that fiscal year, subject to the exclusions set forth in Section 22.08.030."

While this is fairly straightforward, in practice it is difficult for the untrained eye to get a sense of how much money is going towards public art because one must account for exclusions. Indeed, it is not clear to the Council how much money is at stake if the City Auditor's recommendation were to be enacted, as the City Auditor argues that her recommendation would save the City \$2.2 million over the next five years and the Administration disagrees because it wants to prevent a loss of \$443,000 for public art over the next five years. Although these numbers can be reconciled if the \$443,000 amount is understood as an annual loss (instead of a five-year loss), the Council should not assume that. The point is, it's not immediately clear.

Additionally, private discussions with both the City Auditor and the Administration alluded to a nexus requirement between the source-of-funds and the resulting art. Put differently, it is generally accepted that exempting underground utilities from the percent-for-art requirement would not hinder the Office of Cultural Affairs' ability to bring public artwork like the Sonic Runway to San José, as funds generated by underground utilities must be used to fund public art related to the environment or sewers. Yet a cursory review of the Public Art Ordinance does not yield any mention of the concept of a nexus requirement, although this concept is briefly referenced on page 30 of the *Public Art NEXT!* Master Plan. This Council cannot appreciate the implications of the City Auditor's recommendation until we understand the restrictions on the funds generated for public art by underground utilities.

Finally, the Council should not equate implementing the City Auditor's recommendation with withdrawing support for public art. One of the key findings of the *Public Art NEXT!* Master Plan issued in 2007 is that:

"Percent for Art" Leads to Reactive, Site-Specific Approach. The traditional Percent for Art financing strategy links public art expenditures to specific capital projects as they come along. This limits the program from proactively planning to locate artworks in areas that have the most visible impact.

To the extent that San José's potential as a city depends on public art, that potential should be unleashed to its fullest, creating the most visible impact in the most public of places. Perhaps the time has come to fund public art in a way that does not lead to a reactive, site-specific approach.

CONCLUSION

The Council should be fully appraised of how public art is funded and what types of public art can be funded with monies generated by underground utilities before rendering a decision on the City Auditor's recommendation to weigh our infrastructure backlog needs against public art.