



COUNCIL AGENDA: 3/27/18

FILE: 18-389

ITEM: 3.3(b)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: March 15, 2018

Approved

Date

3-16-18

**SUBJECT: ADMINISTRATION'S RESPONSE TO THE CITY AUDITOR'S
RECOMMENDATION TO CONSIDER ELIMINATING THE PUBLIC
ART REQUIREMENT FOR ENVIRONMENTAL AND WATER UTILITY
CAPITAL PROJECTS**

RECOMMENDATION

Close out the City Auditor's recommendation that the City Council amend the public art ordinance to eliminate the public art requirement for "The Administration should consider recommending that certain ratepayer-funded capital projects, including those related to underground utilities or the wastewater treatment process."

OUTCOME

Approval of the Administration's recommendation would uphold the current public art ordinance and close out the City Auditor's outstanding audit recommendation.

BACKGROUND

City of San José Public Art Masterplan - *Public Art Next!*

In 2008, after significant community and stakeholder outreach involving roughly 1,000 people, the San José City Council approved amendments to the City's Public Art Ordinance under Title 22 of the San José Municipal Code, to reduce the art allocation from two percent (2%) to one percent (1%), and to broaden the eligibility of capital improvement infrastructure projects. This type of public art funding is found in other cities in California such as Santa Cruz, Santa Monica, Ventura; and the United States such as Seattle, WA, Phoenix, AZ and others.

The City Council approved the [*Public Art Next!*](#)¹ recommendation to "establish ongoing collaborative relationships with other City Departments to ensure that the Public Art Program aligns with their plans." A key component of *Public Art Next!* is environmental services, and public art that helps beautify, educate, and preserve our environment. The primary objectives of public art related to capital projects funded by the Sanitary Sewer, Storm Sewer, and Water Utility Systems Capital Programs within the Environmental and Utility Services City Service Area² (EUS infrastructure) and activities are to commission artwork that:

- Highlights the City's natural assets and richness;
- Stimulates education around environmental challenges;
- Demonstrates innovations in environmental management;
- Creates an appreciation of aspects of the environmental services infrastructure;
- Enhances customer-services areas (recycling centers, household hazardous waste drop-offs);
- Promotes San José as an environmental leader; and
- Mitigates the impact of EUS infrastructure in public places.

Public Art Next! Also recommends that the Public Art Program and staff from the Environmental Services Departments (ESD) take several steps to facilitate an effective partnership:

- Review the funding sources for EUS projects and study the feasibility of pooling funds to commission artwork in places of high public usage and/or environmental significance;
- Develop strategies, potentially through a Public Art Focus Plan process, for the use of pooled funds. The Public Art Focus Plan can guide the budget, scope and scale of public art on-site, and, if possible, off-site;
- Identify grants and other funding opportunities, such as education and outreach programs that could be fulfilled by commissioning of a work of art; and
- Seek opportunities to partner with other City departments and environmental stakeholders to commission environmentally-related public art at places of high public usage or environmental significance.

City Auditor's Report: *Environmental Services: A Department at a Critical Juncture*

On August 8, 2012, the City Auditor released a report called *Environmental Services: A Department at a Critical Juncture*. Of the report's 22 recommendations, recommendation 21 stated "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 or the wastewater treatment process." The Administration responds to the Auditor's recommendations twice a year, which is presented

¹ <http://www.sanjoseca.gov/DocumentCenter/View/25897>

² The EUS CSA also contains projects related to the Water Pollution Control Capital Program; however, for the purposes of this memorandum, EUS infrastructure references only those projects within the Sanitary Sewer, Storm Sewer, and Water Utility Systems Capital Programs.

to the Council as part of an update. The Administration views this recommendation as implemented.

Upon its release, the City Manager along with key staff from the City Manager's Budget Office, Environmental Services Department, and Office of Economic Development/Office of Cultural Affairs considered this recommendation. Based on the legality of the public art ordinance, extensive community involvement in the public art planning process, and public value of public art associated with rate-payer funded capital projects, the Administration did not pursue recommending to Council to eliminate the public art requirement associated with these funds.

At the Rules Committee meeting on December 2, 2015, the Mayor asked the Auditor to present 10 audit recommendations for potential council prioritization on December 15, 2015. Of the 10, the Auditor's recommendation that the City Council consider exempting rate-payer infrastructure (ESD) projects from the public art ordinance was placed on the list for consideration. The item did not receive Council support to be added to the list of Council priorities.

Due to concerns raised by tributary agencies, on June 6, 2017, the Council amended Chapter 22.08 (Public Art Program) of Title 22 of the San José municipal code to exempt the San José-Santa Clara Regional Wastewater Facility (RWF) from the one percent public art assessment on Capital Improvement Projects (CIP). This action eliminated \$2.8 million of public art funding, or 40% of the forecasted budget for public art over the next five years plus an ongoing reduction in future years.

CIP projects associated with Sanitary Sewer, Storm Sewer and Water Utility funds remain eligible for public art per the current (amended) public art ordinance. In 2018, the City Attorney's Office affirmed once again that the public art ordinance's application to capital projects funded by ratepayer funds is legal so long as staff will ensure that the funds are spent and projects are implemented in a manner to meet any legal requirements.

It is the opinion of the Administration that this outstanding audit recommendation has been considered by not only the Administration, but by Council. Of note, the June 2017 Council action to exempt the public art requirement from RWF capital projects addressed the Auditor's recommendation. It is recommended that this item be closed and no longer considered outstanding.

ANALYSIS

The City Manager does not support the City Auditor's recommendation to eliminate the remaining "certain ratepayer-funded capital projects" from the public art ordinance for following reasons:

1. There is a high public value of environmental art associated with these rate-payer funded capital projects.

2. The public art masterplan *Public Art Next!*, was created with the involvement and support of over a thousand residents and stakeholders
3. The 2008 ordinance reduced the applicable percentage of the public art ordinance from 2% to 1%, and expanded the number and types of eligible CIP projects to include ratepayer projects. Reducing the number of eligible projects but not increasing the public art percent will significantly undermine the integrity of the public art masterplan and program.
4. The public art ordinance's application to capital projects funded by ratepayer funds is legal when implemented in a manner to meet any legal requirements.

Completed and Active Environmental Art Projects

Offering an important community benefit, public art projects funded by ratepayer-funded capital projects for the storm and sewer process create highly visible public art projects that facilitate education and behavior changes in ways that are beneficial to the utility system and ultimately to the ratepayers in the service area. The Public Art Program has worked collaboratively with ESD to develop a multi-year, multi-pronged EUS Public Art Strategy to use public art to realize the Green Vision and build a connection between the work of ESD, its ratepayers and the populations it serves. Public Art projects employ art as a vehicle to raise awareness of environmental stewardship, to communicate and provide public education relative to infrastructure systems. The projects are intended to be created in visible locations in San José. Since the inception of the plan, a number of projects have been completed and a number of projects are underway in partnership with ESD.

For example, *Watershed* by Peter Richards, for the San José Environmental Innovation Center (EIC) won a national award from the Americans for the Arts in 2015. The artwork is composed of integrated elements that relate to a fundamental of human existence: gathering and storing energy. The adjacent "watershed" is constructed of materials salvaged from the demolition of a former onsite building and materials no longer used in the main building. The 6,600-gallon water storage tank collects and stores rainwater captured from the EIC roof. This water is used to irrigate a grove of reclaimed olive trees and to irrigate a demonstration garden operated by Habitat for Humanity's ReStore as part of their education services program. The beautiful garden system includes a back drop window installed on the side of the Household Hazardous Waste Building, revealing the workings of a plant receiving, processing, packaging and shipping household hazardous waste material.

FOGwaste, another project, saw extensive community outreach over a three-year period to address sanitary system overflows associated with the improper disposal of fats, oils and grease (FOG). The art project raises awareness of the City's vital wastewater infrastructure to community members. Through multiple community workshops at community centers, libraries, and schools and interviews with first responders and ESD workers, artists Claire Napawan and Brett Snyder developed a plan and implemented it to educate and encourage greater urban environmental stewardship, and pictographically inform the public of the safe way to dispose of FOG rather than disposing it down drains and negatively impacting the collection system. The

launch of this project started in Districts 3 and 7, where more than 27 languages are spoken. The artists quickly realized that to communicate effectively, it was necessary to use the only language understood across multi-lingual, multi-cultural, and diverse populations – *art* – or in the form of a simple pictographic language that could be understood visually without a need for verbal or written language. After an intensive three-year community effort, this project was realized in partnership with ESD. A second phase is underway of wrapping service trucks and providing sleek simple pictographic instructional documents delivered by first responders to educate the public city-wide.

Other examples include projects underway in public places that will be experienced by hundreds of thousands of residents annually. At the Children's Discovery Museum's new exterior environmental garden, a planned project will help multigenerational families understand the invisible network of sewage and drainage systems throughout San José. A project at the Don Edwards Wildlife Refuge will visually highlight and educate visitors in a sculptural way the water restoration process. The CoGeneration beautification project at the RWF will transform industrial blight into an aesthetically beautiful treatment. Sited along the Guadalupe River Trail in Alviso, the Alviso storm pump station tile mural will aesthetically enhance the station and inform youth and their families about water stewardship.

Maintaining San José's Public Art Program Services and Reputation as a National Model

If the amendment to Chapter 22.08 (Public Art Program) of Title 22 of the San José Municipal code to eliminate the public art requirement for EUS Projects occurs, it will eliminate future environmental public art projects and negate the public art master plan and the community's involvement. If elimination of further EUS funding occurs, it will deprive the community of critical infrastructure education, environmental awareness, and beautification projects. It will represent an additional \$443,000 cut over the next five years, and ongoing, that will result in a significant reduction in service levels.

The recent reductions in percent for art funding have had a negative impact on the Public Art Program and the community. Nearly 350 U.S. cities and municipalities have a percent for arts requirement. Many have a cumulative of 2% or more as their requirement on public and private projects, Atlanta, GA; Austin, TX; San Francisco, CA; San Diego, CA; Palo Alto, CA; Philadelphia, PA; Portland, OR; and Seattle, WA, among others. 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 San José Public Art Program is an award-winning program that has been a center of excellence in the City, and has been a national model. Now, it is facing significant service reductions that inhibit its public value and ability to advance civic goals in innovative ways.

EVALUATION AND FOLLOW-UP

After the Administration's acceptance to eliminate the RFW funding, in June of 2017, \$2.8 million was removed from the forecasted 2018-2022 Adopted CIP for Art in Public Places. The Administration expected that the recommendation would be closed out. The City Auditor did not close out the recommendation, and is following up on the remainder of the recommendation which is to eliminate the public art requirement for ratepayer-funded underground utility projects. If approved by Council, additional public art exemptions would represent an additional \$443,000 cut in the next five years plus additional ongoing public art allocations associated with these funds.

The demand for public art from residents in San José is great, and the current public art programming for environmental projects is award winning, educational, promotes environmentally sound practices and creates a vehicle to deliver good water stewardship knowledge in a clever and creative way across multiple diverse ethnic, lingual, social, and cultural stratus. This ultimately benefits ratepayers in that it helps to nurture an environmental understanding that reduces environmental impact from pollution, fats, oils, grease, and other toxic and infrastructure damaging pollutants into the storm/sewer system. It also helps to beautify San José, with aesthetically and well thought out design treatments.

PUBLIC OUTREACH

The City Auditor's recommendation to eliminate percent funding for RFW was posted on the City Public Art Committee Agenda website on the October 3, 2017 Public Art Committee meeting and was presented at the October 16, 2017 meeting of the City of San José Arts Commission. This item will be presented at the March 19, 2018 meeting of the City of San José Arts Commission. This memorandum will be posted on the City's Council Agenda website for the March 27, 2018 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

Subsequent to the June 2017 amendment to the ordinance, the Arts Commission took action to forward a recommendation to restore the public art ordinance to 2%, the pre-2008 ordinance level. This item will be presented at the March 19, 2018 meeting of the City of San José Arts Commission for potential action.

FISCAL/POLICY ALIGNMENT

High impact public art is a key component of the following City Council-adopted plans that engaged a thousands of residents: *Envision San José 2040*, *Cultural Connection: San José's Cultural Plan*, *Public Art Next!*. Furthermore, public art is a key strategy of the City's Economic Strategy. Environmental public art projects advance the City's environmental goals outlined in the *Green Vision* and *Climate Smart*.

COST SUMMARY/IMPLICATIONS

Though the 2019-2023 Proposed CIP is still under development, the 2018-2022 Adopted CIP reflects a total public art allocation of \$767,000 in 2018-2019 through 2021-2022. If the City Auditor's recommendation is approved, the contribution to public art would be eliminated within the Sanitary Sewer System (\$368,000), Storm Sewer System (\$51,000), and the Water Utility System (\$24,000) for a total estimated amount of \$443,000. This would result in an 58% reduction to the public art program in those fiscal years which will result in a decrease in public art availability and likely require an alternative staffing model.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

KIM WALES

Deputy City Manager

Director of Economic Development

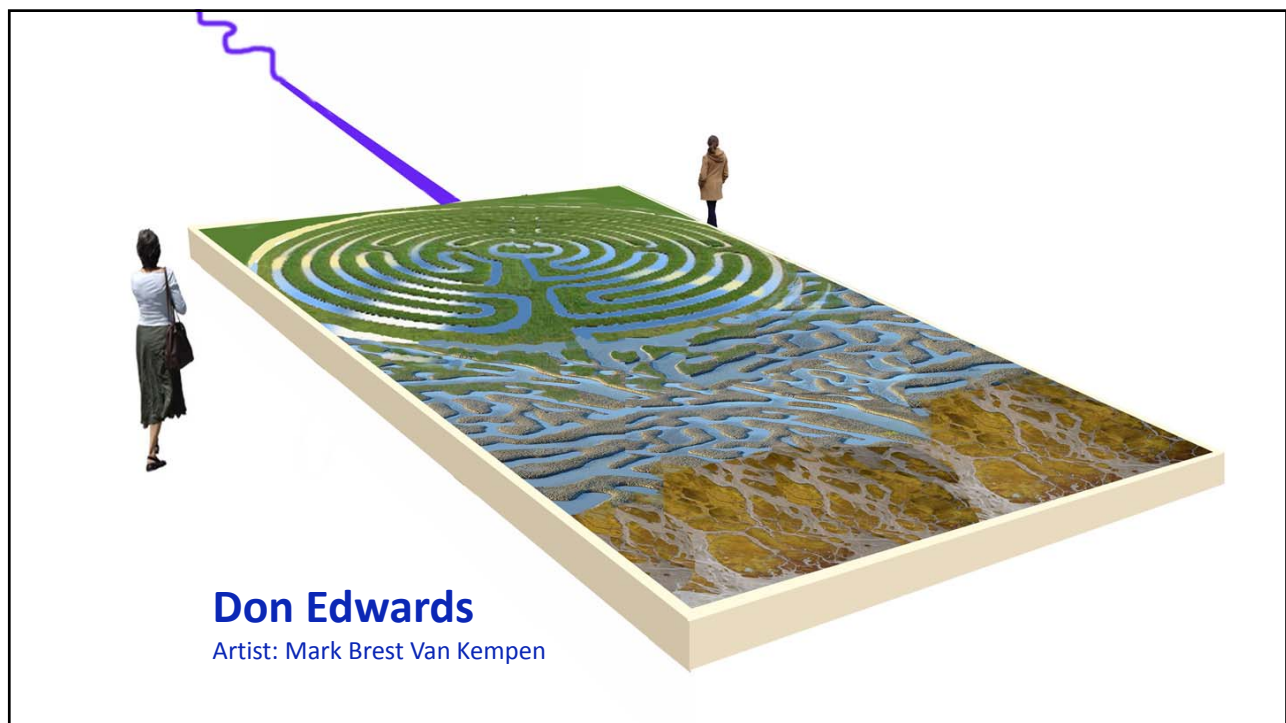
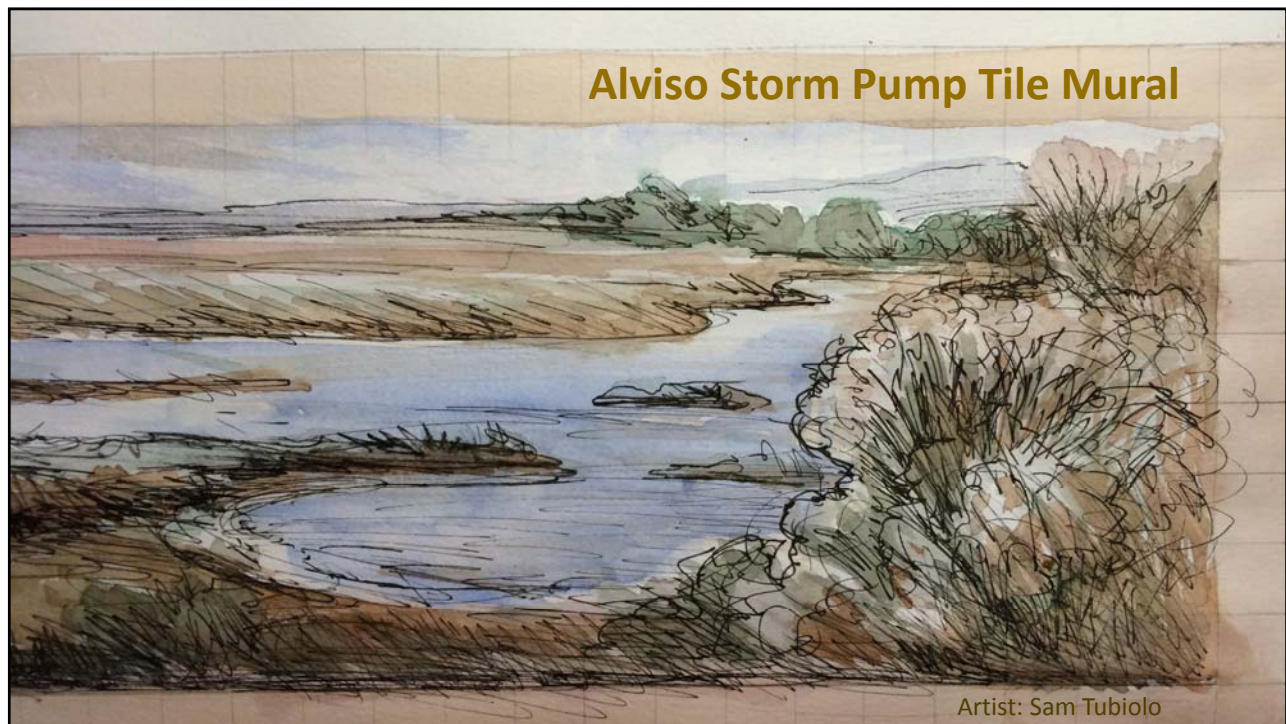
For questions, contact Kerry Adams-Hapner, Director of Cultural Affairs, at (408) 793-4333.

Attachment:

Highlights of recent and planned public art projects associated with certain rate-payer funds

ATTACHMENT





Discovery Museum Youth Environmental Awareness

Artist: Mark Brest Van Kempen

