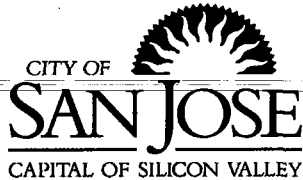


7.3 Actions Related to the Amendment to Title 22 - Public Art Program at the San Jos -Santa Clara Regional Wastewater Facility.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: April 6, 2017

Approved

Date

4/7/17

**SUBJECT: AMENDMENT OF TITLE 22 OF THE SAN JOSE MUNICIPAL CODE
(CONVENTION, CULTURAL AND VISITORS SERVICES) RELATING TO
FUNDING OF PUBLIC ART**

RECOMMENDATION

Approve an ordinance to amend Section 22.08.030 of Chapter 22.08 (Public Art Program) of Title 22 of the San José Municipal Code to exempt capital improvement projects for the San José-Santa Clara Regional Wastewater Facility¹ from the one percent public art assessment of the capital improvement budget.

OUTCOME

Amending the Municipal Code to exempt capital improvement projects at the Regional Wastewater Facility (RWF) from the one percent (1%) public art assessment of the capital improvement budget would allow the City to discontinue the one percent (1%) public art assessment for RWF Capital Improvement Program construction projects.

BACKGROUND

In 1984, the City established the Art in Public Buildings Program. The purpose of the San José Public Art Program is to enhance the appearance of public places; to engage artists to help beautify the appearance of the City; to provide staff to assist the City on matters pertaining to public art; and to implement the provisions of the public art master plan. Over time, updated resolutions were approved specifying guidelines, procedures and funding sources for public art projects.

¹ The legal, official name of the facility remains San José/Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

In June 2008, the San José City Council approved a new Public Art Master Plan and adopted 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 to include infrastructure projects whose sites were not accessible from the public right of way. Unless restricted by the funding source, appropriations may be pooled within a fund and be allocated to projects remote from capital projects where they were generated. In creating this new funding source, the City Council endorsed the Public Art Master Plan recommendation to *"establish ongoing collaborative relationships with other City Departments to ensure that the Public Art Program aligns with their plans."* For example, public art projects funded by ratepayer-funded capital projects for the wastewater treatment process were intended to be highly visible to the public and facilitate education and behavior changes in ways that are beneficial to the utility system and ultimately the ratepayers in the service areas.

On August 14, 2008, the Treatment Plant Advisory Committee (TPAC) unanimously recommended the amendment for City Council approval. On August 19, 2008, the City Council adopted the amendments.

The preferred alternative for the RWF Master Plan was approved by San José City Council on April 19, 2011. A review of the Public Art funding at the RWF included in the 2012-2016 Proposed CIP was conducted to confirm compliance with the Public Art Ordinance. As follow-up to the review by staff, the City Council approved the City Manager's Budget Addendum #11 to amend the 2011-2012 Proposed Capital Budget by decreasing the allocation for Public Art by \$314,000, and to amend the Water Pollution Control Plant Capital Improvement Program for 2012-2013 through 2015-2016 to decrease the Public Art allocation by \$2,002,000. Additionally, in 2016, a reduction of \$719,000 in the Public Art allocation was retroactively made for fiscal years 2008 through 2011 as described in the September 27, 2016 Information Memo to TPAC and City Council (attached).

ANALYSIS

Under the provisions of the Master Agreements between the City of San José, City of Santa Clara and West Valley Sanitation District (WVSD), Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (Tributary Agencies), all agencies are required to contribute to capital improvement projects. The public art assessment is considered a part of the cost of these projects.

With the adoption of the Plant Master Plan in 2013, the RWF has undertaken a significant rebuild of the RWF infrastructure. It is anticipated that \$1.4 billion will be invested in the RWF in the next 10 years and a total of approximately \$2.2 billion over the next 30 years. With this substantial level of investment needed in the infrastructure, the Tributary Agencies have raised concerns about the additional level of investment needed to fund public art at the RWF or in their service areas.

Although the public art assessment was previously supported by TPAC, staff has taken their concerns into consideration and is recommending amending the ordinance to exempt the RWF CIP projects. Staff is not recommending this amendment be retroactive. All other new capital storm and sewer projects funded by San José rate payers will continue to fund the one percent public art assessment.

The amendment to the ordinance will be reflected in the 2018-2022 Proposed CIP, which is currently scheduled to be released on April 24, 2017. Based on figures provided in the 2017-2021 Adopted CIP, this would result in the elimination of at least approximately \$2,460,000 (\$726,000 from 2017-2018, \$27,000 from 2018-2019, \$1,634,000 from 2019-2020, and \$73,000 from 2020-2021). A more refined figure based on proposed 2018-2022 projects will be included in the 2018-2022 Proposed CIP. Should the recommendation in this memorandum not be approved, the CIP would need to be adjusted prior to adoption by the City Council to reinstate public art funding. Since applied to the RWF CIP projects (2007-08 through 2016-17), the total Public Art assessment has been \$3,851,274. This amount reflects dollars collected from the City of San José, City of Santa Clara, and the Tributary Agencies less the previously mentioned adjustment, as illustrated in the following table.

| Agencies | Public Art Allocations to Date 2007-2008 through 2016-2017 | Public Art Allocations in 2017-2021 Adopted CIP* |
|------------------------------------|---|---|
| City of San José | \$2,563,157 | \$1,646,360 |
| City of Santa Clara | \$537,257 | \$369,876 |
| West Valley Sanitation District | \$253,111 | \$154,242 |
| Cupertino Sanitary District | \$167,379 | \$99,794 |
| City of Milpitas | \$296,100 | \$171,785 |
| County Sanitation District 2-3 | \$25,013 | \$12,372 |
| Burbank Sanitation District | \$9,257 | \$5,572 |
| Total | \$3,851,274 | \$2,460,000 |

*Total public art allocation for fiscal years 2017-2018, 2018-2019, 2019-2020, and 2020-2021.

Currently, no public art projects associated with the RWF CIP projects are underway, however, the monies collected to date are anticipated to be used for public art at RWF projects that are currently under construction. Exempting the RWF CIP projects from the Public Art ordinance will have an impact on public art program capacity. City Council and staff will need to evaluate the impact and consider adjustments as necessary to support the public art program and implement the Public Art Master Plan.

EVALUATION AND FOLLOW-UP

If adopted, the elimination of the one percent public art assessment to the RWF Capital Improvement Program construction projects will be maintained through the 2017-2018 Proposed Capital Budget and 2018-2022 Capital Improvement Program; however, if the recommendation is not adopted, funding for the public art program would need to be added to the CIP prior to City Council adoption. Through a separate staff report, staff will bring forward additional information on the implications of this funding change as well as recommendations related to alternative funding options to preserve funding for future public art projects in San José.

POLICY ALTERNATIVES

Alternative #1: Continue collecting the one percent (1%) Public Art assessment on the RWF CIP construction projects

Pros: The RWF CIP generates a significant portion of the funding for public art projects that could also be placed in all service areas of the RWF.

Cons: The Public Art assessment on RWF CIP construction projects is an additional cost to all sewer ratepayers at a time when there is a need to minimize rate increase and prioritize between projects.

Reason for not recommending: Discontinuing the assessment for public art would be an opportunity for the City to reduce the cost of the RWF CIP.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the May 9, 2017 Council Meeting. This item is scheduled to be heard at the April 13, 2017 Treatment Plant Advisory Committee (TPAC) meeting. This item will be presented at the April 17, 2017 meeting of the City of San Jose Arts Commission.

COORDINATION

This memorandum has been coordinated with the City of San José City Manager's Budget Office, Office of Economic Development, Office of Cultural Affairs, and with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item is scheduled to be heard at the April 13, 2017 TPAC meeting. A supplemental memorandum with the committee's recommendation will be included in an amended May 9, 2017 City Council meeting agenda.

COST SUMMARY/IMPLICATIONS

If the proposed amendment to the Public Art Ordinance is approved, the Public Art Program will receive \$2,460,000 less in funding over the next four years than previously anticipated. The Public Art Program will continue to receive the one percent allocation from new sanitary sewer capital projects, which are funded solely by San José rate payers.

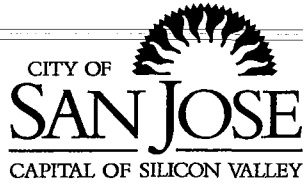
CEQA

Not a Project, File No. PP10-068(b), General Procedure & Policy Making, Municipal Code, Title 22

/s/ Ashwini Kantak for
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Ashwini Kantak, Assistant Director of Environmental Services, at (408) 975-2553.

Attachment: September 27, 2016 Info Memo to TPAC and City Council



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: PUBLIC ART APPROPRIATION
REVIEW

DATE: September 27, 2016

Approved

Date

9/29/16

INFORMATION

The attached information memorandum will be submitted to the Treatment Plant Advisory Committee to provide background and analysis for the adjustments made to the Public Art Appropriation between the City of San José, City of Santa Clara, and tributary agencies as part of the 2015-2016 Plant Capital Improvement Program budget.

/s/ Ashwini Kantak for
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Ashwini Kantak, Assistant Director of Environmental Services, at (408) 975-2553.

Attachment

Memorandum

TO: TREATMENT PLANT
ADVISORY COMMITTEE

FROM: Kerrie Romanow

**SUBJECT: PUBLIC ART APPROPRIATION
REVIEW**

DATE: September 27, 2016

Approved

D. D. SyL

Date

9/29/16

INFORMATION

BACKGROUND

In 1984, the City established the Art in Public Buildings Program. The purpose of the San José Public Art Program is to enhance the appearance of public places; to engage artists to help beautify the appearance of the City; to provide staff to assist the City on matters pertaining to public art; and to implement the provisions of the public art master plan. Over time, updated resolutions were approved specifying guidelines, procedures and funding sources for public art projects.

In June 2008, the San José City Council considered 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 to include infrastructure projects whose sites were not accessible from the public right of way. Unless restricted by the funding source, appropriations may be pooled within a fund and be allocated to projects remote from capital project where they were generated. In creating this new funding source, the City Council endorsed the Public Art Master Plan recommendation to "*establish ongoing collaborative relationships with other City Departments to ensure that the Public Art Program aligns with their plans.*" For example, public art projects funded by ratepayer-funded capital projects for the wastewater treatment process are intended to be highly visible to the public and facilitate education and behavior changes in ways that are beneficial to the utility system and ultimately the ratepayers in the service areas. The Council adopted the amendments in August 2008 following a recommendation by the Treatment Plant Advisory Committee (TPAC).

The preferred alternative for the San José-Santa Clara Regional Wastewater Facility¹ (RWF) Master Plan was approved by San José City Council on April 19, 2011. This prompted a review by the Administration of the Public Art funding at the RWF included in the 2012-2016 Proposed Capital Improvement Program (CIP) to confirm compliance with the Public Art Ordinance. As follow-up to the review by staff, San José City Council approved the City Manager's Budget Addendum #11 to amend the 2011-2012 Proposed Capital Budget by decreasing the allocation for Public Art by \$314,000, and to amend the Water Pollution Control Plant Capital Improvement Program for 2012-2013 through 2015-2016 to decrease the Public Art allocation by \$2,002,000.

In August 2012, the Office of the City Auditor issued a report entitled "Environmental Services: A Department at a Critical Juncture," and recommended that the Administration review past and current public art allocations in the Water Pollution Control fund to determine whether the appropriations are in accordance with the Public Art Ordinance. As previously mentioned, a review was conducted for the Fiscal Year 2011-2012 Proposed Capital Budget and the 2012-2016 Regional Wastewater Facility Five-Year CIP resulting in an adjusted, and reduced, RWF public art allocation. In Fiscal Year 2015-2016, staff also concluded a review of the 2007-2008, 2008-2009, 2009-2010, and 2010-2011 RWF CIP budgets, and confirmed if prior allocations included capital projects costs that would be considered exempt since Fiscal Year 2011-2012.

ANALYSIS

The Administration has determined that, in alignment with the evaluation conducted in 2011, public art costs associated with the following projects should have been exempt from the Public Art Ordinance as specified further below.

To address this needed adjustment, staff proposed changes to the FY 2015-2016 budget. With the June 21, 2016 San José City Council approval of the 2015-2016 Appropriation Ordinance and Funding Sources Resolution amendments in various funds, the Public Art allocation for the 2015-2016 Plant CIP budget Public Art appropriation was reduced by \$719,000. As a result of this action, the City of San José, City of Santa Clara, and each tributary agency will be credited for their share of the Public Art appropriation reduction as indicated in Table A on the following page.

¹ The legal, official name of the facility remains San José/Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

TREATMENT PLANT ADVISORY COMMITTEE

September 27, 2016

Subject: Public Art Appropriation Review

Page 3

Table A- Public Art Reconciliation for the Water Pollution Control Plant Capital Program

| Fund 512 Capital Improvement Program | 2007 - 2008 | 2008 - 2009 | 2009 - 2010 | 2010 - 2011 | Comments |
|--|--------------------|--------------------|--------------------|--------------------|---|
| Total Construction Projects | 33,596,000 | 46,738,000 | 39,145,000 | 31,680,000 | |
| Public Art | (102,000) | (419,000) | (138,000) | (275,000) | |
| Advanced Process Control and Automation | | | | (1,940,000) | Equipment Replacement |
| Digester Gas Line Replacement | (1,100,000) | | | | Equipment Replacement |
| Digester Rehabilitation | | (10,000,000) | (2,000,000) | (1,000,000) | Rehabilitation/Replacement |
| Environmental Services Building Repair | | (6,000,000) | | | Rehabilitation/Maintenance |
| Land Management and Improvements | | | (250,000) | | Non-Construction |
| East Primary Concrete Tank Repair and Stainless Steel Conversion | | | | (1,684,000) | Rehabilitation/Maintenance/Seismic Retrofit |
| Fine Bubble Membrane Diffuser Conversion and Automation | | | | (750,000) | Equipment Replacement |
| Inactive Lagoons Bio-Solids Removal Study | (100,000) | | | (875,000) | Non-Construction |
| M5, Ring Buss and Cable Replacement and Automation | (7,000,000) | | | | Equipment Replacement |
| Plant Electrical Reliability | (5,000,000) | | (20,500,000) | (3,400,000) | Equipment Replacement |
| Scum Digestion | (2,350,000) | | | | Maintenance/Equipment Replacement |
| Secondary and Nitrification Clarifier Rehabilitation | | | (1,000,000) | (3,701,000) | Rehabilitation/Equipment Replacement |
| Dissolved Air flotation dissolution Improvements | | | | (298,000) | Maintenance/Equipment Replacement |
| Filter Improvements | | | | (200,000) | Maintenance/Equipment Replacement |
| Equipment Replacement | (2,553,000) | (4,200,000) | (2,380,000) | (2,420,000) | Equipment Replacement |
| Plant Infrastructure Improvements | (7,552,000) | (7,991,000) | (5,738,000) | (8,472,000) | Rehabilitation/Maintenance |
| Unanticipated/Critical Repairs | (250,000) | (250,000) | (250,000) | (250,000) | Rehabilitation/Maintenance/Equipment |
| SBWR Reservoir Facility | | | (6,000,000) | | Rebudget |
| Revised South Bay Action Plan - SBWR Extension | (2,000,000) | (9,301,000) | | | Rebudget |
| Subtotal | 5,589,000 | 8,577,000 | 889,000 | 6,415,000 | |
| 1% for Public Art | 55,890 | 85,770 | 8,890 | 64,150 | |
| Actually Allocated Per Proposed | (102,000) | (419,000) | (138,000) | (275,000) | |
| Variance | (46,110) | (333,230) | (129,110) | (210,850) | |
| Total Variance | (719,300) | | | | |
| Total Recommended Adjustment | (719,000) | | | | |

TREATMENT PLANT ADVISORY COMMITTEE

September 27, 2016

Subject: Public Art Appropriation Review

Page 4

Estimated Public Art Refund by Agency (FY07/08-FY10/11)

| | |
|---------------------------------|------------------|
| San José | \$480,102 |
| Santa Clara | 96,360 |
| West Valley Sanitation District | 48,265 |
| Cupertino Sanitary District | 31,035 |
| City of Milpitas | 55,582 |
| County Sanitation District 2-3 | 5,913 |
| Burbank Sanitary District | 1,743 |
| Total | \$719,000 |

EVALUATION AND FOLLOW-UP

As part of the annual year-end audit, staff has calculated the amount of credit owed to the City of San José, City of Santa Clara, and the tributary agencies, and any credits owed will be reflected in the January 2017 reconciliation for the Treatment Plant Capital Fund Annual Transaction Report.

COORDINATION

This memorandum has been coordinated with the City of San José City Manager's Budget Office, Office of Cultural Affairs, and with the City Attorney's Office.

/s/ Ashwini Kantak for
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Ashwini Kantak, Assistant Director of Environmental Services, at (408) 975-2553.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: May 15, 2017

Approved

D. D. Syl

Date

5/24/17

**SUBJECT: FUNDING ALTERNATIVES TO BACKFILL PUBLIC ART REVENUE
REDUCTIONS SHOULD REGIONAL WASTEWATER FACILITY CIP
PROJECTS BE EXEMPTED FROM PUBLIC ART ORDINANCE**

RECOMMENDATION

The Arts Commission recommends that the City Council direct the Administration to research public art funding alternatives and report back to the Council by the end of November 2017 with recommendations to backfill the reductions in Public Art revenue that an exemption of Regional Wastewater Facility Capital Improvement Projects from the 1% for art public art ordinance would create.

OUTCOME

Approval of the Arts Commission's recommendation will result in policy and financial analysis on public art funding options for the Council's consideration in the fall of 2017.

BACKGROUND

A recommendation to Amend Title 22 of the San José Municipal Code relating to funding of public art is being recommended to the City Council on May 9, 2017 with the outcome being the exemption of the entire 1% public art allocation from future developments of the Regional Wastewater Facility Capital Improvement Projects (RWF CIP).

In 2008, 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 to include capital improvement infrastructure projects. In creating this new funding source, the City Council endorsed the *Public Art Next!* Master Plan recommendation to "*establish ongoing collaborative relationships with other City*

May 15, 2017

Subject: Funding Alternatives to Backfill Public Art Revenue Reductions Should RWF CIP Projects be Exempted from the Public Art Ordinance

Page 2

Departments to ensure that the Public Art Program aligns with their plans.” For example, public art projects funded by ratepayer-funded capital projects for the wastewater treatment process can create highly visible public art projects that facilitate education and behavior changes in ways that are beneficial to the utility system and ultimately the ratepayers in the service areas. This type of public art funding is routine in other cities in California and across the United States. On August 14, 2008, the Treatment Plant Advisory Committee (TPAC) unanimously recommended the amendments for City Council approval. On August 19, 2008, City Council adopted the amendments.

A key component of the public art master plan *Public Art Next!*¹, which over 1,000 community members helped develop, is environmental services. Since the inception of the plan, a number of projects are underway in partnership with the Environmental Services Department (ESD). For example, *FOGwaste* is a social practice artwork that raises awareness of the City of San José’s vital wastewater infrastructure to community members. *FOGwaste* encourages greater urban environmental stewardship. After an intensive three-year community project realized in partnership with ESD, a second phase will be implemented. Other examples include projects underway at the City-owned Children’s Discovery Museum’s new exterior environmental garden and the Don Edwards Wildlife Refuge, which will inform youth and their families about water stewardship. Another key project is an environmental-themed tile mural on an Alviso storm pump station wall that will aesthetically enhance the station located adjacent to the popular Guadalupe River Trail.

The RWF CIP exemption would eliminate components of the public art master plan and lessens opportunities to partner with ESD to develop public art projects that stimulate understanding of environmental issue among diverse populations. This exemption would also represent the second significant change to funding for public art. The first change was the deferment of the Airport Art Public Art fund appropriations. In May 2010, \$3 million earmarked for the Airport Art Public Art Program was removed to address the Airport’s need to maintain existing landing fees by reducing its debt service obligations. The deferment of the Airport Art Public Art fund is to remain in effect until activity levels reach 12.2 million passengers per year.

ANALYSIS

At its regular meeting of April 17, 2017, the Arts Commission reviewed the recommendation for exemption for the RWF CIP. The Commission took unanimous action to forward a recommendation to the full Council to request that the Council direct staff to research alternative funding recommendations to help backfill the deficit this exemption will create and to provide those recommendations to Council by November 2017.

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

May 15, 2017

Subject: Funding Alternatives to Backfill Public Art Revenue Reductions Should RWF CIP Projects be Exempted from the Public Art Ordinance

Page 3

Exempting the RWF CIP projects from the public art ordinance will have a significant negative fiscal impact on the Public Art Program and limit its ability to deliver public art projects and programming. Based on figures provided in the 2017-2021 Adopted CIP, this would result in the elimination of at least approximately \$2,460,000. A \$2.46 million funding level decrease over the next five years to the Public Art Program is 37% of the current \$6.6 million budget projected for public art projects in the 2017-2021 Adopted CIP. This sizable reduction will impede resources available for programs, projects, personnel, and administration.

In efforts to preserve levels of public art funding, sustain the City's commitment to public art, and honor the residents that participated in the *Public Art Next!* community process, options that can be explored include but are not limited to:

- Revise the public art ordinance to return to a 2% for art allocation for all CIP projects with the exemption of RWF CIP.
- Consider a requirement for percent for art on private development projects.
- Consider a public art fee or allocation from other existing revenue sources.

If Council approves the Arts Commission's recommendation, the Administration can report back to the City Council in November 2017 with its findings and recommendations to identify alternative funding mechanisms to backfill the deficit to the Public Art Program budget that the RWF CIP exemption would create.

EVALUATION AND FOLLOW-UP

Upon Council approval, the Administration will report back on funding alternatives by the end of November 2017.

PUBLIC OUTREACH

This item was agendaized and discussed at the April 17, 2017 meeting of the Arts Commission. Additionally, this item will be posted for the June 6, 2017 City Council meeting.

COORDINATION

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

May 15, 2017

Subject: Funding Alternatives to Backfill Public Art Revenue Reductions Should RWF CIP Projects be Exempted from the Public Art Ordinance

Page 4

COMMISSION RECOMMENDATION/INPUT

The Arts Commission discussed the recommendation for exemption for the RWF CIP at its regular April 17, 2017 meeting. Commissioners provided their input and expressed their concerns about the erosion of the public art ordinance. The Commission took unanimous action to forward a recommendation to the full Council to request that the Council direct staff to research alternative funding recommendations to help backfill the deficit this exemption will create and to provide those recommendations to Council by November 2017. The Commissioners would like to raise awareness to private developers, neighborhoods, and diversify the outreach to other communities. The Commissioners view this item as a top priority.

COST SUMMARY/IMPLICATIONS

Reduction of public art funding caused by the proposed exemption of the RWF from CIP is projected to decrease funding by \$2,460,000 over the next five years and more in the subsequent years. The potential funding alternatives have not been explored to assess potential revenues for public art, and that would be part of the research phase. The research phase may include expenses for a consultant to assist in studying funding policy alternatives, which would be funding from the Office of Cultural Affairs non-personnel budget funded through the Transient Occupancy Tax.

CEQA

Not a Project, File No. PP10-069(a), Staff Report.

/s/

KIM WALES
Deputy City Manager
Director of Economic Development

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



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: PUBLIC ART EXEMPTION AND
ALTERNATIVES TO BACKFILL
PUBLIC ART REVENUE
REDUCTIONS

DATE: June 5, 2017

APPROVE

DATE: 6-5-17

RECOMMENDATION

Drop recommendation 7.3(b) and return to Council once staff has completed work on the Urban Village Implementation Framework and the Downtown Sign District Program, both of which are contemplated to provide substantial resources for public art.

BACKGROUND

No one can deny the benefits of public art. For several years, Council has provided direction for staff to pursue the Urban Village Implementation Framework and the Downtown Sign District Program—both of which should provide resources to fund public art—and that work should be completed. After those sources of funding are established, the Council and community can best assess what gaps, if any, require additional investment.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
SECTION 22.08.030 OF CHAPTER 22.08 OF TITLE 22 OF
THE SAN JOSE MUNICIPAL CODE TO EXEMPT THE
CAPITAL IMPROVEMENT PROJECTS FOR THE SAN
JOSE SANTA CLARA REGIONAL WASTEWATER
FACILITY FROM THE CAPITAL IMPROVEMENT BUDGET
PUBLIC ART FUNDING REQUIREMENT**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP10-068(B), General Procedure & Policy Making, Municipal Code, Title 22; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 22.08.030 of Chapter 22.08 of Title 22 of the San José Municipal Code is amended to read as follows:

22.08.030 Exclusions or Additions to Public Art Program Requirements

- A. If the terms of a contract, federal or state grant, law, rule or regulation prohibit or restrict the collection or use of funds in connection with a City Capital Improvement Project for expenditures upon Public Art, or if the eligible uses of the funding are limited and specified and do not include public art, then the amount equal to one percent (1%) of the funding from such source shall be subtracted from the one percent (1%) total Capital Improvement Budget for Public Artwork, so as to exclude from the total Public Art portion of the Capital Improvement Budget any funds that are so prohibited or restricted. For example and without limitation, the public art calculation of one percent (1%) shall not apply and shall be subtracted from the public art allocation of one percent (1%) of the Capital Improvement Budget, to remove any Capital Improvement Project, or the proportionate share of any Capital Improvement Project, that is funded through a fee or exaction on private development subject to the Mitigation Fee Act (Government Code Section 66000 et seq.) from the public art funding requirements set forth in this Title.

If the City Manager's Office or Executive Director of the Redevelopment Agency cannot resolve disagreement between departments regarding whether a funding source may be spent upon public art, the City Manager's Office shall forward the question to the City Attorney's Office for final resolution of the legal use of such funds before any reduction is made in the calculation of the Public Art funding.

- B. If the terms of a contract, federal or state grant, law, rule, or regulation or other limitation on the source of funds prohibit or restrict the collection or use of funds in connection with a Capital Improvement Project for expenditures upon Public Art, or if the eligible uses of the funding are limited and specified and do not include public art, then the not-less-than-two-percent (2%) to be expended by the Redevelopment Agency for Public Artwork consistent with this Title shall be calculated so as to exclude from the total cost of said project any funds that are

so prohibited or restricted. For example and without limitation, the public art calculation of 2% shall not apply to Capital Improvement Project of the Redevelopment Agency, or the proportionate share of any Capital Improvement Project of the Redevelopment Agency, that is funded through a fee or exaction on private development subject to the Mitigation Fee Act (Government Code section 66000 et seq.) from the public art funding requirements set forth in this Title.

If the City Manager's Office or Executive Director of the Redevelopment Agency cannot resolve disagreement between departments regarding whether a funding source may be spent upon public art, the City Manager's Office shall forward the question to the City Attorney's Office for final resolution of the legal use of such funds before any reduction is made in the calculation of the Public Art funding.

- C. The following are also excluded from the City's and from the Redevelopment Agency's Public Art funding requirements and shall not be included in the budgets used to calculate the applicable Public Art funding requirements:
1. Costs of non-construction related activities such as studies, reports, leases, and easements; including, without limitation, activities in the City's Capital Improvement Budget which are designated as "non-construction."
 2. The cost of environmental review, whether or not the environmental review is related to a construction project.
 3. Capital Improvement Projects that are designated as "maintenance" in the City's Capital Improvement Budget or designated as "non-construction" projects in the Capital Improvement Budget, retrofits (such as seismic or those required to meet legal requirements such as the Americans with

Disabilities Act); site remediation; acquisition or installation of furniture, fixtures and equipment; and affordable housing projects.

4. Redevelopment Agency Assisted Private Projects and Public Capital Improvement Projects that are primarily rehabilitation or maintenance of existing facilities; retrofits (such as seismic or those required to meet legal requirements such as the Americans with Disabilities Act); site remediation; acquisition or installation of furniture, fixtures and equipment or similar projects that do not expand the capacity of an existing facility, including but not limited to Façade Improvements; and affordable housing projects.

4.5. Capital Improvement Projects for the San Jose Santa Clara Water Pollution Control Plant.

- D. Public Art funds derived from Redevelopment Agency Capital Improvement Projects may not be used for maintenance or for projects located outside of Redevelopment Project Areas.
- E. Nothing is intended to prohibit the City Manager and the Redevelopment Agency Executive Director, in conjunction with the submission of the annual capital budgets of the City and Redevelopment Agency, respectively, and subject to the approval of the City Council and the Redevelopment Agency Board of Directors, from designating additional funds, subject to applicable restrictions, to be utilized to place Public Art in Public Places.
- F. In conjunction with submission of the City's and Redevelopment Agency's proposed annual capital improvement budget to the City Council, and to the Redevelopment Agency Board, respectively, the City Manager and the

Redevelopment Agency Executive Director shall notify the Arts Commission of:

(i) those capital improvement programs and projects that include Public Art allocations in said budgets; and (ii) any proposed discretionary funds added to the Art in Public Places program.

- G. The City Manager and the Redevelopment Agency Executive Director may adopt rules and guidelines consistent with this Chapter, further defining the process and method of calculation of the amount of funds to be set aside for acquisition of Public Art as provided in this Chapter.

SECTION 2.

Nothing herein is intended to apply retrospectively to the public art funds appropriated on or before Fiscal Year 2016-2017 for capital improvement projects at the San Jose Santa Clara Water Pollution Control Plant pursuant to provisions of the Municipal Code modified by this Ordinance or pursuant to the resolutions.

RD:RLT
4/5/17

PASSED FOR PUBLICATION of title this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

SAN JOSÉ / SANTA CLARA WATER POLLUTION CONTROL PLANT

May 26, 2017

TREATMENT PLANT ADVISORY COMMITTEE

The Honorable Mayor and City Council
City of San José
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Liccardo and City Council:

At its meeting of April 13, 2017, the Treatment Plant Advisory Committee (TPAC) reviewed this item concerning the Water Pollution Control Plant on the San José City Council agenda for June 6, 2017:

A. Amendment of Title 22 of the San Jose Municipal Code (Convention, Cultural and Visitors Services) Relating to Funding of Public Art

Staff Recommendation: Approve an ordinance to amend Section 22.08.030 of Chapter 22.08 (Public Art Program) of Title 22 of the San José Municipal Code to exempt capital improvement projects for the San José – Santa Clara Regional Wastewater Facility from the one percent public art assessment of the capital improvement budget.

Committee Member Leonardis inquired why the amendment was not considered to go retroactive. Assistant Director Ashwini Kantak clarified that some of the monies collected have been spent; other remaining funds are planned to be used at the Regional Wastewater Facility, in conjunction with capital projects, for which the public art allocation was assessed.

On a motion by Committee Member Gatto and a second by Committee Member Phan, TPAC approved to accept the staff recommendation.

Ayes – 8 (Arenas, Debi Davis, Dev Davis, Gatto, Liccardo, Phan, Sykes, Watanabe)

Nays – 1 (Leonardis)

Absent – 0

Sincerely,



Sam Liccardo, Chair

TREATMENT PLANT ADVISORY COMMITTEE