REPORT TO MAYOR AND COUNCIL **NO: 12-187**

Council Date: August 14, 2012

SUBJECT: Review Effectiveness of Existing Art in Private Development In-Lieu Fee Option – Study Issue

REPORT IN BRIEF

Since the adoption of the Art in Private Development (AIPD) regulation in 1990 and a Council Policy requiring art in public construction projects in 2002, there has been periodic interest in revising specific aspects of the regulation and policy. On February 3, 2012, City Council approved a Study Issue to review the effectiveness of the City's current AIPD regulation, Municipal Code (MC) 19.52 and, specifically, the existing option that allows developers to pay an In-Lieu Fee rather than install artwork at the development site, MC 19.52.100. (Please refer to Attachment A – Study Issue LCS 12-02 Review Effectiveness of Existing Art in Private Development Policies and Practices.) Currently, MC 19.52.100 allows developers to utilize the Art In-Lieu Fee option under limited conditions and upon approval from the Director of Community Development.

This study will reevaluate the City's current emphasis on requiring developers to provide public art at the development site rather than permitting payment of an in-lieu fee to the City's Public Art Fund. (Please refer to Attachment B – Summary of Public Art Fund.) The Public Art Fund is intended to supplement the City's Art in Public Construction Program, as well as other public art projects sponsored by the City.

Additionally, this report incorporates discussion on two items that emerged during the course of developing this Study Issue: 1) the need to clearly define the types of projects that are eligible for funding through the Public Art Fund, and 2) the need to establish a process for deaccessioning art from the City's permanent collection. It is standard practice in museums and government agencies with art collections to have policies to cover both the acquisition of artwork as well as the removal of artwork in the collection. Sunnyvale currently does not have a deaccessioning policy.

BACKGROUND

The City's Art in Private Development (AIPD) Program was initially adopted in 1990. The criteria that triggers the inclusion of public art includes all nonresidential lots over two acres, nonresidential lots located on a major

intersection or thoroughfare of the City, or by means of specific plan, use permit or special development permit.

In-lieu fees were initially considered when the AIPD regulation was adopted into the City's Municipal Code. However, at that time, an emphasis was placed on requiring developers to incorporate public art into their projects as a means of mitigating the sense of uniformity and loss of human scale that often accompanies commercial and industrial development projects.

Since the adoption of the AIPD Program, the ordinance has been amended to strengthen the successes and positive components of the program. In 2002, City Council approved the addition of a requirement to expend 1% of the construction valuation of a qualifying development, including building and tenant improvements, but excluding the cost of land and site improvements. This requirement was established to encourage the selection of public art consistent with the scale and scope of eligible developments. Up until 2002, each developer determined how much to spend on public art.

At the same time, an option for the payment of an in-lieu fee alternative for public art was approved and the Public Art Fund was established to accrue the in-lieu fees. However, in order to emphasize the inclusion of artwork on the development site, limiting conditions were applied to the in-lieu fee option. Only two projects out of 26 have been determined eligible for the in-lieu option. Properties needed to possess at least one of the following conditions in order to qualify for the in-lieu fee waiver:

- an obstructed view corridor from the public right-of-way due to existing landscaping, utility poles or existing buildings on adjacent property;
- lack of an appropriate artwork location near the main entrance or street, either due to lack of space, existing trees and landscaping, required public easements, or existing utility pipes and electrical boxes;
- lack of a publicly visible location for art due to security restrictions;
- lack of adequate space to incorporate public art.

The current Study Issue to reevaluate the existing in-lieu fee alternative was proposed by City Council following a discussion that occurred during interviews with prospective Arts Commission candidates on November 1, 2011. During the course of developing the study issue report, staff also identified a need to further clarify the types of projects that can be funded through the Public Art Fund, priorities for possible art projects and funding, as well as a need to add a formal deaccessioning policy to the Council's Art in Public Construction Policy 6.4.4. A deaccessioning policy establishes the process and criteria for removing pieces from the City's permanent art collection.

EXISTING POLICY

The Sunnyvale General Plan emphasizes the importance of art in the community. A selection of related policies follows:

General Plan Policy CC-1.1: Identify the boundaries of the City with attractive and distinctive features.

General Plan Policy CC-1.8: Provide and encourage the incorporation of art – both functional and decorative – in public and private development.

General Plan Policy CC-1.8a: As non-general fund resources allow – develop a new Master Plan for Public Art.

General Plan Policy CC-1.8e: Continue to acquire public artworks which contribute to the public identity of outdoor places and provide pleasure and enrichment for Sunnyvale residents.

General Plan Policy CC- 4.1: Ensure that Sunnyvale's public facilities are easily identified, accessible, attractive and representative of the Community's values and aspirations.

DISCUSSION

Study Issue LCS 12-02 considers the City's current art in private development policy and municipal code regulation (MC19.52) and, more specifically, the City's in-lieu fee alternative for private development (MC19.52.100). To prepare this report, staff solicited input from the community regarding the art in private development regulation and existing criteria for utilizing the in-lieu fee alternative. Additionally, staff researched "best practices" from other agencies with art in private development programs. Although the City's original art in private development ordinance was adopted over twenty years ago, the City has revisited the regulation a number of times over the years, including an in-depth policy study regarding the status, intent and effectiveness of public art policies and practices existing in 2000. The two-year study was undertaken with the goal of maintaining and strengthening the successful and positive components of the existing art in private development program at that time, while offering policy level strategies to strengthen the provision of public art in Sunnyvale.

Sunnyvale's Art In-Lieu Fee History

Since the adoption of the Art In-Lieu Fee option in 2002, 25 private development projects have been required to include public art under the AIPD Ordinance. Nineteen of those projects have completed the installation of artwork on private development sites and four projects have received Arts Commission approval on their public art proposal. The four artworks are still in varying stages of fabrication and installation. Of the total 26 projects, only two were eligible for the in-lieu fee option. Approximately $6,000 of the $124,000 principal contributed by the two projects in the Public Art Fund was then used

to design and fabricate a public art piece that was installed at the Columbia Neighborhood Center in 2007. The sculpture was created by Columbia Middle School students participating in the City-sponsored Art Apprenticeship Program. Remaining funds are being held pending development of guidelines for use of the Public Art Fund.

Proposed Amendments to Sunnyvale's Current AIPD Ordinance

In addition to the possibility of allowing developers and property owners the flexibility to choose whether to place public art on their development sites or to contribute to the City's Public Art Fund an in–lieu fee equal to 1% of the construction valuation of their eligible projects, staff identified additional areas of the art in private development regulation that need to be addressed or clarified. There are three primary areas of the AIPD regulation and two City Council public art policies that Council is asked to consider:

1. Whether to allow developers and property owners the flexibility to choose without limitations to place public art on their development sites or to pay an in–lieu fee consistent with 1% of the construction valuation of eligible projects. If the in-lieu fee alternative is revised, Municipal Code 19.52. Required Art in Private Developments and Council Policy 6.4.3 – Art in Private Development will need to be amended;
2. Amending Council Policy 6.4.4 - Art in Public Construction Projects to reflect changes in Council Policy 6.4.3. by clarifying the types of City projects that will be eligible for support from the Public Art Fund and provide a process for removing artworks from the City's Permanent Art Collection (creation of a deaccessioning policy), and;
3. Development of a Master Plan for Art to serve as a framework for the expenditure of in-lieu fees held in the Public Art Fund by identifying and prioritizing public art projects and locations throughout the City.

1. Consider whether to allow developers and property owners the flexibility to choose without limitations whether to place public art on their development sites or to contribute to the City's Public Art Fund an in–lieu fee consistent with 1% of the construction valuation of eligible projects.

The current AIPD regulation limits the conditions under which the in-lieu fee option can be utilized. Projects must clearly demonstrate that there is no appropriate place for artwork, either because of lack of space or restricted view corridors and lack of visibility to the public. Many developers and property owners are in favor of a revised policy that allows them to choose whether or not to place artwork on their development sites or exercise the in-lieu fee option at their discretion. Developers have stated this change would be beneficial for large–scaled, mixed-use projects that have limited

funds, because either the 1% requirement applies only to the retail portion of the project or the project is a retail establishment that consists of the building shell only. These projects are usually large in scale, and providing artwork appropriate to the scope of the project can be challenging within a budget equal to 1% of the construction valuation of the commercial portion of their project.

Additionally, developers and property owners have stated they believe that in some locations artwork would be more publicly accessible and, therefore, a larger benefit to the Sunnyvale community if the art was placed in a public facility, park or open space rather than a commercial or industrial neighborhood. Many recent industrial projects subject to the art regulation are located in predominately industrial areas in North Sunnyvale, where the general public is unlikely to be unless they work or have business in the vicinity.

During initial discussions of this Study Issue, it was suggested that art in private development in-lieu fees could possibly be used to support performing arts programs, such as free concerts at Plaza del Sol. However, this would likely be considered outside the scope of what is meant by publicly-visible artwork.

Action Item:

- *Amend Municipal Code 19.52 – Art in Private Developments*

Should Council decide to provide developers and property owners more flexibility in utilizing the in-lieu fee option, MC 19.52 will need to be revised to reflect this. (Please refer to Attachment C for Proposed Changes to Municipal Code 19.52.)

With the proposed revisions of the section 19.52 of the Municipal Code, Council Policy 6.4.3 – Art in Private Development will no longer be required and may be rescinded at that time. (Attachment D - Council Policy 6.4.3 Art in Private Development.)

Action Item:

- *Rescind Council Policy 6.4.3. – Art in Private Development*

Developers who are required to provide art as a condition of development are also required to maintain and repair the artwork as long as it exists at their site. Since art purchased using in-lieu fees will be placed on public property, the developer will no longer be directly responsible for maintaining the artwork. An additional fee assessed on developers who exercise the in-

lieu option will provide the funds necessary for the City to maintain any artwork purchased using in-lieu fees. An alternative strategy would be to reduce the amount of in-lieu funding used for the actual purchase of art and set resources aside for long-term maintenance. This strategy would significantly reduce the actual amount of funding available for art purchases using in-lieu fees. A third alternative would be for the City to absorb the cost of maintenance and repair of all artwork purchased with in-lieu fees. Depending on the type of artwork that is eventually acquired, this could amount to as much as $3,000 a year to clean, repair and maintain one large outdoor sculpture. Multiplied out over twenty years, the fiscal impact of only a few large-scale pieces could be substantial.

It is difficult to project what actual long-term maintenance costs might be on artwork that has not yet been purchased. Staff considered the costs the City currently incurs annually for the maintenance and repair of artwork in the City's permanent public art collection and then extrapolated out over twenty years. It appears that 1/10th of a percent (0.1%) may provide adequate resources to repair and maintain public art purchased with in-lieu fees paid by developers; however, there is no way to give an accurate estimate until such time as a piece of visual public art is identified for purchase.

Under this proposal, a project with a construction valuation of $1,000,000 would require installation of an artwork valued at $10,000 or an in-lieu fee equivalent to that amount. An additional $1,000 would be assessed if the in-lieu fee option was exercised and deposited to the Public Art Maintenance Fund to be used to maintain and repair visual artwork purchased by the City using that $10,000.

The type of materials used to fabricate the art and the installation location will affect the cost to maintain it. For example, the bronze sculpture at the corner of Matilda and El Camino Real, *El Paso de los Suenos,* cost the City $250,000 to purchase. The cost to maintain it is generally $1,800 annually. The $65,000 cement, bronze and marble sculpture, *Ommagio a Tempo,* located in the upper pond of the Community Center costs approximately $2,500 annually for cleaning. The stainless steel sculpture *Matrix*, which cost $10,000 when it was installed in front of the theater at the Community Center only needs to be washed with soapy water from time to time for a nominal cost in staff time. A two-dimensional painting may only need to be dusted periodically; however, a textile mural on a wall may need professional cleaning once a year. Depending on how resources in the Public Art Fund are expended, a 0.1% set-aside may or may not cover the actual

cost of maintaining artwork purchased with these funds; but it would be a start.

Action Item:

- *Adopt requirement for developers paying in-lieu fee to provide resources to maintain and repair art purchased with in-lieu fees in future years.*

2. Consider whether to amend Council Policy 6.4.4 - Art in Public Construction Projects to reflect changes in Council Policy 6.4.3. by clarifying the types of City projects that will be eligible for support from the Public Art Fund and provide a process for removing artworks from the City's Permanent Art Collection.

The expenditure of funds from the Public Art Fund is governed by Council Policy 6.4.4 Art in Public Construction, although use of funds is not restricted to new construction (hence a recommendation to rename the policy "Art in Public Places").

Types of Projects Eligible for Funding from Public Art Fund

Should City Council modify MC 19.52 to provide developers and property owners with the flexibility to exercise the in-lieu fee alternative, it is anticipated that the Public Art Fund balance will increase significantly over time. The City may consider supplementing the existing Art in Public Construction Policy to include the acquisition of public art for City facilities and/or public open space using funds from the Public Art Fund rather than just funds from the 1% of the construction valuation of eligible City capital projects.

An amendment to the current regulation to Council Policy 6.4.4 Art in Public Construction will provide concise guidelines for allowable expenditures from the Public Art Fund. That will assist staff with meeting program goals. It will also ensure that the City is protected from possible litigation stemming from how the City assesses development fees, in particular the Art In-Lieu Fee. (Please refer to Attachment E – Council Policy 6.4.4 Art in Public Construction with Modifications Highlighted.)

Deaccessioning Policy

Council Policy 6.4.4 requires City staff to include any artwork purchased through construction projects to be included in the City's permanent art collection. The collection was established in 1979 with funding through the Sunnyvale Purchase Award Program in place at that time. Subsequent pieces were added to the collection through the City's Master Plan for Public Art, private donations, and most recently through implementation of the art in public construction program.

The City owns and maintains a collection of 64 works of art. The Council Policy that governs the City's Permanent Art Collection includes guidelines on how to acquire publicly funded works of art for municipal projects, but it does not include a process to deaccession, remove or dispose of works of art when it is deemed necessary. (Please refer to Attachment F – City of Sunnyvale Permanent Art Collection.)

Public art is intended to remain on public display indefinitely, but there are occasions where it may be necessary to remove an artwork from the collection. Artworks can deteriorate beyond repair due to environmental factors or vandalism. The selected location may also change due to property renovation, a change of site usage or sale of the site, necessitating the relocation or removal of the artwork.

The addition of a deaccession policy would provide a comprehensive and consistent manner for removal of publicly owned artworks. Deaccessioning guidelines are standard for museums, galleries, universities, and government organizations that maintain public art collections. After researching a number of deaccessioning policies from across the nation, it appears the following elements are essential to a successful program:

- The circumstances under which a work of art would be eligible for deaccessioning;
- The process for deaccessioning a work of art, and;
- The responsibility for oversight of the deaccessioning component.

<u>*Action Items:*</u>

- *Amend Council Policy 6.4.4 – Art in Public Construction as shown in Attachment E - Art in Public Construction with Modifications Highlighted*
    - *Define projects eligible for funding by Public Art Fund*
    - *Establish deaccessioning policy for City's art collection*

3. Consider development of a Master Plan for Art that identifies and prioritizes public art projects and locations throughout the City.

From 1984 to 1992, the City's Master for Public Art, a capital improvement project, provided a thoughtful approach to the strategic placement of public art throughout the community. Twenty-one sites were identified throughout Sunnyvale for the installation of public art and were selected using criteria established to provide maximum visibility and accessibility to the public. Sites identified in the master plan included the City Center, Community Center, and various park and open spaces in Sunnyvale. In addition to locating artwork geographically throughout the community, the Master Plan

worked to provide diversity in the City's public art collection by balancing representational art with abstract, three-dimensional work with two-dimensional, and artwork in a variety of media. Periodic review of the master plan was established to address changing priorities or interests of the community.

The master planning approach is an effective strategy to ensure that public art is located throughout the community in highly visible and strategic locations. Creation of a Master Plan for Public Art can serve as an essential framework for the expenditure of in-lieu fees held in the Public Art Fund by identifying and prioritizing potential locations for art, as well as the possible types of artwork and media. These goals would be developed in conjunction with the City's Arts Commission, with community input and interests in mind.

Action Items:

- *Amend Arts Commission 2012 Work Plan to add the development of a master plan for public art*
- *Direct staff to work with Arts Commission to develop a master plan for public art*

Community Outreach

A community outreach meeting was conducted on May 2, 2012, to solicit input from local property owners and developers. Twenty-one property owners, developers and architects associated with past, current or future non-residential projects in Sunnyvale were invited to attend. Of the 21 invitees, two individuals attended. Both of those individuals were part of either an architectural firm or business association; and, therefore, each represented a larger faction of property owners.

In general, both attendees agreed that broadening the conditions under which the Art In-Lieu Fee could be exercised was a positive alternative to the current regulation. They both concurred that placing artwork in municipal venues was more beneficial to the public, and that accessibility of artwork on private industrial properties was limited because the majority of community members do not frequent industrial/office parks in Sunnyvale. It was also suggested that, in most cases, the City was more equipped and knowledgeable about designing, siting and caring for public art than property owners.

Survey of Other Public Agencies with Art in Private Development In-lieu Fee Options

During preparation of this report, staff surveyed the cities and counties belonging to the Northern California Public Art Administrators Network (PAAN). Of the 18 agencies surveyed, 11 did not respond and 7 agencies responded that their city had a percent for art requirement for private development and an associated in-lieu fee option. (Please refer to Attachment G – Public Art In-Lieu Fee Survey – Bay Area Cities.) The following is a brief summary of the survey results:

- One (1) agency imposed restrictions on when property owners and developers could utilize the in-lieu fee option. Similar to Sunnyvale's current practice, the in-lieu fee could only be used in instances where there was no viable location for art.
- Three (3) agencies have, or are developing, a Master Plan for Public Art.
- One (1) agency specified that the public art project must reside within the "project zone."
- Acceptable expenditures of the in-lieu fees collected included public art, including administrative fees and site preparation for public art.
- No agencies permitted the in-lieu funds to be utilized for performing arts programming.

FISCAL IMPACT

Staff does not anticipate new administrative costs would be incurred by the City as a result of allowing developers to use the in-lieu fee option rather than place art on their development sites. Increased revenue in the Public Art Fund and the development of more art projects for public facilities, parks and open space would require additional staff time to administer the projects. However, any increase in staff hours for public projects would be offset by a reduction in current staff hours required to assist developers and property owners to obtain Arts Commission approval for AIPD projects.

Currently, developers providing public art on-site are required to maintain and repair their artwork as long as the art exists on the property. There will be additional maintenance costs associated with caring for any new works of art commissioned by the City. To provide resources to pay these costs in future years, an additional 1/10th of a percent (0.1%) could be added to the 1% construction valuation of a development project. This would provide resources to repair and maintain art purchased with in-lieu fees paid by developers. Another option, as discussed on pages 6 and 7, would be to absorb future maintenance costs; this would result in no fiscal impact, but would reduce the

amount of in-lieu monies directed toward the actual fabrication and/or installation of visual public art.

An Art Permit fee would not be required from developers who choose to exercise the in-lieu fee option of Municipal Code 19.52. The new fee will offset the cost of staff hours to administer the project.

It is anticipated that the fiscal impact associated with the sale or deaccessioning of art from the City's permanent collection would be minimal because it is anticipated that the reason most artwork is removed from the collection would be due to irreparable damage or deterioration.

PUBLIC CONTACT

Public Contact was made through posting of the Arts Commission agenda and Planning Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk, Sunnyvale Public Library, Senior Center and Community Center.

Notice of Commission and Council meetings regarding this report was also distributed to the "Friends of Parks and Recreation" mailing list (a list of organizations and individuals who have expressed an interest in parks and recreation issues).

A community meeting was also held with interested businesses, developers and property owners on May 2, 2012, to solicit feedback on this issue. Staff also met with the Moffett Park Business Group's Board of Directors on this subject on May 14, 2012.

The Arts Commission conducted a public hearing on this item at their meeting on July 18, 2012. The Planning Commission conducted a public hearing on this item at their meeting on July 23, 2012.

ALTERNATIVES

The Council is being asked to take action on LCS 12-02 Review Effectiveness of Existing Art in Private Development Policies and Practices. The Council may vote to:

1. Allow developers and property owners the flexibility to choose without limitations whether to place public art on their development sites or to contribute to the City's Public Art Fund an in–lieu fee consistent with 1% of the construction valuation of covered projects. Approve amendments to Municipal Code 19.52 Art in Private Developments and Council Policy 6.4.3 - Art in Private Development.

2. Approve fee of an additional 1/10th of a percent (0.1%) of construction valuation of covered projects to be placed in a separate Art Maintenance Fund to provide resources for repair and maintenance of art purchased with in-lieu fees.
3. Approve amendments to Council Policy 6.4.4. Art in Public Construction and direct staff to:
   - Implement guidelines for deaccessioning artwork from the City's Permanent Art Collection;
   - Develop guidelines to further define the parameters under which the Public Art Funds can be used;
   - Direct staff to develop a Master Plan for Public Art to identify potential public art projects and prioritize public art locations for funding, and;
   - Change title of policy to *Art in Public Places.*
4. Take no further action related to the Effectiveness of Existing Art in Private Development In-Lieu Fee Option Study Issue.
5. Direct staff to take some other action related to the City's public art policy.

RECOMMENDATION

Staff recommends Alternatives 1, 2 and 3.

Staff recommends Alternative 1 – Allow property owners to make an in-lieu contribution to the City's Public Art Fund, instead of placing art on site, even when there is an appropriate location for art. Approve amendments to Municipal Code 19.52 Art in Private Developments and Council Policy 6.4.3 - Art in Private Development. The in-lieu fee contribution will be beneficial for developers who are restricted by either a lack of appropriate space or limited art budgets because only a portion of their development is subject to the public art requirement. It will also provide funding for City public art projects that may be more accessible to the general public as compared to public art in predominately commercial and industrial neighborhoods. Additionally, public art commissioned through the Public Art Fund may provide a beneficial cultural art element to a larger audience. The artwork would also become part of the City's Permanent Art Collection, ensuring that the artwork is properly maintained and cared for.

Staff recommends Alternative 2 – Adopt an additional 1/10th of a percent (0.1%) fee for developers exercising the in-lieu fee option. These resources will

be set aside in a separate Art Maintenance Fund to repair and maintain art purchased using in-lieu fees.

Staff recommends Alternative 3 – Approve amendments to Council Policy 6.4.4. Art in Public Construction and direct staff to:

- Implement guidelines for deaccessioning artwork from the City's Permanent Art Collection;
- Develop guidelines to further define the parameters under which the Public Art Funds can be used;
- Direct staff to develop a Master Plan for Public Art to identify potential public art projects and prioritize public art locations for funding, and;
- Change title of policy to *Art in Public Places*.

The addition of a deaccession component will provide a comprehensive and consistent manner for dealing with the removal of publicly owned artworks. Deaccessioning policies are standard for museums, galleries, universities, and government organizations that oversee and manage a public art collection.

If the Council approves the in-lieu fee option as it is proposed in this Study Issue, there will be increased resources available through the Public Art Fund to develop community-based public art projects. Clearly defining the types of projects that can be supported by Public Art Funds and developing a Master Plan for Public Art projects will enable staff to develop and implement public art projects that are community driven and meaningful to the residents of Sunnyvale, as well as strategically integrated into the city's public landscape to provide the greatest accessibility and visibility for the public. Strategically prioritizing goals and locations for public art will keep the City's public art programs proactive and relevant and contribute to the City's identity and reputation as a cultural arts center.

Staff recommends the title change for Council Policy 6.4.4. to *Art in Public Places* (from Art in Public Construction) because adoption of the revised policy broadens its scope from a 1% set-aside for art in eligible construction projects to include acquisition of visual art for any public facility or park without a capital improvement project triggering the acquisition.

The Arts Commission reviewed a draft of this report at its meeting on July 18, 2012, and voted 4-1 (Commissioner Karun dissented.) to recommend that City Council support staff's recommendation, Alternatives 1, 2 and 3. The Commission's recommendation was based on the current economic climate and what they believe to be in the best interest of the City. Commissioner Karun dissented because she does not believe that developers should have complete flexibility to choose either artwork or the in-lieu fee. She said developers should generally be required to have artwork on site and the in-lieu fee exercised as an option for sites that cannot accommodate art. The way the revised regulation is worded developers will have complete authority as to whether or not to put artwork on their development site. (Attachment H, Draft Minutes of the July 18, 2012, Arts Commission Meeting)

The Planning Commission reviewed a draft of this report at its meeting on July 23, 2012, and voted 4-1 (Commissioner Melton dissented.) to recommend that City Council approve staff's recommendation, Alternatives 1, 2 and 3. The Commission's recommendation was based on the observation that allowing an in-lieu fee option would provide the City with resources to acquire and place art in more public settings than some of the previous development sites. Commissioner Melton dissented because he believes that developers should be required to place artwork on the development of site to achieve the goals outlined in the ordinance.

The Planning Commission also commented on their hope that developers will "self-regulate" and not use the in-lieu fee alternative for every project. The Commission also discussed the fact that public art could still be required on private development sites as a condition of development. They also suggested that it might be appropriate to conduct a policy study in the future to determine whether or not the 1% for art requirement should apply to large-scale residential developments as well, given the number of mixed use projects anticipated in the future. (Attachment I, Draft Minutes of the July 23, 2012, Planning Commission Meeting)

Both commissions stressed the importance and value of developing a master plan for public art as proposed in this report. A master plan would be used to guide the City's use of in-lieu fees in the future and ensure that funds do not sit unspent.

Reviewed by:

Lisa G. Rosenblum, Director, Library and Community Services
Prepared by: Nancy Bolgard Steward, Community Services Superintendent

Hanson Hom, Director, Community Development

Grace Leung, Director, Finance

Approved by:

Gary M. Luebbers
City Manager

Attachments

Attachment A	Study Issue LCS 12-02 Review Effectiveness of Existing Art in Private Development Policies and Practices
Attachment B	Summary of Public Art Fund
Attachment C	Municipal Code 19.52 Art in Private Developments
Attachment D	Council Policy 6.4.3 Art in Private Development
Attachment E	Council Policy 6.4.4 Art in Public Construction with Modifications Highlighted
Attachment F	City of Sunnyvale Permanent Art Collection
Attachment G	Public Art In-Lieu Fee Survey – Bay Area Cities
Attachment H	Draft Minutes of the Arts Commission Meeting of July 18, 2012
Attachment I	Draft Minutes of the Planning Commission Meeting of July 23, 2012

2012 Council Study Issue

LCS 12-02 Review Effectiveness of Existing Art in Private Development Policies and Practices

Lead Department Library and Community Services

History **1 year ago** None **2 years ago** None

1. What are the key elements of the issue? What precipitated it?

Since the adoption of the Art in Private Development regulation in 1990 and a Council Policy requiring art in public construction projects in 2002, there has been periodic interest in revisiting specific aspects of the regulation. This study will review the City's current Council Policies 6.4.3 and 6.4.4 (Art in Public Construction and Art in Private Development), as well as Municipal Code Chapter 19.52. - Required Artwork in Private Developments. Council proposed the study on November 15, 2011 following a discussion that occurred during City Council interviews with prospective Arts Commission candidates on November 1, 2011.
In-lieu fees were initially considered when the art in private development regulation was adopted into the City's municipal code. However, at that time an emphasis was placed on requiring developers to incorporate public art into their non-residential projects as a means of mitigating the sense of uniformity and loss of human scale that often accompanies commercial and industrial development projects. Public art can be an effective way to enhance the visual landscape of a community. Currently, developers may apply to the Director of Community Development for a waiver that allows them to pay a fee equal to 1% of the construction valuation of a development, including building and tenant improvements, and excluding the cost of land and site improvements.

This study will re-evaluate the City's current emphasis on requiring developers to provide public art at the development site rather than permitting payment of in-lieu fees to the City's Public Art Fund. The Public Art Fund supplements the City's art in public places program. The existing regulation allows developers to pay an in-lieu fee as a means of satisfying the public art requirement, but only under limited circumstances. Qualifying projects may include, but are not limited to the following conditions:

- Properties that have an obstructed view corridor from the public right-of-way due to existing landscaping, utility poles or existing buildings on adjacent property.
- Properties that do not have an artwork location near the main entrance or street, either due to lack of space, existing trees and landscaping, required public easements, or existing utility pipes and electrical boxes.
- Properties that lack a publicly visible location for art due to security restrictions.
- Properties that do not have adequate space to incorporate public art.

Very few developments meet this limited criterion. Re-evaluating the City's intent behind the art in private development regulation could result in changes that provide developers additional flexibility, as well as to enhance the City's public art program in municipal facilities and parks by expanding the funding base.

2. How does this relate to the General Plan or existing City Policy?

General Plan Policy CC1.1 Identify the boundaries of the City with attractive and distinctive

features.

General Plan Policy CC-1.8 Provide and encourage the incorporation of art – both functional and decorative – in public and private development.

General Plan CC-1.8e Continue to acquire public artworks which contribute to the public identity of outdoor places and provide pleasure and enrichment for Sunnyvale residents.

General Plan Goal CC-4.a Provide public facilities which are accessible, attractive and add to the enjoyment of the physical environment.

3. **Origin of issue**

Council Member(s) Councilmembers Griffith and Moylan

4. **Staff effort required to conduct study** Minor

Briefly explain the level of staff effort required
Approximately 65 hours of staff time would be required to conduct the study. This includes time spent updating research and analysis from 2002 public art policy study. This would require input from three City departments (Library and Community Services, Community Development, and Office of the City Attorney. Staff work will include preparation of a Report to Council, and public hearings before the Arts Commission and Planning Commission.

5. **Multiple Year Project?** No **Planned Completion Year** 2012

6. **Expected participation involved in the study issue process?**

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? Yes
If so, which? Arts Commission, Planning Commission
Is a Council Study Session anticipated? Yes

7. **Briefly explain if a budget modification will be required to study this issue**

Amount of budget modification required

Explanation
No budget modification will be required because staff time to conduct the study can be absorbed within the City's operation budget.

8. **Briefly explain potential costs of implementing study results, note estimated capital and operating costs, as well as estimated revenue/savings, include dollar amounts**

Are there costs of implementation? Yes

Explanation
No additional costs are anticipated to implement potential study results. Staff time used to work with developers in the past will be repositioned to coordinate the creation and installation of art in public facilities and parks. Staff would be responsible for developing public art projects, selecting or recruiting artists and artwork, and installation of the artwork. Staff has reviewed the art in private development projects over the past four years. If the existing in-lieu fee policy was modified to provide more flexibility to developers, an average of $160,000 could be deposited to

the City's Public Art Fund if every developer chose to pay the in-lieu fee, rather than include art in their developments.

9. Staff Recommendation

Staff Recommendation Support

If 'Support', 'Drop' or 'Defer', explain
Staff recommends study of this issue in 2012. The art in private regulation and the Council Policies related to public art in private development and public construction projects were most recently visited in 2001 and 2002. City Council established an in-lieu fee option for developers in 2002; however, it was determined that the art in private development regulation would focus on the provision of art within actual private development projects. Since that time, the in-lieu fee option has permitted developers to pay a fee to the City only under limited conditions, and the fees have been used to acquire art for parks and municipal facilities. Use of the in-lieu fee option requires a waiver from the Director of Community Development and is the exception, rather than the rule. This study would potentially provide more flexibility to developers and additional funding for the creation and installation of art in public places.

Reviewed by		Approved by	
Lisa G Rosenblum	12/7/11		12-8-11
Department Director	**Date**	**City Manager**	**Date**

Public Art Fund Summary – 890170

April 19-2012

Revenues

FY	OL3	Object Level Title	Description	Total
2004	2349	Public Arts Revenues	Plaza Project Public Art	$13,420
2004	2349	Public Arts Revenues	Toyama Ptnrs Donation	$5,000
2004	3355	Interest On Investments	Interest Distribution	$511
2005	2349	Public Arts Revenues	CR022301/25 Dollinger frm GL 4023	$4,413
2005	3355	Interest On Investments	Interest Distribution	$656
2006	3355	Interest On Investments	Interest Distribution	$942
2007	2349	Public Arts Revenues	ART IN-LIEU FEE-verizon	$143,700
2007	2349	Public Arts Revenues	TO 890180 CR931291/193	($28,700)
2007	3355	Interest On Investments	Interest Distribution	$6,437
2008	3355	Interest On Investments	Interest Distribution	$6,181
2009	3355	Interest On Investments	Interest Distribution	$3,523
2010	3355	Interest On Investments	Interest Distribution	$1,541
2011	3355	Interest On Investments	Interest Distribution	$1,041
2012	3355	Interest On Investments	Interest Distribution	$747
			Total Revenue	**$159,412**

Expenditures

FY	OL3	Object Level Title	Description	Total
2007	5300	Professional Services	Work-Columbia Ctr Art Work	$5,865
			Total Expenditures	**$5,865**
			Account Balance	**$153,547**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING CHAPTER 19.52 (REQUIRED ARTWORK IN PRIVATE DEVELOPMENTS) AND ADDING CHAPTER 19.52 (ART IN PRIVATE DEVELOPMENT) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE

SECTION 1. CHAPTER 19.52 REPEALED. Chapter 19.52 (Required Artwork in Private Developments) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby deleted in its entirety.

SECTION 2. CHAPTER 19.52 ADDED. Chapter 19.52 (Art in Private Development) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as set forth in Exhibit "A" attached and incorporated by reference.

SECTION 3. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2012, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
City Clerk
Date of Attestation: _____

APPROVED:

_____
Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

_____
Michael D. Martello, Interim City Attorney

Chapter 19.52
ART IN PRIVATE DEVELOPMENT

19.52.010 Findings and Purpose
19.52.020 Applicability
19.52.030 Art Requirement
19.52.040 Standards for Art
19.52.050 Art Permit
19.52.060 Master Art Permit
19.52.070 Installation and Maintenance Requirements
19.52.080 Establishment of the Public Art Fund

19.52.010 Findings and Purpose

(a) **Findings.** The city council makes the following findings:

(1) The City's visual and aesthetic quality has a significant impact on property values, economic well-being and orderly development;

(2) Development of large-scale or highly visible sites contributes to the City's unique character;

(3) The incorporation of publicly visible art on large-scale sites, highly visible intersections or spaces that are publicly accessible within private developments enhances the City's visual and aesthetic quality and creates a unique sense of community and self-image; and

(4) Providing art mitigates an undesired and potentially deleterious sense of uniformity and loss of human scale and orientation and is in the public interest.

(b) **Purpose.** This chapter regulates and establishes standards for inclusion of art in private development.

19.52.020 Applicability

(a) **Major Intersection.** Non-residential development, including hotels, shall provide art when located at a major street intersection listed in this section. A lot is located at one of the referenced intersections if the lot has frontage along both of the streets forming the intersection. The development may include either new construction of a main building of any size, an addition of at least 10,000 square feet to a main or accessory building, or new construction of an accessory building.

1. El Camino Real and Wolfe Road
2. El Camino Real and Remington Drive / Fair Oaks Avenue
3. El Camino Real and Sunnyvale Avenue / Sunnyvale Saratoga Road
4. El Camino Real and Mathilda Avenue
5. Central Expressway and Lawrence Expressway
6. Central Expressway and Mary Avenue
7. Mathilda Avenue and State Highway 101
8. Mathilda Avenue and State Highway 237
9. Lawrence Expressway and State Highway 237
10. Lawrence Expressway and State Highway 101

(b) **Lots of 2 Acres or More.** Non-residential development, including hotels, shall provide art when located on any lot of 2 acres or more. The development may include either new construction of a main building of any size, an addition of at least 30,000 square feet to a main or accessory building, or new construction of an accessory building. If more than one lot is developed jointly or as an integrated project, the requirements of this chapter apply if the

aggregate lot area is 2 acres or more, regardless of whether the property is under common ownership.

(c) **Phased Projects.** In the event of construction occurring over a period of time, projects become subject to this chapter when the aggregate floor area of all construction reaches the specified levels.

(d) **Public Interest.** Art may be required for any proposed project, including those not mentioned in this section when deemed in the public interest.

19.52.030 Art Requirement

(a) **Provision of Art.** Projects shall provide publicly visible art on-site that is equal in value to 1% of the project construction valuation.

(b) **Building Valuation.** Building permit valuation is determined by the chief building official using the city building permit valuation formula. Valuation of development projects includes the construction of the building shell. Valuation does not include land acquisition, site improvements, parking structures, off-site improvements or tenant improvements. In the event of multi-phased development, valuation is based on the cost of all phases, even though all phases may not be completed at the same time.

(c) **Art Valuation.** When calculating the value of an art to be placed on a private development site, eligible costs include:

(1) Purchase price of the art;

(2) Art consultant fees;

(3) Installation costs, including transportation of the art to the site, pedestals or display costs;

(4) Wiring, fixtures and other costs directly related to the installation of lighting the art; and

(5) Identification plaque.

(6) Ineligible costs include land acquisition, site preparation, travel costs for the artist, architect fees, utility fees associated with the installation or operation of the art, fees associated with dedication ceremonies, publicity, or educational components and maintenance fees and repairs.

(d) **Art Valuation Remainders.** In some instances the cost of artwork may not equate precisely to 1% of the construction valuation. If the developer does not spend the entire 1% on public art, then the remaining amount shall be contributed to the Public Arts Fund.

(e) **Alternative to Provision of Art.** Developers may choose to make a contribution to the Public Art Fund in-lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to 1.1% of the building valuation. The additional 0.1% is to be used for maintenance of art provided through the Public Art Fund. The in-lieu fee shall be paid prior to issuance of the building permit.

19.52.040 Standards for Art

Proposed art in private development shall meet the criteria in this section. The arts commission may allow modifications that are consistent with the intent of this chapter.

(a) **Type of Art.** Art should be one significant piece of art, except that requirement may be met with several works of art when specifically found by the arts commission to fulfill the intent of this chapter. The nature and style of the art is considered in the context of other similar art in the surrounding area to encourage a wide range of types of art, styles and materials in order to create a balanced and interesting artistic and aesthetic appearance. The following types of art are permitted as long as they are on a large public scale:

(1) Sculpture: in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;

(2) Painting: all media, including permanently affixed works, such as murals;

(3) Graphic arts: printmaking, drawing, calligraphy and photography, but only when on a large public scale;

(4) Mosaics;

(5) Glass;

(6) Clay, fiber and textiles, wood, metal, plastics and other materials;

(7) Mixed media: any combination of forms or media, including collage. Water, neon, fiber optic and electronic sculpture generally should not be encouraged due to difficulty of maintenance. Such art may be permitted if adequate assurance of continued maintenance is provided.

(8) Functional art created by a professional artist, such as benches, tree grates and trash receptacles; or,

(9) Any other form of work of art determined to satisfy the intent of this chapter.

(10) Ineligible Works. The following do not meet the requirements for art in private development:

(i) Artwork that is similar to, reminiscent of or based on a corporate logo;

(ii) Reproductions by mechanical or other means of original works of art. Permitted art may include, however, limited editions controlled by the artists of original prints, cast sculpture, photographs and other art forms;

(iii) Directional or other functional elements such as supergraphics, signing, color coding, except where these elements are integral parts of original signed arts;

(iv) Art objects which are mass produced from a standard design, such as playground equipment, fountains, flags or banners; and,

(v) Landscaping and gardening, except where these elements are designed by the artists and are an integral part of a fine art.

(a) **Artist Qualifications.** The artist is required to have experience and knowledge of monumental-scale art intended for public viewing. The artist's qualifications will be evaluated and examples of past work may be reviewed to determine whether or not the artist has appropriate experience for the project.

(c) **Artistic Preference.** The determination of artistic preferences is primarily a function of the owner or developer of the property. It is the intent of this chapter to provide for the public display of private art on private property without substituting the artistic preferences of the city for those of the owner or developer of the property.

(d) **Visibility and Locations.** Appropriate locations may include, but are not limited to, vehicular entryways to the property, plazas, greenbelts and building facades. The location selected should allow reasonable accessibility to the art, including visibility of the art from the public street. The location shall be exterior and installation of the art piece shall enhance the art and allow for unobstructed public viewing from as many angles as possible. When located in proximity to major traffic thoroughfares, the art should be at a motorist's scale and oriented toward the view corridor of the motorist. The art shall be an integral part of the landscaping and/or architecture of the buildings.

(e) **Proportional Size.** The art shall be proportional to the scale of the development and designed to create an artistic, visual and aesthetic impact upon observers. Particularly in locations on major thoroughfares and major intersections, the art should be of such size and nature as to strengthen the urban design and aesthetic quality of life in the community.

(f) **Inoffensive.** Because the art will necessarily be highly visible to the public, will be associated with city requirements and because the traveling public will have no real opportunity

to avoid the visual aspects of the art, expressions of obvious bad taste or profanity is prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

(g) **Permanence.** The art shall be a permanent, fixed asset to the property. The composition of the art shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.

19.52.050 Art Permit

(a) **Art Permit Required.** An art permit is required for installation of art in private development. The art permit shall be obtained prior to building permit occupancy. In phased projects, the Director retains discretion as to which building permit triggers the need for the Art Permit application.

(b) **Application.** The Art Permit application shall contain the following information:

(1) An application signed by the owner of the affected property;

(2) Landscape and site plans indicating the location and orientation of the art, signage, utility boxes, fire suppression systems, and the landscaping and architectural treatment integrating the piece into the overall project design;

(3) Color elevation rendering clearly showing the artwork to scale in relation to its surroundings;

(4) A sample, model, or photograph and "to-scale" drawings or renderings of the proposed art piece;

(5) Material samples and finishes;

(6) A resume of the proposed artist including slides or photographs of the proposed artist's past work which demonstrates similar work to the proposal;

(7) A written statement by the artist describing any theme or development of the art, as well as a discussion of the manner in which the proposed art meets the criteria in Section 19.52.040 (Standards for Art);

(8) A lighting plan including samples of lighting fixtures; and

(9) Other information as required by the superintendent of community services.

(c) **Finding.** The proposed art is consistent with the Section 19.52.040 (Standards for Art) and the purpose of this chapter.

(d) **Decision.** The application, along with the recommendation of the superintendent of community services, will be forwarded to the arts commission for review and action at a public hearing. The arts commission, based on the finding, may either:

(1) Approve the permit as requested or conditioned to meet the requirements of this chapter; or

(2) Deny the permit.

(e) **Appeals**. Actions of the arts commission may be appealed by any person, including an arts commissioner or city councilmember. Written appeals shall be filed within 15 calendar days of the date of the action. The appeal shall state the grounds for the appeal. All proceedings initiated by the action of the arts commission will be suspended pending a final determination by the city council of the appeal's merits at a public hearing. The city council, based on the finding, may either:

(1) Approve the permit as requested or conditioned to the requirement of this chapter; or

(2) Deny the permit.

(f) **Failure to Act.** Failure of the arts commission to act on a permit application within 60 calendar days, or an extended period as mutually agreed upon by the applicant and the arts commission is deemed a denial of the application. Denial may be appealed to the city council in

accordance with this section. The superintendent of community services shall send a notice of the action to the applicant. Failure to send notice does not affect the arts commission action or extend any appeals period.

Section 19.52.060 Master Art Permit

(a) **Applicability.** Development of any property having an aggregate area of more than 50 acres may apply for a Master Art Permit. Development may occur at one time or in phases and shall consist of contiguous lots.

(b) **Application.** Application for a Master Art Permit is filed in the same manner as an Art Permit, except that the application does not need to specifically identify each particular piece of art proposed.

(c) **Content.** The Master Art Permit may define the total obligation to provide art and include information on the quantity, type, orientation and timing of installation of the proposed art. The Master Art Permit may waive Art Permit requirements for individual installations.

(d) **Decision.** Decisions require a city council hearing after recommendation by the arts commission.

19.52.070 Installation and Maintenance Requirements

(a) **Timing of Installation.** If art installation is impracticable prior to the anticipated date of building occupancy, the Director may allow building occupancy provided that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to the Director.

(b) **Permit for Installation.** The applicant shall obtain a building permit for the art.

(c) **County Recordation.** Prior to completion of the art installation, a document shall be recorded with the county containing a description of the art and noting the obligation of present and future property owners to maintain and repair the art.

(d) **Plaque Required.** Each piece of art shall provide an appropriate identification plaque or monument measuring at least 8 inches by 8 inches. The plaque shall be made of cast metal and be placed near the art piece. Information is limited to the date, title and artist. The requirement of this section may be waived if determined in a particular circumstance to be inconsistent with the intent of this chapter.

(e) **Maintenance.** Art shall be maintained in good condition after its installation. Maintenance of the art includes related landscaping, lighting and the identification plaque. Violation of the maintenance requirements may result in the imposition of administrative fines and penalties under Chapter 1.06 (Administrative Fines and Penalties) and may include the City's cost of maintaining or repairing the art.

(f) **Removal.** Removal of required art is prohibited without the City approval. The City may require replacement of the art. Removal or replacement of art shall comply with Section 19.52.050 (Art Permit).

19.52.080 Establishment of the Arts Funds

The city council authorizes the establishment of two funds for the deposit of all fees paid under to this chapter.

(a) **Public Arts Fund.** This fund uses 1% of the construction valuation for the acquisition and installation of the art and administration of the public art program, including but not limited to improvements, site preparation, lighting and landscaping.

(b) **Art Maintenance Fund.** The 0.1% of the construction valuations shall be set aside in the art maintenance find for repairing and maintaining art purchased by the in-lieu fee.

RESCIND

Deleted: Policy 6.4.3 Art in Private Development

~~POLICY PURPOSE:~~

~~The purpose of this policy is to ensure the inclusion of art on private property by establishing uniform guidelines and procedures.~~

~~POLICY STATEMENT~~

~~This policy provides uniform guidelines for art in private development within the Sunnyvale community. In particular:~~

1. ~~A 1% flat fee of construction costs for all projects subject to the Art in Private Development requirement,~~

2. ~~An in-lieu fee option for projects that lack an appropriate location for public art.~~

3. ~~Developments subject to the Art in Private Development requirement shall be required to provide publicly accessible artwork in an amount equal to 1% of the valuation of an eligible development project including building and tenant improvements. The following types of costs are typically excluded from the project valuation; land acquisition, site improvements, such as grading and costs associated with off-site improvement costs beyond the property line, such as moving power lines, adding a traffic light or right turn lane, or relocating a historical landmark to another location, will be excluded.~~

~~ELIGIBLE PROJECTS~~

~~All nonresidential development projects (including hotel and motel developments) involving construction of new buildings or the expansion of existing buildings on property subject to Chapter 19.52 of the Sunnyvale Municipal Code.~~

~~DEFINITIONS~~

1. ~~Building Permit Valuation: The City's building permit valuation formula as referenced in Title 16 of the Sunnyvale Municipal Code will be used as the basis for calculating the required expenditure for public art. Valuation is based on the building standards published by the International Conference of Building Officials (ICBO), as adopted by the State of California.~~

2. ~~In Lieu Fee Option: Developers of projects that lack an appropriate location for public art may apply to the Director of Community Development for a waiver that would allow them to contribute an in-lieu fee of 1% of the construction valuation of a development, including building and tenant improvements, and excluding the cost of land site improvements. Such projects may include, but are not limited to the following conditions:~~

   A. ~~Properties that have an obstructed view corridor from the public right of way due to existing landscaping, utility poles or existing buildings on adjacent property.~~
   B. ~~Properties that do not have an artwork location near the main entrance or street, either due to lack of space, existing trees and landscaping, required public easements, or existing utility pipes and electrical boxes.~~

~~C. Properties that lack a publicly visible location for art due to security restrictions.~~

~~D. Properties that do not have adequate space to incorporate public art.~~

~~3. Public Art Fund: In-lieu fees will be contributed to the Public Art Fund administered by the Department of Parks and Recreation. In-lieu fees from the Public Art Fund may be used to:~~

~~A. Create community art projects.~~

~~B. Install public art on public property such as parks or the grounds of public facilities such as the Community Center and Civic Center.~~

~~C. Install public art in the interior of public buildings that are deemed to be areas of concentrated public activity such as the lobbies and public areas of the Library, City Hall buildings and Community Center buildings.~~

~~D. Install public art at City gateways and focal points or other high profile locations identified in the Master Plan for Public Art.~~

~~4. Artwork Valuation: When calculating the value of an artwork to be placed on a private development site, eligible costs will include:~~

~~A. The purchase price of the artwork~~
~~B. Art consultant fees~~
~~C. Transportation of the artwork to the site~~
~~D. Installation of the artwork~~
~~E. Pedestals or display costs~~
~~F. Lighting for the artwork and utility fees associated with installation and/or operation of the artwork~~
~~G. Identification plaque~~

~~Ineligible costs include:~~

~~A. Land acquisition~~
~~B. Site preparation~~
~~C. Travel costs for the artist~~
~~D. Architect fees~~
~~E. Utility fees associated with the installation or operation of the artwork~~
~~F. Fees associated with dedication ceremonies, publicity, or educational components~~
~~G. Maintenance fees and repairs~~

~~PROCESS~~

~~1. Verification of the eligible costs associated with the acquisition and installation of artwork required under the terms of the Sunnyvale Municipal Code must be submitted to the Director of Community Services or his/her designee.~~

~~2. Process for Artwork Valued at Less than One Percent (1%): Developers will not be prohibited from the acquisition and installation of artwork valued at less than the one percent (1%) required expenditure provided the proposed artwork meets all remaining criteria of the Art Private Development Ordinance and the applicant contributes to the Public Art Fund the difference between one percent (1%) of the construction valuation of the project as described in Sub-section A and the cost of the artwork as calculated in Sub-section F.~~

~~(Adopted RTC 02-136 (5/7/02);Revised for clarity (4/9/07)/Administrative update (March 2012))~~

~~Lead Department: Department of Community Services~~

Policy 6.4.4 Art in Public Places

Deleted: Art in Public Construction Projects

POLICY PURPOSE

The purpose of this policy is to ensure uniform guidelines and procedures for the inclusion of publicly accessible art on public properties, and to establish ~~by establishing uniform guidelines and procedures for eligible municipal projects and to provide~~ uniformity between the requirement for art in ~~public~~ municipal construction projects with the requirement for art in private development projects. Additionally, this policy will also provide uniform procedures and guidelines for the permanent removal or deaccession of a city-owned public art piece.

POLICY STATEMENT

In 2002, the City Council reviewed the status, intent and effectiveness of public art policy in Sunnyvale and approved a policy to require art in public construction projects under certain circumstances.

In 2012, the Council again reviewed the effectiveness of existing public art policy and voted to amend the current policies to include a deaccessioning policy for the City's Permanent Art Collection, as well as to further define project eligibility for subsidies from the Ctiy's Public Art Fund.

DEFINITIONS

1. Art: The conscious use of skill and creative imagination in the production of aesthetic objects.

2. Public Art: Artwork that is publicly accessible and is located in a building or on a site ~~is located in a public building or on public property~~ that allows an unobstructed view of the artwork. The artwork can be located on either public properties or private properties.

3. Public Areas: Any public gathering place including, but not limited to; public plazas, the library, parks and park buildings, police and fire stations, community, neighborhood and senior centers, public transportation centers, and civic centers.

4. Publicly Funded Projects: All construction funded by public or taxpayer funds.

~~5. Eligible Projects:~~

~~A. All aboveground publicly funded public buildings or public open space projects within City jurisdiction with a construction valuation of $1,000,000 or more. This includes the development or renovation of all public facilities, as well as; parks, street medians, City gateways, public plazas and any other locations identified in the Master Plan for Public Art developed in accordance with Council direction.~~

~~B. All construction or renovation projects of $100,000 or more in facilities such as:~~

- ~~Sunnyvale Community Center~~
- ~~Sunnyvale Civic Center complex including Library and Public Safety Building~~

- ~~Fire Stations~~
- ~~Columbia Neighborhood Center~~
- ~~Neighborhood Park Buildings~~
- ~~Water Pollution Control Plant and SMART Station~~
- ~~Focal points and gateways into the community~~
- ~~Any future City buildings that are comparable in nature~~

~~6. Exempt Projects: All underground projects, utility (including water) projects, streets and sidewalks, trees and landscaping, utility relocation, seismic upgrades, mechanical and electrical work, traffic improvements (such as traffic lights, crosswalks and traffic calming measures), and construction due to fire or other natural calamities.~~

~~7. Eligible Costs: Acquisition of artwork, staff and consultant costs associated with the acquisition and installation of the artwork, artist and design fees, artist travel, transportation and installation of artwork, lighting, landscaping directly associated with the artwork and identification plaques. Any costs related to utility relocations, site preparation and staff time directly associated with the installation of an artwork are also eligible.~~

~~8. Non-eligible Costs: Architect and engineering fees, site preparation (including utility relocation), landscaping, and public works and community development staff costs not directly associated with the artwork.~~

5. Public Art Fund: A fund established to create community art projects or to purchase artwork for installation on the interior or exterior of public buildings, or other such public property, such as parks, the grounds of public facilities, or community gateways. The Public Art Fund is administered by the Department of Community Services and receives funding through in-lieu fees for art. Public Art Funds may be used to support eligible projects:

A. Create community art projects for installation on public property.

B. Install public art on public property such as parks or the grounds of public facilities such as the Community Center and Civic Center.

C. Install public art in the interior of public buildings that are deemed to be areas of concentrated public activity such as the lobbies and public areas of the Library, City Hall buildings and Community Center buildings.

D. Install public art at City gateways and focal points or other high profile locations identified in the Master Plan for Public Art.

E. Install temporary or rotating art exhibits on public property.

F. Subsidize public art projects required through municipal construction projects and located on public property.

6. Project Valuation: The City's building permit valuation formula as set forth in Title 16 of the Municipal Code will be used as the basis for calculating the required expenditure for public art. The formula is based on the building standards published by the International Conference of Building Officials. In the case of park and open space projects, the one percent (1%) requirement will be calculated based on the total project budget, excluding administrative costs.

~~10~~7. ~~Artwork Valuation~~ Required Expenditure Valuation: When determining whether or not the 1% required expenditure has been met, the following costs can be included: ~~calculating the value of an artwork to be incorporated into a public project, eligible costs include:~~

A. The purchase price of the artwork
B. Art consultant fees
C. Travel costs for the artist
D. Transportation of the artwork to the site
E. Installation of the artwork
F. Site preparation costs directly associated with installation of the artwork
G. Landscaping that is integral to the artwork
H. Pedestals or display costs
I. Lighting for the artwork and utility fees associated with installation and/or operation of the artwork
J. Identification plaque

Ineligible costs include:

A. Land acquisition
B. Site preparation
C. Architect fees
D. Fees associated with dedication ceremonies, publicity, or educational components
E. Maintenance fees and repairs

8. Public Art Collection: The collection of artwork either donated to the City, or purchased through public funds, which is owned and maintained, in trust for the public, by the City of Sunnyvale.

9. Deaccession: The process to permanently remove an artwork from the City's Public Art Collection.

10. Disposal: Any method used to transfer ownership of the deaccessioned piece to another entity, either through sale, donation, trade or destruction.

11. Conservation: The broad concept of care necessary to maintain an artwork in good condition.

12. Preservation: Actions taken to prevent deterioration of damage in artworks.

13. Restoration: The treatment of deteriorated or damaged artwork to approximate as nearly as possible its original (or artist-intended) form, design, color and function.

Deleted: Public Art Fund: A fund established to create community art projects or to purchase artwork for installation on the interior or exterior of public buildings, or other such public property, such as parks, the grounds of public facilities, or community gateways. The Public Art Fund is administered by the Department of Community Services and receives funding through in-lieu fees for art. Eligible projects include:¶
¶
¶
~~9~~6.

Deleted: 7

~~PROCESS~~ ART IN MUNICIPAL CONSTRUCTION PROJECTS

Eligible municipal construction projects are required to integrate public art. The artwork shall be located in publicly visible areas either inside a public building or on public property. ~~Eligible projects will be required to provide artwork valued at one percent (1%) of the valuation of an eligible project.~~ The artwork shall be valued at an amount equal to 1% of the project valuation within a variance of ten percent.

PROJECT ELIGIBILITY

Eligible Projects:

A. All aboveground publicly funded ~~public~~ buildings or public open space projects within City jurisdiction with a construction valuation of $1,000,000 or more. This includes the development or renovation of all public facilities, as well as; parks, street medians, City gateways, public plazas and any other locations identified in the Master Plan for Public Art developed in accordance with Council direction.

B. All construction or renovation projects of $100,000 or more in facilities such as:

- Sunnyvale Community Center
- Sunnyvale Civic Center complex including Library and Public Safety Building
- Fire Stations
- Columbia Neighborhood Center
- Neighborhood Park Buildings
- Water Pollution Control Plant and SMART Station
- Focal points and gateways into the community
- Any future City buildings that are comparable in nature

~~6.~~Exempt Projects: All underground projects, utility (including water) projects, streets and sidewalks, trees and landscaping, utility relocation, seismic upgrades, mechanical and electrical work, traffic improvements (such as traffic lights, crosswalks and traffic calming measures), and construction due to fire or other natural calamities.

~~The in-lieu fee alternative available to private developers applies to public construction projects at the discretion of the Director of Public Works. If the in-lieu option is exercised, the funds will be placed in the Public Art Fund for acquisition and installation of art on public property or in public buildings at a later date.~~

ASSIGNMENT OF RESPONSIBILITIES

~~1.~~The Director of Public Works and the Director of Library and Community Services, or their designees shall be responsible for identifying municipal construction and renovation projects that meet the conditions of this policy and will be required to provide public art.

The Director of Library and Community Services, or his/her designee shall be responsible for initiating public art projects that are not required through municipal construction, but that have

been designated as eligible for funding from the Public Art Fund, in accordance with the City's approved Master Plan for Art.

1. Review Process for Art in Public Places:

A. Project review Committee: ~~A project review~~ This committee will coordinate the public art component of an eligible municipal construction project, and shall consist~~ing~~ of staff from the Departments of Public Works, Library and Community Services, and Community Development, as appropriate. ~~, will coordinate the public art component of an eligible municipal project.~~

B. Location and Artwork Review: Possible locations for the artwork and the type of artwork to be considered for the project shall be identified with input from the Project Review Committee, the Sunnyvale Arts Commission, pertinent city staff, interested citizens and project architects. Based upon this information, proposals will be solicited from qualified artists.

C. Short List of Artists: The Project Review Committee will be responsible for reviewing all art proposals and/or qualifications of artist applications. A short list of 2-5 artists and/or proposals will be established by the Committee. The short list shall have a minimum of two artists and/or proposals for consideration.

~~3~~2. Approval Process:

A. Report to Council (RTC): A draft ~~Report to Council~~ RTC outlining the project and the short list of artists will be forwarded to the Arts Commission ~~with two or more qualified proposals~~ for review and recommendation prior to going to City Council for action.

B. Council Approval: ~~4.~~ Following Council approval of a specific art proposal, the Director of Library and Community Services, or the Director's designee(s), shall be responsible for coordinating the integration of the public artwork into the ~~capital improvement project.~~ municipal construction project.

3. In-Lieu Fee Alternative:

A. The in-lieu fee alternative available to private developers applies to public construction projects at the discretion of the Director of Public Works.
B. If the in-lieu option is exercised, the funds will be placed in the Public Art Fund for acquisition and installation of art on public property or in public buildings at a later date.

PERMANENT ART COLLECTION

~~5.~~Artwork approved for purchase or commission ~~accepted~~ by the City Council shall become part of the City's ~~Public~~ Permanent Art Collection. All artwork in the collection will be documented in the City's Public Art Inventory and identified with a metal plaque. Oversight and maintenance of the Public Art Collection is the responsibility of the Department of Community Services.

DE-ACCESSIONING PLAN

Artworks in the City's Permanent Art Collection are meant to remain on public display. However, circumstances may deem it necessary to permanently remove works of art from the City's Permanent Art Collection.

1. Eligible Circumstances for De-accessioning:

   A. Security: The security or continued good condition of an artwork cannot be reasonably guaranteed in its current location. Arts staff will attempt to relocate any artwork deemed at risk for security purposes; but in the event a suitable, secure location cannot be found, the item may be de-accessioned from the collection.
   B. Public Safety: The artwork is a danger to the general public because it is naturally deteriorating, or it has been altered through vandalism, unforeseen man-made circumstances or a natural disaster.
   C. Inauthentic: The artwork is discovered to be inauthentic or fraudulent.
   D. Stolen Art: The artwork is discovered to be stolen, and therefore, is returned to its legal owner.
   E. Theft: The artwork is illegally removed from its place of public display and cannot be located.
   F. Damage Beyond Repair: The artwork has been severely damaged and deemed "beyond repair" by a professional art conservationist, or the artist, and it cannot be restored to the artist's original intended condition for a price less than is considered prohibitive.
   G. Change in the Permanent Art Collection's Mission: The artwork no longer meets the mission of the Permanent Art Collection due to a formal change in the Collection's Mission Statement.
   H. Loss of Site (Site Alteration or Sale of Site): The artwork can no longer reside in its original location because the original location is altered due to construction, a change of site usage, or sale of the site. Arts staff will attempt to relocate the artwork to a suitable site; however, lack of a suitable site, either now or in the foreseeable future, or if there is not suitable storage until a site in the foreseeable future is available, could merit deaccessioning.

      For site-specific artwork, or permanently-affixed artwork, deaccessioning may be warranted without any attempt to relocate the artwork if it is deemed that the artwork cannot be moved without causing irreparable damage or the cost of relocating the artwork is considered prohibitive.
   I. Temporary Acquisition: The artwork is intended to be a temporary display and the City's obligation to display the artwork is complete.
   J. Excessive Representation: The artwork is deemed as duplicative or excessive in representation of work of that type or of that artist.
   K. Aesthetic Value: The artwork has not withstood the test of time and has been professionally determined to lack aesthetic value to justify its continued upkeep and/or storage.
   L. Content: Once the Artwork has been accessioned into the City's Permanent Art Collection, it may not be de-accessioned solely on the basis of content or personal preference of any staff member, commission or board member, or member of the public.

2. Assignment of De-accessioning Responsibilities:

A. No city department shall remove any work of art from the site for which it was selected, nor remove it from display, without prior consent of the Director of Library and Community Services, or the Director's designees(s).
B. The Director of Library and Community Services, or the Director's designee(s), is responsible for determining whether or not the artwork meets any of the above criteria for removal or de-accessioning.
C. The Director of Library and Community Services, or the Director's designee(s), shall be responsible for oversight of the de-accessioning process.
D. The Director of Library and Community Services, or the Director's designee(s), shall make every effort to contact the artist of the artwork recommended for de-accession, or the artist's heirs, using current contact information. The artist, or the artist's heirs, shall be given the opportunity to purchase the artwork, or its parts, before the disposal or destruction of the artwork.
E. The Director of Library and Community Services, or the Director's designee(s), shall determine the purchase price of a de-accessioned artwork, based on current market value.
F. In the event that the de-accessioned artwork is sold, the Department of Community Services will deposit the proceeds of such sale into the Public Art Fund of the City.
G. In the event that the de-accessioned artwork is sold or donated, the removal of the artwork from city property shall be the responsibility of the purchaser or recipient of the donation and shall be of no cost to the City.
H. De-accessioning and disposal of an artwork must be conducted publicly and formally with adequate documentation. It must also comply with all applicable local, state and federal laws.
I. No current, or former, member of the Art Commission, City Council or City staff member shall be allowed to bid on and/or purchase a de-accessioned artwork.
J. A permanent record of the artwork's inclusion in the City's Permanent Art Collection, and reasons for its removal, shall be maintained in a Permanent Art Collection database by the Department of Library and Community Services.

3. Process for De-accessioning Artwork:

A. If an artwork is subject to any of the above conditions and deemed eligible for de-accessioning, the Arts staff will prepare a report for review and evaluation by the City's Arts Commission, which will prepare a formal recommendation to the City Council for action on the de-accession.
B. The Staff Report shall include:
    a) Reasons for the suggested de-accession
    b) Original accession method(s) and cost of artwork
    c) Estimated current market value of the artwork
    d) Proposed de-accession method(s) and cost for each proposed method, including the sale price if applicable
    e) When appropriate, photo documentation of the site conditions and/or current condition of the artwork in question
    f) Official Police Report (if applicable)

(Adopted: RTC 02-136 (5/7/2002); Updated for accuracy (10/28/09); Amended: RTC _____ (8/14/2012).)

Lead Department: Department of Library and Community Services

PUBLIC ART COLLECTION

(Revised 04/2/12)

INVENTORY #	ARTIST & TITLE	MEDIUM	LOCATION
85.3	Judy Ackeret 'Only Flowers Bloom'	Watercolor	CC/Senior Center Cypress Room
88.2	John Battenberg 'Murphy Street Scene'	Painted Steel	CC/Orchard Heritage Park
85.4	Sandra Beard 'Untitled #2'	Monoprint	CC/Senior Center Manager's Office
85.5	Sandra Beard 'Untitled #3'	Monoprint	CC/CAC Art Storage - to be relocated
89.12	Douglas Chun 'Approaching Storm'	Watercolor	CC/Theater Lobby
89.11	Douglas Chun 'Valley Vineyard II'	Watercolor	CC/Theater Lobby
91.3	Lee Truax Dalton 'Portrait of Antone Vargas'	Oil on Canvas	CH/ Council Chambers Lobby
91.11	Elizabeth Devereaux 'Allegorical Landscape'	Stained Glass	Library
89.5	Joe Draegert 'August'	Lithograph	CH/Council Chambers
89.6	Joe Draegert 'Still Life with Artichoke Blossom'	Acrylic on Hardboard	CH/OCM Mayor's Office
80.2**	Carol Donegan 'Ghost in Silicon Valley'	Lithograph	CC/Senior Center Maple Room
91.13	Nancy Weeks Dudchenko "It's a Symphony"	Ceramic	CC/Senior Center Lobby

ATTACHMENT F

INVENTORY #	ARTIST & TITLE	MEDIUM	LOCATION
84.1	Dan Dykes ‘Matrix’	Stainless Steel	CC/Theatre Main Entrance
91.5	Sharon Evans ‘Charles Spalding’	Graphite on Paper	CC/CAC Art Storage – to be relocated
88.1	Malou Flato ‘Untitled’	Painted Tile	Raynor Activity Center/Bldg. 8
85.2	Gene Flores ‘El Paso de los Suenos’	Bronze	CH/Lawn @ ECR & Mathilda
91.4	Alice Freund ‘Walter Everett Crossman’	Pastel on Paper	CH/Council Chambers Lobby
76.1	D. Gabairis ‘Seagulls’	Metal	CC/Senior Center Lobby
91.9	Bob Gerbracht ‘Portrait of John Hendy’	Pastel on Paper	CC/Recreation Center Conference Rm
89.2	Matt Glavin ‘Genesis #802’	Mixed Media	CH/OCM Mayor’s Office
04.2	Gerald Heffernon ‘Fruit Gigantica’	Painted Aluminum	Downtown Plaza/ Evelyn@Francis
97.2	Martin Hernandez ‘Growth in the Valley’	Acrylic on Plywood	Raynor Activity Center/ Art Storage (Room 16) – to be reinstalled in CNC Lobby
97.1	Jane Hofstetter ‘Romeo and Juliet’	Oil on Canvas	CC/CAC Art Storage – being repaired – to be reinstalled in Theatre Dance Studio
89.3*	Martha Hubert 'Night Passage: 2'	Monoprint	CH /Council Chambers
03.1	Gordon Huether 'Tree of Life’	Water-cut steel w/ dichroic glass	CC/Senior Center Main Entrance
03.2	Gordon Huether ‘Forest’	Etched Glass	CC/Senior Center Lobby
89.4	Bill Iaculla ‘Cathedral Windows’	Cast Handmade Paper	CH/(OCM) Hallway

INVENTORY #	ARTIST & TITLE	MEDIUM	LOCATION
06.1	Melissa Jennifer ‘Pole People’	Steel, aluminum, glass	Raynor Activity Center/ Storage Rm 16-reinstall at CNC at the end of the expansion project
85.1	J. Seward Johnson ‘Out to Lunch’	Bronze	Library Main Entrance
85.6	Judy Miller Johnson ‘Angel’s Trumpets’	Etching	CC/Senior Center Breakroom
85.7	Ellen Kiefer ‘Purification’	Monoprint	CC/Senior Center Willow Room
88.3	Carlos Laorca ‘Layer Painting #1’	Mixed media	CC/Meeting Room (CAC)
89.13	Lebadang ‘Nature’s Prey’	Lithograph	CC/Senior Center Maple Room
91.8	Sarah Linder ‘Portrait of Martin & Mary Murphy’	Oil on Canvas	CC/Recreation Center Conference Rm
91.14	Yael Luri & Jean Pierre Larochette ‘Unfolding Knowledge’	Cotton, Wool, Silk, Tapestry	Library Reference Desk
85.8	Sandra MacDiarmid ‘Waijimi Market, Japan’	Oil on Paper	CC/CAC Art Storage – to be relocated
04.2	Therese May 'Sunnyvale Community Quilt'	Fabric with mixed media	CC/Senior Center Hallway
89.1	Sal Pecoraro ‘Omaggio A Tempo’	Travertine marble and bronze	CC/Upper Pond
81.2**	Carol Pfoutz ‘Community Center Oak’	Clay Collage	CH/Council Chambers
87.1	Virginia Pochman ‘Lily Pond’	Watercolor	Library
83.1*	Frank Rosen 'Metamorphosis of an Uncommercial Traveler’	Oil on Canvas	CH/Council Chambers
91.7	David Saccheri ‘Charles Stowell’	Oil on Canvas	CC/Rec Center Conference Rm
91.12	Robert Salas ‘Lakewood Community Mural’	Water-based Tempera	Lakewood Park Playground

INVENTORY #	ARTIST & TITLE	MEDIUM	LOCATION
10.01	Lydia Sanchez “Sunnyvale Community Mural”	House Paint on concrete	Fair Oaks Park NE field
91.2	Susan Schary ‘Portrait of Ida Trubschenck’	Oil on Canvas	CH/Council Chambers Lobby
85.10	Joan Schulze ‘Bridge to Bridge’	Fabric Collage	CC/Senior Center Waiting Area
85.11	Joan Schulze ‘Flight’	Fabric Collage	CC/Senior Center Waiting Area
85.12	Joan Schulze ‘Sunstorm’	Fabric Collage	CC/Senior Center Waiting Area
91.6	Robert Semans ‘Edwina Benner’	Oil on Canvas	CH/Council Chambers Lobby
91.10	Robert Semans ‘Portrait of Alillion Wilhelmy’	Oil on Canvas	CH/Council Chambers Lobby
89.7	Kathleen Sharp ‘Portal Study’	Textile	CC/CAC Art Storage – to be relocated
99.1	Danny Sheu & Jeff Bordona ‘Untitled’	Ceramic Tiles	Lakewood Park Park Building exterior
98.4	Danny Sheu & Jeff Bordona ‘Untitled’	Ceramic Tiles	Washington Park Restroom exterior
98.1	Dan Snyder (Island Fantasy) Untitled	Brass Inlays	Washington Park Playgrounds
89.9	Mark Templeton ‘Untitled’	Watercolor Collage	CH/OCM Lobby
89.10	Mark Templeton ‘Untitled’	Watercolor Collage	CH/OCM Lobby
85.13	Susan Terry ‘Forget Me Nots’	Watercolor	CC/CAC Arts Storage
89.10**	Susan Terry ‘Hendy Iron Works’	Watercolor	CC/CAC Art Storage
85.14	Susan Terry ‘Tulips’	Watercolor	CC/CAC Art Storage
80.3**	Susan Terry ‘Twin Palms, Downtown Sunnyvale’	Watercolor	CC/Senior Center Sequoia Room

INVENTORY #	ARTIST & TITLE	MEDIUM	LOCATION
80.3**	Susan Terry 'Watertower at California and Mathilda'	Watercolor	CC/CAC Art Storage
91.1	Marilyn Thompson 'Portrait of Carl & Hannah Olson'	Oil on Canvas	CH/Council Chambers Lobby
96.1	Earlyn Tomasini 'Mass Transit'	Painted Steel	Public Safety Main Entrance
08.1***	Flo Oy Wong 1933: Gee Lai Wah" "Made in usa: Angel Island Shhh" series	Mixed Media	CC/Senior Center Sequoia Room
79.2**	Naomi Zapanta 'Roots'	Etching 3/20	CH/Council Chambers

CH – City Hall CC – Community Center CAC – Creative Arts Center OCM – Office of the City Manager
* Donated by Members of the City Council **Sunnyvale Purchase Award *** Donated by artist

H:khd/Permanent Collection/Public Art Inventory

Public Art In Lieu Fee Survey – BayArea Cities

Agency	In Lieu Fee Option?	Conditions under which In Lieu Fee can be Utilized	Public Art Master Plan?	Acceptable Public Art Fund Expenditures
City of Alameda	Yes 1%	Any	n/a	Public Art placement, acquisition, maintenance and/or administrative fees
City of Emeryville	Yes 1%	Any	n/a	Public Art placement, acquisition, maintenance and/or administrative fees
City of Napa	Yes 1%	Any	Yes**	Public art programming and temporary exhibitions**
City of Petaluma	Yes 1%	Any	no	Public Art placement, acquisition, maintenance and/or administrative fees, and public exhibitions of art
City of San Jose	Yes* n/a	Any*	Yes	Any art or cultural programs.
City of Santa Rosa	Yes 1%	Any	No	Public artworks, cultural programming, staffing costs and future reserves
City of Sunnyvale***	Yes 1%	Only if the site lacks an appropriate place for art, or other extenuating circumstance. Must be approved by Director of Community Development	No	Public art or Visual Arts programs
City of Walnut Creek	Yes n/a	Only if the site lacks an appropriate place for art, or other extenuating circumstance. Must be approved by Design Review Committee	Yes (Priority List)	Fees must be used for public art project within “project zone”

*Private Development was required through the Redevelopment Agency. In Lieu Fees were permitted.
**Master Plan for Public Art is currently being developed.
***City of Sunnyvale is included in this survey for reference.

April 2012 H:AIPD/In lieu file

ATTACHMENT G

PUBLIC HEARINGS/GENERAL BUSINESS

2. Draft Report to Commission: Review Effectiveness of Existing Art in Private Development In-lieu Fee Option – Study Issue

Superintendent Steward presented the staff report. In response to a question about the place in the decision-making process, Superintendent Steward said it is the Commission's role to review the information and formulate their own recommendation to Council.

A support letter from Ms. Kerry Haywood, Executive Director, Moffett Park Business Group, was distributed.

Commissioners' questions included whether funds resulting from in-lieu fees could be used for a visual arts facility; whether it would be an additional burden on staff to monitor; whether the City would put artwork on private property if the developer chose not to; if developers and property owners are allowed the unrestricted choice to either place public artwork or contribute an in-lieu fee, should there sometimes be qualifications for having public artwork instead of the in-lieu fee option. Questions were responded to satisfactorily.

Superintendent Steward thanked Diane Moglen, Arts Manager, and Kristin Dance, Visual Arts Coordinator, for the work and energy that they put into this study.

The Public Hearing was opened. There were no speakers. The Public Hearing was closed.

MOTION: Commissioner Sumner moved and Commissioner Santos seconded to recommend that Council support staff's recommendation, Alternatives 1, 2 and 3.

1. **Allow developers and property owners the flexibility to choose without limitations whether to place public art on their development sites or to contribute to the City's Public Art Fund an in–lieu fee consistent with 1% of the construction valuation of covered projects. Approve amendments to Municipal Code 19.52 Art in Private Developments and Council Policy 6.4.3 - Art in Private Development.**
2. **Approve fee of an additional 1/10th of a percent (0.1%) of construction valuation of covered projects to be placed in a separate Art Maintenance Fund to provide resources for repair and maintenance of art purchased with in-lieu fees.**
3. **Approve amendments to Council Policy 6.4.4. Art in Public Construction and direct staff to:**
   - **Implement guidelines for deaccessioning artwork from the City's Permanent Art Collection;**
   - **Develop guidelines to further define the parameters under which the Public Art Funds can be used;**
   - **Direct staff to develop a Master Plan for Public Art to identify potential public art projects and prioritize public art locations for funding, and;**
   - **Change title of policy to *Art in Public Places.***

Discussion included the fact that the new policy would provide developers and property owners with choice and flexibility. Commissioners also indicated it would be very interesting and exciting to have a Public Art Fund. Commissioners discussed that there are no clear guidelines at this time as to how the in-lieu fees would be used. A downside would be that commercial properties might not have artwork if the business or developer chose the in-lieu fee option. Superintendent Steward explained that public art could still be required by City Council through a Special Development Permit or as a condition of development.

Commissioner Karun proposed a friendly amendment regarding exceptions to choosing the in-lieu fee option if developers meet certain criteria to be determined at a later time. Discussion followed as to how the friendly amendment could be formulated. The friendly amendment was declined by Commissioner Sumner following lengthy discussion.

VOTE: 4-1 motion passed. Commissioner Karun dissented.

Commissioner Karun dissented because she does not believe that developers should have complete flexibility to choose either artwork or in-lieu fee. Developers should be required to have artwork on site, and the in-lieu fee would give developers the option of not putting artwork on property.

Commissioner Park said in this situation, economic climate and in the best interests of the City, she would be comfortable going with staff's recommendations. She added that the in-lieu fee option would also make the City more attractive to developers.

3.	**Location:**	**City-wide**
	Proposed Project:	Review Effectiveness of Existing Art in Private Development In-Lieu Fee Option – Study Issue
	Staff Contact:	Nancy Steward, 408-730-7342 nsteward@ci.sunnyvale.ca.us
	Notes:	*This item is scheduled to be considered by City Council on August 14, 2012.*

Nancy Bolgard Steward, Superintendent of Community Services, presented the staff report.

Comm. Hendricks referred to a letter provided on the dais from the Moffett Park Business Group confirming with staff that this group is not in support of staff recommendation Alternative 2 regarding a .1% additional fee for developers exercising the in-lieu option. Comm. Hendricks discussed the recommended alternatives in the report with Superintendent Steward.

Comm. Melton discussed with Superintendent Steward the limited number of people showing up for outreach meetings and the outreach meeting with the Moffett Park Business Group. Comm. Melton discussed with staff the recommended Alternative 1, which would allow more flexibility to developers to pay in-lieu fees. Staff said they do not know whether developers would choose to pay the in-lieu fee or provide art. Comm. Melton referred to page 5 of the report and provided a summary of the proposed flexibility to be allowed for developers to either provide artwork versus paying in-lieu fees, and related legal aspects. **Kathryn Berry**, Senior Assistant City Attorney, further discussed the legal aspects including nexus studies and fee mitigations. **Diana O'Dell**, Senior Planner, added that the proposed in-lieu fee is not being classified as a mitigation fee, but would be a cash equivalent option for developments. Comm. Melton asked staff if, hypothetically, the in-lieu fees could be used towards providing an art museum. Superintendent Steward said this question came up recently and has been posed to the City Attorney's office, however a formal opinion has not yet been provided. Superintendent Steward said this question comes up every few years and discussed the previous outcomes to the question.

Comm. Sulser discussed with staff Attachment G regarding in-lieu fees in other cities, confirming that these are the only cities that responded to the survey, which does not include many of our neighboring cities.

Vice Chair Dohadwala discussed with Superintendent Steward the 1% fee. Ms. O'Dell said the 1% fee information is included in the zoning ordinance with Superintendent Steward referring to Attachment C, page 2, Chapter 19.52.030 of the proposed ordinance. Vice Chair Dohadwala asked if there are projects for public art waiting to be funded. Superintendent Steward said yes and discussed projects and funding.

Comm. Hendricks referred to page 10 of the report and clarified with staff that the in-lieu fees could go towards art anywhere in the City and not just in the project zone.

Chair Larsson discussed with staff the decision makers for whether art has to be provided. Staff discussed the process for various scenarios related to providing art. Chair Larsson asked

if there is there flexibility to collect and use in-lieu fees in private development areas. Superintendent Steward said no, that the way the use of in-lieu fees is currently envisioned, that would not be an option as the in-lieu fees become public money.

Comm. Hendricks discussed with staff if the Planning Commission would have the flexibility to require art from possibly a mixed-use project even if the size or scale of the project did not require it. Superintendent Steward said the Planning Commission could request it, but could not require it. Staff said if that is desired the regulation would need to be rewritten to include residential development. Comm. Hendricks said that in the future the City might want to look at this with Superintendent Steward saying she could include the issue in her tickler file and that the Commission might want to suggest a study issue.

Chair Larsson confirmed with staff that including residential now would be outside the scope of this study issue.

Chair Larsson opened the public hearing.

Pat Castillo, a member of the public, said speaking as a resident only, she would like to ask the Planning Commission to heartily support the changes proposed in the ordinance. She discussed some of the history from the 1990's of this issue. She said she knows money is tight; however it is also important that we have art. She discussed the importance of the use of a variety of art. She said she has no problem adding the additional percentage to deal with maintenance and hopes the Commission supports the staff report.

Comm. Melton asked Ms. Castillo to comment about staff recommendation Alternative 1, explaining why and how he is struggling with the recommendation. Ms. Castillo commented on Comm. Melton's question.

Chair Larsson closed the public hearing.

Comm. Melton discussed with staff the involvement of the Arts Commission, which provides final approval for private art with staff saying that the decision can be appealed to Council.

Chair Larsson discussed with staff the criteria the Art Commission uses in making their decisions, with staff saying it is very specific.

Vice Chair Dohadwala discussed with staff the various mechanisms of funding for public arts.

Chair Larsson commented about the accounting of funds collected recently, and confirmed with staff that not much has been spent. He said with the proposed changes the City could collect in-lieu fees but not spend them. He said it seems like the Master Plan is the answer to this concern with Superintendent Steward confirming, yes, that it is an important tool and would help set criteria and priorities for spending the in-lieu fees including the type of art, location.

Comm. Hendricks moved to recommend to City Council Alternatives 1, 2 and 3 as shown in the report. Comm. Sulser seconded.

Chair Hendricks said he is happy to make this motion. He said he thinks this is great. He said a lot of the proposed clean-up, and the other part is regarding in-lieu fees. He discussed a couple of recent projects and art related to the projects. He said he likes the flexibility in the changes and hopes that developers do not just start paying the in-lieu fees as a default. He said the intent is to still have art on sites and hopefully the Planning Commission can encourage developers to provide the art. He said he still has some question on the .1% maintenance fee.

Comm. Sulser said most of the proposed changes are common sense. He said he likes the in-lieu fee option and that it potentially makes more public art available. He said this could allow art to be redistributed to other parts of Sunnyvale. He said he also does not want to see every developer choose to pay the in-lieu fee.

Comm. Melton requested of the maker of the motion that the motion be split into two separate motions. He said he would like Alternative 3 to be one motion and then a second or even a third motion to vote on the alternatives separately. Comm. Hendricks asked why, with Comm. Melton explaining that it would allow him to more precisely register his recommendation. Chair Larsson suggested he could offer a Friendly Amendment. Comm. Melton offered a Friendly Amendment to amend the motion to speak solely to Alternative 3. He said he still has reservations about Alternative 1 and 2 and has no reservations about Alternative 3. The maker of the motion did not accept the Friendly Amendment, and said however, he would recommend that the Commission vote against his motion if they would prefer to separate the Alternatives. Comm. Melton said he understood. Chair Larsson suggested to Comm. Melton that a formal amendment could be offered. Comm. Melton said he would rather have his comments provided for the record and proceed with a vote. Comm. Melton commented that he likes the original purpose of art in private development with the humanizing of the corporate developments, and would like it to continue. He said he echoes Comm. Hendricks and Comm. Sulser's concern about the developers preferring to pay the in-lieu fees and no longer providing the art. He said he would not be supporting the motion.

Chair Larsson said he would be supporting the motion. He said he shares the concern that developers may go for the in-lieu option and we would not have the art in private development we would like. He said that for him the key is the Master Plan that sets out a vision for what we would like to do with art in the City. He said if we receive too much money, the City could stop excepting the in-lieu fees. He commented that he is not sure if the Master Plan is the appropriate place to talk about the balance of public or corporate art.

Comm. Hendricks acknowledged the concerns of Comm. Melton. He said he thinks there is mitigation. He said most of the affected projects would come before the Planning Commission, and the Commission would have an opportunity to talk to the developers. He said if we see a pattern we can ask staff to look at. He commented that he has seen projects that the art does not fit appropriately.

Vice Chair Dohadwala said she would be supporting the motion. She said she agrees with Comm. Melton that we may suddenly see less art in corporate areas. She discussed Moffett Park and said she thinks the developers would keep the 1%. She says she likes that staff has some flexibility. She said she would like to explore other avenues for funding for public art. Vice

Chair Dohadwala said she would like money dedicated towards particular public projects. Superintendent Steward commented that the kind of tool to dedicate to projects is not in place right now, however if the modification is approved the next step would be to develop the tool to prioritize where we want to use these funds.

ACTION: Comm. Hendricks made a motion to recommend to City Council Alternatives 1, 2 and 3 as shown in the report on pages 13 and 14: Alternative 1 regarding allowing property owners to make an in-lieu contribution to the City's Public Art fund, instead of placing art on site, even when there is an appropriate location for art; Alternative 2 regarding adopting an additional 1/10th of a percent fee for developers exercising the in-lieu fee option; and Alternative 3 regarding approving amendments to Council Policy 6.4.4., Art in Public Construction including recommendations to staff. Comm. Sulser seconded. Motion carried, 4-1, with Comm. Melton dissenting and Comm. Chang and Comm. Kolchak absent.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at their August 14, 2012 meeting.

DRAFT