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Introduction

In accordance with the City Auditor's 2004-05 Audit Workplan, we have audited the Public Art Program of the Office of Cultural Affairs. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Objective, Scope, and Methodology section of this report.

The City Auditor's Office thanks the Public Art Program, Office of Cultural Affairs, the Department of Public Works, City Manager's Office, and Budget Office staff for giving their cooperation, information, and assistance during the audit process.

The Public Art Program

In 1984, the City established the Art in Public Buildings Program. The ordinance specified that one percent of funds from eligible construction projects be used for acquiring works of visual art. In 1988, the program underwent several changes, including increasing the percentage allocated for public art funds from one percent to two percent, creating an oversight committee, and changing the program name to Art in Public Places. In 1992, the City Council approved expanding funding to include parks construction; focusing on commissioning site specific and architecturally integrated works of art; allowing up to 15 percent of the allocation to be used for project administration; and using peer panels to recommend qualified artists for projects.

The Office of Cultural Affairs (OCA) manages the City's Public Art Program (Program). The 13-member San José Arts Commission through its subcommittee, the Public Art Committee, oversees the Public Art Program. A Public Art Advisory Committee comprised of artists, arts and design professionals, and urban planners assists the Public Arts Committee. The Committees meet monthly to review "aesthetic and technical merits of proposed artwork designs."

Legal Mandate

The Program operates under Title 22 of the Municipal Code, which specifies that "the city council and redevelopment agency Board shall provide in their respective annual capital improvement budgets for amounts of not less than two percent of the total amount budgeted for each 'eligible construction project' to be set aside" to commission, purchase, and install

artworks. Eligible construction projects shall include any capital improvement project of the City or Redevelopment Agency involving a public place. This applies to capital projects that exceed a total cost of $500,000 and are identified in the Annual Capital Improvement Budget of the City or Redevelopment Agency.

Resolution 64284 (adopted by the City Council December 10, 1992) established guidelines and procedures for the Program. The resolution specifically addressed factors for calculating the art allocation and identifying eligible art projects. Art funding for an eligible construction project is supposed to be set when project funds for the design phase of the project are first appropriated. The total estimated cost for the eligible construction project is supposed to include the cost of engineering, design, and construction, but exclude costs related to land acquisition, soil remediation, and off-site improvements. If the proposed budget for the eligible construction project increases as a result of a "deliberate decision" to change the size or nature of the project, "the Art Allocation shall be increased proportionally" and funds appropriated accordingly.

The resolution also requires that after the adoption of the Annual Capital Improvement Budget of the City, the City Manager is supposed to notify the Arts Commission of eligible construction projects and of the amounts budgeted for each project. Additionally, the City Manager is also supposed to make the Arts Commission aware of the process for selecting architectural and design-related consultants, and the implementation schedule for each project. Further, the resolution requires that the Director of any City department responsible for the construction of an eligible construction project shall designate a staff member to meet with OCA staff to discuss the nature of each project identified in the five-year Capital Improvement Plan and the Annual Capital Improvement Budget.

Art Master Plans

For major new projects or bond measures, the Program develops a specific Public Art Master Plan for the project or groups of projects. Specific Public Art Master Plans have been approved for the 1) Martin Luther King, Jr. Library; 2) New Civic Center; 3) Park and Library Measure O & P Bond Projects; and 4) Airport Master Plan. A Master Plan is currently being developed for the Police and Fire Safety

Facilities Bond Projects. Additionally, in December 2000, the San José Arts Commission issued a Public Art Master Plan for the years 2000 to 2005. The plan focused on addressing issues related to neighborhoods, Strong Neighborhood Initiative, public-private collaboration, education and outreach, and program management. Specific areas of concern included Program staffing, funding conservation, and maintenance of artwork. According to the OCA Director, the Master Plans provide a strategic approach to guide large projects and project groups that responds to the City and client department goals.

Public Art Workload

The 2004 Public Art Workplan (dated March 12, 2004) has 40 projects with a total art budget of $18,148,175 resulting from capital construction projects valued at over $900 million. Of these 40 projects, 25 are City Bond-funded[1], eight are City-funded, six are privately-funded[2], and one is Redevelopment Agency-funded. In 2003, the Program oversaw the completion of nine projects with total art budgets of $2,319,815, of which $347,972 was allocated for administrative expenses.

As of February 4, 2005, as shown in Exhibit 1, the Public Art Program has 38 public art projects[3] funded at $18.3 million. Of these 38 public art projects, nine are undergoing artist selection, 15 are undergoing design development, five are undergoing fabrication and installation, and nine are pending.

[1] Includes one project funded with Airport bonds.

[2] As part of agreements with San José Redevelopment Agency, private developers have been required to provide one percent of project costs for public art.

[3] Includes three private developer-funded projects.

Exhibit 1 Public Art Projects As Of February 4, 2005

	Council District	Project	Funding Source	Project Status	Public Art Budget
1	Citywide	City of San José/San José State Joint Library (Group IV)	RDA	Design Development	$970,440
2	Citywide	Civic Center: Streetscape	City/Bonds	Design Development	$1,081,000
3	Citywide	Civic Center: Water Feature	City/Bonds	Fabrication Installation	$2,869,000
	Citywide	Civic Center: Master Plan	City/Bonds	Completed	$50,000
				Sub-total Civic Center	**$4,000,000**
4	Citywide	San José Airport North Concourse	User Fees	Pending	$3,814,000
5	Citywide	Emma Prusch Park	City/Bonds	Design Development	$123,086
6	Citywide	Happy Hollow Park and Zoo	City/Bonds	Pending	$1,249,808
7	Citywide	Police South Sub-station	Public Safety Bond	Artist Selection	$1,000,000
8	Citywide	Sports Complex: Shady Oaks	City/Bonds	Pending	$195,811
9	Citywide	Sports Complex: Singleton	City/Bonds	Pending	$205,050
10	Citywide	Trail System	City/Bonds	Design Development	$224,154
11	1	Police West CPC/Starbird Park	City/Bonds/RDA	Artist Selection	$145,770
12	2	Fire Station #35	Public Safety Bond	Artist Selection	$40,000
13	2	Edenvale Garden Park	City/Bonds	Design Development	$143,152
14	2	Edenvale Library	City/Bonds	Design Development	$209,087
15	2	Hayes Mansion: Interior Art	City/Bonds	Pending	$249,333
16	3	Father Sheedy Park	O & P Bonds	Artist Selection	$20,000
17	3	Joyce Ellington Library	City/Bonds	Design Development	$158,754
18	3	Roosevelt Community Center	O & P Bonds	Artist Selection	$382,562
19	3	Adobe/Phase II: Façade	Private	Design Development	$423,300
20	3	CIM Group	Private	Design Development	$1,379,110
21	3	CIM Group	Private	Artist Selection	$971,140
22	4	Fire Station #25	Public Safety Bond	Artist Selection	$40,000
23	4	Mabury Road Park	City	Pending	$57,750
24	4	River Oaks/Coyote Creek Trail	City/Bonds	Fabrication	$74,931
25	4	Morrill Community Center	City/Bonds	Pending	$80,850
26	4	Berryessa Branch Library	City/Bonds	Fabrication Installation	$200,114
27	5	Plato Arroyo Skate Park	O & P Bonds	Artist Selection	$10,000
28	5	Hillview Branch Library	City/Bonds	Design Development	$205,876
29	5	Alum Rock Branch Library	City/Bonds	Design Development	$209,052
30	5	Story/King Road Retail	Private	Design Development	$240,625
31	6	Rosegarden Library	City/Bonds	Design Development	$143,070
32	8	Meadowfair Park	City	Pending	$12,000
33	8	Evergreen Branch Library	City/Bonds	Fabrication	$188,897
34	8	Evergreen Center Expansion	City/Bonds	Pending	TBD
35	9	Fire Station #17	Public Safety Bond	Artist Selection	$40,000
36	9	Camden Community Center	City/Bonds	Fabrication Installation	$171,406
37	9	Cambrian Branch Library	City/Bonds	Design Development	$229,546
38	10	Almaden Branch Library/Community Center	City/Bonds	Design Development	$514,349
				TOTAL	**$18,323,023**

*Note: This table excludes closed projects shown on the 2004 Workplan, except for one Master Plan Project which is shown to calculate total project costs. The total project cost shown for the joint City/San José State Library is based on the City's share of construction costs. Currently, only $60,200 in Group IV project costs remain. The art budget costs shown for Fire Stations #35, #25, and #17 represent only design and administrative costs. Fabrication and installations have not been set.

Public Art Program Budget And Staffing

The Program is located within the Office of Cultural Affairs (OCA), which reports to the City Manager's Office.[4] Program staffing includes an Arts Program Director, four Senior Arts Program Officers, and one Arts Program Coordinator. The two percent of capital budget art allocation funds all positions except for two Senior Arts Program Officers positions which the City's General Fund supports. In 2004-05, the total administrative budget for the Program is almost $700,000, of which $655,000 is for personal services and $41,000 is for non-personal services. Of the four Senior Arts Program Officers, three are responsible for managing art projects. The three Senior Arts Program Officers split the workload of 33 active projects valued at about $17 million.

Since December 2003, a Senior Arts Program Officer has been responsible for conducting project outreach activities, including managing the outreach database and sending out meeting notifications. Program Officers are responsible for 1) the organization and oversight of the artist selection process; 2) artist contract management; 3) art project budget management; 4) negotiating schedules with artists; 5) communication and coordination with City departments and City Council members; 6) developing written reports for commissioners and the City Council; and 7) delivering public presentations to community members and commissioners.

The Program Coordinator is responsible for 1) developing artist rosters including artist outreach and coordination of selection with Program Officers; 2) developing and managing artist and media databases; 3) scheduling and monitoring artwork maintenance; 4) coordinating with the Public Art Committee; 5) preparing staff meeting agendas; and 6) managing small, neighborhood-based public art projects.

[4] The Mayor's March Budget Message for 2005-06 has a recommendation to the City Manager to merge the OCA into the Office of Economic Development.

Audit Objective, Scope, And Methodology	Our audit objectives were to review the performance of the Program related to public art allocation, community participation, and artist selection. We limited our review to City Departments' public art projects listed in the 2004 Annual Workplan and project status as of February 4, 2005. We interviewed staff from the Program, the Department of Public Works, the Department of Transportation, the City Manager's Budget Office, and the City Attorney's Office. We surveyed 72 Public Art Task Force members[5] and received responses from 20 participants. We also met with the Chairman of the Public Art Committee and City Council members. We attended and observed an artist selection meeting for Starbird Park and participated in a walking tour of Public Art located in Downtown San José, including the City of San José/San José State University Joint Library. We obtained and reviewed information pertaining to public art allocation, community participation, and artist selection. We matched program cost information against the City's Financial Management System on a limited basis to verify the accuracy and reliability of the information.
Major Accomplishments Related To This Program	As part of the City Administration's response to this audit, the Deputy Director of the Office of Cultural Affairs informs us of the Public Art Program accomplishments.

[5] Included 20 Airport Art Steering Committee members.

Finding I

Strengthening The Public Art Program's Internal Controls Will Improve Fiscal Accountability And Program Effectiveness

The City of San José's Office of Cultural Affairs (OCA) manages the City's Public Art Program (Program). The Program is primarily funded from two percent of certain capital construction project funds. During our audit of the Program, we found that the OCA needs to strengthen its internal controls related to project costs, community participation, and artist selection. Specifically, we found

- The City Manager has not complied with the Municipal Code requirement to notify the Arts Commission when eligible construction projects do not receive an art allocation;
- Public art allocations do not always reflect the actual cost of a capital project;
- City departments changed public art allocations without involving Program staff;
- Program staff do not consistently track the administration cost of public art projects;
- Program staff involve the community in the public art process, but community involvement could be more meaningful;
- The OCA has not always followed its own policies and procedures regarding Public Art Task Forces (PATFs);
- The Program overstates its community participation statistics; and
- The Program needs to establish performance measures for artist workshops.

The City Manager's Office and OCA can strengthen the Program's internal controls and improve its fiscal accountability and effectiveness by notifying the Arts Commission when eligible construction projects do not receive an art allocation and better define public visibility and eligible capital projects for complying with Municipal Code funding requirements. Program staff should also submit for City Council consideration a proposal for increasing art allocations

when project budgets increase significantly. In addition, the City Manager's Office needs to require City departments to coordinate with the Program Director prior to proposing any public art allocation reductions. The Program also needs to track and monitor administration cost information for each individual public art project and track and report complete information on pooled public art project funding. Finally, the Program needs to report accurate information regarding public participation in its quarterly reports; develop a benchmark and guidelines for community participation; develop a strategy to increase community participation; ensure PATFs are established for all eligible art projects; and report performance measures for local artist outreach efforts.

The City Manager Has Not Complied With The Municipal Code Requirement To Notify The Arts Commission When Eligible Construction Projects Do Not Receive An Art Allocation

The City Manager has not complied with a technical provision of the Municipal Code to notify the Arts Commission when eligible construction projects do not receive an art allocation. The Municipal Code requires that when the City Manager and the Redevelopment Agency Executive Director submit the annual capital budgets for the City and Redevelopment Agency, each may exempt eligible construction projects from receiving an art allocation if certain criteria are met. Projects may be exempted if the anticipated public visibility and/or public traffic usage of the capital improvement project is too minimal to warrant expenditures of funds for works of art. To exempt a project, the City Manager and Redevelopment Agency Executive Director are required to notify the Arts Commission of proposed exemptions. The 2004-05 Adopted Capital Budget has 157 projects with a minimum budget of $500,000 or more. The proposed budget for these projects is over $716 million. However, most of these projects may not be eligible construction projects because they are related to sanitary and storm sewers or the acquisition of capital assets, such as communication equipment. For example, a capital-funded project without an art allocation is the $70 million Water Pollution Control Plant Reliability Improvements Project. According to a Senior Sanitary Engineer, this project should be exempt because the project is located in the interior part the treatment plant, away from public right of way, and the majority of the facility will be constructed below ground. As a result, this project will have minimal public visibility. However, the Administration exempted this project from the two percent art allocation without notifying the Arts Commission.

According to Program staff, it is not always clear when a capital project should be exempted from the two percent art allocation. The Municipal Code allows projects to be exempted if "the anticipated public visibility and/or public traffic usage of the capital improvement project is too minimal" to warrant an art allocation. In our opinion, the Municipal Code should be clarified to minimize any confusion regarding project exemptions. The City Manager's Office should better define public visibility for purposes of identifying all construction projects that should receive a two percent art allocation.

We also found other construction projects listed in the capital budget that the Administration incorrectly exempted from receiving an art allocation. Examples of these capital budget projects[6] are the 13th Street Streetscape project funded at $1,452,000 (a $29,040 art allocation omission) and Monterey Corridor Median Improvement Project funded at $2,836,000 (a $56,720 art allocation omission). According to a Redevelopment Agency Program Manager, the Administration exempted capital projects because it is not clear if transportation and streetscape-related projects fall under the Public Art Program.

We should note that the Municipal Code establishes that capital improvement projects over $500,000 involving a public place qualify for an art allocation. Public places include, but are not limited to "sidewalks, streetscapes, plazas, parks, buildings, bridges, parking garages, sports and recreational facilities." Thus, it appears that the two projects noted above should have qualified for an art allocation.

We recommend that the City Manager's Office:

Recommendation #1

Notify the Arts Commission when eligible construction projects do not receive a public art allocation. (Priority 3)

[6] These two projects are part of the San José Redevelopment Agency Area Traffic Capital Program.

We recommend that the Administration:

Recommendation #2

Better define public visibility and eligible capital projects for purposes of identifying all construction projects that should receive a two percent art allocation. (Priority 3)

Public Art Allocations Do Not Always Reflect The Actual Cost Of A Capital Project

Once public art allocations are established, they can be increased in the event of a "deliberate decision to change the size or nature of the eligible construction project." However, art allocations do not increase when the cost of an eligible capital project increases significantly due to factors such as inflation or staff underestimating the cost of the project. For example, we found one project whose proposed budget increased 34 percent without a corresponding increase in the art allocation. Specifically, in 2001, Public Works staff provided the Program Director with estimated construction and engineering-related costs of $9.1 million to construct the Animal Shelter. Public Works staff calculated the two percent art allocation at $182,000, or two percent of $9.1 million. Subsequently, when the City bid the project in 2002, construction and engineering-related costs totaled $12,237,000. As a result, the public art allocation for the Animal Shelter should have been $244,470 or $62,740 more than the original allocation. Public Works staff did not allocate the additional $62,740 to the project.

Public Works staff indicated that by the time the bids came in, the selected artist was already working on incorporating the art project into the facility design and any additional art allocations would have complicated the project. Public Works staff also believed that the increased costs did not necessitate increasing the art allocation.

It appears that part of the art allocation problem may be timing. Public Works staff calculates the art allocation when it develops budget estimates for the project. Public Works prepares budget estimates up to two years before construction begins. By the time construction occurs, construction costs are sometimes higher than the original estimates, with the Animal Shelter project being a case in point. In our opinion, Program staff should submit for City Council consideration a proposal to

allow public art allocations to be increased in the event of higher project costs. By so doing, art allocations would be more reflective of the actual cost of a capital project.

We recommend that the Program Staff:

Recommendation #3

Submit for City Council consideration a proposal to allow art allocations to be increased in the event of increased project budgets beyond a specific percentage or dollar amount. (Priority 3)

City Departments Changed Public Art Allocations Without Involving Program Staff

We found that in some situations City departments changed public art allocations without involving Program staff. Specifically, in at least two cases, City departments directly reduced or proposed reducing public art allocations, resulting in public art allocations of less than two percent without properly notifying or involving Program staff. These two projects included a public safety-related project and the New Civic Center project.

In a December 8, 2003 memorandum from the Acting San José Police Department (SJPD) Chief to a Deputy City Manager, the SJPD proposed reducing the $1,077,527 public art budget for the SJPD's South Sub-station by $77,527 and use this money to increase public art funding for the Driver Safety Training Project from $164,690 to $239,966. SJPD staff envisioned using the art funding for "artistic and decorative fencing and screening of the Driving Course." The fencing was needed to screen portions of the training facility from motorists on Highway 237, who could be distracted by police cars with full lights and sirens heading toward the highway. In a March 1, 2005 memorandum to the Deputy City Manager, the SJPD Chief recommended returning $165,000 of the $239,966 Driver Safety Training Project public art allocation to the capital project budget. Neither, the SJPD nor the City Manager's Office informed Program staff of this public art funding recommendation in a timely manner.

The New Civic Center Master Plan the City Council adopted on June 19, 2001, established a plan to spend $5 million[7] on public art at the New City Hall. The plan proposed allocating funds as follows:

Water Feature/Fountain	$2,650,000
Streetscape	$1,000,000
Bay Area Art Collection	$550,000
Civic Gallery	$50,000
Project Administration	$750,000
Total	**$5,000,000**

In March 2003, Program staff realized that the Adopted Capital Improvement Program Budget showed a $4 million art allocation for the New Civic Center. According to Program staff, by the time it realized that a smaller appropriation had been made, it had committed $3,650,000 to fund the Water Feature and Streetscape art projects. Consequently, the $550,000 for the Bay Area Art Collection, $50,000 for Civic Gallery, and $400,000 of the $750,000 for Project Administration that were in the adopted plan were not funded. As in the previous case, no one in the Administration informed Program staff that the public art allocation for the New City Hall had been reduced.

We recommend that the City Manager's Office:

Recommendation #4

Require departments to coordinate with the Public Art Program Director prior to proposing any public art allocation reductions. (Priority 3)

Program Staff Do Not Consistently Track The Administration Cost Of Public Art Projects

We found that the Program staff do not consistently maintain detailed records for individual public art projects. Specifically, the Program does not track project administrative costs in a way to identify the total cost of delivering individual art projects.

The Program generally accounts for individual project costs in three cost categories – administration, design, and fabrication/installation. Resolution 64284 sets the allowable cost for project administration at 15 percent of the project art

[7] An email from the then Public Art Director, indicated that Public Works negotiated the $5 million amount for public art at the New Civic Center, as opposed to the two percent calculation.

allocation. Administrative costs include – salaries, benefits, overhead, and supplies. Design and fabrication/installation costs primarily represent professional and consultant services contracts with artists for the development and construction of art projects.

We reviewed cost information for six art projects and found that in some cases the Program combined administrative costs for individual projects into one lump sum administration category. For example, Program staff combined the administrative costs for all Parks, Recreation, and Neighborhood Services park bond projects into one cost category in the City's Financial Management System (FMS). As a result, the Program cannot account for administrative staff time, supplies, and overhead associated with individual park projects. Consequently, the Program cannot determine if the administrative costs of individual park bond projects violate the Resolution 64284 restriction of 15 percent. More specifically, our review of FMS information revealed that none of the $65,000 public art budget allocation for the Fontana Park project was spent on administration even though Program staff did in fact spend time and effort towards the project. Thus, it appears that the Fontana Park project exceeded its $65,000 public art budget, and Program staff used other public art project allocations to fund the administrative costs of the Fontana Park project.

Program staff indicated that the loss of a budget analyst position has hampered their ability to adequately track and account for individual art projects.

In our opinion, the Program's accounting system is not adequate to account for individual project administrative costs. As a result, the Program cannot ensure that it is in compliance with the Resolution 64284 administrative cost restriction of 15 percent for individual public art projects.

We recommend that the Program:

Recommendation #5

Develop a means to track and monitor administrative cost information for each individual public art project. (Priority 3)

OCA Did Not Adequately Track And Communicate Pooled Funding For Some Public Art Projects

Program staff did not maintain adequate documentation of which project funds it pooled for these projects. We should note that the Public Art Workplan for Measure O & P Bond Projects, May 2002, proposed a recommended strategy to pool funding for smaller neighborhood park projects. However, the workplan did not fully document on which art project funds would be pooled, nor did Program staff communicate any information on pooled project funds to the City Council or the City Manager's Budget Office.

We found that five public art projects had allocations greater than two percent which resulted from Program staff transferring art allocation amounts among various projects. Even though the Municipal Code allows allocations greater than two percent, Program staff did not keep budget information on pooled art allocations to allow for the tracking of transferred funds. The Budget Office was not aware that Program staff had transferred art allocations among projects. As a result, the Budget Office did not have correct information regarding some art project allocations.

We found that Program staff pooled art allocation funds from smaller neighborhood park projects within Council Districts to fund larger art projects. For example, a Public Task Force is working closely with an artist to a design a gazebo for the Emma Prusch Regional Park. According to the Budget Office records, the art allocation should have been $70,000. However, Program staff allocated an additional $53,096 in Almaden Lake Park O & P art funds to the gazebo project for a total of $123,086. We found that Program staff also allocated additional art funding for the Almaden Library/Community Center; Maybury Road Park; Citywide Trail Projects; and Happy Hollow Park and Zoo.

We recommend that Program staff:

Recommendation #6

Track and report information on pooled public art project funds to the City Council and the City Manager's Budget Office. (Priority 3)

Program Staff Involve The Community In The Public Art Process, But Community Involvement Could Be More Meaningful

The OCA Director describes the Program's community involvement process as the most comprehensive in the country. Generally, Program staff convene community-based panels to select artists for art projects. For each public art project, a Public Art Task Force (PATF) comprised of local residents is supposed to be established to review and approve the public art project. A PATF is comprised of City Council-appointments and other interested community members willing and able to commit to attending five meetings over the duration of the art project. The PATFs are responsible for reviewing and providing input for 1) the art design concept; 2) schematic and design development proposals; 3) the Public Art Committee; and 4) the Public Art Advisory Committee.

For each art project, Program staff develop an outreach database of interested community members. Program staff gather names from various sources, such as City Council offices, neighborhood associations, service organizations, churches, school district offices, and other groups tied to the specific project. Program staff use the database to invite interested participants to community meetings about the project and to mail, email, and telephone potential participants.

Additional opportunities for community participation in the public art process include the Arts Commission and its sub-committee—the Public Art Committee. The Public Art Committee oversees and advises the Commission on the Program process, including the selection, acquisition, placement, and conservation of public works of art in the City's collection, and implementation of the City's Public Art Master Plan.

The OCA Has Not Always Followed Its Own Policies And Procedures Regarding Public Art Task Forces

The PATF is the cornerstone of the Program's community participation process. We found that not all public art projects included a formal PATF as internal OCA policy and procedures require. We found that of 33 active public art projects, 21 had a PATF and 12 projects did not have a PATF. Of those 12 projects without a PATF, seven are in pending status. According to the Program Deputy Director, four public safety projects will have PATFs as they are initiated. Furthermore, the Program Deputy Director noted that for two projects that

were developed without PATFs, the Animal Shelter (completed) and the Citywide Trail system, Program staff held community meetings, met with community groups, and involved the public in the art process.

We recommend that the Program:

Recommendation #7

Ensure Public Art Task Forces are established for all eligible art projects and report any exceptions in its quarterly reports to the Arts Commission. (Priority 3)

We surveyed 72 PATF members to obtain their opinions on the public art process. Of the 72 PATF members we surveyed, 20 (28 percent) responded. Of the 20 PATF members who responded to our survey:

- 75 percent agreed or strongly agreed that meeting notices were received in a timely manner;
- 70 percent agreed or strongly agreed that PATF meetings were held at convenient times;
- 70 percent agreed or strongly agreed that their participation made a difference in the project outcome;
- 75 percent agreed or strongly agreed that Public Art Program staff were receptive and open to suggestions;
- 70 percent agreed or strongly agreed that their participation was valued by Public Art Program staff;
- 70 percent agreed or strongly agreed that their input and opinions were considered by Public Art Program staff; and
- 65 percent agreed or strongly agreed that community participation was an effective way to select the artist.

As shown above, the majority of PATF participants that responded to our survey were generally positive about their involvement in the public art process. However, some PATF members raised concerns about the authenticity of the community participation for individual art projects. For example, one PATF member indicated that Program staff solicited the residents' opinions so that only a few names and addresses could be listed as evidence of public participation.

Another PATF member expressed similar concerns. This PATF member felt that the PATFs' participation in the selection of the art itself was ancillary because Program staff had already selected the art before the public meeting, which staff held only because it was required. This PATF participant also said that staff, while polite and courteous, did not value community comments. Another respondent was concerned that the current approach for selecting projects may not allow artists who have specific ideas to be heard.

In our opinion, some PATF members appear to not know what their role in the art and artist selection process should be. The Program needs to clarify the expected role of PATF members in the art process and ensure that community participants can make a meaningful contribution to the public art process.

We recommend that the Program:

Recommendation #8

Establish guidelines for community members in the public art process and communicate those guidelines to potential and current Public Art Task Force members. (Priority 3)

The Program Overstates Its Community Participation Statistics

We found that the Program overstated its community outreach efforts to the Arts Commission and the City Council. Specifically, the Program reported inflated statistics on the number of public meeting attendees and flyers mailed. We found that the outreach statistics included public attendance figures from public art meetings, grand openings, groundbreakings, and general outreach activities. On a quarterly basis, the OCA Director issues a status report of the Public Art Workplan. Since 2004, a component of this report includes information on community outreach efforts. In the 2004 Public Art Third Quarter Report to the Arts Commission, dated November 3, 2004, the OCA Deputy Director reported that nine community meetings were held for four neighborhood-based art projects. Staff mailed 5,072 flyers and 828 residents participated in these community meetings. Similarly, in the 2004 Public Art Fourth Quarter Report (February 4, 2005) to the Arts Commission, staff reported that 10 community meetings were held for six neighborhood-based art projects. Staff reported that they mailed 3,202 flyers and 596 residents participated in these community meetings.

We reviewed the supporting documentation for the Fourth Quarter Report and found the following:

- Of 596 residents listed as participating in 10 community meetings, we verified that only 68 persons attended four community meetings related to reviewing design concepts and selecting artists for public art projects. Some of the 68 meeting attendees counted as residents included non-residents, such as artists invited to observe the meetings.
- Of 596 persons counted as participating in community meetings, 476 included participants in a groundbreaking ceremony, grand opening ceremony, multi-cultural festival participants, and History Park Family Day attendees. These 476 participants are a Program staff estimate.
- The 3,202 flyers Program staff listed as mailed included 750 flyers staff dropped off at branch libraries.

In our opinion, the OCA should ensure the Program collects and reports accurate participation information.

Overstated Statistics Mask Low Participation Rate

We found that, by aggregating various statistics, Program staff did not present the Arts Commission with a complete representation of community participation in specific arts meetings. As shown in Exhibit 2 below, the actual number of community members attending public art meetings ranged from 10 to 26 participants.

Exhibit 2 2004 Public Art Fourth Quarter Report: Meetings

Date	Project	Meeting Purpose	Number Of Meeting Attendees[8]
10/25/04	Edenvale Branch Library	View Design Concept	26
9/20/04	Joyce Ellington Library	Artist Selection	12
11/29/04	CIM Development	View Schematic Design	10
10/27/04	Cambrian Library	View Schematic Design	20

Community participation in the artist selection process appears to be quite limited. For example, at the September 20, 2004, Joyce Ellington Library artist selection meeting, the Program reported that it conducted outreach by mailing 1,146 flyers

[8] The number of meeting attendees was based on the number of people who signed the sign-in sheet. Attendees were not required to sign-in. The sign-in sheet noted that to receive meeting notices, attendees should fill out the form. It is possible that not all meeting attendees signed the sign-in sheet.

advertising the meeting. Exhibit 3 shows the actual breakdown of the 1,146 flyers Program staff reported as mailed.

Exhibit 3 Joyce Ellington Library Artist Selection Meeting Notification List

Number	Action
36	Joyce Ellington email List
68	95112 Zip Code Community Outreach database email
13	Arts Commissioners email
117	**Subtotal Emails**
72	General Community Outreach list (Neighborhood Associations, SNI, non-profit cultural groups)
81	Association for Viet Arts List
668	Mailing List 1,000 foot radius from library
821	**Subtotal Mailing**
150	Flyers distributed to J. Ellington Library
31	Reminder emails from J. Ellington email list
27	Phone Calls on 9/18 and 9/19
208	**Subtotal Flyers, Reminder Emails, and Phone Calls**
1,146	**Total Email, Mailing, and Phone Calls**

Source: Auditor analysis of OCA data.

Altogether, Program staff contacted 938 specific individuals for the Joyce Ellington Library artist selection meeting, but we found that about only one percent of those 938 individuals actually attended the meeting.

We recommend that the Program:

Recommendation #9

Report accurate information regarding meeting participants in its quarterly reports. (Priority 3)

Recommendation #10

Develop a benchmark for community participation and develop a strategy to improve community participation. (Priority 3)

The Program Needs To Establish Performance Measures For Artist Workshops

Public Art Program staff conducts a full-day annual training workshop for local artists. According to the Program staff, the workshop provides training to local and regional artists on all aspects of the public art process, perspective on various roles in public art making, case studies, and public art resources. As of 2002, Program staff conducted full-day workshops for local artists in order to insure that they would have a competitive advantage in applying for public art commissions. The Program offered workshops in 1994 as a full-day training and in 1996 over a period of seven to 12 weeks. The Program stopped offering the workshops from 1997 through 2001.

In order to evaluate if the workshops are successful in getting participating artists to join the pool, the Program should develop and report the number of local artists who attend workshops, apply for inclusion in the public art pool, and workshop artists receiving public art commissions. The Program reports the number of artist requests for assistance to which it responded and one-on-one artist meetings in its Quarterly Public Art Workplan to the Arts Commission. As shown in Exhibit 4, the Program reported that six artists joined the artist pool after attending public art workshops and four have received commissions.

Exhibit 4 Artist Workshop Attendees

Year Of Workshop	Number Of Attendees	Artists Applied To Artist Pool	Artists Included In Artist Pool	Commissioned Artists
2002	57	8	4	2
2003	14	5	2	1
2004	44	TBD	TBD	1
Total	**117**	**13**	**6**	**4**

Source: Public Art Program.

The Program does not report the statistics shown in Exhibit 4 in its quarterly report to the Arts Commission. In our opinion, the Program should include artist workshop participation information in its quarterly report to the Arts Commission.

We recommend that the Program:

Recommendation #11

Include in its quarterly reports to the Arts Commission performance measures on its efforts to groom local artists for public art commissions. (Priority 3)

CONCLUSION

The City Manager's Office and OCA can strengthen the Program's internal controls and improve its fiscal accountability and effectiveness by notifying the Arts Commission when eligible construction projects do not receive an art allocation and better define public visibility and eligible capital projects for complying with Municipal Code funding requirements. Program staff needs to bring forth a proposal for Council attention for increasing art allocations. In addition, the City Manager's Office needs to require City departments to coordinate with the Program Director prior to proposing an art allocation reduction. The Program also needs to track and monitor administration cost information for each individual public art project and track and report complete information on pooled public art project funding. Finally, the Program needs to report accurate information regarding public participation in its quarterly reports; develop a benchmark and guidelines for community participation; develop a strategy to increase community participation; ensure PATFs are established for all eligible art projects; and report performance measures of local artist outreach efforts.

RECOMMENDATIONS

We recommend that the City Manager's Office:

Recommendation #1

Notify the Arts Commission when eligible construction projects do not receive a public art allocation. (Priority 3)

We recommend that the Administration:

Recommendation #2

Better define public visibility and eligible capital projects for purposes of identifying all construction projects that should receive a two percent art allocation. (Priority 3)

We recommend that the Program Staff:

Recommendation #3 **Submit for City Council consideration a proposal to allow art allocations to be increased in the event of increased project budgets beyond a specific percentage or dollar amount. (Priority 3)**

We recommend that the City Manager's Office:

Recommendation #4 **Require departments to coordinate with the Public Art Program Director prior to proposing any public art allocation reductions. (Priority 3)**

We recommend that the Program:

Recommendation #5 **Develop a means to track and monitor administrative cost information for each individual public art project. (Priority 3)**

We recommend that Program staff:

Recommendation #6 **Track and report information on pooled public art project funds to the City Council and the City Manager's Budget Office. (Priority 3)**

We recommend that the Program:

Recommendation #7 **Ensure Public Art Task Forces are established for all eligible art projects and report any exceptions in its quarterly reports to the Arts Commission. (Priority 3)**

Recommendation #8 **Establish guidelines for community members in the public art process and communicate those guidelines to potential and current Public Art Task Force members. (Priority 3)**

Recommendation #9 **Report accurate information regarding meeting participants in its quarterly reports. (Priority 3)**

Recommendation #10 **Develop a benchmark for community participation and develop a strategy to improve community participation. (Priority 3)**

We recommend that the Program:

Recommendation #11 **Include in its quarterly reports to the Arts Commission performance measures on its efforts to groom local artists for public art commissions. (Priority 3)**

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Other Pertinent Information

Public Art Master Plan 2000

On February 20, 2001, the City Council accepted the Public Art Master Plan and directed the City Attorney to draft the Ordinance implementing changes in the Public Art Master Plan. The City Council also directed the Administration to include in the Master Plan more historical landmarks and originating industries and directed the Administration to consider public art partnerships with schools.

The Master Plan-recommended changes to the Public Art Ordinance and Resolutions included the following:

- Amend the Public Art Ordinance to allow up to 20 percent of the two percent art allocation to be used for project administrative costs;
- Enable artists' participation in the City's Urban planning development initiatives;
- Lower the threshold for eligible capital improvement projects from $500,000 to $100,000;
- Allow the pooling of public art funds within Council Districts;
- Amend the language of the Public Art Ordinance and accompanying resolutions to specify one percent for public art from project budgets of private development partnerships efforts led by the City of San José and San José Redevelopment Agency;
- Amend the City's General Plan to include language that public art be involved in neighborhood improvement planning initiatives; and
- Amend the language of the Public Art Ordinance to increase the City Manager's contracting authority to be consistent with the general contract authority provisions of the Municipal Code.

As of June 1, 2005, the Administration has not brought the Ordinance changes to the City Council. The Administration is planning on developing a new Public Art Master Plan with new proposals regarding the Ordinance. The Administration would like to clarify ambiguities concerning funding eligible construction projects. The Administration expects to begin work on the new Public Art Master Plan in July 2005.

The City Cannot Provide Local Artist Preference During The Artist Selection Process

The City Auditor's Office researched a City Councilmember's question (in relation to the adoption of the Airport Public Art Master Plan). The Councilmember asked if the City could increase the participation by local artists in the Public Art Program. The City Attorney's Office, working with OCA staff, drafted language that would provide a local preference in the artist selection process for the Airport Public Art Master Plan. That language is as follows:

> *"Local Artist Enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara. Evidence of legitimate business presence in San José shall include:*
>
> *A. Having a current San José business tax certificate; and*
>
> *B. Having either of the following types of places of business operating legally within the County of Santa Clara:*
>
> *1. The Artist's principal business office, place of business or studio; or*
>
> *2. The contractor's regional, branch or satellite studio or place of business with at least one full-time employee located in the County of Santa Clara.*
>
> *A "Small Business Artist Enterprise" means a Local Artist Enterprise that has Thirty-Five (35) or fewer total employees.*

The City Attorney's Office does not recommend that the City adopt local artist requirements or preferences that go beyond the local preference language cited above. As of the date of this report, a local artist preference has not been incorporated into the overall Public Art Program. Before such a preference could be incorporated, it would need to be reviewed and considered by the Arts Commission.

The Administration Was Unable To Provide Documentation To Validate Art Allocations For Several Park Projects

We attempted to validate the two percent public art allocations for the 36 public-funded art projects by verifying the eligible construction project budget estimates. For each eligible construction project, Public Works calculates the art allocation when it develops its budget estimates using a "Cost Estimating Sheet". Public Works prepares these estimates as much as two years prior to project construction. Public Works gave us Cost Estimating Sheets for 31 projects but was unable to provide us with Cost Estimating Sheets for five park projects. The Department of Parks, Recreation, and Neighborhood Services and Program staff were also unable to provide us with cost information for these five projects.

Since fall 2004, the calculation of the public art allocations has been automated as part of the Capital Budget process. This includes:

- Automated Cost Estimating Worksheet—The Capital Project Management System (CPMS) includes a capital project cost estimating module, of which, one cost element is Public Art. Based on the cost of the project and the public art exclusions (land acquisition and soil remediation), there is a line item in the cost estimating module for the project manager to place the public art contribution. Due to the restrictive nature of some of the funding sources for the capital projects that would exclude public art, the module allows the manager the flexibility to modify the public art contribution as needed based on these conditions. The information from the cost estimating module is transferred to the Capital Budget Preparation Database.
- The Capital Budget Preparation Database is used to download the budget information from the CPMS. This allows staff to further define the public art budget by itemizing any additional exclusions related to the funding of a project. This will allow staff to determine if a public art budget adjustment is necessary based on the change in the cost of the project. The database will also be used to determine whether all of the public art allocations have been identified. Staff will have to provide an explanation for the construction projects over $500,000 that do not have a public art allocation.

These recent changes to the budget automation process should result in more accurate and verifiable public art allocation information.

Click On The Appropriate Box To View Item

Administrator's Response

Appendix A