



POLICY AND SERVICES COMMITTEE MINUTES

Special Meeting
October 8, 2013

Chairperson Kniss called the meeting to order at 6:12 P.M. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Holman, Klein, Kniss (Chair), Price

Absent:

ORAL COMMUNICATIONS

None

AGENDA ITEMS

1. (Former Agenda Item Number 2) Provide Direction Regarding Proposed Public Art Program for Private Developments, Public Art Master Planning Process, and Staffing Plan to Support Public Art Programs.

Chair Kniss announced that Agenda Item 2 would be heard first, followed by Agenda Item 1.

Rhyena Halpern, Assistant Director of Community Services said the intent of including public art in private development was to reflect the creative and vibrant community, to enhance the visual landscape of the City, and to increase identity and civic pride. Staff researched 70 cities with public art programs to find out how they work with private developers. She noted that there were 48 cities in California that had a public art policy that included private development and said that many cities had an 'in-lieu' option for developers, which was to be discussed later.

Elise DeMarzo, Management Specialist for the Community Services Department said the qualifying projects must have a commercial development addition or reconstruction over 10,000 square feet, and have a minimum construction value of \$200,000; the data for the projects of the past three years did not affect non-franchise business owners. Developers that met the 10,000 square foot requirement and the budget threshold; they

MINUTES

could choose to either commission the artwork or pay the in-lieu fee for the art. She said Staff would assist developers by recommending artists, consultants, and project management assistance, along with advice about best practices in public art.

Kathleen Kavanaugh, Public Art Commissioner supported the One Percent for Art Memo. Throughout her career she interviewed developers that spent their time developing real estate in the construction environment. The developer and the artist worked very closely, due to important nuances that needed consideration in art projects. She observed that establishing goals and guidelines for collaboration beforehand helped the success of the final artwork.

Chair Kniss asked if the in-lieu option presented a problem.

Ms. Kavanaugh remarked that the artwork was traditionally incorporated into the projects she worked on; she was not involved in any in-lieu projects.

Council Member Holman asked about in-lieu funding set-aside for a new Staff position.

Ms. Halpern recommended up to 20 percent of in-lieu funds to be used for staffing. Staff intended on coming back to address the Fiscal Year (FY) 2015 Staffing Needs.

Council Member Holman said the economy was good at the time but the staffing need was ongoing and plans were in place.

Ms. Stump clarified that Staff was recommending reimbursement of actual costs up to 20 percent. Staff wanted to focus in on acquiring new art with the use of the fees, along with the project and administrative costs that were used in association with the actual cost of up to 20 percent. The 20 percent was intended for reimbursement of Staff time actually spent in association with the acquiring new pieces of art.

Council Member Holman asked if one percent of funds could be used to restore existing artwork on a site that was not required to be maintained.

Ms. Stump said there was no clear guidance on that area because it included maintenance on Palo Alto's existing public art collection. The funds discussed were not meant for restoring or maintaining existing artwork, they were attributed to new artwork.

MINUTES

Council Member Holman clarified that she was discussing the restoration of private development artwork.

Ms. Stump remarked that the draft Ordinance said if a developer chose to have artwork on their premises, they would be held responsible for maintenance. She added that if maintenance was needed on private premise artwork, there was a process through the Public Art Commission to receive approval for funding.

Council Member Holman clarified that Ms. Stump was talking about new artwork.

Ms. Stump said yes and that the drafted Ordinance was prospective. That meant having the Ordinance drafted so that it limited the City's ability to tax. This was an exception to strict rules regarding impact fees, and was not approved by the people or had not gone through the general proceedings requirements of the City. She clarified she was talking about artwork that dealt with regulatory issues, a newly developed site that required artwork. Developers had the option of paying in-lieu fees; those were funds used to acquire artwork that the City owned, maintained, and used for project management and maintenance.

Ms. Halpern added some of the Greg Brown murals were in the Cities collection. The number one challenge with public artwork was the maintenance and conservation of artwork, which was an obligation of the artwork owner.

Council Member Holman clarified there was a Greg Brown mural on a public building at the Post Office. She said that some definitions in the Staff Report were not complete. Additionally, in connection with "Finding" and "Purpose" in the Staff Report, she asked if Staff considered adding a "Sense of Place" section to the Ordinance.

Ms. Halpern said Staff could add that.

Council Member Price said looking at various examples of artwork showed how artwork can change a person's experience, she added that the issue of a long-term cultural Art Plan was common and showed the basis for a well done Art Program. She also mentioned the significance of how art should have an impact. Many cities had artwork that did not make the types of statements they ought to make. Some of the procedures and techniques transit authorities used in determining artist eligibility and processes in this regard were useful. She remarked on the recognition and fluctuation of resources that came in and how contracting out Staff time and costs were all

MINUTES

helpful suggestions. She wanted Staff to come back with an overall Staffing Plan, including financials, and to embed in the Plan how Palo Alto was able to offer the consulting services to the private sector developer.

Ms. Halpern clarified that Staff could be project managers on those private projects or, as needed, they could be contractors. If that did not work, Staff utilized an approved pool of contractors for projects. This allowed the Public Art Program to grow with the market. She said she would go over the Staff Report for clarity on that subject.

Council Member Price remarked that she looked forward to the community process as it moved toward the master planning.

Ms. Halpern thought impact was the reason there was so much success with the in-lieu option because it was possible to pool funds to make impactful work. She noted that municipalities did not have construction projects and thought the recommendations in the Staff Report were a good way to address that issue in the community.

Council Member Klein thought that at the range of the economic cycle, the suggestions Staff offered made a lot of sense. The chart in the Staff Report was useful but the suggestions were limiting because it needed to show the rates that all of the cities charged with regard to the private development aspect. His reasoning behind this was some cities charged more or maybe less than one percent.

Chair Kniss clarified that the Policy and Services Committee (Committee) was requesting a sub-chart be made showing all the public art in private development programs before this Item went before the full Council and to have the percentages separately identified in a chart.

Council Member Klein agreed and suggested showing what cities were charging on the chart. With regard to exemptions, he was thinking of entities that were excludable, such as private schools. He said there were many private schools in Palo Alto and asked if they were subject to the Ordinance at hand. He asked if Staff wanted to put private schools in a different category.

Ms. DeMarzo said she did not notice that private schools were called out for exemptions in her research. She noted that a lot of schools voluntarily brought artwork into their campuses.

Council Member Klein remarked there were some private schools that were involved and said there was a lighter touch with regard to private schools.

MINUTES

He wondered why Palo Alto Unified School District (PAUSD) was mentioned with regard to exemptions, since the City did not have any control over them.

Ms. Stump wanted to look into that area some more and restated the Ordinance was still in the draft format.

Council Member Klein suggested deleting PAUSD from the Ordinance because it could raise political sensitivities for no good reason.

Ms. Stump said Staff would take look at that.

Council Member Klein asked if, in regard to in-lieu fees, once the developer paid the money to the City, if the City was limited to using the funds toward new projects; he wanted to know how that would be tracked.

Ms. Stump said Staff needed to have good accounting on the fund and thought the funds were limited to new projects. The question of public art and in-lieu fees was discussed in the California Supreme Court in the Ehrlich case against Culver City because Culver City was not at one percent; that was possibly where the one percent came from. The court ruled that one percent was a permissible general land-use regulation similar to set-back requirements. The developers challenge was that the fee was an unsupported impact fee. The question was open until the court determined an outcome. The fee needed to be available to the developer's discretion and needed to be in-lieu to make it closely aligned with the artwork on the building itself.

Council Member Klein asked if a smaller developer had to pay one percent, then whatever the City decided to do with that money, like combine it with other smaller payments, would make it more impactful. If tracking the money very carefully was needed, he thought it would create an accounting burden on the Staff. He illustrated an example of a person that spent 1/5 of an hour working on a project that came from a fund of one percent.

Ms. Halpern said tracking multiple projects was done by assigning a figure for phases of a project. For example, if there was a \$10,000 public artwork project, and there was a selection phase, a fabrication phase, and an installation phase, Staff tracked the hours in phases.

Council Member Klein clarified that he was talking about how a Staff person's time was divided up during the day if they were not able to use new money for the older artwork. Putting artwork in three phases did not apply to the difference between existing artwork and new artwork.

MINUTES

Ms. DeMarzo noted that Staff in other cities accounted for public art in private development by carefully tracking their time.

Ms. Halpern noted Staff was working with Office of Management and Budget (OMB) to ensure Staff was using proper accountability.

Ms. Stump said Staff was working with Administrative Services Department as well and there were various standardized methodologies recommended.

Greg Betts, Director of Community Services noted that the Committee was familiar with contributions given from a number of different grant programs. Staff assigned different accounting codes per grant so that when the City was audited, it was possible for anyone to see how Staff's time was divided up.

Council Member Klein asked how old the Ehrlich vs. Culver City was.

Ms. Stump said she would have to research for more information.

Council Member Klein asked if one percent was a restriction and if it was a legal problem if Palo Alto went to 1.25 percent. There was a city listed in the Staff Report at two percent.

Ms. Stump remarked that there were several cities that were at two percent. She did not think it was an absolute requirement to stay at one percent and if Council wanted to add another quarter of a percent, she would look into it.

Ms. Halpern wanted more input from the Committee on incentivizing the in-lieu option by lowering the one percent to .95 percent.

Council Member Klein said he had seen the idea before, in Below Market Rate housing for example. He thought a reduction of that size was not much incentive. He added developers always come in higher than estimated and that might discourage private developers. He thought incentive needed to a lot lower to be a good incentive.

Chair Kniss thought One Percent for Art was a good sounding name and thought comparing cities like Santa Monica could be different because they do more development than Palo Alto. The in-lieu costs versus the actual artwork was a balancing act between the like or dislike of a presentation. Art was always going to be relative, and there was always going to be a discussion of who chooses the artwork and weighing different variables, like where the art was going to be situated.

MINUTES

Council Member Klein thought it would be good for Staff to pick out a number of cities, like Santa Monica, to see what their budget was. He did not recommend the City Council be involved in matters of taste. He advocated for public art to be experimental.

Chair Kniss said there was intentionally not an appeal to the City Council process woven into this discussion.

Council Member Price wanted to discuss exemptions. She noted some affordable housing projects that distinguished between elements produced by an artist, versus art by an architect. She thought it was important to pursue those kinds of projects because affordable housing projects needed artistic enhancement. Additionally she questioned the Staff Report portion that asked developers to assess their level of support; the point that talked about draft contracts with artists that allowed developers flexibility should conditions at the site changed was of interest to her. She wanted to know if it was that there were changes to the site plan, or were there budget modifications being discussed; she wanted to know if there were any examples of what draft contracts with artists looked like.

Ms. DeMarzo clarified that developers were considering moving artwork either within the site or off site; one developer said this offered more flexibility for him for the future.

Council Member Price wanted clarification on the deaccession, or potential moving of artwork. For example, if a company were to move in the future, she asked if the language for the conditions of approval ensured that the artwork was maintained.

Ms. DeMarzo remarked that the artwork was to remain with the building if the building was sold. If the developer decided on deaccession of artwork, the developer needed to notify the City and go through city policies.

Council Member Price suggested that Staff add a few transit agencies before going to Council.

Ms. Halpern remarked that many transit agencies decided on artwork that could withstand the public space.

Council Member Holman noted an inconsistency in the Ordinance regarding the Public Art Requirement for Public Developments and a certificate of occupancy; but she appreciated that being in the Ordinance. She noted a

MINUTES

conflict in the Staff Report regarding payment of in-lieu fees prior to the issuance of building permits.

Ms. Stump said Staff was still working on the details of when the Art Program would be integrated with the City standard.

Council Member Holman was concerned about art enhancement versus what was important to the project and how the artwork would be integrated into the development of the project. She remarked that the in-lieu fee was a challenging issue and emphasized finding ways to collaborate with the public because a review process was needed for the success of the program. The Ordinance listed exclusive architectural design and study, it did mention permitting fees; she suggested the term "soft costs" be used. She agreed with Council Member Klein that the 95 percent was not incentive enough for developers and liked the sound of One Percent for Art, but was happy calling it Percent for Art.

Chair Kniss remarked that developers offered the same suggestions.

MOTION: Council Member Price moved, seconded by Council Member Klein to recommend the City Council review and adopt the Staff recommendation:

1. Approve a Public Art Program for Private Developments, including adopting an Ordinance establishing art requirements and other key provisions (Attachment C).
2. Direct Staff and the Public Arts Commission to engage the public in a Public Art Master Plan process that will guide public arts acquisitions and programming under the Public Art Program.
3. Direct Staff to evaluate and bring forward recommendations regarding Public Art staffing, maintenance, project management, capital improvement needs and revenue estimates as part of the FY 2015 Proposed Budget document.
4. Direct Staff to return to the Committee in 2014 with recommendations to update the municipal percent for art policy that applies to City capital improvement projects.

Council Member Price looked forward to the discussion of this topic at the Council level.

Council Member Holman asked how Staff was going to decide on the percentage.

MINUTES

Ms. Halpern said Staff would eliminate the incentive and keep it at one percent; the in-lieu option was enough of an incentive.

Council Member Holman remarked that the Committee discussed making the percentage higher.

Ms. Halpern wanted to table this discussion for when they came back to the Committee.

Council Member Holman warned that once the percentage was in place, it would be hard to revise.

Ms. Stump stated that the Committees input was helpful and observed that the Council and the Committee wanted a few options for the next discussion in terms of the size of the art contribution. She noted that Staff, the City Manager, and the Community Services Director needed to think about presenting some options for next time. She remarked that whatever Council wanted to do with the private contribution should be mirrored with the Cities own contribution.

Council Member Holman supported the program and suggested adding to the Ordinance that art contribute to a safer environment. She noted collaboration with other communities and wanted that mentioned in the Ordinance.

Ms. Halpern said Staff had a list of five Agenda Items they wanted to bring back to the Committee and community collaboration was one of those Items.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to eliminate the .95 percent developer in-lieu fee.

Council Member Klein emphasized these were the Committee's recommendations.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to leave it at one percent.

Chair Kniss commented that Staff leave the one percent and not enable an appeal option for the program. She clarified that the art would be obtained by the property owner.

MOTION PASSED: 4-0

MINUTES

Chair Kniss requested this Item not go on the Consent Calendar.

2. (Former Agenda Item Number 1) Board and Commission Applications Revisions.

Chair Kniss said that the Boards and Commissions Recruitment Program was brought to the Policy and Services Committee (Committee) in April, 2013. The application piece was referred back to Committee while the rest of the program went on to Council for appeal.

Donna Grider, City Clerk said that in April of 2013 the Committee requested that Council Member's Price and Holman form a Subcommittee to work with Staff to revise the Board and Commission applications. The goal was to find qualified candidates to apply. The deadline for revision was for January 1, 2014.

Chair Kniss recollected that the goal was to have applicants apply continuously and to discuss the Board and Commission Volunteer Fair.

Ms. Grider agreed, and said the Board and Commission Volunteer Fair was to take place in the spring.

Ronna Gonsalves, Deputy City Clerk confirmed that the date for the Board and Commission Recognition event was set for November 7, 2013.

Chair Kniss confirmed that other Items being discussed included benchmarking with other agencies for input on application revision.

Ms. Grider said her office reached out to City Clerk's in surrounding areas and discovered that surrounding agencies were actually waiting to hear the results of Palo Alto's Board and Commission program. She added that Staff wanted to move forward with an online application process in an effort to simplify the process.

Chair Kniss recalled that there was going to be advertising that would also take place.

Ms. Grider said they wanted to move away from only using newspaper ads and wanted to refresh the program through a variety of different methods.

Council Member Holman noted that she and Council Member Price divided the benchmarked applications to even out the load. She remarked that the process was lengthy and added that her objective was to write the

MINUTES

application so that the applicant was informed of what they were applying for. In addition, she wanted to have enough information from the applicant to make the interview process more efficient.

Council Member Price commented on educating candidates and suggested listing relevant parts of the Municipal Code and other relevant documents on the application so that interested people will be informed of their obligation. She noted there were now more thought provoking essay questions on the application. These revisions showed the applicant that they City cared about the Boards and Commissions positions.

Council Member Klein commented that many of the questions were prefaced similarly and suggested changing it to a kinder statement, such as "Please identify..." He thought the length of time it took to fill out the application should be shortened and suggested eliminating the statement, "I understand my role to be an advisor to the Council". He emphasized not overwhelming the applicant and asked for clarification on the question "Excluding your principle residency, do you own real property in Palo Alto, or within two miles of Palo Alto".

Molly Stump, City Attorney noted that she was unsure of the source of that question.

Council Member Klein did not think it was necessary to stress the conflict of interest laws on the application.

Ms. Stump confirmed that Staff was recommending the question regarding owning property in Palo Alto or within 500 feet from Palo Alto but said Staff did not need to include this question on the application.

Council Member Klein suggested the question about owning property in Palo Alto should be narrowed down to just Palo Alto.

Chair Kniss suggested some guidelines for the applicant when filling out the application and proposed saying that not every question needed to be answered. She remarked that making this provision made the application process less daunting. Having more view-point questions, such as "What about this interests you and why" was good.

Council Member Holman recalled that there were two questions that the Subcommittee wanted to add and explained that the application did need to be completed entirely.

Ms. Gonsalves asked whether the question was in the application.

MINUTES

Council Member Holman referenced an Architectural Review Board (ARB) application question that said: "If applicable, please identify a project or projects" and suggested that "if applicable" be taken out.

Ms. Gonsalves clarified that the Municipal Code says applicants did not have to submit samples of their work. She added that there was difficulty in applicants adding samples on the on-line applications.

Council Member Holman added that the Municipal Code did not say they had to submit examples, but she recalled that Council always asks for examples of good or bad projects from applicants. She suggested applicants submit a project address or an online link on the application.

Ms. Stump said there was no reason an address or link could not be requested.

Council Member Holman directed Staff to change the words "if applicable" from the ARB and the Historic Resources Board application.

Ms. Grider was concerned about losing applicants attention and reiterated that the application questions were crafted with the idea of not being too lengthy.

Chair Kniss agreed and felt that getting people to apply was important and that Council would weed out applicants in the interview process.

Council Member Holman reminded the Committee that the application review process was being revised to better prepare Council for an applicant's interview and that asking some of the operative questions ahead of time was time saving.

Ms. Grider remarked that she was referring to a specific application question.

Council Member Holman explained that most of the questions did not require lengthy responses.

Chair Kniss remarked that there were many questions.

Ms. Grider had concerns with questions such as "Have you ever attended or reviewed an online Staff Report." She said out that having questions in writing emitted a certain expectation of the applicant to answer the question.

MINUTES

Ms. Gonsalves went back to Council Member Holman's remark and said there was a similar question that she was referring to.

Ms. Grider confirmed that the question being discussed was "Have you ever attended a meeting." She remarked that some questions were more in-depth.

Chair Kniss remarked that the application questions were not permanent and that there would be more input from the applicants in the future.

Ms. Grider said Staff received input from applicants all year long.

Ms. Gonsalves confirmed that her department worked quite closely with the applicants.

Council Member Holman suggested that the format of the application be changed.

Ms. Gonsalves remarked that the setup was going to be different, as it was going to be transformed to an online format. She relayed that Staff was looking into a few different programs for the application and was unsure at this time what the format would look like exactly.

Council Member Holman also suggested that Staff look into ensuring that all Boards and Commission be listed on the website and added that she sent in some questions/suggestions to Staff a week ago that she was looking forward to having answered at this meeting.

Sheila Tucker, Assistant to the City Manager said that Staff would be happy to bring Council Member Holman's questions back to the Committee for input.

Council Member Price agreed with Council Member Klein about asking an applicant a question that was not well informed. She suggested Staff remove "How would you view your role as a Board Member and your role toward policy" and add the disclaimer of "brief" comments being acceptable on the application. She wanted a welcoming spirit to the application and concluded by asking if the bulk of the revisions needed to be approved at this meeting.

Council Member Klein suggested Staff come back to the Committee because there were too many application questions that needed to be revised; he did not want all possible questions to be listed on the application and suggested Council Member's Price and Holman work with Staff to cut the questions

MINUTES

down to about half.

Council Member Holman pointed out that there was not actually 19 questions.

Council Member Klein compared the Board and Commission application to a college application and wanted to explore more with open-ended questions.

Chair Kniss gave an example of a bad answer to a view-point question to emphasize her recommendation.

Council Member Klein clarified that answers to view-point questions told him a lot about the candidate. This method showed more clearly which candidates were thinking individuals; this was the type of candidate that was desirable.

Council Member Price asked about the timeline for changing the format.

Ms. Grider noted that Staff could still use the existing application if this discussion was not resolved in time.

Chair Kniss suggested Staff continue to revise the questions, to streamline them, and bring them back to the Committee.

Council Member Price thought it was ideal to have some kind of timeline.

Chair Kniss said there was a meeting in November and December of 2013 and thought there would be time then.

MOTION: Council Member Klein moved, seconded by Chair Kniss to continue this Item and to direct Staff and the Subcommittee to reduce the number of questions on the application.

Council Member Holman wanted to clarify that her questions to Staff would be answered at the next meeting.

MOTION PASSED: 4-0

Pamela Antil, Assistant City Manager clarified that Council Member Holman's suggested changes required changes to the Municipal Code. She said Staff was happy to work with the City Attorney on Municipal Code changes but said this would be separate from Board and Commission application revisions.

MINUTES

Council Member Holman remarked that Council suggested this topic be brought up at the same time and said changes to the Municipal Code applied because it referred to application changes and clean-ups.

Ms. Antil asked if the changes were for the applications or the Municipal Code.

Council Member Holman said it was clean-up to the Municipal Code.

Ms. Grider did not feel these questions regarding the Municipal Code were applicable to the application revision process.

Chair Kniss inquired whether there were general Municipal Code revisions that needed to be made, or did these changes make the application revisions difficult.

Council Member Holman said it was the references to the Municipal Code in the applications. She remarked on the importance of some Boards and Commissions not being directly listed in the Municipal Code.

Chair Kniss asked the City Attorney if it was possible to look into these concerns.

Ms. Stump commented that some proposals were straight forward and some required substantial work. She said that work on the Municipal Code required Staff time, a lot of work, and input from Council.

Chair Kniss asked Staff to put together a general time-line, then go to Council for a discussion.

Ms. Stump accepted the task but requested work begin after Council Member Holman completed her input.

Chair Kniss suggested having a piece of the time-line at the next meeting.

Ms. Antil added that the City Manager's Office and the City Clerk's Office would correct the issues with the website. She noted that some of Municipal Code references were correct.

Council Member Holman explained that the Municipal Code did not directly mention some Boards and Commissions. She suggested language that would direct people to the spot in the Code relevant to the specific Board or Commission they were in search of.

MINUTES

Council Member Klein agreed and said Staff did not need a Motion to add links to sections in the Code. Amending the Code was extensive and discussing the time it was going to take needed to be established before that project went further; he suggested putting that Item on the Council Agenda.

Chair Kniss recapped that the City Attorney would work on a timeline, the City Manager's Office and the Clerk's Office could work on links to Boards and Commissions on the website, and Boards and Commissions applications revisions would be continued in December, 2013.

FUTURE MEETINGS AND AGENDAS

Chair Kniss thought there was a Special City Council Meeting on November 12, 2013.

Donna Grider, City Clerk confirmed there was a Special City Council Meeting on November 12, 2013.

Chair Kiss said on November 19, 2013 there was a Finance Committee scheduled; she asked if the Finance Committee and Policy and Services Committee could meet on the same night.

Molly Stump, City Attorney pointed out that with dual Committee meeting nights, there were some Staff that needed to attend both meetings.

Chair Kniss said they could meet on November 19 or 20, 2013.

Pamela Antil, Assistant City Manager said that November 19, 20, or 26, 2013 had been discussed.

Chair Kniss thought November 26, 2013 would not work and asked if the dual meeting night was an issue.

Council Member Klein remarked that it had been done in the past.

Chair Kniss said the next Policy and Services Committee meeting would be at 6:00 PM.

Chair Kniss said the next Policy and Services Committee meeting was now scheduled for November 19, 2013 at 6:00 PM and requested that the Items be spread out so that Staff that had to speak at both meetings were able to do so.

MINUTES

ADJOURNMENT: Meeting adjourned at 8:05 P.M.