



# City of Palo Alto

## City Council Staff Report

(ID # 11539)

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**Report Type: Action Items**

**Meeting Date: 10/5/2020**

**Summary Title: Percent for Public Art Ordinances**

**Title: Review and Discuss the City of Palo Alto's Public Art Program and Direct Staff to Either Amend the Municipal Code to Temporarily Suspend the one Percent for Public art in Municipal Projects and/or Private Development Projects for two Years, or Provide Other Direction to Staff**

**From: City Manager**

**Lead Department: Community Services**

### **Recommendation**

Staff recommends the City Council review and discuss the following report on the Public Art Program and:

1. Direct staff to return to City Council with an ordinance to amend the municipal code to temporarily suspend the one percent for public art in municipal projects and/or private development projects for two years, or
2. Provide other direction to staff.

### **Executive Summary**

Public art enhances the quality of life in a community, promotes cultural understanding, contributes to public health, fosters economic development and creates vital public spaces. Currently, cities such as West Hollywood, Berkeley and Santa Monica are looking to their public art programs to help their communities heal from the devastating effects of COVID-19. The City of Palo Alto's (City) two public art ordinances allow for a very broad spectrum of temporary and permanent artworks and provides opportunities for the City, developers, and artists to create diverse and exciting art experiences for the community. The Public Art Program oversees implementation of permanent and temporary art installations throughout the City, including maintenance of the collection of more than 300 permanently sited and portable works of art and the exhibition of approximately 200 works of art throughout City facilities. To read more about the importance of public art in communities, see this 2018 [report](#) from Americans for the Arts. The Public Art Program also manages the Cubberley Artist Studio Program, which provides studio space for 23 artists and active programming directly to the community.

There are two ordinances governing the Public Art Program: an ordinance for municipal projects, ([Visual Art in Public Places, Municipal Code Chapter 2.26](#)) and an ordinance for private development projects, ([Public Art for Private Developments, Municipal Code Chapter 16.61](#)). Together, these ordinances offer parity between what we are doing as a City and what we require of private developers, ensuring that artwork is integrated into development projects throughout the City where appropriate.

At the City Council [budget hearing](#) on May 26<sup>th</sup>, City Council directed staff to return to City Council this fall with a temporary suspension of the one percent for Public Art programs for two years, and reevaluate at the mid-year budget check-in. This staff report describes the rich history of the City's Public Art Program and provides information on how the Program is implemented today.

### **Background**

Public art can be found throughout the City: inside and outside public buildings, City parks, and even on private property. Art can take various forms, including sculptures, paintings and murals, environmental projects, data visualization artworks, and sculptural functional seating and historic frescoes.

While the City's collection of artwork began in 1972 and 1973 with a volunteer art panel, the City of Palo Alto officially began operating a Public Art Program in 1975 when it created the Visual Arts Jury (later renamed the Public Art Commission) and established the Art in Public Places Program. That same year, Greg Brown served as the City's first Artist in Residence beginning his murals throughout the downtown corridor with grant support. *Nude in Steel* by Hans Wehrli was the first outdoor artwork acquired by the City in 1976, and it still stands outside the Rinconada Library. In the early 1980's the City acquired several outdoor sculptures, including the Bruce Johnson's wood sculpture in Mitchell Park that children love to explore and the red kinetic Jerome Kirk sculpture that sits adjacent to the Palo Alto Art Center. Byxbee Park opened in 1991 with major earthworks by Peter Richards and Michael Oppenheimer, and many of those features are still visible today. In the late 1990's, the City partnered with California Avenue businesses to create the "Avenue of the Arts," commissioning multiple murals and artworks over a period of six years.

In 2005, the City passed a policy for the 1% for Art in Municipal projects, paving the way for artworks at the San Francisquito Creek Pump Station, four artworks at Mitchell Park Library and Community Center, the Palo Alto Art Center and Rinconada Library campus, and the California Avenue fountain. The Public Art Program has partnered with the Palo Alto Art Center and the Art Center Foundation to bring community favorites to life such as Patrick Dougherty's willow sculpture on Embarcadero Road. King Plaza has been the site of ongoing temporary public art installations since 2015, drawing visitors to see artworks in a wide range of expressions and styles, from Burning Man artwork, functional sculpture, to *Blue Trees* and the meditative labyrinth there today. See Attachment A for images of some of the recognizable public art in Palo Alto.

In nearly 50 years, the public art collection has grown to more than [300 pieces](#) of art valued at over \$2 million. The Public Art Program has received national recognition from the Americans for the Arts for multiple projects in recent years, including [Conversation](#) by Susan Narduli at City Hall, [Tabula](#) by Charles Gadeken and D.V.Rogers on the Visa building, and three temporary installations.

## Discussion

The Public Art Program includes oversight and management of the following major activities, which are described in detail below:

1. Public art in municipal projects
2. Temporary public art projects; housed within the Municipal Program
3. Public art in private developments and the public art in-lieu fund
4. Cubberley Artist Studios
5. Staff support of the Public Art Commission

## Public Art in Municipal Projects

The City of Palo Alto has had a Public Art Program since 1975. In 2006, City Council adopted a Public Art Policy for art in municipal projects. In 2015, [City Council](#) further strengthened its ongoing commitment and support for the program by amending the Municipal Code to enhance funding for the Public Art Program. The 2015 [ordinance](#) increased funding commitments by mandating that one percent of the City's annual Capital Improvement Program (CIP) budget be set aside for public art and allowed the funding to be pooled. There are many types of municipal CIP projects that are excluded from the one percent funding mandate, including:

1. ADA Compliance Projects (not including projects where ADA compliance is a portion of a larger project);
2. Road, path and sidewalk repairs, including: traffic signals and upgrades, curb and gutter repairs, sign reflectivity, road and parking sign age, resurfacing of roads or other existing hardscape areas;
3. Emergency repair projects;
4. Cyclical replacement and repair of trails, outdoor furnishings, or fencing;
5. Studies;
6. Roof replacement;
7. Mechanical, security, A/V equipment, HVAC, and IT installations, upgrades and repairs;
8. Art in Public Places CIP;
9. Utilities projects, except where the project includes construction or reconstruction of a building;
10. Vehicle repair and replacement;
11. Seismic upgrades and waterproofing;
12. Projects where the majority of the cost is allocated to elements located underground; or
13. Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-City sources that prohibit expenditure of funds for

art.

Municipal Public Art funds may be used at any appropriate site within Palo Alto for permanent or temporary public art projects. Additionally, funds from two or more CIP projects may be pooled to fund a single work of art.

#### Public Art in Municipal Projects Budget Process and Project Timeline

The one percent for art in municipal projects funding is allocated and tracked in the Art in Public Spaces capital project (AC-86017). Funds in this project are updated annually as part of the development and review of the five-year capital improvement plan to ensure the CIPs required to contribute one percent to the Art in Public Spaces project have been identified. The Art in Public Places project in the City's Capital Improvement Fund includes both the new funds allocated as part of that budget cycle and the funds already encumbered and under contract for other projects in process as one lump sum. Due to the multi-year nature of public art, many projects are in process over several budget cycles, making the Art in Public Spaces budget appear to be much larger in recent years. The one percent allocation has been larger in recent years due to the Infrastructure Plan projects currently underway and planned for the next few years. The annual one percent allocation is projected to decrease once the Infrastructure Plan projects are complete.

The Public Art Commission holds an annual retreat with staff in September to discuss which CIP projects are on the horizon that will have artwork integrated and what the two-year forecast is for new projects. This ensures that the art selection and development processes take place at the same time as the design for the building or facility is taking place. If the building is already designed and the art is added later that frequently results in costly redesign and complications to integrate any artwork into the project. As a result, the stakeholder engagement, artist selection, and design process take place prior to the fiscal year in which the construction is budgeted and the actual funds for that project are allocated to the Art in Public Spaces CIP. While the overall construction budget may increase for a project during this time, the artist is held to the budget amount in their contract. The artist fabrication and installation contract amount is based on estimates the artist secures that are typically only valid for a certain amount of time. For that reason, artists occasionally move forward with fabrication in advance of completion of the construction project to avoid any cost increases on their end. The Public Art Commission and staff use the 2016 adopted [Public Art Master Plan](#) priorities as a guide to set forth the priorities for the coming year. This [Process Chart](#) outlines the general art selection and approval process for municipal public art projects.

Projects installed and commissioned with municipal CIP funds include the *Go With the Flow crosswalks* on Louis Road, *Welcome Wagon* at Fire Station 3, *Birdie* at the Palo Alto Municipal Golf Course, *Brilliance* sculptures at the Palo Alto Art Center and Rinconada Library campus, Code:ART, the temporary *murals* at the California Avenue Garage construction site, *Confluence fountain* on California Avenue, Mitchell Park *Library* and *Community Center artworks*, and the Patrick Dougherty *willow sculpture* commissioned in partnership with the Palo Alto Art Center

and the Art Center Foundation.

Current artworks commissioned with CIP funds but not yet installed include artworks for the following Infrastructure Plan projects Charleston/Arastradero corridor, the Highway 101 bike and pedestrian bridge, and three artworks at the Public Safety Building. In addition, eight temporary murals in the commercial corridors of University Ave and California Avenue and artwork commissioned in partnership with the Palo Alto Art Center creating an outdoor gallery along Embarcadero Road.

#### Municipal Project Maintenance

Maintenance for the existing collection is allocated in the operating budget for the Community Services Department in the amount of \$30,000 annually. Recent projects maintained and restored through these funds include the [Greg Brown murals](#) downtown, the California Avenue fountain, and the [Nathan Oliveira sculpture](#) at the Art Center.

#### **Temporary Public Art Projects**

In addition to the funding provided through the municipal ordinance described above, the Public Art Program receives baseline funding of \$50,000, which is also allocated in the Art in Public Spaces capital project. This funding is generally reserved for temporary public art, such as exhibitions on King Plaza. This amount has served to help fund projects in years when the one percent allocation was small.

#### **Public art in private developments and the public art in-lieu fund**

On December 2, 2013, the Palo Alto City Council adopted an [Ordinance](#) to add chapter 16.61 to the Municipal Code establishing a requirement for public art in private development projects. This requirement applies to projects that: require architectural review, will be over 10,000 square feet, and have an estimated construction value of more than \$200,000. The Ordinance provides the option of commissioning artwork on the development site equal to the cost of one percent of the estimated construction valuation or paying the one percent to the Public Art Fund in-lieu of commissioning art on site. Developers must complete in-lieu payments prior to the issuance of any building permit for the development project. The Private Development Public Art Ordinance is designed to be fully cost recovery.

The public art in private development ordinance does not apply to:

1. Buildings or structures primarily used for religious worship;
2. Historic renovations;
3. Affordable housing developments;
4. Municipal facilities;
5. Repair or reconstruction of structures damaged by flood, fire, wind, earthquake or other disaster;
6. Seismic retrofit projects; or
7. Any project exempted by federal or state law.

Developers that choose to meet the requirements of this ordinance by commissioning their own public art on site must complete their artist selection, design development process and get initial and final approvals from the Public Art Commission prior to the issuance of a building permit. The final artwork must be installed and inspected by Public Art staff prior to the issuance of a final Certificate of Occupancy. Public Art staff works closely with the Planning Department, Development Services and the applicants throughout the process. Developers are required to submit five percent of their overall art budget to the City to offset staff time associated with oversight of this process. They may also choose to contract with staff to manage the public art process on site for an additional 15% of their budget. To learn more about the process, see the public art [application packet](#) that is provided to developers.

Artworks installed through the private percent for art include artwork at [Avenidas](#) Senior Center at 450 Bryant Ave, the [Stanford Mall](#) at 180 El Camino Real, the [Visa Building](#) at 385 Sherman Ave., 430 Forest Ave., [VMware](#) at 3421 Hillview Ave., and the Bowman School at 639 Arastradero Rd. More than 60 projects have been subject to the private development ordinance between 2014 and 2020. To date, a total of 16 projects have been completed including 6 projects with installed artwork onsite and 12 projects paying the in-lieu contribution to the Public Art Fund. Currently, there are 40 active projects, including 11 projects with artwork to be installed onsite, 12 projects planning to pay the in-lieu contribution, and 17 undetermined.

There are projects in the process of fabrication and installation currently, including 1050 Page Mill Road, 2600 El Camino Real, and 415 Page Mill Road.

### **The Cubberley Artist Studio Program**

The Cubberley Artist Studio Program (CASP) supports the vitality of the arts in Palo Alto by providing City-sponsored, affordable studio space for artists, building creative community, and fostering public engagement with the arts and artists. The Cubberley Artist Studio Program consists of 22 studios, currently housing 23 artists.

In exchange for subsidized studio space, the artists provide free public programming, such as recent online exhibitions and artist talks, artist portfolio reviews for community artists, and online workshops. In typical years, they host annual open studio days and community exhibitions. Additionally, the artists gift a work of art to the City collection in the first term of their residency. Artists are limited to two four-year residency terms once they are juried into the program through an open call to artists and a competitive process. The program requires some public art and CSD staff time but does not have a dedicated budget to run the program.

### **Staff Support of the Public Art Commission**

The Public Art Commission consists of five members who meet monthly to advise City staff on the placement, funding amounts, and design development of temporary and permanent artworks on City property as well as on private development projects. Staff support to the Commission consists of agenda planning; staffing Commission meetings, creating minutes and

delivering meeting follow up items; supporting Commissioners through the artist selection panel process, public interactions and special events; regular check-ins with the Chair and Vice Chair regarding press, public letters and current events; and relaying resources about developing trends and best practices in the Public Art field. The Public Art Commission holds a retreat during September of each year to set the priorities for the following year in accordance with the Public Art Master Plan while balancing projects already in progress. The Commission will be discussing opportunities for temporary and permanent public art projects that support racial and cultural equity, diversity, community strength and resiliency. This could include temporary murals along University Avenue and California Avenue, permanent or temporary artworks resulting from an artist residency within a City department, or a permanent artwork at a City site focused on racial equity.

### **Resource Impact**

The resource impact of this staff report will vary depending upon what action Council will take. There is no resource impact if Council chooses to continue the Public Art Program as defined in the Municipal Code. If Council chooses to suspend new funding allocations for either or both of the public art programs (municipal projects and private developments) the impacts are detailed below.

#### Public Art Program Staffing

The staffing for the Public Art Program is 2.2 FTE. The Public Art Program Director (Senior Community Services Manager) is partially funded by private percent for art funds and partially by general fund contributions. Other staff are funded wholly by general fund contributions.

#### Municipal Projects (Art in Public Places CIP)

Just over \$2.0 million is currently allocated for public art related to municipal projects in AC-86017 in FY2021, which includes approximately \$500,000 of funding that was previously encumbered for public art installations that were started in prior years. Of the \$1.5M of unencumbered funds, \$200,000 is associated with the Downtown Garage project and planned to be shifted back to the Infrastructure Reserve in the Capital Improvement Fund during mid-year budget adjustments. In FY2022, approximately \$190,000 is estimated as the 1% for public art from eligible FY22 planned capital projects. In addition to these funding allocations, as described above, the Art in Public Places project receives \$50,000 annually as a base allocation from the Capital Improvement Fund.

FY 2021 funding has not yet been encumbered to projects and could be reallocated by City Council if the Ordinance is suspended. Approximately \$8,000 has been allocated in each fiscal year to cover staff expenses associated with a part-time Art Preparator / Maintenance position. This position is needed regardless of whether any new funding is provided for municipal projects as they are responsible for maintenance of the existing collection. If this ordinance is suspended, a new funding source for this position will need to be identified. At this time, staff has not identified an alternative source.

### Private Development Projects

As explained above, Public Art is required on-site for most large developments built in the City of Palo Alto and is designed to be fully cost recovery. Since this Ordinance was adopted in 2014, developers have contributed approximately \$1.83 million in in-lieu fees. Up to twenty percent of in-lieu fees are used to support the administrative costs associated with managing the Private Development Program.

One position is partially funded through Public Art In-lieu fees. This position is needed regardless of whether any new funding is provided for in-lieu projects as they are responsible for projects already in process as well as for oversight of developers who chose to create their own public art on developments. In FY2020, in-lieu fees supported approximately \$40,000 of the salary and benefit costs of this position, and staff budgeted a similar level of support in FY2021 and anticipates this continuing for FY2022. If the Private Development Ordinance is suspended for two years, a new funding source will need to be identified for this position.

### Resource Impact Summary

In summary, suspending FY2021 and FY2022 allocations for the Art in Public Spaces CIP (AC-86017) could result in approximately \$1.3 million of savings in the Capital Improvement Fund in FY2021 and \$0.2 million to reallocate during the development of the FY2022 Capital budget and 2022-2026 Capital Improvement Plan. A new funding source for \$16,000 of part-time salary and benefit costs will also need to be identified. Suspending the FY2021 and FY2022 developer payments for the Public Art in Private Development In-Lieu fund will result in the loss of developer paid revenues, which has ranged from \$210,000 to \$570,000 annually over the past few years and the need to identify a new funding source for approximately \$80,000 in salary and benefit costs.

### **Policy Implications**

The [Public Art Master Plan](#) was approved May 2016 by the Public Art Commission and the City Council formally adopted the Public Art Master Plan [August 15, 2016](#).

The Art in Public Spaces program is supported by several policies in the 2030 Comprehensive Plan.

- Policy L-4.4.1 Study the feasibility of using public and private funds to provide and maintain landscaping and public spaces such as parks, plazas, sidewalks and public art within commercial areas.
- Policy L-4.8 Ensure that University Avenue/Downtown is pedestrian-friendly and supports bicycle use. Use public art, trees, bicycle racks and other amenities to create an environment that is inviting to pedestrians and bicyclists.
- Policy L-8.2 Provide comfortable seating areas and plazas with places for public art adjacent to library and community center entrances.
- Policy L-8.5 Recognize public art and cultural facilities as a community benefit. Encourage the development of new and the enhancement of existing public and private



art and cultural facilities throughout Palo Alto. Ensure that such projects are compatible with the character and identity of the surrounding neighborhood.

- Policy L-8.6 Seek potential new sites for art and cultural facilities, public spaces, open space and community gardens.
- Program T1.19.5 Improve amenities such as seating, lighting, bicycle parking, street trees, public art and interpretive stations along bicycle and pedestrian paths and in City parks to encourage walking and cycling and enhance the feeling of safety.
- Policy T-1.21 Maintain pedestrian- and bicycle-only use of alleyways Downtown and in the California Avenue area where appropriate to provide connectivity between businesses and parking and transit stops, and consider public art in the alleyways as a way to encourage walking
- Policy C-3.4 Utilize the Public Art Master Plan, as amended, as a guide for the continued maintenance and preservation of the Public Art Collection.
- Policy C-4.5 Expand the space available in the community for art exhibits, classes and other cultural activities, studios and galleries and other activities made possible by technical innovation, while maintaining and enhancing natural areas.

### **Stakeholder Engagement**

The Public Art Program coordinates and collaborates with several City departments, the Public Art Commission, artists, local businesses, property owners, and the community. All public art projects include robust stakeholder engagement and involvement throughout the artist selection and art development process. Projects like Code:ART and the California Avenue Public Art Master Plan makes the broader engagement with residents and the business community especially visible. For example, Code:ART drew thousands of visitors to downtown Palo Alto to talk about the future of our underutilized spaces and alleys, and plans are in place to host a future CodeART event. The Public Art Commission has discussed the possibility of Council's direction to suspend the ordinance at its August 20, 2020 meeting as it relates to the planning of its September retreat. Public Art staff has discussed the potential implications of a suspension internally, but broader community engagement has not taken place.

### Public Sentiment for the Program

Feedback on the City's public art projects has been overwhelmingly positive throughout the years with many public comments and active volunteer participation. A few select quotes include:

- Feedback on the overall collection of public art
  - *Public art enhances our shared spaces in Palo Alto, and I love all your temporary installations as well as the permanent artworks.*
  - *Thank you!!! Your work makes our city such a beautiful town to live and work.*
- Feedback on specific installations
  - *"It has been amazing to see this [Black Lives Matter Mural] unfold and progress so rapidly. And the finished work is so moving and inspiring. I am proud to know that Palo Alto and [@publicartpa](#) stepped forward to make CA one of 43 states that have painted this message on pavement. With great appreciation!"*

- *This mural [Under the Sun by Mohamed Soumah] always makes me smile - especially on drizzly winter days.*
- *[The Year of the Ocean mural in California Avenue bike and pedestrian underpass] I have always loved this mural since I was a child--so glad to see it refreshed. It's neat--whimsical and fun, without pretensions.*
- *Seeing this here [the Blue Trees] makes me happy! Kudos to Konstantin Dimopolous and Palo Alto Public Art for bringing this thought-provoking installation to Palo Alto!! You've created so many unique art experiences that enliven our town, turning it into a more interesting, intellectual, cultural, and arts-rich place.*
- Feedback on special events including the Code: Art Event
  - *Love it! So fun for all ages and anyone can participate. Temporary art is the best.*
  - *There is a feeling and sense of community in this event. We like that.*
  - *Wonderful enhancement to downtown Palo Alto. Would like more of it!*

### **Environmental Review**

The recommended action is not considered a Project as defined by the California Environmental Quality Act.

### **Attachments:**

- ATTACHMENT A Public Art Images

APPENDIX A: Public Art Images



Greg Brown, *Boy Fishing*, located on the downtown Post Office and *Garbage Man with Venusian in Can* located on Hamilton Avenue. Greg Brown began painting his whimsical murals in Downtown Palo Alto in 1975, the same year that the Visual Arts Jury and the Art in Public Spaces Program were formalized by Council.



*Nude in Steel*, 1976 by Hans Wehrli

The City's first acquisition of a permanently sited outdoor sculpture, *Nude in Steel* was originally temporarily exhibited in front of the Palo Alto City Hall. Installed at its current site in front of Rinconada Library in the 1990s, the sculpture has welcomed generations of library visitors and occasionally is found with a flower tucked behind her ear.



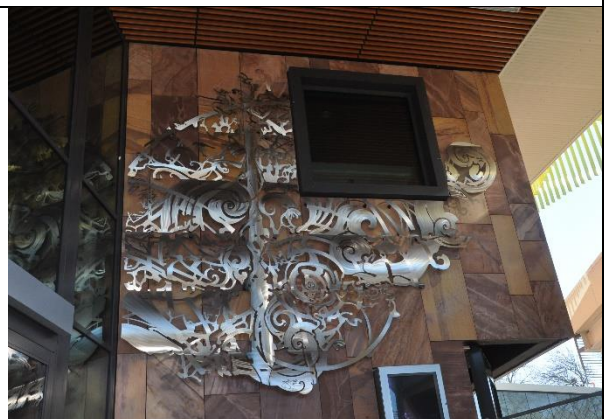
*Welcome Wagon*, 2019 by Pete Beeman is the most recently installed permanent artwork at the new Fire Station 3. The artist worked closely with Fire Department staff on the design development for a kinetic bench



Byxbee Park's iconic *Pole Field* is one of several earthwork installations by Peter Richards and Michael Oppenheimer that is still standing.



Bruce Johnson's *After the Fire* was one of several sculptures purchased in the 1980's and is a favorite for children playing in Mitchell Park to explore. *Push*, by Fred Hunnicutt was installed in the same timeframe.



Brad Oldham's *Wise and Whimsy* bollards greet visitors to the Mitchell Park Library and Community Center and offer a seat for those who need it. Roger Stoller's *Cloud Forest* design was inspired by the coastal redwoods and spreading seeds of knowledge at the library. All four artworks at the Mitchell Park Library and Community Center were developed after extensive stakeholder engagement.



Murals by Chris Johanson, David Huffman and Joey Piziali are prime examples of artworks commissioned in partnership with California Avenue businesses to create the “Avenue of the Arts”.



*Brilliance*, 2014 by Joe O’Connell and Blessing Hancock is a series of sculptures that incorporate language sourced from the Palo Alto community about biological, intellectual, and artistic growth. These six sculptures animate the space between the Art Center and the Rinconada Library.



Colin Selig’s creative seating along University Avenue were originally a temporary installation. After a lot of positive community feedback, the City decided to purchase the works to keep them downtown.



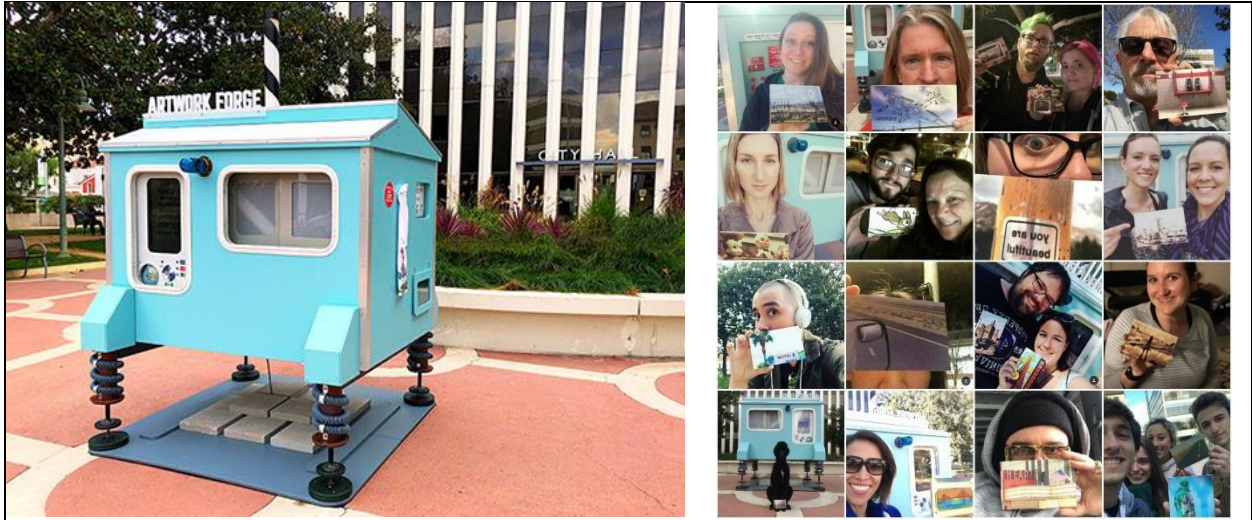
Installation of temporary environmental sculpture *Foraging Island* by artists Mary O'Brien and Daniel McCormick at Byxbee Park during their artist residency at the Palo Alto Baylands Nature Preserve. 69 community volunteers ranging in age from 6 to 90, donated a total of 189 hours to help the artists create *Foraging Island*.



Two of eight temporary installations from the 2017 Code:ART festival that drew approximately 10,000 visitors to downtown Palo Alto over three days, animating underutilized alleyways and spaces. The planned Code:ART2 festival has been postponed to October 2021.



King Plaza has been the site of ongoing temporary public art installations since 2015, inviting visitors to visit the plaza and experience something new. The current installation titled *Bucolic Labyrinth* by Paz de la Calzada features an audio guide for those seeking instruction on how to walk a labyrinth.



*The Artwork Forge* by Toby Atticus Fraley. Over the course of the installation, the sculpture dispensed approximately 2,000 pieces to the public, twice the amount Public Art staff anticipated. There was an outpouring of social media engagement with this temporary installation as well as repeat visitors to King Plaza.

Photo Credits: Palo Alto Camera Club, Jim Colton, Mary O'Brien, and Creative Machines