

Frequently Asked Questions – a Quick Guide for Private Developers

WHY IS PALO ALTO REQUIRING THAT MY DEVELOPMENT CONTRIBUTE TO PUBLIC ART?

Public art is an integral element in private development that offers Palo Alto many possibilities, to celebrate our city’s character and aspirations, enhance civic pride and a sense of place, and to reflect the creative community that lives, works, and visits here. Private development is critical to Palo Alto’s growth. Successful public art projects have the ability to infuse new development with a strong connection to the community, giving both residents and visitors a vibrant sense of place.

WHAT IS A WORK OF PUBLIC ART?

Public art is artwork in the public realm, which may be situated on public or private property, and acquired through public or private funding. The most important aspect of a work of public art is that it is created by a professional working artist of recognized achievement in the field of public art. The artist may collaborate with architects, landscape architects, engineers, lighting designers and/or other professionals, but he or she must be the primary designer of the art project, and must hold the contract with the developer for the work of art.

HOW WOULD MY DEVELOPMENT BENEFIT FROM INCORPORATING PUBLIC ART ON SITE?

There are many benefits for Developers in commissioning public art, including gaining



Semillas, 2016 by Brad Howe
Stanford Shopping Center
180 El Camino Real, Palo Alto CA

visibility, making their properties more attractive and memorable to both business and residential markets, and promoting good relationships within the community.

“Don’t just pay for art because it is required. Work hard to get the best possible solution for the site and project. The end result of this should be something you will enjoy seeing every time you visit the project. If you are not proud of the art, it is just an expense.”

David Jury | Vice President, Support Services & Facilities Development | Palo Alto Medical Foundation

WHAT ARE PALO ALTO’S REQUIREMENTS FOR PUBLIC ART IN PRIVATE DEVELOPMENT?

The Public Art in Private Development Ordinance, adopted by the City of Palo Alto in December 2013, establishes a requirement for art for all new developments, including new construction, remodels, addition and reconstruction with a floor area of 10,000 sq. ft. or more and construction valuation of \$200,000 or more; and all new residential projects of five

or more units. The ordinance provides an option of commissioning artwork on the development site equal to the cost of 1% of the estimated construction valuation, or paying the 1% to the Public Art Fund in-lieu of commissioning artwork.

HOW DO I PAY THE IN-LIEU CONTRIBUTION?

In lieu of an on-site project, a Developer may contribute 1% of the estimated Construction Valuation to the City's Public Art Fund. Developments with Art Budgets of \$100,000 or less are encouraged to pay the in-lieu contribution rather than commission artwork on-site. Upon making the in-lieu contribution the Developer receives a receipt from Accounts Payable or online. Public Art staff will confirm valuation amount and receipt of contribution to the Public Art Fund prior to the final Certificate of Occupancy issuance.



Tabula, 2016 LED installation by Charles Gaden and D.V. Rogers, Visa building at 385 Sherman Ave in Palo Alto, CA. Image by Allen Mort

HOW DOES PUBLIC ART ON SITE GET SELECTED?

First, the Developer should meet with the Public Art Program Staff within 60 days of the planning intake meeting and application. At this meeting, the Developer will gain more details about the process, eligible types of artwork, costs and resources available. This consultation must be complete before the development project is calendared for consideration by a public body, including the Architectural Review Board, Planning & Transportation Commission or City Council, and before the Director of Planning and Community Environment issues any approvals with respect to the project.

Once this initial meeting has taken place, the Developer can choose from the following methods:

- Employ a private, Public Art Consultant whose services would be used to solicit or identify public artists that meet the City's criteria for public art. Some Art Consultants also manage the process from start to finish. The fee for the use of a consultant is included in the 1% budget allocation. 5% of the budget goes to the Public Art Staff to offset administrative costs associated with your project.
- Delegate project management and administration process to the City of Palo Alto Public Art Staff. The fees for the use of the Public Art Program Staff will be allocated from the overall art budget and costs will not exceed 20% of the total art budget.
- Although not recommended, the Developer can directly propose an artist or work of art and pay 5% to Public Art Staff for the administration of your project.

The Public Art Commission must review and approve the final public art proposal. The Commission will review the plan for compliance with the public art requirements identified in the Ordinance.

At the Initial PAC Review, the Developer presents the development plan and outlines their plan for arts administration to the Commission and receives guidelines and recommendations from the PAC.

AT WHAT POINT AM I REQUIRED TO PRESENT WHAT THE ARTWORK WILL LOOK LIKE?

The Developer should present their final Art Plan at the final Review meeting with the Public Art Commission once the following information has been formulated by the Developer:

- The process that outlines how the artwork and artist were selected (*i.e.* RFQ/RFP; through an Art Consultant; Invitation / Commission; Direct Selection / Purchase)
- Images of previous work by that artist and Resume.
- Description of artwork, including overall length, width and height, materials, and method of construction;
- Detailed drawings or photographs of the proposed work;
- Detailed drawings of the specific public art site showing: location of artwork and location of plaque for artwork;
- Detailed timeline and itemized budget including installation, artist fees and any art consultant fees;
- Description of maintenance requirements.



Aperture, 2021 by Gordon Huether
3251 Hanover Street, Palo Alto, CA

WHAT CRITERIA DOES THE PUBLIC ART COMMISSION APPLY TO REVIEW AND APPROVE THE PROPOSED PUBLIC ART?

When reviewing the final Art Plan, the PAC will evaluate the public art based on the following criteria:

- Appropriateness of the artwork to the site;
- Quality and originality of the artwork;
- Visibility and accessibility of the artwork by the public;
- Engagement or Interactive Elements;
- Durability of Materials;
- Public Safety.

IS THE PUBLIC ART COMMISSION THE ONLY BODY THAT APPROVES THE ARTWORK OR MUST IT ALSO BE APPROVED BY P&TC, ARB, AND THE CITY COUNCIL?

The artwork only gets approved by the PAC. However, the other bodies may comment on the placement of the art as it pertains to the architecture, circulation issues, lighting concerns, or other elements.

WHEN MUST THE DEVELOPER SUBMIT THE FINAL PROPOSAL AND INSTALL PUBLIC ART ON SITE?

The Developer must submit their final art proposal for the PAC review and approval before the issuance of a building permit. The artwork must be completed, installed and inspected by the City's Public Art Program staff before the final Certificate of Occupancy can be issued.

WHO OWNS THE ARTWORK?

The public art is owned by the property owner.

WHO IS RESPONSIBLE FOR MAINTENANCE OF ARTWORK?

The property owner is responsible for the maintenance and conservation of the artwork. Durable materials should be used for minimal maintenance and proven ability to withstand the specific environmental conditions of the site. Artwork shall have reasonable maintenance requirements as specified by the artist and these requirements shall be compatible with routine city maintenance procedures. We recommend that the development team consults and art conservator when evaluating materials used to fabricate the artwork.

WHAT HAPPENS IF THE OWNER SELLS THE PROPERTY?

In case the development project is sold, the ownership of the public art will be transferred with the property. The artwork must remain at the development in the location approved by the PAC and may not be claimed as the property of the seller or removed from the site.

I WANT TO REMOVE THE ARTWORK FROM THE DEVELOPMENT SITE. WHAT SHOULD I DO?

If the development owner wishes to sell, de-accession or remove the artwork from a site, the owner must notify the City a minimum of 90 days before removing the work.* The owner must receive prior approval from the Public Art

Commission. The Developer will be required to replace the sold or de-accessioned artwork with an alternative work of equivalent or greater value, as determined by the PAC. In the alternative, the Developer can choose to contribute to the Public Art Fund in lieu of replacing on-site art.

*As it pertains to public art, property owners and developers should be aware of Visual Artists Rights Act (VARA), a section of the Federal Copyright Legislation. Among other things, this law forbids the willful destruction of a work of visual art. For further information regarding VARA, see United States Code Annotated, Title 17. Copyrights, Chapter 1 – Subject Matter and Scope of Copyright, Current through P.L. 105-153, approved 12-17-97.