



CITY OF GLENDALE CALIFORNIA
JOINT REPORT TO THE CITY COUNCIL AND
REDEVELOPMENT AGENCY

August 24, 2010

AGENDA ITEM

Report: Glendale Urban Art Program

1. Agency motion providing direction on the proposed Glendale Urban Art Program
2. City Council motion providing direction on the proposed Glendale Urban Art Program

COUNCIL ACTION

Public Hearing []	Ordinance []	Consent Calendar []	Action Item [X]	Report Only []
Approved for <u>Aug. 24, 2010</u> calendar				

ADMINISTRATIVE ACTION

	Signature
Submitted	
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Approved	
James E. Starbird, Executive Director	
Reviewed	
Scott Howard, City Attorney	
Emil Tatevosian, Deputy Director of Community Redev. & Housing	

RECOMMENDATION

Staff requests that the Council and Agency provide direction on the details of a proposed Citywide Urban Art Program and initiate a Zoning Code Amendment to implement the program.

SUMMARY

Per Council and Agency direction on May 11, a proposal for a Citywide Urban Art Program has been drafted. The proposal revisits the "1% art requirement" currently included in the Downtown Specific Plan (DSP) and identifies how the program can be applied citywide. An Urban Art Program Administrative Policy (including review and approval authority) and an Art Fund Policy will be necessary as the next steps in implementing the program.

Council and Agency direction and feedback is needed on the following four policy issues related to the Urban Art Program and Urban Art Fund:

1. Art Fund Contribution

It is recommended that the Citywide Program require Developers to provide on-site art equal to 2% of the project valuation or have the option to pay 1% in lieu-payment.

2. Applicability of Program and Exclusions

It is recommended that the program be applicable in commercial and mixed-use zones as described in Zoning Code Chapters 30.12 and 30.14, specifically DSP, IMU, IMU-R, SFMU, C1, C2, C3, CR, and CPD. Industrial and Residential zones would be excluded. Exemptions for the requirement shall be the same as in the DSP. Currently, auto dealers are exempt from development impact fees and projects with an affordable housing component or a historic structure are exempt from the Urban Art Program. Council/Agency direction is requested on the type of projects that should be exempted.

3. On-Site Art Installation Review Process/Authority

Based on current practice, the Arts and Culture Commission reviews and makes recommendations on proposed plans for on-site art installation, with final review and approval resting with the design review authority (Council/Agency or Design Review Board).

4. Art Fund Authority and Use Guidelines

Determine and direct the use of funds for installation, programs, facilities, and operations. Direction is also needed on the fund expenditure process and review authority.

FISCAL IMPACT

There are no fiscal impacts associated with this report. However, depending on Council/Agency direction, there may be future payments into an "Art Fund."

BACKGROUND

A proposal for a Citywide Urban Art Program has been drafted based on Council and Agency direction received on May 11, 2010. The proposal revisits the "1% art requirement" currently included in the Downtown Specific Plan (DSP) and identifies how the program can be applied citywide. An Urban Art Program Administrative Policy (including review and approval authority) and an Art Fund Policy will be necessary as the next steps in implementing the program.

While citywide public art requirements are prevalent in cities throughout the United States, the concept had never been implemented in Glendale until the Downtown Specific Plan was adopted. Like many other ideas new to Glendale, the DSP was used to introduce and examine the best possible way to implement this policy before applying the program citywide. Based on the experience with the projects within the DSP area, staff has identified challenges and opportunities for Council/Agency consideration and policy direction.

CURRENT PROGRAM

The Urban Art Program and associated Urban Art Fund are established through the Downtown Specific Plan (DSP), adopted in November 2006. Developers have the option to provide on-site art or pay an in-lieu payment. The value of the proposed on-site art or in-lieu payment must be equal to one percent (1%) of the overall project value. To date two redevelopment projects have received approvals for on-site art and one project has opted to make the in-lieu payment. Currently, projects involving an affordable housing component or a historic structure are exempt from the DSP requirement for public art.

As it exists, the Urban Art Program seeks to promote a diverse and stimulating cultural environment to enrich the quality of life for residents and visitors. The Program encourages the creative interaction of artists, developers, designers, city officials and community members during the design of development projects, in order to develop public art that is meaningful to the site and to the community. The Program anticipates a diverse range of art experiences throughout the downtown, enlivening the public space available during the everyday routines of walking to work, eating at a sidewalk café, or shopping on Brand Boulevard.

Consolidating the art approvals into the final design and entitlement review effectively requires downtown projects to develop their art concept concurrent with final architectural design. It obligates applicants to review the art proposal with the Arts and Culture Commission during the design process, which requires a significant up-front commitment and investment in both the artist and art itself. This investment, collaborative design by the artist and architect, and the public review process should maintain a fairly high standard for public art in downtown Glendale. Based on the precedent set by Hyatt Place (225 W. Wilson) and Legendary Towers (300 N. Central), it is likely that only larger and more sophisticated downtown developments will commission first class artists and architects, invest in on-site art installations and undergo the required public hearing process. By contrast, developers of more modest projects subject to the Urban Art Program have indicated that they will likely pay the in-lieu payment.

One challenge presented by such situation has been proposed public art associated with smaller projects that might not measure up to the best possible outcome. Therefore, there might be an opportunity to improve on the options provided for developers in a way that the City can maximize the quality of public art in Glendale.

OPTIONS FOR A CITYWIDE URBAN ART PROGRAM

The Council/Agency directed staff to investigate a citywide art program. The goals and objectives forming the DSP Urban Art Program are relevant citywide and as such the DSP Program may be an appropriate starting point.

1. Applicability

Currently, the Urban Art Program is applicable to the Downtown Specific Plan ("DSP") area for developments valued at \$500,000 or more. A city-wide program could keep the \$500,000 development value threshold and be applied to the development in the commercial and mixed-use zones described in Zoning Code Chapters 30.12 and 30.14 (specifically DSP, IMU, IMU-R, SFMU, C1, C2, C3, CR, and CPD). The requirement would not apply to Industrial or Residential zones. The DSP exemptions for affordable housing or historic resource projects could also apply citywide. Other potentially applicable exemptions will be discussed later in the report.

2. Program Options

a. Payment Only Program

One option discussed by Council/Agency was a straight Art Fee only program (with out an art installation requirement option). Staff has researched this issue and determined that a flat, one-percent (1%) art fee would likely present complicated legal challenges.

Pursuant to the Mitigation Fee Act, (Cal Gov. Code §§ 66000-14), the City must first identify the purpose of the fee, the use of the fee, and the reasonable relationship (nexus) between the fee's use and the type of development project on which the fee is imposed. There must be a reasonable relationship between the need for the public facility (i.e. an art piece, art program) and the type of development project on which the fee is imposed. Further, the fee must be clearly calculated to be proportional to the public need that is resulted from a project.

No city has completed a nexus study for a straight art fee program because it is difficult, if not impossible, to measure what impact a new development project has upon public art or art programs in a city that creates a detriment that can be cured only through imposition of a fee. A flat art fee could therefore be seen as an unqualified taking and thus, unconstitutional.

Even with a satisfactory nexus relationship, a city must also provide factual evidence that a one-percent art fee is an individualized determination that supports the nexus relationship. The city would most likely fail to find enough factual evidence to show that one-percent of the cost of a particular development project is an accurate calculation for the deficit of art suffered by the city.

Another aspect of this analysis is whether an art fee imposed in a limited "arts district" would withstand a constitutional challenge. Although possible, the City would still face considerable challenges in implementing a straight art fee limited to a particular district. Staff is not aware of any city that has done so. The City would be subject to the same "reasonable relationship" standard as a citywide art fee and would incur significant costs to provide both a nexus relationship and a rough proportionality analysis to support a straight art fee. Sufficient alternatives exist that would garner similar objectives as a citywide art fee that do not require this level of analysis and support.

Staff inquired whether there are any alternatives to a straight art fee that would insulate the City from a potential constitutional challenge. Many municipalities employ an in-lieu art payment option rather than a straight art fee, and impose a strict standard for the installation of on-site art that ultimately encourages a developer to choose making the in-lieu payment rather than commissioning the design and paying for the installation of an on-site art piece. These cities generally garner the funds to dictate their own public arts projects within their cities without the threat of constitutional challenges.

b. On-site Installation/Payment Option

It is recommended that the citywide program be modeled after the DSP Program and provide the option to install the art on-site, or to make an in-lieu payment. A tiered program is recommended where the on-site art equals two percent (2%) of project value and the in-lieu payment equal one percent (1%). The contribution is recommended to be tiered as an incentive for development projects to pay into an Art Fund if they find the prospect of inclusion of appropriate public art too challenging.

3. Review Authority

It is recommended that on-site art proposals be approved by the design review authority, following review and recommendation by the Arts and Culture Commission.

This two-step review process currently applies to projects in the DSP, where the review authority is Redevelopment Agency or City Council (or, for projects under 10,000sf, the Redevelopment and/or Planning Director). Since the Agency is review authority for most of the Mixed-Use zones, this will not result in any new procedures. However, for the majority of the Commercial zones, the Design Review Board is the review authority and approving art plans will be a new function for them.

Establishing the design review authority as the approving body of the public art requirement ensures that on-site art is developed as an integral element of the project, and reviewed in the context of the proposal's site plan and architectural design. As demonstrated by the Hyatt Place and 300 N Central projects, reviewing on-site art in conjunction with final design approvals requires a significant commitment to the public art during the design process. With these two projects, the result has been unique collaborations between artists and architects, which helps fulfill the program's goal to generate meaningful public art. Finally, combining the art approvals with design approvals also reduces the likelihood that on-site art requirement will result in isolated sculptures dropped in front of buildings and other forms of "plop art," which might otherwise happen if the Commission had approval authority of the art, independent of the design review process. Nonetheless, a focused discussion of public art - on topics such as the conceptual basis of the art and its appropriateness to the community and its history - properly rests with the Arts and Culture Commission, and the final review authority will benefit from their advice.

For the developers who put off the public art component of the project until the last steps of the review process a two-step review process creates an incentive to pay the in-lieu fee. The review by the Arts and Culture Commission will be an additional burden by many applicants, and only those willing to make a meaningful commitment to public art will consider it worthwhile. As has been demonstrated in the DSP, smaller, less interested developers (or those under tight deadlines and time constraints) will likely opt to pay the in-lieu payment into the Art Fund.

NEXT STEPS

Staff has researched several cities with a similar program and has identified the following areas where Council/Agency direction is needed in order to move forward with the policy. The cities that have been considered are Santa Monica, Culver City, Brea, Pasadena, and San Francisco (arguably the city with the most advanced public art program in California).

1. Citywide Art Program Guidelines

Art Program guidelines will allow for consistency and standardized development of art plans citywide. At a minimum, the guidelines should address the following:

- Purpose and Goals;
- Developer Obligation and Options;
- Guidelines for On-site Installation and Evaluation;
- Art Fund Contribution and Use Policy;
- Review and Approval Authority for On-site Installation; and,
- Review and Approval Authority for Citywide Installation.

2. Art Fund Policy

The Art Fund, once formally created, would accept the in-lieu payment from developers. The Policy should identify the type of expenditures that might be desirable and the funding release authority. Based on legal research, these funds can be applied toward installation of public art as well as for art programming which may include art related facilities, operations, performances and events.

3. Direction Items

Council/Agency direction is requested on the following:

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EXHIBIT(S)

Exhibit A: Matrix for Art Programs in Other Cities

EXHIBIT A: MATRIX FOR ART PROGRAMS IN OTHER CITIES

City	Applicability	Program Contribution Options	In-lieu Payment Amount/ On-site Art Installation Value	Art Fund Use	Review Authority
BREA	Building value of \$1.5M or more.	On-site installation or in-lieu payment.	1% of the building value.	Permanent artwork.	Art in Public Places Advisory Committee
CULVER CITY	Building value of \$500,000 in a Specific Plan area. Rehabilitations with a value of \$250,000 or more.	On-site installation; donation of art work; incorporation of art based architecture; and in-lieu payment.	1% of building value.	Permanent artwork; performing arts; purchase of property for public art; and administration.	Cultural Affairs Commission
PASADENA	Project value of \$500,000 in Specific Plan area. CIP Projects with a value of \$250,000 and more.	On-site installation or in-lieu payment.	1% of the building value.	Permanent artwork; cultural programming; and cultural facilities.	Arts Commission
SANTA MONICA	CIP Projects	On-site installation.	1% of project value.	Permanent artwork.	City Council; Arts Commission; and Art Bank Jury
SAN FRANCISCO	Building value of \$250,000 in a Specific Plan area.	On-site installation.	1% of the building value up to \$1M. \$2,000 per \$1M increase in building value thereafter.	n/a	Planning Department; No public approval process
	CIP Projects	On-site installation or payment.	2% of project value.	Permanent artwork; and artwork conservation.	Arts Commission

MOTION

Moved by Agency Member _____, seconded by Agency Member _____, that the Agency hereby directs staff with respect to the Downtown Specific Plan Urban Art Fund Implementation Options outlined in the August 24, 2020 staff report from the Director of Community Redevelopment and Housing as follows: _____.

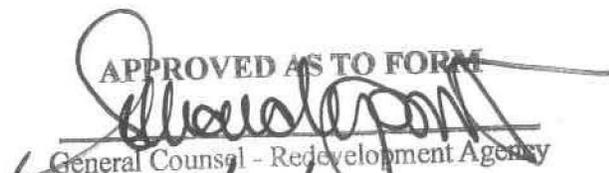
Vote as follows:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM

General Counsel - Redevelopment Agency
Date: 8/19/10

MOTION

Moved by Council Member _____, seconded by Council Member _____, that the Agency hereby directs staff with respect to the Downtown Specific Plan Urban Art Fund Implementation Options outlined in the August 24, 2020 staff report from the Director of Community Redevelopment and Housing as follows: _____.

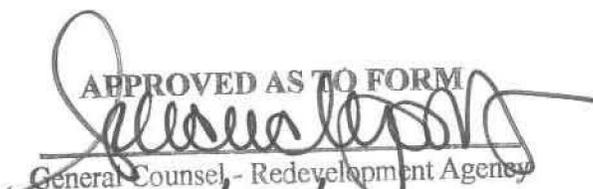
Vote as follows:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM

General Counsel - Redevelopment Agency
Date: 8/19/10