



PUBLIC ART AND PRIVATE DEVELOPMENT RESOURCE GUIDE FOR DEVELOPERS

“States have an opportunity to both improve livability and boost state and local economies by investing in the arts and culture.”

National Governors Association

1. WHY IS THE CITY REQUIRING THAT MY DEVELOPMENT INCLUDE PUBLIC ART?

Public art is an integral element in private development that offers a city or municipality many possibilities: the opportunity to make a place exceptional, to honor local tradition and/or history, to illuminate the City’s aspirations. Art can bring its viewers joy, surprise, stimulation, and reflection in a way that is unique to a specific place. Notable art projects can put a City “on the map” in a way that brings national, and even international attention to a site. This can make the City a more competitive location for business and tourism alike. In addition, public art supports the local economy through the processes of design, fabrication, and installation.

Development is good, but thoughtful development is even better. Private development is critical to a City’s growth: thoughtful development that respects local history, culture, and customs can be integrated into the life of the City’s citizens,

as well as its urban landscape in a way that adds to the City’s cultural as well as its economic life. 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, and helping to both express and forge local identity.

2. WHAT IS A WORK OF PUBLIC ART?

City codes typically specify that the public art project is an original, site-specific work of art, constructed of durable materials such as, but not limited to, metal, glass, stone, light, or mosaic.

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 work *with* architects, landscape architects, engineers, lighting designers and/or other professionals, but he or she must be the primary designer of the project, and must hold the contract with the developer for the work of art.



Richard Deutsch
Chevy Chase Center, MD
Photograph: Joseph Romeo

Against the Day

3. WHAT ARE THE CITY'S REQUIREMENTS FOR PUBLIC ART PROJECTS?

Understanding the City's requirements for public art projects is the critical first step in any successful project. Nearly 100 cities and municipalities across the U.S. have a requirement for public art in private development, and no two programs are the same. Therefore, it is important to research the particular requirements in the jurisdiction in which your development is located.

Requirements for public art projects generally fall into three categories: **Guidelines, Policies, and Ordinances.**

Guidelines are typically suggestions issued by City staff and approved by elected officials. Guidelines state desired outcomes concerning new private developments. Guidelines may address matters such as FAR (foot/area ratio), public space amenities, illumination, the character of the architecture, and the inclusion of public art. Guidelines may be flexible, and they may not be enforceable. Guidelines often require discussion with City representatives to ensure that there is a clear understanding of what is expected. There may be some flexibility regarding the placement of the art project, the scale of the work, etc.

Policies are typically more specific; they are spelled out in municipal documents, and are often designed to address a particular area where

several independent developments are being planned. They are meant to affect the character of an existing community, or create a new area of the City.

Policies express "the way we do things" within a community. They are often used to help give cohesion to a private development area in which several independent developments will be affecting the character of a neighborhood, or in redevelopment or new developments in expanding city boundaries.

Policies are more enforceable than guidelines, particularly when a precedent has been set by past developments. For the developer they also allow for some flexibility, as explained?

Ordinances are enforceable laws passed by elected officials. Ordinances are used to define very specific requirements for public art projects, such as the artist selection process; options for the nature of the project (materials and methods); maintenance requirements; and other matters pertaining to the creation and life of the public art project.

Building permits are issued only when compliance with these city codes is met. Ordinances can be very definite about matters such as the look of a building. The benefit of ordinances is that they are objective, clear, and enforceable: the drawback is that they are rigid,

which can discourage innovation and in some cases may present obstacles to choosing the best options for solving problems or challenges that arise.

Reviewing the existing public art projects in the City or municipality may help developers come up with creative ideas for various possibilities and opportunities, while also giving them an overview of the City's public art collection. This can help the developer see how the new public art project may complement other works in the City's collection.

“Arlington's program is governed by a Public Art Policy, not ordinance, and public art on private property is always negotiated, never required. The strength of the program is the long cultivated expectation for public art.” Brooks Barwell, Arlington County, Virginia

4. WHAT IS THE CULTURAL LANDSCAPE OF THIS CITY?

When a developer understands the cultural landscape of a City or municipality, a more positive outcome is likely to result, both for

the developer and for members of the community.

Here are a few good questions for developers to ask:

- a. Does the City, Town, or Municipality have a Cultural Arts Department? If so, who is the Director?
- b. Is there an appointed Arts Commission, or an established cultural council?
- c. Does the Commission have legal authority?
- d. Has the Commission been involved in previous public art projects (or is it a new program)?
- e. Do the City and /or community produce an annual program of cultural events?
- f. Who are some of the artists living and working in this community?
- g. Are there any local or regional organizations that can help foster connections between local artists (particularly artists working in public art), nationally known artists, and the entities charged with supervising the installation of public art?

- h. Does the City/municipality/ area have a Public Art or Cultural master plan?

**5. “How can I do the right thing for my project and for the City?”
(In other words, how can a developer go about meeting the City’s requirements in a way that benefits his or her development project as well as the City?)**

The developer has a vision for what his or her development will be. For its part, the City has created public art policies that support its vision for future growth, with hopes of gaining visibility in a national and international market, and a global world. By deciding to develop a project within a particular City, the developer accepts responsibility for being an active and informed citizen of that community even if he or she does not live there.

Investing in public art may offer benefits in the form of opportunities for trade-offs regarding, for example, flexibility in FAR requirements, expedited permitting, additional building height, massing options, and a range of other possibilities.

There are many other benefits for developers to realize in creating public art, including gaining visibility, making their properties more attractive to both business and residential markets, and promoting good relationships within the community.

“The arts are the best insurance policy a city can take out on itself.”

Woody Dumas, Mayor of Baton Rouge

6. How can a public art requirement become an asset for the developer?

Many developers and owners who were initially skeptical about the requirements of public art projects have become unequivocal in their support for such projects, and the benefits to their developments, after participating in the process.

A public art project that is generated by thorough discussions first between the developer and the City staff, and then with the artist; and that follows a clear and

transparent process, can often enhance the vision of the developer, and make the development both a destination and a local landmark.

“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



Larry Kirkland *Garden Gifts*
Sunnyvale Clinic of the Palo Alto Medical
Foundation, CA
Photographer: Craig Collins

7. Why is it a good idea to hire a public art consultant?

Many developers are understandably unfamiliar with the process of commissioning and supervising the construction of a work of public art. An experienced public art consultant brings a unique set of skills to oversee the process, from the initial discussions, to selection of the artist, to design development, and throughout the approval process, fabrication, and installation.

Commissioning an artist to create a work of public art is different than working with architects, landscape architects, engineers and contractors. The public art consultant can bring an invaluable amount of professional experience and insight to the process. The public art consultant is the owner's (or developer's) representative in all phases of the project, ensuring that the work of public art is achieved within budget and on schedule, and that it meets the aesthetic goals of all involved.

A public art consultant has the expertise needed to work with the developer, the developer's team, the artists, and City staff to commission and create a unique, site-specific public art project for either a public or private development. The public art consultant is retained to oversee the selection of an artist and to ensure that the finished project is of the quality promised by the artist and meets the expectations of the commissioning entity. His or her experience includes coordinating and

managing a variety of personalities, skills, interests, and regulations. The specific experience and expertise of the public art consultant (which is quite different from that of a corporate art consultant) can save the developer considerable time and effort, and will contribute to the realization of an exemplary project.

An experienced public art consultant is invaluable in assuring that communication among the various participants is clear, and that all stages of the process are anticipated and discussed well in advance. The public art consultant can assist the client in a range of ways.

For example:

- Recognizing opportunities within the public art project, such as a shade structure, or a seating element, or the enhancement of a planned water feature;
- Understanding and coordinating the municipal approval process;
- Communicating with the City staff to insure a smooth process from beginning to completion;
- Soliciting portfolios from a variety of artists to consider for the project.
- Working closely with the artist to ensure the highest quality of work;
- Ensuring that deadlines are met;
- Helping to manage budget issues.

In addition, the public art consultant can ensure that the work is successfully integrated into the built environment of the development project, in cooperation with the developer's design team and contractors.

For public art projects in private development, the public art consultant is paid by the developer, and the fee is negotiated between the two parties. It is important to confirm with the City representatives whether this fee is an allowable expense within the art budget. Payment is either based on an hourly fee with an upset limit, or a set fee based on a percentage of the overall budget. For example, an ordinance may limit the consultant's fee to 5% of the overall art budget. Of course, fees paid to the public art consultant must be transparent. An art consultant's fee is not a percentage of the artist's contract for the commission.

The public art consultant represents the developer's interests and concerns throughout the project, including the final achievement of the best possible public art project for the owner, the artist, and the community.

8. What specialized experience does an experienced public art consultant bring to the developer's team?

- Experience in and understanding of the building construction process.
- Experience in timely decision-making and negotiating skills.
- A detailed and comprehensive understanding of the unique challenges and opportunities in creating a site-specific work of public art.

- Experience in dealing with the dynamics of City politics.

9. What are some of the key questions to ask a public art consultant you are considering hiring?

- Do you have experience in overseeing a range of public art projects (different budgets, locations, sites)?
- Can you provide references from developers or city administrators with whom you have worked?
- What are some of your initial thoughts about possible ways to achieve my goals for this project?

The City's Arts and Culture Council should be able to recommend a few qualified public art consultants.

10. What makes for a good public art process? And how does this contribute to the realization of a successful public art project?

A well-considered public art process includes a thorough, transparent artists' search and selection process. It is essential to a good project outcome that this process is clear, that everyone involved knows the steps in the process, and that they understand how and why they are there. As in construction projects, this is the critical underlying infrastructure of the public art project.

Questions to ask:

- **Does the City define the process?**
Some City ordinances and guidelines

specify that City staff, as well as the developer's team, must be involved in the selection of both the site for the work and the project artist, and may have a clear process for including them in place. Other Cities and municipalities may have less well-defined requirements. It is very important that the developer work closely with the City staff to become familiar with the process and understand the requirements.

- **If the City has not specified the steps in the public art process, an experienced public art consultant can be very helpful in working with the developer and the City to achieve a positive process and outcome.**



Lynn Basa *The Grove* (with wedding party)
Village Square, Claremont, CA
Photograph by Artist

11. Who should the developer include on his team?

It is of crucial importance for the developer to assemble a team of knowledgeable, engaged, experienced individuals to participate in the public art process. These individuals may include:

- A public art consultant;
- City officials;
- Art educators and curators;

- An architect (the project architect, and/or an architect not directly involved in the development project);
- A landscape architect experienced in public art,
- Other experienced artists.

While it is understood that the developer will make final decisions about the public art project, the input, discussion, and counsel of the advisory group and City staff can be invaluable in creating a positive outcome. The role of the advisory team is to help the developer gain knowledge of and insight into a range of possibilities in selecting both the public art site and the artist.

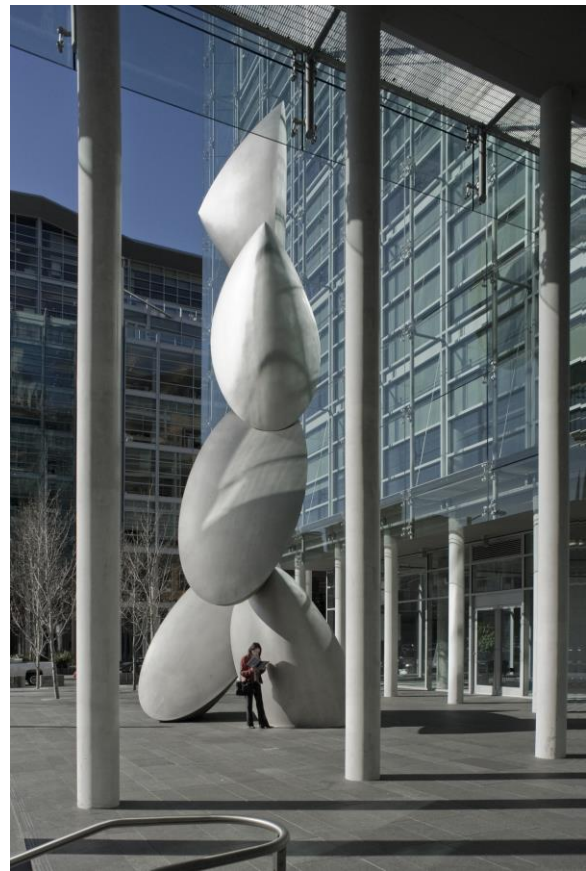
Commissioning a work of public art is a major decision that will have a long-term impact on the development, as well as on the community. The advisory team can assist the developer by making the City approval process more streamlined, and by providing professional support throughout the selection and approval process and throughout the project's development.

12. How is the cost of the public art project determined?

Typically, the cost of the public art project is calculated as a percentage of the hard construction costs of the development project. Each City or municipality sets its own percentage, usually (but not always) 1%. This number represents the total budget for the public art project, and covers all costs related to the public art project, including artist selection and fees, the artist's consultants and engineers, fabrication, shipping and transportation,

installation, and construction costs related to installation of the public art project.

It is important to discuss the budget with City staff, to ensure that all the costs that are to be included in the budget are understood and accounted for.



Richard Deutsch *Fragments*
 Blu Plaza, San Francisco, CA
 Photograph by Artist

13. How is the best and most appropriate site for public art determined?

Even if sited on private land, the public art project will become an important part of the City's landscape. Depending on the available siting for the public art project, City codes often require that the work of art work is visible and/or accessible to the public.

Each development project and site area is unique, and determining the best location for the work of public art in a way that also enhances the development project should be a part of early discussions. The developer's concept and goals for the development project are a critical part of this discussion. By reviewing the project site plan, the developer's advisory group, working with City staff, may find unique ways of realizing opportunities that are not apparent during the initial review.

Sometimes there will be several different possible sites to consider: in other cases, one site will be immediately apparent as the best location. Most experienced artists will want to be able to contribute to this discussion. For many artists who do public works, understanding a site with as much clarity and perception as architects and landscape designers is an important part of their professional expertise. Bringing an artist onto the development team early in the design phase allows for his or her vision to be optimally realized.



Anne Marie Karlsen *Wheels*
Santa Monica Place Parking Garage, CA
Photographer: William Short

14. How is the artist selected?

Through a site plan review process, with the developer, advisory committee and City staff working together, typically several possible location(s) for the public art project are selected.

Some locations will suggest a particular type of public artwork (landscape, lighting, mosaic, metal, etc.). When this is the case, the search for an artist or group of artists experienced in that particular medium marks the beginning of the search process.

In other projects there may be various possibilities for both the site and the type of work, thereby allowing for a wider range of potential artistic opportunities.

Some experienced artists work in a variety of media. Another way of approaching this process is to bring an artist or artists to meet with the team prior to selecting a site.



Larry Kirkland *Around About*
Westgate Center Pasadena, CA
Photograph by Artist

There are several ways to seek appropriate, experienced artists. Public art consultants have comprehensive knowledge of and experience with qualified artists. Typically, the advisory team, as well as the City's arts and culture staff, will also have recommendations for artists to consider. In some cities there is a pre-qualified pool of artists to be considered for art commissions, selected by a jury process.

One type of selection process, coordinated by the public art consultant or City Staff, might include the following steps:

- Request for qualifications (RFQs) from artists to be considered for the project are collected.
- The developer, the advisory committee, City staff, and the public art consultant review artists' materials submitted.
- Working together, the advisory team and City staff determines a short list of 3-5 artists to be considered.
- The short-listed artists visit the site, meet with the developer and the team, and review the site plan and architectural drawings for the project.
- Artists present their concepts and ideas to the selection committee (the developer, members of Advisory Committee, City officials and staff)
- After discussion by the selection committee, the artist is selected. (If additional information is needed before a decision can be made, the committee decides next steps.)

In another approach to the selection process an artist is selected after a review of his or her qualifications and an interview with the Committee. This artist is then retained to develop a concept, working with the design team of architects and landscape designers. The concept is then subject to review and acceptance by the developer, the Advisory Committee, and City officials and staff.

decision-maker for the public art project.

15. How can developers and artists do their best work together?

“During the design process it is important to create opportunities for discussions about budget, theme, size, colors, materials, style and how to best work with whatever approvals are necessary. A very collaborative relationship will result in a product that is far better for both parties than a project created in a vacuum. If the developer does not have the temperament for working with an artist in this fashion, recognize that fact and appoint someone else to do so.”

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

- Begin to discuss the project with City staff and the public art consultant as early in the process as possible -- the earlier, the better, to allow for proactive planning.
- Establish a clear and transparent process and schedule for reviews of the project. (Typically the reviews are related to contract phases and the payment schedule outlined in the artist's contract.)
- Articulate the vision for the development project, and express ideas about how the public art project might be best integrated into the development project overall.
- Clarify the roles of members of the advisory team. This is particularly important if the developer has designated someone on his/her staff as a key representative and

16. What should be included in the artist's contract?

- The public art consultant and/or City staff will have experience with public art contracts. Unlike other building, design, and construction contracts, the artist's contract includes the artist's right to retain intellectual property rights to his or her ideas, concepts, models, samples, drawings as well as the finished work of art.
- The artist is responsible for the supervision and/or execution of all aspects of the public art project.
- The contract must be directly between the developer and the artist (not through a third party, such as the project architect or general contractor).
- Once the art project is complete, the title of ownership passes to the developer. The artist or artist's estate retains the copyright in perpetuity.



Larry Kirkland *Wonder Wander*
Gateway Center at Potomac Yards,
Arlington County VA.
Photographer: Craig Collins

17. What happens after the artwork is installed and approved?

- The finished and installed public art project is part of the developer's agreement with the City. The project's Certificate of Occupancy may depend upon the completion of the art project and its acceptance by the City.
- As part of the developer's agreement with the City, the art project and the entire site must be maintained in accordance with guidelines supplied by the artist.
- No alterations, removal, relocation, or de-acquisition may take place without the approval of both the City and the artist.
- Should the property be sold, these requirements remain in place as part of the property, and are the responsibility of the new owner.
- City codes specify the process when a work of art is damaged or removed due to mitigating factors, as determined by the City.

18. Frequently asked questions:

- ***Is it preferable to hire a local artist?***
This often depends upon the scale and scope of the project. Smaller project budgets suggest that, to hold down costs, an artist from the region should be sought. Larger projects may attract an artist of greater reputation and expanded vision. Finding the right artist for a particular project may mean expanding beyond the region.
- ***Should the artist be required to use local fabricators?*** Artists create their artworks in many ways: some in their own studios, and some using a variety of artisans and fabricators. Artists often develop strong working relationships with these fabrication teams. These specialists are uniquely qualified to help realize the vision of the artist. A local fabricator might be suggested to a good end result, but this decision should be left up to the artist.
- ***What happens if the developer and the developer's team are not satisfied with the artist's proposals?***
A good contract will define the process. Most often if the developer or City is not satisfied with the proposed concept, a frank discussion among all involved will help define the problematic issues. The artist is then offered the opportunity to refine or reconceptualize the proposal, for an additional fee. If the new concept is still unacceptable, the developer has

the right to release the artist from the contract and find another artist.

mutually respectful relationship between owner and artist is very important.

- ***What are some safeguards for ensuring that the public art project will stay within budget and on schedule?*** Be very clear what the established budget is. Have a thorough understanding of the artist's previous projects, the budgets for them, and whether there were budget over-runs in the past. Ask for a complete budget breakdown of all materials, labor, overhead, crating, shipping, consultant fees, installation, and artist oversight and fee. Insist that the artist carry a contingency, and make sure the developer has a contingency as well. As with all building projects, running into the unexpected is to be expected.
- ***Are artists hard to work with?*** Artists ask the reverse: "Are these people hard to work with?" Artists, like many others, are creative, visionary, hardworking and dedicated people. Those who are involved in creating works in the public arena understand the complicated demands of schedules, reviews, and working with large, complex groups of people. Prior to hiring an artist, it is important to talk with those who have worked with him or her previously. It is also important to understand that artists are not like traditional construction workers. Artists make one-of-a-kind objects, and it requires great skill and attention to realize their visions. Establishing an involved and



Michael Stutz *Flamethrower*
Westin Gaslamp Quarter, San Diego, CA
Photograph by Artist

This document was written by Susan M Miller, with contributions by Janet Hulstrand, Janet Kagan and Larry Kirkland

www.AmericansForTheArts.org/PAN