



**COUNCILMEMBER DAVID ALVAREZ**

**City of San Diego  
Eighth District**

**MEMORANDUM**

**DATE:** January 24, 2017

**TO:** City Attorney Mara Elliot

**FROM:** Councilmember David Alvarez

**SUBJECT: Accessibility of Public Art included within Capital Improvement Projects**

Incorporating public art in City Capital Improvement Projects is a critical way of ensuring that the public is able to access works of art across San Diego. Council Policy 900-11 requires that the public art program be funded by 2% of eligible construction projects in excess of \$250,000. This policy has resulted in some beautiful and engaging pieces of artwork throughout San Diego. However, in December, a *Voice of San Diego* article, "The City Might Not Have to Put Public Art in Not-So-Public Places After All," (attached) raised an important question regarding whether public art pieces are required to be built on the site of a City project if that project is funded with restricted funds and is anticipated to not be readily accessible to the public. As taxpayer funded public art is meant to be experienced and viewed by the public, I believe there should be a clear answer as to whether our current policies allow for public art to be built off-site when a facility that triggers the public art policy is, by and large, inaccessible to the public.

I am requesting an opinion from you regarding whether there is a requirement for a public art piece to be located on-site in order to comply with the City Public Art Policy. Additionally, in relation to the Public Utility Department projects mentioned in the article, do any of the bonds or funding sources for either of the two projects include specific restrictions that would limit the City's ability to locate the public art offsite at a more publicly accessible location? If so, would such a restriction apply to future projects funded by bonds or other similar financing vehicles? Would it be possible to issue a bond that allows for a small amount of the funding to be used off-site for the purposes of a public art component and would that be allowable when a CIP is utilizing enterprise funds?

Thank you for your prompt response.

CC: Halla Razak, Director, Public Utilities Department  
Dana Springs, Executive Director, Commission for Arts & Culture  
Lakshmi Kommi, Director, Debt Management Department

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## The City Might Not Have to Put Public Art in Not-So-Public Places After All

Posted By [Kinsee Morlan](#) On December 2, 2016 @ 10:44 am In [Arts/Culture,Public Art](#) | [No Comments](#)

The city says [it puts pricey public art pieces in not-so-public places](#) <sup>[1]</sup> because it has to – but that might not be true.

Two water facility construction projects totaling \$1.3 million are currently in the city's pipeline, and both trigger the city's public art policy, which requires 2 percent of project costs to go to public art.

Water facilities are essentially closed to the general public, though. The city contends that the funding for the art comes with strings that require it to be located on the site of the public works projects, even if they're in places the public never actually goes. But a closer look reveals the city might be overly cautious in its approach and that locating the art in nearby locations where the public might actually get to enjoy it could be within the rules after all.

Locating public art in city facilities that aren't open to the public is, in fact, something other cities like San Francisco have almost completely stopped doing.

### Accessing the Inaccessible

Good luck finding your way into the Miramar Water Treatment Plant. On a recent trip there, I passed the entrance twice. Once I found it, I was met with fences and a security guard.

It's not exactly the welcoming entrance you'd expect from one of the city's public art installations, which cost \$750,000.

Once inside the gates, I briefly got lost again before a city public information officer waving her hands helped me find my way.

An [installation by San Diego artist Robin Brailsford](#) <sup>[2]</sup> awaits those who manage to make it to the plant's front doors. Brailsford's design mimics the Colorado River and Grand Canyon, transforming the plant's entrance into an artful oasis centered on the water that's treated there. Typically, untreated water would simply flow into a plant through a buried pipe, but Brailsford's concept exposes the water and turns it into art. Other art elements extend inside the plant.

The Miramar Water Treatment Plan isn't very publicly accessible, and that's by design.

Water treatment plants provide sensitive and essential city services, so the buildings need to be secure. After the Sept. 11 attacks, security tightened further; public tours and open houses have essentially stopped. Now only the occasional tour group or journalist who requests access and passes security checks makes it inside the guarded gates of water facilities in San Diego.

The [inaccessibility is a problem when it comes to the big-budget public art](#) <sup>[1]</sup> located at city water facilities. While other city-funded art is [located at libraries, fire stations and other public places](#) <sup>[3]</sup> that make sense, the art accessibility issue is something that's noted in the city's own [public art master plan](#) <sup>[4]</sup>, which guides how the city handles its art program:

"Some of the best public artworks are relatively hidden from public access. Water treatment plants and bio-solid processing facilities are two such examples; the departments operating these facilities have commissioned award-winning artworks that are either not open to the public or cannot be seen

without an appointment. Many fine projects are also sited in areas that don't promote visitors, due to security concerns."

The master plan goes on to call the problem "a marketing issue, as well as one of accessibility" and the recommended solution is for the city's Commission for Arts and Culture <sup>[5]</sup>, which manages the city's public art program, to create "a specific marketing plan for each new public artwork to introduce and educate the public about the project."

Approximately \$975,000 will go toward public art at a new Pure Water North water recycling system at the North City Advanced Water Purification Facility in University City, and about \$340,000 will pay for public art at the new Chollas Water Operations Facility in Oak Park.

Both buildings, scheduled to be completed over the next few years, will essentially be closed to the general public, but that hasn't encouraged city leaders to think of a more solid solution for expanding access than better marketing.

Putting together a good plan promoting the two new art pieces once they're built may increase public awareness of the artworks' existence, but it won't make the art any easier to get to.

## **Moving the Public Art to a More Public Place**

Brailsford said her original idea for the art at the Miramar Water Treatment Plant included siting some artistic elements at Lake Miramar, which is right next door to the plant and open to the public. She was told the lake was off limits since it wasn't part of the plant.

According to the city's public art policy <sup>[6]</sup>, though, it is possible to use funds to pay for portable or temporary art, so an artist is allowed to create a piece of artwork that isn't physically attached to the city building that paid for it.

That means the city's public art policy does give the city and artists some flexibility, depending on how the project is funded. If the city takes out a bond to pay for a project, for instance, then stipulations might require all of the money to be spent at the site of the project.

Dana Springs, executive director of the city's Commission for Arts and Culture, couldn't say for sure whether the Pure Water North or the Chollas Water Operations Facility projects are funded in such a way that require public art to be located on site.

Determining whether the funding sources bind the art to the site of the project would require a legal opinion from the city attorney's office.

Voice of San Diego requested public records that included information about funding sources for both the Pure Water North and Chollas Water Operations Facility projects. We sent those documents to the city attorney's office and asked whether any of the funds required the art to be located onsite of either project. Gerry Braun, the city attorney's director of communications, said the office couldn't answer because it can only provide legal opinions at the request of the city.

Meanwhile, the standard process is for arts commission staff to eyeball how projects are funded and make its own determination about whether it is legal to locate art installations offsite. So far, the commission has never decided to locate a project funded by the 2 percent requirement at an offsite location, in part because Springs said she likes having public art at water facilities.

"I think that having art on these sites is reasonable and good," she said.

Springs doesn't think changing the way the city interprets its percent-for-art program is the best way to make public art more accessible. Instead, she said, the city should find more money to pay for more public art, and use it on projects with fewer requirements.

This year, for instance, the commission set aside some of its hotel tax money to pay for public art with fewer restrictions on where it can be located.

"That is actually a cleaner, faster, quicker route," Springs said. "The funding has restrictions [it has to be used to promote tourism] but it doesn't have the same restrictions."

## 'Sometimes It's Just Asking Questions and Not Making Assumptions'

San Francisco has mostly solved the problem that San Diego finds so difficult.

That city's public art [ordinance](#) <sup>[7]</sup> allows it to pool public art funds until it can build better pieces in more publicly accessible places.

A few years ago, San Francisco's [Arts Commission](#) <sup>[7]</sup> also investigated the restrictions on bond-funded projects and found they aren't all that limiting.

"We assumed if it was bond money funding a project, the art had to be on the building that generated it, but no it doesn't," said Susan Pontious, who directs San Francisco's public art program. "Sometimes it's just asking questions and not making assumptions."

San Francisco's city attorney issued an opinion that said, in most cases, as long as bond funds are used for capital purposes, it's OK to move public art to other sites. Only in instances when bonds are passed by voters and the measures includes restrictive language does the art have to remain onsite.

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URL to article: <http://www.voiceofsandiego.org/topics/arts/city-might-not-put-public-art-not-public-places/>

URLs in this post:

[1] it puts pricey public art pieces in not-so-public places:

<http://www.voiceofsandiego.org/topics/arts/san-diegos-public-art-isnt-public/>

[2] installation by San Diego artist Robin Brailsford:

<https://www.codaworx.com/project/brailsford-stream-of-consciousness-body-of-water-city-of-san-diego-capital-improvement-projects>

[3] located at libraries, fire stations and other public places:

[https://www.google.com/maps/d/viewer?](https://www.google.com/maps/d/viewer?mid=1Jm01nxasxC4iMgVcj9MSucAfdos&ll=33.15313054428474%2C-117.90587476093754&z=8)

[mid=1Jm01nxasxC4iMgVcj9MSucAfdos&ll=33.15313054428474%2C-117.90587476093754&z=8](https://www.google.com/maps/d/viewer?mid=1Jm01nxasxC4iMgVcj9MSucAfdos&ll=33.15313054428474%2C-117.90587476093754&z=8)

[4] public art master plan: <https://www.sandiego.gov/sites/default/files/legacy/arts-culture/pdf/pubartmasterplan.pdf>

[5] Commission for Arts and Culture: <https://www.sandiego.gov/arts-culture>

[6] public art policy: [http://docs.sandiego.gov/councilpolicies/cpd\\_900-11.pdf](http://docs.sandiego.gov/councilpolicies/cpd_900-11.pdf)

[7] ordinance: <http://www.sfartscommission.org/pubartcollection/documents/pa00-public-art-ordinance/>

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