

Subject: Public Art Vision and Policies

Meeting Date: February 14, 2022	
Submitted/Presented by/Department: Nate Burkett, City Manager	
Action Type	
<input type="checkbox"/> Consent Item	<input checked="" type="checkbox"/> Discussion/Direction
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Informational Only
<input type="checkbox"/> Action/Motion	<input type="checkbox"/> Report
<input type="checkbox"/> Resolution	<input type="checkbox"/> Other: Click or tap here to enter text.
Action	
Hold discussion and give direction on Public Art Vision and Policies	
Background	
<p>The City Council has indicated an interest in establishing a vision for public art in the City of West St. Paul. The purpose of this conversation is to create guideposts for the potential development of ordinances, policies and procedures related to public art.</p> <p>There are two major points for the council to keep in mind during this discussion:</p> <p>First - it is very important to recognize a distinction between public art policies and sign policies. In many examples, public art is defined as art located on public property and is accessible to the general public. This would be in contrast to the sign code which would generally regulate the size, manner, and location of signs on private property. There is a nexus between the two topics in that many times certain types of public art are regulated by a sign code (murals) whether intentionally or incidentally. However - the purpose of this conversation is to separate the two topics through intentional amendments to regulation and policy.</p> <p>Second - there are certain risks that come along with adoption of public art ordinances or policies. From a legal perspective, there is past and current litigation that suggests public art and/or displays on public property are subject to scrutiny because (among other reasons) it may be viewed as government affirmation of the free speech rights of one group over another (i.e. group A has space for their art, but group B does not). There are challenges coming through the court systems that will have impacts on any policy that is adopted, and the council needs to be aware that such a challenge could be made to any ordinance or policy adopted here.</p> <p><u>Introduction</u></p> <p>There is a pending proposal for a potential mural on a building in the city. The council is encouraged not to think specifically about this proposal, but to think about the overarching policy and the vision that the council has for public art in the city.</p> <p>There are many questions that the council will need to provide direction on in the future such</p>	

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as objectives of a public art program, processes and funding. The direction required for today is intended to help staff understand the council's view on what public art is, where it should be located and who will/may be responsible for proposing, planning and installing public art. With that, staff can prepare recommended adjustments to regulations as well as draft policies for council consideration.

Definition of Public Art

The definition of public art will be a driver of policies or regulations that are developed to put the vision in to action. In review of other regulations and policies there are several elements that are commonly included:

- **Location:** Public art is typically identified as being on public property. In some policies this is relatively broad, including all government owned property and infrastructure (i.e. state, county and city, and other types of jurisdictions). In other policies location is narrowly defined to city owned property or even more narrowly defined to city parks.
- **Accessibility:** all policies reviewed include some statement that "public art" is located in places that are accessible to the public.

Recommended Definition: Define Public Art as "original art pieces, installed on city-owned (or publicly-owned) property, intended for public view and accessible to the public"

Location of Public Art

The purpose of this heading is to look at public art from a zoning perspective. What zones of the city are appropriate for public art? The recommended definition limits public art to either city-owned or publicly-owned property. There are ordinance examples (Section D at [this link](#)) that allow art pieces which may be considered public art on private property, and which creates size, material and lighting requirements for said art pieces.

If the council's direction is to limit public art to city-owned property perhaps simply establishing a policy guiding the objectives and processes will be sufficient to implement a public art program.

If the council's direction is to limit public art to publicly-owned property, the regulatory and legal issues become more complex. While there is a possibility that regulations could be created to allow public art on all publicly-owned property based simply on ownership - recent legal precedents suggest such a rule might be struck down as arbitrary and capricious. For example, if a publicly-owned property with a mural next is next door to a single family home, it would seem it would seem arbitrary to say that simply because the owner of one property is government the rules should be different.

A better methodology would be to use the zoning code to identify zones where public art is

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allowed. Currently, the city has areas that are guided as "institutional" in the comprehensive plan. In theory, the city could initiate a zoning amendment to create an institutional zone, follow the guiding from the comprehensive plan, and allow public art in institutional zones as well as parks and open spaces. It should be noted that not all areas guided as institutional are publicly-owned. There are several parcels guided as institutional that are privately owned and used for educational or other purposes. The Metropolitan Council has requested all cities make sure their zoning aligns with comprehensive plans, so this re-zoning step may be required in any case.

In summary, the lowest risk first step would be to develop a public art policy that guides public art to city-owned property - preferably parks. With somewhat more risk and effort public art opportunities could be expanded to "institutional" zones. And at a higher risk level, the council may also consider public art opportunities in other zones throughout the city.

Recommended Location(s): City owned land zoned as parks and open spaces.

Proposing, Planning, Installation and Maintenance

This section needs to be broken out in to two elements. One for city-owned property and another in the event the council wants to allow public art on property that is not city-owned.

If the council chooses to guide public art to city owned property, the council will establish processes by which the city will choose which art pieces to install. Those polices will guide how pieces are chosen, placed and maintained. The council will have broad discretion on all elements of the art pieces including size, material and lighting.

- On city owned property, the council may choose to commission art, call for proposals, or allow the general public to make proposals to create art in public spaces. This is a determination the council will make at a later date that also has legal and practical implications.
- As part of the Explore WSP days event in August, staff is considering proposing a call to artists to bring an art piece to the arts, environment and cultural fair, to allow the public to vote on their favorite, and then to purchase the most popular art piece.

If the council chooses to allow public art on properties not owned by the city by any other manner, the council will retain broad discretion on public art pieces on city-owned property, but may only create regulations on the size, material and lighting on public art pieces elsewhere. This will require adoption of new ordinances, and amendments to others. In addition because regulations will be adopted for properties not owned by the city, the council will likely be held to the same standards on city-owned property for the size, material and lighting of art pieces.

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Recommendation: (Dependent upon council direction on location)

Summary

- The easiest and lowest risk means to begin the development of a public art program in the city is to develop a policy and begin advancement on city-owned property, primarily in parks and open spaces. If the direction from the council is to allow for all publicly-owned property or even for some privately owned property to display public art there is a method to allow for that as well.
- The council will retain a more broad discretion on size, material and lighting related to public art pieces by limiting to city-owned property, particularly parks and open spaces.
- There are risks of litigation if the council direction is to allow public art on properties not owned by the city.

Links of Interest

- [2040 WSP Comp Plan](#) (Page 11 is the guiding map)
- [WSP Zoning map](#)
- [Various links to implementation plans and policies](#) (courtesy of the City of Red Wing, MN)
- [Rochester, MN ARTWalk](#)
- [Delano, MN Public Art Policy](#)
- [St. Paul, MN Public Art Program Guidance](#)
- [Minneapolis, MN Public Art Program](#)
- [American Bar Association Article on First Amendment implications](#)

Attachments

Previous Relevant Actions

Alternatives

Financial

Budgeted: Yes

No Financial Impact

Fund: Click or tap here to enter text.

Click or tap here to enter text.

Department: Click or tap here to enter text.

Account: Click or tap here to enter text.

Amount: Click or tap here to enter text.