Memorandum 10-148 Public Arts Committee Administrative Guidelines

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TO: MAYOR AND CITY COUNCIL MEMBERS
CITY OF HOMER

FROM: THOMAS F. KLINKNER

RE: PUBLIC ARTS COMMITTEE ADMINISTRATIVE GUIDELINES

FILE NO.: 506,742.100

DATE: DECEMBER 3, 2010

Based on our discussion of this topic at the November 22, 2010 Council meeting, I have done the following. First, I have drafted the attached ordinance that provides for the creation, composition and duties of the Public Arts Committee in a form similar to that used for other City boards and commissions. Parts of this ordinance, particularly those regarding the Committee's duties, require input from the Council. Second, I have prepared the attached revision of the Committee's proposed administrative guidelines, principally (i) to eliminate duplication of material in the proposed ordinance and (ii) to modify provisions that purport to impose legal obligations on the City. Explanations of both the ordinance and the revisions to the Committee's administrative guidelines follow.
1. The Draft Ordinance. The draft ordinance consists of two parts. Section 1 adopts a new HCC Chapter 1.70 regarding the Public Arts Committee. This chapter follows the pattern used for other City boards and commissions in HCC Chapters 1.72 through 1.79. Sections 2 though 5 amend sections of HCC Chapter 18.07 regarding works of art in public places. Topics that the draft ordinance addresses are discussed below. Citations to the Committee's administrative guidelines refer to line numbers in the last draft of administrative guidelines prepared by the Committee, which is dated November 18, 2010.
A. Committee Composition. Proposed HCC 1.70.010(a) provides that the Committee shall consist of seven members, as currently provided in HCC 18.07.060. As required by AS 29.20.320, it provides that Committee members are appointed by the Mayor and confirmed by the Council. It also authorizes the Mayor to solicit nominations to the Committee, as HCC 18.07.060 presently authorizes the Council to do. I also have added the qualifications for Committee members that the Committee proposed in its administrative guidelines at lines 40-47. Proposed HCC 1.70.010(b) adds the provision that the Committee proposed in its administrative guidelines at lines 48-49 that up to two Committee members may reside outside the City. What qualifications are required of Committee members, and whether non-City residents may serve on the Committee, are matters of policy for the Council to determine.
B. Terms and Vacancies. Proposed HCC 1.70.020(a) provides the same terms for Committee members as HCC 18.07.060. Proposed HCC 1.70.020(b) provides for the filling of vacancies on the Committee in the same manner as HCC 18.07.060. Proposed HCC 17.060.020(c) provides for the Committee to declare a vacancy for the same unexcused absences from meetings as the Committee proposed in its administrative guidelines at lines 59-61.
C. Proceedings of Committee. Proposed HCC 1.70.030(a) authorizes the Committee to adopt regulations governing its proceedings, subject to Council approval. Proposed HCC 1.70.030(b) provides for officers of the Committee as the Committee proposed in its administrative guidelines at lines 102-113.
D. Powers and Duties. Proposed HCC 1.70.040 adopts a list of powers and duties for the Committee that is considerably abbreviated from the list the Committee proposed in its administrative guidelines at lines 21-33, 66-100 and 145-148. However, the powers and duties in proposed HCC 1.70.040 extend beyond the present functions of the Committee under HCC Chapter 18.07, which are limited to works of art in City buildings and facilities and the administration of the public art fund. What powers and duties should be assigned to the Committee is a matter of policy for the Council to determine.
E. Adoption of Regulations. Section 2 of the ordinance would amend HCC 18.07.040(b) to clarify the procedure for

the Committee to adopt regulations, and make it similar to the procedure by which the Council approves other administrative matters.
F. Selection of Works of Art. Section 3 of the ordinance would amend HCC 18.07.050 to clarify the manner in which a jury is designated to select works of art for acquisition by the City.
G. Repeal of HCC 18.07.060. Proposed HCC Chapter 1.70 would address the matters that presently are addressed in HCC 18.07.060, making the latter code section redundant. Therefore, the ordinance would repeal HCC 18.07.060.
H. Exemptions of Projects. The ordinance would amend HCC 18.07.070 to clarify the standards and procedure for exempting a City construction project from the requirement to include works of art.
2. Revisions to the Administrative Guidelines. I began the attached revision of the administrative guidelines by adopting all of the changes to the last draft of administrative guidelines prepared by the Committee, which is dated November 18, 2010. I then proposed deleting and adding material, both within the Committee's proposed revisions, and in the present administrative guidelines. An explanation of my revisions follows. Citations to line numbers refer the line numbers in the attached revision of the administrative guidelines.
A. Purpose, Composition, Terms and Responsibilities, Officers (lines 20–112; 146-148). Following the pattern established for other City Boards and Commissions, these matters should be addressed in the City Code. The draft ordinance would enact HCC Chapter 1.70 to do this. Proposed HCC Chapter 1.70 adopts the substance of the revised administrative guidelines regarding the Committee's composition, terms and officers. However, as noted above, HCC 1.70.040 adopts a list of powers and duties for the Committee that is considerably abbreviated from the list the Committee proposed in the administrative guidelines but that extends beyond the present functions of the Committee under HCC Chapter 18.07, which are limited to works of art in City buildings and facilities and the administration of the public art fund.
B. Selection of Works of Art (lines 246-286). The selection of works of art for acquisition by the City is governed by HCC 18.07.050, which provides:
18.07.050 Selection. a. Where the construction, creation or commissioning of works of art are to be incorporated in the building or facility or its grounds, such works of art shall be selected and recommended to the Council for approval by a jury of at least three members consisting of the architect or project designer, a representative of the user department, a representative of the Public Arts Committee and any other persons as may be designated by regulation and recommended to the Council for approval.
b. Where there will be an acquisition of existing works of art or the commissioning of works of art which will not be incorporated into the project design, selection shall be made or approved by a jury of at least three members consisting of a representative of the user department, one or more representatives of the Public Arts Committee and other persons as may be designated by regulation and recommended by the Council for approval.
The proposed ordinance revises the wording of HCC 18.07.050, but does not change its substance. Under HCC 18.07.050, a jury is selected by the Committee, subject to Council approval, to recommend the selection of works of art for acquisition. The acquisition of a selected work of art is subject to Council approval.
I made the following changes to the provisions regarding selection of works of art in the revised guidelines. First, I changed the revised guidelines to clarify that, as HCC 18.07.050 provides, the Committee's selection of a jury is subject to Council approval. Second, I substituted the term "jury" used in HCC 18.07.050 for the term "selection committee" used in the revised guidelines. This substitution clarifies the connection between HCC 18.07.050 and the revised guidelines. Finally, I adjusted the description of one member of a jury to conform to HCC 18.07.050.
C. Requests for Proposals (lines 302-305). For the reasons discussed above, I substituted the term "jury" for the term "selection committee."
D. Legal Issues. Several provisions of the revised guidelines appeared to impose legal obligations on the City. Such obligations should be imposed only by Council action—either by adoption of a budget to fund performance of the obligations or by approval of a contract with an artist, the terms of which include such obligations. I deleted or modified the following provisions for these reasons:
• Reservation to an artist of the right to approve changes to City-owned art (lines 311-314; 517-519). Any such reservation should be imposed only by a Council-approved contract with the artist.
• Reservation to an artist of the copyright to City-owned art (lines 317-318; 352-354; 361-362). Any such reservation should be imposed only by a Council-approved contract with the artist.
• Supervision of the installation of a work of art (lines 319-320). In many cases, it may benefit the City to hire an artist to supervise the installation of the artist's work. However, the City, which commissioned the work of art, should determine when to do so.
• References to applicable laws (lines 361-362; 441; 450; 517; 543-544). Nothing in the administrative guidelines indicates whether their author determined that such laws exist. If they do, they should be cited with specificity. A general obligation to comply with applicable law simply states one's existing responsibility to obey the law, and does not inform the reader regarding what obligations apply in a specific situation.
• Maintenance of works of art (lines 315-316; 417). The Council determines the level of maintenance that the City

will provide through its adoption of the annual budget for the City.
• Donor restrictions (386-387). The Council should retain the authority to determine whether to accept donations subject to restrictions imposed by the donor.
• Establishment of public art fund (lines 556-557). HCC 18.07.090 establishes this fund, so there is no need for the Committee to do so.
3. Conclusion. In conclusion, I recommend that the Council (i) adopt the proposed ordinance with any changes regarding the composition and powers of the Committee that the Council desires; and (ii) adopt the Committee's revised administrative guidelines with the modifications discussed above.

TFK/CMM
cc: Walt Wrede
Jo Johnson

Related Resolutions**Memorandum - Related Resolutions:** Resolution 10-80 Amending Public Arts Committee Guideline
Related Ordinances**Memorandum - Related Ordinances:** Ordinance 10-55(A) Appointment, Composition and Functions of the Public Arts Committee

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