

STAFF REPORT

DATE: May 9, 2022
TO: Sacramento Regional Transit Board of Directors
FROM: Devra Selenis, VP, Communications and Partnerships
SUBJ: APPROVING VISUAL ARTWORK POLICY AND STANDARDS

RECOMMENDATION

Adopt the Attached Resolution.

RESULT OF RECOMMENDED ACTION

Adopting a Visual Artwork Policy would establish set guidelines on the design standards for Visual Artwork that may be placed on the exterior and interior of SacRT vehicles, bus stops and shelters, transit centers, light rail stations (including parking lots, station platforms, structures and light rail bridges), and any other real or personal property owned or controlled by SacRT (“SacRT Property”).

FISCAL IMPACT

No fiscal impact.

The policy and standards will be administered by existing SacRT Staff, with the intent that the Visual Artwork that may be placed will not increase SacRT’s maintenance or operations costs unless separately agreed to by SacRT. Agreements by SacRT that fund the cost of production, installation or maintenance of Visual Artwork will be separately reviewed and approved through the normal contracting processes (including Board approval as required), as applicable, and will be subject to budget approvals at that time.

DISCUSSION

At the March 28, 2022 Board meeting, Staff presented a Visual Artwork Policy to the Board for consideration for adoption. During comments regarding the policy, concerns were raised that it did not sufficiently address the incorporation of public artwork as part of SacRT capital projects. Such artwork has been included in past rail extension projects, including the Amtrak-Folsom Corridor and South Sacramento Corridor Phase 2 (Blue Line to Cosumnes River College).

Prior to 2013, the Federal Transit Administration (FTA) allowed for art to be considered a “transit enhancement” that was eligible for federal capital grant funding. Under the current governing statutes, grantees are prohibited from using federal funding for any form of artwork, including but not limited to the incremental costs of incorporating art or non-functional landscaping into facilities or including an artist on a design team and such expenditures with non-federal funds are ineligible to be used as local match to a federal grant. These limitations will unfortunately affect SacRT’s ability to incorporate publicly-funded artwork into future projects, unless those projects are funded entirely with non-federal sources. However, because the law is subject to change, Staff has included a new section in the policy regarding the promotion of art in public places to the extent allowed by the applicable funding sources.

In addition, the subject of memorials was raised during the March 2022 Board meeting. Under this Visual Artwork Policy, SacRT will not permit visual artwork memorials; however, other forms of memorials may be permitted in accordance with a Board-adopted Memorial Program, which is currently being drafted to be brought to the Board for approval at a future meeting.

RESOLUTION NO. 2022-05-047

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

May 9, 2022

APPROVING A VISUAL ARTWORK POLICY AND STANDARDS PERTAINING TO THE APPROVAL AND PLACEMENT ON SACRT PROPERTY

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

WHEREAS, the Sacramento Regional Transit District's (SacRT) Visual Artwork Policy and Standards will establish set guidelines on the design standards for the placement of Visual Artwork on SacRT Property, as defined below.

WHEREAS, setting a SacRT Visual Artwork Policy and Standards will help enrich rider experience, affirm the distinct identity of the surrounding communities, and support a distinctive sense of place.

WHEREAS, SacRT's Visual Art Policy and Standards will build on best practices when engaging with arts and cultural organizations, and artists, and make SacRT Property more vibrant and welcoming to encourage strong community relationships, and attract and maintain ridership.

WHEREAS, SacRT's policy and standards will establish neutral, content-based limitations on Visual Artwork to ensure a safe environment for the operation of SacRT's services.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

Section 1: Public Purpose

By adopting this Visual Artwork Policy and Standards, SacRT's declared intent and purpose is to demonstrate the strong link between art and public transit. The value of incorporating both to improve the appearance and safety of SacRT facilities adds vibrancy to public spaces, and makes patrons feel welcome. Excellent design and high-quality art contributes to the goal that SacRT Properties be valued space and in effect, the people who use the space are valued. If appropriately designed, Visual Artwork, can add a humanistic dimension to the customer and community environment and may deter graffiti and other forms of vandalism and nuisance behaviors.

- A. Providing a safe, convenient and pleasant environment for SacRT patrons, which includes maximizing SacRT fare revenues by attracting and

maintaining the patronage of riders; and

B. Affirming the distinct identity of the surrounding communities; and

C. Protecting minors who use SacRT facilities and travel on SacRT's transportation system.

Section 2: **Defining SacRT Property and Visual Artwork**

SacRT Property: the exterior and interior of SacRT vehicles, bus stops and shelters, transit centers, light rail stations (including parking lots, station platforms, structures and light rail bridges), and any other real or personal property owned or controlled by SacRT ("SacRT Property"). There may be areas occupied by SacRT facilities, such as public sidewalks, where the placement of Visual Artwork is outside SacRT's control; those areas are not covered by this Policy. Visual Artwork placed in those locations may be the subject of policies adopted by other public or private entities.

Visual Artwork: for purposes of this policy, Visual Artwork may have any of the following attributes:

- Painting; photography; graphics; sculpture; bas relief; murals; water features; mosaics; fiber works; neon; glass; prints; calligraphy; recyclable and movable artworks; earth works and landscape features; site-specific paving, gates, landmarks and street furniture designed with artist input; and installations of sound and light works.
- Artworks that are permanent, transitory, functional, integrated or discrete to their site.
- Artworks created by artists for specific locations for aesthetic, or celebratory purposes.
- Artworks presented for possible donation by a private citizen or group.

Section 3: **Nonpublic Forum**

In adopting this Visual Artwork Policy and Standards, it is SacRT's declared intent and purpose that Visual Artwork placed either temporarily or permanently on SacRT Property is there by permission only and represents government speech curated by SacRT in a nonpublic forum. It is not SacRT's intent or purpose to establish public forum through the placement of curated Visual Artwork.

Section 4: **Visual Artwork as Part of SacRT Projects**

To the extent permitted by applicable funding sources, SacRT will pursue the inclusion of Visual Artwork in SacRT capital projects, including new station construction or station modification. Those projects will be subject to the selection criteria set out in this policy.

Section 5: **Visual Artwork on SacRT Property by Permission**

SacRT has sole authority to decide placement, maintenance, removal, relocation, and/or rejection of Visual Artwork on SacRT Property, except in those instances where SacRT occupies or shares property with another entity whose permission is also required for the placement of Visual Artwork.

Visual Artwork may not be placed on SacRT Property unless permitted in accordance with the provisions of an agreement approved by SacRT. Any agreement approved by SacRT for the placement of artwork on SacRT Property must be consistent with the provisions of this policy. Pre-existing agreements for Visual Artwork on SacRT Property may be amended, if necessary, to be consistent with this policy and to make any other changes that may equitably be required.

The process for authorizing the placement of Visual Artwork will be specific to the SacRT Property on which it is proposed to be placed. SacRT may consider unsolicited proposals for the placement of Visual Artwork or, for larger or more permanent Visual Artwork, may proceed with a call for artists and conduct a more formal evaluation of proposals in consultation with internal and external stakeholders.

Factors that may be considered in evaluating requests for placement of Visual Artwork include but are not limited to:

- Technical Feasibility (can the work be produced and installed as proposed)
- Relevance of the piece to the SacRT Property where it is proposed to be placed
- How the work serves to activate or enhance SacRT Property
- Durability and maintainability of the Visual Artwork
- Appropriateness of the scale of the Visual Artwork
- Compliance with the content restrictions set out in Section 8 below
- Whether the artwork has the potential to create a public nuisance by creating hiding places or blind spots on the SacRT Property.

Agreements that involve the expenditure of SacRT funds for the development and installation of Visual Artwork will be treated, as applicable depending on context: (1) as procurements subject to the requirements of Title I; or (2) miscellaneous agreements subject to Title XIV of the SacRT Administrative Code.

Section 6: **Durability of Materials and Property Inspection**

Visual Artwork on SacRT Property may be exposed to a variety of harsh conditions, including build-up of soot and grime, a range of climate conditions, and vandalism. Durable materials should be used for minimal maintenance and proven ability to withstand the challenging environmental conditions of the area for the projected lifespan, which may include protective graffiti coating.

Visual Artwork must not hinder inspection of SacRT Property. Chipping, blasting, or

modifying existing concrete surfaces is prohibited. Paint used on structures must not fill or obscure cracks and must not pose a risk to the safety and maintenance of SacRT Property.

Section 7: Installation, Maintenance and Removal

The installation and maintenance of Visual Art on SacRT Property will be set in accordance with the provisions of an agreement approved by SacRT. Any agreement will provide that SacRT's retains sole discretion to direct the removal of artwork, subject only to compliance with the requirements of California Civil Code Section 987 and following, as applicable. Issues regarding ownership of the Visual Artwork and intellectual property interests may be addressed in the required agreement. SacRT may condition its permission for the placement of Visual Artwork on agreement with the artist for long-term maintenance and repair of the Visual Artwork at no cost to SacRT (this may include the artist maintaining the Visual Artwork or compensating SacRT for its costs to maintain the Visual Artwork).

Section 8: Unauthorized Visual Artwork

Visual Artwork placed on any SacRT Property is designed to add vibrancy to public space. Therefore, it must not be a commercial advertisement or a public service announcement, which are allowable only under SacRT's adopted "Advertising on SacRT Facilities and Vehicles Policy" (definitions outlined in RESOLUTION NO. 17-01-0006, as it may be amended in the future).

Section 9: Viewpoint Neutral Limitations

The following viewpoint-neutral content-based limitations are established. Visual Artwork is not permitted on and may not be maintained on any SacRT Property if it or information contained in it falls within one or more of the following categories:

- A. False, Misleading, or Deceptive. The Visual Artwork, or any material contained in it, is false, misleading, or deceptive.
- B. Unlawful Goods or Services. The Visual Artwork, or any material contained in it, promotes, or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- C. Unlawful Conduct. The Visual Artwork, or any material contained in it, promotes, depicts or encourages, or appears to promote, depict or encourage, unlawful behavior or activities.
- D. Obscenity. The Visual Artwork, or any material contained in it, contains obscene matter or any other matter that is prohibited under the provisions of California Penal Code Section 311 and following,

as such laws may be amended or supplemented.

- E. Prurient Interests. The Visual Artwork, or any material contained in it, contains harmful matter or any other matter that is prohibited under the provisions of California Penal Code Section 313 and following, as such laws may be amended or supplemented.
- F. Profanity, Vulgarity, Riot. The Visual Artwork, or any material contained in it, is profane or vulgar, or presents a clear and present danger of causing a riot, disorder, or other imminent threat to public safety, peace, or order.
- G. Community Standards. The Visual Artwork contains material that is so objectionable under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of, or interference with the transportation system.
- H. Libelous Speech, Copyright Infringement. The Visual Artwork, or any material contained in it, holds up an individual or groups of people to public ridicule, derision, or embarrassment, or is libelous, or is an infringement of a copyright, trademark, or registered mark.
- I. Alcohol. The Visual Artwork, or any material contained in it, promotes, or depicts the sale or use of alcohol.
- J. Tobacco. The Visual Artwork, or any material contained in it, promotes, or depicts the sale or use of tobacco or tobacco-related products, except products that counteract symptoms of tobacco habituation.
- K. Marijuana. The Visual Artwork, or any material contained in it, promotes, or depicts the sale or use of marijuana.
- L. Firearms. The Visual Artwork, or any material contained in it, directly or indirectly promotes the sale or use of a firearm or contains an image or depiction of a firearm.
- M. Political Campaign Speech. The Visual Artwork, or any material contained in it, contains political campaign speech. For purposes of these guidelines, the term “political campaign speech” is speech that (1) supports or opposes or appears to support or oppose a ballot measure, initiative, or referendum, or (2) refers to any candidate for public office.
- N. Religion. The Visual Artwork, or any material contained in it, promotes or opposes any religion, religious belief, or practice.

- O. Interference with Traffic or SacRT Operations. The Visual Artwork, or any material contained in it, displays any image, word, phrase, symbol, or character likely to interfere with, mislead, or create a dangerous condition that distracts (1) vehicle traffic or could impact SacRT Operations.
- P. Violence. The Visual Artwork, or any material contained in it, contains an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices associated in the advertisement with an act or acts of violence or harm on a person or animal.
- Q. “Adult”-Oriented Images. The Visual Artwork, or any material contained in it, promotes or encourages, or appears to be sexually explicit, or depicts sexual activity.
- R. Electronic Smoking Products, Services, or Devices. The Visual Artwork, or any material contained in it, promotes or encourages use of electronic or battery-operated devices that deliver vapors for inhalation.
- S. Special Provisions Regarding Web Addresses and Telephone Numbers. The Visual Artwork, or any material contained in it, directs viewers to a website or telephone number that contains material that violates this Policy.

Section 10: Memorials

From time-to-time SacRT receives requests from individuals, groups and/or organizations for permission to place Visual Artwork memorials on SacRT Property to honor an individual. SacRT does not allow Visual Artwork memorials; however, other forms of memorials may be permitted in accordance with a Board-adopted Memorial Program.

Section 11: Naming of SacRT Property

This policy does not alter or affect the criteria for property naming and corporate sponsorship/naming rights as set out in Resolution 17-06-0087, as it may be later amended and restated.

Section 12: Moratorium

At the discretion of SacRT's General Manager/CEO, SacRT may at any time, subject to any contractual obligations, declare a complete ban or moratorium on all Visual Artwork on any SacRT Property under SacRT's control and direct that no Visual Artwork of any kind, other than SacRT Visual Artwork, be considered or accepted for display.

STEVE MILLER, Chair

A T T E S T:

HENRY LI, Secretary

By: _____
Tabetha Smith, Assistant Secretary