

## RESOLUTION NO. 2018-01

### A RESOLUTION OF THE SPECIAL PUBLIC ARTS COMMITTEE OF THE CITY OF SANTA MARIA, CALIFORNIA MAKING FINDINGS AND A RECOMMENDATION TO THE CITY COUNCIL OF THE CITY OF SANTA MARIA CONCERNING THE PROPOSED ADDITION OF CHAPTER 10-5 PUBLIC ART PLAN TO THE CITY OF SANTA MARIA MUNICIPAL CODE

**WHEREAS**, at the October 3, 2017 City Council meeting, the City Council considered an ordinance adding Chapter 10-5 to the City of Santa Maria Municipal to establish a Santa Maria Public Art Plan, but after discussion, the City Council directed that a committee of interested parties be organized in an effort to further analyze and refine the proposed Public Art Plan and bring back for further consideration, and

**WHEREAS**, the Public Art Plan committee was composed of representatives from the Planning and Recreation and Parks Commissions; developers/builders; community art groups and Councilmember Michael Moats as the committee chair, and

**WHEREAS**, after holding several meetings the committee has developed the following recommended text for an ordinance to establish the Public Art Plan.

**NOW, THEREFORE, BE IT RESOLVED** by the Special Public Arts Committee of the City of Santa Maria, California, that the City Council adopt the recommendations of Public Art Plan committee as follows and adopt an ordinance adding Chapter 10-5 Public Art Plan to the City of Santa Maria Municipal Code as proposed and revised by the Special Public Arts Committee:

#### **SECTION 1:**

The Santa Maria Municipal Code is hereby amended by adding Chapter 10-5 to read as follows:

#### **CHAPTER 10-5 PUBLIC ART PROGRAM**

##### **SECTION 9-18.01. Purpose.**

The City recognizes its responsibility to foster culture and the arts, and the need for the development of artists and craftsmen. Public Art in Santa Maria will beautify private development and public spaces and facilities for the visual pleasure of residents and visitors. Art positively impacts property values, enhances the Santa Maria experience, and will serve as an economic catalyst. Public Art is for the benefit, enjoyment, and inspiration of the residents and guests of this community today and into the future.

##### **SECTION 10-5.02. Definitions.**

(a) **“Building Development Costs”** means those construction costs as declared on all building permit applications for construction as determined by the City Building Official.

(b) **“Capital Projects”** shall mean new construction, expansion, or replacement projects for an existing City facility or facilities, except those in the right-of-way or those involving City utility systems.

(c) **“Contribution Requirement”** shall mean a financial commitment for the creation and installation of Public Art.

(d) **“Eligible Fund”** means any source of funding for construction projects which may legally be used for the purpose of constructing, creating, or acquiring Public Art.

(e) **“Municipal Construction Project”** means any Capital Project with Building Development Costs equal to or greater than \$50,000.00, paid for wholly or in part by the City of Santa Maria to construct or remodel any building, structure, park or parking facility, or any portion thereof, within the limits of the City of Santa Maria, excluding improvements to the public right-of-way or those involving City utility systems.

(f) **“Non-Profit Agency”** means a corporation organized under Internal Revenue Code § 501(c)3, in good standing with the California Secretary of State and Franchise Tax Board, and in compliance with any and all federal, state and local licensing, reporting and tax requirements.

(g) **“Commercial Development”** means any new construction or addition to an existing development or building on private property, not owned by a public entity.

(h) **“Public Art”** means works of art installed on or at locations that allow viewing visibility from a public right-of-way or from other public property, and special festivals and celebrations that promote or enhance these art forms. These include:

1. Sculptures, including in-the-round, bas-relief, mobile, fountain, kinetic, electronic or other in any material or combination of materials;
2. Painting and graphics, including large or small scale murals, printmaking, drawing, calligraphy or other;
3. Photography and digital mediums, including any combination of photography, electronic medial such as sound, film, holographic, video and other forms on a large public scale;
4. Mosaics and tile, chalk and sand art and sculpture;
5. Temporary displays of 1 through 4, listed above;
6. Capital improvements determined by the City Council to be artistic in value;
7. Any other art form determined by the City to satisfy the intent of this section.

Public Art may be an integral part of a structure, attached to a structure, detached within or outside of a structure, or exhibited in other public facilities.

(i) **“Public Art Draft Concept”** shall consist of:

1. A site plan indicating the location of the proposed Public Art;
2. A sample, model, photograph, drawing or sketch of the proposed Public Art;
3. Exemplars of materials, if applicable and possible.

(j) **“Public Art In-Lieu Contribution”** shall mean the percentage of Building Development Costs required to be deposited into the City Arts Fund to finance Public Art if the project applicant, Recreation and Parks Commission or Recreation and Parks Director does not wish to install Public Art on the site of his/her Private Development.

(k) **“Public Art Submittal”** shall consist of:

1. Landscape and site plans indicating the location and orientation of the Public Art and the landscaping and architectural treatment integrating the piece into the overall project design;

2. Sample, model, photograph or detailed drawings of the proposed Public Art;
  3. Exemplars of materials and finishes, if applicable;
  4. Resume of the proposed artist;
  5. If applicable, slides and/or photographs of the proposed artist's past Public Art, demonstrating works similar to the proposal;
  6. A written statement by the artist describing any theme and/or conceptual development of the Public Art;
  7. A written statement by the developer as to the manner in which the Public Art will be displayed in an area that is visible from a public right-of-way or public property;
  8. A maintenance plan for the Public Art;
  9. The cost of the work of art, including installation costs; and
  10. Any such additional information or materials as may be required by the Community Development Director, Public Works Director, City Risk Manager, or their designee(s).
- (l) "RPC" shall mean the Recreation and Parks Commission.

**SECTION 10-5.03. City Arts Fund and Authorized Expenses.**

- (a) There is hereby established a special fund designated as the "City Arts Fund" into which shall be deposited funds appropriated as provided herein, together with such other Eligible Funds as the City Council shall appropriate for Public Art, or receive as gifts or donations for such purpose, and from which expenditures may be made as provided in this chapter.
- (b) Separate accounts shall be established within the City Arts Fund to segregate receipts by source or, when so directed by the RPC, for specific works of art.
- (c) Without requiring all funds within the City Arts Fund to be spent in any given fiscal or calendar year, up to five percent (5%) of the City Arts Fund on an annual basis may be used for administration of processing Public Art Draft Concepts and Public Art Submittals, monitoring compliance or other administrative tasks associated with Public Art. At least ninety-five percent (95%) of the City Arts Fund shall be dedicated to Public Art acquisition, installation and authorized expenses. Monies not used within the fiscal year allocated shall be reallocated to the next fiscal year.
- (d) City Arts Fund revenues shall be used for the following authorized expenses:
1. The acquisition, commission, design, engineering and fabrication costs, and improvement of Public Art;
  2. Installation costs including but not limited to mounting, anchorage, containment, pedestals, bases, and/or utilities such as water and power;
  3. The improvement of public property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City;
  4. Transportation of the work to the site;
  5. Signage;
  6. Maintenance, repair and Insurance of Public Art on public property;
- (e) City Arts Fund revenues may not be used for purposes that do not directly benefit public art, subject to review and approval by the RPC.
- The Director of the Recreation and Parks Department Director or his/her designee is authorized to develop administrative guidelines and procedures for expenditures

consistent with this Chapter. Notwithstanding the foregoing, none of the following shall be considered Public Art:

1. Objects that are mass produced of standard design, such as banners, signs, playground equipment, or benches.
  2. Reproduction, by mechanical or other means, of original works of art, except as incorporated into film, video, photography, printmaking or other derivative works as approved by the RPC;
  3. Landscape architecture or gardening, except where these elements are designed by an artist and are an integral part of a work of art.
- (f) The RPC shall report annually to the City Council with details of Public Art acquired and/or installed.
- (g) The City shall budget for Public Art for municipal construction projects from an eligible fund or the City Arts Fund in such amounts as determined by the City Council during City budget process. Appropriations for this Public Art Plan shall be made in accordance with the budgeting procedures of the City.

#### **SECTION 10-5.04. Authority of the RPC.**

To carry out its responsibilities hereunder, the RPC shall:

- (a) Consult with Santa Maria Arts groups to prepare proposed guidelines to carry out the City's Public Art Plan, including but not limited to, a method and methodology for the selection of artists, selection of works of art to become Public Art and its placement, and present such proposed plan and guidelines to the RPC for approval.
- (b) The Recreation and Parks Department will make recommendations to be brought to the RPC regarding the purchase of works of art or commissioning of the design and execution and/or replacement of Public Art, and
- (c) The Recreation and Parks Department will prepare proposed rules and regulations consistent with this ordinance to facilitate the implementation of its responsibilities hereunder and present such proposed rules and regulations to the RPC for approval.

#### **SECTION 10-5.05. Contribution Requirements.**

- (a) Municipal Construction Projects shall devote one quarter (1/4) of one (1) percent of Development Costs to the City Public Art Fund.
- (b) Upon a recommendation by the City Manager to the City Council, the City Council may contribute additional amounts to the City Arts Fund for Capital Projects.
- (c) Commercial projects ( including mixed-use projects) and discretionary residential developments shall devote an amount not less than one quarter (1/4) of one (1) percent of the building development valuation up to a maximum of two million dollars (2,000,000) for acquisition and installation of Public Art on the development site.
- (d) For all other projects a one-quarter (1/4) of one (1) percent fee shall be paid directly to a City Public Art Fund for all building permits issued with a valuation over \$50,000 and up to four hundred thousand dollars (\$400,000)
- (e) In lieu of acquisition and installation of Public Art on a development site, a commercial developer may request City approval for a Public Art In-Lieu

Contribution to fulfill the Public Art requirement. The Planning Commission may authorize a Public Art In-Lieu Contribution if it determines as a part of discretionary review of a Private Development that installation of Public Art on the project site would be infeasible or undesirable. The Public Art In-Lieu Contribution shall equal the cost that would have been required for acquisition and installation of Public Art. The In-Lieu fee shall be paid prior to the issuance of a certificate of occupancy. There shall be no future credits for owners or developers who provide In-Lieu contributions.

- (f) Subject to approval of the Planning Commission, Private Development applicants may incorporate into the project Public Art with a value lower than the Contribution Requirement. In such case, the applicant shall pay a Public Art In-Lieu Contribution to the City Arts Fund in an amount equal to the difference between the value of the Public Art installed and the one quarter of one percent (1/4%) Contribution Value calculated pursuant to Section 110-5.05(a).

#### **SECTION 10-5.06. Administration**

(a) A Public Art Draft Concept shall first be approved by the RPC. Public Art generally shall:

1. Fit the character of the area where it will be located;
2. Include timeless qualities for enduring enjoyment of the art work; and
3. Stand out as a work of artistic merit.

(b) Upon approval of a Public Art Draft Concept by the RPC, a Public Art Submittal shall be provided by the developer or owner to the Community Development Department to evaluate compliance with all implicated zoning regulations, general plan requirements, building and fire code compliance, the Americans with Disabilities Act, and related laws, regulations and ordinances, and to ensure the Public Art installation will not create an undue risk or a safety problem; consider maintenance requirements; determine durability; and identify any engineering concerns.

(c) Any changes or modifications by the artist or anyone to the Public Art following approval of the Public Art Submittal must be approved by the Director of Community Development.

#### **SECTION 10-5.07. Installation and Maintenance.**

(a) Commercial Development Installation: Commercial Development Public Art shall be installed prior to issuance of a certificate of occupancy for new construction, or prior to final building inspection if a remodel. If installation prior to the date of occupancy is impracticable as determined by the Community Development Director or his/her designee, a certificate of occupancy may be approved if the Public Art Submittal has been approved.

(b) Commercial Development Maintenance of Public Art: The Community Development Director or his/her designee shall ensure the private property owner maintains the Public Art, or causes it to be maintained continuously in good condition after its installation. The property owner shall perform and fund all necessary repairs and maintenance to the satisfaction of the City, and in compliance with Civil Code § 987, et seq. The maintenance obligations of the property owner shall be contained in a covenant

and recorded against the property by the applicant. All privately sited Public Art shall remain the property of the owner for the life of the Certificate of Occupancy. Title and ownership of the Public Art shall transfer in whole or in part to any successor-in-interest of the structure. In addition, the owner shall maintain in full force and effect fire and extended insurance coverage, including but not limited to vandalism coverage, in a minimum amount of the purchase price of said Public Art. If the owner fails to maintain the Public Art after having been given reasonable notice to do so, the City may, at its sole discretion, opt to perform required maintenance, and record a lien and/or special assessment against the real property to recover its costs following a hearing pursuant to Chapter 1-8. If a property owner wishes to remove Public Art, the City must be notified in writing not later than forty-five (45) days in advance of the proposed removal date. The property owner shall replace the Public Art with Public Art of equal or greater value before or concurrent with removal of the existing art, or pay an equal amount into the City Art Fund.

(c) Municipal Construction Project Maintenance of Public Art: The Recreation and Parks Director or his/her designee shall ensure Public Art on property owned by the City is maintained in good condition after its installation, and in compliance with Civil Code § 987, et seq.

#### SECTION 2:

The within Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), and the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) (General Rule) of the CEQA Guidelines, because the City Council hereby finds with certainty that there is no possibility the passage of this Ordinance amending the zoning code will have a significant effect on the environment.

#### SECTION 3:

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the State of California or of the United States of America. If any section, subsection or clause of this ordinance shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance shall be deemed unconstitutional or invalid, the validity of the remainder of this ordinance and its sections, subsections and clauses shall not be affected.

#### SECTION 4:

This Ordinance shall be in full force and effect thirty (30) days after its passage. Within fifteen (15) days following its passage, the City Clerk shall cause this Ordinance to be published in a newspaper of general circulation in accordance with State Law; or when deemed necessary due to the length or complexity of the Ordinance, cause a summary of the Ordinance to be prepared and published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. If a summary is

published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted, then within fifteen (15) days after adoption of the Ordinance the City Clerk shall publish a summary of the Ordinance with the names of those City Council Members voting for and against the Ordinance and shall post a certified copy of the full text of such adopted Ordinance along with the names of those City Council Members voting for and against the Ordinance.

**PASSED AND ADOPTED** at the special meeting of the Special Public Arts Committee of the City of Santa Maria held on the thirty-first day of May, 2018, by the following roll call vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

ATTEST:

\_\_\_\_\_  
Dr. Michael Moats, Chair

\_\_\_\_\_  
Dennis Smitherman, staff

APPROVED AS TO FORM

\_\_\_\_\_  
Assistant City Attorney

APPROVED AS TO CONTENT

\_\_\_\_\_  
City Manager

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Santa Maria held this \_\_\_\_ day of \_\_\_\_ 2018.

ATTEST:

\_\_\_\_\_  
Chief Deputy City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
City Manager