



## **CITY OF COMMERCE AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Jorge Rifa, City Administrator

**SUBJECT:** PUBLIC HEARING – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE AMENDING COMMERCE MUNICIPAL CODE CHAPTER 19.31 (STANDARDS FOR SPECIFIC LAND USES) OF THE COMMERCE MUNICIPAL CODE AND ADD DIVISION 23, 19.31.700 (ART IN PUBLIC PLACES PROGRAM) – FIRST READING

**MEETING DATE:** September 6, 2016

---

### **RECOMMENDATION:**

Approve the Ordinance for first reading.

### **MOTION:**

1. Conduct the necessary public hearing; and
2. Move to read the Ordinance by title only and approve for first reading.

### **INTRODUCTION:**

On April 19, 2016, staff presented to the City Council a report related to Art in Public Places (AIPP). Following the hearing, the City Council requested that Staff prepare the necessary ordinance implementing AIPP requirements for the City of Commerce. As such, staff took this matter to the Planning Commission in May of this year for their consideration, followed by a hearing with the City Council on June 21, 2016. During the Council meeting, feedback was received directing staff to consider possible alternatives to capture additional projects, while limiting any potential impacts to small projects. Based on the comments received, staff took these comments and refined the recommendation contained herein which lowers the threshold for compliance, while being mindful of small projects and business.

With this adjustment, staff is requesting that the City Council adopt an Ordinance entitled: An Ordinance of the City Council of the City of Commerce amending Title 19 ("Zoning") of the Commerce Municipal Code, to add a new section to the Zoning Ordinance and create Chapter 19.31.700 (Art in Public Places) which will be known as the Art in Public Places Ordinance.

## **BACKGROUND:**

Cities within proximity of Commerce, such as Downey, Norwalk and Santa Fe Springs, have implemented successful AIPP ordinances. Through those ordinances, these cities have been able to generate a collection of nationally recognized artwork with benefit to the public. In one specific case, the City of Santa Fe Springs' program is designed to expand the opportunities for residents and visitors to experience artistic, historic, and cultural aspects of the city through placement of artwork in public places. Downey and Norwalk have both designed their programs to benefit their respective communities by providing a wide range of artwork styles, themes and media, all of the highest quality.

## **DEFINITIONS:**

As with any ordinance, a clear set of definitions is necessary. Each key term associated with it must be defined in order for users and administrators to fully understand how it should be implemented and applied. With respect to AIPP, definitions are used and needed for terms such as, "Artwork," "Construction Costs," "Reconstruction," and other related terms.

## **PROJECTS SUBJECT TO AIPP REQUIREMENTS:**

In the City of Santa Fe Springs, new residential, commercial, or industrial projects having a total cost valuation of \$300,000 or more are subject to the AIPP ordinance. Similarly, any expansion, remodeling, or tenant improvements to existing buildings are subject to their ordinance if the building valuation is \$300,000 or more.

In Norwalk, commercial and industrial projects, or a residential project of four or more lots or units and having a building valuation of \$500,000 or more, are subject to its ordinance. Similarly, the City of Downey also has a \$500,000 threshold in place for similar projects.

## **FEES:**

These ordinances typically calculate contributions to public art based on a percentage of the total project costs, excluding land value. The three cities discussed in this report have all implemented fees that are at least one percent of the project cost. For example, for a \$500,000 project, the cost of the artwork would have to equal at least \$5,000. Unlike Santa Fe Springs and Norwalk, Downey has also set a maximum fee per project of \$150,000.

AIPP ordinances are also usually equipped with an in-lieu mechanism. Here, instead of installing artwork on a project site, a developer can opt to pay an in-lieu fee to the City of Commerce. This in-lieu payment would be equal to the fee associated with creating a piece of art on one's property. These funds are then set aside in a separate fund or account to provide AIPP in public places in a manner that furthers the intent and purpose of the City's AIPP ordinance. These funds would only be used for items such as, but may not be limited to, the following:

1. The cost of artwork and installation.

2. Maintenance and repair of artwork funded through the AIPP program.
3. Art education programs and events.
4. Frames, mats, pedestals, and other objects necessary for the proper presentation of artwork.
5. Artwork identification plaques.
6. Training and development for staff members.
7. Walls, pools, landscaping or other architectural elements necessary for the proper aesthetic and structural placement of artwork.

#### DEFINING ART:

Art can mean many different things to different individuals. In Santa Fe Springs, artwork is defined as publicly accessible artistic and cultural facilities, services and/or amenities encompassing all cultures through the broadest possible range of expression, media and materials, including:

1. The services of, or work by, an artist who produces art in an medium or material, including but not limited to, the visual, performing, literary and media arts.
2. Artistic and cultural facilities such as exhibition space, performance or rehearsal space, artist studio space and arts education facilities.
3. The provision of artistic and cultural services, including the sponsorship of performing arts.
4. The restoration or replication of original decorative ornament and artwork as part of the rehabilitation of historic, cultural and architectural landmarks.
5. Artistic or cultural amenities in accordance with the AIPP policies and implementation procedures.

Downey requires art pieces to be enduring original artworks. They must be of the highest quality and craftsmanship and engage one's mind and senses while enhancing and enriching the quality of life in the city. The artwork will be generally permanent sites and an integral part of the landscaping and/or architecture of the building. The artwork shall be constructed in a scale that is proportional to the scale of the development.

Norwalk's program has been in place for numerous years and defines artwork as original creations of art including but not limited to, the following categories:

1. Sculpture;
2. Murals;
3. Mosaic; and

#### 4. Fountains

These categories may be realized through such mediums as steel, bronze, stained glass, concrete, wood, ceramic tile and stone, as well as other suitable materials.

In contrast, these ordinances also list items that are not considered to be art or artwork. These items include the following:

1. Expressions of obvious bad taste or profanity, which would likely be offensive to the general public.
2. Reproductions of original artworks.
3. Decorative, ornamental or functional elements that are designed by the building architect as opposed to an artist commissioned for the purpose of creating the artwork.
4. Landscape architecture and landscape gardening except where these elements are designed or approved by the artist and are an integral part of the artwork by the artist.
5. Any artwork that promotes a business or service.
6. Directional elements such as super graphics.

#### GUIDELINES:

Generally, ordinances of this type include basic guidelines for the installation and maintenance of artwork such as the following:

1. List of permissible locations on a site. Typically, artwork would be placed in an area accessible to the public.
2. Permanence and materials. Artwork should be permanently affixed to the property and made of permanent materials in order to be durable against the elements and vandalism.
3. Scale. Artwork must be appropriate in scale, material, form, and content to their immediate, general, social, and physical environments. The artwork shall compliment the development and not look like an afterthought.
4. Artists. Artwork shall be designed and constructed by persons experienced in the production of such artwork and recognized by critics and by his or her peers as one who produces works of art.
5. Maintenance. The developer or their successor shall be responsible for the maintenance of the artwork. The developer shall enter into a covenant obligating the developer or successors to maintain such artwork, as well as indemnify, defend,

and hold the City and related parties harmless from any and all claims or liabilities arising out of the artwork.

6. Insurance and Removal. Artwork shall be insured for the full replacement value and may not be removed without prior approval from the City.

The ordinances discussed herein are established to grant power to the City Council to review and approve public art projects. Cities can opt to create a process that requires staff to handle the initial review of the artwork.

Projects subject to AIPP ordinances will require plan check review and approval as well as building permits. Commerce may opt to require public art projects to be approved prior to issuing building permits or prior to issuing a certificate of occupancy. Art projects must be installed prior to issuing a certificate of occupancy. This ensures full compliance with the City's regulations.

#### Changes following June 21, 2016 City Council Meeting:

After considering the public testimony received at the June 21, 2016 council meeting, staff reviewed the information received and is making an alternative recommendation that is intended to capture additional projects, while giving consideration to small business. Specifically, staff is recommending lowering the threshold from \$500,000 to \$250,000. As such, projects with a building valuation of \$250,000 or over will be required to provide public art, or may opt to pay one-time in-lieu fee, that is to be at least one percent of the project valuation. With this recommended change, staff is attempting to address the comments received of capturing more projects, while trying to limit any negative impacts to smaller projects proposed within the City.

#### **CONCLUSION:**

The proposed ordinance will allow the implementation of the City's Art in Public Places Ordinance that will allow for the establishment and creation of Art within the within the City. The proposed ordinance is attached to this report for review.

#### **ALTERNATIVES:**

1. Approve the subject Ordinance, thereby amending Chapter 19.31 of the Commerce Municipal Code; or
2. Provide staff with alternative direction.

#### **FISCAL IMPACT:**

This activity can be carried out without additional impact on the current operating budget.

#### **CEQA CLEARANCE:**

The proposed code amendment regarding cultivation is exempt from the California Environmental Quality Act (CEQA) as it is an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment. Even if it were, it

would be exempt under Title 14 of the California Code of Regulations § 15061(b) (3) in that there is no possibility that the activity may have a significant effect on the environment.

**RELATIONSHIP TO STRATEGIC GOALS:**

This agenda report relates to the 2012 Strategic Planning Goal: “*Protect and Enhance the Quality of Life in the City of Commerce.*”

Recommended by:	Maryam Babaki, Director of Public Works &Development Services
Prepared by:	Jose Daniel Jimenez, City Planner
Reviewed by:	Matt Marquez, Deputy Director of Development Services
Reviewed by:	Vilko Domic, Finance Director
Approved as to form:	Eduardo Olivo, City Attorney
Respectfully submitted:	Jorge Rifá, City Administrator

ATTACHMENT: Proposed Ordinance