

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING CHAPTER 19.31 OF THE COMMERCE MUNICIPAL CODE TO CREATE DIVISION 23, CHAPTER 19.31.700 (ART IN PUBLIC PLACES) IMPLEMENTING A PUBLIC ART REQUIREMENT FOR CERTAIN DEVELOPMENT PROJECTS**

WHEREAS, the City of Commerce ("City") is a general law city, incorporated under the laws of the State of California; and

WHEREAS, the proposed zoning text amendment is consistent with the City of Commerce General Plan, as it would help to further the goals and objectives of the Plan which is intended to promote quality development within the City by allowing developed properties the opportunity to utilize this section of the Code as a way to promote quality design within the City; and

WHEREAS, the purpose of an Art in Public Places (AIPP) ordinance is to ensure the incorporation of public art into the community and into development projects within the City; and

WHEREAS, the City Council determined that public art is a critical element of providing culturally rich environment to residents and visitors and enriches the community with aesthetic qualities, and therefore provided staff with feedback and direction to move forward with establishing an AIPP ordinance; and

WHEREAS, City staff has drafted an AIPP ordinance which contains procedures and guidelines for the installment of art in public places; and

WHEREAS, the Planning Commission held a public hearing on May 25, 2016, for the purpose of recommending that the City Council approve an ordinance regarding art in public places.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF COMMERCE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. That the adoption of this Ordinance is not subject to the California Environmental Quality Act, 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 a project, it would be exempt under Title 14 of the California Code of Regulation §15061(b) (3) in that there is no possibility that the activity may have a significant effect to the environment.

Section 2. Chapter 19.31 of the Commerce Municipal Code is hereby amended, in its entirety, to read as follows:

DIVISION 23, CHAPTER 19.31.700 – ART IN PUBLIC PLACES PROGRAM

**19.31.710 – Purpose and Intent**

This chapter may be known and cited as the “City of Commerce Art in Public Places Program.” The intent of the Art in Public Places Program is to provide a collection of nationally recognized, permanent outdoor artwork throughout the City, to be of public benefit. The program is designed to present the community with a variety of artistic styles and themes, all of the highest possible quality.

**19.31.720 – Definitions**

As used in this Chapter:

“Applicant” means the owner of the property or tenant utilizing the property and seeking the required permits.

“Art in Public Places Fund” means the account funded by money collected from Applicants in accordance with the in-lieu contribution provisions of this chapter, which will be used to fund Artwork within the City of Commerce.

“Artwork” means original creations of art including but not limited to, the following categories: sculpture, murals, mosaic and 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.

“Project” means any new residential, commercial, or industrial project for development of new buildings, or any expansion, remodeling, or tenant improvements to existing buildings.

“Project Cost” means the total value of a project, excluding the land value, as determined by the Building Official, and indicated on the building permits issued by the City for that project.

“Project Site” means the physical site on which the Project is located.

“Public Place” means any exterior area on public or private property, which is accessible and visible to the general public.

“Theme” means the subjects that have been approved by the City.

### **19.31.730 – Requirement to provide artwork or pay in-lieu contribution**

When a project is subject to the requirements of this chapter, the Applicant shall comply with provisions of either subsection A or B of this section, or a combination of both:

A. The Applicant shall acquire and install Artwork in a public place on or in the vicinity of the Project Site as approved by the City Council pursuant to this chapter. The cost or value of such work as approved by the City Council shall equal or exceed the amount to be in-lieu contribution that would otherwise be made under subsection B of this section.

B. In-Lieu Contribution. In lieu of acquiring and installing Artwork, Applicants may contribute funds to the Art in Public Places Fund established pursuant to Section 19.31.700, *et. seq.*, equal to one percent of the total project cost. The in-lieu contribution shall be paid by the Applicant before the issuance of building permits, unless otherwise provided by the City Council. Applicants shall indicate on their Art in Public Places application whether they wish to make an in-lieu contribution.

### **19.31.740 – Projects subject to Art in Public Places requirement**

A. The requirements of this chapter shall apply to the following activities:

1. Commercial or industrial developments, having a project cost equal to or in excess of two hundred fifty thousand dollars (\$250,000.00);
2. Residential development of more than four lots or units, including single-family residential structures, condominiums, apartments, townhouses or other dwelling units, if the aggregate project costs exceed two hundred fifty thousand dollars (\$250,000.00).

B. Exceptions. The requirements of this chapter shall not apply to the following activities:

1. All public work and governmental agency projects;
2. Residential development of more than four lots or units, including single-family residential structures, condominiums, apartments, townhouses or other dwelling units, if the aggregate project costs less than two hundred fifty thousand dollars (\$250,000.00).
3. Reconstruction of structures, which have been damaged by fire, flood, wind, earthquake or other calamity.

4. Religious, hospital, scientific or charitable organizations, if the project is constructed on property exempt from taxation pursuant to California Revenue and Taxation Code Section 214.

#### **19.31.750 – Processing**

The requirements and procedures for the processing of an Art in Public Places application shall be as follows:

A. Prior to or at the time of submission of plans for plan check for a project subject to the requirements of this chapter, the Applicant shall submit to the Public Works and Development Services Department a completed Art in Public Places application indicating whether the Applicant has elected to acquire and install artwork or make an in-lieu contribution to the Art in Public Places Fund.

B. When the Applicant has elected to make an in-lieu contribution to the Art in Public Places Fund, building permits shall not be issued until such contribution has been paid.

C. The Public Works and Development Services Department shall submit to the City Council an application to acquire and install artwork.

D. The City Council shall evaluate and provide comments and/or make a recommendation on each proposed artwork within thirty (30) days from the date of receipt of the application to acquire and install artwork.

E. When the Applicant has elected to acquire and install Artwork, no building permit shall be issued until the City Council has approved the Art in Public Places application. A certificate of occupancy shall not be issued for the project until the approved Artwork has been installed or an amount equal to the in-lieu contribution the Applicant would otherwise have been obligated to pay is deposited with the City to secure proper installation of the Artwork. The deposit will be forfeited to the City and placed in the Art in Public Places Fund if the Artwork is not installed within the ninety (90) day period or by the expiration of any extension to install the Artwork the City Council shall grant. The City shall use such forfeited funds for other public artworks complying with Section 19.31.710 (Art in Public Places Program).

#### **19.31.760 – Art in Public Places Review Committee**

A. Planning staff shall review any proposed art installation for public safety, weather resistance, theme balance within the overall program, verification of value, anticipated public response, proper lighting, public accessibility, installation methods,

proportion, composition, the artist's previous experience on monumental scale sculpture, and the artist's art training and exhibition record. Any recommendation by staff will then be forwarded to the City Council for their consideration.

### **19.31.770 – Guidelines for Artworks**

Guidelines for the approval and maintenance of artworks shall include, but are not limited to, the following criteria:

A. The Artwork shall be displayed in an area that is open and freely accessible to the public for at least ten (10) hours each day or displayed in a manner which otherwise provides public accessibility in an equivalent manner based on the characteristics of the Artwork or its placement on the Project Site.

B. The Art in Public Places application shall include a site plan showing the location of the Artwork, complete with landscaping, lighting and other appropriate accessories to complement and protect the Artwork.

C. The composition of the Artwork shall be of a permanent type of material in order to be durable against vandalism, theft and weather, and in order to require a low level of maintenance.

D. The Artwork shall be related in terms of scale, material, form and content to immediate and adjacent buildings and landscaping so that it complements the Project Site and surrounding environment.

E. The 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.

F. The Artwork shall be permanently affixed to the Project.

G. The Artwork shall be maintained by the property owner in a safe, neat and orderly manner acceptable to the City. Any repair and maintenance shall be the responsibility of the Applicant and completed in accordance with a maintenance plan approved by the City.

H. The Artwork installed on a Project Site shall remain at the Project Site and shall be replaced in the event of theft or repaired in the event of damage. Artwork shall be insured for the full replacement value. Art may not be removed without prior approval from the City Council. If removal is granted, an in-lieu contribution equal to the value of the Artwork shall be made to the City's Art in Public Places Fund.

I. Prior to the issuance of building permits the property owner shall execute and record with the Los Angeles County Recorder, covenants, conditions and restrictions in form and content approved by the City Administrator and the City Attorney providing, among other things, that the property owner and its successor and assigns shall: (1) maintain the Artwork as required by 19.31.770(G); (2) indemnify, defend and hold the City and related parties harmless from any and all claims or liabilities arising out of the Artwork; and (3) maintain in the City Clerk's office a certificate of public liability insurance naming the City as an additional insured including such coverage and liability limits as may be specified by the City Administrator.

J. The following items are not to be considered as Artwork:

1. Art objects that are mass produced from a standard design. However, limited productions may be considered with specific restrictions;
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 work that promotes a business or service;
6. Services or utilities necessary to operate or maintain the Artwork.

#### **19.31.780 – Art in Public Places Fund**

A. Accounting. Any money collected in accordance with the in-lieu contribution provisions of this chapter shall be deposited in a separate account denominated as the "Art in Public Places Fund." The City Administrator or his/her designee shall establish accounting records sufficient to identify and control these funds. The account containing these funds shall earn interest and the earned interest shall be used for and be subject to the same restrictions established in subsection B of this section.

B. Use of Fund. The Art in Public Places Fund shall be used to provide sites for, and works of art in, public places in order to further the intent and purpose of this chapter as set forth in Section 19.31.710.

C. Permissible Expenditures. Expenditures of funds shall be limited to the following uses:

1. The cost of Artwork and its installation;
2. Waterworks, landscaping, lighting and other objects which are an integral part of the Artwork;
3. Frames, mats, pedestals, and other objects necessary for the proper presentation of the Artwork;
4. Walls, pools, landscaping or other architectural or landscape architectural elements necessary for the proper aesthetic and structural placement of the Artwork;
5. Maintenance and repair of Artworks funded through the Art in Public Places Fund.

D. Administration.

1. The Art in Public Places Fund shall be administered by the City Council.
2. The Public Works and Development Services Department shall make recommendations to the City Council concerning the purchase or commissioning of Artworks, including:
  - a. Places which should be considered for Artworks; and
  - b. The medium of the proposed Artwork; and
  - c. The artist whose work should be considered for placement in the recommended location.
3. Selection of artists and Artworks shall be based on the guidelines set forth in Section 19.31.700.
4. The City will contract with the artist and with consultants as necessary for the purchase or commissioning as well as the execution and installation of the Artwork.
5. On-site activity in connection with the Artwork installation shall be coordinated by the City Administrator.
6. Maintenance and repair of Artworks funded through the Art in Public Places Fund shall be financed from that account.

7. So far as is practical, in the event repair of the Artwork is required, the City shall first give the artist the opportunity to do that work for a reasonable fee. In the event the artist is unable or refuses to make the repair for such a fee, the City may proceed to contract for such repair with another qualified artist.

E. Endowments. The Art in Public Places Fund shall also be used as a depository for endowments, bequests, grants or donations. Such sums may be expended as set forth in subsection C of this section above as approved by the City Council.

SECTION 3. This Ordinance shall take effect on the thirty-first (31<sup>st</sup>) day after its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_th day of \_\_\_\_\_ 2016.

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Ivan Altamirano, Mayor

ATTEST:

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Lena Shumway  
Secretary/City Clerk