



## MILPITAS PLANNING COMMISSION AGENDA REPORT

March 11, 2015

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**APPLICATION:** **ZONING TEXT AMENDMENT – ZA15-0001 – A request for a Zoning Text Amendment to adopt new provisions in the Zoning Code relating to Public Art Requirements for Private Development Projects.**

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-013 recommending the City Council adopt Zoning Amendment No. ZA15-0001 to amend the Zoning Code to add new provisions relating to Public Art Requirements for Private Development Projects.**

**LOCATION:**  
Address/APN: Citywide

**PEOPLE:**  
Project Applicant: City of Milpitas  
Consultant: NA  
Property/Business Owners:  
Project Planner: Adam Petersen, Senior Planner

**LAND USE:**  
General Plan Designation: All  
Zoning District: All  
Overlay District: NA

**ENVIRONMENTAL:** The project is exempt in accordance with the California Environmental Quality Act (CEQA) Section 15061(b)(3) “Review for Exemptions,” Section 15060(c)(2) “Preliminary Review,” Section 15183 “Projects Consistent with a General Plan, Community Plan or Zoning,” and Section 15262 “Feasibility and Planning Studies.”

## **BACKGROUND**

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### *History*

On February 18, 2014, the Milpitas City Council directed staff to conduct research in favor of public art in private development projects with an option for a new public art in lieu fee. That direction also included returning to City Council with a report and analysis regarding a public art in private development projects program. Consistent with that direction, staff is bringing this report and proposing an Ordinance for Planning Commission discussion and consideration and recommendation to the City Council.

## **PROJECT DESCRIPTION**

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### *Overview*

Based on City Council Direction, staff has research the practice of requiring public art or public art in-lieu contribution for private development projects, by ordinance in other California and Bay Area cities. The ordinances reviewed all required private development projects to either incorporate various forms of art on site or pay an in-lieu contribution, each option valued at a percentage of project construction valuation. Most ordinances cite the following benefits of a public art for private development projects:

- Distinguish Milpitas as a place to live, play, work, and visit;
- Further enhance the aesthetic environment;
- Strengthen cultural awareness, creativity, and innovative thinking;
- Integrate art professionals into the design and planning process.

There are multiple mechanisms that would incorporate art as a component in private development.

### *Sample Ordinances*

Staff surveyed other city art ordinances in developing a requirement for private development projects. Of the cities surveyed, the majority required private development projects that were either above a certain square footage or above a certain valuation to make a public art contribution. This contribution was either in the form of art located on the project site or as an in-lieu contribution to a city public art fund. Flexibility in the requirement, where the money in the fund was used by the City for public art projects is common in most ordinances.

### *Brea Example*

Council Member Montano requested that staff evaluate the City of Brea Art in Public Places Plan (APPP). The Brea APPP requires developers to select and install permanent outdoor sculptures at their project sites. Projects with a valuation of \$1.5 million to \$3.9 million have the option of contributing sculptures or contributing in-lieu funds. Projects with a building valuation of more than \$4.0 million are required to install sculptures onsite. Exemptions are provided for private residences of four or fewer dwelling units, places of worship, and public facilities. Developers are required to submit a sculpture application, which is reviewed and approved by an Art Advisory.

Public Art Ordinance Survey

City	Requirement	Value Contributed to Art	On-Site Art	In-Lieu Fee
Brea	\$1.5 million - \$3.9 million building valuation	1% building permit valuation	Sculpture incorporated into project or payment required	
	\$4.0 million or more	1% building permit valuation	Select / purchase / install	
San Jose	Not Required Encouraged from Private Developers	1% of total estimated project costs	Select / purchase / install	
		0.6% of total estimated project costs		Payment Required
Oakland	Nonresidential – subject to design review and 2,000 sq ft or more	1% of permit valuation	Construct on-site or payment required to in-lieu fund	
	Residential – 20 units or more	0.5% of permit valuation		
Walnut Creek	25,000 sq ft or larger anywhere in city	1% building permit valuation		Payment Required
	15,000 sq ft – 24,999 sq ft in Core Area	0.5% building permit valuation		Payment Required
		Assessment greater than \$25,000	Construct on project site or contribute to in-lieu fund	
Pasadena	\$500,000	1% building permit valuation		
City of Fremont				
Downtown Fremont and Warm Springs	Less than 100,000 sq ft	Fee determined by City Council – per sq ft		Payment Required
	More than 100,000 sq ft	Fee determined by City Council – per sq ft	50% of fee for art on site	50% into fund
Emeryville	Private Nonresidential - \$300,000 building development costs	1% building permit valuation	Construct on project site or contribute to in-lieu fund	

	Private Residential – 20 or more units	0.5% building permit valuation	Construct on project site or contribute to in-lieu fund
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## **PROJECT ANALYSIS**

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### ***Proposed Amendments***

The proposed Zoning Ordinance amendment would create Section 14 in the Zoning Ordinance. The proposed changes are underlined and attached to the draft resolution as part of the Planning Commission packet.

An overview of the proposed Ordinance is provided below:

1. The public art requirement shall apply to private development projects that exceed the following thresholds:
  - a. Nonresidential development projects with 2,000 square feet or more of new floor area.
  - b. Residential development projects containing 20 or more units.
2. The amount of the public art requirement is as follows:
  - a. Nonresidential projects: One percent (1%) of the building development costs; and
  - b. Residential projects: One percent (1%) of the building development costs.
3. The City has the option of either requiring:
  - a. Installation of publicly accessible art on the development site; or
  - b. Payment of an in-lieu fee to the City's Public Art Fund for acquisition and placement of public art throughout the City.
4. The requirements, although encouraged for all development in the City of Milpitas, will not apply to an affordable housing development if the developer demonstrates to the satisfaction of the City that the requirements would cause the development project not to be economically feasible.

The proposed ordinance is modeled on the successful ordinances in the City of Oakland and Emeryville. The ordinance provides the City with the option of commissioning public art on the site of development or making an in-lieu contribution to the City's Public Art Fund. Deposits to the Public Art Fund may be used for acquisition and placement of public art throughout the city, reviewed by the City's Art Commission staff with recommendations to the City Council.

The proposed Ordinance will not apply to (a) building/construction related permits already issued and not yet expired; or (b) to zoning entitlements approved by the City and not yet expired; or (c) to zoning applications deemed complete by the City as of the date of final adoption. However, zoning applications deemed complete by the City prior to the date of final adoption of this Ordinance may be processed under provisions of the proposed ordinance if the developer and/or owner choose to do so.

Compliance with the provisions of the proposed ordinance will be required by the developer at Building Permit application, as follows: (a) payment of the full amount of the Public Art in-lieu contribution, or (b) submittal of contractual agreement to commission or purchase and install approved artwork on the development site. In the case of installation of public art on the development site, the developer will maintain the artwork in proper condition on an ongoing basis.

The proposed Public Art for Private Development ordinance is an aesthetic requirement for most new development within the City of Milpitas. The proposed art and in-lieu contribution is an aesthetic requirement of most new development projects, and is not a development impact fee because it does not defray an impact created by new development, and therefore a nexus study is not required.

The Public Art for Private Development projects ordinance will result in an enhanced public art program and more public artwork throughout the City of Milpitas, improving and enhancing the overall aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhance the quality of life.

## **FINDINGS**

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Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a Zoning Amendment. Findings shall identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

### ***Zoning Text Amendment (Section XI-10-57.02.G.3)***

#### *1. The proposed amendment is consistent with the General Plan.*

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance will enhance the quality of life for residents in the City by contributing architectural variety and design to the aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhance the quality of life.

The project is also consistent with the following General Plan Guiding Principles and Policies:

**Guiding Principle 2.a-G-7** – When considering development proposals, seek “community benefit”, such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.

**Implementing Policy 2.a-I-17** – Foster community pride and growth through beautification of existing and future development.

The addition of the Public Art for Private Development Ordinance is consistent with the General Plan because it constitutes a “community benefit” by upgrading the aesthetic environment of the City. The requirement for art work makes the City a more livable and visually stimulating place which ultimately benefits the community. Further, the Ordinance creates a sense of place and identity that fosters community and pride and growth through beautification of the existing and future development. For these reasons, the proposed Ordinance is consistent with the General Plan.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will result in a more aesthetically pleasing environment. Incorporating art work in private developments, and throughout the City, makes buildings and their grounds more welcoming, and it creates a deeper interaction with the places visited, and which citizens work and live. For these reasons, the public health, safety and welfare will be benefited by the proposed Ordinance.

## **ENVIRONMENTAL REVIEW**

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The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed project is a project under CEQA.

Prior to adopting this Ordinance, the Planning Commission independently finds and determines that this action is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15262 (feasibility and planning studies), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

## **PUBLIC COMMENT/OUTREACH**

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The Zoning Ordinance requires that a community meeting be conducted prior to adoption of a new Ordinance. Staff plans to conduct a community meeting on March 16, 2015 to discuss the proposed Ordinance.

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. The table below provides a summary of the City’s public noticing efforts for this project.

**Public Noticing Summary**

<b>Notice of Public Hearing</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>▪ Public hearing notice posted in the Milpitas Post <i>(14 days prior to the hearing)</i></li> <li>▪ Posted on the City's official notice bulletin board <i>(10 days prior to the hearing)</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board <i>(5 days prior to the hearing)</i></li> <li>▪ Posted on the City of Milpitas’s Web site <i>(one week prior to the hearing)</i></li> </ul>

**CITY COUNCIL REVIEW**

This item is scheduled as a public hearing by the City Council on April 7, 2015.

**CONCLUSION**

Based on the analysis described above, adoption of the proposed ordinance will require or provide for the construction of public artwork on new development project sites. This requirement is triggered if a nonresidential project adds more than 2,000 square feet of building space or if a residential project exceeds 20 units. Both types of development proposals are required to contribute one percent (1%) to an in-lieu fund or have artwork placed onsite. This will cause public art to be dispersed and created throughout the City of Milpitas enhancing the visual environment and quality of life for visitors and residents.

The public art program is an aesthetic requirement. This policy is not a development fee because it does not defray an impact created by new development, and therefore a nexus study is not required.

**RECOMMENDATION**

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments;
2. Close public hearing;
3. Adopt Resolution No. 15-013 recommending the City Council adopt **Zoning Amendment No. ZA15-0001 to adopt a new Public Art Requirement for Private Development Projects, based on the above findings.**

**ATTACHMENTS**

- A. Resolution No.15-013
  - a. Exhibit A: Draft Ordinance