

**REGULAR**

**NUMBER:** 271.1

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 20 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO PUBLIC ART POLICY

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 6, 2014, upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, enhancement of the Milpitas community through the placement of public works of art has historically been of great importance to the citizens of Milpitas; and

**WHEREAS**, the Public Art Committee has historically been charged with the duties and responsibilities for the selection, placement and funding of public art within Milpitas; and

**WHEREAS**, the Milpitas Arts Commission has concurrent duties regarding the placement of art in Milpitas and acts in an advisory capacity to the City Council regarding matters pertaining to supporting and promoting the Arts in the City of Milpitas; and

**WHEREAS**, the duties and responsibilities and concerns and interests of the Commission and Committee are overlapping and it has been suggested that combining the two bodies can and will provide a more focused approach to addressing public art issues and art issues in general in the best interests of the public and artistic advantage of the community; and

**WHEREAS**, the City Council has directed that the Public Art Committee and the Arts Commission be combined and the duties of both exercised by the Art Commission.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE**

Chapter 20 of Title V of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 20 THE CITY OF MILPITAS PUBLIC ART POLICY

**Sections:**

V-20-110 Enactment of Provision

V-20-210 Purpose

V-20-310 Definition of Public Art

V-20-410 Arts Commission

V-20-510 Public Art Program Master Plan

V-20-610 Public Art Fund

V-20-710 Program Expansion

V-20-810 Severability

## **V-20-110 Enactment of Provision**

The Ordinance codified in this Chapter is being enacted as Title V, Chapter 20 of the Milpitas Municipal Code, titled, "The City of Milpitas Public Art Policy."

## **V-20-210 Purpose**

The City of Milpitas accepts responsibility for expanding opportunities for its citizens to experience public art. An ordinance designed specifically for Milpitas will ensure a public art program that enhances the quality of life in the community.

## **V-20-310 Definition of Public Art**

- (a) "Public artwork" or "Public Art" means works of art that are meant to be enduring original artworks located on, affixed or applied to City property. They shall be of the highest quality and craftsmanship.
- (1) Public Art shall be permanently sited and an integral part of the landscaping and/or architecture of a building considering the historical, geographical and social/cultural context of the site.
  - (2) Public Art shall be constructed to a scale that is proportional to the scale of the building or property it relates to or is sited upon.
  - (3) Public artwork may include sculpture, furnishings or fixtures, including but not limited to gates, walls, railings, streetlights or seating. Public Art may include water elements and walkways.
  - (4) Public artwork may include murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishings or fixtures permanently affixed to a building or its grounds, or a combination thereof, and may include architectural features of buildings.
  - (5) Public artwork shall be displayed in a manner that will enhance enjoyment by the general public.
  - (6) Public artwork may include artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or design team that includes a professional visual artist.
  - (7) Public Art may include reproductions of original works of art.
- (b) Public artwork does not include the following:
- (1) Art objects that are mass-produced of standard design such as playground equipment, benches or fountains;
  - (2) Decorative or functional elements or architectural details of a building designed solely by the building architect, unless such decorative and functional elements or architectural details are artist commissioned, and designed in collaboration with the building's architect;
  - (3) Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist;
  - (4) Directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.

### **V-20-410 Arts Commission**

- (a) The City of Milpitas and the Milpitas Redevelopment Agency in the past had established a Public Art Committee. The Milpitas Redevelopment Agency has since that time been dissolved by State Law. The City Council of the City of Milpitas does hereby dissolve the Public Art Committee and empowers the Milpitas Arts Commission with the same powers and duties held by the Public Art Committee to be held in conjunction with its own duties as the Arts Commission.
- (b) Membership. The membership of the Arts Commission, its duties and procedures shall be as set forth in its bylaws as approved by the City Council.
- (c) The Arts Commission's recommendations shall be advisory to the City Council.
- (d) The Commission's primary task under this Ordinance shall be to review and recommend the selection and placement of Public Artwork.

### **V-20-510 Public Art Program Master Plan**

- (a) The City of Milpitas shall develop with input from the public and upon the review, advice and recommendation of the Arts Commission a Public Art Program Master Plan. The Public Art Program Master Plan shall establish and guide the development and implementation of a Milpitas Public Art Policy.
- (b) The Public Art Program Master Plan shall:
  - (1) Survey opportunities throughout the City for suitable sites and areas for the placement of Public Art;
  - (2) Provide advice as to the potential priority for Public Art installations;
  - (3) Advise as to potential Public Artwork aesthetic themes;
  - (4) Advise as to the appropriate cataloguing and maintenance of Public Artwork.
- (c) The Arts Commission shall recommend to the City Council the adoption of program guidelines, policies and procedures to ensure consistent administration of the Public Art Program.

### **V-20-610 Public Art Fund**

- (a) The City of Milpitas shall dedicate 1.5% of eligible projects expenditures within the City's annual Capital Improvement Projects to the acquisition and installation of Public Art. The categories of eligible projects shall be limited to the following: New Building Projects, Large Infrastructure Projects, CIP projects limited to Community Improvements, Selected Parks and Streets Projects.
  - (1) To establish a significant initial fund, the City shall provide an additional \$125,000 per year to the Public Art Fund for the first four years of the Public Art Program Master Plan, effective Fiscal Year 05/06.
  - (2) Three years from the effective date of the Ordinance codified in this Chapter, the City Council shall review a minimum eligibility threshold of \$1 million per CIP project for the funding of public artwork for the application of the 1.5% formula.
  - (3) In conjunction with the submission of the annual budget, the City Manager shall annually notify the Arts Commission of which projects are eligible construction projects within the approved categories for the 1.5% formula application, as well as expenditures for the prior year subject to the 1.5% funding.

- (b) The Public Art Fund shall be used to further the intent and purpose of this Article and in the administration of the Public Art Policy.
  - (1) Permitted expenditures of the Public Art Fund shall include, but are not limited to:
    - (A) The cost of public art and its installation, which includes the hiring of artists to develop and design concepts for the selection, acquisition, purchase, commissioning, placement, installation, exhibition and/or display of artwork;
    - (B) Waterworks, landscaping, lighting, plaques and other objects, which may be an integral part of the public artwork;
    - (C) Frames, mats, pedestals and other objects necessary for the presentation of the public artwork;
    - (D) Walls, pools, landscaping and other architectural or landscape architectural elements necessary for the proper aesthetic and structural placement of the public artwork;
    - (E) Maintenance and repair of public artwork funded through the Public Art Fund;
    - (F) Administration of the City's Public Art Program, including staff support and related expenses, transportation of Public Art, site preparation, permit or certificate fees, business and legal costs directly associated with specific Public Art projects, master planning, installation and maintenance of Public Art, curatorial services, documentation, publicity and community education. Administrative costs shall also include staff time, direct costs and administrative overhead.
    - (G) Hiring of consultants on an as needed basis to advise and assist the Arts Commission in such areas as professional appraisal of Public Artwork; packing and shipping of public artwork; conservation and maintenance; collection documentation; installation design; presentation assistance; contract negotiation; artist selection; program monitoring; on-site monitoring of public artwork installation.
    - (H) Reproductions of original works of art.
  - (2) Monies appropriated under this section shall not be used for the following:
    - (A) Art objects, which are mass-produced of standard design such as playground equipment or fountains.
    - (B) Decorative or functional elements which are designed by the building architect as opposed to a commissioned artist.
    - (C) Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist.
- (c) Nothing shall preclude gifts, grants, bequests, donations or other monies received by the City Council for art purposes from being placed in the Public Art Fund and used for the purposes expressed herein or for any other purpose as may be determined by the donor.
- (d) Funds dedicated by the City shall be used to leverage additional private funds. The Arts Commission shall aggressively seek to acquire additional funding for the Public Art Fund through donations, grants, sponsorships and all other appropriate fundraising means and opportunities. All additional funds received shall supplement Public Art Funds dedicated by the City and the former Redevelopment Agency. The Arts Commission shall prepare a semiannual report to the City Council updating the City Council on the Commission's fundraising efforts and goals.
- (e) Contracts related to the Public Art Program shall be submitted to the City Council for approval.

### **V-20-710 Program Expansion**

The Arts Commission shall evaluate and recommend to the City Council the potential extension of the public art program to the private sector.

### **V-20-810 Severability**

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.

### **SECTION 3. COMMISSION BYLAWS**

The City Council does hereby approve the Arts Commission Bylaws attached to this Ordinance as Exhibit A.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

**EXHIBIT A**  
**CITY OF MILPITAS**  
**BYLAWS FOR**  
**ARTS COMMISSION**

**I. Purpose & Mission**

The City Council is committed to providing a livable and vibrant community for all of its citizens and visitors. Based on the community's suggestions received and subsequent City Council discussions and direction, the City Council established an Arts Commission on July 6, 2000. Subsequently at its meeting of August 2, 2005, by Ordinance No. 271, the Council created the Public Art Committee. It is now the desire of the Council to combine the functions of the Arts Commission and Public Art Committee under the title of Arts Commission (hereafter, "Commission").

The Commission will meet bi-monthly, to provide feedback and recommendations to the City Council regarding the City of Milpitas Public Art Master Plan and otherwise undertake the functions of the former Art Committee as set forth in Chapter 20 of Title V of the Municipal Code, including efforts to choose and place public art and advise on matters pertaining to supporting and promoting the Arts in the City of Milpitas. In addition, the Commission will continue with the duties of the current Arts Commission, including those activities described in Section II, c) below.

**II. Commission**

- a) Membership: The Commission shall be comprised of nine (9) members and three (3) alternates who reside within the corporate limits of the City of Milpitas. Upon merger of the Public Art Committee with the Arts Commission as described above in Section I, the nine (9) then-current members of the Arts Commission and the three (3) then-current members of the Public Art Committee shall automatically become the newly formed Arts Commission with the three (3) least senior members being designated alternates. Commission members are volunteers and shall serve without compensation. All members and alternates of the Commission shall serve a three-year term and may be eligible for re-appointment by the Mayor and confirmation by the Council should the Commission member end his/her term in good standing. Interested persons must submit a City of Milpitas citizen participation application (available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at the City Clerk's Office) and proceed through the appointment process. The appointment process shall include recommendation for appointment by the Mayor, and final approval by the City Council. The City Council may, at its discretion, conduct interviews of recommended Commission members prior to appointment.
- b) The Commission bears no oversight authority over any City Department, personnel, consultant, budget or commission. The Commission has no authority to bind the City to any contractual agreements and may not, without authority, make any decisions on behalf of the City. The Commission's recommendations shall be advisory to the City Council. Individual Commission members shall not be City employees, department heads, City consultants or act in any way as agents of the City. However, the City Manager or any Department Head or their designee may provide guidance and input to the Commission and may be consulted, from time-to-time, for additional information.
- c) The Commission's primary task shall be to review and recommend the selection and placement of Public Artwork and otherwise undertake art related tasks as outlined in Chapter 20 of Title V of the

Milpitas Municipal Code, jury artists for the Phantom Art Gallery Program and recommend grant recipients for the Milpitas Art and Culture Grant Program. The Commission shall also recommend to the City Council the adoption of program guidelines, policies and procedures to ensure consistent administration of the City of Milpitas Public Art Program and to generally work in an advisory capacity to the City Council on matters pertaining to supporting and promoting the Arts in the City of Milpitas.

- d) Members shall serve at the pleasure of the City Council and may be terminated at any time by a majority vote of the City Council.
- e) Members are volunteers and shall serve without compensation or reimbursement for any personal expenses.

### **III. Commission and City Staff Procedures**

- a) The Commission's staff liaison shall be the Director or Manager of Recreation Services, or designee. The Commission shall receive staff support on an as-needed basis from the Director or Manager of Recreation Services, and shall coordinate all requests for staff support through that person or designee.

The Commission shall have the City resources available to it for its use, limited to the following:

- (1) Use of meeting rooms in City Hall, or other City facilities
  - (2) Reasonable use of City equipment, (copy, fax, telephone)
  - (3) Access to City website to announce its activities with the approval of the Director or Manager of Recreation Services
- b) The Commission shall meet on a regular, bi-monthly basis in the months of January, March, May, July, September and November, according to and under the California Brown Act and Open Government Ordinance requirements. The Commission may hold public working sessions to solicit the input of the community and/or interested citizens or parties. Such working sessions shall be noticed and open meetings.

### **IV. Rules of Procedure**

- a) A quorum of the Commission shall consist of a majority of the nine (9) members (including any vacancies). A quorum must be present in order for the Commission to hold a meeting. Any five members, including alternates sitting in place of a member, shall constitute a quorum for the transaction of business.
- b) All actions require a majority vote of the Commission members and seated alternates in attendance. Non-seated alternates present may take part in discussion and deliberation but may not vote. Only seated alternates may vote on Commission action items.
- c) These Bylaws, the Milpitas Open Government Ordinance and the Brown Act shall govern the operation of the Commission and its meetings. Robert's Rules of Order shall govern on matters not specifically addressed in those documents.
- d) The Commission shall follow all applicable City fiscal and administrative policies and procedures.
- e) At the first regular meeting following the merger described in Section I, the Commission a Chairperson and a Vice-Chairperson from among the Commission's members to serve for the remainder of the calendar year. Thereafter, elections shall take place the first meeting of each new

calendar year. The Chairperson and Vice-Chairperson shall serve until the next election unless extended to a second term by majority vote of the Commission. No Chairperson or Vice-Chairperson shall serve more than two consecutive one-year terms.

- f) The Chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.
- g) The Vice-Chairperson shall assume all duties of the Chairperson in his/her absence. In the event the Chairperson and Vice Chairperson are both absent, an Acting Chairperson shall be appointed by majority vote from the Commissioners present to preside for that meeting.
- h) The Director or Manager of Recreation Services or designee shall appoint a Secretary who shall record the attendance and minutes of all meetings according to the Milpitas Open Government Ordinance, and shall notice all meetings of the Commission pursuant to the California Brown Act.
- i) The Commission may organize itself into Subcommittees to carry out tasks and responsibilities. Subcommittees shall be subject to the California Brown Act and Milpitas Open Government Ordinance's requirements. Such Subcommittees shall be designated by the Committee with up to four (4) Commission members and at least one staff liaison.
- j) Individual Commission members may not speak for or on behalf of the entire Commission; the Chairperson shall act as the spokesperson for the entire Commission on items that have been approved by a majority vote of the Commission.
- k) The Commission is an important function within the City of Milpitas and, as such, certain expectations are held by the City Council in making the appointment of individuals to the Commission. These expectations include the following:
  - 1. Commission members will attend all regular meetings and special meetings as scheduled or as they arise. Commission members will communicate expected and unexpected absences to the Staff Liaison, or his/her designee, in a timely manner. Any member with 3 or more unexcused absences in a 12-month period shall be reported to the City Council with a recommendation for removal from the Commission. Any member of the Commission may be removed from office by majority vote of the City Council at a regularly scheduled meeting.
  - 2. Commission members will communicate any potential conflicts of interest on agenda items to the Staff Liaison, Secretary, or his/her designee, at least 48 hours in advance of the hearing to allow confirmation of a quorum.
  - 3. Commission members will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting.
  - 4. Commission members will prepare themselves for each meeting by reading the agenda, reports and other materials and communicate any questions to the Director or Manager of Recreation Services or Staff Liaison in advance of the hearing.
  - 5. Commission members will avoid conflicts of interest between their personal and professional financial interests and those interests that may come before the Commission.

**V. Adoption**

This document, as adopted and amended by City Council, shall serve as the Bylaws for the Commission.

PASSED AND ADOPTED by the Arts Commission 2014.

PASSED AND ADOPTED by the Milpitas City Council on the \_\_\_ day of \_\_\_\_\_, 2014.