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PLEASE NOTE:

This copy of Ordinance No. 38.821 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: **38.821**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE ADDING SECTION 14 TO THE ZONING CODE RELATING TO PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 7, 2015, upon motion by Councilmember Giordano 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Title XI, Chapter 10, entitled "Zoning" of the Milpitas Municipal Code sets forth the Zoning standards for the City of Milpitas; and

WHEREAS, on February 18, 2014, the City Council directed staff to prepare an ordinance requiring Public Art on private development projects for the City Council review and consideration; and

WHEREAS, the Milpitas Zoning Code is proposed to be amended to add a Section 14 entitled "Public Art Requirements for Private Development Projects"; and

WHEREAS, on March 11, 2015, the Planning Commission conducted a duly noticed public meeting and adopted Resolution No. 15-013 recommending the City Council amend the Milpitas Zoning Code to add a new Section 14 entitled "Public Art Requirements for Private Developments"; and

WHEREAS, on April 7, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to amend the Zoning Code to add a new Section 14 entitled "Public Art Requirements for Private Developments" and introduced Ordinance No. 38.821 with certain minor revisions; and

WHEREAS, on May 5, 2015, the City Council requested revision to Ordinance No. 38.821 to decrease the value of the art or the art in-lieu contribution from one percent (1%) of Building Development Costs to one-half of one percent (0.5%) of Building Development Costs.

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. FINDINGS

Zoning Text Amendment (Section XI-10-57.02.G.3) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA15-0001:

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 enhances 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.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10 of the Milpitas Zoning Code entitled "Zoning" is amended to add a new Section 14 entitled "Public Art Requirements for Private Development" to read as follows:

Section 14 - Public Art Requirements for Private Development

XI-10-14.01 Definitions

"Affordable Housing" is defined in Section XI-10-54.15.D of the Zoning Code.

"Building Development Costs" means those construction costs as declared on building permit applications, and as accepted by the Building Official. Building permit applications shall include building, plumbing, mechanical and electrical permit applications for the project.

"Developer and/or Owner" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Milpitas), industry, public or private corporation, or any other entity that undertakes any construction within the City subject to the requirements in this Section 14.

"Public Art" is a process which results in the incorporation of original works of art by artists in publicly accessible spaces and which serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals; is of high quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; is unique to its moment in time and place.

"Public Art Program In-Lieu Contribution" means the percentage of Building Development Costs required herein.

"Public Art Projects" are projects which involve artists working through the public art process that result in the creation of original works in publicly accessible spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Public Art Projects also include artists serving on design and development teams to identify opportunities to incorporate art in publicly accessible space.

"Publicly Accessible Art" means art that is accessible to the general public.

XI-10-14.02 Purpose and Intent

This Section 14 is intended to promote the aesthetics and arts in the City of Milpitas by requiring the inclusion of a public artwork component in new private development projects in Milpitas. A policy is hereby established to require certain private developments to include Publicly Accessible works of art for placement on the development site or contribute a Public Art Program In-Lieu Contribution as a condition of project approval. Developers and/or Owners are encouraged to employ Milpitas artists or arts organizations to fulfill the Public Art requirement.

XI-10-14.03 – Contribution Requirements

A. Calculation

1. Nonresidential Building Developments. Private nonresidential building developments involving Two Thousand (2,000) square feet or more of new floor area shall devote an amount not less than one half of one percent (0.5%) of Building Development Costs for acquisition and installation of Publicly Accessible Art on the development site.

2. Residential Building Developments. Private residential building developments of twenty (20) or more new dwelling units shall devote an amount not less than one half of one percent (0.5%) of Building Development Costs for acquisition and installation of Publicly Accessible Art on the development site.

B. Public Art Review

All proposed Public Art to be installed on a development site under this Section 14 shall first be reviewed and approved by the Art Commission for its artistic value and appropriateness in light of the size of the development project. The cost of the proposed Public Art shall not be the sole reason for rejecting the proposed Public Art.

C. In-Lieu Contribution

1. At the discretion of the Developer and/or Owner, in lieu of installing on-site Public Art, the Developer and/or Owner may provide a Public Art Program In-Lieu Contribution to be deposited into the Public Art Fund for acquisition and placement of Public Art throughout the City.

2. The Art Commission may allow a Developer and/or Owner to satisfy the public art requirement by a combination of installing Publicly Accessible Art on the development site and make a Public Art Program In-Lieu Contribution if the Art Commission determines that the location, siting or scale of the development site makes the installation of Publicly Accessible Art inappropriate or impossible for the purposes of satisfying the one percent requirement for installing Publicly Accessible Art on the development site.

D. Subsequent Removal of Public Art or Alternative Compliance Space

If the Developer and/or Owner satisfies the Public Art requirement in accordance with subsection (A)(1), (A)(2), above, the Public Art previously installed on the development site may only subsequently be removed if the Developer and/or Owner makes a Public Art Program In-Lieu Contribution equivalent to the original amount to the Public Art Fund.

E. Exclusions

The requirements of this Section 14 shall not apply to an Affordable Housing development with a minimum of twenty percent (20%) Affordable Housing units if the Developer and/or Owner demonstrates to the satisfaction of the City Council that said requirements would cause the development project not to be economically feasible.

XI-10-14.04 Public Art Fund

Public Art Program In-lieu Contribution shall be placed in the Public Art Fund. The fund shall be used exclusively to (1) provide sites for works of art, (2) acquire and install works of art, (3) maintain works of art, or (4) fund other administrative costs associated with the Public Art Program. The Art Commission shall recommend utilization of monies in the Public Art Fund to the City Council.

XI-10-14.05 Compliance

Compliance with the provisions of this Section 14 shall be demonstrated by the Developer and/or Owner at the time of filing the Building Permit application as follows: (a) payment of the full amount of the Public Art Program In-Lieu Contribution, or (b) written proof to the Building Department and the Public Art Program of a contractual agreement to commission or purchase and to install the requested artwork on the development site by a date approved by City. The value of the Publicly Accessible Artwork shall be independently verified by a third party unrelated to the Developer and/or Owner and submitted to the City with the contractual agreement at the sole expense of the Developer and/or Owner. The Developer and/or Owner shall provide the City with proof of installation of the requested artwork on the development site or proof of full payment of the Public Art In-Lieu Contribution before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this Section 14. In the case of installation of Public Art on the development site, the Developer and/or Owner shall maintain said artwork in proper condition on an ongoing basis.

XI-10-14.06 Violations of this Section

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any permit granted to any Developer and/or Owner who violates the provisions of this Section 14.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. 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.