

REPORT TO THE CITY COUNCIL

City of Salinas, California

DATE: February 7, 2017

FROM: Christopher A. Callihan, City Attorney

SUBJECT: **AN ORDINANCE FOR PUBLIC ART**

RECOMMENDATION:

It is recommended that the City Council provide direction with regard to the establishment of a public art program and the preparation of a Public Art Ordinance.

DISCUSSION:

As a part of its last strategic planning and goal setting the City Council established support for public art as one of its Priority Initiatives/Objectives for 2015-2016. Specifically, the City Council established the goal of making the city of Salinas “a place where people want to live, where diversity is valued and all citizens enjoy a high quality of life.” The current draft Ordinance, brought forward at the request of City Councilmember McShane and former Councilmembers Lutes and Castañeda, establishes a public art program to move the City toward accomplishing this initiative and goal. This would bring the City of Salinas among approximately two hundred other cities across the country which have public art programs.

In summary, as currently written, the current draft Ordinance imposes upon the City the requirement to contribute one-half percent of the value of each of its construction-related capital improvement program projects toward public art. The art would be placed either within the context of the capital improvement program project (in the context of the public work project, for example) or at some other publically-accessible place in the city. A Public Art Commission is created through the current draft Ordinance to review public art and to make recommendations and provide advice to the City Council relative to public art. The final determination of all matters regarding public art, however, resides with the City Council as the program requires the expenditure of public funds. Support would be provided at the Staff level by the Library and Community Services Director. The duties of the Commission are incorporated into the current draft Ordinance, with each of the members needing certain qualifications in order to be eligible for membership. The City Council will need to appoint members to the Arts Commission.¹

¹ An alternative to the creation of a separate commission would be to have the Library and Community Services Commission, or a subcommittee thereof, serve as the Arts Commission.

In its promotion of public art, the current draft Ordinance establishes a “Public Art Reserve Account” into which the City would appropriate funding equal to the amount of one-half percent of the total value of each of the projects identified in the adopted Capital Improvement Program Budget (construction-related projects) at the time the project is commenced. Funds appropriated into the Public Art Reserve Account could be used to obtain and to install public art, to maintain and refurbish public art, among other identified uses. Grants and loans could also be made from the Public Art Reserve Account to support public art.

The City Council’s Subcommittee on Commissions, Committees, and Boards reviewed the current draft Ordinance and recommended it be brought forward to the full City Council for consideration. The City Council’s Finance Subcommittee considered the current draft Ordinance and requested Staff to recommend a “fair amount” which can be allocated on an annual basis to support public art. The Finance Subcommittee also recommended that the Library and Community Services Commission serve as the Arts Commission rather than having a separate commission be formed. The Finance Subcommittee will again consider the idea of a Public Art Ordinance on February 6, 2017.

The Chamber of Commerce has indicated its “Provisional Support” for the idea of a Public Art Ordinance, provided performance and temporary art were removed from the definition of “public art.” The City Council’s Subcommittee on Commissions, Committees, and Boards directed that performance art not be included within the definition, so that has not been included in the current draft ordinance. No similar direction was provided relative to temporary art, so that remains in the current draft ordinance. A copy of the Chamber of Commerce’s letter is attached to this report for reference.

In addition to the most-recent reviews and considerations of the current draft Ordinance by the Subcommittee and by the Chamber of Commerce, Councilmember McShane hosted an “Arts Summit” on June 15, 2016. The Summit was well-attended by a variety of community members and groups, all of which indicated their support for a public art program. Councilmember McShane has also met with various community members and community groups since the Summit to receive input on a public art program. That input is reflected in the attached draft Ordinance.

The City Council should note that the City of Oakland is currently in litigation regarding its public art ordinance, in part on the allegation that its ordinance constitutes an unlawful taking. The City of Oakland has agreed to amend its ordinance to remove the potentially fatal flaw. The City Attorney’s Office is tracking that case and Oakland’s ordinance amendments to be sure that whatever Salinas’s ordinance becomes it does not run afoul in the way Oakland’s allegedly has.

ISSUES:

Does the City Council desire to establish a public art program?

If the City Council desires to have a public art program, it must provide direction regarding the outstanding policy questions identified above, in addition to any other policy issues the City Council may have regarding the establishment of a public art program.

FISCAL IMPACT:

There would be an immediate fiscal impact once the current draft Ordinance becomes effective, if it is adopted: One-half percent of the value of each capital improvement program project (construction-related projects) would be dedicated to the public art program. This appropriation of funds would impact each of those projects which is commenced during the effective period of the current draft Ordinance and each purchase made during the effective period of the current draft Ordinance.

TIME CONSIDERATIONS:

There are no time considerations particular to these proposed actions; however, a significant amount of work has been done to develop the current draft Ordinance.

ALTERNATIVES:

The City Council may choose to adopt the current draft Ordinance as written or otherwise direct staff how to proceed. There are a few policy issues which have come up which the City Council should provide direction on should it not choose to adopt the current draft Ordinance:

1. Allocate one-half a percent of the value of each Capital Improvement Program Budget project to public art.
 - a. Would all CIP projects be included or would it include only construction-related projects?
 - b. Would there be a cap on the annual amount collected from CIP projects? If so, how much? Would there be a per-project cap (e.g., no more than \$50,000 per project) and a total annual cap (e.g., no more than \$250,000 per year)?
 - c. Would the one-half percent apply *only* to publicly-funded CIP projects or would it also apply to privately-funded development projects?
2. Rather than assessing one-half a percent against each project (or some projects) establish a line item allocation in the budget at a set amount which amount would be dedicated to public art.
3. Would the Arts Commission be a separate commission or would the Library and Community Services Commission (or a Subcommittee thereof) serve as the Arts Commission?
4. What sort of "art" would be considered for funding? Would it only be visual art, e.g., sculptures, paintings, and fountains, or would it also include performing art?
5. Would loans and grants be acceptable expenditures from the public art fund or only purchases of public art?

An alternative to what is provided in the current draft Ordinance would be for the City Council to consider creating a Capital Improvement Program Project specifically for public art and public art projects and fund that Program Project each year when it approves its Operating and Capital Improvement Program Budgets. This would be in lieu of the requirement that each project contribute one-half percent of its project value to public art.

CITY COUNCIL GOALS:

Establishing a public art program and adopting a Public Art Ordinance is consistent with the City Council's goal of promoting economic development in the community and the quality of life for residents of and visitors to Salinas.

CONCLUSION

If adopted, a Public Art Ordinance would make Salinas the first among the cities in Monterey County to establish a public art program. By committing City funds, the City would demonstrate its commitment to public art and would provide initial support for the program. Establishing the program in the manner set forth in the current draft Ordinance (where the only funds supporting the program come from the City's capital improvement program projects) would make Salinas somewhat unique as most other cities either place the obligation to support public art either on private projects or on a combination of private projects and capital improvement program projects.

With the program initiated, the City Council can review and determine the effectiveness of the program and determine whether additional funding is required or whether private projects should also be included within the program. To that end, the City Council could consider adopting a Public Art Ordinance as a pilot program with a review at the six-month and the twelve-month anniversary of its effective date. This would afford the City Council the opportunity to determine the effectiveness of a Public Art Ordinance, to determine whether changes to the program are necessary or required, to determine the full impact on the capital improvement program projects, and to determine the full extent to which public funds are being expended on public art.

If adopted, the Public Art Ordinance would be codified at Article 1 of new Chapter 4 (Public Property) as a part of the City Code update.

Attachments:

Current Draft Ordinance

November 21, 2016 Letter from Salinas Valley Chamber of Commerce

Public Art City Comparison Spreadsheet

Support Letter