

**ORDINANCE NO. \_\_\_\_\_ (N.C.S.)**

**AN ORDINANCE FOR PUBLIC ART**

***City Attorney Analysis***

*The proposed Ordinance for Public Art establishes a program to provide for the placement of visual art in public places throughout the City. Through this Ordinance, the City would place one-half percent of the total value of each of its Capital Improvement Program Projects into a reserve account for use in promoting public art. The proposed Ordinance would establish a Public Art Commission to oversee the program, with final determination of matters involving public art to be made by the City Council.*

WHEREAS, State law provides that cities have the responsibility to use the powers vested in them to regulate the aesthetic conditions of the community; and

WHEREAS, the Salinas City Council finds that public artwork should be visible throughout the community to inspire civic pride among the City's residents, to strengthen the City's regional identity by enhancing public spaces, to give character to neighborhoods and business districts, and to provide opportunities for residents and visitors to experience visual art; and

WHEREAS, the Salinas City Council finds that the visual and aesthetic quality of development projects, both public and private, significantly affects the property value and the economic condition of the City; and

WHEREAS, the Salinas City Council finds that public art can be used to strengthen the unique character of business districts and transit corridors by relating the artwork to the site's purpose, history, and natural environment; and

WHEREAS, the Salinas City Council finds that the incorporation of public art into City and private development projects promotes the public interest and general welfare and improves the quality of life for persons living and working in and visiting the City; and

WHEREAS, the Salinas City Council finds that a diverse selection of artwork increases the understanding, enjoyment, and experience of cultural diversity among persons living and working in and visiting the City; and

WHEREAS, the Salinas City Council finds that public art promotes equity, diversity, and inclusiveness within the community. The City's Public Art program will represent Salinas's ethnic diversity and cultural diversity; and

WHEREAS, the Salinas City Council finds that support for artists and arts organizations, development and stewardship of public art, cultural tourism, arts education, and cultural development are public necessities and essential for the continuing growth and development of Salinas's residents and visitors, economy, and quality of life; and

WHEREAS, the Salinas City Council finds that the adoption of a public art ordinance is necessary to increase the City's aesthetic environment through public art; to provide funding to support public art projects throughout the City; and to establish public art contribution requirements and procedures; and

WHEREAS, the Salinas City Council finds that the adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Salinas City Council finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, the activity is not subject to CEQA. (CEQA Guidelines Section 15061.)

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Article 1 is hereby added to Chapter 5 of the Salinas Municipal Code and shall read as follows:

Article 1. Public Art Program.

**Sec. 5-01.01 Findings; Purposes.**

The City of Salinas accepts responsibility for expanding the opportunities for its residents and its visitors to experience public art resulting from the creative expression of its artists in public places throughout the City, whether through the installation of visual art or the performance of art. A policy is hereby established to direct the inclusion of works of art in public spaces throughout the City. To fulfill that responsibility, the City Council hereby makes the following findings and hereby adopts this Article of the Municipal Code for the following purposes:

(a) To enhance the appearance of public places by incorporating visual art of varying types in or about such places in order to support the increased use of public spaces that will result from development projects.

(b) To encourage and to support the placement of visual art, whether through temporary or permanent installations, and to engage artists to create works which contribute culturally and to the appearance of the City.

(c) To encourage and to support the performing arts and to engage artists to create works of performing art which contribute culturally to the City.

(d) To make Salinas a regional destination for public art through strategic placement of public art to maximize public access.

(e) To enhance the vitality of the City, with a focus on main commercial areas (Downtown, Alisal, North Main Street), and support economic development.

(f) To provide an opportunity for residents and visitors to experience the cultural, educational, and social benefits provided by quality visual art installations and to provide opportunities for local artists to display work in a public setting.

**Sec. 5-01.02 Definitions.**

(a) For the purpose of this Article, unless it is plainly evident from the context that a different meaning is intended, certain terms as used in this Article are defined as follows:

(1) "Alteration" means a physical change to a structure or a site. Alteration does not include normal maintenance and repair or total demolition.

(2) "Capital Improvement Program Project" means a construction-related project included in the City's adopted Capital Improvement Program Budget paid for wholly or in part by funds appropriated by the City of Salinas. Capital Improvement Program Project, for purposes of this Article, does not include projects that are maintenance or that are non-construction-related projects. Capital Improvement Program Project also does not include projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-City sources that prohibit expenditure of funds for art.

(3) "Capital Improvement Costs" means the total price of a construction-related Capital Improvement Program Project and for purposes of public works projects identified as a Capital Improvement Program Project all construction costs as well as architectural and engineering fees and site work associated with Capital Improvement Program Projects. Capital improvement costs do not include administrative costs or costs related to the investigation and the remediation of hazardous materials or the cost of environmental review, whether or not the environmental review is related to a construction-related project. Capital improvement costs also do not include costs of non-construction-related activities such as the purchase of goods, services, or equipment; studies, reports, leases, and easements; including, without limitation, activities or purchases in the City's Capital Improvement Program budget which are non-construction-related.

(4) "Maintenance" means any work that is performed on a regularly scheduled basis, but not less frequently than once per year, to service, check, or replace items that are not broken, or work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

(5) "Municipal Art Collection" means any work of art that has been commissioned by or accepted by the City of Salinas and is accessioned into the collective body of artwork owned and managed by the City.

(6) "Municipal Art Plan" means a report, prepared and submitted to the City Council on an annual basis, that describes the funding sources, budgets, and descriptions of proposed and ongoing public art projects and establishes budgets and descriptions for new public art projects.

(7) "Permanent installation" means a work of art in a public place intended to remain or remaining for one year or more.

(8) "Practicing Art Professional" means an individual who has a demonstrated expertise and demonstrated professional qualifications in and interest, competence, or knowledge in the visual arts or the performing arts and who is currently employed in the visual arts or performing arts including fields such as art, art history, art education, architecture, literature, music, painting, sculpture, or the performing arts and who.

(9) "Public area" or "Publicly accessible location" means any place or property within the City limits that is open to the general public for its use or that is in public view or is generally accessible and visible to the public.

(10) "Public art" means original work of art which is sited in a manner accessible and visible to the public and/or public employees and which has been approved as public art by the City of Salinas.

(11) "Public Art Fee" means the fee derived from calculating the value of 0.5% of the construction cost or total purchase price of a Capital Improvement Program Project.

(12) "Temporary installation" means a work of art in a public place intended to remain for less than one year.

(13) "Work of art" means and includes, but is not limited to, a sculpture, monument, mural, fresco, relief, painting, fountain, banner, mosaic, ceramic, weaving, carving, and stained glass. "Work of art" normally would not include landscaping, paving, architectural ornamentation, or signs.

### **Sec. 5-01.03 Public Art Fund.**

(a) Special Reserve Account. The City Manager shall a special reserve account designated as the "Municipal Art Fund." Said reserve account shall be credited annually pursuant to this Article with all funds received by the City to be used exclusively for public art and the maintenance and the repair thereof, whether contributed, earned, secured through grants, or otherwise obtained.

(b) Use of Funds. It is intended that funds in the Municipal Art Fund may be appropriated in the annual budget for the selection, acquisition, and display of public art, to maintain and to refurbish public art, to obtain professional consultants to assist the city and the Public Art Commission in selecting artists and public art, to preserve selected works of public art, and to defray such other capital expenses which are, or may become, an integral part of the public art program. Funds in the Municipal Art Fund may also be appropriated for the improvement of City facilities that are owned or leased by the City and which are used to support the arts and which improvements can be demonstrated to directly support the arts.

A percentage of the Municipal Art Fund shall be appropriated for administrative costs associated with a project. In order to offset maintenance costs for the Municipal Art Collection, a maintenance account shall be established within the Municipal Art Fund for purposes of maintaining and repairing any artwork in the Municipal Art Collection.

(c) Review of Disbursements. Each proposed appropriation for public art and each disbursement from the Municipal Art Fund shall receive the prior review and a recommendation of the public arts commission.

(d) Additional Funding. The Library and Community Services Director, or such other person as designated by the City Manager, shall explore on a continuing basis the availability of funds for the public art program, including grants, from such organizations as the National Endowment for the Arts, the California Arts Commission, and other public and private agencies.

**Sec. 5-01.04 Duties of the Public Art Commission.**

The primary duty of the Public Art Commission is to identify and actively encourage the development and sustainability of the arts in the City by serving as the City's primary resource in matters of art, culture, public art, and cultural tourism, as provided for in this Article.

(a) The duties of the public art commission with respect to the art in public places program shall be as follows:

(1) To act in an advisory capacity to the City Council in all matters pertaining to the arts and the culture of the city of Salinas, including its public art program and Municipal Art Collection;

(2) Recommend to the City Council the adoption of such ordinances, rules, and regulations as it may deem necessary for the administration and the preservation of fine arts, performing arts, and aesthetic aspects of the community;

(3) Review and make recommendations upon all works of art to be acquired by the City, either by purchase, gift, or otherwise pursuant to the accession and gift policies established in the City's Art in Public Places Policies and Procedures Manual;

(4) Review and make recommendations with reference to any existing work of art in the Municipal Art Collection in connection with relocation or alteration thereof, pursuant to the deaccessioning policy established in the City's Art in Public Places Policies and Procedures Manual;

(5) Review and make recommendations upon all works of art to be removed from the Municipal Art Collection, pursuant to the deaccessioning policy established in the City's Art in Public Places Policies and Procedures;

(6) To devise methods of selecting and commissioning artists with respect to the design, execution, and placement of art in public places and, pursuant to such methods, to advise the City Council on the selection and commissioning of artists for such purposes;

(7) To promote the arts as vital tools in building Salinas's community and economy for the benefit of all its residents and visitors;

(8) To promote and support a diversity of arts and cultural opportunities for Salinas's residents and visitors;

(9) To encourage strategic investments in arts and arts organizations that increase public connection with the arts; advise and assist the City Council in obtaining financial assistance for art in public places from private, corporate, and governmental sources;

(10) To foster the development of the local arts community, encouraging an environment for the success of working individual artists;

(11) To review plans for the installation of public art;

(12) To review the inventory of the Municipal Art Collection and to advise the City Council in matters pertaining to the maintenance, placement, alteration, sale, transfer, ownership, and acceptance or refusal of donations of, and other matters pertaining to, public art and the Municipal Art Collection; Record, maintain, and house all data related to accessed works in the Municipal Art Collection;

(13) To recommend the retention of consultants, consistent with the city's consultant selection procedures, to assist the City Council in making decisions concerning the public art program;

(14) To advise and assist private property owners who desire such advice and assistance regarding the selection and installation of works of art to be located on their property in the public view;

(15) To act as a liaison between local artists and private property owners desiring to install works of art on their private property in public view;

(16) To give recognition to, and to maintain, an inventory of selected works of art in the public view;

(17) To endeavor to preserve selected works of art in the public view through agreements with the property owner and/or the artist.

(b) Public Arts Plan. Annually, the Public Art Commission shall prepare and submit a Public Arts Plan to the City Council. The Public Arts Plan will at a minimum describe the funding sources, budgets, and descriptions of proposed and ongoing public art projects and establishes budgets and descriptions for new public art projects. The Public Arts Plan will be submitted to the City Council no later than April 1 of each year.

(c) Composition. The Public Art Commission shall consist of seven persons who are Practicing Arts Professionals. The Mayor and each Council member shall select a representative to serve on the Commission. Commission members may reside within or without the boundaries of the city of Salinas. Vacancies shall be filled in the same manner.

(d) Meetings. The Public Art Commission shall establish a regular time and place of meeting and shall hold at least four meetings a year, one each quarter.

#### **Sec. 5-01.05 Standards for review.**

(a) In performing its duties with respect to the public art, the public art commission shall give special attention to the following manners:

(1) The purposes of this Article;

(2) Conceptual compatibility of the design with the immediate environment of the site;

(3) Appropriateness of the design to the function of the site;

(4) Compatibility of the design and location within a unified design character or historical character of the site;

(5) Creation of an internal sense of order and a desirable environment for the general community by the design and location of the work of art;

(6) Preservation and integration of natural features with the project;

(7) Appropriateness of the materials, textures, colors, and design to the expression of the design concept;

(8) Representation of a broad variety of tastes within the community and the provision of a balanced inventory of public art to insure a variety of style, design, and media throughout the community that will be representative of the eclectic tastes of the community;

(9) Quality of the art (inherent quality of the highest order);

(10) Artist ability (professional level of commitment);

(11) The origin of the art or the residence of the artist, with preference given to art which originates in Salinas and to artists which reside within Salinas, followed in order by art which originates in and artists who reside within Monterey County and the Tri-County area;

(12) Appropriateness of scale, form, material, content, and design relative to the proposed site;

(13) Relationship to the social, cultural, and/or historical identify of the site;

(14) Appropriateness of the proposed materials in regard to permanence and technical feasibility, structural and surface integrity, public safety, and weathering and its protection against theft and vandalism;

(15) Ease of maintenance;

(16) Evaluation of proposed budget and the artist's ability to successfully complete the project within the proposed budget; and

(17) Experience of the artist in working on comparable projects; and

(18) Evaluation of equity and diversity in ethnicity, gender, geographical location/origin, subject matter, scale, medium, and style elements.

#### **Sec. 5-01.06 General rules for art in public places.**

(a) Review of Permanent and Temporary Installations. Permanent and temporary installations shall receive the prior review and advice of the public art commission. Extensions of time for temporary installations to remain for one year or more may be granted by the public art commission. Permanent installations shall not be removed, altered, or changed without the prior review and advice of the public art commission.

(b) Private Sites for Public Art. No work of art financed or installed either wholly or in part with city funds or with grants procured by the city shall be permanently installed on privately owned property without a written agreement between the city and the owner specifying the proprietary interests in the work of art, binding the owner to the general rules for public art, and specifying other provisions deemed necessary or desirable by the City Attorney. Additionally, such written agreements, except those for murals which shall be exempt from the requirements imposed by this sentence, shall specify that the private property owner shall assure:

(1) That the installation of the work of art will be done in a manner which will protect the work of art and the public;

(2) That the work of art will be maintained in good condition and repaired, as needed; and

(3) That the insurance and indemnification will be provided as is appropriate.

(c) Consultation with the Artist. Installation, maintenance, alteration, refinishing, and moving of art in public places shall be done in consultation with the artist whenever feasible.

(d) Inventory of Public Art. The Public Art Commission shall maintain a detailed record of all public art, including site drawings, photographs, designs, names of artists, and names of architects whenever feasible. Appropriate recognition shall be given to the artists in publicity and promotion regarding public art.

#### **Sec. 5-01.07 City Council Review of Artistic Matters in the Public Art Program.**

(a) Recognizing that professional expertise is necessary and desirable in artistic matters, such as the selection of artists for a project, the selection of particular works of art, and the approval of designs and plans for works of art under the public art program, it is a policy that:

(1) Decisions on artistic matters will be made by the public art commission with recommendations made to the City Council, subject to the oversight and the review of the City Council which shall have the final determination over such matters;

(2) The city council reserves the right to exercise its independent judgment on artistic matters as they become agendaized for its review;

(3) All sketches, designs, photographs, precise plans, art examples, and similar items on artistic matters will be transmitted to the city council as a matter of course in conjunction with projects before the city council;

(4) The city council will refer questions, suggestions, requests, complaints, and similar items pertaining to the public art program to the public art commission for their review and response.

#### **Sec. 5-01.08 Appropriation of Funds.**

(a) All appropriations for Capital Improvement Program Projects shall include an amount not to exceed one-half percent (0.5%) of the total capital improvement program project cost to be dedicated to the Municipal Art Fund, up to a maximum amount of fifty thousand dollars per project and up to a maximum annual amount of one hundred thousand dollars aggregated.

(b) Funds appropriated as part of any one project may be accumulated with the funds appropriated from another project or other projects in the Municipal Art Fund and expended for art or other purposes consistent with this Article.

(c) Funds appropriated and accumulated in the Municipal Art Fund which remain unencumbered at the end of the fiscal year shall remain in the Municipal Art Fund and shall be carried over to subsequent fiscal years.

(d) Exclusions. If the source of funding or other applicable law or regulation with respect to any particular Capital Improvement Program Project or portion thereof prohibits or restricts the use or the dedication of such funds for public art, this Article shall not apply to the project's expenses, so prohibited or restricted.

(e) The city manager may adopt administrative regulations to implement this section.

(f) The City Manager may request that the City Council exclude certain Capital Improvement Program Projects from the provisions of this Article by the passage of a resolution authorizing such waiver.

**SECTION 2. CEQA CONSIDERATIONS.** The adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the adoption of this Ordinance there is no possibility that the activity in question may have a significant effect on the environment. [CEQA Guidelines Section 15061(b)(3).]

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares

that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Joe Gunter, Mayor

ATTEST:

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Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

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Christopher A. Callihan, City Attorney