

***City of Brisbane
Planning Commission
Agenda Report***

TO: Planning Commission For the Meeting of August 7, 2014

FROM: John Swiecki, Community Development Director

SUBJECT: Proposed Ordinance to Establish an Art in Public Places Program for Brisbane

Recommendation:

That the Planning Commission make recommendations on the draft ordinance to the City Council as it deems appropriate.

Background:

In November, 2012 the City Council directed the Parks and Recreation Commission to develop an ordinance which would provide a method to fund public art. The attached draft ordinance was unanimously recommended for approval by the Park and Recreation Commission on December 4, 2013. Since the proposed ordinance involves amending Title 15 of the Municipal Code and not Title 17 (the Zoning Ordinance) the Planning Commission has no formal role in consideration of the draft ordinance. However, the City Council directed that the Planning Commission be provided the opportunity to provide feedback on the proposed ordinance. The matter is on the Commission's agenda as a discussion item and not an advertised public hearing. The Commission's advisory comments on the draft ordinance will be forwarded to the City Council for consideration in the formal public hearing.

Discussion:

The purpose of the ordinance is to provide a funding source for public art and establish procedures for the selection and siting of public art.

Key provisions include:

Contribution Requirements

Private nonresidential projects (new and remodels) with development costs between 1 and 5 million dollars are required to contribute at least 1% of their development costs into the Brisbane Public Art Fund. Projects exceeding 5 million dollars in cost have the same percentage contribution requirement, but also have the option of devoting their 1% percent to install publicly accessible on-site art in lieu of contributing to the Brisbane Public Art Fund.

Private residential projects with between 10 and 20 units shall contribute at least 0.5% of their development costs into the Brisbane Public Arts Fund. Projects with more than 20 units shall contribute 1% of their development costs to the Brisbane Public Arts Fund. Residential projects with building costs exceeding 10 million dollars (irrespective of number of units) shall contribute 1% of their development costs to the Brisbane Public Arts Fund. Alternatively for projects of this scale the developer may elect to spend 1% of their development costs for on-site publicly accessible art in lieu of contributing to the Brisbane Public Arts Fund.

City building projects with development costs exceeding \$500,000 shall either devote 0.5% of the development costs for on-site publicly accessible art or make an equivalent contribution to the Brisbane Public Art Fund.

Procedural Requirements

The draft ordinance requires the crafting of implementation guidelines to address issues such as the process for selecting, siting, relocating and/or removing public art, procedures for project specific, publicly-accessible art installed in lieu of art fund contributions, procedures for waiving the ordinance, and requirements to verify compliance with the ordinance. The implementation guidelines are to be developed by a public arts funding subcommittee appointed by the Parks and Recreation Commission. The Guidelines will be subject to the review and approval by the City Council.

Attachment:

Draft Ordinance No. 588

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 15.12 AND
ADDING CHAPTER 15.85 TO THE MUNICIPAL CODE**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.85 of the Municipal Code is added to read as follows:

§ 15.85.010 Title.

This Chapter shall be known as the City's "Art in Public Places Program" and may be so cited.

§ 15.85.020 Purpose.

The purpose of the City's Art in Public Places Program is to promote the visual arts by requiring the inclusion of a public artwork component in certain new public and private development projects in Brisbane. The Council recognizes that public art has the power to energize our public spaces, arouse our thinking, and transform the places where we live, work, and play into more welcoming and beautiful environments that invite interaction. By its presence alone, public art can heighten our awareness, question our assumptions, transform a landscape, or express community values, and for these reasons it can have the power, over time, to transform a city's image. Public art helps define a community's identity and reveal the unique character of a specific neighborhood.

§ 15.85.030 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "Brisbane Public Art Fund" means the fund described in Section 15.85.040.
- B. "Building Development Costs" means construction costs, including grading and landscaping costs, for new private developments that do not include costs for hazardous materials abatement, land use planning consultants, feasibility studies, environmental review, land acquisition, legal fees, architecture/engineering, construction management, geotechnical surveys, historical surveys, and demolition. For public developments, "Building Development Costs" means public construction costs that do not include costs for park and landscape renovation projects; pipelines, power transmission lines and towers, switchyards and substations, dwellings in watershed areas; mechanical, plumbing and electrical system upgrades; seismic or structural upgrades; modifications for disabled access, unless occurring in conjunction with a new building construction. "Building Development Costs" for public developments shall include costs for bridges and overpasses, but shall not include costs for other transportation improvement projects.

- C. "Implementation Guidelines" means the guidelines for implementation of this Chapter to be developed by the Public Art Subcommittee, as appointed by the Parks and Recreation Commission.
- D. "In-Lieu Contribution" means a cash contribution equivalent to the percentage of Building Development Costs required herein.

§ 15.85.040 Brisbane Public Art Fund.

- E. The City Manager shall establish a Brisbane Public Art Fund to receive In-Lieu Contributions, donations, and other funds contributed in support of the Art in Public Places Program. Unspent monies in the Brisbane Public Art Fund shall be carried over to the next fiscal year, unless prohibited by the source of the funds, or applicable laws or regulations.
- F. The Brisbane Public Art Fund may be used to acquire, place, and maintain public art on public property throughout the City, as described in the Implementation Guidelines.

§ 15.85.050 Contribution Requirements.

A. Private Developments

1. Commercial Projects

- a. Private nonresidential and non-live-work building developments with Building Development Costs from one million dollars (\$1,000,000.00) through five million dollars (\$5,000,000.00) shall contribute at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. This section shall apply to both new projects and building alterations/additions.
- b. Private nonresidential and non-live-work building developments with Building Development Costs above five million dollars (\$5,000,000.00) shall contribute at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. Alternatively, at the discretion of the owner or developer, such projects may devote at least one percent (1.0%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site subject to the provisions of 15.85.060. This section shall apply to both new projects and building alterations/additions.

2. Residential Projects

- a. Single and multiple family residential and live-work developments with ten (10) through twenty (20) units shall contribute at least one-

half percent (0.5%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution.

- b. Single and multiple family residential and live-work developments with more than twenty (20) units shall contribute at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution.
 - c. Single and multiple family residential and live-work developments with Building Development Costs above ten million dollars (\$10,000,000.00), regardless of the number of units, shall contribute at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. Alternatively, at the discretion of the owner or developer, such projects may devote at least one percent (1.0%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site subject to the provisions of 15.85.060.
 - d. Private residential and live-work building developments designated as low or modified housing shall be exempt from the requirements of this Chapter.
 - e. Compliance with the provisions of this article shall be demonstrated by the owner or developer prior to the issuance of a Building Permit as follows: (a) payment of the full amount of the in-lieu contribution, or (b) written proof to the Building Department of a contractual agreement to commission or purchase and to install the requested art work on the development site. The owner or developer shall provide the City with proof of installation of the requested artwork on the development site before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this article.
3. In-Lieu Contributions shall not necessarily change the characterization of the project as a private development.
- B. Public Developments. Building developments by the City with Building Development Costs above five hundred thousand dollars (\$500,000.00) shall devote at least one-half percent (0.5%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site or for contribution into the Brisbane Public Art Fund as an In-Lieu Contribution.

§ 15.85.060 Guidelines for Implementation of this Chapter.

The Public Art Subcommittee shall create Implementation Guidelines for the Art in Public Places Program, which shall be approved by the City Council. These

Implementation Guidelines shall include, among other things, provisions regarding:

- A. The selection of public art pieces through a jury of Brisbane residents, art professionals, and City personnel;
- B. Contributions into, expenditures from, and maintenance of the Brisbane Public Art Fund;
- C. The conditions for removing, re-siting, or replacing public art;
- D. The installation of project-specific publicly accessible art in lieu of contribution to the Brisbane Public Art Fund;
- E. The process for waiving the provisions in this Chapter; and
- F. Requirements for demonstrating compliance with provisions of this Chapter.

§ 15.85.070 Waiver of Conditions.

Any or all of the provisions of this Chapter may be waived as authorized by the waiver provisions established in the approved Implementation Guidelines.

§ 15.85.080 Violations of this Chapter.

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any discretionary permit granted to any owner or developer who violates the provisions of this Chapter.

SECTION 2: Chapter 15.12 of the Municipal Code is amended to read as follows:

§ 15.12.280 Public art fund fees

All development projects exceeding the size and/or and valuation thresholds set forth in Section 15.85 et seq. shall make contributions to the Brisbane Public Art Fund in the amounts specified in Section 15.85 et seq.