

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Ordinance No. 588 to Amend Brisbane Municipal Code Title 15 to Establish an Art in Public Places Program and Establish Contribution Requirements for New Development to Create a Public Art Fund

DATE: September 18, 2014

City Council Goals:

To develop recreational facilities and promote recreation, educational and cultural programs and passive uses related to parks (Goal #6).

Purpose:

To establish an Art in Public Places Program including funding and implementation provisions.

Recommendation:

That the City Council introduce Ordinance No. 588.

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 Commission created a Public Art Funding subcommittee to prepare the draft ordinance, which was unanimously recommended for approval by the Park and Recreation Commission on December 4, 2013. The City Council further directed that the ordinance be reviewed by the Planning Commission. However, since the ordinance does not involve amending Title 17 (the Zoning Ordinance) of the Municipal Code, the Planning Commission has no formal role in the ordinance adoption. The commission considered the draft ordinance at its August 7, 2014 meeting and their recommendations are discussed below.

Discussion:

The purpose of the ordinance is to provide a funding source for public art and direct the development of implementation guidelines establishing procedures for the selection and siting of public art.

Key provisions include:

Funding:

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. Project of that scale have the option of devoting the 1% percent to on-site, publicly accessible 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 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 .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 which address issues such as the process for selecting, siting, relocating and/or removing public art, procedures for project specific, publicly-accessible art installations 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 and subject to review and approval by the City Council.

Planning Commission Recommendations:

The Planning Commission endorsed the draft ordinance while suggesting one change to the draft language. Specifically the Commission suggested that Section 15.85.060.A. be modified to read “The selection of public art pieces ~~through a jury of Brisbane residents, art professionals and City personnel~~ “; It was the Commission’s belief that it was premature for the ordinance to establish parameters for the art selection process. The Commission felt the forthcoming implementation guidelines are the appropriate venue to

establish the appropriate selection process for Brisbane, and the ordinance should not limit the City's flexibility in this regard. The Commission further requested that they be represented in whatever selection process is established through the implementation guidelines.

Environmental Determination:

The establishment of fees as set forth in the draft ordinance is statutorily exempt from the provisions of the California Environmental Quality Act pursuant to Section 15273 of the CEQA Guidelines because the fees are intended to provide funding to purchase supplies, equipment, and/or materials for public art.

Fiscal Impact:

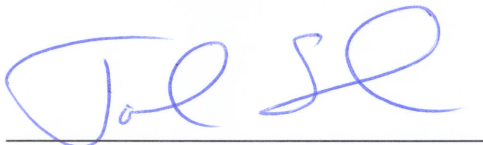
Required contributions for public building projects as specified in the ordinance, and staff time to facilitate ordinance implementation.

Measure of Success:

The establishment of a successful Art in Public Places program for Brisbane.

Attachments:

Draft Ordinance No. 588
Planning Commission Minutes and Correspondence
Parks and Recreation Commission Minutes



John Swiecki, Community Development Director



Clay Holstine, City Manager

ORDINANCE NO. 588

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.
- D. "In-Lieu Contribution" means a cash contribution equivalent to the percentage of Building Development Costs required herein.
- E. "Public Art Subcommittee" means the subcommittee appointed by the Parks and Recreation Commission.

§ 15.85.040 Brisbane public art fund.

- A. 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.
- B. 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 Section 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 Section 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.

3. Compliance with the provisions of Section 15.85.050(A) 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 artwork 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 Chapter.

4. An In-Lieu Contribution 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 Implementation guidelines.

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 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 valuation thresholds set forth in Chapter 15.85 shall make contributions to the Brisbane Public Art Fund in the amounts specified in Chapter 15.85.

***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.

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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. _____

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- 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.
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- 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.

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 - 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.

Draft
BRISBANE PLANNING COMMISSION
Action Minutes of August 7th, 2014
Special Meeting

CALL TO ORDER

Chairperson Cunningham called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners, Munir, Parker, Reinhardt and Chairperson Cunningham

Absent: Commissioner Do

Staff Present: Community Development Director Swiecki and Senior Planner Johnson

ADOPTION OF AGENDA

Commissioner Parker moved to adopt the agenda. The motion was seconded by Commissioner Munir. The motion carried 4-0.

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

Chair Cunningham acknowledged written communications not on the agenda.

NEW BUSINESS

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

Director Swiecki presented the agenda report on the proposed ordinance and answered the Commission's questions. He reminded the Commission that the document was provided on an informational basis only for the Commission's feedback, but not in an official decision making capacity.

Director Swiecki along with current and past Parks and Recreation Commission members who were present, Karen Lentz and Kevin Fryer, answered the Commission's questions.

The Commission recommended a change to Section A of the draft ordinance, regarding the selection of public art pieces, to make the jury selection more inclusive and less prescriptive. Both Commissioner Lentz and Mr. Fryer agreed with the suggestion and Commissioner Lentz indicated that they will bring forward the Commission's suggestion. Commissioner Munir moved and Commissioner Parker seconded to recommend the change to Section A. The motion passed 4-0.

From: Dana [<mailto:earthhelp@earthlink.net>]

Sent: Thursday, August 07, 2014 4:40 PM

To: Johnson, Kenneth

Cc: Evans, Karen; Parker, Carolyn; Spediacci, Sheri; Conway, Clarke; Liu Lori AT yahoo; Miller, Ray; O'Connell, Terry

Subject: Re: Brisbane Planning Commission - 8/7/14 Special Meeting Agenda & Links

Please distribute to the Planning Commissioners

RE: Study session about Public Art Funding Mechanism and Selection Process-

I am unable to come to the meeting and only had the opportunity to do cursory reading of the material.... but have seen earlier drafts.

In general, I and others, find it offensive to support any legislation that ties a minimal contribution of funds for Art to the Citizens and Visitors of Brisbane to future development and/or future in-lieu promises to perform. Look at Sierra Point and the Northeast Ridge. The developer(s) has/have gotten all their promises, but the public's dedicated Open Space and promised improvements (Northeast Ridge AND Marina alike) are yet to be implemented.

I support funding the Arts. In many communities, Public Art Funds are tied to the use of their hotel occupancy tax fund. In this way, there is a steady stream of revenue rather than a maybe-sometime-later endowment after "the build-out" or supposed completion of performance by a developer route.

The structure for committee selection and City Management involvement is also something objectionable. The selection process should be a full, open, PUBLIC process, subject to Planning Commission Purview. The Planning Commissioners are the more knowledgeable legislative body that offers a Publicly Noticed forum. No offense, but sub-committees which meet during regular "work hours" off camera are not fair and cannot be considered "open" to the Public.

Again you are given a "Special Meeting" with no teeth, no vote to take. You should question the process.

Respectfully,
Dana Dillworth



Brisbane Parks and Recreation Commission Action Minutes

REGULAR MEETING

December 4, 2013

BRISBANE CITY HALL COMMUNITY MEETING ROOM, 50 PARK PLACE, BRISBANE, CA

CALL TO ORDER

Commission Chair Bologoff called the meeting to order at 6:00 p.m.

ROLL CALL

Commissioners present: Bologoff, Cutler (arrived at 6:40 p.m.), Dunn, Fryer and Marmion
Commissioners absent: Lentz
Staff present: Deputy City Manager/Administrative Services Director Schillinger
and Recording Secretary Carpenter

ADOPTION OF AGENDA

Commissioner Marmion moved, seconded by Commissioner Dunn, to approve the December 4, 2013 Agenda as presented. The motion carried 4-0.

APPROVAL OF MINUTES

Commissioner Marmion noted a typing error on page 2, in paragraph 8 under CITY COUNCIL LIAISON, 'administrative assistance position going park-time' should read 'administrative assistance position going part-time'.

Commissioner Dunn moved, seconded by Commissioner Fryer, to approve the October 23, 2013 Minutes as amended. The motion carried 4-0.

CITIZEN COMMUNICATIONS

None.

OLD BUSINESS

Public Art

Director Schillinger stated that this is an issue that the Public Art Subcommittee has been working on for a number of months, after the idea was brought to the Parks and Recreation

Public Art (cont)

Commission for consideration. The Commission then received direction from the City Council to draft a Public Arts Ordinance. He said that the Public Arts Subcommittee reviewed a number of different ordinances and had several conversations before coming up with this draft, prepared by the city attorney.

Commissioner Fryer added that the small questions (nuts & bolts) would be handled in a resolution, which is easier to modify, once the ordinance is in place.

Director Schillinger stated that the next step, if the Commission approves the draft, is to take it to the City Council to review, if there is no further concerns/questions, it would then go to the Planning Commission to determine where in the code it should go. Finally, the draft would then go back to the City Council for introduction and adoption of the ordinance.

The Commission reviewed the ordinance draft

Commissioner Marmion moved, seconded by Commissioner Fryer, to approve the Municipal Public Art Ordinance, as written, to go to City Council for approval. The motion carried 4-0.

NEW BUSINESS

Community Pool – fees

The Commission reviewed staff's proposal for pool fees. This agenda item was tabled to January.

Goal Setting – set date

Director Schillinger explained that this item came out of the joint meeting with the City Council liaison. The City Council commented that there should be some type of annual Parks and Recreation Commission goals report. Director Schillinger suggested a workshop format for the commission to discuss goals. The Commission selected Sunday, January 26 for the workshop. Director Schillinger will look into the availability of the Brisbane Marina for the workshop.

REPORTS

Chairperson

Chairperson Bologoff reported, that a citizen mentioned to her, that the lights in the park behind the Community Center are on 24 hours. Director Schillinger stated he would notify the appropriate people.