



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**CITY COUNCIL STAFF REPORT**

Meeting: July 3, 2018

Subject

First Reading of an Ordinance amending to Cupertino Municipal Code Chapters 19.12 (Administration) and 19.148 (Required Artwork in Public and Private Developments). (Application number: MCA-2018-01; Location: City-wide; Applicant: City of Cupertino)

Recommended Action

Conduct the first reading of the draft ordinance: "Ordinance amending Municipal Code Chapters 19.12 (Administration) and 19.148 (Required Artwork in Public and Private Developments)"; and 2. Schedule the second reading of the ordinance for August 21, 2018.

Discussion

Amendments are recommended for Cupertino Municipal Code Chapters 19.12 (Administration) and 19.148 (Required Artwork in Public and Private Developments) for the following reasons:

**(1) Cupertino General Plan consistency**

The amendments are consistent with the applicable sections of Chapter 3 of the General Plan:

GOAL LU-7

Promote a civic environment where the arts express an innovative spirit, cultural diversity and inspire community participation.

POLICY LU-7.1: Public Art

Stimulate opportunities for the arts through development and cooperation with agencies and the business community.

STRATEGY: LU-7.1.1: Public Art Ordinance

Maintain and update an ordinance requiring public art in public as well as private projects of a certain size.

**(2) 2018-2019 Community Development Department work plan item**

Cupertino Municipal Code Chapter 19.148 was enacted in 2009. The City Council identified updating the artwork ordinance as one of the work plan items identified for 2018-2019 fiscal year.

**(3) Fine Arts Commission recommendation**

- a. *Proportion of artwork.* In their review of public art proposals over the last several years, the Fine Arts Commission noted that the artwork value cap of \$100,000 created an amount of art that was sometimes disproportional to the scope, size or value of the development. One of the broad goals of the recommendation is to provide more public art. Removal of the dollar cap, lowering the threshold for requiring artwork, and tiering of construction valuation achieves this purpose.
- b. *Comparison to local cities.* The Fine Arts Commission requested that staff research the art programs of local cities within the Bay Area and particularly of comparable cities in Santa Clara County. The results are summarized in Attachment B for reference and context. In comparison to most other cities within the region, Cupertino had the lowest requirement for artwork value and was the only city that had a dollar cap. All cities utilized a percentage of construction value, typically within the 1% range, rather than a specific dollar amount. There were also examples of acknowledgement of project size and scaling the value based on project size. The approach of utilizing a percentage rather than a set dollar cap also allows the ordinance to move with the economy and inflation, and prevents the ordinance from being quickly outdated.
- c. *Continue to discourage in lieu payments, but provide criteria.* Given that the acceptable artwork includes many ways of incorporating art into architecture itself (such as bas-relief, murals, glass and sculpture), the Commission continues to discourage in lieu payments. However, it is recommended that a request for in lieu payments would require (1) a higher artwork value of 1.25% and (2) City Council approval.
- d. *Other clean-up items.* There are additional clarifications recommended such as:
  - ✓ Amendments to the table 19.12.030 of Chapter 19.12. This is shown in Exhibit A of Attachment B, which reiterates where the Fine Arts Commission is the final but appealable decision (review of public art), and where City Council approval is required (in lieu payments).
  - ✓ Use of the term “construction valuation” rather than “building permit valuation”
  - ✓ Use of the term “payment” instead of “fee”

On June 18, 2018, the Fine Arts Commission reviewed and unanimously recommended the proposed amendments. The proposed changes are summarized in the table below and are reflected in redline form in the proposed ordinance attached in Exhibit A of Attachment B.

<b>Topic</b>	<b>Current standard</b>	<b>Fine Arts Commission recommendations</b>
Percent required, artwork value	.25%	<ol style="list-style-type: none"> <li>1. Raise the artwork value to 1%</li> <li>2. Clarify the percentage is of construction valuation.</li> <li>3. Continue to discourage in lieu payments; require a 1.25% artwork value and City Council approval for this category</li> </ol>
Dollar cap	\$100,000	<ol style="list-style-type: none"> <li>1. Remove the dollar cap</li> </ol>
Scaling of percentage	None – applies equally to projects of all sizes above 50,000 sq.ft.	<ol style="list-style-type: none"> <li>1. Projects 10,000 sf and higher – 1%.</li> <li>2. Create tiers to levels of construction valuation (1% for first \$100M and .9% excess of \$100M valuation)</li> </ol>
Threshold	New 50,000 sq.ft.	<ol style="list-style-type: none"> <li>1. Consider lower threshold: 10,000 sq.ft.</li> </ol>

#### Sustainability Impact

None.

#### Fiscal Impact

None.

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Approved by: Aarti Shrivastava, Assistant City Manager

David Brandt, City Manager

#### Attachments:

A – Draft ordinance

B – Redline changes

C – Local cities' art programs

D – Fine Arts Commission resolution