

**City of Hercules
Agenda Item Transmittal**

Meeting Date: February 23, 2010

Agenda Item Number: XI.2

Agenda Item Wording:

Have/Waive the First Reading of an Ordinance Amending Title 10 (“Land Use”) of the Hercules Municipal Code with the Addition of Chapter 20, “Art In Public Places Program.”

Submitting Department: Planning Department

Contact Name: Nelson Oliva, City Manager
Alfred A. “Mick” Cabral, City Attorney
Robert Reber, Assistant Planner

For action by:
 City Council
 RDA Board
 PFA Commission

Placement on agenda:
 Intro./Presentation
 Consent Calendar
 Public Hearing
 Communications
 Council Rpts./Reso
 C.M. Rpts/Reso.
 Intergov. Issues

Staff Recommendation: Staff recommends that the legislative body take the following actions:

Have or waive the first reading of an ordinance amending Title 10 (“Land Use”) of the Hercules Municipal Code with the addition of Chapter 20, “Art in Public Places Program.”

Alternatives:

Do not have or waive the first reading of the proposed ordinance and provide direction to staff.

Discussion:

According to a 2007 study, there are over 350 public art programs nationwide that are funded by Percent for Art programs.¹ The cities that have such programs range from small municipalities to major metropolises. The City of Hercules currently has no public art policy, program, or method for procuring public art, yet the City has approved or anticipates receiving plans for major developments, including New Town Center, Bayfront, Sycamore Crossing, and the Intermodal Transit Center. Each of these projects is prominently located and presents significant opportunities to provide stimulating and culturally important artwork that would improve the public realm, enhance the quality of life for residents, and increase the city’s visual appeal to visitors.

The Art in Public Places program, as provided for in the proposed ordinance, would charge a 1% fee at the time of issuing a building permit, for privately- and publicly-funded projects alike. The fee would apply to non-residential construction with building costs that exceed \$100,000, and to residential projects that involve five (5) or more units and that also exceed total building cost of

¹ “Public Art Benchmarking Study,” Arts Council Napa Valley, July–October 2007.

\$100,000. Costs related to tenant-improvement-only projects would not be subject to the fee. Additionally, projects to remodel, repair, or reconstruct structures damaged by fire, flood, wind, earthquake, or other hardship would be exempt from the fee. Also, for projects for which the fee could make the project unfeasible or cause undue hardship or not be in the public’s interest (such as those involving affordable housing and non-profit organizations), the applicants may request that the City Council approve an exemption. Each applicant could also request to satisfy up to 60% of the 1% obligation by installing onsite publicly accessible artwork of equal or greater value, subject to City Council approval.

All fees collected would be placed into the Art in Public Places Fund to be used with City Council approval strictly for artwork that is freely available to the public throughout Hercules. Artwork could be any of a wide variety of original creations, including—but not limited to—sculpture, murals, mosaics, fountains, and paving designs. Similarly, the artwork could be accomplished through a wide range of media, such as steel, bronze, stained glass, concrete, wood, ceramic tile, stone, and other suitable materials. The Art in Public Places Fund could be used to acquire, install, and maintain such artwork, as well as purchase or lease sites where the artwork would be installed.

Environmental Determination/CEQA Analysis: Staff has determined that the project (i.e., the adoption of the proposed public art program) falls under a list of classes of projects that have been determined not to have a significant effect on the environment and is therefore “categorically exempt” from the provisions of the California Environmental Quality Act (CEQA) and does not require an environmental impact report or the filing of a negative declaration of environmental impact. In accordance with CEQA Section 15061(b)(3), “[C]EQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Attachments:

1. [Ordinance](#)

<i>Financial Impact</i>	
Description: NOT APPLICABLE	
Funding Source:	
Account Number: _____	
Budget Recap:	
Total Estimated cost: \$	New Revenue: \$
Amount Budgeted: \$	Lost Revenue: \$
New funding required: \$	New Personnel: \$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>	

Subcommittee Review and Approval: None Required