



REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR AND
CITY COUNCIL

DATE: December 16, 2008

SUBJECT: Art in Public Places (Woodland Public Art Program)

Report in Brief

The City Council directed City Staff to prepare an Art in Public Places (APP) Ordinance, provide estimates on the costs of staffing a Civic Arts Commission that would be established through the APP Ordinance, and present options for funding APP (Woodland Public Art Program).

Staff recommends that the City Council read by title only an Ordinance adding Part M to Article 7 of Chapter 2 and Article X-XX to Chapter X relating to Art in Public Places with the installed art valuation established at 0.75% and the payment of an art fee is established at 1.0% of the project construction costs as described herein.

Background

The principal features of the APP Ordinance include the creation of the Woodland Public Art Program which includes the Civic Arts Commission and the Woodland Public Art Fund. The Civic Arts Commission would be responsible for the following activities.

- Making recommendations to the City Council on public art. (The City Council will take final action on public art.)
- Recruiting, promoting, and communicating with artists.
- Performing public outreach, marketing, and disseminating on the Woodland Public Art Program.
- Reviewing planning briefs and facilitating the process for installing Public Art Work.
- Managing the Woodland Public Art Fund and performing fundraising activities.

The City's current public art policy requires the inclusion of public art into the development of all commercial and industrial projects (City of Woodland Community Design Standards). Currently, there are eleven (11) public art projects in process. These projects are comprised of Carl's Junior (East Main Street), Applebee's (East Main Street), Woodland Gateway Center, Comfort Suites Hotel (Freeway Drive), Fairfield Inn Hotel (Freeway Drive), Freeway Drive Gymnasium (Freeway Drive), Dumars (East Street), the two Rite Aid sites (Main Street/East Street and West Main Street/Ashley Avenue), the Purity Plaza expansion, and the Michael's Pipe Service facility (Wilson Way). The art

work for Carl's Junior and Applebee's received Planning Commission approval while the Comfort Suites art work received conceptual approval from the Commission. The Woodland Gateway Center received City Council approval. The remaining projects will be required to receive Planning Commission approval of their public art. For future public art projects, the Civic Arts Commission as proposed through the Art in Public Places Ordinance would review public art and make recommendations on public art to the City Council. The City Council would take final action on public art projects.

Staff recommends establishing an art fee based on the construction value of new commercial and industrial projects. The proposed art fee is 1% of the building construction valuation. A project would not be subject to the art fee provided that art was installed at the project site subject to the review of the Civic Arts Commission and approval of the City Council. The value of the art work installed at the project site must be equal to or exceed 0.75% of the building construction valuation. It should be noted that art fees collected by the City could be augmented with grants and donations obtained by the Civic Arts Commission.

Presently, commercial and industrial projects are required to acquire and install their own public art. The proposed Art in Public Places Ordinance would alter the current practice by allowing these projects to pay in-lieu fees, 1% of building construction valuation. However, these projects would still have the option of acquiring and installing their own public art. George Streng, a member of the Woodland Art Center and an active participant in discussions on Art in Public Places, expressed his support for providing commercial and industrial projects with the option of paying in-lieu art fees to satisfy their public art requirement. Whether a commercial or industrial project pays art fees or acquires/installs its own art work, the Civic Arts Commission would review and make a recommendation to the City Council on the art work.

While the APP Ordinance continues the practice of requiring public art for the construction of new commercial and industrial buildings, it also requires public art for additions to existing commercial and industrial buildings if the square footage increase is more than 50% of the existing building. Also for the first time, the proposed Ordinance requires public art for the construction of City of Woodland buildings that are open to the general public.

Staff examined two other methods for funding public art. The first allocates a portion of building permit fees for public art. While this would not create a new burden on the development community, the City's General Fund would be impacted. The second method creates a building permit art fee. This would result in a new burden on the development community and would not affect the City's General Fund.

A number of communities in California have established Art in Public Places Programs and employ a variety of methods to fund their programs.

- **Davis** – Program is funded by setting aside 1% of all funds allocated for capital improvement projects.
- **Sacramento** – Program is funded by setting aside 2% of eligible Sacramento City/County capital improvement project budgets.

- **Emeryville** – Private developers of non-residential buildings contribute 1% of their building construction costs for on-site public art; the City allocates 1.5% of building construction costs for municipal developments. Private developers that have executed development or participation agreements with the Emeryville Redevelopment Agency and residential and live-work developments contribute 40% of 0.5% of development costs to the Emeryville Public Art Fund.
- **Santa Rosa** – A commercial development (excluding industrial) in excess of \$500,000 valuation is required to expend 1% of the project's construction budget (equal to 1% of the building permit valuation) to include publicly accessible art or pay an in-lieu fee. (Santa Rosa has a Public Art in Private Development Program.)
- **San Mateo** – If artwork is not installed at the development project, an in-lieu fee of 0.5% of the total building valuation is required. Art in Public Places Program applies to all commercial and multi-family development projects with a building permit valuation of \$3,000,000 or more.
- **Downey** – All developments that involve the construction or reconstruction of commercial and residential buildings are required to install public art or pay public art fees. The fee is 1% of the construction or reconstruction costs as determined by the Building Official. For the installation of public art, the value of the artwork shall be equal to or exceed the art fee.
- **Culver City** – New residential development projects of five or more units; all commercial, industrial, and public building developments with building valuations exceeding \$500,000; and rehabilitations exceeding \$250,000 in building valuations are subject to the City's public art requirement. For projects that do not install artwork with a minimum value of 1% of the total building cost, have the building's architecture approved as art, or donate art work to the City valued at least 1% of the total building's cost, the art fee is 1% of the total building's cost.
- **West Covina** – For projects that do not install artwork, the art fee is 1% of the project cost for commercial projects or 0.5% of the project cost for multi-family residential projects.
- **Laguna Beach** – For projects that do not install artwork, the art fee is 1% of the project valuation. The public art requirement applies to new commercial and industrial projects; commercial and industrial remodeling, repair, and reconstruction projects with a project expenditure that exceeds \$250,000; residential subdivision or development of more than four lots with a project expenditure that exceeds \$250,000; and City parks and public works projects with a project expenditure that exceeds \$250,000.
- **Palm Desert** – For residential projects that do not install or donate artwork, the art fee is 0.25% of the building permit valuation in excess of \$100,000. The public art requirement applies to residential projects with a building permit valuation of more than \$100,000. For commercial development projects that do not install or donate artwork, the art fee is 0.5% of the total building valuation. The City's capital improvement projects contribute a percentage of the overall project construction budget to the Art in Public Places Fund; the percentage is not specified.

Staff examined the City staffing needs for the Civic Arts Commission established through the Arts in Public Places Ordinance. It was assumed that the Commission would meet monthly and typical staff support activities would include the following.

- Prepare Commission agenda and staff reports (4 to 5.5 hours)
- Production and distribution of Commission agenda packet (1 to 1.5 hours)

- Attendance at Commission meeting (2 to 4 hours – based on two staff members attending and meetings of 1 to 2 hours)
- Prepare Commission meeting minutes (1.5 hours)

Staff attendance at a Commission meeting would normally require two staff members: one individual to present staff reports and respond to questions from Commission members and a second individual to serve as the Commission clerk. It is estimated that each Commission meeting would require a range of 8.5 to 12.5 hours of staff time. While the Commission would meet monthly, some of the meetings may be cancelled because of a lack of agenda items. The estimates on staffing do not include legal review of the contracts between the City and artists for the provision of public art, maintaining the Finance Department account established for the Woodland Public Art Fund, the preparation of City Council staff reports on public art projects, attendance at City Council meetings, and other activities in support of the Woodland Public Art Program. Since the City's fiscal condition will not permit the addition of a full or part time position, this commitment would either require a similar reduction in another operational area or other work assigned to the Community Development Department would be delayed in order to support the Commission.

Discussion

The proposed Art in Public Places Ordinance creates a Woodland Public Art Program with two principal components: a Civic Arts Commission and a Woodland Public Art Fund. The ordinance would elevate the status of public art in the community by establishing a commission dedicated to reviewing public art and other art-related activities. One of the challenges during the preparation of the ordinance has been how to fund the Woodland Public Art Program without impacting the City's General Fund and creating an additional financial burden on the development community. The recommended funding mechanism that does not impact the City's General Fund; however, existing staff resources would be utilized to staff the proposed Civic Arts Commission and work on other activities in support of the Woodland Public Art Program. Because commercial and industrial projects would continue to have a public art requirement, the Art in Public Places Ordinance does not create a new burden on the development community. The City should review the Woodland Public Art Program (Art in Public Places Ordinance) after a period of three years to assess how it has functioned and where it may be appropriate to make changes to the program. Consideration may be given to broadening the type of projects that are subject to the payment of art fees.

Art Fees – For a project that installs Public Art Work at the project site, the cost of the art work must be equal to or greater than 0.75% of the project construction cost. A project applicant has the option of not installing art work at the project site and fulfilling the public art obligation through the payment of an art fee equal to 1% of the project construction costs. The idea behind the different levels of funding obligations is to create an incentive for projects to install public art on site. However, Woodland Art Center representative Dino Gay has discussed with staff a different approach to the funding level obligations. Mr. Gay has suggested that there is value to the community in generating art fees in order to purchase and install public art at existing City facilities throughout the community. Along these lines, reversing the funding obligation levels to 1.0%

(installation of public art at the project site) and 0.75% (payment of art fees) potentially creates an incentive for projects to pay art fees rather than install public art. Another alternative is to use the same funding obligation level, 1%, whether the public art is installed on site or an art fee is paid. It is recommended that the City Council deliberate the funding level obligations and consider the alternatives proposed by Mr. Gay.

City Projects – The APP Ordinance establishes a public art requirement for the construction of City buildings that are open to the general public. Because of the “open to the general public” language, water supply wells, sewer pump stations, and other similar facilities would not trigger a public art requirement. When the next City building project generates a public art requirement, the building could be substantial and thus generate a significant art obligation. Woodland Art Center representative George Streng has discussed with staff the need to employ a flexible approach for City building projects that trigger a public art requirement. Whether the City Council settles on the 0.75% or 1.0% funding obligation level for installed public art, the funding obligation may be more than sufficient to provide an adequate public art piece in terms of appearance and scale. The focus should be to select and install an adequate public art work but not necessarily at a cost equal to the funding level obligation. This may result in an opportunity to obtain both public art work and art fees. While it may be difficult to incorporate this flexibility into specific language for the APP Ordinance, Mr. Streng’s suggestion is relevant for both City building projects as well as commercial and industrial projects.

Fiscal Impact

The City would be expected to absorb the staffing commitment required for a Civic Arts Commission with existing staff resources and the City would not incur a specific fiscal commitment for the Woodland Public Art Program except when a City building project triggers a public art requirement. The cost of this commitment would be added to the capital improvement project budget.

Public Contact

The City Council agenda was posted and an announcement of this item was published in the November 29 edition of the Woodland Daily Democrat. In addition, City staff met with George Streng and Dino Gay, members of the Woodland Art Center, to discuss the Art in Public Places Ordinance and receive their input on November 25, 2008. Staff also met with Mr. Streng on July 2, 2008 and communicated with him through email on a number of occasions.

City Council Subcommittee Review

The current version of the Art in Public Places Ordinance was reviewed by the City Council Art Subcommittee on November 4, 2008 and revisions were made to the Ordinance to address comments from the Subcommittee. Key areas for the Subcommittee were that construction projects should not

be delayed because of the public art requirement, requiring public art for the construction of City of Woodland buildings open to the general public, and allowing art work on a building's façade to be potentially eligible as public art. These concepts have been incorporated into the APP Ordinance.

Alternative Courses of Action

1. Read by title only an Ordinance adding Part M to Article 7 of Chapter 2 and Article X-XX to Chapter X relating to Art in Public Places with the installed art valuation established at 0.75% and the payment of an art fee is established at 1.0% of the project construction costs as described herein.
2. Revise the proposed Ordinance to establish the installed art valuation at 1.0% and the payment of an art fee (no installation of public art work at project site) at 0.75% of the project construction costs.
3. Revise the proposed Ordinance to establish the installed art valuation at 1.0% and the payment of an art fee (no installation of public art work at project site) at 1.0% of the project construction costs.

Recommendation for Action

Staff recommends that that the City Council approve Alternative No. 1.

Prepared by: Dan Sokolow
Associate Planner

Reviewed by: Robert MacNicholl
Planning Manager

Reviewed by: Barry Munowitch, AICP
Assistant City Manager

Mark G. Deven
City Manager

Attachment: Art in Public Places Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WOODLAND ADDING PART M TO ARTICLE 7 OF CHAPTER 2 AND ARTICLE X-XX TO CHAPTER X OF THE WOODLAND MUNICIPAL CODE RELATING TO ART IN PUBLIC PLACES

The City Council of the City of Woodland does hereby ordain as follows:

Section 1. Purpose. The purpose of this Ordinance is to add Part M to Article 7 of Chapter 2 and 0 to Chapter X of the Woodland Municipal Code.

Section 2. Authority. The City Council enacts this Ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution.

Section 3. Addition. Part M is hereby added to Article 7 of Chapter 2 of the Woodland Municipal Code as follows:

PART M. CIVIC ARTS COMMISSION.

Section 2-7-90. Creation.

There is hereby created and established a Civic Arts Commission.

Section 2-7-91. Composition.

The Civic Arts Commission shall consist of five (5) members who shall be art and design professionals and/or have a demonstrated interest in public art.

Section 2-7-92. Appointment and removal.

Members of the Civic Arts Commission shall be appointed pursuant to Part B of Article 1 of Chapter 2 of this code.

Section 2-7-93. Terms of members.

The term of office of each member of the Civic Arts Commission shall be four years. All terms shall begin on January 1st and end on December 31st. If a vacancy should occur other than by expiration, it shall be filled by appointment for the unexpired portion of the term. In order to establish staggered terms of office of the members first appointed, two members shall be appointed for a one-year term, one member shall be appointed for a two-year term, one member shall be appointed for a three-year term, and one member shall be appointed for a four-year term. Upon the expiration of such designated terms, successors shall be appointed for full four-year terms. Each member, unless sooner terminated, shall serve until his or her successor is appointed and qualified.

Section 2-7-94. Jurisdiction.

Except as otherwise specified in this code, the Civic Arts Commission shall conduct hearings and make recommendations to the city council on all matters pertaining to the provision of art in public areas.

Section 2-7-95. Powers and duties.

The Civic Arts Commission shall have the following powers and duties:

To administer the Woodland Public Art Program as established in 0.

To recommend to the city council ways to improve the appearance of the City by providing or encouraging public art.

To act upon matters within the Civic Arts Commission's responsibilities as outlined in 0.

To have a representative report to the city council during April of each year on work accomplished in the past year and to outline work to be done in the coming year. The city council may, at its sole discretion, require the report to be in writing.

To exercise such powers and perform such duties as the city council may direct.

Section 2-7-96. Procedure.

The Civic Arts Commission shall hold regular meetings during each calendar year at such time and place in the city as the Civic Arts Commission may fix by resolution. The Civic Arts Commission shall adopt rules for the conduct of its meetings in accordance with law and prepare and maintain a public record of its transaction of business which shall include its findings and determinations on matters within its jurisdiction.

Section 4. Addition. 0 is hereby added to Chapter X of the Woodland Municipal Code as follows:

ART IN PUBLIC PLACES

Policy.

The City Council hereby declares its desire to promote art in public places in the City through the adoption of a policy that:

Provides the community with cultural and aesthetic assets in the form of public art and a public art program.

Provides consistent, efficient, fair and cost-effective procedures for the regulation of public art in the City.

Authorizes the Civic Arts Commission to create and implement procedures for the recommendation of the selection, acquisition and administration of public art.

Provides funding sources for a public art program in the City.

Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings ascribed to them in this section:

Building Official. The Building Official of the City or his/her designee.

Community Development Director. The Community Development Director of the City or his/her designee.

Civic Arts Commission. The Civic Arts Commission as established in Part M of Chapter 2, Article 7 of this Code.

Project. Any private construction or improvement(s) to a building or structure that is or will be used in whole or in part for commercial or industrial activities that increases the square footage of the building or structure. Such construction or improvements shall include the construction of new buildings or structures. An addition to an existing building or structure shall only be considered a “Project” if the square footage of the addition is more than 50% of the square footage of the existing building or structure. The definition of a “Project” shall include also City of Woodland buildings or structures open to the general public. “Project” shall not include any landscaping or other public or private improvements to the property which do not alter the physical building or structure.

Public Art Work. An original visual creation conceived in any medium, material or combination thereof which is approved by the Civic Arts Commission and the city council pursuant to this Article and is placed in areas accessible or visible to the general public. Public Art Work may be permanent, temporary, or functional. “Public Art Work” shall not include any architectural or landscape design or any temporary displays created for the purpose of sale, except when commissioned and so designated by the Civic Arts Commission. This shall not preclude art work on a building façade from being approved by the Civic Arts Commission and the city council as Public Art Work.

Woodland Public Art Program.

A. There is hereby created a Woodland Public Art Program, the goals of which are to:

Ensure Public Art Work meets excellent standards.

Ensure access to Public Art Work, information and programming for the community.

Ensure that Public Art Work is selected wisely and efficiently.

Ensure responsible guardianship and maintenance of Public Art Work.

Facilitate funding of Public Art Work.

6. Encourage the provision of Public Art Work at County, State, and Federal government building projects.

B. The Woodland Public Art Program is not intended to interfere with or delay the planning and building process. Opportunities for placement of Public Art Work may occur during construction or following the completion of a Project based on the recommendation of the Project architect in conjunction with the Community Development Director. The Civic Arts Commission is dedicated to working with property owners of Projects with designated Public Art Work during the planning and construction process to plan, select, and install Public Art Work in a time frame compatible with Project construction. Unless waived by the Community Development Director, all Public Art Work must be fully installed prior to the issuance of a certificate of occupancy for the Project. Unless waived in writing by the Community Development Director, all art fees assessed pursuant to Section X-XX-060 must be paid in full prior to the issuance of a certificate of occupancy for the Project. A certificate of occupancy shall not be issued for the Project until the Public Art is installed, all art fees assessed pursuant to Section X-XX-060 are paid in full, or the Community Development Director has issued a written waiver to defer the installation of the Public Art or the payment of art fees.

C. The daily administration of the Woodland Public Art Program shall be provided by the City, an experienced public art professional or public art agency. Any public art professional or public art agency selected to administer the day-to-day activities of the Woodland Public Art Program shall be identified by the Civic Arts Commission after a solicitation and selection process and recommended to the City Council for consideration.

Woodland Public Art Fund.

There is hereby created a Woodland Public Art Fund, which funds shall be held in a separate account, a special purpose fund, and shall be used for the sole purpose of implementing the Woodland Public Art Program.

Monies appropriated for the Woodland Public Art Fund shall consist of the following:

Art fees collected pursuant to Section X-XX-060.

Gifts and donations from private donors.

Grants from Federal, State, County and City agencies, private groups and individuals.

If real property purchased with monies from the Woodland Public Art Fund is subsequently sold, the proceeds from the sale shall be returned to the Woodland Public Art Fund.

The Woodland Public Art Fund shall be administered by the City's finance department.

The Woodland Public Art Fund shall be used solely:

For the selection, design, acquisition, commission, installation, improvement, maintenance, utilities, and insurance of Public Art Work, as applicable;

For any improvement of real property necessary for the purpose of installing Public Art Work;

For costs associated with administering the Woodland Public Art Program.

Civic Arts Commission Responsibilities.

The Civic Arts Commission shall be responsible for overseeing the administration of the Woodland Public Art Program, which shall include:

Recommending Public Art Work.

Recruiting, promoting and communicating with artists.

Performing public outreach, marketing and disseminating information regarding the Woodland Public Art Program.

Reviewing planning briefs and facilitating the process for installing Public Art Work.

Making recommendations regarding management of the Woodland Public Art Fund and fundraising activities.

The Civic Arts Commission shall provide the City Council with an annual Woodland Public Art Program plan and budget.

The Civic Arts Commission shall conduct hearings and make recommendations to the City Council regarding Public Art Work to be donated to the City.

D. The Civic Arts Commission shall conduct hearings and make recommendations to the City Council as to Public Art Work placed on private and public properties.

The Civic Arts Commission shall provide the City Council with reports on the concept, cost, and design of each Public Art Work to be installed in a Project for approval by the City Council.

City staff shall consult and advise the Civic Arts Commission on matters pertaining to the responsibilities set forth herein.

Payment of Art Fee.

All Projects are subject to the payment of an art fee pursuant to this Section, with the exception of any Project that either: (i) installs Public Art Work on the Project site in accordance with this Article; or (ii) donates Public Art Work to the City pursuant to Section X-XX-070. The value of the installed or donated Public Art Work shall be equal to or greater than 0.75% of the Project construction costs, as determined by the Building Official. In the event that the installed or donated Public Art Work is valued at less than 0.75% of the Project construction costs, the Project shall pay an art fee up to the amount required to equal 0.75% of the Project construction costs, minus the value of the Public Art Work. The valuation of installed Public Art Work shall include the actual art work and the costs necessary for installation.

Any Project that does not install Public Art Work on the Project Site shall pay an art fee equal to 1% of the Project construction costs, as determined by the Building Official for the Woodland Public Art Fund.

Privately Funded Public Art Work Placed on Private Property.

Nothing in this Article shall prohibit the placement of additional or other privately-funded art on private property.

Procedure for Acceptance of Public Art Work Donated to the City.

Application procedure. An application for acceptance of Public Art Work to be donated to the City for placement on public property shall be submitted to the Civic Arts Commission, and shall include, without limitation, the following information:

Preliminary sketches, photographs, models, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed Public Art Work;

A written agreement, in a form approved by the City Attorney, executed by or on behalf of the artist, which expressly waives his or her rights under the California Art Preservation Act or other applicable law; and

Other information as may be required by the Civic Arts Commission to adequately evaluate the proposed donation of Public Art Work.

Review of application. Completed applications shall be submitted to the Civic Arts Commission for review and recommendation to the city council. The city council shall have the sole authority to accept, conditionally accept or reject the donation.

All Public Art Work donated to the City shall become the sole personal property of the City, upon acceptance by the City Council.

Ownership and Maintenance of Public Art Work.

All Public Art Work placed on private real property shall become the sole personal property of the real property owner. The real property owner shall be solely responsible

for the provision of all maintenance necessary to preserve the Public Art Work in good condition.

Maintenance of Public Art Work shall include preservation of the Public Art Work in good condition to the satisfaction of the City, protection of the Public Art Work against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by an insurance appraisal. Prior to placement of Public Art Work, the applicant and the owner of the site shall execute and record a covenant in a form approved by the City Attorney for maintenance of the Public Art Work. Failure to maintain the Public Art Work, as provided herein, is hereby declared to be a public nuisance. The City may pursue additional remedies to obtain compliance with the provisions of this Article, as appropriate.

Removal of Public Art Work.

The Civic Arts Commission shall develop guidelines for the sale, removal and disposal of Public Art Work. These guidelines shall be adopted by resolution of the Civic Arts Commission and shall be submitted to the City Council for consideration and adoption.

Appeal.

Any person may seek review of a decision or recommendation of the Civic Arts Commission by filing a written appeal with the City Clerk's Office within thirty (30) days of the decision by the Civic Arts Commission. The City Clerk's Office shall coordinate with the Community Development Director to schedule the appeal hearing before the City Council.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 6. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Woodland.

PASSED AND ADOPTED this _____ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marlin H. Davies
Mayor

ATTEST:

Sue Vannucci
City Clerk

APPROVED AS TO FORM:

Andrew J. Morris
City Attorney