

RESOLUTION NO. 2016-69

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREMONT
ADOPTING A REVISED ART IN PUBLIC PLACES PROGRAM POLICY** _

WHEREAS, the City has established an Art Review Board under the Fremont Municipal Code (FMC) whose task it is to advise the City in artistic matters and selection of art in public places; and

WHEREAS, the City has an Art in Public Places Program Policy (the Policy) that sets forth procedures for funding, selecting and locating public art within the City; and

WHEREAS, the City has prepared a draft update to the Policy in order to (1) be consistent with various City initiatives such as art programs in the Downtown, City Center and Warm Springs Innovation districts, and (2) clarify the appropriate use of art funds as well as the process for approving artwork in public places; and

WHEREAS, on September 21, 2016 and October 19, 2016, the Art Review Board reviewed the proposed changes to the Policy and recommended approval to the City Council with various minor revisions; and

WHEREAS, the revised Policy will enrich the lives of all residents and visitors to the City of Fremont by providing a system of procedures and guidelines for the funding, installation and maintenance of public art; and

WHEREAS, the City Council considered the revised Policy at its regularly scheduled public meeting on November 15, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT
RESOLVES AS FOLLOWS:

//

//

//

SECTION 1. The revised Art in Public Places Program Policy set forth in Attachment 1 to this Resolution is approved and adopted.

ADOPTED November 15, 2016, by the City Council of the City of Fremont by the following vote:

AYES: Mayor Harrison; Vice Mayor Mei; Councilmembers Chan, Bacon and Jones

NOES: None

ABSENT: None

ABSTAIN: None

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Senior Deputy City Attorney

ATTACHMENT 1

Art in Public Places Program Policy

I. GENERAL POLICY

This policy gives guidance and provides procedures for funding, selecting and locating public art within the City. The policy promotes funding, creation and installation of public Artwork as well as flexibility in locating Artwork to maximize their visibility.

The City does not intend to create a forum for public expression by approving this policy, any Art in Public Places, and/ or any Artwork subject to the boxART! Program (as defined below), but rather is expressing its own government speech. The City will manage the art-selection process as described in this policy. However, Public Art in Private Places shall be the responsibility of that developer or owner.

II. MISSION STATEMENT

To promote community access to art, integrate it into daily life and create community interest that will enrich the economic vitality and cultural vibrancy of the city, creating a unique identity for Fremont.

III. PROJECTS SUBJECT TO THE POLICY

This policy shall be applicable to the construction of every new public building and park constructed by the City of Fremont with an engineer's estimated construction cost of \$1,000,000 or more and other projects designated by the City Council, the funding source for which is known as City 1% funds (as defined in Section VIII below). This policy shall not apply to renovations and reconstruction of public buildings and parks. This policy shall also be applicable to privately financed and owned buildings within areas designated by the City Council for publicly viewable private art and at the option of the owner for buildings in other areas. Contributions of funds by the City to or other involvement of the City in a private development project shall not change the characterization of a project as a private development project. This policy shall also be applicable to artwork funded by public art funds as required in specified zoning districts as well as temporary public art. Special requirements for the approval of projects under the Traffic Signal Control *boxArt!* Program (the "*boxArt!* Program") are described in Section XII of this policy.

IV. DEFINITIONS OF ARTWORK

For the purpose of this policy, unless it is plainly evident from the context that a different meaning is intended, certain terms are defined as follows:

1. "Art in Public Places" means any visual work of art displayed for two weeks or more in an open City owned area, on the exterior of any City owned facility, public areas, lobbies, or public assembly areas or on any non-City property if the work is installed, financed, either

wholly or in part, with City funds, or grants procured by the City.

2. "Public Art in Private Places" means Artwork located and financed by private developers or owners within public view or access.
3. "Artwork" may include, but is not limited to, the following categories: exhibition, sculpture, monument, mural, fountains, fresco, relief, painting, mosaic, ceramic, weaving, carving, stained-glass, wood, metal, plastic. Artwork would normally not include general landscaping, paving, architectural ornamentation, or signage. Works may be portable as well as fixed.

The following items are not considered to be Artwork:

- a. Directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original Artwork.
 - b. Art objects which are mass produced from a standard design such as playground equipment, fountains, flags, or banners.
 - c. Reproductions, by mechanical or other means of original Artwork.
 - d. Decorative, ornamental, or functional elements which are designed by the building architect as opposed to an artist commissioned for the purpose of creating Artwork.
 - e. Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the Artwork by the artist.
 - f. Services or utilities necessary to operate or maintain the Artwork over time.
4. "Permanent Installation" will be any art in a public place intended to remain for an indefinite period of time.
 5. "Temporary Installation" will be any art in a public place intended to remain for a specific period of time.

V. PROCEDURE

1. Artwork funded by City 1% funds is not required to be located on the site of the City project that contributes the funds for the Artwork. The Art Review Board may recommend, due to the project location or other factors, that the project should not incorporate an Artwork. Where a project subject to this policy does not incorporate an Artwork, the funds shall be placed in the public art fund and shall be allocated for Artwork to be placed on a City owned site that is more visible or otherwise more suitable for a public artwork. However, Artwork funded by public art funds for the Downtown, City Center, Warm Springs Innovation or other zoning districts shall be located in the district that was the source of the funding.
2. An account of the total budget for a particular Artwork shall be established by the City or private developer, as the case may be:
 - a. When schematic designs are begun for any new public building or park project or other public project designated by the City Council, or private development project that will incorporate and install an Artwork; or
 - b. When it is determined to install an Artwork on a City owned site as a separate stand-alone project and not in conjunction with a City improvement project. Upon the

establishment of the account for a particular Artwork, the Art Review Board will begin developing the art procedure as described in section 3 below.

3. The Art Review Board shall initially consult with the City staff and the project architect, if any, and shall consult with them thereafter as needed. Then, an art procedure will be developed for the particular Artwork, consisting of the designation of a proposed site, the media to be used, the selection process to be used, theme, and an estimated schedule for the selection and fabrication and installation of the Artwork.
4. After the above consultations and the confirmation of funds for the project, the Art Review Board in consultation with City staff will determine if funds will allow for one or more artists to participate, if feasible for the identified location. (This policy will not necessarily be limited to the involvement of only one artist in each project. In the case of an exceptionally large project with respectively large funds, or a project that may involve multiple art installations, the Art Review Board may decide to involve several artists to more effectively achieve the Art in Public Places Program mission.)
5. The Art Review Board will decide upon a method of selection of the Artwork to be considered most appropriate for the situation. Methods may include: open competition, limited competition, invitation, or direct purchase.
6. The Art Review Board will give the artists general guidelines or parameters of the project. If applicable, the artist(s) will be selected at the schematic design phase, so the artist(s) and the architect can work together toward a totally integrated design solution. Artists in final selection will present maquettes and itemized cost breakdowns of the art project for review. The Art Review Board will make a final selection of the artist(s) and proposed Artwork(s) to recommend to the decision making bodies as described in subsection 7 below.
7. The Art Review Board's recommendations about art in City parks will be made to the Recreation Commission for recommendation to the City Council, while recommendations for art in all other locations will be made to the Planning Commission, for recommendation to the City Council. If the Planning Commission does not have discretionary authority over the project, the Art Review Board will make its recommendations directly to the City Council. The Board shall provide at least two options to the approval body, unless selection of a single piece of Artwork is appropriate due to its distinguished nature or other specific circumstances. The City Council shall make the final decision on whether to accept the Art Review Board's recommendations.
8. After selection of the artist(s) and approval of a proposal, the City Manager or designee will negotiate and execute a contract with the artist(s). Thereafter, the City staff will monitor the contract performance and coordinate the fabrication and installation of the Artwork with the artist, project architects and contractors. When appropriate, the Art Review Board will also develop a suitable public education program in connection with the Artwork.

VI. CRITERIA FOR SELECTION OF ART

In performing its duties with respect to the Art in Public Places Program, the Art Review Board shall give special attention to the following matters:

- 1 The mission statement of the Art Review Board,
- 2 All forms of visual art,
- 3 The architectural, geographical, social/cultural context of the site, and
- 4 To acquiring art that reflects diversity of style, scale, form, materials, media, and artistic sources, as well as diverse cultural perspectives.

VII. CRITERIA FOR SELECTION OF SITES

When selecting a site for installation of public art the Board will consider the following:

- 1 Visibility
- 2 Viewer's perspective
- 3 Public safety
- 4 Public accessibility
- 5 Relationship of Artwork to existing and future architecture/architectural features, natural features, urban design
- 6 Users
- 7 Future development
- 8 Landscape design
- 9 Environmental impact

VIII. THE ART BUDGET

1. City 1% Funds. City projects subject to this policy will allocate an amount equal to one percent (1%) of the estimated construction cost of the project towards Artwork (1% Funds). If Artwork will not be incorporated with the project the funds shall be placed in a public art fund maintained by the City, where they may be combined with funds contributed by other projects. If Artwork is included in a project and not all the funds contributed by the project will be used, the remaining funds shall be placed in the public art fund where they may be combined with funds contributed by other projects. Funds from the public art fund may be allocated to a project subject to this policy in addition to the 1 % Funds contributed by the project. Funds from the public art fund may also be allocated to develop and install an Artwork on a City site as a separate stand-alone project and not in conjunction with a City project. Any funds donated or contributed to by civic-minded individuals or organizations to supplement the 1% Funds shall be placed in the public art fund. Each project subject to this policy shall include the 1% Funds as a project cost in the cost estimates that accompany and are approved with the project plans and specifications.
2. Public Art Funds by District. Artwork may be funded by public art funds established by the Downtown, City Center, Warm Springs Innovation and other zoning districts, subject to locational requirements.

3. Specific Artwork Costs. Further financial arrangements will be as follows:
 - a. All financial arrangements for a specific Artwork are to be negotiated between the City and the artist and are to be set forth in a written agreement.
 - b. All eligible costs for a specific Artwork are to be taken into account as expenses and are to be determined in advance. The Artwork budget will include, but is not limited to, all the following costs within the Art in Public Places Program:
 - i. Structure which enables display of Artwork.
 - ii. All artists' costs to include: materials, labor, fabrication, travel, transportation of art to site, installation, and removal (if it is a Temporary Installation).
 - iii. City's administrative costs incurred in the process of selection, fabrication, and installation of Artwork.
 - iv. Project architect fees as additional services in connection with the art work.
 - v. Documentation (including color slides, black and white photography, and video) of the Artwork's fabrication and installation and a plaque to identify the Artwork and artist.
 - vi. Honorarium and expenses for art consultant to Art Review Board, if necessary.
 - vii. Dedication ceremony.
4. The artist will submit a cost statement prior to the contract award (or during the final phase of competition) to the City staff person acting as the liaison to the Art Review Board and the City Council (Art Liaison).
5. If a proposal is to be selected by means of invitation or limited competition, the artist is paid to develop the proposal. A standard contract will be used in this instance.
6. In the case of a competition, each final artist (limited to five artists) will present maquettes and proposals for final selection. Each of these artists will be paid an amount not to exceed five hundred dollars (\$500) per artist.
7. Suggested expenditure of the Artwork budget will be as follows:
 - a. Twenty percent (20%) maximum allowance for administrative costs, including any specific allocation or budget for preliminary maquettes requested by the Board prior to their development by the artist. Any portion of the maquette budget not expended by the artist(s) will become part of the final compensation as noted in subsection c below.
 - b. Fifty percent (50%) of budget to artist(s) at the award of contract.
 - c. Thirty percent (30%) of budget plus any unexpended allocation from the preliminary maquette budget to artist(s) within thirty (30) days after installation.

IX. PUBLIC ART IN PRIVATE PLACES

The General Plan encourages private developers to incorporate Artwork such as sculpture, fountains, murals, or other visual displays, into their projects, finding that incorporation of Artwork will further enhance these developments and will greatly contribute to the quality of life in Fremont, as well as the growth of greater cultural awareness in our community.

- 1 Public Art in Private Places is optional to developers with projects in the City of Fremont

unless the project is within an area (Art Zone or District) designated by the City Council for publicly viewable private art such as the Downtown, City Center, or Warm Springs Innovation Districts.

2. Developers interested in public art in public or private places will be given the policy guidelines for reference by the City when submitting a development proposal. Private developers may choose to make a cash contribution toward civic-minded City-planned art in public places projects. This contribution could benefit the developer as a tax deductible donation.

X. DISTRICT-BASED PUBLIC ARTWORK

As additional funding for public art becomes available in the Downtown, City Center and Warm Springs Innovation Zoning Districts due to private development projects, City staff wishes to plan for such artwork in an organized fashion while still achieving the goals and policies set forth in the community plans and zoning regulations applicable to each area. To that end, the following requirements and procedures shall apply to such district-based artwork.

1. The procedure for selecting district-based Artwork shall generally follow the requirements of Section V, and the criteria for selection of Artwork and sites shall generally follow the requirements of Sections VI and VII. However, the Art Review Board may use different or additional procedures and/or criteria when warranted under the circumstances and, if appropriate, when incorporated into an annual work plan for the applicable district. In addition, the community development director is authorized to approve on-site artwork; notwithstanding, he or she may refer proposed artwork to the Art Review Board and/or City Council if he or she believes further input and direction is required.
2. District-based Artwork is not limited to Permanent Installations and Temporary Installations but may also include exhibitions such as performance art, music, dance, literary readings and other events.
3. City staff shall prepare annual work plans for expending public art funds in the Downtown, City Center and Warm Springs Innovation Districts and shall present such plans to the Art Review Board for review.

XI. TEMPORARY INSTALLATIONS, DONATIONS, AND BEQUESTS

The City of Fremont will only consider offers of Artworks to the City that are Temporary Installations, donations that are gifts, or bequests.

(a) Temporary Installations. The procedure for selecting Temporary Installations shall generally follow the requirements of Section V, and the criteria for selection of Temporary Installations and sites shall generally follow the requirements of Sections VI and VII. However, the Art Review Board may use different or additional procedures and/or criteria when warranted under the circumstances. City staff shall provide specifications for selected sites and shall conduct the initial screening of submitted Artworks.

(b) Donations and Bequests. A donor who wishes to make a donation or bequest must send a letter to the City of Fremont containing the following information.

1. The type of donation being made.

- Documentation materials of the Artwork being offered for donation including pictures, slides, size, medium, title, year of creation, and a resume of the artist if possible.
- 2 Maintenance requirements of the Artwork.
 - 3 A document showing that the Artwork is free of encumbrance.
 - 4 A release letter by the donor, should the City decide to release the Artwork in the future.
 - 5 An assessment of the City's ability to store the artwork, and/or an available location to display it.

The City of Fremont will acknowledge receipt of the donated Artwork without valuation for tax purposes. The donor must find other means of establishing the value of the Artwork.

The Art Liaison will present all proposals to the Art Review Board for consideration. Based on this recommendation and the Planning or Recreation Commission's recommendation, if applicable, the City Council will decide on accepting all offers of donated Artworks and will notify donors of its decisions within ninety (90) days.

XII. TRAFFIC SIGNAL CONTROL *boxART!* PROGRAM

The Traffic Signal Control *boxArt!* Program is intended to create art on City-owned traffic signal control boxes. The primary goal of this program is to deter graffiti and enhance the public streetscape by adding works of art to surfaces that are often targeted by vandalism, and to reduce the cost of removing graffiti from these surfaces. Designs may not: (1) contain advertisement of, or promotion for, any business or product, (2) violate a legal ownership interest of another party (such as a patent, copyright or trademark) or (3) be defamatory or promote illegal activity. Further design criteria shall be set forth in requests for proposals. The Art Review Board will make the final selection of artworks for the *boxArt!* Program. Policies and procedures guiding the implementation of the *boxArt!* Program are not included in this policy but will instead be developed separately.

Adopted April 10, 2012, Resolution No. 2012-18
Revised December 10, 2013, Resolution No. 2013-72
Revised November 15, 2016, Resolution No. 2016-69