



Fremont City California

Staff Report 2878

ART IN PUBLIC PLACES PROGRAM POLICY AND ART REVIEW BOARD ORDINANCE UPDATE - Consider a Recommendation from the Art Review Board to Approve an Update to the Art in Public Places Policy, Amendments to Art Review Board Regulations in Fremont Municipal Code Chapter 2.20, and an Exemption from the Requirements of the California Environmental Quality Act per CEQA Guidelines Section 15061(b)(3).

Information

Department:	Planning	Sponsors:
Category:	Code Adoptions & Amendments	

Attachments

[Printout](#)
[Exhibit A - Draft Art Review Board Ordinance](#)
[Exhibit B - Draft Resolution](#)
[Exhibit C - Draft Art in Public Places Policy](#)

Item Discussion

Executive Summary: The City of Fremont has an established Art Review Board enabled by the Fremont Municipal Code (FMC) whose task it is to advise the City in artistic matters and selection of art in public places. City staff has prepared an update to the enabling FMC Chapter 2.20 and to the stand-alone Art in Public Places Program Policy document in order to update various standards and requirements described herein. On October 19, 2016, the Art Review Board reviewed the proposed changes and recommended approval of updates to the Art Review Board Ordinance (Ordinance) and Art in Public Places Program Policy (Policy) to the City Council.

Body

BACKGROUND:

Art in Public Places Program Policy

The City's Art in Public Places Program Policy is a freestanding policy that was originally adopted in 1987 in conjunction with the requirement that one percent of the budget for public projects be set aside for public art. Over the years, the Policy has been modified and was last updated in 2013 to add the City's *boxArt!* Program for the purpose of painting traffic control boxes.

Art Review Board Ordinance

Establishment of the Art Review Board was codified in FMC Chapter 2.20 in 1997. It establishes the board membership, duties and responsibilities, and terms. In 2014, the most recent change lengthened allowable Board member service from two to three (four-year) terms.

Recent Art-Related City Initiatives

Over the past several years, the City has been very active in taking steps to incorporate art in public

places.

Art Funds and District Art Programs:

Beginning in 1987, the primary source of funding for art was from public projects, which are required to contribute one percent of their budgets to public art. In 2012, the City began creating district art programs for projects in key areas, beginning with the Downtown District in 2012, then expanding to the Warm Springs Innovation District in 2014 and the City Center District in 2016. Private projects within these areas are required to contribute a fee per square foot of construction, with options to build art on-site in-lieu of a portion of the fee. The Ordinance and Policy have not previously been updated to reflect how the Art Review Board's work relates to these district art programs.

Temporary Public Art:

The City worked with a private party to install temporary art in a public location at the corner of Capitol Avenue and Fremont Boulevard. The experience of this process has made staff aware of some best practices from other jurisdictions that are part of the reason for the Policy update. The Policy is proposed to be updated to incorporate these best practices.

DISCUSSION/ANALYSIS:

Proposed Ordinance and Policy Updates

City staff has drafted proposed changes to the Art Review Board enabling ordinance in FMC Section 2.20.590 et seq. and to the standalone Art in Public Places Policy in order to bring the Ordinance and Policy up to date with City initiatives. A description of the changes follows:

Art in Public Places Policy:

1. General edits for clarity and readability.
2. Defines the Policy as the City generally expressing its own government speech, for legal reasons.
3. Updates to reflect adopted art programs in the Downtown, City Center and Warm Springs Innovation Districts, and to require art funds from these areas to be spent on temporary or public art in the district where the funds were generated, consistent with Zoning ordinance requirements.
4. Moves certain Art Review Board qualification requirements and the Art Review Board representative appointment procedure from the Policy to the Ordinance.
5. Defines temporary installation of art as art in a public place intended to remain for a specific period of time.
6. Requires staff to present an annual workplan to the Art Review Board for art funds generated by projects within the established districts.
7. Requires staff to monitor budgets of regular art funds, and during schematic design for one percent public project funds, for planning of public art, and to consult with the Art Review Board on:
 - a. Method of selection for artists, such as a call for artists
 - b. Total budget for each artwork, including stipends, insurance, labor material, permitting, and installation.
8. Requires staff to conduct initial screening of artworks for submission to the Art Review Board, and allows an option for multiple submissions to be recommended to the City Council.
9. Specifies criteria for selection of art specific to the purposes of the district art programs, and for location context.
10. Updates funding based upon new district art programs.
11. Allows payment to artists to include (negotiated) administrative costs.
12. Specifies prohibitions on advertising, intellectual property infringement, defamation and promotion of illegal activity in art on control boxes.
13. Clarifies that exhibitions are a form of artwork.

Art Review Board Ordinance:

1. General edits for clarity and consistency.
2. Specifies that three board members must have certain qualifications with regard to the arts, and two may be interested in the arts, knowledgeable, and capable, consistent with existing language in the

current Policy.

3. Eliminates art liaison language that was duplicative with FMC Section 2.20.030(g).
4. Specifies duties of the Art Review Board related to advice on artistic matters and selection of art.

Project Analysis

Overview:

The Ordinance and Policy update contemplated herein requires the Art Review Board membership to have relevant experience, brings the Ordinance and Policy into conformity with other City codes and programs, and codifies some matters that represent best practices for selecting and installing art, as well as managing the various art programs effectively.

General Plan and Community Plan Conformance:

The proposed Ordinance and Policy update would be in conformance with the following General Plan policy and implementation measure:

Community Character Policy 4-5.9: Art in Public Places—Utilize public art as a way to strengthen the identity of Fremont’s centers and neighborhoods.

Implementation 4-5.9.A: Art in Public Places Program - Continue the “Art in Public Places Program” as a way to increase the amount of public art in the City.

Community Plans for the Downtown (Section 3.5), City Center (Chapter 3, Goal 4) and Warm Springs/South Fremont (Section 3.7) also call for area development to include public art that is publically visible and designed to be an integral part of the community.

Analysis: The proposed Ordinance and Policy updates support the City’s Community Character and applicable Community Plans by empowering the Art Review Board to advise the City on selection of art for the City’s various art programs.

Zoning Ordinance:

The Zoning Ordinance has established art programs in three zoning districts—City Center (FMC Section 18.43.135), Downtown (FMC Section 18.47.120), and Warm Springs Innovation (FMC Section 18.49.100). Each district requires payment of art fees (currently \$0.52 per square foot) at building permit issuance in order to promote art. For projects greater than 100,000 square feet, the developer has the option of installing art in-lieu of paying up to 50 percent of the fee. The fees are to be used for artwork or exhibitions located within the boundaries of the district from where the funds were generated. The Art Review Board has the responsibility to review art under these programs, and would continue to have that responsibility under the proposed changes to the Ordinance and Policy.

Art Review Board Recommendation

Staff presented the proposed changes to the Art Review Board for a courtesy review on September 21, 2016 (informally), and on October 19, 2016. At the latter meeting, the Art Review Board recommended that the City Council approve the Ordinance and Policy update as proposed herein, with minor changes, as follows:

1. A recommendation for a minor change in the Ordinance to the previous wording of the qualifications necessary to be an Art Review Board member in FMC Section 2.20.590 (Art Review Board Creation and Composition), as modified herein: “Not less than three of the board members will be experienced visual and/or performing artists, ...”
2. A recommendation for a change in the Policy to allow artwork consisting of education and exhibitions (as proposed in the Section X. 2. (District-based Artwork) of the Policy) Citywide by adding “exhibitions” to the definition of Artwork in Section IV. 3. (Definitions—Artwork). This would not change the Zoning ordinance requirement for district-based art funds to be spent in the district from where the funds were generated.
3. A recommendation to create and maintain a City map of district-based artwork and public art for use by the Art Review Board and City Council in reviewing the program, and for providing

information to the public.

4. A recommendation to modify the considerations for acceptance of donations and bequests specified in Section XI. (b). 1-5. of the Policy, and specifically, to add a final item to the list, as follows: "An assessment of the City's ability to store the artwork, and/or an available location to display the artwork."

The draft Ordinance and Policy reflect these changes, except for the general direction to staff in item three.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: The project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule, because it can be seen with certainty that the activity would not have a significant effect on the environment, and the activity is, therefore, not subject to CEQA.

Document Comments

RECOMMENDATION:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule, because it can be seen with certainty that the activity would not have a significant effect on the environment, and the activity is, therefore, not subject to CEQA.
2. Find that the updates to the Art Review Board ordinance and Art in Public Places Program Policy proposed herein are consistent with the General Plan, Community Plans, and Zoning Ordinance, as described in the staff report.
3. Introduce an ordinance amending regulations governing the Art Review Board as shown in Exhibit "A."
4. Adopt a Resolution approving the amended Art in Public Places Program Policy as shown in Exhibits "B" and "C."