

## **ORDINANCE NO. 588**

### **AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 15.12 AND ADDING CHAPTER 15.85 TO THE MUNICIPAL CODE**

**The City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1:** Chapter 15.85 of the Municipal Code is added to read as follows:

#### **§ 15.85.010 Title.**

This Chapter shall be known as the City's "Art in Public Places Program" and may be so cited.

#### **§ 15.85.020 Purpose.**

The purpose of the City's Art in Public Places Program is to promote the visual arts by requiring the inclusion of a public artwork component in certain new public and private development projects in Brisbane. The City Council recognizes that public art has the power to energize our public spaces, arouse our thinking, and transform the places where we live, work, and play into more welcoming and beautiful environments that invite interaction. By its presence alone, public art can heighten our awareness, question our assumptions, transform a landscape, or express community values, and for these reasons it can have the power, over time, to transform a city's image. Public art helps define a community's identity and reveal the unique character of a specific neighborhood.

#### **§ 15.85.030 Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- A. "Brisbane Public Art Fund" means the fund described in Section 15.85.040.
- B. "Building Development Costs" means construction costs, including grading and landscaping costs, for new private developments that do not include costs for hazardous materials abatement, land use planning consultants, feasibility studies, environmental review, land acquisition, legal fees, architecture/engineering, construction management, geotechnical surveys, historical surveys, and demolition. For public developments, "Building Development Costs" means public construction costs that do not include costs for park and landscape renovation projects; pipelines, power transmission lines and towers, switchyards and substations, dwellings in watershed areas; mechanical, plumbing and electrical system upgrades; seismic or structural upgrades; modifications for disabled access, unless occurring in conjunction with a new building construction. "Building Development Costs" for public developments shall include costs for bridges and overpasses, but shall not include costs for other transportation improvement projects.
- C. "Implementation Guidelines" means the guidelines for implementation of this Chapter to be developed by the Public Art Subcommittee.
- D. "In-Lieu Contribution" means a cash contribution equivalent to the percentage of

Building Development Costs required herein.

- E. “Public Art Subcommittee” means a broadly representative subcommittee appointed by the Parks and Recreation Commission.

**§ 15.85.040 Brisbane public art fund.**

- A. The City Manager shall establish a Brisbane Public Art Fund to receive In-Lieu Contributions, donations, and other funds contributed in support of the Art in Public Places Program. Unspent monies in the Brisbane Public Art Fund shall be carried over to the next fiscal year, unless prohibited by the source of the funds, or applicable laws or regulations.
- B. The Brisbane Public Art Fund may be used to acquire, place, and maintain public art on public or private property throughout the City, as described in the Implementation Guidelines.

**§ 15.85.050 Contribution requirements.**

- A. Private Developments

1. Commercial Projects

- a. Private nonresidential and non-live-work building developments with Building Development Costs from one million dollars (\$1,000,000.00) through five million dollars (\$5,000,000.00) shall contribute in an amount equal to at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. This Section shall apply to both new projects and building alterations/additions.
- b. Private nonresidential and non-live-work building developments with Building Development Costs above five million dollars (\$5,000,000.00) shall contribute in an amount equal to at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. Alternatively, at the discretion of the owner or developer, such projects may devote in an amount equal to at least one percent (1.0%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site, subject to the provisions of Section 15.85.060. This Section shall apply to both new projects and building alterations/additions.

2. Residential Projects

- a. Single and multiple family residential and live-work developments with ten (10) through twenty (20) units shall contribute in an amount equal to at least one-half percent (0.5%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution.

- b. Single and multiple family residential and live-work developments with more than twenty (20) units shall contribute in an amount equal to at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution.
  - c. Single and multiple family residential and live-work developments with Building Development Costs above ten million dollars (\$10,000,000.00), regardless of the number of units, shall contribute in an amount equal to at least one percent (1.0%) of their Building Development Costs into the Brisbane Public Art Fund as an In-Lieu Contribution. Alternatively, at the discretion of the owner or developer, such projects may devote in an amount equal to at least one percent (1.0%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site, subject to the provisions of Section 15.85.060.
  - d. Private residential and live-work building developments designated as low or moderate income housing shall be exempt from the requirements of this Chapter.
- 3. Compliance with the provisions of Section 15.85.050(A) shall be demonstrated by the owner or developer prior to the issuance of a Building Permit as follows: (a) payment of the full amount of the In-Lieu Contribution; or (b) written proof to the Building Department of a contractual agreement to commission or purchase and to install the requested artwork on the development site. The owner or developer shall provide the City with proof of installation of the requested artwork on the development site before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this Chapter.
  - 4. An In-Lieu Contribution shall not necessarily change the characterization of the project as a private development.
- B. Public Developments. Building developments by the City with Building Development Costs above five hundred thousand dollars (\$500,000.00) shall devote in an amount equal to at least one-half percent (0.5%) of their Building Development Costs for the acquisition and installation of publicly accessible art on the development site or for contribution into the Brisbane Public Art Fund as an In-Lieu Contribution.

#### **§ 15.85.060 Implementation guidelines.**

The Public Art Subcommittee shall create Implementation Guidelines for the Art in Public Places Program, which shall be approved by the City Council. These Implementation Guidelines shall include, among other things, provisions regarding:

- A. The selection and location of public art pieces;
- B. Contributions into, expenditures from, and maintenance of the Brisbane Public Art Fund;

- C. The conditions for removing, re-siting, or replacing public art;
- D. The installation of project-specific publicly accessible art in lieu of contribution to the Brisbane Public Art Fund;
- E. The process and specifications for waiving the provisions in this Chapter; and
- F. Requirements for demonstrating compliance with provisions of this Chapter.

**§ 15.85.070 Violations of chapter.**

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any discretionary permit granted to any owner or developer who violates the provisions of this Chapter.

**SECTION 2:** Chapter 15.12 of the Municipal Code is amended to read as follows:

**§ 15.12.280 Public art fund fees.**

All development projects exceeding the size and valuation thresholds set forth in Chapter 15.85 shall make contributions to the Brisbane Public Art Fund in the amounts specified in Chapter 15.85.

**SECTION 3:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

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Terry O'Connell, Mayor Pro Tem

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the 2nd day of October, 2014.

AYES: Councilmembers Lentz, Liu, Miller, and Mayor Pro Tem O'Connell

NOES: None

ABSENT: Mayor Conway

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Sheri Marie Spediacci, City Clerk