



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## Meeting Agenda

### Arts and Culture Advisory Commission

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Thursday, September 17, 2020

4:00 PM

City Council Chamber, 2nd Floor, Merced Civic  
Center, 678 W. 18th Street, Merced, CA 95340

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#### NOTICE TO PUBLIC

**Pursuant to Governor Newsom's Executive Order N-29-20, this meeting will be conducted by teleconference and there will be no in-person public access to the meeting location.**

#### WELCOME

At least 72 hours prior to each regular Board/Commission meeting, a complete agenda packet is available for review on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org) or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relation to an open session item that are distributed to a majority of the Commission will be available for public inspection at the City Clerk's Office during regular business hours.

#### MODIFIED PUBLIC COMMENT:

Please submit you public comment to the Arts and Culture Advisory Commission electronically no later than 1 PM on the day of the meeting. Comments received before the deadline will be read as part of the record. Material may be emailed to [cityclerk@cityofmerced.org](mailto:cityclerk@cityofmerced.org) and should be limited to 300 words or less. Please specify which portion of the agenda you are commenting on, i.e. item # or Reports. Your comments will be read to Arts and Culture Advisory Commission at the appropriate time. Any correspondence received during or after the meeting will be distributed to the Arts and Culture Advisory Commission and retained for the official record.

You may provide telephonic comments via voicemail by calling (209) 388-8688 by no later than 1 PM on the day of the meeting to be added to the public comment. Voicemails will be limited to a time limit of three (3) minutes. Please specify which portion of the agenda you are commenting on, for example, Public Comment, Item #, or Reports. Your comments will be played during the meeting to the Arts and Culture Advisory Commission at the appropriate time.

#### INDIVIDUALS WITH DISABILITIES

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chamber.

#### A. CALL TO ORDER

#### B. PLEDGE OF ALLEGIANCE

## C. ROLL CALL

## D. PUBLIC COMMENT

Members of the public who wish to speak on any matter not listed on the agenda may provide email or voicemail comments during this portion of the meeting and should follow the guidelines posted above in the MODIFIED PUBLIC COMMENT INSTRUCTIONS to do so.

## E. CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the Board/Commission, provided that any Board/Commission member, individual, or organization may request removal of an item from the Consent Calendar for separate consideration (please see MODIFIED PUBLIC COMMENT INSTRUCTIONS above). If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

- E.1. [20-525](#)      **SUBJECT:** Arts and Culture Advisory Commission Minutes of July 16, 2020

### REPORT IN BRIEF

Arts and Culture Advisory Commission Minutes from the meeting of July 16, 2020.

### RECOMMENDATION

**Arts and Culture Advisory Commission** - Adopt a motion approving and filing the Arts and Culture Advisory Commission minutes of July 16, 2020.

## F. REPORTS

- F.1. [20-529](#)      **SUBJECT:** Brown Act Training for Committee Members

### REPORT IN BRIEF

Training will include an overview of the Brown Act.

### RECOMMENDATION

Information - Only

- F.2. [20-530](#)      **SUBJECT:** Discussion on the \$4,000 Estimated Cost of Repairing the Tile on the G Street Underpass Art Piece and Funding Resources

### REPORT IN BRIEF

Discuss the \$4,000 estimated cost of repairing the tile on the G Street

Underpass and potential funding sources.

**RECOMMENDATION**

Provide staff direction on the funding sources to repair the tile on the G Street Underpass.

**G. BUSINESS**

**G.1.**    [20-526](#)

**SUBJECT:** Consideration of the Recommended Policy for Public Arts Projects on City Property and in City Rights-of-Way as Directed by the City Council

**REPORT IN BRIEF**

Requests the Arts and Culture Advisory Commission consider the recommended Policy for Public Arts Projects on City property or within the City rights-of-way as directed by the City Council.

**RECOMMENDATION**

**Arts and Culture Advisory Commission** - Adopt a motion:

A. Approving the Policy for Public Arts Projects on City properties and in City rights-of-way as directed by the City Council; or,

B. Making additional recommendations and approving the Policy for Public Arts Projects on City properties and in City rights-of-way as directed by the City Council.

**G.2.**    [20-528](#)

**SUBJECT:** Commission Comments

**REPORT IN BRIEF**

Provides an opportunity for the Chair and/or Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the Commission and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.

**G.3.**    [20-527](#)

**SUBJECT:** Request to Add Item to Future Agenda

**REPORT IN BRIEF**

Provides members of the Boards/Commissions to request that an item be placed on a future Boards/Commissions agenda for initial consideration by the Boards/Commissions.

**H. ADJOURNMENT**



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 20-525

**Meeting Date:** 9/17/2020

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*Report Prepared by: Jennifer Levesque, Assistant City Clerk*

**SUBJECT:** Arts and Culture Advisory Commission Minutes of July 16, 2020

### REPORT IN BRIEF

Arts and Culture Advisory Commission Minutes from the meeting of July 16, 2020.

### RECOMMENDATION

**Arts and Culture Advisory Commission** - Adopt a motion approving and filing the Arts and Culture Advisory Commission minutes of July 16, 2020.

### ATTACHMENTS

1. Arts and Culture Advisory Commission minutes July 16, 2020



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## Minutes

### Arts and Culture Advisory Commission

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Thursday, July 16, 2020

4:00 PM

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#### A. CALL TO ORDER

**Clerk's Note:** Commission waited for Commissioner HYPES to arrive to have a quorum.

Chair DENNIS called the Regular Arts and Culture Advisory Commission Meeting to order at 4:13PM.

#### B. PLEDGE OF ALLEGIANCE

#### C. ROLL CALL

Present Ex-Officio Members:

Kim GARNER  
Anthony MARTINEZ  
Patricia PRATT

**Present:** 4 - Chairperson Colton Dennis, Dob Francise, Rob Hypes and Vice Chair Diana Odom Gunn

**Absent:** 2 - Monika Saini and Maria Del Zaragoza

#### D. PUBLIC COMMENT

Eddie RODRIGUEZ, Merced - spoke on his application for the Arts and Culture Advisory Commission.

Glen, Merced - spoke on homelessness.

#### E. CONSENT CALENDAR

**E.1.** **SUBJECT:** Arts and Culture Advisory Commission Minutes of January 23, 2020

##### REPORT IN BRIEF

Arts and Culture Advisory Commission Minutes from the meeting of January 23, 2020.

##### RECOMMENDATION

**Arts and Culture Advisory Commission - Adopt a motion approving**

and filing the Arts and Culture Advisory Commission minutes of January 23, 2020.

**A motion was made by Member Francise, seconded by Vice Chair Odom Gunn, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 4 - Dennis  
Member Francise  
Member Hypes  
Vice Chair Odom Gunn

**No:** 0

**Absent:** 2 - Member Saini  
Member Del Zaragoza

## F. REPORTS

### F.1.

**SUBJECT:** Request from NAACP, the Hispanic Chamber of Commerce, and WeCed to Place a Street Mural on a Selected City Street

#### REPORT IN BRIEF

Discuss the possibility of adding a Black Lives Mater Street Mural on a selected City Street.

#### RECOMMENDATION

Provide staff direction on next steps.

NAACP Representative Jerome RASBERRY gave a slide show presentation requesting to place a street mural on a selected City street.

Alyssa CASTRO, Merced - spoke on transparency regarding the proposed project.

Rene GUTIERREZ, Merced - spoke in support of the proposed project.

Eddie RODRIGUEZ, Merced - spoke in support of the proposed project.

Manuel ALVARADO, Merced - spoke in support of the proposed project.

President of the NAACP Allen BROOKS, Merced - explained how the project was developed.

Commissioners, Ex-Officio Members, Assistant City Manager Stephanie DIETZ, and Mr. RASBERRY discussed the extent of the City's sponsorship, investing in quality paint, maintenance of the proposed street mural, a project timeline, and various locations for the proposed mural.

Commissioners and Ex-Officio Members continued discussing location of the proposed mural and the two phases of the proposed project.

**A motion was made by Vice Chair Odom Gunn, seconded by Member Francise, to make a strong recommendation to the City Council to support the Black Lives Matter Mural. The motion carried by the following vote:**

**Aye:** 4 - Dennis  
Member Francise  
Member Hypes  
Vice Chair Odom Gunn

**No:** 0

**Absent:** 2 - Member Saini  
Member Del Zaragoza

**A motion was made by Member Francise, seconded by Vice Chair Odom Gunn, to approve the 16th Street and Canal Street location for the proposed mural. The motion failed by the following vote:**

**Aye:** 3 - Dennis  
Member Francise  
Vice Chair Odom Gunn

**No:** 1 - Member Hypes

**Absent:** 2 - Member Saini  
Member Del Zaragoza

## G. BUSINESS

### G.1.

**SUBJECT:** Update on Establishing an Arts and Culture Policy and Discussion on Future Options

#### REPORT IN BRIEF

Update on creating and establishing an Arts and Culture Policy and discussion on future options.

#### RECOMMENDATION

Direct Staff on the next steps in establishing an Arts and Culture Policy.

Commissioners and Assistant City Manager Stephanie DIETZ discussed the draft arts policy and to move this item to the September 17th meeting.

### G.2.

**SUBJECT:** Selection of a New Chair and Vice Chair

#### REPORT IN BRIEF

Yearly selection of Chair and Vice Chair.

**A motion was made by Vice Chair Odom Gunn, seconded by Member Hypes, to appoint Colton Dennis as Chairperson. The motion carried by the following vote:**

**Aye:** 4 - Dennis  
Member Francise  
Member Hypes  
Vice Chair Odom Gunn

**No:** 0

**Absent:** 2 - Member Saini  
Member Del Zaragoza

**A motion was made by Vice Chair Odom Gunn, seconded by Member Francise, to appoint Rob Hypes as Vice-Chair. The motion carried by the following vote:**

**Aye:** 4 - Dennis  
Member Francise  
Member Hypes  
Vice Chair Odom Gunn

**No:** 0

**Absent:** 2 - Member Saini  
Member Del Zaragoza

**G.3.                    SUBJECT: Request to Add Item to Future Agenda**

**REPORT IN BRIEF**

Provides members of the Boards/Commissions to request that an item be placed on a future Boards/Commissions agenda for initial consideration by the Boards/Commissions.

Ex-Officio Member PRATT requested to add an item updating the Art Inventory list.

Commission FRANCISE requested to add an item on repairing the tiles on the G Street Underpass.

**G.4.                    SUBJECT: Commission Comments**

**REPORT IN BRIEF**

Provides an opportunity for the Chair and/or Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the Commission and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.

Chair DENNIS spoke on the importance of the arts.



## H. ADJOURNMENT

**Clerk's Note:** The Regular Arts and Culture Advisory Commission adjourned at 5:18 PM.

**A motion was made by Member Francise, seconded by Chairperson Dennis, to adjourn the Regular Arts and Culture Advisory Commission meeting. The motion carried by the following vote:**

**Aye:** 4 - Dennis  
Member Francise  
Member Hypes  
Vice Chair Odom Gunn

**No:** 0

**Absent:** 2 - Member Saini  
Member Del Zaragoza



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
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## ADMINISTRATIVE REPORT

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**File #:** 20-529

**Meeting Date:** 9/17/2020

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**SUBJECT:** Brown Act Training for Committee Members

### REPORT IN BRIEF

Training will include an overview of the Brown Act.

### RECOMMENDATION

Information - Only

### ATTACHMENTS

1. Presentation

# THE BROWN ACT

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## California's Open Meeting Law

City of Merced  
Arts and Culture Advisory Commission  
September 17, 2020



# THE BROWN ACT

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- ▶ The Brown Act was enacted in 1953.
- ▶ Is codified in the California Government Code, section 54950, et seq.
- ▶ Requires the deliberations and actions of California's public agency governing boards, commissions and councils be taken openly and in public.



# KEY PROVISIONS

- ▶ A meeting shall be open and public except when the Brown Act authorizes otherwise.
- ▶ The public has a right to attend and participate in the meeting.
- ▶ A meaningful agenda must be posted in advance of the meeting.
- ▶ Discussion and action is limited to the matters listed on the agenda for the meeting.
- ▶ Discussions (a) outside of noticed meetings (b) by a majority of committee members (c) about an item of business within the subject matter jurisdiction of the committee (d) are prohibited.



# COMMON QUESTIONS AND ISSUES

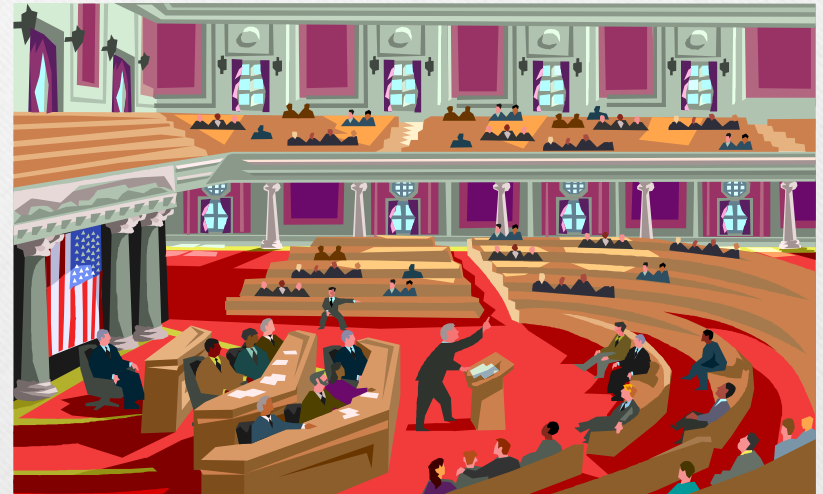
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- Who is covered by the Brown Act?
- What constitutes a meeting?
- What are the notice and agenda requirements?
- What are the public's rights under the Brown Act?
- What are the consequences for violating the Brown Act?



# WHO IS GOVERNED BY THE BROWN ACT?

- ▶ Any “legislative body”
- ▶ Governing body of any local agency, i.e., the city council
- ▶ Local agency commissions, appointed either permanently or temporary, who have decision making or advisory powers.
- ▶ Arts and Culture Advisory Commission is an advisory body and covered by the Brown Act  
(Government Code §54952)





# WHAT IS A MEETING?

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- ▶ A meeting is:
  - ▶ (1) a majority of the members of a the Arts and Culture Advisory Commission
  - (2) at the same time and locations including teleconference locations (3) to discuss, deliberate, or decide on any item that is within subject matter jurisdiction of the Arts and Culture Advisory Commission.



# What is the subject matter jurisdiction of the Arts and Culture Advisory Commission?

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Review projected tax revenues as part of the budget process

Recommend expenditures to the City Council as part of the budget process

Review the independent audit and provide findings to the City Council



# SERIAL MEETINGS

## Hub and Spoke/Daisy Chain

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- (1) A chain or series of communications
- (2) Each of which involves less than a quorum of the Arts and Culture Advisory Commission
- (3) But when taken together involve a majority of the body's members (or)
- (4) A concerted plan to engage in collective deliberation on public business through a series of letters, telephone calls, e-mails, that pass from one member of the governing body to the next and excluding the public.



# WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

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- A “series of communications” includes conference calls, emails, text messages shared among the majority of committee members, or conversations among members in which the position of other members are shared to the majority.
- Technological devices may create a “virtual serial meeting” so be careful when using social media, e-mails, “IM”, texts, chat rooms, blogs, etc.



# E-MAIL

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- ▶ Remember e-mails never go away.
- ▶ E-mail can create a “virtual serial meeting”
- ▶ Don’t hit “reply all” in response to email from staff to all members of the committee.
- ▶ Refrain from emailing or forwarding an email to a majority of committee members.



# ISSUE/CHALLENGE

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When can an issue or discussion become an issue for Brown Act purposes?



# WHEN THE ISSUE IS:

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- Within subject matter jurisdiction of the Arts and Culture Advisory Commission; and,
  - A majority of Arts and Culture Advisory Commission members participate; and,
  - “Meeting is held”; and,
  - Brown Act is not followed.
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- ▶ This deprives the public of an opportunity for meaningful observation of and participation in the decision-making.



# EXAMPLE: E-MAIL

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What starts out as “legal” under the Brown Act:

- I think we should do “x” at our next meeting

Becomes “illegal” when it is replied to by a majority or by “Reply to All”:

- “I agree” [Reply to All]
- “Good idea!!!” [Reply to All]
- “Concur . . .” [Reply to All]



# EXCEPTIONS TO MEETING:

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- Individual Contacts: Individual contacts or conversations between a member of a legislative body and any other person.
- Conferences: Public or educational conferences on matters of general interest.
- Community Meetings: Publicized and public meetings to discuss a topic of local community concern organized by someone other than the city.



# EXCEPTIONS (cont'd):

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- Other Legislative Bodies: Open and noticed meeting of another body of the public agency.
- Standing Committees: Open and noticed meeting of a standing committee within own agency, provided not a member of standing committee.
- Social or Ceremonial Events: Purely social or ceremonial events as long as no discussion of business w/in subject matter of jurisdiction of local agency.



# AGENDAS AND NOTICE

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- Every meeting of the Arts and Culture Advisory Commission must be preceded by a posted agenda.
- The agenda must be posted at least 72 hours before the regular meeting.
- The agenda must advise the public of the meeting and the matters to be transacted or discussed.
- The agenda must state the meeting time and place.
- Each item of business to be transacted must be briefly described.



# ACTION ON NON-AGENDIZED ITEMS

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- The committee members or staff may “briefly” respond to statements or questions posed by the public at a public meeting.
- A committee member may ask “a question for clarification, make a brief announcement, or make a brief report on his or her own activities.”
- Otherwise, no action can be taken on issues or items that were not agendized.



# PUBLIC PARTICIPATION

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- The public has a right to attend, observe and participate in meetings.
- Members of the public cannot be required to register their names or provide information.
- All actions taken by the Arts and Culture Advisory Commission must be in open session, unless a closed session is authorized and the vote of each member must be disclosed to the public at the time the action is taken.



# CRIMINAL ENFORCEMENT ACTIONS

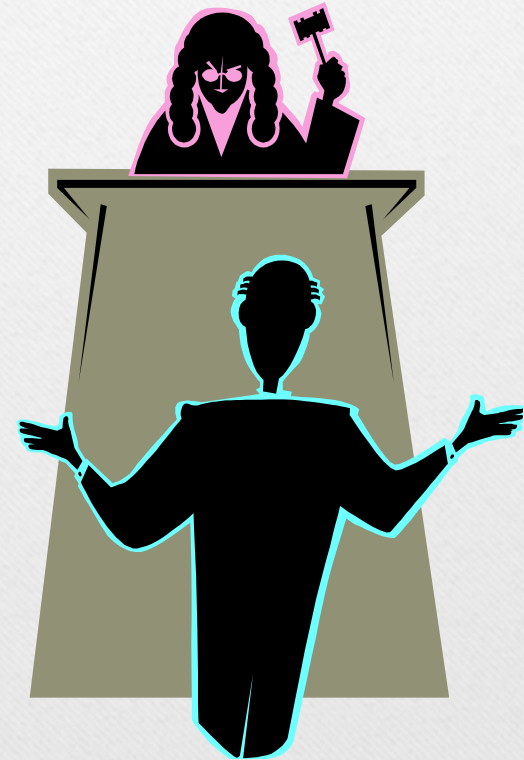
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- Why do we take this so seriously?
- A violation of the Brown Act can be charged as a misdemeanor.



# CIVIL ENFORCEMENT ACTIONS:

- Enforcement actions can be brought by the district attorney or any interested person to get a court order to stop a violation of the Brown Act.
- A court action may also void actions that were taken in violation of the Brown Act.
- Before bringing suit, the plaintiff must demand the committee cure or correct the offending action.





# CONCLUSION

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Discussion, Questions, & Answers



## ADMINISTRATIVE REPORT

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**File #:** 20-530

**Meeting Date:** 9/17/2020

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**SUBJECT:** Discussion on the \$4,000 Estimated Cost of Repairing the Tile on the G Street Underpass Art Piece and Funding Resources

### REPORT IN BRIEF

Discuss the \$4,000 estimated cost of repairing the tile on the G Street Underpass and potential funding sources.

### RECOMMENDATION

Provide staff direction on the funding sources to repair the tile on the G Street Underpass.

### DISCUSSION

The Arts and Culture Advisory Commission received a \$3,000 grant from PG&E Corporation. At the March 14, 2019 Arts and Culture Advisory Commission meeting, Commissioners discussed using the grant funds to maintain art at the G Street Underpass and the lettering at Bob Hart Square. Commissioners directed staff to bring back a cost estimate for both projects.

The Commission has \$2,148 remaining from the PG&E Grant. The cost to fix the tiles on the G Street Underpass is estimated to be \$4,000. The Commission would have to come up with other funding sources to cover the cost of the repair. The Commission could hold a fundraiser or ask the artist of the art piece for a donation to repair the tiles.





## ADMINISTRATIVE REPORT

File #: 20-526

Meeting Date: 9/17/2020

**SUBJECT:** Consideration of the Recommended Policy for Public Arts Projects on City Property and in City Rights-of-Way as Directed by the City Council

### REPORT IN BRIEF

Requests the Arts and Culture Advisory Commission consider the recommended Policy for Public Arts Projects on City property or within the City rights-of-way as directed by the City Council.

### RECOMMENDATION

**Arts and Culture Advisory Commission** - Adopt a motion:

A. Approving the Policy for Public Arts Projects on City properties and in City rights-of-way as directed by the City Council; or,

B. Making additional recommendations and approving the Policy for Public Arts Projects on City properties and in City rights-of-way as directed by the City Council.

### ALTERNATIVES

1. Approve; or,
2. Modify; or,
3. Deny

### DISCUSSION

During the September 19, 2019 Arts and Culture Advisory Commission meeting, staff and Commissioner's reviewed and discussed a proposed Art and Culture Policy. At the October 17, 2019 Arts and Culture Advisory Commission meeting, Commissioner's and Staff discussed developing policies to facilitate the process to place art in the City, removing art pieces, and involving other organizations. The Commission also voted on establishing a Sub-Committee and appointed Chair Colton Dennis and Commissioner's Monika Modest and Diana Odom-Gunn. Chair Colton Dennis gave an update on the Arts and Culture policy at the January 23<sup>rd</sup> Arts and Culture Advisory Commission meeting.

At the August 17, 2020 City Council Meeting, the City Council reviewed and discussed the proposed Arts and Culture Policy and directed staff to make slight changes to the policy regarding the use of City property.

The Arts and Culture Policy is ready for the Arts and Culture Advisory Commission to review, approve and make a recommendation for City Council approval.

**ATTACHMENTS**

1. Draft Application Form
2. Draft Policy

City of Merced

Arts and Culture Advisory Commission

Address: 678 W. 18<sup>th</sup> Street, Merced, CA 95340

Phone:

Email:

## **Art in public places application (Public Art Application Form)?**

Applicant information

Name/Company/Address/City/State/Zip

Phone/Email/Website

Artist information (if different from applicant)

Name/Company/Address/City/State/Zip

Phone/Email/Website

Artwork title

Artwork site

Artwork material

Artwork dimension/weight

Estimated artwork completion date

I certify under penalty of perjury that all the application information is true and correct

Applicant's/artist's signature

Date/time received, received by, amount received (if applicable), receipt No

(There are two categories of public art applications (check available box)

## ☐ Cultural art projects/exhibits/event

Individual artists, arts organizations – Art exhibits and events at city facilities, both temporary loans and permanent gifts

(The artwork proposed is to be (check one): ☐ donated to the city permanently

☐ loaned to the city for a period of time (dates)

The application shall be submitted to the: City of Merced Arts and Culture Advisory Commission

Description of event and exhibit, attach additional pages and samples of art where appropriate

## ☐ Private development projects

Individual artists, private sponsors (businesses, corporations, individual donors), arts organizations

☐ Donations - Public art designated for public/private property

☐ Installations - installation of public/private art on private property

The application shall be submitted to the: City of Merced Arts and Culture Advisory commission

## Proposed artwork application checklist:

attach the following documents (the submittal requirements provide basic information, however, the Arts and Culture Advisory Commission may determine that additional information is required before further processing can take place and final approval can be granted). The final approval of the proposed public artwork will be issued by the Merced City Council

☐ complete and signed Art in Public Places Application Form

☐ project information: title/proposed installation site/description of artwork/scope, dimensions, approximate weight /estimated total budget

☐ description of how the proposed public artwork fits with the development project, adjacent parcels and surrounding neighborhoods

☐ written statement how the proposed artwork will be publicly accessible

☐ written statement that the artwork is original wholly created by the artist(s) (participating community members), is appropriate for all ages, that no copyrights or trademarks have been violated, that nothing about the work has been plagiarized, stolen or copied, that the work will not invade or defame the rights of a person, living or dead

- \_ appraisal/budget of artwork
- \_ artist's resume (CV)
- \_ Site plan of the development, which includes the following:
  - Proposed placement of the public art
  - Orientation of the public art
  - Distance between the public art and public streets
- \_ sample, model, photograph, or drawings of the proposed public art
- \_ sample materials or finishes of proposed public art (include the source or brand/manufacturer, life expectancy of materials, attach manufacturer's technical data sheets, if available)
- \_ landscape plan (if applicable), which includes the following:
  - Location(s) of trees and shrubbery
  - Type(s) of trees and shrubbery
- \_ Installation: proposed installation site, installation method, installation executed by
  - Manner in which the public art will be displayed and is visible from the public right-of-way or public property
  - If the work is site-specific, describe the particular relationship of the work to its site, including any significant physical aspects of the site, which, if altered would change the artist's intended meaning and/or appearance for the artwork
  - If an on-site cultural program, art space, or cultural facility, describe the manner in which the public will gain access to such programs, spaces, or facilities
- \_ resume (CV) of artist(s) involved in proposal and creation of the artwork
- \_ photographs of the proposed artist's past public artwork,
- \_ written statement by the artist declaring the value of the public art
- \_ Maintenance plan, which includes the following
  - Instructions for routine preservation/maintenance
  - Instructions for long-term preservation/maintenance

Who is responsible for the preservation/maintenance

What are the estimated cost for preservation/maintenance

(Describe the methods and techniques to maintain the artwork. Include a maintenance plan, estimated costs of maintenance, how the maintenance will be funded, and who will perform significant repairs if necessary)

\_ Describe the anticipated life span of the artwork in the proposed location

\_ Budget breakdown, which includes the following:

Artist fees for design concept, execution, installation and management/oversight of public art project.

Materials, fabrication, transportation, and installation of public art project

Art consultant fees and funding source, if applicable

\_ Specify that no rights will be retained by the artist(s) with respect to the artwork

Artist(s) initials \_\_\_\_\_

Or, specify rights that will be retained by the artist(s) with respect to artwork and future removal of the artwork from the designated public area proposed to display/install the artwork. City may also remove the artwork after notifying, consulting with the artist. City will return the donated artwork to the artist or may dispose of it if purchased by the City.

\_ Describe any proposed assistance sought from the city (permits, code related requirements, etc.), other public agencies (public works) or donors in connection with the fabrication, development, display/installation, and maintenance of the artwork

\_ Before final approval of the artwork, provide notification and written documentation from affected businesses and residents within the artwork location (business name, address, phone, contact name, signature approval (yes/no), date signed, additional comments)

\_ Provide time line: start date, anticipated installation/completion date

Artist/donor contract acknowledgement (artist(s) and donor(s) are prepared to execute a contract or other document which, in the estimation of the city attorney and city manager, protects and serves as fiscal and other interest of the city in connection with the acquisition or donation of the artwork proposed for display/installation in a public area





City of Merced  
Arts and Culture Advisory Commission  
**Public Art Policy**

**Purpose and Mission Statement**

It is the purpose of the Arts and Culture Advisory Commission (“ACAC”) to advise the City Council on matters pertaining to public art, art projects, cultural programs and activities and the promotion of art within the City of Merced (“Merced”) (M.M.C. section 2.54.010). The ACAC’s mission is to encourage and promote programs and events that enhance art and cultural development in Merced while engaging community members and local businesses; promote the role arts and culture plays in contributing to the beautification and quality of life in Merced; recognize art and cultural events and activities that enhance vitality and innovation in Merced; promote inclusion of artistic endeavors and cultural activities that are reflective of the Merced community; and preserve the community’s artistic works and cultural identities.

**Policy Purpose**

The purpose of this policy is to ensure uniform guidelines and procedures for the inclusion of publicly accessible art in Merced. Additionally, this policy will also provide uniform guidelines and procedures for the maintenance, removal, relocation, or deaccession of city-owned public art or public art on City property.

**Definitions**

The following words and phrases, whenever used in this Policy, shall be construed as defined in this section:

- A. “Art and Culture Advisory Commission” (“ACAC”) a commission appointed by the City Council to advise the City Council as set forth in M.M.C section 2.54.010 and 2.54060 and is responsible for providing recommendations to the City Council, other appointed bodies and staff on a variety of matters including, but not limited to the establishment and implementation of a Public Art Policy and recommendations on the acquisition, installation, maintenance and removal of public art within the City of Merced.
- B. “Artist” a person who has established a reputation of artistic excellence, as judged by peers through a record of exhibitions, public commissions, sale of works or educational attainment.
- C. “Artwork” a work of Public Art.





City of Merced  
Arts and Culture Advisory Commission  
**Public Art Policy**

- D. “Collection” encompasses both the Public Art Collection and the Portable Collection.
- E. “Concept Design” an artist’s preliminary idea for a project, presented in images and/or text, and approved by the ACAC as the basis for further design exploration and community engagement in the development of a public art project.
- F. “Conservation” the examination, documentation, treatment and preventative care of an artwork conducted by a professional art conservator.
- G. “Creative Zone” specific City locations, general types of places, and/or topics that are a priority for public art.
- H. “Curator” a fine arts professional who assists in the development of a public art project, primarily by locating an artist suitable for a project, assisting the artist in developing their concept, and assisting in the implementation of the project.
- I. “Deaccession” the process by which an artwork is permanently removed from the Collection.
- J. “Final Design” an artist’s final design for a public art project, presented after all design investigation and community engagement is complete, and including all renderings, drawings and certifications necessary for approval prior to fabrication and installation.
- K. “General Fund” the fund in the City budget that is the main operating fund used by default to account for and report all financial resources not accounted for and reported in another fund.
- L. “Lead Agency” the entity who applies for approval of artwork to the ACAC and the City Council.
- M. “Maintenance” the routine care and repair of works of Public Art that does not require specialized expertise such as dusting, washing, changing light bulbs, storage, lubrication of moving parts, etc.



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- N. “Permanent Artwork” artwork that has been approved by the ACAC and the City Council for long-term installation in the public right-of-way or on public property, allowing for inclusion in the City of Merced’s liability policy and subject to maintenance by the City of Merced.
- O. “Portable Collection” artworks in a variety of media, such as sculpture, painting, mixed media, prints, photography and textiles that are owned by the City, movable, and primarily exhibited in interior spaces of City buildings.
- P. “Public Art” includes, but is not limited to, original works of sculpture, photography, graphic art, waterworks, fiber-works, neon, glass, mosaics, paint, furniture, fixture, or any combination of visual media that are displayed in a public place for enjoyment of the community and is void of any commercial, campaign, divisive rhetoric inconsistent with the purpose of this policy or related references or affiliations.
- Q. “Public Art Collection” the body of artworks acquired by the City, through commission, donation, purchase, loan, lease, competition (limited or open) or any other means, and displayed on city property and/or owned by the City.
- R. “Public Art Master Plan” a document developed by the ACAC and adopted by City Council which sets the foundations for the Public Art Program including, but not limited to, the vision, mission and overall goals, and broadly identifies the types of projects that the Program will undertake, and recommends policies, procedures and guidelines for implementing the Program.
- S. “Public Rights-of-Way” shall include any and all publicly owned or controlled spaces or property with the exception of City street surfaces.
- T. “Request for Proposals (RFP)” a call to artists that asks for the submission of artist credentials and a conceptual proposal for an artwork, both of which are the basis of selecting an artist.
- U. “Request for Qualifications (RFQ)” a call to artists that asks for the



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submission of artist credentials, which is the sole basis of selecting an artist.

- V. “Temporary Artwork” artwork that has been approved by the ACAC and the City Council for installation in the public right-of-way or public property for no more than one (1) year. Insurance and maintenance of the artwork will be the responsibility of the sponsoring lead agency.

**POLICY:**

**A. Project Development Process:**

1. Annual Work Plan. An Annual Work Plan will be developed for each upcoming fiscal year, outlining which Creative Zone the Program will focus on and which new projects the Program will initiate. The Annual Work Plan shall be developed collaboratively with relevant City departments and the ACAC and shall be approved by the ACAC with a recommendation to the City Council. The City Council shall retain final approval authority related to the annual work plan and contents thereof.
2. Public Art Project Plan. For each public art project that is approved in the Annual Work Plan, the Program shall adopt a Public Art Project Plan, which shall guide the planning and execution of a project. The Project Plan shall include goals, location, budget, timeline, artist selection process, design review process, community engagement process, and identification of internal and external stakeholders. Public Art Project Plans shall be developed by Lead Agency representatives, working with the ACAC, City departments and other stakeholders, and shall be approved by the ACAC with a recommendation to the City Council. The City Council shall retain final approval authority related to the Public Art Project Plan and the contents thereof including, but not limited to, approved facilities and rights-of-way available for projects, budget approval, design input, and approval of the specific content of the Public Art Project Plan.
3. Collaborating with Other City Departments. The ACAC shall maintain close liaison with staff in other departments in order to collaborate on commissioning public art that is integrated into new projects



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throughout the City through the City Manager's office.

**B. Project Approval Process.**

1. **Artist Solicitation.** The Program may solicit artists using a variety of methods, depending on the requirements of the project as determined by each Public Art Project Plan.
  - i. **Open Competition.** A call to artists for a specific project in which artists are asked to respond through a Request for Qualifications (RFQ) or Request for Proposals (RFP) process. Any artist may respond, subject to criteria established in the Public Art Project Plan.
  - ii. **Limited or Invitational Competition.** A call to artists in which a smaller number of artists are specifically invited to respond through a RFQ or RFP process. Artists should be invited based on their past work and demonstrated ability to successfully respond to the conditions of the particular project.
  - iii. **Direct Selection.** A direct selection of a specific artist for a particular project. Such a recommendation may occur for several reasons, but generally when circumstances surrounding the project make either an open or limited competition unfeasible.
2. **Artist Selection.** The Program may choose from the following methods in selecting artists, depending on the requirements of the project:
  - i. **Request for Qualifications (RFQ).** A call to artists is issued asking for the submission of an artist's credentials. A Selection Panel may select three to five finalists based on their qualifications alone to submit a proposal, or to interview. The Selection Panel may recommend selecting one of the finalists based on their qualifications and/or interviews, or not selecting any of the artists and going back to review qualifications of other artists.



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- ii. Request for Proposals (RFP). A proposal-based process may be used in a Limited Competition, or in the second phase of an Open Competition. A call to artists is issued to the short list of qualified artists under consideration asking for the artist's credentials and a specific proposal in response to the RFP. An honorarium for artist time and expenses may be established in the RFP. The Selection Panel may recommend one or more of the artists based on their qualifications and proposal, or not selecting any of the artists.
- 3. Selection Criteria. The following criteria shall be used by the Selection Panel in selecting an artist and artist concept:
  - i. Meets the definition of Artist, as defined in this policy;
  - ii. Demonstrates artistic excellence, innovation and originality as represented in past work and supporting materials;
  - iii. Demonstrates capacity for working in media and with concepts that are appropriate to the project goals and site;
  - iv. Demonstrates interest and capability in creating Public Art in collaboration with the City, design teams and other project partners;
  - v. Demonstrates interest and capability in engaging community representatives in a project;
  - vi. Demonstrates experience in successfully completing works of similar scope, scale, budget and complexity, or articulates how s/he will bring the necessary artistic and technical skills to the project;
  - vii. Demonstrates interest in and understanding of the project as outlined in the Project Plan;
  - viii. Is available to perform the scope of work in a timely and professional manner;



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- ix. Demonstrates artistic merit, including excellence in aesthetic quality, workmanship, innovation and creativity;
  - x. Demonstrates appropriateness in scale and form and is of materials/media suitable for the site;
  - xi. Meets project goals as outlined in the Project Plan;
  - xii. Demonstrates feasibility of construction and installation;
  - xiii. Demonstrates feasibility in terms of budget, timeline, safety, security, durability, operation, maintenance, conservation, legal and ethical issues;
  - xiv. Builds the diversity of the Public Art Collection.
4. Additional Guidelines. The ACAC and City Council may develop additional guidelines and criteria based on the needs of the project and as approved in the Public Art Project Plan. This additional criteria may include, but is not limited to additional submission criteria, design input criteria, modifications to the art/design, relinquishment of all rights previously possessed by the artist/donor, and relinquishment of artist rights under both federal and state law.
5. Curators. As an alternative to issuing a call directly to artists, the Program may issue a RFQ or RFP to non-profit organizations or established curators. In selecting a non-profit or curator, the following criteria should be considered:
- i. Demonstrated interest and capability in working with artists to create Public Art;
  - ii. Demonstrated ability to identify, select and manage artists to produce public art of artistic excellence, innovation and originality that are appropriate for the project;
  - iii. Demonstrated interest in and understanding of the project and City goals;



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- iv. Demonstrated experience in successfully completing works of similar scope, scale, budget and complexity, or ability to articulate how he or she will to bring the necessary artistic and technical skills to the project;
    - v. Availability to perform the scope of work in a timely and professional manner.
  - 6. Selection Panel. Once a project is funded as part of the Annual Work Plan and a Public Art Project Plan is adopted, a Selection Panel may be assembled. The ACAC may serve as the Selection Panel, or opt to form a separate Selection Panel, taking into account recommendations from internal and external stakeholders. The Selection Panel shall advise the ACAC on the selection of artists and approval of concept designs. The Selection Panel is responsible for selecting one or more artists, cultural organizations or curators based upon the process outlined in the Public Art Project Plan and recommending selections to the ACAC for approval. The ACAC shall make a recommendation to the City Council. The City Council will have final approval authority.
  - 7. Artist Agreement. Upon recommendation of the ACAC, the City Manager or designee shall coordinate agreements with selected artists, curators and/or cultural organizations. The agreement may include the scope of work, fee, schedule and relevant terms and conditions. The scope of work will generally include final design, engineering, fabrication and installation of the artwork. All such agreements will be presented to the City Council to allow for the approval of Artist Services Agreements, Artwork License Agreements, Talent Services Agreements, Artwork Loan Agreements and Artwork Gift Agreements. Approval for other agreement types shall follow current Award Authority for Contracts.
- C. Gifts and Loans to the Public Art Collection. Proposed gifts and loans of public art shall be evaluated to determine whether they are in keeping with Program goals and adopted plans and policies.
- 1. Proposals for all gifts and loans of public art made to any City official or department shall be referred to the City Manager.





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2. The City Manager shall oversee technical review to determine:
  - i. There is documentation that the artwork can be legally donated or loaned to the City;
  - ii. The durability, safety and anticipated maintenance needs of the artwork;
  - iii. The ongoing financial costs associated with accepting the gift or loan of artwork can be met;
  - iv. The availability of an appropriate site for the artwork.
3. Additional criteria for technical review may be developed as necessary by the City Manager.
4. Aesthetic review shall be undertaken by the ACAC, according to the following criteria:
  - i. The artwork demonstrates excellence in aesthetic quality, workmanship, innovation and creativity;
  - ii. The artwork demonstrates appropriateness in scale and form, and is of materials/media suitable for the site; and
  - iii. The artwork builds the diversity of the Public Art Collection
5. The ACAC shall provide a recommendation to the City Manager or his/her designee, who shall have final approval authority over gifts and loans of Public Art within the authority of the City's Donation Policy. Donations above the policy limit will be presented to the City Council for consideration.

D. Relocation or Deaccession of Art in the Public Art Collection. The City Council retains the right to relocate or deaccession any artwork in the Public Art Collection, regardless of the source of funding or method of acquisition.

1. The Public Art Program may relocate or deaccession an artwork subject to any of the following criteria:
  - i. The site of artwork is being eliminated or altered in such a





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way that the artwork is no longer compatible with it;

- ii. The security of the artwork can no longer be reasonably guaranteed;
  - iii. The artwork has become a danger to public safety;
  - iv. The cost of maintaining or updating the artwork is cost prohibitive;
  - v. The artist or donor has failed to comply with the terms of any agreement with the City;
  - vi. The deaccessioning of the artwork would otherwise be in the best interest of the City; and
  - vii. The deaccessioning of the artwork is in accordance with the temporary designation of the approved artwork.
2. Relocating or deaccessioning a City owned public artwork will be reviewed in accordance with the following criteria:
- i. The City Manager or his/her designee shall present a preliminary finding to the ACAC that a work of public art should be relocated or deaccessioned. The ACAC shall evaluate if the proposed relocation or deaccession meets the criteria for relocating or deaccessioning;
  - ii. City staff shall contact the artist to discuss the relocation or de-accession of the artwork, as provided for in the artist agreement;
  - iii. If an artwork is to be relocated, the City Manager or his/her designee will develop a plan for the relocation of the artwork, including analysis of the new location for the artwork, and consultation with other City departments as necessary;
  - iv. The City Manager or his/her designee shall present the ACAC with a full report proposing the relocation or deaccessioning of



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the artwork for ACAC review and recommendation; and

- v. The ACAC recommendation shall be forwarded to the City Council for consideration. The City Council retains final approval authority related to any project or activity covered by this policy.
- E. Gifts, Loans, Relocation or Deaccession of Art in the Portable Collection. The approval of gifts, loans, relocations or deaccessions of the Portable Collection shall be at the discretion of the City Manager or his/her designee and the City Council.
- F. The proposed projects subject to this policy shall be governed by the government speech doctrine. The government speech doctrine allows the City of Merced to select the views that it wants to express and to deliver a government-controlled message. The City in enacting this policy seeks to speak for itself irrespective of the funding source for any project subject to this policy



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 20-528

**Meeting Date:** 9/17/2020

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**SUBJECT:** Commission Comments

### REPORT IN BRIEF

Provides an opportunity for the Chair and/or Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the Commission and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 20-527

**Meeting Date:** 9/17/2020

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**SUBJECT:** Request to Add Item to Future Agenda

### REPORT IN BRIEF

Provides members of the Boards/Commissions to request that an item be placed on a future Boards/Commissions agenda for initial consideration by the Boards/Commissions.