



**Special/Regular Meeting
Planning Commission**

LIAM DOWNEY - CHAIR

PAUL LAKE - VICE-CHAIR

MOHAMMAD HABIB - PLANNING COMMISSIONER

MALISHA KUMAR - PLANNING COMMISSIONER

JAMES WILSON - PLANNING COMMISSIONER

JOSEPH MUELLER - PLANNING COMMISSIONER

WAYNE TANDA - PLANNING COMMISSIONER

Tuesday, November 12, 2024 7:00 PM

**Community & Cultural Center, El Toro Room
17000 Monterey Road, Morgan Hill, CA 95037**

SPECIAL/REGULAR MEETING

Please note the alternative location above

MEETING PARTICIPATION

Morgan Hill Planning Commission meetings are held in person. Remote participation will not be available. This meeting will not be live-streamed on the City's website, Facebook page, or Channel 17. The meeting will be recorded and uploaded to the City's Website at a later time.

PUBLIC COMMENT

Public comment may be offered verbally at the meeting or in writing before the meeting. Comments may also be submitted in the following ways:

- Via email to pcpubliccomment@morganhill.ca.gov; or
- Hand delivered or mailed to the Planning Division at 17575 Peak Avenue, Morgan Hill, CA 95037 prior to the meeting

Please email your comments to the Planning Office no later than 3:00 p.m. on Monday (the day before the Planning Commission meeting) so that your comments can be submitted to the members of the Planning Commission with sufficient time to review them. You may continue to provide written comments up to noon on Tuesday (the day of the meeting), although Planning Commissioners may not have sufficient time to review them before the meeting. Public comments submitted to the Planning Division after noon (12:00 p.m.) the day of the meeting will be provided to the Planning

Commission as time allows.

Written comments WILL NOT be read aloud during the Planning Commission Meeting. Please note that written comments are posted on the City's website. It is recommended that you do not include any personal information that you do not want to be posted on the web. Please be advised that communications directed to the Planning Commission are public records and are subject to disclosure pursuant to the California Public Records Act and Brown Act unless exempt from disclosure under the applicable law. Communications will NOT be edited for redactions and will be printed/posted as submitted.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the Planning Office at (408) 310-4709 or by email at planning@morganhill.ca.gov. Requests must be made as early as possible and at least two full business days before the start of the meeting.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING

Pursuant to Government Code Section 54954.2

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Members of the public are entitled to address the Planning Commission concerning any item within the Morgan Hill Planning Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ORDERS OF THE DAY

MINUTES APPROVAL

1. SEPTEMBER 10, 2024 MEETING MINUTES

Recommendation:

1. Accept Meeting Minutes

PUBLIC HEARINGS

2. **MUNICIPAL CODE TEXT AMENDMENT (ZA2024-0003) ESTABLISHING CHAPTER 18.78 (STANDARDS FOR PUBLIC ARTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE REQUIREMENT OF PUBLIC ART IN NEW LAND DEVELOPMENT PROJECTS**

Recommendation:

1. Open/close the public hearing; and,
2. Adopt Resolution recommending City Council approval of the Zoning Amendment.

OTHER BUSINESS

3. **TRANSPORTATION MASTER PLAN**

Recommendation:

1. Review Draft Transportation Master Plan;
2. Provide feedback on Draft Plan; and
3. Provide a recommendation to the City Council on adoption of the Plan.

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the Planning Commission less than 72 hours prior to an open meeting, will be made available for public inspection at the front counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

November 12, 2024

Members of the Public are entitled to directly address the Planning Commission concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Planning Commission on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Planning Commission, but it is very helpful. When you are called, proceed to the podium and the Chair will recognize you. If you wish to address the Planning Commission on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the Planning Commission.

Persons interested in proposing an item for the Planning Commission agenda should contact a member of the Commission who may plan an item on the agenda for a future Commission meeting. Should your comments require Planning's action, your request may be placed on the next appropriate agenda. Planning Commission discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the Commission, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of Commission Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email cityclerk@morganhill.ca.gov.



**Meeting Minutes
Planning Commission**

*LIAM DOWNEY - CHAIR
PAUL LAKE - VICE-CHAIR
MOHAMMAD HABIB - PLANNING COMMISSIONER
MALISHA KUMAR - PLANNING COMMISSIONER
JAMES WILSON - PLANNING COMMISSIONER
JOSEPH MUELLER - PLANNING COMMISSIONER
WAYNE TANDA - PLANNING COMMISSIONER*

Tuesday, September 10, 2024 7:00 PM

**Council Chambers
17555 Peak Avenue, Morgan Hill, CA 95037**

CALL TO ORDER

Chair Downey called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Luna called the attendance at 7:00 p.m.

PRESENT	Liam Downey, Mohammad Habib, James Wilson, Joseph Mueller, Wayne Tanda
EXCUSED	Paul Lake, Malisha Kumar

DECLARATION OF POSTING

Minutes Clerk Luna declared the posting of the agenda at 7:01 p.m.

PLEDGE OF ALLEGIANCE

Planning Commissioner Wilson led the Pledge of Allegiance at 7:01 p.m.

PUBLIC COMMENT

Chair Downey opened the Public Comment period at 7:01 p.m.

ORDERS OF THE DAY

There were no changes made.

CONSENT AGENDA

1. JUNE 25, 2024 MEETING MINUTES

Recommendation:

1. Accept the June 25, 2024 Meeting Minutes.

MOTION:

Accept the June 25, 2024 Meeting Minutes

RESULT:	Passed
MOVER:	Planning Commissioner Mueller
SECONDER:	Planning Commissioner Wilson
AYES:	Planning Commissioner Downey, Planning Commissioner Habib, Planning Commissioner Wilson, Planning Commissioner Mueller, Planning Commissioner Tanda
NAYS:	None
ABSTAIN:	None
ABSENT:	Vice Chair Lake, Planning Commissioner Kumar

2. AUGUST 27, 2024 MEETING MINUTES

Recommendation:

1. Accept the August 27, 2024 Meeting Minutes.

MOTION:

Accept the August 27, 2024 Meeting Minutes

RESULT:	Passed
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MOVER:	Planning Commissioner Mueller
SECONDER:	Planning Commissioner Wilson
AYES:	Chair Downey, Planning Commissioner Habib, Planning Commissioner Wilson, Planning Commissioner Mueller
NAYS:	None
ABSTAIN:	Planning Commissioner Wayne Tanda
ABSENT:	Vice Chair Lake, Planning Commissioner Kumar

PUBLIC HEARINGS

3. SD2022-0003/SR2022-0023/EA2022-0013: W. DUNNE - ROBERTSON (BORELLO ORCHARDS): REQUEST FOR A TENTATIVE SUBDIVISION MAP AND DESIGN PERMIT FOR A SINGLE-FAMILY ATTACHED DEVELOPMENT CONSISTING OF 10 TOWNHOME-STYLE DUETS LOCATED ON THE SOUTHWEST QUADRANT OF WEST DUNNE AVENUE AND VIEWCREST LANE (APN 767-12-060).

Recommendation:

1. Open/close public hearing.
2. Adopt a Resolution approving a Tentative Subdivision Map and Design Permit for the development of a single-family attached residential project consisting of 10 townhome-style duets.

Development Services Director Jennifer Carman presented the Staff Report at 7:03 p.m.

Chair Downey opened the Public Hearing at 7:09 p.m. The following individuals addressed the Planning Commission:

- Giselle Martinez
- David Robertson 7:14 p.m.
- Jeane
- Sara Vourbour
- Vincent

Hearing no father requests to speak, the Public Comment Period was closed.

The Assistant City Attorney, Cynthia Hasson, informed the Planning Commission that Commissioner Wilson disclosed he had a conflict and stepped down from the dais.

MOTION:

Adopt a resolution approving the Tentative Subdivision Map and Design Review Permit for the development of a single-family attached residential project

consisting of 10 townhome-style duets.

RESULT:	Passed
MOVER:	Planning Commissioner Mueller
SECONDER:	Planning Commissioner Tanda
AYES:	Chair Downey, Planning Commissioner Habib, Planning Commissioner Mueller, Planning Commissioner Tanda
NAYS:	None
ABSTAIN:	None
ABSENT:	Planning Commission Wilson, Vice Chair Lake, Planning Commission Kumar

4. **SD2023-0003/EA2023-0008: E. DUNNE – SERENE HILLS: REQUEST FOR A TENTATIVE SUBDIVISION MAP OF AN EXISTING 8.37 ACRE-SITE FOR THE DEVELOPMENT OF SEVEN LOTS TO CONSTRUCT SEVEN DETACHED SINGLE-FAMILY RESIDENCES. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 728-02-002 AND 728-02-003, ARE LOCATED ON 2275 EAST DUNNE AVENUE, NORTH OF SADDLEBACK DRIVE; (SERENE HILLS, LLC., APPLICANT). CEQA: MITIGATED NEGATIVE DECLARATION.**

Recommendation:

1. Open/close public hearing; and
2. Adopt a Resolution approving a Mitigated Negative Declaration and a Tentative Subdivision Map for the future development of a single-family detached residential project consisting of 7 custom lots.

Development Services Director Jennifer Caman presented the Staff Report at 7:30 p.m.

Chair Downey opened the public hearing at 7:40 p.m. The following addressed the Planning Commission:

- Viji Mani, Owner
- Bill McClintock, MH Engineering

Hearing no further request to speak, the Public Comment Period was closed.

MOTION:

Adopt a resolution approving a Mitigated Negative Declaration and a Tentative Subdivision Map for the future development of a single-family detached residential project consisting of 7 custom lots.

RESULT:	Passed
MOVER:	Planning Commissioner Mueller
SECONDER:	Planning Commissioner Wilson
AYES:	Chair Downey, Planning Commissioner Habib, Planning Commissioner Wilson, Planning Commissioner Mueller, Planning Commissioner Tanda
NAYS:	None
ABSTAIN:	None
ABSENT:	Vice Chair Lake, Planning Commissioner Kumar

DIRECTOR'S REPORT/ANNOUNCEMENTS

Development Services Director Jennifer Carman made an announcement at 7:59 p.m.
Assistant City Manager for Community Development Edith Ramirez made an announcement at 8:03 p.m.

ADJOURNMENT

There being no further business to discuss, Chair Downey adjourned the meeting at 8:09 p.m.

PLANNING COMMISSION STAFF REPORT

MEETING DATE: November 12, 2024

PREPARED BY:

Adam Paszkowski, Principal Planner

APPROVED BY: Jennifer Carman

MUNICIPAL CODE TEXT AMENDMENT (ZA2024-0003) ESTABLISHING CHAPTER 18.78 (STANDARDS FOR PUBLIC ARTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE REQUIREMENT OF PUBLIC ART IN NEW LAND DEVELOPMENT PROJECTS

RECOMMENDATION(S)

1. Open/close the public hearing; and,
2. Adopt Resolution recommending City Council approval of the Zoning Amendment.

LOCATION MAP/PROJECT INFORMATION:

N/A

BACKGROUND:

On May 15, 2024, the City Council directed staff to create a Public Art Ordinance. The fee for art would support the City's goals of community development, tourism, health, inclusiveness and economic development. The Morgan Hill 2035 General Plan establishes art goals and the City's Library, Culture, and Arts Commission (LCAC) supports the City's efforts on advancing the City's arts and cultural programming. The LCAC Art Program is codified in Chapter 2.68 of the City's Municipal Code and aims to grow new projects, installations and preserve the City's public art collection.

On October 23, 2024, the City Council approved the [Public Art Framework](#), with amendments, and directed staff to prepare an ordinance requiring public art in new development projects. The City Council directed staff that the Framework/Ordinance should expand on the purpose of Public Art; include performing arts as artwork; and include a 0.5% public art contribution/in-lieu fee for lower-income affordable housing and non-profit projects.

PROJECT DESCRIPTION:

Chapter 18.78 (Standards for Public Arts) is proposed within Title 18 (Zoning) of the Municipal Code to implement the requirement of public art in new land development projects.

Public art, or a public art in-lieu fee, is proposed to be applied to new residential projects of 20 housing units or more, nonresidential projects of 5,000 square feet or larger, and new public buildings, facilities, and city parks. The public art rate is proposed at 1% of the project's total construction valuation for commercial, industrial, moderate-income and above moderate-income residential, and municipal development projects; and 0.5% of the project's total construction valuation for non-profit organizations and lower-income affordable housing development projects. Applicable projects shall incorporate public art on-site of equal value of 1% or 0.5% of the total project's construction valuation or provide the City with an in-lieu payment of equal value during the building permit process with a maximum required in-lieu fee contribution of one million dollars (\$1,000,000) or five hundred thousand dollars (\$500,000), respectively. If the project chooses to

incorporate the public art, the installations shall be in locations visible to and accessible by the public. Public art installations include sculptures, murals, installations, public art gardens, interactive art pieces, performance spaces (including indoor or outdoor stages and amphitheaters), etc.

While performance arts was originally considered an eligible use of public art in-lieu fees in the Public Art Framework presented to the City Council on October 23, 2024, the proposed ordinance does not include performance arts. After further research, staff learned that only very limited jurisdictions allow the use of in-lieu fees towards performance arts as part of their public art ordinances due to the high cost of continuing to support and maintain performance arts in the future without guaranteed funding. However, the proposed Public Art Ordinance does recommend allowing performance spaces, including indoor or outdoor stages and amphitheaters, to be allowed as an on-site artwork installation.

Exemptions include building renovations or additions as well as Public Works Capital Improvement Projects such as streets, water, sewer, trails, bike lanes, and media, and Capital Improvement Projects (CIP) such as building/facility renovations or expansions, streets and roads, medians, trails, bike lanes, landscaping, storm drainage facilities, wastewater facilities, and water facilities. Only new City facilities and parks would be applicable to the Public Art Framework. However, the City Council may exempt municipal projects on a case-by-case basis.

The approval process for City commissioned public art would remain as it is today with the review of the Library, Culture, and Art Commission (LCAC) and final approval by the City Council. Private art installations will be reviewed by the Planning Division during the project's design review process and will also be reviewed by LCAC. Projects that choose to pay the in-lieu fee would be required to pay the fee prior to issuance of the first building permit, which will be placed within the existing Public Art Fund managed by the Public Services Department. Funds would be used for the procurement of new art installations, preventative care, acquisition and improvement of real property for the purpose of displaying artwork, costs for administering the public art program, and structures that display the artwork.

PROJECT ANALYSIS AND FINDINGS: ANALYSIS

The proposed Zoning Amendment has been analyzed with respect to consistency with the: 1) General Plan and 2) Zoning Ordinance.

1. General Plan Consistency

The proposed amendments are consistent with the General Plan as the amendments implement the following City of Morgan Hill 2035 General Plan policies and actions:

Policy CNF-8.17 Public Art. Encourage installation of public art in new and renovated non-residential projects.

Action CNF-8.C Public Art. Develop a plan and standards to encourage the inclusion of public art in new and renovated non-residential projects.

Policy ED-4.7 Public Art at Key Destinations. Prioritize public art in key destination areas like Downtown.

Policy ED-4.8 Public Art in the Planning Process. Integrate public art into the planning process for significant non-residential development projects.

Policy HC-4.3 Cultural Awareness. Promote awareness of and celebrate Morgan Hill's diverse cultures through events, festivals, leadership on public boards and commissions, staff training,

and public art installations.

Policy HC-4.6 Placemaking. Use public art and interpretive plaques to designate special and unique areas of the City, including the downtown, areas of historic and cultural significance, and community gathering places.

Policy HC-4.8 Civic Arts. Partner with local artists and art organizations to engage residents creatively in addressing community issues.

Action HC-4.A Public Art Program. Study whether to require public art as part of new development and/or new City parks.

2. Zoning Ordinance Consistency

The purpose of the Zoning Code is to implement the General Plan and to protect the public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

- a. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

Consistent

The proposed text amendments are consistent with the General Plan in that it implements the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into the planning process for new development.

- b. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

Consistent

The proposed text amendments consist of implementing the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into the development process and promote awareness of and celebrate Morgan Hill's diverse cultures through public art installations, and, therefore, will not be detrimental to the City.

- c. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

Consistent

The proposed revisions will implement the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into new development, and, therefore, are internally consistent with the overall zoning code.

CONCLUSION:

Staff recommends the Planning Commission adopt the Resolution recommending City Council approval of the Zoning Amendment.

CEQA (California Environmental Quality Act):

This ordinance, establishing standards for public art, is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed ordinance is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on

the environment, the activity is not subject to CEQA. The creation of standards for public art does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

COMMUNITY ENGAGEMENT:

On May 15, 2024, the City Council held a public meeting discussing the fee for art policy. Staff presented to the Library, Culture, and Arts Commission twice, on June 4 and October 1, 2024.

Staff also held a Public Art Conversation on October 14, 2024, to explore how to curate the future of arts and culture in Morgan Hill, where more than 140 residents attended and provided feedback on public art and a public art framework. Staff received overwhelming support from attendees for a public art policy, consisting of assessing a public art fee on new construction, primarily for commercial and industrial development projects, with some support of assessing a public art fee towards market rate housing projects. A majority of the attendees indicated that the fee should apply to commercial and industrial projects that are 20,000 square feet in size or more and housing developments greater than 40 dwelling units. As part of the conversation, staff also gathered feedback from attendees indicating what types of public art they would like to see (in which there was equal support for architecture, music, paintings/murals, sculptures, and theater) and the locations they would want to see installations (in which there was equal support for installations at the City gateways/entrances, parks, public buildings, downtown, and freeway facing); and when asked about where they want to see performance arts, the three top locations included parks, sidewalks, and downtown.

On October 23, 2024, the City Council held a public meeting to discuss the Public Art Framework and direct staff to draft a Public Art Ordinance.

In addition, a 10-day public hearing notice was published in the Friday, November 1, 2024, edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096 for the November 12, 2024 Planning Commission meeting regarding this item.

ATTACHMENTS:

1. Planning Commission Resolution
2. Public Art Draft Ordinance

RESOLUTION NO. 24-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ZONING AMENDMENT ZA2024-0003: MUNICIPAL CODE TEXT AMENDMENT ESTABLISHING CHAPTER 18.78 (STANDARDS FOR PUBLIC ARTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE REQUIREMENT OF PUBLIC ART IN NEW LAND DEVELOPMENT PROJECTS

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2024-0003) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of November 12, 2024;

WHEREAS, the Planning Commission has reviewed recommendations contained in the November 12, 2024, staff report on this item;

WHEREAS, the amendments proposed by this Ordinance are necessary to implement the City of Morgan Hill 2035 General Plan to integrate public art into the planning process for new development;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

The proposed text amendments are consistent with the General Plan in that it implements the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into the planning process for new development.

SECTION 2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

The proposed text amendments consist of implementing the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into the development process and promote awareness of and celebrate Morgan Hill's diverse cultures through public art installations, and, therefore, will not be detrimental to the City.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed revisions will implement the City of Morgan Hill 2035 General Plan policies and actions to integrate public art into new development, and, therefore, are internally consistent with the overall zoning code.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending various Code provisions within the Municipal Code. All text amendments recommended to be made as shown in the attached draft ordinance.

PASSED AND ADOPTED THIS 12th DAY OF NOVEMBER 2024, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: **COMMISSIONERS:**

NOES: **COMMISSIONERS:**

ABSTAIN: **COMMISSIONERS:**

ABSENT: **COMMISSIONERS:**

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ESTABLISHING CHAPTER 18.78 (STANDARDS FOR
PUBLIC ARTS) WITHIN TITLE 18 (ZONING) OF THE
MUNICIPAL CODE OF THE CITY OF MORGAN HILL
IMPLEMENTING THE REQUIREMENT OF PUBLIC ART
IN NEW LAND DEVELOPMENT PROJECTS**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:

Section 1. Chapter 18.78 (Standards for Public Arts) of Title 18 (Zoning) is hereby
established to read as follows:

18.78.010 – Purpose

The City Council finds and declares:

- A. Public art contributes to the public's understanding, enjoyment and experience of cultural diversity, while helping to create and maintain a large and diverse community that will enrich the City's cultural identity and economic vitality.
- B. The incorporation of public art into private and public development will create a unique sense of community as well as public identity and enhance the visual and aesthetic quality of such developments.
- C. The incorporation of public art and cultural programs in private and public development contributes to civic enhancement through creation of a more desirable community, which is in the public interest for those living and working in the City of Morgan Hill.
- D. The provision of public art supports and implements General Plan policies to support publicly accessible artwork to enhance the social, cultural, historic, and artistic character of the community and ensure high quality architectural and artistic design in all new developments.
- E. Cultural and artistic assets should be included in private development projects because those projects diminish the availability of the community's resources for those cultural and artistic features, and because it is important that those projects contribute to the urbanization of private property in a manner that benefits the public.
- F. Cultural and artistic resources foster economic development and tourism, revitalize urban areas, and create a more desirable community within which to live and work.

18.78.020 – Applicability and Exemptions

- A. **Applicability.** This chapter applies to all new residential building developments of 20 housing units or more; nonresidential development projects of 5,000 square feet or more; and new public buildings and new city parks.

B. The following shall be exempt from the provisions of this Chapter:

1. Building/facility renovations or additions.
2. Public Works Capital Improvement Projects, including but not limited to, building/facility renovations or expansions, streets and roads, medians, trails, bike lanes, landscaping, storm drainage facilities, wastewater facilities, and water facilities.
3. Non-Municipal Governmental projects.
4. Municipal projects when the City Council finds that, based upon the characteristics of the project or the project budget, it is in the best interests of the Morgan Hill community to do so.

18.78.030 – Contribution Requirements.

A. Program Allocation.

1. Commercial, industrial, moderate-income and above moderate-income residential, and municipal development projects subject to the provisions of this Chapter shall expend not less than one percent (1%) of building development construction valuation, to a maximum of one million dollars (\$1,000,000), acquiring and installing on-site artwork.
2. Non-profit organizations and lower-income affordable housing development projects subject to the provisions of this Chapter shall expend not less than one-half percent (0.5%) of building development construction valuation, to a maximum of five hundred thousand dollars (\$500,000), acquiring and installing on-site artwork.

B. In-lieu Payments. In lieu of acquiring and installing on-site artwork as required under Section 18.78.030.A, the applicant, at the applicant's discretion, may pay into the Morgan Hill Public Art Fund a public art in-lieu contribution in an amount equal to one hundred percent (100%) of the program allocation. If an applicant chooses to make the public art in-lieu payment, the applicant must make that choice prior to final approval of the development project application and fully pay the public art in-lieu payment to the City prior to the issuance of the first building permit for the development project for which the contribution is required.

C. If the applicant chooses to acquire and install on-site artwork, and the value of the on-site artwork is less than one hundred percent (100%) of the program allocation, the applicant shall pay into the Morgan Hill Public Art Fund the difference between one hundred percent (100%) of the program allocation and the value of the on-site artwork.

18.78.040 – Public Art Requirements

- A. On-site artwork shall be installed on the development project site in a location that allows the artwork to be visible and accessible by the public, such as the adjacent right-of-way.
- B. On-site artwork shall be permanently sited and an integral part of the landscaping and/or architecture of a building considering the historical, geographical, and social/cultural context of the site or community.

- C. On-site artwork shall be constructed of materials that are appropriate for the proposed location and to a scale that is proportional to the scale of the building or property it relates to or is sited upon.
- D. On-site artwork installations required by Section 18.78.030 may include:
 - 1. Graphic and multi-media: Printmaking, drawing, calligraphy and photography including digital, any combination of forms of electronic media including sound, film, holographic, and video and other art forms but only when on a large public scale;
 - 2. Interactive art pieces;
 - 3. Mixed Media: Any combination of forms or media, including collage;
 - 4. Mosaics;
 - 5. Painting: All media, including but not limited to, murals;
 - 6. Performance spaces, including indoor or outdoor stages and amphitheaters.
 - 7. Public art gardens;
 - 8. Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials, including glass and neon;
 - 9. Waterworks; and
 - 10. Any other artwork determined by the City Council to satisfy the intent of this section.
- E. The following facilities and artwork shall not be eligible to satisfy the requirements for on-site artwork:
 - 1. Mass-produced, standard design art objects such as playground equipment, benches or fountains;
 - 2. Decorative or functional architectural elements designed solely by the project architect;
 - 3. Directional elements such as super graphics, signage, or color coding;
 - 4. Logos or corporate identity;
 - 5. Reproduction, by mechanical or other means, of original works of art; and
 - 6. Art that signifies political or religious affiliations.

18.78.050 – Program Administration

- A. Projects subject to the public art requirement shall declare their intention to install public art on-site or to contribute to the in-lieu fund as part of the project design approval process, or the submission of building permits, if no design approval is required for the project. If an applicant chooses to install public art on-site, the applicant shall identify the proposed location(s) of the on-site public art on the submitted plans.
- B. Application Requirements. An application for the installation of on-site artwork shall be submitted to the Development Services Department on forms furnished for that purpose and shall include the following information, as applicable:

1. Landscape and/or site plans indicating the location and orientation of the on-site artwork that integrates the artwork into the overall project design;
 2. A sample, model, photograph(s), or drawing(s) of the proposed on-site artwork;
 3. Material samples and finishes, if appropriate;
 4. The artist's resume and portfolio of past work, which demonstrates competency with the materials and forms proposed for the on-site artwork proposal;
 5. A written statement by the artist describing the on-site artwork, as well as a discussion of the manner in which the proposed on-site artwork meets the findings established by Section 18.78.040.E;
 6. An itemized budget declaring the valuation of the on-site artwork pursuant to Section 18.78.070;
 7. A maintenance plan for the on-site artwork;
 8. Any such additional information or materials as may be required by the Development Services Director; and
 9. Application processing fees.
- C. Art Installations. The Planning Division shall review the location of the proposed art installation as part of the project design approval process, or the submission of building permits, if no design approval is required for the project. The Library, Culture, and Arts Commission shall review the proposed artwork.
- D. City Commissioned Public Art Project Installations. The Library, Culture, and Arts Commission shall review the proposed artwork and provide a recommendation to the City Council. The City Council shall review and act on all City commissioned public art projects.
- E. Findings. In order to approve an on-site artwork application, the Library, Culture, and Arts Commission must make all of the following findings:
1. The artist has demonstrated qualifications to complete the proposed on-site artwork with the highest professional standards.
 2. There is sufficient public visibility and accessibility to the on-site artwork, and the proposed on-site artwork is compatible with and harmonious with the development project and surrounding environment.
 3. The proposed on-site artwork is durable and cost effective to maintain using ordinary methods of maintenance.
 4. The budget for the proposed on-site artwork and any in-lieu fees proposed by the applicant is equivalent to or exceeds the required program allocation.
- F. In-lieu Fee Collection. The City's Engineering Division shall be responsible for collecting the in-lieu fee as a development impact fee prior to building permit issuance for nonresidential developments, and prior to certificate of occupancy for residential developments.

- G. Administration. The City's Public Services Department shall be responsible for the administration of the Public Art Fund.

18.78.060 – Maintenance Obligations

- A. The property owner on which the on-site artwork is located shall maintain, or cause to be maintained, in good condition the on-site artwork continuously after its installation and shall perform necessary maintenance thereto to the satisfaction of the City. The maintenance obligations of the property owner shall be incorporated into the conditions of approval for the on-site artwork and shall be reflected in an agreement between the City and the owner of the property on which the on-site artwork shall be located and the agreement shall be recorded against the property prior to building permit issuance or final map approval, whichever occurs first.
- B. Should the property owner wish to remove the on-site artwork, the City must be notified in advance. The property owner shall replace the on-site artwork with on-site artwork of equal or greater value subject to the approval of the City, and consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law.

18.78.070 – Included and Excluded Expenses

- A. The following expenses may be included in the budget for the program allocation for on-site artwork:
1. The on-site artwork itself, including the artist's fee for design, acquisition, purchase, structural engineering and fabrication;
 2. Transportation and installation of the on-site artwork at the development project site;
 3. Artwork identification signs; and
 4. Mountings, anchorages, containments, pedestals, bases, or materials necessary for installation of the on-site artwork.
- B. The following expenses shall not be included in the budget for the program allocation for on-site artwork:
1. The cost of locating the artist(s);
 2. Architect and landscape architect fees;
 3. Land costs;
 4. Landscaping around the on-site artwork not integral to its design;
 5. Publicity, public relations, photographs, or dedication ceremonies;
 6. Utility fees associated with activating the artwork; and
 7. Illuminating the on-site artwork if not integral to the design.

18.78.080 – Use of In-Lieu Fee Funds

Public Art funds collected pursuant to this Chapter may be used for the following activities:

- A. For the design, acquisition, purchase, commission, installation, placement, improvement,

relocation, conservation, and insurance of artwork acquired by the City;

- B. For preventative care, maintenance, and utility charges related to the artwork and real property purchase;
- C. For the acquisition and improvement of real property for the purpose of displaying artwork, which has been or may be subsequently approved by the City;
- D. For costs associated with administering the public art program;
- E. Structures that enable the display of artwork(s); artistic design and fabrication fees; labor of assistants, materials, and contracted services required for the production and installation of the work of art; any required permit or certificate fees, business and legal costs directly related to the project; and
- F. Preparation of site to receive artwork.

Section 2. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. **Effective Date; Posting.** This Ordinance shall take effect on the 31st day following adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____, 2024, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____, 2024, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2024.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

MICHELLE BIGELOW, City Clerk

PLANNING COMMISSION STAFF REPORT

MEETING DATE: November 12, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: Jennifer Carman

TRANSPORTATION MASTER PLAN

RECOMMENDATION(S)

1. Review Draft Transportation Master Plan;
2. Provide feedback on Draft Plan; and
3. Provide a recommendation to the City Council on adoption of the Plan.

LOCATION MAP/PROJECT INFORMATION:

N/A

BACKGROUND:

In June 2023, the City contracted with Hexagon Transportation Consultants for the creation of the City's first comprehensive Transportation Master Plan. The Plan is intended to provide numerous components, including traffic counts, future traffic modeling, updated speed survey to set speed limits, review of existing transportation infrastructure, specific review and analysis of bike and pedestrian infrastructure, development of transportation priorities for the City, creation of a capital improvement program, and numerous other components.

PROJECT DESCRIPTION:

The purpose of this item is to provide the Commission with an opportunity to review the Draft Plan and provide input and direction on the various components of the Plan. City Staff recommend focusing on the Draft Plan Document Chapters 5 and 6 as this will be the information that has not previously discussed at the Commission level. In addition to the Draft Plan main document there are numerous appendices documenting many components in a high level of detail. The documents in Appendix A provide a complete list of future improvements to roadways and intersections throughout the City. The plan documents can be downloaded here:

<https://www.morganhill.ca.gov/2601/TMP-Documents>

PROJECT ANALYSIS AND FINDINGS:

N/A

CONCLUSION:

The Draft Plan is a culmination of a year-long effort to create a comprehensive planning document for the City's transportation system. The Planning Commission has previously provided feedback on the development of the Plan at two prior meetings. The Draft Plan identifies numerous projects and initiatives to support the improving the City in the primary areas of Safety, Increased Transportation Options, Access to Regional Transit Services and Local Destinations, and Congestion Management.

The Draft Plan is visionary in nature and the City does not have the resources today to implement many of the projects and initiatives outlined without the addition of new resources for programmatic elements and capital projects. Future next steps in this area include:

- Upon approval, beginning an update to the traffic/transportation impact fee to collect fees associated with expansion or new facilities associated with new development.
- Upon approval, beginning to use the project lists to ensure new development is conditioned to complete improvements adjacent to new development (when allowable).
- Utilize the completed Plan to serve as the basis for the circulation/transportation element update of the General Plan.
- Use the Plan to support future grant applications for projects and programs outlined in the Plan.
- Have the plan serve as a guide to the City in the development of future Capital Improvement Program Budget updates.
- Use the Plan to support the City Manager in making recommendations to the City Council on the City's Operating Budget.

CEQA (California Environmental Quality Act):

Categorical Exemption 15262:

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. Significant environmental review will occur following the update to the Circulation Element of the General Plan.

COMMUNITY ENGAGEMENT:

Significant community engagement was conducted and is included in the Draft Plan Chapter 4.

ATTACHMENTS:

None