



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 5/6/21

**From:** Stuart Schillinger, Deputy City Manager

**Subject:** Adopt Resolution 2021-29 Authorizing the Examination of Sales and Use Tax Records

### **Community Goal/Result**

Fiscal Sustainability

### **Purpose**

Ensure that the State of California is properly allocating Sales and Use Tax revenues to the City of Brisbane. Also, provide for the ability of staff to use Sales and Use Tax information to further the financial condition and stability of the City.

### **Recommendation**

Adopt Resolution 2021-29 authorizing the examination of Sales and Use Tax Records.

### **Background**

The City uses the firm Avenue Analytics to assist the City with reviewing and auditing State sales and use tax information to ensure we receive our proper allocation. In 1988 the City contracted with Municipal Resource Consultants for Sales and Use Tax services. The company has gone through a number of name changes and most recently been purchased by Avenu Insights & Analytics. Although in California they are using the name MuniServices LLC. With all of the changes the State of California are requiring cities which use MuniServices LLC to adopt a new Resolution naming them directly as well as signing an agreement which allows MuniServices to take over the contract from Municipal Resource Consultants.

The City receives quarterly reports from MuniServices regarding its Sales and Use Tax receipts, as well a listing of the top 100 sales tax producers within the City. MuniServices also provides forecast information which assists staff in making projections of future Sales Tax receipts. Most importantly MuniServices reviews Sales and Use Tax information from the State to ensure that the City is receiving the correct amount. The most notable time where this was important was during the early 2000's when Van Waters and Rodgers did not report Sales and Use Tax correctly and MuniServices caught the error, filed the paper work on our behalf with the State, and made sure we received the appropriate amount of Sales Tax. This correction was worth millions of dollars to the City. Without their services, it is unknown if this correction would have happened as quickly and easily as it did. MuniServices continues to perform this service

for us and routinely catches errors in the allocation from the State, which guarantees we collect all of the Sales and Use tax owed to us.

**Discussion**

The attached Resolution allows MuniServices to review State tax information on behalf of the City of Brisbane. Additionally, it specifies who is allowed to review the confidential information and for what purpose.

**Fiscal Impact**

There is no fiscal impact for the adoption of this Resolution.

**Measure of Success**

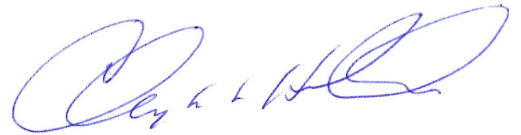
The City continues to receive all Sales and Use Tax owed it.

**Attachments**

1. Resolution 2021-29

*Stuart Schillinger*

Stuart Schillinger, Assistant City Manager



Clay Holstine, City Manager

# Public Arts Implementation Guidelines

## City of Brisbane

### **Purpose:**

The City of Brisbane adopted a Public Arts Ordinance in 2014 in order to increase citizens' appreciation of art, to improve quality of life, and to enhance Brisbane's identity as a unique community within the greater Bay Area. Additionally, public art should stimulate creativity, imagination, and add a unique human quality to the community environment and enrich public spaces. A city rich in art becomes an outdoor cultural museum accessible to everyone.

Public art can and should be an integral part of the design and the planning process of development.

### **Goals:**

1. Community Involvement – A community develops a specific identity and character over time. Residents are uniquely qualified to provide insight into the types of public artwork that are best suited for the community. Those who reside in the community are encouraged to participate in the selection process of public art pieces by participating at public meetings.
2. Diversity of Art – The collection should be diverse in its representation of artists and artistic styles and be reflective of the ethnic and cultural diversity of the community.
3. Creation of Sense of Place – Art is important to our common experience because it brings focus, importance, and cohesion to public spaces. Public art develops images and provides experiences that reflect the historical and cultural essence of a community. Public art transforms public spaces by giving them a context and relevance and making them places of community interest and pride. Public art has the potential to improve the appearance of an entire business block; to heighten the ethnic, historical or cultural aspects of the community and to attract foot traffic to an area that formerly had little or none.
4. Artist Participation – By encouraging collaboration between artist, architects, and engineers we can provide an aesthetic dimension that expands possibilities for creating public spaces for the community.

### **Definitions:**

- **Artist:** An individual or team of individual artists whose body of work and professional activities demonstrate serious ongoing commitment to the fine arts. Members of architectural, engineering, design or landscaping firms retained for the design and construction of a development project covered by these Guidelines shall not be considered artists for the purpose of meeting the requirement to provide public art.

- **Arts professional:** An individual who works in the fine arts field (such as arts consultant, fine arts curators, fine arts collectors, art critics, or art educators).
- **Artwork or work of art:** All forms of original creations of visual arts, including but not limited to: 1) sculpture in any material or combination of materials; 2) painting- all media including portable and permanently affixed works, such as murals and frescoes; 3) graphic arts- print making and drawing; 4) mosaics; 5) photography; 6) crafts in clay, fiber and textiles, wood, metal, plastics and other materials; 7) calligraphy; 8) stained glass; and 9) mixed media – any combination of forms or media, including collage.
- **Artwork cost:** Artwork cost is the total amount budgeted by the City for a public artwork project.
- **Building valuation:** The total dollar amount of all construction permits for the same development project using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO) building valuation.
- **Conceptual design plan:** The initial phase of the approval of public artwork that includes review of the artist’s or artist team’s qualifications, conceptual artwork design, and artwork location.
- **Design:** Artwork detailing project design, including scale drawings within site context, sealed by an engineer, if required.
- **Fabrication:** A detailed description of the methods of fabrication as well as any uncommon or unusual details regarding the approach to creating an artwork piece.
- **Final design plan:** The final phase of the approval of public artwork that involves consideration of a highly defined proposal that conforms to the concept previously considered and approved by the Committee.
- **In-lieu contribution:** In place of an approved artwork on the site, a developer may elect to pay to the City an amount equal to the program allocation set forth in the Public Arts Ordinance. In-lieu fees shall be submitted to the City and deposited into the Public Art Fund before issuance of a building permit for the development project except when a different time period is approved by the Community Development Director and Parks and Recreation Director.
- **Installation:** A detailed description of the installation procedure if the artwork will not be fabricated directly on the selected site. Installation would include the construction of any required footings or foundation.
- **Public art:** Any permanent display of a work of visual art that was specifically designed to be located on a site where it would be easily accessible to the public, either on private or public property within the City of Brisbane.
- **Public art advisory committee:** A committee made of 2 Parks and Recreation Commissioners as designated by the Parks and Recreation Commission, 2 Council Members (the Council’s Parks and Recreation Commission Liaisons), and 3 Brisbane Community members, appointed by City Council. The Community members shall serve two year terms and one of whom will be professionally engaged in the art community, one of whom will be an employee or owner of a business located in Brisbane, and the other member may be either a resident of Brisbane or an owner or employee of a business located in Brisbane. Members of the Public Art Advisory

Committee will be ineligible to propose public art projects while they serve on the Committee and for 1 year after they leave the Committee.

- **Public art fund:** An interest-bearing account that is managed by the City Manager, or designee, into which public art funds, including donated funds, in-lieu funds and/or public art grant funds are deposited.
- **Public art selection committee:** Used for publicly installed art works. The Public Art Selection Committee will have no more than 9 members in considering any particular publicly installed art works. The Public Art Selection Committee will be the members of the Public Art Advisory Committee, as supplemented, by up to one or two additional members who either work or live within the neighborhood of the proposed site of the public art. The need for additional members of the public will be recommended to the City Council at the time a proposed project is brought forward to the City Council. The Public Art Advisory Committee will determine who those members for any particular public art shall be. The Public Art Selection Committee may also consult at no cost to the City with or recommend to the City Council that the City contract with, an art professional to assist the Committee with the selection process.
- **Public place:** An interior or exterior area on public or private property that is easily accessible by and highly visible to the general public.

#### **General Procedure:**

Public artwork is limited to permanent visual works of art, as opposed to performing, written, or temporary art. Visual art includes but is not limited to, murals, sculptures, artist-designed landscape features, streetscape features, earthworks, environmental installations, and water and digital displays.

Any money donated to or collected through the Building Permit process will be deposited in the Public Art Fund. The City Manager, or designee, shall administer the funds and establish accounting records according to Generally Accepted Accounting Principles (GASB). The City Manager or designee will authorize all disbursements from the Public Art Fund. The account shall not be added to the City's General Fund.

The process for selecting the public piece to be installed will depend on whether or not the artwork is commissioned by the City of Brisbane or by a private person or entity.

All privately installed Public Art will be reviewed by a Public Art Advisory Committee. The Public Art Advisory Committee is responsible for reviewing and making decisions on conceptual design plans submitted by a developer of a project subject to the public art requirement.

Additionally, on an annual basis the Public Art Advisory Committee will meet to review the balance of funds in the Public Art Fund to determine if they should propose any projects be initiated and commissioned by the City.

The Public Art Advisory Committee shall ensure all public art projects meet the program criteria and guidelines for selection of an artist or artist team, artwork, and artwork location established in this procedure before submittal of the Final Design Plan to the Parks and Recreation Commission.

The following procedure will be used to review and approve public art projects:

**Privately Installed Public Art**

1. The project contact will meet with the designated staff from the City prior to submitting concept design plans.
2. The developer must contract the services of an artist for any public art project. The developer will provide the work vitae of the art consultant or artist.
3. Proposals must include preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed work.
4. An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs. If the value of a proposed artwork (by past records of comparable work sold, etc.) cannot be verified, City staff may choose to have the artist’s proposal and or/other completed works appraised by a qualified art appraiser selected by the City. The developer will pay up front for any art appraisal service fees. This expense will be deducted from the total artwork allocation cost.
5. Preliminary plans must contain such detailed information as may be required by the Public Art Advisory Committee to adequately evaluate the location of the artwork in relation to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhood if necessary.
6. A preliminary budget must show the proposed public art project is consistent with the public art ordinance requirements.
7. Within 30 days of receiving a complete application the Advisory Committee will hold an open meeting to discuss the proposed project. The meeting will be noticed to all properties within 1,000 feet of the property and posted as required by law. With the agreement of the developer the meeting may take place more than 30 days from receiving the complete application.

The proposed artwork project will be reviewed using the following criteria as applied to the supporting documentation and past projects: Artistic quality (vision, originality, and craftsmanship); Context (architectural, historical, geographical, and socio-cultural context of the site); quality and permanency of materials; maintenance; safety; diversity of artists; representation in the existing collection of publically-accessible artworks; and diversity of artworks(media, scale, style, intention) in the existing collection of publicly accessible artworks.

8. The Public Art Advisory Committee will make a recommendation on the proposed artwork to the full Parks and Recreation Commission. Following the approval by the Public Art Advisory Committee the artist will refine the objectives and the conceptualized plan if needed.

9. The Parks and Recreation Commission will publicly review the proposed artwork project at its next meeting.
10. The Parks and Recreation Commission will make a recommendation to the City Council on the proposed artwork project.
11. The City Council will have the final approval for any public artwork project. If the Council does not approve the proposed project it can either refer the item back to the Advisory Committee, or Parks and Recreation Commission for reconsideration.
12. All cost of maintaining a privately installed Public Art work will be the expense of the private entity unless the City accepts the Public Art piece as a donation.

### **Public Installed Public Art**

1. The Public Art Advisory Committee will recommend to the the City Council the amount of money from the Public Art Fund to be used on any publicly installed public art pieces and the breakout between Administrative and Maintenance costs of the project. The Public Art Advisory Committee will also recommend a location for the art project, type of artwork when appropriate, if there is a need to supplement the Public Art Advisory Committee with community members, and method calling for artists.
2. The Council will approve available funds for the artwork and solicit members to be part of an Art Selection Committee, if needed.
3. The selection committee shall select an artist, or group of artists, through a public process using one of the following methods:
  - a. Request for qualifications (RFQ)
  - b. Request for proposals (RFP)
  - c. Invitational competition.
4. The City Council shall make a decision on the Art Selection Committee's recommendations on the artist or artist group.
5. The Art Selection Committee and the appropriate City staff, as needed for the particular project, shall meet regularly with the selected artist, or group of artists, in developing the Conceptual Design Plan that meets the artwork and location criteria.
6. Once the Conceptual Plan has been approved by the Art Selection Committee, the artist or artist's team shall refine the project objectives and the Conceptual Design Plan according to the direction of the Art Selection Committee. The artist or artist team shall submit to the Parks and Recreation Commission a Final Design Plan (including final narrative, budget, and anticipated maintenance plan and installation schedule) and a two-or three dimensional models with sample materials and dimensions. The budget must detail art consultant fees, artist fees, and fabrication, transportation, installation, and maintenance expenses. The budget exclusive of the maintenance expenses shall be equal to the total amount to be expended on the proposed artwork.
7. After the Final Design has been submitted to the Commission, the artist, or artist team, shall make a presentation of the final design to the Commission for review and approval. Representatives from other City departments and any stakeholder groups will be invited to attend the Commission meeting

and participate in the review. The Parks and Recreation Commission will make its recommendation to the City Council on the Final Design.

8. The Final Design will be approved by the City Council.

### **Use of Funds**

All funds appropriated for public art will be deposited in the Public Art Fund. The City Council shall authorize projects for funding as prescribed in the public art implementation guidelines. In circumstances where it is not feasible to incorporate artistic features into a particular project, such money will be pooled and used for art in other projects. Disbursements shall be made in connection with projects approved by City Council. Nothing herein prohibits the City from soliciting or receiving grants, donations, bequests or gifts from private or public sources.

For individual pieces of art the Art Advisory Committee will recommend, to the City Council, what percentage of the funds will be set aside for the Public Art, Maintenance, and Administration and Education based on the guidelines below.

1. Public Art Funds

No less than sixty-five percent (65%) of the money fees collected shall be directed for Public Art Acquisition and may be spent for the following purposes:

- a) Artists' services and fees.
- b) Acquisition of art.
- c) Artist selection processes, including jury selection costs and model or design fees.

No more than fifteen percent (15%) of the money collected may be directed for Maintenance and curatorial services

- a) Identifying plaques
- b) Repair, maintenance, surveys, curatorial services, and other conservation work necessary to keep all artworks in the City collection in standard condition

No more than twenty percent (20%) of the fee may be directed for Public Art Administration and maybe spent for the following purposes:

- a) Project administration.
- b) Community education programs, publicity, dedications, and other purposes as recommended by Parks and Recreation Commission and approved by the City Council.



Original Public Art Selection Process

Proposed Public Art Selection Process



## RESOLUTION NO. 2021-29

### A Resolution of the City Council of the City of Brisbane Authorizing Examination of Sales and Use Tax Records

**WHEREAS**, pursuant to Ordinance Number 11, the City of Brisbane (City) entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of sales and use taxes; and

**WHEREAS**, pursuant to Revenue and Taxation Code section 7270, the City entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of transactions and use taxes; and

**WHEREAS**, the City Council of the City of Brisbane deems it desirable and necessary for authorized officers, employees and representatives of the City to examine confidential sales or transactions and use tax records of the Department pertaining to sales and use taxes collected by the Department for the City pursuant to that contract; and

**WHEREAS**, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department records, and Section 7056.5 of the California Revenue and Taxation Code establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales or transactions and use tax records of the Department;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** That the City Manager, Assistant City Manager, Administrative Services, Director, Finance Director, Deputy Finance Director, Financial Services Manager, Economic Development Manager, or other officer or employee of the City designated in writing by the Finance Director to the California Department of Tax and Fee Administration is hereby appointed to represent the City with authority to examine sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department pursuant to the contract between the City and the Department.

**Section 2.**

The information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to that contract, and for purposes related to the following governmental functions of the City:

- (a) [Budgeting and Fincial Planning
- (b) Economic Development
- (c) Land Use Planning

The information obtained by examination of Department records shall be used only for those governmental functions of the City listed above.

**Section 3.** That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and MuniServices, LLC:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

**BE IT FURTHER RESOLVED** that the information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to the contract between the City and the Department and for those purposes relating to the governmental functions of the City listed in section 2 of this resolution

**Section 4.** That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to any petition or appeal for the reallocation/redistribution of sales or transactions and use taxes that was filed by MuniServices, LLC. on behalf of the City pursuant to the contract between the MuniServices, LLC. and City. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and the MuniServices, LLC.:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

**Section 5.** That this resolution supercedes all prior resolutions of the City Council of the City of Brisbane adopted pursuant to subdivision (b) of Revenue and Taxation Code section 7056.

janiIntroduced, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

ATTEST: (s) \_\_\_\_\_ (s) \_\_\_\_\_  
City Clerk Mayor

I, \_\_\_\_\_, City Clerk of the City of \_\_\_\_\_, California, DO  
HEREBY CERTIFY that the foregoing resolution was duly introduced, approved and adopted by the  
City Council of the City of \_\_\_\_\_, at a regular meeting of said Council held on  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following roll call vote:

Ayes: (Names of Councilmembers)

Noes: (Names of Councilmembers)

Absent: (Names of Councilmembers)

(s) \_\_\_\_\_  
City Clerk