



City Council Agenda Item

City Council Meeting Date: September 19, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Adoption of Resolution No. 6605(23) Reaffirming the Lompoc Mural Project and Approving Mural Installation Sites

Recommendation:

Staff recommends the City Council consider whether to adopt Resolution No. 6605(23) (Attachment 1) which will reaffirm the Lompoc Mural Project as a City Project and approve 18 mural installation sites not previously approved by the City Council; or provide alternative direction.

Background:

At the February 21, 2023, meeting, the City Council requested a future agenda item to discuss the City's relationship with the Lompoc Mural Society. Staff researched the history of the Lompoc Mural Project and Mural Society, and met with the Mural Society on May 12, 2023, and August 3, 2023, to discuss the status of the relationship.

Following is a history of the Lompoc Mural Society:

August 12, 1988: Initial "Lompoc Mural Project" public conceptual meeting attended by 55 Lompoc citizens. The Mural Project goals and objectives were outlined and introduced by the Lompoc Overall Economic Development Plan Committee, Lompoc Downtown 2000 Committee.

August 29, 1988: Second "conceptual" public meeting attended by 20 Lompoc citizens. The Mural Project goals and objectives were outlined and introduced by the Lompoc Overall Economic Development Plan Committee, Lompoc Downtown 2000 Committee.

September 20, 1988: On a 3-1 vote, the City Council accepted the Mural Project as a City Council project, permitting the Mural Project to apply for

a funding grant, with the understanding that whenever significant money is to be spent for the project, that item would be brought to Council, prior to the expenditure of funds.

October 4, 1988: City Council approved establishment of accounts for the receipt of Mural Contributions/Grants in the Trust and Agency Fund.

December 6, 1988: City Council unanimously approved the Mural Committee to collect funds for the Mural Project through voluntary contributions on the City utility bills.

May 16, 1989: City Council adopted Resolution No. 3835(89) requesting the Economic Development Administration to approve Lompoc's Overall Economic Development Plan update for Fiscal Year (FY) 1989-90, approving \$10,000 for the Lompoc Mural Project, with further matching fund contributions to be determined during the budget review.

October 3, 1989: City Council adoption of Resolution No. 3887(89) (Attachment 2), authorizing the City Administrator to execute site agreements with private property owners and artist agreements with mural artists for installation of murals. This authority was limited to only the six mural sites that had been approved by the City Council.

January 16, 1990: City Council accepted the tourism grant amounts totaling \$46,750, recommended by the Overall Economic Development Plan Committee, of which \$10,000 was recommended for the Lompoc Mural Project.

February 19, 1991: City Council approved the recommendation of the Overall Economic Development Plan Committee for Tourism Funding, FY 1990-91, of \$15,000 for Mural Committee.

March 12, 1991: The Mural Committee advised that a portion of all future fundraising activity would be set aside for maintenance of the murals.

April 2, 1991: City Council adopted Resolution No. 4036(91) again authorizing the City Administrator to execute Site and Artist Agreements for the Lompoc Mural Project, limited to sites within the scope of the Mural Project as previously approved by City Council action.

November 17, 1992: City Council approved seven additional sites for Mural Project murals.

- December 15, 1992: City Council representative appointed to the Lompoc Mural Project.
- February 17, 1998: City Council unanimously voted to remove the Lompoc Mural Society from their list of Committees on which they serve as appointees of the City Council.
- March 6, 2001: City Council approved four mural sites.
- December 3, 2002: City Council approved eleven mural sites.
- February 1, 2005: City Council approved seven mural sites.
- May 16, 2006: City Council approved eight mural sites.

Site Agreements and Artist Agreements

As noted above, the City Council has authorized the City Manager to enter into site agreements with private property owners and artist agreements with mural artists for any mural site that has been approved by the City Council. The City Council approved the form of the site agreements and artist agreements.

The agreements require the City to cover the costs of installing the murals, payment to the artist, maintenance of the murals, and removal when necessary or desired. The agreements also make the City responsible for any damage to the building or other property of the property owner caused by the mural or its installation or maintenance. In practice, the Mural Society has been performing these actions (installation, maintenance, removal) on a volunteer basis and covering the cost of the artists through fundraising and grants.

Mural Sites

Over the years 35 mural sites have been officially recognized and approved by the City Council (some sites were approved more than once). However, in addition to those, the City has entered into site agreements for 18 additional sites for which we are unable to locate any City Council approval.¹ If those 18 sites were never approved by City Council, it is unknown why past City staff executed agreements for murals on those sites.

A table listing the approved mural sites and unapproved mural sites is provided as Exhibit A to Resolution No. 6605(23), Attachment 1 to this staff report.

¹ Further, there are at least three additional murals, including the County Courthouse, that staff is aware of that are not associated with the Mural Project or the Mural Society.

City's Relationship with the Lompoc Mural Society

The Lompoc Mural Society consists of a group of volunteers who have created By-Laws and elected a Board of Directors. However, they have not obtained any official legal status as a nonprofit corporation or other legal entity. Therefore, the Society is not capable of entering into legal agreements or taking on legal responsibilities, unless an individual member or members wanted to personally take on the responsibility or liability.

When the City adopted the Mural Project as a City Project in 1988 it essentially agreed to act as the legal entity to enter into contracts with artists and site agreements with property owners, and take on the legal responsibility for installation, maintenance, removal, and liability for any property damages or injuries related to the murals. All the agreements state that the mural, when finished, will be the property of the City, with some rights remaining with the artist. In practice, all maintenance, storage, restoration, placement, art review and approval, has been conducted by the Mural Society although they are not contractually obligated to do so.

For many years, the City also conducted fundraising for the Mural Project by a utility bill round-up whereby utility customers could round up their bills to donate to the Mural Project. Those funds were then set aside in a separate account managed by the City and disbursed to the Mural Society upon request. Funds remain in that account to this day even though the round-up is no longer an option on City utility bills. As an alternative, the City has an option for accepting donations for the Mural Project on its website, or through their utility bills in a whole dollar amount determined by the customer.

Resolution No. 3887(89) (Attachment 2) authorized the City Administrator to execute site and artist agreements in a form attached to that resolution. In 1991 Resolution No. 4036(91) gave additional authority to the City Administrator to sign alternative site agreements within the scope of the Mural Project. The site agreement forms and artist agreement forms have been updated from time to time by City Attorney Office staff to comply with current laws concerning contracts.

Nonprofit Status

The Lompoc Mural Society is not an official nonprofit corporation or any other type of official legal entity. However, in 2002 the Lompoc Mural and Public Arts Coalition (LAMPAC) was established as a California Public Benefit Corporation. Since 2002, they have provided fundraising for the arts in Lompoc, including the Mural Project. The funds the Mural Society raises and grants they receive have been funneled through LAMPAC since its formation. Prior to that when the Mural Society did obtain grants they were often funneled through another nonprofit entity, or the City, which also has nonprofit status. LAMPAC will continue to act as the Mural Project's fundraiser.

Discussion:

With an aging group of volunteers, the Lompoc Mural Society has requested the City's assistance in ensuring that the Mural Project will continue into the future and that the

murals will be maintained. There are no new murals expected in the near future, with the Landsat mural at 201 W. Ocean being the most recent in 2021.

There are several murals in storage, as well as several restoration projects currently taking place. The Mural Society has the ability to swap out murals of equal size on buildings when required. This results in some murals being moved around and old murals beyond their life being decommissioned. So even without new projects being planned, there continues to be extensive work required to maintain the existing murals.

The City can continue to assist the Mural Society by providing fundraising opportunities, including the link on the website that currently exists. The City may also consider providing QR codes for the murals to be placed on the placards the Mural Society has installed. Those QR codes could then be scanned by tourists and others providing information about the Mural Project and a link to a fundraising site, either the site that exists on the City website, or a new fundraising site to be provided by the Mural Society. The City can also assist the Mural Project through the Public Information Officer who can periodically promote the murals. In addition, Explore Lompoc periodically provides funds to the Mural Society for restoration of murals and they also promote the Mural Project in Lompoc.

Resolution No. 6605(23) will reaffirm the Mural Project as a City Project, approve the 18 sites not previously approved by the City Council, and provide authority to the City Manager to execute Site Agreements and Artist Agreements in a form approved by the City Attorney for any site that has been approved by the City Council, which will continue to make the City responsible for the costs of installation, maintenance, and removal in the event the Mural Society does not or cannot perform those tasks, and will continue to place the risk of liability for property damages or personal injury on the City. Any additional future sites will be presented to the City Council for approval.

Fiscal Impact:

The City has an account for donations to the Mural Society. That account is kept separate and apart from City operating accounts. Other than staff time to maintain that account, there has been no fiscal impact to the City for the Mural Project since it has been run by volunteers and expenses paid through grants/donations to LAMPAC and/or the City donation account.

However, the site agreements and artist agreements require the City to pay the cost of maintenance of the murals in the event the Mural Society does not maintain them, and the cost of removal of the murals when necessary or desired, and take on the liability risk of any damages or injuries related to the murals.

Conclusion:

The Mural Project is a beautification and tourism project, which brings visitors to Lompoc from around the world. Preserving its status as a City Project will help to maintain the project and its murals into the future.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", written in a cursive style.

Jeff Malawy, City Attorney

Attachments: 1) Resolution No. XXXX(23)
2) Resolution No. 3887(89)