

CAC RESOLUTION NO.

A RESOLUTION OF THE CULTURAL ARTS COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING PUBLIC ART MURAL PERMIT (PUBART 10383-2018) TO ALLOW THE INSTALLATION OF AN ARTIST'S RENDITION OF CUAUHATEMOC AND THE PREGNANT VIRGIN AT A PROPERTY LOCATED AT 115 W. SECOND STREET, ASSESSOR'S PARCEL NUMBER 8341-001-030.

WHEREAS, the applicant, Dia De Los Puercos c/o Rick Garcia, has submitted an application for Public Art Mural Permit (PUBART 10383-2018) to allow the installation of an artist's rendition of cuauhatemoc and the pregnant virgin at a property located at 115 W. Second Street, Assessor's Parcel Number 8341-001-030;

WHEREAS, pursuant to Section .5809-25 of the Pomona Zoning Ordinance, the Advisory Committee of the Commission shall review the application and make a recommendation to the Commission on whether to approve the application;

WHEREAS, On January 28, 2019, the Cultural Arts Commission Citizens Advisory Committee considered Public Art Mural Permit (PUBART 10383-2018) and voted recommending that the Cultural Arts Commission approve the project;

WHEREAS, the subject property has a General Plan, Place Type designation of Activity Center;

WHEREAS, the subject property is located in the Downtown Core of the Pomona Corridors Specific Plan;

WHEREAS, the Cultural Arts Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on January 28, 2019 concerning the requested Public Art Mural Permit (PUBART 10383-2018); and

WHEREAS, the Cultural Art Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Cultural Arts Commission of the City of Pomona, California:

SECTION 1. Pursuant to the provisions of the California Environmental Quality Act (CEQA-Public Resources Code, Section 21084 et. Seq.), the guidelines include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. In compliance with Article 19, Section 15301, (Class 1 – Existing Facilities), the proposed project described above hereby meets the guidelines for a Categorical Exemption. Therefore, no further environmental review is required.

SECTION 2. If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

SECTION 3. Based upon careful consideration of all pertinent testimony and the staff report offered in the case as presented at the public hearing, the Cultural Art Commission hereby approves Public Art Mural Permit (PUBART 10383-2018) subject to compliance with all applicable laws and ordinances of the City:

Planning

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Cultural Arts Commission on January 28, 2019. Any major modifications to the approved project plans shall be reviewed and approved by the Cultural Arts Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Planning Manager.
2. This approval shall lapse and become void if the privilege authorized is not utilized within one year from the date of this approval (January 28, 2020). The Planning Manager may extend this period for one year upon receipt of an application for a Time Extension request submitted by the applicant at least thirty days before the expiration date of this approval.
3. The project is subject to a twenty day appeal period. Written appeals may be filed by the applicant with the City Clerk within twenty days of the decision of the Commission. The City Council shall only review applications that have been denied by the Commission.
4. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or

any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

5. In case of a violation of any of the conditions of approval and/or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety (90) days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law.
6. The mural shall remain in place without alteration for a minimum of five years from the date the mural is completed. The property owner shall certify in the permit application that the property owner agrees to maintain the mural in place for a minimum period of five years without alterations.
7. After the term of five years from the date of completion, an Original Artwork Mural may be removed without notification. The building wall surface must be fully restored to its original pre-mural condition.
8. The mural shall not extend more than six inches from the plane of the wall to which it is attached.
9. The property owner is responsible for ensuring that a permitted Original Artwork Mural is maintained in good condition and fully repaired in the case of vandalism or accidental destruction.
10. Failure to maintain the Original Artwork Mural is declared to be a public nuisance, and may be summarily abated or repaired by the City. In the event the property owner fails to maintain the mural, upon reasonable notice, the City may perform all necessary repairs or maintenance to the mural or secure insurance, and all costs incurred by the City shall become a lien against the property.
11. Any future substantial changes in the approved plans, except as allowed for by the following conditions, shall require a modification to the Public Art Mural Permit (PUBART 10383-2018).

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SECTION 5. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND ADOPTED THIS 28TH DAY OF JANUARY, 2019.

SALLY EGAN
CULTURAL ARTS COMMISSION CHAIRPERSON

ATTEST:

ANITA D. GUTIERREZ, AICP
CULTURAL ARTS COMMISSION SECRETARY

APPROVED AS TO FORM:

MARCO A. MARTINEZ
INTERIM ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF POMONA)

AYES:
 NOES:
 ABSTAIN:
 ABSENT:

Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6.