

CHAPTER 88.39. - ART IN PUBLIC PLACES PROGRAM

88.39.010. - Purpose.

This chapter shall be known and cited as the Azusa Art in Public Places Program, the intent and purpose of which is to enhance the physical appearance of the community by facilitating and promoting opportunities to provide for cultural enhancement. The art in public places program also has the following goals: to distinguish Azusa as a special place to live, work, play, and visit; to integrate the vision of artists with the perspective of other design professionals into the planning and design of the urban landscape; to provide every member of the community easy visual access to artworks from vehicles on major public streets; to provide a means to counterbalance what many consider to be the "negative" effects of development (e.g. construction noise, traffic, congestion, and pollution); and to strengthen cultural awareness, creativity, and innovative thinking in the community.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.020. - Definitions.

For purposes of this chapter:

- A. "Commission" means the Azusa Art in Public Places Commission, as established in Azusa Municipal Code sections 2-386 through 2-391.
- B. "Development Project" means any development project subject to the program.
- C. "Program" means the Azusa Art in Public Places Program established pursuant to this chapter.
- D. "Project Applicant" means the individual or entity subject to and required to submit an application to the commission under the program.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.030. - Findings.

The city council makes the following findings in connection with the adoption of this ordinance and the fees established herein:

- A. The purpose of this chapter is to promote the purchase and development of public artwork within the City of Azusa. All in-lieu fees collected shall be used to purchase and develop public artwork within the City of Azusa.
- B. There is a reasonable relationship between the acquisition of artwork through the program and the development projects on which the fees provided by this chapter shall be imposed because (1) artwork will enhance the real property values within the city generally, including the development projects to which the program will apply, and (2) artwork will enhance the aesthetic values of the city as a whole, make the city an attractive place to live and visit, thereby making the city more economically vital.
- C. There is a reasonable relationship between the need for cultural amenities such as art and the development projects to which the program will apply, because the development of real property

generally necessitates that additional costs be incurred and amenities be provided to provide for harmonious and aesthetically pleasing environments created by the development project.

- D. The amount of the art allocation is reasonably related to the artwork to be acquired because the amount of the fee increases as the value of the development project to which the program will apply rises, so there will be a direct and proportionate relationship between the size of the development project and the quantity or quality of artwork which can be purchased from the fees generated by the development project to which the program will apply.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.040. - Program Applicability; Art Allocation.

Commercial and industrial development or residential projects of eight dwelling units or more, with a total building project valuation of \$750,000.00 or more, are required to select, purchase and install permanent outdoor art at the development site, accessible and visible to the general public from public streets. The required minimum art allocation shall be one percent of the total building construction valuation (excluding tenant improvements), which is determined using the International Conference of Building Officials (ICBO) tables in effect at the time building permits are issued. The maximum art allocation per project will be set at \$50,000.00.

All attached and detached additions to an existing commercial or industrial building, with a valuation (for the addition) of \$750,000.00 or more shall also comply with the program. (Ord. No. 09-04, § 3, 9-8-09)

88.39.050. - In Lieu Fee.

In lieu of providing artwork in accordance with the provisions of this Chapter 88.39, the project applicant may pay the art in public places fee established by separate resolution of the city council. Allocations paid in this manner will be used to provide art in public places elsewhere in the city. Fees collected shall be deposited in the art in public places fund established pursuant to Section 88.39.090.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.060. - Determination of Building Valuation.

The minimum art allocation for each development project is equal to one percent of the total building valuation of a development project. The total building valuation is computed at the time building permits are issued, using the most current Building Valuation Data set forth by the International Conference of Building Officials (ICBO). This information is issued quarterly. Square foot value is based on the type of building construction, the proposed use of the building, and the quality of construction. An initial building valuation is estimated by the city's building official when the developer submits formal application plans to the city's planning division. The building valuation is recalculated when the development project receives building permits.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.070. - Permissible Uses of Art Allocation.

The art allocation described in Section 88.39.040 may be used to pay for the following expenditures: the artwork itself, including the artist's fee for design, structural engineering, and fabrication; transportation and installation of the artwork; identification plaque(s) for the artwork; mountings, pumps, motors or subterranean equipment, pedestals, bases, or materials directly necessary for installation of the artwork; lighting specifically illuminating the artwork; art consulting fees which shall not exceed ten percent of the total art allocation; and art appraisals requested by city staff and/or the commission.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.080. - Prohibited Uses of Art Allocation.

The art allocation described in Section 88.39.040 may not be used to pay for the following expenditures: expenses to locate the artist (e.g. airfare for artist interviews, etc.); architect and landscape architect fees; landscaping around a sculpture, that is not included as part of the artist's sculpture furnishings, including, but not limited to, functional structures, prefabricated water or electrical features not created by the artist, and ornamental enhancements; utility fees associated with activating electronic or water generated artwork; lighting elements not integral to the illumination of the artwork; publicity, public relations, photographs, educational materials, business letterhead or logos bearing artwork image; and dedication ceremonies, including unveilings or grand openings.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.090. - Art in Public Places Fund.

There will be, and there is hereby, established an art in public places fund, which shall be a separate, interest-bearing account for all fees collected under this chapter which shall be called the art in public places fund account. The art in public places fund shall be used solely for the acquisition, installation, improvement, and maintenance of artwork to be displayed in the city, and for the administration of the art in public places program.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.100. - Artist and Artwork Selection; Art Consultant.

The project applicant is responsible for selecting the artist(s) and artwork, provided both meet the program criteria. The commission shall consider each artist and proposed artwork on a case-by-case basis.

The project applicant may choose to hire an art consultant to assist with the selection of the artist and the application process. The role of the art consultant is to research and present to the project applicant, qualified artists who are able to create an appropriate artwork for their specific project. The art consultant is responsible for providing written and visual collateral on the artist(s) for the application. The project applicant may not apply more than ten percent of the total art allocation toward consulting fees. Consulting fees in excess of ten percent of the allocation shall be absorbed by the project applicant.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.110. - Value Verification.

If city staff cannot verify the value of a proposed artwork (by past records of comparable work sold, etc.), the city may choose to have the artist's proposal and/or other completed works appraised by a qualified art appraiser selected by the city. The project applicant shall pay up front for any art appraisal service fees. This expense may be deducted from the total art allocation.

(Ord. No. 09-04, § 3, 9-8-09)

88.39.120. - Application Process.

- A. **Plan Review.** Upon submittal of a development proposal for plan approval to the city's planning division, the planning division will assess the valuation of the development project. If the development project is valued at \$750,000.00 or more, staff will inform the project applicant of the estimated one percent art allocation for the development project. The project applicant will be given full program details including the art in public places policy application. Artwork must be approved prior to issuance of a building permit and in place prior to issuance of a certificate of occupancy.
- B. **Artist Selection.** If the project applicant chooses to purchase and install artwork rather than pay the art allocation directly to the city, the project applicant must select an artist(s) who meets the program criteria. The project applicant and selected artist should collaborate in packaging the art application for review by the commission.
- C. **Commission Review.** The project applicant must submit the art in public places application to the city's planning division, which will schedule an appointment with the commission for review of the application.
- D. **Notification and Follow-Up.** The project applicant shall be notified in writing of the commission's decision within ten days of the review meeting. If the artwork is approved, any outstanding items that must be completed by the installation date will be listed and given to the project applicant.

If the artwork is not approved, the reason(s) for denial will be noted, including possible modifications or additions which could lead to recommended approval. Should the project applicant agree to the modifications, he/she may resubmit an application to the commission for reconsideration. The project applicant may also appeal the commission's decision to the city council in accordance with the appeal process provided in Section 88.39.120(E). Once approved by the city, the project applicant shall inform the city of the approximate date the artwork will be installed.

- E. **Appeals.** The project applicant must file the city clerk a written request for an appeal within ten days of notification of the commission's recommendation. All items for appeal should be addressed to the city council. Upon filing an appeal, the city clerk shall set the hearing date and notify the applicant. The city council may affirm, reverse, or modify in whole or in part any commission recommendation or requirement. The city council's decision shall be final and conclusive.
- F. **Unveiling Plans.** The project applicant shall contact the planning division regarding any unveiling or dedication ceremonies for the artwork. An unveiling or dedication is strictly optional. In the event the project applicant chooses to conduct an unveiling or dedication, city staff shall provide the project applicant with an invitation list of city council members and commissioners, and other appropriate guests. City staff shall work with the project applicant to promote press opportunities and public interest in the artwork.

(Ord. No. 09-04, § 3, 9-8-09)

A. Artistic Qualifications.

1. **Experience.** Artists should be working artists, who have a portfolio which includes outdoor art. Qualified artists should have experience in design concept, fabrication, installation, and long-term durability of large-scale exterior artworks. Artists must be able to successfully collaborate with design teams, architects, art consultants, developers, engineers, fabricators, and landscape architects, and meet scheduled deadlines. Artists should also have experience in negotiating and contracting their work responsibly. Artists who do not meet these criteria will not be approved by the commission.
2. **Verification of Past Works.** Artists must be able to verify the value of the proposed artwork, based on their previous and current public art commissions. The commission will look for purchase prices of similar works sold by the artist (by size, medium, etc.) which progressively increase toward, or exceed, the proposed commission amount. The city may request records, including but not limited to, sales contracts, invoices, and payments. Gallery list prices or asking prices of works are not necessarily comparable, as they are not records of a willing buyer. If the value of the proposed art piece cannot be verified (by records of past comparable sold works, etc.), the city may choose, at its sole discretion, to have the artist's proposal and/or other completed works appraised by a qualified art appraiser. This expenditure shall be counted toward the total art allocation, and shall be borne by the developer. The value of the proposed artwork shall be verified prior to commission review as to not delay the approval process.

B. Artwork Criteria.

1. **Artistic Expression and Innovation.** Proposed artworks shall demonstrate how they will effectively engage the public, and invite a "second look." Works engaging to the public are often described as thought provoking, inspiring, entertaining, clever, whimsical, powerful, reflective, or symbolic. Innovation and originality are encouraged and expected. The commission takes interest in the artist's creative thought process in relationship to the specific development project. Therefore, existing works are not generally encouraged. Artists shall be able to thoroughly discuss the following elements of their proposal with the commission: expressive properties (mood, feeling, message, symbolism) and formal properties (balance, emphasis/dominance, repetition/rhythm, unity, form/shape, texture, color).
2. **Scale and Content.** Artworks must be appropriate in scale, material, form, and content to their immediate, general, social, and physical environments. The artwork shall not look like an afterthought to the development. The following are not acceptable:
 - a. Mass produced reproductions or replicas of original works of art. Exceptions are signed sculptures by the original artist for reproduction. (Edition limit: 5).
 - b. Functional equipment, which may be considered part of an amenities package, such as benches, chairs, fountains, etc.
 - c. Decorative or ornamental pieces which are not designed by a qualified, acceptable artist, including historical markers or bells, bell towers, obelisks, minor architectural ornamentation, and garden sculpture.
 - d. Art as advertisements or commercial signage mixed with imagery.

3. **Permanence and Materials.** The following are recommended materials: bronze, stainless steel, high-grade hard stone. The following materials are not recommended: Cor-ten steel, wood, soft stone (e.g. alabaster). Materials not listed may be considered, in the event the artwork application includes a comprehensive plan which meets the interest and standards of the commission and staff. Rust proof materials must be used wherever possible. Artists will be asked to provide a breakdown by percentage of metal alloys for bronzes from four to ten percent. Thickness and grade/quality of steel works will be reviewed for rust proof durability. Artists shall take no shortcuts. All materials (including nuts, bolts, and other metal fixtures) will be in contact with each other that may produce rust. Artists must be able to clearly demonstrate the quality, craftsmanship, and durability of their artwork. Substantial consideration shall be given to structural and surface integrity and stability, permanence and resistance against theft, vandalism, and the probability of excessive maintenance and repair costs. Artworks shall be constructed of durable, long-lasting materials that are able to withstand outdoor display, and require low maintenance. When selecting an art piece, project applicants shall keep in mind that property owners are responsible for the maintenance of the artwork for its lifetime.
4. **Multiple Editions.** If the proposed artwork is one of multiple editions, the applicant shall include the edition number of the piece, and provide the location of all other editions. To maintain the value of the proposed artwork, similar editions may not be publicly displayed within a 50-mile radius of the Azusa Development Project site, unless both the commission and the owner of existing and/or future editions grant permission.
5. **Water Features and Fountains.** Water feature pieces, or artwork requiring water, must be conceptually designed by an acceptable, qualified visual artist in order to be considered for the program. The artwork must stand on its own should the water cease to function properly. There must be a demonstrated collaboration between the artist and the water feature design company. The intent of the program is to promote the work of visual artists, not water feature design companies. Water related costs, such as pump and pool construction, will be evaluated by the commission for consideration as part of the overall art allocation. Project applicants are welcome to exceed the arts budget to construct a water feature. However, water features will not be accepted in lieu of the art in public places requirement. No more than 30 percent of the total art allocation may be utilized for water-related costs.

C. Site and Installation Requirements.

1. **Visibility.** Artwork is to be located outdoors and easily visible to both motorists and pedestrians from a major public street. Distance from the artwork to the public street should typically not be greater than 50 feet. Artwork may not be placed near monumental signs, sign walls, bus benches, or utility boxes, as these structures may impede the public's view from the street or diminish the aesthetic value of the artwork. Lettering, symbols or signage are not permitted upon the artwork or its foundation, except as intended by the artist. Visibility to the general public is the key criteria in approval of artwork location. Exceptions can be made for large open or enclosed public areas such as shopping malls, which may have their art piece(s) in an interior public location.
2. **Signage.** Permanent signage of any type is not permissible in or around the immediate area of the artwork. This includes the foreground, background, or adjacent areas of the artwork. Signage should not distract or diminish the aesthetics of the artworks, when the public views the artwork from the

most accessible vantage points (e.g. intersections, entryways). The commission will review all signage plans and ask the applicant to provide alternative locations should the signage interrupt the public's view.

3. **Lighting and Electrical.** Artwork shall be properly lit during evening and nighttime hours. All lighting and electrical elements should be in good working condition and meet all current safety conditions. Lighting and electronic elements, not integral to the sculpture, will not be included as part of the art allocation. Lighting plans must be submitted as part of the application.
 4. **Landscaping and Base.** Landscaping and art base should be well integrated and securely installed. The sculpture must also be secured to the base. A licensed structural engineer must approve and certify the installation plans as structurally sound, safe, and durable. The base shall only house the artwork and plaque, if applicable.
 5. **Identification.** Each artwork shall be identified by a cast bronze plaque approximately eight inches by eight inches. The plaque shall be placed in a ground location near the artwork, listing only the title, artist, and date of installation. The Commission must approve any additional plaques that may be requested.
- D. **Maintenance.** All property owners are responsible for maintaining their artwork for its lifetime and replacing the artwork should it be damaged beyond repair, destroyed, or stolen. The project applicant should demonstrate that the selected artwork is constructed for permanent outdoor display and that provisions have been made for its long-term care.
- E. **Damaged Artwork.** The property owner is responsible for repairing the artwork in the event of damage and/or vandalism. Artwork damaged or vandalized shall be repaired as closely as possible to the original approved artwork. If repair is needed, the original artist must be given first refusal on repair(s) for a reasonable fee. If the original artist is not available or is unwilling to perform the required repair(s) for a reasonable fee, the owner shall make arrangements for repair(s) with a reputable art conservator. The owner shall be responsible for notifying the commission and city staff of the steps that will be taken to repair the artwork.
- F. **Replacement of Artwork.** In the event the artwork is destroyed, damaged beyond repair, stolen, or otherwise removed from the site, the owner shall replace the artwork with a new work of art. The owner shall submit an application to the city for review by the commission. The new artwork shall comply with all of the requirements of the program in effect at the time the work is replaced. The allocation for the new (replacement) artwork shall be calculated at one percent of the current total building valuation, as computed by the most current Building Valuation Data set forth by the International Conference of Building Officials (ICBO). The replacement process shall be completed within a six to 12 month time frame unless otherwise agreed to by the city.
- G. **Donation of Artwork to City.** Although the artwork is located in public view, the intent of the program is for the artwork to be located on private property as part of the fixed assets of that property. Therefore, the city does not encourage the donation of public art to the city. However, in special cases where it is impossible for artwork to remain on private property and/or be maintained by the property owner, the city may consider accepting the donation of an artwork. Property owners may submit a written request to the

commission describing the unique circumstances and the reasons why they are requesting that the city accept the donation of the artwork. The commission will review their request, discuss the proposal and forward a recommendation to the city council.

(Ord. No. 09-04, § 3, 9-8-09)