

10-1-1114: ART IN PUBLIC PLACES:**A. DEFINITIONS.**

For the purposes of this section, the following definitions apply:

DEVELOPMENT PROJECT: Shall mean any development which requires a building permit. If more than one (1) building is being constructed, then the Development Project shall be the sum of all building permits issued on one (1) legal lot or on more than one (1) legal lot if a covenant which runs with the land is recorded with the County Recorder's Office which holds two (2) or more lots as one for purposes of the art requirements herein. Development Projects exempt from this section are set forth in Subsection (K) below.

PROJECT DEVELOPER: Shall mean the owner, including its successor and assigns, of the subject property.

TOTAL PROJECT COST: Shall mean building valuation for a particular building or improvement for which a building permit is issued, as computed by using the latest Building Valuation Data as set forth by the International Conference of Building Officials (ICBO). Parking garages shall be excluded from the computation of Total Project Cost.

B. ART ALLOCATION REQUIREMENT.

Prior to the issuance of a building permit (or the first building permit, if several are being combined) for any non-exempt Development Project, the Project Developer shall have either (i) received approval from the Art in Public Places Committee authorizing the construction and installation for the lifetime of the Development Project of a work or works of public art on the project site pursuant to this section and the Guidelines below, or (ii) paid a fee to the Art in Public Places Fund established pursuant to this section in lieu of the obligation set forth in (i) above. This fee, if paid shall not be considered an impact fee as defined in Government Code Section 66000 et seq. Rather the fee is an alternative satisfaction of a development standard. Alternatively, the Project Developer may enter into an Art Deferral Agreement with the City whereby cash, or other security in a form acceptable by the City Attorney, in the amount of the in-lieu fee is deposited with the City prior to the issuance of building permit, and such fee (but not any interest generated therefrom) will be refunded to Project Developer upon the completion of the Artwork. No partial refunds will be allowed. The time for the completion of the Artwork shall be a reasonable one. If a Project Developer desires to provide Artwork which is less than the Minimum Allocation for any project, the difference can be paid to the Art in Public Places Fund before building permit issuance.

C. MINIMUM ALLOCATION COMPUTATION FOR ART.

The Minimum Allocation for art in public places ("Minimum Allocation") shall be calculated as follows:

1. One percent of the Total Project Cost for the first 15 million dollars;

2. Three-quarters (0.75) of one percent of the Total Project Cost, for that portion between 15 million and 25 million dollars, in addition to (1) above; and

3. One-half (0.50) of one percent of the Total Project Cost for that portion equal to or in excess of 25 million dollars, plus (1) and (2).

D. GUIDELINES FOR WORKS OF ART.

The Art in Public Places Committee shall apply the following Guidelines to determine compliance with this Section:

1. Examples. The following art projects are examples of acceptable projects:

a. Sculpture - free standing, wall supported or suspended, kinetic, electronic or mechanical in any material or combination of materials;

b. Murals or paintings permanently affixed to a building -- in any material or variety of materials, with or without collage or the addition of non-traditional materials and means;

c. Earthworks, fiberworks, neon, glass, mosaics, photographs, prints, calligraphy, and any combination of forms of media permanently affixed to a building;

d. Standardized Fixtures such as gates, grates, streetlights, street furniture, signage, fences, staircases, balconies, timepieces, flagpoles, and other design enhancements as are rendered by an artist for unique or limited editions;

e. Decorative, Ornamental or Functional Building Elements such as archways, columns, pediments, fountains, capitals, fanciful characters, cornices, gables, balustrades, peristyles, friezes, porticoes or other architectural elements of a building designed by an artist;

f. Directional Elements such as supergraphics, signage or color coding to the extent that these elements are integral parts of an original work of art; and

g. Extraordinary Landscape architecture and landscape gardening when designed by an artist.

2. Composition. The composition of the art project shall be of durable and weather resistant materials.

3. Scale. The art project shall be scaled in a size that is proportional to the size of the Development Project and an integral part of the landscaping or architecture of the project.

4. Location. The art project shall be located on-site as follows: at least 50 percent of the Minimum Allocation shall be invested in works of art on the exterior of the Development Project and in permanent view of both pedestrians and motorists; provided, however,

that this provision shall not apply to enclosed shopping malls with at least 1,000,000 square feet of gross leasable area in which case 100 percent may be within the enclosed portions of the mall, accessible to the visitors thereto. The balance of the Minimum Allocation may be utilized for an art project(s) in interior locations of the Development Project provided that the location(s) are designed for use by the general public and are accessible to the public during normal business hours.

5. Additional Guidelines to be adopted and assistance on artists selection. The Art in Public Places Committee shall adopt additional Guidelines to further assist Project Developers in implementing this section, and the Park, Recreation and Community Services Department staff shall develop a resource library on artists which shall be made available to developers at no charge. The Park, Recreation and Community Services Department is authorized to provide assistance, at no charge, to the Project Developer, in selecting and locating a qualified experienced artist for the project. The Department staff may meet with the Project Developer and show him or her examples of works by experienced artists meeting the program's criteria and to provide a list of artist's names and art consultant's names. The Department staff may also recommend private art consultants who could assist the Project Developer with artist selection.

E. ALTERATION OR RELOCATION ART.

An on-site work of art may not be modified, altered, relocated or removed without the prior approval of the Art in Public Places Committee. Removal without relocation or a substitute art work shall be prohibited. Any modification, alteration, relocation or removal of art work(s) or approval of alteration or relocation granted by the Art in Public Places Committee shall be subject to the California Art Preservation Act, the Visual Rights Act, or other similar state and federal laws.

F. VERIFICATION OF EXPENSES.

The Project Developer shall provide satisfactory evidence to the Park, Recreation and Community Services Department of Project Developer's actual art investment as proof that its Minimum Allocation has been invested on art on-site, prior to the issuance of the certificate of occupancy for the Development Project.

1. Eligible Costs.

A Project Developer may include the following expenses in computing his actual art investment:

- a. Artists professional design and production fee inclusive of labor, materials and services including reasonable Art Consultant/Management fees, not to exceed ten percent of the allocation.
- b. Travel costs of the artist for site visitation and research.
- c. Transportation costs of the work to the site.

- d. Installation of the completed work.
- e. Sales tax.
- f. Any required permit or certification fees.
- g. Identification plaques.
- h. Business and legal costs directly related to art.
- i. Direction or other functional elements such as supergraphics, signing, color coding, maps, etc., provided they are an integral part of an original work of art.
- j. Walls, bases, pools or other architectural components on or in which works of art are placed or affixed, provided they are an integral part of the work of art.
- k. Electrical, water or mechanical service for activation of the work, which is an integral part of the work of art.

2. Non-Eligible Costs.

The following are non-eligible expenses:

- a. Preparation of the site except as necessary to receive the works of art.
- b. Exhibitions and education aspects which are interpretative of and tangential to the actual work of art. This includes exhibition of sketches and marquettes, tours and docents, videotaping or filing of construction and installation of art work.

3. Artist's Compensation/verification of costs.

All financial arrangements shall be negotiated between the Project Developer and the artist and shall be verified in a written agreement. Copies of the executed contracts between the Project Developer and the artist(s) shall be submitted to the Park, Recreation and Community Services Department prior to the issuance of the certificate of occupancy.

G. MAINTENANCE OF ART.

The Project Developer shall maintain the work(s) of art and any related landscaping and lighting for the life of the Development Project. Project Developers shall perform necessary repairs and maintenance to the satisfaction of the City. Failure to repair or maintain the art work shall be a violation of this section.

H. SUBMISSION PROCESS.

- 1. Building Permit. In conjunction with the application for a building permit, a Project Developer shall submit a completed application to the Park, Recreation and Community Services Department which shall be presented to the Art in Public Places Committee for

a finding of compliance with this Section.

2. Application Requirements: Art Work. The art submittal application shall include the following:

- a. Evidence that the art was designed and created by an experienced artist, and
- b. A complete site plan depicting location on-site, landscaping, lighting and other appropriate accessories to complement and protect the art project, including plans for structural support and identifying plaques. The plaques shall list only the date, title and artist and shall not be mounted directly on the art project itself.
- c. Project Developer may alternatively indicate in writing his or her intention to pay the alternative fee, in-lieu of constructing the art.

3. Application Requirement: Minimum Allocation Calculations. An art work submittal application (including a request to pay the alternative fee in-lieu of constructing the art) shall provide calculations of Project Developer's Minimum Allocation, as verification of the proper Minimum Allocation. A Project Developer shall have his or her Minimum Allocation verified by the Community Development Department, who shall forward the finding to the Park, Recreation and Community Services Department.

- a. Multi-phase Projects. In the case of multi-phase projects, the Minimum Allocation shall apply to each phase of the project. A phase shall be deemed to be all those buildings on one site for which building permits are issued within a consecutive 60-month period.
- b. Credit. Project Developers of long-term, multi-phase projects are encouraged to accelerate their investment in works of art. Any such accelerated investment in works of art at a project site shall be credited against the Project Developer's Minimum Allocation on future phases at the same site, together with imputed interest at the rate of ten percent per annum, not to exceed 36 months until such future Minimum Allocations would otherwise be payable under the provisions of this section. This provision shall apply to any works of art complying with the provisions of this section which are installed after the effective date of this section.

4. Application to Committee. The completed application, including a verified Minimum Allocation, shall be submitted to the Art in Public Places Committee by the Park, Recreation and Community Services Department. Within 30 days of the Park, Recreation and Community Services Department's receipt of a completed application, the Art in Public Places Committee shall render a written determination of whether such plan complies with the provisions of this section. The powers of the Committee shall be limited to finding compliance with Subsections (D) and (E) of this section and the Guidelines. In no way shall this Committee rule upon artistic content when considering the plans. The Art in Public Places Committee action shall be final.

5. Installation of Art and Verification of Expenses Required Prior to Certificate of

Occupancy. Prior to the issuance of a certificate of occupancy, the Project Developer shall install the approved work(s) of art as proposed to and approved by the Art in Public Places Committee, and have his or her expenses relating to the actual art investment verified with the Park, Recreation and Community Services Department in accordance with Subsection (F) herein. In the event fabrication and/or installation of the works of art is proceeding diligently but has not been completed prior to the issuance of a certificate of occupancy, the Project Developer shall deliver to the City a surety bond reasonably satisfactory to the City Attorney guaranteeing that the approved works of art will be completed as proposed.

I. ART IN PUBLIC PLACES FUND.

An account shall be established in the General Fund of the City to be known as the Art in Public Places Fund to account for fees paid pursuant to this section. In lieu of committing the Minimum Allocation to an on-site art project, the Project Developer may pay all or a portion of the Minimum Allocation to the City for deposit into the Art in Public Places Fund. Such funds shall be used subject to Council approval for (1) for the financing of art projects including, but not be limited to the acquisition, installation, improvement, maintenance and insurance of art work, that will be located at public buildings or on public grounds as shall be recommended by the Art in Public Places Committee; (2) for Sister City Art Exchange Programs; or (3) if requested by project developers, up to 50 percent of the one percent obligation may be allowed for arts related programs organized through the Burbank Arts Education Foundation, a nonprofit California corporation benefiting Burbank Unified School District students.

J. INTEGRATION WITH MEDIA DISTRICT STREETScape PROGRAM.

To the extent that a work of art installed by a Project Developer pursuant to this section qualifies as a Media District identity element pursuant to the Media District Streetscape Program established pursuant to Article 21 of this chapter, the Project Developer shall be entitled to receive credit under the Streetscape Program.

K. DEVELOPMENT PROJECTS EXEMPT FROM THIS SECTION.

The provisions of this section shall not be applicable to the following:

1. Child care centers;
2. Single family homes;
3. Single family subdivisions with less than 30 units;
4. Commercial and industrial projects with a building valuation, as defined in this Subsection (A), of \$500,000 or less;
5. Multifamily residential projects with a building valuation of \$1,500,000 or less;
6. Low and moderate income housing projects and senior housing projects funded or

assisted by the Redevelopment Agency or the Housing Authority;

7. Any public capital improvement project for which legal restrictions preclude the application of this section; or any public project which the City Council, Redevelopment Agency, Housing Authority, or Parking Authority exempt;

8. Building remodeling, building additions and related activities where the building valuation is not increased by more than 50 percent;

9. Nonprofit social service institutions construction projects; and

10. Any building built on a portion of a site which is completely screened from view from adjacent public right of way or from those portions of the site open to the general public, provided that the height of the building does not exceed the height of the buildings that screen it from view.

L. AUTHORITY TO EXECUTE COVENANTS.

The Director of Park, Recreation and Community Services shall have authority to execute covenants authorized in this section on behalf of the City. [Added by Ord. No. 3290; Amended by Ord. No. 3818, eff. 10/14/11; 3735; 3597, 3354.]