

Chapter 13.50 - ART IN PUBLIC PLACES

Sections:

13.50.010 - Purpose.

The purpose of this chapter is to authorize the establishment of guidelines, procedures and standards for the integration of public art into new private and public development and redevelopment projects.

(Ord. 2005-5 § 1 (part), 2005.)

13.50.020 - Definitions.

In this chapter, certain words or phrases are defined as follows:

"Construction" or "reconstruction" means new construction or the rehabilitation, renovation, remodeling or improvement of an existing building, except those construction activities solely attributable to tenant improvements, having a construction cost, as defined in this chapter, of two hundred fifty thousand dollars or more.

"Development costs" means the total value of the project as determined by the building division, community development department. Calculations shall be based on construction costs as declared on all building permit applications, but shall not apply to costs solely attributable to tenant improvements. Building permit applications shall include, but not be limited to, all building, plumbing, mechanical, and electrical permit applications for the project.

"Nonprofit agency" means a corporation organized under Internal Revenue Code Section 501(c)(3), in good standing with the California Department of Corporations and in compliance with any and all federal, state, and local licensing, reporting, and tax requirements.

"Program allocation" means the amount required under Section 13.050.030 of this chapter.

"Public art" means and includes the programs established in Section 13.050.040 of this chapter.

"Public art in-lieu contribution" means the fee paid to the city of El Cerrito pursuant to this chapter, equal to one percent of development costs as defined herein. In-lieu fees shall be placed in the public art fund (established in Section 13.050.050 of this chapter).

"Public art project" means the cost for the development, acquisition, and installation of the public art required by this chapter. It shall include the costs for the administration of this public art program.

"Public construction project" means any publicly funded construction or reconstruction project, including, but not limited to, the adopted 5-Year Capital Improvement Program, as amended from time to time.

"Visual art professional" means any of the following: professional artist in any medium, curator, art critic, art historian, arts educator, architect or other design professional with a visual or arts background or fine arts collector.

(Ord. 2005-5 § 1 (part), 2005.)

13.50.030 - Contribution requirements.

- A. Private and municipal developments with development costs of two hundred fifty thousand dollars or more shall devote an amount not less than one percent of such costs for acquisition and installation of public art on the development site, subject to a maximum of one hundred fifty thousand dollars. The public art shall be installed on the development site in a location that allows the public art to be visible from a public right-of-way or from other public property. This amount shall be the program allocation.
- B. In lieu of acquisition and installation of public art on the development site, an owner or developer, at its discretion, may place a public art in-lieu contribution in an amount equal to the program allocation into the public art fund.
- C. The contribution requirement of this section shall apply to commercial, industrial and municipal projects, and residential projects that create five or more residential units. Redevelopment agency projects shall be calculated according to the total cost of the project.
- D. An existing building that is remodeled with a construction value equal to or more than fifty percent of the replacement cost of the building shall be subject to the requirements of this section.
- E. All nonprofit agency and nonmunicipal governmental development shall be exempt from the requirements of this section. The city council may exempt any municipal building from the requirements of this section.
- F. Exceptions. The requirements of this chapter shall not apply to the following activities:
 - 1. Underground public works projects;
 - 2. Street or sidewalk repair;

3. Tree planting;
 4. Remodeling, repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
 5. Construction, remodel, repair or reconstruction projects composed entirely of affordable housing;
 6. Seismic retrofit projects;
 7. Construction, remodel, repair or reconstruction of structures owned and occupied by public-serving social service and nonprofit agencies;
 8. Utility pump stations and reservoirs;
 9. Fire sprinkler installation projects.
- G. Any private residential only project of five units or less may choose to voluntarily participate in the art in public places program. Residential developers choosing to voluntarily participate in the program shall follow the procedures set forth in this section. Applicants choosing to voluntarily participate in the public art program shall provide public art on the project site, as provided by this chapter, and are not eligible to pay the in-lieu fee.
- H. The creator of public art shall be a visual art professional who is not a member of the project architect, engineering or landscape architect firm. Public art shall be displayed in a manner that will enhance its enjoyment by the general public.
- I. Compliance with the provisions of this chapter shall be demonstrated by the owner or developer at the time of filing a building permit application in one of the following ways:
1. Payment of the full amount of the public art in-lieu contribution; or
 2. Written proof to the community development department of a contractual agreement to commission or purchase and install the required public art on the subject development site and a written acknowledgement by the visual art professional and the owner or developer, in a form approved by the city, that the proposed public art complies with the following criteria:
 - a. The public art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his or her peers as one who produces works of art,
 - b. The public art shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work,
 - c. The public art shall be related in terms of scale, material, form and content to

immediate and adjacent buildings and architecture, landscaping or other setting so as to complement the site and its surroundings and shall be consistent with any corresponding action of the planning commission, design review board or city council as it may relate to any development entitlements,

- d. Permanent public art shall be a fixed asset to the property,
 - e. The public art shall be maintained by the property owner in a manner acceptable to the city,
 - f. The public art meets all applicable building code requirements.
- J. In the event that the city determines that the proposed public art project does not comply with subsection 12 of this section, the matter shall be referred to the arts and culture commission for review and a determination as to the project's compliance with subsection 12 of this section. The art and culture commission shall be the sole reviewing authority for public art projects; however, the determination of the arts and culture commission may be appealed to the city council.
- K. The owner or developer shall provide the city with proof of installation of the required public art project on the development site prior to the issuance of a certificate of occupancy. If installation prior to the date of occupancy is impracticable, as determined by the city manager or his or her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the city to install the public art, and the applicant has filed security in an amount and form acceptable to the city attorney to guarantee installation of the public art.
- L. Title to all artworks required by and installed pursuant to this chapter shall pass to the successive owners of the development. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art.
- M. If, for any reason, the current owner shall choose to replace any public art installed pursuant to this chapter, the following requirements shall be met before the artwork is replaced:
1. The cost of the replacement shall be equal to, or greater than, the cost of the art to be removed;
 2. The location of the replacement shall meet the requirement for public accessibility in effect at the time of the replacement;
 3. The replacement art shall conform, in every respect, to all standards in effect at the time of the replacement;

4. The replacement work, location and installation shall violate no other ordinance;
 5. The replacement art shall be available for public view not more than one hundred eighty days after the existing art is removed, unless the period is extended by the community development director.
- N. The property owner shall maintain, or cause to be maintained, in good condition the public art continuously after its installation and shall perform necessary repairs and maintenance to the satisfaction of the city. The maintenance obligations of the property owner shall be contained in a covenant and recorded against the property by the applicant. Should the property owner wish to remove the public art, the city must be notified in advance. The property owner shall replace the public art with public art of equal or greater value.

(Ord. 2005-5 § 1 (part), 2005.)

13.50.040 - Public art.

Public art includes the following:

- A. On-site Projects. Works of visual art are meant to be enduring original artworks of the highest quality and craftsmanship. They should engage one's mind and senses while enhancing and enriching the quality of life of the city. The artworks will be generally sited and an integral part of the landscaping and/or architecture of the building, considering the historical, geographical and social/cultural context of the site. The artworks shall be constructed in a scale that is proportional to the scale of the development. These may include:
 1. Sculpture, such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
 2. Painting: all media, including but not limited to, murals;
 3. Graphic and multi-media: printmaking, drawing, calligraphy and photography including digital, any combination of various forms of electronic media, including sound, film, holographic, and video and other art forms but only when on a large public scale;
 4. Mosaics;
 5. Crafts: in clay, fiber and textiles, wood metal, plastics and other materials;
 6. Mixed media: any combination of forms or media, including collage;
 7. Any other form determined by the arts and culture commission.

Public artworks may also be furnishings or fixtures, including, but not limited to, gates, walls, railings, street lights or seating, if created by a visual art professional as unique elements. The artworks can include water elements, walkways, and artistic or aesthetic elements of the overall architecture or landscape design if created by a visual art professional or a design team that includes a visual art professional.

B. On-site Cultural Program.

1. Performance arts: theatre, dance, music;
2. Literary arts: poetry readings and story telling;
3. Media areas: film and video, screenings and installations;
4. Education: art lectures and presentations;
5. Special events: festivals and celebrations;
6. Artist-in-residence programs in the arts;
7. Any other form of cultural program determined by the arts and culture commission, or city council on appeal, to satisfy the intent of this section.

C. On-site art spaces or cultural facilities that include one or more of the following eligible components: gallery/exhibition spaces, resource libraries, visual arts slide registries, performance spaces, artist studio spaces and arts education facilities which are open and accessible to the public.

D. Public art does not include the following:

1. Art objects that are mass-produced of standard design such as playground equipment, benches or fountains;
2. Decorative or functional elements or architectural details, which are designed solely by the building architect as opposed to a visual art professional commissioned for this purpose, working individually or in collaboration with the building architect;
3. Landscape architecture and landscape gardening, except where these elements are designed by the visual art professional and are an integral part of the work of art by the visual art professional;
4. Directional elements such as super graphics, signage, or color coding, except where these elements are integral parts of the original work of art or executed by visual art professionals in unique or limited editions;
5. Logos or corporate identity.

(Ord. 2005-5 § 1 (part), 2005.)

13.50.050 - Public art fund.

- A. There is hereby created a public art fund to account for the public art in-lieu contributions and any and all other revenues appropriated or received for public art and/or public arts and cultural programs, including donations from the public. The revenues in such fund shall be used solely for:
1. The acquisition, commission, design, installation, improvement, maintenance and insurance of public art and/or arts and cultural programs identified by Section 13.50.040 of this chapter;
 2. The acquisition or improvement of real property for the purpose of displaying public art, which has been or may be subsequently approved by the city;
 3. Other expenses associated with the implementation of public art.
- B. All fees collected under this chapter shall be held in a special fund designated "Public Art Fund," and will be maintained, managed and reviewed by the city manager or his or her designee. The arts and culture commission shall, as part of the city's annual budget process, review the administrative costs of the art in public places program for the given fiscal year, including, but not limited to, staff support and related expenses; curatorial services; documentation; publicity, community education and any other services or programs in accordance with the intent of this chapter. Revisions to the adopted annual budget for the public art fund shall be subject to the review and approval of the city manager, who may determine that said revisions also require the approval of the city council.
- C. If real property purchased with monies from the public art fund is subsequently sold, the proceeds from the sale shall be returned to the public art fund.

(Ord. 2005-5 § 1 (part), 2005.)