

Chapter 4.10 ART IN PUBLIC PLACES

4.10.010 Purpose.

The city council finds and declares as follows:

- A. Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the city.
- B. Balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values.
- C. As development and revitalization of the real property within the city continues, the opportunity for creation of cultural and artistic resources is diminished.
- D. As this development and revitalization continues as a result of market forces, urbanization of the community results.
- E. As these opportunities are diminished and this urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased.
- F. Development of cultural and artistic assets should be financed by those whose development and revitalization diminishes the availability of the community's resources for those opportunities and contributes to community urbanization.
- G. Establishment of this art in public places program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
- H. In promotion of the foregoing objectives, the city council through Ordinance No. 473 previously established an art in public places program and fund.
- I. It is the purpose of this chapter to modify, clarify, and codify the city's existing art in public places program. (Ord. 673 § 1, 1992)

4.10.020 Program execution.

The Palm Desert civic arts committee, art in public places selection subcommittee, and public art department shall carry out the duties established by this chapter. (Ord. 673 § 1, 1992)

4.10.030 Art in public places fund.

There is a fund, established pursuant to Ordinance No. 473, known as the "art in public places fund" into which shall be deposited all fees paid pursuant to this chapter. This fund shall be maintained by the city treasurer, and shall be used for the acquisition, installation, improvement, and maintenance of artwork to be displayed in the city, the administration of the art in public places program, and for community public art education programs not to exceed five percent of the annual budget. (Ord. 673 § 1, 1992)

4.10.040 Applicability.

A. All individual residential units whose building permit valuation is in excess of one hundred thousand dollars shall be subject to the provisions of this chapter. An "individual residential unit" is defined as not more than one single-family dwelling which is to be constructed on a lot located in an existing subdivision. With respect to all

other residential development (that is, developments designed to be used as homes for human habitation), the total building permit valuation shall be subject to the provisions of this chapter.

B. All commercial development (that is, developments other than residential development and public facilities) within the city shall be subject to the provisions of this chapter.

C. All public facilities (that is, projects designed for use by the general public) constructed by the city and its redevelopment agency or by any other government entity within the city's jurisdiction shall be subject to the provisions of this chapter, except for street and drainage projects. (Ord. 732 § 1, 1993; Ord. 673 § 1, 1992)

4.10.050 Certificates of occupancy.

The following requirements must be met prior to the city's issuance of occupancy permits.

A. Full compliance with one or more of the following:

1. The approved artwork has been placed in a manner satisfactory to the community arts manager;
2. In-lieu art fees have been paid;
3. Financial security in an amount equal to the acquisition and installation costs of an approved artwork, in a form approved by the city attorney, has been posted; and
4. Donation of an approved artwork has been accepted by the city council.

B. Execution and recordation with the Riverside County recorder by the applicant of covenants, conditions, and restrictions (CC&Rs), in a form approved by the city manager and the city attorney, which require the property owner, successor in interest, and assigns to maintain the public art in good condition as required by the Public Art Guidelines.

C. Submission of the following to the city clerk's office:

1. A statement which indemnifies, defends, and holds the city and related parties harmless from any and all claims or liabilities from the artwork, in a form acceptable to the city attorney; and
2. Certificate of public liability insurance naming the city as an additional insured, including such coverage and liability limits as may be specified by the city manager.

D. Satisfaction of the entire program allocation required by Section 4.10.060 for the project. (Ord. 673 § 1, 1992)

4.10.060 Program allocations.

A. The program allocation, as used in this chapter, is the percentage of the building cost which is set aside for the city's art in public places program and shall be as follows: for individual residential units, an amount equal to one-quarter of one percent for that portion of the total building valuation in excess of one hundred thousand dollars; for all other residential development, including two or more single-family dwellings being built concurrently in the same tract by the same owner or contractor, an amount equal to one-quarter of one percent of the total building valuation; for commercial development, an amount equal to one-half of one percent of the total valuation, excluding land acquisition and off-site improvement costs; for public facilities, an amount equal to one percent of the total building valuation. The total building valuation shall be computed using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO) unless, in the opinion of the building official, a different valuation measure should be used.

B. In lieu of placement of an approved artwork, the applicant may pay to the art in public places fund an amount equal to the program allocation set forth in subsection A of this section.

C. Nothing in this section shall prohibit the applicant from placing an approved artwork with acquisition and installation costs in an amount less than the program allocations; provided that the applicant shall also pay to the art in public places fund an amount equal to the difference between the program allocation and the costs of acquisition

and installation of such artwork. (Ord. 732 § 2, 1993; Ord. 673 § 1, 1992)

4.10.070 Application procedures for placement of artwork on private property.

An application for placement of artwork on private property shall be submitted to the public art department and shall include:

- A. Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork, the resume of the artist as well as evidence of previous work and efforts of the artist;
- B. An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs;
- C. Preliminary plans containing such detailed information as may be required by the public art department to adequately evaluate the location of the artwork in relating to the proposed development, and its compatibility with the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhood if necessary to evaluate the proposal; and
- D. A narrative statement to be submitted to the public art department to demonstrate that the artwork will be displayed in an area open and freely available to the general public, or otherwise provide public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site. (Ord. 1245 § 1, 2012; Ord. 673 § 1, 1992)

4.10.080 Approval for placement of artwork on private property.

- A. Completed applications shall be submitted to the public art department for review and approval of the artwork.
- B. The public art department shall review the completed application and make a recommendation to the art in public places commission concerning the proposed artwork and its proposed location, considering the aesthetic quality and harmony with the proposed project, and the public accessibility to the artwork, including any recommended conditions of approval.
- C. The art in public places commission shall consider the recommendations of the public art department in its review and approval of the proposed project.
- D. If the applicant proposed or the planning commission or city council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to receipt of the art in public places commission's approval, the application shall be returned to the public art department for further review and recommendation concerning the revised proposal prior to resubmittal to the planning commission for final review and approval.
- E. The decision of the art in public places commission is subject to a fifteen-day review period by the city council, then becomes final. During this fifteen-day review period any person may appeal a art in public places commission decision to the city council, who shall conduct a hearing thereon. The decision of the city council shall be final. (Ord. 1245 § 2, 2012; Ord. 673 § 1, 1992)

4.10.090 Application procedure for acceptance of artwork donated to the city.

An application for acceptance of artwork to be donated to the city shall include:

- A. Preliminary sketches, photographs, models or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork;
- B. An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs;

C. A written agreement executed by or on behalf of the artist who created the artwork which expressly waives his or her rights under the California Art Preservation Act or other applicable law; and

D. Other information as may be required by the public art department to adequately evaluate the proposed donation of artwork. (Ord. 673 § 1, 1992)

4.10.100 Review of application for acceptance of artwork donated to the city.

A. Prior to the issuance of grading and building permits, the applicant shall present to the public art department an application for acceptance of artwork donated to the city for review and recommendation to the city council. The city encourages the applicant to submit an application prior to the development of the architect's schematic design.

B. Recommendations shall be forwarded to the city council, which shall have the sole authority to accept or reject or conditionally accept the donation. (Ord. 673 § 1, 1992)

4.10.110 Ownership of artwork.

A. All artwork placed on the site of an applicant's project shall remain the property of the applicant; the obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. If the artwork is not maintained in the manner prescribed by the Public Art Guidelines, the occupancy permit for the project may be revoked by the city council upon due notice and an opportunity to be heard.

B. Maintenance of artwork, as used in this chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the city, protection of the artwork against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by the city attorney. Prior to placement of an approved artwork, applicant and owner of the site shall execute and record a covenant in a form approved by the city for maintenance of the artwork. Failure to maintain the artwork as provided in this chapter is declared to be a public nuisance.

C. In addition to all other remedies provided by law, in the event the owner fails to maintain the artwork, upon reasonable notice, the city may perform all necessary repairs, maintenance or secure insurance, and the costs therefor shall become a lien against the real property.

D. All artwork donated to the city shall become the property of the city upon acceptance by the city council. (Ord. 673 § 1, 1992)

4.10.120 Artwork on public property.

A. The public art department shall prepare and submit to the art in public places commission an annual plan for the art in public places program.

B. The public art department may recommend to the art in public places commission the purchase of artwork to be displayed on public property, which recommendation the commission may submit to the city council. A recommendation shall include the type of artwork considered, an analysis of the constraints applicable to placement of the artwork on a site, the need for a practicality of the maintenance of the artwork, and the costs of acquisition and installation of the artwork. (Ord. 1245 § 3, 2012; Ord. 673 § 1, 1992)

4.10.130 Removal or alteration of artwork.

A. Public art installed on or integrated into a construction project pursuant to the provisions of this chapter shall not be removed or altered without the approval of the city council. If such public art is knowingly removed or altered without prior approval from the public art department, the occupancy permit for the project may be revoked

by the city council upon due notice and an opportunity to be heard. The city may in addition pursue any other available civil or criminal remedies or penalties.

B. If any artwork provided on a development project pursuant to the provisions of this chapter is knowingly removed by the property owner without the approval of the public art department, the property owner shall contribute funds equal to the development project's original public art requirement to the city's art in public places fund, or replace the removed artwork with one which is of comparable value and approved of by the public art department. If this requirement is not met, the occupancy permit for the project may be revoked. (Ord. 673 § 1, 1992)

4.10.140 Return of fees.

A. Fees paid into the art in public places fund which are not committed within five years from the date of payment may be returned to the then current owner of the development project, with all interest actually earned thereon, if a written request for return is filed with the city clerk during the fifth year after payment, and refund of the fees is approved by the city council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the new development for which the fee was paid, and a statement that the applicant is the payor of the fees or the current owner of the development project.

B. The city council shall determine if return of the then uncommitted portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the city council determines any one of the following applies:

1. The city council finds the fee is needed for the art in public places program;
2. Moneys were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date;
3. The administrative costs of refunding uncommitted fees pursuant to this chapter exceeds the amount to be refunded; provided, notice of a public hearing on this issue has been published and posted on the site of the development project in not less than three places. (Ord. 673 § 1, 1992)