

CHAPTER 9.39. - ART IN PUBLIC PLACES

9.39.010. - Title.

This Chapter shall be known as the "Art in Public Places Ordinance."

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.020. - Definitions.

For the purposes of this Chapter, the following words and phrases shall have the following meanings:

"Appropriately maintained" means maintained in conformance with the City's public artwork maintenance policy.

"Artwork" means an original creation of physical art. Artwork includes without limitation a fountain, mobile, mosaic, mural, painting, sculpture or tapestry. An artwork may be realized through such mediums as bronze, ceramic tile, concrete, stained glass, steel or wood. An artwork shall not include objects that are mass-produced with a standard design.

"Artwork value" means the cost of the following (as applicable) in connection with an artwork: design; acquisition; construction; and installation. Artwork value shall not include utility and maintenance costs related to the operation and preservation of an artwork.

"Committee" means the Environmental Committee of the Westlake Village City Council.

"Council" means the Westlake Village City Council.

"Development project" means a construction or modification of a building.

"Director" means the director of planning or such person's designee.

"In-lieu art fee" means a fee in the amount of 1.25 percent of the project value as calculated at the time building permit fees are assessed.

"Project cost" means the total value of a development project, excluding the land value, as indicated on the building permit issued by the City for the project.

"Public artwork" means an artwork that is either: (1) donated to the City for display on City property; or (2) installed on private property in a publicly accessible location.

"Public artwork requirement" means the requirement, imposed by this Chapter, of providing a public artwork or paying the in-lieu art fee.

"Publicly accessible" means located on an area open to the general public and clearly visible from an adjacent public property such as a sidewalk or street.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.030. - Implementation of Chapter.

- A. The procedures prescribed by this Chapter for review and approval of public artwork shall be conducted concurrently with any applicable procedures prescribed by Article 9 of this Code for review and approval of development permits.
- B. The director shall establish a public artwork maintenance policy that specifies maintenance requirements for public artwork installed on private property to satisfy the public artwork requirement. The director may amend such policy as deemed appropriate.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.040. - Art in Public Places Fund.

- A. There is hereby established in the City a fund known as the "art in public places fund," which shall be a depository for fees paid pursuant to this Chapter and for public art-related monetary donations to the City.
- B. The art in public places fund shall be maintained by the Finance Officer/City Treasurer and shall be utilized for the following purposes:
 1. Design, acquisition, installation, improvement, maintenance and insurance of public artwork displayed on City property. Public artwork acquired with money from the art in public places fund shall be the property of the City;
 2. Offering of performing arts or art education programs on City property for the community; provided, however, that not more than five (5) percent of the fund's annual budget shall be used for this purpose;
 3. Public art incorporated into streetscape beautification projects.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.050. - Applicability of Public Artwork Requirement.

- A. Except as provided in subsection B of this Section, the public artwork requirement shall apply to commercial, industrial, office or other nonresidential development projects with a calculated value of at least one hundred thousand dollars (\$100,000) for which a building permit is required.
- B. The following development projects shall be exempt from the public artwork requirement:
 - 1. Government agency development projects;
 - 2. Reconstruction of buildings that have been damaged by fire, flood, wind, earthquake or other calamity.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.060. - Satisfaction of Public Artwork Requirement.

- A. For nonresidential projects having a project cost in excess of one hundred thousand dollars (\$100,000), the public art requirement shall be satisfied by completing one of the following actions in accordance with this Chapter:
 - 1. Donation of a public artwork to the City, having a minimum value equal to one percent of the project value as calculated at the time building permit fees are assessed;
 - 2. Installation of a public artwork on private property. Said artwork shall have a minimum value equal to one percent of the project value as calculated at the time building permit fees are assessed;
 - 3. Payment of an in-lieu art fee in the amount of 1.25 percent of project value as calculated at the time building permit fees are assessed.
- B. If the value of a public artwork approved by the City Council to satisfy the requirements set forth in subsections (A)(1) and (A)(2) of this Section is less than one percent of the project value as calculated at the time building permit fees are assessed, then the difference shall be paid to the City and deposited in the art in public places fund.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.070. - Procedure for Donation or Installation of Public Artwork.

- A. An application for donation of a public artwork to the City, or for installation of a public artwork on private property, shall be filed with the Director prior to the issuance of a grading or building permit for the development project. The application shall be made on a City-provided form and shall contain:
1. An appraisal by an independent, qualified art appraiser or other evidence of the artwork value satisfactory to the Director;
 2. Preliminary sketches, photographs, models or other documentation of sufficient descriptive clarity to indicate the nature of the artwork;
 3. The resume of the artwork's creator;
 4. If the application is for donation, then the application shall include a City Attorney-approved written statement executed by the artwork's creator waiving such person's rights under the Visual Artists Rights Act of 1990 (17 U.S.C. 101 et seq.), California Civil Code Section 1542 and equivalent laws;
 5. If the application is for installation, then the application shall include preliminary plans of sufficient descriptive clarity to indicate the compatibility of the artwork with the development project, adjacent parcels and the surrounding neighborhood;
 6. A written statement explaining how the artwork will be publicly accessible;
 7. Any other information requested by the Director to enable reasonable evaluation of the application.
- B. Each application shall be reviewed initially by the Committee, which shall make a recommendation to the City Council thereon. The City Council may accept or reject a proposed public artwork in its absolute discretion based on its aesthetic judgment. The City Council's decision on an application shall be final.
- C. Prior to issuance of a building permit for the development project, a security shall be deposited with the Director to guarantee the donation or installation of the approved public artwork. Such security shall be a bond, letter of credit or other form satisfactory to the Director and the City Attorney. The amount of such security shall be the amount of the in-lieu art fee that would be applicable to the development project. The security shall be released upon the donation or installation of the approved public artwork.
- D. An approved public artwork shall be delivered to the City or installed on private property prior to issuance of an occupancy permit for the development project.
- E. Prior to installing a public artwork on private property to satisfy the public artwork

requirement, the property owner shall execute and record with the County Recorder a City Attorney-approved covenant. Such covenant shall require the property owner and successors thereof to do the following:

1. Keep the public artwork appropriately maintained;
2. Allow City representatives to enter upon the property upon reasonable written notice to perform necessary repairs to the public artwork at the property owner's expense when the public artwork is not appropriately maintained;
3. Indemnify, defend and hold harmless the City, its officers, employees and agents from any claim, demand, damage, liability, loss, cost or expense attributable to the public artwork.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.080. - Procedure for Payment of In-Lieu Art Fee.

Payment of the in-lieu art fee shall be made prior to the issuance of a grading or building permit for the subject development project unless an alternative deadline is approved by the City Council.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.090. - Maintenance of Public Artwork on Private Property.

Public artwork installed on private property to satisfy the public artwork requirement shall be appropriately maintained and insured by the property owner. The insurance shall be in an amount equal to or greater than the artwork value, and shall provide coverage against loss or damage (including vandalism) of the public artwork.

(Ord. No. 199-06, Enacted, 9/27/06)

9.39.100. - Removal or Alteration of Public Artwork on Private Property.

Public artwork installed on private property to satisfy the public artwork requirement shall not be removed or altered without the prior approval of the City Council. In addition to any other applicable penalty, violation of this Section may render the property owner liable for payment of the in-lieu art fee that would have been applicable to the subject development project, and may result in revocation of the

occupancy permit issued for the subject development project. Prior to any imposition of in-lieu art fee liability or occupancy permit revocation pursuant to this Section, the City shall afford the property owner notice and an opportunity for a hearing.

(Ord. No. 199-06, Enacted, 9/27/06)