

CHAPTER 15.108 PUBLIC ART

§ 15.108.010. 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 construction projects throughout the City of Napa.

Public art helps create a more livable and visually stimulating city. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. It creates a deeper interaction with the places where we live, work and visit. A city rich in art encourages cultural tourism which brings in visitor revenues.

The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the city. Public art illuminates the diversity and history of a community, and points to its aspirations for the future. A wealth of art and culture in the public realm will foster the economic development of the community.

To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process.

(O2010 4, 4/6/10)

§ 15.108.020. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Addition" means an extension or increase in floor area or height of a building or structure.

"Alteration" means any construction or renovation to an existing structure other than repair or addition.

"Artist" means a person who has a reputation among peers as a person of artistic excellence, through a record of exhibitions, public commissions, sale of works, or educational attainment as judged by the reviewing body with final design review authority for the development project.

"Average MEP systems cost" means 20% of the construction cost for any given development project.

"Construction cost" means the total cost of any development project covered by this chapter. Calculations shall be based on construction and site improvement costs as declared on all building permit applications. For purposes of calculating the public art fee, construction costs shall include, but not be limited to, all grading, site improvement, building, plumbing, mechanical, and electrical permit applications for the project. If

the MEP systems cost for the development project exceeds the average MEP systems cost, the developer may request a reduction of the construction cost in accordance with the requirements of Section 15.108.100(A). As noted in the definition of "Development Project," to the extent that all or some portion of the costs of new construction are caused by one or more of the six "exclusion items" identified below, those costs are excluded from the definition of "Development Project"; thus, those costs are also excluded from the calculation of the construction cost. The construction cost for the purpose of determining the public art contribution amount required by this chapter shall be determined by the city's Community Development Director.

"Developer" means the person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this chapter, who may, or may not, be the owner of the subject property.

"Development project" means a project involving the construction of any new commercial building (including office and retail uses), industrial or light industrial uses, or any mixed use building, the construction of new tenant improvements in any shell building, an addition to an existing building, or the rehabilitation, renovation, remodeling or improvement of an existing building, and having a construction cost, as defined in this Chapter, of \$250,000.00 or more. For the purposes of calculation of the public art contribution for a mixed use project, the construction cost shall be calculated using the cost of the nonresidential portion of the project only. To the extent that all or some portion of the new construction include one or more of the six "exclusion items" identified below, those portions of the project shall be excluded from the definition of "Development Project"; thus, those portions of construction shall not be subject to the requirements of this chapter:

1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
2. Historic preservation or restoration;
3. Seismic retrofit or flood protection projects work items;
4. Fire sprinkler installation work items as defined by this code;
5. Any alteration, maintenance or repair of an existing structure, or equipment, that does not result in an addition (i.e. does not result in an extension, expansion or increase in the floor area or height of the existing structure). Notwithstanding this exclusion, construction of new tenant improvements in any shell building shall be within the definition of "development project";
6. Solar (photo voltaic) system applications.

"Director" means the Community Development Director, or a designee of the Community Development Director or the City Manager.

"Installation date" means the actual date on which the public art is installed on site.

"Maintenance" means to keep in continuance or in a certain state, as of repair.

"MEP systems" mean any combination of equipment, controls, accessories,

interconnecting means or terminal elements by which energy is transformed or water conveyed to perform a specific function related to building mechanics, electrical componentry, or plumbing. MEP systems may include, but are not limited to, mechanical, electrical or plumbing equipment, specialized technical equipment, medical equipment, data servers and associated equipment, and satellite arrays.

"MEP systems cost" means that portion of the construction cost attributable to MEP systems.

"Public art" means an original work of a permanent nature in any variety of media produced by an artist which may include sculpture, murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, or a combination thereof, and may include architectural features of the building such as decorative handrails, stained glass and other functional features which have been enhanced to be visually appealing. City commissioned public art may also include pieces as identified above which may be moved from time to time as a gallery collection and placed in public buildings such as City Hall, the library and other publicly accessible facilities.

Public art does not include the following:

1. Art objects that are mass produced of standard design such as playground equipment, benches, statuary objects or fountains;
2. Decorative or functional elements or architectural details, which are designed solely by the building architect as opposed to an artist 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 artist and are an integral part of the work of art by the artist;
4. Directional elements such as super graphics, signage as defined in the Napa Municipal Code Chapter 17.55, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;
5. Interpretive programs;
6. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, print making, or other media arts, specifically commissioned by the city;
7. Services or utilities necessary to operate or maintain the artwork over time;
8. Existing works of art offered for sale or donation to the city which do not have an established and recognized significance as public art among arts professionals and art appraisers as judged by the Public Art Steering Committee or City Council;
9. Works of art which are not visible to the public;
10. Works of art which cannot be reasonably maintained within the resources allocated

by the City of Napa;

11. Logos or corporate identity.

"Public art contribution" means the dollar amount equal to one percent of the construction cost of a development project covered by this chapter. In the case of a mixed-use project, the dollar amount equal to the cost of one percent of the square footage of the non-residential component of that development project. For purposes of determining the public art contribution for a mixed-use project, the contribution shall be equal to the dollar amount equal to the cost of one percent of the square footage of the nonresidential component of the project (e.g., total \$350.00 per square foot ("SF") for the entire 15,000 SF project, where commercial is 2,000 SF: one percent contribution based on $\$350.00 \times 2,000 = \$7,000.00$).

"Public art fund" means a fund established and maintained by the City of Napa for the purpose of funding public art and cultural programming consistent with the public art master plan.

"Public art master plan" means a plan developed by the city and approved by the City Council which identifies locations on public property such as public rights-of-way and public parks which would be acceptable for the placement of public art pieces, and additionally identifies funding priorities and criteria for accounting and expenditures of the accumulated public art fund. The plan shall be developed in conjunction with the City Parks and Recreation Advisory Commission, the Public Art Steering Committee and the Planning Commission.

"Public Art Steering Committee" means the advisory committee established under Section 15.108.070 of this chapter.

"Public construction project" means any city-funded construction or reconstruction project with a construction cost of \$250,000.00 or more as verified by the City Engineer. For the purposes of calculating the public art contribution for a public construction project, the square footage of a public construction project shall not include the portion of any project that includes:

1. Underground public works projects;
2. Street or sidewalk repair;
3. Tree planting;
4. Utility facilities with the exception of administrative buildings and facilities which house city employees;
5. Nonmunicipal government construction.

"Public place" means any exterior area on public or private property which is clearly visible to the general public. If located on private property, the area must be clearly visible from adjacent public property such as a street or other public thoroughfare, sidewalk, or path.

"Remodel." See "Alteration."

"Repair" means the reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

"Solar photovoltaic system" means the total components and subsystems that, in combination, convert solar energy into electric energy suitable for connection to a utilization load.

(O2010 4, 4/6/10; O2011 3, 2/15/11; O2011 5, 11/15/11; O2019-001, 1/15/19)

§ 15.108.030. Public art requirement.

The requirements of this chapter shall apply to the following activities:

- A. Development projects as defined in Section 15.108.020;
- B. Public construction projects as defined in Section 15.108.020.
(O2010 4, 4/6/10)

§ 15.108.040. Public art requirement imposed.

- A. The developer of any development project subject to the requirements of this chapter shall install public art on the project site in a public place as approved by the reviewing body with final design review authority for the development project pursuant to the process identified in this chapter. The cost of the public art must be equal at least to one percent of the construction cost. The creator of public art shall be an artist. Public art shall be displayed in a manner that will enhance its enjoyment by the general public. As an alternative to on-site installation of public art, the developer may:
 - 1. Request that the reviewing body with final design review authority for the development project consider placement of a developer-funded piece in a public place nearby which is identified in the public art master plan; or
 - 2. Pay a public art contribution to the city equal to one percent of the construction cost. The public art contribution shall be paid by the developer at the time of building permit issuance. Projects which would generate a fee of over \$500,000.00 and provide a significant benefit to the public may request that their fee be capped at \$500,000.00 if the developer submits evidence and documentation with the application to the satisfaction of the City Council that payment of a fee in excess of \$500,000.00 would be prohibitively expensive for project delivery; or
 - 3. Subject to the approval of the reviewing body with final design review authority for the development project, install public art on the development project site that has a value lower than the public art contribution amount and make an in-lieu contribution for the balance of the public art contribution.
- B. Prior to obtaining a building permit for construction of the development project, the developer shall demonstrate compliance with the requirements of this chapter in one of the following ways:

1. Payment of the full amount of the public art contribution; or
 2. Written proof to the Director of a contract to commission or purchase and install the required public art previously approved by the review body with final design review authority for the development project on the subject development site. Such proof shall be accompanied by a performance security, in an amount determined by the Director, to be adequate to secure faithful performance of the commission and installation of the required public art and in a form acceptable to the City Attorney. It shall be accompanied by a written acknowledgement by the project artist and the developer, in a form approved by the Director that the proposed public artwork complies with the criteria set forth below:
 - a. The public art shall be designed by an artist.
 - b. The public art shall require a low level of maintenance and the proposed maintenance provisions shall be adequate for the long-term integrity and enjoyment of the work. The owner shall enter into a maintenance agreement with the city to be recorded against the property to ensure that proper maintenance is performed as determined by the Director and in a form acceptable to the City Attorney.
 - 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 to complement the site and its surroundings and shall be consistent with any corresponding action of the reviewing body with final design review authority for the development project as it may relate to any development entitlements.
 - d. Public art shall be permanently affixed to the property.
 - e. The public art shall be maintained by the owner or his or her successor in interest in a manner acceptable to the city.
 - f. The public art shall meet all applicable building code requirements.
- C. The developer shall provide the city with proof of installation of the required public art on the development site prior to the issuance of a certificate of occupancy unless the developer has entered into an agreement and submitted a performance security consistent with subsection (B)(2).
 - D. Title to all public art required by and installed pursuant to this chapter on private property shall be vested in the owner and pass to the successive owners of the development project. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art. Public art installed on public property is owned by the City of Napa and maintenance, removal or protection is the responsibility of the city.
 - E. If, for any reason, the current owner or successor in interest shall choose to replace any public art installed pursuant to this chapter, the following requirements shall be

met before the art is replaced:

1. The replacement public art must be reviewed and approved by the reviewing body with final design review authority for the development project.
2. The cost of the replacement shall be equal to, or greater than, the initial cost (adjusted for time) of the existing public art to be removed.
3. The location of the replacement public art shall meet the requirement for public visibility in effect at the time of the replacement.
4. The replacement public art shall conform, in every respect, to all standards in effect at the time of the replacement.
5. The replacement public art, location and installation shall violate no other ordinance.
6. The replacement public art shall be installed within 180 days of the removal of the existing public art piece, unless the period is extended by the Director.

(O2010 4, 4/6/10; O2011 5, 11/15/11)

§ 15.108.050. Process for approval of the installation of a public art piece.

The developer, in conjunction with the submission of design review materials required by Section 17.62.030, shall submit a narrative proposal and artistic rendering of the public art to be submitted in satisfaction of the requirements imposed by Section 15.108.040, including any additional information, plans or maps prescribed by the Director, at the time of submission of their development application, or indicate an intention to pay a public art contribution prior to issuance of a building permit pursuant to Section 15.108.040(A)(2). The proposal for the public art shall be considered as an element of the design review permit review as set forth in Section 17.62.060 by the reviewing body with final design review authority for the development project.

(O2010 4, 4/6/10)

§ 15.108.060. Public art program—Administrative policies and program guidelines.

The City Manager is authorized to establish and maintain written administrative policies as program guidelines, which shall implement the requirements of this chapter. A copy of the program guidelines shall be maintained in the office of the City Clerk. The program guidelines shall be approved by the City Manager, based on the recommendation of the Director, and subject to the review and approval as to form by the City Attorney. The program guidelines may include, but are not limited to, the following elements: standards for eligible public art works, media and materials in public art, standards for placement and site selection of public art, standards for placement of public art on both public and private development sites, role and procedures of the Public Art Steering Committee, art selection process, art selection standards and criteria, maintenance and conservation of public art works, staffing and administration of the public arts program, public art collection review and de-accessioning, and catalog and

inventory procedures for the collection of art installed under this chapter.
(O2010 4, 4/6/10)

§ 15.108.070. Public Art Steering Committee established.

The City Council hereby establishes a Public Art Steering Committee ("the Committee"). The Committee shall consist of five members appointed by the City Council. One of the five members shall be a visual arts professional, which shall mean, for the purposes of this chapter as well as any other implementing policies adopted pursuant to the authority of Section 15.108.060, any of the following: professional artist in any medium, curator, art critic, art historian, arts educator, architect, or other design professional with a visual arts background or fine art collector. One member shall be a practicing professional artist in any medium. One member shall be nominated by the Arts Council Napa Valley or other arts organization identified by the City Council. The fourth and fifth members of the Committee shall be at-large members. Members of the Committee shall be appointed by the City Council upon the recommendation of the City Manager to four-year, staggered terms and shall hold office in accordance with procedures established by the City Council.
(O2017-009, 6/6/17)

§ 15.108.080. Duties of the Committee.

The Committee shall meet periodically to review and provide input and make recommendations to the City Council regarding proposals and solicitations for city-owned public art funded through the public art fund for sites identified in the public art master plan. To assist the Committee in reaching recommendations for the City Council, the City Manager shall additionally solicit input and participation from other city stakeholders, including, but not limited to, neighborhood groups and associations, members of the development and arts communities, city staff, and any other members of the community who may provide input on public art pieces commissioned using funds from the public arts fund. The Committee may also be requested by the City Manager to participate in the formation and drafting of requests for qualifications, request for proposals, calls for artists, or other solicitation documents to guide eligible artists in applying for city arts commissions and solicitations for public art. Additionally, the Committee may provide advice in the formation and update of the public art master plan. All of the Committee's input shall be in the form of recommendations to the City Council or the City Manager.
(O2010 4, 4/6/10)

§ 15.108.090. Public art fund.

All fees collected under this chapter shall be held in a special fund designated "public art fund," maintained, managed and reviewed by the Director. The City Council shall adopt a public art master plan to govern the acquisition, placement and installation of public art owned by the city using the public art fund. Prior to the appointment of the Committee and the adoption of the Public Art Master Plan, any use of the public art fund shall be subject to a determination by the City Council that the proposed use of revenue is for the acquisition, placement or installation of public art consistent with the purpose of this

chapter.

(O2011 5, 11/15/11)

§ 15.108.100. Fee adjustment.

- A. The developer of any development project whose MEP systems cost exceeds the average MEP systems cost may apply to the Community Development Director to decrease the construction cost for the development project in an amount not to exceed: the MEP systems cost less the average MEP systems cost. The developer shall submit documentation and evidence with the permit application showing to the satisfaction of the Community Development Director that the MEP systems cost will exceed the average MEP systems cost.
- B. A developer subject to the requirements set forth in this chapter may apply to the City Council for a reduction or adjustment to the fees or waiver of the fees based upon the absence of any reasonable relationship or nexus between the impact of the new development and either the amount of the fees charged or the type of facility to be financed or the portion of the facility attributable to the new development. If appealing fees owed upon issuance of a building permit, the developer shall pay all required fees under protest and concurrently file a written application for a waiver or reduction as an appeal to City Council. Appeals filed under this section shall comply with the requirements set forth in Chapter 17.70 and shall be conducted in accordance with the procedures set forth in that chapter, except that all appeals shall be considered by the City Council. The decision of the Council shall be final.

(O2011 5, 11/15/11)

§ 15.108.110. Authority for additional mitigation.

Fees collected pursuant to this chapter do not replace existing development fees, except as the Council may specifically provide, or other charges or limit requirements or conditions to provide additional mitigation of impacts imposed upon development projects as part of normal development review process.

(O2010 4, 4/6/10)

§ 15.108.120. Annual review.

The public art fund authorized by this chapter and implementing Council resolution(s), and the accumulated fee funds and their appropriation and supporting documents, shall be reviewed as part of the budget process.

(O2010 4, 4/6/10)