

CHAPTER 3.37
PUBLIC ARTS FEE, FUND AND PROGRAM

§ 3.37.010. Purpose.

- (a) The purpose of the Palm Springs public arts program is to develop and maintain a visual arts program for the residents and visitors of Palm Springs, to add to the economic viability of the community, and to enhance the environment and unique character of Palm Springs by providing for the acquisition and maintenance of quality works of public art.
- (b) The city council finds and declares as follows:
 - (1) Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the city.
 - (2) Balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values.
 - (3) As development and revitalization of the real property within the city continues, the opportunity for creation of cultural and artistic resources is diminished.
 - (4) As this development and revitalization continue as a result of market forces, urbanization of the community results.
 - (5) 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.
 - (6) Development of cultural and artistic assets should be financed by those whose development and revitalization diminish the availability of the community's resources for those opportunities and contribute to community urbanization.
 - (7) Establishment of this public arts program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
 - (8) It is the purpose of this chapter to modify, clarify and codify the city's existing public arts program.

(Ord. 1479 § 2, 1994)

§ 3.37.020. Program execution.

The Palm Springs public arts commission shall carry out the duties established by this chapter.

(Ord. 1479 § 2, 1994)

§ 3.37.030. Definitions.

For the purpose of this chapter:

"Arts administrator" means the staff person hired by the city to administer the public arts program. The salary and other compensation of the arts administrator may be paid from the arts fund to the extent such person is performing the duties prescribed herein.

"Commission" means the Palm Springs public arts commission.

"Public arts fund" means a separate fund and account which is established to receive monies collected for the designated purposes of the public arts program.

"Public arts program" means the program adopted by the city council.

"Solar energy system" means a system which is an accessory use added to any residential, commercial, industrial, or public structure, for the purpose of providing solar energy to generate onsite electric power, heating, cooling, or water heating.

(Ord. 1479 § 2, 1994; Ord. 1837 § 1, 2014)

§ 3.37.040. Public arts fund.

(a) Creation.

There is established a public arts fund into which shall be deposited all funds collected under this chapter of the Palm Springs Municipal Code and such other funds as may be appropriated by the city council or donated to the city for expenditures in conjunction with the public arts program.

(b) Accounting.

This fund shall be maintained by the city treasurer, with accounting records established to sufficiently identify and control these funds. Expenditures shall be processed through the city's established warrant payment procedure.

(c) Use of Fund.

The funds shall be used solely for the permanent or temporary acquisition, installation, improvement, display, maintenance, and insurance of artwork to be displayed in the city and the administration of the public arts program.

(d) Permissible Expenditures.

- (1) The cost of artwork and its installation and maintenance;
- (2) The cost of purchase or lease of art sites;
- (3) Contributions to local art museums subject to a negotiated benefit for Palm Springs residents as determined by the city;
- (4) Waterworks, landscaping, lighting, signage, and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the proper aesthetic presentation and structural placement of

artwork;

- (5) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork;
- (6) Expenditures for maintenance and repair of artworks;
- (7) Administrative expenses, including legal, to otherwise implement, uphold, or carry out any provision of this chapter.

(e) Ineligible Expenditures.

- (1) Reproductions of original work except limited editions;
- (2) Unlimited editions of original work;
- (3) Mass-produced art objects;
- (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site;
- (5) Architectural rehabilitation or historical preservation of buildings.

(f) Endowments.

The public arts fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in subsections (c) and (d) of this section and when approved by the commission:

- (1) Art exhibitions or displays;
- (2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other nonprofit organizations.

(g) Replacement.

For those artworks that have been purchased with monies from the public arts fund or donated to the city, the city council may determine to sell or exchange existing artworks for replacement artworks. Any funds obtained from the sale of artwork shall be credited to the public arts fund.

(Ord. 1479 § 2, 1994; Ord. 1738 §§ 1, 2, 2008)

§ 3.37.050. Projects subject to public arts program requirements.

(a) Requirements.

Except as provided in subsection (b) of this section, the requirements of this chapter shall apply to all works of construction and rehabilitation for which a building permit is required, including but not limited to:

- (1) New commercial and industrial construction;
- (2) Remodeling or reconstruction of existing commercial or industrial property;
- (3) New residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer;
- (4) New individual single-family residential units constructed on a lot located in an existing subdivision whose building permit valuation is over one hundred thousand dollars.

(b) Exceptions.

The requirements of this chapter shall not apply to the following activities:

- (1) Public projects undertaken by any agency of the city, the state, county, school district or any other governmental entity;
- (2) Remodeling, repair or reconstruction of structures to comply with earthquake seismic safety code standards or which have been damaged by fire, flood, wind, earthquake or other calamity;
- (3) Remodeling, repair or reconstruction of residential units;
- (4) Nonprofit social service or cultural institution projects;
- (5) Low to moderate housing projects as defined by household income Health and Safety Code Section 50093;
- (6) Affordable housing developments receiving city, state or federal assistance;
- (7) Private educational institutions which provide general education equivalent to the public school system (kindergarten through high school or any part thereof);
- (8) Architectural rehabilitation or historical preservation of properties which are designated as Class 1 Historic Sites by the city council;
- (9) The valuation added to works of construction and rehabilitation for existing residential, commercial, and industrial construction for an onsite Solar Energy System.

(Ord. 1479 § 2, 1994; Ord. 1837 § 2, 2014)

§ 3.37.060. Certificates of occupancy.

- (a) No final city approval, such as final inspection or a certificate of occupancy, for any project subject to this chapter shall be granted or issued unless and until full compliance with the public arts program is achieved, in one or more of the following ways:

- (1) The approved artwork has been placed in a manner satisfactory to the public arts commission.
 - (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, have been posted.
 - (4) An approved artwork has been donated and accepted by the public arts commission.
- (b) Full compliance with the public arts program shall not be deemed to exist until the entire program allocation for the project, as defined in Section 3.37.070 has been provided.
- (Ord. 1479 § 2, 1994)

§ 3.37.070. Requirement to provide artwork or pay development fee.

- (a) The applicant shall be deemed to have satisfied his or her obligations under this chapter through the placement of artwork in a manner consistent with this chapter, valued at an amount equal to the program allocation.
- (b) In lieu of placement of an approved artwork, the applicant may, at his or her discretion, pay to the city for deposit into the public arts fund an amount equal to the program allocation set forth in subsection (d) of this section.
- (c) Fees are to be collected with respect to all projects prior to issuance of a building permit, except in the case of residential developments of more than one dwelling unit, where the fee shall be collected on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first.
- (d) The program allocation, as used in this chapter, is the percentage of the building cost which is set aside for the city's public arts program. 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 more accurately represents the value of the building. Excluding land acquisition and off-site improvement costs, the program allocation shall be an amount equal to the percentage of the total building valuation for an applicable project, as listed herein:
 - (1) One-half of one percent for new commercial and industrial construction;
 - (2) One-half of one percent for remodel or reconstruction of existing commercial or industrial property;
 - (3) One-quarter of one percent for new residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer. A project shall

be considered a development of two or more units when two or more building permits are issued to the same person for development of new residential structures within a one-hundred-eighty-day period;

- (4) One-quarter of one percent for new individual single-family residential units constructed on a lot located in an existing subdivision for that portion of building permit valuation in excess of one hundred thousand dollars.
- (e) 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 allocation; provided that the applicant shall also pay to the public arts fund an amount equal to the difference between the program allocation and the costs of acquisition and installation of such artwork.
- (f) Nothing herein shall restrict the city council from waiving the requirements of this chapter, in whole or in part, with respect to any project otherwise subject to the provisions of this chapter, provided that the city council determines that the project applicant has entered into an agreement with the city providing for the applicant's acquisition and installation of artwork in connection with the development of the project which addresses the goals and aims of this chapter in a manner equally or more favorable to the city than would be achieved by strict compliance with this chapter. In such an event, the city council shall make findings to this effect on the basis of substantial evidence.

(Ord. 1479 § 2, 1994)

§ 3.37.080. Art site acceptability.

- (a) Placement of Art by Applicant.

The applicant shall place artwork in outdoor areas of the private property that are accessible and used by the public a minimum of eighteen hours per day. Interior spaces, including lobbies, courtyards, malls, etc., may be eligible if they are accessible to the public a minimum of twelve hours per day.

- (b) Art Purchased through Public Arts Fund.

When selecting the location for art purchased through the public arts fund, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites.

(Ord. 1479 § 2, 1994)

§ 3.37.090. Criteria for artwork selection.

- (a) Eligible requirements for each project will be established by the public arts commission. Specifically excluded are artworks done by students under the supervision of art instructors to satisfy course requirements and artists who are

members of the public arts commission.

The following criteria shall be considered in the selection of artwork:

(1) Quality of the artwork;

(2) Media.

All visual art forms may be considered, subject to limitations set by the selection jury or the arts commission;

(3) Style.

Artworks of all schools, styles, and tastes should be considered for the city collection;

(4) Environment.

Artworks and art places should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate;

(5) Permanence.

Consideration should be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance, and repair costs;

(6) Elements of Design.

Consideration should take into account that public art, in addition to meeting aesthetic requirements, also may serve to establish focal points, terminate areas, modify, enhance, or define specific spaces, or establish identity;

(7) Diversity.

The public arts program should strive for diversity of style, scale, media, artists—including ethnicity and gender and equitable distribution of artworks and art places throughout the city.

(b) The following methods may be used to select artwork:

(1) Direct Purchase.

A completed work of art may be purchased for a specific project or location;

(2) Direct Commission.

An artist may be chosen directly by an artist-selection jury and paid to submit a proposal. Artists will be selected on the basis of their qualifications for a particular project and its probability of successful completion;

(3) Limited Competition.

A small number of artists may be invited and paid by the selection jury to submit proposals;

(4) Open Competition.

Any artist may apply subject to limitations established by the selection jury. No proposal fee is paid to artists; however, a small number of finalists may be selected to submit details, models or plans for which a fee is paid.

(c) In selecting an artwork, the arts commission may appoint a selection jury of qualified persons. The jury shall be subject to the provisions of the Brown Act.

(d) Review by Department of Planning and Zoning.

A department of planning and zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the planning commission for approval pursuant to Section 9404.00 of the zoning ordinance.

(Ord. 1479 § 2, 1994)

§ 3.37.100. Maintenance of artwork on public and private property.

(a) Public Artwork on Public Property.

A maintenance fund shall be established as part of the public arts program. Procedures for custody, maintenance and conservation of artwork shall be established by the public arts commission as well as a maintenance schedule. Specific instructions for care of each work shall be kept on file as part of the collection management. The public arts commission will strive to include maintenance provisions in the artwork contracts that stipulate the length of time (typically one year) the artist will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal on repair contracts within the fair market rate of remuneration. Regular inspection-for-condition reporting shall be conducted so that the collection is maintained in the best possible condition as supervised by designated city personnel. When necessary, a conservation plan will be established prioritizing the work which is to be done.

(b) Private Artwork on Private Property.

The obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. 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 public arts commission. Artwork installed pursuant to this chapter shall be maintained as specified in the written agreement between the city and the private property owner with regard to that artwork. 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 against vandalism and other similar acts in an amount to be determined by the city attorney.

Prior to placement of an approved artwork, applicant and the 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 herein is declared to be a public nuisance. If the artwork is not maintained in the manner prescribed, or is removed or altered without approval of the public arts commission, in addition to all other remedies provided by law, the city may, upon reasonable notice, perform all necessary repairs, maintenance, secure insurance, or take such legal or other action deemed necessary to have the artwork maintained and if necessary, restored, and the costs therefor shall become a lien against the real property.

(Ord. 1479 § 2, 1994)

§ 3.37.110. Application procedures for placement of artwork on private property.

Any artwork being placed on private property as part of the city's public arts program shall be a one-of-a-kind piece. The city encourages applicants to submit an application prior to the development of the architect's schematic design. The requirements and procedures for the processing of a public arts program proposal application (an "arts application") shall be as follows:

- (1) Upon submission of a development project application for a project subject to the requirements of this chapter, the department of planning and zoning shall provide to the project applicant a copy of this chapter, an arts application form and the name and phone number of the city's arts administrator.
- (2) The project applicant shall submit to the arts administrator the completed arts application form, describing the manner in which the project applicant intends to comply with this chapter.
- (3) The arts application shall include:
 - (A) Preliminary sketches, photographs, 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) Preliminary plans containing such detailed information as may be required by the public arts commission to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development (the artwork shall be an integral part of the landscaping and/or architecture of the building), including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods if necessary to evaluate the proposal;
 - (D) A narrative statement 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; and
 - (E) Maintenance factors required to insure its permanence.

(Ord. 1479 § 2, 1994)

§ 3.37.120. Approval procedures for placement of artwork on private property.

- (a) The application for the proposed artwork and its placement will be considered at a monthly public meeting of the Palm Springs public arts commission. A department of planning and zoning representative will also review the artwork and its placement and landscaping elements and may refer the application to the planning commission for approval pursuant to Section 9404.00 of the zoning ordinance. Any changes, questions or recommendations shall be conveyed in writing to the applicant. The commission will determine when all issues have been addressed and accept or reject the artwork. The applicant will be notified in writing of the public arts commission's decision.
- (b) If the applicant proposes or the planning commission or city council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to the receipt of the public arts commission's approval, the application shall, if legally permitted, be returned to the public arts commission for further review and recommendation concerning the revised proposal prior to final approval unless the council otherwise directs.
- (c) A contract between the city and the applicant spelling out all requirements, including insurance and maintenance, shall be executed prior to the city's final acceptance of the applicant's art-in-lieu proposal.

(Ord. 1479 § 2, 1994)

§ 3.37.130. Procedure for refund of public arts fee for artwork in lieu of fee.

If in-lieu artwork has been placed subsequent to payment of a public arts fee, the applicant shall submit to the arts administrator a written request for refund of the amount spent on the artwork placed on the applicant's property. The amount to be refunded shall not exceed the amount that would have been paid into the public arts fund should the applicant have chosen to pay a fee instead of place artwork on the site. The request for reimbursement shall be submitted after the artwork is installed, approved by the public arts commission and accepted by the city.

(Ord. 1479 § 2, 1994)

§ 3.37.140. Ownership of artwork on private property.

Artwork placed on the applicant's property by the applicant in satisfaction of the applicant's program requirement shall remain the property of the applicant.

(Ord. 1479 § 2, 1994)

§ 3.37.150. Application procedure for donation of artwork to the city.

The prospective donor shall submit to the arts administrator:

- (1) Sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork to be donated;

- (2) Additional samples of artist's work other than the proposed donation;
 - (3) Background information on artist who created the proposed donation;
 - (4) Installation costs, if available;
 - (5) Maintenance factors required to ensure its permanence.
- (Ord. 1479 § 2, 1994)

§ 3.37.160. Review and acceptance of artwork donated to the city.

The proposed donation will be considered at a monthly public meeting of the public arts commission. All details of the proposed donation, including the feasibility and expense of placing and caring for the work of art will be considered. The commission will review and discuss the donation and will direct the arts administrator as to any questions to be asked of the donor or artist. A personal appearance by artist may be requested. The commission will determine when all issues have been addressed and accept or reject the artwork.

(Ord. 1479 § 2, 1994)