

Chapter 16.61

PUBLIC ART FOR PRIVATE DEVELOPMENTS

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16.61.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Affordable Housing Developments" means a project where 100% of the units are affordable to a "moderate," "low" or "very low" income household, as those terms are defined by the California Department of Housing and Community Development, as applicable to Santa Clara County.

"Art" or "Work of Art" means original artist-designed and produced unique works in any of a variety of styles and forms.

"Artist" means a practitioner of the creative arts, generally recognized as such by critics and peers, with a body of work including commissions, exhibitions, sales, publications, and collections. For the purposes of this Chapter, "artist" shall not include: (i) persons primarily working in the professional fields of architecture, engineering, design or landscaping; (ii) an employee or relative of the development project architect, landscape architect, engineer or project manager; (iii) any person with a business interest in a development project or with respect to individuals or entities serving as project architects, landscape architects, engineers or project managers; or (iv) a relative of or anyone with a financial interest with respect to an individual or entity serving on an art selection panel for the development project.

"Developer" means a person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter. The developer may or may not also be the project owner.

"Development Project" means any commercial or residential development described in Section 16.61.040(a).

"Historic Renovation" means a Development Project involving preservation of a historic resource listed on or eligible for listing on the California Register of Historical Resources, where such preservation follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstruction Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

"Public Art" means a work of art that is visible or accessible to the public for a minimum of 40 hours per week. Public art is generally large-scale and may include sculpture, painting, installations, photography, video, works of light or sound, or any other work or project determined by the Public Art Commission to satisfy the intent of this chapter, provided, however, that none of the following shall be considered public art for the purposes of satisfying the requirements of this chapter:

(i) Objects that are mass produced of standard design, such as banners, signs, playground equipment, benches, statuary, street or sidewalk barriers, or fountains;

(ii) Reproduction, by mechanical or other means, of original works of art, except as incorporated into film, video, photography, printmaking or other derivative works as approved by the Public Art Commission;

(iii) Decorative, architectural, or functional elements that are designed by the building architect or landscape architect as opposed to an artist commissioned for this purpose; or

(iv) Landscape architecture or gardening, except where these elements are designed by an artist and are an integral part of a work of art.

“Public Art Commission” means the Commission established by Chapter 2.18 of the Municipal Code.

(Ord. 5226 § 3, 2013)

16.61.020 Application.

(a) This chapter shall apply to all new commercial developments (including mixed use projects), including new construction, remodels, additions and reconstruction that (i) have a floor area of 10,000 square feet or more, and (ii) have a construction value of \$200,000 or more, exclusive of costs for architecture, design, engineering and required studies; and all new residential projects of five or more units.

(b) Notwithstanding subsection (a) above, this Chapter shall not apply to:

- i. Buildings or structures primarily used for religious worship;
- ii. Historic renovations;
- iii. Affordable housing developments;
- iv. Municipal facilities;
- v. Repair or reconstruction of structures damaged by flood, fire, wind, earthquake or other disaster;
- vi. Seismic retrofit projects; or
- vii. Any project exempted by federal or state law.

(c) In mixed use projects, those portions of projects excluded from application of this chapter under subsection (b) shall be subtracted from the project for purposes of determination of applicability under subsection (a), above, and from construction valuation under Section 16.61.040 and 16.61.090.

(Ord. 5226 §4, 2013)

16.61.030 Public art requirement for private developments.

Before a certificate of occupancy is issued for any development project subject to this chapter, the developer shall participate in the construction or installation of on-site public art under Section 16.61.040, or, at the developer's option, make a contribution to the Public Art Fund in lieu of providing on-site art, as provided in Section 16.61.090.

(Ord. 5226 § 5, 2013)

16.61.040 On-site public art.

(a) A developer may satisfy the requirements of this Chapter by constructing or installing on-site public art valued at 1% of the first \$100 million construction valuation, adjusted as described in subsection (b) below, and .9% of construction valuation for valuation in excess of \$100 million. For purposes of budgeting and planning for on-site art, an initial estimate of the art contribution shall be calculated based on estimated construction valuation at the time of application for entitlements. The arts contribution shall be finally determined based on the construction valuation determined at the time the building permit is issued.

(b) Beginning in FY 2015 and annually thereafter, the Director of Planning and Community Development shall adjust the ceiling for 1% valuation as set forth in subsection (a) above to reflect increases in the Consumer Price Index for all urban consumers.

(c) If the market value of the on-site public art is greater than the art contribution provided in Subsection 16.61.040(a), the city shall have no obligation to refund the excess amount. If expenditures do not utilize the entire amount provided in 16.61.040(a), the remainder shall be deposited into the Public Art Fund.

(Ord. 5226 § 6, 2013)

16.61.050 Eligible expenditures for on-site public art projects.

The public art contribution for on-site installation may be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation or exhibition of the public art, and project management and administrative costs not to exceed 20% of the total budget. Eligible expenditures include:

- (a) Artist fees;
- (b) Labor of assistants, materials, and contracted services required for design, fabrication, engineering and installation of the public art;
- (c) Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;

- (d) Reasonable art consultant fees, as established in regulations or guidelines approved by the City Manager to implement this Section;
- (e) Communication, utilities, insurance and other indirect costs associated with the creation but not the operation of the public art;
- (f) Transportation of the public art to the site;
- (g) Preparation of the site specifically required for the public art, such as fabrication of platforms or pedestals;
- (h) Installation of the public art;
- (i) Mountings, anchorages, containments or other materials necessary for installation of the public art;
- (j) Public art project management and administration, in an amount not to exceed 20% of the total art contribution; and
- (k) A plaque or plaques identifying the public art.

(Ord. 5226 § 7, 2013)

16.61.060 Ineligible expenditures for on-site public art projects.

Expenditures that are ineligible to be counted toward the on-site public art contribution include:

- (a) Labor of assistants, materials, and contracted services not required for design, fabrication, engineering and installation of the public art;
- (b) Promotional materials or activities for the artist, the public art, the development project, the developer or other parties involved in the development project;
- (c) Opening, dedication or other costs of events for the public art, artist, developer or development;
- (d) Services, materials, utilities or other expenses association with the ongoing operation or maintenance of the public art; and
- (e) Land costs or any other costs associated with the development that are not part of and solely attributable to the public art.

(Ord. 5226 § 8, 2013)

16.61.070 Process for planning and approval of on-site public art.

(a) *Application and planning.* Within 60 days of initial application for permitting or other discretionary approval, the developer shall consult with the Public Art program staff regarding a plan for meeting the requirements of this Chapter. This consultation must be complete before the development project is calendared for consideration by a public body, including the Architectural Review Board, Planning & Transportation Commission or City Council, and before the Director of Planning and Development Services issues any approvals with respect to the project.

(b) *Public Art Commission review and approval.* If the developer elects to comply with this chapter by providing on-site art, the developer's public art plan must be presented to the Public Art Commission. The plan should include the process by which the art and artist will be selected while ensuring that no single artist be commissioned for more than 3 public art in private development projects within Palo Alto, the type of art proposed, a plan to integrate the art into the site, and a proposed budget and schedule of payments. The Public Art Commission shall render a decision whether the proposed public art plan conforms to the requirements and intent of this Chapter within 90 days of submission of a complete application, as determined by the Director of Planning and Development Services, in consultation with the public art program staff. The developer shall not enter into contracts or make expenditures until the Public Arts Commission approves the on-site art plan. In addition, before initiating fabrication and installation of the on-site art, the developer shall return to the Public Art Commission for final approval of the artist and the proposed public art. The Public Art Commission shall render a decision within 60 days of submission of a complete proposal, as determined by the Director of Planning and Development Services, in consultation with the public art program staff. No building permit may issue until the Public Art Commission issues the approvals required under this subsection.

(Ord. 5494 § 3, 2020: Ord. 5226 § 9, 2013)

16.61.080 Additional requirements for on-site public art.

(a) *Plaque.* The public art shall be identified by a plaque that meets the standards in use by the city at the time of installation of the public art

(b) *Ownership and maintenance.* All on-site public art shall remain the property of the property owner or the property owner's successor in interest. The property owner shall retain the obligation to provide all necessary maintenance to preserve the public art in good condition. Immediately upon installation and continuously thereafter, the developer and the property owner shall maintain the public art and shall promptly perform all necessary repairs and maintenance to the satisfaction of the City. The obligation to maintain and preserve the public art includes the obligation to take reasonable

steps to protect the public art against destruction, damage or modification.

(c) *Location and relocation of public art.* Except as provided herein, the public art must remain at the development in the location approved by the Public Art Commission. A property owner may petition the Public Art Commission to relocate the public art within the development project.

When and if the development project is sold, the public art must remain at the development and may not be claimed as the property of the seller or removed from the site. If the development is to be demolished, the owner must relocate the public art to another publicly accessible permanent location approved in advance by the Public Art Commission.

(d) *Removal and replacement of public art.* If the owner desires to deaccession, sell or remove the art from the site, the owner shall give prior notice to the city by providing written notice to the public art program staff no less than 90 days before the intended action. The owner must receive prior approval from the Public Art Commission. The developer will be required to replace the sold or de-accessioned artwork with an alternative work of equivalent or greater value, as determined by the Public Art Commission, in current dollars. In the alternative, the developer may elect to pay fees in lieu of replacing on-site art, at a reasonable rate equivalent to the cost of replacing the art in current dollars, as determined by the Public Art Commission.

(e) *Statutory and contractual rights of artists.* The owner is solely responsible for complying with all statutory and contractual rights of the artist, including rights under the California Preservation of Works of Art Act, the federal Visual Artists' Rights Act, and any other applicable law.

(f) *Covenant; recordation.* The property owner shall record against the property a declaration of covenants, conditions and restrictions, in favor of the city, and in a form approved by the City Attorney. The declaration shall include (i) the owner's obligation to provide all necessary maintenance of the public art, including preservation and restoration of the public art, in good condition, to the reasonable satisfaction of the city, and to protect the public art against destruction or damage; (ii) the owner's obligation to ensure that the public art is accessible to the public as required by this chapter; and (iii) any other terms reasonably necessary to implement this chapter.

(g) *Inspection; remedies.* The city shall have the right to inspect the public art, on reasonable notice, to ensure compliance with this chapter. Failure to maintain the public art as required by this Section is hereby declared to be a public nuisance. The city may remedy the public nuisance and may pursue additional remedies to obtain compliance with this chapter. In addition to all other remedies provided by law, in the event the owner fails to maintain the public art, on reasonable notice the city may perform all necessary repairs and maintenance, or may secure insurance or other needed services, and the costs thereof shall become a lien against the real property.

(Ord. 5226 § 10, 2013)

16.61.090 Developer's option to pay fees to public art fund in-lieu of providing on-site art.

In lieu of installation of on-site public art, the developer may elect to make a monetary contribution to the Palo Alto Public Arts Fund. The amount of the contribution shall be the cost of the public art required by Section 16.61.040. A developer who elects to satisfy the requirements of this chapter through a contribution to the Fund must complete the payment in-lieu prior to the issuance of any building permit for the development project. The payment shall be made as set forth in Chapter 16.64 of this code.

(Ord. 5400 § 16, 2016; Ord. 5226 § 11, 2013)

16.61.100 Inspection and final approval.

Before a certificate of occupancy is issued for the development project, the city shall inspect and confirm that either: (i) public art has been installed as required by the Public Art Commission approvals and to the satisfaction of the Director of Planning and Development Services, in consultation with the Public Art program staff; or (ii) in-lieu contributions have been paid in full. In addition, before a certificate of occupancy is issued, the city shall confirm that the developer has executed and recorded a covenant as required by Section 16.61.080(f).

(Ord. 5494 § 3, 2020; Ord. 5226 § 12, 2013)

16.61.110 Public Art Fund.

There shall be a fund entitled "Public Art Fund" to account for in-lieu contributions made under Section 16.61.090. This fund and the interest thereon shall be maintained by the Chief Financial Officer according to standard governmental accounting requirements. The Public Art Fund shall be reserved for the design, acquisition, commission and installation of new works of art and art experiences in Palo Alto, or for such other equivalent artistic purposes approved by the Public Art Commission. Funds may be used for project management and administration costs associated with acquisition of new works, not to exceed 20% of the project budget, and for the repair, maintenance, conservation and insurance of those works. Art works acquired through the Public Art Fund shall be owned by the City of Palo Alto and generally made accessible to the public.

(Ord. 5226 § 13, 2013)

16.61.120 Regulations.

The City Manager, or his or her designee, is authorized to adopt administrative regulations, procedures or guidelines that are consistent with and that further the terms and requirements of this chapter.

(Ord. 5226 § 14, 2013)