

CHAPTER 19.52
ART IN PRIVATE DEVELOPMENT

Note: Editor's note: Ch. 19.52, consisting of Sections 19.52.010—19.52.100, derived from prior code Sections 19.49.010—19.49.090 and amended by Ords. 2623-99, 2668-01, 2692-02, 2745-04 and 2905-09, was repealed and replaced in its entirety by Ord. 2977-12.

§ 19.52.010. Findings and purpose.

(a) Findings. The city council makes the following findings:

- (1) The city's visual and aesthetic quality has a significant impact on property values, economic well-being and orderly development;
- (2) Development of large-scale or highly visible sites contributes to the city's unique character;
- (3) The incorporation of publicly visible art on large-scale sites, highly visible intersections or spaces that are publicly accessible within private developments enhances the city's visual and aesthetic quality and creates a unique sense of community and self-image; and
- (4) Providing art mitigates an undesired and potentially deleterious sense of uniformity and loss of human scale and orientation and is in the public interest.

(b) Purpose. This chapter regulates and establishes standards for inclusion of art in private development.

(Ord. 2977-12 § 2)

§ 19.52.020. Applicability.

(a) Major Intersection. Nonresidential development, including hotels, shall provide art when located at a major street intersection listed in this section. A lot is located at one of the referenced intersections if the lot has frontage along both of the streets forming the intersection. The development may include either new construction of a main building of any size, an addition of at least ten thousand square feet to a main or accessory building, or new construction of an accessory building.

- (1) El Camino Real and Wolfe Road;
- (2) El Camino Real and Remington Drive/Fair Oaks Avenue;
- (3) El Camino Real and Sunnyvale Avenue/Sunnyvale Saratoga Road;
- (4) El Camino Real and Mathilda Avenue;
- (5) Central Expressway and Lawrence Expressway;
- (6) Central Expressway and Mary Avenue;

- (7) Mathilda Avenue and State Highway 101;
 - (8) Mathilda Avenue and State Highway 237;
 - (9) Lawrence Expressway and State Highway 237;
 - (10) Lawrence Expressway and State Highway 101.
- (b) Lots of Two Acres or More. Nonresidential development, including hotels, shall provide art when located on any lot of two acres or more. The development may include either new construction of a main building of any size, an addition of at least thirty thousand square feet to a main or accessory building, or new construction of an accessory building. If more than one lot is developed jointly or as an integrated project, the requirements of this chapter apply if the aggregate lot area is two acres or more, regardless of whether the property is under common ownership.
- (c) Phased Projects. In the event of construction occurring over a period of time, projects become subject to this chapter when the aggregate floor area of all construction reaches the specified levels.
- (d) Public Interest. Art may be required for any proposed project, including those not mentioned in this section when deemed in the public interest.
- (Ord. 2977-12 § 2)

§ 19.52.030. Art requirement.

- (a) Provision of Art. Projects shall provide publicly visible art on site that is equal in value to two percent of the project construction valuation.
- (b) Building Valuation. Building permit valuation is determined by the chief building official using the city building permit valuation formula. Valuation of development projects includes the construction of the building shell. Valuation does not include land acquisition, site improvements, parking structures, off-site improvements or tenant improvements. In the event of multi-phased development, valuation is based on the cost of all phases, even though all phases may not be completed at the same time.
- (c) Art Valuation. When calculating the value of an art to be placed on a private development site, eligible costs include:
- (1) Purchase price of the art;
 - (2) Art consultant fees;
 - (3) Installation costs, including transportation of the art to the site, pedestals or display costs;
 - (4) Wiring, fixtures and other costs directly related to the installation of lighting the art;

- (5) Identification plaque; and
 - (6) Ineligible costs include land acquisition, site preparation, travel costs for the artist, architect fees, utility fees associated with the installation or operation of the art, fees associated with dedication ceremonies, publicity, or educational components and maintenance fees and repairs.
 - (d) Art Valuation Remainders. In some instances the cost of artwork may not equate precisely to two percent of the construction valuation. If the developer does not spend the entire two percent on public art, then the remaining amount shall be contributed to the public arts fund.
 - (e) Alternative to Provision of Art. Developers may choose to make a contribution to the public arts fund in-lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to 1.1 percent of the building valuation. The additional 0.1 percent is to be used for maintenance of art provided through the public arts fund. The in-lieu fee shall be paid prior to issuance of the building permit.
- (Ord. 2977-12 § 2; Ord. 3167 § 1)

§ 19.52.040. Standards for art.

Proposed art in private development shall meet the criteria in this section. The arts commission may allow modifications that are consistent with the intent of this chapter.

- (a) Type of Art. Art should be one significant piece of art, except that requirement may be met with several works of art when specifically found by the arts commission to fulfill the intent of this chapter. The nature and style of the art is considered in the context of other similar art in the surrounding area to encourage a wide range of types of art, styles and materials in order to create a balanced and interesting artistic and aesthetic appearance. The following types of art are permitted as long as they are on a large public scale:
 - (1) Sculpture: in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
 - (2) Painting: all media, including permanently affixed works, such as murals;
 - (3) Graphic arts: printmaking, drawing, calligraphy and photography, but only when on a large public scale;
 - (4) Mosaics;
 - (5) Glass;
 - (6) Clay, fiber and textiles, wood, metal, plastics and other materials;
 - (7) Mixed media: any combination of forms or media, including collage. Water, neon, fiber optic and electronic sculpture generally should not be encouraged due to difficulty of maintenance. Such art may be permitted if adequate assurance of continued maintenance is provided;

- (8) Functional art created by a professional artist, such as benches, tree grates and trash receptacles; or
- (9) Any other form of work of art determined to satisfy the intent of this chapter.
- (10) Ineligible Works. The following do not meet the requirements for art in private development:
 - (i) Artwork that is similar to, reminiscent of or based on a corporate logo;
 - (ii) Reproductions by mechanical or other means of original works of art. Permitted art may include, however, limited editions controlled by the artists of original prints, cast sculpture, photographs and other art forms;
 - (iii) Directional or other functional elements such as supergraphics, signing, color coding, except where these elements are integral parts of original signed arts;
 - (iv) Art objects which are mass produced from a standard design, such as playground equipment, fountains, flags or banners; and
 - (v) Landscaping and gardening, except where these elements are designed by the artists and are an integral part of a fine art.
- (b) Artist Qualifications. The artist is required to have experience and knowledge of monumental-scale art intended for public viewing. The artist's qualifications will be evaluated and examples of past work may be reviewed to determine whether or not the artist has appropriate experience for the project.
- (c) Artistic Preference. The determination of artistic preferences is primarily a function of the owner or developer of the property. It is the intent of this chapter to provide for the public display of private art on private property without substituting the artistic preferences of the city for those of the owner or developer of the property.
- (d) Visibility and Locations. Appropriate locations may include, but are not limited to, vehicular entryways to the property, plazas, greenbelts and building façades. The location selected should allow reasonable accessibility to the art, including visibility of the art from the public street. The location shall be exterior and installation of the art piece shall enhance the art and allow for unobstructed public viewing from as many angles as possible. When located in proximity to major traffic thoroughfares, the art should be at a motorist's scale and oriented toward the view corridor of the motorist. The art shall be an integral part of the landscaping and/or architecture of the buildings.
- (e) Proportional Size. The art shall be proportional to the scale of the development and designed to create an artistic, visual and aesthetic impact upon observers. Particularly in locations on major thoroughfares and major intersections, the art should be of such size and nature as to strengthen the urban design and aesthetic quality of life in the community.
- (f) Inoffensive. Because the art will necessarily be highly visible to the public, will be

associated with city requirements, and because the traveling public will have no real opportunity to avoid the visual aspects of the art, expressions of obvious bad taste or profanity is prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

- (g) Permanence. The art shall be a permanent, fixed asset to the property. The composition of the art shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.

(Ord. 2977-12 § 2)

§ 19.52.050. Art permit.

- (a) Art Permit Required. An art permit is required for installation of art in private development. The art permit shall be obtained prior to building permit occupancy. In phased projects, the director retains discretion as to which building permit triggers the need for the art permit application.
- (b) Application. The art permit application shall contain the following information:
 - (1) An application signed by the owner of the affected property;
 - (2) Landscape and site plans indicating the location and orientation of the art, signage, utility boxes, fire suppression systems, and the landscaping and architectural treatment integrating the piece into the overall project design;
 - (3) Color elevation rendering clearly showing the artwork to scale in relation to its surroundings;
 - (4) A sample, model, or photograph and "to-scale" drawings or renderings of the proposed art piece;
 - (5) Material samples and finishes;
 - (6) A resume of the proposed artist including slides or photographs of the proposed artist's past work which demonstrates similar work to the proposal;
 - (7) A written statement by the artist describing any theme or development of the art, as well as a discussion of the manner in which the proposed art meets the criteria in Section 19.52.040 (Standards for art);
 - (8) A lighting plan including samples of lighting fixtures; and
 - (9) Other information as required by the superintendent of community services.
- (c) Finding. The proposed art is consistent with Section 19.52.040 (Standards for art) and the purpose of this chapter.
- (d) Decision. The application, along with the recommendation of the superintendent of community services, will be forwarded to the arts commission for review and action at a public hearing. The arts commission, based on the finding, may either:
 - (1) Approve the permit as requested or conditioned to meet the requirements of

this chapter; or

(2) Deny the permit.

(e) Appeals. Actions of the arts commission may be appealed by any aggrieved person in accordance with Chapter 19.98 (General Procedures). The city council, based on the finding, may either:

(1) Approve the permit as requested or conditioned to the requirement of this chapter; or

(2) Deny the permit.

(f) Failure to Act. Failure of the arts commission to act on a permit application within sixty calendar days, or an extended period as mutually agreed upon by the applicant and the arts commission, is deemed a denial of the application. Denial may be appealed to the city council in accordance with this section. The superintendent of community services shall send a notice of the action to the applicant. Failure to send notice does not affect the arts commission action or extend any appeals period.

(Ord. 2977-12 § 2; Ord. 3050-14 § 2)

§ 19.52.060. Master art permit.

(a) Applicability. Development of any property having an aggregate area of more than fifty acres may apply for a master art permit. Development may occur at one time or in phases and shall consist of contiguous lots.

(b) Application. Application for a master art permit is filed in the same manner as an art permit, except that the application does not need to specifically identify each particular piece of art proposed.

(c) Content. The master art permit may define the total obligation to provide art and include information on the quantity, type, orientation and timing of installation of the proposed art. The master art permit may waive art permit requirements for individual installations.

(d) Decision. Decisions require a city council hearing after recommendation by the arts commission.

(Ord. 2977-12 § 2)

§ 19.52.070. Installation and maintenance requirements.

(a) Timing of Installation. If art installation is impracticable prior to the anticipated date of building occupancy, the director may allow building occupancy provided that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to the director.

- (b) Permit for Installation. The applicant shall obtain a building permit for the art.
 - (c) County Recordation. Prior to completion of the art installation, a document shall be recorded with the county containing a description of the art and noting the obligation of present and future property owners to maintain and repair the art.
 - (d) Plaque Required. Each piece of art shall provide an appropriate identification plaque or monument measuring at least eight inches by eight inches. The plaque shall be made of cast metal and be placed near the art piece. Information must include the date, title and artist. The requirement of this section may be waived if determined in a particular circumstance to be inconsistent with the intent of this chapter.
 - (e) Maintenance. Art shall be maintained in good condition after its installation. Maintenance of the art includes related landscaping, lighting and the identification plaque. Violation of the maintenance requirements may result in the imposition of administrative fines and penalties under Chapter 1.06 (Administrative Fines and Penalties) and may include the city's cost of maintaining or repairing the art.
 - (f) Removal. Removal of required art is prohibited without the city approval. The city may require replacement of the art. Removal or replacement of art shall comply with Section 19.52.050 (Art permit).
- (Ord. 2977-12 § 2; Ord. 3167 § 1)

§ 19.52.080. Establishment of the arts funds.

The city council authorizes the establishment of two funds for the deposit of all fees paid under this chapter.

- (a) Public Arts Fund. This fund uses one percent of the construction valuation for the acquisition and installation of the art and administration of the public art program, including, but not limited to, improvements, site preparation, lighting and landscaping.
 - (b) Art Maintenance Fund. The 0.1 percent of the construction valuations shall be set aside in the art maintenance fund for repairing and maintaining art purchased by the in-lieu fee.
- (Ord. 2977-12 § 2)