

Sec. 2207. - Special rules for public art as an optional form of development.

- (a) *Definition.* Public art, as used in this Article, means works of art in any media, whether located on public or private property, that are visible to members of the general public or that have been planned and executed with the specific intention of being sited or staged on or within publicly-owned property.
- (b) *Purpose.* Public art is an investment in the cultural vitality and economic development of a community. Sculptures, murals and other forms of public art can become place-makers, landmarks, and foster culturally dynamic, economically vibrant communities by creating memorable urban places where people desire to live, work, play and learn. For those reasons, the provision of public art in lieu of conformity with one or more of the required forms of development prescribed in this Article accords with the City Council's vision of the Town Center area as a future Arts and Cultural District, the recommendations of the Pembroke SGA Plan, and advances the ultimate goals of the Comprehensive Plan.
- (c) *Applicability.* Public art may be utilized as an Optional Form of Development in place of conformity with one or more of the following provisions regarding a prescribed development standard set forth in section 2204:
 - (1) Build-to zone;
 - (2) Front or side street setbacks;
 - (3) Transparency;
 - (4) Blank wall; or
 - (5) Outdoor amenity space.
- (d) *Location.* Subject to the provisions of subsection (f), public art shall be located:
 - (1) Outdoors so as to be readily visible and accessible to pedestrians, and no further than fifty (50) feet from the nearest point on a public sidewalk, except under exceptional circumstances as approved by the Public Art Committee;
 - (2) Away from signage, transit stop structures or benches, utility boxes, utility poles, mailboxes, bicycle racks or other items, either on or off the property, that may impair the public's view or diminish the aesthetic value of the artwork;
 - (3) In such manner as not to interfere with or impede the flow of pedestrian traffic on a public sidewalk; and
 - (4) On the same zoning lot as the development for which the artwork serves as an Optional

Form of Development and, to the extent possible consistent with the foregoing criteria, in such location as to maximize the degree to which the work of art offsets noncompliance with the prescribed development standard.

- (e) *Public art provided as an Optional Form of Development* shall serve as a direct replacement for each prescribed development standard or standards from which the subject development deviates and, if located on the same zoning lot as the subject development, shall serve the same purpose or purposes as the prescribed development standard.
- (f) *Public art located on publicly-owned property.* Public art may be located on publicly-owned property within the Pembroke Strategic Growth Area, including, without limitation, public streets and sidewalks, Town Center gateways, street corners, the Fountain Plaza, the Sandler Center Plaza, public parking garages and future transit stations, with the approval of the City Council, provided that:
 - (1) There is no feasible location on the subject property from which the work of art can be plainly and wholly seen by the public;
 - (2) The present or any planned land use of the subject property is such that placement of a work of art, in any media, on the property would be destructive to the work of art due to the activities related to the land use;
 - (3) The property is already fully developed in such a way that there is no location on the site for a work of art, and the work of art is approved as an Optional Form for renovation of the building necessitating use of a blank wall or reduction in transparency; or
 - (4) The location of the work of art cannot physically meet the criteria specified in subsection (d)(1);
- (g) *Approval by Public Art Committee.* Public art, and any alteration or removal thereof, must be approved by the Public Art Committee of the Virginia Beach Arts and Humanities Commission.
- (h) *Ownership, maintenance, contractual provisions.* Except in cases in which public art is dedicated to the City, the ownership of public art works shall be bound in perpetuity by written covenant, approved by the City Attorney, to the property for which they serve as an Optional Form of Development and, unless otherwise approved by the City, shall be maintained by the owner of the property for which it serves as an Optional Form of Development. Where a work of art is to be dedicated to the City, there shall be a written agreement between the City, the owner of the work of art and, if applicable, the artist, which

agreement shall include, at a minimum, terms regarding the ownership, maintenance, insurance and intellectual property rights pertaining to the work of art. Such agreement shall be subject to the approval of the City Council.

- (i) *Signage.* No lettering, symbols, or signage shall be permitted upon public art works except as intended by the artist as an integral part of the work. Paintings or murals may be signed by the artist, and the name of the work displayed. For sculptures, the artist shall designate the plaque location, which shall be permanently installed, using theft-resistant techniques, in a ground location near the sculpture or on the base and list only the sculpture's title, the artist's name the date of installation and the name of the donor, if applicable.
- (j) *Planting/landscaping.* Sculptures and their bases shall be well integrated with the surrounding softscape and hardscape. Long-term maintenance should be considered when selecting plant material. Native and drought-resistant plants are encouraged.
- (k) *Unacceptable art.* Decorative or ornamental pieces that are not conceptualized, designed, and fabricated by a qualified artist, such as "off-the-shelf" decorative items such as garden sculpture; historical markers or bells; bell towers; obelisks; architectural ornamentation or enhancements; art as advertisements or commercial signage mixed with imagery; and busts or statuary memorials, or mass produced reproductions or replicas of original works of art shall not be accepted as an Optional Form of Development.
- (l) *Artists' qualifications.* Artists creating public art, or supervising students creating public art, shall be selected by the property owner or developer, subject to approval by the Public Art Committee, and shall have the following qualifications:
 - (1) Artists shall be recognized by critics and peers as a professional practitioner of the visual arts. To assess the qualifications of an artist the Committee will consider factors such as the artist's body of work, educational background, formal training, past and current large scale outdoor public art commissions, sales of work, exhibition records, publications, and any other factors the Committee reasonably deems relevant;
 - (2) Artists shall also have experience in successfully collaborating with design teams, architects, art consultants, developers, engineers, fabricators, and landscape architects; meeting scheduled deadlines; negotiating and contracting their work responsibly; and conceptualizing, designing, fabricating, and installing large-scale outdoor sculpture similar in scope to the proposed sculpture; and
 - (3) Artists shall have the experience and expertise to create site specific public art after consideration of contextual issues related to the development site, including architectural

style, the future use and users of the development project, and community input.

- (m) *Applications.* Applications and supporting materials shall be submitted to the Director of the Office of Cultural Affairs, who shall provide the Arts and Humanities Commission members with copies thereof. The form of such application and requirements for supporting materials shall be determined by the Director.
- (n) *Conflicting provisions.* The procedures set forth in this section shall exclusively govern the selection, placement and other provisions pertaining to public art as an Optional Form of Development, such that in the event of a conflict with any other ordinance, directive, or other provision concerning public art as an Optional Form of Development, the provisions of this section shall control.

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