

Chapter 12.52 - ART IN PUBLIC PLACES PROGRAM

12.52.010 - Program created.

This chapter may be known and cited as the city of Whittier "Art in Public Places Program." The intent of the art in public places program is to provide a collection of nationally recognized artwork throughout the city to be of public benefit. The program is designed to present the community with a variety of art work styles and themes, all of the highest possible quality.

(Ord. 2741 § 1 (part), 1998: Ord. 2597 § 1 (part), 1993)

12.52.020 - Definitions.

As used in this chapter:

- A. "Art work" means original pieces of art, including limited editions, not limited by medium used. It may include paintings, sculpture, murals, mosaic and fountains.

These categories may be realized through such media as steel, bronze, stained glass, concrete, wood, ceramic tile and stone, as well as other suitable materials.

- B. "Project" means the type of development being proposed, whether commercial, industrial or residential.
- C. "Project costs" means the total value of the improvements for a project, as indicated on the building permit application submitted to the city's building and safety division of the community development department, in order to obtain a building permit or permits for the project.
- D. "Public place" means any area on public or private property, either interior or exterior, which must be accessible and visible to the general public.
- E. "Inquire and install" means the developer will be responsible to select an artist and obtain proper approval regarding the art work and the placement of the art work as per this chapter.
- F. "Project applicant" means the property owner, developer or other responsible party proposing the project.
- G. "Project site" means the location of the improvements being developed.

(Ord. 2850 §§ 1 and 2, 2004; Ord. 2741 § 1 (part), 1998: Ord. 2597 § 1 (part), 1993)

12.52.030 - Requirement to provide art work or pay in-lieu contribution.

When a project is subject to the requirements of this chapter, the project applicant shall comply with provisions of either subsection (A) or (B) or a combination of both.

- A. The project applicant shall acquire and install an art work in a public place on or in the vicinity of the project site as approved by the city council pursuant to this chapter. The cost or value of such work as

approved by the city council shall equal or exceed a minimum of twenty thousand dollars or one-half of one percent of the total project cost. Project applicants shall indicate on their art in public places application that they wish to acquire and install art work per the ordinance codified in this chapter. The parks, recreation and community services department can assist the project applicant in locating information on the artists should he/she desire assistance.

- B. In-lieu of acquiring and installing an art work, project applicants shall contribute funds to the art in public places fund established pursuant to Section 12.52.080 equal to one half of one percent of the total project cost. The in-lieu fee shall be paid when all other fees are assessed such as the building permit or prior to occupancy, as may be applicable, unless otherwise approved by the city council. Project applicants shall indicate on their art in public places application that they wish to make an in-lieu contribution.

(Ord. 2850 § 4, 2004; Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 2958, § 4, 10-12-10; Ord. No. 3112, § 2, 2-25-20)

12.52.040 - Projects subject to art in public places requirement.

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

- A. New commercial or manufacturing developments having a total value of two hundred fifty thousand dollars or more, and modifications and additions to existing commercial or manufacturing developments where such improvements have a total value of two hundred fifty thousand dollars or more, as indicated on the building permit application submitted to the city. The term "new commercial or manufacturing developments" are defined to include all those listed within Title 18 of the Whittier Municipal Code.
- B. Residential development of more than two lots or units, whether by detached single family residential structures, condominiums, apartments, townhouses or other dwelling units, or modifications or additions to such developments, such expenditures in the aggregate are two hundred fifty thousand dollars or more as indicated by the valuation on the building permit application submitted to the city. The term residential development will be defined as all those listed within Title 18 of the Whittier Municipal Code.

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

1. All public work and governmental agency projects;
2. Reconstruction of structures that have been damaged by fire, flood, wind, earthquake or other calamity;
3. Projects owned and developed exclusively by nonprofit organizations qualified under Section 501(c)(3) of the United States Internal Revenue Code. Organizations must provide the following to be granted an exemption:
 - a. A certificate of filing, certificate of status or certificate or articles of incorporation or exemption determination letter of the California Secretary of State (Revenue and Taxation code Section 26451.3 provides that the Exemption Application FTB3500, together with any supporting documents shall be open to public inspection if granted);

- b. A determination letter of Internal Revenue Service (IRS) recognition of their Section of 501(c)(3) exempt status. (An organization that subjects an application to the IRS and has it approved, must make a copy of the application and supporting documents, as well as any letter issued by the IRS, available for public inspection).
- C. Requesting an Exemption. When a project applicant seeks an exemption from the requirements of this chapter, he/she must do the following:
 - 1. Once a project applicant is made aware of the requirements of this chapter and the qualifying project developments that trigger such requirements, he/she must within thirty days send a letter to the director of parks, recreation and community services stating why the project applicant feels that the project should not be subject to the requirements established in Section 12.52.040 and that an exemption is requested.
 - 2. The director of parks, recreation and community services will provide the request to the art in public places advisory committee for review. Once the committee has reviewed the request, it shall forward its recommendation to the cultural arts commission.
 - 3. The cultural arts commission will review the recommendation of the art in public places advisory committee. If the commission votes approve an exemption request, the matter will be forwarded to city council for final approval. If the commission votes to deny an exemption request, the decision of the commission is final unless the city council appeals the decision. Then the council will review and make a final decision.

(Ord. 2850 §§ 5 and 6, 2004; Ord. 2847 § 1, 2004; Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 2958, § 2, 10-12-10; Ord. No. 3112, § 2, 2-25-20)

12.52.050 - Processing.

The requirements and procedures for the processing of an art in public places application shall be as follows:

- A. When a project applicant submits a project application to the building and safety division of the community development department, he/she shall be provided a copy of the ordinance codified in this chapter and an art in public places application form.
- B. Thereafter, the project applicant shall in a timely manner, submit to the building and safety division of the community development department the completed art in public places application form. Guidelines for the submission of all applications required under this chapter shall be established by the city council.
- C. Upon receipt of the art in public places application, the building and safety division of the community development department shall file the application with the parks, recreation and community services department, who shall present the application to the art in public places advisory committee. Proof of the filing shall be documented by the director of the community development department, or his/her designee, at the time of filing. If the project applicant has chosen to acquire and install art work, the committee will review the application, which shall include a proposal that details the art work.

- D. The art in public places advisory committee shall, within thirty days from its decision, submit to the cultural a commission a written recommendation on the proposed art work. If the committee finds that the application submitted:
1. Is in compliance with the provisions of this chapter;
 2. Is consistent with the general peace, health, safety and general welfare; and
 3. Meets requirements of artistic merit; it shall recommend to the cultural arts commission approval of the application.
- E. The cultural arts commission shall review the recommendation of the art in public places advisory committee. If it approves, the commission shall pass on the recommendation to the city council for its consideration.
- F. Any person interested in and affected by the proposed art work may file written protests or objections with the city clerk at any time prior to the hour and date set for final action by the council. Each such protest or objection must contain a description of the property and art work as to which the signer is appealing. Upon the day and hour fixed for the final review, the city council shall hear and pass upon the application together with any objections or protests that may be raised by any person.
- G. The city council shall, based upon the guidelines set forth in Section 12.52.070, approve, approve in part, conditionally approve or deny the application.
- H. When the city council has reviewed and passed upon the application, recommendations and objections made thereto, the final decision shall be confirmed by resolution. Said resolution shall include a finding of whether the value of the art work equals or exceeds the amount of the in-lieu contribution which the applicant seeks to satisfy. The decision of the city council on the application shall be final and conclusive.
- I. When the project applicant has elected to acquire and install an art work, the building permit shall not be issued until the city council has approved the art in public places application, and occupancy shall not be allowed until the approved work of art has been installed unless an in-lieu contribution is made as a deposit to secure the proper installation of the art work within a reasonable period of time as specified by the city manager.
- J. When the project applicant has elected to make an in-lieu contribution to the art in public places account, occupancy shall not be allowed until such contribution has been paid.

(Ord. 2850 § 7, 2004; Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 2958, § 4, 10-12-10; Ord. No. 3112, § 2, 2-25-20)

12.52.060 - Art in public places advisory committee.

The city council will appoint an art in public places advisory committee to insure that all city council established criteria has been met. They will review the applications and examine the proposal for public safety, weather resistance, balance with the program, verification of value, public response, proper lighting, public accessibility, installation methods, proportion, composition, the artist's previous experience, the artist's art training and exhibition record.

Committee support shall be provided by:

- A. The director of parks, recreation and community services or designee.

(Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 2958, § 2, 10-12-10)

12.52.070 - Guidelines for approval of art work.

Guidelines for the approval and maintenance of art works shall include, but are not limited to the following criteria:

- A. When a project applicant submits a project application to the building and safety division of the community development department, he/she shall be provided a copy of the ordinance codified in this chapter and an art in public places application form.
- B. The composition of the proposed art work shall be of a permanent type of material in order to be a durable against vandalism, theft, weather and in order to require a low level of maintenance.
- C. The art work shall be related in terms of scale, material, form and content to immediate and adjacent buildings and landscaping so that it complements the site and surrounding environment.
- D. The art work shall be designed and constructed by persons experienced in the production of such art work and recognized by art critics and by his/her peers as on who produces works of art.
- E. The artist's qualifications will be reviewed by the art in public places advisory committee. There must be examples of past work, which can be documented. Solo and group exhibit records, records of the artist work in private and public collections, art training, art education and printed critiques of past work would be helpful in providing documentation. Slides of similar work by the artist will be reviewed by the art in public places advisory committee. Verification of the purchase price of past works will serve to help validate the fair market price of the proposed commissioned art work. The proposed art work should be submitted in the form of a model whenever possible. Multiple view drawings and photographs are also acceptable.
- F. The art work shall be permanently affixed to the property unless it is designated a temporary exhibit in the scope of the project when commissioned.
- G. Installation of the art work shall be planned and implemented to enhance the piece and allow for unobstructed viewing from as many angles as possible. Once the art work has been installed the property owner shall not obstruct viewing of any or all of the piece. Owner may temporarily obstruct the piece in order to maintain the piece.
- H. The art work shall be maintained by the property owner in a safe, neat and orderly manner acceptable to the city. The property owner shall obtain from the artist maintenance instructions to follow including methods to maintain the piece and the frequency of maintenance.
- I. In the event that any art work placed on the development as a result of the ordinance codified in this chapter is removed or destroyed, developer shall, within one hundred eighty days of the removal or

destruction, replace it with art work which meets the requirements of this chapter and is equal to the removed/destroyed art work's fair market value immediately prior to its removal or destruction.

- J. The art work shall become the property of the city of Whittier prior to occupancy being approved by the building and safety division of the community development department.
- K. Prior to the issuance of building permits, the property owner, at his/her expense, shall (1) execute and record with the Los Angeles County recorder covenants, conditions and restrictions in form and content approved by the city manager and the city attorney providing, among other things, that the property owner and its successors, heirs and assigns shall maintain the art work as required by subsection (G) above, (2) indemnify, defend and hold the city, its officers, employees and agents and related parties harmless from any and all claims or liabilities arising out of the art work, and (3) maintain in the city clerk's office a certificate of public liability insurance, naming the city as an additional insured in an amount not less than one million dollars.
- L. Expressions of obvious bad taste or profanity, which would be likely be offensive to the general public, are unacceptable.
- M. Each piece of art work shall be identified by a plaque at the site of an appropriate size and scale to the piece. The plaque shall be made of cast metal and then placed in a location near the art piece listing the title of the piece, the artist, and the date as well as the city and the art in public places program.

The following items are not to be considered as art work:

- A. Art objects that are mass-produced from a standard design;
- B. Reproductions of original art works, with respect to copyrights and any other clearly defined residual rights, when not an integral part of an art work or concept as presented in early design and concept phases;
- C. Decorative, ornamental or functional elements that are designed by the building architect as opposed to an artist commissioned for the purpose of creating the art work;
- D. Ornamental planting except where these elements are designed or approved by the artist and are an integral part of the art work by the artist.

(Ord. 2850 § 8, 2004; Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 3112, § 2, 2-25-20)

12.52.080 - Art in public places account.

- A. Accounting. Any monies collected by the city in accordance with the in-lieu contribution provisions of this chapter shall be deposited in a separate account denominated as the "art in public places account." The city manager or his/her designee shall establish accounting records sufficient to identify and control these funds. The account containing these funds shall earn interest and the earned interest shall be used for and be subject to the same restrictions established in subsection (B) of this section.
- B. Use of Account. The art in public places account shall be used to provide sites for, and works of art in, public

places in order to further the intent and purpose of this chapter as set forth in Section 12.52.010.

C. Permissible Expenditures. Expenditures of funds shall be strictly limited to the following enumerated uses:

1. The cost of art work and its installation;
2. Water works, landscaping, lighting and other objects which are an integral part of the art work;
3. Plaques for each piece, as required by 12.52.070 (A)(13) of this chapter;
4. Educational, promotional and any other such materials relating to art in public places projects;
5. Frames, mats, pedestals and other objects necessary for the proper presentation of the art work;
6. Walls, pools, planting, architectural or landscape architectural elements necessary for the proper aesthetic and structural placement of the art work;
7. Maintenance and repair of art works funded through the art in public places account;
8. Events and ceremonies regarding the art work to promote community awareness, outreach and education.

D. Administration.

1. The art in public places account shall be administered by the city council.
2. The art in public places advisory committee shall make recommendations to the city council concerning the purchase or commissioning of art works, including:
 - a. Places which should be considered for art works; and
 - b. The medium of the proposed art work; and
 - c. The artist whose work should be considered for placement in the recommended location.
3. Selection of artists and art works shall be based on the guidelines set forth in Section 12.52.070.
4. The city will contract with the artist and with consultants as necessary for the purchase or commissioning as well as the execution and installation of the art work.
5. On-site activity in connection with the art work installation shall be coordinated by the city manager and his/her designee.

(Ord. 2850 § 9, 2004; Ord. 2741 § 1 (part), 1998; Ord. 2597 § 1 (part), 1993)

(Ord. No. 3112, § 2, 2-25-20)