

CHAPTER 15.44

ART IN PUBLIC PLACES

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§ 15.44.010 TITLE.

This chapter shall be known as the "Art in Public Places Ordinance."

(Ord. 2004-03 § 2 (part), 2004; Ord. 2023-04 § 3, 2023)

§ 15.44.020 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

APPROPRIATELY MAINTAINED. Maintained in conformance with the city's public artwork maintenance policy.

ARTWORK. An original creation of physical art by an artist. **ARTWORK** includes without limitation a fountain, mobile, mosaic, mural, painting, sculpture or tapestry. An **ARTWORK** may be realized through such mediums as bronze, ceramic tile, concrete, stained glass, steel or wood. An **ARTWORK** shall not include objects that are mass-produced with a standard design.

ARTWORK VALUE. The direct costs of the following elements (as applicable) in connection with an artwork: design; acquisition; construction or creation; and installation. **ARTWORK VALUE** shall not include utility and maintenance costs related to the operation and preservation of an artwork.

COMMITTEE. The Art in Public Places Committee as established by the City Council.

DEVELOPMENT PROJECT. Construction of a building that meets the criteria in §15.44.050.

DIRECTOR. The Director of Community Development or such person's designee.

IN LIEU PUBLIC ART FEE. A fee paid to the city's Art in Public Places Fund by a development project applicant in an amount equal to 1% of the project cost pursuant to § 15.44.060(A)(3), unless otherwise limited in a specific plan or other document approved by the City Council.

PROJECT COST. The total building permit valuation of new construction of a development project, excluding the land value, as indicated on the building permit or permits issued by the city for the project.

PUBLIC ARTWORK. Artwork that is either (i) donated to the city for display on city property; (ii) installed on public property; or (iii) installed on private property in a publicly accessible location.

PUBLICLY ACCESSIBLE. Located in an area of the city open to the general public or clearly visible from the adjacent public right of way such as a sidewalk or street.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2004-20 § 1, 2004; Ord. 2008-08 § 1, 2008; Ord. 2023-04 § 3, 2023)

§ 15.44.030 IMPLEMENTATION OF CHAPTER.

(A) The procedures prescribed by this chapter for review and approval of public artwork shall be conducted concurrently with any applicable procedures prescribed by Title 15 or Title 17 of this code for review and approval of development permits.

(B) The Director shall establish and publish a public artwork maintenance policy that specifies maintenance requirements for public artwork installed on private property to satisfy the public artwork requirement. The Director may amend such policy as deemed appropriate.

(C) The Director shall establish and publish a set of implementation guidelines that identifies a variety of programs and projects to further the goal of providing publicly accessible art throughout the city and encourages community participation in the arts.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2004-20 § 2, 2004; Ord. 2008-08 § 2, 2008; Ord. 2023-04 § 3, 2023)

§ 15.44.040 ART IN PUBLIC PLACES FUND.

(A) There is hereby established in the city a fund known as the "Art in Public Places Fund," which shall be a depository for in lieu public art fees paid pursuant to this chapter and for public art-related monetary donations to the city.

(B) The Art in Public Places Fund shall be maintained by the Director of Finance or their designee and funds shall be utilized for any of the following purposes at the discretion of the city:

(1) Design, acquisition, installation, improvement, maintenance, repair, and insurance of public artwork displayed on city property. Public artwork acquired with money from the Art in Public Places Fund shall be the property of the city.

(2) Offering of performing arts programs on city property for the community; provided, however, that not more than 5% of the fund's annual budget shall be used for this purpose.

(3) Offering of art education programs on city property for the community; provided, however, that not more than 5% of the fund's annual budget shall be used for this purpose.

(C) The Art in Public Places Fund shall be accounted for separately and shall not be used for general governmental purposes. In lieu public art fees deposited into the fund shall be expended for permitted purposes within five calendar years of deposit.

(D) The Director shall timely provide the development impact fee reports on fund activities required by state law to the City Council and the Committee.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2004-20 § 3, 2004; Ord. 2023-04 § 3, 2023)

§ 15.44.050 APPLICABILITY OF PUBLIC ARTWORK REQUIREMENT.

(A) Except as provided in division (B) below, the following development projects shall comply with the public artwork requirement established in this chapter.

(1) Residential development projects involving five or more dwelling units and having a project cost in excess of \$1 million.

(2) Commercial, industrial, office or other non-residential development projects having a project cost in excess of \$1 million.

(B) The following development projects shall be exempt from the public artwork requirement:

(1) Government agency development projects.

(2) Reconstruction of buildings that have been damaged by fire, flood, wind, earthquake or other calamity.

(3) Affordable housing developments that are entirely comprised of residential units that are deed-restricted for occupancy by persons of moderate income or less for a period of 55 years or more.

(4) Tenant improvements to existing structures.

(5) A new development project that is entirely within the boundaries of a Community Facilities District or similar mechanism to fund ongoing city services, established by the City Council and fully approved under applicable law by the property owner.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2008-08 § 4, 2008; Ord. 2017-03 § 2, 2017; Ord. 2023-04 § 3, 2023)

§ 15.44.060 SATISFACTION OF PUBLIC ARTWORK REQUIREMENT.

(A) The public artwork requirement shall be satisfied by completing one of the following actions in accordance with this chapter:

(1) Donating public artwork to the city.

(2) Installing a public artwork on private property.

(3) Paying an in lieu public art fee in an amount established by this chapter to the city.

(B) If the artwork value of a public artwork used to satisfy the public artwork requirement is less than the amount of the in

lieu public art fee that otherwise would be applicable to the development project, then the difference shall be paid to the city and deposited in the Art in Public Places Fund, as provided in this section.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2005-06 § 2, 2005; Ord. 2023-04 § 3, 2023)

§ 15.44.070 PROCEDURE FOR DONATION OR INSTALLATION OF PUBLIC ARTWORK.

(A) An application for donation of a public artwork to the city, or for installation of a public artwork to fulfill the requirements of this chapter or utilizing revenue from the Art in Public Places Fund shall be reviewed initially by the Committee which shall make a recommendation thereon to the City Council. The Committee shall act as an advisory body only. The City Council shall be the final decision maker on all such applications. The City Council may approve, conditionally approve or reject a proposed public artwork in its absolute discretion based on its aesthetic judgement or other factors deemed relevant by the City Council. Notwithstanding the foregoing, applications for public artwork that fulfill the requirements of this chapter and utilize no more than \$5,000 from the Art in Public Places Fund, may be approved by the Committee, with a right of appeal to the City Council.

(B) An application shall be filed with the Director and shall be made on a city-provided form and shall contain such information to enable a reasonable evaluation as requested by the Director, including a City Attorney-approved written statement executed by the artwork's creator waiving such person's rights under the Visual Artists Rights Act of 1990 (17 U.S.C. 101 et seq.), Cal. Civil Code § 1542 and equivalent laws.

(C) An approved public artwork shall be delivered to the city or installed on private property prior to issuance of an occupancy permit for the development project.

(D) Prior to installing a public artwork on private property to satisfy the public artwork requirement, the property owner shall execute and record with the County Recorder a City Attorney-approved covenant. Such covenant shall require the property owner and successors thereof to do the following:

(1) Keep the public artwork and the surrounding property appropriately maintained and available for public access pursuant to § 15.44.090.

(2) Allow city representatives to enter the property upon reasonable notice to perform necessary repairs to the public artwork or replacement at the property owner's expense when the public artwork is not appropriately maintained or replaced.

(3) If the property owner fails to repair, maintain, or replace public artwork upon direction by the city, and does not permit the city's entry pursuant to division (D)(2), above, the property owners' failure to maintain or replace public artwork may be treated as a public nuisance and abated according to the procedures set forth in this code.

(4) Indemnify, defend and hold harmless the city, its officers, employees and agents from any claim, demand, damage, liability, loss, cost or expense attributable to the public artwork.

(5) Such other terms as deemed necessary in individual cases by either the City Attorney or the Director.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2004-20 § 5, 2004; Ord. 2008-08 § 5, 2008; Ord. 2023-04 § 3, 2023)

§ 15.44.080 PROCEDURE FOR PAYMENT OF IN LIEU ART FEE.

Unless an alternative deadline is approved by the City Council, payment of the in lieu public art fee shall be made prior to the issuance of a certificate of occupancy for the subject development project.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2008-08 § 6, 2008; Ord. 2023-04 § 3, 2023)

§ 15.44.100 REMOVAL OR ALTERATION OF PUBLIC ARTWORK ON PRIVATE PROPERTY.

Public artwork installed on private property to satisfy the public artwork requirement shall not be removed or altered without the prior approval of the City Council. In addition to any other applicable penalty, violation of this section may render the property owner liable for payment of the in lieu public art fee that would have been applicable to the subject development project, and may result in revocation of the occupancy permit issued for the subject development project. Prior to any imposition of in lieu public art fee liability or occupancy permit revocation pursuant to this section, the city shall afford the property owner notice and an opportunity for a hearing.

(Ord. 2004-03 § 2 (part), 2004; Ord. 2023-04 § 3, 2023)