

§ 1-13-4 ART IN PUBLIC AND PRIVATE DEVELOPMENTS.

(A) *Intent.* Public art celebrates the city's identity, enhances public spaces, strengthens residents' ties to the community, attracts new businesses and tourism and promotes citizen awareness of, and interest in, the arts. Placing art in publicly accessible spaces creates a more desirable place to live, work and visit and improves the health, safety and welfare of the community. Public art projects have the potential of connecting new commercial and residential development to the community and creating a vibrant sense of place for residents and visitors. Art installations in both public and private development that are accessible to the public further enhance these spaces, serve as a cultural resource and establish a distinctive local identity.

(B) *Scope and applicability.* Public art shall be installed as follows:

(1) Developers of any private new mixed-use and/or commercial (including retail, office, lodging, and planned development) building, or the expansion of any mixed-use and/or commercial building, including all phases of a multi-phase project and including religious institutions and nonprofit organizations, shall: 1) devote an amount equal to 1% of building construction costs for the acquisition and installation of publicly accessible art with a maximum of \$100,000 per building on the development site; or 2) contribute an equal amount to the city's segregated Art in Public Places Fund ("APPF"). The required expenditure shall be based on the building permit valuation which shall be confirmed by the building and safety manager.

(a) For smaller projects a floor is established at .25% of the valuation for commercial projects under 5,000 square feet. Projects between 5,000 square feet and 10,000 square feet shall be .5% of the valuation and all other projects exceeding 10,000 square feet shall be 1% of the valuation. A ceiling is established at \$100,000 per building for larger projects.

(b) Developers of any new multi-family building(s) of 10 dwelling units or more, and/or the expansion of any existing multi-family residential building(s) by 10 dwelling units or more, shall: 1) devote an amount equal to 1% of building construction costs for the acquisition and installation of publicly accessible art on the development site; or 2) contribute an equal amount to the city's segregated APPF. The required expenditure shall be calculated based on the total number of dwelling units in the project and the building permit valuation which shall be confirmed by the building and safety manager.

(2) For new public construction projects involving construction costs over \$50,000, 1% of the construction cost shall be used for public art. All allocations of funds for eligible projects shall include an amount equal to 1% of the projected construction project cost at the time the project is included in the city's capital improvement program to be used for the selection, acquisition, commissioning and display of art.

(3) Renovation exceeding 50% or more of the gross floor area of a mixed use and/or nonresidential building calculated based on the gross floor area of the entire building at the rate applicable to construction of the same type triggers the 1% contribution.

(C) Exemptions include all of the following:

(1) Industrial uses, communication facilities, utility installations and similar projects as determined by the Development Services Director;

(2) Federal, state, or county projects or structures;

(3) Residential uses other than multi-family;

(4) Public art expenditure not legally permissible due to the constraints imposed by the funding mechanism;

(5) Routine maintenance projects such as surface treatments;

(6) Safety improvements such as sidewalks and overlays with shouldering for bike lanes;

(7) For public construction projects where the city has significant budgetary constraints that necessitate cost reduction, the City Council may on a case-by-case basis eliminate or reduce city funds dedicated for art on a specific project.

(D) *Art in private development.*

(1) *Art plan submittal.* At the time of the application for a building permit, the developer will outline plans for incorporating public art in or on the development site, or make a donation of in-lieu funds to the APPF. Art must be installed in accordance with approved plans or the fee in-lieu of paid prior to receiving a certificate of occupancy. The applicant shall:

(a) Contact the Development Services Department regarding the art in private development. Building division staff will calculate the public art budget in accordance with division (B) above after a building permit submittal with cost estimates has been received.

(b) Submit a public art plan to the Development Services Department associated with the site plan application or building permit application for development and/or redevelopment or expansion demonstrating compliance with this section based on the calculated public art budget. All proposed art shall meet the applicable requirements of all other city codes. The proposed plan for presentation to the Public Art Commission ("PAC") shall include:

1. Narrative of the proposed art;

2. Conceptual drawings for the public art project;

3. Detailed itemized budget for the project that includes the city review process, artist fee, cost of design, fabrication, installation, maintenance, site preparation, type of base/platform for the project, plaque and administrative costs;
4. Agreement or contract with artist;
5. Scaled site plan depicting the location and visibility of the proposed art and a landscape plan prepared in accordance with the city's Landscape Code;
6. Scale drawing or model;
7. Maintenance plan; and
8. Perspective views showing the art in the development context.

(c) Once the Development Services Director and Coordinator have determined that the application is complete, the application shall be referred to the PAC. The developer will present the plan to the PAC and seek a recommendation for the project from the PAC. The PAC will review the plan at a regularly scheduled public meeting and determine if it meets the qualifications for aesthetic merit, durability and suitability to be placed in a public space, as defined under the design principles enumerated in division (D)(3) below. The PAC may recommend approval, denial, or recommend approval with changes based on the art criteria and inform the applicant in writing. The applicant may appeal to the City Council within 30 calendar days of the PAC decision and the Council will hear the appeal at a regularly scheduled public meeting within 60 calendar days from the filing date of an appeal by the applicant.

(2) *Design and location requirements.* Public art shall be designed by an artist. If a design team is employed to create public art, at least 1 team member shall be an artist. An artist shall mean any professional practitioner in the arts, generally recognized by critics and peers as a professional in the field as evidenced by his/her education, experience and artwork production. The artist may work with architects, landscape architects, engineers, lighting designers and/or other professionals, but he or she must be the primary designer of the project and must hold the contract with the developer for the work of art. This is evidenced by a portfolio or resume which demonstrates projects previously commissioned, completed and paid for specifically for public art.

(a) 1. Public art shall not include any of the following unless specifically allowed by the PAC and the item is designed by an artist:

- a. Architectural elements or structural parts of a building or other structure;
- b. Fixtures; and
- c. Features such as grates, shade screens, streetlights, benches, signs, and bike racks.

2. Designs of the above items shall definitively result in artistic expression beyond the normally anticipated functional appearance.

(b) Public art shall be original work, produced by an artist; shall be in an area easily accessible and clearly visible to the general public and shall allow for unrestricted viewing from a variety of vantage points; and shall be in types of media including, but not limited to, sculpture, mural, drawing, painting, photographic and mosaic. Public art may be stand-alone or integrated into the architecture or landscaping and should encompass the broadest range of expression, media and materials. Public art should consider the site, context and audience. Public art may possess functional as well as aesthetic qualities.

(c) Appropriations for the acquisition of public art shall not be expended for any of the following:

1. Art objects which are mass-produced and of standard design; however, limited editions signed by the artist, original prints, cast sculpture or photographs may be purchased;
2. Decorative or ornamental elements (unless for the security of the public art or to ensure public safety) which are designed by the building architect or consultants engaged by the architect; or
3. Expenses related to the ongoing operation of the public art, such as electrical, water, or mechanical service required to operate the public art;

(d) Non-eligible public art and costs include: business logo; directional elements such as super graphics or signage; mass-produced fountains, sculptures, and playground equipment; decorative or functional elements created by professionals other than an artist commissioned for this purpose; art reproductions; landscaping elements normally associated with the art; service or utilities necessary to operate art; maintenance costs; architect fees; and normally required improvements and development costs, including but not limited to land acquisition, grading, paving, sidewalks and landscaping.

(e) Public art may be located on a publicly viewable building façade, provided such location improves overall public accessibility to the art.

(f) Art may be located within a building subject to approval by the PAC. The applicant shall demonstrate that the interior location for art provides equal or superior public access relative to outdoor locations. Indoor locations shall be readily accessible to the public such as lobbies and entryways and shall be accessible to the public for a minimum of 40 hours each week.

(g) Upon the recommendation of the Zoning Administrator, the location of public art shall be approved by the PAC and shall be indicated on the landscape plan, floor plan, development plan, plat or other appropriate document as determined by the Zoning Administrator.

(h) Public art shall be permanent, and may be integrated with the work of other design professionals.

(i) Public art shall not be located in sight visibility triangles, but can be located in the center of a roundabout island.

(j) Location of art in a proposed or existing city right-of-way shall be approved by the City Engineer.

(k) Off-site (art not located on a developer's project site) locations within the city for public art must be approved by the City Council, upon review and recommendation by the PAC.

(3) *Design principles.* Assessment of public art applications shall be based on conformance with the adopted Public Art Guidelines ("PAG") and fulfillment of the following principles:

(a) *Quality:* demonstrates originality, artistic quality, and excellence in design and craftsmanship, shown through renderings, explanation of construction, materials and artist resume;

(b) *Response to context:* be appropriate in scale, material, form and context for the immediate and general social and physical environments with which they relate;

(c) *Durability:* include consideration of structural and surface integrity, permanence, and protection against theft, vandalism, weathering, and excessive maintenance and repair costs;

(d) *Integration:* in addition to meeting aesthetic requirements, should also serve to establish focal points, modify, enhance or define specific spaces or establish identity;

(e) *Safety:* not present a hazard or create unsafe conditions;

(f) *Diversity:* contribute to a variety of style, scale, media, artists, community values and forms of expression within the city;

(g) *Visibility:* be visible and accessible for the purposes of public enjoyment and security, considering pedestrian and vehicular traffic, lighting, active hours on site and future development and vegetation growth;

(h) *Feasibility:* include consideration of the likelihood of successful completion based on: project budget, timeline, artist experience and soundness of materials; and

(i) *Advertising elements:* shall not reflect or include advertising elements of a business or corporation, including colors, graphics, logos or other representations of corporate identity.

(4) *Installation, ownership and maintenance.*

(a) Required public art installations created for private development and placed on private property shall be privately-owned and maintained by the property owner or a homeowners association ("HOA"). Public art responsibilities shall transfer and run with the land from property owner to property owner and all successors and assigns. If the city accepts ownership of the art, the land on which the art is placed shall be dedicated to the city or a perpetual easement shall be recorded granting the city perpetual egress, ingress, maintenance and placement rights.

(b) Prior to issuance of a certificate of occupancy, the approved art shall be installed, inspected and certified completed in accordance with approved plans by the Director of Development Services and/or Coordinator. The city may withhold the final certificate of occupancy until public art installation is completed. The Director of Development Services may agree to an extension of time of up to 6 months. If an extension of time is granted, then prior to the issuance of the certificate of occupancy, a cash deposit or letter of credit in an amount guaranteeing the complete installation of the art plus an additional 10% administrative fee based upon the original permit fee amount for the public art portion shall be deposited by the owner or developer with the city. If an extension of time is granted and there is a failure to completely install the art approved by the Director within 6 months of the issuance of the certificate of occupancy, it shall result in forfeiture of the deposit or letter of credit and the money deposited shall be deposited into the APPF.

(c) Public art must remain on public display and shall be maintained in like new condition in perpetuity by the property owner. The art shall be maintained to preserve its intended appearance as specified in the approved application. Faded paint, missing or damaged parts, or deteriorated finishes represent unacceptable maintenance conditions.

1. The original artist shall be offered the opportunity to provide maintenance and repair services for the art they create. If the original artist will not be maintaining the art, documentation of the owner's request to the artist for maintenance and repair services shall be submitted with the maintenance plan.

2. A maintenance plan specifying the parties intended to complete repairs, required maintenance steps, and frequency of maintenance shall be submitted with the application for public art approval. If the parties identified to perform maintenance and repairs are not the original artist, a statement of the parties' qualifications to repair and maintain public art shall be submitted with the maintenance plan. Qualified individuals shall have experience working with the media and materials used in the art.

3. Replacement of missing or damaged public art is required, unless the property owner and/or developer provides documentation that shows that the art was properly maintained in accordance with the approved maintenance plan. Property

owners and/or developers are required to respond to inquiries from the city regarding damaged or missing public art within 15 calendar days of written notice.

4. Failure to maintain the art, as determined by the Director shall constitute a violation of this Code, and/or cause liens against the real property.

(d) In the event that any art placed on the development as a result of this section is removed or destroyed, the owner or developer shall, within 180 calendar days of the removal or destruction:

1. Replace it with art that meets the requirements of this section and is equal to the removed/destroyed art's fair market value as determined by an independent appraiser specializing in works of art immediately prior to its removal or destruction; or

2. Make a cash payment to the APPF in an amount equal to the square foot gross floor area of the development multiplied by the minimum investment requirement set forth above that is applicable at the time of the removal or destruction of the art or within 180 days after the city has been made aware.

(e) A public art installation schedule addressing timing, budget allocation, art location(s), and specific details for each phase of a phased development project shall be submitted for review by the Zoning Administrator, Coordinator and PAC. Each development phase shall include public art allocated proportionally to building valuation or unit count as determined by the Zoning Administrator.

(f) The installation of the art shall be done in a manner that will protect the art and the public. The general safety and permanence of art installation shall be inspected as determined by the City Building and Safety Manager, Zoning Administrator and Coordinator. Incomplete or unsafe installations shall not be approved.

(g) Art projects shall have a small plaque not to exceed 80 square inches in size identifying the title, date and artist. The plaque shall contain the names of the current Mayor and Council members, the PAC members, date of installation and the words "This public art installation was made possible by the developer and the Apache Junction Public Art Program."

(h) The property/public art owner shall be responsible for the services and utilities necessary to operate and/or maintain public art over time.

(i) The property/public art owner shall provide evidence of insurance in a minimum amount equal to the purchase and installation costs of the public art and shall maintain such insurance at all times. A certificate of insurance shall be submitted to the Director on an annual basis.

(j) Public art cannot be permanently removed, relocated or altered in any way without the review and approval of the PAC.

(k) If the developer and/or owner satisfies the public art requirement in accordance with all divisions of this section, the public art previously installed on the development site may subsequently be removed if the developer and/or owner makes a public art program in-lieu contribution equivalent to the original calculated amount to the APPF. The developer/owner will follow the terms of the Visual Artist Rights Act of 1990, 17 U.S.C. § 106A (the "Act"), regarding the modification/destruction of the art, unless the artist has waived rights under the Act.

(l) In the event public art must be temporarily moved or altered due to construction or other activity, the property owner and/or developer shall submit in writing a request to the PAC detailing the purpose, time frame and intended temporary location for the art. The request must be approved by the PAC, with reference to the maintenance plan, prior to movement or alteration of the art. The art shall be returned to its original location.

(m) The property owner and/or developer of phased developments shall obtain a certificate of completion for the art before issuance of the first certificate of occupancy for the first phase of development, except as allowed in division (8) below entitled "Deferment of Art Installation."

(n) Each property owner and/or developer within a multi-property development shall separately comply with this section before the issuance of the certificate of occupancy for the property owner/developer's respective portion of development, except as allowed in the division entitled "Combination of Art Requirements" under division (5) below and "Deferment of Art Installation Requirements" under division (8) below.

(5) *Combination of art requirements.* The property owner/developer of a phased or multi-property owner development may combine the art requirements for each phase of each property owner/developer, upon the PAC's approval of a conceptual art plan for the development. The Zoning Administrator may enter into a written agreement with the property owner/developer regarding combined art requirements. The agreement shall be in a form approved by the City Attorney and recorded against the property. The agreement shall include, but not be limited to:

- (a) The property owner/developer art requirements;
- (b) The schedule for installing the art;
- (c) The penalties for the property owner/developer's breach of the agreement; and
- (d) The remedies for such breach.

(6) *Eligible costs for public art installation.*

(a) The minimum art investment shall take the form of either: 1) an on-site exterior installation by a developer approved by the PAC; or 2) at the developer's discretion, an equivalent cash contribution to the APPF. A combination of the above options is also acceptable.

(b) If specifically approved by the PAC, art budgets may include integrated pedestals, bases, walls, utility extensions and architect fees. The following on-site art and costs are acceptable under this division:

1. Building features and enhancements that are unique and produced by a professional artist;
2. Landscape art enhancements such as enhanced walkways, bridges, unique water or unique art features;
3. Murals or mosaics covering walls or walkways;
4. Professional artist sculptures that can be freestanding, wall-supported, or suspended and made of durable materials suitable to the site;
5. Expenses eligible for the minimum investment, to include:
 - a. Professional artist compensation;
 - b. Fabrication and installation of the art;
 - c. Site preparation;
 - d. Structures enabling the artist to display the art;
 - e. Documentation of the art; and
 - f. Acknowledgment plaque identifying the artist and the art.

(c) For multi-phase projects or where building permit valuation has changed, an updated public art budget, based on the most current building valuation tables, shall be submitted for each phase at the time of application for public art approval.

(d) Upon installation of public art, any unexpended funds shall be deposited into the APPF.

(7) *Conveyance of art.* Approval by the City Council, upon recommendation of the PAC, to accept as a gift to the city, after a two-year warranty period, privately owned public art, will be:

- (a) Provided at no cost to the city, including re-installation costs;
- (b) Gifted in accordance with the city's gift policies;
- (c) Maintained by the property owner in accordance with the city's public art policies for a 2-year warranty period;
- (d) Transferred to the city in a form approved by the City Attorney, including provisions to indemnify the city and allow the city to relocate the art;
- (e) Accessible to the public, by an easement to the city from the public street to the art, for access and maintenance, subject to the City Engineer's approval. The easement shall be in a form approved by the City Attorney.
- (f) After more than the 2-year warranty period, the Council may accept art only if the property owner has maintained it in accordance with this section.
- (g) If the city determines that the art has not been maintained, the property owner shall continue to own and maintain the art in accordance with this section.

(8) *Deferment of art installation.* Before the issuance of the first building permit for the development or the first phase of a development, the Zoning Administrator may enter into a written agreement with the property owner(s) regarding installing art or paying an in-lieu payment on a deferred schedule. The agreement shall be in a form approved by the City Attorney and recorded against the property. The agreement shall include, but not be limited to:

- (a) The property owner/developer's art requirements;
- (b) The schedule for installing the art;
- (c) The penalties for the property owner/developer's breach of the agreement; and
- (d) The remedies for such breach.

(9) *In-lieu of cash contribution.* The developer shall provide art in a place accessible to the public or make a payment in-lieu thereof which shall be placed in the APPF.

(a) Contributions of art or a payment in-lieu shall be made in according to the following:

<i>Development valuation</i>	<i>Purchase of art for project site</i>	<i>Contribute to the In-lieu of Fund</i>
<\$49,999	Not applicable	All funding

\$50,000 - \$4,999,999	Any combination	
>\$5,000,00 0	Minimum of \$50,000	Any additional balance

(b) The PAC may determine that, due to remoteness of location, limited access, or any other cause that may prevent the required public art from fulfilling the intent of these provisions, the fee shall be made as an in-lieu fee to the APPF.

(c) The in-lieu fees paid to the APPF may be used for the maintenance of publicly owned art.

(E) *Administration of Art in Public and Private Development Program.* The Art in Public and Private Development ("APPD") program shall be administered by the PAC in coordination with the Development Services Department and the Finance Department.

(1) The APPD program funds in the APPF will be spent for each project and a written report on those expenditures shall be prepared and submitted on an annual basis to the appropriate city staff and Council and shall contain a description and the amount and source of each expenditure for each specific art project and location of each piece of art purchased or commissioned with such funding and any unspent balance and the name of each artist.

(2) The PAC shall determine the appropriate placement of art commissioned or purchased under the APPD program as well as art accepted as gifts to the city.

(3) The PAC shall establish artist selection guidelines for the APPD program projects, including determining whether any selection will be made by open competition, limited entry (invitational) or direct selection.

(4) The PAC shall oversee the maintenance of art in the APPD program collection.

(5) The PAC shall solicit, receive and review comments and recommendations regarding the selection of art restoration and conservation projects, and to make the final selection of the restoration and conservation projects that will receive APPD program funding.

(6) The city's Finance Director shall establish a segregated fund designated as the APPF into which funds appropriated or derived from gifts or donations and developer in-lieu contributions for public art shall be deposited.

(7) For the budget year in which the City Council appropriates funding for eligible public construction projects, the public art allocation shall be deposited into the APPF in accordance with procedures established by the city's Finance Director. The deposited funds will include an inflation factor for the number of years that the project was in the capital improvements program plan and not implemented. As individual public art projects generally span more than one fiscal year, funds will be available for successive fiscal years.

(8) Monies collected in the APPF shall be budgeted and expended and used for projects commissioned pursuant to this Article. Each disbursement from such account or from other appropriations for art shall be recommended by the PAC and authorized in accordance with applicable law and accounting principles governing expenditures from the city's budget. Separate accounts shall be established whenever funds are required to be used at a designated capital improvement project.

(Ord. 1477, passed 9-17-2019)