

## Chapter 20. Planning and Zoning

### § 20.58. ART IN PUBLIC PLACES PROGRAM

#### § 20.58.010. Purpose.

[Ord. No. 07-04 § 1]

An Albany Art in Public Places Program is hereby established on issuance of certain building permits for development in the City of Albany. The Albany Art in Public Places Program shall be in addition to all other charges for approvals and permits required by other ordinances and resolutions of the City of Albany.

#### § 20.58.020. Definitions.

[Ord. No. 07-04 § 2]

##### **CONSTRUCTION COST**

Means construction cost shall be based on building valuation per square foot, as contained in the City Master Fee Schedule, as it may be amended from time to time, excluding land valuation and off-site improvement costs.

##### **PUBLIC ART PROJECT THRESHOLD**

Means the City Council shall adopt by resolution, standards that set forth the size and types of building permits upon which the ordinance is imposed.

##### **PUBLIC ARTWORK**

Means and may include sculpture, monument, mural, fountains, fresco, relief, painting, drawing, etching, original print and collage, mosaic, ceramic, weaving, carving, stained glass, wood, metal, plastic, textile, earthworks, digital art, or electronic art. The following items are not to be considered Public Artwork:

1. Normal landscaping, paving, architectural ornamentation, or signage, except where these elements are designed by the artist and are an integral part of the fine art works by the artist.
2. Decorative, ornamental, or functional building elements that are advertising in intention, or that includes a business name or logo.
3. Directional elements such as super graphics, signage, or color-coding except where these elements are an integral part of original fine art works.
4. Art objects that are mass-produced from a standard design such as playground equipment, fountains, flags, or banners.
5. Decorative, ornamental, or functional building elements that are designed by the building architect or designer except where these elements are designed by the artist and an integral part of the fine art works by the artist.
6. Works of art that are perceived by the Arts Committee or review panel as offensive and not of interest to the general community.

## § 20.58.030. Exemptions.

[Ord. No. 07-04 § 3]

A. The requirements of this section shall not apply to:

1. Projects that have an active building permit application on or before the effective date of the section.<sup>[1]</sup>  
*[1] Editor's Note: As defined in Section 50072 of the California Health and Safety Code, or Section 223 of the U.S. Social Security Act.*
2. Projects that are determined by the Community Development Director to be exempt from Design Review, pursuant to Section **20.100.050B.2**.
3. Projects with project size or building valuation less than the Public Art Project Threshold.
4. A single-family home that is the primary residence of the owner of the property.
5. Projects initiated to comply with subsection 12-6.3.f (unreinforced masonry bearing wall).
6. Public improvement projects or publicly-assisted project in which the Community Development Director determines that the public source of funding, or other applicable regulation or policy, prohibits the use of funds for public art.
7. Underground public works projects, street or sidewalk repair, street lighting, or landscaping, including American Disabilities Act (ADA) mandated improvements and energy efficiency improvements to existing facilities.

## § 20.58.040. Art in Public Places Program Requirement.

[Ord. No. 07-04 § 4]

- A. Applicants for all new development projects, except projects exempted in Section **20.58.030**, are required to include a Public Art feature valued at 1.75% of construction, or if eligible, pay an in-lieu fee pursuant to Section **20.58.040**. The City Council, by resolution, may adjust the required valuation of the Public Art Feature.
- B. Valuation of Public Art Feature. An applicant is responsible for providing documentation of the value of a Public Art Feature. Such documentation shall be provided by an independent third party with qualifications acceptable to the Community Development Director. The cost of services or utilities necessary to operate or maintain the artwork over time shall not be included in the valuation of the Public Art Feature.
- C. Nothing in this section shall prohibit an applicant from placing an approved Public Art Feature in a project with a valuation less than required, provided that the applicant pays to the Art in Public Places Fund an amount equal to the difference between the actual valuation of the Public Art Feature and the required valuation, pursuant to implementation procedures to be adopted by the City Council.
- D. All Public Art Features installed on private property shall remain the property of the owner of the parcel. The obligation to maintain the Public Art Feature shall remain the property owner, may be incorporated into conditions of approval of the project, and shall be documented in the form of covenant recorded against the property. Failure to maintain Public Art Feature may be declared a public nuisance, and subject to the enforcement provisions of Chapter **18** (Nuisances) of the Municipal Code.

## § 20.58.050. Art in Public Places Fund.

[Ord. No. 07-04 § 4]

- A. The Finance and Administrative Services Director shall establish and administer an Art in Public Places Fund, which shall be used for the acquisition, installation, improvement, and maintenance of Public Art Features. The Fund shall be maintained in a separate account and not commingled with other funds.
- B. For proposed projects on sites of less than ten thousand (10,000) square feet, at the discretion of the project applicant, in lieu of developing an on-site Public Art feature, a project applicant may pay an in-lieu fee to the Art in Public Places Fund equal to 1.75% of construction costs. The City Council, by resolution, may adjust the required in-lieu fee.
- C. For proposed projects on sites of ten thousand (10,000) square feet or more, at the discretion of the City and subject to Arts Committee review, a project applicant may request permission pay an in-lieu fee to the Art in Public Places Fund according to the schedule contained in Section **20.58.040B**. The entity with overall project decision-making authority for the project may approve the request, if on the basis of the application and evidence submitted, the decision-making body makes one or more of the following findings, insofar as they are applicable:
  - 1. The appearance, installation, access to, or maintenance of the Public Art Feature would adversely affect the character of the site or nearby properties.
  - 2. The installation, access to, or maintenance of the Public Art Feature cannot be reasonably achieved in compliance with applicable Building and Housing Regulations (Chapter **12** of the Municipal Code) or Planning and Zoning Regulations (Chapter **20** of the Municipal Code).
  - 3. The size, configuration, or land use on the site limits reasonable public access to a Public Art Feature.
  - 4. The appearance, installation, access to, or maintenance of the Public Art Feature conflicts with the applicant's reasonable ability to comply with other adopted policies of the City, including but not limited to the Green Building Program and development of affordable housing.
  - 5. The appearance, installation, access to, or maintenance of the Public Art Feature would have a detrimental impact on a historic resource, have the potential to be an attractive nuisance, or have a detrimental impact on public safety.

## § 20.58.060. Maintenance and Relocation.

[Ord. No. 07-04 § 6]

- A. Maintenance of Public Art Features installed on private property shall be the sole responsibility of the property owner, taking into account the recommendations of the artist as stated in the maintenance criteria provided during installation. Maintenance criteria shall be documented in conditions of approval associated with the project, and if appropriate, documented in the form of a written memorandum recorded on the parcel(s) with the County Records Office.
- B. Title to all artworks required and installed pursuant to this section shall pass to successive owners of the real property
- C. In the event that a property owner wishes to replace or relocate a Public Art Feature approved pursuant to this section, the property owner must pay for replacement Public Art Feature of equal or greater value, or pay for the relocation of the Public Art Feature to an alternative site in the City. Any replacement or relocation shall abide by all State and Federal laws governing the rights of artists. The replacement or relocation of the art work shall be subject to an agreement with the City, which shall include a timeline for replacement or relocation, and shall comply with the requirements of this section.

## § 20.58.070. Implementation Procedures.

[Ord. No. 07-04 § 7]

- A. Based on recommendations prepared by the Arts Committee and the Planning and Zoning Commission, the City Council shall adopt by resolution procedures for implementation of the requirements of this section, including Arts Committee responsibilities, selection and implementation of art on City property, use of Public Art funds, application requirements, procedures for repair, restoration, or relocation of Public Art Features approved pursuant to this section, and annual review of the Public Art program. Changes to implementation procedures shall be reviewed by the Arts Committee and the Planning and Zoning Commission prior to action by the City Council.
- B. Approval of the public art component of a project shall be incorporated into the design review process pursuant to Section **20.100.050**. A Public Art Feature may be approved by the Planning and Zoning Commission, based on a recommendation of the Arts Committee, if on the basis of the application and evidence submitted, the Commission makes the following findings, insofar as they are applicable:
  - 1. The proposed Public Art Feature is consistent with any applicable design review standards or guidelines adopted by the City;
  - 2. The Public Art Feature is an original work of high aesthetic quality;
  - 3. The Public Art Feature is designed and constructed, in a manner and with materials that are adequate for the long-term integrity of the art and that will require a low level of maintenance to ensure that it remains in good condition for the intended life of the public art feature;
  - 4. The scale, material, form, color, and content of the proposed Public Art Feature is compatible and in harmony with the location and its surroundings; and
  - 5. There is reasonable public accessibility or visibility to the Public Art Feature.
- C. All Public Art Features shall meet applicable government requirements, including Building Code requirements.
- D. In the event of delays beyond the reasonable control of a building permit applicant, the Building Official may issue a Certificate of Occupancy if the applicant provides financial security in a form acceptable to the Community Development Director, which is equivalent to the valuation of the approved Public Art Feature.

## § 20.58.080. Hardship or Infeasibility Exemption.

[Ord. No. 07-04 § 8]

- A. Exemption. If an applicant for a nonexempt project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this section, they may apply for an exemption or reduction in requirements as set forth below. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.
- B. Application. If an applicant for a nonexempt project believes such circumstances exist, the applicant may apply for an exemption at the time of application submittal.
- C. Meeting with Arts Committee. The Arts Committee shall review the information supplied by the applicant, may request additional information from the applicant. The Arts Committee shall make a recommendation to the overall project decision-making authority. If the Arts Committee recommends that it is a hardship or infeasible for the applicant to meet fully the requirements of this chapter based on the information provided, the Arts Committee shall recommend the maximum feasible valuation of public art achievable for the project.

- D. Granting of Exemption. The granting of an exemption shall be made by the overall project decision-making authority. If an exemption is granted, the applicant shall be required to comply with this chapter in all other respects and shall be required to achieve the maximum feasible valuation of public art achievable for the project.
- E. Denial of Exemption. If the Arts Committee determines that it is possible for the applicant to fully meet the requirements of this chapter, they shall so notify the applicant and the overall project decision-making authority in writing.