

CHAPTER 11.45
ART IN PUBLIC PLACES PROGRAM

§ 11.45.010. Purpose and intent.

The purpose and intent of this chapter is to promote the general welfare of the public through the acquisition and installation of public art works.
(Ord. 538 § 3, 2001)

§ 11.45.020. Definitions.

For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases are defined as follows:

"Art," "art work" or "public art" means an original creation of art which is freestanding or free hanging in that it is not a part of a building or other structure, nor an architectural element on or in which the work of art is placed, installed or affixed. Art includes, but is not limited to, sculptures, monuments, wall hangings, tapestries, photographs, etchings, engravings and paintings. Art shall not include decorative, ornamental or functional elements designed by the architect or other design consultant retained for the design and construction of the subject building or art objects that are mass produced with a standard design such as fountains and statuary objects.

"Art education" means the public service of providing activities or experiences ("activities") for the purpose of expanding the awareness, knowledge, understanding, appreciation, or familiarity of members of the public with art in all of its forms.

For the purposes of utilizing funding for art education, the term "Art" is to be construed more broadly than "Art" as defined above and includes art expressed in any medium, including, without limitation, painting, sculpture, photography, lithography and other physical mediums, music, singing, spoken word, and other auditory mediums, plays, films, dance, and other performance mediums, literature and poetry, art history and interpretation, clothing and fashions, and cultural expressions. Art education may be provided by any reasonable means that best achieves the purpose set forth above, including, without limitation, classes, lectures, tours, programs, events, festivals, exhibits, tours, performances, writings, films, audio recordings, and similar means. Art education funds may also be expended to provide material related to such activities. An activity qualifying for expenditure for art education funds must be reasonably available to members of the general public. An activity will be considered reasonably available to members of the general public where the time, date, and description of the activity has been advertised via the city's website and social media for at least one week prior to the activity, and either the activity is open to the general public or is open to members of the public who timely reserve participation in the activity. Space for participants may be limited, the activity may be provided for only a limited time, and a charge may be imposed for participation in the activity. Activities may be held in the facilities of public entities, non-profit or charitable organizations, and private facilities, provided that attendance of activities must not be limited to members, owners, subscribers or other interest holders in the private facility. Participation in certain activities may be limited to certain members of the general public, such as youths, students, seniors, or other

reasonable grouping that does not constitute unlawful discrimination of a protected class. Art education funds must not be expended for prizes, gifts, or similar items.

"Commercial building" means any building or structure, all or part of which, contain commercial or industrial use.

"Construction cost" means the total value of all construction on a commercial structure.

"Maintenance" means preservation of the art work in good condition to the satisfaction of the city, protection of the art work against physical defacement, mutilation or alteration, and securing and maintaining insurance coverage.

"Mural" means a graphic illustration or presentation other than a sign of any type, that is painted or otherwise applied to an inside or outside wall, façade, or surface of a building or structure.

"Public place" means any area on public or private property which is open to the general public and is easily accessible and clearly visible to the general public.

(Ord. 538 § 3, 2001; Ord. 707 § 1, 2012; Ord. 832 § 1, 2020)

§ 11.45.030. Public art or in lieu payment required.

Any person constructing a commercial or industrial use building within the city shall provide art in a public place or make an in lieu payment as provided in subsection A or B of this section.

- 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 art work shall have a value that equals or exceeds one percent of the total project valuation.
- B. In lieu of acquiring and installing an art work in a public place, project applicants may contribute funds to the "art in public places fund" established pursuant to Section 11.45.130 equal to one percent of ninety percent of the total project valuation. The in lieu fee shall be paid by the project applicant at the time of the issuance of a certificate of occupancy. Project applicants shall indicate on their building permit application that they wish to make an in lieu contribution.

(Ord. 538 § 3, 2001)

§ 11.45.040. Projects subject to art in public places requirement.

The requirements of this chapter shall apply to the following:

- A. All new commercial and industrial use projects over fifteen thousand square feet of gross floor area;
- B. Remodeling, repair or reconstruction of existing commercial and industrial use property, interior or exterior, where the building permit value exceeds one hundred thousand dollars in changes to the building, excluding landscaping and "acts of God";
- C. All public facilities over fifteen thousand square feet of gross floor area constructed

by the city, except those listed in Section 11.45.050.
(Ord. 538 § 3, 2001; Ord. 750 § 2, 2015)

§ 11.45.050. Projects not subject to art in public places requirement.

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

- A. Remodeling, repair or reconstruction of existing commercial and industrial use property which constitutes less than one hundred thousand dollars of building permit value;
 - B. Residential subdivision and development;
 - C. Low-income housing construction, remodel, repair or reconstruction projects;
 - D. Construction, remodel, repair or reconstruction of structures to be constructed and occupied by a nonprofit, social service agency or institution;
 - E. Underground public works projects;
 - F. Street or sidewalk repairs;
 - G. Tree planting.
- (Ord. 538 § 3, 2001)

§ 11.45.060. Application.

- A. An art in public places application shall be made on a form provided by the city no later than application for permits.
- B. The following information and documents must be submitted with all applications:
 - 1. If the applicant is:
 - a. An individual, the applicant shall provide his or her legal name, any aliases, and current driver's license,
 - b. A partnership, the applicant shall provide the complete name of the partnership, the legal names of all the general partners, and any aliases,
 - c. A corporation, the applicant shall provide the complete name of the corporation, the legal names and any aliases, and capacity of all officers;
 - 2. The name of the business;
 - 3. The name of the prospective on-site manager or foreman;
 - 4. The type of proposed property use whether commercial or industrial;
 - 5. Square footage of the proposed development project;
 - 6. The location of the property;

7. Option selection:

- a. Acquire and install an art work in a public place pursuant to subsection A of Section 11.45.030, or
 - b. In lieu contribution pursuant to subsection B of Section 11.45.030;
8. A site plan showing the location of the art work, complete with a detailed drawing showing size, scale, colors and description of materials to be used;
9. The applicant shall date and sign the application under penalty of perjury that the information contained in the application is true and correct.

(Ord. 538 § 3, 2001)

§ 11.45.070. Application process.

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

- A. The project applicant shall submit to the public arts commission designated staff liaison a completed application, designating which options are being utilized (in lieu or installation of art). In cases where in lieu has been selected, payment of the fee will complete the process;
- B. Upon receipt of an application and payment of the application deposit fee, the city shall immediately stamp the application as received on that date;
- C. The application will not be accepted unless the application fee is submitted with the respective application;
- D. In those cases under Section 11.45.030(A) not later than thirty days after the city has received the application, the city shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant;
- E. In the event the determination is made that the application is not complete, then the written determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they may be made complete;
- F. If the written determination is not made within thirty days after receipt of the application, the application shall be deemed complete for purposes of this chapter;
- G. Within thirty days after the application has been deemed complete, the public arts commission staff liaison shall forward a copy of the application to the development services committee for its review and comment;
- H. Within thirty days after receiving the comment from the development services committee, the public arts commission staff liaison shall forward a copy of the application and a staff recommendation to the Cathedral City public arts commission for its review and consideration;

- I. The public arts commission shall make a formal recommendation to the city council regarding the application within thirty days of its full review of the application; and
- J. The city council shall approve, conditionally approve or deny the application with or without prejudice based upon the guidelines set forth in Section 11.45.110 within thirty days of its initial review of the application.

(Ord. 538 § 3, 2001)

§ 11.45.080. Time.

- A. The time in which any act provided by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a holiday which is also excluded.
- B. If the last day of the performance of any act set forth in this chapter is a holiday or any other day on which City Hall is closed, then the time in which to perform the act is extended to and including the next day which is not a holiday.
- C. If the last day for the performance of any act provided by this chapter is Saturday or Sunday, then the time in which to perform the act is extended to and including the next Monday.
- D. Any of the time periods set forth in Section 11.45.070 may be voluntarily waived by the applicant.

(Ord. 538 § 3, 2001; Ord. 750 § 3, 2015)

§ 11.45.090. Performance security.

- A. If the applicant has elected to acquire and install an art work, then the applicant shall deposit with the city cash, a letter of credit, or other satisfactory security in an amount equal to the value of the art required by Section 11.45.030(A) within thirty days after the final decision of the city council.
- B. If the public art required by this chapter is not installed within the time period set by the city council, then the applicant shall forfeit the security posted with the city and the city shall be permitted to use the security to purchase and install alternate art in a public place within the city.

(Ord. 538 § 3, 2001)

§ 11.45.100. Guidelines for art works.

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

- A. The art works shall be clearly visible and easily accessible to the public;
- B. The application shall include a site plan showing the location of the art work, complete with landscaping, lighting and other accessories to complement and protect the art work;

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- C. The composition of the art work shall be of permanent type materials in order to be durable against vandalism, theft and weather, and in order to require a low level of maintenance;
- D. 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;
- E. The art work shall be designed and constructed by persons experienced in the production of such art work and recognized by critics and by his or her peers as one who produces works of art; and
- F. The art work shall be a permanent, fixed asset to the property.
(Ord. 538 § 3, 2001)

§ 11.45.110. Denial of application.

A denial of an application shall be based upon the applicant's failure to comply with the guidelines set forth in Section 11.45.100.
(Ord. 538 § 3, 2001)

§ 11.45.120. Certificate of occupancy.

No certificate of occupancy shall be issued unless and until the applicant has complied with Section 11.45.030(A) or (B). In the event the project applicant has elected to make an in lieu contribution to the art in public places fund, the certificate of occupancy shall not be issued until such contribution has been paid in full to the city. In the event of remodeling or repairs that meet the chapter requirements, a final inspection shall not be scheduled or performed until all requirements of the chapter are met.
(Ord. 538 § 3, 2001)

§ 11.45.130. Art in public places fund.

- A. Any payments collected in accordance with the in lieu contribution provision of this chapter shall be deposited in a separate interest bearing account denominated as the "art in public places fund."
- B. The city manager or designee shall establish accounting records sufficient to identify and control the art in public places fund.
- C. The art in public places fund shall be used to provide sites for, and works of art in, public places in order to further the intent of this chapter.
- D. The art in public places fund shall be used to maintain and insure art works installed pursuant to this chapter.
- E. On an annual basis, up to thirty percent of the art in public places fund may be used for art education, including any and all ancillary costs associated with funding such art education (the "arts education allocation"). The thirty percent arts education allocation shall be calculated annually based on the total balance in the art in public

places fund as of July 1 of each fiscal year. Any unused portion of the thirty percent arts education allocation shall remain in the art in public places fund. The thirty percent arts education allocation shall not be cumulative and shall be re-calculated every fiscal year.

- F. The public arts commission shall make recommendations to the city council concerning the use of the public arts fund to purchase or commission art works. The public arts commission shall also make recommendations to the city council concerning the use of the art in public places fund to engage in art education.
- G. The decision to use the art in public places fund to purchase or commission art work shall be based on the guidelines set forth in Section 11.45.100.
- H. All decisions regarding the use of the art in public places fund shall be made by the city council.
- I. Administration of the art in public places fund shall comply with the provisions of Government Code Section 66000 et seq.
(Ord. 538 § 3, 2001; Ord. 707 § 2, 2012; Ord. 750 § 4, 2015; Ord. 811 § 1, 2018)

§ 11.45.140. Ownership, maintenance and insurance.

- A. The holder of the certificate of occupancy of the structure for which the public art requirement was imposed is the owner of the art, and is responsible for its maintenance and for providing insurance coverage in the amount of the purchase price to insure the art against any loss or damage, including vandalism. This provision does not apply when the in lieu option is selected.
- B. Any art purchased by the city from the art in public places fund shall be the property of the city and shall be maintained and insured by the city.
(Ord. 538 § 3, 2001)

§ 11.45.150. Removal or alteration of public art.

Public art installed on or integrated into a construction project pursuant to the provisions of this chapter shall not be removed or altered without the approval of the city council. If such public art is knowingly removed or altered without prior approval from the city council, the property owner shall contribute funds equal to the project's original public art requirement to the city's art in public places fund.
(Ord. 538 § 3, 2001)

§ 11.45.160. Public nuisance.

Failure to comply with Sections 11.45.030 and 11.45.140(A) of this chapter shall constitute a public nuisance which shall be subject to the provisions of Title 13 of this code.
(Ord. 538 § 3, 2001; Ord. 750 § 5, 2015)

§ 11.45.170. Infraction violation.

A violation of Sections 11.45.030, 11.45.090(A) and 11.45.150 of this chapter by any person responsible for committing such violation shall constitute an infraction violation and the violator shall be subject to the provisions of Chapter 13.65 of this code, including, but not limited to, the imposition of any and all criminal penalties set forth therein.

(Ord. 538 § 3, 2001; Ord. 750 § 6, 2015)

§ 11.45.180. Civil fines.

Any person convicted of an infraction shall, for each separate violation of this chapter, be subject to: (1) a fine in an amount not to exceed two hundred fifty dollars for a first conviction of an offense; (2) a fine in an amount not to exceed five hundred dollars for a second conviction of the same offense within a twelve-month period of the date of the first offense; and (3) a fine in an amount not to exceed seven hundred fifty dollars for the third conviction of the same offense within a twelve-month period of the date of the first offense. The fine for a fourth and subsequent convictions of the same offense within a twelve-month period of the date of the first offense shall be one thousand dollars.

(Ord. 538 § 3, 2001)

§ 11.45.190. Additional remedies.

Nothing in this chapter shall preclude the city from pursuing other remedies provided by Chapter 13.140 of this code, including, but not limited to, denial or revocation of certificates of occupancy.

(Ord. 538 § 3, 2001)