

Sec. 78-129. - Public art assessment for private development.

- (a) *Applicability.* The provisions of this article and the public art assessment section shall apply to all private development projects, including new construction, or the renovation or improvement of an existing building, where total construction costs are equal to or greater than \$750,000.00. All buildings within new planned developments shall be assessed cumulatively towards this art in public places requirement, even if the buildings are permitted separately or developed in phases. The provisions of this section apply to new development or new construction within existing planned developments.
- (b) *Requirements.* All private development meeting the applicability requirements of this section shall be assessed a sum in accordance with this section, which funds shall be utilized for public art in accordance with this article. Notwithstanding the foregoing, the public art assessment for any single project shall not exceed \$2 million. All applicable private development shall be required to elect one of the following within 90 days of the issuance of the first building permit for any portion of the project:
 - (1) *Option 1:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount not less than one percent of the total construction costs, and submit an application for approval of the work of art or historic or cultural elements, in compliance with this article. If a local artist will be commissioned to provide a work of art, the work of art shall be valued at not less than 90 percent of one percent of the total construction costs; or
 - (2) *Option 2:* Contribute an amount equal to 80 percent of one percent of the total construction costs for deposit to the art in public places fund. The public art assessment shall be paid in full prior to the issuance of a certificate of occupancy; or
 - (3) *Option 3:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount less than one percent of the total construction costs and contribute 80 percent of the balance of the public art assessment (one percent of the total construction costs) for deposit in the art in public places fund.
 - (4) *Option 4:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount not less than one percent of the total construction costs, which art will be part of a private art program that meets all requirements of a private art program.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-130. - Inclusion of art or elements in the project.

- (a) *Historical or cultural elements.* The developer may choose to retain or incorporate historically important or culturally significant elements in the project in lieu of or in addition to artwork. Historical or cultural elements may include distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic period or culture. The total value of all historical or cultural elements and/or artwork must equal one percent of the total construction costs.
- (b) *Location.* Artwork and/or historical or cultural elements must be located to be readily visible to the public based on normal traffic of vehicles and pedestrians in the area.
- (c) *Process.* If the developer chooses to provide artwork or historical or cultural elements, the developer shall follow the following process:
 - (1) *Escrow and accounting of funds for artwork.* The developer shall submit documentation to the city showing that a deposit for public art was made with the developer's attorney into an escrow account not more than 90 [days] after the issuance of the first building permit, in an amount equal to one percent of the total construction costs.

- (2) *Art consultant.* If the developer chooses to provide artwork, the developer may utilize up to 12 percent of the escrowed art deposit to retain an art consultant to assist in the selection and procurement of the required work of art. The art consultant shall have no financial or other relationship with the artist or developer, nor any ownership in the artwork purchased by the developer. The artist shall not be entitled to the art consultant fee.
- (3) *Artist selection.* Selection of the artist will be the responsibility of the developer. The selected artist shall be an artist as defined in this article. The commission of the artist shall be by written contract between the developer and artist.
- (4) *Application for approval of proposed art or elements.* An application for approval of the work of art or historic or cultural elements shall be made to the arts in public places committee within 90 days of the issuance of the first building permit. The application shall include:
 - i) Artist's qualifications, including resume and portfolio establishing the artist's credentials;
 - ii) Detailed description and depiction of the work of art and its location on the site;
 - iii) Drawings and renderings of the proposed work of art, in terms of size, scale, color, shape, and materials in sufficient detail to provide a clear understanding of the art or elements proposed;
 - iv) Appraisal of the value of the art or element;
 - v) Documentation showing that a deposit for public art was made into an escrow account;
 - vi) Maintenance program required for the artwork or elements;
 - vii) Compliance with public accessibility (ADA) requirements.
- (5) *Committee review of contribution of art and elements.* The art in public places advisory committee shall review the proposed artwork or historical or cultural elements based on the standards established in this article and shall recommend to the city commission whether to approve, deny, or approve with conditions the selection and location of the artwork or elements with sensitivity to the aesthetic and cultural traditions and the history of the city and to the character of the surrounding neighborhood.
- (6) *Appraisal.* To establish the value of the artwork to be installed or historical or cultural elements to be installed or retained by developer to comply with this article, the city may employ an independent art appraiser to provide a written appraisal of the art work(s) submitted or cultural or historic elements. Such appraisal will be paid for by the developer from the escrowed art deposit.
- (7) *Construction cost overruns.* If the final cost of the total construction for the project is higher than the initial project cost estimate used to calculate the art assessment or escrowed art deposit, the developer shall either: i) provide additional art for the project valued at one percent of the increase in the total construction cost or ii) provide an additional deposit to the art in public places fund valued at one percent of the increase in the total construction cost. The additional art shall be installed or the deposit shall be made prior to issuance of the final certificate of occupancy.
- (8) *Accounting of escrow.* Prior to the issuance of the final certificate of occupancy for a project, the developer shall submit a revised construction cost affidavit, which shall be submitted whether developer elected to pay the art assessment or install artwork. The developer's attorney or escrow agent will provide the city a final written affidavit and accounting of the payment for art and any art consulting fees from the escrowed art deposit at the conclusion of the placement of artwork. This affidavit shall be in a form acceptable to the city. Any surplus balance in the escrow account after the developer has completed the installation of the required art work shall be disbursed to the city and deposited into the art in public places fund.

Sec. 78-131. - Ownership and maintenance of private art.

Artwork installed on private property pursuant to the requirements of this article shall be the property of the property owner. Title and ownership of the artwork shall transfer in whole or in part to any successor in interest of the property. The property owner shall be responsible for maintenance of the art work in good condition at all times, as determined by the city's code enforcement official. The property owner shall be responsible for ensuring that the public's view of the artwork is maintained and no vegetation or additional construction shall obstruct the public's view. Maintenance shall include any associated landscaping or related improvements. In the event of destruction or casualty to the artwork, the property owner shall repair or replace the artwork with art equal in value to the value of the artwork originally installed. If the artwork is to be replaced, the art in public places advisory board shall review the proposed artwork and shall recommend to the city commission whether to approve, deny, or approve with conditions the selection of the artwork in accordance with the art in public places implementation guidelines.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-132. - Removal or replacement of art.

- (a) Artwork or elements installed in accordance with this section shall remain on site in the approved location and cannot be altered, replaced or removed except as provided in this article, or when deemed to be unsafe by the city building official, or necessary replacement due to damage from natural disasters. The seller of any property containing artwork installed in compliance with this article shall include restrictions by deed or other instrument that requires retention and maintenance of the artwork or elements in compliance with this article.
- (b) All replacement art and elements shall equal or exceed the value of the original artwork and shall not be less than the original public art assessment requirement. The replacement art shall meet the all of the requirements of this article. All replacement art and elements must be approved by the art in public places committee and the city commission. The replacement art shall be installed and be available for public view not more than six months after the existing artwork is removed, unless this period is extended by the city's director of development services.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-133. - Public projects.

- (a) *Applicability.* All appropriations and authorizations for the new construction, renovation or remodeling of eligible public improvements by the city shall include an amount of not less than one percent of the total construction costs to be deposited in the art in public places fund.
 - (1) Eligible public projects subject to the public art assessment shall be:
 - (i) Any public building, facility or structure which permits public occupancy of all or a portion thereof, including but not limited to fire stations, police stations, and public community centers.
 - (ii) Any vertical construction within a public park or recreation facility
 - (2) Ineligible public improvements that are not subject to the art assessment are:
 - (i) Any road project, including but not limited to construction, resurfacing, curbing, drainage, striping, lighting and signalization.
 - (ii) Any public utility project, including water, waste water and stormwater projects.
 - (iii) Any sidewalk, pedestrian or bicycle path.

- (iv) Any public building, facility or structure which is not accessible to the public.
 - (v) Any project funded by a revenue source which by law cannot be utilized for the acquisition of works of art.
 - (vi) Any acquisition of land.
 - (vii) Any eligible public construction project where the city commission determines that the project appropriation cannot accommodate the art assessment, or the assessment will result in a cost overrun.
 - (viii) Any affordable housing project or project constructed using federal funds which cannot be utilized for public art.
- (b) *Budget.* For eligible projects, an estimate of the public art assessment shall be calculated, included and detailed in the project budget. At the start of the fiscal year, or after the adoption of a project budget amendment, the art assessment will be transferred to the art in public places fund.
- (c) *Process.* For eligible projects, the art in public places committee shall recommend, for approval by the city commission, whether the public project should include a work of art or historic or cultural element. If approved by the city commission, the art in public places committee shall, with the assistance of city staff, conduct a call to artists for proposals for works of art to be incorporated into the project within the budget and in compliance with the art in public places master plan. The committee shall not recommend works or art for installation on public property which cannot be reasonably maintained within the resources allocated by the city. The city commission shall have the final decision of the selection of the artist and/or the selection of the artwork. If the assessment from a project is not sufficient to acquire a work of art which would comply with the master plan or be appropriate for the city, or if the city commission so determines, the public art assessment from a public project shall be deposited into the art in public places fund and may be pooled with other such funds for the acquisition of a work of art for display at another city facility, in compliance with the public art master plan and at the time and place determined by the city commission.
- (d) *Ownership and maintenance.* All artwork acquired pursuant to this article shall be titled in the name of the city. Artwork installed on city property shall be owned by the city. The city shall be responsible for maintaining its artwork.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-134. - Artist grant of license.

The artist of artwork approved and installed on city property under the art in public places program shall grant to the city an unlimited, perpetual, non-exclusive, royalty-free license to reproduce and distribute two-dimensional reproductions of the artwork, in photos, videos and related media, for city-related purposes; shall grant to the city irrevocable ownership rights in any copyright or other intellectual property right regarding the artwork; and shall waive and release in favor of the city all rights, including the right of attribution or integrity, which artist may have in the artwork. Any such documentation shall be approved by the city attorney. The city shall have the option of acknowledging the artist and the artwork title in reproductions. By participating in the art in public places process, the artist authorizes review by the art in public places committee and compliance with public records laws.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-135. - Mural art.

- (a) *Applicability.* The provisions of this section apply to murals to be installed on city or city agency owned property, or murals to be installed on private property with the use of city or agency funds. Murals to be installed on private property without government funding are governed by section 94-410 of this code and require a mural permit from the city.

- (b) Application. An application for approval of a mural by the art in public places committee shall include the following information:
 - (1) Professional resume;
 - (2) Examples of past work (five to ten images);
 - (3) Image of building location;
 - (4) Description of materials to be utilized;
 - (5) A statement describing the mural project, its location, and application process;
 - (6) A final rendering of the proposed work to scale on the location site;
 - (7) A letter of other document from the property owner agreeing to the installation of the mural;
 - (8) Maintenance plan from the artist;
- (c) The art in public places committee shall meet and review the application. The art in public places committee shall recommend to the city building official that a mural permit be issued upon findings that:
 - (1) The mural will not serve as a sign or advertisement in violation of the city sign ordinances;
 - (2) The mural will enhance the aesthetic beauty of the area of its proposed location;
 - (3) The size of the mural is appropriate for its location;
 - (4) The artist is capable of completing the work in accordance with the plans and specification;
 - (5) The proposed materials are durable and graffiti and weather resistant;
 - (6) Any structural support or attachments have been approved by a professional structural engineer;
 - (7) It is not expected that excessive or costly maintenance will be required.

(Ord. No. 4635-16, § 1, 5-9-2016)

Secs. 78-136—78-150. - Reserved.