

## ARTICLE 3: GENERAL PROVISIONS

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### § 3.22 Standards for the Painting and Color of Exterior Surfaces of Buildings and Structures and Art in Public Places Regulations.

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A. Purpose. The purpose of this section is to enhance the appearance of buildings and the built environment, and promote excellence in urban design within designated areas of the City city. Subsections B through I provide standards for the painting and color of the exterior surfaces of buildings and structures in designated areas of the City, excluding single family units, duplexes and triplexes. Subsection J provides the Art in Public Places program for certain development projects, outside of the Community Redevelopment Districts, to either pay an in lieu art fee or install artwork on public properties and on City easements on private property in non-residential and mixed-use zoning districts.

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#### J. Art in Public Places.

##### 1. Intent and Purpose.

- a. It is the intent and purpose of this subsection to further the commitment of the City to the aesthetic enrichment of the community through the creation of Artwork so that citizens and visitors of the City are afforded an opportunity to enjoy and appreciate Artwork. The requirements of this subsection shall be construed to promote the aesthetic values of the entire community and to encourage the preservation and protection of Artwork. The public art requirements found in this subsection are development standards based upon the aesthetic needs of the community.
- b. It is the intent and purpose of this subsection to promote the general welfare by encouraging pride in the community; increasing property values; enhancing the quality of life through artistic opportunities; uniting the community through shared cultural experiences; creating a cultural legacy for future generations through the exhibition of high-quality art that reflects diverse styles; chronicling history through the collection of artifacts,

documents and memorabilia that will acknowledge the past; and creating programs and activities that will further these goals.

- c. This section governs placement of Artwork in public places, which generally includes public property and City easements on private property in non-residential and mixed-use zoning districts, outside of the City's Community Redevelopment Districts. Public art in the City's Community Redevelopment Districts is addressed elsewhere in the Code.

2. Definitions. For the purpose of this subsection, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Artwork** shall mean tangible creations by artists exhibiting the highest quality of skill and aesthetic principles and includes all forms of the visual arts conceived in any medium, material, or combination thereof, including, but not limited to, paintings, sculptures, engravings, carvings, frescos, stained glass, mosaics, mobiles, tapestries, murals, photographs, video projections, digital images, bas-relief, high relief, fountains, kinetics, collages, drawings, monuments erected to commemorate a person or an event, functional furnishings, such as artist designed seating and pavers, architectural elements designed by an artist, and artist designed landforms or landscape elements. The medium can include, but is not limited to, materials such as paint, glass, steel, bronze, wood, stone and concrete. Artwork shall not be construed as a Sign.

The following shall not be considered Artwork for purposes of this subsection:

- a. Reproductions or unlimited copies of original art.
- b. Art objects which are mass produced.
- c. Works that are decorative, ornamental, or functional elements of the architecture or landscape design, except when commissioned from an artist as an integral aspect of a structure or site.

**Building** means any structure that encloses space and is used or built for the shelter or enclosure of persons, businesses, chattel or property.

**Commercial Message** shall mean any message that advertises a business conducted, services rendered, or goods produced or sold either on-premises or off-premises, and includes messages advertising alcohol, tobacco, or adult entertainment.

**Developer** means the property owner, including its successor and assigns, of a development project that is subject to the public art requirement.

**Development Project** means any development, including remodeling, new construction, tenant improvements, or redevelopment, as described on the plan submitted for approval to the City, which requires a building permit. For purposes of this subsection,

development projects shall be located in non-residential and mixed-use development zoning districts outside of the City's Community Redevelopment Districts.

**Mural** shall mean an original, one-of-a-kind unique pictorial representation constituting public art which may include mosaic, painting, or graphic art or combination thereof (including collage effects) that is professionally applied to aesthetically enhance the exterior of a building or accessory structure such as a dumpster enclosure, fence, or site wall. No more than 5 percentage of the square footage of the mural may be comprised of text, words or lettering, and the mural must not contain a commercial message.

**Project Cost** shall mean the total cost of the improvements, excluding land costs.

**Public Art Fund** ("the Fund") means a separate, interest-bearing set of accounts set up by the City to receive monies for the public art program.

**Public Place** shall mean any City property and any City easement on an exterior area of private property in a nonresidential or mixed use zoning district within the City which is easily accessible or clearly visible to the general public from adjacent public property, such as a street or other public thoroughfare or sidewalk, for a period of 10 hours per day, seven days per week, with the property owner's option of excluding access or visibility on national holidays.

### 3. Public Art.

#### a. Applicability.

(1) Project value. This subsection shall apply to all development projects, as defined in J.2. of this subsection, that are 20,000 square feet or more.

(2) Exemption. Notwithstanding the foregoing, the City Commission may partially or totally exempt a project from the public art program that consists of (i) the reconstruction or replacement of buildings or structures which have been damaged by fire, flood, wind, or other natural disaster, (ii) improvements required to address sea-level rise, and (iii) projects on public property.

(3) Method of compliance. A developer may propose to install Artwork on private property on the site of its development project in any non-residential and mixed-use zoning district (located outside of the Community Redevelopment Districts), pursuant to all applicable regulations of this subsection, or in a public place. Alternatively, an in lieu art fee may be paid into the City's Public Art Fund, or a developer may comply with a combination of provision of Artwork and payment of an in lieu art fee.

(4) Voluntary provision of Artwork. Any owner of non-residential or mixed use property outside of the Community Redevelopment Districts that seeks to install artwork may do so by following the process set forth in this subsection.

b. Timeframes for Compliance; Amount of Fee or Value of Artwork.

(1) Building permits. Prior to issuance of a final building permit, the developer shall be required to comply with one of the following:

- i. In-lieu public art fee. shall be pursuant to the City's Comprehensive Schedule of Fees; or
- ii. Placement of Artwork on site. Placement of Artwork on the site of the development project, which shall have a minimum value which shall be pursuant to the City's Comprehensive Schedule of Fees; or
- iii. Combination of in-lieu public art fee and placement of Artwork on site. Placement of Artwork on the site of the development project, which shall have a minimum value and shall be combined with payment "in-lieu" public art fee, both of which shall be pursuant to the City's Comprehensive Schedule of Fees.
- iv. Where placement of Artwork as part of the development project or on public property is proposed, the owner shall provide documentation to the City that the equivalent value of the art fee has been deposited into an escrow account for said purpose prior to the issuance of a building permit.

(2) Certificates of occupancy. No final approval, such as a final inspection or a certificate of occupancy, for any development project, shall be issued unless one (1) or more of the following has been achieved in compliance with the public art permit:

- i. The approved Artwork has been installed in a manner satisfactory to the City Manager or designee in compliance with this subsection.
- ii. In-lieu art fees have been paid in compliance with this subsection.
- iii. Financial security, in an amount equal to the acquisition and installation costs of an Artwork approved in accordance with this subsection, has been provided to the City in a form approved by the City Attorney.

(3) Timeframe for Placement of Artwork on site. If Artwork is to be placed on the development project site, the public art permit for the Artwork shall first be approved by the Public Art Review Committee, and the Artwork shall be provided within the following timeframes and otherwise comply with this subsection.

- i. The developer shall be given up to nine (9) months after issuance of the building permit to obtain approval of the proposed public art permit,

unless the City Manager or designee grants an extension for good cause as determined in their sole discretion. If no such approval is obtained within the time period, the City shall transfer the required art fee funds from the escrow account to the fund.

- ii. The developer shall be given up to nine (9) months after the issuance of a certificate of occupancy to install the Artwork, as approved by the Public Art Review Committee in accordance with this subsection. The City Manager or designee may grant one additional six-month extension for good cause as determined in their sole discretion. If no installation occurs within the required time period, the City shall transfer the required art fee funds from the escrow account to the fund.

c. Public Art Permit. A public art permit shall be required for the creation and installation of Artwork on the site of any development project or in a public place. As determined by the Building Official, the installation of artwork may require a building permit, to be obtained after the public art permit and prior to installation. A public art permit shall be valid for 20 years from the date of approval. Notwithstanding the foregoing, the Public Art Review Committee may extend such public art permit as it deem appropriate.

d. Public Art Permit Application Requirements. Prior to the issuance of any public art permit, a written application, in a form provided by the City, shall be filed by the developer, or by an agent with the consent of the developer, to the Planning and Urban Design Division, together with the following:

(1) A narrative of sufficient descriptive clarity to indicate the nature of the proposed Artwork;

(2) Drawings, photographs, and specifications as are necessary to demonstrate that the Artwork complies with the requirements of this section. Such drawings (surveys, site plans, elevations, sketches, and other illustrations) shall be to scale and fully dimensioned; illustrate property lines, rights-of-way, internal streets, sidewalks, overhead utility lines (if Artwork is three dimensional), and parking areas immediately surrounding the intended location of the Artwork. Drawings shall also indicate the setting and location; design; media and materials; methods of construction; and methods of application, securing, or fastening of the Artwork.

(3) Schedule of Completion outlining the schedule of work that includes the proposed date of completion.

(4) If the Artwork is proposed to be placed on a new or existing City easement on private property, then a proposed Artwork easement shall be submitted in the form provided by the City Attorney's Office.

(5) If the Artwork is a Mural, the amount and type of building signs that could have been placed on the façade devoted to the Mural may be transferred to use on other façades or on a freestanding sign for the building. The Applicant shall separately submit the requisite applications for and obtain approval for any proposed relocation of Sign area pursuant to the Sign Code.

(6) An appraisal or other evidence of the value of the proposed Artwork, including acquisition and installation costs. Alternatively, to establish the value of Artwork submitted to comply with the program's requirements, the City may contract with an independent art appraiser to provide a written appraisal of the art. Such appraisal shall either be funded from the Public Art Fund or by the developer as part of the overall art contribution.

(7) A narrative statement demonstrating that the Artwork will be displayed in a public place.

(8) A statement indicating the property owner's willingness to maintain compliance with this subsection.

f. Public Art Review Committee.

(1) Membership. A Public Art Review Committee shall be established that consists of representatives from the following administrative departments/divisions of the City: City Manager's Office, the Department of Development Services, Planning and Urban Design Division, Communications, Marketing and Economic Development, the Department of Parks, Recreation and Cultural Arts, and the Engineering Division (as applicable).

(2) Meetings. The Public Art Review Committee shall meet, as necessary, to review and approve, approve with conditions, or deny a Public Art Permit Application, based upon the Application, the City staff report evaluating the Application, and information received at the Committee meeting. Applications shall be considered at the first Committee meeting that is more than 30 days following the staff's

determination that the Application is complete. The Committee's decision shall be based upon the review guidelines set forth in subsection J.3.g. below.

(3) Notice of Decisions.

i Approval. Upon approval of a Public Art Permit Application, the applicant will receive written notification of such approval along with information regarding whether the Building Official has determined a building permit for the Artwork is also necessary.

ii Denial. In the event that a Public Art Permit Application is denied, the Applicant shall receive written notification of such denial and the reasons for such denial based upon the review guidelines set forth in subsection J.3.g. below.

iii Appeal. Upon receipt of the denial notification, the Applicant may file an appeal to the Planning and Development Board or Historic Preservation Board as applicable, within 10 days from the denial notification. City staff shall review and prepare a response to the appeal within 14 days of the appeal being filed. The applicable Board shall review whether the Committee's decision was based upon the review guidelines set forth in subsection J.3.g.. below at its next scheduled meeting that is more than 14 days after the appeal was filed, and may reverse a denial upon finding that it was not based on such guidelines.

g. Permit Application Review Guidelines. The Public Art Review Committee shall review all applications based upon the following:

(1) Content:

i The Artwork shall not be deemed a sign, nor shall such Artwork identify a specific business or establishment, or contain a commercial message.

ii The Artwork shall not contain a religious message or a political message. This guideline shall be applied regardless of the viewpoint expressed; and

iii The Artwork shall not include any alcohol, tobacco, adult entertainment, or obscene or offensive materials.

(2) Context:

i The design, location, scale, and content of the Artwork shall be contextual and complement the design and architecture of the building or site; and

ii The Artwork should enhance and contribute to the character of the area in the vicinity of the Artwork.

iii The Artwork shall be in compliance with all life safety requirements and with the vision clearance requirements of § 4.23.B.7.c. of this code.

iv The Artwork shall not cover windows, doors, or otherwise mask architectural details in a manner that detracts from the architecture of the building.

v If the Artwork is placed on a façade, the façade must be safely visible to the public from multiple perspectives, and must have enough suitable blank wall space in good repair. The Public Art Committee shall consider whether it blocks access or required parking, and whether the façade is lit.

(3) Design:

i The quality of the Artwork, media, materials, and methods of installation used, shall be of high quality and durable. Painted Artwork shall include an ultraviolet fade-resistant clear coat; and

ii The permanence of the Artwork, considering environmental conditions of the site and maintenance requirements.

h. Completion of Artwork. All Artwork shall be completed and installed in accordance with the schedule of completion as approved through the Public Art Permit. The Public Art Review Committee may approve extensions after showing just cause. If Artwork is not installed, pursuant to the Public Art Permit and no extension has been granted, the property owner shall make a contribution to the fund in an amount equal to the amount of the in-lieu public art fee which would have initially been required based on the project cost. Such fee shall be paid within 30 days of notification from the City that the Artwork failed to comply with the installation requirements under the Public Art Permit.

i. Ownership.

(1) Ownership of Artwork acquired on behalf of the City for public property pursuant to the requirements of this subsection shall be vested in the City, which shall retain title to all Artwork. Such Artwork shall be donated to the City, and title shall be transferred pursuant to



a standard City public art contract reviewed and approved as to form by the City Attorney.

- (2) Ownership of all Artwork incorporated into development projects shall be vested in the property owner who shall retain title to the Artwork. Property owners retaining title to the Artwork shall provide proof of insurance in the amount of the appraised value of the Artwork.
- (3) If the property is sold, the seller shall either include restrictions in the deed used to transfer the property that require maintenance and insurance of the Artwork and prevent its removal from the property, or remove the Artwork and make a contribution to the fund in an amount equal to the amount of the in-lieu public art fee which would have initially been required based on the project cost. If the title is passed to a subsequent owner and, as a result, a deed restriction exists as to the Artwork, the subsequent owner shall maintain the Artwork in accordance with the deed restriction, applicable law and other established guidelines.
- (4) The Artwork shall not be altered, modified, relocated or removed other than as provided herein without the prior approval of the Public Art Review Committee.

j. Maintenance.

- (1) Obligation. The obligation for maintenance to preserve the Artwork incorporated into development projects in good condition shall remain with the property owner and the owner's successors and assigns. The City shall ensure the maintenance of Artwork on public property.
- (2) Standards. All Artwork shall be maintained to ensure its appearance and shall not show evidence of deterioration, weathering, discoloration, rust, or other conditions reflective of deterioration or inadequate maintenance. Maintenance shall not result in changes or alterations to the approved Artwork.
- (3) Enforcement. Failure of any persons or entities to comply with the regulations pertaining to the Artwork as set forth in this subsection shall be subject to enforcement procedures set forth in Chapter 36 of the Code of Ordinances, Section 10.3 of the Zoning and Land Development

Regulations, and the removal requirements set forth in subsection J.3.k. below.

k. Removal of Artwork.

(1) Responsibility. The property owner shall be responsible for removal of the Artwork that is not maintained in good condition and appearance, showing evidence of deterioration, weathering, discoloration, rust, or other conditions reflective of deterioration or inadequate maintenance.

(2) Enforcement. Failure to remove the Artwork upon notification by the City shall subject the property owner to all enforcement procedures.

(3) Payment of In Lieu Fee. If Artwork is removed, the property owner shall make a contribution to the fund in an amount equal to the amount of the in-lieu public art fee which would have initially been required based on the project cost. Such fee shall be paid within 30 days of notification from the City that the Artwork must be removed.

4. Public Art Fund. The City shall establish a Public Art Fund. This fund shall be maintained by the City and shall be used solely for the acquisition, installation, improvement, maintenance and insurance of Artwork as follows:

a. All money received by the City pursuant to public art program, or from endowments or gifts to the City designated for the arts, shall be placed in the fund. All money shall be deposited, invested, and accounted for.

b. All money received shall be deposited in the fund in a manner to avoid any commingling with other revenues of the City, and all money in the fund shall be expended solely for the purposes for which it was collected. Any interest income earned by the money in the fund shall be expended only for the purpose for which the money was originally collected.

c. The fund shall be used solely for expenses associated with the selection, commissioning, acquisition, transportation, maintenance, public appraisal, education, promotion, administration, removal and insurance of the Artwork.

All completed and submitted building permit applications for development projects that have been accepted by the City within sixty (60) days of the final adoption of this Ordinance will be exempt from the requirements of this Ordinance.