

Chapter 17.63 Art in Public Places

Sections in this chapter:

17.63.010	Purpose and intent
17.63.020	Applicability
17.63.030	Exemptions
17.63.040	Public Art Requirement
17.63.050	Public Art Criteria and Regulations
17.63.060	Eligible Public Art Expenditures
17.63.070	Installation and Maintenance Requirements
17.63.080	Art Permit Approval Process
17.63.090	Establishment of the Arts Funds
17.63.100	Severability

17.63.010 Purpose and intent

This chapter regulates and establishes standards for inclusion of art in private development. The Council finds that the environment, image, and character of the city would be improved by art and that the impacts associated with new development projects would be mitigated, in part, by provision of art in compliance with this chapter. The City Council finds that public art helps make cities more livable and more visually stimulating. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the City. Public art can illuminate the diversity and history of a community, and foster the economic development of the community. To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process.

17.63.020 Applicability

The provisions of this chapter apply to new commercial development, including office and retail uses, and all industrial or light industrial uses, and any commercial portions of any new mixed use development, with a value of two hundred thousand dollars (\$200,000.00) or more; and the alteration or repair of a structure in such uses that increases total gross floor area or otherwise intensifies the use, if the alteration, intensification, or repair has a value of two hundred thousand dollars (\$200,000.00) or more. The value of development shall be as determined by the Building Official. Valuation of development projects includes the construction of the building shell. Valuation does not include land acquisition, site improvements, parking structures, off-site improvements or tenant improvements. In the event of multi-phased development, valuation is based on the cost of all phases, even though all phases may not be completed at the same time.

17.63.030 Exemptions

The following shall be exempt from the requirements of this chapter:

- A. Remodeling, repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
- B. Financed with Public Funds. Alteration, construction, or repair of structures to perform rehabilitation of private property if that rehabilitation is primarily financed with public funds;
- C. Projects whose primary tasks are seismic retrofit or fire sprinkler installation;

- D. Capital Improvement Projects. Capital improvement projects performed by the city;
- E. Nonprofit Service Providers. Projects that are intended primarily to provide facilities for nonprofit public service providers.

17.63.040 Public Art requirement

- A. Provision of Art. Projects subject to this chapter shall provide publicly visible art on-site that is equal in value to at least one percent of the project construction valuation. In some instances the cost of artwork may not equate precisely to one percent of the construction valuation. If the developer does not spend the entire one percent on public art, the remaining amount shall be contributed to the public arts fund.
- B. Alternative to Provision of Art. Developers may choose to make a contribution to the public arts fund in-lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to one percent of the building valuation. The in-lieu fee is to be used for funding of the City's Public Mural Program, as set forth in Section 17.63.090. The in-lieu fee shall be paid prior to issuance of a building permit for the project.
- C. Alternate Sites. In the event the development project site is not conducive, logistically, to the display of public art, Developer shall have the right to satisfy the requirements for providing public art in whole or in part on one alternate site instead of or in addition to the development project covered by this chapter, provided that the public art on such alternate site shall, alone or in conjunction with the development project site, be consistent with all provisions of this chapter and may not be installed or commissioned prior to the completion date of the application triggering these requirements.

17.63.050 Public Art Criteria and Regulations

- A. For purposes of this chapter, "art" may include works of art that are created uniquely by an artist and integrated into the development project on a large public scale, including but not limited to the following or any combination of the following:
 1. Painting in all media including permanently affixed works such as murals or frescoes;
 2. Prints and drawings;
 3. Reliefs, including carvings, frescoes, mosaics, earth works;
 4. Sculpture, including statues, fountains, kinetic, electronic, mobiles and monuments, or other in any material or combination of materials;
 5. Arches or other structures intended for ornament or commemoration;
 6. Graphic and multi-media, including printmaking, photography, any combination or forms of electronic media in a large public scale;
 7. Mixed or conceptual media in any combination of forms or media including drawings, collages, prints, or the use of sound, light, or water. Water, neon, fiber optic and electronic sculpture generally should not be encouraged due to difficulty of maintenance. Such art may be permitted if adequate assurance of continued maintenance is provided;
 8. Video, electronic, holographic, or digital media;
 9. Crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials;

10. Stained glass;
 11. Neon; or
 12. A landscape or architectural feature that has been specifically and originally designed as a unique artistic element for the project and is not a mass production or replication.
- B. The following are not considered public art for the purposes of this chapter:
1. Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;
 2. Objects which are mass produced of standard design such as banners, signs, playground equipment, benches, statuary, street barriers, sidewalk barriers, or fountains;
 3. Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts. Permitted art may include, however, limited editions controlled by the artists of original prints, cast sculpture, photographs and other art forms;
 4. Decorative, architectural, or functional elements which are not designed by the building architect or landscape architect as an original artistic design feature unique to the project;
 5. Landscape architecture, gardening, or materials, except where these elements are designed by the artist and are integral or part of the work of art created by the artist; or
 6. Landscaping required by the City as part of the development entitlements.
 7. Artwork that is similar to, reminiscent of or based on a corporate logo.
- C. **Artist Qualifications.** The artist is required to have experience and knowledge of monumental-scale art or murals intended for public viewing. The artist's qualifications will be evaluated and examples of past work may be reviewed to determine whether or not the artist has appropriate experience for the project.
- D. **Artistic Preference.** The determination of artistic preferences is primarily a function of the owner or developer of the property. It is the intent of this chapter to provide for the public display of private art on private property without substituting the artistic preferences of the city for those of the owner or developer of the property. All financial arrangements related to the public art are negotiated between the artist and the developer as contracting parties and shall be verified by a written agreement.
- E. **Visibility and Locations.** Appropriate locations may include, but are not limited to, vehicular entryways to the property, plazas, greenbelts and building façades. The location selected should allow reasonable accessibility to the art, including visibility of the art from the public street. The location shall be exterior and installation of the art piece shall enhance the art and allow for unobstructed public viewing from as many angles as possible. When located in proximity to major traffic thoroughfares, the art should be at a motorist's scale and oriented toward the view corridor of the motorist. The art shall be an integral part of the landscaping and/or architecture of the buildings.
- F. **Proportional Size.** The art shall be proportional to the scale of the development and designed to create an artistic, visual and aesthetic impact upon observers. Particularly in locations on major thoroughfares and major intersections, the art should be of such size and nature as to strengthen the urban design and aesthetic quality of life in the community.

- G. Inoffensive. Because the art will necessarily be highly visible to the public, will be associated with city requirements, and because the traveling public will have no real opportunity to avoid the visual aspects of the art, expressions of obvious bad taste or profanity is prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

17.63.060 Eligible public art expenditures

- A. Eligible Costs. When calculating the value of an art to be placed on a private development site, eligible costs include purchase price of the art; art consultant fees; installation costs, including transportation of the art to the site, pedestals or display costs; wiring, fixtures and other costs directly related to the installation of lighting the art; and identification plaques.
- B. Ineligible Costs. Ineligible costs include land acquisition, site preparation, travel costs for the artist, architect fees, utility fees associated with the installation or operation of the art, costs associated with dedication ceremonies, publicity, or educational components and operation or maintenance fees and repairs.

17.63.070 Installation and maintenance requirements.

- A. Timing of Installation. If art installation is impracticable prior to the anticipated date of building occupancy, the City Manager may allow building occupancy provided that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to City Manager.
- B. Permanence. The art shall be a permanent, fixed asset to the property. The composition of the art shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.
- C. Maintenance. The developer and subsequently the property owner shall continuously maintain the public art in good condition after its installation for the life of the project, and shall perform necessary repairs and maintenance to the satisfaction of the City. Maintenance of the art includes related landscaping, lighting and the identification plaque. The repair and maintenance obligations of the property owner shall be contained in a covenant and recorded against the property and shall run with the property.
- D. Plaque Required. Each piece of art shall provide an appropriate identification plaque or monument measuring at least eight inches by eight inches. The plaque shall be made of cast metal and be placed near the art piece. Information is limited to the date, title and artist. The requirement of this section may be waived by the City if determined in a particular circumstance to be unnecessary or inconsistent with the intent of this chapter.
- E. Removal. Removal of required art is prohibited without the City's approval. The City may require replacement of the art. Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law. Developer or owner shall execute a restrictive covenant in a form acceptable to the City Attorney enforceable by the City, which shall be recorded against the project site and shall run with the land for a period of 20 years from the installation date.

17.63.080 Art Permit Approval Process

- A. Art permit. An art permit is required for installation of public art in private development.

Prior to issuance of the building permit for the development project, the proposed public art must be reviewed and approved by the City. In cases where Design Review is otherwise required, the public art review

may be incorporated into that proceeding. In cases where design review is not required, the public art review may be incorporated into the use permit hearing or any other hearing before the Planning Commission or Planning Department. If the project is otherwise a permitted use requiring no hearings or review, the public art review shall be conducted by the City Council. The budget for the proposed public art must be approved to ensure that only eligible expenditures are proposed and that such expenditures total the amount of the public art contribution.

- B. Issuance of a permanent certificate of occupancy for the development project will be conditioned on completion and full installation of the public art at the development site in accordance with the public art permit approved by the City, and confirmation by the City that the developer expended the public art contribution in full on the public art and in accordance with this chapter. However, if art installation is impracticable prior to the anticipated date of building occupancy, the City may allow building occupancy provided that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to the City.
- C. Application. The art permit application shall contain the following information:
 1. An application signed by the owner of the affected property;
 2. Landscape and site plans indicating the location and orientation of the art, signage, utility boxes, fire suppression systems, and the landscaping and architectural treatment integrating the piece into the overall project design;
 3. Color elevation rendering clearly showing the artwork to scale in relation to its surroundings;
 4. A sample, model, or photograph and "to-scale" drawings or renderings of the proposed art piece;
 5. Material samples and finishes;
 6. A resume of the proposed artist including slides or photographs of the proposed artist's past work which demonstrates similar work to the proposal;
 7. A written statement by the artist describing any theme or development of the art;
 8. A lighting plan including samples of lighting fixtures; and
 9. Other information as required by the Development Services Manager.
- D. The application shall be approved, or approved with conditions, upon a finding that the proposed art is consistent with the standards and the purpose of this chapter.
- E. Appeals. The approval or denial of the public art application may be appealed so long as the approval process set forth in subsection A of this section provides for such appeal.

17.63.090 Establishment of the Public Art and Mural Fund

The city council authorizes the establishment of a public art and mural fund for the deposit of all fees paid under this chapter.

- A. **Public Arts Fund.** This fund uses one percent of the construction valuation for the acquisition and installation of the art and administration of the public art program, including, but not limited to, improvements, site preparation, lighting and landscaping.

- B. **City Public Mural Fund.** In addition to the 0.1 percent of the construction valuations imposed under this Chapter, the City of San Pablo shall contribute to the public art fund by annual allocation. The initial allocation shall be \$10,000. In addition to acquisition and administration of public art, allowable expenditures for the fund may be used to facilitate and encourage the painting of artistic murals on existing private commercial or industrial properties in the City. The painting of artistic murals on commercial or industrial buildings beautifies the neighborhood and enhances the enjoyment and quality of life for city residents and visitors; encourages revitalization of the area; increases pedestrian activity; creates a more vibrant arts scene, and discourages graffiti tagging of private property. The City Manager shall establish a Public Mural Program to encourage private businesses to paint murals on their commercial buildings with partial funding from the City's Public Arts Fund. In establishing this program, it is not the intent of the City, and the City does not establish a designated public forum. Murals receiving funding from this program shall be communicate the City's message with colorful, detailed, artistic murals communicating the City's themes of healthy eating, active living, childhood obesity prevention, job training and local employment, the cultural diversity of the City, and/or City's status as an All-America City. No commercial products, logos or advertising shall be featured in such murals without the written permission of the City following a determination by the City that any commercial component of the mural does not detract from the artistic integrity of the artwork. Each property owner receiving funding for a public mural under this program shall execute an agreement with the City in a form and with such terms as approved by the City Attorney. The agreements and all proposed murals under this program shall be reviewed and approved by the City Council at a regular or special meeting of the Council."

17.63.100 Severability

If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.