

Ordinance N.C.S.

AMENDING ORDINANCE 1072 N.C.S. (THE ZONING ORDINANCE) TO ADD ARTICLE 19.6, PUBLIC ART, REQUIRING PUBLIC ART AS PART OF ALL NEW DEVELOPMENT IN CERTAIN COMMERCIAL AND INDUSTRIAL ZONES IN THE CITY OF PETALUMA

WHEREAS, the City of Petaluma has determined that public art is a critical element of public health and welfare; and

WHEREAS, research has shown that the arts foster economic development, revitalize urban areas and improve the overall business climate. Additionally, a well-conceived work of art can increase the value of a development project, help to lease space more quickly, enhance the corporate image of the community, promote cultural tourism and provide a visible and lasting contribution to the community in return for the ability to build; and

WHEREAS, public art expresses the confidence, vitality and optimism of the community and reflects the highest ideals of its citizens resulting in a more beautiful and liveable city; and

WHEREAS, Public Art enriches and celebrates our community identity by developing a collection of artworks which have strong inherent aesthetic quality, represent diverse communities and a wide range of artistic styles and disciplines; and

WHEREAS, in order to insure that public art is present throughout the community it is necessary to require that all new development in certain zoning designations in the City of Petaluma include an element of public art or, where appropriate, contribute to a City fund for public art, in an amount to be determined by the City Council, in lieu of providing said art; and

WHEREAS, amending the Zoning Ordinance to require public art is consistent with Program 37.1 of the 1987-2005 General Plan, which encourages a program of public art in parks, public buildings and public open spaces.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PETALUMA DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance 1072 N.C.S. is hereby amended to add the following:

Article 19.6

Public Art

19.6-100 Purpose

19.6-200 Definitions

19.6-300 Public Art Required in Certain Zones

19.6-400 Public Arts Committee

19.6-500 Public Art Fund

19.6-100 PURPOSE.

The purpose of this ordinance is to authorize the establishment of guidelines, procedures and standards for the integration of public art into new private and public development and redevelopment projects.

Public art helps make our city more livable and more visually stimulating. The experience of public art makes the public areas of buildings and their grounds more welcoming, it creates a deeper interaction with the places we visit, and in which we work and live. Public art illuminates the history of a community while it points to the city's aspirations for the future. A city rich in art encourages cultural tourism which brings in visitor revenues.

To achieve these goals, public art planning 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.

19.6-200 DEFINITIONS.

"Construction cost" shall mean the total value of the project as determined by the Community Development Department. Calculations shall be based on construction costs as declared on all building permit applications, but shall not apply to costs solely attributable to tenant improvements. Building permit applications shall include, but not be limited to all grading, building, plumbing, mechanical, and electrical permit applications for the project.

"Construction or reconstruction" means new construction or the rehabilitation, renovation, remodeling or improvement of an existing building, except those construction activities solely attributable to tenant improvements, having a construction cost as defined in this Chapter of \$500,000.00 or more.

"Public artworks" means works of art are to be enduring original artworks. They should be of the highest quality and craftsmanship. They should engage one's mind and senses while enhancing and enriching the quality of life of the city. The artworks will be generally sited and an integral part of the landscaping and/or architecture of the building, considering the historical, geographical and social/cultural context of the site. The artworks shall be constructed in a scale that is proportional to the scale of the development.

Public artworks may include sculpture, furnishings or fixtures, including but not limited to gates, walls, railings, street lights or seating, if created by an artist as unique elements. The artworks can include water elements and walkways.

Public artworks may include artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or a design team that includes a professional visual artist.

Public artworks may include sculpture, murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, or a combination thereof, and may include architectural features of the building.

Public artworks do not include the following:

- (a.) Art objects that are mass-produced of standard design such as playground equipment, benches or fountains;
- (b.) Decorative or functional elements or architectural details, which are designed solely by the building architect as opposed to an artist commissioned for this purpose working individually or in collaboration with the building architect;
- (c.) Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist;
- (d.) Directional elements such as super graphics, 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.
- (e) Logos or corporate identity.

“Public art in-lieu fee” means the fee paid to the City of Petaluma pursuant to this Chapter equal to one percent of construction cost as defined herein. In-lieu fees shall be placed in the Public Art Fund. The fund shall be used for public art on public property. The fund shall be used exclusively to (1) provide sites for works of art, (2) acquire and install works of art, (3) maintain works of art, or (4) support the exhibition of art which is publicly accessible.

“Public art project” means the cost for the development, acquisition, and installation of the public art required by this ordinance. It shall include the costs for the administration of this public art program.

“Public construction project” means any publicly funded construction or reconstruction project, except as provided in Section 19-300(B), of the City of Petaluma or the Petaluma Community Development Commission with an engineer’s estimate of the project cost of \$500,000.00 or more, including but not limited to, the adopted 5-Year Capital Improvement Program, as amended from time to time.

“Visual Art Professional” shall mean any of the following: professional artist in any medium, curator, art critic, art historian, arts educator, architect or other design professional with a visual arts background or fine arts collector.

19.6-300 PUBLIC ART REQUIRED IN CERTAIN ZONES.

A) Public artworks, as defined in Section 19.6-100, shall be required as part of any private or public construction or reconstruction project, as defined by Section 19.6-100, located in the following zoning districts:

- 1) Administrative Professional Office District (C-O).
- 2) Neighborhood Commercial District (C-N).
- 3) Central Commercial District (C-C), including mixed use.
- 4) Highway Commercial District (C-H), including mixed use.
- 5) Light Industrial District (M-L).
- 6) General Industrial District (M-G).

- 7) Planned Unit District (PUD) and Planned Community District (PCD), except residential PUD's and PCD's; but including mixed use.
 - 8) T-5 and T-6 Zones, as established by the Central Petaluma Specific Plan Smart Code, except projects that are entirely residential, but including mixed use.
 - 9) Any City Zoning District for any public construction project as defined by this ordinance.
- B) Exceptions: The requirements of this chapter shall not apply to the following activities:
- 1) Underground public works projects;
 - 2) Street or sidewalk repair;
 - 3) Tree planting;
 - 4) Remodeling, repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
 - 5) Affordable housing construction, remodel, repair or reconstruction projects;
 - 6) Seismic retrofit projects as defined by Petaluma Municipal Code Chapter 17.34;
 - 7) Construction, remodel, repair or reconstruction of structures owned and occupied by public-serving social service and non-profit agencies.
 - 8) Utility pump stations and reservoirs.
 - 9) Fire sprinkler installation projects as defined by Petaluma Municipal Code Section 17.20.070 .
- C) Any private residential only project of 50 units or more, as permitted in any zoning district, may choose to voluntarily participate in the public art program. Residential developers choosing to voluntarily participate in the program shall follow the procedures set forth in this Section. Applicants choosing to voluntarily participate in the public art program shall provide public art on the project site, as provided by this Article, and are not eligible to pay the in-lieu fee.
- D) The public art project shall cost an amount not less than one percent of the construction cost for a private or public project, including all administrative costs borne by the City, as they may relate to that project. The public art may be located (1) in areas on the site of the building or addition clearly visible from the public street or sidewalk, or (2) on the site of the approved open space feature of the project, or (3) upon the approval of any relevant public agency on adjacent public property, or (4) in a publicly accessible area of the development project.
- E) The creator of public art shall be a practitioner in the visual arts who is not a member of the project architect, engineering or landscape architect firm. Public art shall be displayed in a manner that will enhance its enjoyment by the general public.
- F) Compliance with the provisions of this Chapter shall be demonstrated by the owner or developer at the time of filing a building permit application in one of the following ways:
- 1) Payment of the full amount of the public art in-lieu fee; or
 - 2) Written proof to the Community Development Department of a contractual agreement

to commission or purchase and install the required public artwork on the subject development site and a written acknowledgement by the project artist and the owner or developer, in a form approved by the City, that the proposed public artwork complies with the following criteria:

- a) The art shall be designed and constructed by any person experienced in the production of such art and recognized by critics and by his/her peers as one who produces works of art;
 - b) The art project shall require a low level of maintenance and that the proposed maintenance provisions are adequate for the long-term integrity and enjoyment of the work;
 - c) The art work shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so to complement the site and its surroundings and shall be consistent with any corresponding action of the Planning Commission, Site Plan and Architectural Review Committee or City Council as it may relate to any development entitlements;
 - d) Permanent art work shall be a, fixed asset to the property;
 - e) The art work shall be maintained by the property owner in a manner acceptable to the City;
 - f) The art work meets all applicable building code requirements.
- G) In the event that the City determines that the proposed public art project does not comply with criteria (a) through (f), above, the matter shall be referred to the Public Arts Committee for review and a determination as to the project's compliance with criteria (a) through (f). The determination of the Public Arts Committee may be appealed to the City Council in the manner prescribed by Zoning Ordinance Section 26-408 (B) and (C).
- H) The owner or developer shall provide the City with proof of installation of the required public artwork on the development site prior to the issuance of a Certificate of Occupancy.
- I) Title to all artworks required by and installed pursuant to this Chapter shall pass to the successive owners of the development. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art.
- J) If, for any reason, the current owner shall choose to replace any public artwork installed pursuant to this Chapter, the following requirements shall be met before the artwork is replaced:
- 1) The cost of the replacement shall be equal to, or greater than, the cost of the art to be removed.
 - 2) The location of the replacement shall meet the requirement for public accessibility in effect at the time of the replacement.
 - 3) The replacement art shall conform, in every respect, to all standards in effect at the time of the replacement.

- 4) The replacement work, location and installation shall violate no other ordinance.
- 5) The replacement art shall be available for public view not more than 180 days after the existing art is removed, unless the period is extended by the Community Development Director.

19.6-400 PUBLIC ARTS COMMITTEE.

A Public Arts Committee is hereby established by the City Council. Terms of office for each of the Committee members shall be four-year, staggered terms. Said Committee shall be comprised of seven members as follows:

- A) Three members shall be “Visual Arts Professionals”, as defined herein, and appointed by the City Council from the community at-large.
- B) One member shall be a member of the Parks, Music and Recreation Commission, as designated by the members of the Parks, Music and Recreation Commission.
- D) One member shall be a member of the Petaluma Arts Council, as nominated by the Arts Council and appointed by the City Council.
- E) Two members shall be appointed by the City Council from the community-at-large.

The Committee shall perform the duties required of this ordinance and any other ordinance or resolution of the City Council pertaining to the City of Petaluma’s public art program.

19.6-500 PUBLIC ART FUND.

All fees collected under this ordinance shall be held in a special fund designated “Public Art Fund,” maintained, managed and reviewed by the City Manager, or his/her designee. The Public Arts Committee shall, as part of the City’s annual budget process, estimate the administrative costs of the public art program for the given fiscal year, including but not limited to staff support and related expenses; curatorial services; documentation; publicity, community education and any other services or programs in accordance with the intent of this ordinance. Revisions to the adopted annual budget for the Public Art Fund shall be subject to the review and approval of the City Manager, who may determine that said revisions also require the approval of the City Council.

Section 2. Applicability. The provisions of this ordinance shall apply to any project that receives any required entitlement approvals (tentative map, rezoning or pre-zoning, General Plan amendment and related environmental determination) from the Planning Commission and City Council after the effective date of this ordinance. If SPARC approval is the only required entitlement for a project, then the project must receive final SPARC approval prior to the effective date of this ordinance. If a building permit is only required and none of the

circumstances listed in this Section apply to the application, then the building permit must be issued for the project prior to the effective date of this ordinance. However, when a development agreement or some other agreement authorized by the City Manager is in place that clearly establishes provisions for the payment of in-lieu fees, said project may be exempt from the requirements of this ordinance.

Section 3. City Council Review. The City Council shall review the provisions of this ordinance and the effectiveness of the Public Art program following a period of time deemed appropriate by the City Council, but not to exceed five years after the effective date of this ordinance.

Section 4. Exemption from CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Sections 15061(b)(3) and 15378(a), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.