

ORDINANCE NUMBER O- 19280 (New Series)

ADOPTED ON MAY 17 2004

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 26.0701; BY RENUMBERING AND AMENDING SECTION 26.0702 TO 26.0703, SECTION 26.0703 TO 26.0704, AND SECTION 26.0705 TO 26.0702; BY ADDING NEW SECTION 26.0705; BY RETITLING AND AMENDING SECTIONS 26.0706 AND 26.0707; AND BY ADDING NEW SECTIONS 26.0708, 26.0709, 26.0710, 26.0711, AND 26.0712, ALL RELATING TO THE COMMISSION FOR ARTS AND CULTURE AND THE DEVELOPMENT OF CULTURAL AND ARTISTIC RESOURCES IN THE CITY OF SAN DIEGO.

WHEREAS, cultural and artistic resources, including the visual, performing, and literary arts, enhance the quality of life for individuals living in, working in, and visiting the City of San Diego; and

WHEREAS, the balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values in the City of San Diego; and

WHEREAS, as development and revitalization of the real property within the City of San Diego continues due to market forces, urbanization of the community results; and

WHEREAS, as this urbanization occurs, the need to develop cultural and artistic resources to improve the environment, image, and character of the City of San Diego is increased; and

WHEREAS, the expansion of cultural and artistic resources should be financed by those entities undertaking development projects that result most directly in this urbanization and the increased need to enhance the cultural and artistic resources of the City of San Diego; and

WHEREAS, establishing and augmenting the resources available to the Public Art Program will promote the general welfare through balancing the City of San Diego's urban growth with the expansion of its cultural and artistic resources; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 2, Article 6, Division 7, of the San Diego Municipal Code is hereby amended by amending Section 26.0701, to read as follows:

**§26.0701 Purpose and Intent**

It is the purpose and intent of the City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging, and increasing support for arts and culture.

It is also the purpose and intent of the City Council to encourage the preservation and augmentation of the City of San Diego's cultural and artistic resources, and to ensure that the City's increasing urbanization is offset by the creation of *artworks* and venues dedicated to artistic performances, exhibitions, and cultural events.

Section 2. That Chapter 2, Article 6, Division 7, of the San Diego Municipal Code is hereby amended by renumbering and amending Section 26.0702 to 26.0703, Section 26.0703 to 26.0704, and Section 26.0705 to 26.0702, to read as follows:

**§26.0702 Definitions**

Except as otherwise provided, for the purposes of this division:

*Applicant* has the same meaning as stated in Land Development Code section 113.0103.

*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, *public performances*, past public commissions, exhibition record, publications, and production of *artwork*.

*Artwork* includes:

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported or suspended, kinetic, electronic or mechanical.

Murals or paintings: may be made of any material or variety of materials with or without collage; may be made with traditional or non-traditional materials and means.

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary expression, calligraphy, any combination of forms of media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or new genres.

*Artwork* as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

*Capital Improvements Program project* means any permanent public improvement project paid for wholly by monies appropriated by the City to construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a sidewalk, a parking facility, a utility, or any portion thereof, within the City limits or under the jurisdiction of the City.

*Commission* means the City of San Diego Commission for Arts and Culture.

*Cultural use* includes individual and group presentations, exhibitions, or *public performances* involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies.

*Development* has the same meaning as stated in Land Development Code section 113.0103.

*Open and freely accessible* means available for use by the general public during normal hours of business operation consistent with the operation and use of the *premises*.

*Premises* has the same meaning as stated in Land Development Code section 13.0103.

*Public art* means *artwork* that is created using funds from the *public art fund* and is located in *public places*.

*Public art fund* means a separate fund established in the City Treasury into which funds allocated in accordance with Chapter 2, Article 6, Division 7 shall be deposited.

*Public art program* includes all responsibilities and activities of the *Commission* in accordance with Chapter 2, Article 6, Division 7 pertaining to *public art*.

*Public art program allocation* means the percentage of the *total building permit valuation* for a qualifying development in accordance with Chapter 2, Article 6, Division 7 which is set aside for the City's *public art program*.

*Public performances* includes individual and group presentations of music, dance, theatre, opera, literary, film/video and other forms of art generally recognized.

*Public places* means land and buildings owned by the City of San Diego.

*Total building permit valuation* means the combined total valuation of all new structures, including tenant improvements within those new structures, within the *premises*, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

**Commission for Arts and Culture Established**

There is hereby established a Commission for Arts and Culture consisting of fifteen members. *Commission* members shall be persons who represent the following: individual *artists*, arts and culture patrons, educators, the business community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public.

The members shall serve two year staggered terms for a maximum of eight consecutive years, and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before such persons may be reappointed. The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and, 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember. The expiration date of all terms shall be August 31. During September of each year, the Mayor may designate one member as chairperson; however, in the absence of such designation, the *Commission* shall on or after October 15 select from their members a chairperson. The *Commission* shall meet not less than monthly and report to the Mayor and Council on an as needed basis, but not less than one time per year.

The *Commission* shall adopt rules consistent with laws for the government of its business and procedures.

**Duties and Functions**

The *Commission* shall:

- (a) Strongly advocate a substantial increase in funds for arts and culture.
- (b) Make all funding recommendations directly to the Mayor, City Council and City Manager.
- (c) Explore new sources of funding for arts and culture and evaluate the current allocation of Transient Occupancy Tax funding as it pertains to arts and culture.
- (d) Develop, coordinate and regularly reevaluate the City's arts and culture policies.
- (e) Consistent with City Council policy, serve as advocates for arts and culture with the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and Pacific Rim countries.
- (f) Serve as the State/Federal local arts program partner.
- (g) Manage the City's *public art program*, which shall include the following:
  - (1) Advising on the acquisition, placement and maintenance of *public art* on property of the City of San Diego. No *public art* shall be installed or existing work of *public art* removed from *public places* without a review by the *Commission*.

- (2) Developing and recommending to the Mayor, City Council and City Manager as appropriate:
- (A) Programs to promote *public performances* and the public exhibition of the visual, performing, and literary arts.
  - (B) Legislation to provide opportunities for inclusion of the visual, performing, and literary arts in private *development*.
  - (C) Legislation and policies to include *public art* in selected *Capital Improvements Program projects*.
- (h) Receive and accept applications for Transient Occupancy Tax funding, and using objective criteria evaluate the applications and recommend to the Mayor, City Council, and City Manager the allocation of that funding.
- (i) Recommend for the City Manager's review a budget for funding arts and culture programs in the City.
- (j) Establish guidelines to carry out the *public art program* which shall include methods of selecting *artists* or *public art* and for the placement of *public art*.
- (k) Advise the City Council regarding the possible purchase of *public art* or commissioning the design, execution or placement of *public art*. The *Commission* shall work with the City Manager regarding the design, execution or placement of *public art* in connection with *Capital Improvements Program projects*.



- (l) In the placement of *public art* in the City, give special attention to the placement of appropriate *public art* in City neighborhoods.
- (m) Receive input from the City Manager regarding operation and maintenance expenses associated with a work of *public art*. If the City Manager finds that a proposed work of *public art* requires extraordinary operation or maintenance expenses, the *Commission* shall recommend another work of *public art*, or submit with its recommendation to the City Manager and City Council a statement of overriding consideration of why the *public art* should be utilized notwithstanding its extraordinary operation or maintenance expense.
- (n) In cooperation with the City Manager, establish and adopt policies and procedures to implement the requirements of Chapter 2, Article 6, Division 7.
- (o) Where a work of *public art* is to be included in the construction of a *Capital Improvements Program project*, facilitate cooperation and early project coordination between City staff and *artists*.

Section 3. That Chapter 2, Article 6, Division 7, of the San Diego Municipal Code is hereby amended by adding a new Section 26.0705, to read as follows:

**§26.0705 Exemptions**

The requirements of Chapter 2, Article 6, Division 7 do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000.
- (b) Any *premises* which has an institutional use, such as churches, hospitals, and schools.
- (c) Any *premises* which is used solely for residential *development*.
- (d) Any *premises* which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to national security reasons.
- (f) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

Section 4. That Chapter 2, Article 6, Division 7, of the San Diego Municipal Code is hereby amended by retitling and amending Sections 26.0706 and 26.0707, to read as follows:

**§26.0706      General Public Art Program Allocation Regulations**

- (a) Subject to the provisions of Section 26.0708, no final City approval to occupy any private industrial or commercial *development*, or any portion thereof, with a *total building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-

month period ending January 1 of each year) may be granted unless an amount equal to one percent of its *total building permit valuation* has been set aside by the *applicant* as a *public art program allocation*.

- (1) For phased *development*, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the *premises*, but does not include any withdrawn permit applications.
  - (2) The valuation of any exempt component of a mixed use *development* shall be deducted from the combined total valuation.
  - (3) The calculation of total valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.
- (b) *The public art program allocation* may be used by the *applicant* to comply with the requirements of Chapter 2, Article 6, Division 7 through one of the following means:
- (c) Placement of *artwork* on the *premises*. If the value of the *artwork*, including its design, fabrication, and installation costs is not equal to or greater than the *public art program allocation*, the *applicant* shall pay an in lieu fee equal to the difference between the amount of the *public art* program allocation and the value of the artwork.

- (d) Maintaining a portion of the *premises open and freely accessible* for a *cultural use*. If the value of that portion of the *premises* which is *open and freely accessible* for a *cultural use* is not equal to or greater than the *public art program allocation*, the *applicant* shall pay an in lieu fee equal to the difference between the amount of the *public art program allocation* and the value of the *premises* which is *open and freely accessible* for a *cultural use*.
- (e) Payment of an in-lieu fee equal to one-half of one percent of the *total building permit valuation* for the *development*.

**§26.0707 Public Art Program Allocation Procedures**

Upon application for a building permit, the *applicant* shall be informed of the *public art program allocation* requirements and referred to the *Commission* in order to:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of Section 26.0706; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0709.

Section 5. That Chapter 2, Article 6, Division 7, of the San Diego Municipal Code is hereby amended by adding new Sections 26.0708, 26.0709, 26.0710, 26.0711, and 26.0712, to read as follows:

**General Rules for Public Art Program Allocation Regulations**

- (a) If the *applicant* pays an in-lieu fee in accordance with the provisions of Section 26.0706(e), no building permit for the *development* may be issued without payment of the in lieu fee to the City of San Diego.
- (b) If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and freely accessible* for a *cultural use* in accordance with the requirements of Section 26.0706(c) or (d), no building permit for the *development* may be issued until the *applicant* deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the *total building permit valuation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit evidence, satisfactory to the Executive Director of the *Commission*, that:
  - (1) If applicable, the value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the costs of *artist* design fees, fabrication of the *artwork*, and installation of the *artwork*.

- (2) If applicable, the value of the portion of the *premises* which is maintained *open and freely accessible* for a *cultural use* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

**§26.0709 Declaration of Covenants, Conditions, and Restrictions**

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and freely accessible* for a *cultural use* in accordance with the requirements of Section 26.0706(c) or (d), the *development* shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall provide all necessary maintenance of the *artwork*, including preservation of the *artwork* in good condition to the reasonable satisfaction of the City and protection of the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the *premises* may retain ten percent of the *public art program allocation* in order to fund the costs of ongoing repair, conservation, maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements of Chapter 2, Article 6, Division 7.
- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and freely accessible*.

- (c) A description of that portion of the *premises* which will be maintained *open and freely accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions of Chapter 2, Article 6, Division 7.

**§26.0710 Return of Fees**

- (a) Fees paid to the City of San Diego which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the *development* for which the fee was paid, and a statement that the person making the request is the fee payer or the current owner of the *development*.
- (b) The City Council shall determine if return of the then unexpended portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:
  - (1) The City Council finds that the fee is needed for the *public art program*.
  - (2) Funds were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.

- (3) The administrative cost of refunding unexpended fees in accordance with the requirements of Section 26.0710(a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the *development* in not less than three places.

**§26.0711 Failure to Maintain Artwork**

Failure to maintain *artwork* in accordance with Chapter 2, Article 6, Division 7 is declared to be a public nuisance.

**§26.0712 Appeal**

- (a) Any *applicant* may seek review of a decision by the *Commission* under Section 26.0708(c) of Chapter 2, Article 6, Division 7 by filing an application for an appeal hearing with the Executive Director of the *Commission* no later than ten business days after the *Commission's* decision.
- (b) The Executive Director of the *Commission* shall coordinate a date for an appeal hearing before the City Manager or his designee no later than ten business days after the date on which an application for the appeal hearing is filed with the *Commission*. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.



(c) At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the *Commission's* decision. The decision of the City Manager is final.

Section 6. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 7. This ordinance shall take effect and be in force on the sixtieth day from and after its passage, and shall only apply to applications for development of a premises submitted after JUL 16 2004 [The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank space provided].

APPROVED: CASEY GWINN, City Attorney

By Eric A. Swenson  
Eric A. Swenson  
Deputy City Attorney

EAS:lc:js:pev  
04/16/04  
04/20/04 COR.COPY  
04/26/04 COR.COPY2  
05/03/04 REV.  
05/04/04 REV.2  
Or.Dept: Art&Culture  
O-2004-124

**STRIKEOUT ORDINANCE**

OLD LANGUAGE: STRUCK OUT  
NEW LANGUAGE: DOUBLE UNDERLINE

(O-2004-124 REV.2)

ORDINANCE NUMBER O-\_\_\_\_\_ (New Series)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 26.0701; BY RENUMBERING AND AMENDING SECTION 26.0702 TO 26.0703, SECTION 26.0703 TO 26.0704, AND SECTION 26.0705 TO 26.0702; BY ADDING NEW SECTION 26.0705; BY RETITLING AND AMENDING SECTIONS 26.0706 AND 26.0707; AND BY ADDING NEW SECTIONS 26.0708, 26.0709, 26.0710, 26.0711, AND 26.0712, ALL RELATING TO THE COMMISSION FOR ARTS AND CULTURE AND THE DEVELOPMENT OF CULTURAL AND ARTISTIC RESOURCES IN THE CITY OF SAN DIEGO.

**§26.0701 Purpose and Intent**

It is the purpose and intent of the City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging, and increasing support for arts and culture.

It is also the purpose and intent of the City Council to encourage the preservation and augmentation of the City of San Diego's cultural and artistic resources, and to ensure that the City's increasing urbanization is offset by the creation of artworks and venues dedicated to artistic performances, exhibitions, and cultural events.

~~It shall be the responsibility of the Commission for Arts and Culture to make all recommendations pertaining to arts and culture for City funding to the City Council using objective criteria and evaluation panels, as appropriate.~~

It shall be the responsibility for the Commission of Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on projects and programs designed to promote public art throughout the neighborhoods of the City of San Diego, develop policies to involve artist(s) in selected Capital Improvement Projects and encourage the private sector to include public art in private developments.

~~§26.0705~~26.0702      **Definitions**

~~Whenever in this Division, the following words and phrases are used, they shall mean~~ Except as otherwise provided, for the purposes of this division:

*Applicant* has the same meaning as stated in Land Development Code section 113.0103.

- (a) ~~“Artist”~~ *Artist* means an artist individual generally recognized by critics or his/her and peers as a professional and who produces high quality work on a regular basis practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner’s body of work, educational background, experience, public performances, past public commissions, exhibition record, publications, and production of artwork.

*Artwork* includes:

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported or suspended, kinetic, electronic or mechanical.

Murals or paintings: may be made of any material or variety of materials with or without collage; may be made with traditional or non-traditional materials and means.

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary expression, calligraphy, any combination of forms of media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or new genres.

Artwork as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

(b) — “Capital Improvement Project” Capital Improvements Program project means any permanent public improvement project paid for wholly by monies appropriated by the e-City to construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a sidewalk, a parking facility, a utility, or any portion thereof, within the e-City limits or under the jurisdiction of the e-City.

(e) — “Commission” Commission means the City of San Diego Commission for Arts and Culture.

(d) — “Council” means the Mayor and City Council of the City of San Diego.

Cultural use includes individual and group presentations, exhibitions, or public performances involving music, dance, theatre, opera, literature, sculpture, murals.

paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies.

Development has the same meaning as stated in Land Development Code section 113.0103.

~~(e) "Eligible Funds" means the total amount of all funding sources that comprise the capital Outlay Fund. The amount of Eligible Funds will serve as the measurement in checking the amount to be deposited in the Fund for Public Art in accordance with Section 26.0706 of this ordinance.~~

~~(f) "Fund for Public Art" means a separate fund established in the City Treasury into which shall be deposited funds appropriated under Section 26.0607 of this ordinance. Disbursements from such a fund shall be made in connection with projects approved by the Council.~~

Open and freely accessible means available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.

Premises has the same meaning as stated in Land Development Code section 113.0103.

~~(g) "Public Art" includes physical art that may be an integral part of a public site or building, or may be integrated with the work of other design professionals. Public~~

art may be permanent, fixed, temporary or portable. Public art includes, but is not limited to the following:

- (1) — Sculpture: may be made on any material or combination of materials; may be freestanding, wall-supported or suspended, kinetic, electronic or mechanical.
- (2) — Murals or paintings: may be made of any material or a variety of materials with or without collage; may be made with traditional or non-traditional materials and means.
- (3) — Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary arts, calligraphy, any combination of forms of media, including sound, film, holographic, video or computer systems, hybrids of any media or new genres.

Public art means artwork that is created using funds from the public art fund and is located in public places.

Public art fund means a separate fund established in the City Treasury into which funds allocated in accordance with Chapter 2, Article 6, Division 7 shall be deposited.

(h) — "Public Art program" Public art program includes, but is not limited to, all responsibilities and activities of the Commission for Arts and Culture under Sections 26.0701, 26.0703 and 26.0707 Commission in accordance with Chapter 2, Article 6, Division 7 pertaining to public art public art.

Public art program allocation means the percentage of the total building permit valuation for a qualifying development in accordance with Chapter 2, Article 6, Division 7 which is set aside for the City's public art program.

- (i) ~~“Public performances” means Public performances includes individual and group presentations of music, dance, theatre, opera, literary, film/video and other forms of art generally recognized.~~
- (j) ~~“Public places” Public places means land and buildings owned by the City exclusive of City owned performance facilities, e.g., Civic Theatre of San Diego.~~
- (k) ~~“Supplemental Funds” means those funds contributed by individuals, corporations, foundations, or government grants, and placed in the Fund for Public Art in addition to those funds made available under Section 26.0706 of this ordinance which shall be used for implementing the purposes of the Percent for Art Ordinance and other public art projects recommended by the Commission for Arts and Culture and approved by the Council.~~

Total building permit valuation means the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

§26.070226.0703 Commission for Arts and Culture Established

There is hereby established a Commission for Arts and Culture consisting of fifteen members. ~~Commission~~ Commission members shall be persons who represent the following: individual arts artists, arts organizations, art patrons, and culture patrons, educators, the business community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public.

The members shall serve ~~three (3)~~ two year staggered terms for a maximum of ~~six (6)~~ eight consecutive years, and each member shall serve until a successor is duly appointed and confirmed. ~~Effective May 1, 2000 and for all appointments thereafter, members shall serve two (2) year staggered terms for a maximum of eight (8) consecutive years, and each member shall serve until a successor is duly appointed and confirmed.~~ An interval of four years must pass before such persons ~~can~~ may be reappointed. The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven ~~(7)~~ members; and, 2) the Mayor shall appoint the remaining eight ~~(8)~~ members, one each from a list of three ~~(3)~~ nominations submitted by each Councilmember. The expiration date of all terms shall be August 31. During September of each year, the Mayor may designate one ~~(1)~~ member as chairperson; however, in the absence of such designation, the ~~Commission~~ Commission shall on or after October 15 select from their members a chairperson. The ~~Commission~~ Commission shall meet not less than monthly and report to the Mayor and Council on an as needed basis, but not less than one time per year.



The ~~Commission~~ Commission shall adopt rules consistent with laws for the government of its business and procedures.

**§26.070326.0704 Duties and Functions**

The ~~Commission for Arts and Culture~~ Commission shall:

- (a) Strongly advocate a substantial increase in funds for arts and culture.
- (b) Make all funding recommendations directly to the Mayor, City Council and City Manager.
- (c) Explore new sources of funding for arts and culture and evaluate the current allocation of Transient Occupancy Tax funding as it pertains to the arts and culture.
- (d) Develop, coordinate and regularly reevaluate a ~~comprehensive~~ the City's arts and culture policies.
- (e) Consistent with City Council policy, serve as advocates for arts and culture with the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and Pacific Rim countries.
- (f) Serve as the State/Federal local arts program partner.
- (g) Manage the City ~~public art program's~~ public art program, which shall include the following:
  - (1) Advising on the acquisition, placement and maintenance of ~~public art~~ public art on property of the City of San Diego, ~~except for any~~

~~museum, art gallery, or City-owned performance facility. No public art public art shall be installed or existing work of art public art removed from public areas of City property public places without a review by the ~~Commission~~ Commission.~~

- (2) Developing and recommending to the Mayor, City Council and City Manager as appropriate:
  - (A) Programs to promote ~~public performances~~ public performances and the public exhibition of the visual, performing, and literary arts.
  - (B) Legislation to provide ~~incentives to the public sector opportunities~~ for inclusion of the visual, performing, and literary arts in private development development.
  - (C) Legislation and policies to ~~involve artist(s)~~ include public art in selected City ~~Capital Improvement Projects~~ Capital Improvements Program projects.
- (h) Receive and accept applications for Transient Occupancy Tax funding, and using objective criteria evaluate the applications and recommend to the Mayor, City Council, and City Manager the allocation of that funding.
- (i) Recommend for the City Manager's review a budget for funding arts and culture programs in the City.

- (j) Establish guidelines to carry out the *public art program* which shall include methods of selecting *artists* or *public art* and for the placement of *public art*.
- (k) Advise the City Council regarding the possible purchase of *public art* or commissioning the design, execution or placement of *public art*. The *Commission* shall work with the City Manager regarding the design, execution or placement of *public art* in connection with *Capital Improvements Program projects*.
- (l) In the placement of *public art* in the City, give special attention to the placement of appropriate *public art* in City neighborhoods.
- (m) Receive input from the City Manager regarding operation and maintenance expenses associated with a work of *public art*. If the City Manager finds that a proposed work of *public art* requires extraordinary operation or maintenance expenses, the *Commission* shall recommend another work of *public art*, or submit with its recommendation to the City Manager and City Council a statement of overriding consideration of why the *public art* should be utilized notwithstanding its extraordinary operation or maintenance expense.
- (n) In cooperation with the City Manager, establish and adopt policies and procedures to implement the requirements of Chapter 2, Article 6, Division 7.

- (o) Where a work of *public art* is to be included in the construction of a *Capital Improvements Program project*, facilitate cooperation and early project coordination between City staff and *artists*.

§26.0705 Exemptions

The requirements of Chapter 2, Article 6, Division 7 do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000.
- (b) Any *premises* which has an institutional use, such as churches, hospitals, and schools.
- (c) Any *premises* which is used solely for residential *development*.
- (d) Any *premises* which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to national security reasons.
- (f) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

§26.0706

Funds for General Public Art Program Allocation Regulations

The City Manager shall include in the annual budget proposal an amount of money equivalent to 1% of the eligible funds to be deposited in the Fund for Public Art. Eligible funds, for the purpose of this Division include all funding sources that comprise the Capital Outlay Fund. Other funds may be made available to involve artists and Capital Improvements Projects in accordance with Council Policies.

- (a) Subject to the provisions of Section 26.0708, no final City approval to occupy any private industrial or commercial development, or any portion thereof, with a total building permit valuation greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless an amount equal to one percent of its total building permit valuation has been set aside by the applicant as a public art program allocation.
  - (1) For phased development, calculation of total building permit valuation will be based on the total number of building permits applied for, but not yet issued, for the premises, but does not include any withdrawn permit applications.
  - (2) The valuation of any exempt component of a mixed use development shall be deducted from the combined total valuation.

- (3) The calculation of total valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type 1 fire rated occupancy classification.
- (b) The public art program allocation may be used by the applicant to comply with the requirements of Chapter 2, Article 6, Division 7 through one of the following means:
- (c) Placement of artwork on the premises. If the value of the artwork, including its design, fabrication, and installation costs is not equal to or greater than the public art program allocation, the applicant shall pay an in lieu fee equal to the difference between the amount of the public art program allocation and the value of the artwork.
- (d) Maintaining a portion of the premises open and freely accessible for a cultural use. If the value of that portion of the premises which is open and freely accessible for a cultural use is not equal to or greater than the public art program allocation, the applicant shall pay an in lieu fee equal to the difference between the amount of the public art program allocation and the value of the premises which is open and freely accessible for a cultural use.
- (e) Payment of an in-lieu fee equal to one-half of one percent of the total building permit valuation for the development.

Public Art Program Allocation Procedures

To carry out the Commission for Arts and Culture's duties the Commission shall:

- (a) ~~Receive and accept applications for Transient Occupancy Tax funding, and using objective criteria will evaluate the application and recommend to the City Council the allocation of that funding.~~
- (b) ~~Prepare and recommend for the City Council's review a budget for funding arts and culture programs in the City, including the Public Art budget.~~
- (c) ~~Establish guidelines to carry out the Public Art program which shall include, but not be limited to, a method or methods of selection of artists for public art and for the placement of public art.~~
- (d) ~~Advise the City Council regarding the possible purchase of public art or commissioning the design, execution or placement of public art. The Commission shall work with the City Manager regarding the design, execution or placement of public art in connection with Capital Improvement Projects.~~
- (e) ~~In the placement of Public art in the City, give special attention to the placement of appropriate public art in the neighborhoods.~~
- (f) ~~Receive input from the City Manager regarding operation and maintenance expenses associated with a public art. If the City Manager finds that a proposed public art requires extraordinary operation for maintenance expenses, the Commission shall recommend other public art, or submit with its recommendation to the City Manager and City Council a statement of overriding~~

consideration of why the public art should be utilized notwithstanding its extraordinary operation or maintenance expense.

(g) ~~In cooperation with the City Manager, promulgate for City Council appropriate guidelines consistent with this ordinance to facilitate the implementation of the responsibilities of the Commission and City Manager hereunder.~~

(h) ~~In instances of public art to be placed in constructions, Capital Improvements projects to achieve a greater degree of artistic harmony, recommend artists to be conformed by the Manager before City approval of the architect's schematic design.~~

Upon application for a building permit, the *applicant* shall be informed of the public art program allocation requirements and referred to the Commission in order to:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of Section 26.0706; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0709.

**§26.0708 General Rules for Public Art Program Allocation Regulations**

- (a) If the *applicant* pays an in-lieu fee in accordance with the provisions of Section 26.0706(e), no building permit for the *development* may be issued without payment of the in lieu fee to the City of San Diego.
- (b) If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and freely accessible* for a *cultural use* in accordance



with the requirements of Section 26.0706(c) or (d), no building permit for the development may be issued until the applicant deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the total building permit valuation.

(c) Prior to issuance of the Certificate of Occupancy for the development, the applicant shall submit evidence, satisfactory to the Executive Director of the Commission, that:

(1) If applicable, the value of the artwork installed on the premises is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include the costs of artist design fees, fabrication of the artwork, and installation of the artwork.

(2) If applicable, the value of the portion of the premises which is maintained open and freely accessible for a cultural use is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the development.

§26.0709 Declaration of Covenants, Conditions, and Restrictions

If the applicant installs an artwork on the premises or maintains a portion of the premises open and freely accessible for a cultural use in accordance with the requirements of Section 26.0706(c) or (d), the development shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the development shall provide all necessary maintenance of the artwork, including preservation of the artwork in good condition to the reasonable satisfaction of the City and protection of the artwork against destruction, distortion, mutilation, or other modification. The owner of the premises may retain ten percent of the public art program allocation in order to fund the costs of ongoing repair, conservation, maintenance, insurance, and security of the artwork, as necessary to comply with the requirements of Chapter 2, Article 6, Division 7.
- (b) The owner of the development shall ensure that the artwork will be located in an area that is open and freely accessible.
- (c) A description of that portion of the premises which will be maintained open and freely accessible and its designated cultural use.
- (d) Any other reasonable terms necessary to implement the provisions of Chapter 2, Article 6, Division 7.

§26.0710      Return of Fees

- (a)      Fees paid to the City of San Diego which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the *development* for which the fee was paid, and a statement that the person making the request is the fee payer or the current owner of the *development*.
- (b)      The City Council shall determine if return of the then unexpended portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:
- (1)      The City Council finds that the fee is needed for the *public art program*.
  - (2)      Funds were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.
  - (3)      The administrative cost of refunding unexpended fees in accordance with the requirements of Section 26.0710(a) exceeds the amount to be refunded, provided notice of a public hearing on

this issue has been published and posted on the site of the  
development in not less than three places.

**§26.0711 Failure to Maintain Artwork**

Failure to maintain artwork in accordance with Chapter 2, Article 6, Division 7 is  
declared to be a public nuisance.

**§26.0712 Appeal**

- (a) Any applicant may seek review of a decision by the Commission under  
Section 26.0708(c) of Chapter 2, Article 6, Division 7 by filing an  
application for an appeal hearing with the Executive Director of the  
Commission no later than ten business days after the Commission's  
decision.
- (b) The Executive Director of the Commission shall coordinate a date for an  
appeal hearing before the City Manager or his designee no later than ten  
business days after the date on which an application for the appeal hearing  
is filed with the Commission. The appeal hearing shall generally be held  
within sixty business days following the filing of the application for the  
hearing. The certificate of occupancy may be withheld pending resolution  
of the appeal.

- (c) At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the *Commission's* decision. The decision of the City Manager is final.

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04/16/04  
04/20/04 COR.COPY  
04/26/04 COR.COPY2  
05/03/04 REV.  
05/04/04 REV.2  
Or.Dept: Art&Culture  
O-2004-124