

## Article 6: Board and Commissions

### Division 7: Commission for Arts and Culture

(“Commission for Arts and Culture” added 5-15-1989 by O-17298 N.S.)

#### §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 the region’s artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

It is also the purpose and intent of the City Council to set forth the duties and functions of the Executive Director and staff that support the Commission for Arts and Culture, which include: developing, implementing, evaluating and/or recommending changes to public policy, legislation, programs, services and advocacy strategies; overseeing funding allocations in support of non-profit arts and culture organizations, artists, neighborhood arts programs, festivals, and artworks in public development; ensuring the inclusion of art in private development; managing artworks owned and controlled by the City; supporting cultural tourism and innovative arts and culture programming; and undertaking other initiatives that contribute to the quality of life, the economic vitality, and the vibrancy of San Diego.

*(Amended 4-20-1992, by O-17757 N.S.)*

*(Amended 5-17-2004, by O-19280 N.S.)*

*(Amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

#### §26.0702 Definitions

Except as otherwise provided, the following definitions apply to the terms italicized in this division:

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

*Accession* means the formal process used to accept and record an *artwork* as a *Civic Art Collection* item.

*Acquisition* means the transfer of title to the City of valuable property including *artwork* by purchase, donation, bequest, transfer or exchange.

*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language arts, or a combination thereof, based on that professional practitioner's body of work, educational background, experience, past commissions, exhibition/performance record, publications, and production of *artworks*.

*Artworks* must be specified or designed by an *artist* and include:

*Public art* as defined herein;

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

Murals or paintings: may be made of any material or combination of materials; may be made with traditional or non-traditional means;

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, linguistic expressions, calligraphy, ephemera, textiles, found objects, and any media or combination of media including audio, video, film, holographic or computer generated technologies, or other art genres currently known or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance art, happenings, music, television and film or other performing or language art genres currently known or which may come to be known.

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

**The following, unless specified or designed by an *artist*, are not considered *artworks*:**

Reproductions, by mechanical or other means, of original *artworks*. However, limited editions controlled by the *artist* or original prints, cast sculptures, or photographs, may be considered *artworks*.

Decorative, ornamental or functional elements not specified or designed by an *artist*.

Elements generally considered as being components of architecture or landscape design such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); wayfinding or other functional elements such as graphics, signage, advertising or maps.

*Capital Improvements Program project* means any permanent public improvement project, or portion or phase thereof, set forth in the Capital Improvements Program budget as adopted by City Council.

*Civic Art Collection* means *artworks* which have been *accessioned* and are publicly owned, possessed, or controlled by the City and administered by the *Commission*. Incoming loans of *artwork* shall be incorporated into the *Civic Art Collection* for the duration of the loan but are not considered *acquisitions*.

*Civic Enhancement allocation* means the percentage of the *total building permit valuation* for a qualifying *development* in accordance with the requirements set forth herein which is set aside for *artwork* on the *premises*, venues for *cultural use* on the *premises* and/or an in-lieu contribution to the *Public Art Fund*.

*Collections management activities* include, but are not limited to, the *acquisition*, incoming loan, outgoing loan, interdepartmental loan, *deaccession*, *disposal*, relocation, removal, exhibition, operation, maintenance, conservation, documentation, storage, reproduction and/or adaptation of *artworks*.

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

*Cultural use* means *open and accessible* programming for the presentation of visual, performing and/or language arts.

*Deaccession* means the formal process used to permanently remove an *artwork* from the *Civic Art Collection*.

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

*Disposal* means the permanent exchange, sale, destruction or transfer of an *artwork* in the *Civic Art Collection*.

*Extraordinary artwork maintenance* means any maintenance or conservation to the sound condition of an *artwork* that requires specialized services.

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

*Ordinary artwork maintenance* means the routine oversight of the operation and cleaning of and around *artworks*.

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

*Public art* means *artwork* acquired or created using funds appropriated by the City and located in *public places*.

*Public Art Fund* means a separate fund established in the City Treasury into which *Civic Enhancement allocations*; funding for *collections management activities*; funding for *public art project management activities*; monetary bequests and donations for specific or unspecified *cultural use*; grants; grant matching funds; and Transient Occupancy Tax [TOT] funds may be deposited.

*Public art project management activities* include, but are not limited to, *artist selection process activities*, payment of stipends to *artists* and consultant fees, community participation activities, outreach and educational activities, and implementation of communication tools such as interpretive plaques, project documentation, and staff administration of all of the above.

*Public places* means land and buildings owned or controlled by the City.

*Redevelopment Project Area* means any area formally adopted by the City Council pursuant to Community Redevelopment Law, California Health and Safety Code sections 33000 et. seq., maps of which are on file in the Office of the City Clerk.

*Redevelopment Agency Project* means any undertaking of the City of San Diego Redevelopment Agency in a *Redevelopment Project Area* pursuant to the authority vested in the Redevelopment Agency under California Health and Safety Code sections 33000 et. seq.

*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.

(Amended 4-10-2000, by O-18786 N.S.)

(Renumbered from Section 26.0705 and amended 5-17-2004, by O-19280 N.S.)

(Amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)

**§26.0703 Commission for Arts and Culture Established**

There is hereby established a Commission for Arts and Culture consisting of fifteen members, who shall serve without compensation.

The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: (1) The Mayor shall appoint six members; and (2) the Mayor shall appoint the remaining nine members, one each from a list of three nominations submitted by each Councilmember.

*(Amended 4-20-1992, by O-17757 N.S.)*

*(Renumbered from Section 26.0702 and amended 5-17-2004, by O-19280 N.S.)*

*(Amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

*(Amended 6-22-2016 by O-20656 N.S.; effective 7-22-2016.)*

**§26.0704 Duties and Functions – Commission for Arts and Culture**

The *Commission* shall:

- (a) Advocate for the role and value of arts and culture in civic life.
- (b) Promote greater public participation in, and access to, arts and culture.
- (c) Evaluate the City’s allocation of TOT funds for arts and culture and strongly advocate for increasing arts and culture funding to levels which measurably support the vitality and stability of established arts and cultural organizations and which foster an environment attractive to and nurturing of emerging arts and cultural organizations.
- (d) Advocate for and explore alternate sources of arts and culture funding including, but not limited to, grants, donations and corporate sponsorships.
- (e) Advise on the development, implementation, evaluation and/or change of the City’s arts and culture public policy, legislation, programs and services.
- (f) Advocate for City public policy, legislation, programs and services that foster a wide range of arts and cultural offerings which engage a diverse public audience.
- (g) Review the annual proposed budget for the *Commission* as prepared by the Executive Director of the *Commission* and provide recommendations, as appropriate.

- (h) Advise on the administration of the budget for the *Commission*, and the arts and culture allocations within TOT funds including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (i) Oversee and, when appropriate, participate in an open and impartial process for evaluating TOT funding applications from local, non-profit arts and culture organizations.
- (j) Recommend to the Mayor, City Council and City Manager the fair distribution of TOT funds to non-profit arts and culture organizations to support local arts and culture programming.
- (k) Advise on *collections management activities* and *public art project management activities* pertaining to existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (l) Advise on allocations to and from the *Public Art Fund*.
- (m) Advise on the policies and processes whereby *artworks* are included in *Capital Improvements Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.
- (n) Advocate for the fair distribution of arts and culture amenities across each City Council district and throughout the City's neighborhoods.
- (o) Participate in the initiation, implementation and/or sponsorship, alone or in partnership with other public agencies or private organizations, of programs and services to support local arts and culture organizations and individual *artists*.
- (p) Serve as the City's advocates for arts and culture within the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and other Pacific Rim countries.
- (q) Advise on other arts and culture issues as directed by the Mayor, City Council or City Manager.
- (r) Hold regular public meetings and keep written records of the proceedings which shall be public records.

(s) Adopt rules consistent with laws for the governance of its business and procedures.

*(Renumbered from Section 26.0703 and amended 5-17-2004, by O-19280 N.S.)  
(Amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0705 Qualification of Commissioners**

Commissioners shall be persons who represent the following: individual arts and culture patrons, *artists*, educators, the business and professional community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. Efforts should be made to include Commissioners who represent a diversity of backgrounds including, but not limited to, gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, political affiliation and/or professional background. Commissioners also shall be persons who will commit to volunteering time to serve on the board which meets monthly, as well as on at least one *Commission* committee and one *Commission* review panel on an annual basis.

Board Chairs, Presidents, or other officers of the board of directors of an organization funded by the City through the *Commission* may not be considered for an appointment to the *Commission* or accept such a position while a Commissioner. A high-level, full-time employee of an organization funded by the *Commission* may not be considered for appointment to the *Commission* or accept such a position while a Commissioner. In selecting Commissioners, the Mayor or the Mayor’s designee shall consider whether candidates would be able to effectively and ethically serve in light of any foreseeable conflicts of interest.

*(Amended 4-20-1992, by O-17757 N.S.)  
(Renumbered to Section. 26.0702, and added as new section on 5-17-2004, by O-19280 N.S.)  
(Previous Section 26.0705, “Exemptions,” retitled and renumbered to Section 26.0721, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0706 Designation of Commission Chair and Vice Chair**

The Mayor may designate one member as Chair in September of each year in which a Chair is to be selected; however, in the absence of such designation, the *Commission* shall on or after October 15 of such year select from their members a Chair. The Chair shall take office no earlier than October and no later than December. The Vice Chair shall be nominated by the Chair and elected by a majority vote of the *Commission*.

*(Amended 4-20-1992, by O-17757 N.S.)*

*(Retitled and amended 5-17-2004, by O-19280 N.S.)*

*(Previous Section 26.0706, "General Public Art Program Allocation Regulations," retitled and renumbered to Section 26.0714, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0707 Commissioner Terms**

Commissioners 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 an individual can be reappointed.

The expiration date of all terms shall be August 31.

The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional, consecutive year. An interval of two years must pass before an individual can be reappointed as Chair.

The Vice Chair shall serve a term of one year and can be reelected as Vice Chair by the *Commission* for two additional, consecutive one-year terms. An interval of two years must pass before an individual can be reappointed as Vice Chair.

*(Amended 4-20-1992; by O-17757 N.S.)*

*(Retitled and amended 5-17-2004; by O-19280 N.S.)*

*(Previous Section 26.0707, "Public Art Program Allocation Procedures," retitled and renumbered to Section 26.0715, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0708 Commission Meetings and Reporting**

The *Commission* will meet monthly and report to the Mayor and City Council on an as needed basis, but not less than one time per year.

*(Added 5-17-2004; by O-19280 N.S.)*

*(Previous Section 26.0708, "General Rules for Public Art Program Allocation Regulations" retitled and renumbered to Section 26.0716, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*



**§26.0709 Resignation and Removal of Commissioners**

Any Commissioner may submit written resignation to the Chair. The Commissioner resigning must file a Leaving Office Statement with the City Clerk within thirty days of the effective date of resignation. It is the Chair's responsibility to notify the Mayor of any such resignation.

The *Commission* may recommend to the Mayor that an individual Commissioner be removed for sufficient cause.

*(Added 5-17-2004, by O-19280 N.S.)*

*(Previous Section 26.0709, "Declaration of Covenants, Conditions, and Restrictions," retitled and renumbered to Section 26.0717, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0710 Commission Quorum**

Eight Commissioners shall constitute a quorum authorized to transact business.

*(Added 5-17-2004, by O-19280 N.S.)*

*(Previous Section 26.0710, "Return of Fees," retitled and renumbered to Section 26.0718, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0711 Commission Conflict of Interest Code**

A conflict of interest code shall be adopted for Commissioners, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this code. All Commissioners shall be required to complete and file statements of economic interests in accordance with the conflict of interest code, and shall comply with all applicable ethics laws.

*(Added 5-17-2004, by O-19280 N.S.)*

*(Previous Section 26.0711, "Failure to Maintain Artwork" retitled and renumbered to Section 26.0719, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0712 Commission for Arts and Culture Executive Director and Staff**

The Executive Director of the *Commission* shall be appointed by the City Manager. The Director shall be a management assistant to the City Manager. The City Manager shall provide appropriate staff to support the activities of the *Commission* and Executive Director.

*(Added 5-17-2004, by O-19280 N.S.)*

*(Previous Section 26.0712, "Appeal" retitled and renumbered to Section 26.0720, amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0713 Duties and Functions – Executive Director**

The Executive Director shall:

- (a) Serve as the head of and be responsible for the administration of the *Commission*, *Commission* staff, and their respective purposes, duties and functions.
- (b) Appoint, direct and supervise all City employees on the *Commission* staff with the approval of the City Manager, and subject to Civil Service regulations.
- (c) Initiate, administer and propose modifications to such agreements and instruments as the Executive Director deems reasonably necessary to implement public policy, legislation, programs and services pertaining to the *Commission*, *Commission* staff, and their respective purposes, duties and functions.
- (d) Prepare the annual proposed budget for the *Commission* and provide recommendations, as appropriate, to the *Commission* before submitting budget recommendations to the City Manager.
- (e) Direct the administration of the budget for the *Commission* and the arts and culture allocations within TOT funds including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (f) Direct the fair distribution of TOT funds, as approved by City Council, to non-profit arts and culture organizations to support local arts and culture programming.
- (g) Serve as the steward of the *Civic Art Collection* and manage any financial transactions related to *collections management activities* and *public art project management activities* pertaining to all existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (h) Oversee allocations to and from the *Public Art Fund*.
- (i) Initiate agreements to provide professional arts administration services to other agencies, corporations and companies.

- (j) Prepare and submit reports to the Mayor, City Council and City Manager pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (k) Consult with and submit reports to the *Commission* pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (l) Manage other duties pertaining to arts and culture as assigned by the City Manager.

(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)

**§26.0714 Civic Enhancement Allocation Regulations and Calculations**

- (a) To ensure that the City’s increasing urbanization is offset by the creation of *artworks* and venues dedicated to *cultural use*, 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 a *Civic Enhancement allocation* in an amount equal to one percent (when the *applicant* elects to meet the requirements of this section pursuant to Subdivision (b)(1) or (b)(2) or one-half of one percent (when the *applicant* elects to meet the requirements of this section pursuant to Subdivision (b)(3) of its *total building permit valuation* has been set aside by the *applicant*, subject to the provisions of section 26.0716.
  - (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 building permit valuation*.
  - (3) The calculation of *total building permit 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 *Civic Enhancement allocation* may be used by the *applicant* to comply with the requirements set forth herein through one of the following means:
- (1) Placement of *artworks* valuing one percent of the *total building permit valuation* for the *development* on the *premises*. If the value of the *artwork*, including art consultant fees and the costs for design, fabrication, installation, and documentation, is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *artwork*.
  - (2) Maintaining a portion of the *premises* which is *open and accessible* for *cultural use*. If the value of that portion of the *premises* which is *open and accessible* for *cultural use* is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *premises* which is *open and accessible* for *cultural use*.
  - (3) Depositing into the *Public Art Fund*, payment of an in-lieu fee equal to one-half of one percent of the *total building permit valuation* for the *development*.

*(Renumbered from Section 26.0706 "General Public Art Program Allocation Regulations," retitled to "Civic Enhancement Allocation Regulations and Calculations" and amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

#### **§26.0715 Civic Enhancement Allocation Declaration**

Upon applying for a building permit, the *applicant* shall:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of section 26.0714; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with section 26.0717.

*(Renumbered from Section 26.0707, "Public Art Program Allocation Procedures," retitled to "Civic Enhancement Allocation Declaration" and amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0716 Compliance with Civic Enhancement Allocation Regulations**

- (a) If the *applicant* chooses to pay an in-lieu fee in accordance with the provisions of section 26.0714 (b)(3), no building permit for the *development* may be issued without payment of the in-lieu fee to the City's *Public Art Fund*.
- (b) If the *applicant* chooses to install an *artwork* on the *premises* or maintain a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), 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*. Any costs associated with acquiring the required security are the responsibility of the *applicant*, and may not be applied to the *Civic Enhancement allocation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit to *Commission* staff 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 art consultant fees, *artist* design fees, fabrication of the *artwork*, installation of the *artwork*, and/or documentation of the *artwork*.
  - (2) If applicable, the value of the portion of the *premises* which is maintained *open and accessible* for *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*.

*(Renumbered from Section 26.0708, "General Rules for Public Art Program Allocation Regulations" retitled to "Compliance with Civic Enhancement Allocation Regulations," amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0717 Declaration of Covenants, Conditions, and Restrictions for Developments  
Subject to the Civic Enhancement Allocation Regulations**

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), 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 *Civic Enhancement allocation* in order to fund the costs of conservation, ongoing maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements set forth herein.
- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and accessible*.
- (c) A description of that portion of the *premises* which will be maintained *open and accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions set forth herein.

*(Renumbered from Section 26.0709, "Declaration of Covenants, Conditions, and Restrictions," retitled to "Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations," amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0718 Return of Civic Enhancement Allocations**

- (a) *Civic Enhancement allocations* paid into the City’s *Public Art Fund* 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 *Civic Enhancement allocations* 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 *Civic Enhancement allocation* was paid, and a statement that the person making the request paid the *Civic Enhancement allocation* or is the current owner of the *development*.
- (b) The City Council shall determine if return of the then unexpended portion of the *Civic Enhancement allocation* 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 funds are needed for *artwork* or *cultural use*.
  - (2) The *Civic Enhancement allocations* 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 *Civic Enhancement allocations* 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.

*(Renumbered from Section 26.0710, “Return of Fees,” retitled to “Return of Civic Enhancement Allocations,” amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0719 Failure to Maintain Artwork Created Through Civic Enhancement Allocations**

Failure to maintain *artworks* created through *Civic Enhancement allocations* may be a public nuisance.

*(Renumbered from Section 26.0711, “Failure to Maintain Artwork” retitled to “Failure to Maintain Artwork Created Through Civic Enhancement Allocations,” amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0720 Civic Enhancement Allocation Appeal**

Any *applicant* may seek review of a decision by the Executive Director of the *Commission* under section 26.0716 (c) by filing an application for an appeal hearing with the Executive Director of the *Commission* no later than ten business days after the Executive Director’s decision.

The Executive Director of the *Commission* shall coordinate a date for an appeal hearing before the City Manager or the City Manager’s designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Executive Director. 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.

At the conclusion of the appeal hearing, the City Manager or the City Manager’s designee may affirm, reverse, or modify the Executive Director’s decision. The decision of the City Manager is final.

*(Renumbered from Section 26.0712, “Appeal” retitled to “Civic Enhancement Allocation Appeal,” amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0721 Civic Enhancement Allocation Exemptions**

The *Civic Enhancement allocation* requirements do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000 or current threshold pursuant to section 26.0716.
- (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 and accessible*, in its entirety, to the general public due to security reasons.
- (f) Industrial and commercial *development* that is not *open and 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.

*(Renumbered from Section 26.0705, “Exemptions,” retitled to “Civic Enhancement Allocation Exemptions,” amended 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*



**§26.0722 Control of Artworks**

No *artworks* shall be contracted for, exhibited on, or erected on *public places*, or become the property of the City by *acquisition* or otherwise, or be in the custody of the City by loan or otherwise, unless such *artworks*, shall first have been submitted to and accepted by the *Commission* staff, and following review and recommendation by the *Commission*. No existing *artworks* owned by or in the custody of the City shall be *deaccessioned*, removed, relocated, conserved, altered, exhibited or *disposed* of in any way without the approval of *Commission* staff, and following review and recommendation by the *Commission*.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0723 Management of Artworks**

All *collections management activities* shall be the responsibility of the *Commission* staff, and undertaken with the advice of the *Commission*. *Ordinary artwork maintenance* of *artworks* in the *Civic Art Collection* is the responsibility of the City department at which the *artwork* is sited and shall be undertaken at the direction of *Commission* staff.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0724 Acquisition of Artworks**

- (a) *Commission* staff may authorize the purchase of *artworks* for inclusion in the *Civic Art Collection* following the review and recommendation of the *Commission*.
- (b) *Commission* staff shall, on behalf of the City, accept, with or without conditions, or reject donations, bequests or incoming loans of *artwork* following the review and recommendation of the *Commission*. Title to all donated and bequeathed *artworks* accepted by the City and *accessioned* into the *Civic Art Collection* shall be vested and held in the name of the City.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0725 Deaccession and Disposal of Artworks**

- (a) *Commission* staff shall *deaccession* and *dispose* of *artworks* from the *Civic Art Collection*, following the review and recommendation of the *Commission*.
- (b) When an *artwork* to be *deaccessioned* and *disposed* of through sale has an estimated fair market value of \$250,000 or more, *Commission* staff shall submit a report on the recommendation for the sale to the Mayor, City Council and City Manager prior to initiating the sale.
- (c) When an *artwork* is *deaccessioned* and *disposed* of through sale, the *artwork* shall be sold through methods either administered by or approved by the Purchasing Agent. When an *artwork* is *deaccessioned* and *disposed* of through sale or exchange, the Executive Director may administer acceptance of all deeds of conveyance necessary and proper to affect a duly authorized sale or exchange.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0726 Loans from the Civic Art Collection**

*Commission* staff is authorized to loan *artworks* from the *Civic Art Collection* to City departments, agencies, institutions, organizations or galleries. Loans are made according to the terms and conditions of loan agreements.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0727 Reproductions or Adaptations of Artworks**

*Commission* staff is authorized to negotiate with the copyright holder for each *artwork* in or proposed for inclusion in the *Civic Art Collection* for the purpose of acquiring a license to make, or cause to be made reproductions or adaptations of *artworks*. Reproductions or adaptations of *artworks* are made according to the terms and conditions of the licensing agreement.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*

**§26.0728 Proceeds from the Sale, Loan, Reproduction or Adaptation of Artworks**

All monies received from the sale of *artworks* from the *Civic Art Collection* must be expended on new *acquisitions* for the *Civic Art Collection*. Proceeds from the loan of *artworks* from the *Civic Art Collection* or from the licensing of the making of reproductions or adaptations thereof, less any payments due, shall be deposited into the *Public Art Fund*.

*(Added 10-27-2008 by O-19794 N.S.; effective 11-26-2008.)*