

ORDINANCE NO. 3805

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING CHAPTER 21-08, DEVELOPMENT REQUIREMENTS RELATING TO PUBLIC ART, OF THE SANTA ROSA CITY CODE

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Chapter 21-08 is added to the Santa Rosa City Code to read in full as follows:

**CHAPTER 21-08
DEVELOPMENT REQUIREMENTS RELATING TO PUBLIC ART**

Sections:

21-08.010	Purpose and intent.
21-08.020	Definitions
21-08.030	Public Art Contribution; Requirements
21-08.040	Public Arts Projects for On-Site Installation.
21-08.050	Eligible Public Art Expenditures.
21-08.060	Process for Approval of Public Art for On-site Installation.
21-08.070	Additional Requirements for Public Art for On-site Installation.
21-08.080	Location and Relocation for Public Art.
21-08.090	Contribution by the City for Public Art Fund.

21-08.10 Purpose and intent.

The purpose of this ordinance is to authorize the establishment of guidelines, procedures and standards for the integration of public art into development projects throughout the City of Santa Rosa.

Public art helps make our city more livable and more visually stimulating. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. It creates a deeper interaction with the places where we live, work, and visit. The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the City. Public art illuminates the diversity and history of a community, and points to its aspirations for the future. A wealth of art and culture in the public realm will foster the economic development of the community.

To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process.

21-08.020 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

(A) "Art in Public Places Committee" or "AIPPC" means a committee designated by the City Council to advise the City Council and staff on the implementation of this Chapter the Public Art Policy, and expenditures of the Public Art Fund.

(B) "Artist" means a person who has established a reputation of artistic excellence, as judged by peers through a record of exhibitions, public commissions, sale of works, or educational attainment.

(C) "Construction Costs" means the total value of any development project covered by this Chapter. Calculations shall be based on construction and improvement costs as declared on all building permit applications. Building permit applications shall include, but not be limited to all grading, building, plumbing, mechanical, and electrical permit applications for the project. The actual construction costs for the purpose of determining the Public Art Contribution amount required by this Chapter shall be determined by the City's Chief Building Official.

(D) "Developer" means the person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter, who may, or may not, be the owner of the subject property.

(E) "Development" or "Development Project" means a project involving the construction of a new building or the rehabilitation, renovation, remodeling or improvement of an existing building, and having construction costs, as defined in this Chapter, of \$500,000 or more. An existing building that is remodeled with a construction cost greater than or equal to 50% of the replacement cost of the building as determined by the City's Chief Building Official, regardless of the actual amount of the construction costs, shall also be subject to the requirements of this Chapter. Development or Development Project as herein defined shall include any and all commercial development, including office and retail uses, but not industrial or light industrial uses, and any commercial portions of any mixed-use development throughout the City of Santa Rosa, subject to the following exemptions: Remodeling, repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity; seismic retrofit projects as defined by the Santa Rosa City Code; and fire sprinkler installation projects as defined by Santa Rosa City Code.

(F) "In-Lieu Contribution" means payment by owner or developer into the Public Art Fund in the amount of the Public Art Contribution in lieu of installation of public art on-site.

(G) "Installation Date" means the actual date on which the public art is installed on site or the date that the certificate of occupancy was issued, whichever is later.

(H) "Public Art" means an original work of a permanent nature in any variety of media produced by an artist, as defined by this Chapter, or by a team of artists.

(I) "Public Art Fund" means a fund established and maintained by the City of Santa Rosa for the purpose of funding public art and cultural programming consistent with the Public Art Policy, and administered by the AIPPC.

(J) "Public Art Contribution" means the dollar amount equal to (i) for the first twelve month period following the effective date of this Chapter ½% of the construction costs of a development project covered by this Chapter, or (ii) after the expiration of the first twelve month period following the effective date of this Chapter, 1% of the construction costs of a development project covered by this Chapter. In the case of a mixed-use project, the dollar amount equal to ½% for the first twelve month period, or 1% thereafter, of the commercial component of that development project. For purposes of determining the public art contribution for a mixed-use project, the construction costs will be determined based on the per square foot cost of the entire development relative to the commercial portions of the development (e.g., total \$350 PSF for the entire 15,000 SF project, where commercial is 2,000 SF – 1% contribution based on \$350 X 2,000 = \$7,000).

(K) "Public Art Policy" means the City Council Policy 000-42 originally adopted by Council resolution on November 10, 1998, as may be amended from time to time, setting forth those policies governing the AIPPC, the Public Art Program and the administration of the Public Art Fund.

(L) "Public Art Program" means a program for delivery of a broad range of art and cultural projects and activities throughout Santa Rosa and within the Santa Rosa Arts District, as designated by the City Council in the Public Art Policy.

21-08.030 Public art contribution; Requirements.

(A) Developments covered by this Chapter, which are those defined in Section 21-08.020 above, shall be required to devote not less than the public art contribution amount for such development projects, as defined in Section 21-08.020 and determined by the City's Chief Building Officer, for the acquisition and installation of public art on the site of the development project.

(B) Non-municipal governmental construction shall be exempt from this Chapter.

(C) In lieu of acquisition and installation of public art on the development project site, developer, at its discretion, may pay the public art contribution amount in cash. The in-lieu fee public art contribution amount shall be paid in full prior to the issuance of a certificate of occupancy. Any in-lieu payment shall be deposited into the Santa Rosa Public Art Fund as administered by the AIPPC.

(D) Subject to the approval of the AIPPC, developer may install Public Art on the development project site that has a value lower than the Public Art Contribution amount and pay an in-lieu contribution for the balance of the public art contribution.

21-08.040 Public art projects for on-site installation.

(A) Public art, for the purposes of this Chapter and for the purposes of determining what shall meet the public art contribution requirements for on-site installation of public art, may include works of art that are created uniquely by an artist, as that term is defined in this Chapter, and integrated into the development project, including but not limited to the following or any combination of the following:

- (1) Painting in all media including permanently affixed works such as murals or frescoes;
- (2) Prints and drawings;
- (3) Reliefs, including carvings, frescoes, mosaics, earth works;
- (4) Sculpture, including statues, fountains, kinetic, electronic, mobiles and

- monuments, or other in any material or combination of materials;
- (5) Arches or other structures intended for ornament or commemoration;
- (6) Graphic and multi-media, including printmaking, photography, any combination or forms of electronic media in a large public scale;
- (7) Mixed or conceptual media in any combination of forms or media including drawings, collages, prints, or the use of sound, light, or water;
- (8) Video, electronic, holographic, or digital media;
- (9) Crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials;
- (10) Stained glass;
- (11) Neon; or
- (12) A landscape or architectural feature that has been specifically and originally designed as a unique artistic element for the project and is not a mass production or replication

Public art may include any other form determined by the Art in Public Places Committee to satisfy the intent of this Chapter.

(B) The following are not considered public art for the purposes of this Chapter:

- (1) Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;
- (2) Objects which are mass produced of standard design such as banners, signs, playground equipment, benches, statuary, street barriers, sidewalk barriers, or fountains;
- (3) Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts;
- (4) Decorative, architectural, or functional elements which are not designed by the building architect or landscape architect as an original artistic design feature unique to the project;
- (5) Landscape architecture, gardening, or materials, except where these elements are designed by the artist and are integral or part of the work of art created by the artist; or
- (6) Landscaping required by the City's Community Development Department as part of the Development entitlements.

(C) Alternatively, developer may by special application and coordination with City staff, satisfy up to seventy-five percent (75%) of the public art contribution required hereunder as follows:

(1) Developer's inclusion of space within the project that is generally open to the public during regular business hours and is dedicated by developer or owner for regular use as a rotating gallery, free of charge, will be deemed to satisfy twenty-five percent (25%) of the Public Art contribution hereunder required, provided that developer or owner facilitates or arranges for the facilitation of regularly maintained display of original works of art, with no financial gain to developer or owner.

(2) Subject to the reasonable discretion of the Director of Recreation and Parks, developer's provision, design and dedication of at least 500 square feet of open space within the development project, including but not limited to the supply of electrical outlets and lighting, which space is generally available to the public and its primary use is for arts and cultural programming may be deemed to satisfy fifty percent (50%) of the public art contribution, provided that developer or owner facilitates or arranges for the facilitation of such space for regular arts and cultural programming with no financial gain to

developer or owner. The space should be available to individual artists, and not for profit cultural organizations presenting art which is intended for the general public. City staff will be available to provide information on current local artists and cultural organizations as resources for such programming. The Director's reasonable discretion, in allowing the dedication of such space hereunder, shall be based on a determination of the City's needs and likely use of such space to include, but not be limited to, the following criteria - the need and likelihood of the use of such space given the location of the space and other similar existing space within the same general area, whether sufficient arts and cultural programming resources have been identified and are generally available to utilize the space, and whether the space and use of the space as proposed are consistent with the stated goals of the City's public art policy, as herein defined, and the general plan.

(D) Developer shall have the right to satisfy the requirements for providing public art, as herein set forth, in whole or in part on one alternate site instead of or in addition to the development project covered by this Chapter, provided that the public art on such alternate site shall, alone or in conjunction with the development project site, be consistent with all provisions of this Chapter and may not be installed or commissioned prior to the completion date of the application triggering these requirements.

21-08.050 Eligible public art expenditures.

(A) The public art contribution for on-site installation must be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the public art. Eligible expenditures include the following items:

- (1) Artist fees;
- (2) Labor of assistants, materials, and contracted services required for the design, fabrication, and installation of the public art;
- (3) Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;
- (4) Dealer's fees, if necessary and where appropriate, up to 10% of the public art contribution;
- (5) Communication and other indirect costs (insurance, utilities associated with the creation but not the operation of the public art, etc.);
- (6) Transportation of the public art to the site;
- (7) Preparation of site to receive public art, beyond that required for the development itself;
- (8) Installation of the completed public art;
- (9) Structures which enable the display of the public art, such as platforms or pedestals, up to 5% of the total public art contribution;
- (10) Mountings, anchorages, containments, or other materials necessary for installation of the public art; and
- (11) Plaque identifying the public art, as required by this Chapter.

(B) Expenditures that are ineligible to be counted toward the public art contribution include the following items:

- (1) Promotional materials or activities for the artist, the public art, the development, the developer or others parties involved in the development project;
- (2) Opening, dedication, or other event for the public art, artist, or development;
- (3) Developer's project management expenses associated with the public art;
- (4) Services, materials, utilities or other expenses associated with the operation

- or maintenance of the public art;
- (5) The cost of locating the artist(s);
- (6) Land costs or any other costs associated with the development that are not part of and solely attributable to the public art, except as specifically set forth in this Chapter; and
- (7) Illuminating the public art if not integral to the design.

21-08.060 Process for approval of public art for on-site installation.

(A) Selection of the artist and public art will be the responsibility of the developer. At the sole discretion of the AIPPC, the developer may receive limited assistance from the AIPPC in the identification of potential artists and concepts for the public art. All financial arrangements related to the public art are negotiated between the artist and the developer as contracting parties and will be verified by a written agreement.

(B) Prior to issuance of the building permit for the development project, the proposed public art must be reviewed and approved by the Director of Recreation and Parks or designee for compliance with this Chapter and any associated guidelines subsequently formulated by the City. In addition, the budget for the proposed public art must be approved to ensure that only eligible expenditures are proposed and that such expenditures total the amount of the public art contribution.

(C) Issuance of any temporary or permanent certificate of occupancy for the development project will be conditioned on completion and full installation of the public art at the development site in accordance with the public art proposal approved by the City, and confirmation by the City that the developer expended the public art contribution in full on the public art and in accordance with this Chapter. In the alternative, developer may elect to defer the obligation to install the public art or to pay the in lieu contribution amount to the City for up to six months by executing a written agreement setting forth developer's obligations hereunder in favor of the City and by providing security for said obligation in a form acceptable to the City Attorney.

21-08.070 Additional requirements for public art for on-site installation.

(A) Whenever feasible, the public art shall be installed on the development site in a location that allows the public art to be visible to the public from a public right-of-way or from other public property at all times. In the event that this is not feasible, the developer may request approval from the City to place the public art on the development site in a location to which the public has free and unrestricted access during as many hours per day as possible, but at a minimum between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday each week.

(B) The art shall be a permanent, fixed asset to the property. The composition of the artwork shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.

(C) The Public Art shall be identified by a plaque that meets the standards in use by the City at the time of installation of the Public Art. The requirement of this paragraph may be waived if determined in a particular circumstance to be inconsistent with the intent of this Chapter.

(D) The developer and subsequently the property owner shall maintain or cause to be maintained in good condition the public art continuously after its installation and shall perform necessary repairs and maintenance to the satisfaction of the City. The maintenance obligations of the property owner shall be contained in a covenant and recorded against the property and shall run with the property.

21.08-080 Location and relocation for public art.

(A) The public art must remain on the project site for not less than twenty years from the original installation date, as that term is defined in this Chapter. When and if the development project is sold within twenty years from the installation date, the public art must remain at the development for which it was created and may not be claimed as the property of the seller or removed from the development or its location as approved by the AIPPC. In the event that a property is to be demolished within said twenty year period, the owner must relocate the public art to another publicly accessible, permanent location that is approved in advance by the AIPPC.

(B) A property owner may petition the AIPPC to relocate the public art to another publicly accessible location on the development project site.

(C) In the case of removal of the public art for any reason prior to the expiration of the twenty year period, developer or owner of the development project must notify the City at least 30 days in advance of the removal, and must replace the public art within six (6) months of its removal, meeting all of the requirements of this Chapter and using the same approval process, or pay an amount equal the remaining portion of the in lieu contribution prorated over said twenty year period.

(D) Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law. Developer or owner shall execute a restrictive covenant in a form acceptable to the City Attorney enforceable by the City, which shall be recorded against the project site and shall run with the land for a period of twenty years from the installation date.

21.08-090 Contribution by the City for public art fund.

The City of Santa Rosa shall contribute to the Public Art Program by annually allocating an amount into the Public Art Fund that is equal to 1% of the total dollar amount of the construction costs of eligible capital improvement projects. Eligible projects covered by this Chapter are defined as those capital improvement projects paid for in whole or in part from the City General Fund or the park acquisition and development fund, and involving the construction, rehabilitation, remodeling or improvement of any building, structure, park, public utility, street, sidewalk or parking facility within the limits of the City of Santa Rosa. For eligible projects funded from multiple funding sources, only that portion of the total project costs funded from eligible funding sources shall be applicable under this Chapter. Park acquisition and development funds may be spent only on public art in parks projects. The fees collected pursuant to the City Code Chapter 19-70, "Parks and Recreation Land Fees" shall not be increased for the purpose of acquiring art in public places.

Section 2. Application. This Ordinance shall apply to any development project for which a completed application has not yet been received by the City of Santa Rosa Community Development Department as of the date the Ordinance takes effect.

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(2) in that the Council finds there is no foreseeable possibility that the implementation of this ordinance may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid, the validity of the remaining portions of this ordinance shall not be affected.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after the expiration of ninety (90) days from the date of its final passage.

IN COUNCIL DULY PASSED AND ADOPTED this 28th day of November, 2006.

AYES: (4) Mayor Bender; Councilmembers Condron, Rabinowitsh, Sawyer

NOES: (3) Councilmembers Blanchard, Martini, Pierce

ABSENT: (0)

ABSTAIN: (0)

ATTEST: Susan Stoneman, City Clerk

APPROVED: Jane Bender, Mayor

APPROVED AS TO FORM:

Brien Farrell, City Attorney