

CHAPTER 3. PUBLIC ART FOR PUBLIC WORKS Revised 8/16

7-3.101 Purpose. Revised 8/16

It is the purpose of this chapter and the policy of this City that each major City construction project shall have an appropriate display of art integrated into the project or a public art fee shall be paid into the Public Art Fund. This chapter shall be administered as provided in the Public Art Master Plan. The City Manager may adopt administrative regulations as needed to implement this chapter. (§1, Ord. 2155, eff. 8/5/16)

7-3.102 Definitions. Revised 8/16

As used in this chapter:

(a) *Construction Cost* means the estimated construction cost of construction or alteration projects as determined by the City Engineer and proposed for the Capital Budget.

(b) *Construction or Alteration* means either a new construction project or the rehabilitation, renovation, remodeling or improvement of an existing building.

(c) *City Construction Project* means new construction of all City buildings, including underground and structured parking facilities, except maintenance or service facilities not normally visited by the public, and the construction of gateways, parks, plazas, medians and other public areas where they did not exist previously.

(d) *City Alteration Project* means the alteration of City buildings, except maintenance or service facilities not normally visited by the public, where such a project requires the issuance of a building permit by the City of Walnut Creek. (§1, Ord. 2155, eff. 8/5/16)

7-3.103 Applicability. Revised 8/16

(a) This chapter does not apply to City alteration projects that involve less than fifty percent (50%) of the gross floor area (as defined in Section 10-2.1.303) of a building.

(b) This chapter does not apply to City alteration projects with a construction cost of less than five hundred thousand dollars (\$500,000.00). (§1, Ord. 2155, eff. 8/5/16)

7-3.104 Dedication for Art. Revised 8/16

(a) Except as provided in Section 7-3.105, one percent (1%) of the construction cost of a City construction project or a City alteration project shall be set aside for the inclusion of public art or paid into the Public Art Fund. The one percent (1%) requirement does not apply to construction costs that will be paid for by funds limited to a specified purpose that does not include public art, or where the terms of a contract, grant, law, or regulation prohibit or restrict the expenditure of funds on works of art.

(b) The public art shall be displayed in, upon, adjacent to or in close proximity to the City construction or alteration project. If the Arts and Recreation Director determines that it would be inappropriate to display art at that location, the dedication for art may be used for the acquisition of art for display in, upon, adjacent to or in close proximity to other City property or be paid into the Public Art Fund.

(c) The value of the public art includes the cost of the development, acquisition, and installation of the public art, and the administrative costs associated with creating and installing the art.

(d) The Public Art Fund shall be administered according to Section 10-10.106. Public art in City projects may be funded by the General Fund, unassigned reserves, an enterprise fund, and the Public Art Fund, consistent with any restrictions established by law or contract for each funding source. (§1, Ord. 2155, eff. 8/5/16)

7-3.105 Parking Facilities Exception. Revised 8/16

For construction or alteration of City underground and structured parking facilities, one-half of one percent (0.5%) of the construction cost shall be set aside for the inclusion of public art on the site or paid into the Public Art Fund. (§1, Ord. 2155, eff. 8/5/16)

7-3.106 Ownership. Revised 8/16

All art acquired pursuant to this chapter shall be acquired in the name of the City of Walnut Creek and title shall vest in the City of Walnut Creek. (§1, Ord. 2155, eff. 8/5/16)

CHAPTER 10. PUBLIC ART Revised 7/16

10-10.100 Purpose and Goals. Revised 7/16

The purpose of this chapter is to implement Goal 12 of the Quality of Life chapter of the City of Walnut Creek's General Plan 2025, "Maintain and enhance Walnut Creek's position as a leading regional cultural and arts center," and goals of the Public Art Master Plan adopted by the City of Walnut Creek in 2000 and revised in 2016.

Public art helps make our City more livable and visually stimulating by encouraging cultural and economic investment in the community and contributing to a dynamic and thriving place to live, visit, and do business.

To achieve these goals, the Council has adopted a public art requirement. Any fee revenues will be used to realize and support public art in public spaces. When art is to be realized on private development, public art planning should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process. (§1, Ord. 2154, eff. 7/8/16)

10-10.101 Definitions. Revised 7/16

As used in this chapter:

- a. **Construction Cost** shall be determined by the Chief Building Official. For new construction, the cost shall be the full rate set forth in the ICC Building Valuation Data with no deduction for shell only buildings. For alterations, the cost shall be twenty percent (20%) of the full rate set forth in the ICC Building Valuation table.
- b. **Construction or Alteration** means either new construction (in whole or in part) of a building or the rehabilitation, renovation, remodeling or improvement of an existing building that requires the issuance of a building permit by the City of Walnut Creek. (§1, Ord. 2154, eff. 7/8/16)

10-10.102 Applicability. Revised 7/16

The provisions of this chapter apply to all construction or alteration except as set forth below.

- a. This chapter does not apply to residential alterations.
- b. This chapter does not apply to residential projects in which at least ninety percent (90%) of the dwelling units are restricted to very low, low or moderate income households (as defined in Section 10-2.1.303).
- c. This chapter does not apply to alterations that involve less than fifty percent (50%) of the gross floor area (as defined in Section 10-2.1.303) of a building.
- d. This chapter does not apply to alterations with a construction cost of less than five hundred thousand dollars (\$500,000.00).
- e. This chapter does not apply to alterations by nonprofits organized under Section 501(c)(3) of the Internal Revenue Code where such nonprofits do not own the building where the alterations are to occur.

f. This chapter does not apply to new construction or alterations within the General Plan Business Park (B-P) Land Use Category until July 1, 2018, or until ninety percent (90%) occupancy of the gross floor area of the business park is achieved, whichever occurs first.

g. This chapter does not apply to a residential development project (as defined in Section 10-2.1.303) of five (5) or fewer units. (§1, Ord. 2154, eff. 7/8/16)

10-10.103 Public Art Requirement. Revised 7/16

a. For any project subject to this chapter, public art must be provided as described in Section 10-10.104 or an equivalent payment must be made to the public art fund as provided in Section 10-10.105.

b. Except as provided elsewhere in this chapter, the public art requirement applies for each incidence where construction or alteration occurs. No exemptions or credits for previously installed public art or previous payments to the public art fund will apply. (§1, Ord. 2154, eff. 7/8/16)

10-10.104 On-Site Public Art. Revised 7/16

a. Anyone seeking to satisfy the public art requirement by placing art on a project site must comply with this section.

b. Except as provided below, construction or alteration projects must provide art with a value equal to at least one percent (1%) of the construction cost. The value of the public art includes the cost of the development, acquisition, and installation of the public art, the administrative costs associated with creating and installing the art, and any costs charged for the administration of this chapter.

c. For construction or alteration of underground and structured parking facilities necessary to meet the requirements of the off-street parking and loading regulations contained in Section 10-2.3.201 et seq., public art valued at not less than one-half of one percent (0.5%) of the construction cost must be provided.

d. For construction or alteration of buildings owned by nonprofit organizations organized under Section 501(c)(3) of the Internal Revenue Code, public art valued at not less than one-half of one percent (0.5%) of the construction cost must be provided.

e. For construction or alteration of a hospital, as defined in Section 10-2.1.403, public art valued at not less than one-half of one percent (0.5%) of the construction cost must be provided.

f. Public art may include sculpture, murals, photography and original works of graphic art, earthworks, fiber works, waterworks, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, or a combination thereof, and may include architectural features of the building or elements of landscape design. The creator of public art shall be a practitioner in the visual arts who is not a member of the project engineering, architecture or landscape architecture firm.

g. The public art must be located (1) in areas on the site clearly visible from the public street or sidewalk, or (2) in publicly accessible outdoor areas, or (3) on adjacent public property (subject to the approval of any relevant public agency), or (4) in a publicly accessible lobby area or cafeteria of an office building, hotel or hospital. Public art must be displayed in a manner that will enhance its enjoyment by the general public.

h. The public art must be installed prior to the issuance of the first certificate of occupancy unless the Arts and Recreation Director concludes that it is not feasible to install the public art within this time frame and adequate assurance (which the Director may require to be in the form of a letter of credit or bond) is provided that the public art will be installed in a timely manner, in which case the Arts, Recreation and Community Services Director may extend the time for installation. (§1, Ord. 2154, eff. 7/8/16)

10-10.105 Contribution to Public Art Fund. Revised 7/16

a. Any person subject to this chapter may choose to make a payment to the City's public art fund that is equivalent to the valuation required for providing art as set forth in Section 10-10.104. When the value of the public art would be fifty thousand dollars (\$50,000.00) or less, it is encouraged, but not required, that a payment be made to the public art fund.

b. Public art payments must be made prior to the issuance of a certificate of occupancy.

c. Until July 1, 2021, a person choosing to make a payment to the public art fund instead of providing public art will be allowed to deduct twenty-five percent (25%) from the cost of the public art required under Section 10-10.104. (§1, Ord. 2154, eff. 7/8/16)

10-10.106 Use of Public Art Fund. Revised 7/16

a. The public art fund must be used to further City-owned art or City-sponsored exhibitions that are accessible to the public. The fund must be used exclusively to (1) prepare sites for works of art, (2) acquire and install works of art, (3) maintain works of art, (4) support the exhibition of art, and (5) fund administrative costs associated with the public art program. The Arts Commission shall recommend utilization of monies in the public art fund to the City Council.

b. Contributions from the public art fund to support administrative expenses of the public art program may not exceed twenty-five percent (25%) of the program's administrative budget in a given year. (§1, Ord. 2154, eff. 7/8/16)

10-10.107 Appeal of Arts Commission Decision. Revised 7/16

A final decision by the Arts Commission on the selection of public art, the artist or the site location may be appealed to the City Council within ten (10) days of the decision. The City Council may refer the matter back to the Arts Commission for further consideration, or may reverse, affirm or modify the Arts Commission decision. The Council's findings and decision on the appeal are final. (§1, Ord. 2154, eff. 7/8/16)

10-10.108 Maintenance and Removal of Works of Art. Revised 7/16

The owner of the real property on which public art is located must maintain the public art installed pursuant to this chapter. No work of art may be removed unless a replacement work of public art is approved pursuant to this chapter. (§1, Ord. 2154, eff. 7/8/16)

10-10.109 Waiver. Revised 7/16

The City Council, at its discretion, may waive, wholly or partially, the requirements of this chapter and approve alternative methods of compliance with this chapter if the applicant demonstrates, and the City Council finds, that such alternative methods meet the purposes of this chapter. (§1, Ord. 2154, eff. 7/8/16)