

ORDINANCE NO. (O)11-06

AN ORDINANCE OF THE TOWN OF ORO VALLEY, ARIZONA, AMENDING THE ORO VALLEY ZONING CODE REVISED, BY AMENDING CHAPTER 27, GENERAL DEVELOPMENT STANDARDS, SECTION 27.3, PUBLIC ARTWORK PROVISIONS; REPEALING ALL RESOLUTIONS, ORDINANCES AND RULES OF THE TOWN OF ORO VALLEY IN CONFLICT THEREWITH; PRESERVING THE RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER

WHEREAS, the Town of Oro Valley is a political subdivision of the State of Arizona vested with all associated rights, privileges and benefits and is entitled to the immunities and exemptions granted municipalities and political subdivisions under the Constitution and laws of the State of Arizona and the United States; and

WHEREAS, on March 13, 1981, the Mayor and Council approved Ordinance (O)81-58, which adopted that certain document entitled "Oro Valley Zoning Code Revised (OVZCR); and

WHEREAS, on November 17, 2010, Council directed staff to amend Section 27.3, Public Artwork Provisions to raise the required minimum permit valuation for utilizing in-lieu fee options from \$250,000 to \$1,000,000; to allow use of in-lieu fees for the maintenance of public art; to create an option for owner/developer of projects at remote locations to request an in-lieu contribution rather than create public art; to include a provisions that owners of property with public art that that been damaged or destroyed be exempt from the requirement to replace artwork; and to propose changes for an equitable maintenance of public art if a property changes ownership; and

WHEREAS, the Planning and Zoning Commission reviewed the proposed amendments at a duly noticed public hearing on January 13, 2011 in accordance with State Statutes and recommended approval of the proposed amendments to the Town Council; and

WHEREAS, the Oro Valley Town Council has considered the proposed amendments to Chapter 27, General Development Standards, Section 27.3, Public Artwork Provisions and the Planning and Zoning Commission's recommendation and finds that it is consistent with the Town's General Plan and other Town ordinances; and

WHEREAS, at a duly noticed Town Council Meeting on March 2, 2011, Chapter 27, General Development Standards, Section 27.3, Public Artwork Provisions, was declared a public record by Mayor and Council.

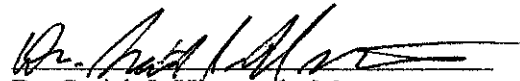
NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Town of Oro Valley, Arizona, that certain document entitled Chapter 27, General Development Standards, Section 27.3, Public Artwork Provisions, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby amended with additions being shown in ALL CAPS and deletions in strikethrough text.

SECTION 2. All Oro Valley Ordinances, Resolutions, or Motions and parts of Ordinances, Resolutions, or Motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.

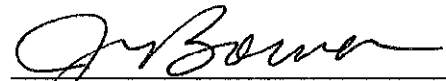
SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona this 2nd day of March, 2011.

TOWN OF ORO VALLEY

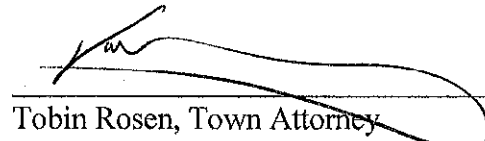

Dr. Satish I. Hiremath, Mayor

ATTEST:


Julie K. Bower, Town Clerk

Date: 3/3/11

APPROVED AS TO FORM:


Tobin Rosen, Town Attorney

Date: 3/2/11

PUBLISH: DAILY TERRITORIAL
MARCH 14, 15, 16, 17, 2011

POSTED: 3/8/11 - 4/8/11

EXHIBIT "A"

Chapter 27 General Development Standards

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Section 27.3 Public Artwork Provisions

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C. Artwork Budget

1. A budget for public artwork shall be established based on one percent (1%) of the building permit valuation for the project, including all phases of a multi-phase project. The itemized budget and a copy of the contract or agreement with the artist shall be submitted for Town review. The budget shall be spent on the design, fabrication, installation, and the Town review process of public artwork for the project.
2. For applicable public construction projects, one percent (1%) of the project construction cost shall be used for public artwork.
3. If specifically approved by the Art Review Commission, artwork budgets may include integrated pedestals, bases, walls, utility extensions and architect's fees exclusively required for the artwork.
4. Artwork budgets shall not be used for normally required improvements and development costs, including but not limited to land acquisition, grading, paving, sidewalks and landscaping.
5. For multi-phase projects, an updated public artwork budget, based on the most current building valuation tables, will be submitted for each phase at the time of application for public artwork approval.
- ~~6. If the building permit valuation is less than two hundred fifty thousand dollars (\$250,000) the owner/developer may elect to contribute the one percent (1%) two thousand five hundred dollars (\$2,500) to the Town of Oro Valley. It shall be earmarked specifically for public artwork projects.~~
- ~~7. If the building permit valuation is ten million dollars (\$10,000,000) or more, the owner may elect to contribute that portion of the one percent (1%) over one hundred thousand dollars (\$100,000) to the Town of Oro Valley earmarked specifically for public artwork projects.~~
- ~~8. A portion of the one percent (1%) may also be used to construct on-site performing art facilities used for and by the public for the promotion and production of the arts.~~

D. FEE IN-LIEU OF PUBLIC ART

- ~~61. If the building permit valuation is less than two hundred fifty thousand dollars (\$250,000) ONE MILLION DOLLARS (\$1,000,000), the owner/developer may elect to contribute the one percent (1%) two thousand five hundred dollars (\$2,500) to the Town of Oro Valley AS AN IN-LIEU FEE. It shall be earmarked specifically for public artwork projects.~~
- ~~72. If the building permit valuation is ten million dollars (\$10,000,000) or more, the owner may elect to contribute that portion of the one percent (1%) over one hundred thousand dollars (\$100,000) to the Town of Oro Valley earmarked specifically for public artwork projects.~~

83. A portion of the one percent (1%) may also be used to construct on-site performing art facilities used for and by the public for the promotion and production of the arts.
94. THE IN-LIEU FEES PAID TO THE PUBLIC ART FUND MAY BE USED FOR THE MAINTENANCE OF PUBLICLY OWNED ARTWORK.

DE. Design and Location Requirements

1. Public artwork shall be designed by an artist, as defined in Section 31. If a design team is employed to create public artwork, at least one (1) team member shall be an artist as defined in Chapter 31.
2. Public artwork shall not include any of the following unless specifically allowed by the Art Review Commission and the item is designed by an artist: architectural elements or structural parts of a building or other structure; fixtures or features such as grates, shade screens, streetlight, benches, signs, and bike racks. Designs of such items shall clearly result in artistic expression beyond the normally anticipated functional appearance.
3. Public artwork shall be in an area easily accessible and clearly visible to the general public. The location shall allow for unrestricted viewing from a variety of vantage points.
4. Public artwork may be located on a publicly viewable building facade, provided such location improves overall public accessibility to the artwork.
5. Artwork may be located within a building subject to Art Review Commission approval. The applicant shall demonstrate to the satisfaction of the Art Review Commission that the interior location for artwork provides equal or superior public access relative to outdoor locations. Indoor locations shall be readily accessible to the public such as lobbies and entryways and shall be accessible to the public for a minimum of forty (40) hours each week.
6. The location of public artwork shall be indicated on the landscape plan, development plan, plat or other appropriate document as determined by the Planning and Zoning Director.
7. Public artwork shall be permanent and fixed, and may be integrated with the work of other design professionals.
8. Public artwork shall not be located in sight visibility triangles.
9. Location of art in a proposed or existing Town right-of-way shall be approved by the Town Engineer.
10. Off-site locations within the Town for public artwork may be approved by the Town Council, upon review and recommendation by the Art Review Commission.
11. IF THE PLANNING AND ZONING ADMINISTRATOR DETERMINES THAT THE DEVELOPMENT SITE WHERE THE PUBLIC ART IS REQUIRED IS REMOTE AND THAT THERE WOULD BE SEVERELY LIMITED PUBLIC ACCESS TO OR VISIBILITY OF THE PUBLIC ART, THE PROPERTY OWNER MAY ELECT TO UTILIZE THE IN-LIEU OPTION AS OUTLINED IN SECTION D.

EF. Installation and Maintenance

1. Public artwork shall be installed, inspected and certified complete prior to the issuance of a final certificate of occupancy. If a certificate of occupancy has previously been issued, any business license or other Town approvals shall not be granted until public artwork installation is complete.

2. An artwork installation schedule, addressing timing, budget allocation, artwork location(s), and specific details for each phase of a phased development project, shall be submitted for review by the Planning and Zoning Director. Each development phase shall include public artwork allocated proportionally to building valuation as determined by the Planning and Zoning Director.
3. Public artworks must remain on public display under optimum conditions in which they were originally installed.
4. The installation of the artwork will be done in a manner that will protect the artwork and the public. The general safety and permanence of artwork installation shall be inspected as determined by the Town Building Official, Town Engineer and the Planning and Zoning Director. Incomplete or unsafe installations shall not be approved.
5. Artwork projects may have a small plaque not to exceed eighty (80) square inches in size identifying the work, artist and contributors.
6. Continued maintenance of the artwork shall be the responsibility of the property owner. The artwork shall be maintained to preserve its intended appearance as specified in the approved application. Faded paint, missing or damaged parts, or deteriorated finishes represent unacceptable maintenance conditions.
7. The original artist shall be offered the opportunity to provide maintenance and repair services for the artworks they create. If the original artist will not be maintaining the artwork, documentation of the property owner's request to the artist for maintenance and repair services shall be submitted with the maintenance plan required in Section 27.3.E.F.8.
8. A maintenance plan specifying the party(ies) intended to complete repairs shall be submitted with the application for public artwork approval. If the party identified to perform maintenance and repairs is not the original artist, a statement of the individual's qualifications to repair and maintain public artwork shall be submitted with the maintenance plan. Qualified individuals shall have experience working with the media and materials used in the artwork.
9. Public artwork responsibilities shall transfer from property owner to property owner.
10. The property owner shall be responsible for the services and utilities necessary to operate and/or maintain public artworks over time.
11. The property owner shall provide evidence of insurance in a minimum amount equal to the purchase and installation costs of the public artwork.
12. Replacement of missing or damaged public artworks is required, UNLESS THE PROPERTY OWNER PROVIDES DOCUMENTATION THAT SHOWS THAT THE ARTWORK WAS PROPERLY MAINTAINED IN ACCORDANCE WITH THE APPROVED MAINTENANCE PLAN. Property owners are required to respond to inquiries from the Town regarding damaged or missing public artwork within fifteen (15) days of written notice.
13. Failure to maintain the artwork, as determined by the Planning and Zoning Director, shall constitute a violation of this code, and/or cause liens against the real property.
14. Public artwork cannot be permanently removed, relocated or altered in any way without the review and approval of the Art Review Commission, as long as the establishment remains open for business or maintains an Oro Valley business license.
15. In the event public artwork must be temporarily moved or altered due to construction or other activity, the property owner shall submit in writing a request to the Planning and Zoning Director

detailing the purpose, time frame, and intended temporary location for the artwork. Only the individual identified in the maintenance plan shall be permitted to move or alter public artwork. The request must be approved by the Planning and Zoning Director prior to movement or alteration of the artwork. The artwork shall be returned to its original location.

FG. Processing

1. The Art Review Commission shall review and may approve all applications for public artwork in a two-step process: conceptual review and final review.
2. Whenever a landscape plan is required with a development plan or subdivision plat, conceptual review of public artwork must be approved by the Art Review Commission prior to the approval of the landscape plan for development projects.
3. Public artwork for public construction projects shall be reviewed by the Art Review Commission. Timing for public construction projects' artwork conceptual and final review by the Art Review Commission shall be determined by the Town Engineer and the Planning and Zoning Director.
4. Conceptual review shall assess artist qualifications, conceptual artwork design and artwork location(s). Conceptual review and approval is required prior to completion of a final review by the Commission.
5. Subsequent to conceptual review, the Art Review Commission shall complete a final review. The applicant shall provide information on the artwork's final design and a maintenance plan per Section 27.3.E.F.8 in sufficient detail to permit the Commission to completely evaluate the application using the standards and criteria included in this Section 27.3. Changes to the approved artwork design or the approved maintenance plan shall be approved by the Art Review Commission.
6. Project completion shall be certified by the acceptable installation of the approved artwork and submittal by the property owner of a certification package including the following: a statement that the artwork, artist and site meet the criteria established by the ordinance codified in this Section, the date on which the installation was completed, and an itemized account of the expenses incurred in fulfilling the requirements of the ordinance codified in this Section. Certification shall be completed before the Town issues a final certificate of occupancy.
7. For existing development, previously approved projects, subsequent phases of phased projects, or projects that do not require a landscape plan, final review of public artwork shall be approved prior to the issuance of the building permit.
8. Decisions of the Art Review Commission on conceptual or final review shall be final, unless, within twenty (20) days from the date of the Commission's decision, the applicant files an appeal in writing to the Town Council. The written appeal shall be filed with the Town Clerk and shall state in writing where, in the opinion of the appellant, the Commission was in error. The Clerk shall schedule the appeal for a Town Council agenda and the Town Council, at its meeting, shall uphold, modify or overrule the decision of the Commission.
9. The Town Council shall have the right to initiate its own review of any decision of the Art Review Commission and shall uphold, modify or overturn said decision. Notice of Town Council-initiated review of an Art Review Commission decision shall be given to the applicant by the Town Clerk within twenty (20) days after the action of the Art Review Commission.
10. If an appeal is not filed nor Town Council review initiated within twenty (20) days of the Commission's decision, the decision shall be deemed final.

GH. Review Criteria

In reviewing applications for public artwork, the Art Review Commission shall consider, but is not limited to, the criteria described below. The Commission shall determine acceptability of individual applications based on their interpretation and judgement of fulfillment of these criteria.

1. Proposed artworks shall not hinder public safety, including hazards to pedestrians and the creation of attractive nuisances.
2. Public artwork locations shall be well-integrated with the layout and hardscape components of the site and shall maintain visibility and proximity to the viewing public, and compatibility with and enhancement to the aesthetic value of the building(s) or site. Artwork shall be located in relatively high activity areas.
3. Potential obstructions, such as landscape materials at maturity or future construction, should be considered.
4. Locations for artwork should include nearby accessible seating, when appropriate, from which the artwork can be easily viewed.
5. Durability and safety of materials and the overall project design, as determined by a registered professional engineer licensed by the State of Arizona, as applicable, should be considered. Siting and installation of artwork shall consider hazards from specific design features, materials, and potential breakage.
6. The artwork shall be original and unique, and not duplicate existing art projects.
7. The concept and design should be consistent with the overall theme of the project and the context of the proposed installation site.
8. The appropriateness of the materials, textures, and colors to the expression of the design concept and the site shall be considered.
9. Durability of the artwork and its ability to prevent or minimize vandalism, undesired weathering or other damage through the use of materials, finishes and site locations shall be considered.

Section 27.3 Public Artwork Provisions

A. Purpose

The purpose of these public artwork requirements is to implement the General Plan Arts and Culture Element and support the cultural and educational enrichment of the citizens and visitors to Oro Valley through the creation of artwork that is accessible to all members of the community. The Town seeks enhancements to community beauty, artistic entertainment and enrichment for all its residents and visitors, and education in and through the arts.

B. Applicability

1. Public artwork is a required element of new private and public construction projects in Oro Valley as specified in this Section 27.3.
2. Artwork projects created for private development as a result of the requirements of this Section shall be privately owned and included in all nonresidential development projects, including religious institutions and nonprofit organizations, with the exception of communication facilities, utility installations and similar projects as determined by the Planning and Zoning Director.
3. All projects where public artwork has not been provided in accordance with Town Council requirements and legal nonconforming uses, that propose twenty-five percent (25%) or more cumulative addition or structural modifications, such as changes in square footage, gross floor area, and building facade, shall meet the requirements of this Section 27.3.
4. Public artwork is required for all new public construction projects involving construction costs over fifty thousand dollars (\$50,000), with the following exceptions:
 - i. Public art expenditure is not legally permissible due to the constraints imposed by the funding mechanism;
 - ii. Maintenance projects such as surface treatments;
 - iii. Safety improvements such as sidewalks and overlays with shouldering for bike lanes;
 - iv. Significant budgetary constraints necessitate cost reduction, subject to Town Council approval.

C. Artwork Budget

1. A budget for public artwork shall be established based on one percent (1%) of the building permit valuation for the project, including all phases of a multi-phase project. The itemized budget and a copy of the contract or agreement with the artist shall be submitted for Town review. The budget shall be spent on the design, fabrication, installation, and the Town review process of public artwork for the project.
2. For applicable public construction projects, one percent (1%) of the project construction cost shall be used for public artwork.

3. If specifically approved by the Art Review Commission, artwork budgets may include integrated pedestals, bases, walls, utility extensions and architect's fees exclusively required for the artwork.
4. Artwork budgets shall not be used for normally required improvements and development costs, including but not limited to land acquisition, grading, paving, sidewalks and landscaping.
5. For multi-phase projects, an updated public artwork budget, based on the most current building valuation tables, will be submitted for each phase at the time of application for public artwork approval.

D. FEE IN-LIEU OF PUBLIC ART

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72. If the building permit valuation is ten million dollars (\$10,000,000) or more, the owner may elect to contribute that portion of the one percent (1%) over one hundred thousand dollars (\$100,000) to the Town of Oro Valley earmarked specifically for public artwork projects.
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6. The location of public artwork shall be indicated on the landscape plan, development plan, plat or other appropriate document as determined by the Planning and Zoning Director.
7. Public artwork shall be permanent and fixed, and may be integrated with the work of other design professionals.
8. Public artwork shall not be located in sight visibility triangles.
9. Location of art in a proposed or existing Town right-of-way shall be approved by the Town Engineer.
10. Off-site locations within the Town for public artwork may be approved by the Town Council, upon review and recommendation by the Art Review Commission.
11. IF THE PLANNING AND ZONING ADMINISTRATOR DETERMINES THAT THE DEVELOPMENT SITE WHERE THE PUBLIC ART IS REQUIRED IS REMOTE AND THAT THERE WOULD BE SEVERELY LIMITED PUBLIC ACCESS TO OR VISIBILITY OF THE PUBLIC ART, THE PROPERTY OWNER MAY ELECT TO UTILIZE THE IN-LIEU OPTION AS OUTLINED IN SECTION D. IN THIS CASE, THE IN-LIEU FEE PROVISION MAY BE APPLIED TO ALL OR A PORTION OF THE ONE PERCENT (1%) CONTRIBUTION FOR PUBLIC ARTWORK.

EF. Installation and Maintenance

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2. An artwork installation schedule, addressing timing, budget allocation, artwork location(s), and specific details for each phase of a phased development project, shall be submitted for review by the Planning and Zoning Director. Each development phase shall include public artwork allocated proportionally to building valuation as determined by the Planning and Zoning Director.
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9. Public artwork responsibilities shall transfer from property owner to property owner.
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11. The property owner shall provide evidence of insurance in a minimum amount equal to the purchase and installation costs of the public artwork.
12. Replacement of missing or damaged public artworks is required, UNLESS THE PROPERTY OWNER PROVIDES DOCUMENTATION THAT SHOWS THAT THE ARTWORK WAS PROPERLY MAINTAINED IN ACCORDANCE WITH THE APPROVED MAINTENANCE PLAN. Property owners are required to respond to inquiries from the Town regarding damaged or missing public artwork within fifteen (15) days of written notice.
13. Failure to maintain the artwork, as determined by the Planning and Zoning Director, shall constitute a violation of this code, and/or cause liens against the real property.
14. Public artwork cannot be permanently removed, relocated or altered in any way without the review and approval of the Art Review Commission, as long as the establishment remains open for business or maintains an Oro Valley business license.
15. In the event public artwork must be temporarily moved or altered due to construction or other activity, the property owner shall submit in writing a request to the Planning and Zoning Director detailing the purpose, time frame, and intended temporary location for the artwork. Only the individual identified in the maintenance plan shall be permitted to move or alter public artwork. The request must be approved by the Planning and Zoning Director prior to movement or alteration of the artwork. The artwork shall be returned to its original location.

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6. Project completion shall be certified by the acceptable installation of the approved artwork and submittal by the property owner of a certification package including the following: a statement that the artwork, artist and site meet the criteria established by the ordinance codified in this Section, the date on which the installation was completed, and an itemized account of the expenses incurred in fulfilling the requirements of the ordinance codified in this Section. Certification shall be completed before the Town issues a final certificate of occupancy.
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8. Decisions of the Art Review Commission on conceptual or final review shall be final, unless, within twenty (20) days from the date of the Commission's decision, the applicant files an appeal in writing to the Town Council. The written appeal shall be filed with the Town Clerk and shall state in writing where, in the opinion of the appellant, the Commission was in error. The Clerk shall schedule the appeal for a Town Council agenda and the Town Council, at its meeting, shall uphold, modify or overrule the decision of the Commission.
9. The Town Council shall have the right to initiate its own review of any decision of the Art Review Commission and shall uphold, modify or overturn said decision. Notice of Town Council-initiated review of an Art Review Commission decision shall be given to the applicant by the Town Clerk within twenty (20) days after the action of the Art Review Commission.
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3. Potential obstructions, such as landscape materials at maturity or future construction, should be considered.
4. Locations for artwork should include nearby accessible seating, when appropriate, from which the artwork can be easily viewed.
5. Durability and safety of materials and the overall project design, as determined by a registered professional engineer licensed by the State of Arizona, as applicable, should be considered. Siting and installation of artwork shall consider hazards from specific design features, materials, and potential breakage.
6. The artwork shall be original and unique, and not duplicate existing art projects.
7. The concept and design should be consistent with the overall theme of the project and the context of the proposed installation site.
8. The appropriateness of the materials, textures, and colors to the expression of the design concept and the site shall be considered.
9. Durability of the artwork and its ability to prevent or minimize vandalism, undesired weathering or other damage through the use of materials, finishes and site locations shall be considered.

((O)08-23, Added, 12/3/08)