

ORDINANCE NO. (O)14-02

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 AND CHAPTER 31, DEFINITIONS, AS THEY RELATE TO PUBLIC ART; 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, 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 May 15, 2013, Council directed staff to amend Section 27.3, Public Artwork Provisions and Chapter 31, Definitions to improve the diversity of public art; and

WHEREAS, the Planning and Zoning Commission reviewed the proposed amendments at a duly noticed public hearing on December 3, 2013, 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; Chapter 31, Definitions, as they relate to Public Art 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 January 15, 2014, Chapter 27, General Development Standards, Section 27.3, Public Artwork Provisions and Chapter 31, Definitions, 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 and Chapter 31 Definitions, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby amended with additions being shown in ALL CAPS and deletions in ~~striketrough~~-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of Ordinances, Resolutions, or Motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.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 15th day of January, 2014.

TOWN OF ORO VALLEY


Dr. Satish I. Hiremath, Mayor

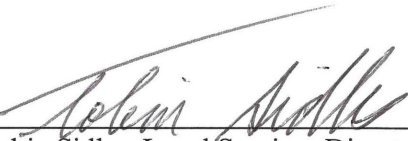
ATTEST:


Julie K. Bower, Town Clerk

Date: 1/17/14

PUBLISH: DAILY TERRITORIAL
JANUARY 22, 23, 24, 27, 2014

APPROVED AS TO FORM:


Tobin Sidles, Legal Services Director

Date: 1-17-14

POSTED: 1/22/14 - 2/24/14

EXHIBIT "A"

Additions shown in ALL CAPS font

Deletions shown in ~~Strikethrough~~ font

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.
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 Administrator.
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.
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 BUILDING PERMIT VALUATION SHALL BE CONFIRMED BY THE BUILDING OFFICIAL. 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 Planning and Zoning Administrator, 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 OR WHERE BUILDING PERMIT VALUATION HAS CHANGED, 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

1. If the building permit valuation is less than TWO ~~one~~ million dollars (\$2,000,000 ~~\$1,000,000~~), the owner/developer may elect to contribute the one percent (1%) to the Town of Oro Valley as an in-lieu fee. It shall be earmarked specifically for public artwork projects.
2. 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.
3. 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.
4. THE CONCEPTUAL DESIGN REVIEW BOARD MAY DETERMINE THAT DUE TO REMOTENESS OF LOCATION, LIMITED ACCESS, OR ANY OTHER CAUSE THAT MAY PREVENT THE REQUIRED PUBLIC ARTWORK FROM FULFILLING THE INTENT OF THESE PROVISIONS, THE ONE PERCENT (1%) MONIES BE MADE AS AN IN-LIEU FEE.
4. 5. The in-lieu fees paid to the public art fund may be used for the maintenance of publicly owned artwork.

E. CALL FOR ARTISTS PROCESS

1. IF THE BUILDING PERMIT VALUATION IS OF ONE MILLION DOLLARS (\$1,000,000) OR MORE, BUT LESS THAN FOUR MILLION DOLLARS

(\$4,000,000), A CALL FOR ARTISTS PROCESS IS REQUIRED AND MUST BE AT LEAST REGIONALLY ADVERTISED IN ACCORDANCE WITH THE PUBLIC ART GUIDELINES.

2. IF THE BUILDING PERMIT VALUATION IS OF FOUR MILLION DOLLARS (\$4,000,000) OR MORE, A CALL FOR ARTISTS PROCESS IS REQUIRED. THE CALL SHALL BE ADVERTISED NATIONALLY IN ACCORDANCE WITH THE PUBLIC ART GUIDELINES.
3. IF THE BUILDING PERMIT VALUATION IS LESS THAN ONE MILLION DOLLARS (\$1,000,000), NO CALL FOR ARTISTS PROCESS IS REQUIRED. THE CONTRACTED ARTIST SHALL WORK AND RESIDE IN SOUTHERN ARIZONA.
4. THE PLANNING AND ZONING ADMINISTRATOR SHALL ADOPT GUIDELINES TO BE KNOWN AS THE "PUBLIC ART GUIDELINES", AMENDED FROM TIME TO TIME, TO SPECIFY THE CALL-FOR-ARTIST PROCESS.

F. Processing

1. Public artwork shall be reviewed in a ~~two (2)~~ THREE (3) step process: CALL FOR ARTISTS (IF REQUIRED), conceptual review, and final review. Conceptual public artwork shall be reviewed by the Conceptual Design Review Board AND TOWN COUNCIL; and final public art submittals shall be reviewed by Town staff.
2. A "QUALIFIED AGENT" SHALL BE USED TO PERFORM A CALL FOR ARTIST PROCESS AS REQUIRED IN SECTION E, ABOVE. THIS PROCESS IS TO BE COMPLETED IN ACCORDANCE WITH THE PUBLIC ART GUIDELINES PRIOR TO SUBMITTING A CONCEPTUAL DESIGN PROPOSAL TO THE TOWN.
3. FOLLOWING THE CALL FOR ARTISTS PROCESS, APPLICANT SHALL SUBMIT CONCEPTUAL PUBLIC ARTWORK DESIGNS TO BE ~~2. Public artwork for public construction projects shall be reviewed by the Conceptual Design Review Board AND TOWN COUNCIL. Timing for public construction projects' artwork conceptual and final review by the Conceptual Design Review Board shall be determined by the Town Engineer and the Planning and Zoning Administrator.~~
- ~~3.~~ 4. The conceptual design review of artwork shall assess artist qualifications (FOR NON CALL FOR ARTIST PROPOSALS), conceptual artwork design and artwork location(s) as provided in subsection H of this section. Conceptual review and approval are required prior to completion of a final review by Town staff.
4. 5. Subsequent to conceptual review, the Planning and Zoning Administrator (PZA) shall complete a final review. The applicant shall provide information on the artwork's final design and a maintenance plan per subsection ~~F.8~~ **I.8** of this section. ~~in sufficient detail to permit the Commission to completely evaluate the application using the standards and criteria included in subsection H of this section.~~ Changes to the approved artwork design or the approved maintenance plan shall require approval of the PZA.

5. 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.~~
6. 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.
7. 8. Decisions of the Town Council on conceptual art shall be final.
9. PLANNING AND ZONING ADMINISTRATOR DECISIONS SPECIFIED IN SECTION 27.3 PUBLIC ARTWORK PROVISIONS SHALL BE APPEALABLE WITHIN 30 DAYS TO TOWN COUNCIL. TOWN COUNCIL DECISIONS ON APPEALS PURSUANT TO THIS SECTION SHALL BE FINAL.

G. Design and Location Requirements

1. Public artwork shall be designed by an artist as defined in Chapter 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 Conceptual Design Review Board 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, streetlights, 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 Conceptual Design Review Board approval. The applicant shall demonstrate to the satisfaction of the Conceptual Design Review Board 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 Administrator.

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 Conceptual Design Review Board.
11. ~~The Planning and Zoning Administrator may determine that the proposed public art location is remote and that public access to or visibility of the public art will be severely limited. This determination may result in the property owner electing to utilize the in-lieu option as outlined in subsection D of this section. The in-lieu fee provision may be applied to all or a portion of the one percent (1%) contribution for public artwork.~~

H. PUBLIC ART DESIGN PRINCIPLES

The Conceptual Design Review Board shall assess individual applications based on conformance with the adopted design standards – Addendum “A” of the Zoning Code and fulfillment of the following principles:

1. QUALITY: ARTWORK DEMONSTRATES ORIGINALITY, ARTISTIC QUALITY, AND EXCELLENCE IN DESIGN AND CRAFTSMANSHIP; TO BE DEMONSTRATED THROUGH RENDERINGS, EXPLANATION OF CONSTRUCTION, MATERIALS, AND ARTIST RESUME.
2. RESPONSE TO CONTEXT: ARTWORKS SHOULD BE APPROPRIATE IN SCALE, MATERIAL, FORM AND CONTENT FOR THE IMMEDIATE AND GENERAL SOCIAL AND PHYSICAL ENVIRONMENTS WITH WHICH THEY ARE TO RELATE.
3. DURABILITY: CONSIDERATION SHOULD BE GIVEN TO STRUCTURAL AND SURFACE INTEGRITY, PERMANENCE, AND PROTECTION AGAINST THEFT, VANDALISM, WEATHERING, AND EXCESSIVE MAINTENANCE AND REPAIR COSTS.
4. INTEGRATION: WHERE POSSIBLE, IN ADDITION TO MEETING AESTHETIC REQUIREMENTS, ARTWORKS SHOULD ALSO SERVE TO ESTABLISH FOCAL POINTS, MODIFY, ENHANCE OR DEFINE SPECIFIC SPACES OR ESTABLISH IDENTITY.
5. SAFETY: ARTWORKS SHOULD NOT PRESENT A HAZARD OR CREATE UNSAFE CONDITIONS.
6. DIVERSITY: ARTWORKS SHOULD CONTRIBUTE TO A DIVERSITY OF STYLE, SCALE, MEDIA, ARTISTS, COMMUNITY VALUES AND FORMS OF EXPRESSION WITHIN THE TOWN.
7. VISIBILITY: ARTWORKS SHOULD BE VISIBLE AND ACCESSIBLE FOR THE PURPOSES OF PUBLIC ENJOYMENT AND SECURITY,

CONSIDERING PEDESTRIAN AND VEHICULAR TRAFFIC, LIGHTING, ACTIVE HOURS ON SITE AND FUTURE DEVELOPMENT AND VEGETATION GROWTH.

8. FEASIBILITY: CONSIDERATION SHOULD BE GIVEN TO THE LIKELIHOOD OF SUCCESSFUL COMPLETION OF THE ARTWORK. FACTORS TO BE CONSIDERED INCLUDE BUT ARE NOT LIMITED TO: PROJECT BUDGET, TIMELINE, ARTIST'S EXPERIENCE AND SOUNDNESS OF MATERIALS.
9. PUBLIC ART SHALL NOT REFLECT OR INCLUDE ADVERTISING ELEMENTS OF A BUSINESS OR CORPORATION INCLUDING COLORS, GRAPHICS, LOGOS OR OTHER REPRESENTATIONS OF CORPORATE IDENTITY.

H. — Review Criteria

~~Public art is an integral element of project design and contributes to the overall quality of life for Oro Valley residents and visitors. Public art contributes to a sense of place, defines and reinforces community identity, and reflects the unique character of the Town.~~

~~The Conceptual Design Review Board shall assess individual applications based on conformance with the adopted design standards — Addendum A of the Zoning Code and fulfillment of the following principles:~~

- ~~1. Public art should serve as a distinctive and integral element in the overall design of a project or development.~~
- ~~2. Public art should relate to the context and character of the project. Where appropriate, public art may employ themes associated with activities within the development.~~
- ~~3. Public art should relate to the historical, cultural or natural context of the project area, the neighborhood or the Town.~~
- ~~4. Public art shall not include corporate advertising elements of a business including colors, graphics, logos or other representations of corporate identity.~~
- ~~5. Public art shall be designed to prevent hazards to the public. Durability and safety of materials shall be considered including potential areas of excessive wear or damage, which shall be mitigated.~~
- ~~6. Potential obstructions, including landscape materials at maturity or future construction, shall be considered when locating public art.~~
- ~~7. Public art shall be original and not duplicate existing artwork in the Town and shall conform to community standards.~~

I. Installation and Maintenance

1. Public artwork ~~shall~~ MAY 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~~ MAY 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 Administrator. Each development phase shall include public artwork allocated proportionally to building valuation as determined by the Planning and Zoning Administrator.
3. Public artworks must remain on public display AND SHALL BE MAINTAINED IN THE ~~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 Administrator. Incomplete or unsafe installations shall not be approved.
5. Artwork projects ~~may~~ SHALL have a small plaque not to exceed eighty (80) square inches in size identifying the TITLE, DATE ~~work~~, AND artist ~~and contributors~~. THE PLAQUE SHALL CONTAIN THE WORDS "ORO VALLEY 1% FOR PUBLIC ART PROGRAM".
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 subsection ~~F-I.8~~ of this section.
8. A maintenance plan specifying the party(ies) intended to complete repairs, REQUIRED MAINTENANCE STEPS, AND FREQUENCY OF MAINTENANCE, 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 Administrator, 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 Conceptual Design Review Board, ~~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 Administrator 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 Administrator, WITH REFERENCE TO THE MAINTENANCE PLAN, prior to movement or alteration of the artwork. The artwork shall be returned to its original location.

Chapter 31: Definitions

1. “Artist” shall mean an individual generally recognized by critics and peers as a professional, full time practitioner of the visual arts, as judged by the quality of that professional practitioner’s body of work, education, experience, past commissions, exhibition record, publications, and production of artwork.
2. “Public Artwork” shall mean artwork that is accessible to the community and the general public. It may be privately funded and owned or it may be fully funded by public agencies for public benefit. Public artwork adds aesthetic appeal, draws visitors and improves the image of the Town. It entails the application of skill and taste by an artist in creating an original work of art. ~~Examples of appropriate public artwork include, but are not limited to: sculpture—freestanding, wall supported or suspended; murals or paintings; earthworks; fiber works; and mosaics.~~ Privately funded and owned public artwork may not include: directional graphics or color-coded location indicators; mass-produced or standard “off-the-shelf” items, including playground equipment, fountains, or statuary, and most art reproductions