

DRAFT

Ordinance
07/03/2019

2019 Amendments to Apache Junction City Code, Volume II
Chapter 1: Zoning Ordinance

ARTICLE 1-13: **DEVELOPMENT** ~~DESIGN~~ STANDARDS

1-13-4 ART IN PUBLIC AND PRIVATE DEVELOPMENT

- A. **INTENT** Public art celebrates the city's identity, enhances public spaces, strengthens residents' ties to the community, attracts new businesses and tourism and promotes citizen awareness of, and interest in, the arts. Placing art in publicly assessable spaces creates a more desirable place to live, work and visit and improves the health, safety and welfare of the community. Public art projects have the ability to connect new commercial and residential development to the community and create a vibrant sense of place for residents and visitors. Art installations in both public and private development that are assessable to the public further enhances these spaces, serves as a cultural resource accessible to all, and establishes a distinctive local identity.
- B. **SCOPE AND APPLICIBILITY** Public artwork shall be installed within the city limits prior to the issuance of a Certificate of Occupancy and is a required element of new private development and city public construction Capital Improvement Projects for the following:
1. Development of any private new mixed-use and/or nonresidential building or the expansion of any mixed-use and/or nonresidential building including all phases of a multi-phase project and including religious institutions and nonprofit organizations shall devote an amount not less than one percent (1%) of building construction costs for the acquisition and installation of publicly accessible art on the development, or contribute this amount to city's segregated Art in Public Places Fund. The required expenditure shall be based on the gross floor area or added gross floor area. The building permit valuation shall be confirmed by the Building Official.
 2. Development of any new multifamily building(s) of 10 dwelling units or more; and/or the expansion of any existing multifamily residential building(s) by 10 dwelling units or more or, if the additional dwelling units increase the number

of dwelling units in the residential project by 100% or more shall devote an amount not less than one-half of one percent (.5 of 1%) of building construction costs for the acquisition and installation of publicly accessible art on the development site, or contribute this amount to the city's public art account for artwork to be placed within the city. The required expenditure is calculated based on the total number of dwelling units in the project. The building permit valuation shall be confirmed by the Building Official.

3. One percent (1%) of the project construction cost shall be used for public artwork for new public construction projects involving construction costs over fifty thousand dollars (\$50,000). All allocations of funds for eligible projects shall include an amount equal to one percent of the projected construction costs at the time the project is included in the city's capital improvement program to be used for the selection, acquisition, commissioning and display of artwork.

4. Renovation disturbing 50% or more of the gross floor area of a mixed use or commercial building calculated based on the gross floor area of the entire building at the rate applicable to construction of the same type or more than 50% of the building facade. Any renovation that, when considered together with all renovations to the same building occurring within the preceding 24 months, disturbs 50% or more of the gross floor area of the building, subjects the entire building to the publicly accessible art requirements at the rate applicable to construction of the same type.

C. EXEMPTIONS

1. Industrial uses, communication facilities, utility installations and similar projects as determined by the Director; or
2. Federal, state, or county, projects or structures; or
3. Residential uses other than multifamily; or
4. Public art expenditure is not legally permissible due to the constraints imposed by the funding mechanism; routine maintenance projects such as surface treatments; safety improvements such as sidewalks and overlays with shouldering for bike lanes; or significant budgetary constraints that necessitate cost reduction, subject to city council approval.

D. REVIEW PROCESS FOR ART IN PRIVATE DEVELOPMENT

At the time of the application for a building permit, the developer will outline plans for incorporating public art in or on the project, or make a donation of in-lieu funds to the city Art in Public Places Fund. Building permits are issued only when compliance with all city codes are met. Artwork must be installed in accordance with approved plans prior to receiving a Certificate of Occupancy.

1. Contact the City of Apache Junction Planning Division regarding the Art in Private Development obligation. Staff will calculate the public art budget based on the one percent of the project's total construction budget.
2. The applicant shall submit a public artwork plan associated with the application for development and/or redevelopment or expansion demonstrating compliance with this Section based on the calculated amount. All proposed artwork shall meet the applicable requirements of all other Apache Junction City Codes. This plan is required before a building permit is issued and includes concepts for the public art project, location and visibility of the proposed artwork and name of the professional artist, as defined by the ordinance definition, if he/she has been selected. The proposed plan for presentation to the Public Art Commission shall include:
 - a. Narrative of the proposed artwork
 - b. Detailed itemized budget for the project that includes the city review process, artist's fee, cost of design, fabrication, installation, maintenance, site preparation, type of base/platform for the project if needed, plaque and administrative costs.
 - c. Agreement or contract with the artist
 - d. Scale site plan and landscape plan
 - e. Scale drawing or model
 - f. Maintenance plan
 - g. Perspective views showing the artwork in the development context
3. Once Director and Coordinator has approved the application, the application shall be referred to the Public Arts Commission. The developer will present the plan to the Public Art Commission during an Art Commission meeting and seek a recommendation for the project. The Commission will review the plan and determine if it meets the qualifications for aesthetic merit, durability and suitability to be placed in a public space, as defined under design principles. The Commission may recommend approval, denial, or recommend approval with changes based on the artwork criteria and inform the applicant in writing.

E. DESIGN AND LOCATION REQUIREMENTS

1. Public artwork shall be designed by an artist. If a design team is employed to create public artwork, at least one (1) team member shall be an artist.
2. Public artwork shall not include any of the following unless specifically allowed by the Public Art 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, streetlights, benches, signs, and bike

racks. Designs of such items shall clearly result in artistic expression beyond the normally anticipated functional appearance.

3. Public art is a piece of original work, produced by an artist, in a variety of media including, but not limited to, sculpture, mural, drawing, painting, and mosaic. Public art may be stand alone or integrated into the architecture or landscaping and should encompass the broadest range of expression, media and materials. Public art shall mean publicly accessible original art that enriches the city and evokes meaning. It may also include artist-designed infrastructure elements. Public art should consider the site, its context and audience. Public art may possess functional as well as aesthetic qualities.
4. Appropriations for the acquisition of public art shall not be expended for any of the following: 1. Art objects which are mass-produced and of standard design. However, limited editions, signed by the artist; original prints; cast sculpture or photographs may be purchased. 2. Decorative or ornamental elements (unless for the security of the public art or to ensure public safety), which are designed by the building architect or consultants engaged by the architect. 3. Expenses related to the ongoing operation of the public art, such as electrical, water, or mechanical service required to operate the public art.
5. Non-eligible public art and costs includes business logo; directional elements such as super graphics or signage; mass-produced fountains, sculpture, and playground equipment; decorative or functional elements created by professionals other than an artist commissioned for this purpose; art reproductions; landscaping elements normally associated with the artwork; mass produced art objects, such as fountains, statuary, playground equipment; service or utilities necessary to operate artwork; maintenance costs; architect fees; and normally required improvements and development costs, including but not limited to land acquisition, grading, paving, sidewalks and landscaping.
6. 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.
7. Public artwork may be located on a publicly viewable building facade, provided such location improves overall public accessibility to the artwork.
8. Artwork may be located within a building subject to approval by the Public Art Commission. The applicant shall demonstrate 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.

9. 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.
10. Public artwork shall be permanent, and may be integrated with the work of other design professionals.
11. Public artwork shall not be located in sight visibility triangles
12. Location of art in a proposed or existing city right-of-way shall be approved by the City Engineer.
13. Off-site locations within the city for public artwork may be approved by the City Council, upon review and recommendation by the Public Art Commission.

F. DESIGN PRINCIPLES

Assessment of public art applications shall be based on conformance with the adopted design standards and fulfillment of the following principles:

1. **Quality:** Public Art 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:** Public Art 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:** Public Art should not present a hazard or create unsafe conditions.
6. **Diversity:** Public Art should contribute to a diversity of style, scale, media, artists, community values and forms of expression within the city.

7. Visibility: Public Art 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. Advertising Elements: Public art shall not reflect or include advertising elements of a business or corporation including colors, graphics, logos or other representations of corporate identity.

G. INSTALLATION, OWNERSHIP AND MAINTENANCE

1. Required public art installations created for private development and placed on private property shall be privately owned and maintained by the property owner or Home Owners Association. Public artwork responsibilities shall transfer from property owner to property owner and all successors and assigns. If the city accepts ownership of the art, the land on which the art is placed shall be deeded to the city or a perpetual easement shall be recorded granting the city rights and access to the site.
2. Prior to issuance of a Certificate of Occupancy, the approved artwork shall be installed, inspected and certified complete in accordance with approved plans by the Director and/or Coordinator. The city may withhold the final certificate of occupancy until public artwork installation is complete. The Director may agree to an extension of time of up to six months. If an extension of time is granted, then prior to the issuance of the Certificate of Occupancy, a cash deposit or an irrevocable letter of credit in an amount guaranteeing the complete installation of the artwork plus an additional 10% late fee shall be deposited by the owner or developer with the City. Failure to completely install the artwork approved by the Director within six months of the issuance of the Certificate of Occupancy shall result in forfeiture of the deposit or letter of credit and the money deposited shall be credited to the Art in Public Places Fund.
3. Public art must remain on public display and shall be maintained in like new condition in perpetuity by 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.
 - a. 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 owner's request to the artist for

maintenance and repair services shall be submitted with the maintenance plan.

- b. 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.
- c. Replacement of missing or damaged public art 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 city regarding damaged or missing public artwork within fifteen (15) days of written notice.
- d. Failure to maintain the artwork, as determined by the Public Art Commission, through its staff or contractor shall constitute a violation of this code, and/or cause liens against the real property.

4. In the event that any artwork placed on the development as a result of this Section is removed or destroyed, the owner or developer shall, within 180 days of the removal or destruction:

- a. Replace it with artwork that meets the requirements of this Section and is equal to the removed/destroyed artwork's fair market value immediately prior to its removal or destruction; or
- b. Make a cash payment to the City Art in Public Places Fund in an amount equal to the square foot gross floor area of the development multiplied by the minimum investment requirement set forth above that is applicable at the time of the removal or destruction of the artwork.

5. A public art 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 and Public Art Commission. Each development phase shall include public artwork allocated proportionally to building valuation as determined by the Planning and Zoning Administrator.

6. 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 City Building Official, City Engineer, the Planning and Zoning Administrator, Coordinator and a designee of the Public Art Commission (e.g. consultant). Incomplete or unsafe installations shall not be approved.

7. Artwork projects shall have a small plaque not to exceed eighty (80) square inches in size identifying the title, date and artist. The plaque shall contain the words "Apache Junction Public Art Program."
8. The property/public art owner shall be responsible for the services and utilities necessary to operate and/or maintain public artworks over time.
9. The property/public art owner shall provide evidence of insurance in a minimum amount equal to the purchase and installation costs of the public art.
10. Public art cannot be permanently removed, relocated or altered in any way without the review and approval of the Public Art Commission.
11. If the developer and/or owner satisfies the public art requirement in accordance with all subsections of this document, the public art previously installed on the development site may subsequently be removed if the developer and/or owner makes a public art program in-lieu contribution equivalent to the original calculated amount to the public art account. Developer/owner will follow the terms of the Visual Artist Rights Act of 1990, a federal law, regarding the modification/destruction of the artwork, unless the artist has waived these rights.
12. In the event public art must be temporarily moved or altered due to construction or other activity, the property owner shall submit in writing a request to the Public Art Commission detailing the purpose, time frame, and intended temporary location for the artwork. The request must be approved by the Public Art Commission, with reference to the maintenance plan, prior to movement or alteration of the artwork. The artwork shall be returned to its original location.
13. Phased Development: The property owner of phased developments shall obtain a Certificate of Completion for the artwork before issuance of the first certificate of occupancy for the first phase of development, except as allowed in the section titled Deferment of Artwork.
14. Multi-Property owner developments: Each property owner within a development shall separately comply with this ordinance before the issuance of the certificate of occupancy for the property owner's respective portion of development, except as allowed in the section titled Combination of Artwork Requirements and Deferment of Artwork Requirements.
15. Combination of artwork requirements: The property owners of a phased or multi-property owner development may combine the artwork requirements for each phase of each property owner, upon the Public Art Commission's approval of a Conceptual Art Plan for the development. The Zoning Administrator may enter into an agreement with the property owner(s) regarding combined artwork requirements. The agreement shall be in a form satisfactory to the City Attorney

and recorded against the property. The agreement shall include, but not be limited to:

- a. The property owners' artwork requirements,
- b. The schedule for installing the artwork, and
- c. The penalties for the property owner's breach of the agreement.

H. PUBLIC ART INSTALLATION The minimum art investment shall take the form of either an on-site installation of developer-selected and approved by the Public Art Commission exterior artwork, or, at the developer's discretion, an equivalent cash contribution to the City Art in Public Places Fund may be made to be used for public art in the City. A combination of the above options is also acceptable. Art selected by an owner or developer to be integrated on the site of the project shall be located on an exterior of the structure or the building site that is visible to the public.

1. If specifically approved by the Public Art Commission, artwork budgets may include integrated pedestals, bases, walls, utility extensions and architect's fees exclusively required for the artwork. The following on-site artworks and costs are acceptable under this Section:

- a. Building features and enhancements that are unique and produced by a professional artist;
- b. Landscape art enhancements such as enhanced walkways, bridges, unique water, or unique art features;
- c. Murals or mosaics covering walls or walkways;
- d. Professional artist sculptures that can be freestanding, wall-supported, or suspended and made of durable materials suitable to the site;
- e. Other suitable artworks accepted by the Public Art Commission.
- f. Costs that are eligible towards the minimum investment required by this Section include:
 1. Professional artist compensation;
 2. Fabrication and installation of the artwork;
 3. Site preparation;
 4. Structures enabling the artist to display the artwork;
 5. Documentation of the artwork;

6. Acknowledgment plaque identifying the artist and the artwork.
2. 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.
3. Upon installation of public art, any unexpended funds shall be deposited into the city's Art in Public Places Fund to be used for art in public places.

I. IN LIEU OF CASH CONTRIBUTION

1. If the building permit valuation for private development is less than two million dollars (\$2,000,000), the owner/developer may elect to contribute the one percent (1%) to the City of Apache Junction as an in-lieu fee. It shall be earmarked specifically for public art in a public place.
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 City of Apache Junction earmarked specifically for public in a public place.
3. The Public Art Commission 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. The in-lieu fees paid to the public art fund may be used for the maintenance of publicly owned artwork.

J. CALL FOR ARTISTS

The public art review process may be modified, if a call for artists is used in accordance with the following:

1. A "qualified agent" shall be used to perform a call for artist process in accordance with the Public Art Guidelines, prior to submitting a conceptual design proposal to the city.
2. If the building permit valuation is less than four million dollars (\$4,000,000), a call for artists process must be at least regionally advertised in accordance with the Public Art Guidelines.
3. If the building permit valuation is of four million dollars (\$4,000,000) or more, a call for artists process shall be advertised nationally in accordance with the Public Art Guidelines.

4. The Public Art Commission shall adopt guidelines to be known as the “Public Art Guidelines,” amended from time to time, to specify the call for artists process.

K. CONVEYANCE OF ARTWORK

Approval by the City Council, upon recommendation of the Public Art Commission, to accept as a gift to the city, after a two-year warranty period, privately owned public art will be:

1. Provided at no cost to the city, including re-installation costs.
2. Gifted in accordance with the city’s public art collection policies.
3. In a condition acceptable to the city, in accordance with its guidelines.
4. Maintained by the property owner in accordance with the city’s guidelines for two years after the City Council concurs with the Public Art Commission’s recommendation to accept artwork.
5. Transferred to the city in a form satisfactory to the City Attorney, including provisions to indemnify the city and allow the city to relocate the artwork.
6. Accessible to the public, by an easement to the city from the public street to the artwork, for access and maintenance, subject to the City Engineer’s approval. The easement shall be in a form satisfactory to the City Attorney before the Council accepts the artwork.
7. After the two-year period, the Council may accept artwork only if the property owner has maintained it in accordance with city guidelines.
8. If the city determines that the artwork has not been maintained in accordance with the city’s guidelines, the property owner shall continue to own and maintain the artwork in accordance with the city’s guidelines.

L. DEFERMENT OF ARTWORK

1. Before the issuance of the first building permit for the development, the Zoning Administrator may enter into an agreement with the property owner(s) regarding installing artwork or paying an in-lieu payment on a deferred schedule. The agreement shall be in a form satisfactory to the City Attorney and recorded against the property. The agreement shall include, but not be limited to:
 - a) The property owner’s artwork requirements,

- b) The schedule for installing the artwork, and
- c) The penalties for the property owner's breach of the agreement.

2. Before the issuance of the first building permit for the first phase of a phased development, the Zoning Administrator may enter into an agreement with the property owner(s) regarding paying an in-lieu payment on a deferred schedule. The payment amount shall be pro-rated per phase, based on the building construction costs of all buildings for each phase. The agreement shall be in a form satisfactory to the City Attorney and recorded against the property. The agreement shall include, but not be limited to:

- a) The property owner's in-lieu payment requirements,
- b) The schedule for paying the in-lieu fee, and
- c) The penalties for the property owner's breach of the agreement.

M. ADMINISTRATION OF PUBLIC ART IN PUBLIC PLACES PROGRAM

The administration of the Public Art Program shall reside with the Development Services Department, which shall have the following powers and duties:

1. To implement the Public Art Program ordinance in collaboration with the Public Art Commission, and to establish procedures for eligible projects;
2. To review with city staff eligible Public Art Program projects;
3. To determine how the Public Art Program funds will be spent for each project and report on those expenditures on an annual basis to the appropriate city staff and Council. The report shall be submitted in writing and disclose the following: the amount and source of the funding for the Public Art Fund; the amount of such funding allocated to each specific public art project and the unspent balance; a description and the amount of each expenditure of such funding for each specific public art project and location of each artwork(s) purchased or commissioned with such funding; and the name and residence of each artist;
4. To determine the appropriate placement of artwork(s) commissioned or purchased under the Public Art Program as well as artwork(s) accepted as gifts to the city;
5. To establish artist selection guidelines for Public Art Program projects, including determining whether any selection will be made by open competition, limited entry (invitational) or direct selection;
6. To maintain artworks(s) in the Public Art Program collection; and
7. To solicit, receive and review comments and recommendations regarding the selection of artwork restoration and conservation projects, and to make the final

selection of the restoration and conservation projects that will receive Public Art Program funding.

N. INTERNAL CONTROLS

1. The city's finance director shall establish a segregated fund designated as the Art in Public Places Fund into which funds appropriated or derived from gifts or donations and developer in-lieu contributions for public art shall be deposited.
2. For the budget year that the City Council appropriates funding for the eligible project and that the eligible project is instituted, the public art allocations shall be deposited into the Art in Public Places Fund in accordance with procedures established by the city's finance director. As individual public art projects generally span more than one fiscal year, funds will be available for successive fiscal years.
3. Monies collected in the Art in Public Places Fund shall be budgeted and expended in the same manner as other city revenues and used for projects commissioned pursuant to this article. Each disbursement from such account or from other appropriations for artwork shall be recommended by the Public Art Commission and authorized in accordance with applicable law and accounting principles governing expenditures from the city's budget. Separate accounts shall be established whenever funds are required to be used at a designated capital improvement project.