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Ordinance
07/~~1708~~/2019

2019 Amendments to Apache Junction City Code, Volume II
Chapter 1: Zoning Ordinance, Article 1-13: Development Standards,
§1-13-4, Art in Public and Private Development

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

1-13-4 ART IN PUBLIC AND PRIVATE DEVELOPMENT

A. Intent ~~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~~ accessible 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~~ accessible to the public further enhances these spaces, serves as a cultural resource and establishes a distinctive local identity.

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B. Scope and Applicability ~~SCOPE AND APPLICABILITY~~:

Public ~~artwork~~ art 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:

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- 4- Developers 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: 1) 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 site; 2) or contribute an equal amount to city's segregated Art in Public Places Fund ("APPF") ~~maintained by the city finance department~~. The required expenditure shall be based on ~~the~~

~~gross floor area or added gross floor area and~~ the building permit valuation which shall be confirmed by the building and safety manager.

2. ~~3.~~ Developers 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; 1) 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 2) contribute an equal amount to the city's segregated ~~Art in Public Places Fund APPF maintained by the city finance department.~~ The required expenditure ~~shall be~~ is calculated based on the total number of dwelling units in the project and the building permit valuation which shall be confirmed by the building and safety manager.

- ~~43.~~ For new public construction projects involving construction costs over fifty thousand dollars (\$50,000). ~~One percent (1%) of the building 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 building construction project 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.

- ~~42.~~ Renovation ~~disturbing exceeding~~ 50% or more of the gross floor area of a mixed use and/or nonresidential 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 façade also~~ triggers the 1 percent above contribution. ~~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, further subjects the entire building to the publicly accessible art requirements at the rate applicable to construction of the same type.~~

C. Exemptions EXEMPTIONS:

1. Industrial uses, communication facilities, utility installations and similar projects as determined by the development services director; or
2. Federal, state, or county, projects or structures; or
3. Residential uses other than multifamily; or
4. Public art expenditure not legally permissible due to the constraints imposed by the funding mechanism; or

5. Routine maintenance projects such as surface treatments; or
6. Safety improvements such as sidewalks and overlays with shouldering for bike lanes; or
7. For public construction projects where the city has significant budgetary constraints that necessitate cost reduction, subject to the city council may on a case by case basis eliminate or reduce city funds dedicated for art on a specific project approval.

D. REVIEW PROCESS FOR ART IN PRIVATE DEVELOPMENTArt in Private Development:

(1) Art Plan Submittal

At the time of the application for a building permit, the developer will outline plans for incorporating public art in or on the project development site, or make a donation of in-lieu funds to the city APPE Art in Public Places Fund maintained by the city finance department. Building permits are issued only when compliance with all city codes are met. ArtworkArt must be installed in accordance with approved plans or the fee in-lieu of paid prior to receiving a certificate of occupancy.

The applicant shall:

4- (a) Contact the City of Apache Junction planning division development services department regarding the art in private development obligation. Building division sStaff will calculate the public art budget in accordance with subsection B above after a building permit submittal with cost estimates has been received based on the one percent of the project's total building construction budget.

2- (b) Submit a public artworkart plan to the development services department associated with the site plan application or building permit application for development and/or redevelopment or expansion demonstrating compliance with this section based on the calculated public art budget construction percentage amount. All proposed artworkart shall meet the applicable requirements of all other 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 artworkart and name of the professional artist, as defined by ordinance, if selected. The proposed plan for presentation to the Public Art Commission ("PAC") shall include:

- a- 1. narrative of the proposed artworkart
- b- 2. conceptual drawings for the public art project
- b- 3. detailed itemized budget for the project that includes the city review process, artist's fee, cost of design, fabrication, installation, maintenance, site

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preparation, type of base/platform for the project, plaque and administrative costs

- ~~e-a.~~ 4. agreement or contract with ~~the~~ artist
- ~~d-b.~~ 5. scaled site plan depicting the location and visibility of the proposed art and landscape plan
- ~~e-c.~~ 6. scale drawing or model
- f. 7. maintenance plan
- ~~g-d.~~ 8. perspective views showing the artworkart in the development context

~~3-~~ (c) Once the director of development services and coordinator have determined that the approved the application is complete, the application shall be referred to the Public Arts Commission ("PAC"). The developer will present the plan to the PAC during and seek a recommendation for the project from the PAC. The PAC 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 the design principles enumerated in subsection F. The PAC may recommend approval, denial, or recommend approval with changes based on the artworkart criteria and inform the applicant in writing. The applicant may appeal to the city council within 30 days of the PAC decision and the council will hear the appeal at a regularly scheduled meeting within 60 days of the filing of an appeal by the applicant.

(2) ~~E~~ Design and Location Requirements- DESIGN AND LOCATION REQUIREMENTS:

Public artworkart shall be designed by an artist. If a design team is employed to create public artworkart, at least one (1) team member shall be an artist. An artist shall mean any professional practitioner in the arts, generally recognized by critics and peers as a professional in the field as evidenced by his/her education, experience and artwork production. The artist may work with architects, landscape architects, engineers, lighting designers and/or other professionals, but he or she must be the primary designer of the project, and must hold the contract with the developer for the work of art. This is evidenced by a portfolio or resume which demonstrates projects previously commissioned, completed, and paid for specifically for public art.

~~1-~~

~~2-~~ (a) Public artworkart shall not include any of the following unless specifically allowed by the PAC and the item is designed by an artist:

- ~~a-~~ 1. architectural elements or structural parts of a building or other structure;
- ~~b-a.~~ 2. fixtures;

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~~e-b.~~ 3. features such as grates, shade screens, streetlights, benches, signs, and bike racks.

Designs of the above items shall definitively result in artistic expression beyond the normally anticipated functional appearance.

~~3.~~ (b) Public art ~~shall be is a piece of~~ original work, produced by an artist, ~~shall be in an area easily accessible and clearly visible to the general public and shall allow for unrestricted viewing from a variety of vantage points,~~ in types of medium including, but not limited to, sculpture, mural, drawing, painting, photographic 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 be original art that is publicly accessible. 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.

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~~4.~~ (c) Appropriations for the acquisition of public art shall not be expended for any of the following:

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- ~~a.~~ 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;
- ~~b.~~ 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;
- ~~c.~~ 3. expenses related to the ongoing operation of the public art, such as electrical, water, or mechanical service required to operate the public art.

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~~5.~~ (d) 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 ~~artworkart~~; ~~mass-produced art objects, such as fountains, statuary, playground equipment~~; service or utilities necessary to operate ~~artworkart~~; maintenance costs; architect fees; and normally required improvements and development costs, including but not limited to land acquisition, grading, paving, sidewalks and landscaping.

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~~6.~~ ~~Public artworkart 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. (e) Public artworkart may be located on a publicly viewable building façade, provided such location improves overall public accessibility to the artworkart.

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8. (f) ArtworkArt may be located within a building subject to approval by the PAC. The applicant shall demonstrate that the interior location for artworkart 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.

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9. (g) Upon the recommendation of the zoning administrator, tThe location of public artworkart shall be approved by the PAC and shall be indicated on the landscape plan, floor plan, development plan, plat or other appropriate document as determined by the zoning administrator.

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10. (h) Public artworkart shall be permanent, and may be integrated with the work of other design professionals.

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11. (i) Public artworkart shall not be located in sight visibility triangles.

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12. (j) Location of art in a proposed or existing city right-of-way shall be approved by the city engineer.

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13. (k) Off-site locations within the city for public artworkart must be approved by the city council, upon review and recommendation by the PAC.

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(3) F. DESIGN PRINCIPLES Design Principles:

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Assessment of public art applications shall be based on conformance with the adopted Public Art Guidelines ("PAG") design standards and fulfillment of the following principles:

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4. (a) Quality: Demonstrates originality, artistic quality, and excellence in design and craftsmanship, to be demonstrated through renderings, explanation of construction, materials, and artist resume.

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2. (b) Response to Context: Be appropriate in scale, material, form and context for the immediate and general social and physical environments with which they are ~~te~~ relate.

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3. (c) Durability: Include consideration of structural and surface integrity, permanence, and protection against theft, vandalism, weathering, and excessive maintenance and repair costs.

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4- (d) Integration: In addition to meeting aesthetic requirements, should also serve to establish focal points, modify, enhance or define specific spaces or establish identity.

5- (e) Safety: Not present a hazard or create unsafe conditions.

6- (f) Diversity: Contribute to a ~~diversity-variety~~ of style, scale, media, artists, community values and forms of expression within the city.

7- (g) Visibility: 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- (h) Feasibility: Include consideration of the likelihood of successful completion based on: project budget, timeline, artist experience and soundness of materials.

9- (i) Advertising Elements: Not reflect or include advertising elements of a business or corporation, including colors, graphics, logos or other representations of corporate identity.

(4) G- INSTALLATION, OWNERSHIP AND MAINTENANCE Installation, Ownership and Maintenance:

1- (a) Required public art installations created for private development and placed on private property shall be privately-owned and maintained by the property owner or a home owners association ("HOA"). Public ~~artwork~~art responsibilities shall transfer and run with the land 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 dedicated to the city or a perpetual easement shall be recorded granting the city egress, ingress, maintenance and placement rights in perpetuity.

2- (b) Prior to issuance of a certificate of occupancy, the approved ~~artwork~~art shall be installed, inspected and certified complete in accordance with approved plans by the director of development services and/or coordinator. The city may withhold the final certificate of occupancy until public ~~artwork~~art installation is completed. The director of development services 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 in an amount guaranteeing the complete installation of the ~~artwork~~art plus an additional 10% ~~late-administrative~~ fee shall be deposited by the owner or developer with the city. If an extension of time is granted and there is a fFailure to completely install the ~~artwork~~art approved by the director within six months of the issuance of the certificate of occupancy it shall result in forfeiture of the deposit or letter of credit and the money deposited shall be credited to the APPF Art in Public Places Fund.

~~3-~~(c) Public art must remain on public display and shall be maintained in like new condition in perpetuity by the property owner. The artworkart 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-~~ (1) The original artist shall be offered the opportunity to provide maintenance and repair services for the artworkarts they create. If the original artist will not be maintaining the artworkart, documentation of the owner's request to the artist for maintenance and repair services shall be submitted with the maintenance plan.

~~b-~~ (2) A maintenance plan specifying the parties intended to complete repairs, required maintenance steps, and frequency of maintenance shall be submitted with the application for public artworkartart approval. If the parties identified to perform maintenance and repairs are not the original artist, a statement of the parties qualifications to repair and maintain public artworkartart shall be submitted with the maintenance plan. Qualified individuals shall have experience working with the media and materials used in the artworkartart.

~~e-~~ (3) Replacement of missing or damaged public art is required, unless the property owner provides documentation that shows that the artworkartart 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 artworkartart within fifteen (15) calendar days of written notice.

(4) Failure to maintain the artworkartart, as determined by the director shall constitute a violation of this code, and/or cause liens against the real property.

~~e-~~ ~~4-~~(d) In the event that any artworkartart placed on the development as a result of this Section is removed or destroyed, the owner or developer shall, within one hundred eighty (180) calendar days of the removal or destruction:

~~a-~~(1) Replace it with artworkartart that meets the requirements of this section and is equal to the removed/destroyed artworkartart's fair market value as determined by an independent appraiser specializing in works of art immediately prior to its removal or destruction; or

~~b-~~ (2) Make a cash payment to the city Art in Public Places Fund-APPF 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 artworkartart.

~~5-~~ (e) A public art installation schedule, addressing timing, budget allocation, artworkart location(s), and specific details for each phase of a phased development project, shall be submitted for review by the zoning

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administrator and PAC. Each development phase shall include public ~~artwork~~art allocated proportionally to building valuation or unit count as determined by the zoning administrator.

~~6-~~ (f) The installation of the ~~artwork~~art shall be done in a manner that will protect the ~~artwork~~art and the public. The general safety and permanence of ~~artwork~~art installation shall be inspected as determined by the city building and safety manager, zoning administrator, and coordinator. Incomplete or unsafe installations shall not be approved.

~~7-~~ (g) ~~Artwork~~Art 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 names of the current mayor, city council members, the PAC members, date of installation and the words "This public art installation was made possible by the developer and the Apache Junction Public Art Program."

~~8-~~ (h) The property/public art owner shall be responsible for the services and utilities necessary to operate and/or maintain public ~~artwork~~arts over time.

~~9-~~ (i) 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 and shall maintain such insurance at all times. A certificate of insurance shall be submitted to the director on an annually basis.

~~10-~~ (j) Public art cannot be permanently removed, relocated or altered in any way without the review and approval of the PAC.

~~11-~~ (k) 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, per 17 U.S.C. § 106A), regarding the modification/destruction of the ~~artwork~~art, unless the artist has waived these rights.

~~12-~~ (l) 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 PAC detailing the purpose, time frame, and intended temporary location for the ~~artwork~~art. The request must be approved by the PAC, with reference to the maintenance plan, prior to movement or alteration of the ~~artwork~~art. The ~~artwork~~art shall be returned to its original location.

~~13-~~ (m) The property owner of phased developments shall obtain a certificate of completion for the ~~artwork~~art before issuance of the first certificate of

occupancy for the first phase of development, except as allowed in § M below entitled “Deferment of ~~Artwork~~Art Installation.”

14. (n) Each property owner within a multi-property 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 entitled “Combination of ~~Artwork~~Art Requirements under § H below and Deferment of ~~Artwork~~Art Installation Requirements” under § ~~H-M~~ below

~~(5) H. COMBINATION OF ARTWORK REQUIREMENTS~~ Combination of Art Requirements:

4. (a) The property owners of a phased or multi-property owner development may combine the ~~artwork~~art requirements for each phase of each property owner, upon the PAC’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~~art requirements. The agreement shall be in a form approved by the city attorney and recorded against the property. The agreement shall include, but not be limited to:

- a. ~~1.~~ The property owners’ ~~artwork~~art requirements;
- b. ~~2.~~ The schedule for installing the ~~artwork~~art;
- c. ~~3.~~ The penalties for the property owner’s breach of the agreement;
- d. ~~4.~~ The remedies for such breach.

~~I. (6)PUBLIC ART INSTALLATION~~ Eligible Costs for Public Art Installation:

~~1. (a) The minimum art investment shall take the form of either an on-site installation by a developer selected and approved by the PAC exterior ~~artwork~~art, or, at the developer’s discretion, an equivalent cash contribution to the ~~city Art in Public Places Fund-APPF~~ 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.~~~~

2. (b) If specifically approved by the PAC, ~~artwork~~art budgets may include integrated pedestals, bases, walls, utility extensions and architect fees. The following on-site ~~artwork~~arts and costs are acceptable under this section:

- a. ~~1.~~ building features and enhancements that are unique and produced by a professional artist

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- ~~b.~~ 2. –landscape art enhancements such as enhanced walkways, bridges, unique water, or unique art features
- ~~c.~~ 3. murals or mosaics covering walls or walkways
- ~~d.~~ 4. professional artist sculptures that can be freestanding, wall-supported, or suspended and made of durable materials suitable to the site
- ~~e.~~ 5. other suitable artworkarts accepted by the PAC
- ~~f.~~ 6. costs eligible for the minimum investment required to include:
 - ~~1.~~ a. professional artist compensation
 - ~~2.~~ b. fabrication and installation of the artworkart
 - ~~3.~~ c. site preparation
 - ~~4.~~ d. structures enabling the artist to display the artworkart
 - ~~5.~~ e. documentation of the artworkart
 - ~~6.~~ f. acknowledgment plaque identifying the artist and the artworkart
- ~~3.~~ (c) For multi-phase projects or where building permit valuation has changed, an updated public artworkart budget, based on the most current building valuation tables, shall be submitted for each phase at the time of application for public artworkart approval.
- ~~4.~~ (d) Upon installation of public art, any unexpended funds shall be deposited into the city's Art in Public Places Fund APPF to be used for art in public places.

(7) CONVEYANCE OF ART:

(a) Approval by the city council, upon recommendation of the PAC, 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 acceptance policies.
- 3. In a condition acceptable to the city, in accordance with the city's public art acceptance policies.

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4. Maintained by the property owner in accordance with the city's public art acceptance policies for the two year warranty period.
5. Transferred to the city in a form approved by the city attorney, including provisions to indemnify the city and allow the city to relocate the art.
6. Accessible to the public, by an easement to the city from the public street to the art, for access and maintenance, subject to the city engineer's approval. The easement shall be in a form approved by the city attorney.
7. After more than the two-year warranty period, the council may accept art only if the property owner has maintained it in accordance with city guidelines.
8. If the city determines that the art has not been maintained in accordance with the city's guidelines, the property owner shall continue to own and maintain the art in accordance with the city's guidelines.

(8) DEFERMENT OF ART INSTALLATION:

- (a) Before the issuance of the first building permit for the development or the first phase of a phased development, the zoning administrator may enter into an agreement with the property owner(s) regarding installing art or paying an in-lieu payment on a deferred schedule. The agreement shall be in a form approved by the City Attorney and recorded against the property.

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The agreement shall include, but not be limited to:

1. The property owner's art requirements
2. The schedule for installing the art
3. The penalties for the property owner's breach of the agreement
4. The remedies for such breach

J. (9) IN LIEU OF CASH CONTRIBUTIONIn-lieu of Cash Contribution:

- (a) The developer shall provide art in a place accessible to the public or make a payment in-lieu thereof which shall be earmarked specifically for public art in a public place. Contributions of art or a payment in-lieu shall be made in according to the following:

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<u>Art in Private Development valuation</u>	<u>% for Art requirement</u>	<u>Art in Public Places</u>	<u>Art in Public Places in-lieu of fund</u>
<u><\$49,999</u>	<u>1%</u>	<u>Not applicable</u>	<u>All funding</u>
<u>\$50,000 - \$4,999,999</u>	<u>1%</u>	<u>Any combination</u>	
<u>\$5,000,000 - \$9,999,999</u>	<u>1%</u>	<u>All funding</u>	<u>Not applicable</u>
<u>\$10,000,000 - \$19,999,999</u>	<u>1%</u>	<u>Minimum \$100,000</u>	<u>Any balance over \$100,000</u>

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<u>>\$20,000,000</u>	<u>.5%</u>	<u>Minimum \$100,000</u>	<u>Any balance over \$100,000</u>
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~~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 as an in-lieu fee.~~ It shall be earmarked specifically for public art in a public place.

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~~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 earmarked specifically for public art in a public place.~~

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~~3.1.~~ The PAC 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 fee~~ shall 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.

K. ~~CALL FOR ARTISTS~~Call for Artists for City Construction Projects:

~~The public art review process may be modified, if A~~ a call for artists for city construction projects and for accumulated in-lieu fees shall follow ~~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 ("PAG"), 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 (state of Arizona) advertised in accordance with the PAG 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 (U.S. and U.S. Territories) in accordance with the PAG Public Art Guidelines.
4. The PAC shall adopt the above referenced guidelines ~~to be known as the "Public Art Guidelines,"~~ as amended from time to time, to specify the call for artists process.

~~L. CONVEYANCE OF ARTWORK:~~

~~Approval by the city council, upon recommendation of the PAC, 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 acceptance policies.~~
- ~~3. In a condition acceptable to the city, in accordance with the city's public art acceptance policies.~~
- ~~4. Maintained by the property owner in accordance with the city's public art acceptance policies for two years.~~
- ~~5. Transferred to the city in a form approved by 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 approved by the city attorney.~~
- ~~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.~~

M. 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 approved by the City Attorney and recorded against the property.~~

The agreement shall include, but not be limited to:

- ~~1. The property owner's artwork requirements~~
 - ~~2. The schedule for installing the artwork~~
 - ~~3. The penalties for the property owner's breach of the agreement~~
 - ~~4. The remedies for such breach~~
- ~~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~~

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~~construction costs of all buildings for each phase. The agreement shall be in a form approved by 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~~
- ~~c) The penalties for the property owner's breach of the agreement~~
- ~~d) The remedies for such breach~~

N. ADMINISTRATION OF ~~PUBLIC~~ ART IN PUBLIC AND PRIVATE DEVELOPMENT PLACES PROGRAM

The ~~administration of the Public Art in Public and Private Development Program~~ program shall be administered by ~~reside with~~ the PAC in coordination with the development services department and the finance department, ~~which shall have the following powers and duties:~~

~~1. To implement the Public Art Program ordinance in collaboration with the PAC, and to establish procedures for eligible projects.~~

~~2. To review with city staff eligible Public Art Program projects.~~

~~3.1. To determine how the Public The Art in Private and Public Development~~ pProgram funds will be spent for each project and a written report on those expenditures shall be prepared and submitted on an annual basis to the appropriate city staff and council and shall contain ~~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 and source of each expenditure ~~of such funding~~ for each specific ~~public~~ art project and location of each piece of artwork(s) purchased or commissioned with such funding; any unspent balance and the name and residence of each artist.

~~4.2. The PAC shall To determine the appropriate placement of artwork~~(s) commissioned or purchased under the Art in Private and Public Development program ~~Public Art Program~~ as well as artwork(s) accepted as gifts to the city.

~~5.3. The PAC shall To establish artist selection guidelines for the Art in Private and Public Development program~~ Public Art Program projects, including determining whether any selection will be made by open competition, limited entry (invitational) or direct selection.

~~6.4. The PAC shall oversee the maintenance To maintain of artwork~~(s) in the Art in Private and Public Development program ~~Public Art Program~~ collection.

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~~7.5.~~ The PAC shall ~~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 Art in Private and Public Development program ~~Public Art Program~~ funding.

N. INTERNAL CONTROLS:

~~6.~~ ~~4.~~ The city's finance director shall establish a segregated fund designated as the Art in Public Places Fund-APPF into which funds appropriated or derived from gifts or donations and developer in-lieu contributions for public art shall be deposited.

~~2.~~ ~~7.~~ For the budget year that the city council appropriates funding for the eligible public construction project and that the eligible project is instituted, the public art allocations shall be deposited into the Art in Public Places Fund-APPF in accordance with procedures established by the city's finance director. The deposited funds will include an inflation factor for the number of years that the project was in the Capital Improvements Program plan and not implemented. As individual public art projects generally span more than one fiscal year, funds will be available for successive fiscal years.

~~3.~~ ~~8.~~ Monies collected in the Art in Public Places Fund-APPF 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 PAC 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.

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