

## **Chapter 15.07 - EL MONTE ART IN PUBLIC PLACES PROGRAM**

### **15.07.010 - Program creation.**

This chapter may be known and cited as the "El Monte Art in Public Places Program." The intent of the Art in Public Places Program is to provide a collection of nationally recognized, permanent outdoor art work throughout the city of El Monte, to be of public benefit. The program is designed to present the community with a variety of art work styles and themes, all of the highest possible quality.

(Ord. 2642 § 1 (part), 2006)

### **15.07.020 - Definitions.**

As used in this chapter:

**"Advisory Committee"** means the Art in Public Places Advisory Committee organized pursuant to section 15.07.070 of this chapter.

**"Art Coordinator"** means a person designated by the Economic Development Director who shall review and evaluate all applications submitted pursuant to this chapter; work with project applicants to develop and refine art work proposals; and make recommendations to the Art in Public Places Advisory Committee.

**"Art work"** means original creations of art, including, but not limited to, the following categories; sculpture, murals, mosaic, and fountains. These categories may be realized through such mediums as steel, bronze, stained glass, concrete, wood, ceramic tile, and stone, as well as other materials deemed suitable under the program guidelines established by the Economic Development Director.

**"Development project"** and **"project"** means any construction, rehabilitation or renovation undertaking for which a building permit is required, including, but not limited to, construction, rehabilitation or renovation undertakings that are completed in multiple phases under separate building permits applied for within a twelve (12) month period commencing from the date that the first of the building permit is issued.

**"Planning Division"** means the El Monte Planning Division of the El Monte Economic Development Department.

**"Project"** means any undertaking that develops, erects, constructs, enlarges, alters, repairs, moves, improves, removes, converts or demolishes any real property and/or improvements.

**"Project cost"** means the total value of a development project, excluding the land value, whether or not the development project is undertaken (i) in a single phase under a single building permit; or (ii) in multiple phases under multiple building permits applied for within a twelve (12) month period commencing from the date that the first of the building permits is issued.

**"Public place"** means any exterior area on public or private property which is accessible and visible to the general public.

(Ord. 2642 § 1 (part), 2006; Ord. 2685 §§ 1, 2, 2007; Ord. No. 2883, §§ 2—4, 51, 6-21-2016)

**15.07.030 - Requirement to provide art work or pay in-lieu contribution.**

When a project is subject to the requirements of this chapter, the project applicant shall comply with provisions of either subsection A or B of this section or a combination of both:

- A. The project applicant shall acquire and install an art work in a public place on or in the vicinity of the project site as approved by the City Council pursuant to this chapter. The cost or value of such work as approved by the City Council shall equal or exceed the amount of an in-lieu contribution that would otherwise be made under subsection B of this section.
- B. In lieu of acquiring and installing an art work, project applicants may contribute funds to the art in public places fund established pursuant to Section 15.07.080 of this chapter equal to one percent of the total project cost. The in-lieu fee shall be paid by the project applicant before the issuance of building permits, unless otherwise provided by the City Council. Project applicants shall indicate on their art in public places application that they wish to make an in-lieu contribution.

(Ord. 2642 § 1 (part), 2006)

**15.07.040 - Project subject to art in public places requirement.**

- A. The requirements of this chapter shall apply to the following development projects:
  - 1. Commercial or industrial projects which incur project costs totaling more than five hundred thousand dollars (\$500,000.00), including, but not limited to, commercial or industrial development projects undertaken in multiple phases under separate building permits within a twelve (12) month period commencing from the date the first of the multiple building permits is issued;
  - 2. Development projects involving the new construction of four (4) or more residential dwelling units, including, but not limited to, development projects involving the new construction of four (4) or more residential dwelling units (i) within a single building, structure or mixed use development; (ii) within a planned unit development; or (iii) within a mixed-unit development.

For purposes of this section commercial or industrial development projects include, but are not limited to, the construction, rehabilitation and/or renovation of (i) multiple tenant developments; (ii) nonresidential portions of mixed-use developments; and (iii) buildings, facilities or other structures designed and approved for the following purposes: retail or wholesale; manufacturing; mechanical repair; office use; mini-mall; personal care facilities; entertainment; restaurant, dining or other food preparation; on-sale liquor establishment and off-sale liquor establishment; storage; agricultural; hotel, motel, motor hotel, inn, boarding house, or lodging house.

- B. Exceptions. The requirements of this chapter shall not apply to the following activities:
  - 1. All public work and governmental agency projects;
  - 2. Reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
  - 3. Religious, hospital, scientific, charitable organizations, public educational institutions (such as public primary and secondary schools, public colleges, public adult schools and the like) if the

project is constructed on property exempt from taxation pursuant to California Revenue and Taxation Code Section 214.

(Ord. 2685 § 3, 2007; Ord. 2642 § 1 (part), 2006)

**15.07.050 - Guidelines for art work.**

Subject to approval by the City Council, the El Monte Economic Development Department shall develop and establish guidelines for the construction, approval and maintenance of art works. For the purposes of this chapter such guidelines shall be referred to elsewhere in this chapter as the "city guidelines." The city guidelines shall include, but are not limited to, the following criteria;

- A. The art work shall be displayed in an area that is open and freely accessible to the public for at least ten (10) hours each day or displayed in a manner which otherwise provides public accessibility in an equivalent manner based on the characteristics of the art work or its placement on the site;
- B. The art in public places application shall include a site plan showing the location of the art work, complete with landscaping, lighting and other appropriate accessories to complement and protect the art work;
- C. The composition of the art work shall be of a permanent type of material in order to be durable against vandalism, theft and weather, and in order to require a low level of maintenance;
- D. The art work shall be related in terms of scale, materials, form and content to immediate and adjacent buildings and landscaping so that it complements the site and surrounding environment;
- E. The art work shall be designed and constructed by persons experienced in the production of such art work and recognized by critics and by his or her peers as one who produces works of art;
- F. The art work shall be permanently affixed to the property;
- G. The art work shall be maintained by the property owner in a safe, neat, clean and orderly manner acceptable to the city. The art work shall also be maintained in good repair;
- H. The art work installed on a project site shall remain the property of the project applicant. Art work installed on city property shall be the property of the city;
- I. Prior to the issuance of building permits, the property owner shall execute and record with the Registrar-Recorder/County Clerk for the county of Los Angeles, covenants, conditions and restriction in the form and content approved by the Economic Development Director and the City Attorney providing, among other things:
  - (1) That the property owner, its successor and assigns and all subsequent owners of the underlying real property shall maintain the art work as required by subsection G of this section;
  - (2) That the owner shall indemnify, defend and hold the city, its elected and appointed officials, officers, employees, volunteers and related parties harmless from any and all claims or liabilities arising out of the art work; and

(3) That owner shall provide the City Clerk's office with a certificate of public liability insurance naming the city as an additional insured including such coverage and liability limits as may be specified by the Economic Development Director.

J. The following items are not to be considered as art works:

1. Art objects which are mass produced from a standard design,
2. Reproductions of original art works,
3. Decorative, ornamental or functional elements which are designed by the building architect as opposed to an artist commissioned for the purpose of creating the art work,
4. Landscape architecture and landscape gardening except where these elements are designed or approved by the artist and are in integral part of the art work by the artist,
5. Services or utilities necessary to operate or maintain the art work.

(Ord. 2642 § 1 (part), 2006; Ord. No. 2883, §§ 5, 6, 6-21-2016)

**15.07.060 - Processing.**

The requirements and procedures for the processing of an art in public places application shall be as follows:

- A. Upon submission of a project application subject to the requirements of this chapter, the Planning Division shall provide the project applicant with a copy of the ordinance as codified in this chapter of the El Monte Municipal Code and an art in public places application form.
- B. The project applicant shall submit to the Planning Division a completed art in public places application form in a timely manner as set forth under the city guidelines.
- C. The Planning Division shall, upon receipt of the application, submit the application to the Art Coordinator. The Art Coordinator shall review each project applicant's initial art work proposal; work with each project applicant to modify and/or refine each art work proposal to ensure its conformity with the city guidelines and to maximize its aesthetic compatibility with its anticipated surroundings; and make recommendations on each art work application based on his or her determinations. The Art Coordinator, in consultation with Economic Development staff, shall also ascertain the required value of the art work and the required amount of in-lieu fees in the event the project applicant elects to pay such fees as an alternative to the installation of art work.
- D. Within sixty (60) days from the date the application is submitted to the Art Coordinator, the Art Coordinator shall submit to the Advisory Committee a written proposal based on the Art Coordinator's investigation and determinations and his or her consultations with the project applicant.
- E. Within thirty (30) days from the date upon which the Advisory Committee receives a recommended proposal from the Art Coordinator, the Advisory Committee shall review and comment upon the recommendation and in its sole and absolute discretion, formulate and make a recommendation of its own to the City Council. The Advisory Committee's failure to make a recommendation to the City Council within the time allotted shall result in the Art Coordinator's recommendation becoming the recommendation of the Advisory Committee.

- F. The City Council shall either approve the art work proposal as recommended by the Advisory Committee; approve the art work proposal subject to additional modifications and/or conditions acceptable to the project applicant; or deny the art work proposal. All City Council approvals shall be final.

If the City Council denies an initial art work proposal, the project applicant, within thirty (30) days of the denial, shall submit a written notice to the City Clerk indicating that the project applicant has elected: (1) to have the art work proposal reconsidered at the Advisory Committee level so that the Advisory Committee in consultation with the Art Coordinator and the project applicant may develop and submit a revised and reformulated proposal for City Council approval within thirty (30) days from the filing date of the project applicant's written request; or (2) to contribute appropriate funds into the art in public places fund in lieu of installing art work. Subject to the restrictions of subsection G of this section, a project applicant may make successive written requests to have a denied proposals reconsidered at the Advisory Committee level until a proposal acceptable to the City Council is developed. All written requests to have a revised proposal reconsidered at the Advisory Committee level shall be made within thirty (30) days from the date of a denial.

The City Council reserves the right to approve a revised and reformulated art work proposal as proposed; approve a revised and reformulated art work proposal subject to additional modifications and/or conditions acceptable to the project applicant; or deny such revised and reformulated proposals. Subject to the restrictions of subsection G of this section, denials of initial art work proposals or revised and reformulated art work proposals shall be final if the project applicant subsequently elects to contribute to the art in public places fund in lieu of installing art work; or upon the project applicant's failure to timely request that a denied proposal be reconsidered at the Advisory Committee level.

- G. When the project applicant has elected to acquire and install an art work, no building permit may be issued until the City Council has approved an art work proposal, and no certificate of occupancy shall be issued until the approved art work has been installed.
- H. In the event the City Council has approved an art work proposal but the art work itself cannot be completed before the completion of the overall private project, the project applicant may request that a certificate of occupancy be issued absent installation of the art work, provided the project application first submits to the El Monte Economic Development Department a cashier's check in an amount equivalent to the required value of the art work. The Economic Development Department shall hold the funds in trust until the art work is completed, permanently installed and inspected for compliance with this chapter. As an additional condition to the issuance of a certificate of occupancy pursuant to this subsection, the project applicant shall be required to execute a three (3) party written agreement between the project applicant, the proposed artist and the city of El Monte regarding the artist's payment plan, using the funds held in trust by the Economic Development Department. The agreement shall provide that the city will be authorized to determine the final location of the art work, should there be any complications over the arrangement. Should the art work not be installed after six (6) months from the issuance of a certificate of occupancy, the city shall control the decision-making regarding the funds in trust and completion of the public art work. Any project applicant who is issued a certificate of occupancy pursuant to this subsection, must install the approved art work no later than six (6) months from the date the certificate of occupancy is issued. Nothing in this subsection shall preclude the city from denying a certificate of occupancy pursuant to provisions of the El Monte Municipal Code and/or state law unrelated to the subject matter of this chapter.

- I. If the project applicant has elected to make an in-lieu contribution to the art in public places fund, no building permits shall be issued until such contribution has been paid.

(Ord. 2642 § 1 (part), 2006; Ord. No. 2883, §§ 7, 8, 6-21-2016)

**15.07.070 - Art in Public Places Advisory Committee.**

- A. The Art in Public Places Advisory Committee (the "Advisory Committee") is a review panel charged with reviewing art in public places applications; evaluating the art work recommendations of the Art Coordinator with the aim of insuring that all art work criteria established pursuant to this chapter, including the city guidelines, are met; and making recommendations to the City Council as to each art in public places application. The Advisory Committee shall review the applications and examine the proposals for public safety, weather resistance, balance within the program, verification of value, public response, proper lighting, public accessibility, installation methods, proportion, composition, the artist's previous experience on monumental scale sculpture, the artist's art training and exhibition record, and the art works aesthetic compatibility with its anticipated surrounds. The Committee, shall consist of:
  1. One representative member of the El Monte Planning Commission;
  2. One representative member of the El Monte Cultural Affairs Commission;
  3. One representative member of the El Monte Veterans and Homeless Affairs Commission; and
  4. Two (2) El Monte residents appointed by the City Council who shall serve as public representatives. Where commissioners are found to be inactive, a second member of the Planning Commission and/or an additional resident may be appointed.
- B. The five (5) commission representatives to the Advisory Committee shall be appointed by the Mayor, subject to approval by the City Council, pursuant to Government Code Section 40605. Members of the commissions shall be reappointed annually; residents shall be reappointed bi-annually.
- C. The El Monte Economic Development Department and the Art Coordinator shall be responsible for providing administrative, investigative and advisory support to the Advisory Committee. The presence of at least three (3) Advisory Committee members at any regular, adjourned or special meeting of the Advisory Committee shall constitute the minimum quorum necessary to conduct business and take action.

(Ord. 2642 § 1 (part), 2006; Ord. No. 2883, § 9, 6-21-2016)

**15.07.080 - Art in public places fund.**

- A. Accounting. Any moneys collected in accordance with the in-lieu contributions provisions of this chapter shall be deposited in a separate account denominated as the "Art in Public Places Fund." The El Monte Economic Development Department in cooperation with the El Monte Finance Division shall establish accounting records sufficient to identify and control these funds. The account containing these funds shall earn interest and the earned interest shall be used for and be subject to the same restrictions established in subsection B of this section.

- B. Use of Fund. The art in public places fund shall be used to provide sites for, and works of art in, public places in order to further the intent and purpose of this chapter as set forth in Section 15.07.010 of this chapter.
- C. Permissible Expenditures. Expenditures of funds shall be limited to the following uses:
1. The cost of art work and its installation;
  2. Waterworks, landscaping, lighting and other objects which are an integral part of the art work;
  3. Frames, mats, pedestals, and other objects necessary for the proper presentation of the art work;
  4. Walls, pools, landscaping or other architectural or landscape architectural elements necessary for the proper aesthetic and structural placement of the art work;
  5. Maintenance and repair of art works funded through the art in public places fund.
- D. Administration.
1. The art in public places fund shall be administered jointly by the El Monte Economic Development Department and the El Monte Finance Division.
  2. The Advisory Committee shall make recommendations to the City Council concerning the purchase or commissioning of art works with art in public places funds, including:
    - a. Places which should be considered for art work;
    - b. The medium of the proposed art work; and
    - c. The artist whose work should be considered for placement in the recommended location.
  3. Selection of artists and art works shall be based on the guidelines to be established pursuant to Section 15.07.050 of this chapter.
  4. The city will contract with the artist and with consultants as necessary for the purchase or commissioning as well as the execution and installation of the art work.
  5. On-site activity in connection with the art work installation shall be coordinated by the Economic Development Director or his or her designee under the supervision of the City Manager and the Assistant City Manager.
  6. Maintenance and repair of art work funded through the art in public places fund shall be financed from that account.
  7. So far as is practical, in the event repair of the art work is required, the city shall first give the artist the opportunity to do that work for a reasonable fee. In the event the artist is unable or refuses to make the repair for such a fee, the city may proceed to contract for such repair with another qualified artist.
- E. Endorsements. The art in public places fund shall also be used as a depository for endowments, bequests, grants or donations. Such sums may be expended as set forth in subsection C of this section as approved by the City Council.

(Ord. 2642 § 1 (part), 2006; Ord. No. 2883, §§ 10, 11, 6-21-2016)