



# Public Art Commission Agenda Report

ITEM NO. 3

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**DATE:** September 28, 2022  
**TO:** Public Art Commission  
**FROM:** Angelica Frausto-Lupo, Community Development Director  
**PREPARED BY:** Matt Chang, Planning Manager  
**SUBJECT:** Public Art Concept Approval Process

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## Recommendation

Receive staff's presentation and provide comments.

## Discussion

At the request of the Public Art Commission Chair, staff is placing an item in front of the Commission to discuss the South Pasadena Municipal Code (SPMC) requirements for the public art concept review process associated with development projects. The Municipal Code section, Public Art Program and Development (SPMC Sections 36.390 and 36.395) is provided as **Attachment 1**.

The SPMC states that:

*“Every new residential development of four or more units and every new commercial or industrial building project with a building valuation exceeding \$500,000 will be required to provide public artwork or dedicate funds to support public art. The public art program shall also apply to any remodeling project of existing commercial or industrial building and any residential building of four or more units or complex of four or more units, when the remodeling has a building valuation exceeding \$250,000”*

The Public Art Commission is the decision body for reviewing and approving public art associated with these development projects.

Staff will outline the Municipal Code review process at the meeting.

## Attachment

1. South Pasadena Municipal Code – Public Art Program and Development

# **ATTACHMENT 1**

South Pasadena Municipal Code – Public Art  
Program and Development

## Division 36.390. Public Art Program

### Sections:

[36.390.010 Purpose.](#)

[36.390.020 Definitions.](#)

[36.390.030 Public Art Work at City-Owned Facilities.](#)

[36.390.040 Establishment of Public Art Program Fund.](#)

[36.390.050 Use of Funds.](#)

[36.390.060 Artwork Review Process.](#)

[36.390.070 Ownership of Art.](#)

### 36.390.010 Purpose.

The purpose of the public art program is to promote cultural experiences, increase economic [development](#), and enhance the general welfare and quality of life in the community. The public art program will achieve this purpose through the exhibition of high quality artwork and the creation of programs that promote art to the general public. (Ord. No. 2325 § 1 (part), 2018.)

### 36.390.020 Definitions.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. “Artwork” means an original creation of physical art by an artist; and includes but is not limited to a fountain, mobile, mosaic, mural, painting, sculpture, or tapestry. Artwork may be realized through media including but not limited to bronze, ceramic tile, concrete, stained glass, steel, or wood. An artwork shall not include objects that are mass produced with a standard design, signage, or landscape gardening.
- B. “Building valuation” means the value computed by the [Building Official](#) using the latest building valuation data as set forth by the International Conference of [Building Officials](#).
- C. “[Development](#) project” means a new residential [development](#) of four or more units, a new commercial or industrial building [project](#) with a building valuation exceeding \$500,000 as determined by the [Building Official](#), any remodeling [project](#) of an existing commercial or industrial building, and any residential building of four or more units or complex of four or more units when the nonexempt portion of the remodeling [project](#) has a building valuation exceeding \$250,000 as determined by the [Building Official](#).
- D. “Public art [development](#) fee” means a fee paid to the [City](#)’s public art fund by a [development](#) project [applicant](#) in an amount equal to one and one-half percent of the total building valuation for

the [project](#) excluding land acquisition, [off-site](#) improvement expenses, interior improvements, parking facilities, and public facilities.

E. “Public art” means any artwork installed on private property in a publicly accessible location as established by the public art program or artwork displayed on City-owned facilities.

F. “Publicly accessible” means located on an area open to the general public and clearly visible from an adjacent public property such as a sidewalk or [street](#). (Ord. No. 2325 § 1 (part), 2018.)

#### 36.390.030 Public Artwork at City-Owned Facilities.

City-owned facilities that are publicly accessible during regular business hours or that are visible from the public right-of-way are eligible for the display of public artwork. Any art proposed to be donated or installed in or on City-owned facilities will be reviewed by the Public Art [Commission](#). (Ord. No. 2325 § 1 (part), 2018.)

#### 36.390.040 Establishment of a Public Art Program Fund.

The [City](#)’s Finance [Director](#) shall establish a depository hereunder for the public art [development](#) fee within a designated public art fund specifically for said fees to account for any fees for the public art program paid pursuant to this chapter. The public art fund shall be accounted for separately and shall not be used for general governmental purposes. The public art fund shall be maintained by the [City](#) Finance [Director](#), and shall be allocated as follows:

A. Eighty percent solely for [project](#) costs, including fees for design, acquisition, commissioning, placement, installation, exhibition, improvement, maintenance, and insurance of public artwork.

B. Twenty percent for administrative costs, including [project](#) administration, staff time, artist selection, design, drawing, maquette, community education, insurance, maintenance, curatorial services, identifying plaques, documentation, and publicity. (Ord. No. 2325 § 1 (part), 2018.)

#### 36.390.050 Use of Funds.

[Projects](#) to be funded from the designated public art fund shall consist of artwork placed in public places or incorporated into public buildings, art education programs, public art display programs or performances, or the allocation of space such as a civic [gallery](#) or theater space as recommended by the Public Art [Commission](#) and approved or accepted by the [City](#) Council. (Ord. No. 2325 § 1 (part), 2018.)

#### 36.390.060 Artwork Review Process.

The Public Art [Commission](#), as appointed by the [City](#) Council, shall review procedures for the selection of locations of public art displays, art to be purchased or commissioned for display, review and [approval](#) of proposed public art

work, and for the selection of public performers on behalf of the [City](#)'s public art program. (Ord. No. 2325 § 1 (part), 2018.)

#### 36.390.070 Ownership of Art.

All artwork purchased or created from the public art fund shall become the property of the [City](#) upon acceptance by the [City](#) Council. (Ord. No. 2325 § 1 (part), 2018.)

### Division 36.395. Public Art Development

#### Sections:

- 36.395.010 Percentage for Public Art for Development Projects.
- 36.395.020 Exempt Developments.
- 36.395.030 Allocation.
- 36.395.040 Satisfaction of Requirement.
- 36.395.050 Public Art Consultant.
- 36.395.060 Public Art Concept Approval Process.
- 36.395.070 Public Art Final Approval Process.
- 36.395.080 Ownership and Maintenance Cost of On-Site Public Art.
- 36.395.090 Removal or Alteration of Public Artwork on Private Property.

#### 36.395.010 Percentage for Public Art for Development Projects.

Every new residential [development](#) of four or more units and every new commercial or industrial building [project](#) with a building valuation exceeding \$500,000 will be required to provide public artwork or dedicate funds to support public art. The public art program shall also apply to any remodeling [project](#) of existing commercial or industrial buildings and any residential building of four or more units or complex of four or more units, when the remodeling has a building valuation exceeding \$250,000. (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.020 Exempt Developments.

The following [developments](#) or modifications, [alterations](#), and additions to the [developments](#) are exempt from this division: affordable [housing units](#), performing arts facilities, [museums](#), private nonprofit and institutional [uses](#), interior remodel or tenant improvements, seismic reinforcement, and rebuilding necessitated by a natural disaster. (Ord. No. 2325 § 2 (part), 2018; Ord. No. 2358 § 2, 2021.)

#### 36.395.030 Allocation.

The valuation of the percentage for public art [development](#), as provided for in SPMC [36.395.010](#), shall be based on a percentage of the building cost in an amount equal to one percent or more of the total building valuation for

the **project** if the **project** is being built on **site** and one and one-half percent if the **developer** will be paying the public art **development** fee in lieu of providing public art on **site**, excluding land acquisition, **off-site** improvement expenses, interior improvements, parking facilities, and public facilities. (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.040 Satisfaction of Requirement.

**Development** projects subject to the public art program may satisfy the requirement through:

A. Installation of approved site-specific public artwork, cultural, or artistic facilities equal to or exceeding the value of the contribution amount; or

B. Payment in lieu of the one and one-half percent **development** fee to a new public art fund.

1. Payment of the public art **development** fee will be collected in two installments: (a) 50 percent of the total public art **development** fee shall be collected prior to issuing the **building permits**; and (b) 50 percent of the total public art **development** fee shall be collected prior to final inspection or issuing the certificate of **occupancy**.

C. No final **approval**, such as final inspection or a certificate of **occupancy**, for any **development** project subject to this division shall be granted or issued unless and until full compliance with the public art program is achieved.

D. The **applicant** must certify that any artwork donated or purchased is free and clear of all liens, claims, encumbrances, and restrictions. The **applicant** must also certify that no portion of the artwork has been exported from its country of origin in violation of laws of that country in effect at the time of export, nor imported into the United States in violation of United States laws and treaties in effect at the time of import. The **applicant** must represent and warrant that no tax laws, laws of inheritance, or other laws or regulations applicable to the artwork have been broken. The **applicant** agrees to indemnify, defend, and hold harmless the **City** from and against any and all claims, damages, loss, and expenses relating to the break or alleged break of any of the **applicant's** obligations, representations, or warranties herein, and relating to the claims of third parties or challenging the title to the artwork or any intellectual rights or copyright for the artwork transferred and conveyed to the **City**. (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.050 Public Art Consultant.

For public art **projects** developed on **site**, the **developer** must contract the services of a professional art consultant experienced in working with municipal art programs for any public art **project** valued at more than \$25,000 (if not paid in lieu). (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.060 Public Art Concept Approval Process.

For public art [projects](#) developed on [site](#), prior to the associated entitlement review for a [development](#) project an application for public art concept review shall be submitted to the Public Art [Commission](#) and shall include:

- A. Completed public art application; and
- B. Preliminary sketches, photographs, or other documentation to provide sufficient clarity of the nature of the proposed artwork; and
- C. Preliminary plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed [development](#), and its compatibility with the proposed [development](#), including compatibility with the character of the adjacent conforming developed [parcels](#) and existing neighborhood if necessary to evaluate the proposal; and
- D. A narrative statement to be submitted to demonstrate that the artwork will be displayed in an area open and freely available to the general public; and
- E. A maintenance plan describing the required maintenance and costs to preserve the artwork in good condition.

The Public Art [Commission](#)'s concept review shall be provided to the entitlement review body(ies) for consideration during the [approval](#) process. (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.070 Public Art Final Approval Process.

For public art [projects](#) developed on [site](#), following the entitlement [approval](#) process for a [development](#) project, an application for final public art [approval](#) shall be submitted to the Public Art [Commission](#) and shall include:

- A. Completed public art application; and
- B. Finalized sketches, photographs, or other documentation to provide sufficient clarity of the nature of the proposed artwork; and
- C. An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs; and
- D. Written agreement executed by or on behalf of the artist who created or is creating the artwork which expressly waives their rights under the California Art Preservation Act or other applicable laws; and
- E. Finalized plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed [development](#), and its compatibility with the proposed [development](#), including compatibility with the character of the adjacent conforming developed [parcels](#) and existing neighborhood if necessary to evaluate the proposal; and

F. A narrative statement to be submitted to demonstrate that the artwork will be displayed in an area open and freely available to the general public at least 10 hours each day, or otherwise is publicly accessible in an equivalent manner based on the characteristics of the artwork or its placement on the [site](#); and

G. A maintenance plan describing the required maintenance and costs to preserve the artwork in good condition.

Completed applications shall be submitted to staff for the Public Art [Commission](#)'s review and [approval](#). [Building permits](#) shall not be issued until final [approval](#) has been granted by the Public Art [Commission](#). (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.080 Ownership and Maintenance Cost of On-Site Public Art.

Any artwork associated with the public art program that is included on [site](#) for an [applicant](#)'s [project](#) shall remain on the property of the [applicant](#); the obligation to provide all maintenance to preserve the artwork in good condition will remain with the owner of the [site](#). Maintenance of artwork shall include without limitation preservation of the artwork in good condition, protection of the artwork against physical defacement, mutilation or [alteration](#), and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by the [City](#) Attorney. Prior to placement of an approved artwork, the [applicant](#) and owner of the [site](#) shall execute and record a covenant in a form approved by the [City](#) for maintenance of the artwork. Failure to properly maintain the artwork is hereby declared a public nuisance. In addition to all remedies provided by law, in the event the real property owner fails to maintain the artwork, upon reasonable notice, the [City](#) may perform necessary repairs or maintenance or secure insurance, and the costs therefor shall become a lien against the real property. (Ord. No. 2325 § 2 (part), 2018.)

#### 36.395.090 Removal or Alteration of Public Artwork on Private Property.

Public artwork installed on private property to satisfy the public art [development](#) requirement shall not be removed or altered without the prior [approval](#) of the [City](#) Council. In addition to any other applicable penalty, violation of this section may render the property owner liable for payment of the one and one-half percent [development](#) fee to the public art fund and may result in revocation of the [occupancy](#) permit issued for the subject [development](#) project. Prior to any imposition of the one and one-half percent [development](#) fee to the public art fund or [occupancy](#) permit revocation pursuant to this section, the [City](#) shall afford the property owner notice and an opportunity for a hearing. (Ord. No. 2325 § 2 (part), 2018.)