

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTER 17.60 "ART IN PUBLIC PLACES PROGRAM" OF TITLE 17 "ZONING" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

**WHEREAS**, Desert Hot Springs Municipal Code ("DHSMC") Chapter 17.60 establishes the City of Desert Hot Springs' ("City") "Art in Public Places" program, whereby developers of residential and commercial development projects located in the City, in order to obtain certain entitlements, are required to acquire and install public art on or in the vicinity of development sites, or in some cases to make a monetary contribution to the City's "Art in Public Places Fund" in lieu thereof; and

**WHEREAS**, DHSMC Chapter 17.60 does not yet expressly apply to industrial development projects; and

**WHEREAS**, the City is currently experiencing a significant amount of industrial development; and

**WHEREAS**, the City Council desires to amend Chapter 17.60 to render it expressly applicable to industrial development projects in order to maximize the potential to cause new artwork to be created and installed throughout the City, thereby improving the City's overall aesthetic value.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Desert Hot Springs as follows:

**Section 1. RECITALS**

That the above recitals are true and correct and are incorporated as though fully set forth herein.

**Section 2. AMENDMENT TO TITLE 17, CHAPTER 17.60 OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 17.60 ("Art in Public Places Program") of Title 17 ("Zoning") of the Desert Hot Springs Municipal Code shall be amended to read as follows:

**17.60.010 Intent.**

The purpose of this chapter is to:

- A. Promote the public interest and general welfare through the acquisition and installation of public art.
- B. Promote the public interest and general welfare by enhancing the City's aesthetic environment through public art.
- C. Establish requirements and procedures for developer contributions to public art.
- D. Provide funding to support the acquisition and installation of public art.

### **17.60.020 Definitions.**

For the purposes of this chapter, unless otherwise apparent from the context, the following definitions shall apply:

“Applicant” means a developer of a development project subject to provisions of this chapter.

“Art” or “public art” or “public art project” means an original creation of art that is designed by a professional visual artist or artists. Art includes, but is not limited to, sculpture, mural or portable painting, earthwork, fiber-work, mosaic, photograph, print, calligraphy, any combination of forms of media, furnishings or fixtures.

“Artist” means any person who engages in an activity defined as an art, public art or public art project pursuant to this chapter.

“Building valuation” means the value of the building or other construction project based on the Building Official’s estimate of the development project valuation, computed using the latest building valuation data as set forth in International Conference of Building Officials, unless in the opinion of the Building Official, a different valuation is appropriate for particular projects.

“City” means the City of Desert Hot Springs.

“City Council” means the City Council of the City of Desert Hot Springs.

“City Manager” means the City Manager of the City or his/her designee.

“Community and Cultural Affairs Commission” means the Desert Hot Springs Community and Cultural Affairs Commission established pursuant to Chapter 2.44 of the City of Desert Hot Springs Municipal Code.

“Development project” means all physical changes and improvements needed to complete a new residential, ~~or commercial,~~ ***or industrial*** project in the City. Such physical changes shall include the construction of new structures and buildings, expansion, remodeling or tenant improvement of any existing building or structure. For purposes of this chapter, “development project” specifically excludes the expansion, remodeling or tenant improvement of any existing commercial building or structure, valued at less than \$100,000.

“Financial security” means cash or bond.

“Freely available” means that the art is accessible to the public for viewing, in a direct line of sight, for a period of 10 hours per day, 7 days per week, with the option of excluding national holidays.

### **17.60.030 Development projects subject to public art contribution.**

A. The requirements of this chapter shall apply to development projects as follows:

1. All residential development projects (that is, development projects designed to be used as homes for human habitation), where 3 or more individual residential units are being built concurrently in the same tract by the same owner. "Individual residential unit" is defined as 1 single-family dwelling or 1 unit in a multifamily residential development.

2. All commercial development projects (that is, development projects other than residential, ***industrial*** or public building) excluding expansion, remodeling or tenant improvement of any existing commercial building or structure, valued at less than \$100,000.

**3. All industrial development projects located in any industrial zone excluding expansion, remodeling or tenant improvement of any existing industrial building or structure, valued at less than \$100,000.**

B. Nothing contained in this chapter shall prevent the City Council from imposing requirements for inclusion of public art in particular projects not subject to the requirements of this chapter, pursuant to conditions imposed upon a particular discretionary approval, where it is determined that facts particular to the proposed development warrant such imposition.

#### **17.60.040 Final City approval.**

A. No certificate of occupancy for any development project subject to this chapter shall be granted or issued, unless and until full compliance with the Art in Public Places Program is achieved in 1 or more of the following methods:

1. The approved public art has been placed in a manner satisfactory to the City Council, after consideration of the Community and Cultural Affairs Commission's recommendation. Placement of public art shall be completed prior to the final inspection and issuance of a certificate of occupancy.

2. In-lieu public fees have been paid, if applicable pursuant to Section 17.60.050.

3. Financial security in an amount equal to the acquisition and installation costs of an approved public art, in a form approved by the City Attorney, has been posted. This option is available when an applicant or developer is not certain whether to contribute to the City's Art in Public Places Fund or to obtain approval of a public art. In such cases, the City Manager shall require the applicant to provide the security in the amount of funds required by this chapter for the project into the City's Art in Public Places Fund for a period of time not to exceed 1 year after the issuance of any building permit. This option will allow an applicant additional time to determine the desired alternative for compliance with the City's Art in Public Places Program requirements. The developer is, however, required to make the determination and either pay the in-lieu fee, if applicable, or place or donate the public art, as provided by this chapter.

4. Donation of an approved public art has been accepted by the City Council.

5. In cases where approved public art is placed on private property pursuant to this chapter, the applicant or developer shall execute and record a covenant with the Riverside County Recorder, which sets forth the applicant's obligations to comply with the Art in Public Places Program. The covenant shall be recorded prior to the request for final construction inspections and the issuance of a Certificate of Occupancy.

B. For the purposes of subsection A of this section, full compliance with the Art in Public Places Program shall not be found until the entire Art in Public Places Program contribution required pursuant to Section 17.60.050 for the development project has been satisfied.

**17.60.050 Art in Public Places Program contribution requirements.**

A. Public Art Requirement. The developer shall acquire and install public art on or in the vicinity of the development site, in accordance with provisions of this chapter. The value of the public art shall be at least as follows:

1. Residential Development Project. The value of the public art shall equal 0.5% of the residential development project's building valuation (exclusive of land).

2. Commercial Development Project. The value of the public art shall equal 0.75% of the commercial development project's building valuation (exclusive of land).

**3. Industrial Development Project. The value of the public art shall equal 0.75% of the industrial development project's building valuation (exclusive of land).**

Any such public art shall be subject to the approval of the City Council, after receiving a recommendation from the Community and Cultural Affairs Commission. As an alternative the developer may elect to donate public art to the City for placement on public property pursuant to Section 17.60.110.

B. Monetary Contribution In-Lieu of Public Art. In the event that the value of the public art, as required by subsection A of this section, is \$20,000 or less, the developer may elect to make a monetary contribution to the City as follows:

1. Residential Development Project. In the amount equal to 0.5% of the residential development project's building valuation (exclusive of land).

2. Commercial Development Project. In the amount equal to 0.75% of the commercial development project's building valuation (exclusive of land).

**3. Industrial Development Project. In the amount equal to 0.75% of the industrial development project's building valuation (exclusive of land).**

C. Nothing in this section shall prohibit the applicant from placing an approved public art with acquisition and installation costs in an amount less than the Art in Public Places Program allocations, where the 0.5%, or 0.75%, ~~or 1%~~, as required and provided in subsection A of this section, value of the public art

exceeds \$20,000 and provided that the developer shall also pay into the Art in Public Places Fund an amount equal to the difference between the Art in Public Places Program allocation and the costs of acquisition and installation of such public art.

**17.60.060 Art in Public Places Fund.**

A. Establishment of Art in Public Places Fund. There is hereby created a fund to be known as the Art in Public Places Fund into which shall be deposited all fees paid pursuant to this chapter.

B. Purpose of the Funds Collected. The funds collected pursuant to subsection B of Section 17.60.050 shall be used for the acquisition, installation, improvements—including site preparation, lighting and landscaping—of public art in order to further the intent of this chapter, and to administer the Art in Public Places Program.

C. Use of the Funds Collected. The Community and Cultural Affairs Commission shall make recommendations to the City Council regarding the proposed use of the funds collected pursuant to this chapter. The City Council shall have the sole authority to appropriate for expenditure the use of such funds. The City Manager shall include in the annual budget and/or the Five-Year Capital Improvement Program the proposed use of funds collected pursuant to this chapter.

D. Records and Accounting. The City Manager or designee shall establish accounting records sufficient to identify and control the funds collected pursuant to this chapter.

E. Administrative Costs. No more than 25% of the funds collected pursuant to this chapter for each public art project shall be used to pay administrative costs, including the processing of the public art applications, reviewing and approving public art sites and art works, monitoring, compliance, and any other administrative task.

F. Program Administrative Costs. Of the administrative costs set forth in subsection E of this section, up to 2% may be used to pay program administrative costs, including costs associated with collecting in-lieu fees, recordkeeping, reporting, and general administration of the Public Arts Program.

**17.60.070 General procedures for implementing Art in Public Places Program.**

A. The decision maker or decision making body on any development project subject to requirements of this chapter shall find that the project as proposed complies with the provisions of this chapter.

B. Public Art Program Submittal. In conjunction with submittal of application(s) for the approval of a development project subject to this chapter, the applicant shall submit a public art compliance report to the City Manager. The public art compliance report shall specify:

1. The total building valuation of the project, provided by the City's Building Official and the calculation of the value of the applicant's required public art project;

2. The location of the public art project site or the reservation of a public art site, or whether applicant would like to donate the public art to the City for placement on public property; and

3. If eligible pursuant to Section 17.60.050, whether the applicant has elected to satisfy its public art contribution obligation through a public art contribution or through the payment of a fee in-lieu thereof.

C. Timing of Public Art In-Lieu Contribution. If payment of in-lieu fee is applicable to the development project as specified in Section 17.60.050 and the applicant elects to make the public art in-lieu contribution, a requirement that public art in-lieu contribution payment be made prior to issuance of any building permit in the project based on building valuation for the particular building for which the building permit is sought.

#### **17.60.080 Application procedures for placement of art on private property.**

An application for placement of public art on private property shall be submitted to the City Manager and shall include the following information, at minimum:

A. Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;

B. An appraisal or other evidence of the value of the proposed public art, including acquisition and installation costs;

C. Preliminary plans containing such detailed information as may be required by the City Manager to adequately evaluate the location of the public art in relation to the proposed development, and its compatibility with the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhood, if necessary to evaluate the proposal; and

D. A narrative proposal with elevations, site plans, lines of sight studies, renderings and other descriptive materials, as deemed necessary by the City Manager, to be submitted to the Community and Cultural Affairs Commission to demonstrate that the public art will be displayed in an area open and freely available to the general public or otherwise provide public accessibility in an equivalent manner based on the characteristics of the public art or its placement on the site.

#### **17.60.090 Review and approval for placement of public art on private property.**

A. Review by City Manager. Except as provided in subsection B of this section, completed applications shall be submitted to the City Manager for review and approval of the public art, considering the aesthetic quality and harmony of the public art with the existing on-site improvements, and the proposed location of and public accessibility to the art.

B. Review by Community and Cultural Affairs Commission. The Community and Cultural Affairs Commission shall review and consider the completed application, together with the recommendation of the City Manager, and make a recommendation to approve, conditionally approve or deny the proposed public art, and its proposed location, considering the aesthetic quality and harmony with the proposed project, and the public accessibility to the public art.

1. If the applicant proposes significant revisions to the public art, a revised application shall be submitted to the City Manager for review and recommendation to the Community and Cultural Affairs Commission. The Community and Cultural Affairs Commission shall make a recommendation to the City Council whether to approve, conditionally approve or deny the requested revision.

2. If the applicant proposes, or the Community and Cultural Affairs Commission recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to receipt of the City Manager's recommendation, the revised application may be returned to the Community and Cultural Affairs Commission for further review and recommendation to the City Council.

3. Any person may seek review of the decision made by the Community and Cultural Affairs Commission pursuant to subsection B of this section, by filing an appeal pursuant to Section 17.60.160.

C. Review by the City Council. The Community and Cultural Affairs Commission's recommendation to approve or conditionally approve an application for placement of public art on a private property shall be forwarded to the City Council, which shall have the sole authority to approve, conditionally approve or deny the application.

**17.60.100 Application procedure for acceptance of public art donated to the City.**

An application for acceptance of public art to be donated to the City for placement on public property shall be submitted to the City Manager, and shall include the following information, at minimum:

A. Preliminary sketches, photographs, models, site plan, lines of sight, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;

B. An appraisal or other evidence of the value of the proposed public art, including acquisition and installation costs;

C. A written agreement, in form approved by the City Attorney, executed by or on behalf of the artist who created the art, which expressly waives his/her rights under the California Art Preservation Act or other applicable law; and

D. Other information as may be required by the Community and Cultural Affairs Commission to adequately evaluate the proposed donation of public art.

**17.60.110 Review and approval of application for acceptance of public art donated to the City.**

A. In the event developer elects to donate the public art to the City, prior to the issuance of grading and building permits, the developer shall submit to the City Manager an application for acceptance of public art donated to the City for review and recommendation to the Community and Cultural Affairs Commission. The City encourages the applicant to submit an application prior to the development of the architect's schematic design. The Community and Cultural Affairs Commission shall review, consider and make a recommendation to the City Council to approve, conditionally approve or deny the application for donation of public art.

B. Community and Cultural Affairs Commission recommendations shall be forwarded to the City Council, which shall have the sole authority to accept or reject or conditionally accept the donation.

**17.60.120 Ownership and maintenance of public art.**

A. All public art placed on the site of the development project shall remain the property of the applicant or developer and the obligation to provide all maintenance necessary to preserve the public art in good condition shall remain with the owner of the site.

B. "Maintenance of public art," as used in this chapter, shall include without limitation, preservation of the public art in good condition to the satisfaction of the City Manager, protection of the public art 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 Risk Manager. Prior to placement of an approved public art, an applicant and owner of the site shall execute and record a covenant, agreement or other instrument, in a form approved by the City Attorney for maintenance of the public art. Failure to maintain the public art as provided in this chapter is declared to be a public nuisance and may be abated as such pursuant to applicable provisions of City of Desert Hot Springs Municipal Code.

C. In addition to all other remedies provided by law, in the event the developer or property owner fails to maintain the public art, upon reasonable notice, the City may perform all necessary repairs, maintenance or secure insurance, and the costs therefor shall become a lien against the real property if not paid upon request by the City.

D. All public art donated to the City shall become the property of the City upon acceptance by the City Council.

**17.60.130 Annual report by CCAC concerning art on public property.**

A. The Community and Cultural Affairs Commission shall prepare an annual plan for the Art in Public Places Program.

B. The Community and Cultural Affairs Commission may recommend to the City Council the purchase of public art to be displayed on public property. The recommendation shall include the type of public art considered, an analysis of

the constraints applicable to placement of the public art on a site, the need for and practicality of the maintenance of the public art, and the costs of acquisition and installation of the public art.

**17.60.140 Removal or alteration of art.**

If any public art provided on a development project pursuant to the provisions of this chapter is knowingly removed by the property owner without the approval of the City Council, the owner of the property shall contribute funds equal to the development project's original public art requirement to the City's Art in Public Places Fund, or replace the removed public art with one which is of comparable value, which shall be reviewed by the Community and Cultural Affairs Commission, and approved by the City Council.

**17.60.150 Return of Art in Public Places Fund fees.**

A. Fees paid into the City's Art in Public Places Fund which are not committed within 5 years from the date of payment may be returned to the then current owner of the development project, with all interest actually earned thereon, if a written request for return is filed with the City's Director of Finance during the 5th year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the new development for which the fee was paid, and a statement that the applicant is the payer of the fees or the current owner of the development project.

B. The City Council shall determine if return of the then uncommitted portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any 1 of the following applies:

1. The City Council finds the fee is needed for the Art in Public Places Program.
2. Moneys were not posted as fees, but were satisfied by bond or other instrument taken to secure payment at a future date.
3. The administrative costs of refunding uncommitted fees pursuant to this chapter exceeds the amount to be refunded; provided notice of a public hearing on this issue has been published and posted on the site of the development project in not less than 3 places.

**17.60.160 Appeals.**

Any person may seek review of a decision of the Community and Cultural Affairs Commission by filing a written appeal with the City Clerk's Office within 15 days of the decision by the Community and Cultural Affairs Commission. The appeals shall be heard by the City Council.

**Section 3. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions,

sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

**Section 4. REPEAL OF CONFLICTING PROVISIONS**

All the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

**Section 5. AMENDING OF BAIL SCHEDULE**

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

**Section 6. CEQA EXEMPTION**

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines for California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3), because this projects does not have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**Section 7. EFFECTIVE DATE**

This ordinance shall take effect thirty (30) days after its second reading.

**Section 8. CERTIFICATION**

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

**PASSED AND ADOPTED** by the City Council of the City of Desert Hot Springs at a regular meeting held on the 17th day of January, 2017 by the following vote:

**AYES:** 5 – Betts; McKee; Parks; Zavala; and Mayor Matas.

**NOES:** None.

**ABSTAIN:** None.

**ABSENT:** None.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED:**

\_\_\_\_\_  
Scott Matas, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney