

ORDINANCE NO.1372 (2000 Series)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS
OBISPO RELATING TO PUBLIC ART IN PRIVATE DEVELOPMENT**

WHEREAS, the City of San Luis Obispo desires to provide opportunities the general public to experience quality works of art by facilitating the acquisition, display and development of such works of art in places where they may be experienced by large numbers of people; and

WHEREAS, balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values; and

WHEREAS, the Land Use Element of the General Plan states that “The City will encourage inclusion of appropriate public art in all projects;” and

WHEREAS, the City of San Luis Obispo has adopted a policy which requires one percent of all eligible municipally funded capital projects be contributed toward public art; and

WHEREAS, the City of San Luis Obispo desires to further enhance the aesthetic environment of the City by requiring private property owners and developers to incorporate works of art in new developments and substantially improved developments in the City, or as a voluntary measure in lieu thereof, to donate public art or funds for public art; and

WHEREAS, such works of art will be of intrinsic value to the developments in which they are located; and

WHEREAS, City of San Luis Obispo desires to adopt an ordinance relating to public art in private development.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Chapter 17.98 shall be added to the Municipal Code and shall read as follows:

Public Art Requirements for Private Development

17.98.010 Purpose

The City of San Luis Obispo wishes to enhance the cultural and aesthetic environment of the City, and to encourage creativity and an appreciation of the arts and our cultural heritage. Through the establishment of a program of public art funded by private development, the City will promote the general welfare through balancing the community’s physical growth and revitalization with its cultural and artistic resources.

17.98.020 Definitions

A. “Art in Public Places”, as used in this Chapter, shall mean public art installed either on or off-site, as part of new development, in conformance with the standards set forth in this Chapter.

B. “Non-residential development,” as used in this Chapter, shall mean the construction of commercial, mixed use, office and industrial projects, which are not intended for residential purposes.

C. “Public art,” as used in this Chapter, shall include, but not be limited to, sculpture, monuments, murals, frescoes, bas-relief, mobiles, drawings, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, ceramics, carving and stained glass located in or on a public place. It does not include landscaping, paving, architectural ornamentation or signs as defined by Chapter 15.40 of the Municipal Code.

D. “Public Art Coordinator,” as used in this Chapter, shall mean that City employee designated by the City Administrative Officer to be responsible for the City’s Visual Arts in Public Places program.

E. “Public Art Jury,” as used in this Chapter, shall mean an appointed jury of no less than five (5) City residents including, but not limited to, as appropriate, a board member from the San Luis Obispo County Arts Council, an artist, a business representative, an educator/historian and a City or Advisory Body representative.

F. “Public place,” as used in this Chapter, shall mean City or privately owned land or buildings which are open to the general public on a consistent basis and which are also places of high visibility to the general public.

G. “Total construction costs,” as used in this Chapter, shall mean the valuation of the proposed structures or improvements, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).

17.98.030 Public Art Account

There shall be an account designated for public art, into which shall be deposited all fees paid pursuant to this Chapter. This account shall be maintained by the City Finance Director and shall be used for the acquisition, installation, and improvement of public art in the City.

17.98.040 Applicability

The program described in this Chapter is a mandatory program and the standards specified are minimum standards for compliance. Participation in the program by itself does not qualify project applicants for consideration of increased project density/intensity as discussed in the Land Use Element of the City of San Luis Obispo General Plan.

- A. This chapter shall apply to all new non-residential development, as defined in this Chapter, having a total construction cost of \$100,000 or more, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).
- B. This chapter shall apply to all expansion of, remodeling of or tenant improvements to existing eligible buildings when any such work has a total construction cost of \$100,000 or more, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).

17.98.050 Exceptions

The following development activities shall be exempt from the requirements of Section 17.98.040:

- A. Construction, repair or alteration of buildings to carry out rehabilitation of private property if that rehabilitation is primarily financed with public funds.
- B. Construction, repair or alteration of buildings to meet City-mandated seismic rehabilitation or fire lateral replacement.

17.98.060 Public Art Contribution

- A. The project applicant shall acquire and install public art approved by a public art jury and the Architectural Review Commission in a public place on or in the vicinity of the development project site. The minimum cost of the public art, including installation, shall be determined by the following allocation:
 - 1. An amount equal to one-half of one percent (.5%) of that portion of the total construction costs in excess of (\$100,000), for each building permit, computed using the latest Building Valuation Data as set forth in the Uniform Building Code (UBC) unless, in the opinion of the City's Chief Building Official, a different valuation measure should be used.
 - 2. Should a project consist of multiple buildings with separate building permits, at the City's option, arrangements may be made to combine the public art requirements in an appropriate manner.

3. In no event shall the required cost for public art under this program exceed fifty thousand dollars (\$50,000) per building permit.
- B. As an option, the project applicant may acquire and install public art, approved by a public art jury and the Architectural Review Commission and accepted by the City Council, in a City-owned public place not located at the development site. Cost of the public art shall be determined by the allocations set forth in Subsection A of this Section. Such public art shall be considered a donation to the City of San Luis Obispo.
- C. In lieu of placement of approved public art, the applicant may pay as a voluntary alternative, to a Public Art In-Lieu Account an amount equal to the program allocation set forth in Subsection A of this Section.

17.98.070 Application Procedures for Placement of Required Public Art on Private Property

An application for placement of public art on private property shall be submitted to the Community Development Director and shall include:

- 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 artwork, including acquisition and installation costs;
- C. Preliminary plans containing such detailed information as may be required by a public art jury and the Architectural Review Commission to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods;
- D. A narrative statement to be submitted to the Community Development Director to demonstrate that the public art will be displayed in an area open and freely available to the general public, or that public accessibility will be provided in an equivalent manner based on the characteristics of the artwork or its placement on the site.

17.98.080 Approval for Placement of Public Art on Private Property

- A. Applications completed in accordance with Section 17.98.070 shall be submitted to the Community Development Director for review and approval of the public art in accordance with this Chapter.
- B. The Community Development Director shall forward the completed application to the Public Art Coordinator who shall convene a public art jury to review the proposed public art using adopted public art evaluation criteria.

- C. Upon recommendation of the public art jury, the public art application shall be reviewed by the Architectural Review Commission.
- D. All approvals for placement of public art on private property shall be obtained prior to issuance of a building permit.

17.98.090 Application Procedure for Acceptance of Public Art Donated to the City

An application for acceptance of public art to be donated to the City shall include:

- A. Preliminary sketches, photographs, models 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 executed by or on behalf of the artist who created the public art which expressly waives his or her rights under the California Art Preservation Act or other applicable law.
- D. Other information as may be required by the Public Art Coordinator to adequately evaluate the proposed donation of public art.

17.98.100 Review of Application for Acceptance of Public Art Donated to the City

- A. Prior to the issuance of grading and building permits, the applicant shall present to the Community Development Director for review, an application for acceptance of public art donated to the City, pursuant to Section 17.98.060 (B).
- B. The Community Development Director shall forward the application to the Public Art Coordinator who shall convene a public art jury to review the proposed public art, using adopted public art evaluation criteria.
- C. Upon the recommendation of the public art jury, the application shall be forwarded to the Architectural Review Commission for review.
- D. Upon the recommendation of the Architectural Review Commission, the application shall be forwarded to the City Council, which shall have the sole authority to accept, reject or conditionally accept the donation.

17.98.110 Payment of Art In-Lieu Fee

If the payment of an art in-lieu fee is voluntarily elected, the payment, in an amount equal to the program allocation set forth in Section 17.98.060 (C), shall be paid prior to the issuance of a building permit.

17.98.120 Certificate of Occupancy

The following requirements must be met prior to the City's issuance of occupancy permits.

- A. Full compliance with one of the following:
 - 1. The approved public art has been placed on the site of the approved project, in a manner satisfactory to the Chief Building Official and the Public Art Coordinator; or
 - 2. Donation of approved public art has been accepted by the City Council; or
 - 3. In-lieu art fees have been paid.

- B. If public art has been placed on the site of the approved project, the applicant must execute and record with the County Recorder covenants, conditions and restrictions (CC&Rs), which require the property owner, successor in interest and assigns to:
 - 1. Maintain the public art in good condition as required by the City's Public Art Guidelines;
 - 2. Indemnify, defend and hold the City and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the City Attorney;
 - 3. Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

17.98.130 Ownership of Public Art

- A. All public art placed on the site of an applicant's project shall remain the property of the applicant; 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 artwork in good condition to the satisfaction of the City, 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 City's Risk Manager. Prior to placement of approved public art, applicant and owner of the site shall execute and record a covenant, in a form approved by the City, requiring maintenance of the public art. Failure to maintain the public art as provided in this Chapter is declared to be a public nuisance.

- C. In addition to all other remedies provided by law, in the event the owner fails to maintain the public art, upon reasonable notice, the City may perform all necessary repairs and maintenance or secure insurance, and the costs therefore shall become a lien against the real property.
- D. All artwork donated to the City shall become the property and responsibility of the City upon acceptance by the City Council.

17.98.140 Removal or Alteration of Public Art

- A. Public art installed on or integrated into a construction project pursuant to the provisions of this Chapter shall not be removed or altered without the approval of the City Council.
- B. If any public art provided on a development project pursuant to the provisions of this Chapter is knowingly removed by the property owner without prior approval, the property owner shall contribute funds equal to the development project's original public art requirement to the City's Public Art In-Lieu account, or replace the removed artwork with one which is of comparable value and approved the City Council. If this requirement is not met, the occupancy permit for the project may be revoked by the City Council upon due notice and an opportunity to be heard. The City may, in addition, pursue any other available civil or criminal remedies or penalties.

SECTION 2. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in the Tribune, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after its final passage.

INTRODUCED AND FINALLY PASSED by the Council of the City of San Luis Obispo at its meeting held on the 15th day of August 2000, on a motion of Vice Mayor Schwartz, seconded by Council Member Marx, and on the following roll call vote:

AYES: Council Members Marx , Romero, Vice Mayor Schwartz, and Mayor Settle

NOES: None

ABSENT: Council Member Ewan

ATTEST:



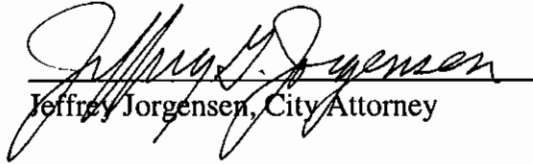
Lee Price, City Clerk

CITY OF SAN LUIS OBISPO,
A Municipal Corporation



By: _____
Allen K. Settle, Mayor

APPROVED AS TO FORM:


Jeffrey Jorgensen, City Attorney