

§ 21.03.150. Community art program.

A. Purpose. This section shall be known and cited as the Glendora Community Art Program, the intent and purpose of which is to enhance the physical appearance of the community by facilitating and promoting opportunities to provide for cultural enhancement. The Glendora Community Art Program also has the following goals:

1. Distinguish Glendora as a special place to live, work, play and visit.
2. Strengthen cultural awareness, creativity, and innovative thinking in the community.
3. Promote the general welfare by encouraging pride in the community, increasing property values, enhancing the quality of life through development of cultural and artistic resources.
4. Integrate the vision of artists with the perspective of other design professionals into the planning and design of the urban landscape.
5. Provide every member of the community easy visual access to artworks from pedestrians and vehicles on major public streets.
6. Provide a means to counterbalance what many consider to be the "negative" effects of development (e.g., construction noise, traffic, congestion, and pollution).

B. Definitions. For purposes of this section:

"Art" or "artwork" includes, but is not limited to, sculpture, monument, murals, fresco, basrelief, mobiles, photography, drawings, handcrafts, painting, fountain, landscape composition, banners, mosaic, ceramic, weaving, caring, and stained glass. "Art" or "artwork" is the creative result of individual or group effort and is either unique or of limited-issue nature, and is normally not mass-produced or intended primarily for a commercial market. "Art" or "artwork" does not normally include landscaping, paving, architectural ornamentation, or signs as defined by Chapter 19.24 of the municipal code.

"Commission" means the city of Glendora planning commission.

"Community art fund" means the fund and account established by the city for any money collected in accordance with the in-lieu contribution provisions of this section, as set forth in subsection F of this section.

"Developer" means any person or entity that is financially and legally responsible for the planning, development, and construction of any development or development project covered by the community art program, who may or may not, be the owner of the subject property.

"Development" or "development project" means any man-made change to improved or unimproved real property, the use of any principal structure or land, or any other activity that requires the issuance of a building permit and subject to the program.

"Director" means the director of community development department.

"Mixed-use with residential" means commercial project that includes residential as ancillary component of ten or less units.

"Program" means the Glendora Community Art Program established pursuant to this section.

"Project applicant" means the individual or entity subject to and required to submit an application to the commission/director under the program. The project applicant shall be the individual or entity that has submitted the application for a development project and/or owns the land upon which the development is proposed.

- C. Program Applicability—Art Allocation. This section applies to commercial and industrial development or residential projects of ten dwelling units or more, with a total building permit valuation of three hundred seventy-five thousand dollars or more. Applicability also includes exterior modifications, alterations and additions, all remodeling of existing residential buildings of more than ten units, and all remodeling of existing commercial and industrial developments.

All applicable development, shall be required to acquire, place, and install approved artwork, subject to the terms and guidelines of this section, concurrently with the completion of the development project, consistent with the standards of this section. Applicable development projects can either provide public art that is equal to, or more than the dollar value amount required, or in lieu of installation, instead provide an equal fee payment to the city to be applied to the community art fund (as described herein).

1. Art Allocation.

- a. The value of the placed and installed approved art shall be equal to a minimum percent of the total proposed development's building permit valuation (BPV), as described below:

All commercial/industrial & mixed-use with residential as ancillary component (with BPV of \$375,000+)	The fees, rates, and charges for the Glendora Art Program shall be established pursuant to resolution by the city council
All new residential development of 11 or more units/houses and new mixed-use with residential as primary component.	The fees, rates, and charges for the Glendora Art Program shall be established pursuant to resolution by the city council

- b. The total BPV shall be computed at the time building permits are issued, using the most current building valuation data set forth by the International Code Council (ICC). Square foot value is based on the type of building construction, the proposed use of the building, and the quality of construction. An initial BPV shall be estimated by the city's building official when the developer/project applicant submits formal application

plans to the city's building and planning divisions. The BPV shall be recalculated when the development project receives building permits.

- c. The project applicant shall be permitted to purchase, place, and install an approved artwork in an amount less than the required value, provided that the project applicant pays an in-lieu contribution to the community art program fund equal to the difference between the required value and the costs of acquisition and installation of such artwork.
2. In-Lieu Fee Contribution. In lieu of placement of approved artwork, the project applicant may pay into the community art program fund an amount equal to the required art allocation of the total proposed development's BPV. Payment must be made prior to building permit issuance.
 3. Program Exemptions. The following developments or modifications, alterations, and additions to the developments are exempt from this section:
 - a. Residential, mixed-use, commercial, or industrial development consisting exclusively of rehabilitation work required for seismic safety, as a result of a natural disaster, declared federal or state emergency or major disaster, or to comply with applicable building requirements, and governmental mandates, including, but not limited to, the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended, regardless of valuation.
 - b. Commercial or industrial development projects owned solely by a nonprofit organization under Internal Revenue Code Section 501(c)(3), provided the premises are operated by a nonprofit organization and used exclusively in furtherance of nonprofit purposes.
 - c. New residential or mixed-use development containing a minimum of twenty-five percent affordable housing units for very low-, low-, or moderate-income households as defined in the California Health and Safety Code commencing with Section 50050.
 - d. New residential projects (single-family and multiple-family) of ten or less units.
 - e. Buildings and projects designed and dedicated to performing arts spaces or facilities including theaters, performance art centers, or other similar facilities as determined by the director, or museums. This exemption does not include commercial movie theaters, private recreation facilities, or buildings or spaces dedicated to primarily administrative activities.
 - f. All public works projects and governmental agency projects.

These exemptions shall apply only as long as a valid building permit and the exempt use is maintained.

D. Permissible Uses of Art Allocation. The art allocation may be used by project

applicant to pay for the following expenditures: the artwork itself, including the artist's fee for design, structural engineering, and fabrication; transportation and installation of the artwork; identification plaque(s) for the artwork; mountings, pumps, motors or subterranean equipment, pedestals, bases, or materials directly necessary for installation of the artwork; lighting specifically illuminating the artwork; art consulting fees which shall not exceed ten percent of the total art allocation; and art appraisals requested by the commission/director.

- E. Prohibited Uses of Art Allocation. The art allocation may not be used by the project applicant to pay for the following expenditures: expenses to locate the artist (e.g., airfare for artist interviews, etc.); architect and landscape architect fees; landscaping around a sculpture, that is not included as part of the artist's sculpture furnishings, including, but not limited to, functional structures, prefabricated water or electrical features not created by the artist, and ornamental enhancements; utility fees associated with activating electronic or water generated artwork; lighting elements not integral to the illumination of the artwork; publicity, public relations, photographs, educational materials, business letterhead or logos bearing artwork image; and dedication ceremonies, including unveilings or grand openings.
- F. Community Art Fund.
1. Any money collected in accordance with the in-lieu contribution provisions of this section shall be deposited in a separate account denominated as the "community art program fund." The art fund may also be used as a depository for endowments, bequests, grants, or donations. The city manager or his or her designee shall establish accounting records sufficient to identify and control these funds.
 2. Expenditure. The community art program fund shall be used to provide art in order to further the intent and purpose of this section. The expenditures of funds shall be limited to the following uses:
 - a. For the design, acquisition, commission, installation, improvement, maintenance, and insurance of artwork. Design fees may include any fee paid to an appropriate party for the development of a design concept and preparation of construction drawings, which are separate and apart from the cost of the fabrication and installation of artwork;
 - b. To sponsor or support art education, performing and literary arts, art events, and create temporary or community-based art;
 - c. For the acquisition and improvement of real property or easements or licenses upon any real property for the purpose of displaying artwork, which has been or may be subsequently approved by the city;
 - d. Identification of existing artwork in the community;
 - e. During a fiscal year, for maintenance of and utility charges related to the artwork purchased pursuant (F)(2)(a), above; provided, that the total amount of expenditures made in any year from the community art

program fund shall not exceed ten percent of the total available amount of in-lieu contributions deposited, pursuant to this section, during the city's fiscal year immediately preceding the expenditure; or

- f. For costs associated with administering this section, in an amount not to exceed fifteen percent of the allocation as set forth in this section.
3. If real property purchased with monies from the community art program fund is subsequently sold, then the proceeds from the sale shall be returned to the community art program fund.
4. Return of in-lieu contributions shall be subject to the following:
 - a. In-lieu contributions paid into the community art program fund that are not committed within ten years from the date of payment may be returned to the current owner of the development project with all interest actually earned thereon if a written request for return is filed with the city's finance department during the tenth year after payment and refund of the fees is approved by the city council. The request for return shall be verified and shall include the date of payment, the amount paid and method of payment, the location of the development for which the fee was paid, and a statement that the project applicant is the payer of the fees and/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 one of the following applies:
 - i. The city council finds the fee is needed for art in public places.
 - ii. The administrative costs of refunding the uncommitted fees pursuant to this section exceeds the amount to be refunded, provided that at least ten days prior to the hearing, a notice of public hearing on this issue has been published and posted on the site of the development project in not less than three places.
 - iii. Expenditure of fees shall be subject to the standards set forth in this chapter.
- G. Value Verification. A budget shall be included with art proposal and updated at time of permit issuance to document required art allocation amount and permissible use expenditures. If city staff elects to verify the value of a proposed artwork (by past records of comparable work sold, etc.), the city reserves right to request to have the artist's proposal and/or other completed works appraised by a qualified art appraiser selected by the city. The project applicant shall pay up front for any art appraisal service fees. This expense may be deducted from the total art allocation.
- H. Application Process.

1. **Art Determination.** Upon submittal of a development proposal for plan or permit approval to the city's planning division or building division, the valuation of the development project will be assessed. If the development project is valued at a level above the community art program's applicability, staff will inform the project applicant of the estimated art allocation requirement for the development project. The project applicant will be given full program details including the community art program application. Artwork must be approved prior to issuance of a building permit and in place prior to issuance of a certificate of occupancy.
2. **Artist Selection.** The project applicant, when choosing to install artwork instead of contributing to the community art program fund in lieu of placement of approved artwork, the project applicant must choose artist(s) meeting the program criteria. In collaborating with the selected artist, the project applicant shall package the art application for commission/director review. The project applicant is responsible for artist and artwork selection, subject to the criteria set forth in the program, which shall be evaluated individually by the commission or the director, as set forth below.

For assistance, the project applicant can hire an art consultant. Such consultant's role is to research and present qualified artists, responsible for providing written and visual materials for the application. Consulting fees are capped at ten percent of the total art allocation, with any excess absorbed by the project applicant.

3. **Commission/Director or Director Review.** The project applicant must submit the community art program application to the city's planning division, which will schedule an appointment with the planning commission or director for review of the application. The planning commission shall review all art proposals located on publicly owned land and/or right-of-way, within in the Civic Center Area Plan (CCAP) zone, on properties that have a historical listing, and all development projects with building permit valuations of over one million five hundred thousand dollars. The director will review all art proposals not subject to the above-mentioned planning commission reviews. Findings for approval shall be based on the review criteria and requirements of this section.
4. **Notification, Follow-Up, and Appeals.**
 - a. The project applicant shall be notified in writing of the commission/director's decision of the review meeting. If the artwork is approved, any outstanding items that must be completed by the installation date will be listed and given to the project applicant.
 - b. If the artwork is not approved, the reason(s) for denial will be noted, including possible modifications or additions which could lead to recommended approval. Should the project applicant agree to the modifications, he or she may resubmit an application to the commission/director for reconsideration. The project applicant may also appeal the

commission/director's decision to the city council in accordance with the appeal process provided in Section 21.01.030(F). Once approved by the city, the project applicant shall inform the city of the approximate date the artwork will be installed.

5. Unveiling Plans. The project applicant shall contact the planning division regarding any unveiling or dedication ceremonies for the artwork. An unveiling or dedication is strictly optional. City staff shall work with the project applicant to promote press opportunities and public interest in the artwork.

I. Review Criteria and Requirements.

1. Artistic Qualifications.

- a. Experience. Artists should be working artists, who preferably have a portfolio or can create public art. Qualified artists should have experience in design concept, fabrication, installation, and long-term durability of large-scale exterior artworks. Artists must be able to successfully collaborate with design teams, architects, art consultants, developers, engineers, fabricators, and landscape architects, and meet scheduled deadlines. It is preferable to have artists that also have experience in negotiating and contracting their work responsibly. Artists who do not meet these criteria will not be approved by the commission/director.
- b. Verification of Past Works. Artists must be able to verify the value of the proposed artwork, based on their previous and current art. The city may request records, including, but not limited to, sales contracts, invoices, and payments with respect to any previous and current public artworks the proposed artist has commissioned. Gallery list prices or asking prices of works are not necessarily comparable, as they are not records of a willing buyer. If the value of the proposed art piece cannot be verified (by records of past comparable sold works, etc.), the city may choose, at its sole discretion, to have the artist's proposal and/or other completed works appraised by a qualified art appraiser. This expenditure shall be counted toward the total art allocation and shall be borne by the developer. The value of the proposed artwork shall be verified prior to commission/director review as to not delay the approval process.
- c. Exemption. The above provisions shall not apply if city or nonprofit is undertaking project as a "community related" art installation as part of an allowed community art fund expenditure.

2. Artwork Criteria.

- a. Artistic Expression and Innovation. Proposed artwork shall demonstrate how they will effectively engage the public and invite a "second look." Works engaging to the public are often described as thought provoking, inspiring, entertaining, clever, whimsical, powerful, reflective, or

symbolic. Innovation and originality are encouraged and expected. The commission/director takes interest in the artist's creative thought process in relationship to the specific development project. Therefore, existing works are not generally encouraged. Artists shall be able to thoroughly discuss the following elements of their proposal with the commission/director: expressive properties (mood, feeling, message, symbolism) and formal properties (balance, emphasis/dominance, repetition/rhythm, unity, form/shape, texture, color).

- b. Scale and Content. Artworks must be appropriate in scale, material, form, and content to their immediate, general, social, and physical environments. The artwork shall not look like an afterthought to the development. The following are not acceptable:
 - i. Mass produced reproductions or replicas of original works of art. Exceptions are signed sculptures or similar work by the original artist for reproduction. (Edition limit: five.)
 - ii. Functional equipment, which may be considered part of an amenities package, such as benches, chairs, fountains, etc.
 - iii. Decorative or ornamental pieces which are not designed by a qualified, acceptable artist, including historical markers or bells, bell towers, obelisks, minor architectural ornamentation, and garden sculpture.
 - iv. Art as advertisements or commercial signage mixed with imagery.
 - v. Landscape architecture and landscape gardening except where these elements are designed or approved by the artist and are an integral part of the artwork by the artist; or
 - vi. Landscaping required by the city as part of any development/project entitlements (or conditions of approval established therefor).
 - vii. Services or utilities necessary to operate or maintain the artwork.
- c. Permanence and Materials. The following are recommended materials: bronze, stainless steel, high-grade aluminum, hard stone. The following materials are not recommended: corten steel, wood, soft stone (e.g., alabaster). Other materials not listed may be considered, in the event the artwork application includes a comprehensive maintenance plan, which meets the interest and standards of the commission/director and staff. Rust proof materials must be used whenever possible. Artists will be asked to provide a breakdown by percentage of metal alloys for bronzes from foundries. Thickness and grade/quality of steel works will be reviewed for rust proof durability. Artists shall take note of which materials (including nuts, bolts, and other metal fixtures) will be in contact with each other that may produce oxidation and rust. Artists must be able to clearly demonstrate the quality, craftsmanship, and durability

of their artwork. Substantial consideration shall be given to structural and surface integrity and stability, permanence and weathering, resistance against theft, vandalism, and the probability of excessive maintenance and repair costs. Artwork must be constructed of durable, long-lasting materials that are able to withstand outdoor display, and require low levels of maintenance. When selecting an art piece project applicants shall keep in mind that property owners are legally responsible for the maintenance of the artwork for its lifetime.

- d. **Multiple Editions.** If the proposed artwork is one of multiple editions, the project applicant shall include the edition number of the piece provide the location of all other editions. To maintain the value of the proposed artwork, similar editions may not be publicly displayed within a fifty-mile radius of the development/project site, unless both the commission/director and the owner of existing and/or future editions grant permission.
- e. **Water Features and Fountains.** Water feature pieces, or artwork requiring water, must be conceptually designed by an acceptable, qualified visual artist in order to be considered for the program. The artwork must stand on its own should the water cease to function properly. There must be a demonstrated collaboration between the artist and the water feature design company. The intent of the program is to promote the work of visual artists, not water feature design companies. Water-related costs, such as pump and pool construction, will be evaluated by the commission/director for consideration as part of the overall art allocation. Project applicants are welcome to exceed the arts budget/art allocation to construct a water feature. However, water features will not be accepted in lieu of the community art program requirement. No more than thirty percent of the total art allocation may be utilized for water-related costs.
- f. **Architecture as Art.** The following shall be used to determine, on a case-by-case basis, whether architecture can be considered art for the purposes of fulfilling this section's requirements:
 - i. The architect shall be substantially recognized by the art world in shows, museums, and/or publications.
 - ii. When reviewing architecture as art, the underlying concept of the architecture shall be expressive as more than mere utilitarian architecture. The architecture as a whole or certain architectural features shall express ideas or meaning and have cultural significance or conceptual complexity in relation to the totality of the object.
 - iii. In the alternative, architecture can be considered art if it is created as a collaborative effort with an artist, the artist does the majority of the work, the artist has major design control of the portions of the architecture to be considered art, and the artist has been brought in early in the process. The artist shall have experience and knowledge

of monumental scale and sculpture.

- iv. The architecture must meet all the general criteria regarding the placement of artwork on private property as defined in this section.
- g. Inoffensive. Due to the artwork's "public" requirements, will necessarily be highly visible to the public, will be associated with community art program requirements, and because the traveling public will have no real opportunity to avoid the visual aspects of the art, expressions of obvious bad taste or profanity are prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

J. Site and Installation and Maintenance Requirements.

1. Visibility. Artwork is to be located outdoors and easily visible to both motorists and pedestrians from a major public street. Distance from the artwork to the public street should typically not be greater than fifty feet. Artwork may not be placed near monumental signs, sign walls, or bus benches as these structures may impede the public's view from the street or diminish the aesthetic value of the artwork. Lettering, symbols, or signage are not permitted upon the artwork or its foundation, except as intended by the artist. Visibility to the general public is the key criteria in approval of artwork location. The artwork shall be displayed in an area that is open and freely accessible to the public for at least ten hours each day or displayed in a manner which provides public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site. Exceptions can be made for large open or enclosed public areas if the artwork or its placement is clearly visible from the street.
2. Signage. Permanent signage of any type is not permissible in or around the immediate area of the artwork. This includes the foreground, background, or adjacent areas of the artwork. Signage should not distract or diminish the aesthetics of the artworks, when the public views the artwork from the most accessible vantage points (e.g., intersections, entryways). The commission/director will review all signage plans and ask the project applicant to provide alternative locations should the signage interrupt the public's view.
3. Lighting and Electrical. Artwork shall be properly lit during evening and nighttime hours. All lighting and electrical elements should be in good working condition and meet all current safety conditions. Lighting and electronic elements, not integral to the sculpture, will not be included as part of the art allocation. Lighting plans must be submitted as part of the application.
4. Landscaping and Base. Landscaping and art base should be well integrated and securely installed. The sculpture must also be secured to the base. A licensed structural engineer must approve and certify the installation plans as structurally sound, safe, and durable. The base shall only house the artwork

and plaque, if applicable.

5. Identification. Each artwork shall be identified by a plaque approximately eight inches by eight inches and made from cast bronze or an alternative material approved by the director. The plaque shall be placed in a ground or wall location near the artwork, listing only the title, name of artist(s), name of who it was commissioned by, and date of installation. The director must approve any additional plaques that may be requested. This expense may be deducted from the total art allocation.

K. Ownership and Maintenance.

1. All artwork placed on the site of a project applicant's development shall be property of the landowner; the obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the site's owner.
2. The project applicant shall demonstrate that the selected artwork is constructed for permanent outdoor display and that provisions have been made for its long-term care, preservation of the artwork in good condition to the satisfaction of the city, protection of the artwork against physical defacement, mutilation, or alteration, and encourage securing and maintaining fire and extended coverage insurance and vandalism coverage. Prior to the issuance of a final building inspection, the project applicant and owner of the site shall execute and record a covenant in a form approved by the city for the maintenance of the artwork.
3. All artwork donated to the city shall become the property of the city upon acceptance by the city council.

- L. Damaged Artwork. The property owner of the development shall be responsible for repairing the artwork in the event of damage and/or vandalism. Artwork damaged or vandalized shall be repaired as closely as possible to the original approved artwork. If repair is needed, the original artist must be given first refusal on repair(s) for a reasonable fee. If the original artist is not available or is unwilling to perform the required repair(s) for a reasonable fee, the property owner shall make arrangements for repair(s) with a reputable art conservator. The property owner shall be responsible for notifying the commission/director and city staff of the steps that will be taken to repair the artwork. Property owners are encouraged to secure and maintain fire and extended coverage insurance and vandalism coverage.

- M. Removal of Artwork. Removal of required art is prohibited without the city's approval. The city may require replacement of the art. Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law. The developer or owner of the applicable development project shall execute a restrictive covenant in a form acceptable to the city attorney, enforceable by the city, which shall be recorded against the project site and shall run with the land for a period of twenty years from the installation date of the applicable art/artworks.

1. Request. A request for the removal of any approved artwork shall be submitted

to the director in the form of a letter for review and approval. If the removal request is approved, a building demolition permit is required if determined to be necessary by the city's building and safety division.

2. Approval. Approval of removal of artwork will be subject to the condition of the artwork and the required length of time indicated in the recorded covenant.
- N. Donation of Artwork to City. Although the artwork is located in public view, the intent of the program is for the artwork to be located on private property as part of the fixed assets of that property. Therefore, the city does not encourage the donation of public art to the city. However, in special cases where it is impossible for artwork to remain on private property and/or be maintained by the property owner, the city may consider accepting the donation of an artwork. Property owners may submit a written request to the commission describing the unique circumstances and the reasons why they are requesting that the city accept the donation of the artwork. The commission will review their request, discuss the proposal, and forward a recommendation to the city council.

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