

ORDINANCE NO. Introduction (CM)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
WATSONVILLE AMENDING TITLE 8 (BUILDING REGULATIONS) OF
THE WATSONVILLE MUNICIPAL CODE BY ADDING A NEW CHAPTER
20 ENTITLED PUBLIC ART PROGRAM REQUIREMENTS WHICH
IMPOSES A NEW PUBLIC ART REQUIREMENTS FOR PRIVATE
DEVELOPMENT PROJECTS**

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WHEREAS, public art has a significant positive economic and cultural impact in the City of Watsonville, which improves the quality of life for those who live or work in the City; and

WHEREAS, the City has authority to impose aesthetic and design conditions on property development, including a condition to either pay a fee to fund public art, or require a contribution of an approved work of art of equivalent value; and

WHEREAS, the City Council desires to implement such a program; and

WHEREAS, the proposed program, which is modeled closely on the successful policies of other cities in this state, imposes a new public art requirement for private development projects, and provides developers with the option of commissioning public art on the development site or making an in-lieu contribution to the City's public art account ("Watsonville Cultural Fund"); and

WHEREAS, deposits to the Watsonville Cultural Fund account may be used for the commission, acquisition and placement of public art throughout the City, and will be managed by the City's Parks and Community Services staff with guidance from the Public Art Advisory Committee; and

WHEREAS, the artist community has always been a creative force within the City; and

WHEREAS, a new public art requirement for private development will encourage and require works of art in new development in the City, which is important for the vitality of the artist community as well as the quality of life for all Watsonville residents; and,

WHEREAS, developers and/or owners shall be encouraged to integrate art from the earliest possible stages of development planning to assure design elements which respond to the unique physical attributes and geographic location of the development

project; and

WHEREAS, on March 1, 2022, the Planning Commission adopted Resolution No. 05-22 (PC) recommending that the City Council adopt the proposed Public Art Program Ordinance adding Chapter 20 of Title 8 of the Watsonville Municipal Code; and

WHEREAS, on March 7, 2022, the Parks and Community Commission approved staff's recommendation establishing a Public Art Program with a fee of 1.5%.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. ENACTMENT.

Title 8 (Building Regulations) of the Watsonville Municipal Code is hereby amended by adding a new Chapter 20 entitled Public Art Program Requirements to read in words and figures as follows:

TITLE 8 BUILDING REGULATIONS

CHAPTER 20 PUBLIC ART PROGRAM REQUIREMENTS

Sec. 8-20.010 Title

This Chapter shall be known as the "Public Art Program Requirements" and is referred to herein as this Chapter.

Sec. 8-20.020 Purpose

The City Council finds and declares:

(a) Cultural and artistic resources, include visual artwork, the performing arts, and architectural resources that enhance the quality of life for individuals living in, working in and visiting the City.

(b) Balanced development of cultural and artistic resources preserves and

improves the quality of the urban environment, increases real property values, and has a positive economic impact.

(c) As development and revitalization of real property within the City continues, the opportunity for creation of cultural and artistic resources is diminished. As these opportunities are diminished and urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased.

(d) This Chapter is intended to promote the arts in the City of Watsonville by requiring the inclusion of a public artwork component in new development and renovation projects in Watsonville. A policy is hereby established to require certain private developments to use a portion of building development funds for the acquisition and installation of publicly accessible works of art for placement on the development site as a condition of project approval. Developers and/or owners are encouraged to employ Watsonville artists or arts organizations to fulfill the public art requirement.

Sec. 8-20.030 Definitions.

As used in this Chapter, the following terms shall have the meanings set forth hereto or as otherwise specified in the guidelines referenced herein. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

(a) “Allocation for Watsonville Public Art Program” shall mean the percentage of the construction costs which are set aside for the City's Public Art Program.

(b) “Artwork” includes but is not limited to paintings, drawings, murals in any media, stained glass, statues, bas-relief or other sculptures, and any creation under

“new genres” as defined herein; environmental artworks or public spaces; monuments, fountains, arches or other structures intended for ornament or commemoration; integrated and functional architectural, video and other media-based elements designed by a qualified artist. For projects that involve no structures, artwork may include a combination of landscape design, natural and manufactured materials including but not limited to rocks, fountains, reflecting pools, sculptures, screens, benches, and other types of street furniture, provided they have been designed by a qualified artist. Artwork may be of a permanent or temporary nature. The term “Artwork” also includes “Public Art” which is a process that results in the incorporation of original works of art by artists in publicly accessible spaces and which serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals; is of high quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; and is unique to its moment in time and place.

(c) “Building Permit Valuation” shall be the same definition as described in Chapter 8-1.109(c) of the Watsonville Municipal Code.

(d) “Community Development Director” shall mean the Community Development Director of the City or his or her designee.

(e) “Conservation” encompasses actions taken toward the long-term preservation of cultural property and includes examination, documentation, treatment and preventative care, supported by research and education. Restoration is a type of conservation treatment and specifically refers to an attempt to bring cultural property closer to its original appearance. Stabilization, also a type of conservation, refers to an

attempt to maintain the integrity of cultural property and to only minimize deterioration.

(f) “Cultural Fund” shall mean a special revenue fund established by the City to receive monies from both in lieu contributions made by a developer and/or owner and appropriated according to expenses authorized in section 8-20.100.

(g) “De-Accession” refers to the process of permanently removing artwork acquired through the Watsonville Public Art Program as outlined in this Chapter.

(h) “Demolition Costs” shall mean payment for any work needed for the removal of buildings or other existing structures from City property.

(i) “Design Fees” shall include, but are not limited to, those fees paid to an artist, architect, structural engineer or an appropriate party for the development of a design concept and the preparation of construction drawings. Design fees are separate and apart from the cost of the fabrication and installation of an artwork.

(j) “Developer and/or Owner” shall mean any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Watsonville), industry, public or private corporation, or any other entity that undertakes any construction within the City subject to the requirements in this Chapter.

(k) “Floor Area” is defined in Section 14-18.358 of the Watsonville Municipal Code.

(l) “Freely Accessible” shall mean the artwork is accessible to the public for viewing, in its entirety and in a direct line of sight without hindrances or obstacles, for a period of at least (10) hours per day, seven (7) days per week.

(m) “New Genres” shall include, but are not limited to, sculpture, sound installation, video, film, audio, digital, hybrid and emerging art forms. These works may

be temporary or permanent in nature.

(n) “Non-Profit” shall mean those entities that have obtained tax exempt status under Section 501(c)(3) of the Internal Revenue Service Code.

(o) “Parks and Community Services Director” shall mean the Parks and Community Services Director of the City or his or her designee.

(p) “Performing Arts shall mean performances and rehearsals conducted by professional or amateur performers, including theater performance (any form of dramatic presentation, spoken or silent); musical theater/opera (any dramatic performance of which music is an integral part); dance (any form of rhythmical movement); music or concert (any musical performance with live musicians and/or singers).

(q) “Permanent Installation” shall mean artwork designed and fabricated to remain installed for twenty (20) or more years.

(r) “Project” also referred herein as “Development Project” is defined as consisting of all physical changes and improvements necessary to complete a development. Such physical changes shall include the construction of new structures or the remodeling of existing structures on a single parcel.

(s) “Public Art Advisory Committee” shall mean a professionally qualified citizen committee recommended by the Watsonville Parks and Recreation Commission and approved by City Council to oversee quality control of the public art program, its projects, and to recommend to the Parks and Community Services Department the sites, scope of project, artworks and artists for the public art projects funded through the Watsonville Cultural Art Fund Account.

(t) “Public Art Program In-Lieu Contribution” shall mean the percentage of

building development costs required herein.

(u) “Public Art Projects” are projects which involve artists working through the public art process that result in the creation of original works in publicly accessible spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Public Art projects also include artists serving on design and development teams to identify opportunities to incorporate art in publicly accessible spaces.

(v) “Publicly Accessible Art” shall mean art that is accessible to the general public.

(w) “Real Property.” That which consists of land, and of all rights and profits arising from and annexed to land, of a permanent, immovable nature.

(x) “Real Property Acquisition Costs” shall mean payments made for the purchase of parcels of land, existing buildings or structures, and costs incurred by the City for appraisals or negotiations in connection with such purchases.

(y) “Qualified Artist” also referred herein as “Artist” shall mean a practicing artist who has demonstrated a high level of accomplishment through a body of work, exhibitions, presentations, or performances. The qualified artist shall have a history of strong conceptual development, as well as possess the ability for skillful execution of tools, materials, and craft. This includes programs rooted in innovative uses of technology, collaborative work, or interdisciplinary projects. The qualified artist shall work primarily in the production of art in unique or limited editions and not for purposes of

marketing, mass production or advertising.

(z) "Temporary Installation" shall mean artwork intended to remain installed for two (2) years or less.

Sec. 8-20.040 Development subject to provisions of chapter.

(a) All new residential development projects of five or more units and subject to design review approval pursuant to Chapter 14-12.400 of the Watsonville Municipal Code, and all commercial, industrial, and public building development projects involving 2,000 square feet or more of new floor area and subject to design review approval pursuant to Chapter 14-12.400 of the Watsonville Municipal Code, with a building construction valuation of five hundred thousand dollars (\$500,000.00) or more shall be subject to the provisions of this Chapter.

(b) All exterior and interior modifications and additions that include all remodeling of existing residential buildings of five (5) or more units, and all remodeling of existing commercial, industrial, and public buildings, shall be subject to the provisions of this Chapter when such remodeling has a valuation of two hundred fifty thousand dollars (\$250,000.00) or more, excluding earthquake rehabilitation required for seismic safety.

(c) Buildings designed and dedicated primarily to nonprofit performing arts spaces or museum uses shall not be required to meet the Watsonville Public Art Program Allocation requirement for as long as the performing arts or museum uses are maintained within these buildings.

Sec. 8-20.050 Allocation.

(a) Calculation

(1) Nonresidential Building Developments. Private nonresidential

building developments and remodeling specified in subsections 8-20.040(a) and 8-20.040(b), respectively, shall devote an amount not less than one-quarter percent (0.25%) of building permit valuation for acquisition and installation of publicly accessible artwork on the development site.

(2) Residential Building Developments. Private residential building developments and remodeling specified in subsections 8-20.040(a) and 8-20.040(b), respectively, shall devote an amount not less than one-quarter percent (0.25%) of building permit valuation for acquisition and installation of publicly accessible art on the development site.

(b) In-Lieu Contribution

(1) Compliance. At the discretion of the developer and/or property owner, and in lieu of installing on-site public art, a Public Art Program in-lieu contribution shall be placed into the Cultural Fund Account for acquisition and placement of public art throughout the City.

(2) Alternative Compliance. Alternatively, developer and/or owner may, by special application and approval by the City, satisfy up to seventy-five percent (75%) of the Public Art Program in-lieu contribution required hereunder as follows, if approved by the Public Art Advisory Committee. Any remaining in-lieu contribution shall be placed into the Cultural Art Fund Account.

(i) Developer and/or owner's inclusion of space within the development project that is generally open to the public during regular business hours and is dedicated by developer and/or owner for regular use as a rotating art gallery, free of charge, will be deemed to satisfy up to

twenty-five percent (25%) of the Public Art Program in-lieu contribution;
and/or

(ii) Developer and/or owner's provision, design and dedication of at least 500 square feet of space within the development project, to be made available to the public for the primary use of arts and cultural programming, may be deemed to satisfy up to fifty percent (50%) of the Public Art Program in-lieu contribution.

(c) Multiple building permits issued within a three-year period for a single project shall be considered in the aggregate in determining the Watsonville Public Art Program allocation.

(d) If the total Watsonville Public Art Program allocation for a project is less than seventy-five thousand dollars (\$75,000), the applicant shall pay their Watsonville Public Art Program allocation into the Cultural Fund as the only option for complying with the Watsonville Public Art Program requirement, unless, in the opinion of the Parks & Community Services Director, an alternative option as described in Subsection F below, is deemed appropriate for a particular project.

(e) Payment of any required Watsonville Public Art Program allocation shall be received prior to issuance of a City building permit.

(f) If the Watsonville Public Art Program allocation is seventy-five thousand dollars (\$75,000) or greater, the applicant shall either:

(1) Pay the Watsonville Public Art Program allocation into the Cultural Fund ("in-lieu fee") prior to issuance of a City Building Permit; or

(2) Commission original, site-specific artwork for the applicant's development project, with a valuation equal to or greater than the

Watsonville Public Art Program allocation in compliance with the guidelines of this Chapter; or

(3) Upon approval from the Parks and Recreation Commission, donate artwork to the City with an appraised value equal to or greater than the Watsonville Public Art Program allocation in compliance with the guidelines of this Chapter; or

(4) Incorporate a Cultural Facility into the applicant's development project, in compliance with the guidelines of this Chapter.

(g) Any applicant whose Watsonville Public Art Program allocation is less than seventy-five thousand dollars (\$75,000) may voluntarily increase their Watsonville Public Art Program allocation to an amount of seventy-five thousand dollars (\$75,000) or greater, and thereby qualify the applicant to fulfill the Watsonville Public Art Program requirement pursuant to Subsection F above.

(h) For the commission of new on-site artwork, applicants are required, at the applicant's expense, to use a Request for Proposal ("RFP") process for selecting an artist when the Watsonville Public Art Program allocation exceeds one hundred thousand dollars (\$100,000). The applicant shall also hire a qualified art consultant to assist with the RFP process, proposal development, and project oversight. The Parks and Community Services Department shall review the art consultant and RFP information with the applicant prior to releasing the RFP. The RFP will include the following components:

(1) Deadline for submission of requested information;

(2) Information on development project components, including but not limited to goals for the development project and the artwork, scope of work,

physical description of project site and other physical or legal restrictions which may apply;

- (3) Proposal review/selection schedule;
- (4) Scope of services;
- (5) Artwork budget;
- (6) Development project and artwork timelines; and,
- (7) Evaluation criteria.

(i) If the Watsonville Public Art Program allocation is seventy-five thousand dollars (\$75,000) or greater, the applicant may opt to fulfill the Watsonville Public Art Program requirement by incorporating a Cultural Facility within the development project. In order to ensure integrated projects, applicants shall submit plans to the Parks and Community Services Department during Preliminary Project Review (PPR) or prior to receiving any discretionary review approvals. The only acceptable Cultural Facilities are: indoor and outdoor performing arts spaces that can accommodate a minimum audience of fifty (50), with a performance area of at least five hundred (500) square feet, or exhibition spaces designed for the visual arts. Cultural Facilities must include all amenities for supporting a performance or art exhibition space, including a sound and lighting system, audience seating, separately designated restrooms, and technical space. Cultural Facilities shall be permanent and must be ADA-compliant. Cultural Facilities must be specifically designated as such and cannot be used for any other purpose on an on-going basis. Applicants may receive credit for up to three (3) years of operations, maintenance and programming costs for Cultural Facilities, together with construction costs, toward fulfillment of the minimum Watsonville Public Art Program allocation for their project. The applicant's proposal for a Cultural Facility shall include a

plan that identifies key staff, programming goals and an associated budget for a minimum of three (3) years. The proposal shall be approved by the Parks and Community Services Department, monitored by designated City staff, and subject to all applicable federal, state and local laws and regulations. Review and approval of Cultural Facilities shall include review and recommendation by Parks and Recreation Commission. Cultural Facilities are required to display a permanent plaque as outlined in Section 8- 20.080 and are subject to the covenant and maintenance requirements of Section 8-20.130.

(j) Subsequent Removal of Public Art or Alternative Compliance Space. If the developer and/or owner satisfies the public art requirement in accordance with subsection (A)(1), (A)(2), or (B)(2), above, the public art previously installed on the development site or the inclusion and/or dedication of space within the development project may subsequently be removed if the developer and/or owner makes a Public Art Program in-lieu contribution equivalent to the original amount to the Cultural Fund Account.

Sec. 8-20.060 Public artwork application fee for administrative and design review.

Applicants shall pay a Public Artwork Application fee with the submission of any Public Artwork Application and/or revised Public Artwork Application to commission public artwork pursuant to this Chapter. The Public Artwork Application fee, hereunder, shall be set by the City Council upon its approval of the City's Master Fee Schedule.

Application fees set by City Council for the Public Art Program shall not exceed fifteen percent (15%) of the Watsonville Public Art Program allocation, or one hundred thousand dollars (\$100,000), whichever is less. Applicants may also be charged a design review fee in addition to the Public Artwork Application fee if the estimated

budget for the artwork exceeds one hundred thousand dollars (\$100,000).

Sec. 8-20.070 Public artwork application process – artwork on private property.

(a) In order to ensure integrated projects, applicants choosing to commission new artwork for their project shall submit plans to the Community Development Director during Preliminary Project Review or prior to receiving any discretionary review approvals. No application for a development permit that is subject to the provisions of this Chapter shall be considered for discretionary approval until the developer and/or owner has submitted a Complete Public Artwork Application, as determined by the Community Development Director in consultation with the Parks and Community Services Director.

(b) The City may promulgate submittal requirements, instructions for completing forms, internal procedures for acceptance and filing of applications, and provisions for waiver by administrative guideline. At a minimum, the following information shall be included as part of the applicant's submittal:

(1) Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork;

(2) Preliminary plans containing such detailed information as may be required by the Community Development Director to adequately evaluate the location of the artwork in relation to the proposed development, including compatibility with the character of adjacent conforming developed parcels and the existing neighborhood. Applicants should be involved in the development of the preliminary plans in order to assist in the proper placement of the artwork in relation to their proposed development environment, and to ensure that the artist that is chosen creates an artwork that fits the needs and requirements of both the applicant's project and the Watsonville Public Art Program.

(3) The names of all owners and, if a corporation, all officers.

(c) Determination of a Complete Public Artwork Application.

Within thirty (30) calendar days after a Public Artwork Application has been received by the Planning Division, the Community Development Director shall determine whether the Public Artwork Application is responsive and complete. If it is determined that the application is not complete, written notice shall be forwarded to the applicant specifying the application's deficiencies. The Community Development Director shall take no further action on the application unless the deficiencies are remedied. If the official fails to make a determination of completeness within thirty (30) calendar days and the applicant did not unreasonably withhold consent to written request for an extension of time, the Public Artwork Application is deemed complete. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this Chapter; nor does it relieve the applicant from submitting further required material required by the Parks and Community Services Director in advance of the public hearing at which the Parks and Recreation Commission will consider the application.

(d) Prior to Hearing and Review of the Application by the Parks and Recreation Commission, the applicant shall have submitted to the Planning Division, at least, the following or as, otherwise, instructed by the Community Development Director:

(1) A narrative proposal, with the artwork's budget and timeline.

Elevations, site plans, line of sight studies, renderings and other descriptive materials, as deemed necessary by the Parks and Community Services Department, shall be included to demonstrate that the artwork will be displayed

in an area open and freely accessible to the general public.

(2) Information provided by a conservator affiliated with the American Institute for Conservation (“AIC”) about the durability of the proposed materials, recommendations for future maintenance and estimated maintenance costs. In addition, the application shall include information on how the future maintenance costs will be allocated and identify the party responsible for ensuring that maintenance is performed; and,

(3) If applicable, an appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs. Appraisals shall be conducted by an Accredited Member or Accredited Senior Appraiser of the American Society of Appraisers, or a member of another established national or international organization for appraisers

(e) Processing of Complete Public Artwork Application and Report.

Following the determination that a Public Artwork Application is complete, or the application is deemed complete under this Chapter, the Parks and Community Services Director shall cause to be filed the application, and prepare a report for the Public Art Advisory Committee, Parks and Recreation Commission, and/or City Council, as may be required, recommending approval, denial or continuance for redesign. The Parks and Community Services Director shall schedule the matter for public hearing and consideration of approval by the Parks and Recreation Commission or make a final decision within the time and in the manner required by this Chapter, California law, or by administrative guidelines.

(f) Official filing date.

The time for processing Public Artwork Applications or acting on such applications

established by California law or by this Chapter shall commence on the date that the Public Artwork Application is determined or deemed complete. Material modifications of any Public Artwork Application by the applicant following the filing of the application and prior to the expiration of the period during which the City is required to take action shall extend the period for a like time following the Parks and Community Services determination that the modified application is complete and the application is refiled.

(g) Re-application following denial.

Whenever a Public Artwork Application is denied for failure to meet the requirements of this Chapter or for reasons articulated by the Parks and Recreation Commission at the public hearing wherein the application was considered for approval; and such denial is not overturned by the City Council on appeal, the denied Public Artwork Application will not be reconsidered. Instead, the applicant shall submit anew a subsequent Public Artwork Application for a materially different proposal than the one denied. The subsequent Public Artwork Application will be processed in the manner set forth in this Chapter.

(h) Withdrawal of Public Artwork Application.

A Public Artwork Application may be withdrawn prior to action on the matter. Such withdrawal shall be submitted by the applicant, in writing, to the Park and Community Services Director. The applicant shall not be entitled to a refund of application fees upon withdrawal of a Public Artwork Application unless it is determined by the Parks and Community Services Director that only de minimus work by City Staff had been conducted on the application prior to the time it was withdrawn.

(i) Public Art Advisory Committee.

The City may establish and appoint members to a Public Art Advisory Committee

that will review each application and make recommendations to the Parks & Recreation Commission. Such Committee, if so created by the City, shall include, to the extent feasible, a combination of professional artists, arts and design professionals, community representatives and City department representatives. If a Public Art Advisory Committee is established, then it will review Public Artwork Applications before they are presented for consideration by the Parks and Recreation Commission. However, the Parks and Recreation Commission may, in limited circumstances, elect to consider Public Art Applications that were not previously reviewed by the Public Art Advisory Committee.

(j) Decision by Parks and Recreation Commission.

The Parks and Recreation Commission shall review completed and responsive applications; and may approve, approve with conditions, or deny the proposed artwork, and its proposed location; and in so evaluating the application for approval; the Parks and Recreation Commission may consider, among other things, the aesthetic quality and harmony with the proposed project, and the public accessibility of the artwork. Proposed artwork is subject to approval by the Parks and Recreation Commission. Decisions of the Parks and Recreation Commission to approve, approve with conditions, or deny applications may be appealed by any interested person pursuant to the provisions for appeals contained in Part 11, Chapter [14-10](#) of Title [14](#) of this Code.

(k) Submitted Public Artwork Applications that are responsive and complete shall be evaluated on:

- (1) Compliance with the general Watsonville Public Art Program requirements as outlined in this Chapter;
- (2) Artistic quality;
- (3) Conceptual compatibility of the design with the immediate

environment for the site;

(4) Appropriateness of the design to the function of the site;

(5) Creation of a desirable environment for the general community by the design and location of the artwork;

(6) Preservation and integration of natural features with the project;

(7) Appropriateness of the materials, textures, colors, and design to the expression of the design concept;

(8) Effectiveness in conveying the artist's intention and underlying themes;

(9) Whether the artwork is representative of a broad variety of tastes within the community and makes a contribution to the provision of a balanced inventory of artworks commissioned through the Watsonville Public Art Program;

(10) Permanence of structural and surface components including, but not limited to, the structural and surface soundness and inherent resistance to theft, vandalism, weathering, and excessive maintenance or repair costs.

(l) Disqualifying characteristics for artwork:

(1) Directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original artwork or executed by the artist in unique or limited editions;

(2) Artwork that incorporates logos, images, text or other elements that relate directly to a specific business's or organization's branding or marketing themes;

(3) Art objects which are mass-produced and of standard design such as playground equipment or fountain pieces;

(4) Reproduction of original artworks, except in cases where incorporated into an original artwork;

(5) Decorative or functional elements that are designed by the building architect as opposed to a qualified artist;

(6) Landscape design except where it is designed by a qualified artist and is an integral part of the artwork;

(7) Architectural rehabilitation, historic preservation and structural building modifications;

(8) Educational activities;

(9) Artwork containing obscene matter that lacks serious literary, artistic, political or scientific value.

(m) If the applicant proposes significant revision to the artwork that is the subject of an approved Public Artwork Application, a revised Public Artwork Application and Public Artwork Application fee shall be submitted to the Parks and Community Services Department for review and approval. The Parks and Recreation Commission shall make a determination whether to approve, approve with conditions or deny the requested revision. Decisions of Parks and Recreation Commission to approve, approve with conditions, or deny revised applications may be appealed by any interested person pursuant to the provisions for appeals contained in Part 11, Chapter [14-10](#) of Title [14](#) of this Code.

Sec. 8-20.080 Final City approval.

Notwithstanding Chapter 14-10 of this Code, City reserves the right to the fullest extent of the law to withhold approval of necessary permits, entitlements, and/or other development related requests, and/or may also refuse to issue a Certificate of

Occupancy for any development project subject to this Chapter unless and until full compliance with the Watsonville Public Art Program is achieved as follows--if so required by this Chapter:

(a) In lieu art fees have been paid;

(b) Artwork that is the subject of an approved Public Artwork Application has been fabricated and placed on the project site in a manner consistent with the proposal approved by the Parks and Recreation Commission or City Council and inspected by Department staff;

(c) Donation of an approved artwork has been accepted by the Parks and Recreation Commission or City Council;

(d) A Cultural Facility has been incorporated into the applicant's development project;

(e) In cases where approved artwork is placed on private property or a Cultural Facility has been incorporated into the applicant's development project pursuant to this Chapter, all of the following must occur prior to final City approval or issuance of a Certificate of Occupancy for any project subject to this Chapter:

(1) A copy of the maintenance guidelines that include information on materials, parts and fabricator contact information has been submitted to the City;

(2) A covenant, complying with Section 8-20.110, Subsection C. and setting forth the applicant's obligations under the Watsonville Public Art Program, has been executed and recorded with the Santa Cruz County Recorder;

(3) A plaque has been installed adjacent to the artwork measuring

no less than 8" x 8" or a proportionate size. The plaque shall be made of cast metal, stainless steel or other durable material and will be placed in an appropriate location near the artwork and shall include the date, title of artwork (if applicable), artist(s) or architect(s) (as applicable), and should indicate that the artwork, building's architecture or Cultural Facility was commissioned in conjunction with the Watsonville Public Art Program. Staff shall review and approve plaque text and layout prior to its fabrication and installation at the site.

Sec. 8-20.090 Cultural fund account.

(a) There is hereby created a fund to be known as the "Watsonville Cultural Fund" (hereinafter "Cultural Fund") to account for fees paid pursuant to this Chapter and other funds received by the City as proceeds from the sale of real property acquired/purchased with Cultural Fund monies, pursuant to this Chapter.

(b) It is intended that funds in the Cultural Fund Account will be appropriated in the annual budget for the purposes described in this Chapter.

Sec. 8-20.100 Use of cultural fund account monies.

(a) Permissible expenditures from the Cultural Fund Account may include the following:

(1) For the design, acquisition, purchase, commission, installation, placement, improvement, relocation, conservation, and insurance of artwork acquired by the City through the Watsonville Public Art Program;

(2) For preventative care, maintenance and utility charges related to the artwork and real property purchased pursuant to Section 8-

20.090(A) above;

(3) To sponsor or support the performing arts;

(4) For the acquisition and improvement of real property for the purpose of displaying artwork or conducting performing arts activities, which has been or may be subsequently approved by the City;

(5) For costs associated with administering the Watsonville Public Art Program and associated cultural programs, in an amount not to exceed twenty-five percent (25%) of the total fees deposited into the Cultural Fund pursuant to this Chapter during the fiscal year immediately preceding that appropriation, in any year subsequent to the initial fiscal year of the Watsonville Public Art Program; however, in the event the City Council determines that a special circumstance exists, the City Council may set a higher amount by a majority vote; and

(6) Other City-produced cultural or art education programs pursuant to the requirements of this Chapter.

(7) Structures that enable the display of artwork(s). - Artistic design and fabrication fees. Labor of assistants, materials and contracted services required for the production and installation of the work of art. Any required permit or certificate fees, business and legal costs directly related to the project. Dealer's fees, if necessary and where appropriate CAD, in concurrence with the National Endowment for the Arts (N.E.A.) recommendation that no more than 10% of the artist's fees be paid as a dealer/gallery commission. Transportation of the work of art to the site;

(8) Preparation of site to receive artwork; and

(9) Administrative fees/costs as follows: (i) Parks and Community Services Department's administration costs incurred in the process of administering the Public Art Program including staff time, direct costs and administrative overhead. (ii) Documentation, including photographic documentation, of the artwork's fabrication, installation, and plaques to identify the artwork.

(b) Cultural Fund Account monies may not be used for the following:

(1) Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.

(2) "Art objects" which are mass-produced of standard design such as playground equipment or fountains.

(3) Reproduction, by mechanical or other means, or original works of art, except in cases of film, video, photography; printmaking or other media arts.

(4) Decorative or functional elements that are designed by the building architect as opposed to an artist commissioned for this purpose.

(5) Landscape architecture and landscape gardening, except where these elements are designed by the artist and are an integral part of the artwork by the artist.

(c) If real property purchased with monies from the Cultural Fund is subsequently sold, the proceeds from the sale shall be returned to the Cultural Fund.

Sec. 8-20.110 City's acceptance of donated artwork.

(a) Persons, business entities, public agencies, or other organizations wishing to donate artwork to the City in furtherance of the Public Art Program shall submit an Artwork Donation Application to the Community Services Department and shall include the following information, at minimum:

- (1) Artist biography and object provenance;
- (2) Sketches, photographs, models, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork and installation and siting requirements;
- (3) Acquisition and installation costs;
- (4) An appraisal or other evidence of the value of the proposed artwork.

The value of the proposed artwork will be determined by an Accredited Member or Accredited Senior Appraiser of the American Society of Appraisers, or a member of another established national or international organization for appraisers;

- (5) Information provided by an American Institute for Conservation ("AIC") affiliated conservator about the durability of the proposed materials, recommendations for future maintenance and estimated maintenance costs; and,

(b) If applicable, a written agreement, in a form approved by the City Attorney, executed by or on behalf of the artist who created the artwork or the donor wherein the City is held harmless, protected, and indemnified by the donor for any and all liability arising out of its acceptance of the donated artwork as permitted by applicable law. B.

Review of application: The Parks and Community Services Department shall review the

Artwork Donation Application and make a recommendation to the Parks and Recreation Commission, which shall have the authority to accept or reject or conditionally accept the donation. Decisions of the Parks and Recreation Commission related to Artwork Donation Applications may be appealed to the City Council by any interested person pursuant to the provisions for appeals contained in Part 11, Chapter [14-10](#) of Title [14](#) of this Code.

(c) All artwork donated to the City in fulfillment of the requirements of this Chapter shall become the property of the City upon acceptance by the Parks and Recreation Commission or City Council.

Sec. 8-20.120 De-accessioning of artwork.

(a) The City will allow the de-accessioning of artwork acquired or commissioned through the Watsonville Public Art Program only when it is in the public interest and serves to improve the quality of the overall Watsonville Public Art Program collection;

(b) De-accessioning should be considered only after five (5) years following the acceptance of artwork donated to the City or the installation of permanent art commissioned through the Watsonville Public Art Program, unless it is deemed a threat to public safety. The need for temporary removal from public display does not necessitate de-accession. In instances where the artwork considered for de-accession is on private property, the Parks and Recreation Commission shall make the final decision. When the artwork is installed on public property or is City-owned, the Parks and Community Services Department shall make a recommendation to the Parks and Recreation Commission, which will make the final decision. Decisions of the Parks and Recreation Commission related to de-accessioning may be appealed to the City Council

pursuant to the provisions for appeals contained in Part 11, Chapter [14-10](#) of Title [14](#) of this Code.

(c) The City may elect to sell artwork that has been de-accessed; and shall deposit proceeds of the sale minus requisite payment to the artist under California Resale Royalties Act.

(d) De-accession may be considered and approved by the Parks and Recreation Commission for reasons related to and including, but not limited to, the following:

(1) The artwork is a threat to public safety, or the condition/security of the work cannot be guaranteed;

(2) The owner cannot properly care for the artwork, or the artwork requires an excessive or unreasonable amount of maintenance;

(3) The artwork has serious or dangerous faults in design or workmanship, the condition of the artwork requires restoration costs in gross excess of its monetary value or is in such a deteriorated state that restoration is either unfeasible, impractical, or would render the artwork inappropriate;

(4) A similar but superior example exists in the collection;

(5) The artwork is a forgery;

(6) No suitable site for the artwork is available;

(7) A significant adverse reaction to the artwork is documented over five (5) years or more;

(8) The artwork is judged to have no aesthetic, historical or cultural value;

(9) The owner wishes to replace an artwork with a more appropriate

work by the same artist;

(10) The artwork can be sold to finance, or can be traded for, an artwork of greater importance;

(11) A written request from the artist to remove the artwork from public display has been received and approved by the City;

(12) The artwork is not or is rarely displayed; and/or

(13) The artwork is incompatible with the rest of the collection.

Sec. 8-20.130 Ownership and maintenance of artwork.

(a) All artwork placed on the site of an applicant's project shall become the property of the property owner and his or her successor(s) in interest. Artwork cannot be sold or transferred other than to a subsequent successor in interest. The obligation to provide maintenance and security, as necessary to preserve the artwork in good condition, shall remain with the owner of the site.

(b) Maintenance of artwork, as used in this Section, shall include without limitation: preservation of the artwork and, where applicable, of the lighting and surrounding landscaping, in good condition to the satisfaction of the City; protection of the artwork against physical defacement, mutilation or alteration; and, securing and maintaining fire and extended insurance and vandalism coverage in an amount to be determined on a case-by-case basis by the City.

(c) Prior to placement of an approved artwork, the applicant and the owner of the site shall execute and record a covenant reflecting all the owners' obligations under this Chapter, in a form approved by the City.

(d) The covenant shall include a financial plan for the maintenance of the artwork, a schedule of future condition checks, preventative maintenance and restoration

of the artwork necessary to conserve the artwork at an appropriate level, and should be created with input from the artist, the applicant, the Parks and Community Services Department, and an Art Consultant, if one was hired for the project.

(e) Applicants are required to set-aside funds for future conservation and, where possible, in interest bearing accounts. Annual preventative maintenance costs set-aside funds shall be equal to no less than five percent (5%) nor greater than fifteen percent (15%) of the total amount of the Watsonville Public Art Program allocation but shall be based on conservation reports prepared by a professional art conservator working with the artist and the artist's fabricator. Funds for maintenance are in addition to the Watsonville Public Art Program allocation.

(f) The City reserves the right to inspect the artwork at any time to ensure it is being maintained as required by any covenant entered into pursuant to the provisions of subsection C above.

(g) Failure to maintain the artwork as provided herein is hereby declared to be a public nuisance. The City may pursue remedies to obtain compliance with the provisions of the Watsonville Public Art Program for maintenance of artwork, including subjecting the property owner to administrative citation and/or misdemeanor prosecution; placing conditions for maintenance of an artwork on the owner's future development project approvals; performing all necessary repairs, maintenance or securing insurance and placing a lien against the involved property for the costs associated with such.

(h) The artwork is to remain freely accessible, as previously defined, and may not otherwise be draped or obscured.

(i) The siting of the artwork, including the surrounding landscaping or adjacent area, shall not be altered without approval from the City. The City reserves the right to implement measures necessary to preserve the design and placement of an artwork as approved by the Parks and Recreation Commission.

(j) Unless an artwork poses imminent danger to life or property, no person or entity shall remove any artwork from the location for which it was selected, and anyone needing to do so shall obtain City approval prior to doing so.

(k) The applicant, its successors, and its assigns, may not destroy, permanently remove, relocate, change, alter, modify, or allow to be defaced, any artwork or portion thereof without the express consent of the City. This requirement will be included in the covenant to be recorded against the property.

(l) If any approved artwork placed on private property pursuant to this Chapter is removed without City approval, the artwork must be replaced with artwork of the same value as that of the removed artwork and be approved by the Parks and Recreation Commission, or the property owner must pay the value of the removed artwork into the Cultural Fund. If these requirements are not met within one-hundred eighty (180) days, then the Certificate of Occupancy shall be revoked or a lien placed against the involved property.

Sec. 8-20.140 Compliance.

Compliance with the provisions of this Chapter shall be demonstrated by the developer and/or owner at the time of filing the Building Permit application as follows: (a) payment of the full amount of the Public Art Program in-lieu contribution, or (b) written proof to the Building Department and the Parks and Community Services Department, Public Art Program of a contractual agreement to commission or purchase and to install

the requested artwork on the development site. The developer and/or owner shall provide the City with proof of installation of the requested artwork on the development site or proof of full payment of the Public Art Program in-lieu contribution before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this Chapter. In the case of installation of public art on the development site, the developer and/or owner shall maintain said artwork in proper condition on an ongoing basis.

Sec. 8-20.150 Violations of this chapter.

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any permit or permission granted to any developer and/or owner who violates the provisions of this Chapter 1 and Chapter 2 of the Watsonville Municipal Code.

Sec. 8-20.160 Appeal.

Decision of the Parks and Community Services Department or the Parks and Recreation Commission made pursuant to this Chapter may be appealed by any interested person pursuant to the provisions for appeals contained in Part 11, Chapter [14-10](#) of Title [14](#) of this Code.

Sec. 8-20.170 Reserved.

Sec. 8-20.180 Artwork on public property, performing arts and purchase of real property for public art.

(a) The Parks and Community Services Department shall prepare a plan for the Watsonville Public Art Program and update it annually through the budget approval process.

(b) The Parks and Community Services Department may recommend to the

Parks and Recreation Commission the purchase of artwork to be displayed on public property, the maintenance of public art, recommend support for the performing arts, and the purchase and improvement of real property to be used for the display of artwork. A recommendation shall include the following information:

(1) The type of artwork considered, an analysis of the constraints applicable to placement of the artwork on a site, the need for and practicality of the maintenance of the artwork, and the costs of acquisition and installation of the artwork; or

(2) The type of performance and amount recommended; or

(3) The estimated costs of acquisition and improvements of the real property proposed to be purchased.

(c) The Parks and Community Services Department is authorized to solicit and review performing arts grant applications and make a recommendation to the Parks and Recreation Commission up to the amount authorized in the City budget for the fiscal year for which the projects are being considered.

(d) An expenditure from the Cultural Fund may be made for the performing arts provided the Parks and Recreation Commission approves the performing arts event and that the performance occurs at a location in the City, or location owned or controlled by the City, or at an alternative site which is located within close proximity to the corporate boundaries of the City and which has facilities for performing arts that complement or supplement those available within the City.

Sec. 8-20.190 Approval procedures for City public art projects.

All City-initiated public art projects shall follow the same approval requirements as development projects on private property, with the exception of the requirement to pay

any in-lieu fees.

SECTION 2. RECITALS.

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 3. REEVALUATION.

The provisions of this Ordinance should not be construed as placing a higher priority on public art than other development requirements or impact fees. This Ordinance may be reevaluated whenever new requirements or fees are considered so that the totality and allocation of all development requirements and fees are deemed reasonable and appropriate.

SECTION 4. SEVERABILITY.

The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. If any provision of this Ordinance is held to be inapplicable, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and developers and/or owners. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Prior to adopting this Ordinance, the City Council independently finds and

determines that this action is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

SECTION 6. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall be effective 60 days from the date of final passage by the City Council, but shall not apply (a) to building/construction related permits already issued and not yet expired; or (b) to zoning applications approved by the City and not yet expired; or (c) to zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these amendments if the developer and/or owner chooses to do so.
