

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 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.

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

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

(w) “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.

(x) “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.

(y) “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 three-quarter percent (0.75%) of building permit valuation, and not more than \$75,000

(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 three-quarter

percent (0.75%) of building permit valuation, and not more than \$75,000.

(b) 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.

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

Sec. 8-20.060 Final City approval.

(a) 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 all fees required by this chapter have been paid.

Sec. 8-20.070 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. 8-20.080 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.

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. 8-20.090 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. 8-20.100 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. 8-20.110 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 fee.

Sec. 8-20.120 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. 8-20.130 Appeal.

Decision 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. 8-20.140 Reserved.

Sec. 8-20.150 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. 8-20.160 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.

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.
