

Article 2: Administrative Code

Division 59: Cultural Affairs Department

(“Cultural Affairs Department” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5901 Cultural Affairs Department

- (a) The Cultural Affairs Department is a City department. The department is responsible for advancing arts, culture, creativity, and related activities and industries in the City; supporting cultural tourism and innovative arts and cultural programming; and undertaking initiatives that drive an equitable and inclusive creative economy and cultural ecosystem, cultivating local participation and access, and advancing San Diego as a global city.
- (b) The Director of the Cultural Affairs Department is the administrative head of the department and is appointed by, and may be removed by, the City Manager. The Director is the appointing authority of all personnel in the department.
- (c) The Cultural Affairs Department will operate under the direction of the City Manager. The department is responsible for performing those duties and functions assigned and directed by the City Manager, including developing, implementing, evaluating, and recommending changes to public policy, legislation, programs, services, and advocacy strategies related to cultural affairs; overseeing the City’s investments in new and artistic media, creative industries, and cultural production; administering funding allocations in support of nonprofit arts and culture organizations, *artists*, neighborhood arts programs, festivals, and *artworks* in public development; administering the arts and culture programmatic allocations within the transient occupancy tax funds; administering allocations to and from the *Public Art Fund*; ensuring the inclusion of art in private development; overseeing *public art project management activities* for *artworks* included in *Capital Improvement Program projects*, *Redevelopment Agency projects*, and other projects in *public places*; managing *artworks* owned and controlled by the City or contracted for, erected on, or exhibited on *public places*, including entering into and administering contracts related to the acquisition, loan, or licensing of such *artworks*; *accessioning* and *deaccessioning artworks* into the *Civic Art Collection*; and supporting the Commission for Arts and Culture in carrying out its duties as established in Chapter 2, Article 6, Division 7, and any other board or commission assigned by the City Manager.

(“Cultural Affairs Department” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5902 Definitions

For the purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Accession means the formal process used to accept and record an *artwork* as a *Civic Art Collection* item.

Acquisition means the transfer of title to the City of valuable property, including *artwork* by purchase, donation, bequest, transfer, or exchange.

Applicant has the same meaning as stated in San Diego Municipal Code section 113.0103.

Artist means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language arts, or a combination thereof, based on that professional practitioner's body of work, educational background, experience, past commissions, exhibition/performance record, publications, and production of *artworks*.

Artwork(s) must be specified or designed by an *artist* and include:

Public art as defined herein;

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported, suspended, mounted, installed, kinetic, electronic, or mechanical;

Murals or paintings: may be made of any material or combination of materials; may be made with traditional or non-traditional means;

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, linguistic expressions, calligraphy, ephemera, textiles, found objects, and any media or combination of media including audio, video, film, holographic or computer-generated technologies, or other art genres currently known, or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance art, happenings, music, television, and film, or other performing or language art genres currently known, or which may come to be known.

Artworks may be permanent, temporary, fixed, or portable; may be an integral part of a building, facility, or structure; and may be integrated with the work of other design professionals.

The following, unless specified or designed by an *artist*, are not considered *artworks*:

Reproductions, by mechanical or other means, of original *artworks*. However, limited editions controlled by the *artist* or original prints, cast sculptures, or photographs, may be considered *artworks*;

Decorative, ornamental, or functional elements not specified or designed by an *artist*;

Elements generally considered as being components of architecture or landscape design, such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

Art objects that are mass-produced, ordered from a catalog, or of standard design (such as benches or fountains); and

Wayfinding or other functional elements, such as graphics, signage, advertising, or maps.

Capital Improvements Program project means any permanent public improvement project, or portion or phase thereof, set forth in the Capital Improvements Program budget as adopted by City Council.

Civic Art Collection means *artworks* which have been *accessioned* and are publicly owned, possessed, or controlled by the City and administered by the Cultural Affairs Department. Incoming loans of *artwork* shall be incorporated into the *Civic Art Collection* for the duration of the loan but are not considered *acquisitions*.

Civic Enhancement allocation means the percentage of the *total building permit valuation* for a qualifying *development*, in accordance with the requirements set forth herein, which is set aside for *artwork* on the *premises*, areas dedicated for *cultural use* on the *premises*, or an in-lieu contribution to the *Public Art Fund*.

Collections management activities include the *acquisition*, incoming loan, outgoing loan, interdepartmental loan, *deaccession*, *disposal*, relocation, removal, exhibition, operation, maintenance, conservation, *extraordinary maintenance*, documentation, storage, reproduction, and adaptation of *artworks*.

Commission means the City of San Diego Commission for Arts and Culture established in Chapter 2, Article 6, Division 7.

Cultural use means *open and accessible* programming for the presentation of visual, performing, and language arts, or a combination thereof.

Deaccession means the formal process used to permanently remove an *artwork* from the *Civic Art Collection*.

Development has the same meaning as stated in San Diego Municipal Code section 113.0103.

Disposal or *dispose* means the permanent exchange, sale, destruction, or transfer of an *artwork* in the *Civic Art Collection*.

Extraordinary artwork maintenance means any maintenance or conservation to the sound condition of an *artwork* that requires specialized services.

Open and accessible means available for use by the general public during normal hours of business operation consistent with the operation and use of the *premises*.

Ordinary artwork maintenance means the routine oversight of the operation and cleaning of and around *artworks*.

Premises has the same meaning as stated in San Diego Municipal Code section 113.0103.

Public art means *artwork* acquired or created using funds appropriated by the City and located in *public places*.

Public Art Fund means a separate fund established in the City Treasury into which may be deposited: *Civic Enhancement allocations*; funding for *collections management activities*; funding for *public art project management activities*; monetary bequests and donations for specific or unspecified *cultural use*; grants; grant matching funds; and transient occupancy tax funds.

Public art project management activities include, but are not limited to, *artist selection process activities*; payment of stipends to *artists* and consultant fees; community participation activities; outreach and educational activities; implementation of communication tools such as interpretive plaques; project documentation activities; and staff administration of all of the above activities.

Public places mean lands and buildings owned or controlled by the City.

Redevelopment Agency Project means any undertaking of the City of San Diego Redevelopment Agency in a *Redevelopment Project Area* pursuant to the authority vested in the Redevelopment Agency under California Health and Safety Code sections 33000, *et. seq.*

Redevelopment Project Area means any area formally adopted by the City Council pursuant to Community Redevelopment Law, codified in California Health and Safety Code sections 33000, *et. seq.*, maps of which are on file in the Office of the City Clerk.

Total building permit valuation means the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council and used by the City Building Official in determining valuation.

(“Definitions” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5903 Control of Artworks

No *artworks* shall be contracted for, exhibited on, or erected on *public places*, or become the property of the City by *acquisition* or otherwise, or be in the custody of the City by loan or otherwise, unless such *artworks* have first been submitted to and accepted by the Cultural Affairs Department following review and recommendation by the *Commission*. No existing *artworks* owned by or in the custody of the City shall be *deaccessioned*, removed, relocated, conserved, altered, exhibited, or *disposed* of in any way without the approval of the Cultural Affairs Department following review and recommendation by the *Commission*.

(“Control of Artworks” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5904 Management of Artworks

All *collections management activities* shall be the responsibility of the Cultural Affairs Department and undertaken with the advice of the *Commission*. *Ordinary artwork maintenance* of *artworks* in the *Civic Art Collection* is the responsibility of the City department at which the *artwork* is located and shall be undertaken at the direction of the Cultural Affairs Department.

(“Management of Artworks” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5905 Acquisition of Artworks

- (a) The Cultural Affairs Department Director may authorize the purchase of *artworks* for inclusion in the *Civic Art Collection* following the review and recommendation of the *Commission*.

- (b) The Cultural Affairs Department Director shall, on behalf of the City, accept, with or without conditions, or reject donations, bequests, or incoming loans of *artwork*, following the review and recommendation of the *Commission*. Title to all donated and bequeathed *artworks* accepted by the City and *accessioned* into the *Civic Art Collection* shall be vested and held in the name of the City.

(“*Acquisition of Artworks*” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5906 Deaccession and Disposal of Artworks

- (a) The Cultural Affairs Department shall conduct *deaccession* and *disposal* of *artworks* from the *Civic Art Collection* following the review and recommendation of the *Commission*.
- (b) When an *artwork* to be *deaccessioned* and *disposed* of through sale has an estimated fair market value of \$250,000 or more, the Cultural Affairs Department shall submit a report on its recommendation for the sale to the City Council and City Manager at least thirty calendar days prior to initiating the sale.
- (c) When an *artwork* is *deaccessioned* and *disposed* of through sale, the *artwork* shall be sold through methods administered or approved by the City Purchasing Agent. When an *artwork* is *deaccessioned* and *disposed* of through sale or exchange, the Cultural Affairs Department Director may accept and execute all deeds of conveyance necessary to affect the sale or exchange.

(“*Deaccession and Disposal of Artworks*” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5907 Proceeds from the Sale, Loan, Reproduction, or Adaptation of Artworks

All monies received from the sale of *artworks* from the *Civic Art Collection* must be expended on new *acquisitions* for the *Civic Art Collection*. Proceeds from the loan of *artworks* from the *Civic Art Collection* or from the licensing of the making of reproductions or adaptations of *artworks* from the *Civic Art Collection*, shall be deposited into the *Public Art Fund*, less any payments due.

(“*Proceeds from the Sale, Loan, Reproduction, or Adaptation of Artworks*” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5908 Civic Enhancement Allocation Regulations and Calculations

- (a) To ensure that the City's increasing urbanization is offset by the creation of *artworks* and venues dedicated to *cultural use*, no final City approval to occupy any private industrial or commercial *development*, or any portion thereof, with a *total building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year), may be granted unless a *Civic Enhancement allocation* in an amount equal to one percent (when the *applicant* elects to meet the requirements of this section pursuant to Subdivision (b)(1) or (b)(2)) or one-half of one percent (when the *applicant* elects to meet the requirements of this section pursuant to Subdivision (b)(3)) of its *total building permit valuation* has been set aside by the *applicant*, subject to the provisions of section 22.5910.
- (1) For phased *development*, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the *premises*, but does not include any withdrawn permit applications.
- (2) The calculation of *total building permit valuation* shall not include any exempt component of a mixed-use *development*.
- (3) The calculation of *total building permit valuation* shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire-rated occupancy classification.
- (b) An *applicant* must comply with the *Civic Enhancement allocation* requirements set forth in this section through one of the following means:
- (1) *Applicant* shall place *artworks* on the *premises*. The *applicant* shall ensure that the *artworks* will be located in an area that is *open and accessible*. If the value of the *artwork*, including art consultant fees and the costs for design, fabrication, installation, and documentation, is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *artwork*.

- (2) *Applicant shall maintain a portion of the premises as open and accessible for cultural use. If the value of that portion of the premises which is open and accessible for cultural use is not equal to or greater than the Civic Enhancement allocation, the applicant shall pay into the Public Art Fund an amount equal to the difference between the amount of the Civic Enhancement allocation and the value of the premises which is open and accessible for cultural use.*
- (3) *Applicant shall deposit into the Public Art Fund an in-lieu fee payment equal to one-half of one percent of the total building permit valuation for the development.*

(“Civic Enhancement Allocation Regulations and Calculations” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5909 Civic Enhancement Allocation Declaration

Upon applying for a building permit, the *applicant* shall:

- (a) declare in writing the means by which the *applicant* will comply with the requirements of section 22.5908; and
- (b) where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with section 22.5911.

(“Civic Enhancement Allocation Declaration” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5910 Compliance with Civic Enhancement Allocation Regulations

- (a) If the *applicant* chooses to pay an in-lieu fee in accordance with the provisions of section 22.5908(b)(3), no building permit for the *development* may be issued without payment of the in-lieu fee to the City’s Public Art Fund.
- (b) If the *applicant* chooses to install an artwork on the premises or maintain a portion of the premises open and accessible for cultural use in accordance with the requirements of section 22.5908(b)(1) or (b)(2), no building permit for the *development* may be issued until the *applicant* deposits security with the City, either in the form of a surety bond issued by a surety company authorized to do business in the State of California, cash, or the equivalent security approved by the City Manager and City Attorney, equal to one-half of one percent of the total building permit valuation. Any costs associated with acquiring the required security are the responsibility of the *applicant*, and are in addition to, and may not be deducted from, the Civic Enhancement allocation.

- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit evidence, subject to a written determination of adequacy by the Director of the Cultural Affairs Department, of one or a combination of the following:
- (1) The value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the costs of art consultant fees, *artist* design fees, fabrication of the *artwork*, installation of the *artwork*, and documentation of the *artwork*.
- (2) The value of the portion of the *premises*, which is maintained *open and accessible* for *cultural use*, is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

(“*Compliance with Civic Enhancement Allocation Regulations*” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5911 Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of section 22.5908(b)(1) or (b)(2), the *development* shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney, which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall maintain and preserve the *artwork* in good condition to the reasonable satisfaction of the City, and protect the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the *development* may retain ten percent of the *Civic Enhancement allocation* to fund the costs of conservation, ongoing maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements set forth in this division.
- (b) The owner of the *development* shall ensure that the *artwork* will be in an area that is *open and accessible*.
- (c) A description of that portion of the *premises* will be included, which will be maintained *open and accessible*, that specifies its designated *cultural use*.

- (d) Any other reasonable terms necessary shall be included to implement the provisions set forth in this division.

(*“Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.*)

§22.5912 Return of Civic Enhancement Allocations

- (a) *Civic Enhancement allocations* paid into the City’s *Public Art Fund* that are unexpended within five years from the date of payment may be returned to the then-current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the *Civic Enhancement allocations* is approved by the City Council. The request for return shall be verified by City staff, and it shall include the date of payment, the amount paid and method of payment, the location of the *development* for which the *Civic Enhancement allocation* was paid, and a statement that the person making the request is the current owner of the *development*.
- (b) The City Council shall determine if return of the unexpended portion of the *Civic Enhancement allocation* and interest is appropriate under subsection (c) below and, if so, the method of refund.
- (c) Provided that notice of a public hearing consistent with State law regarding the City Council’s consideration of a *Civic Enhancement allocation* and interest refund has been published and posted by the City on the site of the *development* in not less than three places, the City Council may decide that no refund shall be appropriate if the City Council determines any one of the following conditions applies:
- (1) The City Council finds that the funds are needed for *artwork or cultural use* for a similar purpose.
 - (2) The *Civic Enhancement allocation* requirements were satisfied by letter of credit, bond, or other instrument taken to secure payment at a future date.
 - (3) The administrative cost of refunding unexpended *Civic Enhancement allocations* exceeds the amount to be refunded.

(*“Return of Civic Enhancement Allocations” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.*)

§22.5913 Failure to Maintain Artwork Created Through Civic Enhancement Allocations

Failure to maintain *artworks* created through *Civic Enhancement allocations* may be a public nuisance under California Civil Code section 3479.

(“Failure to Maintain Artwork Created Through Civic Enhancement Allocations” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5914 Civic Enhancement Allocation Appeal

- (a) Any *applicant* may seek review of a decision by the Director of the Cultural Affairs Department under section 22.5910(c) by filing a written application for an appeal hearing with the Director of the Cultural Affairs Department no later than ten business days after the date of the written notification to the applicant of the Director’s decision.
- (b) Within ten business days of an application for appeal being filed, the Director of the Cultural Affairs Department shall schedule a date for an appeal hearing before the City Manager or the City Manager’s designee, which shall generally be held within sixty business days, but no later than ninety business days, following the filing of the application for the hearing. The Certificate of Occupancy for the *development* may be withheld pending resolution of the appeal.
- (c) At the conclusion of the appeal hearing, the City Manager or the City Manager’s designee may affirm, reverse, or modify the Director’s decision. The decision of the City Manager or the City Manager’s designee is final.

(“Civic Enhancement Allocation Appeal” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)

§22.5915 Civic Enhancement Allocation Exemptions

The *Civic Enhancement allocation* requirements do not apply to the following:

- (a) industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000 or current threshold pursuant to section 22.5908;
- (b) any *premises* that has an institutional use, such as churches, hospitals, and schools;
- (c) any *premises* that is used solely for residential *development*;
- (d) any *premises* that is owned or leased solely by a non-profit entity and used in furtherance of the owner’s or lessee’s non-profit purpose;

- (e) industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to security reasons; or
- (f) industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

(“*Civic Enhancement Allocation Exemptions*” added 10-14-2024 by O-21878 N.S.; effective 11-13-2024.)