

ORDINANCE NO. 1479
AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA
AMENDING CHAPTER 2.24 OF THE PALM SPRINGS
MUNICIPAL CODE, AND ADDING A NEW CHAPTER 3.37
THERE TO, AND REPEALING SECTION 9311.00 OF THE
PALM SPRINGS ZONING ORDINANCE PERTAINING TO PUBLIC ART

WHEREAS, the City Council of the City of Palm Springs wishes to maintain the character of Palm Springs and create the best possible environment for the residents; and

WHEREAS, to maintain the aesthetics of the City, the City Council believes that development in the City should be planned and executed with a view toward enhancing the visual character and beauty of the City; and

WHEREAS, in addition to beautifying, the arts can sensitize and humanize, can provide social involvement, and can assist in education, personality development, and community well-being; and

WHEREAS, the City Council previously established a Public Arts Program and Fund pursuant to Chapter 2.24 of the Palm Springs Municipal Code and Section 9311.00 of the Palm Springs Zoning Ordinance; and

WHEREAS, the City wishes to clarify and codify its current Public Arts Program.

NOW, THEREFORE, the City Council of the City of Palm Springs, California, DOES ORDAIN as follows:

SECTION 1. Chapter 2.24 of the Palm Springs Municipal Code shall hereby read in its entirety as follows:

Chapter 2.24

PUBLIC ARTS COMMISSION

Sections:

- 2.24.010 Creation.
- 2.24.020 Term – Vacancies – Vote.
- 2.24.030 Officers – Committees.
- 2.24.040 Meetings – Rules of Procedure.
- 2.24.050 Powers and Duties of the Commission.

2.24.010 Creation. There is hereby created within the City of Palm Springs a Public Arts Commission consisting of seven members, appointed by the City Council, to serve at the pleasure of the City Council.

2.24.020 Term – Vacancies – Vote. Members of the Commission shall serve for the

term provided by Chapter 2.06 of the Palm Springs Municipal Code. A vacancy in the Commission shall not impair the right of the remaining members to exercise the powers of the Commission pursuant to this Chapter. Four members shall constitute a quorum of the Commission, and any ruling, decision or other action of the Commission may be taken by a majority of those members present, provided a quorum is present.

2.24.030 Officers – Committees. The Commission, at its organizational meeting and annually thereafter, shall elect from its membership a chairman and vice-chairman. The chairman and vice-chairman shall have and perform such duties as are commonly associated with their respective titles. The City Manager may appoint an executive secretary and other staff, and provide compensation for their services as may be authorized by the City Council.

2.24.040 Meetings – Rules of Procedure. The Commission shall meet at least once each month at such time and place as shall be fixed by the Commission by its standing rules. A majority of the existing appointed members of the Commission shall constitute a quorum for the transaction of business. The Commission may establish such rules and regulations as it deems necessary for the conduct of its business. In matters relating to the holding of regular and special meetings, the Commission is bound by the provisions of the Ralph M. Brown Act of the State of California (Sections 54950, et seq., California Government Code). (Ord. 1201 3 (part), 1983).

2.24.050 Powers and Duties of the Commission. Within the limitations provided by law, the Public Arts Commission shall have the following powers and duties:

- (1) Establish a schedule of regular meeting times.
- (2) Be responsible for a Palm Springs Public Arts Program including policies and guidelines, oversight of development of art projects and maintenance of art collection.
- (3) Unless otherwise directed by the City Council, give approvals or consents required hereunder where actions requiring expenditures from the Public Arts Fund do not exceed \$25,000. Expenditures in excess of \$25,000 shall require Council approval.
- (4) Obtain Council approval for all contracts for commission of, and maintenance for, works of art in any amount. Under the direction of the Council, the Commission will act to see that the terms of any agreements are carried out.
- (5) Identify and resolve fundamental issues for successful implementation of the arts program such as, but not limited to: selection process of artworks; handling of public controversy; public involvement; economic impact; on-going maintenance of artwork; removal of public art; relationship of program to other City programs.
- (6) Establish a review mechanism for acquisitions by commission, purchase, gift or extended loan.
- (7) Approve all art acquired through the Public Arts Fund, either on City or private property, whether on loan, as a gift or purchase.
- (8) Designate proposed or eligible Public Arts locations and sites on either publicly or privately owned property.
- (9) Determine the type of artwork or medium desired for a particular site.
- (10) Encourage collaboration with artist(s), architects and planners in the early design phase of a project to ensure a totally integrated solution where public art is

- proposed for a new project.
- (11) Establish management policies for documentation, registration, maintenance and conservation of all artwork.
 - (12) Develop a public information program.
 - (13) Provide grants or loans to fund public education concerning art, but funded solely through private donations or endowments, and not from any funds collected pursuant to 3.37.070.
 - (14) Act in an advisory capacity to the Planning Commission for review of works of art that are privately funded on private property that can be seen from the public right-of-way.

SECTION 2. A new Chapter 3.37 is hereby added to the Palm Springs Municipal Code to read in its entirety as follows:

Chapter 3.37

PUBLIC ARTS FEE, FUND AND PROGRAM

Sections:

- 3.37.010 Purpose.
- 3.37.020 Program Execution.
- 3.37.030 Definitions.
- 3.37.040 Public Arts Fund.
- 3.37.050 Projects Subject to Public Arts Program Requirements.
- 3.37.060 Certificates of Occupancy.
- 3.37.070 Requirements to Provide Artwork or Pay Development Fee.
- 3.37.080 Art Site Acceptability.
- 3.37.090 Criteria for Artwork Selection.
- 3.37.100 Maintenance of Artwork.
- 3.37.110 Application Procedures for Placement of Artwork on Private Property.
- 3.37.120 Approval Procedures for Placement of Artwork on Private Property.
- 3.37.130 Procedure for Refund of Public Arts Fee for Art-in-Lieu of Fee.
- 3.37.140 Ownership of Artwork on Private Property.
- 3.37.150 Application Procedure for Donation of Artwork to the City.
- 3.37.160 Review and Acceptance of Artwork Donated to the City.

3.37.010 Purpose.

- (a) The purpose of the Palm Springs Public Arts Program is to develop and maintain a visual arts program for the residents and visitors of Palm Springs; to add to the economic viability of the community; and to enhance the environment and unique character of Palm Springs by providing for the acquisition and maintenance of quality works of public art.
- (b) The City Council finds and declares as follows:
 - (1) Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the City.

- (2) Balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values.
- (3) As development and revitalization of the real property within the City continues, the opportunity for creation of cultural and artistic resources is diminished.
- (4) As this development and revitalization continues as a result of market forces, urbanization of the community results.
- (5) As these opportunities are diminished and this 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.
- (6) Development of cultural and artistic assets should be financed by those whose development and revitalization diminishes the availability of the community's resources for those opportunities and contributes to community urbanization.
- (7) Establishment of this Public Arts Program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
- (8) It is the purpose of this Chapter to modify, clarify and codify the City's existing Public Arts Program.

3.37.020 Program Execution. The Palm Springs Public Arts Commission shall carry out the duties established by this Chapter.

3.37.030 Definitions. For the purpose of this Chapter:

- (1) "Commission" shall mean the Palm Springs Public Arts Commission.
- (2) "Public Arts Fund" shall mean a separate fund and account which is established to receive monies collected for the designated purposes of the Public Arts Program.
- (3) "Public Arts Program" shall mean the program adopted by the City Council of Palm Springs.
- (4) "Arts Administrator" shall mean the staff person hired by the City to administer the Public Arts Program. The salary and other compensation of the Arts Administrator, may be paid from the Arts Fund to the extent such person is performing the duties prescribed herein.

3.37.040 Public Arts Fund.

- (a) Creation. There is hereby established a "Public Arts Fund" into which shall be deposited all funds collected under this Chapter of the Palm Springs Municipal Code and such other funds as may be appropriated by the City Council or donated to the City for expenditures in conjunction with the Public Arts Program.
- (b) Accounting. This fund shall be maintained by the City Treasurer, with accounting records established to sufficiently identify and control these funds. Expenditures shall be processed through the City's established warrant payment procedure.
- (c) Use of Fund. The funds shall be used solely for the acquisition, installation,

improvement, maintenance and insurance of artwork to be displayed in the city and the administration of the Public Arts Program.

(d) Permissible Expenditures:

- (1) The cost of artwork and its installation.
- (2) The cost of purchase or lease of art sites.
- (3) Waterworks, landscaping lighting and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the property aesthetic presentation and structural placement of the artwork.
- (4) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork.
- (5) Expenditures for maintenance and repair of artworks.
- (6) Administrative expenses, including legal, to otherwise implement uphold or carry out any provision of this Chapter.

(e) Ineligible Expenditures:

- (1) Reproductions of original work except limited editions.
- (2) Unlimited editions of original work.
- (3) Mass-produced art objects.
- (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site.
- (5) Architectural rehabilitation or historical preservation of buildings.

(f) Endowments. The Public Arts Fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in 3.37.040(c) and (d) and when approved by the Commission:

- (1) Art exhibitions or displays.
- (2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other non-profit organizations.

(g) Replacement. For those artworks that have been purchased with monies from the Public Arts Fund or donated to the City, the City Council may determine to sell or exchange existing artworks for replacement artworks. Any funds obtained from the sale of artwork shall be credited to the Public Arts Fund.

3.37.050 Projects Subject to Public Arts Program Requirements.

(a) Requirements. Except as provided below in 3.37.050(b), the requirements of this Chapter shall apply to all works of construction and rehabilitation for which a building permit is required, including, but not limited to:

- (1) New commercial and industrial construction.

- (2) Remodeling or reconstruction of existing commercial or industrial property.
 - (3) New residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer.
 - (4) New individual single-family residential units constructed on a lot located in an existing subdivision whose building permit valuation is over \$100,000.
- (b) Exceptions. The requirements of this Chapter shall not apply to the following activities:
- (1) Public projects undertaken by any agency of the City, the State, County, School District or any other governmental entity.
 - (2) Remodeling, repair or reconstruction of structures to comply with earthquake seismic safety code standards or which have been damaged by fire, flood, wind, earthquake or other calamity.
 - (3) Remodeling, repair or reconstruction of residential units.
 - (4) Nonprofit social service or cultural institution projects.
 - (5) Low to moderate housing projects as defined by household income Health and Safety Code Section 50093.
 - (6) Affordable housing developments receiving City, State or Federal assistance.
 - (7) Private educational institutions which provide general education equivalent to the public school system (kindergarten through high school or any part thereof).
 - (8) Architectural rehabilitation or historical preservation of properties which are designated as Class 1 Historic Sites by the City Council.

3.37.060 Certificates of Occupancy.

- (a) No final City approval, such as final inspection or a certificate of occupancy, for any project subject to this Chapter shall be granted or issued unless and until full compliance with the Public Arts Program is achieved, in one or more of the following ways:
- (1) The approved artwork has been placed in a manner satisfactory to the Public Arts Commission.
 - (2) In-lieu art fees have been paid.
 - (3) Financial security in an amount equal to the acquisition and installation costs of an approved artwork, in a form approved by the City Attorney, has been posted.
 - (4) An approved artwork has been donated and accepted by the Public Arts Commission.
- (b) Full compliance with the Public Arts Program shall not be deemed to exist until the entire Program Allocation for the project, as defined in 3.37.070 has been

provided.

3.37.070 Requirement to Provide Artwork or Pay Development fee.

- (a) The applicant shall be deemed to have satisfied his or her obligations under this Chapter through the placement of artwork in a manner consistent with this Chapter, valued at an amount equal to the Program Allocation.
- (b) In-lieu of placement of an approved artwork, the applicant may, at his or her discretion, pay to the City for deposit into the Public Arts Fund an amount equal to the Program Allocation set forth in 3.37.070(d).
- (c) Fees are to be collected with respect to all projects prior to issuance of a building permit, except in the case of residential developments of more than one dwelling unit, where the fee shall be collected on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first.
- (d) The Program Allocation, as used in this Chapter, is the percentage of the building cost which is set aside for the City's Public Arts Program. The total building valuation shall be computed using the latest Building Valuation Data as set forth by the International Conference of Building Officials (ICBO) unless, in the opinion of the Building Official, a different valuation measure more accurately represents the value of the building. Excluding land acquisition and off-site improvement costs, the program allocation shall be an amount equal to the percentage of the total building valuation for an applicable project, as listed herein:
 - (1) One half of one percent ($\frac{1}{2}\%$) for new commercial and industrial construction.
 - (2) One half of one percent ($\frac{1}{2}\%$) for remodel or reconstruction of existing commercial or industrial property.
 - (3) One quarter of one percent ($\frac{1}{4}\%$) for new residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer. A project shall be considered a development of two or more units when two or more building permits are issued to the same person for development of new residential structures within a one hundred and eighty (180) day period.
 - (4) One quarter of one percent ($\frac{1}{4}\%$) for new individual single-family residential units constructed on a lot located in an existing subdivision for that portion of building permit valuation in excess of \$100,000.
- (e) Nothing in this Section shall prohibit the applicant from placing an approved artwork with acquisition and installation costs in an amount less than the Program Allocation; provided that the applicant shall also pay to the Public Arts Fund an amount equal to the difference between the Program Allocation and the costs of acquisition and installation of such artwork.
- (f) Nothing herein shall restrict the City Council from waiving the requirements of this Chapter, in whole or in part, with respect to any project otherwise subject to the provisions of this Chapter, provided that the City Council determines that the

Project Applicant has entered into an agreement with the City providing for the applicant's acquisition and installation of artwork in connection with the development of the project which addresses the goals and aims of this Chapter in a manner equally or more favorable to the City than would be achieved by strict compliance with this Chapter. In such an event, the City Council shall make findings to this effect on the basis of substantial evidence.

3.37.080 Art Site Acceptability.

- (a) Placement of art by applicant. The applicant shall place artwork in outdoor areas of the private property that are accessible and used by the public a minimum of eighteen (18) hours per day. Interior spaces, including lobbies, courtyards, malls, etc., may be eligible if they are accessible to the public a minimum of twelve (12) hours per day.
- (b) Art purchased through Public Arts Fund. When selecting the location for art purchased through the Public Arts Fund, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites.

3.37.090 Criteria for Artwork Selection.

- (a) Eligibility requirements for each project will be established by the Public Arts Commission. Specifically excluded are artworks done by students under the supervision of art instructors to satisfy course requirements and artists who are members of the Public Arts Commission. The following criteria shall be considered in the selection of artwork:
 - (1) Quality of the artwork.
 - (2) Media – all visual art forms may be considered, subject to limitations set by the selection jury or the Arts Commission.
 - (3) Style – artworks of all schools, styles, and tastes should be considered for the City Collection.
 - (4) Environment – artworks and art places should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate.
 - (5) Permanence -- consideration should be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance, and repair costs.
 - (6) Elements of design - consideration should take into account that public art, in addition to meeting aesthetic requirements, also may serve to establish focal points, terminate areas, modify, enhance, or define specific spaces, or establish identity.
 - (7) Diversity - The Public Arts Program should strive for diversity of style, scale, media, artists - including ethnicity and gender and equitable distribution of artworks and art places throughout the City.

- (b) The following methods may be used to select artwork:
- (1) Direct purchase: A completed work of art may be purchased for a specific project or location.
 - (2) Direct commission: An artist may be chosen directly by an artist-selection jury and paid to submit a proposal. Artists will be selected on the basis of their qualifications for a particular project and its probability of successful completion.
 - (3) Limited competition: A small number of artists may be invited and paid by the selection jury to submit proposals.
 - (4) Open competition: Any artist may apply subject to limitations established by the selection jury. No proposal fee is paid to artists, however, a small number of finalists may be selected to submit details, models or plans for which a fee is paid.
- (c) In selecting an artwork, the Arts Commission may appoint a selection jury of qualified persons. The jury shall be subject to the provisions of the Brown Act.
- (d) Review by Department of Planning and Zoning - A Department of Planning and Zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance.

3.37.100 Maintenance of Artwork on Public and Private Property.

- (a) Public artwork on public property. A maintenance fund shall be established as part of the Public Arts Program. Procedures for custody, maintenance and conservation of artworks shall be established by the Public Arts Commission as well as a maintenance schedule. Specific instructions for care of each work shall be kept on file as part of the collection management. The Public Arts Commission will strive to include maintenance provisions in the artwork contracts stipulating the length of time (typically one year) the artist will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal on repair contracts within a fair market rate of remuneration. Regular inspection-for-condition reporting shall be conducted so that the collection is maintained in the best possible condition as supervised by designated City personnel. When necessary, a conservation plan will be established prioritizing the work which is to be done.
- (b) Private artwork on private property. The obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. Art installed on or integrated into a construction project pursuant to the provisions of this Chapter shall not be removed or altered without the approval of the Public Arts Commission. Artwork installed pursuant to this Chapter shall be maintained as specified in the written agreement between the City and the private property owner with regard to that artwork. Maintenance of artwork, as used in this Chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the City, protection of the artwork against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism and other similar acts in an

amount to be determined by the City Attorney. Prior to placement of an approved artwork, applicant and owner of the site shall execute and record a covenant in a form approved by the City for maintenance of the artwork. Failure to maintain the artwork as provided herein is hereby declared to be a public nuisance. If the artwork is not maintained in the manner prescribed, or is removed or altered without approval of the Public Arts Commission, in addition to all other remedies provided by law, the City may, upon reasonable notice, perform all necessary repairs, maintenance, secure insurance, or take such legal or other action deemed necessary to have the artwork maintained and if necessary, restored, and the costs therefore shall become a lien against the real property.

3.37.110 Application Procedures for Placement of Artwork on Private Property. Any artwork being placed on private property as part of the City's Public Arts Program shall be a one-of-a-kind piece. The City encourages applicant's to submit an application prior to the development of the architect's schematic design. The requirements and procedures for the processing of a Public Arts Program proposal application (an "arts application") shall be as follows:

- (1) Upon submission of a development project application for a project subject to the requirements of this Chapter, the Department of Planning and Zoning shall provide to the project applicant a copy of this Chapter, an arts application form and the name and telephone number of the City's Art Administrator.
- (2) The project applicant shall submit to the Arts Administrator the completed arts application form, describing the manner in which the project applicant intends to comply with this Chapter.
 - (1) The arts application shall include:
 - (A) Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork.
 - (B) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs.
 - (C) Preliminary plans containing such detailed information as may be required by the Public Arts Commission to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development (the artwork shall be an integral part of the landscaping and/or architecture of the building), including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods if necessary to evaluate the proposal; and,
 - (D) A narrative statement to demonstrate that the artwork will be displayed in an area open and freely available to the general public, or otherwise provide public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site.
 - (E) Maintenance factors required to insure its permanence.

3.37.120 Approval Procedures for Placement of Artwork on Private Property.

- (A) The application for the proposed artwork and its placement will be considered at a monthly public meeting of the Palm Springs Public Arts

Commission. A Department of Planning and Zoning representative will also review the artwork and its placement and landscaping elements and may refer the application to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance. Any changes, questions or recommendations shall be conveyed in writing to the applicant. The Commission will determine when all issues have been addressed and accept or reject the artwork. The applicant will be notified in writing of the Public Arts Commission's decision.

- (B) If the applicant proposes or the Planning Commission or City Council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to the receipt of the Public Arts Commission's approval, the application shall, if legally permitted, be returned to the Public Arts Commission for further review and recommendation concerning the revised proposal prior to final approval unless the Council otherwise directs.
- (C) A contract between the City and the applicant spelling out all requirements, including insurance and maintenance, shall be executed prior to the City's formal acceptance of the applicant's art-in-lieu proposal.

3.37.130 Procedure for Refund of Public Arts Fee for Artwork-in-Lieu of Fee. If in-lieu artwork has been placed subsequent to payment of a public art fee, the applicant shall submit to the Arts Administrator a written request for refund of the amount spent on artwork placed on the applicant's property. The amount to be refunded shall not exceed the amount that would have been paid into the Public Arts Fund should the applicant have chosen to pay a fee instead of placing artwork on the site. The request for reimbursement shall be submitted after the artwork is installed, approved by the Public Arts Commission and accepted by the City.

3.37.140 Ownership of Artwork on Private Property. Artwork placed on the applicant's property by the applicant in satisfaction of the applicant's program requirement shall remain the property of the applicant.

3.37.150 Application Procedure for Donation of Artwork to the City. The prospective donor shall submit to the Arts Administrator:

- (1) Sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork to be donated.
- (2) Additional samples of artist's work other than the proposed donation.
- (3) Background information on artist who created the proposed donation.
- (4) Installation costs, if available.
- (5) Maintenance factors required to insure its permanence.

3.37.160 Review and Acceptance of Artwork Donated to the City. The proposed donation will be considered at a monthly public meeting of the Public Arts Commission. All details of the proposed donation, including the feasibility and expense of placing and caring for the work of art will be considered. The Commission will review and discuss the donation and will direct the Arts Administrator as to any questions to be asked of the donor or artist. A personal appearance by artist may be requested. The Commission will determine when all issues have been addressed and accept or reject the artwork.

SECTION 3. Section 9311.00 of the Zoning Ordinance of the City of Palm Springs is hereby repealed and of no further force or effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after passage.

SECTION 5. PUBLICATION. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance, and to cause the same or a summary thereof or a display advertisement, duly prepared according to law, to be published in accordance with law.

ADOPTED this _____ day of _____, 1994.

AYES:

NOES:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

By: _____
City Clerk

Mayor

REVIEWED AND APPROVED:
