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ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE TO ADD A NEW CHAPTER 15.108, "PUBLIC ART" AND AMENDING NAPA MUNICIPAL CODE SECTION 17.62.060 "REVIEW CRITERIA" FOR DESIGN REVIEW PERMITS

WHEREAS, the City of Napa has determined that public art is a critical element of providing a diverse and culturally rich environment to residents and visitors to Napa that promotes the general public welfare; and

WHEREAS, research has shown that the arts foster economic development, revitalize urban areas and improve the overall business climate. Additionally, a well-conceived work of art can increase the value of a development project, help to lease space more quickly, enhance the corporate image of the community, promote cultural tourism and provide a visible and lasting contribution to the community in return for the ability to build; and

WHEREAS, public art expresses the confidence, vitality and optimism of the community and reflects the highest ideals of its citizens resulting in a more beautiful and livable city; and

WHEREAS, public art enriches and celebrates our community identity by developing a collection of artworks which have strong inherent aesthetic quality and represent diverse communities and a wide range of artistic styles and disciplines; and

WHEREAS, in order to ensure that public art is present throughout the community it is necessary to require that all new non-residential development in the City of Napa include an element of public art or, where appropriate, contribute to a City fund for public art, in an amount to be determined by the City Council, in lieu of providing said art; and

WHEREAS, in order to provide the City Council with advisory recommendations regarding developer public art proposals funded through in lieu contributions, it is necessary to establish a new Public Art Steering Committee; and

WHEREAS, the City Council takes legislative notice of court cases holding that regulations imposing aesthetic requirements through zoning enactments are valid exercises of the police power and do not constitute impermissible takings merely because they may restrict uses or impose costs in conjunction with the development of property (see, e.g., Ehrlich v. City of Culver City, 12 Cal. 4th 854, 885-886; Metromedia Inc. v. San Diego (1980) 453 U.S. 490, 508 fn. 13; Penn Central Transp. Co. v. New York City (1978) 438 U.S. 104, 124; Agins v. Tiburon, (1980) 447 U.S. 255); and

WHEREAS, the requirement that applicants for development projects provide either public art or an in lieu equivalent is a legitimate and valid land use regulation that has been analogized by California courts as akin to traditional land use regulations imposing minimal setbacks, parking and lighting conditions, landscaping requirements and other design conditions; and

WHEREAS, aesthetic regulation as set forth in the public art contribution is reasonably related to the public health, safety and welfare of the citizens of the City of Napa, and furthers the significant government interests of the promotion of visual and cultural interest in commercial and residential zoning districts, preservation of neighborhood character, communication of community values and cultural interests, promotion of tourism and stimulation of the local economy, and enhancement of the visual character and identity of the City; and

WHEREAS, the City Council hereby finds that the public art contribution is thus neither a "development fee" subject to the requirements of the California Mitigation Fee Act, California Government Code 66000 *et seq*, nor a development exaction subject to the heightened scrutiny of relevant rules set

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forth in Nollan v. California Coastal Commission 483 U.S. 825 (1987) and Dolan v. City of Tigard 512 U.S. 374 (1994), but rather, that the public art contribution is a zoning requirement that furthers aesthetic objectives under the authority of the City's general police power; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Napa as follows:

SECTION 1: Amendment. A new Chapter 15.108, "Public Art" is hereby added to Title 15 of the Napa Municipal Code to read as follows:

Chapter 15.108 – PUBLIC ART

- 15.108.010 Purpose
- 15.108.020 Definitions
- 15.108.030 Public Art Requirement
- 15.108.040 Public Art Requirement Imposed
- 15.108.050 Process for the Approval and Installation of a Public Art Piece
- 15.108.060 Public Art Program- Administrative Policies and Program Guidelines
- 15.108.070 Public Art Steering Committee Established
- 15.108.080 Duties of the Committee
- 15.108.090 Public Art Fund
- 15.108.100 Fee Adjustment
- 15.108.110 Authority for Additional Mitigation
- 15.108.120 Annual Review

15.108.010 PURPOSE

The purpose of this ordinance is to authorize the establishment of guidelines, procedures and standards for the integration of public art into new private and public construction projects throughout the City of Napa.

Public art helps create a more livable and visually stimulating city. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. It creates a deeper interaction with the places where we live, work and visit. A city rich in art encourages cultural tourism which brings in visitor revenues.

The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the City. Public art illuminates the diversity and history of a community, and points to its aspirations for the future. A wealth of art and culture in the public realm will foster the economic development of the community.

To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process.

15.108.020 DEFINITIONS

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

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“Artist” means a person who has a reputation among peers as a person of artistic excellence, through a record of exhibitions, public commissions, sale of works, or educational attainment as judged by the reviewing body with final design review authority for the development project.

“Construction Cost” means the total cost of any development project covered by this Chapter. Calculations shall be based on construction and improvement costs as declared on all building permit applications. Building permit applications shall include, but not be limited to, all grading, building, plumbing, mechanical, and electrical permit applications for the project. The actual construction costs for the purpose of determining the Public Art Contribution amount required by this Chapter shall be determined by the City’s Community Development Director.

“Developer” means the person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter, who may, or may not, be the owner of the subject property.

“Development Project” means a project involving the construction of any new commercial building (including office and retail uses), industrial or light industrial uses, or any mixed use building, or the rehabilitation, renovation, remodeling or improvement of an existing building, and having a Construction Cost, as defined in this Chapter, of \$250,000 or more. For the purposes of calculation of the Public Art Contribution for a mixed use project, the Construction Cost shall be calculated using the cost of the non-residential portion of the project only. An existing building that is remodeled with a Construction Cost greater than or equal to 50% of the replacement cost of the building as determined by the City’s Community Development Director, regardless of the actual amount of the Construction Cost, shall also be subject to the requirements of this Chapter. Those development projects which qualify as any of the following shall not be subject to the requirements of this Chapter:

- a) Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity.
- b) Historic preservation.
- c) Seismic retrofit or flood protection projects work items.
- d) Fire sprinkler installation work items as defined by this Code.

“Director” means the Community Development Director, or a designee of the Community Development Director or the City Manager.

“Installation Date” means the actual date on which the public art is installed on site.

“Non-profit Organization” means an incorporated organization which exists for educational or charitable reasons and provides programs or services of public benefit and from which its shareholders or trustees do not benefit financially, including, but not limited to, organizations exempt from taxation under either California Revenue and Taxation Code 23701 *et seq*, or section 501(c)(3) of the Internal Revenue Code.

“Public Art” means an original work of a permanent nature in any variety of media produced by an artist which may include sculpture, murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, or a combination thereof, and may include architectural features of the building such as decorative handrails, stained glass and other functional features which have been enhanced to be visually appealing. City commissioned public art may also include pieces as identified above which may be moved from time to time as a gallery collection and placed in public buildings such as City Hall, the Library and other publicly accessible facilities.

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Public Art does not include the following:

- a. Art objects that are mass produced of standard design such as playground equipment, benches, statuary objects or fountains;
- b. Decorative or functional elements or architectural details, which are designed solely by the building architect as opposed to an artist commissioned for this purpose working individually or in collaboration with the building architect;
- c. Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist;
- d. Directional elements such as super graphics, signage as defined in the Napa Municipal Code Section 15.56, 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.
- e. Interpretive programs.
- f. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, print making, or other media arts, specifically commissioned by the City.
- g. Services or utilities necessary to operate or maintain the artwork over time.
- h. Existing works of art offered for sale or donation to the City which do not have an established and recognized significance as public art among arts professionals and art appraisers as judged by the Public Art Steering Committee or City Council..
- i. Works of art which are not visible to the public.
- j. Works of art which cannot be reasonably maintained within the resources allocated by the City of Napa.
- k. Logos or corporate identity.

“Public Art Contribution” means the dollar amount equal to 1% of the construction cost of a development project covered by this Chapter. In the case of a mixed-use project, the dollar amount equal to the cost of 1% of the square footage of the non-residential component of that development project. For purposes of determining the public art contribution for a mixed-use project, the contribution shall be equal to the dollar amount equal to the cost of 1% of the square footage of the non-residential component of the project (e.g., total \$350 per square foot (“SF”) for the entire 15,000 SF project, where commercial is 2,000 SF - 1% contribution based on $\$350 \times 2,000 = \$7,000$).

“Public Art Fund” means a fund established and maintained by the City of Napa for the purpose of funding public art and cultural programming consistent with the Public Art Master Plan.

“Public Art Master Plan” means a plan developed by the City and approved by the City Council which identifies locations on public property such as public rights of way and public parks which would be acceptable for the placement of Public Art pieces, and additionally identifies funding priorities and criteria for accounting and expenditures of the accumulated public art fund. The plan shall be developed in conjunction with the City Parks and Recreation Advisory Commission, the Public Art Steering Committee and the Planning Commission.

“Public Art Steering Committee” means the advisory committee established under section 15.108.060 of this Chapter.

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“Public Construction Project” means any City-funded construction or reconstruction project with a construction cost of \$250,000 or more as verified by the City Engineer. For the purposes of calculating the public art contribution for a public construction project, the square footage of a Public Construction Project shall not include the portion of any project that includes:

- a) Underground public works projects
- b) Street or sidewalk repair
- c) Tree planting
- d) Utility facilities with the exception of administrative buildings and facilities which house City employees
- e) Non-municipal government construction

“Public Place” means any exterior area on public or private property which is clearly visible to the general public. If located on private property, the area must be clearly visible from adjacent public property such as a street or other public thoroughfare, sidewalk, or path.

15.108.030 - PUBLIC ART REQUIREMENT

The requirements of this chapter shall apply to the following activities:

1. Development Projects as defined in Section 15.108.020.
2. Public Construction Projects as defined in Section 15.108.020.

15.108.040 - PUBLIC ART REQUIREMENT IMPOSED

A. The developer of any development project subject to the requirements of this Chapter shall install public art on the project site in a public place as approved by the reviewing body with final design review authority for the development project pursuant to the process identified in this Chapter. The cost of the public art must be equal at least to one percent (1%) of the construction cost. The creator of public art shall be an artist. Public art shall be displayed in a manner that will enhance its enjoyment by the general public. As an alternative to on-site installation of public art, the developer may:

1. Request that the reviewing body with final design review authority for the development project consider placement of a developer- funded piece in a public place nearby which is identified in the public art master plan or;
2. Pay a public art contribution to the City equal to one percent (1%) of the total construction cost. The public art contribution shall be paid by the developer at the time of building permit issuance. Projects which would generate a fee of over \$500,000 and provide a significant benefit to the public may request a lower fee rate if the developer submits evidence and documentation with the application to the satisfaction of the City Council that payment of a fee in excess of \$500,000 would be prohibitively expensive for project delivery.
3. Subject to the approval of the reviewing body with final design review authority for the development project, install public art on the development project site that has a value lower than the public art contribution amount and make an in-lieu contribution for the balance of the public art contribution.

B. Prior to obtaining a building permit for construction of the development project, the developer shall demonstrate compliance with the requirements of this Chapter in one of the following ways:

1. Payment of the full amount of the public art contribution; or

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2. Written proof to the Director of a contract to commission or purchase and install the required public art approved by the review body with final design review authority for the development project on the subject development site, accompanied by a performance security, in an amount determined by the Director, to be adequate to secure faithful performance of the commission and installation of the required public art and in a form acceptable to the City Attorney, and a written acknowledgement by the project artist and the developer, in a form approved by the Director that the proposed public artwork complies with the criteria set forth below:
 - a. The public art shall be designed by an artist.
 - b. The public art shall require a low level of maintenance and the proposed maintenance provisions shall be adequate for the long-term integrity and enjoyment of the work. The owner shall enter into a maintenance agreement with the City to be recorded against the property to ensure that proper maintenance is performed as determined by the Director and in a form acceptable to the City Attorney;
 - c. The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other setting so to complement the site and its surroundings and shall be consistent with any corresponding action of the reviewing body with final design review authority for the development project as it may relate to any development entitlements;
 - d. Public art shall be permanently affixed to the property;
 - e. The public art shall be maintained by the owner or his successor in interest in a manner acceptable to the City;
 - f. The public art shall meet all applicable building code requirements.

C. The developer shall provide the City with proof of installation of the required public art on the development site prior to the issuance of a Certificate of Occupancy unless the developer has entered into an agreement and submitted a performance security consistent with section 15.108.040 (B)(2).

D. Title to all public art required by and installed pursuant to this Chapter on private property shall be vested in the owner and pass to the successive owners of the development project. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art. Public art installed on public property is owned by the City of Napa and maintenance, removal or protection is the responsibility of the City.

E. If, for any reason, the current owner or successor in interest shall choose to replace any public art installed pursuant to this Chapter, the following requirements shall be met before the art is replaced:

1. The replacement public art must be reviewed and approved by the reviewing body with final design review authority for the development project.
2. The cost of the replacement shall be equal to, or greater than, the initial cost of the existing public art to be removed adjusted for time.
3. The location of the replacement public art shall meet the requirement for public visibility in effect at the time of the replacement.
4. The replacement public art shall conform, in every respect, to all standards in effect at the time of the replacement.
5. The replacement public art, location and installation shall violate no other ordinance.
6. The replacement public art shall be installed within 180 days of the removal of the existing public art piece, unless the period is extended by the Director.

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15.108.050 PROCESS FOR APPROVAL OF THE INSTALLATION OF A PUBLIC ART PIECE.

The developer, in conjunction with the submission of design review materials required by Section 17.62.030, shall submit a narrative proposal and artistic rendering of the public art to be submitted in satisfaction of the requirements imposed by Section 15.108.040, including any additional information, plans or maps prescribed by the Director, at the time of submission of their development application, or indicate an intention to pay a public art contribution prior to issuance of a building permit pursuant to section 15.108.040(A)(2). The proposal for the public art shall be considered as an element of the design review permit review as set forth in Section 17.62.060 by the reviewing body with final design review authority for the development project.

15.108.060 PUBLIC ART PROGRAM - ADMINISTRATIVE POLICIES AND PROGRAM GUIDELINES

The City Manager is authorized to establish and maintain written administrative policies as program guidelines, which shall implement the requirements of this Chapter. A copy of the program guidelines shall be maintained in the office of the City Clerk. The program guidelines shall be approved by the City Manager, based on the recommendation of the Director, and subject to the review and approval as to form by the City Attorney. The program guidelines may include, but are not limited to, the following elements: standards for eligible public art works, media and materials in public art, standards for placement and site selection of public art, standards for placement of public art on both public and private development sites, role and procedures of the Public Art Steering Committee, art selection process, art selection standards and criteria, maintenance and conservation of public art works, staffing and administration of the public arts program, public art collection review and de-accessioning, and catalog and inventory procedures for the collection of art installed under this Chapter.

15.108.070 PUBLIC ART STEERING COMMITTEE ESTABLISHED

The City Council hereby establishes a Public Art Steering Committee ("the Committee"). The Committee shall consist of five members appointed by the City Council. Two of the five members shall be visual arts professionals, which shall mean, for the purposes of this Chapter as well as any other implementing policies adopted pursuant to the authority of 15.108.060, any of the following: professional artist in any medium, curator, art critic, art historian, arts educator, architect, or other design professional with a visual arts background or fine art collector. One member shall be the City of Napa representative of the Napa County Arts and Culture Commission. One member shall be nominated by the Arts Council Napa Valley or other City-recognized arts organization. The fifth member shall be an at-large member. Members of the Committee shall be appointed by the City Council upon the recommendation of the City Manager to four-year, staggered terms and shall hold office in accordance with procedures established by the City Council.

15.108.080 DUTIES OF THE COMMITTEE

The Committee shall meet periodically to review and provide input and make recommendations to the City Council regarding proposals and solicitations for City-owned public art funded through the public art fund for sites identified in the public art master plan. To assist the Committee in reaching recommendations for the City Council, the City Manager shall additionally solicit input and participation from other City stakeholders, including but not limited to neighborhood groups and associations, members of the development and arts communities, City staff, and any other members of the community who may provide input on public art pieces commissioned using funds from the public arts fund. The Committee may also be requested by the City Manager to participate in the formation and drafting of requests for qualifications, request for proposals, calls for artists, or other solicitation documents to guide eligible artists in applying for City arts commissions and solicitations for public art. Additionally, the Committee may provide advice in the formation and update of the public art master plan. All of the Committee's input shall be in the form of recommendations to the City Council or the City Manager. Accordingly, the City Council finds that the Committee shall not have "decision making authority" with respect to the public arts program, pursuant to Section 18701 of the regulations of the California Fair Political Practices Commission (Title 2, Division 6 of the California Code of Regulations).

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15.108.090 - PUBLIC ART FUND

All fees collected under this Chapter shall be held in a special fund designated "Public Art Fund," maintained, managed and reviewed by the Director. The City Council shall adopt a public art master plan to govern the acquisition, placement and installation of public art owned by the City using the public art fund.

15.108.100- FEE ADJUSTMENT

A developer subject to the requirements set forth in this Chapter may apply to the City Council for a reduction or adjustment to the fees or waiver of the fees based upon the absence of any reasonable relationship or nexus between the impact of the new development and either the amount of the fees charged or the type of facility to be financed or the portion of the facility attributable to the new development. If appealing fees owed upon issuance of a building permit, the developer shall pay all required fees under protest and concurrently file a written application for a waiver or reduction as an appeal to City Council. Appeals filed under this section shall comply with the requirements set forth in Chapter 17.70 and shall be conducted in accordance with the procedures set forth in that Chapter, except that all appeals shall be considered by the City Council. The decision of the Council shall be final.

15.108.110 AUTHORITY FOR ADDITIONAL MITIGATION

Fees collected pursuant to this chapter do not replace existing development fees, except as the Council may specifically provide, or other charges or limit requirements or conditions to provide additional mitigation of impacts imposed upon development projects as part of normal development review process.

15.108.120 ANNUAL REVIEW

The public art fund authorized by this chapter and implementing Council resolution(s), and the accumulated fee funds and their appropriation and supporting documents, shall be reviewed as part of the budget process.

SECTION 2: Amendment: Napa Municipal Code section 17.62.060, "Review Criteria," is hereby amended to read as follows:

17.62.60 Review Criteria

- A. Consistency with General Plan Design Policies and Specific Plan Design policies.
- B. Consistency with applicable Design Guidelines adopted by the City Council.
- C. General Site Design. There should be a harmonious relationship between the structures within the development and between the structures and the site. Proposed structures and related site development improvements (e.g., access, parking, grading, etc.) should be related to existing development in the vicinity. There must be a consistent organization of materials and a balanced relationship of major elements.
- D. General Architecture. The project architecture should be harmoniously integrated in relation to the architecture in the vicinity in terms of colors and materials, scale, and building design. The design should be sensitive to and compatible with historic and architecturally significant buildings in the vicinity, and should enhance important community gateways and waterways.
- E. General Landscape Design. The natural landscape should be preserved in its natural state, insofar as practicable. The landscaping shall be designed as an integral enhancement of the site, sensitive to natural site features.
 - 1. Water conserving landscape design shall be required consistent with the City's Water Efficient Landscape Guidelines.
 - 2. Landscaped buffer areas may be required near wetlands and other sensitive habitat areas.

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F. Public Art Component. Consistency of any public art proposal submitted in satisfaction of Chapter 15.108 with the general selection criteria for public artworks set forth in Chapter 15.108 and any program guidelines as established under the authority of Chapter 15.108.060.

SECTION 3: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4: Effective Date. This ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }
COUNTY OF NAPA } SS:
CITY OF NAPA }

I, -----, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the ___ day of ____, 2009, and had its second reading and was adopted and passed during the regular meeting of the City Council on the ___ day of ____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA