



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.GOV

CITY COUNCIL STAFF REPORT

Date: October 21, 2025

Subject

Study session to review the Arts & Culture Commission's recommendation to the Municipal Code standards for art in public and private development, including the standards in the Municipal Code and developing an Art-in-lieu fee policy. (Application No. MCA-2025-003; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

Conduct the study session and provide feedback to Staff.

Background

On March 1, 2005, the City Council approved Resolution No. 05-040, *City of Cupertino Public Art Program: Guidelines for Selection of Public Art*, (Attachment A) adopting guidelines for the selection of public art. This action expanded the existing policy from two years prior by providing more specific guidelines, including establishing criteria for the selection and placement of artwork, as well as procedures and forms for gifts and exhibitions, among others. This policy has remained unchanged since that time.

The City first approved its original "Required Artwork in Public and Private Developments Ordinance" (09-2037) on February 17, 2009, codifying a General Plan policy at the time that required public art for approved development projects over 50,000 square feet to allocate .25% of the project valuation (cap of \$100,000) to onsite art. The current Ordinance (18-2175) was approved by the City Council on August 21, 2018. It removed the \$100,000 spending cap and added the current valuation percentages (1% for onsite artwork, 1.25% for in-lieu).

Additionally, the General Plan: *Community Vision 2015-2040* has the following policies and strategies as it relates to art in the City:

- POLICY LU-6.8: CULTURAL RESOURCES Promote education related to the city's history through public art in public and private developments.
- POLICY LU-7.1: PUBLIC ART Stimulate opportunities for the arts through development and cooperation with agencies and the business community.

- LU-7.1.1: Public Art Ordinance. Maintain and update an ordinance requiring public art in public as well as private projects of a certain size.
- LU-7.1.2: Gateways. Promote placement of visible artwork in gateways to the city.
- LU-7.1.3: Artist Workspace. Encourage the development of artist workspace, such as live/work units, in appropriate locations in the City.
- POLICY RPC-6.3: ART AND CULTURE Utilize parks as locations of art and culture and to educate the community about the City's history, and explore the potential to use art in facilities and utilities when located in parks.

On April 3, 2024, the City Council approved the FY 2024-2025 City Work Program (CWP), with a total of 20 projects. One of the CWP projects that is aligned with Council's Quality of Life goal, is associated with art in public and private areas. Changes to the City's art in public and private places requirements could entail revisions to the City's Municipal Code and the development of an Art-in-lieu fee policy. At present, the City's Municipal Code discourages the payment of art in-lieu fees by developers in favor of having them provide art at a publicly visible location within their developments.

Analysis

The Municipal Code, *Chapter 19.148: Required Artwork in Public and Private Developments* and Resolution No. 05-040, *City of Cupertino Public Art Program: Guidelines for Selection of Public Art* (Attachment A), are the standards that the City currently uses for evaluating art in both public and private projects (Attachment A). Currently, the City does not have a separate Art Fund.

Within the last couple of years, staff have been reviewing the ordinances, policies, and programs of various cities in the Bay Area for comparison. Staff's research focused on the following:

- Art Requirements of Private Development: How do cities treat in-lieu payments in contrast to providing onsite art pieces?
- Separate Art Fund: Do the cities have a separate art fund or do in-lieu payments go into their General Fund?
- Fund Distribution: What limits are imposed on how the funds are used? What programs/projects can cities subsidize with the funding?
- Decision Making Bodies: Which of the cities' decision-making bodies ultimately decides how the funds are used?

For the complete analysis, please refer to Attachment C.

Staff presented this item for consideration to the Arts and Culture Commission at the September 23, 2024, March 24, May 19, and July 22, 2025 meetings. Throughout the discussion, the Commission asked a wide range of questions and made comments. The Commission made recommendations at the conclusion of their review. The recommendations included the following:

- The Arts & Culture Commission would approve an in-lieu payment option. Currently, the City Council is the approval body, with the Arts & Culture Commission providing a recommendation to Council.

- The In-lieu payment and valuation of art pieces on private development shall be maintained at a consistent valuation of 1%, instead of the current higher 1.25% for the in-lieu payment.
- The City shall create and maintain a separate art fund.
- Art fund could be used to fund the development of an arts Master Plan and other Commission recommendations, including expansion of funding to programming beyond physical art such as theatre and scholarships.
- The City Council shall be the decision-making body, upon recommendation by the Arts and Culture Commission, for the allocation of funds.

The Arts and Culture Commission also directed staff to provide redlined versions of the Municipal Code and Policy for review at their regular July 22, 2025, meeting. Attachment A provides the redlined version of CMC Table 19.12.030 *Approval Authority* and Chapter 19.148: *Required Artwork in Public and Private Developments*. These changes would designate the Commission as the ultimate decision-making regarding art in-lieu payment options and the reduced contribution percentage for applicants using the in-lieu payment option. Attachment D provides an amendment to the City's existing Policy (City Council Resolution No. 05-040) by establishing a separate art fund, as well as setting the parameters for how the funds may be used.

Planning Commission

At its regularly scheduled meeting on September 23, 2025, the Planning Commission received a presentation on the Arts & Culture Commission's recommendations to the City Council. The Planning Commission motioned 3-2 (No: Fung, Lindskog) to retain the existing premium (1.25%) for the in-lieu fee, create a separate art fund to be solely used for the creation of public art in any form, and that Council maintains final discretion on approvals.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The creation of a separate art fund, as well as not discouraging the payment of an art in-lieu fee, has the potential of adding funds to art programming into the City.

City Work Program (CWP) Item/Description

Yes. FY 24-25

Art in Public and Private Areas: Revisit Municipal Code standards for art in public and private development, including the standards in the Municipal Code and developing an Art-in-lieu fee policy.

Council Goal:

Quality of Life

California Environmental Quality Act

The item before the Council is a study session and does not involve any discretionary action on the Council's part. The California Environmental Quality Act (CEQA) and the CEQA Guidelines (collectively, "CEQA") apply only to discretionary actions, so this item is not subject to CEQA.

Next Steps

With Council direction, staff will prepare amendments to Municipal Code Section 19.12.030, Chapter 19.148, as well as any proposed modifications to the draft policy for Council consideration.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Benjamin Fu, Director of Community Development
Floy Andrews, Interim City Attorney

Approved for Submission by: Tina Kapoor, Interim City Manager

Attachments:

- A. Resolution No. 05-040 (*City of Cupertino Public Art Program: Guidelines for Selection of Public Art*).
- B. Municipal Code Table 19.12.030 Approval Authority and Chapter 19.148: Required Artwork in Public and Private Developments (redline)
- C. Jurisdiction Analysis of Art Programming
- D. Draft Policy (City Council Resolution No. 05-040)
- E. Email from Arts and Culture Commission Chair