

 <b>CITY COUNCIL ART IN-LIEU FEE POLICY</b>	<b>Citywide Policy Manual</b> Policy # TBD
	<b>Attachments:</b> City Council Resolution No. 05-040
<b>Effective Date:</b> November XX, 2025, per Resolution 25-XX	<b>Responsible Department:</b> Community Development and Public Works
<b>Related Policies &amp; Notes:</b> Guidelines for Selection of Public Art, Municipal Code Chapter 19.148	<b>City Council or Administrative Policy:</b> City Council

### Purpose

The purpose of this policy is to provide a process for any request to pay the City an alternative in-lieu fee. The policy also provides amended guidance to the City staff, and the Arts and Culture Commission for purchasing existing artwork and for commissioning artists to create new artwork for the City.

In instances where the placement of required artwork on a particular development is not feasible, the Arts and Culture Commission can approve an alternative in-lieu payment in the amount of 1% of the construction valuation to the City, pursuant to the approval authority provisions of Cupertino Municipal Code Chapter 19.12.030. Application of such alternative in-lieu fee can be found in Municipal Code Chapter 19.148. The policy will ensure that any art in-lieu fees collected are spent in accordance with existing policies and ordinances.

### Public Art Fund

A separate Public Art Fund will be established with in-lieu fees collected from developments. The in-lieu contributions in the Public Art Funds can only be used for the commissioning, acquisition, fabrication, design, and installation of public art. Spending of funds shall be determined by the City Council based on the recommendation of the Arts & Culture Commission.

Additionally, as the in-lieu developer fees are unpredictable in nature and can only be considered as one-time revenues, they shall not be allocated for delivering ongoing city services. As such, General Fund contributions will be required for any City of Cupertino public art programming, including, but not limited to, staffing and administration of said programs; gallery and exhibit operations; website and publicity development; and workshops, curriculum, and tour development.

### Fund Distribution

Public art funds shall be distributed in a manner that is consistent with the Guidelines for Selection of Public Art (City Council Resolution No. 05-040), as well as the standards as mandated in Cupertino Municipal Code Chapter 19.148. The general cost for each individual public art piece is unique. However, the City shall strive to limit soft costs, including, but not limited to installation and consultant fees, to 20-25% of the project budget. Each project shall incorporate a contingency range of 10-20% for unanticipated cost overruns.

## **RESOLUTION NO. 05-040**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADOPTING GUIDELINES FOR THE SELECTION OF PUBLIC ART**

WHEREAS, the City Council has expressed its support for public art in the community;  
and

WHEREAS, the City has acquired public art through direct purchase or commission, as well as in the form of a gift or loan; and

WHEREAS, the City Council wishes to have consistent guidelines for the acquisition, placement, and documentation of future acquisitions.

NOW, THEREFORE, BE IT RESOLVED:

1. That the General Guidelines for the Selection of Public Art are adopted; and
2. Staff and Council members are directed to refer to these guidelines when purchasing and commissioning public art, or when accepting loans and gifts of public art.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino on the 1st day of March 2005, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Kwok, Lowenthal, Sandoval, Wang, James
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

/s/ Kimberly Smith

\_\_\_\_\_  
City Clerk

APPROVED:

/s/ Patrick Kwok

\_\_\_\_\_  
Mayor, City of Cupertino



**City of Cupertino Public Art Program**  
**Guidelines for Selection of Public Art**

Prepared by the Cupertino Fine Arts Commission  
Adopted by City Council on March 1, 2005  
Resolution No. 05-040

## City of Cupertino Public Art Program

### General Guidelines for Selection of Public Art

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# **City of Cupertino Public Art Program General Guidelines for Selection of Art**

## **Purpose**

The City of Cupertino Fine Arts Commission desires to create an artistic visual identity for the city by placing artworks in various locations.

The purpose of this public art policy is to provide a process through which the city can accept art work, including loans or gifts of public art. The policy also provides guidance to the city and the Arts Commission for purchasing existing art work and for commissioning artists to create new art work for the city.

## **Scope**

This public art policy applies to the installation of all art work, including that which is loaned to the city for more than three months, donated, purchased, or commissioned by the City of Cupertino for public display. Public art exhibitions under three months' duration are facilitated by the Commission.

Additional people may be chosen by the Commission to form an ad hoc committee to aid in the selection of art for the city, including:

- A. A member of the Fine Arts Commission
- B. A member of a city commission from the area affected (parks, library, etc.)
- C. A professional in the field of arts, which may include a professional artist, art administrator, museum professional, architect, etc.
- D. A person from the community at large

## **Goals**

- A. To develop the criteria for selecting public works of art by developing policies and setting clear guidelines and objectives
- B. To acquire art for the City of Cupertino's temporary and permanent collection of both sited and portable art works, through purchase, competition, loan, donation, and commission
- C. To identify possible funding sources
- D. To identify potential outdoor sites on public lands and inside public buildings that are appropriate for placing completed artworks

## **Guidelines**

The following are guidelines for selecting artists and public art works:

- A. A wide variety of visual media and materials will be considered
- B. Materials used should require minimum maintenance and be maximally resistant to vandalism
- C. Environmental and public liability concerns will be considered in the selection of art
- D. The selection of artists will not be restricted by age, gender, or ethnic background
- E. The artist should have proven ability and experience in designing, producing, managing and installing art work, including large-scale public art work, if necessary
- F. When public funds are used, members of the community surrounding the location of the future art work may be invited to a public forum to discuss the art project in order to foster community appreciation of the art piece
- G. A timeline shall be developed to coordinate and educate parties involved in the project and to structure an overall plan for its completion.

## **Consultants**

It may be desirable to involve the selected artist and/or a public art consultant to work with a project design team at the conceptual phase of architectural planning in order to integrate the art work into the site. If an artist has not yet been selected, a consultant may be asked to offer art options and selection procedures.

The function of the consultant will be to foster communication among people with differing backgrounds (e.g. artist, developer, planner, public works, architect, landscape architect, engineers, attorney, community), and to manage the fabrication and/or installation of the art work.

The consultant will be selected by the Cupertino City Council upon the recommendation of the Fine Arts Commission, and in conjunction with other affected commissions as needed.

## **Criteria and Conditions for Selection of Art Work**

- A. The city shall maintain a responsible collection, maintenance, and de-accession policy and procedure for art works that are accepted as part of the city's Public Art Program.
- B. No acquisition shall be accepted without approval by the City Council. The City of Cupertino may refuse a gift of art for any reason, and in particular if the city cannot provide for the storage, protection, and preservation of the work under suitable conditions, or if the art work does not meet the selection criteria of this document.

- C. Acceptance of art work shall be confirmed by means of an agreement between the donor or artist and the city, including art work that is loaned for a defined period of time with the lender retaining title to the art work
- D. The following criteria shall be used in determining whether an art work is acceptable:
1. Aesthetics: It is deemed to be an art work of lasting aesthetic value that enhances the city's cultural environment by being receptive, respectful, and stimulating, and it contributes to the comprehensive record of visual arts for the community.
  2. Quality: There is an inherent quality in the art work itself (i.e. the City of Cupertino shall not necessarily accept art work based solely on the artist's overall reputation)
  3. Style: An art work shall be compatible in scale, materials, form, and content with its surroundings
  4. Permanence: Consideration shall be given to structural and/or surface soundness, resistance to theft, vandalism, weathering, and maintenance and repair costs
  5. Public Liability: Each art work shall be examined and approved for safety conditions and factors which may bear upon public liability
  6. Variety: The overall Public Art Program shall consider variety in style, scale, and materials
  7. Technical Feasibility: (For purchases or commissions) Each proposed art work shall be examined for convincing evidence of the artist's ability to successfully complete the art work as proposed
  8. Duplication: To assure that the art work will not be duplicated, the artist shall be asked to warrant that the art work is unique and an edition of one, unless stated to the contrary in the contract. (Multiples shall be considered for selection at the city's discretion)
- E. The city shall make no promises to exhibit art work permanently or to maintain art work as the property of the city in perpetuity.

### **Acquisition Procedures**

All potential acquisitions, whether gifts, donations, purchases, commissions, or loans of art to the City of Cupertino must be reviewed by the Fine Arts Commission and approved by the City Council or its designee.

Works of art may not be accepted if the city cannot provide for the display, storage, protection and preservation of the work under conditions that insure its availability to the public, and insure its permanency in the city's collection.

Methods of acquisition shall include the following:

- Direct purchase
- Direct commission
- Gift or Donation
- Temporary Loan
- Permanent Loan
- Competition
- Temporary Exhibit

## **Gifts**

All items accepted as gifts by the City of Cupertino will become the exclusive and absolute property of the City of Cupertino and may be displayed, loaned, retained or disposed of in the best interests of the City of Cupertino.

The City of Cupertino will not, and shall not be required to carry any insurance against loss or destruction of or damage to such item. The City of Cupertino will not be required to exercise greater precautions for the care and the safety of such objects than it exercises with respect to its own property of same or similar nature.

If the City of Cupertino decides not to accept the item and so notifies the owner, the owner has sixty (60) days from the date of notification to reclaim the item. If the item is not reclaimed, the City of Cupertino shall have the right to dispose of such property in any manner it may choose, or to place it in storage at the owner's risk and expense.

The City of Cupertino may require a written order from the owner (or his duly authorized agent or legal representative) before it returns the item described in the agreement.

(See sample Gift Receipt on Page 9)

## **Title**

Title to the works of art acquired for the permanent collection shall be transferred to the city of Cupertino. A contract between the city and artist or agent will be entered for loaned art.

## **Copyright**

Works of art acquired through the acquisition process described above shall require a copyright agreement with the artist prior to acquisition, so that the city can make arrangements to use reproductions of the work for publicity and professional purposes, without infringing on the artist's copyright. Institutions or individuals interested in reproducing works of art in the City of Cupertino collection shall contact the staff liaison to the Fine Arts Commission in writing to request reproduction privileges.

## **Placement and Exhibition**

To ensure excellence in the work's physical embodiment of the principles of design, the involvement of an art professional in aesthetic decision-making is desirable. Sited works will be appropriate to the location, i.e. be proportionate in size and be appropriate for the setting. When making a recommendation to the City Council, the Fine Arts Commission shall take into consideration the site map of proposed city locations for artwork. Sited works may reflect the history and culture of the area.

The following factors will be considered prior to placing art works:

- Visibility
- Lighting
- Public safety
- Traffic patterns (interior, exterior, pedestrian and auto)
- Relationship to existing art work, architecture, and natural features in the vicinity
- Future development plans for the area

(See sample agreements on Page 11-13)

## **Access**

Works of art from the city collection shall be on public view in locations accessible to members of the public during regular business hours, unless other arrangements are agreed upon between the artist and the city.

## **Preservation and Maintenance**

The Fine Arts Commission will conduct regular inspections and inventory all items in the collection to determine their condition and location, in order to identify any needed maintenance or restoration.

## **Documentation**

The Fine Arts Commission, with the assistance of the staff liaison, will develop and maintain the archives and records of the city's collection (see sample Catalogue Form on Page 12)

Information provided by the artist shall include:

- Photographs of work provided by the artist (preferably both digital and film)
- Written description of work provided by the artist
- Care and maintenance recommended by the artist
- Condition of the artwork when received and upon regular inspection
- Financial appraisal of the art work provided by the artist
- Location and date of installation
- A record of the purchase price and all correspondence pertaining to the artwork and its acquisition
- Artist's biography

Information maintained by the city shall include:

- An electronic catalogue entry of each object in the collection, (see sample Catalogue Form in appendix)
- All correspondence between the artist and the city

## **Insurance**

Works of art that are on loan or temporary exhibit are insured as set forth in the contract with the artist or agent. The contract shall provide a full description of the art work, and insurance coverage shall include installation and removal of the art work as well as the period of time when it is to be on loan or exhibit.

## **Deaccessioning Works of Art**

Works of art that are the property of the City of Cupertino shall be deaccessioned or removed following procedures pursuant to Civil Code 980 et seq.

This Civil Code includes Section 985, "Sale of Fine Art", which provides that the artist is due 5% of any proceeds if the art work is sold, and Section 987, "Protection of Fine Art," which protects artwork from destruction or alteration, and extends the legal rights of protection to the artist's heirs or beneficiaries for 50 years after the artist's death.

Funds received by the City from the public sale of art works from the collection shall be directed back to the purchase of works of art for the collection, or for the conservation of objects in the collection.

(See sample Bill of Sale on page 10)



**CITY OF CUPERTINO  
Gift Receipt**

Possession of the art work listed on the face of this receipt is accepted by the City of Cupertino subject to the following conditions:

1. All art work accepted by the City of Cupertino will become the exclusive and absolute property of the City of Cupertino and may be displayed, retained, destroyed or disposed of in the best interests of the City of Cupertino.
2. The City of Cupertino will not, and shall not be required to carry any insurance against loss or destruction of or damage to such item. The City of Cupertino will not be required to exercise greater precautions for the care and the safety of such art work than it exercises with respect to its own property of same or similar nature.
3. The undersigned, herein called "Donor," hereby assigns, transfers and gives to the City of Cupertino, herein called "City," its successors and assignees, the rights to the art work described as follows: (Please provide all pertinent information in block letters)

Title \_\_\_\_\_ Artist's name(s) \_\_\_\_\_

Materials/media \_\_\_\_\_ Donor's estimated value \_\_\_\_\_

Dimensions \_\_\_\_\_ Weight \_\_\_\_\_

4. The gift is made by Donor unconditionally and without the reservation of any right, claims or interest in the above described personal property. Donor affirms that he/she owns said artwork and that to the best of his/her knowledge, has good and complete right, title and interest to give it to City. Donor hereby releases City from all liability with respect to any loss or damages to the artwork referred to in this agreement. Donor agrees that City shall not cover such artwork with insurance.

I have read and understand the conditions of the Gift Receipt.

DATE: \_\_\_\_\_ DONOR SIGNATURE: \_\_\_\_\_

The City of Cupertino acknowledges receipt of your offer to give the City of Cupertino the item described on this page. Formal notification of action on this offered gift will come after the regular meeting of the Cupertino City Council.

DATE: \_\_\_\_\_ CITY MANAGER SIGNATURE \_\_\_\_\_



**CITY OF CUPERTINO  
Bill of Sale**

In consideration of the receipt of the sum of \_\_\_\_\_, the receipt of which is hereby acknowledged, the undersigned \_\_\_\_\_, residing at \_\_\_\_\_ [address] in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, hereby sells, assigns and transfers to \_\_\_\_\_, residing at \_\_\_\_\_ [address], in the City of \_\_\_\_\_, State of California, the following attached \_\_\_\_\_ [insert description of art], entitled “\_\_\_\_\_”.

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature

[Acknowledgement]



## CITY OF CUPERTINO Art Exhibition Agreement

\_\_\_\_\_(Artist) hereby deposits and loans the artwork described on the attached Receipt to the City of Cupertino for exhibition in \_\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_ on the following terms and conditions:

**Standard of Care:** Unless otherwise agreed to by the Artist, the City will exercise the same care with respect to the art referred to on the Receipt for Loan of Art (the "art") as it does in the safekeeping of comparable property of its own.

**Photography and Documentation:** Unless the City is notified in writing to the contrary, the work(s) may be photographed and reproduced for City's private purposes. The City assumes the right, unless specifically denied by the Artist, to examine the work(s) by all modern photographic means available, and it is understood and agreed that information thus gathered will remain confidential and will not be published without the written consent of the Artist. Artist also recognizes and understands that the exhibition will occur in a public place where public meetings and events will occur that are subject to photography and other video recording as a matter of law, and Artist expressly permits incidental photography or other video recording under such circumstances.

**Return of Artwork:** Art works accepted by the City on loan will not be returned to anyone other than the Artist except upon receipt of written order from the Artist or Artist's duly authorized agent or legal representative. The Artist shall not remove any of the artwork from the exhibition location during the specified loan period without the written consent of the City. In the case of death or incapacity of the Artist, the legal representative of the Artist is requested to notify the City as soon as possible, giving his or her full name and address in writing.

The City may request the return to the Artist of any property deposited with it by written notice directed to the Artist. If the City, after making reasonable efforts and through no fault of its own, shall be unable to return the art within thirty (30) days of such notice, then the City shall have the absolute right to place the art in storage and to charge removal fees and costs. If, after six (6) months, the art has not been reclaimed, then in consideration for its storage and its efforts to safeguard the artwork during such period, the work(s) shall be deemed an unrestricted gift to the City.

Even if the Artist does not remove the artwork on the date requested or on the date provided by this Agreement, whichever is earlier, the City may proceed to remove the art work from exhibition and install a different exhibition or store the Artist's artwork as provided in the previous paragraph.

**Limit of Liability.** Artist agrees and understands that Artist has designated the Artist's signed price of each artwork item in the Receipt attached to this Loan Agreement and further agrees and understands that in no event shall the City be liable to the Artist for any amount in excess of the itemized signed price for any damage that may occur to any of the items of art. By accepting the artwork on loan, it is not implied in any way that the City has accepted the signed price as the actual value of the artwork, but only that this establishes the maximum liability of the City in exhibiting or storing the artwork.

The undersigned understands and accepts this agreement.

Artist Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_



**CITY OF CUPERTINO**  
**Right of Entry and Indemnification Agreement**  
**for Publicly Displayed Artwork**

This Right Entry and Indemnification Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by and between the CITY OF CUPERTINO, a municipal corporation of the State of California ("City") and \_\_\_\_\_ ("Exhibitor").

**RECITALS**

WHEREAS, City wishes to encourage activities designed to enhance the aesthetics of the City of Cupertino; and

WHEREAS, City is the owner of certain property located at \_\_\_\_\_ in the City of Cupertino, County of Santa Clara ("the Premises"); and

WHEREAS, Exhibitor desires to erect a piece of art on a portion of the Premises for the period of \_\_\_\_\_ to \_\_\_\_\_;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1. City grants to Exhibitor permission to enter upon that portion of the Premises outlined in red on Exhibit A, attached hereto, for the purpose of erecting a piece of art entitled \_\_\_\_\_. The installation of the piece of art shall be at the sole cost and expense of Exhibitor, and such costs shall include any City permit and other fees, which Exhibitor shall pay on demand to City.

SECTION 2. The right of entry granted herein shall be effective as of \_\_\_\_\_, and shall terminate on \_\_\_\_\_.

SECTION 3. The piece of art shall be maintained by Exhibitor at all times in a safe, neat, and good physical condition. City shall be the sole judge of the quality of maintenance. If City is not satisfied with the maintenance by Exhibitor, Exhibitor, upon receipt of written notice submitted by the City through its City Manager which states in general terms the manner of required maintenance, shall perform the required maintenance.

SECTION 4. Upon the expiration or earlier termination of this Agreement, Exhibitor, at his sole cost and expense, agrees to immediately remove the piece of art from that portion of the Premises and restore the site of the sculpture on the Premises to its original condition. If the Exhibitor fails to exercise his duties under this Section, City shall have the right to remove the piece of art, store it, and restore the Premises at no cost or liability to City. Exhibitor covenants and agrees to reimburse City for any removal, storage, and/or restoration costs and expenses.

SECTION 5. The parties agree that City shall in no way be responsible for any loss of or damage (including defacement) to the piece of art or for any property belonging to or rented by Exhibitor, its officers, servants, agents, or employees that may be stolen, destroyed or in any way damaged during the erection or maintenance of the piece of art at the site on the Premises.

SECTION 6. Exhibitor agrees to indemnify, defend and hold harmless the City, its officers, agents, servants and employees against any claims or suits for loss or damage to personal property and damage or injury, including death, to any person or persons, arising out of or in connection with the existence, maintenance, use, or location of the piece of art on the Premises, whether or not caused, in whole or in part, by the alleged negligence of officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of Exhibitor or City. Exhibitor agrees to assume all liability and responsibility of City, its officers, agents, servants and employees for those suits or claims. Exhibitor agrees to indemnify City for any injury or damage to the Premises, whether arising out of or in connection with any acts or omissions of Exhibitor or his officers, agents, employees, contractors, subcontractors, licensees, or invitees or caused in whole or in part by the alleged negligence of City's officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees.

SECTION 7. Exhibitors shall obtain and maintain until completion and acceptance of the work required by this Agreement at least all of the minimum insurance requirements required by the City's Risk Manager as specified in Exhibit B, attached hereto, prior to installation of the piece of art. Exhibitor understands and agrees that such insurance amounts may be revised or waived at any time at City's option, and Exhibitor agrees to comply with and provide any insurance revisions requested by City within five (5) days following receipt of notice of those requirements by Exhibitor.

SECTION 8. This Agreement is personal to Exhibitor and is not assignable, and any attempted assignment of this Agreement shall terminate the privileges granted to Exhibitor under this Agreement.

SECTION 9. Exhibitor agrees that if any action, whether real or asserted, at law or in equity, is brought under this Agreement, venue for that action shall lie in the County of Santa Clara, California.

SECTION 10. City and its agents and employees, at all times during the installation and erection of the piece of art, shall have the right of entry and free access to the sculpture site and the right to inspect all work done, labor performed and materials furnished in and about the sculpture site and to inspect all aspects of the installation of the sculpture.

WITNESS THE EXECUTION HEREOF the day and year first herein above written.

APPROVED AS TO FORM:

CITY OF CUPERTINO, a municipal  
Corporation

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**City of Cupertino  
Catalogue of Art and Sculpture**

**Description**

Title:

Subject Matter &  
Description:

Date of Artwork:

Dimensions:

Materials &  
Condition:

Location(s):

**Artist**

Name:

Address:

Telephone:

Fax:

Email:

Website:

Notes:

**Acquisition**

Date:

Indicate method of acquisition:

- ☐ Direct purchase
- ☐ Direct commission
- ☐ Gift or donation
- ☐ Temporary loan/exhibit
- ☐ Permanent loan

Purchase price, if applicable:

Value (with date of appraisal, if applicable):

City of Cupertino ID number \_\_\_\_\_

**Owner**

Name:

Address:

Telephone:

Fax:

Email:

Website:

Notes:

**Copyright Status**

**Maintenance**

Recommended care and maintenance, and any special services or supplies necessary.

Condition (indicate the date the art was last inspected):

**Images**

*Attach photographs and/or digital images*