



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**PLANNING COMMISSION STAFF REPORT**

Meeting: September 23, 2025

**SUBJECT**

Presentation on the Arts & Culture Commission's recommendation to the City Council on an Art-in-lieu fee policy. (Application No. MCA-2025-003; Applicant: City of Cupertino; Location: City-wide)

**RECOMMENDED ACTION**

Receive a presentation.

**DISCUSSION**

***Background***

On April 3, 2024, the City Council approved the FY 2024-2025 City Work Program with a total of 20 projects. One of the new projects that is aligned with Council's Quality of Life goals is associated with art in public and private areas. This requires revisiting the City's 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.

***Analysis***

The Municipal Code Chapter 19.148: *Required Artwork in Public and Private Developments*, is the standard which the City currently uses for evaluating art in the City (Attachment A). Further, the City Council on March 1, 2005, approved Resolution No. 05-040 adopting guidelines for the selection of public art (part of Attachment 2). Currently, the City does not have a separate Art Fund.

In 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 the City treats in-lieu payments in contrast to providing onsite art pieces.

- Separate Art Fund: Does the City have a separate art fund or do in-lieu payments go into the General Fund?
- Fund Distribution: What limits have been imposed on how the funds are used. What programs/projects can the city subsidize with the funding?
- Decision Making Bodies: Who ultimately decides on use of funds?

For the complete analysis, please refer to Attachment 3.

On September 23, 2024, March 24, 2025, May 19, 2025, and July 22, 2025, staff presented information concerning this item to the Arts and Culture Commission<sup>1</sup>. During these meetings the Commission asked questions and made comments. The staff recommendations included:

- Arts & Culture Commission approve the in-lieu payment option. Currently City Council is the approval body, with the Arts & Culture Commission recommending.
- In-lieu payment and valuation of art pieces on private development shall be maintained at a consistent valuation of 1%, instead of the 1.25% that currently exists for in-lieu payments.
- The City shall create and maintain a separate art fund.
- A potential use of art funding should be used to develop an arts Master Plan, and other Commission recommendations, including an expansion of funding to art programming beyond physical art.
- City Council to be the decision-making body, upon recommendation by the Arts and Culture Commission, for the allocation of funds.

The Arts and Culture Commission requested staff to provide a final redline version of the Municipal Code and Policy for review at its July 22, 2025 meeting. Attachment 1 provides the redline version of CMC Table 19.12.030 *Approval Authority* and Chapter 19.148: *Required Artwork in Public and Private Developments*. These changes allow the Arts and Culture Commission ultimate decision making on art in-lieu payment options and lower the contribution percentage. Attachment 2 provides an amendment to the City's existing Policy (City Council Resolution No. 05-040) by establishing a separate art fund, as well as parameters for what the funds can be spent on.

## ENVIRONMENTAL ASSESMENT

This Ordinance is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has

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<sup>1</sup> Art in lieu fees sit within the Planning Code, this item is presented to the Planning Commission for information only since the jurisdiction regarding this item resides with the Arts and Culture Commission.

no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

## **PUBLIC NOTICING & OUTREACH**

The following noticing has been conducted for this project:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i></li><li>▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i></li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board <i>(five days prior to hearing)</i></li><li>▪ Posted on the City of Cupertino's Web site <i>(five days prior to hearing)</i></li></ul>

## **PUBLIC COMMENTS**

No comments have been received.

## **NEXT STEPS**

The recommendations made by the Arts and Culture Commission will be forwarded to the City Council for consideration at the October 21, 2025, hearing.

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Prepared by: Gian Paolo Martire, Senior Planner  
Reviewed by: Michael Woo, Senior Assistant City Attorney  
Approved by: Luke Connolly, Assistant Director of Community Development

## **ATTACHMENTS**

1. Municipal Code Chapters 19.12. 19.148 Required Artwork in Public and Private Developments (redline)
2. Amended Policy (City Council Resolution No. 05-040)
3. Jurisdiction Analysis of Art Programming