

**ORDINANCE NO. 18-2175**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING MUNICIPAL CODE CHAPTERS 19.12 "ADMINISTRATION" AND  
19.148 "REQUIRED ARTWORK IN PUBLIC AND PRIVATE DEVELOPMENTS" TO  
CREATE MORE OPPORTUNITIES FOR PUBLIC ART IN NEW DEVELOPMENT**

**WHEREAS**, the Cupertino General Plan encourages opportunities for public art and the City Council adopted an ordinance requiring public art in new developments, which is codified in Chapter 19.148 of the Cupertino Municipal Code; and

**WHEREAS**, the Fine Arts Commission was established to foster, encourage and assist the realization, preservation and advancement of fine arts for the benefit of the citizens of Cupertino; and

**WHEREAS**, the Fine Arts Commission considered Municipal Code Amendment Application MCA-2018-01 during a regularly noticed public meeting on June 18, 2018; and

**WHEREAS**, the Fine Arts Commission unanimously recommended that the City Council adopt the proposed amendments in substantially the form as shown in Exhibit A attached hereto to amend Municipal Code Chapters 19.12: Administration, and 19.148: Required Artwork for Public and Private Developments; and

**WHEREAS**, the proposed amendments will create additional opportunities to promote public art in new development, by removing the low value cap for artwork, using a percentage of construction value instead, and requiring that in lieu payments meet a higher artwork value and be approved by City Council; and

**WHEREAS**, the City Council held a noticed public meeting for the first reading of the ordinance and a noticed public meeting for the second reading, at which time it considered all evidence presented, both written and oral; and

**WHEREAS**, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

**WHEREAS**, the City has analyzed the proposed amendments and determined they are statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15061(b)(3) (General Rule), 15273

(Rates, Tolls, Fares and Charges), and 15378(b)(5) (Organizational or Administrative Activities); and

**WHEREAS**, the City Council before taking action on this Ordinance has reviewed the exemptions, and using its independent judgment, determines the Ordinance to be exempt from CEQA as stated above; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Cupertino Municipal Code Chapters 19.12 and 19.148 are amended as shown in Exhibit A attached hereto.

**SECTION 2. FINDINGS.** The following findings are made under Cupertino Municipal Code section 19.152.030(D):

(1) The proposed Ordinance conforms with the latest adopted general plan for the City, specifically to Policy LU-7.1: Public Art and Strategy LU-7.1.1: Public Art Ordinance, does not conflict with any allowable uses in the land use element and does not conflict with any policies or programs in any other element of the general plan. Policy LU-7.1: Public Art states that it is the city's policy to "stimulate opportunities for arts through development and cooperation with agencies and the business community." Strategy LU-7.1.1: Public Art Ordinance states that it is the city's strategy to "maintain and update an ordinance requiring public art in public as well as private projects of a certain size." Cupertino Municipal Code Chapter 19.148: Required Artwork for Public and Private Developments is an existing ordinance. The proposed amendments update the required artwork value and threshold of project size.

(2) The proposed Ordinance will protect the public health, safety, and welfare and promote the orderly development of the City by requiring public art in public as well as private projects of a certain size.

(3) The proposed Ordinance is consistent with Municipal Code Title 19, Chapter 19.148, which currently requires artwork in public and private developments.

(4) The application is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15061(b)(3) (General Rule), 15273 (Rates, Tolls, Fares and Charges), and 15378(b)(5) (Organizational or Administrative Activities).

**SECTION 3. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect and be in force thirty (30) days from and after adoption as provided by Government Code Section 36937.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 3rd day of July, 2018 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 21st of August 2018, by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

APPROVED:

Darcy Paul, Mayor

EXHIBIT A OF CITY COUNCIL DRAFT ORDINANCE NO. \_\_\_\_\_

CHAPTER 19.12.030: APPROVAL AUTHORITY

Table 19.12.030 - Approval Authority

Type of Permit or Decision	Administrative Review <sup>A,B</sup>	Design Review Committee	Fine Arts Commission	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period <sup>C</sup>	Noticing/ Noticing Radius <sup>D</sup>	Posted Site Notice	Expiration Date <sup>E</sup>	Chapter/ Findings
Public art	-	-	F	-	A <sup>1</sup>	PM	None	None	None	2.80 and 19.148
Art in lieu payment	-	-	R	-	F	PM	None	None	None	2.80 and 19.148

## CHAPTER 19.148: REQUIRED ARTWORK IN PUBLIC AND PRIVATE DEVELOPMENTS

- 19.148.010 Purpose and intent.
- 19.148.020 Applicability of regulations.
- 19.148.030 Permitted artwork.
- 19.148.040 Ineligible artwork.
- 19.148.050 Application procedures for public artwork.
- 19.148.060 Design criteria and artist qualifications.
- 19.148.070 Minimum artwork value.
- 19.148.080 Maintenance requirements.
- 19.148.090 In lieu payment for artwork is discouraged.

### 19.148.010 Purpose and Intent.

The purpose of this chapter is to provide a review framework for public art in both public and private developments in the City of Cupertino, commensurate with the following specific goals, as described in the Cupertino General Plan:

- A. Enhance community character and identity;
- B. Provide attractive public arts to residents and visitors alike;
- C. Stimulate opportunities for the arts through cooperative relations between local business and the City.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

### **19.148.020 Applicability of Regulations.**

- A. Any development of ten thousand sq. ft. or larger involving construction of new buildings and/or the expansion of existing buildings shall be subject to the requirements of this chapter.
- B. Additional artwork not mentioned in this chapter by means of specific plan, permits or other discretionary review may be required when deemed appropriate by the City Council.

(Ord. 2085, § 2 (part), 2011; Ord. 2056 (part), 2010; Ord. 2037 (part), 2009)

**19.148.030 Permitted Artwork.**

Types of art that may be used to satisfy the requirements of this chapter include, but are not limited to, the following:

- A. Sculpture: in-the-round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
- B. Painting: all media, including portable and permanently affixed works, such as murals;
- C. Graphic arts: printmaking, drawing, calligraphy and photography, but only when on a large public scale;
- D. Mosaics;
- E. Functional artwork created by a professional artist, such as benches, tree grates or trash receptacles;
- F. Any other form of work of art determined by the Fine Arts Commission to satisfy the intent of this chapter.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.040 Ineligible Artwork.**

The following shall not be considered eligible to satisfy the requirements of this chapter:

- A. Reproductions of original works of art, whether by mechanical or other means. However, permitted artwork may include limited editions, controlled by the artist, of original prints, cast sculpture, photographs, or other art forms;
- B. Directional or other functional elements such as supergraphics, signing, or color coding, except where those elements are integral parts of original signed artworks;
- C. Art objects which are mass-produced from a standard design, such as playground equipment, fountains, flags or banners;

D. Landscaping and garden features, except where these elements are designed by the artist and are an integral part of a fine artwork.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.050 Application Procedures for Public Artwork.**

A. An application for public artwork shall include all requirements of Chapter 19.12.

B. Application for public art for a new development shall be made in conjunction with the review of the permits for the entire project, in order that the design and location be taken into consideration at the time of architectural and site planning, as outlined in Chapter 19.168.

C. The Fine Arts Commission shall review for approval the public art application and artwork. The decision of the Fine Arts Commission may be appealed in accordance with Sections 1.16.020 and 19.12.030 of the Cupertino Municipal Code, or as amended.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.060 Design Criteria and Artist Qualifications.**

It is the intent of this chapter to provide for public art on private property without imposing the artistic preferences of the City on the owner or the developer of the property. Artistic preferences are to be primarily those of the owner or developer of the property, but the artwork and its location is subject to approval of the Fine Arts Commission.

A permit required pursuant to Section 19.148.050 shall be granted upon a showing by the applicant that the proposed artwork meets the following criteria:

A. The artwork is of a nature specified in Section 19.148.030.

B. The artwork requirement is to be satisfied with one significant piece of artwork, except that the requirement may be met with several works of art when specifically found by the Fine Arts Commission to fulfill the intent of this chapter. The artwork shall be an integral part of the landscaping and/or architecture of the buildings.

C. The artwork shall be easily visible from the public street and be located in an area specifically designated on the project site plan. Appropriate locations include, but are not limited to, entryways to the property, greenbelts, and building exteriors. The artwork must be in permanent view to motorists and pedestrians. Artwork located at

the entrance to a development should make a major statement and be visible from the main parking lot, if any. When located in proximity to major traffic thoroughfares, the artwork should be at a motorist's scale and oriented toward the view corridor of the motorist.

D. Artwork located along Stevens Creek Boulevard or De Anza Boulevard corridors shall be large in scale and oriented to the view corridors of the motorist. Appropriate artwork in these corridors will most likely be sculptural; however, other forms of art may be considered if consistent with the intent of this chapter. Artwork should have a visual impact upon passengers in a moving vehicle or pedestrians not less than 100 feet away.

E. The composition of the artwork shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and resistant to graffiti and the effects of weather.

F. The nature and style of the artwork shall be considered in the context of other artwork in the surrounding area in order to encourage a wide range of art styles and materials, and to create a balanced and interesting aesthetic appearance. The developer is encouraged to give preference to artists living or working in the San Francisco Bay area, and to avoid using artists whose work is already displayed as public art within the City of Cupertino boundaries.

G. Because the artwork will necessarily be highly visible to the public and be associated with City requirements, expressions of obvious bad taste or profanity shall not be approved.

H. Water and/or electronic sculpture may be permitted if adequate assurance of continued maintenance is provided.

I. Artwork shall be identified by an appropriate plaque or monument measuring not less than eight inches by eight inches. The plaque shall be made of a durable, permanent material and shall be placed near the artwork, and shall list the date of installation, title and artist, and medium.

J. The artwork shall be a permanent, maintained fixed asset of the property, and statements to this fact shall be attached or recorded to the existing CC&R's or otherwise recorded on the property deed, to advise subsequent property owners of their obligations to maintain the artwork.



K. The proposed artwork shall meet the criteria for review as set forth in the City of Cupertino Public Art Program Guidelines for Selection of Public Art, as originally adopted by the City Council Resolution No. 05-040, or as later amended.

L. The artist's qualifications will be evaluated and examples of past work may be reviewed. The review, however, shall be primarily for the purpose of determining the artist's experience with artwork of monumental proportion.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.070 Minimum Artwork Value.**

The minimum expenditure for the artwork, including but not limited to design, fabrication, and installation, shall be one percent of the construction valuation, with the following tiers:

- a) 1% of the first \$100 million of construction valuation
- b) .9% of construction valuation for valuation in excess of \$100 million.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.080 Maintenance Requirements.**

The property owner shall maintain the artwork in good condition continuously after its installation, as determined appropriate by the City. Maintenance shall include all related landscaping, lighting, and upkeep, including the identification plaque. Artwork required or approved pursuant to this chapter cannot be removed, except for required maintenance or repair, unless approved by the City; at which time the City may require replacement or relocation of the artwork. In the event that the artwork is located in the public right-of-way, a maintenance agreement with the City shall be required.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)

**19.148.090 In Lieu Payment for Artwork is Discouraged.**

In some instances the placement of artwork on a particular property may not be feasible. The developer or property owner may apply to the Fine Arts Commission for an in lieu payment alternative on projects that lack an appropriate location for public art, although such alternative is strongly discouraged. In such cases, an in lieu payment of 1.25% of the construction valuation may be made to the City, pursuant to the approval authority provisions of Cupertino Municipal Code Chapter 19.12.030.

(Ord. 2085, § 2 (part), 2011; Ord. 2037 (part), 2009)