



## CITY COUNCIL STAFF REPORT

DATE: April 18, 2012 NEW BUSINESS  
SUBJECT: PUBLIC ARTS FEES FOR LARGE SOLAR ENERGY PRODUCTION FACILITIES AND PROJECTS  
FROM: David H. Ready, City Manager  
BY: Craig A. Ewing, AICP, Director of Planning

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### SUMMARY

On April 6, 2011, the City Council directed staff to study and recommend an alternative fee assessment method for public arts fees for large solar energy production facilities and projects. The Council specifically sought "...a proposed policy for imposing public art fees on all solar power generating facilities that would be similar to the methodology used for wind power generating facilities" (see attached meeting minutes). Staff is presenting the results of its study relative to public art fees with a staff recommendation and seeks Council direction.

### RECOMMENDATION:

Adopt Resolution No. \_\_\_ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING AN AMENDMENT TO THE CITY'S COMPREHENSIVE FEE SCHEDULE ADOPTED BY RESOLUTION NO. 21578 (AS AMENDED), ESTABLISHING AN ALTERNATIVE METHOD FOR DETERMINING PROJECT VALUATION FOR LARGE SCALE SOLAR ENERGY PRODUCTION FACILITIES FOR PURPOSES OF ASSESSING PUBLIC ART FEES."

### PRIOR ACTIONS:

In 1994, the City Council amended the comprehensive fee schedule to establish a new methodology for calculating valuation for wind energy production facilities. The new valuation schedule was also applied to the Public Arts fees for these same projects. This significantly reduced the revenue for public art from wind energy production projects.

On April 6, 2011, as part of an appeal hearing of the public arts fees on a 4.95 megawatt solar energy production facility (Planning Case 5.1253 CUP) the City Council directed staff to study and recommend an alternative fee assessment method for large scale solar energy production facilities for public arts fees that would be more "fair and equitable" in comparison to other alternative energy production projects.

### STAFF ANALYSIS:

The City's public arts fees support the placement and maintenance of art throughout the community. The fees are assessed as a percentage of the cost of construction, much like building permit fees. Since the public art fee is calculated as a simple percentage, the larger the cost of construction - the greater the amount received from the project for public art. This

reflects the findings of the City Council in the Public Arts Ordinance “*purpose*” section (PSMC 3.37.010(b)(6) which states,

*“Development of cultural and artistic assets should be financed by those whose development and revitalization diminish the availability of the community’s resources for those (cultural and artistic) opportunities and contribute to community urbanization.”*

Staff has reviewed method for determining public arts fees related to the development of solar energy production for Council consideration.

Public Arts Fees and Building Permit Fees: The project valuation vs. energy output

As noted above, public arts fees are calculated based on the project’s construction value. Generally, the fee is 0.05% of the value of construction for commercial projects and 0.25% of the value of construction for residential construction. An exception was created for the wind energy industry, which enjoys a different and significantly lower valuation schedule for calculating public arts fees (and building permit fees).

For example: construction costs for wind power generating machines (turbines) are estimated at roughly \$2,120 per kilowatt (kW)<sup>1</sup> and construction costs for large scale solar power generating facilities (solar panels) are estimated at roughly \$3,850 per kW<sup>2</sup>. Thus a typical 5 megawatt (5,000 kilowatt) wind turbine project would cost roughly \$10.6 million to construct, and a 5 megawatt solar project would cost roughly \$19.25 million to construct.

To provide a comparison of the impact of these two methods of fee calculation – value based on construction cost vs. value based on kilowatts of electricity produced – here are some estimated public art fees associated with two 5 megawatt (5,000 kilowatt) generating facilities, one wind and one solar:

<b>5 Mega-Watt Energy Plant:</b>	<b>5 Wind Turbines</b>	<b>21,000 Solar Panels</b>
Cost to Build (approx.)	\$10.6 million	\$19.25 million
Public Arts Fee:		
Construction cost method	\$53,000	\$96,250 ←
kW of electricity produced method <sup>3</sup>	\$243 ←	\$243

➡ These are the current fees that would be charged these two project types.

If the City Council concludes that public arts fees for solar energy projects should more closely match those of wind energy installations, staff recommends that the Comprehensive Fee Schedule be amended to apply the wind turbine valuation table for calculating public arts fees for both wind and solar energy projects.

<sup>1</sup> Source: U.S. Department of Energy on-line newsletter

<sup>2</sup> Source: Solar Energy Industries Association

<sup>3</sup> Using the valuation table from the City Fee Schedule: Five mW of wind turbine is valued as: \$36,658 for the 1<sup>st</sup> 1,000 kW + (\$3 per each kW over 1,000 = \$3 x 4,000kw = \$12,000 + 36,658) = \$48,658 of value times 0.5% = \$243 in public art fees.

Alternatively, Council may determine that the wind energy industry no longer needs the reduced public arts fee incentive and it could restore wind energy public arts fee assessment to be based on actual cost of construction instead of kilowatts of power produced -- the same method currently in place for large scale solar projects and all other building types.

Public Art fees for small-scale roof-top projects

No public arts fees are assessed on small scale residential solar projects because such projects are considered "remodeling" and remodeling projects are exempt from public arts fees (PSMC Section 3.37.050(4)(b)(3)).<sup>4</sup>

Staff recommends that no changes be made in the public arts fees for small-scale roof top solar installations.

CONCLUSION:

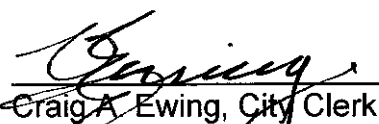
Staff recommends that the City Council amend the Comprehensive Fee Schedule with respect to calculation of fees for public art as follows:

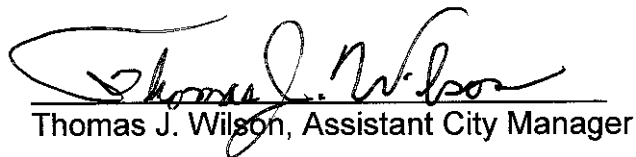
1. Use the wind turbine valuation table for calculating public art fees for large solar energy production facilities.
2. Maintain the current fee structure for small scale commercial and residential "roof top" solar projects.

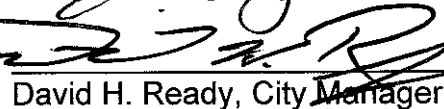
The City Council may direct Staff as appropriate, including possible approval of the attached resolution.

FISCAL IMPACT:

The recommended alternative public arts fee schedule for large scale solar installations would reduce revenue for maintenance and purchase of public art. The average annual revenue from public arts fees for the past four fiscal years was \$201,993<sup>5</sup> and average annual public art expenditures was \$290,764.

  
Craig A. Ewing, City Clerk

  
Thomas J. Wilson, Assistant City Manager

  
David H. Ready, City Manager

Attachments:

- September 21, 1994 City Council Staff Report on Fees for Wind Projects
- Excerpt from the City's Comprehensive Fee Schedule showing wind valuation table
- Chapter 3.34 "Public Arts Fee, Fund and Program"
- Excerpt from City Council Meeting Minutes of April 6, 2011

<sup>4</sup> New residential construction projects that install solar panels at the time of initial construction would pay the 0.25% public art fee.

<sup>5</sup> FY 07/08 through FY 10/11; no large scale solar projects were permitted during this period.

RESOLUTION NO \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING AN AMENDMENT TO THE CITY'S COMPREHENSIVE FEE SCHEDULE ADOPTED BY RESOLUTION NO. 21578 (AS AMENDED), ESTABLISHING AN ALTERNATIVE METHOD FOR DETERMINING PROJECT VALUATION FOR LARGE SCALE SOLAR ENERGY PRODUCTION FACILITIES FOR PURPOSES OF ASSESSING PUBLIC ARTS FEES.

WHEREAS, the City Council enacted Ordinance No. 1479, providing for the establishment of a public arts program (Municipal Code Section 3.37.00); and

WHEREAS, the City, under various statutory provisions under the California Government Code, may set and collect fees for the cost of providing various public services to the community; and

WHEREAS, the City Council desires to update and amend the methodology for establishing valuation for large scale solar energy production facilities for purposes of assessing public art fees.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1.

a. Pursuant to Municipal Code Section 3.37.070 (*Requirement to provide artwork or pay development fee*) Public Art Fees are to be collected prior to the issuance of the building permit for all eligible projects based on total building valuation.

b. For the purposes of determining total building valuation for large scale solar energy production facilities for the purposes of assess public art fees, the valuation schedule for Wind Energy Conversion Systems shall be used.

SECTION 2. FEES IMPOSED.

a. The Wind Energy Conversion System valuation table from the City's Comprehensive Fee Schedule is as follows.

*Wind Energy Conversion Systems (WECS)*

*Valuation Schedule*

<i>1 - 100 kw</i>	<i>\$278.00 each kw</i>
<i>101 - 250 kw</i>	<i>\$27,771.00 plus</i>
<i>Each additional kw to and including 250 kw</i>	<i>\$23.00 each kw</i>
<i>251 - 500 kw</i>	<i>\$31,104.00 plus</i>
<i>Each additional kw to and including 500 kw</i>	<i>\$10.00 each kw</i>

<i>501 - 1000 kw</i>	<i>\$33,881.00 plus</i>
<i>Each additional kw to and including 1000 kw</i>	<i>\$5.00 each kw</i>

b. On July 1<sup>st</sup> of each year, commencing on July 1, 2011, the fee and charge shall be automatically adjusted by an amount equal to the percentage of increase or decrease in the Consumer Price Index for this region, as last computed for the previous twelve (12) months, to reflect the cost-of-living changes to ensure that changing economic conditions do not impair the real value of the fees and charges.

SECTION 3. SEVERABILITY.

Each component of the fees and all portions of this Resolution are severable. Should any individual component of the fee or other provision of this Resolution be adjudged to as invalid, the remaining provisions shall be fully effective, and the fee shall be fully effective except as to that portion that has been judged to be invalid.

SECTION 4. EFFECTIVE DATE.

The fees imposed by Sections 2(a) and 2(b) and of this Resolution shall be immediately effective upon adoption of this Resolution.

SECTION 5. COMPREHENSIVE FEE SCHEDULE.

The City Clerk is hereby authorized and directed to incorporate said modifications and fees into the Comprehensive Fee Schedule, adopted by Resolution No. 21578 as amended.

ADOPTED THIS 18<sup>TH</sup> DAY OF APRIL, 2012.

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. \_\_\_\_\_ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on the 18th day of April, 2012, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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James Thompson, City Clerk  
City of Palm Springs, California

DATE: September 21, 1994  
TO: City Council  
FROM: Gary Bitterman, Building Official via Douglas R. Evans,  
Director of Planning & Building

**STRUCTURAL BUILDING PERMIT FEES - WIND ENERGY CONVERSION SYSTEMS**

**RECOMMENDATION:**

It is recommended that the City Council amend the comprehensive fee schedule to provide a basis for determining Wind Energy Conversion Systems (WECS) building permit fees.

**BACKGROUND:**

A significant portion of the area currently being proposed for annexation to the City is utilized for the generation of electrical energy by Wind Energy Conversion Systems. The comprehensive fee schedule currently contains no provision for determining building permit fees for these types of structures.

The system currently used for determining the cost of structural building permits is based on the value of the finished building or structure. Since Wind Energy Conversion Systems are somewhat unique in that they are not directly comparable to buildings and other types of structures for which building permits are issued, a specialized system for determining a basis for permit cost is recommended.

The County of Riverside has developed and is currently using a system for determining the value of the work done to install a WECS system which is based on the kilowatt output of the wind turbine being installed. Although the use of the County system results in lower permit costs than the City's current fee system, the Department of Planning and Building feels that the County system more accurately reflects the cost of providing permit related services.

Permit costs for site grading, electrical and mechanical work, etc. would be determined in the normal manner.

The attached valuation schedule must be incorporated into the Comprehensive Fee Schedule for use when the wind energy areas are annexed to the City.

  
DOUGLAS R. EVANS  
Director of Planning and Building

  
GARY BITTERMAN  
Building Official

APPROVED:   
City Manager

**ATTACHMENTS:**

1. Wind Energy Conversion Systems Valuation Schedule

25A1

24 A2

**COMPREHENSIVE FEE SCHEDULE  
BUILDING**

**Building Permits**

**Valuation Schedule - Wind Energy Conversion Systems (WECS)**

For WECS of 1-100 kw	= \$250.00 each kw
For WECS of 101-250 kw	= \$20.00 each additional kw over 100 kw
For WECS of 251-500 kw	= \$10.00 each additional kw over 250 kw
For WECS of 501-1000 kw	= \$ 5.00 each additional kw over 500 kw
For WECS of over 1000 kw	= \$ 3.00 each additional kw over 1000 kw

**Note:** Fees for grading, electrical, mechanical, plumbing or other work are separate. See "Valuation Fee Schedule" for building permit fee.



**BUILDING**

**Building Permits** \*(including valuation for electrical, plumbing and mechanical)  
 (Add fees for Planning Division review when applicable.  
 See Planning Division: Plan Checking Fees)

**Current Fees**  
 38.00 Min, plus

Administrative Fee and Special Purpose Fee as Applicable  
 Fee Refunds

1. The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.
2. The building official may authorize the refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. The building official may authorize the refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.
4. The building official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

Permit Issuance Administrative Fee 26.11 per permit, plus  
 (Building, electrical, mechanical, plumbing, & miscellaneous) Applicable Permit Valuations

Valuation Fee Schedule  
 (The following Valuation Fee Schedule may be used as a guideline to assist in the determination of building permit fees.)

1.00 to 500.00 total valuation	38.00 Minimum Valuation Fee
501.00 to 2000.00	
Minimum Valuation Fee	38.00
First 500	26.11 plus
Each additional 100 or fraction thereof, to and including 2,000.00	3.39
2001.00 to 25,000.00	
First 2000	76.93 plus
Each additional 1,000.00 or fraction thereof, to and including 25,000.00	15.55
25,001.00 to 50,000.00	
First 25,000	435.17 plus
Each additional 1,000.00 or fraction thereof, to and including 50,000.00	11.22

**BUILDING (Continued)**

**Current Fees**

**Building Permits (Cont'd)**

50,001.00 to 100,000.00	
First 50,000	715.11 plus
Each additional 1,000.00 or fraction thereof, to and including 100,000.00	7.78
100,001.00 to 500,000.00	
First 100,000	1,103.91 plus
Each additional 1,000.00 or fraction thereof, to and including 500,000.00	4.05
500,001.00 to 1,000,000.00	
First 500,000	3,592.24 plus
Each additional 1,000.00 or fraction thereof, to and including 1,000,000.00	5.28
1,000,001.00 and up	
First 1,000,000	6,230.51 plus
Each additional 1,000.00 or fraction thereof	4.05

\*NOTE: "Valuation" to be calculated from most current Building Safety Journal or declared valuation, whichever is higher.

**Wind Energy Conversion Systems (WECS)**

**Valuation Schedule \*\***

1 - 100 kw	278.00 each kw
101 - 250 kw	27,771.00 plus
Each additional kw to and including 250 kw	23.00 each kw
251 - 500 kw	31,104.00 plus
Each additional kw to and including 500 kw	10.00 each kw
501 - 1000 kw	33,881.00 plus
Each additional kw to and including 1000 kw	5.00 each kw

**BUILDING (Continued)**

**Current Fees**

**Valuation Fee Schedule (Cont'd)**

1001 kw – up 36,658.00 plus  
Each additional kw to and over 1000 kw 3.00 each kw

**\*\*NOTE:** Fees for grading, electrical, mechanical, plumbing or other work are separate.  
See "Valuation Fee Schedule" for building fee.

**Board of Appeals Fee** 269.00

**Copying (Misc. Documents, Texts, etc.)**  
Page Fee .10 per page

**Microfilming Fees**  
Page Fee  
Page 1 2.00 first page  
Page 2 and all pages thereafter .33 per page  
  
Large Plans (18' x 24' x 36') 1.39 per sheet

**Newsracks**  
Registration (R22387) 18.00 per newsrack per year  
Impoundment (R22387) 45.00 per impounded newsrack

**Permits**  
Code Compliance Inspection and Report SEE: Special Purpose Fees  
  
Electrical Permit Fees  
Permit Issuance Administrative Fee. 26.11 each permit, plus  
Supplemental Fee (Any of the following supplemental fees, whichever one is greater)  
Minimum Electrical Permit Fee 38.00  
System Fee Schedule  
New Residential Buildings

(The following fees shall include all wiring and electrical equipment in or on each building, or other electrical equipment on the same premises constructed at the same time.)

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**Palm Springs Municipal Code**

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Title 3 REVENUE AND FINANCE

Division I GENERAL REVENUE AND FINANCIAL PROVISIONS

**Chapter 3.37 PUBLIC ARTS FEE, FUND AND PROGRAM**

**3.37.010 Purpose.**

(a) The purpose of the Palm Springs public arts program is to develop and maintain a visual arts program for the residents and visitors of Palm Springs, to add to the economic viability of the community, and to enhance the environment and unique character of Palm Springs by providing for the acquisition and maintenance of quality works of public art.

(b) The city council finds and declares as follows:

- (1) Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the city.
- (2) Balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values.
- (3) As development and revitalization of the real property within the city continues, the opportunity for creation of cultural and artistic resources is diminished.
- (4) As this development and revitalization continue as a result of market forces, urbanization of the community results.
- (5) As these opportunities are diminished and this urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased.
- (6) Development of cultural and artistic assets should be financed by those whose development and revitalization diminish the availability of the community's resources for those opportunities and contribute to community urbanization.
- (7) Establishment of this public arts program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
- (8) It is the purpose of this chapter to modify, clarify and codify the city's existing public arts program.

(Ord. 1479 § 2 (part), 1994)

**3.37.020 Program execution.**

The Palm Springs public arts commission shall carry out the duties established by this chapter. (Ord. 1479 § 2 (part), 1994)

**3.37.030 Definitions.**

For the purpose of this chapter:

"Commission" means the Palm Springs public arts commission.

“Public arts fund” means a separate fund and account which is established to receive monies collected for the designated purposes of the public arts program.

“Public arts program” means the program adopted by the city council.

“Arts administrator” means the staff person hired by the city to administer the public arts program. The salary and other compensation of the arts administrator may be paid from the arts fund to the extent such person is performing the duties prescribed herein. (Ord. 1479 § 2 (part), 1994)

**3.37.040 Public arts fund.**

(a) Creation.

There is established a public arts fund into which shall be deposited all funds collected under this chapter of the Palm Springs Municipal Code and such other funds as may be appropriated by the city council or donated to the city for expenditures in conjunction with the public arts program.

(b) Accounting.

This fund shall be maintained by the city treasurer, with accounting records established to sufficiently identify and control these funds. Expenditures shall be processed through the city’s established warrant payment procedure.

(c) Use of Fund.

The funds shall be used solely for the permanent or temporary acquisition, installation, improvement, display, maintenance, and insurance of artwork to be displayed in the city and the administration of the public arts program.

(d) Permissible Expenditures.

- (1) The cost of artwork and its installation and maintenance;
- (2) The cost of purchase or lease of art sites;
- (3) Contributions to local art museums subject to a negotiated benefit for Palm Springs residents as determined by the city;
- (4) Waterworks, landscaping, lighting, signage, and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the proper aesthetic presentation and structural placement of artwork;
- (5) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork;
- (6) Expenditures for maintenance and repair of artworks;
- (7) Administrative expenses, including legal, to otherwise implement, uphold, or carry out any provision of this chapter.

(e) Ineligible Expenditures.

- (1) Reproductions of original work except limited editions;
- (2) Unlimited editions of original work;
- (3) Mass-produced art objects;
- (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site;

(5) Architectural rehabilitation or historical preservation of buildings.

(f) Endowments.

The public arts fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in subsections (c) and (d) of this section and when approved by the commission:

(1) Art exhibitions or displays;

(2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other nonprofit organizations.

(g) Replacement.

For those artworks that have been purchased with monies from the public arts fund or donated to the city, the city council may determine to sell or exchange existing artworks for replacement artworks. Any funds obtained from the sale of artwork shall be credited to the public arts fund. (Ord. 1738 §§ 1, 2, 2008; Ord. 1479 § 2 (part), 1994)

**3.37.050 Projects subject to public arts program requirements.**

(a) Requirements.

Except as provided in subsection (b) of this section, the requirements of this chapter shall apply to all works of construction and rehabilitation for which a building permit is required, including but not limited to:

(1) New commercial and industrial construction;

(2) Remodeling or reconstruction of existing commercial or industrial property;

(3) New residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer;

(4) New individual single-family residential units constructed on a lot located in an existing subdivision whose building permit valuation is over one hundred thousand dollars.

(b) Exceptions.

The requirements of this chapter shall not apply to the following activities:

(1) Public projects undertaken by any agency of the city, the state, county, school district or any other governmental entity;

(2) Remodeling, repair or reconstruction of structures to comply with earthquake seismic safety code standards or which have been damaged by fire, flood, wind, earthquake or other calamity;

(3) Remodeling, repair or reconstruction of residential units;

(4) Nonprofit social service or cultural institution projects;

(5) Low to moderate housing projects as defined by household income Health and Safety Code Section 50093;

- (6) Affordable housing developments receiving city, state or federal assistance;
- (7) Private educational institutions which provide general education equivalent to the public school system (kindergarten through high school or any part thereof);
- (8) Architectural rehabilitation or historical preservation of properties which are designated as Class 1 Historic Sites by the city council.

(Ord. 1479 § 2 (part), 1994)

**3.37.060 Certificates of occupancy.**

(a) No final city approval, such as final inspection or a certificate of occupancy, for any project subject to this chapter shall be granted or issued unless and until full compliance with the public arts program is achieved, in one or more of the following ways:

- (1) The approved artwork has been placed in a manner satisfactory to the public arts commission.
- (2) In-lieu art fees have been paid.
- (3) Financial security in an amount equal to the acquisition and installation costs of an approved artwork, in a form approved by the city attorney, have been posted.
- (4) An approved artwork has been donated and accepted by the public arts commission.

(b) Full compliance with the public arts program shall not be deemed to exist until the entire program allocation for the project, as defined in Section 3.37.070 has been provided. (Ord. 1479 § 2 (part), 1994)

**3.37.070 Requirement to provide artwork or pay development fee.**

(a) The applicant shall be deemed to have satisfied his or her obligations under this chapter through the placement of artwork in a manner consistent with this chapter, valued at an amount equal to the program allocation.

(b) In lieu of placement of an approved artwork, the applicant may, at his or her discretion, pay to the city for deposit into the public arts fund an amount equal to the program allocation set forth in subsection (d) of this section.

(c) Fees are to be collected with respect to all projects prior to issuance of a building permit, except in the case of residential developments of more than one dwelling unit, where the fee shall be collected on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first.

(d) The program allocation, as used in this chapter, is the percentage of the building cost which is set aside for the city's public arts program. The total building valuation shall be computed using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO) unless, in the opinion of the building official, a different valuation measure more accurately represents the value of the building. Excluding land acquisition and off-site improvement costs, the program allocation shall be an amount equal to the percentage of the total building valuation for an applicable project, as listed herein:

- (1) One-half of one percent for new commercial and industrial construction;
- (2) One-half of one percent for remodel or reconstruction of existing commercial or industrial property;
- (3) One-quarter of one percent for new residential subdivisions or developments of two or more units, whether by detached single-family

residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer. A project shall be considered a development of two or more units when two or more building permits are issued to the same person for development of new residential structures within a one-hundred-eighty-day period;

(4) One-quarter of one percent for new individual single-family residential units constructed on a lot located in an existing subdivision for that portion of building permit valuation in excess of one hundred thousand dollars.

(e) Nothing in this section shall prohibit the applicant from placing an approved artwork with acquisition and installation costs in an amount less than the program allocation; provided that the applicant shall also pay to the public arts fund an amount equal to the difference between the program allocation and the costs of acquisition and installation of such artwork.

(f) Nothing herein shall restrict the city council from waiving the requirements of this chapter, in whole or in part, with respect to any project otherwise subject to the provisions of this chapter, provided that the city council determines that the project applicant has entered into an agreement with the city providing for the applicant's acquisition and installation of artwork in connection with the development of the project which addresses the goals and aims of this chapter in a manner equally or more favorable to the city than would be achieved by strict compliance with this chapter. In such an event, the city council shall make findings to this effect on the basis of substantial evidence. (Ord. 1479 § 2 (part), 1994)

#### **3.37.080 Art site acceptability.**

(a) Placement of Art by Applicant.

The applicant shall place artwork in outdoor areas of the private property that are accessible and used by the public a minimum of eighteen hours per day. Interior spaces, including lobbies, courtyards, malls, etc., may be eligible if they are accessible to the public a minimum of twelve hours per day.

(b) Art Purchased through Public Arts Fund.

When selecting the location for art purchased through the public arts fund, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites. (Ord. 1479 § 2 (part), 1994)

#### **3.37.090 Criteria for artwork selection.**

(a) Eligible requirements for each project will be established by the public arts commission. Specifically excluded are artworks done by students under the supervision of art instructors to satisfy course requirements and artists who are members of the public arts commission. The following criteria shall be considered in the selection of artwork:

- (1) Quality of the artwork;
- (2) Media.

All visual art forms may be considered, subject to limitations set by the selection jury or the arts commission;

- (3) Style.

Artworks of all schools, styles, and tastes should be considered for the city collection;



(4) Environment.

Artworks and art places should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate;

(5) Permanence.

Consideration should be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance, and repair costs;

(6) Elements of Design.

Consideration should take into account that public art, in addition to meeting aesthetic requirements, also may serve to establish focal points, terminate areas, modify, enhance, or define specific spaces, or establish identity;

(7) Diversity.

The public arts program should strive for diversity of style, scale, media, artists—including ethnicity and gender and equitable distribution of artworks and art places throughout the city.

(b) The following methods may be used to select artwork:

(1) Direct Purchase.

A completed work of art may be purchased for a specific project or location;

(2) Direct Commission.

An artist may be chosen directly by an artist-selection jury and paid to submit a proposal. Artists will be selected on the basis of their qualifications for a particular project and its probability of successful completion;

(3) Limited Competition.

A small number of artists may be invited and paid by the selection jury to submit proposals;

(4) Open Competition.

Any artist may apply subject to limitations established by the selection jury. No proposal fee is paid to artists; however, a small number of finalists may be selected to submit details, models or plans for which a fee is paid.

(c) In selecting an artwork, the arts commission may appoint a selection jury of qualified persons. The jury shall be subject to the provisions of the Brown Act.

(d) Review by Department of Planning and Zoning.

A department of planning and zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the planning commission for approval pursuant to Section 9404.00 of the zoning ordinance. (Ord. 1479 § 2 (part), 1994)

**3.37.100 Maintenance of artwork on public and private property.**

(a) Public Artwork on Public Property.

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A maintenance fund shall be established as part of the public arts program. Procedures for custody, maintenance and conservation of artwork shall be established by the public arts commission as well as a maintenance schedule. Specific instructions for care of each work shall be kept on file as part of the collection management. The public arts commission will strive to include maintenance provisions in the artwork contracts that stipulate the length of time (typically one year) the artist will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal on repair contracts within the fair market rate of remuneration. Regular inspection-for-condition reporting shall be conducted so that the collection is maintained in the best possible condition as supervised by designated city personnel. When necessary, a conservation plan will be established prioritizing the work which is to be done.

(b) Private Artwork on Private Property.

The obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. Art installed on or integrated into a construction project pursuant to the provisions of this chapter shall not be removed or altered without the approval of the public arts commission. Artwork installed pursuant to this chapter shall be maintained as specified in the written agreement between the city and the private property owner with regard to that artwork. Maintenance of artwork, as used in this chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the city, protection of the artwork against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance against vandalism and other similar acts in an amount to be determined by the city attorney. Prior to placement of an approved artwork, applicant and the owner of the site shall execute and record a covenant in a form approved by the city for maintenance of the artwork. Failure to maintain the artwork as provided herein is declared to be a public nuisance. If the artwork is not maintained in the manner prescribed, or is removed or altered without approval of the public arts commission, in addition to all other remedies provided by law, the city may, upon reasonable notice, perform all necessary repairs, maintenance, secure insurance, or take such legal or other action deemed necessary to have the artwork maintained and if necessary, restored, and the costs therefor shall become a lien against the real property. (Ord. 1479 § 2 (part), 1994)

**3.37.110 Application procedures for placement of artwork on private property.**

Any artwork being placed on private property as part of the city's public arts program shall be a one-of-a-kind piece. The city encourages applicants to submit an application prior to the development of the architect's schematic design. The requirements and procedures for the processing of a public arts program proposal application (an "arts application") shall be as follows:

- (1) Upon submission of a development project application for a project subject to the requirements of this chapter, the department of planning and zoning shall provide to the project applicant a copy of this chapter, an arts application form and the name and phone number of the city's arts administrator.
- (2) The project applicant shall submit to the arts administrator the completed arts application form, describing the manner in which the project applicant intends to comply with this chapter.
- (3) The arts application shall include:
  - (A) Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork;
  - (B) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs;
  - (C) Preliminary plans containing such detailed information as may be required by the public arts commission to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development (the artwork shall be an integral part of the

landscaping and/or architecture of the building), including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods if necessary to evaluate the proposal;

(D) A narrative statement to demonstrate that the artwork will be displayed in an area open and freely available to the general public, or otherwise provide public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site; and

(E) Maintenance factors required to insure its permanence.

(Ord. 1479 § 2 (part), 1994)

**3.37.120 Approval procedures for placement of artwork on private property.**

(a) The application for the proposed artwork and its placement will be considered at a monthly public meeting of the Palm Springs public arts commission. A department of planning and zoning representative will also review the artwork and its placement and landscaping elements and may refer the application to the planning commission for approval pursuant to Section 9404.00 of the zoning ordinance. Any changes, questions or recommendations shall be conveyed in writing to the applicant. The commission will determine when all issues have been addressed and accept or reject the artwork. The applicant will be notified in writing of the public arts commission’s decision.

(b) If the applicant proposes or the planning commission or city council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to the receipt of the public arts commission’s approval, the application shall, if legally permitted, be returned to the public arts commission for further review and recommendation concerning the revised proposal prior to final approval unless the council otherwise directs.

(c) A contract between the city and the applicant spelling out all requirements, including insurance and maintenance, shall be executed prior to the city’s final acceptance of the applicant’s art-in-lieu proposal. (Ord. 1479 § 2 (part), 1994)

**3.37.130 Procedure for refund of public arts fee for artwork in lieu of fee.**

If in-lieu artwork has been placed subsequent to payment of a public arts fee, the applicant shall submit to the arts administrator a written request for refund of the amount spent on the artwork placed on the applicant’s property. The amount to be refunded shall not exceed the amount that would have been paid into the public arts fund should the applicant have chosen to pay a fee instead of place artwork on the site. The request for reimbursement shall be submitted after the artwork is installed, approved by the public arts commission and accepted by the city. (Ord. 1479 § 2 (part), 1994)

**3.37.140 Ownership of artwork on private property.**

Artwork placed on the applicant’s property by the applicant in satisfaction of the applicant’s program requirement shall remain the property of the applicant. (Ord. 1479 § 2 (part), 1994)

**3.37.150 Application procedure for donation of artwork to the city.**

The prospective donor shall submit to the arts administrator:

- (1) Sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork to be donated;
- (2) Additional samples of artist’s work other than the proposed donation;
- (3) Background information on artist who created the proposed donation;

- (4) Installation costs, if available;
- (5) Maintenance factors required to ensure its permanence.

(Ord. 1479 § 2 (part), 1994)

**3.37.160 Review and acceptance of artwork donated to the city.**

The proposed donation will be considered at a monthly public meeting of the public arts commission. All details of the proposed donation, including the feasibility and expense of placing and caring for the work of art will be considered. The commission will review and discuss the donation and will direct the arts administrator as to any questions to be asked of the donor or artist. A personal appearance by artist may be requested. The commission will determine when all issues have been addressed and accept or reject the artwork. (Ord. 1479 § 2 (part), 1994)

1. **PUBLIC HEARINGS:**

1.A. **APPEAL OF THE PLANNING COMMISSION DECISION BY SOLAR POWER INC., REQUESTING RELIEF FROM THE IMPOSITION OF PUBLIC ARTS FEES FOR A 4.96 MEGAWATT SOLAR POWER GENERATING FACILITY ON 24 ACRES OF A 98-ACRE PARCEL AT THE SOUTHEAST CORNER OF KAREN AVENUE AND 19TH AVENUE ZONE E-I (CASE 5.1253 CUP):**

Craig Ewing, Director of Planning Services, provided background information as outlined in the staff report dated April 6, 2011.

Mayor Pro Tem Weigel opened the public hearing, and the following speaker addressed the City Council.

FRANCES KNIGHT, Solar Power, provided background information on the scope and purpose of the project, stated the fee acts as a disincentive to clean energy projects, noted art could be installed on the property but such art would only be appreciated by occasional maintenance staff, commented on the fees for all agencies, requested to be relieved of the art fee, or an art fee be calculated proportionate to the project such as wind power projects.

No further speakers, the public hearing was closed.

Councilmember Hutcheson stated his support for incentives for renewable energy and requested staff bring back a proposal to modify the fees.

Councilmember Foat stated her agreement, commented on the substantial reduction, and requested staff research a per acre in-lieu fee.

Councilmember Mills commented on the timing of the request, stated the difference between the fees is large and staff should review for equity, and stated staff should review a minimum fee and perhaps a per acre fee for that zone.

**ACTION:** 1) Deny the appeal; and 2) Direct staff to return to the City Council with a proposed policy for imposing public art fees on all solar power generating facilities that would be similar to the methodology used for wind power generating facilities. **Motion Councilmember Foat, seconded by Councilmember Hutcheson and unanimously carried 4-0 on a roll call vote.**

**AYES:** Councilmember Foat, Councilmember Hutcheson, Councilmember Mills, and Mayor Pro Tem Weigel.

**NOES:** None.

**ABSENT:** Mayor Pougnet.