ORDINANCE NO. 2977-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING CHAPTER 19.52 (REQUIRED ARTWORK IN PRIVATE DEVELOPMENTS) AND ADDING CHAPTER 19.52 (ART IN PRIVATE DEVELOPMENT) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE

SECTION 1. CHAPTER 19.52 REPEALED. Chapter 19.52 (Required Artwork in Private Developments) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby deleted in its entirety.

SECTION 2. CHAPTER 19.52 ADDED. Chapter 19.52 (Art in Private Development) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as set forth in Exhibit “A” attached and incorporated by reference.

SECTION 3. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on ________, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on ________, 2012, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
ATTEST:

____________________________
City Clerk
Date of Attestation: __________

SEAL

APPROVED AS TO FORM AND LEGALITY:

____________________________
Michael D. Martello, Interim City Attorney

APPROVED:

____________________________
Mayor
Chapter 19.52
ART IN PRIVATE DEVELOPMENT

19.52.010 Findings and Purpose
(a) Findings. The city council makes the following findings:
(1) The City’s visual and aesthetic quality has a significant impact on property values, economic well-being and orderly development;
(2) Development of large-scale or highly visible sites contributes to the City’s unique character;
(3) The incorporation of publicly visible art on large-scale sites, highly visible intersections or spaces that are publicly accessible within private developments enhances the City’s visual and aesthetic quality and creates a unique sense of community and self-image; and
(4) Providing art mitigates an undesired and potentially deleterious sense of uniformity and loss of human scale and orientation and is in the public interest.
(b) Purpose. This chapter regulates and establishes standards for inclusion of art in private development.

19.52.020 Applicability
(a) Major Intersection. Non-residential development, including hotels, shall provide art when located at a major street intersection listed in this section. A lot is located at one of the referenced intersections if the lot has frontage along both of the streets forming the intersection. The development may include either new construction of a main building of any size, an addition of at least 10,000 square feet to a main or accessory building, or new construction of an accessory building.
1. El Camino Real and Wolfe Road
2. El Camino Real and Remington Drive / Fair Oaks Avenue
3. El Camino Real and Sunnyvale Avenue / Sunnyvale Saratoga Road
4. El Camino Real and Mathilda Avenue
5. Central Expressway and Lawrence Expressway
6. Central Expressway and Mary Avenue
7. Mathilda Avenue and State Highway 101
8. Mathilda Avenue and State Highway 237
9. Lawrence Expressway and State Highway 237
10. Lawrence Expressway and State Highway 101
(b) Lots of 2 Acres or More. Non-residential development, including hotels, shall provide art when located on any lot of 2 acres or more. The development may include either new construction of a main building of any size, an addition of at least 30,000 square feet to a main or accessory building, or new construction of an accessory building. If more than one lot is developed jointly or as an integrated project, the requirements of this chapter apply if the
aggregated lot area is 2 acres or more, regardless of whether the property is under common ownership.
(c) **Phased Projects.** In the event of construction occurring over a period of time, projects become subject to this chapter when the aggregate floor area of all construction reaches the specified levels.
(d) **Public Interest.** Art may be required for any proposed project, including those not mentioned in this section when deemed in the public interest.

19.52.030 Art Requirement
(a) **Provision of Art.** Projects shall provide publicly visible art on-site that is equal in value to 1% of the project construction valuation.
(b) **Building Valuation.** Building permit valuation is determined by the chief building official using the city building permit valuation formula. Valuation of development projects includes the construction of the building shell. Valuation does not include land acquisition, site improvements, parking structures, off-site improvements or tenant improvements. In the event of multi-phased development, valuation is based on the cost of all phases, even though all phases may not be completed at the same time.
(c) **Art Valuation.** When calculating the value of an art to be placed on a private development site, eligible costs include:
   (1) Purchase price of the art;
   (2) Art consultant fees;
   (3) Installation costs, including transportation of the art to the site, pedestals or display costs;
   (4) Wiring, fixtures and other costs directly related to the installation of lighting the art; and
   (5) Identification plaque.
   (6) Ineligible costs include land acquisition, site preparation, travel costs for the artist, architect fees, utility fees associated with the installation or operation of the art, fees associated with dedication ceremonies, publicity, or educational components and maintenance fees and repairs.
(d) **Art Valuation Remainders.** In some instances the cost of artwork may not equate precisely to 1% of the construction valuation. If the developer does not spend the entire 1% on public art, then the remaining amount shall be contributed to the Public Arts Fund.
(e) **Alternative to Provision of Art.** Developers may choose to make a contribution to the Public Art Fund in lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to 1.1% of the building valuation. The additional 0.1% is to be used for maintenance of art provided through the Public Art Fund. The in-lieu fee shall be paid prior to issuance of the building permit.

19.52.040 Standards for Art
Proposed art in private development shall meet the criteria in this section. The arts commission may allow modifications that are consistent with the intent of this chapter.
(a) **Type of Art.** Art should be one significant piece of art, except that requirement may be met with several works of art when specifically found by the arts commission to fulfill the intent of this chapter. The nature and style of the art is considered in the context of other similar art in the surrounding area to encourage a wide range of types of art, styles and materials in order to create a balanced and interesting artistic and aesthetic appearance. The following types of art are permitted as long as they are on a large public scale:
(1) Sculpture: in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
(2) Painting: all media, including permanently affixed works, such as murals;
(3) Graphic arts: printmaking, drawing, calligraphy and photography, but only when on a large public scale;
(4) Mosaics;
(5) Glass;
(6) Clay, fiber and textiles, wood, metal, plastics and other materials;
(7) Mixed media: any combination of forms or media, including collage. Water, neon, fiber optic and electronic sculpture generally should not be encouraged due to difficulty of maintenance. Such art may be permitted if adequate assurance of continued maintenance is provided.
(8) Functional art created by a professional artist, such as benches, tree grates and trash receptacles; or,
(9) Any other form of work of art determined to satisfy the intent of this chapter.
(10) Ineligible Works. The following do not meet the requirements for art in private development:
    (i) Artwork that is similar to, reminiscent of or based on a corporate logo;
    (ii) Reproductions by mechanical or other means of original works of art. Permitted art may include, however, limited editions controlled by the artists of original prints, cast sculpture, photographs and other art forms;
    (iii) Directional or other functional elements such as supergraphics, signing, color coding, except where these elements are integral parts of original signed arts;
    (iv) Art objects which are mass produced from a standard design, such as playground equipment, fountains, flags or banners; and,
    (v) Landscaping and gardening, except where these elements are designed by the artists and are an integral part of a fine art.
(b) Artist Qualifications. The artist is required to have experience and knowledge of monumental-scale art intended for public viewing. The artist’s qualifications will be evaluated and examples of past work may be reviewed to determine whether or not the artist has appropriate experience for the project.
(c) Artistic Preference. The determination of artistic preferences is primarily a function of the owner or developer of the property. It is the intent of this chapter to provide for the public display of private art on private property without substituting the artistic preferences of the city for those of the owner or developer of the property.
(d) Visibility and Locations. Appropriate locations may include, but are not limited to, vehicular entryways to the property, plazas, greenbelts and building facades. The location selected should allow reasonable accessibility to the art, including visibility of the art from the public street. The location shall be exterior and installation of the art piece shall enhance the art and allow for unobstructed public viewing from as many angles as possible. When located in proximity to major traffic thoroughfares, the art should be at a motorist’s scale and oriented toward the view corridor of the motorist. The art shall be an integral part of the landscaping and/or architecture of the buildings.
(e) Proportional Size. The art shall be proportional to the scale of the development and designed to create an artistic, visual and aesthetic impact upon observers. Particularly in locations on major thoroughfares and major intersections, the art should be of such size and nature as to strengthen the urban design and aesthetic quality of life in the community.
(f) Inoffensive. Because the art will necessarily be highly visible to the public, will be associated with city requirements and because the traveling public will have no real opportunity
to avoid the visual aspects of the art, expressions of obvious bad taste or profanity is prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

(g) **Permanence.** The art shall be a permanent, fixed asset to the property. The composition of the art shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.

**19.52.050 Art Permit**

(a) **Art Permit Required.** An art permit is required for installation of art in private development. The art permit shall be obtained prior to building permit occupancy. In phased projects, the Director retains discretion as to which building permit triggers the need for the Art Permit application.

(b) **Application.** The Art Permit application shall contain the following information:

1. An application signed by the owner of the affected property;
2. Landscape and site plans indicating the location and orientation of the art, signage, utility boxes, fire suppression systems, and the landscaping and architectural treatment integrating the piece into the overall project design;
3. Color elevation rendering clearly showing the artwork to scale in relation to its surroundings;
4. A sample, model, or photograph and “to-scale” drawings or renderings of the proposed art piece;
5. Material samples and finishes;
6. A resume of the proposed artist including slides or photographs of the proposed artist’s past work which demonstrates similar work to the proposal;
7. A written statement by the artist describing any theme or development of the art, as well as a discussion of the manner in which the proposed art meets the criteria in Section 19.52.040 (Standards for Art);
8. A lighting plan including samples of lighting fixtures; and
9. Other information as required by the superintendent of community services.

(c) **Finding.** The proposed art is consistent with the Section 19.52.040 (Standards for Art) and the purpose of this chapter.

(d) **Decision.** The application, along with the recommendation of the superintendent of community services, will be forwarded to the arts commission for review and action at a public hearing. The arts commission, based on the finding, may either:

1. Approve the permit as requested or conditioned to meet the requirements of this chapter; or
2. Deny the permit.

(e) **Appeals.** Actions of the arts commission may be appealed by any person, including an arts commissioner or city councilmember. Written appeals shall be filed within 15 calendar days of the date of the action. The appeal shall state the grounds for the appeal. All proceedings initiated by the action of the arts commission will be suspended pending a final determination by the city council of the appeal’s merits at a public hearing. The city council, based on the finding, may either:

1. Approve the permit as requested or conditioned to the requirement of this chapter; or
2. Deny the permit.

(f) **Failure to Act.** Failure of the arts commission to act on a permit application within 60 calendar days, or an extended period as mutually agreed upon by the applicant and the arts commission is deemed a denial of the application. Denial may be appealed to the city council in
accordance with this section. The superintendent of community services shall send a notice of
the action to the applicant. Failure to send notice does not affect the arts commission action or
extend any appeals period.

Section 19.52.060 Master Art Permit
(a) **Applicability.** Development of any property having an aggregate area of more than 50
acres may apply for a Master Art Permit. Development may occur at one time or in phases and
shall consist of contiguous lots.
(b) **Application.** Application for a Master Art Permit is filed in the same manner as an Art
Permit, except that the application does not need to specifically identify each particular piece of
art proposed.
(c) **Content.** The Master Art Permit may define the total obligation to provide art and
include information on the quantity, type, orientation and timing of installation of the proposed
art. The Master Art Permit may waive Art Permit requirements for individual installations.
(d) **Decision.** Decisions require a city council hearing after recommendation by the arts
commission.

19.52.070 Installation and Maintenance Requirements
(a) **Timing of Installation.** If art installation is impracticable prior to the anticipated date of
building occupancy, the Director may allow building occupancy provided that the art permit has
been issued and the applicant has filed with the city adequate security to guarantee installation of
the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security
instrument, along with an agreement to install the required art in such amount and form as is
acceptable to the Director.
(b) **Permit for Installation.** The applicant shall obtain a building permit for the art.
(c) **County Recodertion.** Prior to completion of the art installation, a document shall be
recorded with the county containing a description of the art and noting the obligation of present
and future property owners to maintain and repair the art.
(d) **Plaque Required.** Each piece of art shall provide an appropriate identification plaque or
monument measuring at least 8 inches by 8 inches. The plaque shall be made of cast metal and
be placed near the art piece. Information is limited to the date, title and artist. The requirement of
this section may be waived if determined in a particular circumstance to be inconsistent with the
intent of this chapter.
(e) **Maintenance.** Art shall be maintained in good condition after its installation.
Maintenance of the art includes related landscaping, lighting and the identification plaque.
Violation of the maintenance requirements may result in the imposition of administrative fines
and penalties under Chapter 1.06 (Administrative Fines and Penalties) and may include the
City’s cost of maintaining or repairing the art.
(f) **Removal.** Removal of required art is prohibited without the City approval. The City may
require replacement of the art. Removal or replacement of art shall comply with Section
19.52.050 (Art Permit).

19.52.080 Establishment of the Arts Funds
The city council authorizes the establishment of two funds for the deposit of all fees paid under
to this chapter.
(a) **Public Arts Fund.** This fund uses 1% of the construction valuation for the acquisition
and installation of the art and administration of the public art program, including but not limited
to improvements, site preparation, lighting and landscaping.
(b) **Art Maintenance Fund.** The 0.1% of the construction valuations shall be set aside in the
art maintenance fund for repairing and maintaining art purchased by the in-lieu fee.