

ORDINANCE NO. 12-04

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 19, SECTION 19.05, BY REVISING THE PROVISIONS RELATED TO PUBLIC ART DONATIONS.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) approved Ordinance No. 93-22, which adopted the Zoning Ordinance for the Town of Fountain Hills (the “Zoning Ordinance”); and

WHEREAS, the Town Council desires to amend the Zoning Ordinance to revise Chapter 19 (Architectural Review Guidelines), Section 19.05 (Landscaping & Signage) to revise the procedures for developer donations to the Public Art Fund; and

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding the subject matter of this ordinance were advertised in the August 22, 2012 and August 29, 2012 editions of the Fountain Hills Times; and

WHEREAS, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 13, 2012, and by the Town Council on October 4, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town of Fountain Hills Zoning Ordinance, Chapter 19 (Architectural Review Guidelines), Section 19.05 (Landscaping & Signage), Subsection I (Public Art Requirement) is hereby amended as follows:

I. Public Art Requirement:

- 1.** All development proposals subject to ~~Design~~ CONCEPT PLAN REVIEW under this Chapter shall be required to provide one of the following prior to the issuance of a ~~Certificate of Occupancy~~ BUILDING PERMIT:
 - a.** Exterior public art of an appraised or invoiced value equal to or greater than 1% of the cost of building construction and associated site work and signage. Water features using recycled water are preferred; or
 - b.** A donation to the Fountain Hills Public Art Fund in an amount equal to or greater than 1% of the cost of building construction and associated site work and signage.

2. The value of construction costs will be determined by the Town using standard valuation procedures at the time of application.
3. Applicants are encouraged to meet with the Fountain Hills ~~Cultural Council~~ PUBLIC ART COMMITTEE for recommendations when considering exterior public art selections.
4. AN APPLICANT MAY BE ENTITLED TO A REFUND OF THE MONETARY DONATION OR THE RETURN OF THE EXTERIOR PIECE OF ART SUBJECT TO THE FOLLOWING:
 - a. AN APPLICANT WHO HAS MADE A MONETARY PUBLIC ART DONATION FOR A BUILDING CONSTRUCTION, FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED BUT CONSTRUCTION HAS NOT BEEN INITIATED, SHALL BE ELIGIBLE FOR A REFUND. REQUESTS FOR A REFUND SHALL BE MADE ON A FORM PROVIDED BY THE TOWN FOR SUCH PURPOSES. AN APPLICATION FOR A REFUND MUST BE MADE WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. THE APPLICANT SHALL SUBMIT WITH THE APPLICATION (I) THE AMOUNT OF THE DONATION PAID BY THE APPLICANT, (II) RECEIPTS EVIDENCING SUCH PAYMENTS AND (III) DOCUMENTATION EVIDENCING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. FAILURE TO APPLY FOR A REFUND WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT SHALL CONSTITUTE A WAIVER OF THE RIGHT TO A REFUND. UPON RECEIPT OF A COMPLETE APPLICATION, THE TOWN MANAGER OR AUTHORIZED DESIGNEE SHALL REVIEW THE REQUEST AND DETERMINE WHETHER A REFUND IS DUE. A REFUND SHALL BE PAID UPON AFFIRMATIVE DETERMINATION BY THE TOWN MANAGER OR AUTHORIZED DESIGNEE.
 - B. AN APPLICANT WHO HAS MADE A PUBLIC ART DONATION IN THE FORM OF AN EXTERIOR PIECE OF ART, FOR A BUILDING CONSTRUCTION, FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED BUT WHICH CONSTRUCTION HAS NOT BEEN INITIATED SHALL BE ENTITLED TO THE RETURN OF THE EXTERIOR PIECE OF ART DONATED. REQUESTS FOR RETURN SHALL BE MADE ON A FORM PROVIDED BY THE TOWN FOR SUCH PURPOSES. AN APPLICATION FOR A RETURN MUST BE MADE WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. THE APPLICANT SHALL SUBMIT WITH THE APPLICATION (I) THE DESCRIPTION OF THE EXTERIOR PIECE OF ART, (II) DOCUMENTATION EVIDENCING THE APPLICANT'S DONATION OF THE EXTERIOR PIECE OF ART TO THE TOWN AND

(III) DOCUMENTATION EVIDENCING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. FAILURE TO REQUEST A RETURN OF THE EXTERIOR PIECE OR ART WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT SHALL CONSTITUTE A WAIVER OF THE RIGHT TO RETURN AND THE EXTERIOR PIECE OF ART SHALL BE DEEMED PROPERTY OF THE TOWN. UPON RECEIPT OF A COMPLETE APPLICATION, THE TOWN MANAGER OR AUTHORIZED DESIGNEE SHALL DETERMINE WHETHER RETURN IS DUE. THE TOWN SHALL RETURN EXTERIOR PIECE OF ART TO THE APPLICANT FOLLOWING AN AFFIRMATIVE DETERMINATION BY THE TOWN MANAGER OR AUTHORIZED DESIGNEE.

- c. AN ADMINISTRATIVE FEE, IN AN AMOUNT DETERMINED BY THE TOWN COUNCIL SHALL BE PAID AT THE TIME OF THE APPLICATION TO OFFSET THE ADMINISTRATIVE EXPENSE ASSOCIATED WITH PROCESSING THE APPLICATION.

SECTION 3. If any section, subsection, 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 shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, October 4, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

Linda M. Kavanagh, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Kenneth W. Buchanan, Town Manager

Andrew J. McGuire, Town Attorney