

CHAPTER XII. PUBLIC PROPERTY

ARTICLE 6. PUBLIC ART IMPACT FEE

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12-601. SHORT TITLE. This section shall be known and cited as the “Leawood, Kansas Public Art Impact Fee Section.”

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-602.

PURPOSE. The Governing Body of the City of Leawood has determined that commercial development within the City should be accompanied by the establishment of Public Art to balance and harmonize the impact that non-residential development has upon the community. The Governing Body has further determined that a fee should be imposed upon nonresidential development to establish a fund to be administered by the City for the purposes of acquisition, development, construction and maintenance of Public Art. A Public Art Impact Fee is hereby imposed on development for the purpose of integrating highly visible art into the Leawood community to create a legacy of works to be enjoyed by current and future generations. The Public Art Impact Fee shall be imposed by the City on all development, and all fees collected shall be used solely and exclusively to provide and maintain public art that will enhance the aesthetic appearance of Leawood's public spaces and designated private areas and increase the public's enjoyment of community areas and of the arts.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-603.

DEFINITIONS.

- (a) **Applicant:** the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for nonresidential development.
- (b) **Building:** any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.
- (c) **Building Permit:** the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, and to the rebuilding of a damaged structure, but not to permits required for accessory uses.
- (d) **City:** the City of Leawood, Kansas.
- (e) **Development:** the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit.
- (f) **Dwelling:** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.
- (g) **Floor Area; Finished:** the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.

- (h) **Master Plan or Master Development Plan:** the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto.
- (i) **Non-residential Development:** all development other than residential development and public and quasi-public use, as herein defined.
- (j) **Property:** a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.
- (k) **Property Owner:** any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.
- (l) **Public Art:** The term "public art" as used herein, may include, but not be limited to the visual and performing arts, creative production of music, drama, dance, creative writing, arts and crafts, film, photocopying or other suitable expression, including that of an artist as a member of the design team for a building, park land or infrastructure, sculptures, paintings, murals, manhole covers, paving pattern, lighting, seating, building façade, kiosk, gate, fountain, play equipment, engraving, carving, fresco, mobile, collage, mosaic, bas-relief, tapestry, photography, drawing, landscape item including artistic placement of natural material or arches or other structures of a permanent or temporary character intended for ornament or commemoration.
- (m) **Public and Quasi-Public Use:** a development owned, operated or used by the City of Leawood, Kansas: any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this section only, "places of worship" are hereby defined as quasi-public uses.
- (n) **Residential Development:** the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.
- (o) **Subdivision Regulations:** The Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereto.
- (p) **Zoning Ordinance:** The Leawood Development Ordinance, including all duly adopted amendments thereto.

(Ord. 1751C; 11-2-98)
 (Ord. 2075C; 08-16-04)
 (Ord. 2233C; 05-21-07)

12-604. APPLICABILITY OF PUBLIC ART IMPACT FEE. This section shall be uniformly applicable to nonresidential development but not apply to residential, public and quasi-public uses on property in the City of Leawood.

(Ord. 1751C; 11-2-98)
 (Ord. 2233C; 05-21-07)

12-605.

IMPOSITION OF PUBLIC ART IMPACT FEE.

- (a) A Public Art Impact Fee shall be imposed on nonresidential development in the City, except as provided in subsection (b) and Section 12-612, herein.
- (b) The Public Art Impact Fee shall not be imposed on any development for which an application for development approval had been received by the City prior to November 2, 1998. For purposes of this subsection only, an application for development approval shall mean an application for a certificate of occupancy for any property that is zoned for use as non-residential property.
- (c) Upon receipt of an application for development approval, the Director of Planning and Development shall preliminarily calculate the amount of the Public Art Impact Fee by multiplying the applicable nonresidential impact fee rate by the floor area (in square feet) estimated for the proposed development for which approval is being sought. Such calculation shall be an estimate only for the benefit of the applicant for preliminary plan approval and shall be (a) subject to final determination at such time as applicant requests a building permit; and (b) imposed in accordance with the ordinance in effect at the time of the request for building permit.

(Ord. 1751C; 11-2-98)

(Ord. 2233C; 05-21-07)

12-606.

AMOUNT OF PUBLIC ART IMPACT FEE. The Public Art Impact Fee shall be at the following rate:

Nonresidential Development: \$. 15 per square foot of floor area, finished.

(Ord. 1751C; 11-02-98)

(Ord. 2179C; 08-21-06)

(Ord. 2233C; 05-21-07)

12-607.

COLLECTION OF PUBLIC ART IMPACT FEE.

- (a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Public Art Impact Fee.
- (b) Applicants for building permits for nonresidential development subject to this section must submit the following information:
 - (1) the finished floor area for non-residential development;
 - (2) relevant supporting documentation as may be required by the Director of Planning and Development.
- (c) The Director of Planning and Development shall be responsible for determining that:
 - (1) the applicant has paid the Public Art Impact Fee; or
 - (2) the applicant has been determined to be exempt pursuant to Section 12-612; or
 - (3) an appeal has been taken and a bond or other surety posted pursuant to Section 12-613.
- (d) The Director of Planning and Development shall collect the applicable Public Art Impact Fee at the time of issuance of a building permit for non-residential development.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-608.

CALCULATION OF PUBLIC ART IMPACT FEE. Upon receipt of an application for a building permit for development subject to this article, the Director of Planning and Development shall calculate the amount of the applicable Public Art Impact Fee due in accordance with the following procedure:

- (a) Determination of applicability of this article to the subject property shall be made within three working days of receipt of such application by the Director of Planning and Development;
- (b) If this section is not applicable because the subject property is exempt pursuant to Section 12-612 herein, the Director of Planning and Development shall return the application with the inapplicability or exemption noted thereon;
- (c) If this section is determined to be applicable, the Director of Planning and Development shall:
 - (1) for nonresidential development, multiply the applicable Public Art Impact Fee rate by the finished floor area (in square feet) of nonresidential development for which the building permit is being sought.

- (2) Director of Planning and Development shall calculate the amount of the Public Art Impact Fee preliminarily due pursuant to the building permit application and the requirements of this section in effect at the time of issuance of the building permit.
- (3) A building permit application must be resubmitted to the Director of Planning and Development and the amount of the Public Art Impact Fee recalculated if the applicant alters the proposed development by increasing the finished floor area of non-residential development.
- (d) An applicant may file a petition for review with the City Administrator or his or her duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Planning and Development as to the applicability of the Public Art Impact Fee ordinance or the exemption of the property, or the amount of the Public Art Impact Fee due. Within one month of the date of receipt of a petition for review, the City Administrator or his or her duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 1751C; 11-2-98)

(Ord. 2233C; 05-21-07)

12-609.

ANNUAL REVIEW.

- (a) Prior to January 1, 2000 and every year thereafter, the City Administrator, or his or her duly designated agent, shall prepare a report to the Governing Body on Public Art Impact Fees. In the preparation of such report, the City Administrator or his or her duly designated agent shall review the following information:
 - (1) a statement from the City Finance Director summarizing Public Art Impact Fees collected and disbursed during the year;
 - (2) a statement from the Director of Public Works summarizing public art acquisition and development in connection with public works improvements and the status thereof for the preceding year;
 - (3) a statement from the Director of Planning and Development summarizing the type, location, timing and amount of development for which building permits were issued in the year and summarizing the administration and enforcement of the Public Art Impact Fee.
 - (4) a statement and recommendation from the Leawood Arts Council on any and all aspects of the Public Art Impact Fee and public art needs.

- (b) The City Administrator's report shall make recommendations, if appropriate, on amendments to the ordinance; and changes in the administration or enforcement of the ordinance; and changes in the Public Art Impact Fee rate.
- (c) The Public Art Impact Fee rate shall be reviewed annually. Based upon the City Administrator's report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the Public Art Impact Fee ordinance including, but not limited to an amendment of the Impact Fee rate. If the Governing Body fails to take such action, the Public Art Impact Fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the Public Art Impact Fee ordinance at such other times as may be deemed necessary.
- (d) In the annual review process, the Governing Body shall take into consideration the following factors: inflation as measured by changes in an appropriate land and construction cost index used by the City; improvement cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed public art.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-610.

RESTRICTIONS ON USE OF AND ACCOUNTING FOR PUBLIC ART IMPACT FEE FUNDS.

- (a) The funds collected by reason of the establishment of the Public Art Impact Fee must be used solely for the purpose of funding the acquisition, development, construction and maintenance of public art.

- (b) Upon receipt of Public Art Impact Fees, the City Administrator or his designee shall transfer such funds to the City Finance Director who shall be responsible for the placement of such funds in a segregated interest bearing account designated as the "Public Art Impact Fee Account." All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for public art acquisition, development, construction and maintenance. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Finance Director shall establish adequate financial and accounting controls to ensure that Public Art Impact Fee funds disbursed from such account is utilized solely and exclusively for public art acquisition, development, construction and maintenance or for reimbursement to the City of advances made from other revenue sources to fund public art acquisition, development, construction and maintenance. Disbursement of funds from the accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this section. provided, however, that funds shall be expended within a reasonable period of time, but not to exceed seven years from the date such funds are collected.
- (c) The City Finance Director shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.
- (d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-611.

REFUNDS.

- (a) The current owner of property on which a Public Art Impact Fee has been paid may apply for a refund of such fee if:
 - (1) the city has failed to provide public art utilizing impact fee collected within seven years of the date of payment of the Public Art Impact Fee, assuming that the money that is first deposited in the impact fee account is the money that is first spent from such account; or
 - (2) the building permit for nonresidential development pursuant to which the Public Art Impact Fee has been paid has lapsed for non-commencement of construction.
- (b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

- (c) The petition for refund must be submitted to the City Administrator or his or her duly designated agent on a form provided by the city for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the Public Art Impact Fee issued by the Director of Planning and Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.
- (d) Within one month of the date of receipt of a petition for refund, the City Administrator or his or her duly designated agent must provide the petition, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his or her duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.
- (e) Petitioner may appeal the determination of the City Administrator to the Governing Body.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-612.

EXEMPTIONS.

- (a) A property owner shall be exempt from the Public Art Impact Fee otherwise due for proposed nonresidential development on the subject property if such property owner has:
 - (1) provided an art project, developed and selected in accordance with the process set forth in the City's Public Art Policy, through private funding that is equal to or greater than the dollar value of the fee that is imposed by this section;
 - (2) which art project has been approved in accordance with the City's planning codes and restrictions; and
 - (3) which has been approved by the Leawood Arts Council, the Planning Commission and the Governing Body as a part of the development approval process as satisfying the requirements of this article.
- (b) All Public Art procured under the City's impact fee process shall become the property of the City.
- (c) An exemption may only be given for building permit applications for nonresidential development on the subject property for which exemption has been approved as provided in Section 12-612(a) prior to application for issuance of a building permit.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-613. APPEALS. After a determination by the Director of Planning and Development of the applicability of the Public Art Impact Fee or the amount of the Impact Fee due, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within 30 days following the determination by the Director of Planning and Development. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Public Art Impact Fee due as calculated by the Director of Planning and Development, the application shall be processed. The filing of an appeal shall not stay the collection of the Impact Fee due unless a bond or other sufficient surety has been filed.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-614. EFFECT OF PUBLIC ART IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS. This section shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or provision public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

12-615. PUBLIC ART IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT. The Public Art Impact Fee is additional and supplemental to, and not in substitution on any other requirements imposed by the City on the development of land or the issuance of building permits. It is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of public art in conjunction with the development of land.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)