



Development and Infrastructure Services Department

Date: April 3, 2015

Subject: Public art installation and the issuance of a Final Certificate of Occupancy

APPLICABLE REFERENCES

*Section 27.3.I.1, Installation and Maintenance, of the Zoning Code provides that Public artwork shall be installed, inspected and certified complete prior to the issuance of a final certificate of occupancy. The Town shall **may** withhold the Final Certificate of Occupancy until public artwork installation is complete.*

ANALYSIS/DETERMINATION

Town Council, at their regular meeting of January 15, 2014, approved a public art zoning amendment with the condition that the word “shall” be changed to “may” in the section referenced above.

The purpose of this interpretation is to provide clarification to ensure consistent and fair application of this stipulation. An interpretation is warranted to address two issues:

- 1) The second sentence conflicts with the first.
- 2) It appears the Planning & Zoning Administrator has been granted unfettered discretion. Courts have consistently held that statutory provisions be sufficiently definite to prevent arbitrary or discriminatory enforcement.

INTERPRETATION

Based on Town Council's discussion at their regular meeting of January 15, 2014 and the need to ensure consistency in application, the following interpretation is hereby rendered:

1. The Planning and Zoning Administrator will make every effort to ensure public art is installed prior to issuance of a Final Certificate of Occupancy.
2. If an applicant/owner does not install the public art in a timely manner, a Final Certificate of Occupancy (FCO) can still be issued under the following limited circumstances:
 - Evidence is provided that establishes public art installation, as approved by the Town, is anticipated within 30 days of FCO issuance. An example of relevant evidence includes a fully executed artist contract with a specific delivery and installation date.

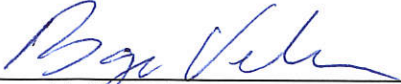
If evidence indicates that installation will take more than 30 days beyond FCO issuance, the applicant/owner must post a suitable assurance, as identified in Section 26.6.E of the zoning code, for the Town approved artwork.

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It's in our nature.

3. The Planning and Zoning Administrator will withhold a Final Certificate of Occupancy if an applicant/owner has not obtained Town approval of public art work and a fully executed artist contract.

Persons aggrieved by a Zoning Interpretation may file an appeal to the Board of Adjustment within twenty (20) days from the date it is published on the Town's website, in accordance with Section 21.6.G of the Town of Oro Valley Zoning Code.



Bayer Vella, LEED-AP, AICP
Planning and Zoning Administrator



Date