

ORDINANCE NO. (DRAFT 4/11/2019)

An ordinance amending ~~Title 3 – Advisory Commissions and Committees~~ and Title 22 - Planning and Zoning of the Los Angeles County Code – to establish a Percent for Art in Private Development requirement for residential, commercial, and industrial development, and revitalization projects in the unincorporated areas of the County.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. The Board of Supervisors finds as follows:

A. That artistic and cultural resources enhance the quality of life for individuals living in, working in and visiting the unincorporated areas of the County;

B. That development of artistic and cultural resources in communities preserves and improves the quality of the urban environment, ~~and increases property values~~ encourages civic engagement, promotes cultural diversity, enhances social well-being, and fosters economic vitality of communities;

C. That as residential, commercial, and industrial development, and revitalization of the real property within the unincorporated areas of the County continues, urbanization and increased density of the community results, and the need to develop new artistic and cultural resources to enhance the environment, image and character of the community increases;

D. That the development of artistic and cultural assets should be financed by those whose residential, commercial, and industrial development and revitalization projects increase the community's demand for cultural resources; and, therefore,

E. That the Civic Art requirement is a fair and equitable method of distributing the cost of Civic Art among residential, commercial, and industrial development and revitalization projects.

SECTION 2. Section 22.14.160 is thereby amended to read as follows:

...

Pedestrian paseo. A landscaped walkway accessible to the public, located outside of a public right-of-way or private roadway, where motorized vehicles are prohibited. A pedestrian paseo shall be a minimum of five feet in width, provide amenities such as appropriate lighting, benches, and water features, and be designed to maximize visibility of the paseo from public view points.

Percent for Art in Private Development. The following terms are defined solely for the purpose of Section 22.246.080 (Percent for Art in Private Development):

Art consultant. A organization or individual working as a professional administrator of the arts, who realizes income through the provision of services relating to the arts such as, but not limited to, contracting artists and arts media for venues with public audiences or providing oversight of on-site logistics, demonstrates previous success in project management, oversight of on-site logistics, and provides leadership in completion of the Civic Art.

Artist. A person who has established a reputation of artistic excellence in the arts, including but not limited to visual, performing or literary arts, as judged by peers and experts in the field, through a record of public exhibitions, performances, commissions, sale of works, recognition and/or educational attainment.

Building valuation. The total value of all construction work for which a building permit is issued, and includes, but is not limited to, outside improvements, all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanently installed work or permanently installed equipment.

Civic Art. An original, site-specific work of art or a facility dedicated to the arts, constructed of materials such as, but not limited to, paintings and murals, sculptures, mixed media, and memorials, that is placed to be freely publicly accessible to the public on both private property and publicly-owned property. The work of art can take a wide range of forms, sizes, and scales such as, but not limited to community art, ecological art, digital media, installation, restoration or replication of original decorative ornament, performances, and festivals, all of which can be temporary or permanent. Works of art or facility acceptable as Civic Art may be in any artistic discipline and in any media accepted by the Department of Arts and Culture in compliance with Section 22.246.080. “Civic art” does not include fixtures or features such as streetlights, benches, signs, or other design enhancements, unless designed rendered by an artist as a unique or limited edition feature for the development project.

Civic Art Program. The Los Angeles County Department of Arts and Culture Commission Civic Art Program to which provides artistic and cultural facilities, services and/or amenities to the residents of the County.

Commercial and industrial development. Any nonresidential land use, including, but not limited to, retail, office, professional, research, manufacturing, heavy industry, hotels, motels, utilities and private recreational facilities, but not including any use by a public entity for which the Board of Supervisors is the governing body.

Cultural facility. Any facility that is open to the public that provides artistic or cultural services, including but not limited to theaters, performance space(s), art galleries, exhibition spaces, artist studio spaces, arts education facilities, and other similar facilities as determined appropriate by the Department of Arts and Culture. The definition do not include churches, schools, commercial movie theatres, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and non-profit facilities used for non-profit activities.

Development project. Any activity which requires the issuance of at least one building permit by the County and includes all related permits contained within the same project number in the County's master tracking system.

Fee. A monetary responsibility other than a tax or special assessment that is collected under the terms of Section 22.246.080 to provide funds for Civic Art projects.

Landmark. A property, including, any structure, site, place, object, tree, landscape, or natural feature, that is designated as a landmark by the Board of Supervisors pursuant to Chapter 22.124 (Historic Preservation).

Publicly accessible. Any place or property site within the County which is open to the general public for its use, or which is in public view. If the Civic Art is located in an interior location it must be publicly accessible during ~~normal~~ regular business hours.

Private recreation facilities. Recreation facilities established and operated by a private entity or an association of persons who are bona fide members, to be used exclusively by its members. Such term may also include private recreation clubs, as defined in Section 22.08.180.

Residential development. A development project for five or more dwelling units, including mixed use developments. It may also be a subdivision or a common interest development as defined in Section 4100 of the California Civil Code, approved by the County and consisting of five or more dwelling units or unimproved residential lots. It may also be either a project to substantially rehabilitate and convert an existing commercial building to residential use with five or more dwelling units, or the substantial rehabilitation of an existing multi-family dwelling, as defined in Section 65863.4(d) of the California Government Code, with five or more dwelling units.

SECTION 3. Section 22.246.080 is hereby added to Title 22 of the Los Angeles County Code to read as follows:

22.246.080 Percent for Art in Private Development

A. **Purpose.** The purpose of this Section is to promote the general welfare and enhance livable communities by requiring the use and incorporation of works of

publicly accessible art in private development. By doing so, the County preserves and enriches the character and environment of its unincorporated communities;
improves the quality of life for those who visit, live, or work in the County;
mitigates potential adverse impacts of construction and increased density; fosters
the economic vitality of communities; and engages residents, neighborhoods,
businesses, and community organizations in creative partnerships with artists.
This Section sets forth requirements for the provision of Civic Art, in connection with conditions for the design of residential, commercial, and industrial development projects.

B. Applicability. The provisions of this Section shall apply only to private residential, commercial, and industrial development projects with a building valuation of \$500,000~~750,000~~ or more for which a building permit has not been issued as of the effective date of this Ordinance. The provisions shall also apply to repair and renovation projects with a building valuation of \$500,000~~750,000~~ or more on existing commercial or industrial development, in which one percent of design and construction costs instead of total project valuation shall be allocated to commission Civic Art.

C. Definitions. Specific terms used in this Section are defined in Division 2 (Definitions), under “Percent for Art in Private Development.”

D. Administration. In accordance with Section 3.38.010 in Title 3 (Advisory Commissions and Committees)~~Chapter 22.89 (Department of Arts and Culture)~~

in Title 2 (Administration) of the County Code, the Los Angeles County Arts Commission **Department of Arts and Culture** shall:

1. Promulgate Civic Art program policies, **guidelines** and implementation procedures for adoption by the Board **pursuant to this Section**;
2. Maintain records of civic work created and supported pursuant to this Section;
3. Prepare the annual Civic Art program budget for approval by the Board;
3. Report annually to the Board as required by Subsection K (Use of Fees Collected), below.

E. Establishment of Civic Art Requirement. When a development project is subject to the requirements of this Section, the applicant shall comply with the provisions of Subsection E.1 or E.2, or a combination of both, as defined below.

1. *On and Off-Site Civic Art Option.*

a. For new projects, the applicant shall provide and maintain Civic Art in a publicly accessible place pursuant to this Section. The Civic Art may be of, **to include** but **is** not limited to the following four types of programs:

- i. *Newly commissioned work of hard art.* The hard art may be created in any permanent media approved by the **Department of Arts and Culture Commission**, **and** presented on the subject property in a publicly accessible place **location** on and/or within **250 feet** of the development project site. **If the applicant**

chooses to place artwork on municipal property or private property within 250 feet of the development project site, all required approvals, permits, and agreements in compliance with this Section, shall be the responsibility of the applicant to obtain, and shall be presented to the Department of Arts and Culture prior to approving the Civic Art plan.

- ii. Cultural Facilities. The construction, repair, and/or funding to support of cultural facilities that are onsite the development project site or within a five-mile radius of the site.
- iii. Conservation. Restoration, conservation or preservation of existing private and/or County-owned publicly accessible artworks Civic Art that is onsite the development project site or within a five-mile radius of the site. This may include, but is not limited to, the restoration or replication of original decorative ornament or artwork deemed historically or culturally significant as part of the rehabilitation of historic, cultural, and architectural landmarks; and/or
- iv. Artistic and cultural programs and services. Artistic and cultural services that are onsite the development project site or within a five-mile radius of the site, including but not limited to:
 - (1) Performing arts: theatre, dance, music and performance art;

- (2) Literary art: poetry readings and storytelling;
- (3) Media art: film and video, screenings and installations;
- (4) Arts education: lectures, programs, presentations and instruction in and about arts and culture;
- (5) Special events: parades, festivals and celebrations provided that they are cultural in nature;
- (6) Temporary ~~and mixed media~~ artworks: ecological, environmental, lighting, aerial, water, sound, participatory, exhibition; and
- (7) Similar arts services as approved by the ~~Department of Arts and Culture~~ Commission.

b. For repair and renovation projects not listed under Subsection F, below, with a building valuation of \$500,000~~750,000~~ or more, one percent of design and construction costs instead of total project valuation shall be allocated to commission Civic Art.

c. For the creation of Civic Art pursuant to this Section, applicants shall hire a professional art consultant to assist with all phases of the project development and project oversight from inception to completion. The art consultant may be selected by the developer or from an optional prequalified list provided by the ~~Department of Arts and Culture~~ Commission. ~~The applicant may utilize Arts Commission Civic Art~~

Department of Arts and Culture ~~Commission~~ staff as the art consultant for a fee equal to fifteen percent of the one percent requirement.

2. **Civic Art In-lieu Fee Option.** In lieu of providing Civic Art, the applicant may pay a fee to be deposited in the Civic Art ~~Private Development Art~~ Fund equal to one percent of building valuation.

3. The provision of Civic Art pursuant to this Section shall be subject to the approval of the ~~Department of Arts and Culture~~ Commission in accordance with the County Civic Art Program policies and implementation procedures.

F. **Exemptions from Civic Art Requirement.** The following shall be exempt from the provisions of this Section:

1. Commercial and industrial development projects with a cumulative building valuation of less than ~~\$500,000~~ 750,000;

2. Commercial and industrial development projects owned or operated by religious facilities under Internal Revenue Code section 501(c)(3) and used exclusively for religious activities;

3. Commercial and industrial development projects with additions or modifications to existing buildings when such work has a cumulative building valuation of less than ~~\$500,000~~ 750,000;

4. Commercial and industrial development consisting exclusively of rehabilitation work required for seismic safety or to comply with governmental mandates, including the Americans with Disabilities Act of 1990 regardless of valuation;

5. Repair, renovation or rehabilitation intended to upgrade an existing building or structure that does not change the purpose or character of use or type and does not alter the size or occupancy load of the building;
6. Replacement, repair, renovation, or rehabilitation to an existing building, including replacement of on-site Civic Art, that has been partially or completely destroyed by a fire or natural disaster up to the original building valuation. Improvements in excess of the original building valuation shall not be exempt;
7. All housing residential development projects of four dwelling units or fewer;
8. Residential components of a mixed use development project Affordable housing development projects, provided that the development projects consist solely of dwelling units, exclusive of a manager's unit(s), that are affordable to extremely low, very low, lower, or moderate income households;
9. Facilities owned or leased solely by a non-profit organization, as defined in Section 22.14.140 (N) and under Internal Revenue Code section 501(c)3, provided the premises are used solely in furtherance of the owner's or lessee's non-profit purpose; and
10. Commercial and industrial development projects, or portion(s) thereof, that are designed and dedicated to performing arts or museum spaces the arts, as long as the performing arts or museum spaces sites are maintained within the building, provided the premises continue to be dedicated as such

to the arts. Acceptable facilities include museums, theaters, performance arts centers, and other similar facilities as determined appropriate by the Department of Arts and Culture Commission. Excluded facilities include schools, commercial movie theaters, banquet halls, gymnasiums or other sports facilities, and buildings dedicated primarily to administrative activities.

G. Compliance with Civic Art Requirement.

1. When an applicant elects to fulfill the Civic Art requirement by means other than paying the in-lieu fee, no building permit shall be issued until the County has received and accepted a Civic Art plan with a proposal committing the applicant to complying with this requirement by a pre-determined date. Once applicant is notified of acceptance of the Civic Art proposal, applicant will submit the same in order to obtain a building permit, and at the same time, shall post an automatically renewing certificate of deposit payable to the County in an amount equivalent to one percent of the building's valuation with the County. The County may hold the deposit until a certificate of occupancy is issued for the development project. and a A certificate of occupancy may be issued and the deposit returned with clearance by the Department of Arts and Culture Commission when, in addition to meeting all other building requirements, the Civic Art project is determined to be in compliance with this Section and with the County's Civic Art Program policies and implementation procedures. The applicant shall

~~post a certificate of deposit in an amount equivalent to one percent of the building's valuation with the County, and the County may hold the deposit until a certificate of occupancy is issued for the development project, and then return the deposit to the applicant. If the requirement is not met, and the applicant has been given a reasonable time to cure, the Department of Arts and Culture Commission shall put the deposit into the Civic Art In-Lieu Private Development Art Fund.~~

- ~~2. When an applicant has elected to pay a Civic Art in-lieu fee, no building permit shall be issued until such fee has been paid.~~

H. Civic Art Compliance with Zoning Requirements

- ~~1. The proposed Civic Art shall comply with all zoning regulations prescribed by this Title 22, including permitted uses for the zone, applicable entitlements for the use, and development standards, including height, parking and setbacks, in addition to the zoning requirements for the proposed commercial or industrial development project. Entitlements for the proposed Civic Art, if required, shall be submitted concurrently with site plans and any required entitlements for the commercial or industrial development project.~~
- ~~2. All on and off-site Civic Art proposals plans in conjunction with a development project located within the geographic area governed by the Marina Del Rey Specific Plan shall be submitted to the Design Control Board for review, any recommendations, including a written report and/or~~

marked plans, to illustrate its conclusions relating to the project's architectural design and site planning shall be submitted by the Design Control Board to the Commission or Hearing Officer within 120 days of the filing of a Coastal Development Permit application in compliance with Section 22.46.1110.D (Design Control Board).

I. Civic Art Standards

1. The proposed Civic Art shall comply with the following standards:

a. The Civic Art satisfies the artistic and cultural needs of the development project so as to reduce the need for public artistic and cultural facilities, services and community amenities to serve the patrons, occupants and owners of the development project and is responsive to the needs of the community in which the development project and/or Civic Art will be located;

b. ~~For the three types of programs described in Section 22.246.080.E.1.a.i through iii,~~ ~~the Civic Art is to be privately owned and maintained by the applicant and future occupants or owners of the subject property. Maintenance shall be adequately provided for by a covenant for a minimum of 25 years, which shall run with the land, or other appropriate provisions will be made based on the characteristics of the Civic Art. Any Civic Art to be removed upon expiration of the 25 year term from the subject property shall be relocated to a County facility or donated to a cultural institution, at the owner's expense, as approved by the Arts~~

~~Commission.~~ deaccessioned in accordance with the Civic Art Program policies and procedures;

c. The Civic Art shall be in an area open and freely publicly accessible to the general public at least eight hours each day of at least five days per week;

d. A cultural facility that is being improved pursuant to this Section shall be freely publicly accessible to the general public during its regular business hours;

e. The cost of services or utilities necessary to operate or maintain the Civic Art project over time is not included in calculating the value of a Civic Art project for the purpose of satisfying the one percent of building valuation requirement; and

f. The Civic Art shall be in substantial compliance with any arts and cultural master plan, policies and implementation procedures adopted by the Board.

2. For purposes of compliance with Subsection I.1, above, the cost of a Civic Art project shall not include any of the following to satisfy of the Civic Art requirement:

a. Directional elements such as supergraphics, signage, or color coding;

b. Artworks that contain a commercial message by referencing, presenting, or promoting a product or service that is available on or off

site of the subject property through text, image, logo, trademark, or other mechanism;

- c. Art objects that are mass produced or of standard design;
- d. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking or other media arts;
- e. The architecture of the building or facility, or any portion thereof, including decorative, ornamental or functional elements, unless designed by an artist specifically commissioned for this design enhancement purpose;
- f. Landscape architecture and landscape gardening, except where these elements are designed by an artist specifically commissioned for this design enhancement purpose; or
- g. Services or utilities necessary to operate or maintain the Civic Art over time.

J. ~~Civic~~ Private Development Art Fund.

1. A ~~Civic~~ Private Development Art Fund shall be established and shall continue from year to year. The fund shall consist of ~~five separate accounts, one for each Supervisorial district~~ ~~one account to be used in all Supervisorial Districts, to be~~ established by the Auditor-Controller in accordance with Section 27100.1 of the California Government Code ~~Section~~ ~~and~~ administered by the County Treasurer and Tax Collector apart

from the general revenue funds and accounts of the County. All interest and investment earnings in said ~~accounts~~-fund shall accrue to the use and benefit of the applicable ~~accounts~~-fund.

2. All Civic Art in-lieu fees received by the County pursuant to this Section shall be deposited in the applicable account in the ~~Civic~~-Private Development Art Fund and shall be accounted for and expended consistent with Section 66006 of the California Government Code. The fund is authorized to accept gifts, grants and donations made to the County for Civic Art.

3. All appropriations, gifts, grants and awards of money or property received for Civic Art from either public or private donors shall be placed in trust for and inure to the use and benefit of the County for Civic Art purposes; and said property and funds shall be expended, utilized and disbursed pursuant to the provisions of this Section. Any gifts, grants and awards received subject to a condition shall be expended strictly in accordance with such condition.

K. Use of Fees Collected.

1. The ~~Department of Arts and Culture~~—Commission shall make recommendations to the Board for expenditures from the ~~Civic~~-Private Development Art Fund in accordance with County budgetary procedures and adopted Civic Art program policies and implementation procedures, which expenditures shall be exclusively for the acquisition, commissioning, installation, improvement, maintenance and insurance of Civic Art on

County property; the restoration, conservation, or preservation of existing County-owned Civic Art; the provision of Civic Art in any of the four types of programs described in Subsection E, above; or any similar acts or cultural services as approved by the ~~Department of Arts and Culture~~ Commission.

2. ~~Civic art in-lieu fees shall be expended within the Supervisorial district from which the fees were collected, for Civic Art accessible to anyone in the district, including, but not limited to, the patrons, occupants and owners of the development projects for which the fees were collected.~~

~~32. The Department of Arts and Culture Commission shall provide an annual report to the Board on: which outlines Percent for Art in Private Development activities for the previous fiscal year. The report will detail 1) the provision of on or off-site art installations and arts services, restoration and conservation, programs, facilities and amenities undertaken during the year, and 2) the use of all Civic Art in-lieu fees collected and deposited in the Civic Private Development Art Fund; including identification of all income, expenditures, and balances of each of the accounts in the fund during the prior fiscal year and its recommendations for proposed expenditures for the subsequent fiscal year. Upon receipt of such report, the Board shall authorize expenditures from the Civic Private Development Art Fund and shall make findings with respect to any portion of the in-lieu fees remaining unexpended or uncommitted in this fund five or more years after deposit of the fees. These findings shall identify the purpose to which~~

~~the fee is to be put and shall demonstrate a reasonable relationship between the fee and the purpose for which the fee was charged.~~ The report may set priorities for use of the Private Development Art Fund in future years.

L. **Alternative Method.** This Section is intended to establish an alternative method for the provision or financing of Civic Art, the need for which is generated directly or indirectly by a commercial or industrial development project or projects. The provisions of this Section shall not be construed to limit the power of the County to utilize any other method for accomplishing this purpose but shall be in addition to any other fees or requirements which the Board is authorized to impose as a condition to approving new development pursuant to state and local laws.

SECTION 4. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. This ordinance shall be effective 30 days after adoption.