REPORT TO THE REGIONAL PLANNING COMMISSION

DATE ISSUED: April 11, 2019  
MEETING DATE: 4/24/2019  
AGENDA ITEM: 6  
PROJECT NUMBER: 2017-000213  
PROJECT NAME: PERCENT FOR ART IN PRIVATE DEVELOPMENT ORDINANCE  
PLAN NUMBER(S): RPPL2017008325  
SUPERVISORIAL DISTRICT: 1-5  
PROJECT LOCATION: Countywide  
PROJECT PLANNERS: Alyson Stewart, Senior Regional Planner  
Department of Regional Planning  
anstewart@planning.lacounty.gov  
Grace Ramirez-Gaston, Director of Civic Art  
Los Angeles County Arts Commission  
gramirezgaston@arts.lacounty.gov

RECOMMENDATION

The Department of Regional Planning staff ("Staff") recommends the Regional Planning Commission adopt the attached resolution recommending approval to the Los Angeles County Board of Supervisors the Percent for Art in Private Development Ordinance, Plan No. RPPL2017008325, as amended.

Staff recommends the following motion:

I MOVE THAT THE REGIONAL PLANNING COMMISSION CLOSE THE PUBLIC HEARING AND FIND THAT THE CATEGORICAL EXEMPTION QUALIFIES PURSUANT TO STATE AND LOCAL CEQA GUIDELINES.

I ALSO MOVE THAT THE REGIONAL PLANNING COMMISSION ADOPT THE ATTACHED RESOLUTION RECOMMENDING APPROVAL TO THE LOS ANGELES COUNTY BOARD OF SUPERVISORS THE PERCENT FOR ART IN PRIVATE DEVELOPMENT ORDINANCE, PLAN NO. RPPL2017008325 WITH THE REVISIONS RECOMMENDED BY STAFF.
PROJECT DESCRIPTION

Plan Number RPPL2017008325, Percent for Art in Private Development Ordinance (Ordinance), would amend Title 22 (Planning and Zoning) of the County Code to require one percent of the building valuation of any private residential, commercial and industrial development project be dedicated to providing civic art in the unincorporated communities. The one percent could be used to commission art on-site, build a cultural facility on-site, support conservation or restoration of existing art projects within a five-mile radius, or provide artistic or cultural services and programming within a five-mile radius. Alternatively, the one percent can be paid as an in-lieu fee to support art and cultural projects throughout the unincorporated communities.

PROJECT BACKGROUND

In a public hearing on August 1, 2018, staff presented the Ordinance to your Commission and several stakeholders from the development industry testified on the Ordinance with their concerns for potential impacts on their projects. Your Commission moved to continue the public hearing to October 31, 2018 and then to November 28, 2018, directing staff to research: 1) include a residential component; 2) the proposed $500,000 threshold and how it impacts small businesses; 3) how the funds would be administered; and 4) the administrative costs of the program. At the November 28, 2018 public hearing, staff presented their findings from research of 46 jurisdictions in California with similar ordinances regarding the applicability of residential developments to the requirement, minimum valuation thresholds, contribution percentages, and ordinance administration. Your Commission moved to continue the hearing to February 13, 2019, and then to April 24, 2019, directing staff to bring back proposed ordinance language to include market-rate residential development and to work with affordable housing developers to define how art can be part of the project to meet the requirement and to incentivize design upgrades that can qualify for art rather than applying a fee.

OUTREACH EFFORTS

Staff met with representatives from Los Angeles County Business Federation (BizFed) and Building Industry Association of Southern California (BIA) in two separate meetings with each organization during December 2018 and January 2019. At the first meetings, staff summarized the Ordinance and presented an overview of how a project would comply with the Ordinance, with examples of art incorporated in development standards that could be used to satisfy building code requirements. Staff also suggested language to define criteria for including architecture as art. The stakeholders agreed that they would return to their members and ask for developer input on incentives that could be included in market-rate housing prior to the second meetings. Staff also requested to hear back from members whose housing portfolios included any projects that complied with similar private developer ordinances to learn about their experiences with the process, including what worked, what didn’t, and how such ordinance could be improved.

At the second roundtable discussions, BIA and BizFed did not provide any specific incentives or off-sets they would like to see that were not already covered under the
County Density Bonus Ordinance, such as expedited processing, parking reduction, and height or density increase, and they stated they were still not in favor of the fee, which in their view was another mandated exaction on developers. They were still concerned about the impact by the proposed requirement on housing production Countywide. None of their stakeholders provided feedback about their experience complying with similar private development ordinances in other nearby jurisdictions. BizFed suggested adding more flexibility in the criteria language by including architecture as art, make the art contribution voluntary, or exempt projects that already have design enhancements. Staff explored the architecture as art idea, and found that very few jurisdictions include architecture as art as an option, and they all required that the architect-artist be well-renowned with an extensive portfolio or proven track record and express conceptual complexity in relation to the totality of the project. The only individuals who would use this option would be of the same caliber as Frank Gehry, and those individuals would not likely need an exemption to add civic art to their budget. Staff solicited comments from artists, designers, and art consultants and most opposed the inclusion of this criteria. They felt the intent of this Ordinance is to include artist participation with a real voice in the process of community building and public engagement. Others believed architects may take away those opportunities and replace art with enhanced or ornamental architectural elements.

During February and March 2019, the Community Development Commission (CDC) hosted two affordable housing stakeholder roundtable meetings in collaboration with Arts Commission and Regional Planning. Staff provided an overview of the Ordinance and explained how a project would comply with the Ordinance. Affordable housing developers expressed interest in the program, but feared that a one percent fee could potentially be a significant issue that would inhibit the funding of affordable housing projects. If required to direct funds toward art, those redirected funds would potentially take away from something else that is needed or required in the building, and this could potentially cancel or delay the project. Otherwise, the redirected funds may force all building materials to be heavily value-engineered, thus degrading the quality or durability of the project. Lastly, they need a streamlined entitlement process in getting their projects approved quickly, and adding another requirement may pose another hurdle in getting the projects funded and built.

At the second and final meeting, all affordable housing developers that came shared that there are significant pressures placed on them from funders to deliver high-quality housing while keeping costs on their pro forma to a minimum. They explained it is harder to produce affordable housing than market-rate housing because affordable housing is 20 percent more expensive. These increased costs come from contractual obligations of paying government-mandated prevailing wages to contractors and installing quality building materials that will endure for as long as the dwelling units remain contractually affordable. Furthermore, California’s Tax Credit Allocation Committee (known as TCAC) often places project applications through high cost testing, with a focus towards cost efficiency, before granting non-competitive (four percent) or competitive (nine percent) tax credits, and those tax credits are what would make or break an affordable housing project. The stakeholders suggested affordable projects be made eligible as a recipient of in-lieu art fees so that there is an opportunity for art placement or cultural programming
in 100% affordable projects. As for issues of equity, these stakeholders argue that they provide equity in building affordable housing as a public good. Otherwise, the stakeholders would prefer that a new loan program be set up specifically to help the developers meet their percent for art obligations, or have a menu to credit against the one percent for non-art-related amenities provided for the community, such as a community room or garden or wrap-around services.

After much dialogue and consideration after the outreach meetings, Regional Planning, Arts Commission and CDC reached consensus that projects containing solely of affordable housing units should be exempt from the Ordinance, however, market-rate housing developments should be able to absorb the additional fee. These Departments also agreed against including criteria language for architecture as art.

PROPOSED CHANGES TO ORDINANCE

APPLICABILITY TO RESIDENTIAL DEVELOPMENT

Per your Commission’s direction at the November 28, 2018 meeting, staff included residential development to be subject to the Ordinance, but only that market-rate and mixed use developments, with five or more dwelling units, will be subject to the Ordinance. Staff revised the language in the exemptions section (Section 22.246.080.F) as follows:

- Modify all housing developments to only those with four or fewer dwelling units,
- Add affordable housing development projects, provided that they consist solely of dwelling units for households at income levels from extremely low to moderate.
- Remove mixed use projects with residential components.

Staff is not recommending that affordable housing development projects in which all dwelling units would be affordable be subject to the Ordinance because of the severity of the affordable housing shortage throughout the County. This recommendation aligns with Housing Element Policy 1.2 to mitigate the impacts of governmental regulations and policies that constrain the provision of housing for low and moderate income households and those with special needs in the General Plan. Staff recommends that funds from the in-lieu fees may be used to provide affordable housing developments with art and cultural services and programming, to ensure that equity for the arts is achieved in both market-rate and affordable housing developments. However, use of the funds for this purpose should be addressed through policies and guidelines rather than codified in the Ordinance.

BUILDING VALUATION THRESHOLD FOR PUBLIC ART REQUIREMENT

Based on public testimony given at the public hearings on August 1, 2018 and November 28, 2018, your Commission was concerned whether $500,000 is an appropriate threshold, and whether that threshold would likely capture many small businesses. Staff took into consideration the rising costs of building materials and the Consumer Price Index, and is now recommending raising the building valuation threshold to $750,000 for all development projects subject to the requirement in the Ordinance.
OTHER CHANGES TO ORDINANCE

Other modifications to the Ordinance are proposed, as follows:

- All references to “commercial and industrial development” have been updated with “residential, commercial, and industrial development” in certain instances and “private development” in other instances.
- Add definitions for cultural facility and residential development for the purpose of this Ordinance.
- Remove specific art media types or art-related uses to broaden the scope of what civic art can include.
- The exemption for nonprofit organizations has been revised to specify only 501(c)3 organizations, since the Title 22 definition only refers to 501(c) which is more broad and inclusive of many other organizations, including those with business interests.
- The Arts Commission’s name is changed to the Department of Arts and Culture. The name change will officially go into effect on July 1, 2019. Likewise, the Code reference to the Arts Commission has been updated with a new Code reference to the new Department.
- Modify the duties of the Arts Commission to only those that pertain to administering the Ordinance by the new Department of Arts and Culture.
- Add a prohibition on commercial art as civic art.
- Rename the Civic Art Fund as Private Development Art Fund, and fold five separate accounts for each Supervisorial District into one account to be used for all Districts. This change will ensure that the funds will be spent equitably, since there is more construction in certain Districts than in others. The within-five-mile-radius requirement will remain the same, and it will allow crossing District boundaries.
- Other clarifying changes on grammar, word usage, and administration of the program, including civic art plan submittals and deposits.

Additionally, the Draft Resolutions have been revised to reflect these changes.

ENVIRONMENTAL DETERMINATION

This project qualifies as categorically exempt pursuant to CEQA Guidelines Sections 15063(b)(3) and 15183. See Exhibit C – Previous Staff Reports for the analysis and determination.

PUBLIC COMMENTS

A total of two letters were received in support of the project, which included an art advisory group based in Los Angeles and the Community Development Commission/Housing Authority for the County of Los Angeles. Both letters are supportive of the suggested changes in the Ordinance. One is supportive in that architecture as art is not included as an option to comply with the requirement. The other is supportive in that solely affordable housing projects are excluded from the requirement.
A total of three letters were received in opposition of or with concerns with the Ordinance, which included the Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, the Marina Del Rey Lessees Association, and the Southern California Association of Nonprofit Housing (SCANPH). The first letter is not in support of mandatory participation in the civic art program by private developers, and recommends that the program be made voluntary instead, or provide off-sets as incentives for participation. The second letter is opposed to having residential development projects be subject to the requirements, and having most development projects in Marina Del Rey be subject to the requirement when there already exists a Design Control Board to address aesthetics for these projects within the Marina Del Rey Specific Plan area. The third letter is opposed to having 100-percent affordable housing development subject to the Ordinance. The letter states that there is a significant housing crisis, affordable housing is an equitable public good, and voters recently approved public money to be used specifically for housing for people with low income or are homeless. This Ordinance has already addressed SCANPH’s concerns by excluding affordable residential development.

See Exhibit E for copies of correspondences.

---

**LIST OF ATTACHED EXHIBITS**

| EXHIBIT A | Draft Ordinance with revisions (redlined) |
| EXHIBIT B | Draft Resolution with revisions (redlined) |
| EXHIBIT C | Previous Staff Reports of 8/1/18 and 11/28/18 |
| EXHIBIT D | Board Motions |
| EXHIBIT E | Public Correspondence |