

ANALYSIS

This ordinance amends the Los Angeles County Code, Title 22 – Planning and Zoning, to establish a Public Art in Private Development Program for residential, commercial, and industrial development, and repair, addition, and alterations of such projects in the unincorporated areas of the County of Los Angeles.

MARY C. WICKHAM
County Counsel

By
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Property Division

EML:JMJ:ss

Requested: 08/12/19

Revised: 01/29/20

ORDINANCE NO. 2021-0047

An ordinance amending the Los Angeles County Code, Title 22 – Planning and Zoning, to establish a Public Art in Private Development Program for residential, commercial, and industrial development, and repair, addition, and alterations of such projects in the unincorporated areas of the County.

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

SECTION 1. FINDINGS.

The Board of Supervisors finds as follows:

- A. Artistic and cultural resources enhance the quality of life for individuals living in, working in, and visiting the unincorporated areas of the County;
- B. Development of artistic and cultural resources in communities preserves and improves the quality of the urban environment, encourages civic engagement, promotes cultural diversity, enhances social well-being, and fosters economic vitality of communities;
- C. As residential, commercial, and industrial development, and repair, addition, and alterations of such development 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. Development of artistic and cultural assets should be financed by those whose residential, commercial, and industrial development, and repair, addition, and

alterations of projects increase the community's demand for cultural resources; and, therefore,

E. The Public Art in Private Development Program is a fair and equitable method of distributing the cost of public art among residential, commercial, and industrial development and repair, addition, and alterations of projects.

SECTION 2. Section 22.14.010 is hereby amended to read as follows:

22.14.010 A.

...

Affordable housing and senior citizen housing. The following terms are defined for the purposes of Chapter 22.120 (Density Bonus) ~~and~~ Chapter 22.166 (Housing Permits), and 22.246.090 (Private Art in Public Development Program):

...

SECTION 3. Section 22.14.160 is hereby amended to read as follows:

22.14.160 P.

...

Public Art in Private Development Program. The following terms are defined solely for the purpose of Section 22.246.090 (Public Art in Private Development Program):

Addition. An expansion, extension, or increase in the gross floor area or height of a building or facility.

Alteration. Any construction or renovation to an existing structure other than repair or addition. A change, addition, or modification in construction, change in

occupancy or use, or structural repair to an existing building or facility. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.

Artist. A person who engages in the creation of artistic or cultural works as a vocation, including, but not limited to, visual, performing, or literary arts; and has established a reputation of artistic excellence in the arts, as judged by peers and experts in the field, through 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, including, but not limited to, value of 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. For projects consisting solely of repair, addition, or alterations of existing buildings, the building valuation shall be calculated as the total value of all design and construction costs for the project.

Certificate of Occupancy. A document issued by the Department of Public Works, pursuant to Section 109.3 (Certificate Issued) of Title 26 (Building Code) of the County Code.

Commercial and Industrial Development. Any nonresidential land use, including, but not limited to, retail, office, professional, research, manufacturing, heavy industry, hotels, motels, utilities, or 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 and dedicated to publicly accessible artistic or cultural uses, including, but not limited to, theaters, performance space(s), art galleries, exhibition spaces, Artist studio spaces, arts education facilities, or other similar facilities as determined appropriate by the Department of Arts and Culture. This definition does not include churches, schools, commercial movie theaters, gymnasiums or other sports facilities, bookstores, or buildings dedicated primarily to housing or administrative activities.

Deposit of Security. A financial security that can either be an automatically renewing Certificate of Deposit with the County or an automatically renewing irrevocable standby Letter of Credit payable to the County, in such format as specified by the County, in an amount equivalent to one percent of the building valuation. The County, in its sole discretion, may provide additional forms of deposit for Developers to satisfy the Program Requirement.

Developer. The person or entity that is financially and legally responsible for the planning, development, and construction of any development project covered by the Public Art in Private Development Program, who may, or may not, be the owner of the subject property.

Development Project. Any activity that 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.

Eligible Project. Residential development, or mixed use, commercial, or industrial development project in the unincorporated areas of the County with a building valuation of \$750,000 or greater; or, any such project for repair, addition, or alterations of existing buildings with a design and construction project cost of \$750,000 or greater. The \$750,000 building valuation eligibility threshold shall be adjusted on March 1, 2021, and annually thereafter, based on the changes to the Consumer Price Index of the preceding year.

Eligible Project Value. The total value of the Public Art allocation based on one percent of the building valuation of Eligible Projects.

In-Lieu Fee. An amount equal to one percent of the building valuation paid into the Public Art in Private Development Fund, rather than providing Public Art, pursuant to Section 22.246.090 E.1 (Establishment of Public Art in Private Development Program). Alternatively, if the Developer provides Public Art, pursuant to the same Subsection E.1, and the value of such Public Art is less than one percent of the building valuation, the In-Lieu Fee shall be the difference between one percent of the building valuation and the Public Art to be deposited into the Public Art in Private Development Fund.

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).

Public Art. Public Art, for the purposes of satisfying the Program Requirement, consists of any publicly accessible artistic or cultural amenities as further provided in Section 22.246.090 and approved by the Department of Arts and Culture. Public Art that satisfies the Public Art in Private Development Program in compliance with Section 22.246.090 may include, but is not limited to, the following:

1. Sculpture: Free-standing, wall supported, or suspended; kinetic, electronic, or mechanical in material, or combination of materials;

2. Murals or Portable Paintings: Painting in any materials or variety of materials, with or without collage, or the addition of nontraditional materials and means;

3. Standardized Fixtures: If rendered by an Artist, for unique or limited editions, standardized fixtures including, but not limited to, grates, street lights, signage, or other design enhancements;

4. Cultural Facilities: Public gallery or exhibition space, performance space, theaters, artistic studio space, or art education facilities;

5. Conservation of County-owned artworks, or restoration or replication of original decorative ornamentation or Public Art as part of the rehabilitation of the County's historic, cultural, or architectural Landmarks;

6. Performing Arts: Theater, dance, music, or performance art;

7. Literary Art: Poetry, storytelling, or creative writing:

8. Media Art: Film, video, or digital media:

9. New Media: Media including, but not limited to, earthworks, light work, sound work, holographic work, or any hybrids of media and new genres:

10. Education: Lectures, presentations, instruction, or training in or about arts and culture:

11. Special Events: Parades, festivals, or celebrations relating to arts and culture; or

12. Similar arts services as approved by the Department of Arts and Culture.

Public Art in Private Development Fund. A special fund established to support arts and culture programs in the County. Revenue comes from In-Lieu Fees paid by Developers.

Public Art in Private Development Plan ("Art Plan"). A plan submitted to the Department of Arts and Culture for approval, pursuant to the Policies and Procedures by which a Developer will comply with Section 22.246.090.

Public Art in Private Development Policies and Procedures ("Policies and Procedures"). Guidelines and parameters setting out how the Public Art in Private Development Ordinance shall be implemented, and compliance achieved by those subject to its terms.

Public Art in Private Development Program. A program administered by the Department of Arts and Culture to provide artistic and cultural amenities for the benefit of the residents of the County based on allocations provided by Developers.

Program Requirement. A responsibility other than a tax or special assessment that is collected under the terms of Section 22.246.090 to provide for Public Art in Private Development. One percent of the building valuation for Eligible Projects in the unincorporated areas of the County shall be expended on approved Public Art, paid as an In-Lieu Fee, or a combination thereof.

Publicly Accessible. Any site within the County which is open to the general public or is in public view. If the Public Art is in an interior location, it must be visibly accessible to the public during regular business hours. If the Public Art is a cultural activity, program, or service, it must be available and open to the general public.

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 22.14.180 (R).

Repair. The reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

Residential Development. A development project resulting in the creation of 30 or more dwelling units, including mixed use developments, subdivisions, common interest developments, or multifamily housing. Affordable housing and senior citizen housing are exempt from Public Art in Private Development, pursuant to

Section 22.246.090.C.6 (Exemptions from Public Art in Private Development), and shall be excluded from the calculation of the building valuation.

SECTION 4. Section 22.246.090 is hereby added to read as follows:

22.246.090 Public Art in Private Development Program.

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 the Public Art in Private Development Program, in connection with conditions for the design of residential, mixed use, commercial, and industrial development projects, and repair, addition, and alterations of such development projects.

B. Applicability.

The provisions of this Section shall apply to all new Eligible Projects, as defined in Section 22.14.160 (P), that are not entitled as of the effective date of this ordinance.

C. Exemptions from Public Art in Private Development Program.

The following shall be exempt from the provisions of this Section:

1. Residential, mixed use, commercial or industrial development consisting exclusively of rehabilitation work required for seismic safety or to comply with all applicable building requirements, and governmental mandates, including, but not limited to, the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended, regardless of valuation;

2. Repair intended to upgrade an existing building or structure that does not change the use or type of such building or structure and does not alter the size or occupancy load of the building or structure;

3. Repair or alterations of an existing building, including replacement of on-site Public 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;

4. Commercial or industrial development projects owned solely by a nonprofit organization, as defined in Section 22.14.140 (N), provided the premises are operated by a nonprofit organization and used exclusively in furtherance of nonprofit purposes;

5. Commercial or industrial development projects, or portions thereof, that are designed and dedicated exclusively to nonprofit artistic or cultural use. Exempt facilities include museums, theaters, performance arts centers, or other similar facilities as determined appropriate by the Department of Arts and Culture. This exemption does not include gymnasiums or other sports facilities, commercial movie theaters, private recreation facilities, or buildings dedicated primarily to administrative activities; or

6. All affordable housing, senior citizen housing, and special needs housing, as defined in Section 22.14.010 (A), including, but not limited to, homeless shelters, transitional housing, senior citizen housing development, veteran housing, or special needs housing.

D. Administration.

In accordance with Chapter 2.89 (Department of Arts and Culture) in Title 2 (Administration) of the County Code, the Department of Arts and Culture shall:

1. Promulgate Policies and Procedures, pursuant to this Section;
2. Maintain records of Public Art created and supported, pursuant to this Section; and
3. Report annually to the Board as required by Section 22.246.090.J (Use of Fees Collected).

E. Establishment of Public Art in Private Development Program.

When a development project is subject to the requirements of this Section, any Eligible Project will comply with one or more of the following options, as set forth in further detail in the Policies and Procedures:

1. One of four categories of Public Art:
 - a. Newly commissioned work of permanent art;
 - b. Construction, repair, or funding of improvements to cultural facilities on the development site or within a radius as approved by the Department of Arts and Culture;

c. Restoration, conservation, or preservation of existing publicly accessible Public Art on the development site or within a radius as approved by the Department of Arts and Culture; or

d. Funding of artistic and cultural programs or services on the development site or within a radius as approved by the Department of Arts and Culture.

2. Public Art In-Lieu Fee Option. As an alternative to providing Public Art as described in Subsections E.1.a through d, above, the Developer may pay a fee to be deposited in the Public Art in Private Development Fund equal to one percent of the building valuation of a development project. Alternatively, if the Developer provides Public Art as described above, and the value of such Public Art is less than one percent of the building valuation, the Developer shall pay the difference between one percent of the building valuation and the Public Art to the Public Art in Private Development Fund.

F. Compliance with Public Art in Private Development Program.

1. When a Developer elects to fulfill the Program Requirement by means other than paying the In-Lieu Fee, no building permit shall be issued until the Department of Arts and Culture has received, approved, and accepted the Art Plan with a proposal committing the Developer to comply with the Program Requirement by a pre-determined date. Once the Developer is notified of acceptance of the Art Plan, the Developer shall submit a Deposit of Security with the County, in such format as specified by the County, in an amount equivalent to one percent of the building's valuation, as defined in Section 22.14.160 (P). No building permit shall issue until the Developer submits the Art Plan and posts a Deposit of Security as described herein.

The County may hold the deposit until a Certificate of Occupancy is issued for the development project. The County, in its sole discretion, may provide additional forms of deposit for Developers to satisfy this requirement. A Certificate of Occupancy may be issued, and the deposit in the amount equal to the direct costs expended returned, when approved by the Department of Arts and Culture after the Public Art is determined to be delivered in compliance with this Section and the County's Public Art in Private Development Program Policies and Procedures. If the Program Requirement is not met, and the Developer has been given a reasonable time to cure, the Department of Arts and Culture shall collect on the value of the Deposit of Security and deposit the funds into the Public Art in Private Development Fund.

2. When a Developer has elected to pay the In-Lieu Fee, pursuant to Subsection E.2 (Public Art In-Lieu Fee Option), above, no building permit shall be issued until such In-Lieu Fee has been paid.

3. For Public Art placed on the Developer's property, the Public Art is to be owned and maintained by the Developer or, if applicable, by occupants or owners of the subject property. Maintenance of the Public Art shall be adequately provided for in a covenant as approved by the Department of Arts and Culture, which shall run with the land for a minimum of 25 years, unless a different timeframe is approved by the Department of Arts and Culture. If the nature of the Public Art requires other appropriate provisions be made for the proper care and maintenance of the Public Art, in addition to or in lieu of a covenant, such additional or alternate provisions will be agreed to, pursuant to a form and standards as approved by the Department of Arts and

Culture. Any Public Art to be removed, altered, or relocated from the subject property at any time shall be deaccessioned in accordance with the Policies and Procedures.

4. The cost of services or utilities necessary to operate or maintain the Public Art over time is not included in calculating the value of the Public Art for the purpose of satisfying the Program Requirement.

G. Public Art Compliance with Zoning Requirements.

1. The proposed Public Art shall comply with all zoning regulations prescribed by this Title 22, including zoning regulations for the proposed development project, permitted uses for the zone, applicable entitlements for the use, and development standards including, but not limited to, height, parking, and setbacks. Entitlements for the proposed Public Art, if applicable, shall be submitted concurrently with site plans and any required entitlements for the development project.

2. All on- and off-site Public Art, 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 or marked plans, that illustrate the Design Control Board's conclusions relating to the project's architectural design and site planning, shall be submitted 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).

H. Public Art Standards.

1. All Public Art shall comply with the following standards:

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

b. The Public Art shall be in an area open and publicly accessible at least eight hours each day of at least five days per week;

c. A cultural facility that is being improved, pursuant to Subsection E.1.b, above, shall be publicly accessible during its regular business hours; and

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

2. For purposes of compliance with Subsection H.1, above, the following costs shall not be included to satisfy the Program Requirement, nor shall any such costs be included in the budget for the proposed Public Art:

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. Mass produced objects, or objects of standard design;

d. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, traditional fine art 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 Public Art over time.

I. Public Art in Private Development Fund.

1. A Public Art in Private Development Fund shall be established and shall continue from year to year. The fund shall consist of one account to be used in all Supervisorial Districts, to be established by the Auditor-Controller and administered by the County Department of Arts and Culture apart from the general revenue funds and accounts of the County. All interest and investment earnings in said fund shall accrue to the use and benefit of the applicable fund.

2. All Public Art in Private Development In-Lieu Fees received by the County, pursuant to this Section, shall be deposited in the Public Art in Private Development Fund and shall be appropriately accounted for and expended. The fund is authorized to accept gifts, grants, and donations made to the County for Public Art in Private Development.

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

J. Use of In-Lieu Fees Collected.

1. The Department of Arts and Culture shall make recommendations to the Board for expenditures from the Public Art in Private Development Fund in accordance with County budgetary procedures and adopted Policies and Procedures, which expenditures shall be administered by the Department of Arts and Culture and used exclusively for the acquisition, commissioning, installation, improvement, maintenance, insurance, restoration, conservation, or preservation of Public Art in any form, and the provision of any similar arts or cultural activities, programs, or arts services for the benefit of the County.

2. The Department of Arts and Culture shall provide an annual report to the Board which outlines Public Art in Private Development activities for the previous

fiscal year. The report will detail the provision of Public Art in Private Development undertaken during the year, and the use of all Public Art in Private Development In-Lieu Fees collected and deposited in the Public Art in Private Development Fund. The report may set priorities for use of the Public Art in Private Development Art Fund in future years.

SECTION 5. SEVERABILITY.

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.

[2214160JJCC]

SECTION 6 This ordinance shall be published in The Daily Commerce a newspaper printed and published in the County of Los Angeles.



Chair

ATTEST:

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of September 15, 2021 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

<u>Ayes</u>		<u>Noes</u>	
Supervisors	<u>Hilda L. Solis</u>	Supervisor	<u>None</u>
	<u>Holly J. Mitchell</u>		
	<u>Sheila Kuehl</u>		<u>Abstain</u>
	<u>Janice Hahn</u>	Supervisor	<u>Kathryn Barger</u>
	_____		_____

Effective Date: October 15, 2021
~~Operative~~
Date: _____

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles



APPROVED AS TO FORM:
RODRIGO A. CASTRO-SILVA
County Counsel

By _____
Dawyn Harrison
Chief Deputy County Counsel