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Board of Supervisors

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Director

Kristin Sakoda

DATE: September 20, 2019

TO: Chair Janice Hahn
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Kathryn Barger

FROM: Kristin Sakoda *VS*
Director of Arts and Culture

Amy J. Bodek *AS for AIS*
Director of Regional Planning

**SUBJECT: PUBLIC ART IN PRIVATE DEVELOPMENT
ORDINANCE - REPORT ON RESIDENTIAL
DEVELOPMENT (ITEM NO. 7, JULY 23, 2019)**

As requested by the Board of Supervisors at a public hearing held on July 23, 2019 for Project No. 2017-000213 (All districts) for the Public Art in Private Development Ordinance, the Department of Arts and Culture (Arts and Culture), the Department of Regional Planning (Regional Planning), and all relevant County departments were directed to report back to the Board in 60 days with the following:

1. An analysis on what the true cost of compliance will be for developers given the need to hire an art consultant;
2. A pathway for affordable housing credits for projects already proposing affordable housing, including a potential pro rata application of the fee, with consideration for excluding affordable housing units in market-rate residential and mixed-use development, so that the one-percent fee is applied only to market-rate units;
3. Analysis of the percentage of market rate housing built as compared to affordable housing and whether it has an impact on the building of affordable housing;
4. A more concise path to compliance for developers that enhances transparency in the process, including clarification that the program does not apply to existing entitled development in addition to homeless and transitional housing, including temporary bridge housing, homeless shelters, veteran and specialty health housing projects;

5. A full list of fees that the County assesses on residential development across all departments during both entitlement and building permit/land development stages, of varying project sizes; and
6. A list of the municipalities in the State that have residential development components in their Percent for Art ordinances and a list of all municipalities with Public Art ordinances that include a percent requirement for private development.

Response and Findings

Arts and Culture worked with Regional Planning, Department of Public Works (Public Works), LA County Development Authority (LACDA) and other relevant departments to obtain information and respond to the directives as follows:

1. Analysis on what the true cost of compliance will be for developers given the need to hire an art consultant.

For the creation of new on-site artwork, artistic and cultural services, programming, and conservation work, developers are not required to hire an art consultant. If a developer chooses to work with an art consultant:

- The project developer may use an art consultant of their own choosing.
- An art consultant may be selected from a prequalified list provided by Arts and Culture.
- The art consultant fee is included in the total 1% fee.
- An art consultant fee may vary but shall not exceed more than 20 percent of the total art budget for the one-percent requirement.
- The project developer may utilize Arts and Culture staff as the art consultant.

For the option of cultural facilities, the developer shall be required to engage Arts and Culture as the art consultant to ensure appropriate public integration for a fee of 15 percent of the total 1% fee. Arts and Culture will work with the developer to develop and verify the facility's location and capacity, preliminary design concept, credentials of proposed operating entity, estimated operating budget of user(s), contract administration, and programmatic goals and objectives. Prior to issuance of building permits, the applicant will be required to secure approval of a plan that includes legal agreements providing adequate assurances of continuing cultural use for on- or off-site cultural facilities.

Arts and Culture encourages developers to hire art consultants as their unique set of skills are often needed and, in some cases, critical to the success of a project. The right consultant can educate the developer on art options; engage with the community; foster good communication by facilitating discussions among people with differing backgrounds and perspectives; manage the selection, fabrication and installation processes; promote complete integration of the art with the development; keep the process on track, on time and on budget; and facilitate the entire process.

Furthermore, commissioning an artist to create public art is different than working with architects, landscape architects, engineers and contractors. An art consultant can bring professional experience and insight to the process. An art consultant can serve as the owner's (or developer's) representative in all phases of the project, ensuring that the work of public art is achieved within budget and on schedule, and that it meets the aesthetic goals of all involved.

2. **A pathway for affordable housing credits for projects already proposing affordable housing including a potential pro rata application of the fee, with consideration for excluding affordable housing units in market-rate residential and mixed-use development, so that the one-percent fee is applied only to market-rate units.**

To obtain a well-rounded understanding of the potential impacts of the Public Art in Private Development fee on affordable housing development, Arts and Culture, Regional Planning, and LACDA convened two listening sessions with various stakeholders from the Southern California Association of Nonprofit Housing (SCANPH) membership base. Consistent with the feedback obtained from the two listening sessions, a pro rata application of the fee is proposed that would effectively exclude affordable housing units.

The application of the Public Art in Private Development fee is proposed to be taken on a pro rata basis with the consideration of a proportional application of total building unit square footage of affordable units and market rate units. The fee would be applied per the example shown below:

Market Rate Units:	60,000 sf	(60%)
Affordable Units:	40,000 sf	(40%)
Total Residential Square Footage:	100,000 sf	(100%)
<hr/>		
Total Project Hard Costs:	\$20,000,000	
1% Fee for Art	\$200,000 (1% of Project Hard Costs)	
1% Fee for Market Rate Units:	\$120,000 (Proportional Market Rate Fee as 60% of 1% of Project Hard Costs)	

The pro rata formula shall be calculated by Regional Planning during the entitlement phase and shall be re-calculated and collected during the permitting phase. All fees would be required to be paid prior to issuance of a final Certificate of Occupancy.

3. **Analysis of the percentage of market rate housing built as compared to affordable housing and whether it has an impact on the building of affordable housing.**

Arts and Culture, LACDA, and Public Works reviewed residential permit data from 2012 to 2018 to analyze the percentage of market rate housing built as compared to affordable housing.

Between 2012-2018, the County issued building permits for 6,265 units of housing. This includes units related to single family dwellings, multi-family dwellings (market rate and affordable) and tract housing. In comparing the number of housing units built to the proposed eligible Public Art in Private Development Ordinance residential housing, the County issued building permits for a total of 2,665 multi-family dwelling units of five units or greater (highlighted in the chart below: mixed use and affordable). Of those, **481 units were affordable (18%) and 2,174 units were market rate (82%)**. In 2019 thus far (as of July 31), Public Works issued building permits for 355 affordable housing units.

<i>Dwelling Type</i>	<i>Number of Dwelling Units (2012-2018)</i>
<i>Single Family Dwelling Units (1)</i>	1,205
<i>Multi-family Dwelling Units (below 5)</i>	452
<i>Multi-family Dwelling Units (5 and above)</i>	2,174
<i>Affordable Housing Dwelling Units</i>	481
<i>Tract Housing</i>	1,953
<i>Total</i>	6,265

LACDA collects and analyzes data on affordable projects that are awarded public financing and public subsidy through its Notice of Funding Availability (NOFA). All projects captured in the LACDA's database are affordable, with no mixed-income or market rate components. With respect to market rate housing development, the LACDA's data is too limited in scope to respond to this inquiry.

To answer the question of impact, LACDA engaged Keyser Marston Associates (KMA), California Housing Partnership Corporation (CHPC) and Nancy Lewis and Associates (NLA). KMA conducted a 2015 study that sought to determine the nexus between market rate residential and affordable housing.¹ KMA's analysis arrives at the determination that the development of market rate housing results in the need for services and service industry jobs and, thus, the need for affordable housing for service industry workers. The study demonstrates and quantifies the impact of new market rate housing development on the demand for affordable housing development in Rancho Cordova, California, but has a universal application. Based on the findings in KMA's analysis, the development of new market rate housing would have an impact on the need for development of affordable housing units.

4. (A) A more concise path to compliance for developers that enhances transparency in the process, (B) including clarification that the program does not apply to existing entitled development (C) in addition to homeless and transitional housing, including temporary bridge housing, homeless shelters, veteran and specialty health housing projects.

- A. During the entitlement phase, Regional Planning will notify the developer of the Public Art in Private Development requirement. It is incumbent on the developer to contact Arts and Culture to receive detailed information on the process, available resources, and identify the preferred approach to satisfy the Public Art in Private Development requirement.

Compliance Options. When a development project is subject to the requirement, the Developer, at their sole discretion, has the option to utilize one of the following avenues to comply with the 1% requirement:

- Newly commissioned work of permanent art.
- Provide on or off-site cultural facilities.
- Provide on or off-site artistic and cultural programs and services.
- Provide on or off-site conservation of publicly accessible Public Art.
- Pay an in-lieu fee to a Public Art in Private Development Fund.

Upon approval of the final Public Art Plan by Arts and Culture, the developer will receive a certificate of agreement from Arts and Culture, which will allow the developer to obtain a building permit for the development project. The developer will be required to provide a financial security instrument (i.e. a completion bond or other instrument acceptable to County Counsel) which will be retained by the County for fulfillment of the art requirement, until the final Certificate of Occupancy is issued. As stated earlier, if the developer elects to pay an in-lieu fee, the developer would be required to pay the in-lieu fee in full prior to the Certificate of Occupancy. If the developer elects to construct on- or off-site art, or participate in cultural programming on- or off-site, the retention of the security instrument would remain in place until the art or programming was deemed complete by Arts and Culture.

- B. The Public Art in Private Development requirement does not apply to projects that have received full entitlements, as determined by Regional Planning. (For purposes of determining

¹ Keyser Marston Associates. Analysis of Nexus Support for Affordable Housing Plans. January 8, 2015.

applicability for residential projects, those projects which have received entitlements, but are subject to a CEQA lawsuit, would be deemed complete, and not required to participate in the art program).

This requirement applies to eligible projects that have not received full entitlement by the effective date of this ordinance.

- C. The ordinance provides exemptions for 501(c)3 nonprofit organizations which develop a large portion of homeless and transitional housing projects. Additionally, the ordinance language has been updated to reflect that affordable housing development projects, including non-profit facilities such as homeless shelters, transitional housing, senior centers, veteran housing, and specialty health housing projects are exempt. County Counsel is currently preparing the ordinance prior to placing the ordinance on the Board's consent agenda.

5. A full list of fees that the County assesses on residential development across all departments during both entitlement and building permit/land development stages, of varying project sizes.

Public Works, Regional Planning, Parks and Recreation and Fire provided their list of fees that are charged on residential development – specifically multi-family dwellings and tract homes. We found that Regional Planning fees are relatively consistent across various types of projects, as compared to other departments, such as Public Works and Parks and Recreation, whose fees vary greatly based on the site, square footage, number of units and location of the development. Due to variation in these factors, each stage of development includes scenarios that are based on average data in the County. See Attachment A: List of Residential Development Fees/ Multi-Family Dwelling Unit Development Fees and Tract Housing Development Fees.

6. A list of the jurisdictions in the State that have a residential development component in their Percent for Art ordinances and a list of all jurisdictions with a Percent for Art ordinance.

Arts and Culture and Regional Planning found at least 55 jurisdictions in the State with Percent for Art programs that include a residential development component in their ordinances. Details of some of these jurisdictions' Percent for Art ordinances are included as an attachment at the end of the report (Attachment B); this document was part of the Staff Report to the Regional Planning Commission dated October 18, 2018.

1. Alhambra	2. Azusa	3. Baldwin Park	4. Bellflower
5. Burbank	6. Carson	7. Cerritos	8. Claremont
9. Commerce	10. Culver City	11. Downey	12. El Monte
13. Glendale	14. Huntington	15. Lynwood	16. Malibu
17. Manhattan Beach	18. Monrovia	19. Norwalk	20. Paramount
21. Pasadena	22. Pomona	23. Redondo Beach	24. Sante Fe Springs
25. Santa Monica	26. Sierra Madre	27. South Gate	28. West Covina
29. West Hollywood	30. Whittier	31. Palo Alto	32. Oakland
33. San Francisco	34. Richmond	35. San Mateo	36. Berkeley
37. Dana Point	38. Emeryville	39. Alameda	40. Walnut Creek
41. Agoura Hills	42. El Cerrito	43. Livermore	44. San Jose
45. Albany	46. Emeryville	47. Long Beach	48. San Luis Obispo
49. Brea	50. Escondido	51. Palm Desert	52. Sunnyvale
53. Dublin	54. Laguna Beach	55. Palm Springs	

Additional Considerations

Arts and Culture recently received additional permitting data on tract housing development in unincorporated areas of the County; Attachment C, titled "Residential Development Revenue Analysis" provides an updated Public Art in Private Development projected revenue analysis on residential development that includes tract housing of 5 or more units, in addition to multi-family dwelling units.

Residential development revenue has the potential to be approximately half of the total dollar value benefit to the County of the Public Art in Private Development program and will significantly help create additional public access to the arts, contribute to cultural equity and inclusion, and celebrate diversity in underserved communities in the unincorporated areas of the County.

Recommendations

- Arts and Culture respectfully recommends the Board consider including residential development in the Public Art in Private Development Ordinance with an exclusion on all affordable housing units, including all homeless and transitional housing.
- To address concerns that small residential units could be impacted by this ordinance, Arts and Culture proposes raising the threshold of eligible residential projects, including tract housing, from projects of five to thirty units.

Including residential development in the Public Art in Private Development Ordinance will strengthen LA County's position as a national leader who values the transformative and unifying impact of the arts on the region's diverse and vibrant communities.

If you have any questions, please contact Grace Ramirez-Gaston at gramirezgaston@arts.lacounty.gov or (213) 202-5865, or Bruce Durbin at bdurbin@planning.lacounty.gov or (213) 974-6432.

Attachment A
Attachment B
Attachment C

c: Department of Public Works
Los Angeles County Development Authority
Los Angeles County Fire Department
Department of Parks and Recreation
County Counsel

MUTLI-FAMILY DWELLING UNIT DEVELOPMENT FEES

The following fees are related to the development of multi-family dwelling units, across all departments during all stages of entitlement, land development and building permit.

Entitlement Fees¹	Sample Multifamily
Area Sq. Ft.	20,000
Unit #	20
Valuation (Multi: \$115/Sq.Ft)	\$ 2,300,000.00
Standard Regional Planning Application Fees	
Ministerial Site Plan Review For Residential	\$ 878.00
Site Plan Referral To Fire	\$ 139.00
Business License Referral For Apartments	\$ 409.00
Certificate Of Compliance To Establish Use	\$ 1,915.00
Total	\$ 3,341.00

Building Permit Fees	Sample Multifamily Home		
Area Sq. Ft. (1,000 sf/unit is used as typical apartment units range from 600 sf to 1,400 sf)	5,000	20,000	40,000
Unit #	5	20	40
Valuation (Multi: \$115/Sq.Ft)	\$ 575,000.00	\$ 2,300,000.00	\$ 4,600,000.00
Public Works Fees			
Plan Review ²	\$ 7,688.00	\$ 27,526.00	\$ 53,978.00
GMED BldngPlan & Geotech Review ³	\$ 2,953.00	\$ 7,574.00	\$ 7,574.00
Drainage & Grading Review (200 cy)	\$ 3,232.00	\$ 3,232.00	\$ 3,232.00
Building Permits ⁴	\$ 9,045.00	\$ 32,384.00	\$ 63,503.00
Grading Permit	\$ 389.90	\$ 389.90	\$ 389.90
Road Encroachment	\$ 1,651.00	\$ 1,651.00	\$ 1,651.00
Sanitation District Fees			
Sewer Connection Fee (\$5,500/unit)	\$ 16,500.00	\$ 66,000.00	\$ 132,000.00
Fire Department Fees			
Fuel Mod. Review	\$ 832.00	\$ 832.00	\$ 832.00
Fire Sprinkler Review	\$ 491.00	\$ 491.00	\$ 491.00
Architectural Review for SFR (water/access)	\$ 675.00	\$ 675.00	\$ 675.00
Site Inpsection Fee	\$ 332.00	\$ 332.00	\$ 332.00
Water Storage Inspection Fee (if applicable)	\$ 332.00	\$ 332.00	\$ 332.00
Law Enforcement Facility Fee			
Santa Clarita Valley (\$337/unit) ⁵	\$ 1,685.00	\$ 6,740.00	\$ 13,480.00
Library Fees			
Santa Clarita Valley (\$969/unit) ⁵	\$ 4,845.00	\$ 19,380.00	\$ 38,760.00
School Fees			
LAUSD (\$3.79/sf) ⁶	\$ 18,950.00	\$ 75,800.00	\$ 151,600.00
Total Building Permit Fees	\$ 69,600.90	\$ 243,338.90	\$ 468,829.90

¹ Other DRP Multifamily Unit Entitlement Fees That May Apply (Depending On Site Circumstances):

If A 20-Unit Market Rate Apartment Project Elects To Use A Density Bonus Option With A 10% Set-Aside:	
Administrative Housing Permit	\$ 1,150.00
Development Authority - Affordable Unit Monitoring Fee	\$ 13,750.00
If A Project Is Subject To CEQA And CUP (Less Than 5% Of Apartment Projects Would Be Subject To CEQA)	
Environmental Assessment, Initial Review	\$ 358.00
Environmental Assessment, Negative Declaration	\$ 5,882.00
Notice Of Environmental Determination	\$ 2,430.00
Mitigation Monitoring Reporting Program Deposit	\$ 6,000.00
Other DRP Fees	
Parking Permit	\$ 9,780.00
Minor Parking Deviation (To Reduce Up To 30% Of Required Parking	\$ 1,488.00
Zone Change	\$ 14,458.00
General Plan Amendment Deposit	\$ 3,000.00
Conditional Use Permit - Proposed Commercial Zone	\$ 9,780.00
Conditional Use Permit - Referral to Parks and Recreation Department	\$ 384.00
Conditional Use Permit - Referral to Department of Public Health (if public water/sewer available)	\$ 559.00
Conditional Use Permit - Referral to Fire Department	\$ 197.00
Administrative Oak Tree Permit	\$ 1,217.00
Discretionary Housing Permit (If Electing Density Bonus And Cannot Satisfy	\$ 3,981.00

² Fees include electrical, mechanical, plumbing based on 60% of building fee

³ Added \$2,343 (Gmed Review Fees Included) + \$473.50 (Site Inspection GR)

⁴ Building Permit Fees include electrical, mechanical, and plumbing based on 60% of building fee

⁵ Library fees vary based on location

⁶ Fees vary by school district/LAUSD chosen as sample

TRACT HOUSING DEVELOPMENT FEES

The following fees are related to the development of tract homes in LA County, across all Departments during all stages of entitlement, land development and building permit.

Land Development Fees	Sample Subdivision		
<i>Number of Lots</i>	5	20	50+
Land Development - Public Works fees			
Final Map Review	\$ 15,000.00	\$ 22,800.00	\$ 26,900.00
Hydrology Review	\$ 3,450.00	\$ 5,000.00	\$ 8,900.00
Grading Review	\$ 8,500.00	\$ 23,550.00	\$ 42,500.00
Drainage Review	\$ 14,200.00	\$ 33,500.00	\$ 42,300.00
Traffic Impact Analysis	\$ -	\$ -	\$ 1,800.00
Fire Final Map Review	\$ 1,000.00	\$ 1,100.00	\$ 1,400.00
Bridge & Major Thoroufare Construction Fee District ¹	\$ 3,290.00	\$ 15,000.00	\$ 15,000.00
Total	\$ 45,440.00	\$ 100,950.00	\$ 138,800.00

Entitlement Fees²	Sample Subdivision		
<i>Number of Lots</i>	5	20	50+
Regional Planning Fees			
Ministerial Site Plan Reviews For Residential	\$ 878.00	\$ 878.00	\$ 878.00
Tentative Map - Major Land Division	\$ 24,217.00	\$ 26,747.00	\$ 32,337.00
Major Land Division (Map) Revision	\$ 6,546.00	\$ 6,546.00	\$ 6,546.00
Supplemental Deposit (Applies when original or revision Tract Map Deposit runs out)	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Final Tract Map Initial Deposit	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Time Extension (Post-Aproval, For Two Extensions)	\$ 670.00	\$ 670.00	\$ 670.00
Bond Release	\$ 2,093.00	\$ 2,093.00	\$ 2,093.00
Certificate Of Compliance To Establish New Use	\$ 1,915.00	\$ 1,915.00	\$ 1,915.00
DRP Inspection Fees	\$ 800.00	\$ 800.00	\$ 800.00
Parks and Recreation Fees			
Local Parks Space Obligation (Quimby) ³	\$ 10,405.84	\$ 41,623.36	\$ 104,058.40
Total	\$ 51,524.84	\$ 85,272.36	\$ 153,297.40

Total Standard Subdivision Fees (LD + Entitlement)	\$ 96,964.84	\$ 186,222.36	\$ 292,097.40
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Building Permit Fees	Sample Tract Home		
<i>Area Sq. Ft.</i>	2,000	2,500	3,000
<i>Valuation (Tract: \$198/Sq.Ft)</i>	\$ 396,000.00	\$ 495,000.00	\$ 594,000.00
Public Works Fees			
Plan Review ⁴	\$ 5,630.00	\$ 6,768.00	\$ 7,907.00
GMED BldngPlan & Geotech Review ⁵	\$ 2,033.00	\$ 2,541.00	\$ 3,050.00
Drainage & Grading Review (200 cy)	\$ 3,232.00	\$ 3,232.00	\$ 3,232.00
Building Permits ⁶	\$ 6,623.00	\$ 7,962.00	\$ 9,302.00
Grading Permit	\$ 389.90	\$ 389.90	\$ 389.90
Road Encroachment	\$ 1,651.00	\$ 1,651.00	\$ 1,651.00
Sanitation District Fees			
Sewer Connection Fee (\$5,500/unit)	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00
Fire Department Fees			
Fuel Mod. Review	\$ 725.00	\$ 832.00	\$ 832.00
Fire Sprinkler Review	\$ 491.00	\$ 491.00	\$ 491.00
Architectural Review for SFR (water/access)	\$ 491.00	\$ 491.00	\$ 491.00
Site Inpsection Fee	\$ 332.00	\$ 332.00	\$ 332.00
Water Storage Inspection Fee (if applicable)	\$ 332.00	\$ 332.00	\$ 332.00
Law Enforcement Facility Fee			
Santa Clarita Valley (\$467/unit) ⁷	\$ 467.00	\$ 467.00	\$ 467.00
Library Fees			
Santa Clarita Valley (\$969/unit) ⁷	\$ 969.00	\$ 969.00	\$ 969.00
School Fees			
LAUSD (\$3.79/sf) ⁸	\$ 7,580.00	\$ 9,475.00	\$ 11,370.00
Total Building Permit Fees	\$ 36,445.90	\$ 41,432.90	\$ 46,315.90

¹ Pertains to areas within a B&T District

² Other DRP Tract Housing Entitlement Fees That May Apply (Depending On Site Circumstances):

If A Project Is Subject To CEQA:	
Environmental Assessment, Initial Review	\$ 358.00
Environmental Assessment, Negative Declaration	\$ 5,882.00
Environmental Impact Report Deposit	\$ 5,000.00
Fire Dept Referral Deposit	\$ 1,000.00
Public Works Traffic Study (for 1 to 1,000 daily trips)	\$ 1,920.00
Notice Of Environmental Determination	\$ 2,430.00
Mitigation Monitoring Reporting Program Deposit (Only If Project Has An MND)	\$ 6,000.00
Other DRP Fees	
Conditional Use Permit – Modification or Elimination of conditions	\$ 7,879.00
Conditional Use Permit – Subdivision Directional Signs	\$ 9,241.00
Conditional Use Permit – Significant Ecological Areas (Greenfield Development)	\$ 21,389.00
Conditional Use Permit For Grading Over 100,000 Cubic Yards For Off-Site	\$ 9,780.00
CUP Referral to Fire Department	\$ 384.00
CUP Referral to Department of Parks and Recreation	\$ 559.00
CUP Referral to Department of Public Health	\$ 197.00
Development Agreement Deposit	\$ 3,000.00
Specific Plan Deposit (For Very Large Subdivisions)	\$ 3,000.00
Zone Change	\$ 14,458.00
General Plan Amendment Deposit	\$ 3,000.00
Revised Exhibit A For Existing CUP	\$ 3,262.00
Revised Exhibit A For Existing CUP - Fire Department Referral	\$ 262.00
Administrative Oak Tree Permit (One Tree)	\$ 1,217.00
Discretionary Oak Tree Permit (Two Or More Trees)	\$ 9,780.00

³ Quimby fees vary based on location and housing type. Newhall chosen as median sample. Developers may choose to provide parkland on site in lieu of paying Quimby fees.

⁴ Fees include electrical, mechanical, plumbing based on 60% of building fee

⁵ Added \$2,343 (Gmed Review Fees Included) + \$473.50 (Site Inspection GR)

⁶ Building Permit Fees include electrical, mechanical, and plumbing based on 60% of building fee

⁷ Fees vary based on location

⁸ Fees vary by school district/LAUSD chosen as sample



Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead



Amy J. Bodek, AICP
Director

Dennis Slavin
Chief Deputy Director

October 18, 2018

TO: David W. Louie, Chair
Elvin W. Moon, Vice Chair
Doug Smith, Commissioner
Laura Shell, Commissioner
Pat Modugno, Commissioner

FROM: Bruce Durbin, Supervising Regional Planner *BD*
Ordinance Studies Section

Grace Ramirez-Gaston, Director of Civic Art
Los Angeles County Arts Commission

SUBJECT: PROJECT NO. 2017-000213-(1-5)
ADVANCE PLANNING CASE NO. RPPL2017008325
AMENDMENT TO TITLE 22 TO ESTABLISH THE PERCENT FOR ART
IN PRIVATE DEVELOPMENT ORDINANCE
AGENDA OF October 31, 2018 – AGENDA ITEM #6

BACKGROUND/INTRODUCTION

In a public hearing on August 1, 2018, your Commission raised some questions regarding the Percent for Art in Private Development Ordinance (Ordinance) and moved to continue the public hearing to October 31, 2018 with a staff report that addresses those concerns. Specifically, your Commission directed 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. This report addresses the four questions in the motion, as well as another concern that was raised during public testimony.

Staff surveyed online codes of multiple jurisdictions throughout the state of California, and found about 46 jurisdictions, including 36 within Los Angeles County, that have “Art in Public Places” or “Percent for Art” ordinances that require private development to contribute to public art. Staff analyzed those codes for policies requiring residential development to contribute to public art, minimum valuation thresholds of development that trigger the requirement, contribution percentages, and ordinance administration.



PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 2

APPLICABILITY OF ORDINANCE TO RESIDENTIAL DEVELOPMENT

At the August 1 public hearing, staff explained that residential development was deliberately excluded from the draft Ordinance due to the current housing shortage, especially affordable housing, and that new residential development would be burdened with additional costs. Your Commission asked whether other jurisdictions have adopted similar policies that specifically exclude residential development, including the City of Los Angeles.

Of the 46 jurisdictions in California surveyed, 39 jurisdictions require that residential developments be subject to the Arts in Public Places or Percent for Art requirements in their ordinances. The threshold on the number of units to trigger the requirement vary among jurisdictions, but the most common threshold is five or more units, followed by at least four units. Of the 39 jurisdictions with this requirement, 11 expressly exempt affordable housing and senior citizen housing from the art requirement. Only seven jurisdictions of the 46, including the City of Los Angeles, specifically exclude residential development from the art requirement.

Number of Residential Units	Number of Jurisdictions
One or more units	0
At least two units	3
At least three units	5
At least four units	9
At least five units	17
Only mixed use projects	2
Required, but did not specify a number	3
Exempt affordable housing from requirement	11
Exempt all residential units	7

BUILDING VALUATION THRESHOLD FOR PUBLIC ART REQUIREMENT

Based on public testimony given at the public hearing, your Commission was concerned whether \$500,000 is an appropriate threshold, and whether that threshold would likely capture many small businesses. This concern takes in account the costs of construction materials in Southern California, and the fact that these costs likely increase over time.

From the survey of 46 jurisdictions in California, it was found that 39 jurisdictions use total building valuation to subject private development projects that meet or exceed a certain dollar amount to the art requirement. Six jurisdictions, including the City of San Francisco and the City of Oakland (whose lawsuit was recently resolved in its favor), use a square footage threshold regardless of the building valuation. The most frequent threshold value cited is \$500,000 with 14 jurisdictions, followed by a lower value of \$250,000 for 11 jurisdictions. A very small number of jurisdictions use a much higher building valuation threshold to trigger the requirement, such as the City of San Diego (which adopted an ordinance in 2004) and a few Bay Area cities. None of the ordinances adopted by these

PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 3

jurisdictions have recently been amended to reflect the rising values of construction materials.

Threshold Value	Number of Jurisdictions
Less than \$250,000 in total building valuation	7
At least \$250,000	11
At least \$500,000	14
At least \$750,000	2
At least \$1,000,000	4
By square footage only	6
Tiered/Split Building valuations depending on square footage or type of land use	2

Staff further inquired a small number of local jurisdictions within Los Angeles County that used \$500,000 as a valuation threshold for their percent for art ordinances, and two jurisdictions responded stating that they did not encounter any issues when requiring development projects that meet that threshold to comply with their percent for art ordinances.

When staff reviewed data for all past projects that were submitted to the Department of Public Works (DPW) for building permits, staff found that all residential projects that had building valuations of under \$750,000 were for improvements to single family residences, which are exempt from the Ordinance. For commercial projects, approximately one-third of all projects with building valuations exceeding \$500,000 did not meet the criteria in the Ordinance, and therefore would be exempt from the Ordinance.

When an earlier iteration of the Ordinance was first recommended by the Regional Planning Commission at a public hearing on April 26, 2000, \$500,000 was used as the starting threshold for private development projects that would be subject to the requirement in the Ordinance. After the Board moved in January 2017 to revive the Ordinance, \$500,000 was retained as the starting threshold, and the survey results show this amount is consistent with many other jurisdictions' thresholds. However, in the eighteen years between the first and the current versions of the Ordinance, the threshold did not take into account the Consumer Price Index (CPI) for construction materials. According to a CPI calculator on the federal Bureau of Labor Statistics' website, the CPI on \$500,000 in January 2000 is now valued approximately \$745,000 in September 2018.

ADMINISTRATION OF ORDINANCE

Administration Cost Caps

The survey also disclosed that most jurisdictions – 35 of 46 – do not specify a cap on the portion of an in-lieu fee or a cap on collected money from the in-lieu fee fund to cover administrative and/or other on-going costs (including maintenance) in their ordinances. It is possible many do have a cap, but it may be within their guidelines, rather than listed in

PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 4

their ordinances. Eleven jurisdictions include a cap in their ordinances which may range from 5 to 25 percent, which may be either for administration, maintenance, or other on-going costs. The survey results disclosed that the cap percentages are evenly spread, and there is no clear preference for a specific percentage.

Cap amount for administrative/ on-going costs	Number of Jurisdictions
5%	1
10%	2
15%	3
20%	2
25%	2
Required, but percent not stated	2
Not stated	34

Use of Fees for Program Administration – Survey

Staff conducted a separate survey of five California jurisdictions regarding the administration of their percent for art ordinances. The number of staffing required for administering the program ranges from one to three, and all imposed a cap on how the funds would be used for project administration and consulting services, including reviewing and approving civic art plans. The jurisdictions that contract out for consulting services for development projects or to manage projects resulting from the contribution fees, use the fees for operations and staffing, at a range between 15 to 25 percent. Some jurisdictions use the fees to fund their program management positions, while others do not. How the five jurisdictions manage their percent for art programs are listed in the following table:

Jurisdiction	Staffing	Fees for Administration and Consulting Services
West Hollywood	1	<ul style="list-style-type: none"> No positions are funded from the in-lieu fees. Consultants may charge up to 15% of project's costs.
Palo Alto	2.2	<ul style="list-style-type: none"> City may charge up to 5% to offset the cost of advising the civic art process, and 15% to project manager. 20% of the Program Manager's position is funded by the public art fund.
San Francisco	2	<ul style="list-style-type: none"> 20% of public art funds may be used for management of permanent artwork. The administration fees may be on a tiered system based on building valuation of project, and some of the funds may be used as grants to cultural and artistic organizations. Fees are dedicated to operations and staffing.
City of Los Angeles	3	<ul style="list-style-type: none"> Up to 18% of the percent may be used towards administrative and operations budget.
Pasadena	1	<ul style="list-style-type: none"> 20 to 25% of the percent must be dedicated to the cultural trust fund. 25% of cultural trust fund may fund the program coordinator's position.

PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 5

Program Administration – LA County

The Los Angeles County Arts Commission (Arts Commission) envisions the County program will be administered by two staff members – a manager and an associate – who will oversee ordinance compliance and program execution. They will be responsible for reviewing, approving, and verifying the developer's civic art plan. The manager may be contracted as a project consultant to the developer for 15 percent of the one-percent requirement. The associate will serve as a support position providing consistency in fiscal and budget management procedures as well as program coordination. Based on data provided by DPW for projects pulling building permits between 2012 through 2017, the anticipated revenue to be generated under the Ordinance would be \$1.7 million for an eligible commercial development project and \$600,000 for an eligible residential development project, if certain residential projects are not exempt from the Ordinance.

If a developer elects the "cultural facility" option to meet the one-percent requirement, the developer must utilize the Arts Commission as the consultant for a fee of 15 percent of the one-percent allotment, and the Arts Commission will oversee the facility's location and capacity, preliminary design concept, credentials of proposed operating entities, estimated operating budget of user(s), and programmatic goals and objectives. The Arts Commission will use the administration fees to support artistic and cultural programming and services, and establish and maintain temporary and permanent projects. Fees collected into the Percent for Art Fund will offset the salaries for the program manager and associate.

If the developer elects the in-lieu fee option to meet the one-percent requirement, the developer will make the contribution to DPW at the time the building permits are pulled, and DPW will transfer the funds to the Arts Commission's Percent for Art Fund on a quarterly basis.

PERCENT ALLOTMENT

During public testimony, a concern was raised whether one percent is an appropriate amount for commercial and industrial projects to contribute towards public art, considering the limited financial impact one percent would impose. One percent was initially chosen because it was the same percent that was used to require public art contribution for all publicly-funded County projects under the 2004 Civic Art Policy. To determine whether one percent is still appropriate for private development, the 46-jurisdiction survey showed that one percent is still the most popular option, chosen by 27 jurisdictions. Very few chose a lesser percentage (four jurisdictions) or a higher percentage (one) for all projects or contribution options. Eleven others used a tiered system where a smaller percent is used for certain types of projects or for specified contribution options, and a larger percent for other types or options, i.e., one percent for an on-site installation or for a building valued at under one million dollars, and two percent for an in-lieu fee or for a building valued at over one million dollars. A few jurisdictions use a tiered system for residential and non-residential projects, usually 0.5% and 1% respectively. Only one jurisdiction

PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 6

goes by a square footage standard instead of a percentage, but varies the square footage valuation (\$0.39 to \$1.57 per square foot) on the type of land use – assembly, office, warehouse, etc.

Type of Allotment	Number of Jurisdictions
Less than 1% of building valuation	4
At 1% of building valuation	27
More than 1% of building valuation	1
Tiered – (0.5 and 1%, 1 and 1.5%, or 1 and 2% of building valuation, or some variation)	11
Square footage of building	1
Allotment determined by resolution	2

ADDITIONAL PUBLIC COMMENTS

None were submitted at this time.

CONCLUSION

The most popular standards elected by these 46 jurisdictions in California in this survey (attached to this report) included the following in their “Art in Public Places”/“Percent for Art” ordinances:

- Private residential development are included to be subject to the public art requirement, with at least four or five units per residential development.
- The minimum building valuation threshold for a private development to be subject to the public art requirement is \$500,000, and most jurisdictions do not account for the CPI in their ordinances.
- A cap on using in-lieu fees to cover administrative and maintenance costs is not commonly codified in an ordinance.
- The program is overseen by two staff members (a program manager and an assistant), and they usually charge a program management fee of 15 to 20 percent.
- The jurisdictions that contracts for consulting services for development projects or to manage projects resulting from the contribution fees, use the fees for operations and staffing.
- The percent of the total building valuation of a private development for contribution to public art is set at one percent. A tiered system with two different percent values is another popular option.

If you have any questions regarding this report or the survey, you may contact Grace Ramirez-Gaston at gramirezgaston@arts.lacounty.gov or (213) 202-5865, or Bruce Durbin at bdurbin@planning.lacounty.gov or (213) 974-6432 Monday through Thursday.

PROJECT NO. 2017-000213

OCTOBER 18, 2018

Page 7

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Attachments:

Comparative Survey of Jurisdictions

Percent for Art/Art in Public Places Ordinances

Jurisdictions within Los Angeles County

September 2018

Cities within LA County	Year Ordinance Adopted	Code Citation (Chapter)	Percent	Residential Development Included	Building Valuation Threshold	Hard and/or Programmatic Art	Admin Expenditure Cap
Alhambra	2001, updated 2012	23.81	Subject to City Council resolution	Yes, 5+ units; affordable housing exempt	\$500,000	Hard	-
Azusa	2009	88.39	1% to maximum cap \$50,000	Yes, 8+ units	\$750,000	Hard	10% to consultation fee
Baldwin Park	2004	154	1%	Yes, 4+ units; affordable housing exempt	\$50,000	Hard	-
Bellflower	2005	3.32	1%	Yes, 2+ units	Res \$500,000 C/I \$250,000	Hard	-
Beverly Hills	1996, updated 2015	3-1-801 et seq	Tiered 1% first 1 million, plus 1.5% over 1 million	No	\$500,000	Hard	Permit fees, consultation fees, travel, prep work do not count towards %
Burbank	2008, updated 2011	10-1-1114	Tiered 1% first \$15 million, plus 0.75% \$15.1 - \$25 million, plus	Yes. Subdivisions under 30 units, affordable/SC housing exempt	MFR \$1.5 million C/I \$500,000	Hard – onsite Both with in-lieu fee	10% to consultation/management fee

			0.50% above \$25 million				
Calabasas	2010	17.24	1% to maximum cap of \$150,000	No	?	Hard	-
Carson	Last update 2011/2014	9138.17.J.1.o and 9137.18.J.1.m – for Carson Street Mixed Use Zone Only	1%	Mixed use only	All projects in MU over 25,000 sf No requirements, just guidelines	?	?
Cerritos	2000, updated 2001	22.94	1%	Yes, 4+ units	\$250,000	Hard	-
Claremont	2005?, updated 2014	16.148	1% - C/I, CIP 0.5% Res	Yes, 2+ units or subdivisions with 5+ lots	\$150,000 CIP \$250,000 C/I \$250,000 Res	Both?	20% of Fund for Admin cost
Commerce	2016	19.31, Div. 23	1%	Yes, 4+ units	\$250,000	Hard	-
Culver City	1988, updated 2013	15.06	1% (<\$75,000 in- lieu only, >\$75,000 have options)	Yes, 5+ units; Affordable/sc housing exempt	\$500,000 new \$250,000 remodels	Both but excluding performances	15% of Fund for maintenance, and 15% of Fund for Admin cost
Downey	2005, updated 2012	VIII-10 Sec 8950 et seq	1%, up to \$150,000	Yes, 4+ units	\$500,000	Hard	-
El Monte	2006, updated 2016	15.07	1%	Yes, 4+ units	\$500,000 C/I Res – 4+ units	Hard	-
Glendale	2010	30.37	1% for in-lieu 2% actual art	Yes, 3+ units in commercial and mixed-use zones only (Affordable housing exempt)	\$500,000	Both	-

Huntington Park	2005	9-3.1701 et seq	1%	Yes, 2+ units; affordable /sc housing exempt	\$100,000 new \$50,000 remodels	Hard on-site, Both with funds	-
Inglewood	2004, updated 2013	Art. 14, 11-140 et seq	1%	No	\$250,000	Hard	-
Los Angeles	1989, 1991	Admin Code 22.118, 91-107.4.6	Based on square footage (0.39-1.57 sf depending on use)	No	\$500,000	Both	-
Lynwood	2006	11-20	1.5%	Yes	\$100,000	Hard	15% Admin Cost 10% Maintenance
Malibu	2014	17.59	2% on-site 1% in-lieu	Yes, 4+ units	\$250,000	Hard	-
Manhattan Beach	2002	10.90	1%	Yes, 4+ units	\$500,000 new \$250,000 remodels	? for on-site; Both for in-lieu	20% Admin cost
Monrovia	2004, updated 2017	15.44	1%	Yes, 5+ units; affordable housing exempt	\$1,000,000	Hard	Part of % can go to Library Fund instead
Norwalk	2014	15.44	1%	Yes, 4+ units	\$500,000	Hard	-
Paramount	1993, updated 2018	By resolution	1%	Yes, 5+ units	\$100,000	Both	-
Pasadena	2002 and 2007, updated 2017	17.40.100	1%	Yes, only in two districts (3+ units)	25,000 sq ft for C/I/MXD, except \$500,000 in two districts	Both	25% Admin cost
Pomona	2011	.5809-24	1%	Yes, 10+ units	\$750,000	Hard	-

Redondo Beach	2015	10-6	1%, up to \$750,000	Yes, 3+ units	\$250,000	Hard	5% for maintenance
Rosemead	2013	17.92	Required, but no specific amount	No (only regional commercial zone)	All projects regardless of value	Hard	-
Santa Fe Springs	2000, updated 2014	38.40 et seq	Under \$2 million, 1% in-lieu only Over \$2 million, 1% on-site or in-lieu	Yes	\$300,000	Hard	-
Santa Monica	2006	9.04.10.20	2% for on-site, 1% x total project sq ft – as established by resolution	Yes, 5+ units	7500 sf for new comm, 25,000 sf for remodels, 5+ units for new res	Hard + cultural facility	-
Sierra Madre	2006	17.90	1%	Yes, 4+ units	\$250,000 (2006) + CPI	Hard	-
South Gate	2000, updated 2015	11.32	1%	Yes, 5+ units	\$500,000 new, \$250,000 remodels	Hard	-
West Covina	2004, updated 2008	17-31 et seq (Article II)	0.5% Residential 1% Others	Yes, 10+ units; affordable/sc housing exempt	\$500,000 new non-res, 5+ units res, \$250,000 non-res remodels	Hard (Funds can be used for both)	-
West Hollywood	2001	19.38	1%	Yes, 3+ units; affordable housing exempt	\$200,000	Not stated or defined	-
Westlake Village	2006	9.39	1% on-site 1.25% in-lieu	No	\$100,000	Hard	-

Whittier	1993, updated 1998	17.52	0.5% or \$20,000 – on- site 0.5% in-lieu	Yes, 3+ units	\$250,000	Hard	-
TOTAL 36							

Jurisdictions outside LA County	Year Ordinance Adopted	Code Citation (Chapter)	Percent	Residential Development Included	Building Valuation Threshold	Hard and/or Programmatic Art	Admin Expenditure Cap
City of San Diego	2004, updated 2008	Article 6, Division 7, Section 26.0701 et seq	1% for on-site, 0.5% in-lieu	No	\$5 million	Both	15% for admin costs, or 20% if through RFP process
City of Palo Alto	2013	16.61	1%	Yes, 5+ units	\$200,000 and >10,000 square feet	Both	-
City of Oakland	2014	15.70	0.5% Residential, 1% Nonresidential	Yes, 20+ units	2,000 square feet for nonresidential 20 units for residential	Hard	-
City and County of San Francisco	1985, updated 2012	Section 429 of the Planning Code	1%	Yes, only in C-3 Zone	Commercial projects over 25,000 square feet in certain zones/zoned districts	Hard	Downtown area only
City of Richmond	2017	Zoning- 15.04, Public Works – 12.62	1%	Yes, 10+ units	\$500,000	Both	-

City of San Mateo	2005	23.60	0.5%	Yes, multi-family residences	\$3 million	Not Stated	–
City of Berkeley	2016, amended 2017	23C.23	1.7% on-site 0.8% in-lieu	Yes, 5+ units; affordable and transitional housing exempt	5+ units, all new construction, and additions of 10,000+ SF for commercial and industrial	Hard	- (In Guidelines)
City of Dana Point	1994, amended 2010	9.05.240	0.5%	Yes, 5+ units	\$1 million	Hard, but can construct space for use of performance art	-
City of Emeryville	1991, amended 1992 and 2009	3-2.401 et seq.	1% non-residential 0.5% residential	Yes, 20+ units	\$300,000 for nonresidential 20+ units for residential	Not Stated (refer to Guidelines)	-
City of Alameda	2017	Chapter XXX, Article VIII (30-98)	1%	Yes, 5+ units; affordable housing and nonprofit development projects exempt	\$250,000	Both	25% cap to be spent on programmatic art
TOTAL 10							

TOTAL ALL JURISDICTIONS: 46

Residential Development Revenue Analysis for the Proposed Public Art in Private Development Ordinance

Threshold <\$750,000
 5 or more units

Estimated Annual Average 1% of All Eligible Housing Development:	\$ 2,052,212
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Tract Housing

The following analysis reflects the average eligible 1% of tract housing development, of 5 units or greater, in unincorporated LA County with a total building valuation threshold of \$750,000 and above, using data collected by the Department of Public Works from 2013-2018.

Estimated Annual 1% of Tract Housing Development	\$ 1,394,061
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Historical Tract Housing Development Permitting Data by Threshold*		
Year	Number of Tract Housing Permits	1% of Tract Development
2018	263	\$ 1,242,094
2017	97	\$ 514,295
2016	282	\$ 1,329,863
2015	169	\$ 888,441
2014	316	\$ 1,972,940
2013	429	\$ 2,416,732

*Approximately 95% of tract housing permits were related to projects in Fifth District.

Multi-family Dwelling Units

The following analysis reflects the average eligible 1% of multi-family dwelling unit development, of 5 units or greater, in unincorporated LA County with a building valuation threshold of \$750,000 and above, using data collected by the Department of Public Works from 2012-2017.

Estimated Annual 1% of Multi-Family Unit Development	\$ 658,151
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Historical Multi-family Dwelling Unit Development Permitting Data by Supervisorial District						
Year	1st District	2nd District	3rd District	4th District	5th District	Grand Total
2017	\$ 90,000	\$ -	\$ 232,710	\$ 980,780	\$ 78,120	\$ 1,381,610
2016	\$ -	\$ -	\$ -	\$ -	\$ 12,330	\$ 12,330
2015	\$ -	\$ 302,150		\$ 1,023,950	\$ 96,930	\$ 1,423,030
2014	\$ 55,000	\$ -	\$ -	\$ -	\$ 77,960	\$ 132,960
2013	\$ -	\$ 506,797	\$ -	\$ 236,580	\$ -	\$ 743,377
2012	\$ -	\$ 255,600	\$ -	\$ -	\$ -	\$ 255,600