



DATE: October 1, 2015

AGENDA ITEM # 5

TO: Public Arts Commission
FROM: Jon Maginot, Staff Liaison
SUBJECT: Public art funding options

RECOMMENDATION:

Discuss the proposed ordinance establishing a Public Art Development Fee

BACKGROUND

At the July 28, 2015 City Council meeting, the City Council held a Public Hearing to consider an ordinance establishing a Public Art Development Fee. Due to a recent court case involving the City of Oakland's Public Art Fee, the Council continued the Public Hearing to August 25, 2015. At the August 25, 2015 meeting, the City Council continued the Public Hearing indefinitely, but directed that staff report back to the Council at the October 27, 2015 meeting regarding the case and the proposed Public Art Development Fee.

DISCUSSION

The City of Oakland's art fee differs from and matches the City of Los Altos' proposed fee in several ways. For non-residential developments, both cities require not less than 1% of building costs for acquisition and installation of public art. Oakland's requirement applies only to non-residential projects which add 2,000 or more square feet of new floor area while Los Altos' requirement only applies to projects with total construction costs in excess of \$1 million (with a cap of \$200,000 in total contribution). Oakland's ordinance requires residential developments of 20 or more units to devote not less than 0.5% of building costs while Los Altos' ordinance would require residential developments of 5 or more units to contribute 1% (with a cap of \$200,000). Both cities allow the developer to contribute in-lieu of installing the art.

In addition, the Oakland ordinance allows certain credits for developers for including space to be used as gallery and cultural programming. The Los Altos ordinance does not include these credits. Finally, the Oakland ordinance requires that public art installed in a development be done by an artist or artists who are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) organization. The Los Altos ordinance does not require this verification.

Attachments:

- 1) City of Los Altos Public Art fee ordinance
- 2) City of Oakland Public Art Ordinance

ORDINANCE NO. 2015-412

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ESTABLISHING A DEVELOPMENT FEE OF 1% FOR PUBLIC ART,
CREATING A PUBLIC ART FUND AND ESTABLISHING REQUIREMENTS
FOR INCLUSION OF PUBLIC ART IN DEVELOPMENT PROJECTS**

WHEREAS, public art enhances the quality of life in a community, fosters economic development and creates inventive and/or stimulating public spaces; and

WHEREAS, published data strongly indicates that cities with an active and dynamic cultural scene are more attractive to individuals and businesses; and

WHEREAS, public art provides an intersection between the past, present and future as well as between disciplines and ideas; and

WHEREAS, Los Altos can create diverse interactive and exciting art experiences for the community with public art in the Civic Center, community plazas, parks, buildings and other public spaces throughout the City; and

WHEREAS, private, non-residential construction projects in the City of Los Altos can contribute to funding the creation, installation, and administration of public art for the enjoyment of residents and visitors; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Chapter 14.82 “Public Art Funding” is hereby added as follows:

“Chapter 14.82 – “Public Art Funding”

14.82.010 – Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter 14.82.

- A. “Publicly accessible art” shall mean art which can be reasonably viewed or experienced from within the public right-of-way or to which access is unrestricted to members of the public at any time of day.

- B. "Total construction costs" shall mean the valuation of the proposed structures or improvements, as calculated based on the most recent City of Los Altos Building Valuation Fee Schedule.

14.82.020 – Los Altos Public Art Fund

There is hereby created a Los Altos Public Art Fund, which funds shall be restricted to implementation of the Los Altos Public Art Program, as set forth in the Los Altos Capital Improvement Program. Such funds may be used to acquire, place, maintain and promote temporary and permanent art on public property throughout the City.

14.82.030 – Contribution Requirements

- A. R1-10, R1-H, R1-20, R1-40. Private single-family developments within the R1-10, R1-H, R1-20 and R1-40 districts shall be exempt from the requirements of this chapter. Private, non-single family developments with total construction costs in excess of one million dollars (\$1,000,000) and subject to design review approval within the R1-10, R1-H, R1-20 and R1-40 districts shall contribute an amount of one percent (1%) of construction costs to the Los Altos Public Art Fund to be used pursuant to Section 14.82.020. Such contribution shall not exceed two hundred thousand dollars (\$200,000).
- B. R3-4.5, R3-5, R-3-3, R3-1.8, R3-1. Private developments of four (4) or more units and subject to design review approval within the R3-4.5, R3-5, R-3-3, R3-1.8 and R3-1 districts shall contribute an amount of one percent (1%) of construction costs to the Los Altos Public Art Fund to be used pursuant to Section 14.82.020. Such contribution shall not exceed two hundred thousand dollars (\$200,000). Construction costs for Below Market Rate units shall not be included in valuation.
- C. OA, OA-1/OA-4.5, CN, CD, CRS, CT, CD/R3, CRS/OAD, PC, PCF, PUD. Private building developments with total construction costs in excess of one million dollars (\$1,000,000) and subject to design review approval within the OA, OA-1/OA-4.5, CN, CD, CRS, CT, CD/R3, CRS/OAD, PC, PCF, and PUD districts shall devote an amount not less than one percent (1%) of such costs for the acquisition and installation of publicly accessible art on the development site. At the discretion of the owner or developer, and in lieu of developing on-site public artwork, a Public Art in-lieu contribution may be placed into the Los Altos Public Art Fund to be used pursuant to Section 14.82.020. Such contribution or installation shall not exceed two hundred thousand dollars (\$200,000). Construction costs for Below Market Rate units shall not be included in valuation.

14.82.040 – Application procedures for placement of required public art on private property

An application for placement of public art on private property shall be submitted in a form and manner as prescribed by the Public Arts Commission staff liaison and shall include:

- A. Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;
- B. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs;
- C. Preliminary plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods; and
- D. A narrative statement or plan that demonstrates the public art will be displayed in a publicly accessible manner. Publicly accessible shall mean an area or form which is reasonably open to the general public at all times of day.

14.82.050 – Approval for placement of public art on private property

General type and placement of public art on private property shall be reviewed by the Public Arts Commission for recommendation prior to final review of the application as a whole by the City Council. A formal application for final placement of public art on private property shall be submitted to and approved by the Public Arts Commission prior to issuance of a building permit.

14.82.060 – Violations of this Chapter

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any discretionary permit granted to any owner or developer who violates the provisions of this Chapter.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2015 and was thereafter, at a regular meeting held on _____, 2015 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jan Pepper, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

Chapter 15.70 - Public Art Requirements

Sections:

Article I - Title

15.70.010 - Title.

This Chapter shall be known as the "Public Art Requirements" and is referred to herein as this Chapter.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

Article II - Administrative

15.70.020 - Definitions.

As used in this Chapter, the following terms shall have the meanings set forth hereto or as otherwise specified in the guidelines referenced herein. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

"Affordable housing" is defined in Chapter 17.107 of the Oakland Planning Code.

"Building development costs" means those construction costs as declared on building permit applications, and as accepted by the Building Official. Building permit applications shall include building, plumbing, mechanical and electrical permit applications for the project.

"Capital improvement costs" include all construction costs as well as architectural and engineering fees and site work associated with capital improvement projects. Capital improvement costs do not include administrative costs or costs related to the investigation and remediation of hazardous materials.

"City capital improvement project" means any capital improvement project paid for wholly or in part by funds appropriated by the City of Oakland to construct or remodel a building, decorative or commemorative structure, park, street, sidewalk, parking facility, or utility or any portion thereof, within the City limits of, or under the jurisdiction of, the City of Oakland.

"Demolition costs" means payment for any work needed for the removal of buildings or other existing structures from City property.

"Developer" and/or "Owner" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Oakland), industry, public or private corporation, or any other entity that undertakes any construction within the City subject to the requirements in Article III.

"Economically feasible" is defined in Section 17.107.020 of the Oakland Planning Code.

"Floor area" is defined in Section 17.09.040 of the Oakland Planning Code.

"Oakland planning code" means Title 17 of the Oakland Municipal Code.

"Public art" is a process which results in the incorporation of original works of art by artists in publicly accessible spaces and which serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals; is of high quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; is unique to its moment in time and place.

"Public art advisory committee" means a professionally qualified citizen committee recommended by the Oakland arts commission and approved by City Council to oversee quality control of the public art program, its projects, and to recommend to the Cultural Arts Division (CAD) the sites, scope of project, artworks and artists for the public art projects funded through the Public Art Project Account.

"Public art program in-lieu contribution" means the percentage of building development costs required herein.

"Public art project account in the cultural arts division budget" means a project account which is established by the City to receive monies from both in lieu contributions made by a developer and/or owner and appropriated from the capital improvement project budgets to the public art program.

"Public art projects" are projects which involve artists working through the public art process that result in the creation of original works in publicly accessible spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Public Art projects also include artists serving on design and development teams to identify opportunities to incorporate art in publicly accessible space.

"Publicly accessible art" means art that is accessible to the general public.

"Real property acquisition costs" means payments made for the purchase of parcels of land, existing buildings or structures, and costs incurred by the City for appraisals or negotiations in connection with such purchases.

"Shall/will" means a determinative directive which includes the common meaning of the word must.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.030 - Conflict.

Wherever the provisions of this Chapter conflict with each other or with the provisions of other associated codes, regulations, or ordinances, the more restrictive provision or standard shall control.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.040 - Amendments.

Where any section, subsection, sentence, clause, phrase, or other part of this Chapter and the referenced law recited herein are amended subsequently, all provisions of the original recitation not so specifically amended shall remain in full force and effect and all amended provisions shall be considered as added thereto.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

Article III - Public Art Requirements for Private Development

15.70.050 - Purpose.

This Article III is intended to promote the arts in the City of Oakland by requiring the inclusion of a public artwork component in new development projects in Oakland. A policy is hereby established to require certain private developments to use a portion of building development funds for the acquisition

and installation of publicly accessible works of art for placement on the development site as a condition of project approval. Developers and/or owners are encouraged to employ Oakland artists or arts organizations to fulfill the public art requirement.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.060 - Contribution Requirements.

A. Calculation

1. **Nonresidential Building Developments.** Private nonresidential building developments involving 2,000 square feet or more of new floor area and subject to design review approval pursuant to Chapter 17.136 of the Oakland Planning Code shall devote an amount not less than one (1%) percent of building development costs for acquisition and installation of publicly accessible art on the development site.
2. **Residential Building Developments.** Private residential building developments of twenty (20) or more new dwelling units and subject to design review approval pursuant to Chapter 17.136 of the Oakland Planning Code shall devote an amount not less than one-half of one (0.5%) percent of building development costs for acquisition and installation of publicly accessible art on the development site.

B. In-Lieu Contribution

1. **Compliance.** At the discretion of the developer and/or owner, and in lieu of installing on-site public art, a Public Art Program in-lieu contribution shall be placed into the Public Art Project Account for acquisition and placement of public art throughout the City.
2. **Alternative Compliance.** Alternatively, developer and/or owner may by special application and approval by the City satisfy up to seventy-five (75%) percent of the Public Art Program in-lieu contribution required hereunder as follows, if approved by the Public Art Advisory Committee. Any remaining in-lieu contribution shall be placed into the Public Art Project Account.
 - a. Developer and/or owner's inclusion of space within the development project that is generally open to the public during regular business hours and is dedicated by developer and/or owner for regular use as a rotating art gallery, free of charge, will be deemed to satisfy twenty-five (25%) percent of the Public Art Program in-lieu contribution; and/or
 - b. Developer and/or owner's provision, design and dedication of at least five hundred (500) square feet of space within the development project, to be made available to the public for the primary use of arts and cultural programming, may be deemed to satisfy fifty (50%) percent of the Public Art Program in-lieu contribution.

C. **Subsequent Removal of Public Art or Alternative Compliance Space.** If the developer and/or owner satisfies the public art requirement in accordance with subsection (A)(1), (A)(2), or (B)(2), above, the public art previously installed on the development site or the inclusion and/or dedication of space within the development project may subsequently be removed if the developer and/or owner makes a Public Art Program in-lieu contribution equivalent to the original amount to the Public Art Project Account.

D. **Exclusions.** The requirements of this Article III shall not apply to an affordable housing development if the developer demonstrates to the satisfaction of the City that said requirements would cause the development project not to be economically feasible.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.070 - Artist Verification.

Public art installed on the development site shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing. Developers and/or owners installing art created by an artist not verified by the City shall pay a verification fee to the City in accordance with the Master Fee Schedule.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.080 - Public art project account.

Any in-lieu contributions placed in the Public Art Project Account shall be used to implement the Public Art Program, as described in Article V, below. Such funds may be used to acquire, place, and maintain public art on public property throughout the City, and to administer the Public Art Program.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.090 - Compliance.

Compliance with the provisions of this Article III shall be demonstrated by the developer and/or owner at the time of filing the Building Permit application as follows: (a) payment of the full amount of the Public Art Program in-lieu contribution, or (b) written proof to the Building Department and the Public Art Program of a contractual agreement to commission or purchase and to install the requested artwork on the development site. The developer and/or owner shall provide the City with proof of installation of the requested artwork on the development site or proof of full payment of the Public Art Program in-lieu contribution before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this article. In the case of installation of public art on the development site, the developer and/or owner shall maintain said artwork in proper condition on an ongoing basis.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.100 - Violations of this article.

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any permit granted to any developer and/or owner who violates the provisions of this Article III.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

Article IV - Public Art Requirements for City Capital Improvement Projects

15.70.110 - Purpose.

The City of Oakland accepts responsibility for expanding the opportunities for its citizens to experience public art and other projects resulting from the creative expression of its artists in public places throughout the City. A policy is hereby established to direct the inclusion of works of art in public spaces throughout the City and/or the design services of artists in certain City capital improvement projects.

Ordinance No. 11086 C.M.S. and the Public Art Policies and Procedures, adopted by the City Council on February 28, 1989, as such documents may be amended from time to time, continue to remain in effect.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

15.70.120 - Funding.

- A. Appropriations. All appropriations for City capital improvement projects, including all bond projects and all other capital projects funded from other sources excluding sewer repairs funded from sewer service charge fees shall include an amount equal to of the total capital improvement project cost to be dedicated to the Public Art Project Account. Funds appropriated will be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation, examination and/or display of original artworks, for the maintenance of artworks, for educating the public about the artwork and the Cultural Arts Division administrative costs to manage the program.

The one-and-one-half (1.5%) percent appropriation shall include but not be limited to General Fund funded capital improvements, gas tax funded capital improvements, Measure B funded capital improvements, off street parking funded capital improvements and any and all other capital improvements funded from other revenues including grants which may be so appropriated.

- B. Method of Calculation. The minimum amount to be appropriated to the Public Art Project Account to fund artists' services and/or artworks, maintenance, administration, and education shall be the total capital project appropriation including all construction costs as well as architectural and engineering fees and site work expenses multiplied by 0.015, excluding amounts budgeted for real property acquisition; demolition; and financing costs.
- C. Pooling. Funds appropriated as part of any one project, but not deemed necessary or appropriate in total or in part for public art at said project site by the Cultural Arts Division in consultation with the Public Art Advisory Committee and the capital improvement project manager, may be expended on other projects approved under the Public Art Project Plan when such funds are eligible to be so used.
- D. Exclusions. If the source of funding or other applicable law or regulation with respect to any particular capital improvement project or portion thereof prohibits or restricts the use of the one-and-one-half (1.5%) percent dedication of such funds for public art, this Article IV shall not apply to the project's expenses, so prohibited or restricted.
- E. Grant Applications. All City departments shall include in applications for capital improvement projects to outside granting authorities amounts for artists' services and/or artworks as specified herein, where permitted or unless otherwise waived by the City Council. Receipt of such funds shall be administered as part of the City's Public Art Program.
- F. Waiver. The City Administrator may request that the City Council exclude certain capital improvement projects from the provisions of this Article IV by the passage of a resolution authorizing such a waiver.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)

Article V - Use of Public Art Project Account

15.70.130 - Use of Funds.

It is intended that funds in the Public Art Project Account will be appropriated in the annual budget to obtain and install art in public places, to maintain and refurbish art in public places when the cost of such maintenance exceeds funds currently available for the maintenance of public property in general, to fund staff time in the Cultural Arts Division necessary to administer the public art program, and to defray such other expenses which are, or may become, an integral part of the public art program, including programs to educate the public about the public art.

- A. Eligible Costs. Monies appropriated under Article IV, above, and any in-lieu contributions made in accordance with Article III, above, may be used for hiring artists to develop design concepts and for the selection, acquisition, purchase, commissioning, placement, installation, exhibition, and/or display of artworks. Artworks may be permanent or temporary and integral to the architecture. Integration of the artists' design concepts and/or the artworks into the project architecture should be insured insofar as feasible, by concurrent selection of the artist(s) with the architect or designer. All of the above are considered eligible expenses for the Public Art Program artist fees. Artist fees for such projects can include the following:
1. Structures which enable the display of artwork(s).
 2. Artistic design and fabrication fees.
 3. Labor of assistants, materials and contracted services required for the production and installation of the work of art.
 4. Any required permit or certificate fees, business and legal costs directly related to the project.
 5. Dealer's fees, if necessary and where appropriate CAD, in concurrence with the National Endowment for the Arts (N.E.A.) and several other arts agencies around the country, recommends that no more than ten (10%) percent of the artist's fees be paid as a dealer/gallery commission.
 6. Communication and other indirect costs (insurance, utilities).
 7. Transportation of the work of art to the site.
 8. Preparation of site to receive artwork.
 9. Installation of the completed work of art.
 10. Administrative fees can include the following:
 - a. Cultural Arts Division's administration costs incurred in the process of administering the Public Art Program including staff time, direct costs and administrative overhead.
 - b. Documentation (color slides and black and white photographs) of the artwork's fabrication and installation and plaques to identify the artwork.
- B. Ineligible Costs. Monies appropriated under Article IV, above, and any in-lieu contributions made in accordance with Article III, above, may not be used for the following:
1. Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.
 2. "Art objects" which are mass produced of standard design such as playground equipment or fountains.
 3. Reproduction, by mechanical or other means, or original works of art, except in cases of film, video, photography, printmaking or other media arts.
 4. Decorative or functional elements which are designed by the building architect as opposed to an artist commissioned for this purpose.
 5. Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist.

(Ord. No. 13275, § 2(Exh. A), 12-9-14)