



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
October 27, 2015**

DISCUSSION ITEM

Agenda Item # 6

SUBJECT: Receive a report on the proposed ordinance 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, and direct staff accordingly

BACKGROUND

At its July 28, 2015 meeting, the City Council held a duly noticed Public Hearing to consider an ordinance establishing a development fee of 1% for public art, creating a Public Art Fund and establishing requirements for inclusion of public art in certain development projects. Subsequent to the posting of that meeting's agenda, a court case developed involving the City of Oakland's Public Art Fee. Due to the development of the case, the City Council continued the Public Hearing to August 25, 2015. On August 25, 2015, the City Council continued the Public Hearing indefinitely, but directed staff to report back to Council at the October 27, 2015 meeting regarding the case and the proposed Public Art Ordinance.

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

January 27, 2015; April 28, 2015; July 28, 2015; and August 25, 2015

DISCUSSION

The City of Oakland's art fee is similar yet different from the City of Los Altos' proposed fee in a number of ways. For non-residential developments, both cities require not less than 1% of building costs for acquisition and installation of public art, but have differing thresholds for when the fee applies to certain developments. Both cities allow the developer to contribute funds in-lieu of installing 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.

In July 2015, the City of Oakland was sued by the Building Industry Association of the Bay Area over its recently adopted percent for art ordinance. The lawsuit is currently at issue in Federal Court. It is unknown how long the case will last or when additional information regarding the proceedings will come forth.

PUBLIC CONTACT

The Public Arts Commission discussed various funding options for public art, including the draft ordinance, at its July 24, 2014, August 28, 2014, September 25, 2014, October 23, 2014, December 11, 2014, May 28, 2015 and June 25, 2015 meetings.

A public hearing notice was published in the *Town Crier* for the Planning and Transportation Commission hearing that was held on June 18, 2015.

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

While it is unknown at this time the exact impact to the City, establishing a development fee would increase City revenues dedicated for public art, which would then be used for projects related to the City's planned public art efforts.

ENVIRONMENTAL REVIEW

Not applicable

RECOMMENDATION

Receive a report on the proposed ordinance 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, and direct staff accordingly

ALTERNATIVES

Not applicable

Prepared by: Jolie Houston, City Attorney
Jon Maginot, City Clerk/Assistant to the City Manager
Approved by: Marcia Somers, City Manager

ATTACHMENT:

1. Proposed ordinance establishing a development fee for public art

Receive a report on the proposed ordinance 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, and direct staff accordingly

ORDINANCE NO. 2015-xxx

**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