

CHAPTER 9.30
PRIVATE DEVELOPER CULTURAL ARTS REQUIREMENT

§ 9.30.010. Findings and Purpose.

- A. The purpose of this Chapter is to authorize the establishment of guidelines, procedures, and standards for the integration of public art and cultural resources into private development projects within the City of Santa Monica.
- B. Public art and cultural resources foster economic development, revitalize urban areas, and improve the overall business climate by creating a more desirable community within which to live and work. Well-conceived and executed works of art enhance the actual value of a development project, create greater interest in leased space within the development project, promote cultural tourism and make a lasting and visible contribution to the community, which helps to mitigate the impacts of development. The experience of public art and cultural resources makes the public areas of buildings and their grounds more welcoming. It promotes the general health and welfare of its citizens by making the City more livable, and visually and aesthetically pleasing.
- C. To ensure that public art and cultural resources are present and sustained throughout the community, it is necessary to require that private development projects in the City of Santa Monica include an element of public art or cultural facilities or, alternatively, contribute to a City arts fund for public art and cultural resources and facilities in lieu of installation of such art.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.020. Applicability.

The regulations, requirements and provisions of this Chapter and Council resolutions adopted pursuant hereto shall apply to development projects as defined in this Chapter.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.030. Definitions.

The following words or phrases shall have the following meanings when used in this Chapter:

Art or art work. Art, including but not limited to, sculpture, painting, graphic arts, mosaics, photography, crafts, mixed media, electronic arts and environmental works. Art or art work as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

Artist. An individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, public performances, past public commissions, sale of works, exhibition record, publications, and production of art work. The members of the architectural, engineering, design, or

landscaping firms retained for the design and construction of a development project covered by this Ordinance shall not be considered artists for the purposes of this Chapter. This definition applies only to the requirements of this Chapter.

Arts Commission. Unless otherwise specified, any reference to "Commission" in this Chapter shall mean the Arts Commission.

Average square foot cost of construction. The construction cost per square foot for construction categories within a development project as established by resolution of the City Council.

Cultural arts development contribution. Contribution by a developer to the Cultural Arts Trust Fund in lieu of installation of on-site public art or cultural facilities.

Cultural facilities. A structure that houses, and has as its primary purpose the presentation of, one or more cultural resources, and that is operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public. Examples of acceptable facilities are museums, theatres, and performing arts centers, and other similar facilities as determined appropriate by the Arts Commission. Facilities that do not meet this definition are churches, schools, commercial movie theatres, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and for-profit facilities used for profit activities.

Cultural resources. Individual and group presentations, exhibitions, or performing arts involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD, DVD, holographic or computer generated technologies; education, including lectures, presentations and training in or about art and culture; special events such as festivals and cultural celebrations; and, similar resources and services as determined and approved by the Arts Commission.

Developer. The person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter, who may, or may not, be the owner of the subject property.

Development project. Commercial development having new floor area of 7,500 square feet or more, commercial remodels or tenant improvements of 25,000 square feet or more that require approval by the Architectural Review Board, or residential projects of 5 or more units. A development project, for purposes of defining a project subject to this Chapter, does not include the following: cultural facilities, churches, temples, synagogues, and other buildings or structures used for religious worship; repair and reconstruction of any building damaged by flood, fire or other disaster; municipal facilities; affordable housing units. In mixed residential/nonresidential development, those portions of projects excluded from the definition of development project hereinabove shall not be included in the calculation of the average square foot cost of construction.

Director. The Director of Community and Cultural Services Department, or their designee, or the Director of Planning and Community Development, or their designee, as appropriate.

Freely accessible. The art work is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.

Performing arts. Performances presented by professional performers, including theatre performance (any form of dramatic presentation, spoken or silent); musical theatre/opera (any dramatic performance of which music is an integral part); dance (any form of rhythmical movement); music/concert (any musical form whether classical, traditional or popular).

Public art or art work. On-site art work produced by an artist, as defined herein, or team of artists, that are freely accessible on private property or on land or in buildings owned by the City or another governmental agency.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.040. Private Developer Cultural Arts Requirement.

- A. **Applicability.** Before the issuance of a building permit for any development project as defined herein, the developer shall participate in the construction or installation of freely accessible on-site public art work in accordance with Section 9.30.050, or provide cultural facilities in accordance with Section 9.30.120, or pay a cultural arts development contribution in accordance with Section 9.30.140 below.
- B. The expenditure of money required to satisfy the requirements of this Chapter, whichever alternative is selected to do so, shall be reduced by the amount, as verified by the Landmarks Commission or Landmarks Commission Secretary as appropriate, spent to preserve an historic resource listed in or determined eligible for listing in the California Register of Historical Resources or the City's local register of historic resources, where such preservation follows the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* or the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.050. On-Site Public Art Projects.

A developer seeking to satisfy the private developer cultural arts requirement of this Chapter through the construction or installation of on-site public art shall do so in the amount of 2 percent of the average square foot cost of construction of the development project as set forth by resolution of the City Council times the project square footage. If the actual construction cost or market value of the on-site public art is greater than the required 2 percent contribution, the City shall have no obligation to pay the excess amount.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.060. Eligible On-Site Public Arts Projects.

- A. Public art, for the purposes of this Chapter and for determining what shall meet the

private developer requirements for on-site installation of public art, includes art works that are created uniquely by an artist, as those terms are defined in this Chapter, and integrated into the development project. Public art may include any other form determined by the Arts Commission to satisfy the intent of this Chapter provided, however, that the following are not considered to be public art for the purposes of this Chapter:

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. Objects which are mass produced of standard design such as banners, signs, playground equipment, benches, statuary, street barriers, sidewalk barriers, or fountains;
3. Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts;
4. Decorative, architectural, or functional elements which are designed by the building architect or landscape architect as opposed to an artist commissioned for this purpose;
5. Landscape architecture, gardening, or materials, except where these elements are designed by the artist and are an integral part of the work of art by the artist; or
6. Landscaping required by this Ordinance as part of the development entitlements.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.070. Eligible On-Site Public Arts Project Expenditures.

- A. The public art contribution for on-site installation must be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the public art. Eligible expenditures include the following items:
1. Artist fees;
 2. Labor of assistants, materials, and contracted services required for the design, fabrication, and installation of the public art;
 3. Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;
 4. Reasonable art consultant fees, as established in guidelines approved to implement the provisions of this Chapter;
 5. Communication and other indirect costs (insurance, utilities associated with the creation but not the operation of the public art, etc.);

6. Transportation of the public art to the site;
 7. Preparation of site to receive public art, beyond that required for the development itself;
 8. Installation of the completed public art;
 9. Structures which enable the display of the public art, such as platforms or pedestals, up to 5% of the total public art contribution;
 10. Mountings, anchorages, containments, or other materials necessary for installation of the public art; and
 11. Plaque identifying the public art, as required by this Chapter.
- (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.080. Ineligible On-Site Public Arts Project Expenditures.

- A. Expenditures that are ineligible to be counted toward the on-site public art contribution include the following items:
1. Promotional materials or activities for the artist, the public art, the development, the developer or other parties involved in the development project;
 2. Opening, dedication, or other event for the public art, artist, or development;
 3. Developer's project management expenses associated with the public art;
 4. Services, materials, utilities or other expenses associated with the operation or maintenance of the public art;
 5. Land costs or any other costs associated with the development that are not part of and solely attributable to the public art; and
 6. Illuminating the public art if not integral to the design.
- (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.090. Process for Approval of Public Art for On-Site Installation.

- A. **Application Procedures.** Upon application for a development permit, the applicant shall be informed of the private developer cultural arts requirement and referred to the Director of the Community and Cultural Services Department in order to declare in writing the means by which the developer will comply with the requirements of this Chapter.
1. If the developer selects the installation of on-site public art work, the developer should submit art plan documentation acceptable to the Director of the Community and Cultural Services Department to support the on-site public art before review by the Architectural Review Board.
- B. **Commission Review and Approval.** Before issuance of the building permit for the

development project, the proposed public art plan documentation must be reviewed and approved by the Arts Commission, or the Public Art Committee if so designated by the Commission, for compliance with this Chapter, and any associated regulations or guidelines authorized by this Chapter.

1. The Arts Commission shall review the submitted documentation, together with the recommendation of the Director of the Community and Cultural Services Department, and approve, approve with conditions, or deny the proposed art work, and its proposed location, considering the qualifications of the artist, the aesthetic quality and harmony of the art work with the proposed development project, and the proposed location of and public accessibility to the art work. In addition, the budget for the proposed public art must be approved to ensure that only eligible expenditures are proposed and that such expenditures total the amount of the public art contribution.
2. If the developer proposes, or the Arts Commission recommends, significant revisions to the art work or architecture or physical design and layout of the proposed project to the art work, a revised application shall be submitted to the Director for review and recommendation to the Arts Commission. The Commission shall make a determination whether to approve, approve with conditions, or deny the requested revision.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.100. Appeal of Commission Decision.

The Commission shall render a written decision whether the proposed installation of on-site art work satisfies the requirements of this Chapter within 90 days after documentation acceptable to the Director of the Community and Cultural Services Department is received. Any person may seek review by the City Council of a decision made by the Arts Commission pursuant to this Section by filing an appeal within 14 consecutive calendar days from the date that the decision is made in the manner provided in Section 9.37.130, Appeals. The decision of the City Council shall be final.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.110. Additional Requirements for Public Art for On-Site Installation.

- A. **Plaque.** The public art shall be identified by a plaque that meets the standards in use by the City at the time of installation of the public art. The requirement of this paragraph may be waived if determined in a particular circumstance to be inconsistent with the intent of this Chapter.
- B. **Ownership and Maintenance of Art Work.** All on-site public art work placed on the site of the developer's project shall remain the property of the property owner and their successor(s) in the interest. The obligation to provide all maintenance necessary to preserve the art work in good condition shall remain with the property owner of the site. The developer and subsequently, the property owner, shall maintain, or cause to be maintained, in good condition the public art continuously after its installation and shall perform necessary repairs and maintenance to the

satisfaction of the City. The maintenance obligations of the property owner shall be contained in a covenant and recorded against the property and shall run with the property.

1. Failure to maintain the art work, as provided herein, is hereby declared to be a public nuisance. The City also may pursue additional remedies to obtain compliance with the provisions of this requirement, as appropriate.
2. In addition to all other remedies provided by law, in the event the owner fails to maintain the art work, upon reasonable notice, the City may perform all necessary repairs, maintenance or secure insurance, and the costs, thereof shall become a lien against the real property.

C. **Location and Relocation of On-site Public Art.** When and if the development project is sold at any time in the future, the public art must remain at the development at which it was created and may not be claimed as the property of the seller or removed from the development or its location approved by the Arts Commission. In the event that a property is to be demolished, the owner must relocate the public art to another publicly accessible, permanent location that is approved in advance by the Commission.

1. A property owner may, for good cause, petition the Arts Commission to replace or re-locate the public art to another publicly accessible location on the development project site. Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other applicable law.
2. If any approved art work placed on private property pursuant to this Chapter is removed without City approval, the certificate of occupancy may be revoked.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.120. On-Site Cultural Facilities Alternative.

- A. A developer seeking to satisfy the private developer cultural arts requirement of this Chapter may do so, if approved by the Arts Commission, through the provision of on-site cultural facilities in the amount of 2 percent of the average square foot cost of construction of the development project as set forth by resolution of the City Council times the project square footage.
- B. If the developer selects the provision of on-site cultural facilities, the developer shall submit documentation acceptable to the Directors of the Community and Cultural Services Department and Planning and Community Development to support the provision of on-site cultural facilities.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.130. Commission Review and Approval.

- A. Before issuance of the building permit for the development project, the proposed cultural facility must be reviewed and approved by the Arts Commission, or the

Public Art Committee if so designated by the Commission, for compliance with this Chapter, and any associated regulations or guidelines authorized by this Chapter.

- B. The Arts Commission shall review the submitted documentation, together with the recommendation of the Directors of the Community and Cultural Services Department and Planning and Community Development, and approve, approve with conditions, or deny the proposed cultural facility, and its proposed location within the development, considering the need for such a facility has been clearly demonstrated; the facility is sited appropriately within the development project area; the managing cultural organization has demonstrated financial capability to successfully operate the facility; the adequacy of an agreement that ensures that the cultural facility will be reserved for public or nonprofit use throughout the term of the commitment; whether the budget proposed is appropriate and that such expenditures total the amount of the cultural arts requirement.
- C. **Appeal of Commission Decision.** The Commission shall render a written decision whether the proposed on-site cultural facilities satisfy the requirements of this Chapter within ninety days after documentation acceptable to the Director of the Community and Cultural Services Department is received. Any person may seek review by the City Council of a decision made by the Arts Commission pursuant to this Section by filing an appeal within 14 consecutive calendar days from the date that the decision is made in the manner provided in Section 9.37.130, Appeals. The decision of the City Council shall be final.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.140. Cultural Arts Development Contribution.

In lieu of installation of on-site public art, the developer may make a cultural arts development contribution in accordance with the following:

- A. **Amount of Contribution.** One percent of the average square foot cost of construction of the development project as set forth by resolution of the City Council times the project square footage.
- B. **Timing of Contribution.** The project applicant shall pay the in-lieu contribution according to the schedule of fees in place on the date the fees are paid, except that the project applicant for a project that has vested rights under State or local law shall pay the applicable fees in accordance with those vested rights. The in-lieu contribution shall be paid in full upon issuance of certificate of occupancy or final inspection, whichever occurs last.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015; amended by Ord. No. 2792CCS, 10/8/2024)

§ 9.30.150. Declaration of Covenants, Conditions, and Restrictions.

If the developer elects to install on-site public art work in accordance with the requirements of this Chapter, the development project shall have recorded against it a declaration of covenants, conditions, and restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as

appropriate:

- A. The developer shall provide all necessary maintenance of the art work, including preservation of the art work in good condition to the reasonable satisfaction of the City and protection of the art work against destruction, distortion, mutilation, or other modification.
- B. The developer shall ensure that the art work will be located in an area that is freely accessible.
- C. A description of that portion of the premises which will be maintained and shall be freely accessible for the designated public art.
- D. Any other reasonable terms necessary to implement the provisions of this Chapter.
(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.160. Final City Approval.

- A. No final City approval for any project subject to this Chapter shall be granted or issued, unless and until the Director of Community and Cultural Services, after consultation with the Director of Planning and Community Development, verifies full compliance with the private developer cultural arts requirement as follows:
 - 1. The approved art work has been installed in a manner satisfactory to the Director of the Community and Cultural Services Department. Installation of art work shall be completed prior to the final inspection and issuance of a certificate of occupancy.
 - 2. In lieu art contributions have been paid, if applicable.
 - 3. Financial security in an amount equal to the acquisition and installation costs of an approved art work, in a form approved by the City Attorney, has been posted.
 - 4. The developer has executed and recorded a covenant with the Los Angeles County Recorder, as required by Section 9.30.150. The covenant shall be recorded prior to the request for final construction approvals and the issuance of a certificate of occupancy.
- B. The Director shall require that the developer submit a written verification of compliance with these requirements as applicable. Said verification shall consist of documentation sufficient to enable the Director to readily determine compliance with the provisions of this Chapter. Upon receipt of written verification from the developer, the Director shall issue a notice determining whether the developer has complied with the requirements of this Chapter. The Director's determination of compliance may be appealed to the City Council if such appeal is filed within 14 consecutive calendar days from the date that the decision is made in the manner provided in Section 9.37.130, Appeals.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.170. Cultural Arts Trust Fund—Use of Funds.

- A. There is hereby created a fund to be known as the "City Cultural Arts Trust Fund" to account for in lieu contributions paid pursuant to this Chapter. This fund and the interest thereon shall be maintained by the City Finance Director and shall be:
1. For the design, acquisition, commission, installation, improvement, repair, maintenance, conservation and insurance of an art work;
 2. To sponsor or support cultural facilities and cultural resources; and
 3. For such other equivalent artistic and cultural uses approved by the Arts Commission.
- B. During a fiscal year, the total amount of expenditures made in any year from the Cultural Arts Trust Fund for the purposes set forth in this Section shall be established in the annual City budget and approved by the City Council. The budget will be developed in keeping with community cultural priorities as established by the City's adopted Cultural Master Plan.
- C. The proposed annual expenditures shall be reviewed by the Arts Commission concurrently with the review of the budget for expenditures from the City's percent for art funds.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.180. Fee Revision by Resolution.

Pursuant to this Chapter, the per square foot amount required to satisfy the private developer cultural art requirement through the provision of on-site public art or cultural facilities, or by an in-lieu contribution shall be adopted from time to time by resolution of the City Council after a noticed public hearing. In adopting the resolution, the City Council shall identify the average square foot cost of construction for construction categories including, but not limited to commercial, residential, and tenant improvement classifications. The per square foot amount shall be calculated by multiplying the average square foot cost of construction by the factor of 2 percent for on-site public art or cultural facilities, and one percent for an in-lieu contribution. The resulting per square foot amount shall be used to determine the amount necessary to comply with the private developer cultural arts requirement selected to satisfy the obligation imposed by this Chapter.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

§ 9.30.190. Regulations.

The City Manager, or designee, is authorized to adopt administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter.

(Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)