



**CONSENT CALENDAR**

**Agenda Item # 4**

**AGENDA REPORT SUMMARY**

**Meeting Date:** July 10, 2018

**Subject:** Ordinance No. 2018-446: Public Art Development Fee

**Prepared by:** Jon Maginot, City Clerk/Assistant to the City Manager

**Approved by:** Chris Jordan, City Manager

**Attachment(s):**

1. Ordinance No. 2018-446

**Initiated by:**

Public Arts Commission

**Previous Council Consideration:**

May 8, 2018 and June 26, 2018

**Fiscal Impact:**

Adoption of the ordinance would establish a development fee that would provide funds for the implementation of the City's Public Art Program

**Environmental Review:**

Not applicable

**Policy Question(s) for Council Consideration:**

- Does the Council wish to implement a Public Art Development Fee of 1% on all non-single-family residential development?

**Summary:**

- Would require private, non-single-family developments in residential districts with total construction costs in excess of \$1M to contribute 1% of construction costs to the Los Altos Public Art Fund
- Would require private developments in commercial, office and public facility districts to install publicly accessible art valued at not less than 1% of construction costs or to contribute 1% of construction costs to the Los Altos Public Art Fund
- Funds collected will be used for acquisition, maintenance, and promotion of temporary and permanent art and art programs throughout the City

**Staff Recommendation:**

Move to adopt Ordinance No. 2018-446 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



**Subject:** Ordinance No. 2018-446: Public Art Development Fee

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**Purpose**

To adopt an Ordinance establishing a Public Art Development Fee

**Background**

On June 26, 2018, the City Council introduced an ordinance establishing a Public Art Development Fee. The ordinance establishes that all private, non-single-family developments with total construction costs in excess of \$1M shall contribute 1% of construction costs to the Public Art Fund.

**Discussion/Analysis**

This ordinance will go into effect 31 days after adoption.

**Options**

- 1) Adopt the ordinance

**Advantages:** Establishes a Public Art Development Fee

**Disadvantages:** None identified

- 2) Modify the ordinance

**Advantages:** May allow for additional edits needed to clarify or modify the proposed ordinance

**Disadvantages:** Would require re-introduction of the ordinance and delay implementation of the Public Art Development Fee

- 3) Do not adopt the ordinance

**Advantages:** None identified

**Disadvantages:** Would not create a Public Art Development Fee. The City's Public Art Program would continue to be funded by General Fund dollars

**Recommendation**

The Public Arts Commission and staff recommend Option 1.

**ORDINANCE NO. 2018-446**

**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 PRIVATE DEVELOPMENT PROJECTS AND  
ADOPTING CEQA EXEMPTION FINDINGS**

**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 engaging 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**, new development generally results in aesthetic impacts to a community; and

**WHEREAS**, as development and revitalization of real property in the City continues, the opportunity for creation of new cultural and artistic resources is diminished and the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased; and

**WHEREAS**, through the inclusion of public art or payment of an in-lieu fee, developers will address at least a portion of the aesthetic impact of their developments on the community by providing art or an in-lieu fee that can be used to increase the presence of art; and

**WHEREAS**, the provision of public art, or payment of a fee, will benefit the public interest, convenience, health safety and/or welfare and address the legitimate public concern of mitigating aesthetic impacts of development; and

**WHEREAS**, the legislative requirement to provide public art or an in-lieu fee generally applies broadly to all similarly situated private developers throughout the City and is a permissible land use regulation and a valid exercise of the City's traditional police power; and

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

**WHEREAS**, on June 26, 2018, the City Council held a duly notice public meeting and all interested parties were provided an opportunity to comment on this ordinance; and

**WHEREAS**, this Ordinance is exempt from environmental review under the California Environmental Quality Act, Cal. Pub. Res. Code sections 21000, *et seq.* and the CEQA Guidelines, 14 Cal. Code Regs. Sections 15000, *et seq.*, each as a separate and independent basis, for the reasons set forth in Section 4 of this Ordinance.

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

**SECTION 1. AMENDMENT OF CODE:** Chapter 3.52 “Public Art Funding” is hereby added as follows:

**“Chapter 3.52 – “Public Art Funding”**

**3.52.010 – Definitions**

The definitions set forth in this Section shall govern the application and interpretation of this Chapter 3.52.

- A. “Applicant” shall mean the property owner or developer who submits a development application to the City and their successors
- B. “Publicly accessible art” shall mean art which can be reasonably viewed or experienced from the public right-of-way or to which access is unrestricted to members of the public at all times of day.
- C. “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.

**3.52.020 – 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. Such funds may be used for the following purposes, including: acquisition, placement, maintenance, and promotion of temporary and permanent art and art programs on City-owned, public property throughout the City.

**3.52.030 – 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-residential 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 3.52.020. 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 3.52.020. 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 applicant, and in lieu of developing on-site public artwork, a Public Art in-lieu contribution of one percent (1%) may be placed into the Los Altos Public Art Fund to be used pursuant to Section 3.52.020. Such contribution shall not exceed two hundred thousand dollars (\$200,000). Costs directly attributable to construction for Affordable Housing units as defined by Section 14.28.020 shall not be included in valuation.

**3.52.040 – 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 detailed plan that demonstrates how the property owner or developer will maintain the artwork, including schedule, cost and manner of maintenance; and

- E. A narrative statement or plan that demonstrates the public art will be displayed in a publicly accessible manner.

### **3.52.050 – Approval for placement of public art on private property**

An application for placement of public art on private property submitted pursuant to Section 3.52.040 shall be reviewed by the Public Arts Commission for recommendation prior to final review of the application as a whole by the City Council. Public art on private property shall conform to standards adopted by Resolution of 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. Installation of public art on private property shall occur concurrent with project construction prior to issuance of final certificate of occupancy.

### **3.52.060 – Modification of an approved public art on private property application**

For modifications to an approved application for public art on private property, the Public Arts Commission shall be the decision-making body. The action of the Public Arts Commission shall be final unless it is appealed in writing to the City Council within fifteen (15) days of the date of the action, and the appropriate fee is paid.

Any material damage to, or removal or replacement of public art installed pursuant to this Chapter shall require immediate written notification to the City and, within thirty (30) days thereof, full repair or in-kind replacement of same, or payment of a Public Art in-lieu contribution as defined in Section 3.52.030.

### **3.52.070 – Ownership of public art on private property; insurance**

The installation or placement of public art on private property shall not constitute a donation to the City. Ownership of public art on private property shall continue with the applicant. The City shall bear no obligation nor assume any responsibility or liability with respect to the installation, operation or maintenance of any art installed on private property, which obligations, responsibilities and liabilities shall be borne by the ~~applicant~~property owner.

The ~~applicant~~property owner shall be required to carry insurance to cover the full replacement cost of the public art installed pursuant to this Chapter. Such insurance shall include coverage resulting from any loss or damage to, including but not limited to vandalism. The ~~applicant~~property owner shall, upon request of City, timely provide evidence of such insurance coverage to the City.

### **3.52.080 – Waiver.**

Notwithstanding any other provision of this chapter, the requirement to install public art on private property or to pay a Public Art in-lieu contribution may be waived, adjusted or reduced by the City Council if an applicant demonstrates that there is no reasonable relationship between the impact of the proposed development and the requirement to install

public art or to pay the Public Art in-lieu contribution, or that applying the requirements of this chapter would take property in violation of the United States Constitution or California Constitution or would result in any other constitutional result.

### **3.52.090 – Enforcement**

The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter, or a property owner with art installed governed by this chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit, including a development approval, building permit or certificate of occupancy. The City shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

**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 any of the remaining portions of this code.

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 4. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.** Based on all the evidence presented in the administrative record, including but not limited to the staff report for the proposed ordinance, the City Council hereby finds and determines that the proposed ordinance is exempt from CEQA review: (1) pursuant to CEQA Guidelines Sections 15050(c)(2) and 15061(b)(3) because it does not authorize any direct or indirect changes to the physical environment and there is no possibility of a significant effect on the environment; (2) because it is not a “project” for purposes of CEQA and is exempt pursuant to State CEQA Guidelines sections 15378(b)(2); (3) pursuant to CEQA Guidelines Section 15378(b)(4) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; (4) because it is not intended to apply to any specifically identified development project and as such it is speculative to evaluate any such future project now; and/or (5) because it is not intended to, nor does it, provide CEQA clearance for future development-related projects by mere establishment of the ordinance’s requirements. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

**SECTION 5. NOTICE OF EXEMPTION.** The City Council hereby directs City staff to prepare and file a Notice of Exemption with the County, County Clerk within five working days of the adoption of this ordinance.

**SECTION 6. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**SECTION 7. 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 \_\_\_\_\_, 2018 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2018 passed and adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Jean Mordo, MAYOR

Attest:

\_\_\_\_\_  
Jon Maginot, CMC, CITY CLERK