CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date: January 5, 2010

To: Honorable Mayor & City Council

From: Brad Meyerowitz, Recreation Services Manager

Subject: Criteria for Approving Proposed Public Art

Attachments: 1. Beverly Hills Public Art Ordinance

INTRODUCTION

Recently a proposed public art installation by the owners of the project at 350 North Canon Drive (Le Grand Passage) was denied by the Fine Art Commission as the Commission determined that the proposed art did not meet the criteria set forth in Section 3-1-804(C)(3) of the Beverly Hills Municipal Code, which requires the fine art to have "intrinsic quality and enduring value beyond any decorative characteristics." The Commission determined that the proposed artwork was decorative in nature and was not fine art. Councilmember Brucker has requested that the City Council review the current criteria for the City's approval process in accepting public fine art to meet the obligations of the Beverly Hills Public Art Ordinance.

DISCUSSION

Beverly Hills Municipal Code Section 3-1-802(A) requires any person constructing, reconstructing or constructing an addition to a commercial, industrial or mixed use building within the City that has a construction cost between $500,000 and $1,000,000 to install fine art that has a value that is equivalent to or exceeds one percent (1%) of that cost. If the construction cost exceeds $1,000,000 then the art must have a value equivalent to or exceeding one and one-half percent (1.5%). In lieu of providing the fine art, payment may be made to the City in an amount of ninety percent (90%) of the value required by subsection A.

If the option of installing art is selected, then the proposed art is required to be brought before the Fine Art Commission for approval (BHMC § 3-1-804).

Subsection C of 3-1-804 sets forth the standards the proposed fine art must satisfy in order to be approved. The standards are as follows:

1. The fine art has the minimum value required by section 3-1-802 of this article. Such value shall be established by an appraisal performed by an independent, qualified fine

art appraiser or other evidence satisfactory to the commission, including, but not limited to, bona fide invoices, purchase orders or agreements, and auction records. Utility and maintenance costs incurred to operate and maintain the fine art over time shall not be considered in determining the value of the proposed fine art.

2. The fine art has been created by an established artist. "Established artist" shall mean a professional artist who derives his or her income primarily from his or her work as an artist and is accepted and recognized in the field of art locally, regionally, nationally or internationally as evidenced by art journals, art books or art gallery reputation. The members of the architectural, engineering, design or landscaping firms retained for the design and construction of the subject commercial or mixed use building shall not be considered qualified established artists for the purposes of this article.

3. The fine art has intrinsic quality and enduring value beyond any decorative characteristics.

4. The fine art is compatible with and enhances the aesthetic quality of the building site. The relationship of the fine art to the site in terms of physical size, shape and colors shall be considered as well as the social and cultural interaction of the fine art with the space it ornaments.

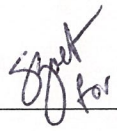
If directed to revise the Public Art Ordinance, it is anticipated that staff will need to reprioritize work tasks in order to conduct the research required to make the recommended amendments.

FISCAL IMPACT

There is no fiscal impact. The staff time to research and develop recommendations for amending the Ordinance is already allocated in the current Fiscal Year budget within the Community Services Department's City-Wide Governance budget unit.

RECOMMENDATION

Staff seeks direction from City Council regarding revisions to the Public Art Ordinance. Should direction be given to move forward with amending the Ordinance, then staff will work with the Fine Art Commission to include their input. As stated earlier, if staff is requested to research and provide recommendations to amending the Ordinance, staff will need to reprioritize their current work tasks, potentially impacting some day-to-day operations. Staff will return to Council within 3 months with recommendations if directed to pursue.



Steve Miller
Approved By

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ART & CULTURAL EVENTS
(310) 285-2523
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December 1, 2009

Ms. Laurel Karabian
Dickranian Management Company
451 North Canon Drive, Suite 8
Beverly Hills, CA 90210

Dear Ms. Karabian,

At their November 19, 2009 meeting, the City of Beverly Hills Fine Art Commission formally denied the proposed commission which was recommended for installation at 350 North Canon Drive. The proposal was denied based on the fact that the artwork does not meet one of the four criteria as stated in subsection 3-1-804C of the City of Beverly Hills Municipal Code. The criteria listed states that "the fine art has intrinsic quality and enduring value beyond any decorative characteristics". The Commission did not feel that the artwork was fine art; part of that decision was based on the sample that was passed around during your presentation. The Commission considered the artwork as decorative.

Fine Art Commission decisions may be appealed by any interested party to the City Council within fourteen **(14)** days of the date of the Commission's decision. Appeals must be filed in writing with the City Clerk at 455 North Rexford Drive, Room 290, Beverly Hills, CA 90210, and must be accompanied by an appeal fee. Please contact Assistant City Clerk Patty Ogden at 310.285.1000 for additional information regarding the appeal.

Please contact me should you need any additional information. I can be reached at 310.285.2523.

Sincerely,

Brad Meyerowitz
Recreation Services Manager

cc: Lois Foraker, Executive Assistant 1, Community Services Department

Article 8. Beverly Hills Public Art Ordinance

3-1-801: TITLE:

This article shall be known as the *BEVERLY HILLS PUBLIC ART ORDINANCE.* (1962 Code § 8-11.01 et seq.; amd. Ord. 96-O-2259, eff. 6-7-1996)

3-1-802: PUBLIC ART OR IN LIEU PAYMENT REQUIRED:

A. Any person constructing, reconstructing or constructing an addition to a commercial, industrial or mixed use building within the city shall provide fine art as follows:

1. Install fine art that has a value that equals or exceeds one percent (1%) of the total construction cost of the building when the total construction cost is between five hundred thousand dollars ($500,000.00) and one million dollars ($1,000,000.00).

2. Install fine art that has a value that equals or exceeds one and one-half percent (1.5%) of the total construction cost of the building when the total construction cost exceeds one million dollars ($1,000,000.00).

B. In lieu of providing the fine art required by subsection A of this section, payment may be made to the city in an amount of ninety percent (90%) of the value required by subsection A of this section. All payments made pursuant to this subsection shall be segregated and used only as provided in section 3-1-808 of this article. (1962 Code § 8-11.01 et seq.; amd. Ord. 94-O-2193, eff. 3-4-1994; Ord. 96-O-2259, eff. 6-7-1996; Ord. 97-O-2282, eff. 7-4-1997; Ord. 98-O-2308, eff. 9-11-1998; Ord. 07-O-2525, eff. 9-21-2007; Ord. 07-O-2530, eff. 10-18-2007)

3-1-803: DEFINITIONS:

The following definitions are applicable to provisions of this article:

COMMERCIAL BUILDING: Any building or structure, all or part of which contains a commercial or industrial use permitted by this code; provided, however, "commercial structure" shall not include any building or structure constructed or reconstructed for the elderly or handicapped pursuant to title 10, chapter 3, article 12.5 of this code.

CONSTRUCTION COST: The total value of all construction, reconstruction or addition work on a commercial structure as determined by the director of building and safety in issuing a building permit for such construction, reconstruction or addition.

FINE ART: A work of art which is freestanding or freehanging in that it is not a structural part of

a building or other structure, nor an architectural element on or in which the work of fine art is placed, installed, or affixed. Fine art includes, but is not limited to, sculptures, monuments, wall hangings, tapestries, photographs, etchings, engravings and paintings. Fine art shall not include decorative, ornamental or functional elements designed by the architect or other design consultantretained for the design and construction of the subject building or art objects that are mass produced with a standard design such as fountains and statuary objects.

MIXED USE OR MIXED USE BUILDING: A site with two (2) or more different land uses, such as, but not limited to, a combination of residential, office or retail uses in a single or physically integrated group of structures or the development of a combination of different land uses in a single zone.

RECONSTRUCTION: All alterations or repairs made to a commercial, industrial or mixed use building within any twelve (12) month period where: a) any such alterations or repairs result in changes to the exterior of the building, other than signs or fabric awnings, that can be seen from the public right of way, b) the changes to the exterior of the building are not limited to repair and ordinary maintenance, c) the building permit valuation of the changes to the exterior of the building exceeds five thousand dollars ($5,000.00), and d) the building permit valuation of all alterations or repairs to the building exceeds five hundred thousand dollars ($500,000.00).

For the purposes of this subsection, the twelve (12) month period referenced above shall include all building permits issued during the twelve (12) months following final inspection of an alteration or repair.

Notwithstanding the foregoing, reconstruction necessitated by damage due to fire, flood, wind, earthquake, or other disaster shall be exempt from this article. (1962 Code § 8-11.01 et seq.; amd. Ord. 90-O-2096, eff. 9-6-1990; Ord. 96-O-2259, eff. 6-7-1996; Ord. 97-O-2282, eff. 7-4-1997; Ord. 98-O-2308, eff. 9-11-1998; Ord. 07-O-2525, eff. 9-21-2007; Ord. 07-O-2530, eff. 10-18-2007)

3-1-804: APPROVAL REQUIRED OF PROPOSED FINE ART:

A. After final completion of architectural review of a structure under title 10, chapter 3, article 30 of this code, an application shall be filed with the city for the fine art commission approval of the fine art proposed for such building. The application shall be on the form designated by the city, containing the following information:

1. Preliminary sketches, photographs, a model or other documentation of sufficient descriptive clarity to indicate the nature of the proposed fine art;

2. Curriculum vitae of the artist;

3. An appraisal by an independent, qualified fine art appraiser or other evidence satisfactory to the commission of the value of the proposed fine art including, but not limited to, bona fideinvoices, purchase orders or agreements, and auction records;

4. The site plans and elevations as approved by the architectural commission;

5. An estimate of the construction cost of the proposed commercial or mixed use structure;

6. Sketches, photographs, or other documentation sufficient to show the relationship of the proposed fine art to the proposed commercial or mixed use structure;

7. Such other information as may be required by the fine art commission in considering the application under the standards established by subsection C of this section.

B. Upon receiving a complete application, the fine art commission shall schedule a meeting to consider the application. Fourteen (14) days' prior written notice shall be provided to the applicant of the time and place of the meeting at which the application will be heard.

C. The fine art commission shall approve the application if the proposed fine art satisfies all of the following standards:

1. The fine art has the minimum value required by section 3-1-802 of this article. Such value shall be established by an appraisal performed by an independent, qualified fine art appraiser or other evidence satisfactory to the commission, including, but not limited to, bona fide invoices, purchase orders or agreements, and auction records. Utility and maintenance costs incurred to operate and maintain the fine art over time shall not be considered in determining the value of the proposed fine art.

2. The fine art has been created by an established artist. "Established artist" shall mean a professional artist who derives his or her income primarily from his or her work as an artist and is accepted and recognized in the field of art locally, regionally, nationally or internationally as evidenced by art journals, art books or art gallery reputation. The members of the architectural, engineering, design or landscaping firms retained for the design and construction of the subject commercial or mixed use building shall not be considered qualified established artists for the purposes of this article.

3. The fine art has intrinsic quality and enduring value beyond any decorative characteristics.

4. The fine art is compatible with and enhances the aesthetic quality of the building site. The relationship of the fine art to the site in terms of physical size, shape and colors shall be considered as well as the social and cultural interaction of the fine art with the space it ornaments.

D. The fine art commission may conditionally approve proposed fine art subject to such conditions that the commission deemsreasonably necessary for such fine art to satisfy the standards set forth in subsection C of this section. Upon the written request of the property owner, the commission may later reconsider a decision denying an application if the applicant installs such fine art on the subject site and is able to demonstrate to the satisfaction of the commission that the fine art as installed meets the standards set forth in subsection C of this section. Such request for reconsideration also may be made by the

property owner and considered by the commission if changes are made either to the subject building or the proposed fine art such that there are new facts upon which the commission may reconsider its earlier denial. (Ord. 90-O-2096, eff. 9-6-1990; amd. Ord. 96-O-2259, eff. 6-7-1996; Ord. 07-O-2530, eff. 10-18-2007)

3-1-805: LOCATION OF FINE ART:

A. The fine art required by this article shall be located in a public place.

B. "Public place" means any area on public or private property which is easily accessible and clearly visible to the general public. If located on private property, the area must be open to the general public and clearly visible from adjacent public property such as a street or other public thoroughfare or sidewalk.

C. When requested by the applicant for the certificate of occupancy, the fine art commission may designate a site on city owned property; provided further, such site is subject to approval by the city council. (1962 Code § 8-11.01 et seq.; amd. Ord. 94-O-2193, eff. 3-4-1994; Ord. 96-O-2259, eff. 6-7-1996)

3-1-806: TIME OF INSTALLATION OF ART OR PAYMENT:

A. Prior to final inspection of construction or reconstruction that triggers the requirements of this article, all fine art required by this article shall be installed as approved by the fine art commission.

B. Prior to the issuance of a building permit that triggers the requirements of this article, the applicant shall make either the in lieu payment authorized by this article or the applicant shall deposit with the city cash, a letter of credit, or other security satisfactory to the director of building and safety, in an amount equal to the value of the fine art required by subsection 3-1-802A of this article. The security shall guarantee installation of fine art as required by this article. If the fine art required by this article is not installed within three (3) months after final inspection of the construction or reconstruction that triggers the requirements of this article, then the applicant shall forfeit the security posted with the city. The city shall be empowered to use the security to purchase and install alternate fine art in a public place within the city.In addition, the city may utilize any other means available to remedy a violation of this article.

C. If the issuance of a building permit does not trigger the requirements of this article, but that building permit: 1) has a valuation in excess of two hundred fifty thousand dollars

($250,000.00), or 2) is issued within one year after final inspection of improvements with a valuation in excess of two hundred fifty thousand dollars ($250,000.00), then the applicant shall deposit cash, a letter of credit, or other security satisfactory to the director of building and safety in an amount equal to the amount required by subsection 3-1-802B of this article. The purpose of such security is to guarantee installation of the art required by this article if later improvements to the building trigger the public art requirement and the applicant is required to pay the applicant's fair share of the public art requirement for the building renovations. The deposit or other security shall be returned to the applicant if the requirements of this article are not triggered within one year after the date of the final inspection of the building improvements with a valuation in excess of two hundred fifty thousand dollars ($250,000.00). The deposit or other security shall be forfeited if the applicant does not fulfill the requirements of this article within three (3) months after final inspection of the construction or reconstruction that triggers the requirements of this article. The forfeited security shall be used as provided in section 3-1-808 of this article. (1962 Code § 8-11.01 et seq.; amd. Ord. 96-O-2259, eff. 6-7-1996; Ord. 98-O-2308, eff. 9-11-1998; Ord. 07-O-2525, eff. 9-21-2007)

3-1-807: OWNERSHIP, MAINTENANCE, AND INSURANCE:

The holder of the certificate of occupancy of the structure for which fine art subject to the provisions of this article is designated shall:

A. Own such fine art, and if the building is sold, shall transfer ownership of the fine art as an integral part of the sale of the building;

B. Maintain such fine art at the on site location as approved by the fine art commission unless a different on site location is authorized in writing by the commission; or reimburse the city for the cost of maintenance where the art is located off site;

C. Maintain in full force and effect, at all times, insurance coverage in the amount of the purchase price and would insure such fine art against any loss or damage, including vandalism in accordance with provisions of title 3, chapter 4 of this code. (1962 Code § 8-11.01 et seq.; amd. Ord. 96-O-2259, eff. 6-7-1996)

3-1-808: SEPARATE FUND FOR PURCHASE OF FINE ART:

All monies paid pursuant to subsection 3-1-802B of this articlein lieu of procurement and placement of fine art shall be held in a separate fund of the city, and shall be used solely for the acquisition, installation, improvement, maintenance, and insurance of fine art for display in the city. Any fine art purchased with such funds shall be the property of the city. (1962 Code § 8-11.01 et seq.; amd. Ord. 96-O-2259, eff. 6-7-1996)

3-1-809: RENOVATION OF BUILDINGS THAT HAVE COMPLIED WITH THE MAXIMUM REQUIREMENTS OF THIS ARTICLE:

Except as provided below, a building owner shall be exempt from further compliance with this article if that owner or previous owners have provided fine art and/or paid in lieu fees for the building and the combined value of all fine art and in lieu fees associated with the building equaled or exceeded the maximum value required by section 3-1-802 of this article at the time that such art was installed or such fees were paid.

This exemption shall not apply to additions to the subject building or to reconstruction that qualifies as construction of a new building for the purposes of title 10 of this code. (Ord. 98-O-2308, eff. 9-11-1998)

3-1-810: APPEAL TO COUNCIL:

Any final decision of the fine art commission may be appealed to council under title 1, chapter 4, article 1 of this code. (1962 Code § 8-11.01 et seq.; amd. Ord. 98-O-2308, eff. 9-11-1998)