AGENDA REPORT

Meeting Date:	September 17, 2007
Item Number:	F-5
To:	Honorable Mayor & City Council
From:	City Attorney
Subject:	AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS PUBLIC ART ORDINANCE PERTAINING TO MIXED-USE BUILDINGS
Attachments:	1. Ordinance

RECOMMENDATION

Staff recommends adoption of this ordinance.

INTRODUCTION

This ordinance includes mixed-use developments as a project subject to the requirements of the Public Art Ordinance.

DISCUSSION

At the City Council meeting of September 4, 2007, the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

There will not be any expenses incurred by the City due to the proposed amendments. Future mixed-use projects, however, will be required to provide art in a value that is likely higher than under the current ordinance.

Laurence S. Wiener, City Attorney

Approved By

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS PUBLIC ART ORDINANCE PERTAINING TO MIXED-USE BUILDINGS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 3-1-802 of Article 8, Chapter 1 of Title 3 of the Beverly Hills Municipal Code shall be amended to read as follows:

"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 ($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."

Section 2. The definition of "mixed-use" or "mixed-use building" shall be added to Section 3-1-803 of Article 8, Chapter 1 of Title 3 of the Beverly Hills Municipal Code to read as follows:

"MIXED-USE or MIXED-USE BUILDING" A site with two 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 use in a single zone."

Section 3. The definition of "reconstruction" set forth in Section 3-1-803 of Article 8, Chapter 1 of Title 3 of the Beverly Hills Municipal Code is hereby amended to read as follows:

"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."

Section 4. Section 3-1-804 of Article 8, Chapter 1 of Title 3 of the Beverly Hills Municipal Code shall be amended to read as follows:

"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 vita 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 fide invoices, 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 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. Thee 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 deems reasonably 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.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of

the Government Code; shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 7. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective
:

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

VINCENT P. BERTONI, AICP
Director of Planning and Community Development

STEPHEN M. MILLER
Director of Community Services