



STAFF REPORT

Meeting Date: September 23, 2014

To: Honorable Mayor & City Council

From: Nancy Hunt-Coffey, Assistant Director of Community Services

Subject: Recommendation by Fine Art Council Liaisons Mayor Bosse and Vice Mayor Gold and the Fine Art Commission Regarding Proposed Changes to the Fine Art Ordinance

Attachments:

1. Current ordinance
2. Red line proposed ordinance
3. Proposed ordinance

INTRODUCTION

The Fine Art Council liaisons, Mayor Bosse and Vice Mayor Gold, as well as the Fine Art Commission recommend that substantial changes be made to the Fine Art Ordinance. This includes changes, such as: lowering the project valuation threshold which will trigger the fine art obligation; clarifying sections of the code that were vague or in conflict; and providing guidance on handling gifts of artwork as well as deaccessioning artwork.

DISCUSSION

The art program for the City has grown to the point where revisions to the Fine Art Ordinance need to be made. There are sections of the current ordinance which are not clear, or are difficult to implement and track. The proposed changes to the ordinance are summarized as follows:

- Expand and clarify the definitions of terms, such as the difference between fine art and decorative art
- Lower the value of construction cost which will trigger the fine art obligation. In the current ordinance, the fine art obligation is essentially triggered at \$500,000. Under the proposed language, the obligation would be triggered for projects that are valued at \$250,000 or above.
- Expand the allowable uses of the fine art fund to include planning, and promotional activities associated with the art collection.
- Clarify the process and information required from developers who seek to fulfill their art obligation by installing fine art. For example, requiring developers or

owners to provide documentation which demonstrates that their recommended artist has sold fine art pieces of similar size, medium and condition at or above the value of their project's fine art obligation.

- Include a new section outlining for developers and owners the items that do not qualify as eligible expenses that will fulfill their fine art obligation.
- Require that a plaque be installed with any developer owned art.
- Clarify the responsibilities of an owner once a piece of art is approved by the Commission and installed on a property. For example, property owners will be required to record a covenant with Los Angeles County Recorder, indicating to any future owners that the art must remain with the property and that it satisfies the fine art obligation.
- Include a section on proposed gifts of fine art, and provide a process for deaccessioning artwork from the City's collection, should it be damaged, or present other technical issues.

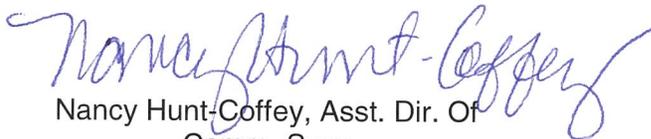
As with the current ordinance, if the issuance of a building permit does not trigger a Fine Art Obligation (e.g., only interior tenant improvements are being made to an existing building), but such building permit has a valuation equal to or greater than two hundred fifty thousand dollars (\$250,000), then the applicant will be required to make a deposit with the City. The purpose of the deposit is to guarantee installation of the art, or an in lieu fee, if later improvements to the building trigger the Fine Art Obligation. The deposit or other security will be returned to the applicant if the Fine Art Obligation is not triggered within one year after the date of the final inspection of the building improvements with the valuation of two hundred fifty thousand dollars (\$250,000).

FISCAL IMPACT

None at this time. With the lowering of the threshold by which the fine art obligation will be triggered, it is possible that over time additional funds could be generated for the fine art fund.

RECOMMENDATION

The Fine Art Council liaisons, Mayor Bosse and Vice Mayor Gold, as well as the Fine Art Commission recommend that the City Council consider the proposed changes to the fine art ordinances.



Nancy Hunt-Coffey, Asst. Dir. Of
Comm. Svcs

Approved By

Attachment 1

Current Ordinance

Article 8. Beverly Hills Public Art Ordinance

3-1-801: Title

3-1-802: Public Art Or In Lieu Payment Required

3-1-803: Definitions

3-1-804: Approval Required Of Proposed Fine Art

3-1-805: Location Of Fine Art

3-1-806: Time Of Installation Of Art Or Payment

3-1-807: Ownership, Maintenance, And Insurance

3-1-808: Separate Fund For Purchase Of Fine Art

3-1-809: Renovation Of Buildings That Have Complied With The Maximum Requirements Of This Article

3-1-810: Appeal To Council

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 consultant retained 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 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 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 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. (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 article in 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)

Attachment 2

Redline Proposed Ordinance

~~3-1-801: TITLE: ORDINANCE NO. 14-O-_____~~

~~This article shall be known as the~~

ORDINANCE OF THE CITY OF BEVERLY HILLS PUBLIC ART ORDINANCE.

~~3-1-802: AMENDING THE BEVERLY HILLS MUNICIPAL CODE REGARDING PUBLIC ART OR IN-LIEU PAYMENT REQUIRED:~~

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

~~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:~~ Section 1. Public Art. The City Council hereby amends and restates in its entirety "Article 8. Beverly Hills Public Art Ordinance" of "Chapter 1: TAXATION AND FEES" of "Title 3. TAXATION, FINANCE, PURCHASING, AND RISK MANAGEMENT" 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.~~

~~3-1-803~~

Article 8. Beverly Hills Fine Art Ordinance

3-1-801: DEFINITIONS:

The following definitions are applicable to the provisions of this article:

ACT OF GOD: A direct, sudden, and irresistible action of natural forces such as could not reasonably have been foreseen or prevented, as a flood, hurricane, earthquake, or other natural catastrophe.

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

COMMISSION: The Fine Art Commission.

CONSTRUCTION COST: The total value of all building permits issued by the City as they relate to the 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~~ Commercial/Industrial Building, or the office or retail portion of a Mixed-Use Building in the City.

DECORATIVE ART: Arts and crafts that are employed in the making of ornamental and functional works in a wide range of materials. Decorative arts are concerned with design, decoration, ornamentation and/or functionality of the object rather than the purely aesthetic.

FINE ART: ~~A work of art which is freestanding or free hanging 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 Art produced or intended primarily for beauty rather than utility. Fine Art includes, but is not limited to, ~~sculptures, monuments, wall hangings, tapestries, photographs, etchings, engravings and paintings:~~ sculpture, photography, drawing, multi-media art and painting. Fine art Art shall not include the following: (i) decorative, ornamental or functional elements designed by the architect or other design consultant retained for the design and construction of the subject building ~~or;~~ (ii) art objects that are mass produced with a standard design such as fountains and statuary objects; (iii) an artistic or architectural element that is a structural part of a building; or (iv) Decorative Art.

FINE ART OBLIGATION: The obligation to provide art or make an in lieu payment as specified in section 3-1-802 of this article.

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.

PROPERTY OWNER: The title holder of the subject property.

RECONSTRUCTION: All alterations or repairs made to a Commercial/Industrial Building or the office and/or retail portion of a Mixed-Use Building within any twelve (12) month period where:

1. Any such alterations or repairs result in changes to the exterior of the building, with the exception of signs and/or awnings;
2. The changes to the exterior of the building are not limited to repair and/or ordinary maintenance;
3. ~~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~~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).; and

~~4. 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.~~

~~5. Notwithstanding the foregoing, reconstruction necessitated by damage due to fire, flood, wind, earthquake, or other disaster shall be exempt from this article.~~

~~6. The building permit valuation of all alterations or repairs to the building equals or exceeds two hundred and fifty thousand dollars (\$250,000.00).~~

3-1-802: FINE ART OBLIGATION

A. Any construction, reconstruction or additions, to a Commercial/Industrial Building or Mixed-Use Building in the City of Beverly Hills shall be assessed with the obligation to provide Fine Art as follows:

1. For projects with total construction costs between \$250,000 to \$1,000,000, the Fine Art Obligation shall be satisfied by either of the following: (a) installation of Fine Art that has a value equal to, or exceeding, one percent (1%) of the total construction costs; or (b) payment of an in lieu fee to the Fine Art Fund equal to ninety percent (90%) of the value required by the immediately preceding subsection (a).

2. For projects with total construction costs equal to or greater than \$1,000,000.01, the Fine Art Obligation shall be satisfied by either of the following: (a) installation of Fine Art that has a value equal to, or exceeding, one and one-half (1.5%) of the total construction costs; or (b) payment of an in lieu fee to the Fine Art Fund equal to ninety percent (90%) of the value required by the immediately preceding subsection (a).

B. If the in lieu payment option has been chosen pursuant to paragraph A of this section 3-1-802, then such in lieu payment shall be made *prior* to the issuance of the related building permit. Once the funds for the in lieu payment have been made available to the Fine Art Fund, then the Property Owner's obligations under this article shall have been fulfilled.

3-1-803: SEPARATE FUND FOR PURCHASE OF CITY-OWNED ART

All payments made to the Fine Art Fund of the City shall be used solely for the following in connection with Fine Art: (1) planning, (2) acquisition (including appraisal fees), (3) installation, (4) improvement, (5) maintenance (including professional services required to maintain the integrity of the public art collection), and (6) promotional activities associated with City-owned Fine Art for display in the City. Any Fine Art purchased with such funds shall be the property of the City, and will have qualified for purchase by the Fine Art Commission subject to the requirements set forth in Section 3-1-805 of this article.

3-1-804: ~~APPROVAL REQUIRED OF~~ APPLICATION REQUIREMENTS FOR PROPOSED FINE ART:

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

1. Preliminary sketches, photographs, ~~a model~~models, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed ~~fine art~~Fine Art;
2. Curriculum vitae of the artist;
3. An appraisal by an independent, qualified ~~fine art~~Fine Art appraiser or other evidence satisfactory to the ~~commission~~Commission of the value of the proposed ~~fine art~~Fine Art, including, but not limited to, bona fide invoices, ~~purchase orders or agreements, and~~ auction records; and Fine Art gallery records;
4. ~~The site plans and elevations as approved by the architectural commission;~~ Documentation showing at least one piece of the same or comparable medium, size, and condition that has sold in the last five (5) years, at or above the required Fine Art Obligation value shall be included;
5. ~~An estimate of the construction cost of the proposed commercial or mixed use structure;~~6. Sketches, photographs, or other documentation sufficientrepresenting to showscale the relationship of the proposed fine artFine Art as installed to the proposed commercial or mixed use structure;7. use structure. Final approval will be contingent upon accurate depiction of proposed artwork and accurate depiction of installation of artwork; and
6. 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 sectionrequested by the

Director of Community Development deemed important for the Fine Art Commission to consider.~~B.~~

Upon receiving a complete application, the ~~fine art commission~~Fine Art Commission shall ~~schedule a meeting to~~ consider the application. ~~Fourteen (14)~~ at its next regularly scheduled meeting; provided however, that the complete application must be received at least two weeks prior to the meeting at which it will be considered. Ten (10) days² prior written notice shall be provided to the applicant of the time and place of the meeting at which the application will be ~~heard.~~considered.

3-1-805: FINE ART CRITERIA

~~C. The fine art commission~~The Fine Art Commission shall approve the application if the proposed ~~fine art~~Fine Art satisfies all of the following ~~standards~~criteria:

1. The ~~fine art~~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~~ as determined by the appraisal submitted along with the application pursuant to Section 3-1-804. Such appraisal shall not use the current market value of materials used to produce a comparable art piece as a basis for determining the value of the proposed fine art.Fine Art. The value of the Fine Art shall not include the items listed in Section 3-1-806 of this article.

2. The ~~fine art~~Fine Art has been, or will be, 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.~~Fine Art, internationally or nationally. Documentation to support the artist’s stature should include, but is not limited to: (a) inclusion in art journals and art books; (b) Fine Art gallery representation; (c) museum exhibition or collection; (d) auction house records; and, (e) letters of support from Fine Art curators. The members of the architectural, engineering, design or landscaping firms retained for the design and construction of the ~~subject~~ commercial or mixed ~~use~~ building under review shall not be considered qualified established artists for the purposes of this article.

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

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

~~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.~~

3-1-806: INELIGIBLE COSTS

Expenses for the following do not qualify as fulfilling the Fine Art Obligation:

1. Art Consultants;
2. Appraisers;
3. Insurance;
4. Maintenance costs;
5. Shipping;
6. A structure, upon which artwork is displayed (e.g. a pedestal);
7. Professional fees for the artist(s);
8. Labor of assistants, materials, and contracted services required toward the installation of the work of art;
9. Any required permit or certificate fees;
10. Business and legal costs directly related to the project;
11. Studio and operating costs;
12. Communication and other indirect costs (insurance, utilities);
13. Travel expenses of the artist for site visitation and research;
14. Transportation of the work of art to the site;

- 15. Preparation of the site to receive the artwork;
- 16. Installation of the completed work of art;
- 17. Documentation (e.g., color slides and black and white photographs of the artwork); and
- 18. Directional elements such as super graphics, plaques, or color-coding except where these elements are integral parts of the original work of art.

3-1-805: LOCATION 807: PLACEMENT AND SIGNAGE OF FINE ART:

- A. ~~A.~~ The ~~fine art~~ Fine Art required by this article shall be located in a public place. ~~B.~~ A “Public ~~place~~ Place” means any area on public or private property ~~which~~ that is easily accessible and clearly visible to the general public. If located on private property, the area must be open to the general public during normal business hours and clearly visible from adjacent public property such as a street or other public thoroughfare or sidewalk.
- B. ~~C.~~ When requested by the
- C. The applicant ~~for the certificate of occupancy, the fine art commission may designate a site~~ may request to have the work of Fine Art placed on city-owned property; provided further, such site is subject to approval by the city council. owned property. Upon such request, the Fine Art Commission may recommend a site on city-owned property for approval by the City Council. Any work of art installed on city-owned property pursuant to this section, would be gifted to the City with an endowment provided by the current Property Owner for transport, installation, insurance, and maintenance, in an amount acceptable to the City Council.
- D. Each work of art shall be identified by a plaque stating the artist’s name, title, date the artwork was created, and the year of installation. The plaque will be placed and maintained in a location near the artwork and easily viewable by the public.

3-1-806: TIME 808: SCHEDULE OF INSTALLATION OF FINE 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.~~
- A. ~~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 a~~ Fine Art Obligation, the applicant shall deposit with the ~~city~~ City cash, a letter of credit, or other security satisfactory to the ~~director of building and safety.~~ Director of Community Development in an amount equal to the value of the ~~fine art~~ Fine Art as required by subsection 3-1-802A of this article. The

security shall guarantee installation of ~~fine art~~ Fine Art, or an in lieu fee, 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.~~

B. All Fine Art required by this article shall be installed, as approved by the Fine Art Commission, prior to the final inspection of the construction or reconstruction that has triggered the requirements of this article. Within 7 days of installation of the approved Fine Art, the applicant shall notify the Fine Art Commission and City staff to verify compliance.

C. If the Fine Art required by this article is not installed by the final inspection of the construction or reconstruction that has triggered the requirements of this article, then the applicant shall forfeit the security posted with the City, and such moneys shall be deposited into the Fine Art Fund. In the case of unforeseeable, and verifiably documented, extenuating circumstances, the deadline to install the Fine Art may be extended up to a maximum of 12 months, with the written approval of the Fine Art Commission.

D. ~~C.~~ If the issuance of a building permit does not trigger ~~the requirements of this article, but that a~~ Fine Art Obligation (e.g., only interior tenant improvements are being made to an existing building), but such 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~~ has a valuation equal to or greater than two hundred fifty thousand dollars (~~\$250,000.00~~ 250,000), 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, or an in lieu fee~~, 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~~ Fine Art Obligation. The deposit or other security shall be returned to the applicant if the ~~requirements of this article are~~ Fine Art Obligation is 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~~ 250,000). The deposit or other security shall be forfeited and deposited into the Fine Art Fund if the applicant does not fulfill the ~~requirements of this article within three (3)~~

~~months after~~ Fine Art Obligation by the 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. has triggered a Fine Art Obligation. In the case of unforeseeable, and verifiably documented, extenuating circumstances, the deadline to install the Fine Art may be extended up to a maximum of 12 months, with the written approval of the Fine Art Commission.

3-1-807: 809: OWNERSHIP, MAINTENANCE, AND INSURANCE: BY THE PROPERTY OWNER

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

1. ~~A. Own such fine art~~ Shall, except if the Fine Art is placed on City-owned property, own such Fine Art, and if the building is sold, shall transfer ownership of the ~~fine art~~ Fine Art as an integral part of the sale of the building;
2. Shall execute a recordable covenant running with the land, in a form acceptable to the City Council, documenting the Fine Art.
3. ~~B. Maintain~~ Shall maintain such ~~fine art~~ Fine Art at the on-site location as approved by the ~~fine art commission~~ 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;~~ approved by the Fine Art Commission and City Council at the request of the Property Owner.
4. Shall maintain artwork per the guidelines set forth by the artist who created it, or the artist's representative, if applicable.
5. May request the ability to remove the Fine Art at a later date by offering to donate the piece to the City or by paying the original or present day value of the art, whichever is higher. Such request must be approved by both the Fine Art Commission and the City Council. If the piece will be gifted to the City, the owner must provide the City with an endowment for the piece to pay for transport, storage, re-installation, insurance and maintenance in an amount acceptable to the City Council. If there is a construction, reconstruction or addition to the property in

conjunction with the request to remove the original Fine Art, then there will be a new Fine Art Obligation assessed in accordance with the provisions of this Article.

7. Shall provide an appraised valuation of the art work every five (5) years, to guarantee the work is insured to its proper market value. Selection of the appraiser is subject to the requirements set forth in Section 3-1-804(3) and such appraisal shall be paid for by the Property Owner.

~~C. Maintain~~ 8. Shall maintain in full force and effect, at all times, insurance coverage in the amount of the purchase price and would insure such fine art most recent appraised value, insuring such Fine Art against any loss or damage, including vandalism, in accordance with the provisions of title 3, chapter 4 of this code. Annual proof of insurance coverage must be provided to the City.

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

~~All monies paid pursuant to subsection 3-1-802B of this article in 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.~~

9. Shall, in the event that the artwork is destroyed, stolen, damaged, or lost, resulting in an insurance claim against such loss, use any funds that are paid out to the owner by the insurance company towards the purchase of a replacement work of art, subject to the most current criteria of the Fine Art Ordinance and equal to the insured valuation of the lost work. Alternatively, the Property Owner has the option to deposit into the Fine Art Fund an amount equal to the insured valuation of the lost work.

~~3-1-809: RENOVATION OF BUILDINGS THAT HAVE COMPLIED WITH THE MAXIMUM REQUIREMENTS OF THIS ARTICLE:~~ 810: RECONSTRUCTIONS

~~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.~~

Each Reconstruction with total construction costs of at least \$250,000 shall trigger the Fine Art Obligation.

A. If a building that had previously met the requirements of its original Fine Art Obligation is damaged by an Act of God resulting in a Reconstruction and the original Fine Art is intact, there will be no additional Fine Art Obligation required. However, if the original Fine Art is destroyed, a replacement work of art that meets the requirements of the Fine Art Ordinance currently in effect will be required in an amount equal to the insured value of the lost or destroyed art piece. Alternatively, the Property Owner has the option to deposit into the Fine Art Fund an amount equal to the insured valuation.

B. If a building that had met the requirements of its original Fine Art Obligation is voluntarily reconstructed and the original Fine Art is intact, a new Fine Art Obligation will be required based on the difference between the construction costs of the new project less the original construction cost of the building. However, if the original Fine Art is destroyed, a replacement work of art that meets the requirements of the Fine Art Ordinance currently in effect will be required in an amount: (i) based upon the construction costs of the new project as specified in section 3-1-802 of this article; or (ii) equal to the most recent appraised value of the lost or destroyed original Fine Art, whichever is higher.

3-1-811: DENIAL BY THE FINE ART COMMISSION

A. In the event a work of art proposed by the Property Owner is denied by the Fine Art Commission, the Property Owner must present other works of Fine Art to the Commission. The full application process must be followed for each work of Fine Art presented to the Commission, as set forth in 3-1-804 of this article.

~~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.~~ B. The applicant may request that the Fine Art Commission reconsider its decision if changes are made either to the proposed Fine Art or the subject building such that there are new facts upon which the Commission may reconsider its earlier decision.

~~3-1-810:~~ 3-1-812: APPEAL TO CITY COUNCIL; FOLLOWING DENIAL BY THE FINE ART COMMISSION

Any final decision of the ~~fine art commission~~ Fine Art Commission may be appealed to ~~council~~ City Council under title 1, chapter 4, article 1 of this code.

3-1-813: GIFTS OF FINE ART

A. All proposed gifts to the City of Fine Art with a value in excess of \$10,000 that are proposed to be installed in a Public Place (as such term is define in Section 3-1-807(A) of this Article) shall be vetted by the Fine Art Commission in accordance with the terms of this Article, prior to being presented to City Council for acceptance in accordance with City guidelines. Nothing herein shall prevent the City Council from accepting gifts of Fine Art with a value in excess of \$10,000 that will not be displayed in a Public Place.

B. The donor must relinquish any and all claims to donated artwork, and must allow the city to sell or trade the artwork through auction or to a private party. Any moneys received from such transaction shall be deposited into the Fine Art Fund. In addition, if the donor requests a receipt from the City containing a specified value of the donated art, such donor will need to provide an appraisal to the City which supports the stated value.

3-1-814: DEACCESSIONING OF CITY-OWNED FINE ART

INTRODUCTION

Deaccessioning is a legitimate part of the formation and care of a collection. However, deaccessioning should be a deliberate and seldom used procedure. It is the policy of the City not to dispose of artwork simply because it is not currently in fashion, and not to dispose of work whose worth might not yet be recognized.

DEFINITION

Deaccessioning shall mean any actions or set of procedures that result in the cessation by the City of its ownership and possession of works of art, through sale, exchange, gift or any other means not in conflict with state or federal law.

CONDITIONS

A. No artwork shall be deaccessioned within five (5) years of acquisition by the City or installation unless:

1. The piece poses a threat to public health or safety;
2. Authenticity was misrepresented at the time of acquisition or installation;
3. There is a valid challenge to title; or
4. It possesses faults of design or workmanship that result in excessive or unreasonable maintenance, and/or damage to an extent where repair is unreasonable or impractical.

B. Once the five-year period has lapsed, the Fine Art Commission may recommend to the City Council the deaccessioning of any work of art if any of the following conditions apply:

1. The cost to repair the work is more than 50% of current appraised value, or the work is so deteriorated that restoration would prove unfeasible or misleading;
2. Destruction of, or changes to, the site threaten the artwork's survival or result in a significant diminishing of its artistic integrity or accessibility; or
3. The Fine Art Commission determines that there is an exceptional and unforeseen reason for removing the artwork from its current site, and no other suitable site in the City can be found.

PROCEDURES

If the conditions for deaccessioning are met, the following information, as appropriate, shall be considered by the Fine Art Commission at a formal meeting:

1. Reasons for the proposed deaccessioning;
2. Opinion of the City Attorney's Office, if necessary;
3. Process of acquisition method and cost and/or value at the time of acquisition;
4. Expert appraisal of the current market value of the work;
5. Costs associated with deaccessioning or removal;
6. A condition report from a professional conservator; and
7. Professional fees associated with the subsequent sale, auction, donation or trade of the artwork.

At the discretion of the Fine Art Commission, where applicable and achievable, the original donor of the work may be given right of first refusal to purchase the work within 60 days of notification. No works may be sold, traded or transferred to a member of the Fine Art Commission, City of Beverly Hills staff or its agents.

Section 2. 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 final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be remain in full force and effect.

Section 3. 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 the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 4. 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:

LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager

Attachment 3

ORDINANCE NO. 14-O- _____

**ORDINANCE OF THE CITY OF BEVERLY
HILLS AMENDING THE BEVERLY HILLS
MUNICIPAL CODE REGARDING PUBLIC ART**

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

Section 1. Public Art. The City Council hereby amends and restates in its entirety “Article 8. Beverly Hills Public Art Ordinance” of “Chapter 1: TAXATION AND FEES” of “Title 3. TAXATION, FINANCE, PURCHASING, AND RISK MANAGEMENT” as follows:

Article 8. Beverly Hills Fine Art Ordinance

3-1-801: DEFINITIONS

The following definitions are applicable to the provisions of this article:

ACT OF GOD: A direct, sudden, and irresistible action of natural forces such as could not reasonably have been foreseen or prevented, as a flood, hurricane, earthquake, or other natural catastrophe.

COMMERCIAL/INDUSTRIAL BUILDING: Any building or structure, all or part of which contains a commercial or industrial use permitted by this code. “Commercial structure” shall not include any building or structure constructed or reconstructed for the elderly or disabled pursuant to title 10, chapter 3, article 12.5 of this code.

COMMISSION: The Fine Art Commission.

CONSTRUCTION COST: The total value of all building permits issued by the City as they relate to the construction, reconstruction or addition work on a Commercial/Industrial Building, or the office or retail portion of a Mixed-Use Building in the City.

DECORATIVE ART: Arts and crafts that are employed in the making of ornamental and functional works in a wide range of materials. Decorative arts are concerned with design, decoration, ornamentation and/or functionality of the object rather than the purely aesthetic.

FINE ART: Art produced or intended primarily for beauty rather than utility. Fine Art includes, but is not limited to: sculpture, photography, drawing, multi-media art and painting. Fine Art shall not include the following: (i) decorative, ornamental or functional elements designed by the architect or other design consultant retained for the design and construction of the subject building; (ii) art objects that are mass produced with a standard design such as fountains and statuary objects; (iii) an artistic or architectural element that is a structural part of a building; or (iv) Decorative Art.

FINE ART OBLIGATION: The obligation to provide art or make an in lieu payment as specified in section 3-1-802 of this article.

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.

PROPERTY OWNER: The title holder of the subject property.

RECONSTRUCTION: All alterations or repairs made to a Commercial/Industrial Building or the office and/or retail portion of a Mixed-Use Building within any twelve (12) month period where:

1. Any such alterations or repairs result in changes to the exterior of the building, with the exception of signs and/or awnings;
2. The changes to the exterior of the building are not limited to repair and/or ordinary maintenance;
3. The building permit valuation of the changes to the exterior of the building exceeds five thousand dollars (\$5,000.00); and
4. The building permit valuation of all alterations or repairs to the building equals or exceeds two hundred and fifty thousand dollars (\$250,000.00).

3-1-802: FINE ART OBLIGATION

A. Any construction, reconstruction or additions, to a Commercial/Industrial Building or Mixed-Use Building in the City of Beverly Hills shall be assessed with the obligation to provide Fine Art as follows:

1. For projects with total construction costs between \$250,000 to \$1,000,000, the Fine Art Obligation shall be satisfied by either of the following: (a) installation of Fine Art that has a value equal to, or exceeding, one percent (1%) of the total construction costs; or (b) payment of an in lieu fee to the Fine Art Fund equal to ninety percent (90%) of the value required by the immediately preceding subsection (a).
2. For projects with total construction costs equal to or greater than \$1,000,000.01, the Fine Art Obligation shall be satisfied by either of the following: (a) installation of Fine Art that has a value equal to, or exceeding, one and one-half (1.5%) of the total construction costs; or (b) payment of an in lieu fee to the Fine Art Fund equal to ninety percent (90%) of the value required by the immediately preceding subsection (a).

B. If the in lieu payment option has been chosen pursuant to paragraph A of this section 3-1-802, then such in lieu payment shall be made *prior* to the issuance of the related building permit. Once the funds

for the in lieu payment have been made available to the Fine Art Fund, then the Property Owner's obligations under this article shall have been fulfilled.

3-1-803: SEPARATE FUND FOR PURCHASE OF CITY-OWNED ART

All payments made to the Fine Art Fund of the City shall be used solely for the following in connection with Fine Art: (1) planning, (2) acquisition (including appraisal fees), (3) installation, (4) improvement, (5) maintenance (including professional services required to maintain the integrity of the public art collection), and (6) promotional activities associated with City-owned Fine Art for display in the City. Any Fine Art purchased with such funds shall be the property of the City, and will have qualified for purchase by the Fine Art Commission subject to the requirements set forth in Section 3-1-805 of this article.

3-1-804: APPLICATION REQUIREMENTS FOR PROPOSED FINE ART

After final approval by the Architectural Commission, if required, an application shall be filed with the City for approval of the proposed Fine Art by the Fine Art Commission. The application shall be on the form designated by the City, containing the following information:

1. Preliminary sketches, photographs, models, 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 fide invoices, auction records, and Fine Art gallery records;
4. Documentation showing at least one piece of the same or comparable medium, size, and condition that has sold in the last five (5) years, at or above the required Fine Art Obligation value shall be included;
5. Sketches, photographs, or other documentation representing to scale the relationship of the proposed Fine Art as installed to the proposed commercial or mixed-use structure. Final approval will be contingent upon accurate depiction of proposed artwork and accurate depiction of installation of artwork; and
6. Such other information as may be requested by the Director of Community Development deemed important for the Fine Art Commission to consider.

Upon receiving a complete application, the Fine Art Commission shall consider the application at its next regularly scheduled meeting; provided however, that the complete application must be received at

least two weeks prior to the meeting at which it will be considered. Ten (10) days prior written notice shall be provided to the applicant of the time and place of the meeting at which the application will be considered.

3-1-805: FINE ART CRITERIA

The Fine Art Commission shall approve the application if the proposed Fine Art satisfies all of the following criteria:

1. The Fine Art has the minimum value required by section 3-1-802 of this article as determined by the appraisal submitted along with the application pursuant to Section 3-1-804. Such appraisal shall not use the current market value of materials used to produce a comparable art piece as a basis for determining the value of the proposed Fine Art. The value of the Fine Art shall not include the items listed in Section 3-1-806 of this article.

2. The Fine Art has been, or will be, 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 Fine Art, internationally or nationally. Documentation to support the artist's stature should include, but is not limited to: (a) inclusion in art journals and art books; (b) Fine Art gallery representation; (c) museum exhibition or collection; (d) auction house records; and, (e) letters of support from Fine Art curators. The members of the architectural, engineering, design or landscaping firms retained for the design and construction of the commercial or mixed-use building under review shall not be considered qualified established artists for the purposes of this article.

3. The Fine Art has intrinsic quality and enduring value.

4. The Fine Art is compatible with and enhances the aesthetic quality of the proposed installation site. The relationship of the Fine Art to the site in terms of physical size, shape and color shall be considered, as well as the social and cultural interaction of the Fine Art with the space it occupies and the surrounding area.

3-1-806: INELIGIBLE COSTS

Expenses for the following do not qualify as fulfilling the Fine Art Obligation:

1. Art Consultants;
2. Appraisers;
3. Insurance;
4. Maintenance costs;

5. Shipping;
6. A structure, upon which artwork is displayed (e.g. a pedestal);
7. Professional fees for the artist(s);
8. Labor of assistants, materials, and contracted services required toward the installation of the work of art;
9. Any required permit or certificate fees;
10. Business and legal costs directly related to the project;
11. Studio and operating costs;
12. Communication and other indirect costs (insurance, utilities);
13. Travel expenses of the artist for site visitation and research;
14. Transportation of the work of art to the site;
15. Preparation of the site to receive the artwork;
16. Installation of the completed work of art;
17. Documentation (e.g., color slides and black and white photographs of the artwork); and
18. Directional elements such as super graphics, plaques, or color-coding except where these elements are integral parts of the original work of art.

3-1-807: PLACEMENT AND SIGNAGE OF FINE ART

- A. The Fine Art required by this article shall be located in a public place. A “Public Place” means any area on public or private property that is easily accessible and clearly visible to the general public. If located on private property, the area must be open to the general public during normal business hours and clearly visible from adjacent public property such as a street or other public thoroughfare or sidewalk.
- B. The applicant may request to have the work of Fine Art placed on city-owned property. Upon such request, the Fine Art Commission may recommend a site on city-owned property for approval by the City Council. Any work of art installed on city-owned property pursuant to this section, would be gifted to the City with an endowment provided by the current Property Owner for transport, installation, insurance, and maintenance, in an amount acceptable to the City Council.

- C. Each work of art shall be identified by a plaque stating the artist's name, title, date the artwork was created, and the year of installation. The plaque will be placed and maintained in a location near the artwork and easily viewable by the public.

3-1-808: SCHEDULE OF INSTALLATION OF FINE ART

- A. Prior to the issuance of a building permit that triggers a Fine Art Obligation, the applicant shall deposit with the City cash, a letter of credit, or other security satisfactory to the Director of Community Development in an amount equal to the value of the Fine Art as required by subsection 3-1-802 of this article. The security shall guarantee installation of Fine Art, or an in lieu fee, as required by this article.
- B. All Fine Art required by this article shall be installed, as approved by the Fine Art Commission, prior to the final inspection of the construction or reconstruction that has triggered the requirements of this article. Within 7 days of installation of the approved Fine Art, the applicant shall notify the Fine Art Commission and City staff to verify compliance.
- C. If the Fine Art required by this article is not installed by the final inspection of the construction or reconstruction that has triggered the requirements of this article, then the applicant shall forfeit the security posted with the City, and such moneys shall be deposited into the Fine Art Fund. In the case of unforeseeable, and verifiably documented, extenuating circumstances, the deadline to install the Fine Art may be extended up to a maximum of 12 months, with the written approval of the Fine Art Commission.
- D. If the issuance of a building permit does not trigger a Fine Art Obligation (e.g., only interior tenant improvements are being made to an existing building), but such building permit has a valuation equal to or greater than two hundred fifty thousand dollars (\$250,000), 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 3-1-802 of this article. The purpose of such security is to guarantee installation of the art, or an in lieu fee, if later improvements to the building trigger the Fine Art Obligation. The deposit or other security shall be returned to the applicant if the Fine Art Obligation is not triggered within one year after the date of the final inspection of the building improvements with a valuation of two hundred fifty thousand dollars (\$250,000). The deposit or other security shall be forfeited and deposited into the Fine Art Fund if the applicant does not fulfill the Fine Art Obligation by the final inspection of the construction or reconstruction that has triggered a Fine Art Obligation.

In the case of unforeseeable, and verifiably documented, extenuating circumstances, the deadline to install the Fine Art may be extended up to a maximum of 12 months, with the written approval of the Fine Art Commission.

3-1-809: OWNERSHIP, MAINTENANCE, AND INSURANCE BY THE PROPERTY OWNER

The Property Owner:

1. Shall, except if the Fine Art is placed on City-owned property, 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.
2. Shall execute a recordable covenant running with the land, in a form acceptable to the City Council, documenting the Fine Art.
3. Shall maintain such Fine Art at the on-site location as approved by the Fine Art Commission, unless a different on-site location is approved by the Fine Art Commission and City Council at the request of the Property Owner.
4. Shall maintain artwork per the guidelines set forth by the artist who created it, or the artist's representative, if applicable.
5. May request the ability to remove the Fine Art at a later date by offering to donate the piece to the City or by paying the original or present day value of the art, whichever is higher. Such request must be approved by both the Fine Art Commission and the City Council. If the piece will be gifted to the City, the owner must provide the City with an endowment for the piece to pay for transport, storage, re-installation, insurance and maintenance in an amount acceptable to the City Council. If there is a construction, reconstruction or addition to the property in conjunction with the request to remove the original Fine Art, then there will be a new Fine Art Obligation assessed in accordance with the provisions of this Article.
7. Shall provide an appraised valuation of the art work every five (5) years, to guarantee the work is insured to its proper market value. Selection of the appraiser is subject to the requirements set forth in Section 3-1-804(3) and such appraisal shall be paid for by the Property Owner.
8. Shall maintain in full force and effect at all times, insurance coverage in the amount of the most recent appraised value, insuring such Fine Art against any loss or damage, including

vandalism, in accordance with the provisions of title 3, chapter 4 of this code. Annual proof of insurance coverage must be provided to the City.

9. Shall, in the event that the artwork is destroyed, stolen, damaged, or lost, resulting in an insurance claim against such loss, use any funds that are paid out to the owner by the insurance company towards the purchase of a replacement work of art, subject to the most current criteria of the Fine Art Ordinance and equal to the insured valuation of the lost work. Alternatively, the Property Owner has the option to deposit into the Fine Art Fund an amount equal to the insured valuation of the lost work.

3-1-810: RECONSTRUCTIONS

Each Reconstruction with total construction costs of at least \$250,000 shall trigger the Fine Art Obligation.

A. If a building that had previously met the requirements of its original Fine Art Obligation is damaged by an Act of God resulting in a Reconstruction and the original Fine Art is intact, there will be no additional Fine Art Obligation required. However, if the original Fine Art is destroyed, a replacement work of art that meets the requirements of the Fine Art Ordinance currently in effect will be required in an amount equal to the insured value of the lost or destroyed art piece. Alternatively, the Property Owner has the option to deposit into the Fine Art Fund an amount equal to the insured valuation.

B. If a building that had met the requirements of its original Fine Art Obligation is voluntarily reconstructed and the original Fine Art is intact, a new Fine Art Obligation will be required based on the difference between the construction costs of the new project less the original construction cost of the building. However, if the original Fine Art is destroyed, a replacement work of art that meets the requirements of the Fine Art Ordinance currently in effect will be required in an amount: (i) based upon the construction costs of the new project as specified in section 3-1-802 of this article; or (ii) equal to the most recent appraised value of the lost or destroyed original Fine Art, whichever is higher.

3-1-811: DENIAL BY THE FINE ART COMMISSION

- A. In the event a work of art proposed by the Property Owner is denied by the Fine Art Commission, the Property Owner must present other works of Fine Art to the Commission. The full application process must be followed for each work of Fine Art presented to the Commission, as set forth in 3-1-804 of this article.

- B. The applicant may request that the Fine Art Commission reconsider its decision if changes are made either to the proposed Fine Art or the subject building such that there are new facts upon which the Commission may reconsider its earlier decision.

3-1-812: APPEAL TO CITY COUNCIL FOLLOWING DENIAL BY THE FINE ART COMMISSION

Any final decision of the Fine Art Commission may be appealed to City Council under title 1, chapter 4, article 1 of this code.

3-1-813: GIFTS OF FINE ART

A. All proposed gifts to the City of Fine Art with a value in excess of \$10,000 that are proposed to be installed in a Public Place (as such term is define in Section 3-1-807(A) of this Article) shall be vetted by the Fine Art Commission in accordance with the terms of this Article, prior to being presented to City Council for acceptance in accordance with City guidelines. Nothing herein shall prevent the City Council from accepting gifts of Fine Art with a value in excess of \$10,000 that will not be displayed in a Public Place.

B. The donor must relinquish any and all claims to donated artwork, and must allow the city to sell or trade the artwork through auction or to a private party. Any moneys received from such transaction shall be deposited into the Fine Art Fund. In addition, if the donor requests a receipt from the City containing a specified value of the donated art, such donor will need to provide an appraisal to the City which supports the stated value.

3-1-814: DEACCESSIONING OF CITY-OWNED FINE ART

INTRODUCTION

Deaccessioning is a legitimate part of the formation and care of a collection. However, deaccessioning should be a deliberate and seldom used procedure. It is the policy of the City not to dispose of artwork simply because it is not currently in fashion, and not to dispose of work whose worth might not yet be recognized.

DEFINITION

Deaccessioning shall mean any actions or set of procedures that result in the cessation by the City of its ownership and possession of works of art, through sale, exchange, gift or any other means not in conflict with state or federal law.

CONDITIONS

- A. No artwork shall be deaccessioned within five (5) years of acquisition by the City or installation unless:
1. The piece poses a threat to public health or safety;
 2. Authenticity was misrepresented at the time of acquisition or installation;
 3. There is a valid challenge to title; or
 4. It possesses faults of design or workmanship that result in excessive or unreasonable maintenance, and/or damage to an extent where repair is unreasonable or impractical.
- B. Once the five-year period has lapsed, the Fine Art Commission may recommend to the City Council the deaccessioning of any work of art if any of the following conditions apply:
1. The cost to repair the work is more than 50% of current appraised value, or the work is so deteriorated that restoration would prove unfeasible or misleading;
 2. Destruction of, or changes to, the site threaten the artwork's survival or result in a significant diminishing of its artistic integrity or accessibility; or
 3. The Fine Art Commission determines that there is an exceptional and unforeseen reason for removing the artwork from its current site, and no other suitable site in the City can be found.

PROCEDURES

If the conditions for deaccessioning are met, the following information, as appropriate, shall be considered by the Fine Art Commission at a formal meeting:

1. Reasons for the proposed deaccessioning;
2. Opinion of the City Attorney's Office, if necessary;
3. Process of acquisition method and cost and/or value at the time of acquisition;
4. Expert appraisal of the current market value of the work;
5. Costs associated with deaccessioning or removal;
6. A condition report from a professional conservator; and
7. Professional fees associated with the subsequent sale, auction, donation or trade of the artwork.

At the discretion of the Fine Art Commission, where applicable and achievable, the original donor of the work may be given right of first refusal to purchase the work within 60 days of notification. No works may be sold, traded or transferred to a member of the Fine Art Commission, City of Beverly Hills staff or its agents.

Section 2. 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 final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be remain in full force and effect.

Section 3. 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 the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 4. 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:

LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager