STAFF REPORT

Meeting Date: **November 18, 2014**

To: Honorable Mayor & City Council

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

Subject: Information regarding Fine Art Commission recommendation to adjust the language of the revised Fine Art Ordinance.

Attachments:
1. Article 8. Beverly Hills Public Art Ordinance from Beverly Hills Municipal Code
2. Red line proposed ordinance
3. Proposed ordinance

INTRODUCTION

The revision to the Fine Art Ordinance was presented at the City Council study session on September 23, 2014. At that time the City Council felt uncomfortable with lowering the valuation threshold for assessing the fine art obligation to projects with valuations of $250,000 or higher. In response, the Fine Art Commission recommends that the Fine Art requirement be applied to projects with valuation of $500,000 or more, rather than $250,000, which is essentially the way the current ordinance is written. In addition, the commission recommends deleting the requirement to post a security deposit if the building permit value is $250,000 in case the fine art obligation is triggered within one year. Unless Council directs otherwise, staff will proceed with this adjustment and prepare the ordinance for final readings. The first reading of the Fine Art Ordinance is on the formal meeting agenda this evening, November 18th, 2014.

DISCUSSION

At the study session on September 23, 2014, the City Council considered proposed revisions to the Fine Art Ordinance. These revisions were substantial and added a number of provisions to the code, including processes for accepting gifts of art as well as deaccessioning art from the City's collection. The revision recommended that the fine art obligation applicable to commercial projects with values of $250,000 or higher. City Council expressed concern with establishing the trigger point at $250,000 and recommended that language from the current ordinance be retained. Under the current ordinance, the fine art obligation is automatically triggered on all commercial projects

where the valuation exceeds $500,000. However, the current ordinance also requires developers who have projects valued $250,000-$500,000 to make a deposit into the Fine Art Fund. If no further work occurs at these project sites within 12 months, then the deposit would be refunded to the developer. If further permits are obtained at these project sites, and the total valuation for all permits within the 12 month period exceeds $500,000, then the fine art obligation would be fully executed for the site.

This provision of the current ordinance has proven particularly difficult to administer and track over time. Additionally, over the last 6 years, there have only been two projects which have obtained multiple permits within a 12 month period that were valued $250,000-$500,000 and subsequently exceeded the $500,000 mark. These two projects resulted in less than $10,000 being deposited into the fine art fund. Because of these factors, the Fine Art Commission recommends that the provision that tracks projects valued $250,000-$500,000 be eliminated and that the Fine Art Obligation be mentioned at $500,000 or more. Similarly, the commission recommends deleting the requirement to post a security deposit if the building permit value is $250,000 in case the fine art obligation is triggered within one year. The Commission feels that this change will make the ordinance less onerous, easier to understand and that it will streamline the process for developers.

Since the item was first considered at the September 23, 2014 City Council study sessions, a few minor adjustments have been made to the ordinance. They are as follows:

- An exemption for reconstruction due to disaster. If a building is destroyed due to a natural disaster, the reconstruction would not trigger a new fine art obligation. It should be noted that two Fine Art Commissioners felt that a reconstruction due to disaster should trigger the obligation.
- Language in the code was clarified to indicate that only art placed by developers/owners after January 1, 2015 would be required to be appraised every 5 years. This provision would not apply to developer owned art that is in place before this date. It should be noted that one Fine Art Commissioner felt that this provision should be retroactive to all developer owned fine art. For art installed prior to that date, developer/owners must provide insurance coverage in the amount of the original purchase price of the piece.
- Section 3-1-813 B was removed. This section placed limitations on donations of fine art to the City. Under further consideration, it was felt that any limits on donations of art should be dealt with on a case-by-case basis.

FISCAL IMPACT

None at this time.

RECOMMENDATION

This report is for information only. Unless City Council directs otherwise, staff will proceed with finalizing the revised art ordinance, with the provisions outlined above, and will bring the finalized ordinance for first reading to an upcoming City Council meeting. The first reading of the Fine Art Ordinance is on the formal meeting agenda this evening, November 18th, 2014.

Nancy Hunt-Coffey
Assistant Director of Community Services

Approved By

Attachment 1

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 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)

Attachment 2

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~~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 ($5,000.00)~~; and
3. ~~4.~~ The building permit valuation of all alterations or repairs to the building equals or exceeds ~~two~~five hundred ~~and fifty~~ thousand dollars ($~~250,000.00~~500,000.00).

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

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~~Construction Costs between $~~250,000 to~~500,000 and $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~~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~~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~~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~~shall meet the requirements set forth in Section 3-1-805(2)-(4) 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~~for 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~~Attorney, regarding 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~~reviewed by ~~both~~ the Fine Art Commission and approved by 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 an 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~~For all Fine Art installed after January 1, 2015, shall provide an appraised valuation or other evidence of value satisfactory to the Fine Art Commission, 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~~Any appraisal shall be made by an independent, qualified Fine Art appraiser and shall be paid for

by the Property Owner. Other evidence of value may include bona fide invoices, auction records, and Fine Art gallery records.

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~~RECONSTRUCTION OF BUILDINGS THAT PREVIOUSLY MET THE FINE ART OBLIGATION

Each Reconstruction with a total ~~construction costs~~Construction Cost of at least $~~250,000~~500,000 shall trigger the Fine Art Obligation.

A. If a building that had previously ~~met~~satisfied 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 or an in-lieu fee was previously paid, 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~~previously satisfied the ~~requirements of its original~~ Fine Art Obligation is voluntarily reconstructed and the original Fine Art is intact or an in-lieu fee was previously paid, a new Fine Art Obligation will be required based on the difference between the ~~construction costs~~Construction Cost of the new project less the ~~original construction cost of the building~~Construction Cost of the project that triggered the original Fine Art Obligation. However, if the original Fine Art is missing or destroyed, a ~~replacement work of art~~new Fine Art Obligation that meets the requirements of the Fine Art Ordinance currently in effect will be required in an amount: (i) based upon the ~~construction costs~~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~~missing 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~~defined in Section 3-1-807(A) of this Article) shall be ~~vetted~~reviewed by the Fine Art Commission in accordance with the terms of this Article, prior to being presented to City Council for consideration of 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, without review by the Fine Art Commission.

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~~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 where the art is located 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 officials or staff or ~~its~~their 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:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
JEFFREY C. KOLIN
City Manager

Document comparison by Workshare Professional on Wednesday, November 12, 2014 5:30:05 PM

Input:	
Document 1 ID	interwovenSite://RWGDMS2/RWGIMAN1/1711965/6
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Document 2 ID	interwovenSite://RWGDMS2/RWGIMAN1/1711965/8
Description	#1711965v8<RWGIMAN1> - Fine Art Ordinance
Rendering set	standard

Legend:	
Insertion	
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Padding cell	

Statistics:	
	Count
Insertions	43
Deletions	41
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	84

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 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; and
3. The building permit valuation of all alterations or repairs to the building equals or exceeds five hundred thousand dollars ($500,000.00).

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

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 $500,000 and $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 shall meet the requirements set forth in Section 3-1-805(2)-(4) 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.

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 for 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.

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 Attorney, regarding 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 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 reviewed by the Fine Art Commission and approved by 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 construction, reconstruction or an 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. For all Fine Art installed after January 1, 2015, shall provide an appraised valuation or other evidence of value satisfactory to the Fine Art Commission, of the art work every five (5) years, to guarantee the work is insured to its proper market value. Any appraisal shall be made by an independent, qualified Fine Art appraiser and shall be paid for by the Property Owner. Other evidence of value may include bona fide invoices, auction records, and Fine Art gallery records.
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: RECONSTRUCTION OF BUILDINGS THAT PREVIOUSLY MET THE FINE ART OBLIGATION

Each Reconstruction with a total Construction Cost of at least $500,000 shall trigger the Fine Art Obligation.

A. If a building that had previously satisfied the Fine Art Obligation is damaged by an Act of God resulting in a Reconstruction and the original Fine Art is intact or an in-lieu fee was previously paid, 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 previously satisfied the Fine Art Obligation is voluntarily reconstructed and the original Fine Art is intact or an in-lieu fee was previously paid, a new Fine Art Obligation will be required based on the difference between the Construction Cost of the new project less the Construction Cost of the project that triggered the original Fine Art Obligation. However, if the original Fine Art is missing or destroyed, a new Fine Art Obligation 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 missing 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.

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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 defined in Section 3-1-807(A) of this Article) shall be

reviewed by the Fine Art Commission in accordance with the terms of this Article, prior to being presented to City Council for consideration of acceptance. 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, without review by the Fine Art Commission.

B. 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.

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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.

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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 where the art is located 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 officials or staff or their agents.

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Adopted:
Effective:

_____
LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE

ATTEST:

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BYRON POPE
City Clerk

APPROVED AS TO FORM:

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LAURENCE S. WIENER
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