



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Community Development

MEETING DATE: November 7, 2023

STAFF REFERENCE: Craig Jimenez, Director

AGENDA LOCATION: AR-1

TITLE: Amendment to Title 2 (Administration and Personnel) and Title 15 (Buildings and Construction) of the Monrovia Municipal Code Pertaining to the Art in Public Places Ordinance; Introduction and First Reading of Ordinance No. 2023-04

OBJECTIVE: To codify the powers and duties of the Art in Public Places Committee and amend the Art in Public Places Ordinance

BACKGROUND: In 2004, the City Council adopted the Art in Public Places Ordinance (2004-03). These requirements established a public art component for new development, as well as a review process for publicly funded art. The Art in Public Places (AIPP) program is funded through a requirement that applies to new construction involving five or more dwellings or with a valuation of \$1 million or more.

The public art requirement is for a contribution equal to 1% of the project cost (valuation). The developer can satisfy this requirement in one, or a combination of two ways:

- Install public art onsite or in a publicly accessible location in the City equal to the art assessment.
- Pay an in lieu fee equal to the assessment, which the City then uses to acquire and install public art.

Artwork, whether commissioned by the developer or the City, is initially reviewed by the Art in Public Places Committee, which makes a recommendation to the City Council. The Committee serves as the advisory body to the City Council on larger expenditures of art funds.

Since its inception, the program has been very successful. Monrovia has over 150 pieces in its collection, representing well over \$1.2 million investment in public art.

ANALYSIS: When the ordinance was adopted in 2004, the City had no experience implementing and administering a public art program. Since that time, as the program has evolved and matured, staff has been able to incorporate best practices into the ongoing administration and implementation of the AIPP program. Based on lessons learned, earlier this year, staff presented a number of recommended modifications to the City Council for feedback. The City Council agreed with these modifications and directed staff to prepare an ordinance for consideration.

The proposed Ordinance No. 2023-04 contains two sections: addition of a new chapter to Title 2 of the Monrovia Municipal Code (MMC) and a “clean up” of the Art in Public Places Ordinance, which is contained in Chapter 15.44 of the MMC. As discussed with the City Council earlier this year, the proposed amendments are practical modifications that better reflect the administration of the program and incorporate a number of policies that have been implemented over the years.

Powers and Duties of the AIPP Committee

Title 2 (Administration and Personnel) of the MMC provides the framework for the administration of commissions, boards and committees as well as delineates their powers. The Ordinance adds a new

chapter (2.62), which will codify the administration of the Art in Public Places (AIPP) Committee, similar to other boards and commissions. The recommended addition to the ordinance includes the following provisions:

- Codifies the membership. The makeup of the AIPP Committee was established in an uncodified section of a previous ordinance which includes a member of the City Council (who serves as chair), and one member each from the Community Services, Historic Preservation, and Planning Commissions, and one resident at-large. No change is proposed in the structure of the Committee.
- Specifies the appointment and membership of the Committee members, places a term limit on the resident at-large member, and clarifies that the selection of the at-large appointment is subject to the same selection process as all other boards and commissions. Commissioners serving on the AIPP Committee are subject to the terms of their respective commissions. Vacancies would be filled in the same manner as the appointment.
- Assigns the duties of the chair to the Community Development Director in the absence of the chair. However, the Director would be limited to conducting the meeting and would not vote on any matters before the Committee.

Modifications to the Art in Public Places Ordinance

The provisions related to the implementation and administration of the AIPP Ordinance are contained in MMC Chapter 15.44. The proposed modifications include the following:

- Minor modifications to clarify the definitions of “artwork”, “artwork value”, “development project”, “director”, “Project Cost”, “Public Artwork”, “Publicly Accessible”
- Changes all references of “in lieu art fee” to “in lieu *public* art fee”
- Officially changes the name of the committee from the no longer applicable “Monrovia Endowment for the Arts” to the “Art in Public Places Committee”
- Eliminates terms not referenced in the revised ordinance: “City Manager”, “Endowment”, “established artist”, “public artwork requirement”
- Removes the requirement to create a “public artwork catalogue”. The original intent was to create a catalogue of art that a developer could choose from; in practice, not utilizing prefabricated pieces has resulted in unique, Monrovia-centric art pieces that better reflect the intent of the ordinance.
- Expands the implementation guidelines to encompass a variety of art media as opposed to limited to murals as currently stated. This aligns the provisions with the current program.
- Clarifies that in-lieu public art fee funds can be used for performing arts programs limited to no more than 5% of the annual program budget. This is consistent with the current limitation on the use of in-lieu public art funds for educational programs.
- Specifies that all in lieu funds must be deposited in the Art in Public Places Fund, eliminating the option for a developer to allocate up to 50% of in-lieu funds put into the Library Improvement Fund. This Library Improvement Fund option was added prior to the passage of the library bond as a way to help fund the construction of a new library. The Library has since been built. This option has not been utilized.
- Updates the affordable housing exemption specifying that only projects that are 100% affordable with specified income restrictions and income restricted for no less than 55 years are exempt from the Public Art requirement.
- Eliminates references to the now-defunct Monrovia Redevelopment Agency.
- Specifies that the AIPP Committee has approval authority for smaller art projects that cost no more than \$5,000. This includes ongoing Signature Programs, such as Art on the Box (utility box painting), Footnotes (sidewalk poetry stamps), and Adopt a Samson (custom painted Samson the Bear statues). Larger installations that cost more than \$5,000 will continue to require the approval of the City Council, with the Committee acting in an advisory capacity on those applications.
- Eliminates the specific application requirements giving the Director of Community Development the authority to determine the appropriate application requirements based on the specifics of the individual programs. This is consistent with most application provisions throughout the MMC.
- Clarifies the insurance, maintenance, repair, and replacement requirements.
- Modifies the timing to satisfy the public art requirement from permit issuance to building occupancy. At the time of permit issuance, most applicants have been focused on their entitlements and then preparing their construction drawings and have not developed any concepts

for their art or decided if they will incorporate art or pay the fee in lieu. Additionally, the timing to satisfy this requirement at the time of occupancy is consistent with other impact fees imposed by the City. The ability to hold up occupancy gives the City considerable power to ensure the requirement is met.

- Notably, this ordinance does not change the development threshold to qualify for this requirement, the amount of public art required, or the calculation of the in-lieu public art fee.

A strikethrough version of the proposed changes to Chapter 15.44 are contained in Attachment A.

The recommended amendments will not make any substantial changes to the ongoing implementation of the program or the financial impact on development projects. The provisions contained in the proposed ordinance will provide greater clarity as well as codify provisions that reflect the ongoing administration of the AIPP program keeping a Monrovia-centric approach to public art.

ENVIRONMENTAL IMPACT: There is no environmental impact associated with this action.

FISCAL IMPACT: The adoption of this ordinance will have no fiscal impact.

OPTIONS: The following options are presented for consideration:

1. Introduce Ordinance No. 2023-04, amending provisions related to the Art in Public Places program.
2. Take no action and provide additional direction to staff on the provisions of the Ordinance.
3. Reject the proposed amendments contained in Ordinance No. 2023-04

RECOMMENDATION: Staff recommends the adoption of Ordinance No 2023-04, amending the provisions related to the Art in Public Places program.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to introduce, waive further reading, and read by title only Ordinance No. 2023-04.

Attachment A

CHAPTER 15.44 ART IN PUBLIC PLACES

§ 15.44.010 TITLE.

This chapter shall be known as the "Art in Public Places Ordinance."

§ 15.44.020 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

APPROPRIATELY MAINTAINED. Maintained in conformance with the city's public artwork maintenance policy.

ARTWORK. An original creation of physical art by an ~~established~~ artist. ARTWORK includes without limitation a fountain, mobile, mosaic, mural, painting, sculpture or tapestry. An ARTWORK may be realized through such mediums as bronze, ceramic tile, concrete, stained glass, steel or wood. An ARTWORK shall not include objects that are mass-produced with a standard design.

ARTWORK VALUE. The direct costs of the following elements (as applicable) in connection with an artwork: design; acquisition; construction or creation; and installation. ARTWORK VALUE shall not include utility and maintenance costs related to the operation and preservation of an artwork.

~~CITY MANAGER. The CITY MANAGER or such person's designee.~~

COMMITTEE. The ~~Monrovia Endowment for the Arts~~ Art in Public Places Committee as established by the City Council.

DEVELOPMENT PROJECT. Construction of a building that meets the criteria in § 15.44.050 of this Code.

DIRECTOR. The Director of Community ~~Services~~ Development or such person's designee.

~~—ENDOWMENT. The Monrovia Endowment for the Arts, as established by the City Council.~~

~~—ESTABLISHED ARTIST. A professional artist who derives his or her income primarily from working as an artist, and whose prominence is recognized by art journals, art books or art gallery reputation. ESTABLISHED ARTIST shall not include an architect, design consultant or landscaping consultant retained for the design and construction of the subject development project.~~

IN LIEU PUBLIC ART FEE. A fee paid to the City's Art in Public Places Fund by a development project applicant in an amount equal to 1% of the project cost pursuant to § 15.44.060(A)(3) of this Code, unless otherwise limited in a specific plan or other document approved by the City Council.

PROJECT COST. The total building permit valuation of new construction of a development project, excluding the land value, as indicated on the building permit or permits issued by the city for the project.

PUBLIC ARTWORK. Artwork that is either (i) donated to the city for display on city property; ~~or (ii) installed on public property; or~~ (iii) installed on private property in a publicly accessible location.

~~PUBLIC ARTWORK REQUIREMENT. The requirement, imposed by this chapter, of providing a public artwork or paying the in-lieu art fee.~~

PUBLICLY ACCESSIBLE. Located ~~on in~~ an area of the City open to the general public ~~and/or~~ clearly visible from ~~the an~~ adjacent public right of way property such as a sidewalk or street.

§ 15.44.030 IMPLEMENTATION OF CHAPTER.

(A) The procedures prescribed by this chapter for review and approval of public artwork shall be conducted concurrently with any applicable procedures prescribed by Title 15 or Title 17 of this code for review and approval of development permits.

~~(B) The Committee shall prepare a public artwork catalogue that identifies artworks that may be used to satisfy the public artwork requirement. The Committee may update such catalogue when deemed appropriate.~~

~~(B)~~ The ~~City Manager~~ Director shall establish and publish a public artwork maintenance policy that specifies maintenance requirements for public artwork installed on private property to satisfy the public artwork requirement. The ~~City Manager~~ Director may amend such policy as deemed appropriate.

~~(C)~~ The ~~City Manager~~ Director shall ~~prepare~~ establish and publish implementation guidelines for a mural program that identifies a variety of programs and projects to further the goal of providing publicly accessible art throughout the city and encourages community participation in the arts. ~~the location, design, content, and care and maintenance of murals that may be installed in the city.~~

§ 15.44.040 ART IN PUBLIC PLACES FUND.

(A) There is hereby established in the city a fund known as the "Art in Public Places Fund", which shall be a depository for In Lieu Public Art Fees paid pursuant to this chapter and for public art-related monetary donations to the city.

(B) The Art in Public Places Fund shall be maintained by the Director of Finance or their designee and funds shall be utilized for any of the following purposes at the discretion of the City:

(1) Design, acquisition, installation, improvement, maintenance, repair and insurance of public artwork displayed on city property. Public artwork acquired with money from the Art in Public Places Fund shall be the property of the city.

(2) Offering of performing arts programs on city property for the community community provided however, that not more than 5% of the Fund's annual budget shall be used for this purpose.

(3) Offering of art education programs on city property for the community; provided, however, that not more than 5% of the Fund's annual budget shall be used for this purpose.

(C) The Art in Public Places Fund shall be accounted for separately and shall not be used for general governmental purposes. In Lieu Public Art fees deposited into the Fund shall be expended for permitted purposes within five calendar years of deposit.

(D) The Director shall timely provide the Development Impact Fee reports on Fund activities required by State law to the City Council and the Committee.

§ 15.44.045 LIBRARY IMPROVEMENT FUND.

~~—(A) There is hereby established in the city a fund known as the “Library Improvement Fund,” which shall be a depository for in-lieu fees paid pursuant to this chapter and for library improvement related monetary donations to the city.~~

~~—(B) The Library Improvement Fund shall be maintained by the Director of Finance and shall be utilized only to acquire, construct or make capital improvements to the Monrovia public library facilities.~~

§ 15.44.050 APPLICABILITY OF PUBLIC ARTWORK REQUIREMENT.

(A) Except as provided in division (B) below, the following development projects shall comply with the public artwork requirement established in this chapter. ~~public artwork requirement shall apply to the following development projects:~~

(1) Residential development projects involving five or more dwelling units and having a project cost in excess of \$1 million.

(2) Commercial, industrial, office or other non-residential development projects having a project cost in excess of \$1 million.

(B) The following development projects shall be exempt from the public artwork requirement:

(1) Government agency development projects.

(2) Reconstruction of buildings that have been damaged by fire, flood, wind, earthquake or other calamity.

(3) Affordable housing developments that are entirely comprised of residential units that are either deed-restricted for occupancy by persons of moderate income or less for a period of 25-55 years or more, or constructed pursuant to a disposition and development agreement with the Monrovia Redevelopment Agency.

(4) Tenant improvements to existing structures.

(5) A new development project that is entirely within the boundaries of a Community Facilities District or similar mechanism to fund ongoing city services, established by the City Council and fully approved under applicable law by the property owner.

§ 15.44.060 SATISFACTION OF PUBLIC ARTWORK REQUIREMENT.

(A) The public artwork requirement shall be satisfied by completing one of the following actions in accordance with this chapter:

(1) Donating public artwork to the city.

(2) Installing a public artwork on private property.

(3) Paying an in-lieu Public Art Fee in the amount established by this Chapter to the City. At the option of developer, 50% of the in-lieu art fee may be deposited in the Library Improvement Fund.

~~—(4) Construction of on-site improvements pursuant to a disposition and development agreement with the Monrovia Redevelopment Agency.~~

(B) If the artwork value of a public artwork used to satisfy the public artwork requirement is less than the amount of the in-lieu Public Art fee that otherwise would be applicable to the development project, then the difference shall be paid to the city prior to the issuance of a certificate of occupancy for the development project and deposited in the Art in Public Places Fund, and/or in the Library Improvement Fund, as provided in this § 15.44.060.

§ 15.44.070 PROCEDURE FOR DONATION OR INSTALLATION OF PUBLIC ARTWORK.

(A) —(A) An application to donate for donation of a public artwork to the city, or to for installation of a public artwork to fulfill the requirements of this Chapter, or to utilizing revenue funds from the Art in Public Places Fund shall be reviewed initially by the Committee which shall make a recommendation thereon to the City Council. The Committee shall act as an advisory body only. The City Council shall be the final decision maker on all such applications. The City Council may approve, conditionally approve or reject a proposed public artwork in its absolute discretion based on its aesthetic judgement or other factors deemed relevant by the City Council. Notwithstanding the foregoing, if an applications for public

artwork that fulfills the requirements of this chapter, or utilizes no more than \$5,000 from the Art in Public Places Fund, may be approved by the Committee-, with a right of appeal to the City Council pursuant to the process set forth in Section 12.48.060 of this code. The decision of the City Council shall be final.

~~(A) An application on private property, shall be filed with the City Manager/Director and prior to the issuance of a grading or building permit for the development project. The application shall be made on a city-provided form and shall contain such information to enable a reasonable evaluation as requested by the Director, including:~~

(B)

~~(1) (1) An appraisal by an independent, qualified art appraiser or other evidence of the artwork value satisfactory to the City Manager.~~

~~(2) (2) If the proposed public artwork is not listed in the city's public artwork catalogue, then the application shall include the following:~~

~~(3) (a) Preliminary sketches, photographs, models or other documentation of sufficient descriptive clarity to indicate the nature of the artwork.~~

~~(4) (b) The resume of the artwork's creator.~~

~~(5) (3) If the application is for donation, then the application shall include the following:~~

~~(6) (a) A City Attorney-approved written statement executed by the artwork's creator waiving such person's rights under the Visual Artists Rights Act of 1990 (17 U.S.C. 101 et seq.), Cal. Civil Code § 1542 and equivalent laws.~~

~~(7) (4) If the application is for installation, then the application shall include the following:~~

~~(8) (a) Preliminary plans of sufficient descriptive clarity to indicate the compatibility of the artwork with the development project, adjacent parcels and the surrounding neighborhood.~~

~~(9) (b) A written statement explaining how the artwork will be publicly accessible.~~

~~(10)(1) (5) Any other information requested by the City Manager to enable reasonable evaluation of the application including review by the City's Risk Manager.~~

~~(B) (B) Each application for the installation of an artwork on private property shall be reviewed initially by the Committee which shall make a recommendation thereon to the City Council. The Committee shall be an advisory body only, and the City Council shall be the final decision-maker on all applications. The City Council may accept or reject a proposed public artwork in its absolute discretion based on its aesthetic judgment. Notwithstanding the foregoing, if the public~~

~~artwork proposed to be installed is listed in the city's public artwork catalogue, the City Manager may approve the application, with a right of appeal to the City Council.~~

~~(C) (C) Each application for the donation of an artwork to be placed on City property, or for the purchase of an artwork with revenue from the Art in Public Places Fund, shall be reviewed initially by the Committee which shall make a recommendation thereon to the City Council. The Committee shall be an advisory body only, and the City Council shall be the final decision-maker on all applications. The City Council may accept or reject a proposed public artwork in its absolute discretion based on its aesthetic judgment. Notwithstanding the foregoing, if the public artwork proposed to be donated or purchased is listed in the city's public artwork catalogue, the City Manager may approve the application, with a right of appeal to the City Council.~~

~~(D) (D) An approved public artwork shall be delivered to the city or installed on private property prior to issuance of an occupancy permit for the development project.~~

(C)

(D) ~~(E)~~ Prior to installing a public artwork on private property to satisfy the public artwork requirement, the property owner shall execute and record with the County Recorder a City Attorney-approved covenant. Such covenant shall require the property owner and successors thereof to do the following:

~~(1):~~

~~(2) (1) Keep the public artwork and the surrounding property appropriately maintained and available for public access pursuant to §15.44.090.~~

(1) Maintain in place a policy or policies of property insurance to protect against damage or loss of the public artwork, with policy limits sufficient to pay for the replacement of the public artwork, if necessary. The property owner shall provide current evidence of such insurance to the City upon request. If the property fails to maintain such insurance in effect the City may, at its discretion, obtain replacement insurance and bill the property owner for the cost. If the property owner fails to timely reimburse the City for the costs of replacement insurance, the City may pursue all available remedies for collection including, without limitation, placing a lien on the subject property.

(2)

~~(3) (2) Allow city representatives to enter upon the property upon reasonable written notice to perform necessary repairs to the public artwork or replacement at the property owner's expense when the public artwork is not appropriately maintained or replaced.~~

(3) If the property owner fails to repair, maintain, or replace public artwork upon direction by the City, and does not permit the City's entry pursuant to

subsection (D)(2), above, the property owners' failure to maintain or replace public artwork may be treated as a public nuisance and abated according to the procedures set forth in this code.

~~(4)~~—~~(3)~~—Indemnify, defend and hold harmless the city, its officers, employees and agents from any claim, demand, damage, liability, loss, cost or expense attributable to the public artwork.

~~(4)(5)~~ Such other terms as deemed necessary in individual cases by either the City Attorney or the Director.

§ 15.44.080 PROCEDURE FOR PAYMENT OF IN LIEU PUBLIC ART FEE.

—Unless an alternative deadline is approved by the City Council, payment of the ~~in~~ Lieu Public Art fee shall be made prior to the issuance of a certificate of occupancy building permit for the subject development project. ~~A certificate of deposit, with the city as the named party, that is equal to the amount of the in lieu art fee may be substituted, subject to the approval of the City Manager.~~

~~§ 15.44.090 MAINTENANCE OF PUBLIC ARTWORK ON PRIVATE PROPERTY.~~

~~—Public artwork installed on private property to satisfy the public artwork requirement shall be appropriately maintained and insured by the property owner. The insurance shall be in an amount equal to or greater than the artwork value, and shall provide coverage against loss or damage (including vandalism) of the public artwork.~~

§ 15.44.~~090~~100 REMOVAL OR ALTERATION OF PUBLIC ARTWORK ON PRIVATE PROPERTY.

Public artwork installed on private property to satisfy the public artwork requirement shall not be removed or altered without the prior approval of the City Council. In addition to any other applicable penalty, violation of this section may render the property owner liable for payment of the ~~in~~ Lieu Public Art fee that would have been applicable to the subject development project, and may result in revocation of the occupancy permit issued for the subject development project. Prior to any imposition of in Lieu Public Art fee liability or occupancy permit revocation pursuant to this section, the city shall afford the property owner notice and an opportunity for a hearing.

ORDINANCE NO. 2023-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL AND TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MONROVIA MUNICIPAL CODE PERTAINING TO ART IN PUBLIC PLACES

THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA does ordain as follows:

SECTION 1. The City Council finds and declares that:

- A. Public artwork enhances the quality of life for individuals living in, working in, and visiting the City of Monrovia, and the City's existing public art program is a significant community asset.
- B. As development and re-development in Monrovia continues, the increasing urbanization of the community makes public art an increasingly important element of the built environment in the City.
- C. The City Council previously established the Art in Public Places Ordinance in 2004, through the adoption of Ordinance No. 2003-03, including the imposition of a public art requirement and adoption of the In Lieu Public Art Fee. It is the intent of the City Council that this ordinance is an administrative update to the structure and implementation of the Art in Public Places program, and not the adoption of a new fee or the increase of any existing fee.
- D. The continuing implementation of the City's Art in Public Places program, and this ordinance, are consistent with the California Supreme Court's ruling in *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996), in which the Supreme Court ruled that California cities can require developers to include public art in development projects or pay an in lieu fee.

SECTION 2. Title 2 (Administration and Personnel) of the Monrovia Municipal Code is hereby amended by adding a new Chapter 2.62 entitled "Art in Public Places Committee, which shall read as follows:

"Chapter 2.62 Art in Public Places Committee

§ 2.62.010 CREATION.

The Art in Public Places Committee is hereby created to advise the City Council regarding public art and the administration and implementation of the Art in Public Places ordinance contained in Chapter 15.44 of this Code.

§ 2.62.020 MEMBERSHIP.

- (A) The Art in Public Places Committee shall consist of five members:
 - (1) One member of the City Council who shall serve as chair
 - (2) One Community Services Commissioner
 - (3) One Historic Preservation Commissioner
 - (4) One Planning Commissioner
 - (5) One resident at-large
- (B) Each of the respective bodies set forth in subsection (A) shall nominate a member to serve on the Committee each year as part of the commission reorganization. Commissioners may be reappointed to the Committee without limitation.
- (C) Commissioners whose terms end on their respective commissions shall also vacate their seat on this Committee.
- (D) The resident-at-large shall serve a three year term and shall be selected pursuant to the process contained in § 2.46.040 of this Code.
- (E) Appointed members of the Committee shall serve without compensation.
- (F) In the absence of the chair, the Director of Community Development shall serve as chair, however, the Director shall not have any vote on matters brought before the Committee. The Director or their designee shall act as Secretary to the Committee and shall keep a record of all the proceedings, decisions, and findings of the Committee which shall be a public record.
- (G) The Members of the Art in Public Places Committee shall serve at the pleasure of the City Council and may be removed by majority vote of the City Council at any time.
- (H) Vacancies shall be filled in the same way the vacating member was appointed.

§ 2.62.030 MEETINGS—QUORUM.

- (A) The Committee shall hold regular meetings, the frequency, date, and time thereof to be established by resolution of the Committee.
- (B) The Director may call for a special meeting of the Committee to review applications received in the interim.

(C) Three members of the Committee shall constitute a quorum to conduct business.

§ 2.62.040 USE OF CITY STAFF.

- (A) Within the limitations of funds appropriated in the annual budget, the Director of Community Development may designate such employees of the City to assist the Committee in a manner deemed necessary and appropriate by the Director.
- (B) Employees of the City designated to assist the Committee shall work under the supervision of the Director and work with the Committee to the end that the policies of the City, as specified by the City Council, are carried out.
- (C) Staff support to the Committee shall be limited to research and analysis, and preparing staff reports and communications regarding the Committee's work.

SECTION 3. Chapter 15.44 (Art in Public Places) of Title 15 (Buildings and Construction) of the Monrovia Municipal Code is hereby amended in its entirety to read as follows:

“§ 15.44.010 TITLE.

This chapter shall be known as the 'Art in Public Places Ordinance.'

§ 15.44.020 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

APPROPRIATELY MAINTAINED. Maintained in conformance with the City's public artwork maintenance policy.

ARTWORK. An original creation of physical art by an artist. ARTWORK includes without limitation a fountain, mobile, mosaic, mural, painting, sculpture or tapestry. An ARTWORK may be realized through such mediums as bronze, ceramic tile, concrete, stained glass, steel or wood. An ARTWORK shall not include objects that are mass-produced with a standard design.

ARTWORK VALUE. The direct costs of the following elements (as applicable) in connection with an artwork: design; acquisition; construction or creation; and installation. ARTWORK VALUE shall not include utility and maintenance costs related to the operation and preservation of an artwork.

COMMITTEE. The Art in Public Places Committee as established by the City Council.

DEVELOPMENT PROJECT. Construction of a building that meets the criteria in § 15.44.050 of this Code.

DIRECTOR. The Director of Community Development or such person's designee.

IN LIEU PUBLIC ART FEE. A fee paid to the City's Art in Public Places Fund by a development project applicant in an amount equal to 1% of the project cost pursuant to § 15.44.060(A)(3) of this Code, unless otherwise limited in a specific plan or other document approved by the City Council.

PROJECT COST. The total building permit valuation of new construction of a development project, excluding the land value, as indicated on the building permit or permits issued by the City for the project.

PUBLIC ARTWORK. Artwork that is either (i) donated to the City for display on City property; (ii) installed on public property; or (iii) installed on private property in a publicly accessible location.

PUBLICLY ACCESSIBLE. Located in an area of the City open to the general public or clearly visible from the adjacent public right of way such as a sidewalk or street.

§ 15.44.030 IMPLEMENTATION OF CHAPTER.

- (A) The procedures prescribed by this chapter for review and approval of public artwork shall be conducted concurrently with any applicable procedures prescribed by Title 15 or Title 17 of this Code for review and approval of development permits.
- (B) The Director shall establish and publish a public artwork maintenance policy that specifies maintenance requirements for public artwork installed on private property to satisfy the public artwork requirement. The Director may amend such policy as deemed appropriate.
- (C) The Director shall establish and publish a set of implementation guidelines that identifies a variety of programs and projects to further the goal of providing publicly accessible art throughout the City and encourages community participation in the arts.

§ 15.44.040 ART IN PUBLIC PLACES FUND.

- (A) There is hereby established in the City a fund known as the "Art in Public Places Fund", which shall be a depository for In Lieu Public Art Fees paid pursuant to this chapter and for public art-related monetary donations to the City.
- (B) The Art in Public Places Fund shall be maintained by the Director of Finance or their designee and funds shall be utilized for any of the following purposes at the discretion of the City:

- (1) Design, acquisition, installation, improvement, maintenance, repair, and insurance of public artwork displayed on City property. Public artwork acquired with money from the Art in Public Places Fund shall be the property of the City.
 - (2) Offering of performing arts programs on City property for the community provided however, that not more than 5% of the Fund's annual budget shall be used for this purpose.
 - (3) Offering of art education programs on City property for the community; provided, however, that not more than 5% of the Fund's annual budget shall be used for this purpose.
- (C) The Art in Public Places Fund shall be accounted for separately and shall not be used for general governmental purposes. In Lieu Public Art fees deposited into the Fund shall be expended for permitted purposes within five calendar years of deposit.
- (D) The Director shall timely provide the Development Impact Fee reports on Fund activities required by State law to the City Council and the Committee.

§ 15.44.050 APPLICABILITY OF PUBLIC ARTWORK REQUIREMENT.

- (A) Except as provided in division (B) below, the following development projects shall comply with the public artwork requirement established in this chapter.
- (1) Residential development projects involving five or more dwelling units and having a project cost in excess of \$1 million.
 - (2) Commercial, industrial, office or other non-residential development projects having a project cost in excess of \$1 million.
- (B) The following development projects shall be exempt from the public artwork requirement:
- (1) Government agency development projects.
 - (2) Reconstruction of buildings that have been damaged by fire, flood, wind, earthquake or other calamity.
 - (3) Affordable housing developments that are entirely comprised of residential units that are deed-restricted for occupancy by persons of moderate income or less for a period of 55 years or more.
 - (4) Tenant improvements to existing structures.
 - (5) A new development project that is entirely within the boundaries of a Community Facilities District or similar mechanism to fund ongoing City services, established by the City Council and fully approved under applicable law by the property owner.

§ 15.44.060 SATISFACTION OF PUBLIC ARTWORK REQUIREMENT.

- (A) The public artwork requirement shall be satisfied by completing one of the following actions in accordance with this chapter:
- (1) Donating public artwork to the City.
 - (2) Installing a public artwork on private property.
 - (3) Paying an In Lieu Public Art Fee in an amount established by this Chapter to the City.
- (B) If the artwork value of a public artwork used to satisfy the public artwork requirement is less than the amount of the In Lieu Public Art fee that otherwise would be applicable to the development project, then the difference shall be paid to the City and deposited in the Art in Public Places Fund, as provided in this § 15.44.060.

§ 15.44.070 PROCEDURE FOR DONATION OR INSTALLATION OF PUBLIC ARTWORK.

- (A) An application for donation of a public artwork to the City, or for installation of a public artwork to fulfil the requirements of this chapter or utilizing revenue from the Art in Public Places Fund shall be reviewed initially by the Committee which shall make a recommendation thereon to the City Council. The Committee shall act as an advisory body only. The City Council shall be the final decision maker on all such applications. The City Council may approve, conditionally approve or reject a proposed public artwork in its absolute discretion based on its aesthetic judgement or other factors deemed relevant by the City Council. Notwithstanding the foregoing, applications for public artwork that fulfil the requirements of this chapter and utilize no more than \$5,000 from the Art in Public Places Fund, may be approved by the Committee, with a right of appeal to the City Council.
- (B) An application shall be filed with the Director and shall be made on a City-provided form and shall contain such information to enable a reasonable evaluation as requested by the Director, including a City Attorney-approved written statement executed by the artwork's creator waiving such person's rights under the Visual Artists Rights Act of 1990 (17 U.S.C. 101 et seq.), Cal. Civil Code § 1542 and equivalent laws.
- (C) An approved public artwork shall be delivered to the City or installed on private property prior to issuance of an occupancy permit for the development project.
- (D) Prior to installing a public artwork on private property to satisfy the public artwork requirement, the property owner shall execute and record with the County Recorder

a City Attorney-approved covenant. Such covenant shall require the property owner and successors thereof to do the following:

- (1) Keep the public artwork and the surrounding property appropriately maintained and available for public access pursuant to §15.44.090.
- (2) Allow City representatives to enter the property upon reasonable notice to perform necessary repairs to the public artwork or replacement at the property owner's expense when the public artwork is not appropriately maintained or replaced.
- (3) If the property owner fails to repair, maintain, or replace public artwork upon direction by the City, and does not permit the City's entry pursuant to subsection (D)(2), above, the property owners' failure to maintain or replace public artwork may be treated as a public nuisance and abated according to the procedures set forth in this code.
- (4) Indemnify, defend and hold harmless the City, its officers, employees and agents from any claim, demand, damage, liability, loss, cost or expense attributable to the public artwork.
- (5) Such other terms as deemed necessary in individual cases by either the City Attorney or the Director.

§ 15.44.080 PROCEDURE FOR PAYMENT OF IN LIEU PUBLIC ART FEE.

Unless an alternative deadline is approved by the City Council, payment of the In Lieu Public Art Fee shall be made prior to the issuance of a certificate of occupancy for the subject development project.

§ 15.44.100 REMOVAL OR ALTERATION OF PUBLIC ARTWORK ON PRIVATE PROPERTY.

Public artwork installed on private property to satisfy the public artwork requirement shall not be removed or altered without the prior approval of the City Council. In addition to any other applicable penalty, violation of this section may render the property owner liable for payment of the In Lieu Public Art Fee that would have been applicable to the subject development project, and may result in revocation of the occupancy permit issued for the subject development project. Prior to any imposition of In Lieu Public Art fee liability or occupancy permit revocation pursuant to this section, the City shall afford the property owner notice and an opportunity for a hearing.”

SECTION 4. The term of the current resident at-large position on the Art in Public Places Committee shall expire on June 30, 2024 and shall hereafter be selected pursuant to the process contained in § 2.46.040 of the Monrovia Municipal Code.

SECTION 5. The custodian of records for all materials that constitute the record of proceeding upon which this decision is based is the City Clerk. Those documents are available for public review in the Office of the City Clerk located at 415 South Ivy Avenue, Monrovia, California 91016.

SECTION 6. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

INTRODUCED this 7th day of November, 2023.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2023.

Becky A. Shevlin, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Alice D. Atkins, MMC, City Clerk
City of Monrovia

Craig A. Steele, City Attorney
City of Monrovia