

**ORDINANCE NO. 3127-14**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
REDONDO BEACH, CALIFORNIA, ADDING CHAPTER 6  
PUBLIC ART FUNDING MECHANISMS TO TITLE 10  
PLANNING AND ZONING OF THE REDONDO BEACH  
MUNICIPAL CODE**

WHEREAS, on August 20, 2013, the Redondo Beach City Council directed that an ordinance be created for funding mechanisms for public art; and

WHEREAS, the Planning Commission of the City of Redondo Beach held a public hearing on October 16th, 2014, at which time all interested parties were given an opportunity to be heard and to present evidence; and

WHEREAS the City of Redondo Beach has determined that public art is a critical element of providing a diverse and culturally rich environment to residents and visitors to Redondo Beach that promotes the general public welfare; and

WHEREAS, research has shown that the arts foster economic development, revitalize urban areas and improve the overall business environment. Additionally, a well-conceived work of art can increase the value of a development project, enhance the corporate image of the community, promote cultural tourism and enhance the Living Streets Policy of a more beautiful and vital city; and

WHEREAS, public art enriches and celebrates our community identity by developing a collection of artworks which have strong inherent aesthetic quality and represent diverse communities and a wide range of artistic styles and disciplines; and

WHEREAS, in order to ensure that public art is present throughout the community it is necessary to require that all new non-residential development in the City of Redondo Beach with a building valuation of at least two hundred fifty thousand dollars (\$250,000), include an element of public art equivalent to one percent (1%) of the building valuation or, where appropriate, contribute to a City fund for public art, in an amount equal to one percent (1%) of the building valuation of the project in lieu of providing said art; and

WHEREAS, in order to ensure that public art is present throughout the community it is necessary to require that all new residential development in the City of Redondo Beach of three (3) units or more and with a building valuation of at least two hundred fifty thousand dollars (\$250,000), include an element of public art equivalent to one percent (1%) of the of the building valuation or, where appropriate, contribute to a City fund for public art, in an amount equal to one percent (1%) of the building valuation (minimum two hundred fifty thousand dollars (\$250,000) of the project in lieu of providing said art; and

WHEREAS, in order to ensure that public art is present throughout the community it is necessary to require that certain eligible City Capital Improvement Projects include an element of public art at a cost equivalent to one percent (1%) of the of the building valuation; and

WHEREAS, in order to provide the City Council with advisory recommendations regarding public art proposals, whether funded by a developer or through in lieu contributions, all public art proposals shall be first received by the Public Art Commission; and

WHEREAS, the requirement that applicants for development projects provide either public art or an in lieu equivalent fee is a legitimate and valid land use regulation that has been analogized by California courts as akin to traditional land use regulations imposing minimal setbacks, parking and lighting conditions, landscaping requirements and other design conditions; and

WHEREAS, aesthetic regulations as set forth in the public art contribution is reasonably related to the public health, safety and welfare of the citizens of the City of Redondo Beach, and furthers the significant government interests of the promotion of visual and cultural interest in commercial and residential zoning, preservation of neighborhood character, communication of community values and cultural interests, promotion of tourism and stimulation of the local economy, and enhancement of the visual character and identity of the City; and

WHEREAS, the City Council hereby finds that the public art contribution is thus neither a "development fee" subject to the requirements of the California Mitigation Fee Act, California Government Code 66000 *et seq*, nor a development exaction subject to the scrutiny of relevant rules set forth in Nollan v. California Coastal Commission 483 U.S. 825 91987) and Dolan v. City of Tigard 512 U.S. 374 (1994), but rather, that the public art contribution is a zoning requirement that furthers aesthetic objectives under the authority of the City's general police power.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Redondo Beach Municipal Code Chapter 6, Title 10 is hereby added to read as follows:

Chapter 6

PUBLIC ART REQUIREMENTS

Sections:

**10-6.01 Purpose**

The purpose of this chapter is to authorize the establishment of guidelines, procedures and standards for the integration of public art into new, eligible private development projects and public capital improvement projects throughout the City of Redondo Beach.

Public art helps create a more livable and visually stimulating city. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. It creates a deeper interaction with the places where we live, work and visit. A city rich in art encourages cultural tourism which brings in visitor revenues.

The fostering of public art in the City and the establishment of a Public Art Program was due, in part, to the hard work of the late John Parsons, a former Planning Commissioner, Harbor Commissioner and Council Member who dedicated himself to this purpose.

The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the city. Public art illuminates the diversity and history of a community, and points to its aspirations for the future. A wealth of art and culture in the public realm will foster the economic development of the community.

To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist(s) should become a member of the project's design team early in the design process.

#### **10-6.02 Implementation by the Public Art Commission**

**The Public Art Commission, as established in Section 2-9.1401 of the Redondo Beach Municipal Code, shall implement the duties established in this Chapter.**

#### **10-6.03 Definitions**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- A. "Addition" means an extension or increase in floor area or height of a building or structure.
- B. "Alteration" means any construction or renovation to an existing structure other than repair or addition.
- C. "Artist" means a person who has a reputation among peers as a person of artistic excellence, through a record of exhibitions, public commissions, sale of works, or educational attainment as judged by the reviewing body with final design review authority for the development project.
- D. "Building Valuation" for an applicable project shall consist of the dollar amount of all construction permits using the latest Building Valuation Data as set forth by the International Code Council (ICC), unless in the opinion of the Building Official, a different valuation methodology is more appropriate for the particular project. It does not include the cost of the land acquisition and off-site improvement costs.
- E. "Developer" means the person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this chapter, who may, or may not, be the owner of the subject property.
- F. "Director" means the Community Development Director, or a designee of the Community Development Director or the City Manager.
- G. "Eligible Capital Improvement Project" shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or

any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this ordinance.

- H. "Installation date" means the actual date on which the public art is installed on site.
- I. "Maintenance" means to keep in continuance or in a certain state, as of repair.
- J. "Private development project" means a project involving the construction of any new residential (three units or more), commercial building (including office and retail uses), industrial or light industrial uses, or any mixed-use project, the construction of new tenant improvements in any shell building, an addition to an existing building, or the rehabilitation, renovation, remodeling or tenant improvement of an existing building, and having a building valuation, as defined in this Chapter, of two hundred fifty thousand (\$250,000.00) or more. For the purposes of calculation of the public art contribution for a mixed-use project, the building valuation shall be calculated based on the nonresidential portion of the project only. To the extent that all or some portion of the new construction includes one or more of the six "exclusion items" identified below, those portions of the project shall be excluded from the definition of "Private development project"; thus, those portions of construction shall not be subject to the requirements of this chapter:
  - 1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity;
  - 2. Historic preservation or restoration;
  - 3. Seismic retrofit or flood protection projects work items;
  - 4. Fire sprinkler installation work items as defined by section 9-1.05 of the Redondo Beach Municipal Code.
  - 5. Any alteration, maintenance or repair of an existing structure, or equipment, that does not result in an addition (i.e. does not result in an extension, expansion or increase in the floor area or height of the existing structure). Notwithstanding this exclusion, construction of new tenant improvements in any shell building shall be within the definition of "development project";
  - 6. Solar (photo voltaic) system applications.
- K. "Public art" means an original work of a permanent nature in any variety of media produced by an artist which may include sculpture, murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, or a combination thereof, and may include architectural features of the building such as decorative handrails, stained glass and other functional features which have been enhanced to be visually appealing. City commissioned public art may also include pieces as identified above which may be moved from time to time as a gallery collection and placed in public buildings such as City Hall, the libraries and other publicly accessible facilities.

Public art does not include the following:

1. Art objects that are mass produced of standard design such as playground equipment, benches, statuary objects or fountains;
  2. Decorative or functional elements or architectural details, which are designed solely by the building architect as opposed to an artist commissioned for this purpose working individually or in collaboration with the building architect;
  3. Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist;
  4. Directional elements such as super graphics, signage as defined in the Redondo Beach Municipal Code Section 10-2.1800, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;
  5. Interpretive programs;
  6. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, print making, or other media arts, specifically commissioned by the City;
  7. Services or utilities necessary to operate or maintain the artwork over time;
  8. Existing works of art offered for sale or donation to the City which do not have an established and recognized significance in the field of public art as determined by qualified arts professionals and art appraisers and ultimately as judged by the Public Art Commission or City Council;
  9. Works of art which are not visible to the public;
  10. Works of art which cannot be reasonably maintained within the resources allocated by the City of Redondo Beach;
  11. Logos or corporate identity.
- L. "Public art contribution" means the dollar amount equal to one percent (1%) of the building valuation of a development project with a building valuation of at least two hundred fifty thousand dollars (\$250,000), covered by this chapter. In the case of a mixed-use project, the dollar amount shall be equal to the cost of one percent (1%) of the building valuation of at least two hundred fifty thousand dollars (\$250,000) of the non-residential component of that development project.
- M. "Public art fund" means a fund established and maintained by the City of Redondo Beach for the purpose of funding public art and the maintenance of public art consistent with the public art master plan.
- N. "Public art master plan" means a plan developed by the City and approved by the City Council which identifies locations on public property such as public rights-of-way and public

parks which would be acceptable for the placement of public art pieces, and additionally identifies funding priorities and criteria for accounting and expenditures of the accumulated public art fund. The plan shall be developed in conjunction with the Public Art Commission.

- O. "Public Art Commission" means the City Commission established under Section 2-9.1401 of the Redondo Beach Municipal Code.
- P. "Public place" means any exterior area on public or private property which is clearly visible to the general public. If located on private property, the area must be clearly visible from adjacent public property such as a street or other public thoroughfare, sidewalk, or path.
- Q. "Remodel." See "Alteration."
- R. "Repair" means the reconstruction or renewal of any part of an existing building for the purpose of its maintenance.
- S. "Reviewing body" means a review in a public forum by official bodies of the City of Redondo Beach including, but not limited to, the Harbor, Public Art and Planning Commissions, as well as the City Council.
- T. "Solar photovoltaic system" means the total components and subsystems that, in combination, convert solar energy into electric energy suitable for connection to a utilization load.

#### **10-6.03 Public art requirement**

The requirements of this chapter shall apply to the following activities:

- A. Eligible Private Development Projects as defined above.
- B. Eligible Capital Improvement Projects as defined above.

#### **10-6.04 Public art requirement for eligible private development projects**

A. The developer of any eligible private development project subject to the requirements of this chapter shall install public art on the project site in a public place as approved by the reviewing body with the authority to approve the development project pursuant to the process identified in this chapter. The cost of the public art shall be equal at least to one percent (1%) of the building valuation. The creator of public art shall be an artist. Public art shall be displayed in a manner that will enhance its enjoyment by the general public. As an alternative to on-site installation of public art, the developer may:

1. Request that the reviewing body with the authority to approve the private development project consider placement of a developer-funded art piece in a public place nearby which is identified in the public art master plan; or

2. Pay a public art monetary contribution into the City Public Art Fund equal to one percent (1%) of the building valuation above two hundred fifty thousand dollars (\$250,000). The public art contribution shall be paid by the developer at the time of building permit issuance. Projects that would generate a 1% fee on amounts over \$75,000,000.00 and provide a significant benefit to the public may request that their 1% fee be capped at \$750,000.00 if the developer submits

evidence and documentation with the application to the satisfaction of the City Manager that payment of a 1% fee in excess of \$750,000.00 would be prohibitively expensive for project delivery; or

3 Subject to the approval of the reviewing body with the authority to approve the private development project, install public art on the development project site that has a value lower than the public art contribution amount and make an in-lieu monetary contribution for the balance of the public art contribution.

B. Prior to obtaining a building permit for construction of the private development project, the developer shall demonstrate compliance with the requirements of this chapter in one of the following ways:

1. Payment of the full amount of the public art monetary contribution; or
2. Written proof to the appropriate Director, designee of the Director, or City Manager of a contract to commission or purchase and install the required public art previously approved by the review body with authority to approve the development project on the subject development site. Such proof shall be accompanied by a performance security, in an amount determined by the Director, to be adequate to secure faithful performance of the commission and installation of the required public art. It shall be accompanied by a written acknowledgement by the project artist and the developer, in a form approved by the Director that the proposed public artwork complies with the criteria set forth below:
  - a. The public art shall be designed by an artist.
  - b. The public art shall require a low level of maintenance and the proposed maintenance provisions shall be adequate for the long-term integrity and enjoyment of the work. The owner shall enter into a maintenance agreement with the City to be recorded against the property to ensure that proper maintenance is performed as determined by the Director.
  - c. The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and architecture, landscaping or other settings to complement the site and its surroundings and shall be consistent with any corresponding action of the reviewing body with final design review authority for the development project as it may relate to any development entitlements.
  - d. Public art shall be permanently affixed to the property.
  - e. The public art shall be maintained by the owner or his or her successor in interest in a manner acceptable to the City.
  - f. The public art shall meet all applicable building code requirements.

C. The developer shall provide the City with proof of installation of the required public art on the development site prior to the issuance of a certificate of occupancy

unless the developer has entered into an agreement and submitted a performance security consistent with subsection B2.

D. Title to all public art required by and installed pursuant to this chapter on private property shall be vested in the owner and pass to the successive owners of the development project. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art. Public art installed on public property is owned by the City of Redondo Beach and maintenance, removal or protection is the responsibility of the City.

E. If, for any reason, the current owner or successor in interest shall choose to replace any public art installed pursuant to this chapter, the following requirements shall be met before the art is replaced:

1. The replacement public art must be reviewed and approved by the reviewing body with the authority to approve private the development project.
2. The cost of the replacement art shall be equal to, or greater than, the initial cost of the existing public art to be removed.
3. The location of the replacement public art shall meet the requirement for public visibility in effect at the time of the replacement.
4. The replacement public art shall conform, in every respect, to all standards in effect at the time of the replacement.
5. The replacement public art, location and installation shall violate no other ordinance.
6. The replacement public art shall be installed within 180 days of the removal of the existing public art piece, unless the period is extended by the Director.

#### **10-6.05 Process for approval of the installation of a public art piece**

The developer shall submit a narrative proposal and artistic rendering of the proposed public art in satisfaction of the requirements imposed by Section 10-6.04, in conjunction with the submittal of an eligible private development project to the Planning Department. The developer may also indicate an intention to pay an in-lieu public art monetary contribution into the City Public Art Fund The proposal for the public art shall be considered as an element of the design review permit review by the reviewing body with authority for the approval of the private development project.

#### **10-6.06 Public art requirement for eligible capital improvement projects**

As part of the City's annual budget process, the City Manager or a designee of the City Manager shall create a report identifying all capital improvement projects that could incorporate public art and which satisfy the following criteria:

1. Designation as an eligible capital improvement project would not result in detriment to the project.



2. The capital improvement project is a permanent public improvement project with a building valuation in excess of two hundred fifty thousand dollars (\$250,000).

3. The resulting public art would be publicly accessible on the capital improvement project site.

4. Eligible capital improvement projects would include the construction of public facilities such as a library, civic center, public safety facility, green/park space, recreational facility or transportation project. Ineligible capital projects include, but are not limited to, underground public works projects, street and/or sidewalk repair, tree planting, drainage and sewer projects, roof repairs, utility facilities, non-municipal government construction and emergency operations facilities and equipment.

If a project is determined to be an Eligible Capital Improvement Project, an amount equivalent to one percent (1%) of the building valuation of the project shall be allocated from the Eligible Capital Improvement Project funding towards public art as part of the Project. The City shall engage an artist for the Eligible Capital Improvement Project at the onset of the development process.

#### **10-6.07 Administrative policies and program guidelines**

The City Manager is authorized to establish and maintain written administrative policies as program guidelines, which shall implement the requirements of this chapter. A copy of the program guidelines shall be maintained in the office of the City Clerk. The program guidelines shall be approved by the City Manager, based on the recommendation of the Community Development Director, and subject to the review and approval as to form by the City Attorney. The program guidelines may include, but are not limited to, the following elements: consistency with General Plan Design policies and Specific Plan Design policies, consistency with applicable Design Guidelines adopted by the City Council, standards for eligible public art works, media and materials in public art, standards for placement and site selection of public art, standards for placement of public art on both public and private development sites, role and procedures of the Public Art Commission, art selection process, art selection standards and criteria, maintenance and conservation of public art works, staffing and administration of the public arts program, public art collection review and removal, and catalog and inventory procedures for the collection of art installed under this chapter.

#### **10-6.08 City Public Art Master Plan**

The City Council shall adopt a public art master plan to govern the acquisition, placement and installation of public art owned by the City using the City Public Art Fund. Prior to the adoption of the Public Art Master Plan, any use of the public art fund shall be subject to a determination by the City Council that the proposed use of revenue is for the acquisition, placement or installation of public art consistent with the purpose of this chapter.

#### **10-6.09 City Public Art Fund**

All fees collected under this chapter shall be held in a special fund known as the "John Parsons Public Art Fund," maintained, managed and reviewed by the City Treasurer. These funds shall be used solely for purpose of furthering the goals of the City's Public Art Program. The City shall use any unexpended public art monetary contributions for the advancement of the Public Art Master Plan and the ongoing maintenance and repair of all current and future public art in the City.

The City shall maintain a five percent (5%) set aside of the Public Art Fund for the maintenance, repair and potential removal or relocation of all current and future public art in the City. The five percent (5%) maintenance allocation shall be funded by all fees collected for the City Public Art Fund (10-6.04 and 10-6.06).

The City shall routinely solicit alternative public art funding sources, including but not limited to, public art grants, donations and sponsorships.

#### **10-6.10 Fee adjustment**

A developer subject to the requirements set forth in this chapter may apply to the City Council for a reduction or adjustment to the fees or waiver of the fees based upon the absence of any reasonable relationship or nexus between the impact of the new development and either the amount of the fees charged or the type of facility to be financed or the portion of the facility attributable to the new development. If appealing fees owed upon issuance of a building permit, the developer shall pay all required fees under protest and concurrently file a written application for a waiver or reduction as an appeal to City Council. Appeals filed under this section shall comply with the requirements set forth in Section 10-1.906 and shall be conducted in accordance with the procedures set forth in that chapter, except that all appeals shall be considered by the City Council. The decision of the City Council shall be final.

#### **10-6.11 Authority for additional mitigation**

Fees collected pursuant to this chapter do not replace existing development fees, except as the City Manager may specifically provide, or other charges or limit requirements or conditions to provide additional mitigation of impacts imposed upon development projects as part of normal development review process.

#### **10-6.12 Annual review**

The City Public Art Fund authorized by this chapter and the accumulated fee funds and their appropriation and supporting documents, shall be reviewed as part of the budget process.

SECTION 2. INCONSISTENT PROVISIONS. Any provisions of the Redondo Beach Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3. SEVERENCE. If any section, subsection, sentence, clause, or phrase of this ordinance 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 remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in the official newspaper of the City, and the same shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

ORDINANCE NO. 2014-10-PCR-011

PASSED, APPROVED AND ADOPTED this 12th day of December, 2014.

\_\_\_\_\_  
Steve Aspel, Mayor

ATTEST:

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES        )        SS  
CITY OF REDONDO BEACH         )

I, Eleanor Manzano, City Clerk of the City of Redondo Beach, California, do hereby certify that the foregoing Ordinance No. 2014-10-PCR-011 duly introduced at a regular meeting of the City Council held on the 18th day of November, 2014, and was duly approved and adopted by the City Council at a regular meeting of said City Council held on the 12th day of December, 2014, by the following vote:

AYES: 5

NOES: 0

ABSENT: 0

ABSTAIN: 0

\_\_\_\_\_  
Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Webb, City Attorney