

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An ordinance of the City Council of the City of Lafayette,))
California recommending approval of a Zoning Text))
Amendment (“ZT05-14”) to Chapter 11-7 “Public Art”)) Ordinance 632
and adding Chapter 6-26 “Public Art” of the Lafayette))
Municipal Code.))

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

WHEREAS, the City’s General Plan contains goals, policies and programs to establish and promote Public Art; and

WHEREAS, the Public Art Ordinance was adopted in 2004 by the City Council; and

WHEREAS, the Public Art Ordinance was updated and approved in 2008 by the City Council; and

WHEREAS, the City’s Public Art Ordinance has only been applied to six (6) projects since its adoption and implementation; and

WHEREAS, the Public Art Ordinance Master Plan was updated and approved in 2013 by the City Council and included a goal to provide more public art; and

WHEREAS, providing art in public spaces, parks, and around buildings brings beauty, a sense of place and a human quality to urban areas; and

WHEREAS, the City prepared Zoning Text Amendment ZT05-14 to amend Chapter 11-7 “Public Art”, remove Chapter 11-7 and replace it with Chapter 6-26 “Public Art”; and

WHEREAS, on August 18, September 15 and October 6, 2014, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT05-14 were heard and ZT06-14 was fully studied and the Planning Commission adopted Resolution No. 2014-19 forwarding a recommendation of approval to the City Council; and

WHEREAS, on October 27 and November 10, 2014, the City Council of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT05-14 were heard and ZT05-14 was fully studied;

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LAFAYETTE CITY COUNCIL THAT:

Section 2. Zoning Text Amendment Findings. Pursuant of Lafayette Municipal Code Section 6-213

and based on the entire record before the City Council and all written and oral evidence received at the public hearing on this matter, the City Council hereby makes and adopts the following findings:

- (a) The zoning text amendment is compatible with the General Plan and each of its elements and all components therein because the General Plan includes a stated goal to support public art (Goal LU-23), a stated policy to promote public art that reflects the cultural life of the community (Policy LU-23.1) and a stated program to research mechanisms for funding public art (Program LU-23.1.1).
- (b) The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the land use districts for which it is proposed and with the regulations for each land use district; and
- (c) There is community need to amend the zoning text to ensure public art is provided for qualified projects in the downtown in order to enhance public spaces and the community's quality of life and to comply with the policies of the General Plan.

Section 3. CEQA. The City finds and determines with certainty that the amendments described in ZT05-14 are not considered a project under the Environmental Quality Act Sections 15061(b)(3) and 15378(b)(5) as the ordinance is an administrative activity that only implements existing state law and would not, itself, allow any construction or propose any projects, and each proposed project would be subject to individual CEQA review.

Section 4. Adoption of Amendment. Based on the record before the City Council, all written and oral evidence presented to the Planning Commission, and the findings made in this Resolution, the Planning Commission hereby recommends that the City Council approve ZT05-14 amending Chapter 11-7 "Public Art" of the Lafayette Municipal Code (LMC) and Adding Chapter 6-26 "Public Art" including revisions to (a) reduce the threshold for covered projects from 10,000 square feet to 5,000 square feet for new construction and modifying the threshold for renovations to 5,000 sq. ft. including substantial exterior modifications; (b) clarify that the requirement for public art is only within the boundaries of the Downtown Specific Plan; (c) clarify the definitions of "construction", "alteration" and "construction or alteration cost"; (d) create a new definition "final construction or alteration cost"; (e) institute a security deposit; (f) require that the final project costs are provided at the end of a project; (g) and require either additional art or an in-lieu fee of 1% of the difference between preliminary and final project, as demonstrated in Exhibit "A" attached hereto and incorporated herein by reference.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Public Records. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

Section 7. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of

general circulation once within fifteen (15) days after its adoption, including the names of the city council members voting for and against its passage, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the city council members who voted for and against its passage.

Section 8. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 9. Certification. The City Clerk shall certify to the adoption of this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting on November 10, 2014, by the following vote:

AYES: Tatzin, B. Andersson, M. Anderson and Mitchell

NOES: Reilly

ABSENT: None

ABSTAIN: None

ATTEST:

APPROVED:

Joanne Robbins, City Clerk

Don Tatzin, Mayor

Attachments

Exhibit "A" Chapter 6-26 – Public Art

Exhibit "B" Chapter 11-7 – Public Art (Strikethrough)

EXHIBIT A

CHAPTER 6-26: PUBLIC ART

Sections:

- 6-2601 Purpose.**
- 6-2602 Definitions.**
- 6-2603 Public art requirement and security.**
- 6-2604 Public art committee.**
- 6-2605 Review process.**
- 6-2606 Gifts of artwork.**
- 6-2607 Criteria for public art.**
- 6-2608 Ownership; maintenance.**
- 6-2609 Deaccession.**
- 6-2610 Public art fund.**
- 6-2611 Exceptions.**
- 6-2612 Sunset Provision.**

6-2601 Purpose.

The purpose of this Chapter is to:

- A. Establish a public art program and its administration.
- B. Establish the City of Lafayette public art collection.
- C. Contribute to the cultural enrichment of the community by adding public art that is of the highest quality, visually stimulating and of enduring value.
- D. Ensure that public art is incorporated into project planning at the earliest possible stage.
- E. Ensure the value of public art is proportional to the true value of a project.
- F. Establish public art gift policies and procedures.

6-2602 Definitions.

- A. "Artist" means a person who has an established reputation of artistic excellence in the visual, performance, literary and/or media arts, as judged by peers, through a record of exhibitions, public commissions, sale of artworks, and/or educational attainment.
- B. "Artwork" means all forms of art created by an artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.
- C. "City of Lafayette public art collection" or "City collection" means all artworks owned by the City of Lafayette or installed on City-owned property.
- D. "Construction" means new construction resulting in a building of 5,000 sq. ft. or more of gross floor area.
- E. "Alteration" means the rehabilitation, renovation, remodeling, addition or improvement of 5,000 sq. ft. or more of an existing building also requiring significant exterior modifications including changes to rooflines, trim and materials.
- F. "Preliminary Construction or alteration cost" means the estimated cost of construction or alteration cost as demonstrated by a preliminary general contract agreement between an architect, contractor and/or property owner. In no case shall the valuation be less than that determined by the Contra

Costa Building Inspection Department

- G. "Cost of artwork" means the total cost of design, manufacture, and installation. In the case of an artwork installed on City-owned property, the cost of artwork will include an endowment for the long-term maintenance of the artwork. An artist's attendance at committee meetings and transportation of the art are excluded from this calculation.
- H. "Deaccession" means the procedure for the removal of an artwork. "Donor" means an individual, group, organization, or business that proposes a public artwork for donation and placement or installation on City-owned property. When applicable, a donor is the artist(s) who created the proposed gift.
- I. "Final construction or alteration cost" means the actual cost to build a new structure or alter an existing structure as demonstrated by the final project cost accounting or "Guaranteed Maximum Price" in a general contract agreement between an architect, contractor and property owner including any change orders, modifications or amendments at the end of a project. The final construction costs will be verified with a declaration and signatures from all parties stating the amount is accurate.
- J. "Gift" means an existing or proposed artwork offered as a donation to the City for placement or installation on City-owned property.. Alternatively, a gift is monetary for the purpose of acquiring public art for the City.
- K. "Maintenance" means actions taken to retard or prevent damage to artwork by control of the environment and/or treatment of the artwork on a routine and long-term basis.
- L. "Public art" means artworks of sculpture, murals, photography, and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics, or any combination of forms of visual media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof displayed at a public place.
- M. "Public art committee" or "committee" means the committee appointed by the City council pursuant to section 6-2604.
- N. "Public place" means any exterior area on public or private property that is easily accessible and clearly visible to the general public. If located on private property, the area will be clearly visible from adjacent City-owned property, such as a street, sidewalk, park or plaza.
- O. "City-owned property" means property, including right-of-way, owned and/or under the jurisdiction of the City or other public agency.

6-2603 Public art requirement and security.

- A. Public art will be installed as a project requirement for the construction or alteration, as defined in this chapter, of a building located in a commercial or multi-family residential zoning district within the boundaries of the Downtown Specific Plan. The installation shall be on the project site. The installation may be at an off-site public place, if requested by the project applicant, and the request is reviewed by the committee and approved by the City Council. The cost of artwork will be an amount not less than one (1) percent of the final construction or alteration cost. In the case of installation of artwork on City-owned property, the cost of artwork will include an endowment towards the long-term maintenance of the artwork.
- B. When an application, subject to public art, is approved by the appropriate hearing authority the property owner shall submit a security deposit prior to the issuance of the building permit. The amount of the security shall be calculated as one half of one percent (0.05%) of a project's preliminary construction or alteration costs. The security deposit will be held until the final construction or alteration costs are submitted and, as provided in this chapter, may be used by the applicant to pay any in-lieu fee. In addition, applicants may utilize the security deposit to pay for

any additional art required under subsection 6-2605G. The City Manager or designee may require reasonable documentation of the costs of any additional art prior to releasing security deposit funds. The deposit or its remaining balance will be refunded without the payment of any interest at the completion of the project upon demonstration that the public art provided meets the requirement in subsection 6-2603A.

- C. In lieu of meeting the requirement in subsection 6-2603A, the City Council may allow a project applicant to pay a fee equal to one (1) percent of the final construction or alteration cost when it is found that location, siting or scale makes the provision of public art inappropriate or infeasible, or the council agrees with the applicant's reasons for not integrating public art into the project. In-lieu fees will be placed in the City's public art fund.
- D. The public art requirement will not apply to the following activities:
 - 1. Underground public works projects;
 - 2. Street or sidewalk repairs;
 - 3. Tree planting or median landscaping;
 - 4. Remodeling, repair or reconstruction of a structure damaged by fire, flooding, wind, earthquake or other calamity;
 - 5. Affordable housing construction or alteration projects or the portion of a market-rate project designated for affordable housing;
 - 6. Interior tenant improvements where there is no significant exterior modification; and/or
 - 7. Exterior modifications that consist of only storefront opening changes, painting, signage or awnings.

6-2604 Public art committee.

A Public Art Committee will be appointed by the City Council. This Committee will be composed of Lafayette residents, that, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts. The Committee will advise the City Council in matters pertaining to public art acquisitions and gifts, artwork maintenance, and, when necessary, artwork deaccession. The Committee will serve as steward of the City collection.

6-2605 Review process.

- A. Application. An applicant seeking approval of a project subject to the requirements of section 6-2603 will submit a public art application and fee, as established by the City Council, to the planning department as a condition of approval of other required project applications. The application will include the preliminary construction and alteration cost of the project, a description of the proposed artwork, budget for design, fabrication, transportation, and installation, resume of the artist, and a maintenance program and budget for the artwork.
- B. Committee Review. The Committee will consider the public art application. The Committee will consider the public art proposal based on the criteria in section 6-2607 or an in-lieu request, and make a recommendation to the City Council.
- C. Council Review. Upon receipt of the Committee's recommendation, the City Council will consider the public art proposal based on the criteria in section 6-2607 or an in-lieu request, and will approve or deny the proposal or request.
- D. Agreement. If the City Council approves the proposed artwork on City-owned property, a formal agreement will be executed between the City and the project applicant. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance budget and requirements, transfer of title, applicant's and/or artist's rights, project supervision, documentation, an identification plaque, City's

rights (including deaccessioning), and other requirements established by the City.

- E. Installation. Approved public art will be installed prior to a certificate of occupancy being issued for the project.
- F. In-lieu Fee. An in-lieu fee will be paid to the public art fund prior to final inspection of the project based on the final construction or alteration cost.
- G. Final Costs. Final construction and alteration costs as well as the actual cost of artwork will be provided to the City. If the cost of the artwork is less than 1% of the final construction and alteration costs, additional art will be installed to meet the 1% requirement, prior to the City's final inspection, otherwise an in-lieu fee will be paid. The new art will follow the same review procedure as described in this section. Payment of the in-lieu fee does not require review by the Public Art Committee or the City Council, but may be authorized by the City Manager or designee.
- H. Deaccession. The alteration or removal of public art that was installed as a requirement of this chapter will be subject to section 6-2609.

6-2606 Gifts of artwork.

- A. Gifts of artwork considered.
 - 1. The City will consider a donor's offer of an existing artwork, commission of an artwork by a specific artist or artists, or to commission an artwork through a competitive public process.
 - 2. Donors will be required to provide a maintenance program for the proposed gift, including estimated maintenance costs. Excessive maintenance costs may be grounds for rejection of the gift.
- B. Review process.
 - 1. All proposed gifts to the City will be referred to the Committee. The Committee's recommendation on the acceptance or rejection of proposed gifts will be referred to the City Council for final action.
 - 2. If the City council approves the acceptance of a gift, a formal agreement will be executed between the City and the donor and/or artist. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance and budget requirements, transfer of title, donor's and/or artist's rights, project supervision, documentation, an identification plaque, City's rights (including deaccessioning), and other requirements established by the City.
- C. Review criteria; standards for acceptance.
 - 1. Criteria. The proposed artwork will be reviewed based on the criteria listed in section 6-2607.
 - 2. Budget. Consideration will include an evaluation of the donor's proposed budget and the artist's ability to successfully complete the project within the proposed budget, and review to assess realistic estimates and comprehensiveness of the budget as it address all costs of the proposal.
 - 3. Unrestricted gifts. Proposed gifts to the City will be clear and unrestricted.
 - 4. Unique artworks. Only one-of-a-kind artworks will be considered, with the exception of prints, photographs or other limited-edition artworks of high quality.
 - 5. Cost of artwork. Acceptance may be contingent upon receipt by the City of payment from the donor for costs associated with the gift that not covered by the donor directly, such as transportation and installation.
- D. Alterations to proposed artwork design. Any significant change to the design or concept made by the artist or donor after approval of the gift proposal must be reviewed and recommended by the Committee and approved by the City Council.
- E. Review of fabrication and installation. Artworks accepted from maquettes or drawings will be subject to City review throughout fabrication and installation. Specific plans for site design,

installation, maintenance and protection will be submitted to the City for approvals.

6-2607 Criteria for public art.

- A. In order to approve public art the Public Art Committee and the City Council shall at a minimum consider the criteria listed below.
 - 1. Aesthetic quality. The foremost consideration will be the quality of the proposed artwork as assessed by the critical review of the Public Art Committee. The provenance, reputation and/or promise of the artist may also be key considerations.
 - 2. Relationship to the collection and to the community. The proposed artwork will be analyzed for its potential relationship to the City's present collection, the requirements of this chapter, and whether it will enhance the aesthetic quality of the community.
 - 3. Compatibility. Conceptual compatibility and appropriateness of the proposed artwork to the surrounding built and/or natural environment will be factors for consideration, and will include scale, form, content and design.
 - 4. Materials, fabrication and installation. The Committee will evaluate the existing artwork's material or the artist's proposed materials and their appropriateness as regards structural and surface integrity, protection against theft, vandalism, public safety, and weathering, and an analysis of long-term maintenance needs. The Committee will also evaluate the proposed method of installation and an evaluation of safety and structural factors involved in the installation.
- B. The following items will not be considered as public art:
 - 1. Art objects which are mass-produced from a standard design;
 - 2. Reproductions of original artworks;
 - 3. Decorative, ornamental or functional elements including details and fenestration of a building which are designed by the project architect as opposed to an artist commissioned for the purpose of creating the artwork; or
 - 4. Landscape architecture and landscape.

6-2608 Ownership; maintenance.

- A. Ownership. If the artwork is installed on private property as part of an approved project, the property owner will own the artwork. Artwork installed on City-owned property will be owned by the City as part of its collection.
- B. Maintenance. For artwork installed on private property as part of an approved project, the property owner will be responsible for maintenance for the life of the artwork. The City will be responsible for maintenance of the artwork in the City Collection, except when the artwork is deaccessioned pursuant to section 6-2609.

6-2609 Deaccession.

- A. Public art on private property. Public art that was installed as a requirement of this chapter will not be removed or altered unless the replacement or alteration is reviewed by the Committee and approved by the City Council pursuant to section 6-2605.
- B. Public art in the City Collection. In accepting an artwork into its collection, the City will not be bound by any agreement with a project applicant or donor of artwork that restricts its ability to act in the City's best interests. Nothing in the acceptance of an artwork will prevent the City from approving subsequent disposal (removal, relocation, and/or sale) of such artwork if it serves the City's best interest to do so. When disposal is proposed, the Committee will review the proposal and make a recommendation to the City Council for final action. The City will deaccession and sell or otherwise dispose of artworks in its collection in accordance with the limitations of the California Preservation

Act (Civil Code 987) and the Visual Artists Rights Act of 1990 (17 U.S.C. 106A and 113(d)).

6-2610 Public art fund.

- A. In-lieu fees and maintenance endowments will be placed into a separate public art fund maintained by the City. Other funds designated for public art, such as awards and gifts, will be placed into the separate fund. The fund will be used exclusively to:
1. Provide sites for public art;
 2. Acquire or install public art;
 3. Commission public art for a specific site; and/or
 4. Maintain artworks in the City of Lafayette public art collection.
- B. The Committee will recommend to the City Council how the public art fund be expended.

6-2611 Exceptions.

An applicant may submit a request and fee, as established by the City Council, to the Public Art Committee for an exception to modify Section 6-2603A and Section 6-2607B. The Public Art Committee shall review the request and make the finding that an unusual or compelling circumstance exists allowing an exception to be made. The City Council shall be the final hearing authority on all exception requests.

6-2612 Sunset Provision.

This chapter shall remain in effect only until December 10 2018, and as of that date is repealed, unless a later enacted ordinance, that is enacted before December 10, 2018, deletes or extends that date.

Exhibit B