

ORDINANCE NO. 2465

**AN ORDINANCE OF THE CITY OF MONTEBELLO, CALIFORNIA ADDING CHAPTER 17.79 TO TITLE 17 OF THE MONTEBELLO MUNICIPAL CODE TO ESTABLISH AN ART IN PUBLIC PLACES PROGRAM; REMOVING THE TERM “MURALS” FROM TITLE 17, CHAPTER 17.62, SECTION 17.62.050 OF THE MONTEBELLO MUNICIPAL CODE; AND ADOPTION OF A CEQA EXEMPTION UNDER § 15061(B)(3)**

**WHEREAS**, the Montebello City Council (“City Council”) wishes to maintain the character of the City of Montebello (“City”) and create the best possible environment for the individuals living in, working in, and visiting the City; and

**WHEREAS**, to maintain the aesthetics of the City, the City Council believes that development in the City should be planned and executed to enhance the visual character and beauty of the City; and

**WHEREAS**, in addition to beautifying, the arts can sensitize and humanize, provide social involvement, and assist in education, personality development, and community well-being; and

**WHEREAS**, with this Ordinance the City Council wishes to amend Chapter 17.62 “Signs” of the Montebello Municipal Code (“MMC”) to remove “murals” from the list of unauthorized signs in Section 17.62.050 “Prohibited signs”; and

**WHEREAS**, with this Ordinance the City Council wishes to establish criteria for approving artwork throughout the City by adding Chapter 17.79 “Art in Public Places Program” to the MMC.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Section 17.62.050 of the MMC is hereby amended to read in its entirety as follows (deletions in ~~striketrough~~ and additions in double underline):

**17.62.050 - Prohibited signs.**

- A. The following signs are prohibited except as provided in Section 17.62.160, Nonconforming signs, Section 17.62.160, Temporary signs, and Section 17.62.105, Off-Premises Digital Display Signs:

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1. Signs that include video, blink, or move in any manner, have any portions that move, or have the appearance of moving, including animated or scrolling electronic text that clocks, time and temperature displays, civic and public services, and unique/creative signs allowed through the approval of a Planned Sign Program are exempt from this prohibition;
  2. Flags (except those which are raised and lowered on permanently fixed flag poles), pennants, banners, paper, wind driven signs (except where specifically provided for within this code);
  3. Roof signs;
  4. Sign structures and supports no longer in use;
  5. Portable signs;
  6. Commercial advertising statuary;
  7. Signs painted directly onto exterior wall surfaces (such as exterior building walls and masonry block walls, etc.);  
Inflatable signs (except as provided in Sections
  8. 17.62.110 and 17.62.170 of this chapter);
  9. New off-premises signs, except those permitted pursuant to this chapter;
  - ~~10. Murals.~~
- B. No person shall construct, place or maintain any sign, signboard, billboard, street bulletin board, sign or advertisement in, over, along, across or upon any public street or public parkway, or other public place within the city, except as provided in Section 17.62.110 or Section 17.62.105 of this chapter.
- C. Nothing contained in this title shall be construed to prohibit the erection or placing in any public street, parkway or other public place, of signs, notices or signals under the authority of the city council or of this code.
- D. No person shall paint, post, attach or affix any handbill, notice, sign or advertisement upon any object in the public right-of-way, or to any bridge, fence, light pole, building, structure, or other property within public view, nor to any tree in any public right-of-way or public place; nor shall any person deface, mar or disfigure any such bridge, fence, light pole, building, tree, etc.

**SECTION 2.** Chapter 17.79 entitled "ART IN PUBLIC PLACES PROGRAM" is hereby added to the MMC to read in its entirety as follows:

### **Chapter 17.79 – ART IN PUBLIC PLACES PROGRAM**

#### **17.79.010 - Program created.**

This chapter may be known and cited as the City of Montebello "Art in Public Places Program." The intent of the Art in Public Places Program is to provide a collection of artwork throughout the City to be of public benefit. The program is designed to present

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the community with a variety of artwork styles and themes, all of the highest possible quality.

### **17.79.020 - Definitions.**

As used in this chapter:

- A. "Acquire and install" means the developer will be responsible to select an artist and obtain proper approval regarding the artwork and the placement of the artwork as per this chapter.
- B. "Artwork" means durable creations that may be original or limited editions of art that may include, but is not limited to, sculptures, murals, monuments, frescoes, fountains, mosaics, paintings, stained glass, or ceramics.

These creations are not limited by medium used, but may be realized through media such as steel, bronze, marble, stained glass, concrete, wood, ceramic tile and stone, as well as, other suitable materials.

- C. "Consultant" means the Art in Public Places Advisory Consultant.
- D. "Director" means the Director of the Planning and Community Department of the City of Montebello.
- E. "Department" means the Planning and Community Department of the City of Montebello.
- F. "Project" means the type of development being proposed, whether commercial, industrial, manufacturing, open space or residential. A project may include new construction, additions, expansions, remodels, façade improvements, interior tenant improvements, alterations, repairs, removals and demolitions.
- G. "Project applicant" means the property owner, developer or other responsible party proposing the project and seeking the required permits.
- H. "Project cost" means the building valuation for a particular building or improvement, excluding the land value, as determined by the City's Building Official, and indicated on the building permits issued by the City for that project.
- I. "Project site" means the location of the improvements being developed.

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- J. "Public place" means any area on public or private property within the City of Montebello, either interior or exterior, which must be easily accessible and visible to the general public from adjacent public property such as a street or other public thoroughfare or sidewalk.

### **17.79.030 - Requirement to provide artwork or pay in-lieu contribution.**

When a project is subject to the requirements of this chapter, the project applicant shall comply with provisions of either subsection (A) or (B) or a combination of both.

- A. The project applicant shall acquire and install an artwork in a public place on or in the vicinity of the project site as approved by the Director pursuant to this chapter. The artwork shall have a cost or value that is calculated as follows:
  - 1. For commercial, industrial, or manufacturing projects listed in Section 17.79.040, the cost or value of the artwork shall be an amount equal to or greater than 1% of the project costs if project costs are equal to or greater than \$250,000; project costs that are under \$2,000,000 will be subject to a .5% impact fee pursuant to this chapter. No credit will be provided for demolished structures.
  - 2. For residential projects listed in Section 17.79.040, the cost or value of the artwork shall be an amount equal to or greater than 1% of the project costs for all projects, including mixed-use projects, with 50 or more dwelling units. No credit will be provided for demolished residential units.

Project applicants shall indicate on their Art in Public Places application that they wish to acquire and install artwork per the ordinance codified in this chapter. The Director can assist the project applicant in locating information on artists should they desire assistance. The timing of the installation of the artwork shall be pursuant to Section 17.79.050.I.

- B. In-lieu of acquiring and installing an artwork, project applicants shall contribute funds to the Art in Public Places account established pursuant to Section 17.79.080. The in-lieu fee shall be calculated as follows:
  - 1. For commercial, industrial, or manufacturing development projects listed in Section 17.79.040, the in-lieu fee shall be an amount equal to or greater than 1% of the project costs if project costs are equal to or greater than \$250,000 ; project costs that are under \$2,000,000 will be subject to a .5% impact fee pursuant to this chapter. No credit will be provided for demolished structures.

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2. For residential development projects listed in Section 17.79.040, the in-lieu fee shall be an amount equal to or greater than 1% of the project costs for all projects, including mixed-use projects, with 50 or more dwelling units. No credit will be provided for demolished residential units.
3. The in-lieu fee shall be paid pursuant to Section 17.79.050.J. Project applicants shall indicate on their Art in Public Places application that they wish to make an in-lieu contribution.

### **17.79.040 - Projects subject to Art in Public Places requirement.**

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

- A. Commercial, industrial, or manufacturing development projects including, but not limited to, new construction, additions, expansions, remodels, façade improvements, interior tenant improvements, alterations, repairs, removals and demolitions. The term "new commercial, industrial, or manufacturing developments" is defined to include all those listed within Title 17 of the MMC.
- B. Residential development projects, including:
  - a. New residential development projects of more than fifty (50) units, whether by detached single family residential structures, condominiums, apartments, townhouses or other dwelling units; and
  - b. Development projects on existing residential developments of more than fifty (50) units, including, but not limited to, new construction, additions, expansions, remodels, façade improvements, interior tenant improvements, alterations, repairs, removals and demolitions. The term "residential development" is defined to include all those listed within Title 17 of the Montebello Municipal Code.

Exceptions. The requirements of this chapter shall not apply to the following activities or projects:

1. Public projects undertaken by any agency of the City, State, County, School District or any other governmental entity;
2. Reconstruction of structures that have been damaged by fire, flood, wind, earthquake or other calamity;

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3. 100 percent affordable housing developments receiving City, State or Federal assistance;
  4. Performing arts facilities;
  5. Museums;
  6. Senior housing projects; and
  7. Projects owned and developed exclusively by nonprofit organizations qualified under Section 501(c)(3) of the United States Internal Revenue Code. Organizations must provide the following to be granted an exemption:
    - a. A certificate of filing, certificate of status, certificate of incorporation, or exemption determination letter of the California Secretary of State (Revenue and Taxation Code Section 26451.3 provides that the Exemption Application FTB3500, together with any supporting documents, shall be open to public inspection, if granted); or
    - b. A determination letter of Internal Revenue Service (IRS) recognition of their Section of 501(c)(3) exempt status (an organization that submits an application to the IRS and has it approved must make a copy of the application and supporting documents, as well as, any letter issued by the IRS, available for public inspection).
- C. Requesting an Exemption. When a project applicant seeks an exemption from the requirements of this chapter, they must do the following:
1. Once a project applicant is made aware of the requirements of this chapter and the qualifying project developments that trigger such requirements, they must within thirty (30) days send a letter to the Director stating why the project applicant feels that the project should not be subject to the requirements established in Section 17.79.040 and that an exemption is requested.
  2. The Director will provide the exemption request to the Art in Public Places Advisory Consultant for review. Once the Consultant has reviewed the request, it shall forward its recommendation to the Planning Commission for final decision.

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### **17.79.050 - Processing.**

The requirements and procedures for the processing of an Art in Public Places application shall be as follows:

- A. When a project application is submitted to the Planning and Community Development Department, the application shall be processed pursuant to the ordinance codified in this chapter and an Art in Public Places application form will be provided.
- B. Thereafter, the project applicant shall submit to the Department a completed Art in Public Places application form. Guidelines for the submission of all applications required under this chapter are listed in Section 17.79.070.
- C. Upon receipt of the Art in Public Places application, the Department shall maintain proof of the filing. If the project applicant has chosen to acquire and install artwork, the Consultant will review the application, which shall include a proposal that details the artwork. The application shall be reviewed and deemed complete by the Director of Planning and Community Development or designee prior to review by the Art in Public Places Advisory Consultant.
- D. The Art in Public Places Advisory Consultant shall review all proposed artwork and make its recommendation to the Director for action based on the following findings:
  1. Complies with the provisions of this chapter;
  2. Protects the general health, safety and welfare of the city; and
  3. Meets requirements of artistic merit.
- E. Any person interested in and affected by the proposed artwork may file written protests or objections with the City Clerk prior to the issuance of a permit by the City, per instructions provided in the application package. Each such protest or objection must contain a description of the property and artwork being appealed. Upon the hour and date set for the final review, the City's City Manager ("City Manager") shall hear and pass upon the application together with any objections or protests that may be raised by any person.
- F. The Director, based upon the guidelines set forth in Section 17.79.070, approve, approve in part, conditionally approve or deny the application.

- G. The final decision by the Director shall be confirmed by Director's Determination . Said determination shall include a finding of whether the cost or value of the artwork equals or exceeds the amount of the in-lieu contribution which the applicant seeks to satisfy. The decision of the Director on the application shall be final and conclusive (unless an appeal has been filed with the City Clerk in conformance with paragraph E) with authority to revoke permits for non-compliance.
  
- I. When the project applicant has elected to acquire and install an artwork, the building permit shall not be issued until the Director has approved the Art in Public Places application, and occupancy shall not be allowed until the approved work of art has been installed unless an in-lieu fee is paid as a deposit in the full amount of the artwork cost or value as required in section 17.79.030.A to secure the proper installation of the artwork within a reasonable period of time as specified by the Director
  
- J. When the project applicant has elected to pay an in-lieu fee to the Art in Public Places account, a building permit shall not be issued until such fee has been paid, unless otherwise authorized by the Director.

**17.79.060 – Art in Public Places Advisory Consultant**

An Art in Public Places Advisory Consultant shall be selected by the City Council to review the applications and examine the proposals for public safety, weather resistance, compliance with program, verification of value, public response, proper lighting, public accessibility, relevance, installation methods, proportion, composition, the artist's previous experience, and the artist's art training and exhibition record.

**17.79.070 - Guidelines for approval of artwork.**

Guidelines for the approval and maintenance of artworks shall include, but are not limited to, the following criteria:

- A. The composition of the proposed artwork shall be of a permanent material which will be durable against vandalism, theft, weather and will require a low level of maintenance. The property owner shall maintain insurance for the artwork at all times equivalent to the current market value of the artwork.

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- B. The artwork shall be complimentary to its surrounding environment, including adjacent buildings, landscaping, and other natural features, as it relates to scale, proportion, material, form and content.
- C. The artwork shall be designed and constructed by persons experienced and trained in the production of such artwork and recognized by art critics and by his/her peers as one who produces works of art.
- D. The artistic merit of the artwork proposal will be evaluated by the Art in Public Places Advisory Consultant. Examples of the artist's past work, such as, solo and group exhibit records, records of the artist's work in private and public collections, art training, art education and printed critiques of past work, must be provided. Examples of similar work by the artist will be reviewed by the Art in Public Places Advisory Consultant. Verification of the purchase price of past works will serve to help validate the fair market price of the proposed commissioned artwork. The proposed artwork shall be submitted in the form of a 3-D model, color renderings or perspective drawings, from various viewpoints, subject to the review of the Director of Planning and Community Development or designee.
- E. Placement of the artwork in a public place on or in the vicinity of the project site as approved by the Director pursuant to this chapter shall be showcased at the project site to allow for unobstructed viewing from as many angles as possible and shall serve as a focal point of the project site. Once the artwork has been installed, the property owner shall not obstruct viewing of any or all of the artwork. Owner may temporarily obstruct the piece in order to perform maintenance or repairs of the artwork.
- F. The artwork shall be maintained by the property owner in a safe, neat and orderly manner acceptable to the City. The property owner shall obtain from the artist maintenance instructions to follow including methods to maintain the artwork and the frequency of maintenance.
- G. In the event that any artwork placed on the development as a result of the ordinance codified in this chapter is removed or destroyed, developer shall, within one hundred eighty days (180) of the removal or destruction, replace it with artwork which meets the requirements of this chapter. The replacement artwork must be equal in value to the removed/destroyed artwork's fair market value immediately prior to its removal or destruction.
- H. The artwork shall become the property of the City of Montebello prior to the issuance of a certificate of occupancy by the Building and Safety division.

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- I. Prior to issuance of a certificate of occupancy for projects subject to the Art in Public Places requirement, the property owner, at his/her expense, shall: (1) install the artwork; (2) execute and record with the Los Angeles County Recorder covenants, conditions and restrictions in form and content approved by the City Manager and the City Attorney providing, among other things, that the artwork is the property of the City of Montebello and that property owner and its successors, heirs and assigns shall maintain the artwork as required by subsection (F) above; (3) indemnify, defend and hold the City, its officers, employees and agents and related parties harmless from any and all claims or liabilities arising out of the artwork; and (4) maintain in the City Clerk's office a certificate of public liability insurance, naming the City as an additional insured in an amount not less than one million dollars (\$1,000,000).
- J. Expressions of obvious bad taste or profanity, which would be likely be offensive to the general public, are unacceptable.
- K. Each piece of artwork shall be identified by a plaque at the site of an appropriate size and scale to the piece. The plaque shall be made of cast metal and then placed in a location near the art piece listing the title of the piece, the artist, the date, and the Montebello Art in Public Places program.
- L. When selecting the location for artwork purchased through the Art in Public Places account, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites.
- M. The following items are not to be considered as artwork:
  1. Art objects or antique objects that are mass-produced from a standard design;
  2. Reproductions of original artworks, with respect to copyrights and any other clearly defined residual rights, when not an integral part of an artwork or concept as presented in early design and concept phases;
  3. Decorative, ornamental or functional elements that are designed by the building architect, as opposed to, an artist commissioned for the purpose of creating the artwork; or

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4. Ornamental planting, except where these elements are designed or approved by the artist and are an integral part of the artwork by the artist.

### **17.79.080 - Art in Public Places account.**

- A. Accounting. Any monies collected by the City in accordance with the in-lieu contribution provisions of this chapter shall be deposited in a separate account denominated as the "Art in Public Places Account." The City Manager, Director of Finance, or designee shall establish accounting records sufficient to identify and control these funds. Furthermore, the City Manager, Director of Finance, or designee shall have discretion over how to account for the in-lieu monies, as per current accounting pronouncements and recognized best practices.
- B. Use of Account. The Art in Public Places Account shall be used to provide sites for, and artwork in public places in order to further the intent and purpose of this chapter as set forth in Section 17.79.010.
- C. Permissible Expenditures. Expenditures of funds shall be strictly limited to the following enumerated uses:
  1. The cost of artwork and its installation;
  2. Plaques for each artwork, as required by 17.79.060.K of this chapter;
  3. Educational, promotional and any other such materials relating to artworks funded through the Art in Public Places account;
  4. Frames, mats, pedestals and other objects necessary for the proper presentation of the artwork;
  5. Walls, pools, water features, planting, lighting, architectural or landscape architectural elements, and other objects necessary for the proper aesthetic and structural placement of the artwork;
  6. Maintenance and repair of artworks funded through the Art in Public Places account;
  7. Events and ceremonies regarding the artwork to promote community awareness, outreach and education; and

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8. Administrative expenses, including, but not limited to, legal, art consultant fees, research, travel costs and appraisal fees, to otherwise implement, uphold or carry out any provision of this chapter.

D. Administration.

1. The Art in Public Places account shall be managed and administered in the same manner as all of the City's accounts.
2. The Art in Public Places Advisory Consultant shall make recommendations to the Director concerning the purchase or commissioning of artworks, including:
  - a. Places which should be considered for artworks; and
  - b. The medium of the proposed artwork; and
  - c. The artist whose work should be considered for placement in the recommended location;
  - d. The subject matter and theme of the artwork; and
  - e. The composition of the artwork.
3. Selection of artists and artworks shall be based on the guidelines set forth in Section 17.79.060.
4. The City will contract with the artist and with consultants, as necessary, for the purchase or commissioning, as well as, the execution and installation of the artwork.
5. On-site activity in connection with the artwork installation shall be coordinated by the Director or designee.

**SECTION 3. INTERNAL CONSISTENCY.** Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

**SECTION 4. SEVERABILITY.** If any action, subsection, line, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a decision of any court of competent jurisdiction, such

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decision shall not affect the validity of the remaining portions of this Ordinance, and each and every individual section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

**SECTION 5. SAVINGS CLAUSE.** Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall constitute a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinance.

**SECTION 6. IMPLEMENTATION.** The City Council hereby directs staff to apply this Ordinance to any applications and requests submitted on or after the effective date of this Ordinance and that pending applications and requests submitted prior to the effective date of this ordinance, which have not been approved, be processed under the provisions of this ordinance.

**SECTION 7. CEQA FINDING.** Pursuant to the California Environmental Quality Act (CEQA), this project is exempt from CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment, the project is not subject to CEQA pursuant to State CEQA Guidelines Section 15061(b)(3). Based on these findings, the City Council hereby adopts a CEQA exemption under § 15061(b)(3).

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall become effective thirty (30) days after approval by the City Council.

**SECTION 9. PUBLICATION.** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted according to law.

**APPROVED AND ADOPTED** \_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
David N. Torres, Mayor

**ATTEST:**

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Christopher Jimenez, City Clerk

**APPROVED AS TO FORM:**

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Arnold M. Alvarez-Glasman, City Attorney

I HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Montebello at its meeting held on the \_\_ day of \_\_\_\_\_, 2023 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Christopher Jimenez, City Clerk