

ORDINANCE NO. 1594

AN ORDINANCE AMENDING TITLE 15 (ZONING REGULATIONS) OF THE EL SEGUNDO MUNICIPAL CODE ESTABLISHING A PUBLIC ART OR IN-LIEU FEE REQUIREMENT AND A CULTURAL DEVELOPMENT FUND

The City Council of the City of El Segundo does ordain as follows:

SECTION 1: The City Council finds and declares as follows:

- A. Courts have recognized a public art requirement as a lawful exercise of a city's traditional planning and zoning police power; such a requirement for either public art or in-lieu fees are not a development impact fee that is subject to the California Mitigation Fee Act, but instead is considered a development standard allowed by the City's zoning and police powers, provided the requirement is reasonably related to a constitutionally permissible public purpose (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854; *Cal. Bldg. Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435);
- B. The City of El Segundo is 5.46 square miles and has distinct areas throughout the City that are zoned for commercial and industrial uses, including the Downtown area, Smoky Hollow, and the portion of the City east of Pacific Coast Highway. Because the City is surrounded by other cities (Manhattan Beach, Hawthorne), the Los Angeles International Airport and the Pacific Ocean, and because the City is almost entirely built out, existing opportunities to expand public art within the community are scarce;
- C. As commercial and industrial development and revitalization of the real property within the City continues, urbanization of the community results, and the need to develop new artistic and cultural resources to enhance the environment, image, and character of the City increases;
- D. Cultural and artistic resources enhance the quality of life for individuals living in, working in, and visiting the City; public art increases cultural awareness, stimulates imaginations and provokes creative dialog among community members;
- E. The development of artistic and cultural resources promotes the general welfare of the community, by preserving and improving the quality of the urban environment, increasing property values, and resulting in a positive economic output;
- F. Artistic and cultural assets should be either provided or financed by those whose commercial and industrial development and revitalization increase the community's demand for cultural resources;

- G. The proposed public art requirement is a requirement of general application for voluntary development within the City, and the optional in-lieu fee will be used for providing artwork, cultural services, performing arts and arts events to the public, as described in this ordinance;
- H. On December 18, 2018, the City Council directed the Arts and Culture Advisory Committee and City staff to develop a Cultural Development Fund proposal for its consideration;
- I. The Planning Commission of the City of El Segundo held a noticed public hearing on October 10, 2019, to review and consider the staff report prepared for the project, receive public testimony, and review all correspondence received on the project; the Planning Commission reviewed and considered the proposed amendments, and adopted PC Resolution No. 2875 recommending the City Council adopt the ordinance; and
- J. On July 16, 2019, and November 5, 2019, the City Council, after giving notice thereof as required by law, held a public hearing concerning the proposed ordinance and carefully considered all pertinent testimony offered in the case.

SECTION 2: General Plan and Zoning Consistency. The City Council finds as follows:

- A. The proposed ordinance is compatible with, and will not frustrate, the goals and policies of the City's General Plan. Furthermore, the proposed ordinance would directly advance Goal LU2 and Objectives LU2-1 and LU2-2, which seek to preserve and enhance the City's cultural resources. The proposed ordinance would also advance Objective LU2-3, which encourages the development of public programs and facilities that will meet the cultural needs of the City's various age, income and ethnic groups. The proposed ordinance is intended to require developers of industrial and commercial projects to either provide public art or pay a fee which will be used for public art and cultural activities. The proposed ordinance establishes a dedicated source of funding for projects and programs to meet and exceed the cultural needs of the City's residents.
- B. The proposed ordinance is consistent with the Zoning Code which recognizes works of art and establishes certain standards to distinguish them from commercial signs (ESMC § 15-18-3(H)).

SECTION 3: Environmental Assessment. Based upon the findings of fact set forth in Sections 1 and 2, the proposed zone text amendment is exempt from further environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility that adoption of the proposed ordinance will have a significant effect on the environment.

SECTION 4: ESMC Section 15-1-6 (Definitions) is amended to add the following terms and definitions in alphabetical order:

Section 15-1-6. Definitions.

The following words and phrases, when used in this title, shall have the meanings respectively ascribed to them in this chapter:

ACCESSIBLE: As pertaining to artworks, see **VISIBLE AND ACCESSIBLE**.

* * *

APPLICANT: the owner of the property, a developer or tenant utilizing the property and seeking the required permits.

* * *

ARTWORK: original creations of art which is intended for and capable of being displayed outdoors, including but not limited to, sculpture, murals, mosaic, fountains, artist-designed landscape features, streetscape features and earthworks. These categories may be realized through such mediums as steel, bronze, stained glass, concrete, wood, ceramic tile and stone, as well as other suitable materials.

ARTISTIC OR CULTURAL SERVICES: performances and experiences, including but not limited to performing arts, literary art, media art, arts education, art events, temporary artworks and festivals.

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COMMERICAL OR INDUSTRIAL DEVELOPMENT PROJECT: any project which results in the development of property in any land use categories, except for single- and multi-family residential projects designed for long-term occupancy.

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PROJECT COST: the total value of a project, excluding the land value, as determined by the Building Official of the City, and indicated on the building permit that is issued by the City for that project.

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PUBLIC PLACE: any exterior area on public or private property, which is visible to the general public as described in Section 15-34-15.

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VISIBLE AND ACCESSIBLE: As pertaining to artworks, means freely accessible to the public for viewing at least eight hours each day of at least five days per week.

SECTION 5: ESMC Title 15 (Zoning Regulations) is amended to add the following chapter:

Chapter 34– Cultural Development.

Section 15-34-1. Purpose.

This chapter is adopted pursuant to the City’s planning, zoning and police powers and may be known and cited as the “City of El Segundo Cultural Development Ordinance.” The intent of the Ordinance is to promote the public arts in the City of El Segundo by creating a collection of visual artwork and providing artistic or cultural services, such as performing arts, literary art, media art, arts education, art events, and temporary artworks, by recognized artists, and of the highest possible quality, throughout the City, for the public’s benefit. As of the effective date of this ordinance, the City shall require that certain private developments use a portion of building development funds for the acquisition of publicly-accessible artwork, or pay to the City an in-lieu fee, as a condition of project approval.

Section 15-34-2. Application.

This chapter shall apply to all commercial or industrial development projects where the project cost exceeds \$2,000,000.00. Notwithstanding the foregoing, this chapter shall not apply to the following projects:

- A. Any project which consists solely of rehabilitation work required for seismic safety or to comply with government mandates, including the Americans with Disabilities Act of 1990 regardless of valuation;
- B. The reconstruction of structures which have been partially damaged or completely destroyed by fire, flood, wind, earthquake or other calamity;
- C. Any project constructed by a government agency which is constructed on property exempt from taxation pursuant to California Revenue and Taxation Code Section 214;
- D. Residential components of a mixed-use development project;
- E. Commercial and industrial development projects, or portion(s) thereof, that are designed and dedicated to performing arts or museum spaces, so long as the performing arts or museum spaces are maintained within the building, provided the premises continue to be dedicated as such. Acceptable facilities include museums, theaters, performance

arts centers, and other similar facilities.

Section 15-34-3. Requirement to Provide Artwork or Pay In-lieu Fee.

- A. When a project is subject to this chapter, the applicant must either (a) commission or acquire and install new artwork in a location on or in the vicinity of the project site, with the appraised value of such artwork and any direct expenses as described herein being equal to or exceeding one percent of the project cost; or (b) pay to the City an amount equal to one percent of the project cost.
- B. For purposes of this section, direct expenses associated with the commission, acquisition or installation of the new artwork include:
 - 1. Art valuation by public art consultant.
 - 2. Consultation and direct administration of art selection and purchase, not to exceed 10 percent of the art requirement.
 - 3. Insuring the art, up to the time of installation.
 - 4. Shipping or storage of the art, up to the time of installation.
 - 5. Preparation of the site, and actual installation.
 - 6. Other expenses, including waterproofing, lighting, structural engineering, and additional structural support.
- C. Direct expenses shall not include maintenance of the installed artwork and indirect administrative costs
- D. Compliance with this section does not constitute a “public benefit” as that term is used in certain specific plans within the City, such as the Smoky Hollow Specific Plan. An applicant may, however, commission or acquire and install new artwork with an appraised value greater than this chapter’s one percent of the project cost threshold, and such additional amount may be considered a “public benefit.”

Section 15-34-4. Application and Approval Process.

- A. Whenever an applicant proposes a project that may be subject to the provisions of this chapter, the Department of Planning and Building Safety must provide the applicant a copy of this chapter and an application form.

- B. All applicants subject to this ordinance must complete and sign an application form.
- C. If an applicant elects to pay the in-lieu fee, no building permit shall be issued until the total fee has been paid.
- D. If the applicant elects to provide public art, the following provisions apply:
 - 1. If the applicant is not the property owner, the applicant must submit a letter from the property owner, in a form acceptable to the City, acknowledging the property owner's understanding and acceptance of the property owner's responsibilities under the ordinance.
 - 2. In order to ensure integrated projects, applicants choosing to commission or acquire and install new artwork for their project shall submit an application for the Public Art Plan to the City's Library Services staff. The application will include preliminary plans that include the proposed location of the artwork and any other documents reasonably required pursuant to the guidelines promulgated by staff and approved by the City Manager.
 - 4. The Arts and Culture Advisory Committee shall review the completed application for the Public Art Plan and approve, approve with conditions, or deny the proposed artwork, and its proposed location, based on the "Standards for Artworks" outlined in Section 15-34-5. The committee's decision is subject to appeal pursuant to Section 15-34-8.
 - 5. No building permit shall be issued by the Department of Planning and Building Safety unless the applicant has executed an agreement committing the applicant to complying with this Chapter and submitting an application for the Public Art Plan by a certain date.
 - 6. No certificate of occupancy shall be issued by the Department of Planning and Building Safety unless and until (a) the application for the Public Art Plan has been approved and the artwork has been installed and complies with this Chapter and (b) the property owner executes and records with the Los Angeles County Registrar-Recorder's office, a covenant regarding the maintenance of the artwork, as required by Section 15-34-7.

Section 15-34-5. Standards for Artworks.

- A. Standards for the approval, siting, and installation of artworks shall include, but are not limited to, the following criteria:
1. The artwork shall be displayed in an area that is visible and accessible by the public, as defined in Chapter 15-1. The application shall include a site plan showing the location of the artwork, complete with landscaping, lighting and other appropriate accessories to complement and protect the artwork.
 2. The composition of the artwork shall be of a permanent type of material in order to be durable against vandalism, theft, and weather and requiring a low level of maintenance.
 3. The artwork shall be designed and constructed by an artist experienced in the production of such artwork and recognized by critics and by the artist's peers as one who produces works of art.
 4. The artwork shall be permanently affixed to the property.
 5. The artwork's concept and design must be compatible with the site's environment and function.
- B. The following items are not to be considered as works of art:
1. Art objects which are mass produced from a standard design, such as playground equipment or fountain pieces;
 2. Reproductions of original artworks, unless it is incorporated into an original artwork or a limited edition;
 3. Decorative, ornamental or functional elements which are designed by the building architect as opposed to an artist commissioned for the purpose of creating the artwork;
 4. Landscape architecture and landscape gardening unless such elements are designed or approved by the artist and are an integral part of the artwork by the artist;
 5. Services or utilities necessary to operate or maintain the artwork;
 6. Directional elements such as super graphics, signs or color coding, except where these elements are integral parts of the original artwork or executed by the artist in unique or limited editions;

7. Artwork that incorporates logos, images, text or other elements that refer or relate to a business or organization's name, branding or marketing themes;
8. Architectural rehabilitation, historic preservation and structural building modifications.

Section 15-34-6. Maintenance and Repair of Artworks.

- A. The artwork installed on private property pursuant to this chapter shall be and remain the property of the property owner.
- B. Artwork installed on City property shall be the property of the City.
- C. The artwork and its setting shall be maintained by the property owner in good repair and in a safe, functional, accessible, and clean condition, all in a manner acceptable to the City. Before the issuance of the certificate of occupancy for the project, the property owner shall execute and record with the Los Angeles County Registrar-Recorder's office, a covenant approved by the City Manager, and in a form approved by the City Attorney, providing, among other things that the property owner and its successor and assigns shall maintain the artwork as required by this section. The property owner may assign the obligations of this Subsection to the applicant without having to first obtain the prior approval of the City.
- D. In the event repair of the artwork is required, the artist who created it shall be given the first opportunity to do that work for a reasonable fee. In the event the artist is unable or unwilling to do so, the City or the property owner may proceed to contract for such repair with another qualified artist.
- E. In the event the City declares the artwork a public nuisance pursuant to Chapter 7-1, the property owner must promptly abate the nuisance.

Section 15-34-7. Cultural Development Fund.

- A. There is hereby created a fund to be known as the "Cultural Development Fund." Any moneys collected in accordance with the provisions of this chapter shall be deposited into the fund. The fund shall be administered by the City of El Segundo's Director of Finance.
- B. The City Manager or designee shall provide an annual accounting to the City Council regarding the use of all fees collected and deposited in the Cultural Development Fund, including identification of all expenditures and balances during the prior fiscal year and recommendations for expenditures for the subsequent fiscal year.

- C. The Fund shall be used to provide art in public places in order to further the intent and purpose of this chapter. Expenditures of funds shall be limited to the following uses:
1. For the design, acquisition, commission, installation, improvement, relocation, maintenance, conservation, restoration, utility charges, and insurance of artwork;
 2. To sponsor or support artistic or cultural services;
 3. For the City's costs of administering the Cultural Development Fund and associated programs.
- D. The City Council may request the Arts and Culture Advisory Committee to make recommendations to City Council for expenditures from the Cultural Development Fund in accordance with this chapter.
- E. Endowments. The Fund shall also be used as a depository for monetary endowments, bequests, grants or donations made for public arts purposes. Such sums may be expended as set forth in this chapter.

Section 15-34-8. Appeal.

Any person may seek review of a decision by the Building Official or the Arts and Culture Advisory Committee. Appeals of the Building Official's decision must be made pursuant to Section 113.3 of the California Building Code, as amended by Section 13-1-2 of this Code. Appeals of a decision of the Arts and Culture Advisory Committee must be made by filing a written appeal with the City Clerk's Office within 10 working days of the Committee's decision and pay an appeal fee. The City Council shall hold at least one hearing on the Arts and Culture Advisory Committee's decision and the hearing shall be held within 40 calendar days of the appeal request. The City Council may affirm, reverse or modify a decision of the Committee and the decision of the City Council shall be final.

Section 15-34-9. Administrative Guidelines.

Administrative Guidelines for implementation of this program shall be promulgated by staff and approved by the City Manager.

Section 15-34-10. Violations.

In addition to other fines or penalties provided by law, the City may revoke or suspend any discretionary permit granted to any applicant who violates any provision of this chapter.

SECTION 6: CONSTRUCTION. This ordinance must be broadly construed in order to achieve the purposes stated in this ordinance. It is the City Council's intent that the provisions of this ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this ordinance.

SECTION 7: ENFORCEABILITY. Repeal of any provision of the El Segundo Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this ordinance.


SECTION 8: VALIDITY OF PREVIOUS CODE SECTIONS. If this entire ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the ESMC or other city ordinance by this ordinance will be rendered void and cause such previous ESMC provision or other the city ordinance to remain in full force and effect for all purposes.

SECTION 9: SEVERABILITY. If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

SECTION 10: The City Clerk is directed to certify the passage and adoption of this ordinance; cause it to be entered into the City of El Segundo's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within 15 days after the passage and adoption of this ordinance, cause it to be published or posted in accordance with California law.

SECTION 11: This Ordinance will become effective on the thirty-first day following its passage and adoption.

PASSED AND ADOPTED this 19th day of November, 2019.


Drew Boyles, Mayor

ATTEST:


Tracy Weaver, City Clerk

APPROVED AS TO FORM:

 *FAR*
Mark D. Hensley, City Attorney


CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF EL SEGUNDO)

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. 1594 was duly introduced by said City Council at a regular meeting held on the 5th day of November, 2019, and was duly passed, and adopted by said City Council, approved and signed by the Mayor, and attested to by the City Clerk, all at a regular meeting of said Council held on the 19th day of November, 2019, and the same was so passed and adopted by the following vote:

- AYES: Mayor Pro Tem Pirsztuk, Council Member Brann, Council Member Pimentel, and Council Member Nicol
- NOES: None
- ABSENT: None
- ABSTAIN: Mayor Boyles

WITNESS MY HAND THE OFFICIAL SEAL OF SAID CITY this 4th day of December, 2019.



Tracy Weaver, City Clerk
of the City of El Segundo,
California