



**TOWN OF LOS GATOS
TOWN COUNCIL REPORT**

MEETING DATE: 4/20/2020

ITEM NO: 13

DATE: April 12, 2021

TO: Mayor and Town Council

FROM: Robert Schultz, Town Attorney

SUBJECT: Introduction and First Reading of an Ordinance of the Town of Los Gatos Amending Chapter 25, by Renaming it to "Revenue and Taxation" and Adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding

RECOMMENDATION:

Accept public comment and then move for the introduction and first reading of an Ordinance, by title only, amending Chapter 25, by renaming it to "Revenue and Taxation" and adding Article VII, Sections 25.70.010-25.70.140 of the Los Gatos Town Code entitled Public Art Funding.

BACKGROUND:

In January of 2016, Town Council approved the Arts and Culture Commission's strategic plan, which identified public art, funding, and community engagement as its three major goals.

At the April 18, 2017 Town Council meeting, the Commission presented the possibility of investigating a development contribution requirement for arts funding, also called "public art funding" or "percent for art," in alignment with the strategic plan.

On June 19, 2018, the Commission returned to Council with a report and recommendation to pursue an ordinance designating some percent of building valuation for all private development projects to fund public arts programs. Council directed staff to obtain further information and so, through a request for proposal process, Keyser Marston Associates produced an analysis in

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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BACKGROUND (continued):

a Private Sector Arts Contribution Program report (Attachment 1).

At the September 3, 2019 Town Council meeting, Council directed the preparation of an Ordinance for Public Art Funding.

DISCUSSION:

A robust public art program fosters economic development, creates vital public spaces, and promotes general health and welfare by contributing to a more desirable community in which to live, work, and recreate. Well-conceived and executed works of art that are integrated into their sites and accessible to the public enhance the value of development projects, create greater interest in leased space, promote cultural tourism, create a sense of place, and make a lasting visible contribution to the intellectual, emotional, and creative life of the community at large, thereby helping to mitigate the impacts of development. The experience of public art makes public areas of buildings and grounds more inviting and engaging.

There is a growing national trend of including private developments in a public art funding requirement by ordinance. In California, more than 48 cities have such an ordinance or policy. Several surrounding jurisdictions in the Bay Area have implemented a percent for art funding structure attached to development within their borders. Some cities have threshold building valuation or size minimums before such a requirement would be imposed, and some have caps after valuation reaches a certain amount. Some cities exempt certain projects. Some cities, such as Walnut Creek and Pasadena, offer no valuation minimums or project exemptions at all. Please see Attachment 1 for the table of art requirements in various municipalities prepared by consultant Keyser Marston. Almost all the cities with private development art programs offer an option for the developer to pay fees to a Public Art Fund in lieu of providing on site art. Fees are used for other Public Art acquisitions and programming.

To analyze what projects would be appropriate for a percent for art requirement, the Keyser Marston report notes that, due to its built-out status, the Town processes comparatively few new non-residential building permits. Accordingly, it was the opinion in the Keyser Marston report that, for viability of the program, it is not practical to impose square footage minimums or building valuation minimums. Given the developmental realities in Los Gatos and with input from the Arts Commission, the draft Ordinance recommends that a 1% percent for art funding requirement attach to all commercial and mixed-use development, both new construction and reconstruction/remodel that adds more than 50% square footage, and all residential development of three or more units, not including Accessory Dwelling Units (ADUs) or Junior Accessory Dwelling Units (JADUs), both new construction and reconstruction/remodels that

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DISCUSSION (continued):

adds more than 50% square footage. Further, there are numerous exceptions in the draft Ordinance, such as:

- (a) This Chapter shall apply to all new commercial developments (including mixed use projects), including new construction, additions and reconstruction that add more than 50% square footage; and
- (b) All new residential projects of three or more units, including new construction, additions and reconstruction that add more than 50% square footage.
- (c) Notwithstanding subsection (a) and (b) above, this Chapter shall not apply to:
 - i. Affordable housing developments, or, if affordable housing is a part of the development, the affordable housing units shall be subtracted from the valuation of the project as in subsection (d) below;
 - ii. Historic renovations;
 - iii. Repair or reconstruction of structures damaged by flood, fire, wind, earthquake, or other disaster;
 - iv. Seismic retrofit projects;
 - v. Single family and two-family residential units;
 - vi. Accessory dwelling units or junior accessory dwelling units;
 - vii. Any project exempted by federal or state law;
 - viii. Municipal facilities;
 - ix. Buildings or structures primarily used for religious worship.

The Draft ordinance also addresses the implementation of the fee during the development review process and the maintenance requirements for the Art. The effective date for the Ordinance would be July 1, 2021 and shall immediately apply to all development projects that have not yet received final land use entitlements.

CONCLUSION:

After accepting public comment, staff recommends that Council move for the introduction and first reading of an Ordinance, by title only, amending Chapter 25, by renaming it to "Revenue and Taxation" and adding Article VII, Sections 25.70.010-25.70.140 of the Los Gatos Town Code entitled Public Art Funding.

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ENVIRONMENTAL ASSESSMENT:

It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act (Section 15061 (b)(3)).

COORDINATION:

This report was coordinated through the Town Attorney's Office, the Community Development Department, and the Arts and Culture Commission.

FISCAL IMPACT:

There are no significant fiscal impacts associated with the approval of this ordinance as it will be a revenue generating ordinance.

ATTACHMENTS:

1. Keyser Marston Associates' August 23, 2019 Private Sector Arts Contribution Program Report
2. Draft Ordinance Amending Chapter 25, By Renaming it to "Revenue and Taxation" and Adding Article VII, Sections 25.70.010- 25.70.140 of the Los Gatos Town Code Entitled Public Art Funding