

## **DRAFT ORDINANCE**

### **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS, CALIFORNIA, AMENDING CHAPTER 25 OF THE LOS GATOS TOWN CODE BY RENAMING IT TO “REVENUE AND TAXATION” AND ADDING ARTICLE VII PUBLIC ART FUNDING**

**WHEREAS**, 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; and

**WHEREAS**, to ensure that public art is present and sustained throughout the community, it is necessary to require that private development projects in the Town of Los Gatos provide public art on site or, alternatively, contribute to a public art fund so that public art can be established elsewhere in the community; and

**WHEREAS**, the purpose of this Chapter is to establish a public art requirement for private developments and to authorize the Town Manager to establish regulations and guidelines to effectuate the intent of this Chapter, and now therefore;

**NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:**

#### **SECTION I**

**INCORPORATION OF RECITALS.** The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

#### **SECTION II**

**LOS GATOS TOWN CODE AMENDMENTS.** Chapter 25 is hereby amended to be renamed to “Revenue and Taxation” and Article VII of Chapter 25 of the Los Gatos Town Code is hereby added as follows:

##### **25.70.010. – Definitions.**

For the purposes of this Chapter, the following definitions shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Affordable Housing Developments* means a project with Below Market Price (BMP) dwellings, as those terms are defined by Los Gatos Town Code section Sec. 29.10.3020.
- (2) *Art or Work of Art* means original artist-designed and produced unique works in any of a variety of styles and forms.

- (3) *Artist* means a practitioner of the creative arts, generally recognized as such by critics and peers, with a body of work including commissions, exhibitions, sales, publications, and collections. For the purposes of this Chapter, "artist" shall not include:
- (i) Persons primarily working in the professional fields of architecture, engineering, design, or landscaping;
  - (ii) An employee or relative of the development project architect, landscape architect, engineer, or project manager;
  - (iii) Any person with a business interest in a development project or with respect to individuals or entities serving as project architects, landscape architects, engineers, or project managers; or
  - (iv) A relative of or anyone with a financial interest with respect to an individual or entity serving on an art selection panel for the development project.
- (4) *Arts and Culture Commission* ("Commission" or "ACC") means the Commission established by Town of Los Gatos Resolution 2016-051.
- (5) *Developer* means a person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Chapter. The developer may or may not also be the project owner.
- (6) *Development Project* means any commercial or residential development or combination thereof.
- (7) *Historic* means a property which has been evaluated and found to have historical importance, as described by Los Gatos Town Code section 29.80.215.
- (8) *Public Art or Publicly Accessible Art* means a work of art that is visible or accessible to the public for a minimum of 40 hours per week. Public art may include sculpture, painting, installations, photography, video, works of light or sound, or any other work or project determined by the Arts and Culture Commission to satisfy the intent of this Chapter, provided, however, that none of the following shall be considered public art for the purposes of satisfying the requirements of this Chapter:
- (i) Objects that are mass produced of standard design, such as banners, signs, playground equipment, benches, statuary, street or sidewalk barriers, or fountains;

(ii) Reproduction, by mechanical or other means, of original works of art, except as incorporated into film, video, photography, printmaking, or other derivative works as approved by the Arts and Culture Commission;

(iii) Landscape architecture or gardening, except where these elements are designed by an artist and are an integral part of a work of art.

#### **25.70.020. - Los Gatos Public Art Fund.**

There is hereby created a Los Gatos Public Art Fund, which funds shall be restricted to implementation for the Los Gatos Public Art Program. Such funds may be used for the following purposes, including: acquisition, placement, maintenance, and promotion of temporary and permanent art and art programs, including visual or performing arts, as approved by the Arts and Culture Commission, on or in Town owned, public property throughout the Town. This fund will account for in-lieu contributions made under Section 25.70.100. This fund and the interest thereon shall be maintained by the Chief Financial Officer according to standard governmental accounting requirements. Art works acquired through the Public Art Fund shall be owned by the Town of Los Gatos and generally made accessible to the public.

#### **25.70.030. -- Application.**

- (a) This Chapter shall apply to all new commercial developments (including mixed use projects), including new construction, and additions and remodels that add more than 50% square footage; and
- (b) All new residential projects of three or more units, including new construction, and additions and remodels that add more than 50% square footage.
- (c) Notwithstanding subsections (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.

Those portions of projects excluded from application of this Chapter under subsection (c) shall be subtracted from the project for purposes of determination of applicability under subsection (a) and (b), above, and from construction valuation under Section 25.70.050 and 25.70.100.

#### **25.70.040. - Public Art Requirement for Private Developments**

Before a certificate of occupancy is issued for any development project subject to this Chapter, the developer shall participate in the construction or installation of on-site public art under Section 25.70.050, or, at the developer's option, shall contribute to the Public Art Fund in lieu of providing on-site art, as provided in Section 25.70.100.

#### **25.70.050. - On-Site Public Art**

- (a) A developer may satisfy the requirements of this Chapter by constructing or installing on-site public art valued at one percent (1%) of construction valuation. For purposes of budgeting and planning for on-site art, an initial estimate of the art contribution shall be calculated based on estimated construction valuation at the time of application for entitlements. The arts contribution shall be finally determined based on the construction valuation determined at the time the building permit is issued.
- (b) If the market value of the on-site public art is greater than the art contribution provided in Subsection 25.70.050 (a), the Town shall have no obligation to refund the excess amount. If expenditures do not utilize the entire amount provided in 25.70.050 (a), the remainder shall be deposited into the Public Art Fund.

#### **25.70.060. - Eligible Expenditures for On-Site Public Art Projects**

The public art contribution for on-site installation may be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, and installation of the public art, and project management and administrative costs not to exceed 20% of the total budget. Eligible expenditures include:

- (a) Artist fees;

- (b) Labor of assistants, materials, and contracted services required for design, fabrication, engineering, and installation of the public art;
- (c) Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;
- (d) Reasonable art consultant fees;
- (e) Communication, utilities, insurance, and other indirect costs associated with the creation but not the operation of the public art;
- (f) Transportation of the public art to the site;
- (g) Preparation of the site specifically required for the public art, such as fabrication of platforms or pedestals;
- (h) Installation of the public art;
- (i) Mountings, anchorages, containments, or other materials necessary for installation of the public art;
- (j) Public art project management and administration, in an amount not to exceed 20% of the total art contribution; and
- (k) A plaque or plaques identifying the public art.

#### **25.70.070. - Ineligible Expenditures for On-Site Public Art Projects**

Expenditures that are ineligible to be counted toward the on-site public art contribution include:

- (a) Labor of assistants, materials, and contracted services not required for design, fabrication, engineering, and installation of the public art;
- (b) Promotional materials or activities for the artist, the public art, the development project, the developer, or other parties involved in the development project;
- (c) Opening, dedication or other costs of events for the public art, artist, developer, or development;
- (d) Services, materials, utilities or other expenses association with the ongoing operation or maintenance of the public art; and

- (e) Land costs or any other costs associated with the development that are not part of and solely attributable to the public art.

#### **25.70.080. - Process for Planning and Approval of On-Site Public Art**

- (a) Application and Planning. Developer shall be informed at the time of Development Review Application about the Public Art requirement and given details of what is required for either public art installation or payment of in-lieu fee, including 1% fee calculated on construction valuation of the project.
- (b) Arts and Culture Commission Review and Approval. If the developer elects to comply with this Chapter by providing on-site art, the developer's public art plan must be presented to the Arts and Culture Commission. The plan should include:
  - 1. The identity of the artist or description of the process by which the artist will be selected. The developer is encouraged to give preference to artists living or working in the San Francisco Bay area and to avoid using artists whose work is already displayed as public art within the Town of Los Gatos boundaries;
  - 2. Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;
  - 3. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs;
  - 4. Preliminary plans containing such detailed information as may be required to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods; and
  - 5. A detailed plan that demonstrates how the property owner or developer will maintain the artwork, including schedule, cost, and manner of maintenance; and
  - 6. A narrative statement or plan that demonstrates the public art will be displayed in a publicly accessible manner.
- (c) The ACC shall, within 60 days, render a decision whether the proposed public art plan conforms to the requirements of this Chapter. The ACC approvals required under this section must be obtained prior to the issuance of any building permit for the development project.

- (d) Before a Certificate of Occupancy is issued, the Town must inspect and confirm that public art has been installed as required by the ACC approvals and to the satisfaction of the Director of Community Development, in consultation with the ACC. If actual expenditures do not utilize the entire amount provided by the 1% valuation of the development, the excess funds are to be deposited into the Public Art Fund. If the market value of the on-site public art is greater than the 1% art contribution required, the Town shall have no obligation to refund the excess amount.
- (e) If Developer chooses to pay In-Lieu Fee:
  - (i) Within 60 days of Development Permit application or other discretionary approval, the developer shall deposit 1% of estimated construction valuation into the Public Art Fund.
  - (ii) A developer who elects to satisfy the requirements of this chapter through a contribution to the Fund must complete the payment in-lieu prior to the issuance of any building permit for the development project. If the building valuation has increased from the time of the initial deposit into the Public Art Fund, additional funds are to be deposited into the fund to meet the 1% requirement.

**25.70.090. - Additional Requirements for On-Site Public Art**

- (a) Plaque. The public art shall be identified by a plaque that meets the standards in use by the Town at the time of installation of the public art. The plaque should contain information such as date of installation, title, and artist and medium.
- (b) Ownership and Maintenance. All on-site public art shall remain the property of the property owner or the property owner's successor in interest. The installation or placement of public art on private property shall not constitute a donation to the Town. The Town shall bear no obligation nor assume any responsibility or liability with respect to the installation, operation or maintenance of any art installed on private property. The property owner shall retain the obligation to provide all necessary maintenance to preserve the public art in good condition. Immediately upon installation and continuously thereafter, the developer and the property owner shall maintain the public art and shall promptly perform all necessary repairs and maintenance to the satisfaction of the Town. The obligation to maintain and preserve the public art includes the obligation to take reasonable steps to protect the public art against destruction, damage, or modification.
- (c) Location and Relocation of Public Art. Except as provided herein, the public art

must remain at the development in the location approved by the Arts and Culture Commission. A property owner may petition the Arts and Culture Commission to relocate the public art within the development project.

- (d) When and if the development project is sold, the public art must remain at the development and may not be claimed as the property of the seller or removed from the site. If the development is to be demolished, the owner must relocate the public art to another publicly accessible permanent location approved in advance by the Arts and Culture Commission.
- (e) Removal and Replacement of Public Art. If the owner desires to deaccession, sell or remove the art from the site, the owner shall give prior notice to the Town by providing written notice to the Arts and Culture Commission no less than 90 days before the intended action. The owner must receive prior approval from the Arts and Culture Commission. The developer will be required to replace the sold or de-accessioned artwork with an alternative work of equivalent or greater value, as determined by the Arts and Culture Commission, in current dollars. The replacement artwork selection should follow the initial selection process. In the alternative, the developer may elect to pay fees in lieu of replacing on-site art, at a reasonable rate equivalent to the cost of replacing the art in current dollars, as determined by the Arts and Culture Commission.
- (f) Statutory and Contractual Rights of Artists. The owner is solely responsible for complying with all statutory and contractual rights of the artist, including rights under the California Preservation of Works of Art Act, the federal Visual Artists' Rights Act, and any other applicable law.
- (g) Covenant; Recordation. The property owner shall record against the property a declaration of covenants, conditions, and restrictions, in favor of the Town, and in a form approved by the Town Attorney. The declaration shall include (i) the owner's obligation to provide all necessary maintenance of the public art, including preservation and restoration of the public art, in good condition, to the reasonable satisfaction of the Town, and to protect the public art against destruction or damage; (ii) the owner's obligation to ensure that the public art is accessible to the public as required by this Chapter; and (iii) any other terms reasonably necessary to implement this Chapter .

#### **25.70.100. - Developer's Option to Pay Fees to Public Art Fund In-Lieu of Providing On-Site Art**

In lieu of installation of on-site public art, the developer may elect to make a monetary contribution to the Los Gatos Public Arts Fund. The amount of the contribution shall be the cost of the public art required by Section 25.70.050. A developer who elects to satisfy the requirements of this Chapter through a contribution to the Fund must complete the payment



in-lieu prior to the issuance of any building permit for the development project.

#### **25.70.110. - Inspection and Final Approval.**

Before a Certificate of Occupancy is issued for the development project, the Town shall inspect and confirm that either: (i) public art has been installed as required by the Arts and Culture Commission approvals and to the satisfaction of the Director of Community Development, in consultation with the Public Art program staff; or (ii) in-lieu contributions have been paid in full. In addition, before a Certificate of Occupancy is issued, the Town shall confirm that the developer has executed and recorded a covenant as required by Section 25.70.090(f).

#### **25.70.115. – Enforcement**

The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter, or a property owner with art installed governed by this chapter. The Town may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit, including a development approval, building permit or certificate of occupancy. The Town shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

#### **25.70.120. -Regulations**

The Town Manager, or his or her designee, is authorized to adopt administrative regulations, procedures or guidelines that are consistent with and that further the terms and requirements of this Chapter.

#### **25.70.130. – Severability**

If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable .

#### **25.70.140. - Implementation**

This ordinance shall be effective on July 1, 2021 and shall immediately apply to all development projects that have not yet received final land use entitlements.

### SECTION III

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_ day of \_\_\_\_\_ 2021, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_ day of \_\_\_\_\_ 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_