

ORDINANCE NUMBER 2212 (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA  
ADDING PART 9.04.10.20 ET SEQ. TO CHAPTER 9.04 OF THE SANTA  
MONICA MUNICIPAL CODE ESTABLISHING THE PRIVATE DEVELOPER  
CULTURAL ARTS REQUIREMENT, AND ESTABLISHING AN APPEAL  
PROVISION

WHEREAS, cultural and artistic resources, including the visual,  
performing, and literary arts, enhance the quality of life for individuals living in,  
working in, and visiting the City of Santa Monica; and

WHEREAS, the balanced development of cultural and artistic resources  
preserves and improves the quality of the urban environment and increases real  
property values; and

WHEREAS, the City has a longstanding and extensive history of adopting  
regulations, programs and policies which regulate aesthetics of both public and  
private development and promote the arts and cultural enrichment including, in  
1974, adopting Santa Monica Municipal Code Chapter 9.32, which established  
standards and guidelines for the review of the aesthetic qualities of new  
development; and

WHEREAS, the City has adopted numerous other comprehensive plans

and development guidelines which directly promote the City's overall aesthetic and cultural interests and values; and

WHEREAS, the City has a history of supporting culture and arts in relation to new construction via the City's Public Percent for Art Program which was enacted in 1986 requiring that one percent of public projects be set aside for on-site art and, since 1981, the City has also negotiated at least seven development agreements that have included a public art requirement; and

WHEREAS, public art and culture has helped attract and anchor a large and diverse creative sector, enriching the City's cultural identity, and this cultural identity is a key component of the City's economic vitality which benefits both from the creative businesses which locate here and from visitors who come to enjoy this creative environment; and

WHEREAS, as development and revitalization of properties take place within the City, land values rise, and cultural and artistic venues and environments can rarely compete for more land in an era of dramatically escalating land costs. Thus, the opportunities for creative and artistic resources become diminished, and the City's physical environment is adversely impacted; and

WHEREAS, continued new development that does not include or contribute toward public art and cultural resources will further exacerbate adverse impacts on the physical environment; and

WHEREAS, cultural and artistic resources should be provided by those entities undertaking development projects that result most directly in this

urbanization and the increased need to enhance the cultural and artistic resources of the City; and

WHEREAS, the 1992 Cultural Arts Master Plan and its 1996 update identified the need to off-set development impacts to community cultural resources as the City becomes more built-out; and

WHEREAS, 2% of the average square foot cost of construction is an appropriate factor upon which to determine the on-site requirement for the private developer cultural arts requirement because, among other things, a portion of the costs for on-site art requirements is devoted to indirect costs such as transportation, installation, consultant services, and insurance, and construction costs within the City typically represent 50% or less of total project cost; and

WHEREAS, 1% of the average square foot cost of construction is an appropriate factor upon which to determine the amount of an in-lieu contribution to a Cultural Arts Trust Fund because, among other things, the project developer does not realize the re-sale value of installed art if the developer chooses to contribute to the Fund rather than place art on-site, and in-lieu contributions avoid implementation and administration costs of evaluating the quality and appropriateness of on-site developer proposed art works, which costs would be considerably higher than administering a fund overseen by the Arts Commission; and

WHEREAS, the private developer cultural arts requirement will promote the general health and welfare of the City's residents, workforce, and visitors through balancing the City of Santa Monica's urban growth with the expansion

of its cultural and artistic resources,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Part 9.04.10.20, PRIVATE DEVELOPER CULTURAL ARTS REQUIREMENT, comprised of sections 9.04.10.20.010 through 9.04.10.20.170, is hereby added to Article 9 of the Municipal Code to read as follows:

**Part 9.04.10.20**

**PRIVATE DEVELOPER CULTURAL ARTS  
REQUIREMENT**

**9.04.10.20.010 Findings and purpose.**

The purpose of this ordinance is to authorize the establishment of guidelines, procedures and standards for the integration of public art and cultural resources into private development projects within the City of Santa Monica.

Public art and cultural resources foster economic development, revitalize urban areas and improve the overall business climate by creating a more desirable community within which to live and work. Well conceived and executed works of art enhance the actual value of a development project,

create greater interest in leased space within the development project, promote cultural tourism and make a lasting and visible contribution to the community, which helps to mitigate the impacts of development. The experience of public art and cultural resources makes the public areas of buildings and their grounds more welcoming. It promotes the general health and welfare of its citizens by making the City more livable, and visually and aesthetically pleasing.

To ensure that public art and cultural resources are present and sustained throughout the community, it is necessary to require that private development projects in the City of Santa Monica include an element of public art or cultural facilities or, alternatively, contribute to a City arts fund for public art and cultural resources and facilities in lieu of installation of such art.

**9.04.10.20.020      Applicability.**

The regulations, requirements and provisions of this Part and Council resolutions adopted pursuant

hereto shall apply to development projects as defined in this Part.

**9.04.10.20.030 Definitions.**

The following words or phrases shall have the following meanings when used in this Part:

**Art or Art Work.** Art, including but not limited to, sculpture, painting, graphic arts, mosaics, photography, crafts, mixed media, electronic arts and environmental works. Art or Art Work as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

**Artist.** An individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, public performances, past public commissions, sale of works, exhibition record, publications, and production of artwork. The members of the architectural, engineering, design, or landscaping firms retained for

the design and construction of a development project covered by this Part shall not be considered Artists for the purposes of this Part. This definition applies only to the requirements of the Part.

**Arts Commission.** The Commission as established in §§ 2.64 et seq. of this Code or any successor legislation. Unless otherwise specified, any reference to "Commission" in this Part shall mean the Arts Commission.

**Average Square Foot Cost of Construction.** The construction cost per square foot for construction categories within a development project as established by resolution of the City Council.

**Cultural Arts Development Contribution.** Contribution by a Developer to the Cultural Arts Trust Fund in lieu of installation of on-site Public Art or Cultural Facilities.

**Cultural Facilities.** A structure that houses, and has as its primary purpose the presentation of, one or more cultural resources, and that is operated by public entities or non-profit organizations dedicated to cultural activities available to a broad

public. Examples of acceptable facilities are museums, theatres, and performing arts centers, and other similar facilities as determined appropriate by the Arts Commission. Facilities that do not meet this definition are churches, schools, commercial movie theatres, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and for-profit facilities used for profit activities.

**Cultural Resources.** Individual and group presentations, exhibitions, or performing arts involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies; education, including lectures, presentations and training in or about art and culture; special events such as festivals and cultural celebrations; and, similar resources and services as determined and approved by the Arts Commission.

**Developer.** The person or entity that is financially and legally responsible for the planning, development and construction of any development project covered by this Part, who may, or may not, be the owner of the subject property.

**Development Project.** Commercial development having new gross floor area of 7500 square feet or more, commercial remodels or tenant improvements of 25,000 square feet or more that require approval by the Architectural Review Board, or residential projects of five or more units. A Development Project, for purposes of defining a Project subject to this Part, does not include the following: cultural facilities, churches, temples, synagogues, and other buildings or structures used for religious worship; repair and reconstruction of any building damaged by flood, fire or other disaster; municipal facilities; affordable housing units. In mixed residential/nonresidential development, those portions of projects excluded from the definition of Development Project hereinabove shall not be included in the calculation of the average square foot cost of construction.

**Director.** The Director of Community and Cultural Services Department, or his/her designee, or the Director of Planning and Community Development, or his/her designee, as appropriate.

**Freely Accessible.** The Art Work is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.

**Performing Arts.** Performances presented by professional performers, including theater performance (any form of dramatic presentation, spoken or silent); musical theater/opera (any dramatic performance of which music is an integral part); dance (any form of rhythmical movement); music/concert (any musical form whether classical, traditional or popular).

**Public Art or Art Work.** On-site art work produced by an artist, as defined herein, or team of artists, that is freely accessible on private property or on land or in buildings owned by the city or another governmental agency.

**9.04.10.20.040 Private Developer**

**Cultural Arts Requirement.**

Before the issuance of a building permit for any Development Project as defined herein, the Developer shall participate in the construction or installation of freely accessible on-site public artwork in accordance with Section 9.04.10.20.050, or provide cultural facilities in accordance with Section 9.04.10.20.110, or pay a Cultural Arts Development Contribution in accordance with Section 9.04.10.20.120 below.

The expenditure of money required to satisfy the requirements of this Part, whichever alternative is selected to do so, shall be reduced by the amount, as verified by the Landmarks Commission or Landmarks Commission Secretary as appropriate, spent to preserve an historic resource listed in or determined eligible for listing in the California Register of Historical Resources or the City's local register of historic resources, where such preservation follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and

Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

**9.04.10.20.050 On-site Public Art Projects.**

A Developer seeking to satisfy the Private Developer Cultural Arts Requirement of this Part through the construction or installation of on-site public art shall do so in the amount of two percent (2%) of the average square foot cost of construction of the development project as set forth by resolution of the City Council times the project square footage. If the actual construction cost or market value of the on-site public art is greater than the required 2% contribution, the City shall have no obligation to pay the excess amount.

**9.04.10.20.060 Eligible On-Site Public Arts Projects**

Public art, for the purposes of this Part and for determining what shall meet the private developer requirements for on-site installation of public art, includes art works that are created uniquely by an

artist, as those terms are defined in this Part, and integrated into the development project. Public art may include any other form determined by the Arts Commission to satisfy the intent of this Chapter provided, however, that the following are not considered to be public art for the purposes of this Part:

(a) Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;

(b) Objects which are mass produced of standard design such as banners, signs, playground equipment, benches, statuary, street barriers, sidewalk barriers, or fountains;

(c) Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts;

(d) Decorative, architectural, or functional elements which are designed by the building architect

or landscape architect as opposed to an artist commissioned for this purpose;

(e) Landscape architecture, gardening, or materials, except where these elements are designed by the artist and are an integral part of the work of art by the artist; or

(f) Landscaping required by the City's Community Development Department as part of the Development entitlements.

**9.04.10.20.070 Eligible On-Site Public Arts Project Expenditures.**

The public art contribution for on-site installation must be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the public art. Eligible expenditures include the following items:

(a) Artist fees;

(b) Labor of assistants, materials, and contracted services required for the design, fabrication, 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, as established in guidelines approved to implement the provisions of this Part;
- (e) Communication and other indirect costs (insurance, utilities associated with the creation but not the operation of the public art, etc.);
- (f) Transportation of the public art to the site;
- (g) Preparation of site to receive public art, beyond that required for the development itself;
- (h) Installation of the completed public art;
- (i) Structures which enable the display of the public art, such as platforms or pedestals, up to 5% of the total public art contribution;
- (j) Mountings, anchorages, containments, or other materials necessary for installation of the public art; and

(k) Plaque identifying the public art, as required by this Part.

**9.04.10.20.080 Ineligible On-Site Public Arts Project Expenditures.**

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

(a) Promotional materials or activities for the artist, the public art, the development, the developer or others parties involved in the development project;

(b) Opening, dedication, or other event for the public art, artist, or development;

(c) Developer's project management expenses associated with the public art;

(d) Services, materials, utilities or other expenses associated with the operation or maintenance of the public art;

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

(f) Illuminating the public art if not integral to the design.

**9.04.10.20.090 Process for Approval of Public Art for On-site Installation.**

(a) Application Procedures. Upon application for a development permit, the applicant shall be informed of the Private Developer Cultural Arts Requirement and referred to the Director of the Community and Cultural Services Department in order to declare in writing the means by which the Developer will comply with the requirements of this Part.

If the Developer selects the installation of on-site public art work, the Developer should submit art plan documentation acceptable to the Director of the Community and Cultural Services Department to support the on-site public art before review by the Architectural Review Board.

(b) Commission Review and Approval. Before issuance of the building permit for the development project, the proposed public art plan documentation must be reviewed and approved by the Arts Commission, or the Public Art Committee if so designated by the Commission, for compliance with this Part, and any associated regulations or guidelines authorized by this Part.

The Arts Commission shall review the submitted documentation, together with the recommendation of the Director of the Community and Cultural Services Department, and approve, approve with conditions, or deny the proposed Art Work, and its proposed location, considering the qualifications of the artist, the aesthetic quality and harmony of the Art Work with the proposed development project, and the proposed location of and public accessibility to the Art Work. In addition, the budget for the proposed public art must be approved to ensure that only eligible expenditures are proposed and that such expenditures total the amount of the public art contribution.

If the Developer proposes, or the Arts Commission recommends, significant revisions to the Art Work or architecture or physical design and layout of the proposed project to the Art Work, a revised application shall be submitted to the Director for review and recommendation to the Arts Commission. The Commission shall make a determination whether to approve, approve with conditions, or deny the requested revision.

(c) Appeal of Commission Decision. The Commission shall render a written decision whether the proposed installation of on-site art work satisfies the requirements of this Part within ninety (90) days after documentation acceptable to the Director of the Community and Cultural Services Department is received. Any person may seek review by the City Council of a decision made by the Arts Commission pursuant to this section by filing an appeal within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Part 9.04.20.24, Sections 9.04.20.24.010 through 9.04.20.24.040 of this Code, or any successor

legislation. The decision of the City Council shall be final.

**9.04.10.20.100 Additional Requirements  
for Public Art for On-site Installation.**

(a) Plaque. The Public Art shall be identified by a plaque that meets the standards in use by the City at the time of installation of the Public Art. The requirement of this paragraph may be waived if determined in a particular circumstance to be inconsistent with the intent of this Part.

(b) Ownership and Maintenance of Art Work. All on-site Public Art Work placed on the site of the Developer's project shall remain the property of the property owner and his/her successor(s) in the interest. The obligation to provide all maintenance necessary to preserve the Art Work in good condition shall remain with the property owner of the site. The developer and subsequently, the property owner, shall maintain, or cause to be maintained, in good condition the public art continuously after its installation and shall perform necessary repairs and maintenance to the satisfaction of the City. The

maintenance obligations of the property owner shall be contained in a covenant and recorded against the property and shall run with the property.

Failure to maintain the Art Work, as provided herein, is hereby declared to be a public nuisance. The City also may pursue additional remedies to obtain compliance with the provisions of this Requirement, as appropriate.

In addition to all other remedies provided by law, in the event the owner fails to maintain the Art Work, upon reasonable notice, the City may perform all necessary repairs, maintenance or secure insurance, and the costs, thereof shall become a lien against the real property.

(c) Location and Relocation of On-site Public Art. When and if the development project is sold at any time in the future, the Public Art must remain at the development at which it was created and may not be claimed as the property of the seller or removed from the development or its location approved by the Arts Commission. In the event that a property is to be demolished, the owner must relocate the public art to

another publicly accessible, permanent location that is approved in advance by the Commission.

A property owner may, for good cause, petition the Arts Commission to replace or re-locate the public art to another publicly accessible location on the development project site. Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other applicable law.

If any approved Art Work placed on private property pursuant to this Subchapter is removed without City approval, the Certificate of Occupancy may be revoked.

**9.04.10.20.110 On-Site Cultural**

**Facilities Alternative.**

(a) A Developer seeking to satisfy the Private Developer Cultural Arts Requirement of this Chapter may do so, if approved by the Arts Commission, through the provision of on-site cultural facilities in the amount of two percent (2%) of the average square foot cost of construction of the development project as

set forth by resolution of the City Council times the project square footage.

If the Developer selects the provision of on-site cultural facilities, the Developer shall submit documentation acceptable to the Directors of the Community and Cultural Services Department and Planning and Community Development to support the provision of on-site cultural facilities.

(b) Commission Review and Approval. Before issuance of the building permit for the development project, the proposed cultural facility must be reviewed and approved by the Arts Commission, or the Public Art Committee if so designated by the Commission, for compliance with this Part, and any associated regulations or guidelines authorized by this Part.

The Arts Commission shall review the submitted documentation, together with the recommendation of the Directors of the Community and Cultural Services Department and Planning and Community Development, and approve, approve with conditions, or deny the proposed cultural facility, and

its proposed location within the development, considering the need for such a facility has been clearly demonstrated; the facility is sited appropriately within the development project area; the managing cultural organization has demonstrated financial capability to successfully operate the facility; the adequacy of an agreement that ensures that the cultural facility will be reserved for public or non-profit use throughout the term of the commitment; whether the budget proposed is appropriate and that such expenditures total the amount of the cultural arts requirement.

(c) Appeal of Commission Decision. The Commission shall render a written decision whether the proposed on-site cultural facilities satisfy the requirements of this Part within ninety (90) days after documentation acceptable to the Director of the Community and Cultural Services Department is received. Any person may seek review by the City Council of a decision made by the Arts Commission pursuant to this section by filing an appeal within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Part

9.04.20.24, Sections 9.04.20.24.010 through 9.04.20.24.040 of this Code, or any successor legislation. The decision of the City Council shall be final.

#### **9.04.10.20.120 Cultural Arts**

##### **Development Contribution.**

In lieu of installation of on-site public art, the Developer may make a Cultural Arts Development Contribution in accordance with the following:

(a) Amount of Contribution. One percent (1%) of the average square foot cost of construction of the development project as set forth by resolution of the City Council times the project square footage.

(b) Timing of Contribution. The amount of the in-lieu contribution shall be imposed at the time of approval of the building permits. No building permit for any development project shall be issued unless the contribution has been paid or a contract to pay the contribution has been executed, and no final inspection shall be approved unless the contribution has been paid.

**9.04.10.20.130 Declaration of Covenants,  
Conditions, and Restrictions**

If the Developer elects to install on-site public artwork in accordance with the requirements of Section 9.04.10.20.050, the Development Project shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

(a) The Developer shall provide all necessary maintenance of the art work, including preservation of the art work in good condition to the reasonable satisfaction of the City and protection of the art work against destruction, distortion, mutilation, or other modification.

(b) The Developer shall ensure that the artwork will be located in an area that is freely accessible.

(c) A description of that portion of the premises which will be maintained and shall be freely accessible for the designated public art.

Any other reasonable terms necessary to implement the provisions of this Part.

**9.04.10.20.140 Final City Approval.**

(a) No final City approval for any project subject to this Part shall be granted or issued, unless and until the Director of Community and Cultural Services, after consultation with the Director of Planning and Community Development, verifies full compliance with the Private Developer Cultural Arts Requirement as follows:

(1) The approved Art Work has been installed in a manner satisfactory to the Director of the Community and Cultural Services Department. Installation of Art Work shall be completed prior to the final inspection and issuance of a Certificate of Occupancy.

(2) In lieu art contributions have been paid, if applicable.

(3) Financial security in an amount equal to the acquisition and installation costs of an approved Art Work, in a form approved by the City Attorney, has been posted.

(4) The Developer has executed and recorded a covenant with the Los Angeles County Recorder, as required by section 9.04.10.20.120. The covenant shall be recorded prior to the request for final construction approvals and the issuance of a Certificate of Occupancy.

(b) The Director shall require that the Developer submit a written verification of compliance with these requirements as applicable. Said verification shall consist of documentation sufficient to enable the Director to readily determine compliance with the provisions of this Part. Upon receipt of written verification from the Developer, the Director shall issue a notice determining whether the Developer has complied with the requirements of this Chapter. The Director's determination of compliance may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Part 9.04.20.24, Sections 9.04.20.24.010 through 9.04.20.24.040 of this Code, or any successor legislation.

**9.04.10.20.150 Cultural Arts Trust Fund;**

**Use of Funds.**

There is hereby created a fund to be known as the "City Cultural Arts Trust Fund" to account for in lieu contributions paid pursuant to this Part. This fund and the interest thereon shall be maintained by the City Finance Director and shall be:

(a) For the design, acquisition, commission, installation, improvement, repair, maintenance, conservation and insurance of an Art Work.

(b) To sponsor or support cultural facilities and cultural resources.

(c) For such other equivalent artistic and cultural uses approved by the Arts Commission.

During a fiscal year, the total amount of expenditures made in any year from the Cultural Arts Trust Fund for the purposes set forth in this section shall be established in the annual City budget and approved by the City Council. The budget will be developed in keeping with community cultural

priorities as established by the City's adopted Cultural Master Plan.

The proposed annual expenditures shall be reviewed by the Arts Commission concurrently with the review of the budget for expenditures from the City's percent for art funds.

**9.04.10.20.160 Adoption by Resolution  
of the Per Square Foot Amount for On-site  
Participation or In-lieu Contribution**

Pursuant to this ordinance, the per square foot amount required to satisfy the private developer cultural art requirement through the provision of on-site public art or cultural facilities, or by an in-lieu contribution shall be adopted from time to time by resolution of the City Council after a noticed public hearing. In adopting the resolution, the City Council shall identify the Average Square Foot Cost of Construction for construction categories including, but not limited to commercial, residential, and tenant improvement classifications. The per square foot amount shall be calculated by multiplying the Average Square Foot Cost of Construction by the factor of 2%

for on-site public art or cultural facilities, and 1% for an in-lieu contribution. The resulting per square foot amount shall be used to determine the amount necessary to comply with the private developer cultural arts requirement selected to satisfy the obligation imposed by this Part.

#### **9.04.10.20.170 Regulations**

The City Manager, or her/his designee, is authorized to adopt administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Part, which is hereby codified in Article 9, Part 9.04.10.20, of the Santa Monica Municipal Code or as otherwise designated by the City Clerk.

SECTION 2. This Ordinance shall apply to applications for development projects as defined herein determined complete after the January 12, 2007.

SECTION 3. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a

decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(2) in that the Council finds there is no foreseeable possibility that the implementation of this ordinance may have a significant effect on the environment. The ordinance option to provide on-site public art or cultural facilities does not involve commitment to any specific project, and it is a matter of speculation whether a developer of a project subject to the proposed Private Developer Cultural Arts Requirement will select the on-site option. Moreover, in cases where individual projects select the onsite option, the project may be subject to ministerial review and not a project under CEQA. In discretionary review cases, where art is selected, the art will enhance rather than detract from the environmental setting. CEQA Guideline §15378 (b)(3) also provides that creation of governmental funding mechanisms or other governmental fiscal activities which do not involve commitment to any specific project which may result in a potentially significant physical impact on the environment is not a project subject to CEQA. Because the proposed Ordinance provides for an in-lieu contribution option and Cultural Arts Trust Fund in order to

create a governmental funding mechanism, it is also not a project as set forth in CEQA Guideline §15378.

SECTION 6. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days after its adoption.

APPROVED AS TO FORM:

  
MARSHA JONES MOUTRIE  
City Attorney

Approved and adopted this 5th day of December, 2006.



Richard Bloom, Mayor

State of California )  
County of Los Angeles ) ss.  
City of Santa Monica )

I, Maria M. Stewart, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2212 (CCS) had its introduction on November 28, 2006, and was adopted at the Santa Monica City Council meeting held on December 5, 2006, by the following vote:

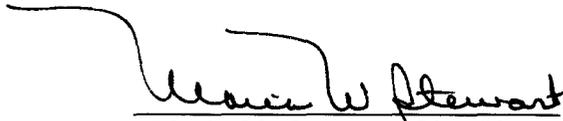
Ayes: Council members: Genser, Holbrook, McKeown, O'Connor, Shriver  
Mayor Bloom, Mayor Pro Tem Katz

Noes: Council members: None

Abstain: Council members: None

Absent: Council members: None

ATTEST:



Maria M. Stewart, City Clerk