

1 [Planning, Administrative Codes - Public Art Fee and Public Artwork Trust Fund]

2
 3 **Ordinance: 1) amending the San Francisco Planning Code, Section 429, to provide that**
 4 **developers currently required to spend 1% of construction costs for public artwork on**
 5 **any development project over 25,000 square feet located in a C-3 district have an**
 6 **option to contribute all or a portion of that Fee to a City fund dedicated to support**
 7 **public art; 2) amending the San Francisco Administrative Code by adding Section**
 8 **10.200-29 to establish a Public Artwork Trust Fund, funded through contributions and**
 9 **Public Art Fees, for the creation, installation, exhibition, conservation, preservation,**
 10 **and restoration of temporary and permanent public art and capital improvements to**
 11 **nonprofit art facilities within the C-3 district to be administered and expended by the**
 12 **Arts Commission; and 3) making environmental findings, Planning Code Section 302**
 13 **findings, and findings of consistency with the General Plan and the Priority Policies of**
 14 **Planning Code Section 101.1.**

15 NOTE: Additions are *single-underline italics Times New Roman*;
 16 deletions are ~~*strike-through italics Times New Roman*~~.
 17 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike-through normal~~.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Findings

20 (a) The Planning Department has determined that the actions contemplated in this
 21 ordinance are in compliance with the California Environmental Quality Act (California Public
 22 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
 23 Board of Supervisors in File No. _____ and is incorporated herein by reference.

24 (b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
 25 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in

1 Planning Commission Resolution No. _____, and incorporates those reasons herein
2 by reference. A copy of said Planning Commission Resolution is on file with the Clerk of the
3 Board of Supervisors in File No. _____.

4 (c) The Board of Supervisors finds that this ordinance is in conformity with the
5 General Plan and the Priority Policies of Planning Code Section 101.1 for the reasons set
6 forth in Planning Commission Resolution No. _____, and hereby incorporates those
7 reasons herein by reference.

8

9 Section 2. The San Francisco Planning Code is hereby amended by amending Section
10 429, to read as follows:

11 **SEC. 429. ARTWORKS, OPTIONS TO MEET PUBLIC ART FEE REQUIREMENT,**
12 **RECOGNITION OF ARCHITECT AND ARTISTS, ~~AND MODEL~~ REQUIREMENTS IN C-3**
13 **DISTRICTS.**

14 (The effective date of these requirements shall be either September 17, 1985, the date
15 that they originally became effective, or the date of a subsequent modification, if any, became
16 effective.)

17 **SEC. 429.1. DEFINITIONS.** (a) ~~Artworks.~~ *In addition to the definitions set forth in Section 401 of*
18 *this Article, the following definitions shall govern interpretation of Section 429.1 et seq.:*

19 *"Conservation" shall mean the profession devoted to the preservation of cultural property for*
20 *the future.*

21 *"Construction Cost" shall be determined by the Department of Building Inspection in*
22 *accordance with established industry standards or in the manner used to determine the valuation of*
23 *work as set forth in Section 107.2 of the Building Code.*

24 *"High capacity nonprofit arts organization" shall mean a nonprofit organization that the Arts*
25 *Commission determines, based on its review of the organization's annual report, certified audits,*

1 performance attendance, prior track record, critical reviews, and other information, can provide the
2 intended programming based on such factors as: the number of years of operation; the financial health
3 and stability of the organization; and the quality of programming, constituency served, and evidence of
4 community support. The Arts Commission may, in its discretion, further refine this definition in rules
5 and regulations.

6 "Maintenance" shall mean a minimally invasive, routine and regularly scheduled activity that
7 may involve the removal of superficial dirt or debris build-up on the surface of the artwork or the
8 cleaning and repair of non-art support material such as a pedestal or plaque.

9 "Preservation" shall mean the protection of cultural property through activities that minimize
10 chemical and physical deterioration and damage, and that prevent loss of informational content. The
11 primary goal of preservation is to prolong the existence of cultural property, and should be undertaken
12 or overseen by a professional conservator.

13 "Restoration" shall mean a treatment procedure intended to return cultural property to a known
14 or assumed state, often through the addition of non-original material.

15 **SEC. 429.2. APPLICATION.** This section shall apply to all projects that involve ~~In the case of~~
16 construction of a new building or addition of floor area in excess of 25,000 square feet to an
17 existing building in a C-3 District, ~~works of art costing~~

18 **SEC. 429.3. IMPOSITION OF PUBLIC ART FEE REQUIREMENT.**

19 (a) **Determination of Requirements.** The Department shall determine the applicability of
20 Section 429.1 et. seq. to any development project requiring a first construction document and, if Section
21 429.1 et seq. is applicable, the number of gross square feet subject to its requirements, and shall
22 impose this requirement as a condition of approval for issuance of the first construction document for
23 the development project to address the need for additional public art in the downtown districts. The
24 project sponsor shall supply any information necessary to assist the Department in this determination.

1 **(b) Amount of Fee.** Upon design approval of the development project from the Planning
2 Department, and except as otherwise provided herein, the project sponsor shall dedicate and expend
3 an amount equal to one percent of the construction cost of the building or addition as
4 determined by the Director of ~~DBI~~ the Department of Building Inspection (the "Public Art Fee") for
5 the purposes described herein and subject to the options set forth below. ~~shall be installed and~~
6 ~~maintained (i) in areas on the site of the building or addition and clearly visible from the public~~
7 ~~sidewalk or the open-space feature required by Section 138, or (ii) on the site of the open-space feature~~
8 ~~provided pursuant to Section 138, or (iii) upon the approval of any relevant public agency, on adjacent~~
9 ~~public property, or (iv) in a publicly accessible lobby area of a hotel. In lieu of installing and~~
10 ~~maintaining works of art pursuant to subsections (i) through (iv) above, a project sponsor may elect to~~
11 ~~contribute a sum of money at least equivalent to the cost of the artwork to finance, in whole or in part,~~
12 ~~rehabilitation and restoration of the exterior of a publicly-owned building provided that the building is~~
13 ~~(i) owned by the City and County of San Francisco, and (ii) located in a P District adjacent to a C-3~~
14 ~~District, and (iii) designated as an historical landmark by Article 10 of this Code or designated as a~~
15 ~~Category I Significant Building by Article 11 of this Code and listed as a National Historical Landmark~~
16 ~~on the National Historical Register; provided, however, that the right to elect to use this in-lieu~~
17 ~~provision to satisfy the obligations of this Section shall terminate five years from the effective date of~~
18 ~~this provision.~~

19 **(c) Department Notice to Development Fee Collection Unit at DBI.** After the Department has
20 made its final determination of the net addition of gross floor area subject to Section 429.1 et seq. and
21 the dollar amount of the Public Art Fee required, the Department shall immediately notify the
22 Development Fee Collection Unit at DBI of its determination, in addition to the other information
23 required by Section 402(b) of this Article.

24 **(d) Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or site permit
25 for a development project subject to the requirements of Section 429.1 et seq., the sponsor shall elect

1 one of the three options listed below to fulfill any requirements imposed as a condition of approval and
2 notify the Arts Commission and the Department of their choice of the following:

3 (1) Option to Use 100% of Public Art Fee to Provide On-Site Public Artwork. Unless
4 otherwise provided below, the project sponsor may elect to provide on-site public art of a value at least
5 equivalent to the Public Art Fee.

6 (2) Option to Contribute 100% of Public Art Fee Amount to Public Artwork Trust.
7 Effective ~~on~~ the effective date of this Ordinance No. _____ for a project that has not received its
8 first construction document, and except as provided herein, the project sponsor may pay the Public Art
9 Fee for deposit in the Public Art Trust Fund defined under Section 10.100-29 of the San Francisco
10 Administrative Code for the purposes set forth in Section 429.7(b), including the creation, installation,
11 exhibition, conservation, preservation, and restoration of works of public art and for capital
12 improvements to non profit arts facilities (“In-Lieu Fee for Public Artwork Trust”) within the C-3
13 District or within a half mile of the boundary of the C-3 District.

14 (3) Option to Provide 50% of Public Art Fee Amount to On-Site Public Artwork with
15 Remaining Discounted Amount to Public Art Trust. Effective on the effective date of this Ordinance
16 No. _____ a project that has not received its first construction document may elect to expend 50%
17 of the Public Art Fee for the acquisition of On-Site Public Artwork that shall be subject to the
18 requirements of subsection (d) (1) above regarding On Site Public Artwork, and deposit 45% of the
19 remaining balance of the Public Art Fee into the Public Art Trust. As provided in Section 402, the
20 project sponsor shall pay the fee to the Development Fee Collection Unit at DBI.

21 (e) Department's Notice to Development Fee Collection Unit of Sponsor's Choice. After the
22 project sponsor has notified the Arts Commission and the Department of the choice to fulfill the
23 requirements of Section 429.1 et seq., the Department shall immediately notify the Development Fee
24 Collection Unit at DBI of the project sponsor's choice.

1 (f) **Development Fee Collection Unit Notice to Arts Commission and Department Prior to**
2 **Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
3 provide notice in writing or electronically to the Arts Commission and to the Department prior to
4 issuing the first certificate of occupancy for any development project subject to Section 429.1 et seq.
5 that has elected to fulfill all or part of the requirements with an option other than payment of an in-lieu
6 fee to verify that the artwork was placed in the agreed upon location with the appropriate ADA
7 compliant signage. If the Arts Commission or the Department notifies the Unit at such time that the
8 sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of
9 occupancy until the subject project is brought into compliance with the requirements of Section 429.1
10 et seq.

11 (g) **Process for Revisions of Determination of Requirement.** In the event that the Department
12 or the Planning Commission takes action affecting any development project subject to Section 429.1 et
13 seq., and such action is subsequently modified, superseded, vacated, or reversed by the Board of
14 Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article
15 shall be followed.

16 **SEC. 429.4. COMPLIANCE BY PROVIDING ON-SITE PUBLIC ARTWORK.**

17 (a) **Installation.** The project sponsor must install the public art in compliance with this Section
18 (1) in areas on the site of the building or addition so that the public art is clearly visible from the public
19 sidewalk or the open-space feature required by Section 138, or (2) on the site of the open-space feature
20 provided pursuant to Section 138, or (3) in a publicly accessible lobby area of a hotel (“On-Site Public
21 Artwork”).

22 Said ~~works of art~~ On-Site Public Artwork shall be installed prior to issuance of the first
23 certificate of occupancy; provided, however, that if the Zoning Administrator concludes that it
24 is not feasible to install the works within that time and that adequate assurance is provided
25 that the works will be installed in a timely manner, the Zoning Administrator may extend the

1 time for installation for a period of not less than 12 months. Said works of art may include
2 sculpture, bas-relief, murals, mosaics, decorative water features, tapestries or other artworks
3 permanently affixed to the building or its grounds, or a combination thereof, but may not
4 include architectural features of the building, nor artwork designed by the architect, except as
5 permitted with respect to the in lieu contribution regarding publicly owned buildings meeting
6 the criteria described above. Artworks shall be displayed in a manner that will enhance their
7 enjoyment by the general public. The type and location of artwork, but not the artistic merits
8 of the specific artwork proposed, shall be approved by the Zoning Administrator following a
9 review of the Arts Commission's written report under subsection (b) below in accordance with the
10 provisions of Section 309 of this Code. ~~The term "construction cost" shall be determined in the~~
11 ~~manner used to determine the valuation of work as set forth in Section 107.2 of the Building Code.~~

12 (b) Consultation with Arts Commission. Effective on the effective date of this Ordinance No.
13 _____ , the project sponsor shall provide information to the Arts Commission regarding the type,
14 durability, design, artistic merit, and publicly accessible location of the project sponsor's proposed On-
15 Site Public Artwork. Following such consultation and prior to DBI's issuance of the first construction
16 document, the Arts Commission shall provide the project sponsor and Planning Department with a
17 written report summarizing its recommendations regarding the type, durability, design, artistic merit,
18 and publicly accessible location of the On-Site Public Artwork. The Arts Commission shall conduct its
19 consultation with the project sponsor regarding the On-Site Public Artwork proposal within 60 days of
20 receiving complete documentation of the On-Site Public Artwork proposal from the project sponsor,
21 unless the Zoning Administrator approves a time extension following a written request by the Arts
22 Commission setting forth the reasons for the requested extension. The Arts Commission
23 recommendation shall be advisory to the Planning Department.

24 (c) Administrative Fee. The Arts Commission is authorized to collect an administrative fee
25 from the project sponsor of \$2,500 for administration of this option and, if justified, an additional

1 amount based on a time and materials basis. The administrative fee shall be taken out of the Public Art
2 Fee, not calculated in addition to the Fee. The Arts Commission may adjust the administrative fee
3 annually based on a cost-of-living or similar index. Any such adjustment shall be published on the Arts
4 Commission and Department of Planning websites.

5 (d) **Removal, Relocation, or Alteration of Artwork.** Once the project sponsor has installed and
6 completed the final Artwork, the project sponsor, building owner and any third party, may not remove,
7 relocate or alter the Artwork without notifying and consulting with the Arts Commission at least 120
8 days prior to the proposed removal, relocation or alteration. The Arts Commission shall not approve
9 any removal, relocation, or alteration unless it finds that such removal, relocation, or alteration is of
10 equal or greater value. If a project sponsor does remove, relocate, or alter the Artwork without
11 notification and approval of the Arts Commission, the Planning Department is authorized to pursue
12 enforcement of this Section under Section 176 or 176.1 of this Code or to pursue any other remedy
13 permitted by law.

14 **SEC. 429.5. COMPLIANCE BY CONTRIBUTION OF 100% OF PUBLIC ART FEE AMOUNT**
15 **TO PUBLIC ARTWORK TRUST.**

16 With the approval of the Arts Commission, the project sponsor may designate the use of her or
17 his contribution to the Trust to a high capacity private, non profit arts organization to provide exterior
18 public artistic programming in the C-3 district or within a half mile of the boundary of the C-3 District.
19 As provided in Section 402, the project sponsor shall pay the fee to the Development Fee Collection
20 Unit at DBI. DBI shall not issue a first construction document for a project subject to this Section
21 unless and until the project sponsor has paid the fee in full.

22 **SEC. 429.6. COMPLIANCE BY PROVIDING 50% OF PUBLIC ART FEE AMOUNT TO ON-**
23 **SITE PUBLIC ARTWORK WITH REMAINING DISCOUNTED AMOUNT TO PUBLIC ART**
24 **TRUST.**

1 (a) **Installation.** The project sponsor must install and complete the final Artwork as provided
2 in Section 429.4(a) and 45% of the remaining amount to the Public Art Trust. These two actions will
3 fulfill the project sponsor's Public Art Fee Requirement under this Section 42.9 and the project sponsor
4 may retain the balance of 5% of the Public Art Fee.

5 (b) **Consultation with Arts Commission.** Effective on the effective date of this Ordinance No.
6 _____ , the project sponsor shall provide information to and consult with the Arts Commission
7 pursuant to the provisions of Section 429.4(b).

8 (c) **Administrative Fee.** The Arts Commission is authorized to collect an administrative fee
9 from the project sponsor of \$2,500 for administration of this option and, if justified, an additional
10 amount based on a time and materials basis. The administrative fee shall be taken out of the Public Art
11 Fee Requirement, not calculated in addition to the Fee. The Arts Commission may adjust the
12 administrative fee annually based on a cost-of-living or similar index. Any such adjustment shall be
13 published on the Arts Commission and Department of Planning websites.

14 **SEC. 429.7. ARTS COMMISSION PUBLIC ARTWORK TRUST FUND.**

15 (a) All monies contributed to the Public Artwork Trust Fund pursuant to this Section 429 shall
16 be deposited in the special fund maintained by the Controller called the Public Artwork Trust under
17 Section 10.100-29 of the Administrative Code, as may be amended from time to time. The receipts in
18 the Trust are hereby appropriated in accordance with law to be used by the Arts Commission within the
19 C-3 District or within a half-mile of the boundary of the C-3 District to enhance the visibility and
20 quality of artworks in the public realm and to improve the public's access and enjoyment of the
21 artworks in the public realm.

22 (b) With the above objective, the Public Art Trust shall be used to fund: (i) the creation,
23 installation, and exhibition of temporary and permanent public works of art in the public realm and
24 within the C-3 District or within a half mile of the boundary of the C-3 District; (ii) the conservation,
25 preservation, and restoration, but not maintenance of temporary and permanent public works of art in

1 the public realm and within the C-3 District or within a half-mile of the boundary of the C-3 District
2 subject to a 15% maximum allocation per single project; (iii) a competitive public process overseen by
3 the Arts Commission for distribution of funds to San Francisco nonprofit arts entities and artists to
4 fund temporary public art projects, performance, film and video screenings, and capital improvements
5 for publicly accessible cultural facilities within the C-3 District or within a half-mile of the boundary of
6 the C-3 District; (iv) with the approval of the Arts Commission and the designation of the project
7 sponsor, to a high capacity private, non profit arts organization to provide exterior public artistic
8 programming in the C-3 district or within a half mile of the boundary of the C-3 District; and (v) the
9 reasonable administrative expenses of the Arts Commission staff in connection with administering
10 compliance with the requirements of this Section on a time and materials basis for managing projects
11 funded through the Public Artworks Trust, not to exceed 20% of the costs for any one project.

12 (c) The Arts Commission shall administer and expend the Public Artwork Trust, which shall
13 have the authority to prescribe rules and regulations governing the Fund that are consistent with this
14 Section. The Arts Commission shall prepare and submit an annual report of the expenditures and use
15 of the Public Art Trust to the Director of the Planning Department starting in July 1, 2012 for the prior
16 fiscal year.

17 **SEC.429.8.** ~~(b)~~ **Recognition of Architects and Artists.** In the case of construction of a new
18 building or an addition of floor area in excess of 25,000 square feet to an existing building in a
19 C-3 District, an ADA compliant plaque or cornerstone identifying the project architect and the
20 creator of the On-Site Public Artwork ~~artwork~~ provided pursuant to ~~Subsection (a)~~ this Section 429
21 and the erection date of the On-Site Public Artwork shall be placed at a publicly conspicuous
22 location on or in the building prior to the issuance of the first certificate of occupancy. Prior to
23 the issuance of the First Certificate of Occupancy, the project sponsor shall also send a written notice
24 to the Arts Commission for the Commission's records containing the name of the artist(s), the title, date
25 and medium of the artwork, a photograph of the artwork, and the location of the Artwork and address

1 of the building. The Commission staff shall make this information available to the public in an
2 accessible format, such as through the publication of a public art map or on its website, and shall
3 update the information regularly.

4 ~~(c) Models. In a C-3 District, in the case of construction of a new building, or any addition in~~
5 ~~height in excess of 40 feet to an existing building, two models shall be submitted to the Planning~~
6 ~~Department prior to approval of the project, as follows:~~

7 ~~(1) One model of the building at a scale of 1" = 100'; and~~

8 ~~(2) One model of the block in which the building is located at a scale of 1" = 32', which model~~
9 ~~shall include all the buildings on the block on which the building is located and the streets surrounding~~
10 ~~the block to the centerline of the streets and shall use as its base the land form starting at sea level;~~
11 ~~provided, however, that if the Planning Department determines that it has an up-to-date model of the~~
12 ~~block in which the building is located, only a model of the building shall be submitted.~~

13 ~~(d) Procedure Regarding Certificate of Occupancy. The Director of DBI shall provide notice~~
14 ~~in writing to the Zoning Administrator at least five business days prior to issuing the first certificate of~~
15 ~~occupancy for any building subject to the provisions of this Section. If the Zoning Administrator notifies~~
16 ~~the Director of DBI within such time that the provisions of this Section have not been complied with,~~
17 ~~the Director of DBI shall deny the permit. If the Zoning Administrator notifies the Director of DBI that~~
18 ~~the provisions of this Section have been complied with or fails to respond within five business days, the~~
19 ~~permit of occupancy shall not be disapproved pursuant to this Section. The procedure set forth in this~~
20 ~~subsection is not intended to preclude enforcement of the requirements of this Section through any~~
21 ~~means otherwise authorized.~~

22 **SEC. 429.9. LIEN PROCEEDINGS.** A project sponsor's failure to comply with the requirements of
23 Sections 429.5 or 429.6 shall be cause for the Development Fee Collection Unit at DBI to institute lien
24 proceedings to make the in-lieu fee, plus interest and any deferral surcharge, a lien against all parcels
25

1 used for the development project in accordance with Section 408 of this Article and Section 107A.13.15
2 of the San Francisco Building Code.

3
4 Section 3. The San Francisco Administrative Code is hereby amended by adding a
5 new section 10.100-29 to read as follows:

6 **SEC. 10.100-29. ARTS COMMISSION PUBLIC ARTWORK TRUST FUND.**

7 (a) Establishment of Fund. The Arts Commission Public Artwork Trust Fund is established
8 as a category four fund to receive any monies collected for the Public Art Fee in accordance with
9 Planning Code Section 429, as may be amended from time to time, and deposited with the City
10 Treasurer for use by the Arts Commission in accordance with Planning Code Section 429 and to
11 receive all revenue from private contributions to the City for the Arts Commission's public art
12 program.

13 (b) Use of Fund. Unless otherwise provided by Charter, municipal code, contract or
14 funding source, the monies in said fund shall be expended only for the (i) the creation, installation, and
15 exhibition of temporary and permanent public works of art in the public realm and within the C-3
16 District or within a half mile of the boundary of the C-3 District; (ii) the conservation, preservation,
17 and restoration, but not maintenance of temporary and permanent public works of art in the public
18 realm and within the C-3 District or within a half-mile of the boundary of the C-3 District subject to a
19 15% maximum allocation per single project; (iii) a competitive public process overseen by the Arts
20 Commission for distribution of funds to San Francisco nonprofit arts entities and artists to fund
21 temporary public art projects, performance, film and video screenings, and capital improvements for
22 publicly accessible cultural facilities within the C-3 District or within a half-mile of the boundary of the
23 C-3 District; (iv) with the approval of the Arts Commission and the designation of the project sponsor,
24 to a high capacity private, non profit arts organization to provide exterior public artistic programming
25 in the C-3 district or within a half mile of the boundary of the C-3 District; and (v) the reasonable

1 administrative expenses of the Arts Commission staff in connection with administering compliance with
2 the requirements of this Section on a time and materials basis for managing projects funded through
3 the Public Artworks Trust, not to exceed 20% of the costs for any one project.

4 (c) Exceptions to Fund Category. The Arts Commission shall authorize all expenditures
5 from the fund.

6
7 Section 4. The Board of Supervisors urges the Arts Commission, in consultation with
8 the Planning Department and the public, to engage in a strategic planning process as to how
9 the Public Artwork Trust Fund shall be expended. The Board of Supervisors also urges the
10 Arts Commission to recommend an updated set of "Fine Arts Guidelines" to the Planning
11 Department for review and approval by the Planning Commission.

12
13 Section 5. Effective Date. This ordinance shall become effective 30 days from the
14 date of passage.

15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 JUDITH A. BOYAJIAN
19 Deputy City Attorney