

1 [Planning Code - ~~Eliminating~~ Revising Public Art Relocation and Removal Requirements for
2 Existing 100% Affordable Housing Projects]

3 **Ordinance amending the Planning Code to ~~eliminate the public art requirement for~~
4 ~~100% affordable housing projects~~ and provide for the relocation or removal of existing
5 artwork at such 100% affordable housing projects subject to certain conditions;
6 affirming the Planning Commission's determination under the California Environmental
7 Quality Act; and making findings, including findings of consistency with the General
8 Plan and the eight priority policies of Planning Code Section 101.1.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

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

17 Section 1. Findings.

18 (a) On November 16, 2023, the Planning Commission, in Resolution No. 21446,
19 determined that the actions contemplated in this ordinance comply with the California
20 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said
21 Resolution is on file with the Clerk of the Board of Supervisors in File No. 230706 and is
22 incorporated herein by reference. The Board affirms this determination.

23 (b) The Planning Commission, in Resolution No. 21446, also adopted findings that the
24 actions contemplated in this ordinance are consistent, on balance, with the City's General
25 Plan and eight priority policies of Planning Code Section 101.1. The Planning Commission

1 also adopted findings of public necessity under Planning Code Section 302. The Board
2 adopts these findings as its own.

3 (c) The Board of Supervisors is proceeding with this action to remove a financial
4 obstacle in the creation of affordable housing and in furtherance of policy 8.6.5 in the recently
5 enacted Housing Element that states: “[r]emove Planning Code Section 429 Public Art
6 requirements for 100% affordable housing projects.”

7
8 Section 2. The Planning Code is hereby amended by revising Sections 429.1, ~~429.2,~~
9 and 429.4, to read as follows:

10 [PUBLIC ART FEE]

11 * * * *

12 **SEC. 429.1. DEFINITIONS.**

13 In addition to the definitions set forth in Section 401 of this Article, the following
14 definitions shall govern interpretation of Section 429.1 et seq.:

15 “100% Affordable Housing Project” means a project that meets the applicability requirements
16 for affordable housing projects set forth in Section 315(b) of this Code.

17 "Conservation" shall mean the profession devoted to the preservation of cultural
18 property for the future.

19 * * * *

20
21 **SEC. 429.2. APPLICATION.**

22 This section shall apply to:

23 (a) all projects that involve construction of a new building or addition of floor area in
24 excess of 25,000 square feet to an existing building in a C-3 District, ~~except for existing 100%~~
25 ~~Affordable Housing Projects;~~ and

1 (b) all non-residential projects that involve construction of a new building or addition
2 of floor area in excess of 25,000 square feet and that have submitted their first complete
3 Development Application on or after January 1, 2013 on the following parcels:

4 (1) all parcels in RH-DTR, TB-DTR, SB-DTR, UMU, WMUG, WMUO and SALI
5 Districts;

6 (2) properties that are zoned MUG, CMUO, or MUO or MUR and that are north of
7 Division/Duboce/13th Streets; and

8 (3) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and
9 7295 (Stonestown Galleria Mall).

10 For the purposes of this Section, a "Development Application" shall mean any
11 application for a building permit, site permit, environmental review, Preliminary Project
12 Assessment (PPA), Conditional Use, or Variance.

13
14 **SEC. 429.4. COMPLIANCE BY PROVIDING ON-SITE PUBLIC ARTWORK.**

15 (a) **Installation.** The project sponsor must install the public art in compliance with
16 this Section 429.4: (1) in areas on the site of the building or addition so that the public art is
17 clearly visible from the public sidewalk or the open-space feature required by Section 138, or
18 (2) on the site of the open-space feature provided pursuant to Section 138, or (3) in a publicly
19 accessible lobby area of a Hotel ("On-Site Public Artwork"). Said On-Site Public Artwork shall
20 be installed prior to issuance of the first certificate of occupancy; provided, however, that if the
21 Zoning Administrator concludes that it is not feasible to install the Artwork within that time and
22 that adequate assurance is provided that the Artwork will be installed in a timely manner, the
23 Zoning Administrator may extend the time for installation for a period of not more than 12
24 months. Said works of art may include sculpture, bas-relief, murals, mosaics, decorative water
25 features, tapestries or other artworks permanently affixed to the building or its grounds, or a

1 combination thereof, but may not include architectural features of the building, nor artwork
2 designed by the architect, except as permitted with respect to the in lieu contribution regarding
3 publicly owned buildings meeting the criteria described above. Artworks shall be displayed in
4 a manner that will enhance their enjoyment by the general public. The type and location of
5 Artwork, but not the artistic merits of the specific artwork proposed, shall be approved by the
6 Zoning Administrator in accordance with the provisions of Section 309 of this Code.

7 (b) **Recognition of Artists.** An ADA compliant plaque identifying the creator, name
8 (if any), and installation date of the On-Site Public Artwork required by subsection (a) above
9 shall be placed at a publicly conspicuous location within view of the On-Site Public Artwork at
10 the same time the Artwork is installed.

11 (c) **Removal, Relocation, or Alteration of Artwork.** Once the project sponsor has
12 installed and completed the final Artwork, the project sponsor, building owner and any third
13 party may not remove, relocate or alter the Artwork without notifying and consulting with the
14 Planning Department at least 120 days prior to the proposed removal, relocation or alteration.
15 A project sponsor's or building owner's notice of intent to the Planning Department to remove,
16 relocate, or alter Artwork shall include written approval of the proposed removal, relocation, or
17 alteration from the artist or artist's estate, if applicable, under the federal Visual Artists Rights Act (17
18 U.S.C. §§106A and 113(d))("VARA"), the California Art Preservation Act (Cal. Civil Code §§987 et
19 seq.)("CAPA"), or any successor laws protecting the integrity of Artwork, or a written waiver from the
20 artist expressly waiving their rights, if any, under VARA and CAPA. The Planning Department shall
21 not approve any removal, relocation, or alteration unless it finds any removed Artwork will be
22 replaced with Artwork of equal or greater value or that any relocation or alteration is only a
23 minor modification. If a project sponsor does remove, relocate, or alter the Artwork without
24 notification and approval of the Planning Department, the Planning Department is authorized
25 to pursue enforcement of this Section under Section 176 or ~~176.4~~ of this Code or to pursue

1 any other remedy permitted by law.

2 (d) Removal, Relocation, or Alteration of Artwork for Existing 100% Affordable Housing
3 Projects. Notwithstanding the requirements of subsection (c) of this Section 429.4, 100% Affordable
4 Housing Projects for which public art has already been installed as of the effective date of the
5 ordinance in Board of Supervisors File No. 230706, including a 100% affordable residential
6 building built to satisfy affordable housing requirements of market rate projects, may remove, relocate,
7 or alter Artwork if the Artwork has been vandalized or severely compromised such that it cannot be
8 restored to its original condition without significant financial expenditures. A project sponsor’s or
9 building owner’s notice of intent to the Zoning Administrator to remove, relocate, or alter Artwork
10 shall include: (1) documentation of vandalism or severely compromised conditions and (2) written
11 approval of the proposed removal, relocation, or alteration from the artist or artist’s estate, if
12 applicable, under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) (“VARA”), the
13 California Art Preservation Act (Cal. Civil Code §§987 et seq.) (“CAPA”), or any successor laws
14 protecting the integrity of Artwork, or a written waiver from the artist expressly waiving their rights, if
15 any, under VARA and CAPA. The Zoning Administrator, after a duly noticed public hearing, may
16 approve, conditionally approve, or deny removal, relocation, or alteration of the Artwork. The Zoning
17 Administrator shall take into account the financial burden of repair and the extent of the
18 vandalism, including past history of repeat vandalism, and likelihood that the Artwork may be
19 vandalized again. For cases proposing removal under this subsection (d), the Zoning
20 Administrator shall consider the viability of relocating the Artwork elsewhere on the property.
21 In regard to relocation or alteration, including relocation of the Artwork elsewhere on the
22 property, if the Zoning Administrator determines that relocation or alteration is a minor
23 modification of the Artwork, then no hearing is required. Notice of the Zoning Administrator’s
24 hearing shall be sent to property owners within a 300 foot radius of the subject site at least seven days

1 before the hearing. Enforcement of this subsection (d) shall be in accordance with Section
2 749.4(e)429.4(c).

3
4 Section 3. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor’s veto of the ordinance.

8
9 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the “Note” that appears under
14 the official title of the ordinance.

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16 APPROVED AS TO FORM:
17 DAVID CHIU, City Attorney

18 By: /s/ JOHN D. MALAMUT
19 JOHN D. MALAMUT
Deputy City Attorney

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