



December 5, 2023

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Dorsey  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-005549PCA:  
Eliminating Public Art Requirement for 100% Affordable Housing Projects  
Board File No. 230706

Planning Commission Recommendation: **Approval with Modifications**

Dear Ms. Calvillo and Supervisor Dorsey,

On November 16, 2023, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Dorsey that would amend the Planning Code to eliminate the public art requirement for 100% affordable housing projects and provide for the relocation or removal of existing artwork at such projects subject to certain conditions. At the hearing the Planning Commission recommended approval with modifications.

The Commission's proposed modifications were as follows:

1. Amend Administrative Code Section 3.19 to exempt 100% affordable housing projects, including 100% affordable residential buildings built to satisfy affordable housing requirements of market rate projects, from the 2% for art enrichment requirement.
2. Create new, and clarify existing ZA hearing Criteria for Consideration:  
Criteria for Consideration
  - The extent of the vandalism, including past history of repeat vandalism, and likelihood of being vandalized again;
  - The financial burden of repair, and;
  - For cases proposing removal, the viability of relocating the art elsewhere on the property.
3. Add clarifying language to the removal, relocation, and alteration provisions of Subsection (d) to ensure

that 100% Affordable Housing Projects proposing a *minor* relocation or alteration of the artwork are offered the same, less onerous process currently available to market-rate projects.

4. Make technical amendments to delete a reference to Sec. 176.1 (which no longer exists) and correct an incorrect reference to a Code Section.
5. Encourage further conversation between City departments and stakeholders on finding alternative resources of funding for art acquisition, installation, and maintenance at 100% affordable projects.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr  
*Manager of Legislative Affairs*

cc: John Malamut, Deputy City Attorney  
Madison Tam, Aide to Supervisor Dorsey  
John Carroll, Office of the Clerk of the Board

**Attachments :**

Planning Commission Resolution

Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21446

**HEARING DATE: NOVEMBER 16, 2023**

**Project Name:** Eliminating Public Art Requirement for 100% Affordable Housing Projects  
**Case Number:** 2023-005549PCA [Board File No. 230706]  
**Initiated by:** Supervisor Dorsey / Introduced June 6, 2023  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
Audrey.Merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO ELIMINATE THE PUBLIC ART REQUIREMENT FOR 100% AFFORDABLE HOUSING PROJECTS AND PROVIDE FOR THE RELOCATION OR REMOVAL OF EXISTING ARTWORK AT SUCH PROJECTS SUBJECT TO CERTAIN CONDITIONS; AFFIRMING THE PLANNING DEPARTMENT’S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS, INCLUDING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND PUBLIC NECESSITY, CONVENIENCE, AND WELFARE FINDINGS PURSUANT TO PLANNING CODE, SECTION 302.**

WHEREAS, on June 6, 2023, Supervisor Dorsey introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230706, which would amend the Planning Code to eliminate the public art requirement for 100% affordable housing projects and provide for the relocation or removal of existing artwork at such projects subject to certain conditions;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 16, 2023; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed recommendation(s) is/are as follows:

1. Amend Administrative Code Section 3.19 to exempt 100% affordable housing projects, including 100% affordable residential buildings built to satisfy affordable housing requirements of market rate projects, from the 2% for art enrichment requirement.
2. Create new, and clarify existing ZA hearing Criteria for Consideration:  
Criteria for Consideration
  - The extent of the vandalism, including past history of repeat vandalism, and likelihood of being vandalized again;
  - The financial burden of repair, and;
  - For cases proposing removal, the viability of relocating the art elsewhere on the property.
3. Add clarifying language to the removal, relocation, and alteration provisions of Subsection (d) to ensure that 100% Affordable Housing Projects proposing a *minor* relocation or alteration of the artwork are offered the same, less onerous process currently available to market-rate projects.
4. Make technical amendments to delete a reference to Sec. 176.1 (which no longer exists) and correct an incorrect reference to a Code Section.
5. Encourage further conversation between City departments and stakeholders on finding alternative sources of funding for art acquisition, installation, and maintenance at 100% affordable projects.

## Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Department supports the proposed ordinance because it will reduce the cost to develop and maintain affordable housing, and because it effectuates implementing Action 8.6.5 of the Housing Element. Like many other cities, San Francisco is facing a substantial increase in affordable housing unit targets without a proportional increase in federal funding and fluctuating and increasingly competitive State funding. Removing unnecessary costs for affordable housing developers is one way the city can help funds for affordable housing to go farther; reducing one of the many constraints on affordable housing production and retention. The department has also identified further refinements to the proposed ordinance and additional ways to reduce the cost of affordable housing that is funded by the City.

## General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

### HOUSING ELEMENT

#### OBJECTIVE 4.A

**SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.**

##### Policy 8

Expand permanently supportive housing and services for individuals and families experiencing homelessness as a primary part of a comprehensive strategy to eliminate homelessness.

##### Policy 26

Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State- and local-required timelines, especially for 100% affordable housing and shelter projects.

##### Policy 30

Support the reduction of non-governmental challenges that enable affordable housing and small and mid-rise multi-family buildings as a prominent housing type.

#### Action 8.6.5

Remove Planning Code Section 429 Public Art requirements for 100% affordable housing projects.

*Public art requirements are a direct cost to housing projects which impacts their financial feasibility. This requirement is an especially difficult challenge for 100% affordable housing projects as they not only struggle to pay for the art, but also to maintain and protect it. The spirit of the 1% for Art requirement is to ensure that the public has access to high-quality and variety in art. It is not intended to be a direct benefit to the residents or workers of the space itself, but rather those who interact with the building. Although removing this requirement for 100% affordable buildings going forward will lessen the amount of public art viewable from the street, the direct, negative impact of affordable housing not being built far outweighs the indirect impact of residents and the public not having an art piece present on-site.*

## Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will*

*not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 16, 2023.



Jonas P. Ionin  
Commission Secretary

Jonas P Ionin

Digitally signed by Jonas P  
Ionin  
Date: 2023.11.22 11:15:16  
-08'00'

AYES: Braun, Diamond, Koppel, Moore, Tanner

NOES: Imperial

ABSENT: None

RECUSED: Ruiz

ADOPTED: November 16, 2023



# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: November 16, 2023**

**90-Day Deadline:** December 10, 2023

**Project Name:** Eliminating Public Art Requirement for 100% Affordable Housing Projects  
**Case Number:** 2023-005549PCA [Board File No. 230706]  
**Initiated by:** Supervisor Dorsey / Introduced June 6, 2023  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
 Audrey.Merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
 aaron.starr@sfgov.org, 628-652-7533  
**Environmental Review:** Not a Project Under CEQA

<b>Recommendation:</b>	Approval with Modifications
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### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to eliminate the public art requirement for 100% affordable housing projects and provide for the relocation or removal of existing artwork at such projects subject to certain conditions.

#### The Way It Is Now:

1. Planning Code Section 429 does not have or reference a definition for 100% affordable housing; however, Planning Code Section 315(b) defines a 100% affordable housing project as a project that is restricted for a minimum of 55 years or the life of the project as affordable for “persons and families of low or moderate income,” as defined in California Health & Safety Code Section 50093.
2. Planning Code Section 429 requires public artwork for certain development projects. Projects subject to the requirement must dedicate and expend an amount equal to one percent of the construction cost of the building or addition as determined by the Director of DBI to either artwork to be installed on-site, the



Public Artwork Trust Fund, or a combination of both.

3. Artwork installed pursuant to the 1% requirement may not be removed, relocated, or altered without Planning Department approval. The Planning Department may not approve the removal, relocation, or alteration unless it finds that removed artwork will be replaced with art of equal or greater value, or that any relocation/alteration is only a minor modification.

### **The Way It Would Be:**

1. Planning Code Section 429 would be amended to include a definition of a “100% Affordable Housing Project” for the purposes of applying the 1% for Art requirement. A “100% Affordable Housing Project” would be one that meets the applicability requirements of Sec. 315(b).
2. Section 429.2 would exempt “100% Affordable Housing Projects” from the 1% for Art requirement.
3. Artwork previously installed pursuant to the 1% requirement would be allowed to be removed, relocated, or altered *if*:
  - The project is a “100% Affordable Housing Project”, as defined in the Section. For the purposes of this subsection, 100% affordable housing projects built to satisfy an affordable housing requirement of a market rate project are also eligible, and;
  - The artwork has been vandalized or severely compromised such that it cannot be restored to its original condition without significant financial expenditure.

To apply to remove, relocate, or alter the artwork, the project sponsor or building owner must submit a “notice of intent” to the Zoning Administrator (ZA). The notice must include:

- Documentation of the vandalism or severely compromised conditions, and;
- Written approval or waiving of their rights of the proposed removal, relocation or alteration from the artist or the artist’s estate (pursuant to the federal Visual Artists Rights Act or any successor laws that protect artwork).

The ZA would conduct a publicly noticed hearing to approve, conditionally approve, or deny the application. A mailed notice to all property owners within a 300ft radius of the subject site at least 7 days prior to the hearing would be required.

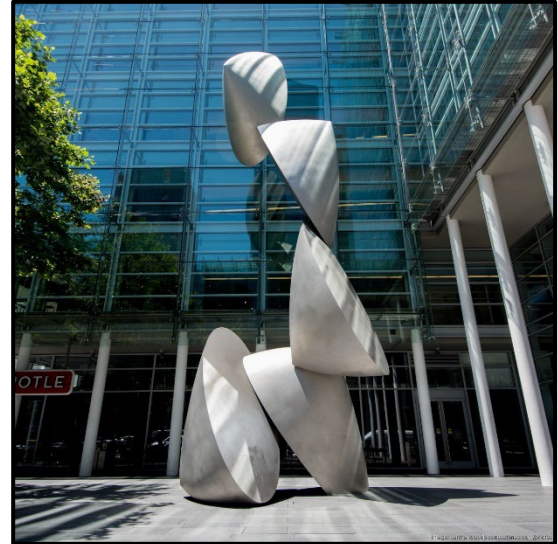
## **Background**

The Planning Code requires certain development projects in the Downtown and nearby neighborhoods to provide public art equal to at least 1% of the total construction cost. This program was established by the 1985

Downtown Plan and is governed by Section 429 of the Planning Code. The program is responsible for over 60 pieces of public art in the city's downtown alone since its inception<sup>1</sup>.

As of May 2012, some projects may choose to dedicate a portion of their 1% Art requirement to the City's Public Art Trust. The Public Art Trust's funds are used to enliven and activate the downtown and other core areas with ongoing and imaginative arts programming, including temporary or permanent sculpture installations, the performing arts, special art events, or art markets. The Trust may also be used for capital improvements to cultural facilities and restoration of City-owned artworks within the eligible districts. The primary goal of the Trust is to help these areas become cultural destinations.

In 2013, Section 429 of the Planning Code was amended to expand the public art requirement to all non-residential projects that involve a new building or addition more than 25,000 square feet in 15 zoning districts, concentrated in sections north of Downtown along the waterfront, most of the South of Market, Dogpatch, and parts of the Mission District.



*"The Signature" by Richard Deutch. One of several pieces installed to fulfill the 1% for Art requirement for the construction of 4 buildings at the corners of 1<sup>st</sup> & Howard streets. Sculpture is located at the public plaza in front of 400 Howard.*

## Issues and Considerations

### Other Art Requirements for Certain Affordable Housing Projects

Administrative Code Section 3.19 applies to all buildings, above ground structures, parks, and transportation projects that utilize public funding for construction. The section requires 2% of the project's gross estimated construction cost to be used for "art enrichment". "Art Enrichment" qualified actions and projects include the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Arts Commission. If not also amended to exempt 100% affordable housing projects, this requirement would hinder the impact of the proposed ordinance for any 100% affordable housing project that utilizes public funds to finance the project partially or wholly.

### Governmental & Non-Governmental Constraints to Affordable Housing

The non-governmental constraints that impact market-rate development—high land values, high construction costs, low site availability, and community resistance—also have significant effects on affordable housing, or housing produced with public subsidy by non-profit developers.

<sup>1</sup> <https://data.sfgov.org/Culture-and-Recreation/Public-Art-from-1-Art-Program-/cf6e-9e4j/data>

Reducing construction costs would reduce a constraint on affordable housing production. It is one key action that will stretch the federal, state, and local funding already in place much farther to meet Affirmatively Furthering Fair Housing requirements and the needs of many more people in San Francisco.

**Reducing construction costs would reduce one constraint on affordable housing production.**

In addition to non-governmental constraints that impact market-rate development, the recently published Housing Element found that San Francisco lacks sufficient resources to retain and expand the number of units affordable to low and middle-income households required by our RHNA target. San Francisco has been able to meet previous above-moderate RHNA targets but stayed well below the low- and moderate-income housing targets. Like many other cities, San Francisco is facing a substantial increase in affordable housing unit targets without a proportional increase in federal funding and fluctuating and increasingly competitive State funding. The city is being asked to produce more affordable housing, with less financial resources. In response, San Francisco has substantially expanded its local resources for affordable housing through General Fund allocations, development impact fees, and bonds. In 2019-2020, local affordable housing funding reached \$500 million, more than four times the \$110 million which had been the average over the previous 15 years. Inclusionary affordable housing, required as part of any major housing development, represents about one third of all affordable housing production. Local funding has shifted from one third of the federal and State funding to more than double. And still, the overall funding for affordable housing remains below what is required to produce about 45,000 units for low and moderate-income households. To achieve this substantial goal, city leaders, advocates, policy makers, industry experts, and the public will need to collaborate to invite new models of financing, recognize new revenue streams are needed, and commit to a sustained system. Although the proposed ordinance would not create any new financing programs or resources to fund affordable housing, it will succeed in reducing the overall cost to construct and maintain 100% affordable housing projects: thereby increasing their financial feasibility.

### **The Public Artwork Trust Fund**

Planning Code Section 429.5 and Administrative Code Section 10.100 establish and regulate the Public Artwork Trust Fund. Projects subject to the public art requirement may choose to pay part or all their fee to The Public Artwork Trust Fund in lieu or in addition to installing artwork on-site. The funds are to be used by the Arts Commission within the C-3 District or within a half mile of the boundary of the C-3 District. These funds may also be used if the project is within another zoning district, so long as it is within a half mile of the project boundary to enhance the visibility and quality of artworks in the public realm. The Arts Commission may utilize the funds for: creation, installation, and exhibition of public art, conservation, preservation, and restoration (but not maintenance of) public art, reasonable administrative expenses of the Arts Commission staff, and to fund local nonprofit arts entities and artists to exhibit projects, works, and performances. The Arts Commission not only administers and expends the Public Artwork Trust Fund, but is also the authority to prescribe rules and regulations governing the Fund.

### The Cost of Public Art for Affordable Housing

The Public Art requirement is not just a one-time cost to developers. Over time, artworks require maintenance and possible restoration making them an ongoing operating cost. Further, Section 429 requires the art to be viewable by the public. As a result, most building developers locate their art requirement outdoors where the art is exposed to the weather and vandalism. This only increases the long-term maintenance costs for the building owners or tenants. This can be especially burdensome to 100% Affordable Housing Projects. Ongoing maintenance costs can significantly increase HOA fees for cash-strapped residents. Money spent on repairing or maintaining an art piece also takes away resources that could otherwise be used to fund on-site supportive services. Further, affordable housing projects receiving public funding are also subject to unique governmental constraints including funding subject to specific reporting requirements, prevailing wage expectations, and multi-jurisdictional complexities. All these costs compound the burden of maintaining a six-to-seven figure art piece.



"Wall Drawing #1012" by Sol LeWitt. Installed to fulfill 1% for Art Requirement at 1400 Mission Street, a 100% affordable development.

### General Plan Compliance and Racial and Social Equity Analysis

The Constraints Reduction policies<sup>2</sup> were developed as part of the Department’s 2022 Housing Element and addresses the challenges in achieving housing approvals and production for shelters and supportive housing affordable to low-, moderate-, and above moderate-income households (as identified in the Analysis of Governmental and Non-Governmental Constraints). Eliminating the Public Art requirement for affordable housing projects has been identified as Governmental Constraint to the production of affordable housing:

*“Public art requirements are a direct cost to housing projects which impacts their financial feasibility. This requirement is an especially difficult challenge for 100% affordable housing projects as they not only struggle to pay for the art, but also to maintain and protect it.”*

As such, Action 8.6.5 of the Housing Element is to remove Planning Code Section 429 Public Art requirements for 100% affordable housing projects. The spirit of the 1% for Art requirement is to ensure that the public has access to high-quality and variety in art. It is not intended to be a direct benefit to the residents or workers of the space itself, but rather those who interact with the building. Although removing this requirement for 100% affordable buildings going forward will lessen the amount of public art viewable from the street, the direct, negative impact of affordable housing not being built far outweighs the indirect impact of residents and the public not having an art piece present on-site.

<sup>2</sup> [Appendix C: Analysis of Governmental & Non-Governmental Constraints \(sfplanning.s3.amazonaws.com\)](https://sfplanning.s3.amazonaws.com)

## Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however, the proposed changes can be implemented without increasing permit costs or review time.

## Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Amend Administrative Code Section 3.19 to exempt 100% affordable housing projects, including 100% affordable residential buildings built to satisfy affordable housing requirements of market rate projects, from the 2% for art enrichment requirement.
2. Consider allowing 100% affordable housing projects to apply to utilize funds from the Public Artwork Trust Fund to be used to purchase and install on-site, public artworks.
3. Create new, and clarify existing ZA hearing Criteria for Consideration:  
Criteria for Consideration
  - The extent of the vandalism, including past history of repeat vandalism, and likelihood of being vandalized again;
  - The financial burden of repair, and;
  - For cases proposing removal, the viability of relocating the art elsewhere on the property.
4. Add clarifying language to the removal, relocation, and alteration provisions of Subsection (d) to ensure that 100% Affordable Housing Projects proposing a *minor* relocation or alteration of the artwork are offered the same, less onerous process currently available to market-rate projects.
5. Make technical amendments to delete a reference to Sec. 176.1 (which no longer exists) and correct an incorrect reference to a Code Section.

## Basis for Recommendation

The Department supports the proposed ordinance because it will reduce the cost to develop and maintain affordable housing, and because it effectuates implementing Action 8.6.5 of the Housing Element. Like many other cities, San Francisco is facing a substantial increase in affordable housing unit targets without a proportional increase in federal funding and fluctuating and increasingly competitive State funding. Removing unnecessary costs for affordable housing developers is one way the city can help funds for affordable housing to go farther; reducing one of the many constraints on affordable housing production and retention. The department has also identified refinements to the proposed ordinance and additional ways to reduce the cost of affordable housing that is funded by the City.

**Recommendation 1:** Amend Administrative Code Section 3.19 to exempt 100% affordable housing projects, including 100% affordable residential buildings built to satisfy affordable housing requirements of market rate projects, from the 2% for art enrichment requirement. The goal of the proposed Ordinance is to help make 100% affordable housing projects more financially feasible, which will be undercut for any project using public funding if this Administrative Code requirement is not also amended to exempt 100% affordable housing projects.

**Recommendation 2:** Consider allowing 100% affordable housing projects to apply to utilize funds from the Public Artwork Trust Fund to be used to purchase and install on-site, public artworks. The Department and Supervisor Dorsey's office believe this fund could be a great resource for 100% affordable housing projects either located in the C-3, within ½ mile of the C-3, or within ½ mile of a project that has paid into the fund, to be able to apply to utilize these funds for the purchase and installation of on-site public artworks.

**Recommendation 3:** Create new, and clarify existing ZA hearing Criteria for Consideration. Although the Ordinance lays out several factors that the ZA should consider when evaluating applications to remove, relocate, or alter an artwork, they are vague. The staff's proposed modification would clarify the criteria that the ZA should use to approve, conditionally approve, or deny an application.

**Recommendation 4:** Add clarifying language to ensure that 100% Affordable Housing Projects proposing a *minor* relocation or alteration are offered the same, less onerous process currently available to market-rate projects. Section 429.4(c) currently contains provisions for the proposed removal, relocation, or alteration of Artwork installed pursuant to the requirements of Sec. 429. Under the current Code, if a proposed relocation or alteration of the Artwork is considered minor, a project sponsor may apply to relocate or alter the Artwork by notifying the Department at least 120 days prior to relocation or alteration. The Planning Department may approve this request administratively, so long as it concurs that the proposed alteration or relocation is minor. Under the proposed Ordinance, 100% Affordable Housing Projects would be required to submit a Notice of Intent and the application would be subject to a ZA hearing, even if the proposed alteration or relocation is considered minor. The Ordinance should be amended as follows to ensure minor alterations and relocations are treated the same for 100% Affordable Housing Projects as they are for market-rate projects:

***(d) Removal, Relocation, or Alteration of Artwork for 100% Affordable Housing Projects.***  
*Notwithstanding the requirements of subsection (c) of this Section 429.4, 100% Affordable Housing Projects, including a 100% affordable residential building built to satisfy affordable housing requirements of market rate projects, whose application does not otherwise qualify under subsection (c) above as a minor alteration or relocation, may remove, relocate, or alter Artwork if the Artwork has been vandalized or severely compromised such that it cannot be restored to its original condition without significant financial expenditures.*

**Recommendation 5:** Make technical amendments. A drafting error resulted in an incorrect Code reference on page 5, line 18. Section 749(c) does not exist. The sentence should reference Planning Code Sec. 429.4(c). Additionally, Board File 220878 amended the Code to delete Planning Code Sec. 176.1, so references to this section should also be deleted.

## Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

## Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

## Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

### Attachments:

Exhibit: Board of Supervisors File No. 230706

1 [Planning Code - Eliminating Public Art Requirement for 100% Affordable Housing Projects]

2

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 projects subject to certain conditions; affirming the Planning**  
6 **Commission’s determination under the California Environmental Quality Act; and**  
7 **making findings, including findings of consistency with the General Plan, and the eight**  
8 **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.

13

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

15

16 Section 1. Findings.

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

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



1 Commission also adopted findings of public necessity under Planning Code Section 302. The  
2 Board 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 100% Affordable  
25 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

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1 to pursue enforcement of this Section under Section 176 or 176.1 of this Code or to pursue  
2 any other remedy permitted by law.

3 **(d) Removal, Relocation, or Alteration of Artwork for 100% Affordable Housing Projects.**

4 Notwithstanding the requirements of subsection (c) of this Section 429.4, 100% Affordable Housing  
5 Projects, including a 100% affordable residential building built to satisfy affordable housing  
6 requirements of market rate projects, may remove, relocate, or alter Artwork if the Artwork has been  
7 vandalized or severely compromised such that it cannot be restored to its original condition without  
8 significant financial expenditures. A project sponsor’s or building owner’s notice of intent to the  
9 Zoning Administrator to remove, relocate, or alter Artwork shall include: (1) documentation of  
10 vandalism or severely compromised conditions and (2) written approval of the proposed removal,  
11 relocation, or alteration from the artist or artist’s estate, if applicable, under the federal Visual Artists  
12 Rights Act (17 U.S.C. §§106A and 113(d)) (“VARA”), the California Art Preservation Act (Cal. Civil  
13 Code §§987 et seq.) (“CAPA”), or any successor laws protecting the integrity of Artwork, or a written  
14 waiver from the artist expressly waiving their rights, if any, under VARA and CAPA. The Zoning  
15 Administrator, after a duly noticed public hearing, may approve, conditionally approve, or deny  
16 removal, relocation, or alteration of the Artwork. Notice of the Zoning Administrator’s hearing shall  
17 be sent to property owners within a 300 foot radius of the subject site at least seven days before the  
18 hearing. Enforcement of this subsection (d) shall be in accordance with Section 749.4(c).

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

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1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

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8 APPROVED AS TO FORM:  
9 DAVID CHIU, City Attorney

10 By: /s/JOHN D. MALAMUT  
11 JOHN D. MALAMUT  
12 Deputy City Attorney

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