

1 [Administrative Code - Use of Art Enrichment Funds and Maintenance of Public Art]

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3 **Ordinance amending the Administrative Code to define “art enrichment”;** allow
4 **aggregation of art enrichment funds for use on any City property rather than only the**
5 **funding department’s property; allow the Arts Commission to reserve up to 10% of the**
6 **art enrichment budget for maintenance and conservation; allow art enrichment funds**
7 **to be used exclusively for maintenance and conservation under limited circumstances;**
8 **and to clarify references to the Arts Commission’s jurisdiction over works of art**
9 **consistent with the Charter; and making environmental findings.**

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

14

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

16 Section 1. Environmental Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. ____ and is incorporated herein by reference.

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22 Section 2. The Administrative Code is hereby amended by revising Section 3.19 to
23 read as follows:

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1 **SEC. 3.19. APPROPRIATION FOR ART ENRICHMENT OF PROPOSED PUBLIC**
2 **BUILDINGS, ABOVEGROUND STRUCTURES, PARKS AND TRANSPORTATION**
3 **IMPROVEMENT PROJECTS.**

4 **(a) Art Enrichment Allocation.** Before proposing a bond issue or making a request
5 for an appropriation for the construction of any of the projects set forth in Subsection (c)
6 below, the officer, board or commission concerned shall add thereto for the art enrichment of
7 the proposed construction, two percent of the gross estimated construction cost, exclusive of
8 the items proposed for such art enrichment. Where funding eligibility is limited by law or
9 funding agency rules, the art enrichment allocation shall be based upon two percent of eligible
10 construction costs.

11 If the officer, board or commission concerned determines that two percent of the
12 gross estimated construction cost is inappropriate for art enrichment, such officer, board or
13 commission shall submit its recommendation regarding the art enrichment budget and the
14 basis for its determination to the Arts Commission for the Arts Commission's review. If the
15 officer, board or commission concerned is unable to resolve the matter with the Arts
16 Commission, the matter shall be submitted to the Mayor by the Arts Commission for final
17 determination within 60 days from the date the recommendation is made.

18 Failure of the Arts Commission to submit the matter to the Mayor for resolution
19 within such time shall be deemed equivalent to the Arts Commission's acceptance of the
20 recommendation made by the officer, board or commission concerned.

21 **(b) Definitions.** For purposes of this Section:

22 ~~(H)~~ "Alteration" of a building, aboveground structure, or transportation
23 improvement project shall include substantial changes to elements such as walls, partitions,
24 or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial
25 changes" shall include additions to, removal of, and modification of such elements.

1 “Art Enrichment” shall mean the acquisition and installation of original works of art (including
2 limited editions), or temporary installation, display, or presentation of the same, on City property for
3 aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public
4 with the creative work of artists, as approved by the Arts Commission.

5 “Civic Art Collection” shall mean the various artworks owned by the City under the
6 jurisdiction of the Arts Commission that are accessioned by Resolution of the Commission into the
7 Civic Art Collection.

8 ~~(2)~~ “Construction cost” shall mean the total estimated construction contract award
9 amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Arts
10 Commission. “Construction cost” shall not include movable or personal property or
11 construction cost contingency.

12 ~~(3)~~ “Transportation improvement project” refers to Municipal Railway and
13 Department of Public Works projects which include both aboveground and below-ground
14 transportation-related projects; new boarding ramps; new transit platforms; new terminals and
15 transportation systems with their attendant passenger amenities, such as shelters, seating,
16 lighting, landscaping, and signage; new transportation-related structures such as maintenance
17 and operating facilities; power substations; and street/highway-related transit improvements
18 such as bridges and overpasses.

19 **(c) Application.** This Section shall apply to the construction or alteration of the
20 following: (1) a building; (2) an aboveground structure; (3) a new park; or (4) a transportation
21 improvement project.

22 The requirements of this Section shall also apply to the alteration of a building,
23 aboveground structure, or transportation improvement project.

24 **(d) Exemptions.** The following shall be exempt from the requirements of this
25 Section:

1 (1) Transportation improvement projects limited to rail replacement, rehabilitation
2 or extension of catenary wiring; sidewalk (including curbs and gutters), street paving, repair or
3 improvements; or transit vehicle purchases;

4 (2) All mechanical, plumbing and electrical system upgrades, structural or seismic
5 upgrades, and modifications for disabled access, unless occurring in conjunction with
6 alteration of a building, an aboveground structure or transportation improvement project;

7 (3) All park and landscape renovation projects including, but not limited to court
8 resurfacing; landscape renovation or replanting; sewer and water lines; drainage and irrigation
9 systems; wells; erosion control; restrooms; repaving; new paving; stairway repair or
10 replacement; utilities; community gardens; modifications for disabled access; signage;
11 lighting; fence replacement or repair; replacement or repair of existing play structures; natural
12 areas management; modifications to existing parks; and new land uses within existing parks;

13 (4) Annual CIP funded capital improvements for security/life safety and health
14 deficiencies when not occurring in conjunction with alteration of existing public buildings,
15 aboveground structures, parks and transportation projects which are supported by the
16 General Fund;

17 (5) Aboveground pipelines and their supports, such as trestles, anchor blocks and
18 saddles; valve lots; power transmission lines and towers; switchyards and substations; and
19 dwellings in watershed areas;

20 (6) Airfields and Airports Commission equipment; *and*.

21 (7) Airports Commission signage when not occurring in conjunction with a larger
22 construction contract subject to this Section.

23 (e) **Administrative Fees.** The Arts Commission shall supervise and control the
24 expenditure of all funds appropriated for art enrichment and shall allocate up to 20 percent of
25 said funds for all necessary and reasonable administrative costs incurred in connection

1 therewith, ~~unless the Arts Commission agrees to a lesser amount on projects with art enrichment~~
2 ~~budgets in excess of \$750,000, or~~ unless such administrative fee is limited or prohibited by the
3 funding source.

4 **(f) Aggregation of Funds.** When mutually agreed upon by the Arts Commission,
5 ~~and~~ the City department from whose capital project the art enrichment allocation was
6 obtained, and any other City department with jurisdiction over a proposed alternative site, and
7 where permitted by the funding source, the Arts Commission shall have the authority to
8 aggregate art enrichment funds for use ~~at a more publicly accessible facility under the jurisdiction~~
9 ~~of the participating City department on an alternative City property.~~

10 **(g) Maintenance and Conservation Funds.** When permitted by the funding
11 source, the Arts Commission may set aside and expend up to ~~five~~ten percent of the total art
12 enrichment allocation for each project for maintenance and conservation ~~purposes of artworks in~~
13 ~~the Civic Art Collection. If the project has limited public access, or generates funds insufficient to~~
14 ~~acquire new artwork, or cannot otherwise be used judiciously for that purpose, the Arts Commission~~
15 ~~may use the entire project Art Enrichment allocation for maintenance and conservation (aggregating~~
16 ~~or transferring funds as per subsection (f) above).~~ When permitted by the funding source, fFunds set
17 aside pursuant to this Section shall be invested in an interest-bearing account when the total
18 of such funds set aside exceeds \$10,000.

19 **(h) Miscellaneous Provisions.**

20 (1) When a client department suggests a mitigation measure to address any
21 perceived safety concerns relative to any element of the art enrichment, the Arts Commission
22 shall work with the client department to ensure that such mitigation is implemented to the
23 satisfaction of the client, the Arts Commission and the artist, if such safety concern is raised
24 by the client department within 30 days after the element has been presented for review to the
25 client department.

1 (2) ~~If a City department can sufficiently demonstrate to the Arts Commission that a project~~
2 ~~is not appropriate for public access, the Arts Commission shall waive the art enrichment allocation for~~
3 ~~such project provided that the art enrichment funding cannot be aggregated for use at a more publicly~~
4 ~~accessible facility under the jurisdiction of the participating City department.~~

5 (3) Construction and installation of art enrichment shall comply with the
6 requirements of all applicable building codes, laws, ordinances, rules and regulations.

7 (43) Nothing in this Section contained shall be construed to limit or abridge the
8 legal powers of the governing boards of the War Memorial, the Fine Arts Museums, the Asian
9 Art Museum or the Port of San Francisco.

10 (54) Nothing in this Section shall be construed to limit or abridge the jurisdiction of
11 the officer, board or commission of the participating City department to supervise and control
12 the expenditure of project funds other than the two percent allocation for art enrichment.

13 (65) This amendment shall not be applied retroactively to projects for which an art
14 enrichment allocation previously would not have been required, nor to those projects for which
15 project funding has been approved either by prior voter action or by airport revenue bond
16 sales, but not yet appropriated or expended. Nor shall this ordinance be construed to allow for
17 an increase in the total art enrichment allocation for a project that is already underway or for
18 which the art enrichment allocation has already been established.

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20 Section 3. The Administrative Code is hereby amended by revising Section 2A.150.1
21 to read as follows:

22 **SEC. 2A.150.1. ARTS COMMISSION; ADDITIONAL RESPONSIBILITIES.**

23 **(a) Cataloging, Care and Maintenance of Public Art Media.** ~~The~~ Consistent with
24 Charter Section 5.103, the cataloging, care and maintenance of all sculptures, statues, murals,
25 paintings and other art media belonging to the City and County of San Francisco, other than

1 and excepting those located on properties under the jurisdiction and control of the San
2 Francisco Unified School District, the ~~M. H. de Young Memorial Museum, the California Palace of~~
3 ~~the Legion of Honor charitable trust departments under Section 5.101 of the Charter, or, the~~
4 California Academy of Sciences, ~~and the Recreation and Park Commission~~, shall be under the
5 jurisdiction of the Arts Commission.

6 ~~(b) Agreement with Recreation and Park Commission. The Arts Commission shall be~~
7 ~~authorized to enter into agreement with the Recreation and Park Commission, upon such terms as may~~
8 ~~be mutually agreed, for the cataloging, care and maintenance of any or all of the above media located~~
9 ~~on properties under the jurisdiction of the Recreation and Park Commission.~~

10 **(e) Authorization for Sale of Works of Art.** When the Arts Commission determines
11 that it would be advantageous to the City and County, a work of art under the jurisdiction of
12 the Arts Commission may be sold or exchanged as hereinafter set forth.

13 The Arts Commission may execute and accept all deeds of conveyance necessary
14 and proper to effect a duly authorized sale or exchange. A work of art to be sold or exchanged
15 shall be cataloged, listed and described with reasonable certainty and a copy of such catalog
16 shall be furnished to the Ppurchaser of supplies.

17 **(cd) Exchange of Works of Art.** The Arts Commission may exchange a work of art
18 on such terms as the Arts Commission, by a 2/3 vote of the members of the Arts Commission,
19 determines appropriate; provided that any exchange is subject to the approval of the
20 Ppurchaser of supplies.

21 **(de) Public Auction.** A work of art under the jurisdiction of the Arts Commission
22 may be sold at public auction to the highest and best bidder and the Arts Commission may
23 contract with a licensed auctioneer for the purpose of conducting the sale or sales. The
24 contract shall specify the compensation to be paid for the auctioneer's services and set forth
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1 the terms and conditions under which the sale or sales are to be conducted. Each such
2 contract shall be approved by the Purchaser *of Supplies*.

3 **(ef) Sale at Other Than Public Auction.** A work of art under the jurisdiction of the
4 Arts Commission may be sold by private sale under the following circumstances:

5 (1) If the work is offered at public auction and no bids are received, or if the bids
6 are rejected; or

7 (2) If the Arts Commission determines, by a 2/3 vote of the members of the Arts
8 Commission, that the work may be sold on terms more advantageous to the City and County
9 if sold through private sale. Any contract for the private sale of a work of art is subject to the
10 approval of the Purchaser. A work of art on which bids have been rejected shall not thereafter
11 be sold through private sale for less than the amount of the highest bid received.

12 **(fg) Reproductions or Adaptations.** The Arts Commission may license the making
13 of reproductions or adaptations of works of art under its jurisdiction.

14 **(gh) Disposition of Proceeds from the Sale or Exchange of a Work of Art or of**
15 **a Reproduction or Adaptation Thereof.** All moneys received from the sale of a work of art
16 under the jurisdiction of the Arts Commission, or from the licensing of the making of a
17 reproduction or adaptation thereof, shall be placed in the ~~public art media fund~~ Arts Commission
18 Public Arts Fund as provided for in Section ~~10.117-1~~ 10.100-30 of the ~~San Francisco~~
19 Administrative Code. The monies in this fund attributable to the sale or exchange of a work of
20 art shall be used exclusively for the purpose of acquiring or maintaining one or more other
21 works of art ~~for the same public building or purpose for which the original work was acquired.~~
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23 Section 4. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

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

10
11 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
12 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
13 court of competent jurisdiction, such decision shall not affect the validity of the remaining
14 portions of the ordinance. The Board of Supervisors hereby declares that it would have
15 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
16 word not declared invalid or unconstitutional without regard to whether any other portion of
17 this ordinance would be subsequently declared invalid or unconstitutional.

18 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
19 interpreted or applied so as to create any requirement, power, or duty in conflict with any
20 federal or state law.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 ADINE VARAH
25 Deputy City Attorney

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Not defined as a project under
CEQA guidelines Sections 15378 + 15060
because it does not result in a physical
change in the environment.

Mayor Lee
BOARD OF SUPERVISORS

JPH 5/30/14
DJ HERRERA

