

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: June 13, 2023  
To: Planning Department / Commission  
From: Erica Major, Clerk of the Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 230706  
Planning Code - Eliminating Public Art Requirement for 100% Affordable Housing Projects

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan
  - Planning Code, Section 101.1
  - Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Erica Major at [Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org).

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).

19  
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.

7

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

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

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## **LEGISLATIVE DIGEST**

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

**Ordinance amending 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 Commission'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.**

### Existing Law

Planning Code Sections 429 et seq. establish a program that requires public artwork for certain projects. Section 429.4 includes provisions for removal, relocation, or alteration of existing artwork installed under the Planning Code requirements. Section 315(b) defines 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.

### Amendments to Current Law

This ordinance would eliminate the public art requirements for 100% affordable housing projects. The legislation also would create a process for the Planning Department to allow removal, relocation, or alteration of existing public artwork at such projects if, among other requirements, the artwork has been vandalized or severely compromised and the required authorization to remove, relocate, or alter the artwork has been obtained from the artist. This process would involve a publicly noticed Zoning Administrator hearing. The ordinance also makes various findings including environmental findings, General Plan findings, and the Planning Code Section 101.1 eight priority policy findings.

### Background Information

The recently enacted Housing Element's Policy 8.6.5 proposes removal of Planning Code Section 429 public art requirements for 100% affordable housing projects in order to make such projects more financially feasible.



## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: