

BOARD of SUPERVISORS



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## MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Myrna Melgar, Chair  
Land Use and Transportation Committee

FROM: John Carroll, Assistant Clerk

DATE: December 11, 2023

SUBJECT **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, December 12, 2023

The following file should be presented as COMMITTEE REPORT during the Board meeting on Tuesday, December 12, 2023. This ordinance was acted upon during the Land Use and Transportation Committee meeting on Monday, December 11, 2023, at 1:30 p.m., by the votes indicated.

**BOS Item No. 41**

**File No. 230706**

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

Ordinance amending the Planning Code to provide for the relocation or removal of existing artwork at 100% affordable housing 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.

**RECOMMENDED AS AMENDED AS A COMMITTEE REPORT**

Vote: Supervisor Myrna Melgar – Aye  
Supervisor Dean Preston – Aye  
Supervisor Aaron Peskin – Aye

Cc: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Alisa Somera, Legislative Deputy  
Anne Pearson, Deputy City Attorney

File No. 230706

Committee Item No. 8

Board Item No. 41

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: Dec. 11, 2023

Board of Supervisors Meeting:

Date: Dec. 12, 2023

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance - VERSION 2                        |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest - VERSION 2               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract / DRAFT Mills Act Agreement         |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence                        |

#### OTHER

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Transmittal – December 5, 2023</u>    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>BOS Reso No. 427-23 – September 21, 2023</u>              |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CEQA Determination – June 30, 2023</u>                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral CEQA and Planning Commission – June 13, 2023</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Committee Report Request Memo – December 7, 2023</u>      |
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Prepared by: John Carroll

Date: Dec. 8, 2023

Prepared by: John Carroll

Date: De. 11, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

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  
25

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.

15  
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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**REVISED LEGISLATIVE DIGEST**  
*(Amended in Committee – December 11, 2023)*

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

**Ordinance amending the Planning Code to provide for the relocation or removal of existing artwork at 100% affordable housing 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 create a process for the Planning Department to allow removal, relocation, or alteration of existing public artwork at 100% affordable housing 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 unless the Zoning Administrator finds that the proposed relocation or alteration is a minor modification of the artwork. The ordinance also makes various findings including environmental findings, General Plan findings, and the Planning Code Section 101.1 eight priority policy findings.

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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

**Recommendation:** Approval with Modifications

### 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.

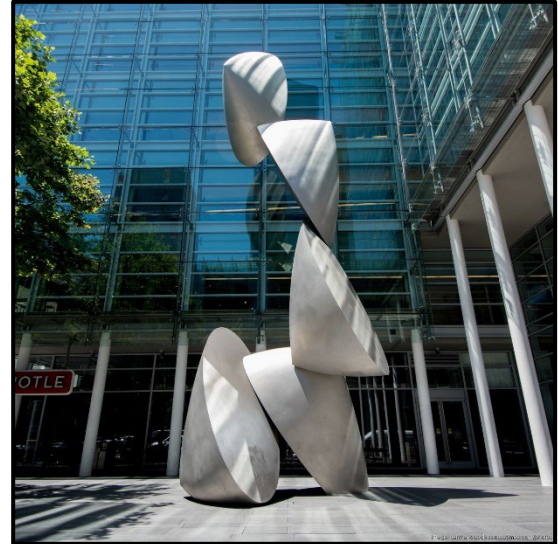
## **Background**

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 Hosing 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

25 ///

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.

24 ///

25 ///

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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1 [Approval of a Retroactive 90-Day Extension for Planning Commission Review of Planning  
2 Code - Eliminating Public Art Requirement for 100% Affordable Housing Projects (File No.  
3 230706)]

4 **Resolution retroactively extending by 90 days the prescribed time within which the**  
5 **Planning Commission may render its decision on an Ordinance (File No. 230706)**  
6 **amending the Planning Code to eliminate the public art requirement for 100%**  
7 **affordable housing projects and provide for the relocation or removal of existing**  
8 **artwork at such projects subject to certain conditions, and affirming the Planning**  
9 **Department’s California Environmental Quality Act determination; and making Planning**  
10 **Code, Section 302, findings, and making findings of consistency with the General Plan,**  
11 **and the eight priority policies of Planning Code, Section 101.1.**

12 WHEREAS, On June 6, 2023, Supervisor Matt Dorsey introduced legislation amending  
13 the Planning Code to eliminate the public art requirement for 100% affordable housing  
14 projects and provide for the relocation or removal of existing artwork at such projects subject  
15 to certain conditions, and affirming the Planning Department’s California Environmental  
16 Quality Act determination; and making Planning Code, Section 302, findings, and making  
17 findings of consistency with the General Plan, and the eight priority policies of Planning Code,  
18 Section 101.1; and

19 WHEREAS, On or about June 13, 2023, the Clerk of the Board of Supervisors referred  
20 the proposed Ordinance to the Planning Commission; and

21 WHEREAS, The Planning Commission shall, in accordance with Planning Code,  
22 Section 306.4(d), render a decision on the proposed Ordinance within 90 days from the date  
23 of referral of the proposed amendment or modification by the Board to the Commission; and  
24  
25

1           WHEREAS, Failure of the Commission to act within 90 days shall be deemed to  
2 constitute disapproval; and

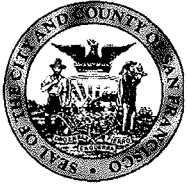
3           WHEREAS, The Board, in accordance with Planning Code, Section 306.4(d) may, by  
4 Resolution, extend the prescribed time within which the Planning Commission is to render its  
5 decision on proposed amendments to the Planning Code that the Board of Supervisors  
6 initiates; and

7           WHEREAS, Supervisor Dorsey has requested additional time for the Planning  
8 Commission to review the proposed Ordinance; and

9           WHEREAS, The Board deems it appropriate in this instance to grant to the Planning  
10 Commission additional time to review the proposed Ordinance and render its decision; now,  
11 therefore, be it

12           RESOLVED, That by this Resolution, the Board hereby extends the prescribed time  
13 within which the Planning Commission may render its decision on the proposed Ordinance for  
14 approximately 90 additional days, until December 10, 2023.





**City and County of San Francisco**  
**Tails**  
**Resolution**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 230945

**Date Passed:** September 12, 2023


Resolution retroactively extending by 90 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 230706) 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, and affirming the Planning Department's California Environmental Quality Act determination; and making Planning Code, Section 302, findings, and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.


September 12, 2023 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 230945

I hereby certify that the foregoing Resolution was ADOPTED on 9/12/2023 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

  
\_\_\_\_\_  
London N. Breed  
Mayor

9/21/23  
\_\_\_\_\_  
Date Approved

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

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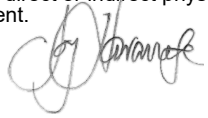
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## MEMORANDUM

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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

- 
- California Environmental Quality Act (CEQA) Determination Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.  
(California Public Resources Code, Sections 21000 et seq.)  
 Ordinance / Resolution  
 Ballot Measure  
06/30/23 
- 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).

**From:** [ZOE ZHU](#)  
**To:** [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#)  
**Subject:** Petition  
**Date:** Friday, December 8, 2023 7:47:24 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to feel pride walking into our building, our home. Please help our community, pass the legislation so we can finally remove the graffiti and the vandalized artwork. Thank you.

**From:** [Wilson Li](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)  
**Subject:** Support for file 230706  
**Date:** Thursday, December 7, 2023 9:58:21 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

**We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.**

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to feel pride walking into our building, our home. Please help our community, pass

the legislation so we can finally remove the graffiti and the vandalized artwork.

Thank you.

Jianpei (Wilson)

**From:** [Jun Li](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)  
**Subject:** Support for file 230706  
**Date:** Wednesday, December 6, 2023 8:32:51 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

**We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.**

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to feel pride walking into our building, our home. Please help our community, pass the legislation so we can finally remove the graffiti and the vandalized artwork.

Thank you.

Jun Li

**From:** [Martha Vallejo](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Board of Supervisors \(BOS\)](#)  
**Subject:** 12-6-2023 VOTE LEGISLATION: Graffiti Problems  
**Date:** Wednesday, December 6, 2023 4:19:43 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at **1400 Mission Street**, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% **Below Market Rate** (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building.

When we bought our units, **we were not informed** about this matter.

Over the years, the **Mural** has been **repeatedly vandalized** with **Graffiti**. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, **we do not have the funds** to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you **please pass this legislation for the Board of Supervisors' vote**, and

we ask that the Board of Supervisors please vote to approve this legislation.

Please help our community, pass the legislation so we can finally remove the graffiti and the vandalized artwork.

Thank you

Martha Vallejo

**We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.**



**From:** [Megan Freeman](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)  
**Subject:** Support for file 230706  
**Date:** Wednesday, December 6, 2023 1:16:08 PM  
**Attachments:** [Screen Shot 2023-12-06 at 1.09.55 PM.png](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. I love my home, building community, and neighborhood. My family, along with all the residents in my building, are good community members. We strengthen the community and add to a growing sense of safety in the mid-Market neighborhood. I am an elementary teacher and the great majority of my neighbors also contribute positively through their work. My two young children also contribute to a feeling of joy and safety in the neighborhood. They bike and scoot to the local playground, the main library, and to many shops. The mere presence of us enjoying the neighborhood helps people feel comfortable and at ease.

I mention these details because the graffiti on our building does the exact opposite. It creates a sense of chaos, discomfort, and neglect. We desperately want to remedy this situation. I want our building to help make the community shine, just like the other new buildings in the area. I want my children to have pride in our building. PLEASE help us fix this graffiti issue (which began during the protests of 2020).

You also need to know that we are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we

were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

**We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.**

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for the Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to feel pride walking into our building, our home. Please help our community, pass the legislation so we can finally remove the graffiti and the vandalized artwork.

Thank you,

Megan Freeman

P.S. I'm including a recent photo to show you my the people you'd be helping through your vote. :-)



--

Megan Freeman

**From:** [Carroll, John \(BOS\)](#)  
**To:** "Michael Quan"  
**Cc:** [Melgar, Myrna \(BOS\)](#); [Low, Jen \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Smeallie, Kyle \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Angulo, Sunny \(BOS\)](#); [Dorsey, Matt \(BOS\)](#); [Tam, Madison \(BOS\)](#)  
**Subject:** RE: Support for 230706  
**Date:** Wednesday, December 6, 2023 2:37:00 PM  
**Attachments:** [image001.png](#)

---

Thank you for your comment letter.

I am forwarding your comments to the members of the LUT committee, and I will include your comments in the file for this ordinance matter.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

-

[Board of Supervisors File No. 230706](#)

**John Carroll**  
**Assistant Clerk**

Board of Supervisors  
San Francisco City Hall, Room 244  
San Francisco, CA 94102  
(415)554-4445



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

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**From:** Michael Quan <michaelquan87@yahoo.com>  
**Sent:** Tuesday, December 5, 2023 9:00 PM  
**To:** Carroll, John (BOS) <john.carroll@sfgov.org>  
**Subject:** Support for 230706

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi,

I can not attend the meeting but want to voice my suppose to paint over the mural because the graffiti would cause a higher crime and overall reduce the home value.

Thanks,

1400.mission st unit 713.

[Sent from Yahoo Mail on Android](#)

[Sent from Yahoo Mail on Android](#)

**From:** [Carroll, John \(BOS\)](#)  
**To:** [Ryan Hazelton](#)  
**Cc:** [Melgar, Myrna \(BOS\)](#); [Low, Jen \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Smeallie, Kyle \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Angulo, Sunny \(BOS\)](#); [Dorsey, Matt \(BOS\)](#); [Tam, Madison \(BOS\)](#)  
**Subject:** RE: Support for File 230706  
**Date:** Wednesday, December 6, 2023 2:37:00 PM  
**Attachments:** [image001.png](#)

---

Thank you for your comment letter.

I am forwarding your comments to the members of the LUT committee, and I will include your comments in the file for this ordinance matter.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

-

[Board of Supervisors File No. 230706](#)

**John Carroll**  
**Assistant Clerk**

Board of Supervisors  
San Francisco City Hall, Room 244  
San Francisco, CA 94102  
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**From:** Ryan Hazelton <rhazeltonsf@gmail.com>  
**Sent:** Tuesday, December 5, 2023 4:13 PM  
**To:** Carroll, John (BOS) <john.carroll@sfgov.org>  
**Subject:** Support for File 230706

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear John Carroll,

I am a resident in the building called *1400 Mission* in SOMA (10th & Mission), one of the 100% BMR condo buildings through MOHCD. Our 100% affordable housing building has been plagued by graffiti on our building's art installation for years and our hands have been tied to remedy it due to city code - the mural has been covered by graffiti, yet cannot be painted over because of city code preventing the mural being painted over, even though it is now under layers of graffiti.

**I'm submitting this public comment in support of file 230706 so that our building and other BMR buildings in the future can properly mitigate the impact of chronic graffiti in our neighborhood.**

Supervisor Dorsey's office has been a tremendous help in partnering with our building to find solutions to fix the chronic graffiti on our building's art installation. Community art is an important and valuable attribute for our city and beautifies our neighborhood, but the current building code in place is regressive and has had unintended consequences for our BMR building.

We hope by passing file 230706 that current and future BMR buildings can contribute to our neighborhoods' beauty and charm, while also being able to take care of issues that plague our city streets like graffiti. We need this passed to help better participate in the city's effort to fight graffiti on our streets while still beautifying our downtown corridors.

Thank you,

-Ryan Hazelton

1400 Mission Street, Unit 506

SF, CA 94103

**From:** [Barklee Sanders](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myra \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Tam, Madison \(BOS\)](#); [Merlone, Audrey \(CPC\)](#)  
**Cc:** [1400 BSM: 1400 Manager](#)  
**Subject:** Support for File 230706 (Eliminating Public Art Requirement for 100% Affordable Housing Projects) – Urgent Resolution for Graffiti Issue at 1400 Residence  
**Date:** Tuesday, December 5, 2023 7:59:57 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

## Introduction

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=6253964&GUID=23482B46-29CC-4185-925B-977FCBF4C86C&Options=&Search=>

I am writing as a concerned resident and owner at the 1400 building, a community largely comprising Below-Market-Rate (BMR) homeowners. We are united in our support for File 230706, which is pivotal in resolving the persistent graffiti problem that has significantly impacted our building.

## The Plight of BMR Homeowners

Our building, primarily consisting of BMR units, is a testament to our city's commitment to affordable housing. However, the ongoing graffiti issue has been detrimental. It has not only devalued our property but also undermined the sense of pride and community we have strived to foster. As BMR homeowners, it is particularly challenging to continually face such depreciating factors that threaten our investment and living environment.

## Severity of the Graffiti Problem

The graffiti issue at our residence has been chronic and relentless. Over the years, it has transformed a once vibrant mural into a disfigured wall, significantly diminishing the building's aesthetic appeal. This continuous vandalism is more than a visual nuisance; it represents a failure to maintain a respectable and dignified living space for residents who have invested their hard-earned money into these homes.

## Support for Legislative Action and Gratitude to Supervisor Dorsey

We wholeheartedly support the legislation proposed under File 230706 and express our sincere gratitude to Supervisor Dorsey and his office for their steadfast cooperation and efforts in addressing this issue. Their involvement has been instrumental in bringing this matter to the forefront and seeking a resolution that respects both the law and the welfare of the residents.

## Art's Importance and Its Unintended Consequences

While we recognize and value the importance of art in our community, the current state of the mural, overshadowed by graffiti, reflects a regressive and unintended impact. Art should uplift and enhance a community, not contribute to its deterioration. It is crucial that this legislation also considers the long-term implications of such public art installations, especially in BMR housing areas.

## Legal Considerations

[https://www.americanbar.org/groups/state\\_local\\_government/publications/state\\_local\\_law\\_news/2016-17/winter/understanding\\_first\\_amendment\\_limitations\\_government\\_regulation\\_artwork/#:~:text=Narrow%20tailoring%20requires%20that%20the,served%20by%20the%20differential%20treatment](https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/winter/understanding_first_amendment_limitations_government_regulation_artwork/#:~:text=Narrow%20tailoring%20requires%20that%20the,served%20by%20the%20differential%20treatment)

It is pertinent to note that while the First Amendment offers expansive protection for artwork, including murals, it is not without limitations. Artwork that is deemed obscene, incorporates fighting words, or incites violence does not fall under this protection. Moreover, artwork that might be commercial in nature still enjoys First Amendment protection, albeit to a lesser degree. It is essential to recognize that graffiti, as a form of artwork, can be regulated under local nuisance control codes.

## Relevant Legal Precedents

In cases like *Neighborhood Enterprises, Inc. v. City of St. Louis* and others courts have scrutinized local regulations on murals and artworks, particularly focusing on whether such regulations are content and viewpoint neutral. It is vital that any regulation be content neutral, focus on non-communicative aspects of the artwork, and be narrowly tailored to serve a significant governmental interest. As residents, we believe that the removal of graffiti from our building aligns with these legal standards, as it addresses issues of building aesthetics, safety, and property value, without infringing on the expressive content of the original mural.

## Precedent for Other BMR Buildings

Our situation should serve as a precedent for other BMR buildings facing similar challenges. It is imperative that the city proactively addresses these issues, ensuring that communities, particularly those living in BMR housing, do not continuously bear the burden of unchecked vandalism and its associated adverse effects.

## Conclusion and Call for Action

In closing, I urge the Committee and the Board of Supervisors to favorably consider and approve File 230706. This action will not only resolve a long-standing problem but will also set a positive precedent for the management and care of BMR properties in the face of urban challenges.

Thank you for your attention and for supporting our community.

**Barklee Sanders**

Technology Consultant

More about me: [barkleesanders.com](http://barkleesanders.com)

Schedule a meeting: <https://cal.com/barkleesanders>



**From:** [1400manager@titanmg.com](mailto:1400manager@titanmg.com)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Tam, Madison \(BOS\)](#); [Merlone, Audrey \(CPC\)](#)  
**Cc:** ["1400 RSM"](#); [1400 Manager](#)  
**Subject:** Support for File 230706, 1400 Mission Street Board of Directors  
**Date:** Wednesday, December 6, 2023 10:58:13 AM  
**Importance:** High

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

December 5, 2023

**RE: Support for file 230706**

Dear Board of Supervisor and Land Use Committee:

Hope you are having a great week.

We are the Board of Directors for 1400 Mission Street Owners Association. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate ownership building.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly tagged with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow use to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

In early 2020, we started the long and arduous process of trying to get the mural removed because it is a very large eyesore and demoralizing for our community given how hard we have all worked to be able to purchase here. We reached out to the Planning Division to understand what we must do to get the mural removed so we can better maintain the side of the building when there is graffiti to abate. We reached out to the estate of the artist in order to obtain the approval to remove the mural, which we did. We then reached out to the Zoning and Compliance Division to try to address the mural/ graffiti issue and ask for their help to remove the graffiti, and consequently the mural. After months of back and forth with the Zoning department, they finally told us that the current legislation has no variance or consideration written into the law to help BMR owned buildings maintain the art or otherwise replace it when it is damaged. Additionally, the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. Therefore, we reached out to Supervisor Dorsey and Madison Tam in 2022 for their help. They jumped right in and made every effort to help our community resolve the mural and graffiti issues and have helped us identify what needs to be done to be able to remove the mural and paint over the graffiti.

Which brings us to the matter which has been brought before you, file 230706. **We wish to**

**advise that we 100% support this legislation** and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward. We understand that art in San Francisco is an important part of our cultural fabric, however, this art legislation has had a regressive and unintended impact on our building and community. We also want to make sure other BMR buildings do not have to face the same challenges that we are currently facing.

We are asking that you please pass this legislation for Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to come home to an unblemished building, a place we can be proud to call our home. Thank you for your consideration.

Sincerely,

The 1400 Mission Street Owners Association Board of Directors

Brian Schraeder, President  
Rob Nevitt, Vice President  
David Zhang Treasurer  
Alex Martinez, Secretary  
Alexandria Lee, Member at Large

**From:** [Angie Kuo](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)  
**Subject:** Support for File 230706  
**Date:** Wednesday, December 6, 2023 12:40:27 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for the Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

We want to feel pride walking into our building, our home. Please help our community, pass the legislation so we can finally remove the graffiti and the vandalized artwork.

Thank you.  
Angela Kuo

**From:** [Megan Koroshetz](#)  
**To:** [Carroll, John \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)  
**Subject:** Support for file 230706  
**Date:** Wednesday, December 6, 2023 1:48:31 PM

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Dear Board of Supervisor and Land Use Committee:

I am a homeowner at 1400 Mission Street, San Francisco, CA. We are a community of culturally and ethnically diverse homeowners, who have ownership in a 100% Below Market Rate (BMR) ownership building. Our community association name is 1400 Mission Street Owners Association, and we have 190 units.

The developer for the building had the mural installed via the Art Commission/San Francisco planning department when the building was first built. The value of the art at that time was 1% of the value of the building. Over the years, the Mural has been repeatedly vandalized with Graffiti. We've made many attempts to maintain the mural, however, given the fact that we are a BMR building, we do not have the funds to refurbish it. We aren't allowed to paint over the graffiti because current laws do not allow us to remove or paint over the mural, although it is totally obscured by graffiti and has been for years.

Management and the Board of Directors have been trying to work with the city for over three years to get the graffiti off of our building and address the art issue. Meanwhile, we get graffiti abatement violations for the graffiti over the mural from DPW, but we aren't allowed to paint over it and we can't afford to refurbish the mural since the artist's estate advised that we were only allowed to refurbish the mural via their estate approved artists for tens of thousands of dollars. We need your help!

**We wish to advise that we 100% support this legislation, file 230706 and thank Supervisor Dorsey, Madison Tam and anyone else who helped move this matter forward.**

We understand that art in San Francisco is important, but in our case, it is not something we can afford to maintain given the fact that graffiti is an ongoing, never-ending issue. We also do not want other buildings which are all below market rate to have to go through what we have had to go through.

We are asking that you please pass this legislation for Board of Supervisors' vote, and we ask that the Board of Supervisors please vote to approve this legislation.

Please do not hesitate to reach out if you would like more feedback.

Megan Koroshetz

Apt 801  
415-385-9209

## 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: