

1 [Planning Code – Amendments to Public Art Fee]

2

3 **Ordinance amending Planning Code Section 429 1) to provide that developers of non-**  
 4 **residential and residential development projects currently required to spend 1% of**  
 5 **construction costs for public artwork or to deposit such fee into the Public Artwork**  
 6 **Trust Fund have the following options: spend all of that fee to provide on-site public**  
 7 **artwork, or contribute all of that fee to the Trust, or expend 50% of that fee on-site and**  
 8 **contribute 50% to the Trust, 2) to provide developers a 20% discount on any portion of**  
 9 **the fee contributed to the Trust, 3) to provide developers the option to designate a**  
 10 **purpose or name a specific arts organization as the intended recipient of the fee**  
 11 **deposited into the Trust, 4) to provide that developers submit an estimate of**  
 12 **construction costs prior to issuance of the first construction document to establish an**  
 13 **estimated fee but that developers must submit actual construction costs to the**  
 14 **Department of Building Inspection prior to issuance of the first certificate of occupancy**  
 15 **and shall contribute any additional fees owed based on actual costs to the Trust, and**  
 16 **5) to provide that part of the cost of artwork incorporated into the project as**  
 17 **architectural features may be expended towards the fee.**

18 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
 19 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 21 **Board amendment additions** are in double-underlined Arial font.  
 22 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 23 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 24 subsections or parts of tables.

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

1           **Section 1.** The Planning Code is hereby amended by revising Section 429, to read as  
2 follows:

3           **SEC. 429. ARTWORKS, OPTIONS TO MEET PUBLIC ART FEE REQUIREMENT,**  
4 **RECOGNITION OF ARCHITECT AND ARTISTS, AND REQUIREMENTS.**

5  
6           **SEC. 429.1. DEFINITIONS.**

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

9           “Conservation” shall mean the profession devoted to the preservation of cultural  
10 property for the future.

11           “Construction Cost” shall be determined by the Department of Building Inspection in  
12 accordance with established industry standards or in the manner used to determine the  
13 valuation of work as set forth in Section 107.2 of the Building Code.

14           “Maintenance” shall mean a minimally invasive, routine and regularly scheduled  
15 activity that may involve the removal of superficial dirt or debris build-up on the surface of the  
16 artwork or the cleaning and repair of non-art support material such as a pedestal or plaque.

17           “Preservation” shall mean the protection of cultural property through activities that  
18 minimize chemical and physical deterioration and damage, and that prevent loss of  
19 informational content. The primary goal of preservation is to prolong the existence of cultural  
20 property, and should be undertaken or overseen by a professional conservator.

21           “Restoration” shall mean a treatment procedure intended to return cultural property  
22 to a known or assumed state, often through the addition of non-original material.

23           “Public Artwork Trust Fund” shall mean the Public Artwork Trust Fund established in  
24 Section 10.100-29 of the San Francisco Administrative Code.

1           **SEC. 429.2. APPLICATION.**

2           This section shall apply to:

3           (a) all projects that involve construction of a new building or addition of floor area in  
4 excess of 25,000 square feet to an existing building in a C-3 District; and

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

8           (1) all parcels in RH-DTR, TB-DTR, SB-DTR, SLI, SLR, SSO, C-M, UMU, WMUG,  
9 WMUO and SALI Districts;

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

12          (3) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and  
13 7295 (Stonestown Galleria Mall).

14          For the purposes of this Section, a “Development Application” shall mean any  
15 application for a building permit, site permit, environmental review, Preliminary Project  
16 Assessment (PPA), Conditional Use, or Variance.

17  
18           **SEC. 429.3. IMPOSITION OF PUBLIC ART FEE REQUIREMENT.**

19           (a) **Determination of Requirements.** The Department shall determine the  
20 applicability of Section 429.1et seq. to any development project requiring a first construction  
21 document and, if Section 429.1et seq. is applicable, the number of gross square feet subject  
22 to its requirements, and shall impose this requirement as a condition of approval for issuance  
23 of the first construction document for the development project to address the need for  
24 additional public art in the downtown districts. The project sponsor shall supply any  
25 information necessary to assist the Department in this determination.

1 (b) **Amount of Fee.** Upon design approval of the development project from the  
2 Planning Department, and except as otherwise provided herein, the project sponsor shall  
3 dedicate and expend an amount equal to 1% of the actual construction cost of the building or  
4 addition as determined by the Director of DBI (the “Public Art Fee”) for the purposes described  
5 herein and subject to the options set forth below. The project sponsor shall use the total estimated  
6 construction cost to determine the Public Art Fee due prior to issuance of the first construction  
7 document (the “Estimated Public Art Fee”). But the project sponsor shall submit documentation to DBI  
8 of the actual construction cost prior to issuance of the first certificate of occupancy (temporary or  
9 permanent). If the Public Art Fee is greater than the Estimated Public Art Fee, then the project sponsor  
10 shall deposit the additional monies owed into the Public Artwork Trust Fund.

11 (c) **Department Notice to Development Fee Collection Unit at DBI.** After the  
12 Department has made its *final* determination of both the dollar amount of the Estimated Public Art  
13 Fee, the net addition of gross floor area subject to Section 429.1 et seq. and the dollar amount  
14 of the actual Public Art Fee required, the Department shall immediately notify the  
15 Development Fee Collection Unit at DBI of its determination, in addition to the other  
16 information required by Section 402(b) of this Article.

17 (d) **Options to Fulfill Requirements.**

18 ~~(1) Non-Residential and C-3 Residential Development Projects. Prior to issuance of a~~  
19 ~~building or site permit for nNon-residential buildings and C-3 residential development projects~~  
20 ~~subject to the requirements of Section 429.1 et seq., with public open space requirements greater than~~  
21 ~~1,499 square feet but less than 3,000 square feet that provide ground floor open space shall comply with~~  
22 ~~Section 429.3 by providing on-site public art of a value equivalent to the Public Art Fee; provided,~~  
23 ~~however, that if the required Public Art Fee exceeds \$500,000, only on-site public art valued at~~  
24 ~~\$500,000 is required to be provided on-site. Non-residential buildings with public open space~~  
25 ~~requirements greater than or equal to 3,000 square feet that provide ground floor open space shall~~

1 ~~comply with Section 429.3 by providing on-site public art of a value equivalent to the Public Art Fee;~~  
2 ~~provided, however, that if the required Public Art Fee exceeds \$750,000, only on-site public art valued~~  
3 ~~at \$750,000 is required to be provided on-site. In any case where the Public Art Fee requirement~~  
4 ~~exceeds the amount required on-site, prior to issuance of a building or site permit the project sponsor~~  
5 shall elect one of the ~~following~~ options listed below to fulfill any requirements imposed as a  
6 condition of approval and to notify the Arts Commission and the Department of their choice of  
7 the following:

8 (A) Option to Use 100% to expend the remainder of the Public Art Fee to Provide  
9 On-Site Public Artwork. ~~or~~ The project sponsor may elect to spend all of the Public Art Fee to  
10 provide on-site public artwork.

11 (B) Option to Receive a 20% Discount and Deposit 100% of the Discounted Public Art  
12 Fee into the Public Artwork Trust Fund. The project sponsor may elect to receive a 20% discount and  
13 deposit the remainder all of the discounted Public Art Fee into the Public Artwork Trust Fund  
14 established in Section 10.100-29 of the San Francisco Administrative Code for the purposes  
15 set forth therein and in Section 429.5(b), including the creation, installation, exhibition,  
16 conservation, preservation, and restoration of works of public art and for capital improvements to non  
17 profit arts facilities (“In-Lieu Fee for Public Artwork Trust”), within the C-3 District or within a half  
18 mile of the boundary of the C-3 District or, if the project is within another zoning district, within a half  
19 mile of the project boundary, or

20 (C) Option to Expend 50% of the Public Art Fee to Provide On-Site Public Artwork  
21 and to Deposit the Rest of the Public Art Fee with a 20% Discount into the Public Artwork Trust  
22 Fund. The project sponsor may elect to expend a portion of the remainder 50% of the Public Art Fee  
23 to provide on-site public artwork and deposit the rest with a 20% discount into the Public Artwork  
24 Trust Fund; for the purposes set forth therein and in Section 429.5(b) (“In-Lieu Fee for Public  
25 Artwork Trust”).

1 If the project sponsor elects payment of an in-lieu fee under Section d(1)(B) or (C) above,  
2 the project sponsor may designate a purpose or name a specific arts organization as the intended  
3 recipient of the Public Art Fee deposited into the Public Artwork Trust Fund that is consistent with the  
4 allowable uses of the Trust, subject to Arts Commission approval, which shall be documented in writing  
5 between the project sponsor and the Arts Commission.

6 As provided in Section 402, the project sponsor shall pay the fee to the  
7 Development Fee Collection Unit at DBI.

8 ~~(2) Residential Development Projects. Prior to issuance of a building or site permit for a~~  
9 ~~residential development project subject to the requirements of Section 429.1 et seq., the sponsor shall~~  
10 ~~elect one of the options listed below to fulfill any requirements imposed as a condition of approval and~~  
11 ~~to notify the Arts Commission and the Department of their choice of the following:~~

12 ~~—— (A) Option to Use 100% of Public Art Fee to Provide On-Site Public Artwork. Unless~~  
13 ~~otherwise provided below, the project sponsor may elect to provide on-site public art of a value at least~~  
14 ~~equivalent to the Public Art Fee.~~

15 ~~—— (B) Option to Contribute 100% of Public Art Fee Amount to Public Artwork Trust Fund.~~  
16 ~~Effective on the effective date of Ordinance No. 62-12 for a project that has not received its first~~  
17 ~~construction document, and except as provided herein, the project sponsor may pay the Public Art Fee~~  
18 ~~for deposit in the Public Artwork Trust Fund established in Section 10.100-29 of the San Francisco~~  
19 ~~Administrative Code for the purposes set forth therein and in Section 429.5(b), including the creation,~~  
20 ~~installation, exhibition, conservation, preservation, and restoration of works of public art and for~~  
21 ~~capital improvements to nonprofit arts facilities (“In-Lieu Fee for Public Artwork Trust”) within the C-~~  
22 ~~3 District or within a half mile of the boundary of the C-3 District or, if the project is within another~~  
23 ~~zoning district, within a half mile of the project boundary. As provided in Section 402, the project~~  
24 ~~sponsor shall pay the fee to the Development Fee Collection Unit at DBI.~~

1           — ~~(C) Option to Expend a Portion of the Public Art Fee Amount to On-Site Public Artwork~~  
2 ~~and the Remainder to the Public Artwork Trust Fund. Effective on the effective date of Ordinance No.~~  
3 ~~62-12 a project that has not received its first construction document may elect to expend a portion of~~  
4 ~~the Public Art Fee for the acquisition of On-Site Public Artwork that shall be subject to the~~  
5 ~~requirements of Subsection (d)(2)(A) above regarding On-Site Public Artwork, and deposit the~~  
6 ~~remaining balance of the Public Art Fee into the Public Artwork Trust Fund. As provided in Section~~  
7 ~~402, the project sponsor shall pay the fee to the Development Fee Collection Unit at DBI.~~

8           **(e) Department’s Notice to Development Fee Collection Unit of Sponsor’s**  
9 **Choice.** After the project sponsor has notified the Arts Commission and the Department of the  
10 choice to fulfill the requirements of Section 429.1et seq., as required by ~~§~~section (d)~~(1) or (2)~~  
11 above, the Department shall immediately notify the Development Fee Collection Unit at DBI of  
12 the project sponsor’s choice.

13           **(f) Development Fee Collection Unit Notice to Arts Commission and**  
14 **Department Prior to Issuance of the First Certificate of Occupancy.** The Development  
15 Fee Collection Unit at DBI shall provide notice in writing or electronically to the Arts  
16 Commission and to the Department prior to issuing the first certificate of occupancy for any  
17 development project subject to Section 429.1et seq. that will fulfill all or part of the  
18 requirements with an option other than the project sponsor’s payment of an in-lieu fee to verify  
19 that the artwork was placed in the agreed upon location with the appropriate ADA compliant  
20 signage. If the Arts Commission or the Department notifies the Unit at such time that the  
21 sponsor has not satisfied the requirements, the Director of DBI shall deny any and all  
22 certificates of occupancy until the subject project is brought into compliance with the  
23 requirements of Section 429.1et seq. DBI shall not charge a fee for this purpose.

24           **(g) Process for Revisions of Determination Requirement.** In the event that the  
25 Department or the Planning Commission takes action affecting any development project

1 subject to Section 429.1 et seq., and such action is subsequently modified, superseded,  
2 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action,  
3 the procedures of Section 402(c) of this Article shall be followed.

4  
5 **SEC. 429.4. COMPLIANCE BY PROVIDING ON-SITE PUBLIC ARTWORK.**

6 (a) **Installation.** The project sponsor must install the public art in compliance with  
7 this Section 429.4 (1) in areas on the site of the building or addition so that the public art is  
8 clearly visible from the public sidewalk or the open-space feature required by Section 138, or  
9 (2) on the site of the open-space feature provided pursuant to Section 138, or (3) in a publicly  
10 accessible lobby area of a Hotel (“On-Site Public Artwork”). Said On-Site Public Artwork shall  
11 be installed prior to issuance of the first certificate of occupancy; provided, however, that if the  
12 Zoning Administrator concludes that it is not feasible to install the Artwork within that time and  
13 that adequate assurance is provided that the Artwork will be installed in a timely manner, the  
14 Zoning Administrator may extend the time for installation for a period of not more than 12  
15 months. Said works of art may include sculpture, bas-relief, murals, mosaics, decorative water  
16 features, tapestries or other artworks permanently affixed to the building or its grounds, or a  
17 combination thereof, but may not include architectural features of the building, nor artwork  
18 designed by the architect, ~~except as permitted with respect to the in lieu contribution regarding~~  
19 publicly owned buildings meeting the criteria described above. If the Artwork, as designed by the artist,  
20 is to be incorporated into the design of the publicly accessible open space or into the façade of the  
21 building, only the “Delta” cost, above and beyond the cost of construction materials as deemed  
22 appropriate to the project by the Planning Department shall be expended towards the Public Art Fee.  
23 Artworks shall be displayed in a manner that will enhance their enjoyment by the general  
24 public. The type and location of Artwork, but not the artistic merits of the specific artwork  
25



1 proposed, shall be approved by the Zoning Administrator in accordance with the provisions of  
2 Section 309 of this Code.

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

7 **(c) Removal, Relocation, or Alteration of Artwork.** Once the project sponsor has  
8 installed and completed the final Artwork, the project sponsor, building owner and any third  
9 party may not remove, relocate or alter the Artwork without notifying and consulting with the  
10 Planning Department at least 120 days prior to the proposed removal, relocation or alteration.  
11 The Planning Department shall not approve any removal, relocation, or alteration unless it  
12 finds any removed Artwork will be replaced with Artwork of equal or greater value or that any  
13 relocation or alteration is only a minor modification. If a project sponsor does remove,  
14 relocate, or alter the Artwork without notification and approval of the Planning Department, the  
15 Planning Department is authorized to pursue enforcement of this Section under Section 176  
16 or 176.1 of this Code or to pursue any other remedy permitted by law. The project sponsor  
17 should note that the Artwork may be subject to protection by the Visual Artists Rights Act (VARA)  
18 and/or the California Art Preservation Act (CAPA) in addition to the City's requirements.

19  
20 **SEC. 429.5. ARTS COMMISSION PUBLIC ARTWORK TRUST FUND.**

21 (a) All monies contributed to the Public Artwork Trust Fund pursuant to this Section  
22 429 shall be deposited in the special fund maintained by the Controller called the Public  
23 Artwork Trust under Section 10.100-29 of the Administrative Code, as may be amended from  
24 time to time. The receipts in the Trust are hereby appropriated in accordance with law to be  
25 used by the Arts Commission within the C-3 District or within a half mile of the boundary of the

1 C-3 District or, if the project is within another zoning district, within a half mile of the project  
2 boundary to enhance the visibility and quality of artworks in the public realm and to improve  
3 the public's access and enjoyment of the artworks in the public realm. Trust funds are to be  
4 distributed by the Arts Commission in accordance with the Arts Commission's public policies relative  
5 to both grants and commissions.

6 (b) With the above objective, through a ~~competitive~~ public process the Public Artwork  
7 Trust Fund shall be overseen by the Arts Commission and used to fund:

8 (1) the creation, installation, and exhibition of temporary and permanent public  
9 works of art in the public realm and within the C-3 District or within a half mile of the boundary  
10 of the C-3 District or, if the project is within another zoning district, within a half mile of the  
11 project boundary;

12 (2) the conservation, preservation, and restoration, but not maintenance of  
13 temporary and permanent public works of art in the public realm and within the C-3 District or  
14 within a half mile of the boundary of the C-3 District or, if the project is within another zoning  
15 district, within a half mile of the project boundary;

16 (3) distribution of funds to San Francisco nonprofit arts entities and artists to fund  
17 temporary public art projects, performance, film and video screenings, and capital  
18 improvements for publicly accessible cultural facilities within the C-3 District or within a half  
19 mile of the boundary of the C-3 District or, if the project is within another zoning district, within  
20 a half mile of the project boundary; and

21 (4) the reasonable administrative expenses of the Arts Commission staff in  
22 connection with administering compliance with the requirements of this Section on a time and  
23 materials basis for managing projects funded through the Public Artworks Trust, not to exceed  
24 20% of the costs for any one project.

1 (c) The Arts Commission shall administer and expend the Public Artwork Trust  
2 Fund, and shall have the authority to prescribe rules and regulations governing the Fund that  
3 are consistent with this Section.

4 (d) No permanent artwork shall be commissioned for a public site under the jurisdiction of  
5 the City and County of San Francisco without the prior approval of the Arts Commission and the  
6 establishment of a maintenance endowment.

7  
8 **SEC. 429.6. RECOGNITION OF ARCHITECTS IN C-3 DISTRICTS.**

9 In the case of construction of a new building or an addition of floor area in excess of  
10 25,000 square feet to an existing building in a C-3 District, an ADA compliant plaque or  
11 cornerstone identifying the project architect and the erection date of the building shall be  
12 placed at a publicly conspicuous location on or in the building prior to the issuance of the first  
13 certificate of occupancy.

14  
15 **SEC. 429.7. LIEN PROCEEDINGS.**

16 A project sponsor's failure to comply with the requirements of Section 429.3(d)(2)(B)  
17 or (C)1 shall be cause for the Development Fee Collection Unit at DBI to institute lien  
18 proceedings to make the in-lieu fee, plus interest and any deferral surcharge, a lien against all  
19 parcels used for the development project in accordance with Section 408 of this Article and  
20 Section 107A.13.15 of the San Francisco Building Code.

21  
22 **Section 2. Effective Date.** This ordinance shall become effective 30 days after  
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
25 of Supervisors overrides the Mayor's veto of the ordinance.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

By: \_\_\_\_\_  
Lauren Curry  
Deputy City Attorney

n:\legana\as2017\1700709\01220718.docx