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CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE II TO ADD CHAPTER 2.05, WHICH WILL ESTABLISH PROCEDURES FOR THE ACQUISITION (ALSO REFERENCED AS "ACCESSION") AND DISPOSITION (ALSO REFERENCED AS "DEACCESSION") OF ARTIFACTS AND OTHER ITEMS FOR/FROM THE LISTED HOLDINGS OF THE OAKLAND MUSEUM OF CALIFORNIA (OMCA)**

**WHEREAS**, the Oakland Museum of California (OMCA), located at 1000 Oak Street, at 10<sup>th</sup> Street in Oakland, CA, is a cultural facility which is operated by the Oakland Museum of California (OMCA), a non-profit foundation, whose collection is owned by the City of Oakland and held in trust for the public; and

**WHEREAS**, the City of Oakland and the OMCA Oakland Museum of California Foundation ("Foundation") entered into a ten-year funding Agreement in 2011, approved by Resolution No. 83442 C.M.S, that, among other things, sets forth the terms under which the Foundation and its successor organization, the OMCA, will care for, conserve, steward, research and provide scholarly and interpretive expertise in support of the Collection of close to two million art works, artifacts, and natural science specimens related to California's cultural and environmental history; and

**WHEREAS**, the 2011 funding agreement stipulated that all activities carried out by the OMCA will be in accordance with the standards of the American Alliance of Museums (formerly the American Association of Museums), and that the City and the OMCA agree to abide by and comply with the standards of the American Alliance of Museums and Associations of Art Museum Directors on all regulations concerning acquisitions and disposition of the Collection; and

**WHEREAS**, the OMCA develops the Collecting Plan (Plan), purpose and strategies for collection growth as laid out in the Plan and adds to the collection of California artworks, historical artifacts, and natural science specimens (Collection) through gifts of tangible personal property, transfers from institutions or agencies, purchases, bequests, and through field collection; and

**WHEREAS**, the OMCA is charged with developing an exemplary Collection that promotes public understanding of California's art, history, and environment, and the OMCA solicits and acquires objects for the Collection, and occasionally it designates objects for deaccession from the Collection; and

**WHEREAS**, such acquisitions of new properties for the Collection become the personal property of the City of Oakland that are held in public trust regardless of the source of the funds used for the purchase; and

**WHEREAS**, the decision to accept gifts or transfers, or to purchase art, artifacts, or specimens, is based on curatorial judgment in the context of the purpose and strategies for collection growth as laid out in the Collecting Plan and relevance of the object(s) to the OMCA's mission and relation to other objects already in the Collection, a conservation evaluation of physical condition of the object(s), and the OMCA's ability to maintain and preserve the object(s); and

**WHEREAS**, the collection of the Oakland Museum of California, which currently numbers close to two million objects, date back more than 100 years to the collection of three predecessor institutions – the Oakland Public Museum, the Oakland Art Gallery, and the Snow Museum of Natural History, all operated by the City of Oakland - have been added to substantially over the years and have been occasionally refined through deaccession; and

**WHEREAS**, the Collection is primarily created through the generosity of donors through contributions of works for the Collection or through philanthropic support for purchase of collection objects with the intent of making them available to the public, no City taxpayer funds are ever utilized for collection purchases, and deaccession proceeds are held by the City in an OMCA-acquisition designated fund, which never receives revenue from the City; and

**WHEREAS**, Oakland Charter Section 808 provides that the City Council shall establish by ordinance the conditions and procedures for any purchase or contract; and

**WHEREAS**, items of interest to the OMCA to add to the Collection are typically distinctive and therefore not suitable to the City's standard purchasing requirements such as bidding or other solicitation processes for personal property; and

**WHEREAS**, the City and OMCA wish to establish acquisition and disposition procedures suitable to museum collections;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES  
ORDAIN AS FOLLOWS:**

**SECTION 1.** Oakland Municipal Code Title II is hereby amended to add Chapter 2.05, *Oakland Museum of California Collection Acquisition and Disposition/Disposal Procedures*, shown as underscored text, to establish procedures for the acquisition (accession) and disposition (deaccession) of property to or from the listed holdings of the Oakland Museum of California, as follows:

**Chapter 2.05 - Oakland Museum of California Collection Acquisition and  
Disposition/Disposal Procedures**

**2.05.010. Title and Purpose.**

This Chapter shall be known as “Oakland Museum of California Collection Acquisition and Disposition/Disposal Procedures” and shall set forth requirements and procedures for the acquisition, sale, auction, transfer, trade, disposal or other disposition of the Oakland Museum of California Collection.

**2.05.020. Definitions.**

The following words and phrases whenever used in this article shall be construed as defined in this section:

“Accession” means the acquisition of new objects, items or artifacts to be officially added to the listed holdings of the Collection.

“City” means the City of Oakland, a municipal corporation of the State of California.

“Collection” means the art works, historical artifacts, photographs and natural science specimens, including all listed holdings of the OMCA, that are owned by the City of Oakland.

“Collecting Plan” means the document used as a guide on collecting to ensure that future acquisitions meet the needs, mission and goals of the OMCA.

“Deaccession” means official removal of objects, items, artifacts or other property from the listed holdings of the Collection through sale, auction, transfer, donation or other means of disposal as authorized by this Ordinance and museum standard and policy guidelines referenced herein and as revised from time to time.

“OMCA” means the non-profit corporation charged with operating the Oakland Museum of California and preserving, stewarding, interpreting and presenting the Collection.

**2.05.030. Authority of the City Administrator.**

The City Administrator is authorized to provide final approval of OMCA accession/acquisition and sale, donation, disposal or other disposition of objects and art works from the Collection provided the transactions are carried out in compliance with the standards, requirements and procedures set forth herein and as revised from time to time.

**2.05.040. No requirement to advertise, invite bids or issue request for proposals.**

Acquisitions of objects and art works for the Collection shall not be subject to advertising, bidding, request for proposal/qualification or other competitive solicitation requirements, including those in Oakland Municipal Code, Chapter 2.04, except when the City Administrator, on the recommendation and advice of the OMCA Director, determines such processes are appropriate for a specific purpose.

**2.05.050. Funds generated by disposal of items.**

- A. Funds generated by the disposal of deaccessioned items shall be used in accordance with the standards of the American Alliance of Museums and Association of Art Museum Directors and as revised from time to time. The City and OMCA will maintain current copies of the policy in the City Administrator’s Office and at the OMCA.
- i. Funds generated by the sale or disposal of deaccessioned items are restricted and must only be used for the purchase of new collections and shall not be used for collection care, operating, or other expenses of the OMCA or the City of Oakland.
  - ii. Such funds, and accrued interest on those funds, shall be deposited in the City of Oakland account(s) established for the OMCA and strictly reserved for the purchase of new objects for the Collection.
  - iii. The City of Oakland will provide a financial process and disperse funds to the OMCA for using these funds for purchase of objects for the Collection and provide an annual update to the OMCA of funds in the account(s).

B. Funds generated by objects acquired for sale.

- i. If objects accepted for sale were given expressly to support a program or activity (restricted gifts), funds realized from the sale will honor the donor's intent and may be allocated accordingly upon the recommendation of the OMCA Director, less any direct costs of the sale incurred.
- ii. Funds from the sale of gifts or bequests of art work or artifacts that are not formally accessioned into the Collection and are not restricted by donor designation may be used for a variety of purposes to benefit the OMCA in accord with the OMCA Policy Concerning Gifts of Tangible Property and as revised from time to time. The City and OMCA will maintain current copies of the policy in the City Administrator's Office and at the OMCA.

**2.05.060. Accession (acquisition) of property for the Collection.**

The City Administrator will approve OMCA policies governing the accession of property for the Collection that are in accordance with the standards of the American Alliance of Museums and Association of Art Museum Directors and as revised from time to time. The City and OMCA will maintain current copies of the policy in the City Administrator's Office and at the OMCA.

The OMCA adds to the Collection of California artworks, historical artifacts, and natural science specimens through gifts of tangible personal property, transfers from institutions or agencies, purchases, bequests, and through field collection. All additions to the Collection, regardless of the source of funds used for the acquisition, become the property of the City of Oakland, to be held in public trust.

The OMCA will accept gifts or transfers, purchase art, artifacts, or specimens, based on curatorial judgment in the context of the purpose and strategies for collection growth as laid out in the Collecting Plan, and the relevance of the object(s) to the OMCA's mission, the relation to other objects already in the Collection, an evaluation of physical condition of the object(s), and the OMCA's ability to maintain and preserve the object(s).

The City Administrator shall approve the accession of property to the Collection valued over \$500,000 (five hundred thousand dollars) at the time of acquisition.

**2.05.070. Deaccession (disposition/disposal) of property from the Collection.**

The deaccession of objects from the Collection has been and will remain an exceptional occurrence the Oakland Museum of California Board of Trustees and City Administrator shall undertake with prudence for the protection of the OMCA, the City of Oakland, and the donors who gave the objects or provided the funds to purchase the objects for the Collection.

The City Administrator will approve OMCA policies governing the deaccession of property from the Collection that are in accordance with the standards of the American Alliance of Museums and Association of Art Museum Directors and as revised from time to time, and include the following, among other things:

- A. Objects acquired in violation of acquisition requirements in section 2.05.060. Should evidence be presented to the OMCA that any object in its possession was acquired in violation of the principles and laws described in section 2.05.060, above, OMCA, or City Administrator, will investigate the circumstances. If justified by the results of the investigation, OMCA will conduct deaccession procedures and the City and OMCA will return the object to its rightful or legal owner, to the extent that it is legally possible and practical to do so.
- B. Restrictions. All binding restrictions attached to gifts or bequests will be honored in recommendations for disposition/disposal.
- C. Approval process for deaccessions. The OMCA will present the City Administrator with proposed deaccessions and generally intended disposition plans. If sale at public auction is selected as the final disposition, the OMCA will present the City Administrator with the plan for proposed auction sale. The City Administrator shall accept or reject proposals within 30 days of receipt. After 30 days, no response will constitute acceptance by the City Administrator.
- D. Sales off limits to certain OMCA and City of Oakland officials and employees. Deaccessioned objects may not be acquired directly or indirectly by members of the OMCA Board, the Museum Director, City of Oakland elected officials, the Oakland City Administrator or any Museum or City of Oakland employees involved in a decision-making role or recommendation regarding deaccessioned items. This restriction may apply to additional employees and other persons determined to have an advantage in acquiring deaccessioned items by the Museum Director such as volunteers. The City Administrator shall determine when a city employee has been involved in a decision-making or recommendation role in their capacity as a City of Oakland employee regarding deaccessioned

items. Determinations by the Museum Director and City Administrator will be made on a case by case basis.

- E. Annual Report. The OMCA shall issue an annual report to the City which shall include a report of all deaccessions done during the period covered by the annual report.

**SECTION 2. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 3. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

2109595v3

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND  
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

### **ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE II TO ADD CHAPTER 2.05, WHICH WILL ESTABLISH PROCEDURES FOR THE ACQUISITION (ALSO REFERENCED AS "ACCESSION") AND DISPOSITION (ALSO REFERENCED AS "DEACCESSION") OF ARTIFACTS AND OTHER ITEMS FOR/FROM THE LISTED HOLDINGS OF THE OAKLAND MUSEUM OF CALIFORNIA (OMCA)**

This ordinance will amend the Oakland Municipal Code to add new Chapter 2.05, which will establish procedures for the acquisition, disposition (sale or disposal) of City of Oakland museum real property that is owned by the City of Oakland, such as art works, historical artifacts, photographs and natural science specimens, including all listed holdings of the Oakland Museum of California.