



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2018 APR 26 PM 4:00 **AGENDA REPORT**

**TO:** Members of the City Council

**FROM:** Councilmember Lynette  
Gibson McElhaney

**SUBJECT:** Amendments to Chapter 15.78:  
Public Art Requirements for Private  
Development Ordinance

**DATE:** 04/26/18

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**RECOMMENDATION**

Councilmember Lynette Gibson McElhaney recommends that the City Council adopt an ordinance amending Oakland Municipal Code Chapter 15.78 to (A) authorize the satisfaction of the public art requirement through the submission and approval of alternative equivalent proposals for installation of public art in state highway right-of-way or on other public agency property and (B) permit in-lieu contributions to nearby City owned arts facilities to satisfy the public art requirement for private development and authorizing the allocation of funds contributed for capital improvements to capital improvement fund accounts established by the City Administrator.

**EXECUTIVE SUMMARY**

Oakland Municipal Code (OMC) Chapter 15.78 'Public Art Requirements' currently offers few options for developers to make payments in-lieu of the required public art installation. These proposed amendments allow the developer, subject to City approval, to satisfy the requirement by making an in-lieu contribution to a nearby, publicly owned art and/or cultural facility for capital improvements so that all Oaklanders can more fully utilize that resource. Additionally, these amendments provide an option for developers to satisfy their public art requirement by installing art on nearby property owned by other public agencies.

**BACKGROUND / LEGISLATIVE HISTORY**

The City's current requirement for public art in private development, most recently amended by the City Council on June 20, 2017 (Ordinance No. 13443 C.M.S. and included in O.M.C. Chapter 15.78), is for certain nonresidential developments to contribute 1.0 percent and certain residential developments to contribute 0.5 percent of building development costs for freely accessible art and/or cultural facilities. The requirement for public art in private developments is applied to residential developments of 20 or more new dwelling units and subject to design review approval and nonresidential development of 2,000 square feet or more of new floor area and subject to design review approval. This contribution can be satisfied in one of three ways:

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1. The entire contribution could be used by the developer for the acquisition and installation of permanent public art on the development site or the adjacent right-of-way (within one quarter of a mile).
2. The entire contribution could be satisfied through an in-lieu contribution by the developer that would be placed into the Public Art Project Account, which is used to acquire, place, and maintain public art on public property throughout the City, and to administer the Public Art Program.
3. The contribution could be satisfied, with approval from the City, including the Public Art Advisory Committee, through a combination of:
  - a. Up to 25 percent toward a rotating art gallery within the development project that is free and open to the public; and
  - b. Up to 50 percent toward design and dedication of a minimum 500 square feet of interior cultural and art space in the development that would be available to the public;
  - c. The balance would be paid as an in-lieu contribution into the Public Art Project Account.

### **ANALYSIS AND POLICY ALTERNATIVES**

The proposed ordinance seeks to amend Chapter 15.78 to create two additional ways for developers to satisfy the required contribution:

- 1) The developer can apply to the City Council to satisfy the public art requirement by making an in-lieu contribution for capital improvements at a publicly owned art and/or cultural facility located within a mile from the development. These funds will be held in a separate capital improvement fund account created by the City Administrator; or
- 2) The developer can apply to the City Council to satisfy the requirement with an equivalent proposal on land owned by a different public agency.

These common sense amendments create additional flexibility to developers to satisfy the public art requirements while retaining strong public oversight by requiring City Council oversight. Additionally, funding for capital improvements for arts and culture facilities will bring badly needed improvements that all Oaklanders can enjoy.

### **FISCAL IMPACT**

There is no anticipated fiscal impact from these amendments.

### **COORDINATION**

These amendments are being brought forth on behalf of community members who have requested that the public art requirements of recent private developments be satisfied in these alternative means. Councilmember McElhaney's office consulted with the Office of the City

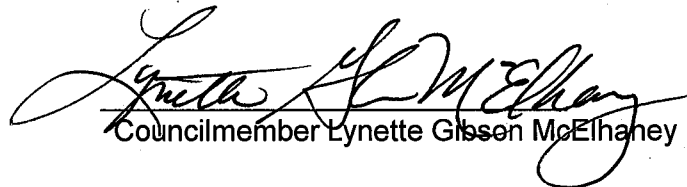
Attorney and the Cultural Affairs Division of the Department of Economic and Workforce Development in the drafting of this ordinance.

**ACTION REQUESTED OF THE CITY COUNCIL**

Adopt an ordinance amending the Oakland Municipal Code Chapter 15.78 to (A) authorize the satisfaction of the public art requirement through the submission and approval of alternative equivalent proposals for installation of public art in state highway right-of-way or on other public agency property and (B) permit in-lieu contributions to nearby City owned arts facilities to satisfy the public art requirement for private development, and authorizing the allocation of funds contributed for capital improvements to capital improvement fund accounts established by the City Administrator.

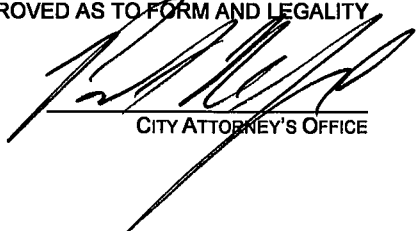
For questions regarding this report, please contact Alex Marqusee, Legislative Analyst, at 510-238-7031.

Respectfully submitted,

  
Councilmember Lynette Gibson McElhaney

Prepared by:  
Alex Marqusee, Legislative Analyst  
Office of Councilmember McElhaney

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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 CHAPTER 15.78 TO (A) AUTHORIZE THE SATISFACTION OF THE PUBLIC ART REQUIREMENT THROUGH THE SUBMISSION AND APPROVAL OF ALTERNATIVE EQUIVALENT PROPOSALS FOR INSTALLATION OF PUBLIC ART IN STATE HIGHWAY RIGHT-OF-WAY OR ON OTHER PUBLIC AGENCY PROPERTY AND (B) PERMIT IN-LIEU CONTRIBUTIONS TO NEARBY CITY OWNED ARTS FACILITIES TO SATISFY THE PUBLIC ART REQUIREMENT FOR PRIVATE DEVELOPMENT, AND AUTHORIZING THE ALLOCATION OF FUNDS CONTRIBUTED FOR CAPITAL IMPROVEMENTS TO CAPITAL IMPROVEMENT FUND ACCOUNTS ESTABLISHED BY THE CITY ADMINISTRATOR**

**WHEREAS**, on February 28, 1989, the Oakland City Council adopted Ordinance No. 11086 C.M.S., the Percent for Public Art Ordinance, which authorized the allocation of 1.5% of City capital improvement project costs to commission and acquire public art; and

**WHEREAS**, on December 9, 2014, the Oakland City Council adopted Ordinance No. 13275 C.M.S. to adopt Oakland Municipal Code Chapter 15.70, Public Art Requirements, which established a new requirement of .5% for residential or 1% for nonresidential of private development project costs for public art and codified, in part, the existing requirement of 1.5% of the City's capital improvement project costs for public art; and

**WHEREAS**, on June 27, 2017, the Oakland City Council adopted Ordinance No. 13443 C.M.S. making certain amendments to Chapter 15.70 and adopted the chapter in a new section as Chapter 15.78; and

**WHEREAS**, new development generally results in aesthetic impacts to a community. As development and revitalization of real property within the City continues, the opportunity for creation of cultural and artistic resources is diminished. As these opportunities are diminished and urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased; and

**WHEREAS**, through the inclusion of public art or payment of an in lieu fee, developers of benefitting land uses will address at least a portion of the impact of their developments on aesthetics; and

**WHEREAS**, the Ordinance also provides the following benefits to the community: (a) maintaining Oakland's art and culture for generations; (b) recognizing the vital importance of the arts to the City as a whole; (c) enhancing the economic sustainability of artists and arts organizations as a key to the vitality of the City of Oakland; and (d) making a lasting contribution to the intellectual, emotional and creative life of the community at large, and creating a more desirable community to live, work, and recreate; and

**WHEREAS**, the public interest, convenience, health, safety and/or welfare require that public art be provided in conjunction with the approval of land use applications to address the legitimate public concern of mitigating the aesthetic impacts of development and land use proposals on the urban environment; and

**WHEREAS**, the visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the city. Public art can illuminate the diversity and history of Oakland communities, and point to their aspirations for the future. A wealth of art and culture in the public realm will foster the economic development of the community; and

**WHEREAS**, to implement these policy goals, public art should be integrated into development projects and land use applications citywide. Where possible, consideration of public art should be integrated into project planning at the earliest possible stage, and the selected artist should become a member of the project's design team early in the design process; and

**WHEREAS**, the legislative requirement to provide either public art or an in lieu fee generally applies to all private developers, and is a permissible land use regulation and a valid exercise of the City's traditional police power; and

**WHEREAS**, public art enhances the quality of life for Oakland's citizens, residents, visitors and businesses, and provides a means to enjoy and experience the City's cultural diversity; and

**WHEREAS**, the City seeks to amend Chapter 15.78 to create a process for developers to apply to the City to satisfy the public art requirement by alternative means not currently authorized under the Chapter, involving the installation of artwork on the State highway right-of-way and on property owned by other public agencies; and

**WHEREAS**, the City further seeks to amend Chapter 15.78 to provide a new mechanism by which residential developers can satisfy the previously adopted public art requirements by funding capital improvements to City owned or operated arts or cultural facilities; and

**WHEREAS**, funding capital improvements for the aforementioned facilities will increase the residents' resources for creating the arts and cultural activities to improve the environment, image and character of the community and to address the aesthetic impacts of land use approvals as intended by the public art requirements for residential developments; and

**WHEREAS**, this Ordinance does not codify the existing requirement that 1.5% of the City's capital improvement project costs be allocated to commission and acquire public art throughout the City, which was adopted by the City Council through Ordinance No. 11086 C.M.S. and continues to remain in effect; and

**WHEREAS**, this Ordinance serves the public interest and is necessary to protect and promote the health, safety, and/or welfare of the City of Oakland's constituents, and is enacted pursuant to Article XI, Sections 5 and 7, of the California Constitution, Section 106 of the Charter of the City of Oakland, the City's General Plan, specific plans and other land use plans; and

**WHEREAS**, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

**WHEREAS**, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs; and

**WHEREAS**, numerous policies enacted to support, protect and promote the health, safety and/or general welfare of Oakland's constituents are contained in the Land Use and Transportation Element of the City's General Plan and the Oakland Municipal Code, and include public art recommendations for the Broadway Valdez District Specific Plan, Central Estuary Area Plan, Coliseum Area Specific Plan, Lake Merritt Station Area Plan, West Oakland Specific Plan, and the pending Downtown Oakland Specific Plan; and

**WHEREAS**, the City has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare; and

**WHEREAS**, the public art requirement for private development serves the public interest and is necessary to protect the health, safety, and/or welfare of the citizens of Oakland; and

**WHEREAS**, this Ordinance is supported by sufficient justifications and/or evidence, including for reasons stated herein and in the record, and meets the appropriate legal standards, including without limitation the City's police power, constitutional standards, the terms of the Mitigation Fee Act, the Oakland City Charter, the Oakland Municipal and Planning Codes and the City's General Plan, specific plans and other land use plans/policies; and

**WHEREAS**, this Ordinance was considered, after a duly noticed public meeting, at a regular meeting of the City Council on \_\_\_\_\_, and all interested parties were provided an ample opportunity to participate in said meeting and express their views; and

**WHEREAS**, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), and 15183 (projects consistent with a community plan, general plan, or zoning), each as a separate and independent basis, and when viewed collectively provide an overall basis for CEQA clearance; now, therefore,

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The City Council finds and determines the foregoing recitals are true and correct and are an integral part of the City Council's decision, and are hereby adopted as findings.

**SECTION 2. Amendments to Chapter 15.78 to the Oakland Municipal Code.** Chapter 15.78 of the Oakland Municipal Code is hereby amended to add, delete, modify or renumber sections as set forth below (chapter and section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not shown in underscoring or strike-through type are not changed).

**CHAPTER 15.78  
PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT**

- 15.78.010 Title.**
- 15.78.020 Purpose.**
- 15.78.030 Definitions.**
- 15.78.040 Conflict.**
- 15.78.050 Amendments.**
- 15.78.060 Administrative Regulations.**
- 15.78.070 Contribution Requirements.**
- 15.78.080 Appeal Procedure.**
- 15.78.090 Artist Requirement.**
- 15.78.100 Compliance, Ownership and Maintenance.**
- 15.78.110 Violations.**

**15.78.010 - Title.**

This Chapter shall be known as the "Public Art Requirements for Private Development" and is referred to herein as "this Chapter."

**15.78.020 - Purpose.**

The purpose of this Chapter is to establish a public art requirement for private development in order to provide the following benefits to the community: (a) maintain Oakland's art and culture for generations; (b) recognize the vital importance of the arts to the City as a whole; (c) enhance the economic sustainability of artists and arts organizations as a key to the vitality of the City of Oakland; and (d) make a lasting contribution to the intellectual, emotional and creative life of the community at large, and create a more desirable community to live, work, and recreate. A policy is hereby established to require developers and/or owners of certain private developments to use a portion of building development costs for the acquisition and installation of freely accessible works of art for placement on the development site or on the right-of-way adjacent to the development site (within one-fourth (1/4) mile) as a condition of project approval. Developers and/or owners are encouraged, but not required, to employ Oakland artists and/or arts organizations to fulfill the public art requirement.

**15.78.030 - Definitions.**

As used in this Chapter, the following terms shall have the meanings set forth hereto or as otherwise specified in the guidelines referenced herein. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

"Affordable Housing" means housing that is restricted to occupancy at an affordable rent or an affordable housing cost to moderate-income households, low-income households, or very low-income households. The terms "affordable rent" and "affordable housing cost" shall be as defined in California Health & Safety Code Sections 50053 and 50052.5 and their implementing regulations.

"Artist" means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, public performances, past public commissions, sale of works, exhibition record, publications, and production of art work.

"Building Development Costs" means those construction costs as declared on building permit applications, and as accepted by the Building Official. Building permit applications shall include building, plumbing, mechanical and electrical permit applications for the project.

"Capital facility" means any building or structure that serves a particular purpose.

"City-owned Arts Facility" means any City-owned Capital Facility primarily devoted to visual or performing arts, including performing arts centers, museums, cinemas, galleries, music venues, and workshop and rehearsal spaces, and theaters.



"Developer and/or Owner" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Oakland), industry, public or private corporation, or any other entity that undertakes any construction within the City subject to the requirements in this Chapter.

"Economically Feasible" is defined in Section 17.107.020 of the Oakland Planning Code.

"Floor Area" is defined in Section 17.09.040 of the Oakland Planning Code.

"Freely Accessible" means the artwork is accessible to the public for viewing, in its entirety and in a direct line of sight without hindrances or visual obstacles, during regular business hours consistent with the operation and use of the premises. Nothing in this definition or Chapter is intended to require access by any member of the public to any area not otherwise accessible to the public pursuant to the normal operation and use of the premises.

"Maintenance" of artwork shall include, without limitation, preservation of the artwork and, where applicable, of the lighting and surrounding landscaping, in good condition to the satisfaction of the City; and protection of the artwork against physical defacement, mutilation or alteration.

"Oakland Planning Code" means Title 17 of the Oakland Municipal Code.

"Public Art Advisory Committee" means that term as it is defined under City of Oakland Ordinance No. 11086 C.M.S.

"Public Art Projects" are projects which involve artists working through the public art process that result in the creation of original works in freely accessible spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, and/or crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Public art projects also include artists serving on design and development teams to identify opportunities to incorporate art in freely accessible space.

#### **15.78.040 - Conflict.**

Wherever the provisions of this Chapter conflict with each other or with the provisions of other associated codes, regulations, or ordinances, the applicable requirements of this Chapter shall control.

#### **15.78.050 - Amendments.**

Where any section, subsection, sentence, clause, phrase, or other part of this Chapter and the referenced law recited herein are amended subsequently, all provisions of the original recitation not so specifically amended shall remain in full force and effect and all amended provisions shall be considered as added thereto.

## **15.78.060 - Administrative Regulations.**

The City Administrator is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

## **15.78.070 - Contribution Requirements.**

### **A. Calculation.**

1. **Nonresidential Building Developments.** Private nonresidential building developments involving two thousand (2,000) square feet or more of new floor area and subject to design review approval pursuant to Chapter 17.136 of the Oakland Planning Code shall devote an amount not less than one percent (1%) of building development costs for acquisition and installation of freely accessible art on the development site or the adjacent right-of-way (within one-fourth (1/4) mile).

2. **Residential Building Developments.** Private residential building developments of twenty (20) or more new dwelling units and subject to design review approval pursuant to Chapter 17.136 of the Oakland Planning Code shall devote an amount not less than one-half of one percent (0.5%) of building development costs for acquisition and installation of freely accessible art on the development site or the adjacent right-of-way (within one-fourth (1/4) mile).

### **B. In-Lieu Contribution. ~~The in-lieu contribution can be satisfied in the following two (2) ways.~~**

~~4. At the discretion of the developer and/or owner, and in lieu of installing public art, an in-lieu contribution shall be placed into the Public Art Project Account, as defined in Ordinance No. 11086 C.M.S., for acquisition and placement of public art throughout the City.~~

### **C. Alternative Means of Satisfaction of Public Art Requirement**

~~2. The developer and/or owner may by special application and approval by the City satisfy up to seventy five percent (75%) of the in-lieu contribution required hereunder as follows, if approved by the Public Art Advisory Committee, as defined in Ordinance No. 11086 C.M.S. The remaining in-lieu contribution shall be placed into the Public Art Project Account.~~

Instead of installing public art on site, or making an in lieu contribution to the Public Art Project Account, the developer and/or owner may propose to satisfy the public art requirement in any of the three following alternative ways, subject to City approval:

1. The developer and/or owner may by special application approved by the City, following review and approval from the Public Art Advisory Committee, complete an alternative equivalent proposal to install freely accessible art in the State highway right-of-way or on property owned by other public agencies. The developer and/or owner must demonstrate that the cost of the alternative equivalent proposal will equal

the cost of the public art contribution that would otherwise be required under Subsection 15.78.070(A). The City may approve the alternative equivalent proposal if it finds that: 1) the alternative equivalent proposal will further the purposes of this Chapter as set forth under Subsection 15.78.020, 2) the cost of the alternative equivalent proposal will be equal to or greater than the cost of the public art contribution that would otherwise be required under Subsection 15.78.070(A), and 3) the developer and/ or owner has established to the satisfaction of the City that the alternative equivalent proposal will create freely accessible public art in the City to an equal or greater extent than installation of the public art on the development site or payment of in lieu fees. In approving an alternative equivalent proposal, the Public Art Advisory Committee may impose reasonable conditions of approval requiring the developer and/or owner to enter into agreements with the City or other public agencies or private parties in order to memorialize the legal obligations of all parties involved with the alternative equivalent proposal; or

2. The developer and/or owner may by special application to and approval by the City make a contribution to the City, either in the full amount of the in lieu contribution or a percentage thereof (with the remainder of the in lieu contribution placed into the Public Art Project Account), for the purpose of capital improvements to a specified City-owned Arts Facility or Facilities within one (1) mile of the development.

- i. The City Administrator may approve such a contribution if he or she finds that: 1) the City-owned Arts Facility or Facilities are in need of capital improvements, 2) the Facilities once improved will create greater opportunities for the exhibition of visual or performing arts, and provide enhanced opportunities for city residents and visitors to experience visual or performing arts, and 3) the project will not create unbudgeted costs for the City.
- ii. Any capital improvements approved under this subsection are public works of improvement and shall be subject to advertising, bidding, lowest responsible bid award, prevailing wages, bonding, state contractor licensing and other requirements for public works of improvement.
- iii. The City Council hereby authorizes the establishment of facility-specific project accounts for each City-owned Arts Facility or Facilities to which funds are contributed pursuant to this Subsection 15.78.070 (C)(2), and further authorizes the City Administrator to appropriate all funds contributed to the City pursuant to this Subsection to the corresponding facility-specific project account. Funds so appropriated, if not expended in any given fiscal year, shall be carried over to the next fiscal year; or

3. The developer and/or owner may by special application and approval by the City satisfy up to seventy-five percent (75%) of the in-lieu contribution required hereunder as follows, following review and approval by the Public Arts Advisory Committee. The remaining in-lieu contribution shall be placed into the Public Art Project Account.

- i. Developer and/or owner's inclusion of space within the development project that is generally open to the public during regular business hours and is dedicated by developer and/or owner for regular use as a rotating art

gallery, free of charge, will be deemed to satisfy twenty-five percent (25%) of the in-lieu contribution; and/or

- ii. Developer and/or owner's provision, design and commitment of at least five hundred (500) square feet of space within the development project, to be made available to the public for the primary use of arts and cultural programming, may be deemed to satisfy fifty percent (50%) of the in-lieu contribution.

**D. Exclusions.** The requirements of this Chapter shall not apply to an affordable housing development if the developer and/or owner demonstrates to the satisfaction of the City that said requirements would cause the development project not to be economically feasible.

#### **15.78.080 - Appeal Procedure.**

- A. Within ten (10) calendar days after the date of a decision by the Planning Director or City Planning Commission that includes a condition of approval imposing a public art requirement for private development, an appeal from said decision must be filed by the applicant or any other interested party. The appeal shall be submitted to the Bureau of Planning at 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, CA 94612. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Bureau of Planning and shall be filed with the Planning and Building Department ("Department") and submitted to the Department to the attention of the Planning Director, along with the appropriate fees required by the City's Master Fee Schedule. The appeal application must be complete and shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Director or City Planning Commission or wherein the Planning Director or City Planning Commission's decision is not supported by the evidence in the record. The appeal itself must raise each and every issue that is contested, including any and all constitutional claims, along with all the arguments and evidence in the record, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues during the appeal and/or in court.
- B. If a hearing is held on the appeal, then during such hearing, the appellant will be limited to issues and/or evidence previously raised in the appeal itself. The appellant shall not be permitted to present any other issues and/or oral, written and/or documentary evidence during the appeal process.
- C. In considering the appeal, the City Administrator shall determine whether the public art requirement for private development conforms to the requirements of this Chapter and/or asserted constitutional provisions, and may grant or deny the appeal or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The written decision of the City Administrator shall be final and shall be made within sixty (60) days of the submission of the appeal.

#### **15.78.090 - Artist Requirement.**

Public art shall be designed by independent artists or artists working in conjunction with arts and/or community organizations that are verified by the City to be a 501(c)(3) tax designated organization in good standing. Developers and/or owners are encouraged, but not required, to employ Oakland artists and/or arts organizations to fulfill the public art requirement. For the purposes of this Section, "artists" shall not include members of the architectural, engineering, design, or landscaping firms retained for the design and construction of a development project.

#### **15.78.100 - Compliance, Ownership and Maintenance.**

- A. Compliance with the provisions of this Chapter shall be demonstrated by the developer and/or owner at the time of filing the Building Permit application by either:
  - (a) payment of the full amount of the in-lieu fee ~~or~~ (b) furnishing written proof to the Building Department and the Public Art Program of the Public Art for Private Development Checklist complete submittal package including budget and artist contract(s) for projects on the development site or on the right-of-way adjacent to the development site (within one-fourth (1/4) mile) (c) furnishing written proof to the Building Department and the Public Art Program of an alternative equivalent proposal approved by the Public Art Advisory Committee under Subsection 15.78.070(C)(1), including any executed agreements as required by any conditions of approval attached to the alternative equivalent proposal, (d) payment of the full amount of the contribution to specified City-owned Arts Facility or Facilities approved by the City Administrator under Subsection 15.78.070(C)(2); or (e) a complete and approved cultural space plan approved by the Public Art Advisory Committee under Subsection 15.78.070(C)(3).
- B. The developer and/or owner shall install any required artwork or cultural space before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this requirement, and maintain said artwork or cultural space in proper condition on an ongoing basis, in accordance with the maintenance guidelines referenced below.
- C. All artwork or cultural space shall become the property of the developer and/or owner and successor(s) in interest, unless an exception to the requirements of this Subsection 15.78.100 (C) is authorized as part of an alternative equivalent proposal approved pursuant to Subsection 15.78.070(C)(1). Artwork and cultural space cannot be sold or transferred other than to a subsequent successor in interest. The obligation to provide maintenance and security, as necessary to preserve the artwork or cultural space in good condition, shall remain with the developer and/or owner. The developer and/or owner and successor(s) in interest may obtain adequate insurance coverage to cover the costs of the repair of any damage or necessary replacements to the public art or cultural space. In cases where public art is acquired and installed on the development site or on the right-of-way adjacent to the development site (within one-fourth (1/4) mile), or the developer and/or owner elects to provide cultural space on the development site, all of the following must occur prior to issuance of a certificate of occupancy for any project subject to this Chapter:

1. A copy of the maintenance plan that includes information on materials, parts and fabricator contact information has been submitted to the City. Funds for maintenance are not part of the public art contribution requirement; and
  2. A covenant setting forth the developer and/or owner's obligations under this Chapter has been executed and recorded with the Alameda County Recorder, and a conformed copy has submitted to the City. The covenant shall include a financial plan for the maintenance of the artwork or cultural space, a schedule of future condition checks, and preventative maintenance and restoration to conserve the artwork or cultural space at an appropriate level; and
  3. A plaque has been installed adjacent to the artwork measuring no less than 8" x 8" or a proportionate size.
- D. The City reserves the right to inspect the artwork or cultural space at any time to ensure it is being maintained as required by any covenant entered into pursuant to the provisions of Subsection 15.78.100 (C).
- E. Unless an artwork poses imminent danger to life or property, no person may destroy, permanently remove, relocate, change, alter, modify, or allow to be defaced, any artwork or portion thereof without the express consent of the City. This requirement will be included in the covenant to be recorded against the property.
- F. If the developer and/or owner satisfies the public art requirement by installing artwork on the development site or on the right-of-way adjacent to the development site (within one-fourth (1/4) mile), or on an alternative site as part of an alternative equivalent proposal approved pursuant to Subsection 15.78.070(C)(1), and such artwork is subsequently removed or destroyed, the developer and/or owner must either 1) pay an in-lieu fee to the City's Public Art Project Account in an amount equivalent to the original value of the removed artwork, or 2) install replacement art that fulfills the requirements of this Chapter. The decision on which option is chosen is made by the City, not the applicant.
- G. If the developer and/or owner satisfies the public art requirement by including cultural space on the development site and such cultural space is subsequently removed or destroyed or ceases to be regularly available to the public, the developer and/or owner must pay an in-lieu fee to the Public Art Project Account in an amount equivalent to the original value of the space.

### **15.78.110 - Violations.**

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any permit granted to any developer and/or owner who violates the provisions of this Chapter.

**SECTION 3. 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 4. 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.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

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 CHAPTER 15.78 TO (A) AUTHORIZE THE SATISFACTION OF THE PUBLIC ART REQUIREMENT THROUGH THE SUBMISSION AND APPROVAL OF ALTERNATIVE EQUIVALENT PROPOSALS FOR INSTALLATION OF PUBLIC ART IN STATE HIGHWAY RIGHT-OF-WAY OR ON OTHER PUBLIC AGENCY PROPERTY AND (B) PERMIT IN-LIEU CONTRIBUTIONS TO NEARBY CITY OWNED ARTS FACILITIES TO SATISFY THE PUBLIC ART REQUIREMENT FOR PRIVATE DEVELOPMENT, AND AUTHORIZING THE ALLOCATION OF FUNDS CONTRIBUTED FOR CAPITAL IMPROVEMENTS TO CAPITAL IMPROVEMENT FUND ACCOUNTS ESTABLISHED BY THE CITY ADMINISTRATOR**

This Ordinance amends Chapter 15.78 of the Oakland Municipal Code to allow for satisfaction of the public art requirements for private development through the submittal and approval of alternative equivalent proposals to install tangible and freely accessible public art beyond the quarter mile radius of the development site, and to permit developers to make in lieu contributions to nearby City-owned arts or cultural facilities in satisfaction of the public art requirement.