



FILED
OFFICE OF THE CITY CLERK
OAKLAND
2017 JUN -1 PM 4: 37

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti
Interim Director, PBD

SUBJECT: Revisions to Public Art Requirements
For Private Developments

DATE: May 18, 2017

City Administrator Approval

Date:

Ce 6/1/17

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Repealing Ordinance No. 13275 C.M.S., Amending The Oakland Municipal Code To Adopt Chapter 15.78, Public Art Requirements for Private Development, and Adopting California Environmental Quality Act Exemption Findings.

EXECUTIVE SUMMARY

Staff proposes to delete Chapter 15.70 of the Oakland Municipal Code, the Public Art requirement for private development, and recodify the requirements in Chapter 15.78, to incorporate several clarifications and other minor changes. The existing provisions of Chapter 15.70 are proposed to be deleted and recodified in a new Chapter 15.78, as described below. The longstanding public art requirement for the City's capital improvement projects, which was adopted by the City Council through Ordinance No. 11086 C.M.S. and partially codified in Ordinance No. 13275 C.M.S., is no longer codified in the OMC, but continues to remain in effect. The changes are proposed to improve the implementation of the ordinance, clarify the requirements, and provide internal consistency.

BACKGROUND / LEGISLATIVE HISTORY

Current Requirements

The City's current requirement for public art in private development, adopted by the City Council on December 9, 2014 (Ordinance No. 13275 C.M.S. and included in O.M.C. Chapter 15.70), is for certain nonresidential development to contribute 1.0 percent and certain residential development 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:

Item: _____
CED Committee
June 13, 2017

1. The entire contribution could be used by the developer for the acquisition and installation of permanent public art on the development site.
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:
 - 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;
 - Up to 25 percent toward a rotating art gallery within the development project that is free and open to the public; and
 - The balance would be paid as an in-lieu contribution into the Public Art Project Account.

Public Meetings

This item was previously brought to the Planning Commission on January 18, 2017, as an informational item, and to the Public Art Advisory Committee (PAAC) on January 9, 2017. At the PAAC and the Planning Commission, staff conveyed that these recommendations are being made now with the recognition that some other proposals may be considered during community discussions occurring in 2017 as part of the Downtown Specific Plan and Cultural Plan processes. Because these requirements are proposed for the Municipal Code (and not within the Planning Code), there was no formal action by the Public Art Advisory Committee or the Planning Commission.

ANALYSIS AND POLICY ALTERNATIVES

Proposal

Staff proposes to delete Chapter 15.70 and adopt a new Chapter 15.78, entitled Public Art Requirements for Private Development, to recodify and clarify the requirements and process that apply to the public art requirement for private development. As authorized in Section 3 of Ordinance No. 13275 C.M.S., staff further proposes the following changes to the existing requirements to improve the implementation of the ordinance, clarify the requirements, and provide internal consistency:

1. Addition of an appeal procedure to provide a City appeal process for any interested party to appeal a decision that includes a condition of approval imposing a public art requirement for private development;
2. Provide a clear requirement that the in-lieu contribution is due at the time of application for the building permit;
3. Clarify that the public art requirement for private development can be placed either on site or on the right-of-way adjacent to the site;

4. Revise the "Artist Requirement" section to more accurately reflect City requirements, including clarifying that the City encourages, but does not require, the use of local artists in the creation of public art;
5. Provide more specific maintenance/ownership requirements;
6. Require signage identifying the public art at the site;
7. No longer codify the longstanding public art requirement for City capital improvement projects, which was adopted by the City Council through Ordinance No. 11086 C.M.S. and continues to remain in effect;
8. Clarify that the developer may secure insurance to cover possible losses or damage;
9. Authorize the City Administrator to adopt administrative regulations.

The proposal also includes changes to several definitions and terms in the Chapter to provide clearer direction to staff, the public, and developers. For instance, the definition of "affordable housing" is proposed to be consistent with the definition of affordable housing in the impact fee regulations. Other revisions include new or modified definitions of the terms "artist," "maintenance," and "freely accessible".

Finally, several definitions (such as "Capital Improvement Costs," "City Capital Improvement Project," "Demolition Costs," "Public Art," "Public Art Advisory Committee," "Public Art Project Account in the Cultural Arts Division Budget," and "Real Property Acquisition Costs") have been removed because staff is no longer proposing to partially codify the public art requirements for City capital improvement projects. Those definitions and requirements can be found in Ordinance No. 11086 C.M.S. and continue to remain in effect.

Broader Changes to the Requirements

Community stakeholders have communicated to staff that additional changes that are more substantive should be proposed to the existing ordinance. Input has included allowing public art to be located off-site and for the in-lieu contribution to be spent on cultural facilities and programs that are off-site from a development.

Staff believes that these changes require a broader policy discussion and public process than envisioned for the relatively minor changes proposed in this current update and that this broader policy discussion should take place after adoption of the currently proposed ordinance. The more substantive changes require a broader discussion because there are equity issues regarding concentrating public art funds, generated through in-lieu contributions, in the neighborhoods where development is most active instead of distributing the funds to projects throughout the City through an open and transparent process (in current practice, decisions on the distribution of funds in the Public Art Project Account are made through an established public process that involves recommendations made by the Public Art Advisory Committee (PAAC) and approval by the City Council). There is concern that if developers choose where the in-lieu contributions are spent instead of the City Council (with recommendations from the PAAC), the funds will not be spent equitably throughout the City.

Staff also believes that relatively straightforward art requirements should be instituted until the implementation and administration of the program is well established. Introducing off-site cultural funding or public art into the regulations creates significant implementation challenges such as tracking how funds are spent, maintenance responsibilities, liability issues, code enforcement, and identifying appropriate permitting processes.

Therefore, staff proposes to have a future discussion of these broader changes as part of the City's Cultural Plan and Downtown Specific Plan processes. The Cultural Plan will commence this summer. A deeper discussion regarding related public art and cultural policy priorities will be reviewed in community and stakeholder discussions over the course of 2017-18 before making any additional proposed revisions to the public art requirement for private development. Staff proposes to return to the City Council with a report that evaluates the performance of the program within 12 months.

FISCAL IMPACT

The cost of administering the program through the Planning and Building Department is cost-covering through permit fees and in the Public Art Program through cost-recovery fees established in the Master Fee Schedule. Administration costs for any City-initiated projects funded directly by the Public Art Project Account are covered by a percentage of those funds. The definition of "Public Art Project Account" and the use of funds in that account are described in detail in Ordinance No. 11086 C.M.S., adopted by the City Council on February 28, 1989.

PUBLIC OUTREACH / INTEREST

Staff presented the proposal at a community meeting on January 26, 2017. Representatives from the development, public art, and performing arts communities attended. Staff presented background on the Public Art Program, to demonstrate engagement of artists early in the design process, and reviewed current public art requirements and proposed revisions. Several issues were discussed at that meeting, including, but not limited to:

- The original intent of the art in private development requirement as a land use enhancement;
- Allowing required public art to be located at off-site locations;
- Reducing the required in-lieu fees by 20 percent. Note: this is not in the current proposal; and
- Allowing the public art in-lieu contribution to be spent more flexibly than currently allowed, such as at off-site cultural spaces and programs.

Attendees requested further clarification on how funds in the Public Art Project Account are allocated, expressed concern regarding funding for the arts in general and how to ensure funds generated are restricted to the creation of artwork. Additionally, attendees expressed a range of opinions on whether the proposed revisions, and a reduction in the in-lieu contribution, would result in more support for local artists, and how to create more flexible options for meeting the requirement.

COORDINATION

Planning staff has worked with the Cultural Affairs Division of the Economic and Workforce Development Department, the City Attorney, and the Controller's Bureau in the preparation of the proposed changes.

SUSTAINABLE OPPORTUNITIES

Economic: The generation of public art project opportunities financially supports local artists and attracts tourism by creating a sense of place and more sightseeing opportunities. Public art also supports the local arts culture, which had been a major contributor to making Oakland a destination for visitors.

Environmental: Staff believes the proposal will not have a negative impact on the environment and will enhance the aesthetic environment of the city.

Social Equity: Public art is supportive of equity because it is free of charge to the viewer and is freely accessible to the public. Further, the funds generated through the in-lieu contribution will be spent on projects throughout the City, not just in areas where development is occurring.

CEQA

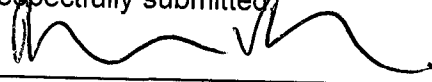
This action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), and 15183 (projects 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.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council adopt the subject ordinance repealing Ordinance No. 13275 C.M.S., amending the Oakland Mucipal Code to adopt chapter 15.78, Public Art Requirements for Private Development, and adopting CEQA exemption findings.

For questions regarding this report, please contact Neil Gray, Planner IV, at (510) 238-3878 or ngray@oaklandnet.com.

Respectfully submitted



DARIN RANELLETTI
Interim Director, Planning and Building
Department

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Neil Gray, Planner IV
Zoning Division

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 JUN -1 PM 4:37

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY



OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE REPEALING ORDINANCE NO. 13275 C.M.S.,
AMENDING THE OAKLAND MUNICIPAL CODE TO ADOPT
CHAPTER 15.78, PUBLIC ART REQUIREMENTS FOR PRIVATE
DEVELOPMENT, AND ADOPTING CALIFORNIA ENVIRONMENTAL
QUALITY ACT EXEMPTION FINDINGS**

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, Ordinance No. 13275 C.M.S. expressly provides that the public art requirement may be reevaluated whenever new requirements or fees are considered so that the totality and allocation of all development requirements and fees are deemed reasonable and appropriate; 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 City of Oakland's public art requirement for private development was adopted so that development of cultural and artistic assets are financed by those whose development diminishes the availability of the community's resources for those opportunities and contributes to community urbanization; and

WHEREAS, the Ordinance also provides 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; and

WHEREAS, the public interest, convenience, health, safety and/or welfare require that public art be provided to address the legitimate public concern of mitigating the aesthetic impacts of development; 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, the Los Angeles County Economic Development Corporation's annual Otis Report on the Creative Economy, a state-wide study, consistently demonstrates that the arts have a significantly positive economic impact to overall tourism revenues in California and are one of the top five creative economy centers; and

WHEREAS, the Americans for the Arts, in their Arts & Economic Prosperity IV Report, document that the arts serve as economic drivers in the community, support jobs, and are the cornerstone of the tourism industry. Both the Otis Report and the Arts & Economic Prosperity IV Report also document the link between the arts and the overall economic health and vibrancy of the State; and

WHEREAS, cultural and artistic resources, which include visual artwork, the performing arts, and architectural resources, enhance the quality of life for individuals living in, working in, and visiting the City of Oakland, and enrich Oakland's visual environment and integrates the creative thinking of artists into the public realm and the streetscape; and

WHEREAS, balanced development of cultural and artistic resources preserves and improves the quality of the urban environment, increases real property values, and has a positive economic impact; 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 repeal Ordinance No. 13275 C.M.S. and amend the Oakland Municipal Code to adopt Chapter 15.78 to recodify and clarify the requirements and process that apply to the public art requirement for private development; 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, including the May 18, 2017 City Council Agenda Report, incorporated herein by reference, 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, the proposed amendments to the Oakland Municipal Code were considered at a regular, duly noticed meeting of the Public Art Advisory Committee on January 9, 2017; and

WHEREAS, the proposed amendments to the Oakland Municipal Code were considered at a regular, duly noticed meeting of the City Planning Commission on January 18, 2017; and

WHEREAS, this Ordinance was considered, after a duly noticed public meeting of the Community and Economic Development Committee on June 13, 2017, and the Committee recommended adoption of this Ordinance; and

WHEREAS, this Ordinance was considered, after a duly noticed public meeting, at a regular meeting of the City Council on June 20, 2017, 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 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. Repeal of Ordinance No. 13275 C.M.S. Ordinance No. 13275 C.M.S., adopted by the City Council on December 9, 2014, is hereby repealed.

SECTION 3. Addition of Chapter 15.78 to the Oakland Municipal Code. Title 15 of the Oakland Municipal Code is hereby amended to add a new Chapter 15.78 as follows. Existing provisions of the Oakland Municipal Code are being recodified from Chapter 15.70 to Chapter 15.78, and existing text is shown as unmodified or in ~~strikethrough~~, and new text shown in double underline.

Chapter 15.780 – Public Art Requirements for Private Development

Article I – Title

Section 15.780.010 – Title

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

Article II – Administrative

15.780.020 – Purpose [*Moved from OMC Section 15.70.050*]

~~The purpose of this Chapter Article III is intended to promote the arts in the City of Oakland by requiring the inclusion of establish a public art requirement for work component in new development projects in Oakland. A policy is hereby established to require certain private developments 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. use a portion of building development funds for the acquisition and installation of publicly accessible works of art for placement on the development site as a condition of project approval. 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 directly adjacent to the development site 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 is defined in Section 17.107.020 of the Oakland Planning Code.

“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 IMPROVEMENT COSTS include all construction costs as well as architectural and engineering fees and site work associated with capital improvement projects. Capital improvement costs do not include administrative costs or costs related to the investigation and remediation of hazardous materials.~~

~~CITY CAPITAL IMPROVEMENT PROJECT means any capital improvement project paid for wholly or in part by funds appropriated by the City of Oakland to construct or remodel a building, decorative or commemorative structure, park, street, sidewalk, parking facility, or utility or any portion thereof, within the City limits of, or under the jurisdiction of, the City of Oakland.~~

~~DEMOLITION COSTS means payment for any work needed for the removal of buildings or other existing structures from City property.~~

“DEVELOPER and/or 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 Article III.

“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.

“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 is a process which results in the incorporation of original works of art by artists in publicly accessible spaces and which serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals; is of high quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; is unique to its moment in time and place.~~

~~PUBLIC ART ADVISORY COMMITTEE means a professionally qualified citizen committee recommended by the Oakland arts commission and approved by City Council to oversee quality control of the public art program, its projects, and to recommend to the Cultural Arts Division (CAD) the sites, scope of project, artworks and artists for the public art projects funded through the Public Art Project Account.~~

~~PUBLIC ART PROGRAM IN LIEU CONTRIBUTION means the percentage of building development costs required herein.~~

~~PUBLIC ART PROJECT ACCOUNT IN THE CULTURAL ARTS DIVISION BUDGET means a project account which is established by the City to receive monies from both in lieu contributions made by a developer and/or owner and appropriated from the capital improvement project budgets to the public art program.~~

~~"PUBLIC ART PROJECTS" are projects which involve artists working through the public art process that result in the creation of original works in freelypublicly-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 aArt projects also include artists serving on design and development teams to identify opportunities to incorporate art in freelypublicly-accessible space.~~

~~PUBLICLY ACCESSIBLE ART means art that is accessible to the general public.~~

~~REAL PROPERTY ACQUISITION COSTS means payments made for the purchase of parcels of land, existing buildings or structures, and costs incurred by the City for appraisals or negotiations in connection with such purchases.~~

~~SHALL/WILL means a determinative directive which includes the common meaning of the word *must*.~~

15.780.04030 – 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 more restrictive provision or standard shall control.

15.780.05040 – 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.

Article III – Public Art Requirements for Private Development

15.70.050 Purpose

~~This Article III is intended to promote the arts in the City of Oakland by requiring the inclusion of a public artwork component in new development projects in Oakland. A policy is hereby established to require certain private developments to use a portion of building development funds for the acquisition and installation of publicly accessible works of art for placement on the development site as a condition of project approval. Developers and/or owners are encouraged to employ Oakland artists or arts organizations to fulfill the public art requirement.~~

15.780.060 – 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 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 publicly-accessible art on the development site or the directly adjacent right-of-way.

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 publicly-accessible art on the development site or the directly adjacent right-of-way.

B. In-Lieu Contribution

The in-lieu contribution can be satisfied in the following two ways:

1. ~~Compliance~~ At the discretion of the developer and/or owner, and in lieu of installing ~~on-site public art, an~~ Public Art Program 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.

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

a. 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 ~~Public Art Program~~ in-lieu contribution; and/or

b. Developer and/or owner's provision, design and commitment ~~dedication~~ 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 ~~Public Art Program~~ in-lieu contribution.

~~C. Subsequent Removal of Public Art or Alternative Compliance Space. If the developer and/or owner satisfies the public art requirement in accordance with subsection (A)(1), (A)(2), or (B)(2), above, the public art previously installed on the development site or the inclusion and/or dedication of space within the development project may subsequently be removed if the developer and/or owner makes a Public Art Program in-lieu contribution equivalent to the original amount to the Public Art Project Account.~~

~~D. Exclusions. The requirements of this Chapter Article III 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, 2nd 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, 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 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.

15.780.09070 – Artist Requirement Verification

~~Public art installed on the development site shall be designed by independent artists, or artists working in conjunction with arts and/or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 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. Developers and/or owners installing art created by an artist not verified by the City shall pay a verification fee to the City in accordance with the Master Fee Schedule.~~

~~15.70.80~~ — ~~Public Art Project Account~~

~~Any in-lieu contributions placed in the Public Art Project Account shall be used to implement the Public Art Program, as described in Article V, below. Such funds may be used to acquire, place, and maintain public art on public property throughout the City, and to administer the Public Art Program.~~

15.780.100090 – Compliance, Ownership and Maintenance

A. Compliance with the provisions of this ChapterArticle III shall be demonstrated by the developer and/or owner at the time of filing the Building Permit application by eitheras follows: (a) payment of the full amount of the Public Art Program in-lieu feecontribution, or (b) 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 directly adjacent to the development site, or (c) a complete and approved cultural space plana contractual agreement to commission or purchase and to install the requested artwork on the development site.

B. The developer and/or owner shall provide the City with proof of installation of the requested any required artwork or cultural space on the development site or proof of full payment of the Public Art Program in-lieu contribution before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance with the provisions of this requirementarticle. In the case of installation of public art on the development site, the developer and/or owner shall, 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. 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 directly adjacent to the development site, 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. **[MOVED FROM SECTION 15.70.060(C)]** If the developer and/or owner satisfies the public art requirement in accordance with subsection (A)(1), (A)(2), or (B)(2), above, the public by installing artwork previously installed on the development site or on the right of way directly adjacent to the inclusion and/or dedication of space within the development site, and such artwork is project may subsequently be removed or destroyed, if the developer and/or owner must either 1) pay an makes a Public Art Program in-lieu fee contribution equivalent to the original amount 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. **[MOVED FROM SECTION 15.70.060(C)]** If the developer and/or owner satisfies the public art requirement by including in accordance with subsection (A)(1), (A)(2), or (B)(2), above, the public art previously installed on the development site or the inclusion and/or dedication of cultural space within on the development site and such cultural space is project may subsequently be removed or destroyed or ceases to be regularly available to the public, if the developer and/or owner makes a Public Art Program must pay an in-lieu contribution fee equivalent to the original amount to the Public Art Project Account in an amount equivalent to the original value of the space.

15.780.1100 Violations of this Article

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~~Article III.

~~Article IV — Public Art Requirements for City Capital Improvement Projects~~

~~15.70.110 Purpose~~

~~The City of Oakland accepts responsibility for expanding the opportunities for its citizens to experience public art and other projects resulting from the creative expression of its artists in public places throughout the City. A policy is hereby established to direct the inclusion of works of art in public spaces throughout the City and/or the design services of artists in certain City capital improvement projects.~~

~~Ordinance No. 11086 C.M.S. and the Public Art Policies and Procedures, adopted by the City Council on February 28, 1989, as such documents may be amended from time to time, continue to remain in effect.~~

~~15.70.120 Funding~~

~~A. — Appropriations~~

~~All appropriations for City capital improvement projects, including all bond projects and all other capital projects funded from other sources excluding sewer repairs funded from sewer service charge fees shall include an amount equal to one and one half percent (1.5%) of the total capital improvement project cost to be dedicated to the Public Art Project Account. Funds appropriated will be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation, examination and/or display of original artworks, for the maintenance of artworks, for educating the public about the artwork and the Cultural Arts Division administrative costs to manage the program.~~

~~The 1.5% appropriation shall include but not be limited to General Fund funded capital improvements, gas tax funded capital improvements, Measure B funded capital improvements, off street parking funded capital improvements and any and all other capital improvements funded from other revenues including grants which may be so appropriated.~~

~~B. — Method of Calculation~~

~~The minimum amount to be appropriated to the Public Art Project Account to fund artists' services and/or artworks, maintenance, administration, and education shall be the total capital project appropriation including all construction costs as well as architectural and engineering fees and site work expenses multiplied by 0.015, excluding amounts budgeted for real property acquisition; demolition; and financing costs.~~

~~C. — Pooling~~

~~Funds appropriated as part of any one project, but not deemed necessary or appropriate in total or in part for public art at said project site by the Cultural Arts Division in consultation with the Public Art Advisory Committee and the capital~~

~~improvement project manager, may be expended on other projects approved under the Public Art Project Plan when such funds are eligible to be so used.~~

~~D. Exclusions~~

~~If the source of funding or other applicable law or regulation with respect to any particular capital improvement project or portion thereof prohibits or restricts the use of the 1.5% dedication of such funds for public art, this Article IV shall not apply to the project's expenses, so prohibited or restricted.~~

~~E. Grant Applications~~

~~All City departments shall include in applications for capital improvement projects to outside granting authorities amounts for artists' services and/or artworks as specified herein, where permitted or unless otherwise waived by the City Council. Receipt of such funds shall be administered as part of the City's Public Art Program.~~

~~F. Waiver~~

~~The City Administrator may request that the City Council exclude certain capital improvement projects from the provisions of this Article IV by the passage of a resolution authorizing such a waiver.~~

~~Article V Use of Public Art Project Account~~

~~15.70.130 Use of Funds~~

~~It is intended that funds in the Public Art Project Account will be appropriated in the annual budget to obtain and install art in public places, to maintain and refurbish art in public places when the cost of such maintenance exceeds funds currently available for the maintenance of public property in general, to fund staff time in the Cultural Arts Division necessary to administer the public art program, and to defray such other expenses which are, or may become, an integral part of the public art program, including programs to educate the public about the public art.~~

~~A. Eligible Costs~~

~~Monies appropriated under Article IV, above, and any in lieu contributions made in accordance with Article III, above, may be used for hiring artists to develop design concepts and for the selection, acquisition, purchase, commissioning, placement, installation, exhibition, and/or display of artworks. Artworks may be permanent or temporary and integral to the architecture. Integration of the artists' design concepts and/or the artworks into the project architecture should be insured insofar as feasible, by concurrent selection of the artist(s) with the architect or designer. All of the above are considered eligible expenses for the Public Art Program artist fees. Artist fees for such projects can include the following:~~

- Structures which enable the display of artwork(s).
- Artistic design and fabrication fees.
- Labor of assistants, materials and contracted services required for the production and installation of the work of art.
- Any required permit or certificate fees, business and legal costs directly related to the project.
- Dealer's fees, if necessary and where appropriate CAD, in concurrence with the National Endowment for the Arts (N.E.A.) and several other arts agencies around the country, recommends that no more than 10% of the artist's fees be paid as a dealer/gallery commission.
- Communication and other indirect costs (insurance, utilities).
- Transportation of the work of art to the site.
- Preparation of site to receive artwork.
- Installation of the completed work of art.
- Administrative fees can include the following:
 - Cultural Arts Division's administration costs incurred in the process of administering the Public Art Program including staff time, direct costs and administrative overhead.
 - Documentation (color slides and black and white photographs) of the artwork's fabrication and installation and plaques to identify the artwork.

B. Ineligible Costs

Monies appropriated under Article IV, above, and any in-lieu contributions made in accordance with Article III, above, may not be used for the following:

- Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.
- "Art objects" which are mass produced of standard design such as playground equipment or fountains.
- Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking or other media arts.

- ~~• Decorative or functional elements which are designed by the building architect as opposed to an artist commissioned for this purpose.~~
- ~~• Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist.~~

SECTION 4. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from 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 of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

SECTION 5. Authority. This Ordinance is enacted to serve the public interest and is necessary to protect the health, safety, and/or welfare of the citizens of Oakland, 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, and the City's General Plan, specific plans, and other land use plans.

SECTION 6. Severability. The provisions of this Ordinance are severable, and if any article, section, subsection, sentence, clause, phrase, paragraph, provisions, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of remaining portions of the Ordinance which shall remain in full force and effect.

SECTION 7. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes on final adoption; otherwise, it shall become effective upon the seventh day after final adoption. This Ordinance shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) zoning applications approved by the City and not yet expired, or (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Oakland Municipal Code amendments if the applicant chooses to do so.

SECTION 8. Conforming Changes. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors) prior to formal publication of the amendments in the Oakland Municipal Code.

SECTION 9. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 10. Notice of Exemption. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

**AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, 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 REPEALING ORDINANCE NO. 13275 C.M.S., AMENDING THE OAKLAND MUNICIPAL CODE TO ADOPT CHAPTER 15.78, PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT, AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION FINDINGS

This ordinance repeals Ordinance No. 13275 C.M.S., which established a public art requirement for private development, and amends the Oakland Municipal Code to adopt Chapter 15.78, Public Art Requirements for Private Development. The ordinance recodifies existing developer public art requirements in OMC Chapter 15.78 and makes several minor clarifying changes to the public art requirement for private development, including adding an appeal procedure, refining various definitions, clarifying that in lieu contributions are due at the time of building permit application, and requiring signage and specific maintenance obligations.