

Chapter 15.78 - PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT

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".

(Ord. No. 13443, § 3, 6-20-2017)

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 (¼) 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.

(Ord. No. 13443, § 3, 6-20-2017)

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.

"Capital Improvement" means any capital improvement project performed by the City or City Contractors to construct or remodel a City-owned, leased or controlled: building, decorative or commemorative structure, park, street, sidewalk, parking facility or utility or any portion thereof, with the City limits of, or under the jurisdiction of, the City of Oakland.

"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, 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.

(Ord. No. 13443, § 3, 6-20-2017; Ord. No. 13491, § 2, 6-5-2018)

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.

(Ord. No. 13443, § 3, 6-20-2017)

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.

(Ord. No. 13443, § 3, 6-20-2017)

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.

(Ord. No. 13443, § 3, 6-20-2017)

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 (¼) 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 (¼) mile).

- B. In-Lieu Contribution. 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. 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 (3) 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 Section 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-half (1/2) 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 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.

(Ord. No. 13443, § 3, 6-20-2017; Ord. No. 13491, § 2, 6-5-2018)

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, 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.

(Ord. No. 13443, § 3, 6-20-2017)

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.

(Ord. No. 13443, § 3, 6-20-2017)

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 (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 (¼) 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 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 (¼) 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 been 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 (¼) 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.

(Ord. No. 13443, § 3, 6-20-2017; Ord. No. 13491, § 2, 6-5-2018)

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.

(Ord. No. 13443, § 3, 6-20-2017)