

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

(The effective date of these requirements shall be either September 17, 1985, the date that they originally became effective, or the date a subsequent modification, if any, became effective.)

(Formerly codified as Sec. 149 (see that section for prior legislative history); amended and redesignated by Ord. 108-10, File No. 091275, App. 5/25/2010; amended by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; Ord. [188-15](#), File No. 150871, App. 11/4/2015, Eff. 12/4/2015)

AMENDMENT HISTORY

Section amended in its entirety and divided into Secs. 429.1 through 429.7; Ord. [62-12](#), Eff. 5/19/2012. Section header amended; Ord. [188-15](#), Eff. 12/4/2015.

SEC. 429.1. DEFINITIONS.

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

"100% Affordable Housing Project" means a project that meets the applicability requirements for affordable housing projects set forth in Section 315(b) of this Code.

"Conservation" shall mean the profession devoted to the preservation of cultural property for the future.

"Construction Cost" shall be determined by the Department of Building Inspection in accordance with established industry standards or in the manner used to determine the valuation of work as set forth in Section 107A.2 of the Building Code.

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

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

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

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [63-20](#), File No. 200077, App. 4/24/2020, Eff. 5/25/2020; Ord. [3-24](#), File No. 230706, App. 1/19/2024, Eff. 2/19/2024)

AMENDMENT HISTORY

Reference updated; Ord. [63-20](#), Eff. 5/25/2020. Definition of 100% Affordable Housing Project added; Ord. [3-24](#), Eff. 2/19/2024.

SEC. 429.2. APPLICATION.

This section (Section 429.1 *et seq.*) shall apply to:

(a) all projects that involve construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, except for 100% Affordable Housing Projects;¹ and

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

- (1) all parcels in RH-DTR, TB-DTR, SB-DTR, UMU, WMUG, WMUO and SALI Districts;
- (2) properties that are zoned MUG, CMUO, or MUO or MUR and that are north of Division/Duboce/13th Streets; and
- (3) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and 7295 (Stonestown Galleria Mall).

For the purposes of this Section 429.2, a "Development Application" shall mean any application for a building permit, site permit, environmental review, Preliminary Project Assessment (PPA), Conditional Use, or Variance.

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [42-13](#), File No. 130002, App. 3/28/2013, Eff. 4/27/2013; Ord. [188-15](#), File No. 150871, App. 11/4/2015, Eff. 12/4/2015; Ord. [296-18](#), File No. 180184, App. 12/12/2018, Eff. 1/12/2019; Ord. [250-24](#), File No. 231268, App. 11/7/2024, Eff. 12/8/2024)

AMENDMENT HISTORY

Division (b)(1) amended; Ord. [42-13](#), Eff. 4/27/2013. Division (b)(2) amended; Ord. [188-15](#), Eff. 12/4/2015. Divisions (b)(1) and (b)(2) amended; Ord. [296-18](#), Eff. 1/12/2019. Undesignated introductory and concluding paragraphs and division (a) amended; Ord. [250-24](#), Eff. 12/8/2024.

CODIFICATION NOTE

1. So in Ord. [250-24](#).

SEC. 429.3. IMPOSITION OF PUBLIC ART FEE REQUIREMENT.

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

(b) **Amount of Fee.** Upon design approval of the development project from the Planning Department, and except as otherwise provided herein, the project sponsor shall dedicate and expend an amount equal to one percent of the construction cost of the building or addition as determined by the Director of DBI (the "Public Art Fee") for the purposes described herein and subject to the options set forth below.

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

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

(1) **Non-Residential Development Projects.** Non-residential buildings with public open space requirements greater than 1,499 square feet but less than 3,000 square feet that provide ground floor open space shall comply with Section 429.3 by providing on-site public art of a value equivalent to the Public Art Fee; provided, however, that if the required Public Art Fee exceeds \$500,000, only on-site public art valued at \$500,000 is required to be provided on-site. Non-residential buildings with public open space requirements greater than or equal to 3,000 square feet that provide ground floor open space shall comply with Section 429.3 by providing on-site public art of a value equivalent to the Public Art Fee; provided, however, that if the required Public Art Fee exceeds \$750,000, only on-site public art valued at \$750,000 is required to be provided on-site. In any case where the Public Art Fee requirement exceeds the amount required on-site, prior to issuance of a building or site permit the project sponsor shall elect one of the following options to fulfill any requirements imposed as a condition of approval and to notify the Arts Commission and the Department of their choice:

(A) to expend the remainder of the Public Art Fee on-site, or

(B) to deposit the remainder of the Public Art Fee into the Public Artwork Trust Fund established in Section 10.100-29 of the San Francisco Administrative Code for the purposes set forth therein and in Section 429.5(b), including the creation, installation, exhibition, conservation, preservation, and restoration of works of public art and for capital improvements to non profit arts facilities ("In-Lieu Fee for Public Artwork Trust") within the C-3 District or within a half mile of the boundary of the C-3 District or, if the project is within another zoning district, within a half mile of the project boundary, or

(C) to expend a portion of the remainder on-site and deposit the rest into the Public Artwork Trust Fund.

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

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

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

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

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

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

(f) **Development Fee Collection Unit Notice to Arts Commission and Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Arts Commission and to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 429.1 *et seq.* that will fulfill all or part of the requirements with an option other than the project sponsor's payment of an in-lieu fee to verify that the artwork

was placed in the agreed upon location with the appropriate ADA compliant signage. If the Arts Commission or the Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 429.1 *et seq.*

(g) **Process for Revisions of Determination Requirement.** In the event that the Department or the Planning Commission takes action affecting any development project subject to Section 429.1 *et seq.*, and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [56-13](#), File No. 130062, App. 3/28/2013, Eff. 4/27/2013; Ord. [188-15](#), File No. 150871, App. 11/4/2015, Eff. 12/4/2015)

AMENDMENT HISTORY

Former divisions (d)(1)(a)-(c) redesignated as (d)(1)(A)-(C); former divisions (d)(2)(i)-(iii) redesignated as (d)(2)(A)-(C); Ord. [56-13](#), Eff. 4/27/2013. Division (d)(2)(C) amended; Ord. [188-15](#), Eff. 12/4/2015.

SEC. 429.4. COMPLIANCE BY PROVIDING ON-SITE PUBLIC ARTWORK.

(a) **Installation.** The project sponsor must install the public art in compliance with this Section 429.4: (1) in areas on the site of the building or addition so that the public art is clearly visible from the public sidewalk or the open-space feature required by Section 138, or (2) on the site of the open-space feature provided pursuant to Section 138, or (3) in a publicly accessible lobby area of a Hotel ("On-Site Public Artwork"). Said On-Site Public Artwork shall be installed prior to issuance of the first certificate of occupancy; provided, however, that if the Zoning Administrator concludes that it is not feasible to install the Artwork within that time and that adequate assurance is provided that the Artwork will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than 12 months. Said works of art may include sculpture, bas-relief, murals, mosaics, decorative water features, tapestries or other artworks permanently affixed to the building or its grounds, or a combination thereof, but may not include architectural features of the building, nor artwork designed by the architect, except as permitted with respect to the in lieu contribution regarding publicly owned buildings meeting the criteria described above. Artworks shall be displayed in a manner that will enhance their enjoyment by the general public. The type and location of Artwork, but not the artistic merits of the specific artwork proposed, shall be approved by the Zoning Administrator in accordance with the provisions of Section 309 of this Code.

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

(c) **Removal, Relocation, or Alteration of Artwork.** Once the project sponsor has installed and completed the final Artwork, the project sponsor, building owner and any third party may not remove, relocate or alter the Artwork without notifying and consulting with the Planning Department at least 120 days prior to the proposed removal, relocation or alteration. A project sponsor's or building owner's notice of intent to the Planning Department to remove, relocate, or alter Artwork shall include written approval of the proposed removal, relocation, or alteration from the artist or artist's estate, if applicable, under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) ("VARA"), the California Art Preservation Act (Cal. Civil Code §§987 *et seq.*) ("CAPA"), or any successor laws protecting the integrity of Artwork, or a written waiver from the artist expressly waiving their rights, if any, under VARA and CAPA. The Planning Department shall not approve any removal, relocation, or alteration unless it finds any removed Artwork will be replaced with Artwork of equal or greater value or that any relocation or alteration is only a minor modification. If a project sponsor does remove, relocate, or alter the Artwork without notification and approval of the Planning Department, the Planning Department is authorized to pursue enforcement of this Section under Section 176 of this Code or to pursue any other remedy permitted by law.

(d) **Removal, Relocation, or Alteration of Artwork for Existing 100% Affordable Housing Projects.** Notwithstanding the requirements of subsection (c) of this Section 429.4, 100% Affordable Housing Projects for which public art has already been installed as of the effective date of the ordinance in Board of Supervisors File No. 230706, including a 100% affordable residential building built to satisfy affordable housing requirements of market rate projects, may remove, relocate, or alter Artwork if the Artwork has been vandalized or severely compromised such that it cannot be restored to its original condition without significant financial expenditures. A project sponsor's or building owner's notice of intent to the Zoning Administrator to remove, relocate, or alter Artwork shall include: (1) documentation of vandalism or severely compromised conditions and (2) written approval of the proposed removal, relocation, or alteration from the artist or artist's estate, if applicable, under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) ("VARA"), the California Art Preservation Act (Cal. Civil Code §§987 *et seq.*) ("CAPA"), or any successor laws protecting the integrity of Artwork, or a written waiver from the artist expressly waiving their rights, if any, under VARA and CAPA. The Zoning Administrator, after a duly noticed public hearing, may approve, conditionally approve, or deny removal, relocation, or alteration of the Artwork. The Zoning Administrator shall take into account the financial burden of repair and the extent of the vandalism, including past history of repeat vandalism, and likelihood that the Artwork may be vandalized again. For cases proposing removal under this subsection (d), the Zoning Administrator shall consider the viability of relocating the Artwork elsewhere on the property. In regard to relocation or alteration, including relocation of the Artwork elsewhere on the property, if the Zoning Administrator determines that relocation or alteration is a minor modification of the Artwork, then no hearing is required. Notice of the Zoning Administrator's hearing shall be sent to property owners within a 300 foot radius of the subject site at least seven days before the hearing. Enforcement of this subsection (d) shall be in accordance with Section 429.4(c).

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [217-16](#), File No. 160424, App. 11/10/2016, Eff. 12/10/2016; Ord. [3-24](#), File No. 230706, App. 1/19/2024, Eff. 2/19/2024)

AMENDMENT HISTORY

Former division (b) redesignated as (c); new division (b) added; Ord. [217-16](#), Eff. 12/10/2016. Divisions (a) and (c) amended; division (d) added; Ord. [3-24](#), Eff. 2/19/2024.

SEC. 429.5. ARTS COMMISSION PUBLIC ARTWORK TRUST FUND.

(a) All monies contributed to the Public Artwork Trust Fund pursuant to this Section 429 shall be deposited in the special fund maintained by the Controller called the Public Artwork Trust under Section 10.100-29 of the Administrative Code, as may be amended from time to time. The receipts in the Trust are hereby appropriated in accordance with law to be used by the Arts Commission within the C-3 District or within a half mile of the boundary of the C-3 District or, if the project is within another zoning district, within a half mile of the project boundary to enhance the visibility and quality of artworks in the public realm and to improve the public's access and enjoyment of the artworks in the public realm.

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

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

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

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

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

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

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [56-13](#), File No. 130062, App. 3/28/2013, Eff. 4/27/2013)

AMENDMENT HISTORY

Former divisions (b)(i) through (iv) redesignated as (b)(1) through (4); Ord. [56-13](#), Eff. 4/27/2013.

SEC. 429.6. RECOGNITION OF ARCHITECTS IN C-3 DISTRICTS.

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

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012; amended by Ord. [217-16](#), File No. 160424, App. 11/10/2016, Eff. 12/10/2016)

AMENDMENT HISTORY

Section and section header amended; Ord. [217-16](#), Eff. 12/10/2016.

SEC. 429.7. LIEN PROCEEDINGS.

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

(Added by Ord. [62-12](#), File No. 110853, App. 4/19/2012, Eff. 5/19/2012)

CODIFICATION NOTE

1. Ord. [62-12](#) references "Section 429.3(d)(2)(b) or (c)." The codifier has redesignated the three subdivisions of Sec. 429.3(d)(2) as (A) through (C). Accordingly, the reference in this section has been altered as shown.

[BICYCLE PARKING FEE]