File No. 110853 Committee Item No. 4
Board Item No. 6

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development **Date** March 26, 2012

Board of Supervisors Meeting **Date** 4/10/12

Cmte	Board	
☐	☐	Motion
☐	☐	Resolution
☒	☒	Ordinance
☒	☒	Legislative Digest
☐	☐	Budget and Legislative Analyst Report
☐	☐	Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form (for hearings)
☒	☒	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER **(Use back side if additional space is needed)**

☒	☒	Environmental Review Determination, dtd 8/23/11
☒	☒	Planning Commission Resolution No. 18477
*☒	*☒	Downtown Gallery Art Inventory
☒	☒	Hearing Notice
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Completed by: Alisa Miller **Date** March 23, 2012
Completed by: Alisa Miller **Date** March 28, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Planning Code and Administrative Code - Public Art Fee and Public Artwork Trust Fund]

Ordinance: 1) amending the San Francisco Planning Code Section 429 to provide that developers currently required to spend one percent (1%) of construction costs for public artwork on any new development project or addition to an existing building over 25,000 square feet located in a C-3 district have an option to contribute all or a portion of that fee to a City fund dedicated to support public art, and after January 1, 2013 imposing this requirement on any new development project or addition to an existing building over 75,000 square feet located in a zoning district other than C-3 to extend the fee to 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: (a) all parcels in RH-DTR, TB-DTR, SB-DTR, SLI, SLR, SSO, C-M, and UMU Districts; (b) properties that are zoned MUG, MOU, or MUR and that are north of Division/Duboce/13th Streets; and (c) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and 7295 (Stonestown Galleria Mall); 2) amending the San Francisco Administrative Code by adding Section 10.200-29 to establish a Public Artwork Trust Fund, funded through contributions and Public Art Fees, for the creation, installation, exhibition, conservation, preservation, and restoration of temporary and permanent public art and capital improvements to nonprofit art facilities within the C-3 district and within a half mile of the boundary of the C-3 district or, if the project is in another zoning district, within a half mile of the project boundary, to be administered and expended by the Arts Commission; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings

(a) The Planning Department has determined that the actions contemplated in this ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 110853 and is incorporated herein by reference.

(b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18477, and incorporates those reasons herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk of the Board of Supervisors in File No. 110853.

(c) The Board of Supervisors finds that this ordinance is in conformity with the General Plan and the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 18477, and hereby incorporates those reasons herein by reference.

Section 2. The San Francisco Planning Code is hereby amended by amending Section 429, to read as follows:

SEC. 429. ARTWORKS, *OPTIONS TO MEET PUBLIC ART FEE REQUIREMENT,* RECOGNITION OF ARCHITECT AND ARTISTS, AND ~~*MODEL*~~ REQUIREMENTS IN C-3 DISTRICTS.

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

SEC. 429.1. DEFINITIONS. (a) ~~*Artworks.*~~ *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.:*

"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 107.2 of the Building Code.

~~"High capacity nonprofit arts organization" shall mean a nonprofit organization that the Arts Commission determines, based on its review of the organization's annual report, certified audits, performance attendance, prior track record, critical reviews, and other information, can provide the intended programming based on such factors as: the number of years of operation; the financial health and stability of the organization; and the quality of programming, constituency served, and evidence of community support. The Arts Commission may, in its discretion, further refine this definition in rules and regulations.~~

"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.

SEC. 429.2. APPLICATION. *This section shall apply to:*

(a) *all projects that involve* ~~*In the case of*~~ 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~~, works of art costing~~ and

~~(b) on or after January 1, 2013, all projects in zoning districts other than a C-3 District that involve construction of a new building or addition of floor area in excess of 75,000 square feet.~~ 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, SLI, SLR, SSO, C-M, and UMU Districts; (2) properties that are zoned MUG, MOU, 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, a "Development Application" shall mean any application for a building permit, site permit, environmental review, Preliminary Project Assessment (PPA), Conditional Use, or Variance.

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 Department of Building Inspection~~ (the "Public Art Fee") for the purposes described herein and subject to the options set forth below. ~~shall be installed and maintained (i) in areas on the site of the building or addition and clearly visible from the public sidewalk or the open space feature required by Section 138, or (ii) on the site of the open space feature provided pursuant to Section 138, or (iii) upon the approval of any relevant public agency, on adjacent public property, or (iv) in a publicly accessible lobby area of a hotel. In lieu of installing and maintaining works of art pursuant to subsections (i) through (iv) above, a project sponsor may elect to contribute a sum of money at least equivalent to the cost of the artwork to finance, in whole or in part, rehabilitation and restoration of the exterior of a publicly owned building provided that the building is (i) owned by the City and County of San Francisco, and (ii) located in a P District adjacent to a C-3 District, and (iii) designated as an historical landmark by Article 10 of this Code or designated as a Category I Significant Building by Article 11 of this Code and listed as a National Historical Landmark on the National Historical Register; provided, however, that the right to elect to use this in lieu provision to satisfy the obligations of this Section shall terminate five years from the effective date of this provision.~~*

*(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) ~~**Sponsor's Choice**~~ **Options** to Fulfill Requirements.*

(1) **Non-Residential Development Projects ~~With Large Ground-Floor Public Open Space Requirements~~.** Non-residential buildings with public open space requirements greater than 1,499 square feet but less than 3,000 square feet that provides ~~on the ground floor open space that are over 3,000 square feet~~ 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 ~~$1,000,000~~ $500,000, only on-site public art valued at ~~$1,000,000~~ $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 ~~may~~ 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 ~~and Non-Residential Development Projects Without Large Ground-Floor Public Open Spaces~~. *Prior to issuance of a building or site permit for a* residential *development project* ~~or a non-residential development project with public open spaces on the ground floor that are 3,000 square feet or less that is~~ *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:*

~~(1)~~ (i) ***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.*

~~(2)~~ (ii) ***Option to Contribute 100% of Public Art Fee Amount to Public Artwork Trust*** **Fund.** *Effective on the effective date of this Ordinance No. _____ 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 Art*work *Trust Fund* ~~defined under~~ established in *Section 10.100-29 of the San Francisco Administrative Code for the purposes set forth* therein and *in Section 429.5*~~7~~*(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. As provided in Section 402, the project sponsor shall pay the fee to the Development Fee Collection Unit at DBI.

~~(3)~~ (c) ***Option to*** **Expend** ~~**Provide**~~ ~~50%~~ **a Portion** ***of*** **the** ***Public Art Fee Amount to On-Site Public Artwork*** ~~**with**~~ **and** ***the Remainder*** ~~**Remaining Discounted Amount**~~ ***to*** **the** ***Public Art*****work** ***Trust*** **Fund.** *Effective on the effective date of this Ordinance No. _____ a project that has not received its first construction document may elect to expend* ~~50%~~ *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) ~~(1)~~ above regarding On-site Public Artwork, and deposit ~~45% of~~ the remaining balance of the Public Art Fee into the Public Art*work *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* ~~has elected to~~ 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 of 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.*

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 (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 ~~*works of art*~~ *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 works within that time and that adequate assurance is provided that the works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not less 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* ~~following a review of the Arts Commission's written report under subsection (b) below~~ in accordance with the provisions of Section 309 of this Code. ~~*The term "construction cost" shall be determined in the manner used to determine the valuation of work as set forth in Section 107.2 of the Building Code.*~~

~~(b) Consultation with Arts Commission. Effective on the effective date of this Ordinance No. _____, the project sponsor shall provide information to the Arts Commission regarding the type, durability, design, artistic merit, and publicly accessible location of the project sponsor's proposed On-Site Public Artwork. Following such consultation and prior to DBI's issuance of the first construction document, the Arts Commission shall provide the~~

~~project sponsor and Planning Department with a written report summarizing its recommendations regarding the type, durability, design, artistic merit, and publicly accessible location of the On-Site Public Artwork. The Arts Commission shall conduct its consultation with the project sponsor regarding the On-Site Public Artwork proposal within 60 days of receiving complete documentation of the On-Site Public Artwork proposal from the project sponsor, unless the Zoning Administrator approves a time extension following a written request by the Arts Commission setting forth the reasons for the requested extension. The Arts Commission recommendation shall be advisory to the Planning Department.~~

~~(c) Administrative Fee. The Arts Commission is authorized to collect an administrative fee from the project sponsor of $2,500 for administration of this option and, if justified, an additional amount based on a time and materials basis. The administrative fee shall be taken out of the Public Art Fee, not calculated in addition to the Fee. The Arts Commission may adjust the administrative fee annually based on a cost-of-living or similar index. Any such adjustment shall be published on the Arts Commission and Department of Planning websites.~~

(b) ~~(d)~~ ***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* ~~Arts Commission~~ Planning Department *at least 120 days prior to the proposed removal, relocation or alteration. The* ~~Arts Commission~~ Planning Department *shall not approve any removal, relocation, or alteration unless it finds* ~~that such removal~~ any removed Artwork will be replaced with Artwork of equal of greater value ~~,~~ or that any *relocation, or alteration is* only a minor modification ~~of equal or greater value~~. *If a project sponsor does remove, relocate, or alter the Artwork without notification and approval of the* Planning Department ~~Arts Commission~~, *the Planning Department is authorized to pursue enforcement of this Section under Section 176 or 176.1 of this Code or to pursue any other remedy permitted by law.*

~~**SEC. 429.5. COMPLIANCE BY CONTRIBUTION OF 100% OF PUBLIC ART FEE AMOUNT TO PUBLIC ARTWORK TRUST.**~~

~~With the approval of the Arts Commission, the project sponsor may designate the use of her or his contribution to the Trust to a high capacity private, non profit arts organization to provide exterior public artistic programming in the C-3 district or within a half mile of the boundary of the C-3 District. As provided in Section 402, the project sponsor shall pay the fee to the Development Fee Collection Unit at DBI. DBI shall not issue a first construction document for a project subject to this Section unless and until the project sponsor has paid the fee in full.~~

~~**SEC. 429.6. COMPLIANCE BY PROVIDING 50% OF PUBLIC ART FEE AMOUNT TO ON-SITE PUBLIC ARTWORK WITH REMAINING DISCOUNTED AMOUNT TO PUBLIC ART TRUST.**~~

~~(a) Installation. The project sponsor must install and complete the final Artwork as provided in Section 429.4(a) and 45% of the remaining amount to the Public Art Trust. These two actions will fulfill the project sponsor's Public Art Fee Requirement under this Section 42.9 and the project sponsor may retain the balance of 5% of the Public Art Fee.~~

~~(b) Consultation with Arts Commission. Effective on the effective date of this Ordinance No. _____, the project sponsor shall provide information to and consult with the Arts Commission pursuant to the provisions of Section 429.4(b).~~

~~(c) Administrative Fee. The Arts Commission is authorized to collect an administrative fee from the project sponsor of $2,500 for administration of this option and, if justified, an additional amount based on a time and materials basis. The administrative fee shall be taken out of the Public Art Fee Requirement, not calculated in addition to the Fee. The Arts Commission may adjust the administrative fee annually based on a cost-of-living or similar~~

~~index. Any such adjustment shall be published on the Arts Commission and Department of Planning websites.~~

SEC. 429.57. 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 Art*work *Trust* Fund *shall be* overseen by the Arts Commission and *used to fund: (i) 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*; (ii) 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 ~~subject to a 15% maximum allocation per single project~~*; (iii)* ~~a competitive public process overseen by the Arts Commission for~~ *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*;* ~~(iv) with the approval of the Arts Commission and the designation of the project~~

~~sponsor, to a high capacity private, non profit arts organization to provide exterior public artistic programming in the C-3 district or within a half mile of the boundary of the C-3 District;~~ *and* ~~(v)~~ (iv) *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 ~~as well as the services of the Department of Building Inspection in administering collection of the Public Art Fee pursuant to Chapter 107A.13 of the San Francisco Building Code.~~

(c) The Arts Commission shall administer and expend the Public Artwork Trust Fund, ~~which~~ and *shall have the authority to prescribe rules and regulations governing the Fund that are consistent with this Section.* ~~The Arts Commission shall prepare and submit an annual report of the expenditures and use of the Public Art Trust to the Director of the Planning Department starting in July 1, 2012 for the prior fiscal year.~~

*SEC.429.*6~~8.~~ ~~*(b)*~~ **Recognition of Architects and Artists.** 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, a*n ADA compliant* plaque or cornerstone identifying the project architect and the creator of the *On-Site Public Artwork* ~~*artwork*~~ provided pursuant to ~~*Subsection (a)*~~ *this Section 429* and the erection date *of the On-Site Public Artwork* shall be placed at a publicly conspicuous location on *or in* the building prior to the issuance of the first certificate of occupancy. ~~Prior to the issuance of the First Certificate of Occupancy, the project sponsor shall also send a written notice to the Arts Commission for the Commission's records containing the name of the artist(s), the title, date and medium of the artwork, a photograph of the artwork, and the location of the Artwork and address of the building. The Commission staff shall make this information available to the public in an accessible format, such as through the publication of a public art map or on its website, and shall update the information regularly.~~

~~*(c) Models. In a C-3 District, in the case of construction of a new building, or any addition in height in excess of 40 feet to an existing building, two models shall be submitted to the Planning Department prior to approval of the project, as follows:*~~

~~*(1) One model of the building at a scale of 1" = 100'; and*~~

~~*(2) One model of the block in which the building is located at a scale of 1" = 32', which model shall include all the buildings on the block on which the building is located and the streets surrounding the block to the centerline of the streets and shall use as its base the land form starting at sea level; provided, however, that if the Planning Department determines that it has an up-to-date model of the block in which the building is located, only a model of the building shall be submitted.*~~

~~*(d) Procedure Regarding Certificate of Occupancy. The Director of DBI shall provide notice in writing to the Zoning Administrator at least five business days prior to issuing the first certificate of occupancy for any building subject to the provisions of this Section. If the Zoning Administrator notifies the Director of DBI within such time that the provisions of this Section have not been complied with, the Director of DBI shall deny the permit. If the Zoning Administrator notifies the Director of DBI that the provisions of this Section have been complied with or fails to respond within five business days, the permit of occupancy shall not be disapproved pursuant to this Section. The procedure set forth in this subsection is not intended to preclude enforcement of the requirements of this Section through any means otherwise authorized.*~~

SEC. 429.7~~9~~. LIEN PROCEEDINGS. *A project sponsor's failure to comply with the requirements of* ~~Sections 429.5 or 429.6~~ Section 429.3(d)(2)(b) or (c) *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.*

Section 3. The San Francisco Administrative Code is hereby amended by adding a new section 10.100-29 to read as follows:

SEC. 10.100-29. ARTS COMMISSION PUBLIC ARTWORK TRUST FUND.

(a) ***Establishment of Fund.*** *The Arts Commission Public Artwork Trust Fund is established as a category* ~~four~~ eight *fund to receive any monies collected for the Public Art Fee in accordance with Planning Code Section 429, as may be amended from time to time, and deposited with the City Treasurer for use by the Arts Commission in accordance with Planning Code Section 429 and to receive* ~~all~~ *revenue from private contributions to the City for the Arts Commission's public art program* for use in 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.

(b) ***Use of Fund.*** *Unless otherwise provided by Charter, municipal code, contract or funding source, the monies in said fund shall be expended only for the (i) 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; *(ii) 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 ~~subject to a 15% maximum allocation per single project~~; *(iii) a competitive public process overseen by the Arts Commission for 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; ~~(iv) with the approval of the Arts Commission and the designation of the project sponsor, to a high capacity private, non profit arts organization to provide exterior public~~

~~artistic programming in the C-3 district or within a half mile of the boundary of the C-3 District;~~ *and (v) 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~~, as well as the services of the Department of Building Inspection in administering collection of the Public Art Fee pursuant to Chapter 107A.13 of the San Francisco Building Code~~.

*(c) **Exceptions to Fund Category.** The Arts Commission shall authorize all expenditures from the fund.*

Section 4. The Board of Supervisors urges the Arts Commission, in consultation with the Planning Department and the public, to engage in a strategic planning process as to how the Public Artwork Trust Fund shall be expended. The Board of Supervisors also urges the Arts Commission to recommend an updated set of "Fine Arts Guidelines" to the Planning Department for review and approval by the Planning Commission.

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 6. This Section is uncodified.

In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendments additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation. This

Ordinance shall not be construed to effectuate any unintended amendments. Any additions or deletions not explicitly shown as described above, omissions, or other technical and non-substantive differences between this Ordinance and the Planning Code that are contained in this legislation are purely accidental and shall not effectuate an amendment to the Planning Code. The Board hereby authorizes the City Attorney, in consultation with affected City departments, to make those necessary adjustments to the published Planning Code, including non-substantive changes such as renumbering or relettering, to ensure that the published version of the Planning Code is consistent with the laws that this Board enacts.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Judith A. Boyajian
JUDITH A. BOYAJIAN
Deputy City Attorney

FILE NO. 110853

REVISED LEGISLATIVE DIGEST

(3/26/2012, Amended in Committee)

[Planning Code and Administrative Code - Public Art Fee and Public Artwork Trust Fund]

Ordinance 1) amending Section 429 of the San Francisco Planning Code to provide that developers currently required to spend one percent (1%) of construction costs for public artwork on any new development project or addition to an existing building over 25,000 square feet located in a C-3 district have an option to contribute all or a portion of that Fee to a City fund dedicated to support public art, and after January 1, 2013 imposing this requirement on any new development project or addition to an existing building over 75,000 square feet located in a zoning district other than C-3 to extend the fee to 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: (a) all parcels in RH-DTR, TB-DTR, SB-DTR, SLI, SLR, SSO, C-M, and UMU Districts; (b) properties that are zoned MUG, MOU, or MUR and that are north of Division/Duboce/13th Streets; and (c) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and 7295 (Stonestown Galleria Mall); 2) amending the San Francisco Administrative Code by adding Section 10.200-29 to establish a Public Artwork Trust Fund, funded through contributions and Public Art Fees, for the creation, installation, exhibition, conservation, preservation, and restoration of temporary and permanent public art and capital improvements to nonprofit art facilities within the C-3 district and within a half mile of the boundary of the C-3 district or, if the project is in another zoning district, within a half mile of the project boundary, to be administered and expended by the Arts Commission; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

Project sponsors of new development projects or the addition of floor area in excess of 25,000 square feet located in the C-3 District are subject to a public art requirement. Project sponsors currently are required to install on the project site works of art costing an amount equal to 1% of the construction cost of that project. For a five-year period, project sponsors also had the option of contributing a sum of money equivalent to the cost of the artwork to finance the rehabilitation and restoration of certain publicly owned and historically significant buildings, but that provision expired in 2009. The Planning Department approves the on-site public artwork.

Amendments to Current Law

The public art contribution requirement remains equal to 1% of the construction cost of the project. However, an option to contribute all or a portion of a fee (the "Public Art Fee") to a newly-established Public Artwork Trust Fund has been added. The fee is extended to 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: (a) all parcels in RH-DTR, TB-DTR, SB-DTR, SLI, SLR, SSO, C-M, and UMU Districts; (b) properties that are zoned MUG, MOU, or MUR and that are north of Division/Duboce/13th Streets; and (c) all parcels zoned C-2 except for those on Blocks 4991 (Executive Park) and 7295 (Stonestown Galleria Mall).

Non-residential development projects with public open space requirements greater than 1,499 square feet but less than 3,000 square feet must still comply with the public art requirement by providing on-site public art at a value equivalent to the Public Art Fee unless that Fee exceeds $500,000, in which case only on-site public art valued at $500,000 is required to be provided on site. Non-residential buildings with public open space requirements equal to or greater than 3,000 square feet must provide on-site public art at a value equivalent to the Public Art Fee unless that Fee exceeds $750,000, in which case only on-site public art valued at $750,000 is required to be provided on site. Where the required Public Art Fee exceeds the on-site requirement, prior to the issuance of a building or site permit the project sponsor must elect whether to (1) expend the remainder of the Fee on site, (2) deposit the remainder of the Fee into the Public Artwork Trust Fund, or (3) expend a portion of the remainder on site and the rest into the Public Artwork Trust Fund. For residential development projects, prior to issuance of a building or site permit the project sponsor must elect to either (1) provide on-site public art of a value at least equivalent to the Public Art Fee, (2) deposit 100% of the Fee into the Public Artwork Trust Fund, or (3) expend a portion of the Public Art Fee for on-site public art and deposit the remainder into the Public Artwork Trust Fund.

The Public Artwork Trust is administered by the Arts Commission through a competitive public process and is used to fund: (1) the creation, installation, and exhibition of temporary and permanent public works of art in the public realm, (2) the conservation, preservation, and restoration, but not maintenance of temporary and permanent public works of art in the public realm, (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, and (iv) the reasonable administrative expenses of the Arts Commission staff in administering compliance with the requirements, which shall not exceed 20% of the costs for any one project.

Background Information

The Arts Commission has worked closely with the Mayor's office, City Planning staff, the arts community, as well as civic organizations to revise Section 429 of the Planning Code, originally enacted in 1985 to require developers within the C-3 district to expend 1% of their project construction costs to acquire and place permanent public art at their development site. The impetus for this change is to give developers that are currently subject to the public art contribution requirement the option to pay a Public Art Fee instead of providing public art on site; to expand the "Benefits District" by ½ mile in all directions; and to establish a Public Artwork Trust Fund that will allow for greater flexibility in the application of the fee to animate the downtown with art and performance in the parks and public plazas, create new cultural destinations through art-conscious city planning, provide additional public opportunities to showcase the work of San Francisco based artists and arts organizations, and to allow for capital improvements to San Francisco nonprofit arts organizations. Developers may elect to continue exactly as they have for the past 25 years and not pursue the new alternative options.

This legislation will result in no additional costs to developers that are currently subject to the public art contribution requirement. However, after January 1, 2013 the public art contribution requirement will be extended to zoning districts other than C-3. After that date, the public art contribution requirement is extended to new development projects or additions to existing buildings over 75,000 square feet located in all zoning districts other than C-3.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 15, 2011

Planning Commission
Attn: Linda Avery
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On July 20, 2011, Mayor Lee introduced the following proposed legislation:

File No. 110853

Ordinance: 1) amending the San Francisco Planning Code, Section 429, to provide that developers currently required to spend 1% of construction costs for public artwork on any development project over 25,000 square feet located in a C-3 district have an option to contribute all or a portion of that Fee to a City fund dedicated to support public art; 2) amending the San Francisco Administrative Code by adding Section 10.200-29 to establish a Public Artwork Trust Fund, funded through contributions and Public Art Fees, for the creation, installation, exhibition, conservation, preservation, and restoration of temporary and permanent public art and capital improvements to nonprofit art facilities within the C-3 district to be administered and expended by the Arts Commission; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

Alisa Somera

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Exempt from CEQA per Article 18, Statutory Exemptions, Section 15273, Rates To Us Fares and Charges.
Nannie Turrell
August 23, 2011

SAN FRANCISCO
PLANNING DEPARTMENT

October 31, 2011

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Ms. Angela Calvillo, Clerk
Honorable Supervisor David Campos
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Case Number CASE NO. 2011.0921T to the Board of Supervisors File No. 11-0853: Public Artwork Ordinance**

Recommendation: **Approval with Modifications**

Dear Ms. Calvillo, Mayor Edwin Lee, and Supervisor David Chiu,

On October 27, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted 7-0 to recommend approval with modifications. Specifically, the proposed Ordinance should be modified as follows:

1. **Maintain the Downtown Gallery associated with buildings that have significant POPOS.**
   a. ~~Maintain the existing requirement for on-site art for non-residential~~ buildings with public open spaces that are over 3000 square feet and are located on the ground floor.
   b. Other than the non-residential buildings with a requirement for a public open space of at least 3000sf, allow all other project to choose to either provide on-site art or fee payment to the Trust.
   c. For very large projects with an art requirement of over $1 million, only require the first $1 million to be spent on-site. Fees above $1 million could be either used on-site or deposited into the fund at the project sponsor's choosing.
2. **Apply requirement universally to all uses over 25,000sf in all districts, not just theC-3 District.**
3. **Allow more flexibility in how funds are spent, provided the expenditures are decided through a public process administered by the Arts Commission.**

a. Instead of providing an option that prescribes percentages for on-site art and for fund payment, the Commission suggests that the requirement for residential uses be divvied up in any amount between either on-site art or payment into the Artworks Trust of the sponsors choosing.

b. If the Non-Residential requirement stays in place, there is no need for fiscal limits on how the Artworks Trust could be spent.

c. Remove the proposed 5% discount for projects that provide both onsite artworks and pay into the fund.

4. **Remove Art Commission Advisory Review for On-Ste Art.**
5. **Consider adding alternative sources of funding for Public Art Projects administered by the Arts Commission.**
6. **The Commission requests that the Board Land Use Committee provide a reasonable amount of time prior to scheduling the hearing for consideration of this ordinance.**

Additional details on these recommendations are in the Commission's attached resolution. The offices of Mayor Edwin Lee and Board President David Chiu, please advise the City Attorney at your earliest convenience if you wish to incorporate any changes recommended by the Commission.

If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorneys: Judy Boyajian and Cheryl Adams
Jason Elliott and Catherine Rauschuber

Attachments (one copy of the following):
Planning Commission Resolution No. 18475
Executive Summary, Map of C-3 District, Draft Inventory of Existing Downtown Gallery

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Planning Commission Resolution No. 18477

Planning Code Text Change

HEARING DATE: OCTOBER 27, 2011

Project Name:	**Downtown Public Art Fee and Public Artwork Trust Fund**
Case Number:	2011.0921T [Board File No. 11-0853]
Initiated by:	Mayor Edwin Lee and Supervisor Chiu: Introduced July 20, 2011
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	Kelley Amdur, Manager of Current Planning
Recommendation:	**Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS SECTION SECTION 429 TO AMEND THE CURRENT REQUIREMENT THAT 1% OF CONSTRUCTION COSTS FOR DOWNTOWN DEVELOPMENTS GREATER THAN 25,000 BE SPENT PROVIDING PUBLIC ART ONSITE, ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on July 20, 2011, Mayor Lee and Supervisor David Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0853 which would amend Planning Code Section Section 429 to amend the current requirement that 1% of construction costs for downtown developments greater than 25,000 be spent providing public art onsite and instead would allow the following options to be provided either within the C-3 District or within a ½ mile radius of this district:

1) Contribute 100% of this money into a new "Public Artwork Trust" fund administered by the Arts Commission; or
2) Designate 100% of this money to a specific nonprofit arts facility; or
3) Provide public art consistent with the current requirements and new additional review by the Arts Commission; or
4) Receive a 5% discount on the fee if the sponsor agrees to provide 50% of fee onsite (subject to review described above) and contribute 45% into the Public Artwork Trust.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 27, 2011; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Article 18, Statutory Exemptions 15273; and,

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the proposed Ordinance should be modified as follows:

1. **Maintain the Downtown Gallery associated with buildings that have significant POPOS.** In the Commission's analysis of the existing Downtown Gallery, arts provided in concert with POPOS play crucial roles. Artwork in these spaces signal that the space is public and provide critical activation of the space with permanent works of art. These spaces must be maintained. Further, artworks provided and maintained by private parties leverage private investment by relieving the City from responsibilities to seek, and secure art as well as to provide with future maintenance and upkeep—a duties that the City currently struggles to fund adequately.
    a. **Maintain the existing requirement for on-site art for non-residential buildings with public open spaces that are over 3000 square feet and are located on the ground floor.** The Commission believes that the cornerstone of the existing program should be maintained and that the large groundfloor POPOS should remain activated by permanent, monumental art. Given the complexities in making rooftop spaces readily accessible and the limitations of smaller open spaces, this requirement would be limited to projects with large open space requirements.
    b. **Other than the non-residential buildings with a requirement for a public open space of at least 3000sf, allow all other project to choose to either provide on-site art or fee payment to the Trust.** If the critical element of the existing 1% for Art Requirement is maintained so that artworks are provided in conjunction with large public open spaces, then the Commission is open to experimentation with other projects that would trigger the requirement.
    c. **For very large projects with an art requirement of over $1 million, only require the first $1 million to be spent on-site. Fees above $1 million could be either used on-site or deposited into the fund at the project sponsor's choosing.** There are have been projects in the past where the art requirement exceeded $1 million. Providing artwork of $1 million on-site should be sufficient for monumental art to activate the POPOS. The Commission is open to flexibility in the use of remaining fees that exceed $1 million for other uses including performance and ephemeral art.
2. **Apply requirement universally to all uses over 25,000sf in all districts, not just theC-3 District.** Given that large-scale development is not limited to the downtown C-3 District only, there

appears to be no valid reason for not applying the fee to all non-residential uses of this size, particularly in areas of SoMa and the Eastern Neighborhoods where substantial non-residential growth is expected and where there are also requirements for POPOS[1]. There is a fair amount of office, hotel, institutional and retail development happening outside of the C-3 throughout SoMa and Eastern Neighborhoods mixed-use districts, and "Downtown" has functionally expanded to effectively include much of SoMa and other nearby districts. It would be more consistent with the current spirit of the requirement to extend the requirement to all major development outside of the downtown C-3 Districts.

3. **Allow more flexibility in how funds are spent, provided the expenditures are decided through a public process administered by the Arts Commission.** If the critical element of the existing 1% for Art Requirement is maintained so that artworks are provided in conjunction with public open space requirements greater than 3000 sf, then the Commission is open to experimentation with other projects that would trigger the requirement.

   a. **Instead of providing an option that prescribes percentages for on-site art and for fund payment, the Commission suggests that the requirement for residential uses be divvied up in any amount between either on-site art or payment into the Artworks Trust of the sponsors choosing** The proposed Ordinance is very prescriptive in the options. As long as the POPOS are activated with art as described above, the Commission believes that it is permissible to allow project sponsors the flexibility to choose to contribute to the fund or provide onsite art or to choose any combination of the two options.

   b. **If the Non-Residential requirement stays in place, there is no need for fiscal limits on how the Artworks Trust could be spent.**

      i. The public process of the Art Commission allocation will ensure appropriate City review and opportunity for public involvement. While this process isn't yet articulated, the Art Commission pledges to resolve this in the near-term.

      ii. The Commission encourages removing the option of "designating" that the money be spent on a particular non-profit. This option presents too great of temptation for "gifting" of favors.

   c. **Remove the proposed 5% discount for projects that provide both onsite artworks and pay into the fund.** The Commission recommends not reducing the amount of money dedicated to the provision of artwork. There is no public benefit in reducing the fee for projects that provide a mixed contribution of both on-site artworks and fund payment, and there should not be an inherent preference between on-site art and payment of the fee. Allowing a project sponsor to pay a fee in lieu of providing art is already an inherent incentive for developers to choose fee payment over the

[1] Planning Code Section 135.3 describes requirements for "Usable Open Space For Uses Other Than Dwelling Units, Group Housing And Live/Work Units Within The South Of Market And Eastern Neighborhoods Mixed Use Districts". Creating a new requirement for onsite public art to activate open spaces provided by this requirement seems consistent with the original intent.

provision of art on-site. Additional discounts only serve to reduce the amount of funding for works of art.

4. **Remove Art Commission Advisory Review for On-Ste Art.** There is already a review process for the placement the value, type, and location of artwork. Artworks on private sites provide many benefits to the City such as the indefinite maintenance and periodic restoration of the artwork by the building owner. Further, by allowing project sponsors to pick art associated with their own building, the City often benefits from owners who voluntarily exceed the requirement—as has happened in the past. As long as the City ensures "publicness" of the artwork, the Commission feels it benefits the City to allow more freedom in choice of the artwork and city government should not be in the position of evaluating the content or artistic merit of art on private property. The artwork provided to date is of undeniably high-quality; adding government review will not improve the quality of the art.
5. **Consider adding alternative sources of funding for Public Art Projects administered by the Arts Commission.** The Commission recognizes the severe funding constraints for administration of public art and programs by the Art Commission. Therefore, the City should explore additional avenues to fortify funding sources for the Art Commission. There is currently a Public Art requirement which provides that 2% of the construction cost of public projects goes towards public art. This program should also be evaluated for potential to provide additional funding.
6. **The Commission requests that the Board Land Use Committee provide a reasonable amount of time prior to scheduling the hearing for consideration of this ordinance.** The Planning Commission has respectfully requested that the legislative sponsors of this Ordinance, Mayor Edwin Lee and Board President David Chiu, be given more time to conduct additional outreach prior to Board action.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. **Artworks provided in concert with POPOS play crucial roles.** Artwork in these spaces signal that the space is public and provide critical activation of the space with permanent works of art. These spaces must be maintained. Further, artworks provided and maintained by private parties leverage private investment by relieving the City from responsibilities to seek, and secure art as well as to provide with future maintenance and upkeep—a duties that the City currently struggles to fund adequately.
2. **Flexibility in the use of public artworks funding can be tested in other avenues.** If the critical element of the existing 1% for Art Requirement is maintained so that artworks are provided in conjunction with public open spaces greater than 3000 square feet, then the Commission is open to experimentation with other projects that would trigger the requirement.
3. **Maintain a full One Percent for art.** The Commission believes there is no public benefit in reducing the fee for projects that provide a mixed contribution of both on-site artworks and fund payment, and there should not be an inherent preference between on-site art and payment of the fee. Allowing a project sponsor to pay a fee in lieu of providing art is already an inherent

incentive for developers to choose fee payment over the provision of art on-site. Additional discounts only serve to reduce the amount of funding for works of art.

4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. DOWNTOWN PLAN

POLICY 1.1
Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

OBJECTIVE 10 ASSURE THAT OPEN SPACES ARE ACCESSIBLE AND USABLE.

POLICY 10.4
Provide open space that is clearly visible and easily reached from the street or pedestrian way.

OBJECTIVE 11 PROVIDE CONTRAST AND FORM BY CONSCIOUSLY TREATING OPEN SPACE AS A COUNTERPOINT TO THE BUILT ENVIRONMENT.

POLICY 16.5
Encourage the incorporation of publicly visible art works in new private development and in various public spaces downtown.

The quality of life is enriched by art and artistic expression in many varied forms. The worker or visitor to downtown spends many hours in an environment of office buildings and commercial enterprises. Art in this environment can offer a counterpoint, attract the eye, stimulate the imagination, arouse emotions or just cause a momentary interest or amusement.

In the past, many prominent buildings included sculptured relief, ornate custom grillwork, mosaics, murals, carvings, as well as statuary and other forms of artistic embellishment. Buildings were less separable from art and artistic expression.

To reestablish this tradition of enhancing the environment for all to enjoy, artwork should be incorporated in new buildings and public spaces in downtown. Art work is required for all new public buildings of the City and County. The Redevelopment Agency has successfully used a requirement for art work in its downtown redevelopment projects to obtain major fountains, sculpture, and other artworks which have made a substantial contribution to the quality of the downtown environment.

Sculpture, bas-relief, mosaics, murals, and decorative water features are among the types of artwork that should be provided.

Public Art:

Art in the public right-of-way is strongly encouraged throughout the downtown area. Art installations might range from sculptures, sidewalk inlays, and kiosk displays to performance art, dance pieces, and temporary installations.
Empty storefronts should be utilized for temporary art installations to enliven the streetscape.

II. ARTS ELEMENT

OBJECTIVE I-1
RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

OBJECTIVE I-2
INCREASE THE CONTRIBUTION OF THE ARTS TO THE ECONOMY OF SAN FRANCISCO.

OBJECTIVE III-1
ENHANCE THE CONTRIBUTION OF ARTISTS TO THE CREATIVE LIFE AND VITALITY OF SAN FRANCISCO.

POLICY III-1.1
Develop funding sources for individual artists.

OBJECTIVE III-2
STRENGTHEN THE CONTRIBUTION OF ARTS ORGANIZATIONS TO THE CREATIVE LIFE AND VITALITY OF SAN FRANCISCO.

POLICY III-2.1
Support a stable funding base for small, medium and large arts organizations and develop new funding sources to enable arts organizations of all sizes to respond to demand for services.

POLICY III-2.2
Assist in the improvement of arts organizations' facilities and access in order to enhance the quality and quantity of arts offerings.

POLICY V-1.1
Provide the greatest possible public input into considerations regarding arts funding.

OBJECTIVE V-2
SECURE NEW SOURCES OF REVENUE FOR THE ARTS.

OBJECTIVE V-3
DEVELOP AND EXPAND ONGOING PARTNERSHIPS WITH THE PRIVATE SECTOR IN SUPPORT OF THE ARTS.

POLICY VI-1.9
Create opportunities for private developers to include arts spaces in private developments city-wide.

OBJECTIVE VI-2
INCREASE OPPORTUNITIES FOR PUBLIC ART THROUGHOUT THE CITY.

POLICY VI-2.2
Protect, maintain and preserve existing art work in the City Collection and art required by ordinance.

Commission Finding: The Ordinance and the modifications recommended by the Commission will maintain the existing Art Requirement where it is most needed in large public open spaces and will allow flexibility in arts funding and increase opportunity for local artists and arts institutions.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed amendments will not affect neighborhood-serving retail uses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed amendments will no longer require art to be provided on-site for residential uses but will still require payment into the Artworks Fund and will ensure that art is a component of future development.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed amendments will not affect the City's supply of existing housing is often the most affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed amendments will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed amendments would not cause displacement of the industrial or service sectors due to office development.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

   Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.

7. That the landmarks and historic buildings be preserved;

   Landmarks and historic buildings would be unaffected by the proposed amendments.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

   The City's parks and open space and their access to sunlight would not be threatened by new development as a result of the proposed amendments.

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 27, 2011.

Linda D. Avery
Commission Secretary

AYES: Olague, Miguel, Antonini, Borden, Fong, Moore, and Sugaya

NOES: none

ABSENT: none

ADOPTED: 10/27/11

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: OCTOBER 27, 2011

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Project Name:	**Downtown Public Art Fee and Public Artwork Trust Fund**
Case Number:	2011.0921T [Board File No. 11-0853]
Initiated by:	Mayor Edwin Lee and Supervisor Chiu: Introduced July 20, 2011
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	Kelley Amdur, Manager of Current Planning
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE & ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance would amend San Francisco Planning Code Section 429 to amend the current requirement that 1% of construction costs for downtown developments greater than 25,000 be spent providing public art onsite and instead would allow the following options to be provided either within the C-3 District or within a ½ mile radius of this district:

1) Contribute 100% of this money into a new "Public Artwork Trust" fund administered by the Arts Commission; or
2) Designate 100% of this money to a specific nonprofit arts facility; or
3) Provide on-site public art consistent with the current requirements *and* with new additional review by the Arts Commission; or
4) Receive a 5% discount on the fee if the sponsor agrees to provide 50% of fee onsite (subject to review described above) and contribute 45% into the Public Artwork Trust.

The Public Artworks Trust could be used for creation, installation, exhibition, conservation, preservation and restoration works of public art as administered by the Arts Commission or for the provision of capital improvements to nonprofit arts facilities or could be designated to a nonprofit for exterior art programming.

The Way It Is Now:

Section 429 of the Planning Code requires that in the Downtown C-3 Districts any new building or any addition of at least 25,000 square feet include a work of art equal to at least 1% of the construction value be provided in one of the following locations:

1. on-site in a privately owned public open-space[1] (POPOS);
2. on-site and clearly visible from the public sidewalk or the public open-space (POPOS); or

[1] Planning Code Section 138 describes "Open Space Requirements in C-3 Districts". This open space requirement was developed by the Downtown Plan in 1985 and are also known as "privately owned public open-spaces" or "POPOS". POPOS include features such as plazas, roof gardens, greenhouses, atriums and others. SPUR produced an assessment of these spaces, titled "Secrets of San Francisco" available at: www.spur.org/publications/library/report/secretsofsanfrancisco_010109.

3. on adjacent public property subject to approval of said public agency; or
4. if the building is a hotel it may be provided in the publicly accessible lobby.

The artwork must be permanent art and not merely architectural detailing of building features. The Code emphasizes that the location must promote "public enjoyment" and while the location and the type of art may be reviewed, the artistic merit of the art are not to be a matter for public review. Both the artist and the building architect must be recognized by a plaque or cornerstone on the site.

In addition to the Code requirements: The Department's "Fine Arts Guidelines" provide further clarification about what the art costs may and may not include; how the art should be "permanently affixed" at the site; how the artwork is at the discretion of the project sponsor but that works by living artist and arts from the Bay Area should be given positive consideration; how to evaluate the public visibility of the artwork; how the cost of the art should be determined; and the process for incorporating the development of the artwork into the process of development and review of the project. The Department also has guidelines about the plaques for recognition of the artist and architect.

There is additional text in this Section that has expired as of June 6, 2009. Ordinance number 77-04 allowed an "in-lieu" payment of the Downtown Art Fee to be spent restoring the Old Mint Building. This Ordinance became effective on June 6, 2004 and expired five years thereafter, on June 6, 2009. This proposed Ordinance would delete this expired option.

The Way The Downtown Art Requirement Would Be:
The proposed Ordinance would amend San Francisco Planning Code Section 429 to amend the current requirement for public art onsite with each private development and instead would allow the following options to be provided either within the C-3 District per the exiting requirements or, newly allowed by this proposed Ordinance, within a ½ mile radius of this district:

1) Contribute 100% of this money into a new "Public Artwork Trust" for use at the Art Commission's Discretion as described below; or
2) Contribute 100% of this money into a new "Public Artwork Trust" and designate 100% of this money to a nonprofit arts facility for the provision of exterior public art programming; or
3) Provide public art consistent with the current requirements *and* with additional review by the Arts Commission (including a review fee of at least $2500, plus time and materials). This review shall consider the durability, type design, artistic merit and public accessibility of the art; or
4) Receive a 5% discount on the fee if the sponsor agrees to provide 50% of fee onsite (subject to review described above) and contribute 45% into the Public Artwork Trust (for stated purposes below).

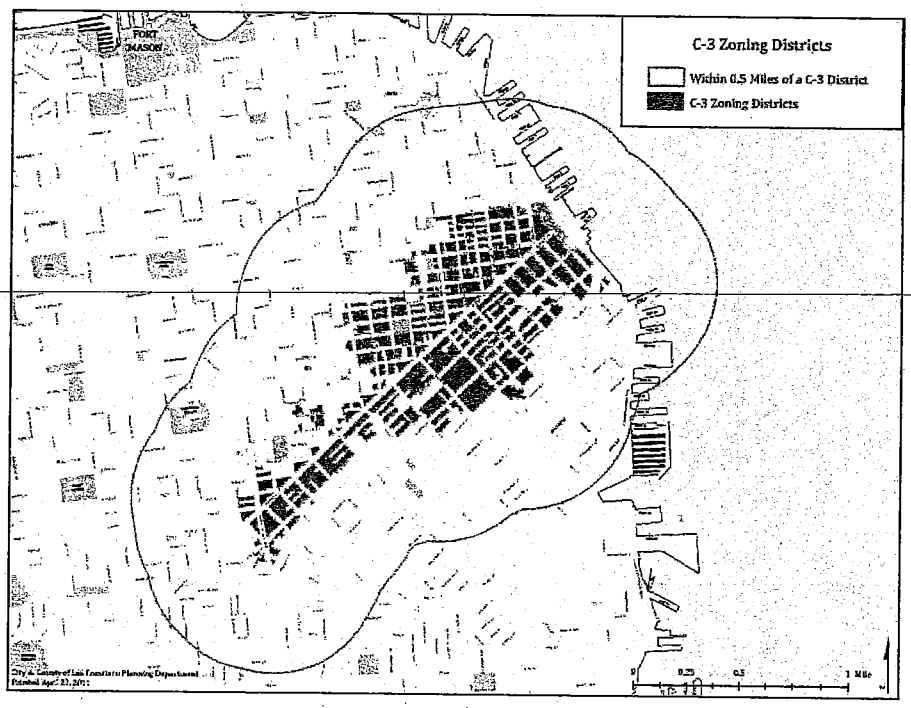
The Way The Public Artworks Trust Monies Could Be Used:
The proposed Ordinance would amend the Administration Code to create the Public Artwork Trust which would have the following limits. The funds may only be used within the C-3 District or a ½ mile radius of that district for the following purposes:

1) the creation, installation, and exhibition of either *temporary* or *permanent* public works of art curated by the Arts Commission without financial limits;
2) the conservation, preservation, and restoration (but not maintenance) of either *temporary* or *permanent* works owned by the Arts Commission art subject to a limit of 15% maximum allocation per single project;

3) a competitive process overseen by the Arts Commission for 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 without financial limits;
4) specific designation of the project sponsor's choice (subject to approval by the Arts Commission) to a "high capacity, private, nonprofit arts organization" to provide exterior public artistic *temporary* programming without financial limits;
5) administrative expenses of the Arts Commission staff in administering "compliance" with requirements via a $2500 fee, plus time and materials subject to a limit of 20% maximum allocation per single project.

The Way Review of Art on Private Property Would Be:

Currently, art provided in fulfillment of the existing requirement on private property is not reviewed by the Arts Commission. The Art Commission is required to approve the placement of art on public property and/or within the public right-of-way under the exiting requirement. Artwork provided at a private site is currently reviewed by the Planning Commission to ensure that artworks are displayed in a manner that will enhance their enjoyment by the general public. Only the value, type, and location of artwork are currently reviewed—specifically not included in this existing review is an assessment of the artistic merit. Under the proposed Ordinance, the Arts Commission would review the type, durability, design, artistic merit, and publicly accessible location of the project sponsor's proposed On-Site Artwork. The Arts Commission would provide the project sponsor and Planning Department with an advisory written report within 60 days for a fee of $2500, plus time and materials.



Inset map of C-3 District and ½ Mile Buffer showing where the Artworks Trust would be enable to expend funding should the proposed Ordinance be adopted. See full size map on Attachment D.

BACKGROUND

The groundbreaking "Downtown Plan" adopted in 1985, was developed under the assumption that significant employment and office development growth would occur. New commercial development would provide new revenue sources to cover a portion of the costs of necessary urban service improvements. Specific programs were created to satisfy needs for additional housing, transit, childcare, open space, and art. The public art requirement created by this plan is commonly known as the "1% for Art" program. This requirement, now governed by Section 429 of the Planning Code, provides that construction of a new building or addition of 25,000 square feet or more within the downtown C-3 district, triggers a requirement that provide public art that equals at least 1% of the total construction cost be provided.

The Art Requirement was developed with great care and foresight. San Francisco at the time was the second city in the nation to require that developers provide public art as part of downtown projects. Prior to San Francisco's requirement only New York City had such an ordinance. After the Downtown Plan was adopted, more than 40 artists, art consultants, lawyers, art educators, developers, interested citizens spent weeks formulating the "Fine Art Guidelines" which clarified the intended implementation of the Art Requirement.

Today's Downtown Gallery

More than 25 years since the adoption of the Downtown Plan, has seen the growth of an extensive outdoor gallery downtown that enriches the environment for workers and tourists alike. The spirit of the 1% for Art requirement is to ensure that the public has access to high-quality and variety in art.

Today's Downtown Gallery Features Artist Anish Kapoor. *As part of the existing 1% for Public Art requirement, in 1997 Birmingham Development decided to purchase Anish Kapoor's first public art sculpture in the United States called "Making the World Many" for the project at 235 Second Street. Subsequently Mr. Kapoor has become one of the world's foremost artist working in metal. He has completed such pieces as Cloud Gate in the Millennium Park; the 2012 Olympic Tower; and the Princess Diana Memorial Sculpture. (See Appendix C for a complete list and photos of today's Downtown Gallery.)*

To help catalog the Downtown public art gallery and to increase public access to this art, the Planning Department is in the process of doing an inventory of all of the Downtown Art contributions that have been created since 1985. Our current results have confirmed that 26 pieces of art in public open spaces or publically accessible locations. There were three projects where we need to confirm the public art. Only one piece of art appeared to not be publically accessible. This inventory is a work-in-progress but our preliminary results show a very high level of compliance. The allegation that the pieces are in inaccessible lobbies has not been borne out by our survey to date.

The Department has contacted all property owners who have provided public art through the existing requirement and shared our preliminary survey results, seeking corrections where needed. Where we found properties that appear to be out of compliance with the

Code requirements (generally because there appeared to be no artist recognition or in the one instance where staff was unable to access the artwork) we reminded the owners of the requirements and requested compliance. The Department intends to open enforcement cases where we are unable to confirm compliance by December 1, 2011.

Our conclusion from reviewing the preliminary survey results is that current requirement has, in fact, created an exciting Downtown Gallery that greatly improves the district through the provision of permanent, monumental works of art. See Attachment C for photos and information on the Draft Inventory. That said, the time is right to re-evaluate the requirements in light of the results generated to date and in light of new circumstances and/or needs within San Francisco.

ISSUES AND CONSIDERATIONS

Permanent Monumental Works of Art Vs. Ephemeral or Smaller Works of Art– More than 25 years since the adoption of the Downtown Plan, has seen the growth of an extensive outdoor gallery downtown that enriches the environment for workers and tourists alike. About one major project per year adds new art to this gallery. Overtime, the gallery has grown into an impressive, permanent public collection. Changing the requirement to allow ephemeral art, which if missed provide no lasting experience is a significant change to the future expression of this gallery. Similarly, allowing only half of the funding for on-site art reduces the opportunity for significant monumental works. Ephemeral arts that include performance art can offer an intense burst of activation for public spaces that while fleeting in experience is lasting in memory. In reevaluating the 1% for Public Art program, it may be possible to provide avenues to ensure that both types of art are provided.

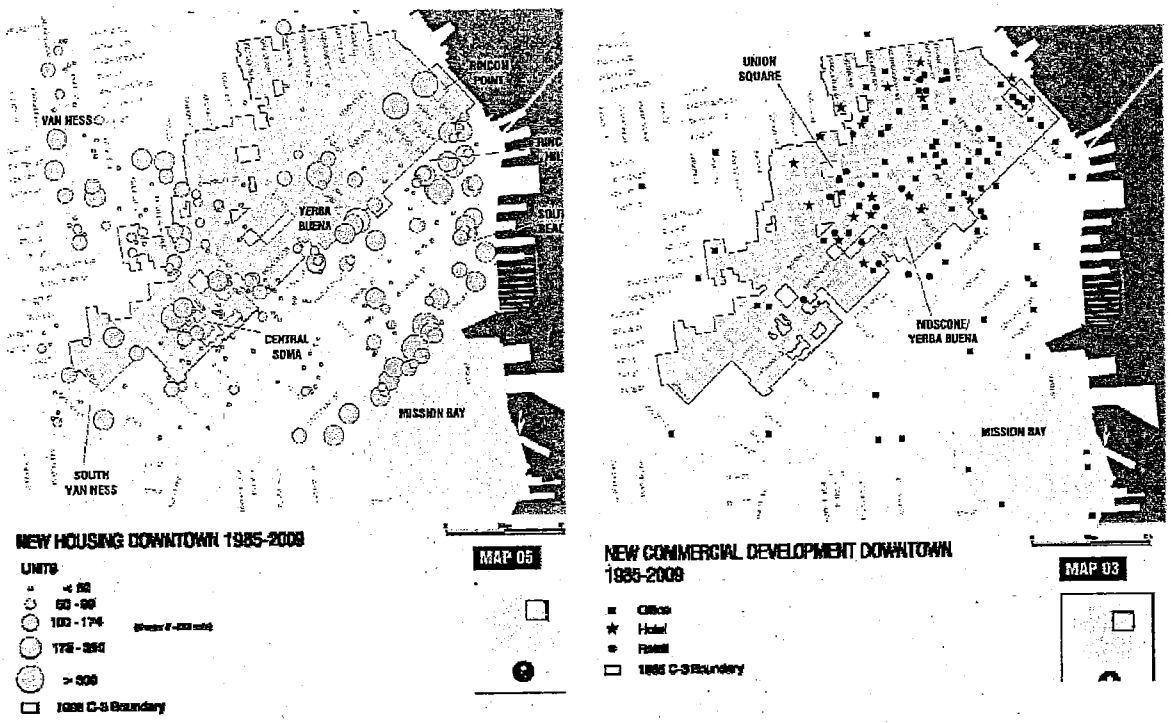
Capital Facilities Improvements Funded by the Requirement. There is a concern that capital improvements of one facility could consume the entire fund. The proposed Ordinance provides no cap on the amount of money that could be dedicated towards "capital improvements" of cultural facilities. Further, the proposed Ordinance currently provides no evaluation of how such facility will be determined to be "publically accessible". Is a facility that sells $50 event tickets publically accessible? Certainly art that is freely accessed in public open spaces presents a high bar for public accessibility. Use of public art funds for other uses should provide similar assurance that the public use of the money would be maintained.

Expanding the Placement of Art Beyond the C-3 Boundary. There are benefits in providing art that is associated with a specific project for both the property owner and the public. The property itself is enriched by the provision of public art. In the past, this has led property owners to spend more on the public than required by Code. This leveraging of private funds to create public art benefits the City and its residents. Project sponsors are unlikely to pay more into a fund than required but they may be inclined to enrich the property with art above and beyond the requirements. Expanding the placement of art by such a large ½ mile distance could dilute the City's ability to create a concentrated Downtown Gallery.

Benefits of Open Space Activation & Signaling "Public-ness" of Open Spaces with Art. The leveraging of private funds to activate the public places created in associated with nonresidential developments. The non-residential buildings are required to provide POPOS. Art plays a critical role in both activating POPOS and providing an indication to the passerby that the space is public. Benefit of having artwork associated with a particular project. The Public Art created under this provision has been a success and has resulted in a delightful, inspiring, enjoyable, stimulating and sometimes amusing

outdoor gallery, easily accessible to anyone walking downtown and a great enrichment of the city's densest urban core.

Re-evaluating Which Projects are Subject to the Art Requirement. At the time of the Downtown Plan, it seemed significant development would be limited to the C-3 District and that this growth would be largely office development. The neighborhoods of SoMa and the Eastern Neighborhoods have experienced and expect further substantial non-residential growth. The "Downtown" has functionally expanded to effectively include much of SoMa and other nearby districts.



The map on the left shows new downtown housing in relation to the C-3 District.

The map on the right shows new downtown commercial development in relation to the C-3 District.

Maps courtesy of the "25 Years: Downtown Plan Monitoring Report, 1985-2009".

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATIONS

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance. Specifically, the proposed Ordinance should be modified as follows:

1. **Maintain the Downtown Gallery associated with buildings that have significant POPOS.** In the Department's analysis of the existing Downtown Gallery, arts provided in concert with POPOS play crucial roles. Artwork in these spaces signal that the space is public and provide critical activation of the space with permanent works of art. These spaces must be maintained. Further, artworks provided and maintained by private parties leverage private investment by relieving the City from responsibilities to seek, and secure art as well as to provide with future maintenance and upkeep—a duties that the City currently struggles to fund adequately.

    a. **Maintain the existing requirement for on-site art for non-residential buildings with public open spaces that are over 3000 square feet and are located on the ground floor.** The Department believes that the cornerstone of the existing program should be maintained and that the large groundfloor POPOS should remain activated by permanent, monumental art. Given the complexities in making rooftop spaces readily accessible and the limitations of smaller open spaces, this requirement would be limited to projects with large open space requirements.

    b. **Other than the non-residential buildings with a requirement for a public open space of at least 3000sf, allow all other project to choose to either provide on-site art or fee payment to the Trust.** If the critical element of the existing 1% for Art Requirement is maintained so that artworks are provided in conjunction with large public open spaces, then the Department is open to experimentation with other projects that would trigger the requirement.

    c. **For very large projects with an art requirement of over $1 million, only require the first $1 million to be spent on-site. Fees above $1 million could be either used on-site or deposited into the fund at the project sponsor's choosing.** There are have been projects in the past where the art requirement exceeded $1 million. Providing artwork of $1 million on-site should be sufficient for monumental art to activate the POPOS. The Department is open to flexibility in the use of remaining fees that exceed $1 million for other uses including performance and ephemeral art.

    d. **Apply requirement universally to all non-residential uses over 25,000sf in other commercial districts with substantial non-residential development, not just theC-3 District.** Given that large-scale development is not limited to the downtown C-3 District only, there appears to be no valid reason for not applying the fee to all non-residential uses of this size, particularly in areas of SoMa and the Eastern Neighborhoods where substantial non-residential growth is expected and where there are also requirements for POPOS[2]. There is a fair amount of office, hotel, institutional and retail development happening outside of the C-3 throughout SoMa

[2] Planning Code Section 135.3 describes requirements for "Usable Open Space For Uses Other Than Dwelling Units, Group Housing And Live/Work Units Within The South Of Market And Eastern Neighborhoods Mixed Use Districts". Creating a new requirement for onsite public art to activate open spaces provided by this requirement seems consistent with the original intent.

and Eastern Neighborhoods mixed-use districts, and "Downtown" has functionally expanded to effectively include much of SoMa and other nearby districts. It would be more consistent with the current spirit of the requirement to extend to major non-residential outside of the downtown C-3 Districts.

2. **Allow more flexibility in how funds are spent, provided the expenditures are decided through a public process administered by the Arts Commission.** If the critical element of the existing 1% for Art Requirement is maintained so that artworks are provided in conjunction with public open space requirements greater than 3000 sf, then the Department is open to experimentation with other projects that would trigger the requirement.

    a. **Instead of providing an option that prescribes percentages for on-site art and for fund payment, the Department suggests that the requirement for residential uses be divvied up in any amount between either on-site art or payment into the Artworks Trust of the sponsors choosing** The proposed Ordinance is very prescriptive in the options. As long as the POPOS are activated with art as described above, the Department believes that it is permissible to allow project sponsors the flexibility to choose to contribute to the fund or provide onsite art or to choose any combination of the two options.

    b. **If the Non-Residential requirement stays in place, there is no need for fiscal limits on how the Artworks Trust could be spent.**

        i. The public process of the Art Commission allocation will ensure appropriate City review and opportunity for public involvement. While this process isn't yet articulated, the Art Commission pledges to resolve this in the near-term.

        ii. The Department encourages removing the option of "designating" that the money be spent on a particular non-profit. This option presents too great of temptation for "gifting" of favors.

    c. **Remove the proposed 5% discount for projects that provide both onsite artworks and pay into the fund.** The Department recommends not reducing the amount of money dedicated to the provision of artwork. There is no public benefit in reducing the fee for projects that provide a mixed contribution of both on-site artworks and fund payment, and there should not be an inherent preference between on-site art and payment of the fee. Allowing a project sponsor to pay a fee in lieu of providing art is already an inherent incentive for developers to choose fee payment over the provision of art on-site. Additional discounts only serve to reduce the amount of funding for works of art.

3. **Remove Art Commission Advisory Review for On-Ste Art.** There is already a review process for the placement the value, type, and location of artwork. Artworks on private sites provide many benefits to the City such as the indefinite maintenance and periodic restoration of the artwork by the building owner. Further, by allowing project sponsors to pick art associated with their own building, the City often benefits from owners who voluntarily exceed the requirement—as has happened in the past. As long as the City ensures "publicness" of the artwork, the Department feels it benefits the City to allow more freedom in choice of the artwork and city government should not be in the position of evaluating the content or artistic merit of art

on private property. The artwork provided to date is of undeniably high-quality; adding government review will not improve the quality of the art.

4. **Consider adding alternative sources of funding for Public Art Projects administered by the Arts Commission.** The Department recognizes the severe funding constraints for administration of public art and programs by the Art Commission. Therefore, the City should explore additional avenues to fortify funding sources for the Art Commission. There is currently a Public Art requirement which provides that 2% of the construction cost of public projects goes towards public art. This program should also be evaluated for potential to provide additional funding.

ENVIRONMENTAL REVIEW

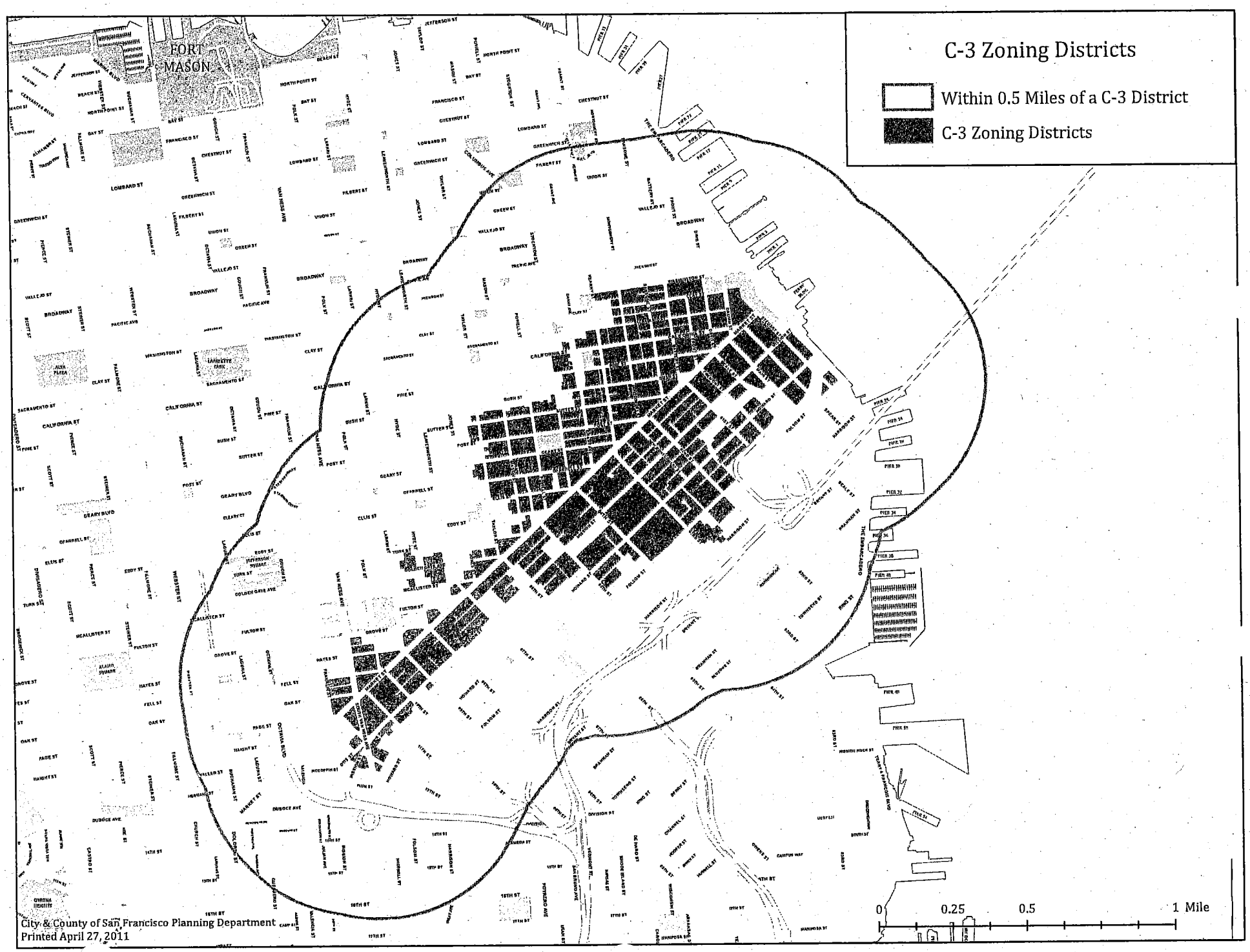
The proposed amendments to the Planning Code are exempt from environmental review under a CEQA Article 18, Statutory Exemptions 15273.

PUBLIC COMMENT

As of the date of this report, the Department has not received public comment.

RECOMMENDATION:	**Recommendation of Approval with Modifications**

Attachment C: Draft Inventory: Photo Exhibit of the Existing Downtown Gallery
Map available online at: http://www.sf-planning.org/index.aspx?page=2879
Attachment D: Map of C-3 District and ½ Mile Buffer


C-3 Zoning Districts
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C-3 Zoning Districts
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1 Mile
City & County of San Francisco Planning Department
Printed April 27, 2011

Today's Downtown Gallery:

Public artwork
created by the 1% for Public Art program
codified in the Planning Code

SAN FRANCISCO
PLANNING
DEPARTMENT

San Francisco's 1% For Art Program

The groundbreaking "Downtown Plan" adopted in 1985, was developed under the fundamental assumption that significant employment and office development growth would occur. New commercial development would provide new revenue sources to cover a portion of the costs of necessary urban service improvements. Specific programs were created to satisfy needs for additional housing, transit, childcare, open space, and art. The public art requirement created by this plan is commonly known as the "1% for Art" program. This requirement, governed by Section 429 of the Planning Code, provides that construction of a new building or addition of 25,000 square feet or more within the downtown C-3 district, triggers a requirement that provide public art that equals at least 1% of the total construction cost be provided.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard.

Date: **Monday, March 26, 2012**

Time: **1:00 p.m.**

Location: **Committee Room 263 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA**

Subject: **File No. 110853.** Ordinance: 1) amending the San Francisco Planning Code Section 429 to provide that developers currently required to spend one percent (1%) of construction costs for public artwork on any new development project or addition to an existing building over 25,000 square feet located in a C-3 district have an option to contribute all or a portion of that fee to a City fund dedicated to support public art, and all non-residential projects that are within zoning districts MUG, MOU, MUR, UMU, SPD, RC-3, RC-4, RH-DTR, TB-DTR, SB-DTR, SLI, SLR, SSO, C-2, and C-M that involve construction of a new building or addition of floor area in excess of 25,000 square feet and that have submitted a complete Development Application on or after January 1, 2013; 2) amending the San Francisco Administrative Code by adding Section 10.200-29 to establish a Public Artwork Trust Fund, funded through contributions and Public Art Fees, for the creation, installation, exhibition, conservation, preservation, and restoration of temporary and permanent public art and capital improvements to nonprofit art facilities within the C-3 district and within a half mile of the boundary of the C-3 district or, if the project is in another zoning district, within a half mile of the project boundary, to be administered and expended by the Arts Commission; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Currently, project sponsors of new development projects or the addition to an existing building over 25,000 square feet, located in the C-3 District, are required to install works of art equivalent to 1% of the construction cost. If the legislation passes, it will establish a Public Artwork Trust Fund and developers will have the option to pay all or a portion of the 1% Public Art Fee into the Fund, instead of installing art on the project site. Fees placed in the Fund, for projects within the

C-3 District, can be used within the C-3 District and one-half mile in all directions of the C-3 District. After January 1, 2013, this requirement could potentially be imposed on any new development project or addition to an existing building over 25,000 square feet. Fees placed in the Fund, for projects not in the C-3 District, can be used within a half mile of the project boundary. Fees placed in the Public Artwork Trust Fund will be paid to the Development Fee Collection Unit at the Department of Building Inspection and the Arts Commission will determine how the funds are expended.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record in this matter, and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, 94102. Information relating to the proposed fee is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, March 23, 2012.

Angela Calvillo, Clerk of the Board

DATED: March 6, 2012
POSTED: March 7, 2012
PUBLISHED: March 12 & 19, 2012

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NOTICE OF PUBLIC HEARING
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LAND USE & ECONOMIC DEVELOP-
MENT COMMITTEE
MARCH 26, 2012 – 1:00 PM
CITY HALL,R OOM 263, 1 DR.C ARL-
TON B.G OODLETT PL.S F,C A

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Angela Calvillo,C lerk of the Board

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