

January 18, 2017**SUMMARY**

This report provides an update on the status of staff's proposed minor changes to the Public Art requirement for private development, which is currently contained in Chapter 15.70 of the Oakland Municipal Code. This Chapter is proposed to be deleted and replaced by a new Chapter 15.78, as described below. Because these requirements are proposed for the Municipal Code (and not within the Planning Code), there is no formal action required by the Planning Commission. Nonetheless, because these requirements are development related, they are being presented to the Planning Commission as an informational Director's Report.

The proposal would amend the public art requirement for private development to clarify ambiguities and procedures and adjust the fee to be deposited into the Public Art Fund in lieu of providing on-site public art.

The City has been sued by Pacific Legal Foundation, on behalf of the Building Industry Association of the Bay Area regarding the art requirements.

CURRENT PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT

The City's public art current requirement for private development, adopted by the City Council on December 9, 2014, is for nonresidential development to contribute 1.0 percent and residential development to contribute 0.5 percent of building development costs, for freely accessible art and/or cultural facilities. The building development costs are as declared on building, plumbing, mechanical, and electrical permit applications. This contribution can be satisfied in one of three ways:

1. The entire contribution could be used for the acquisition and installation of permanent public art on the development site.
2. The entire contribution could be satisfied through an "in-lieu" fee that would be placed into the Public Art Project Account. This account is used to acquire, place, and maintain public art on public property and to administer the Public Art Program.
3. The contribution could be satisfied, with approval from the City, including the Public Art Advisory Committee, through a combination of:
 - Up to 50 percent toward a minimum 500 square feet of interior cultural and art space in the development that would be free and open to the public;
 - Up to 25 percent toward a minimum 500 square feet rotating art gallery that is free and open to the public; and
 - The balance would be paid as an in-lieu fee into the Public Art Project Account.

PROPOSED CHANGES

The current program requires that public art be placed on the same site as a proposed development. An important clarification to the existing public art requirement for private development will be to explicitly define "on-site" to include the adjacent right of way.

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

The revision will also include a new section entitled "Procedure for Exception" that will require developers who challenge the public art requirement on constitutional grounds to submit a petition to the Planning Department before filing a lawsuit against the City.

Other proposed changes will include the following:

1. Revision of the "Artist Verification" section to more accurately reflect City requirements;
2. More specific maintenance/ownership requirements; and
3. A requirement for signage identifying the public art at the site.

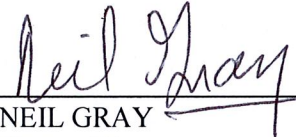
NEXT STEPS

Planning and Public Art Program staff will hold a public meeting regarding the proposal on January 26, 2017 at 6:00 pm in Hearing Room 3 of City Hall. Staff will subsequently present the proposal to the Community and Economic Development Committee (a subcommittee of the City Council) and the full City Council. The proposal is projected to be presented to the City Council for adoption in March of 2017.


There has been input from the development and the arts communities for broader changes to the existing ordinance, such as allowing public art to be located off-site and for the in-lieu fee be targeted for capital improvements to specific cultural assets near a development. Staff proposes that further changes be considered through the Downtown Specific Plan and the Cultural Plan processes because the changes described in this report require immediate adoption to allow for an effective implementation of the ordinance.

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