

ORDINANCE NO. 14-17 N.S.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA
ADDING CHAPTER 12.62 TO THE RICHMOND MUNICIPAL CODE TO ESTABLISH
THE ONE-PERCENT FOR PUBLIC ART ON PRIVATE PROJECTS PROGRAM**

The Council of the City of Richmond does ordain as follows:

Section I. **Amendment of Article XII.**

Article XII of the Municipal Code of the City of Richmond is hereby amended by adding Chapter 12.62 to read as follows:

CHAPTER 12.62

ONE-PERCENT FOR PUBLIC ART ON PRIVATE PROJECTS PROGRAM

Sections:

12.62.010	Purpose
12.62.020	Applicability
12.62.030	Definitions
12.62.040	Contribution Requirements
12.62.050	In-Lieu Contribution
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12.62.090	Implementing Body

12.62.010 Purpose

The purpose of this Chapter is to establish a public art requirement for private developments in order to provide the following benefits to the community:

- Further enhance a diverse and stimulating cultural environment for residents of, and visitors to, the City of Richmond;
- Create a unique sense of place throughout the City of Richmond;
- Increase the economic sustainability of artists and arts organizations as a key to the vitality of the City of Richmond; and
- Promote greater economic vitality through the aesthetic enhancement of the City's public spaces, thereby making Richmond a more attractive environment for regional and local businesses.

12.62.020 Applicability

- (a) This Chapter applies in all zoning districts in the City.
- (b) This Chapter applies to:
 - (1) New Commercial structures;
 - (2) New Industrial structures;
 - (3) New Multifamily residential projects of ten (10) or more Dwelling Units.
- (c) This Chapter applies to all construction of building additions and/or renovations exceeding \$500,000 in Building Costs.

Costs incurred and/or attributed to compliance with the identification and/or mitigation of seismic hazards, environmental conditions, including hazardous or toxic materials, or retrofitting for solar energy or other energy-saving facilities relating to existing structures shall not be included in calculating a project's Building Development Cost.

12.62.030 Definitions

For purposes of this article, the following definitions shall apply:

- (a) **“Artist”** means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner’s body of work, educational background, experience, performances, commissions, exhibition record, publications, and production of Artwork.
- (b) **“Artwork”** that may be used to satisfy the requirements of this Chapter includes, but is not limited to, the following:
 - (1) Sculpture: Of any material or combination of materials; freestanding, wall-supported, suspended, mounted, installed, kinetic, electronic, or mechanical.
 - (2) Murals or paintings: Made of any material or variety of materials including traditional or non-traditional materials and means.
 - (3) Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, books, literary and performing arts, calligraphy, found objects, any combination of media, including audio, video, film, CD-ROM, DVD, holographic or computer-generated technologies, or other genres currently known or which may come to be known.
 - (4) Artwork may be permanent, temporary, fixed, or portable; may be an integral part of a building, facility, or structure; and may be integrated with the work of other design professionals.
 - (5) For the purposes of this policy, the following, unless specified or designed by an Artist, are not considered Artworks:
 - (i) Reproductions, by mechanical or other means, of original Artworks; however, limited editions controlled by the Artist, or original prints, cast sculpture, or photographs, may be included.
 - (ii) Decorative, ornamental, or functional elements that are not designed by an Artist.
 - (iii) Elements generally considered to be components of architecture or landscape design, such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc., which are not designed by an Artist.
 - (iv) Art objects that are mass-produced, ordered from a catalog, or of standard design (such as benches or fountains), directional items or other functional elements such as graphics, signage, or maps.
 - (v) Corporate logos.
- (c) **“Building Development Costs”** represent the construction costs as declared on all private development building permit applications, and as accepted by the Building Official, but shall not include costs solely attributable to tenant improvements, design fees, land acquisition costs or the cost of off-site improvements required as a condition of approval. “Building permit applications” includes, but is not limited to, all grading, building, landscaping, plumbing, mechanical, and electrical permit applications for the project. In the case of phased projects, the Building Development Costs of the project for purposes of this ordinance shall be determined based upon the total projected costs for all phases combined, but will be payable only as each phase is permitted.
- (d) **“Commission”** means the City of Richmond Arts and Culture Commission (and by extension the Public Art Advisory Committee), which was established in 1997 to serve in an advisory capacity to the Mayor, City Council, and City Manager to promote, encourage, and increase support for arts and culture.

- (e) **“In-lieu Contribution”** means the Public Art funds generated by a Private Development that are deposited directly in the Public Art Projects Account (defined in subsection (i) herein) instead of being used for On-Site Publicly Accessible Art.
- (f) **“On-Site Publicly Accessible Art”** means an original Artwork by an Artist that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
- (g) **“Private Developer”** means any person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this Chapter.
- (h) **“Private Development”** means a building project that is funded by private funds, except where the Private Developer is in partnership with the City.
- (i) **“Public Art Projects Account”** means a separate account established in the City Treasury (formerly called the Public Art Fund) into which money acquired through the Percent for Art Resolution No. 70-97 (as may be amended) is deposited for the exclusive use of the Public Art Program.

12.62.040 Contribution Requirements

Private Developers subject to this Chapter shall either:

- (a) Include On-Site Publicly Accessible Art valued at One Percent (1%) of the Building Development Cost.
- (b) Pay an In-Lieu Contribution of One Percent (1%) of the Building Development Cost to the City’s Public Art Projects Account as set forth in Section 12.62.050.

12.62.050 In-Lieu Contribution

- (a) **Applicability.** As an alternative to providing On-Site Publicly Accessible Art, the Private Developer may elect to pay an In-Lieu Contribution to the City as set forth in this Section.
- (b) **Purpose.** Any In-Lieu Contributions paid to the City pursuant to this Chapter shall be used for art and cultural services as set forth in the Public Art Program Policies and Procedures.
- (c) **Amount of Contribution.** The In-Lieu Contribution shall be One Percent (1%) of the Building Development Cost.
- (d) **Time of Payment of Contribution.** The In-Lieu Contribution shall be paid at the same time as other building permit fees.

12.62.060 Compliance

On-Site Publicly Accessible Art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Planning and Building Services Department, Infrastructure & Maintenance Operations (DIMO) and other affected City divisions and departments. The process for identifying and securing required permits shall be set forth in the Public Art on Private Projects Program Policies and Procedures.

12.62.070 Waiver of Conditions

Any portion of the provisions of this article may be waived by majority vote of the City Council or otherwise pursuant to waiver provisions established in the approved Public Art Program Policies and Procedures.

12.62.080 Penalties

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any discretionary permit granted to any owner or developer who violates the provisions of this Chapter, or may, by legal action, seek recovery of the applicable In-Lieu Contribution.

12.62.090 Implementing Body

- (a) The Richmond Arts and Culture Commission, or its designee, shall implement the provisions of this Chapter according to the Public Art Program Policies and Procedures, subject to the review of the City Council.
- (b) The Richmond Arts and Culture Commission, or its designee, shall be responsible for determining if On-Site Publicly Accessible Art complies with the Public Art Program Policies and Procedures.

Section II. **Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. **Effective Date.**

This ordinance becomes effective thirty (30) days after its final passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held on July 11, 2017, and finally passed and adopted at a regular meeting held on July 18, 2017, by the following vote:

AYES: Councilmembers Choi, Martinez, McLaughlin, Willis, Vice Mayor Beckles and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: Councilmember Myrick.

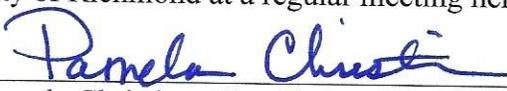
PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 14-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 18, 2017.



Pamela Christian, City Clerk of the City of Richmond