

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

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

SECTION I. Amendment to Chapter 12.62:

Chapter 12.62 of the Municipal Code of the City of Richmond is hereby amended as follows:

CHAPTER 12.62

ONE-PERCENT FOR PUBLIC ART ON PRIVATE PROJECTS PROGRAM

Sections:

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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

¹ This document is pending legal review.

- (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 and/or tenant improvements exceeding \$500,000 in Building Development 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 Costs.

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 design fees, ~~tenant improvements, 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, a subcommittee of the Richmond Arts and Culture Commission), 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.

(k) "Structure" means a building designed and constructed for human occupancy.

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 Costs.
- b) Pay an In-Lieu Contribution of One Percent (1%) of the Building Development Costs to the City's Public Art Projects Account as set forth in Section 12.62.050100.

12.62.050 On-Site Publicly Accessible Art

- a) A developer may satisfy the requirements of this Chapter by constructing or installing on-site publicly accessible art valued at 1% of the Building Development Costs,

adjusted as described in subsection (b) below. For purposes of budgeting and planning for on-site art, an initial estimate of the art contribution shall be calculated based on estimated Building Development Costs at the time of application for entitlements. The arts contribution shall be finally determined based on the Building Development Costs determined at the time the building permit is submitted.

- b) If the market value of the on-site public art is greater than the art contribution provided in Subsection 12.62.050(a), the City shall have no obligation to refund the excess amount. If expenditures do not utilize the entire amount provided in 12.62.050(a), the remainder shall be deposited into the Public Art Projects Account.

12.62.060 Eligible Expenditures for On-Site Public Art Projects

The public art contribution for on-site installation may be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation or exhibition of the public art, project management and administrative costs which shall not exceed 20% of the total budget, and contingency which shall not exceed 10% of the total budget. Eligible expenditures include:

- c) Artist fees;
- d) Labor of assistants, materials, and contracted services required for design, fabrication, engineering and installation of the public art;
- e) Any required permit or certificate fees and reasonable business and legal costs directly related to the public art;
- f) Reasonable art consultant fees, as established in regulations or guidelines approved by the City Manager to implement this Section;
- g) Communication, utilities, insurance and other indirect costs associated with the creation but not the operation of the public art;
- h) Transportation of the public art to the site;
- i) Preparation of the site specifically required for the public art, such as fabrication of platforms or pedestals;
- j) Installation of the public art;
- k) Mountings, anchorages, containments or other materials necessary for installation of the public art;
- l) Public art project management and administration, in an amount not to exceed 20% of the total art budget
- m) A plaque or plaques identifying the public art; and
- n) Contingency fund for unplanned expenses; no more than 10% of total art budget. Any remaining contingency at the completion of the project will revert to the City.

12.62.070 Ineligible Expenditures for On-Site Public Art Projects

Expenditures that are ineligible to be counted toward the on-site public art contribution include:

- a) Labor of assistants, materials, and contracted services not required for design, fabrication, engineering and installation of the public art;
- b) Promotional materials or activities for the artist, the public art, the development project, the developer or other parties involved in the development project;
- c) Opening, dedication or other costs of events for the public art, artist, developer or development;
- d) Services, materials, utilities or other expenses associated with the ongoing operation or maintenance of the public art; and
- e) Land costs or any other costs associated with the development that are not part of and solely attributable to the public art.

12.62.080 Process for Planning and Approval of On-Site Public Art

- a) Application and Planning. Within 60 days of initial application for permitting or other discretionary approval, the developer shall consult with the Arts and Culture manager regarding a plan for meeting the requirements of this Chapter. This consultation must be complete before the development project is calendared for consideration by a public body, including the Design Review Board, Planning Commission or City Council, and before the Community Development Director issues any approvals with respect to the project.
- b) Public Art Advisory Committee Review and Richmond Arts and Culture Commission Approval. If the developer elects to comply with this Chapter by providing on-site art, the developer's public art plan must be presented to the Public Art Advisory Committee. The plan should include the process by which the art and artist will be selected while ensuring that no single artist be commissioned for more than 3 public arts in private development projects within Richmond, the type of art proposed, a plan to integrate the art into the site, and a proposed budget and schedule of payments. The Public Art Advisory Committee shall render a decision whether the proposed public art plan conforms to the requirements and intent of this Chapter within 90 days of submission of a complete application, as determined by the Arts and Culture staff. The developer shall not enter into contracts or make expenditures until the Richmond Arts and Culture Commission approves the on-site art plan. In addition, before initiating fabrication and installation of the on-site art, the developer shall return to the Public Art Advisory Committee for final approval of the artist and the proposed public art. The Public Art Advisory Committee shall render a decision within 60 days of submission of a complete proposal, as determined by the Arts and Culture staff. A recommendation for approval or rejection will be sent by the committee to the Richmond Arts and Culture Commission for approval within 60 days of submission. If the Commission approves the proposal, it shall forward a recommendation to the City Council (for acceptance of projects that are funded through the Public Art Projects Account over \$10,000). Public Art approvals shall be obtained as early as possible in the project application process. No building permit may be issued until the Richmond Arts and Culture Commission grants the approvals required under this subsection. 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 affected City divisions and departments.

12.62.090 Additional Requirements for On-Site Public Art

- a) Plaque. The public art shall be identified by a plaque that meets the standards in use by the City at the time of installation of the public art.
- b) Ownership and Maintenance. All on-site public art shall remain the property of the property owner or the property owner's successor in interest. The property owner shall retain the obligation to provide all necessary maintenance to preserve the public art in good condition. Immediately upon installation and continuously thereafter, the property owner shall maintain the public art and shall promptly perform all necessary repairs and maintenance to the satisfaction of the City. The obligation to maintain and preserve the public art includes the obligation to take reasonable steps to protect the public art against destruction, damage or modification. The artist shall maintain copyright.
- c) Location and Relocation of Public Art. Except as provided herein, the public art must remain at the development in the location approved by the Richmond Arts and Culture Commission. A property owner may petition the Richmond Arts and Culture Commission to relocate the public art within the development project. When and if the development project is sold, the public art must remain at the development and may not be claimed as the property of the seller or removed from the site. If the development is to be demolished, the owner must relocate the public art to another publicly accessible permanent location approved in advance by the Richmond Arts and Culture Commission.
- d) Removal and Replacement of Public Art. If the owner desires to deaccession, sell or remove the public art from the site, the owner shall give prior notice to the City by

providing written notice to the Public Art program staff no less than 90 days before the intended action. The owner must receive prior approval from the Richmond Arts and Culture Commission. The developer will be required to replace the sold or deaccessioned artwork with an alternative work of equivalent or greater value, as determined by the Richmond Arts and Culture Commission, in current dollars. In the alternative, the developer may elect to pay fees in lieu of replacing on-site art, at a reasonable rate equivalent to the cost of replacing the art in current dollars, as determined by the Richmond Arts and Culture Commission.

- e) Statutory and Contractual Rights of Artists. The owner is solely responsible for complying with all statutory and contractual rights of the artist, including rights under the California Preservation of Works of Art Act, the federal Visual Artists' Rights Act, and any other applicable law.
- f) Covenant; Recordation. The property owner shall record against the property a declaration of covenants, conditions and restrictions, in favor of the City, and in a form approved by the City Attorney. The declaration shall include (I) the owner's obligation to provide all necessary maintenance of the public art, including preservation and restoration of the public art, in good condition, to the reasonable satisfaction of the City, and to protect the public art against destruction or damage; (ii) the owner's obligation to ensure that the public art is accessible to the public as required by this Chapter and (iii) any other terms reasonably necessary to implement this Chapter.
- g) Inspection; Remedies. The City shall have the right to inspect the public art, on reasonable notice, to ensure compliance with this Chapter. Failure to maintain the public art as required by this Section is hereby declared to be a public nuisance. The City may remedy the public nuisance and may pursue additional remedies to obtain compliance with this Chapter. In addition to all other remedies provided by law, in the event the owner fails to maintain the public art, on reasonable notice the City may perform all necessary repairs and maintenance, or may secure insurance or other needed services, and the costs thereof shall become a lien against the real property.

12.62.05012.62.100 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 Costs.
- d) Time of Payment of Contribution. The In-Lieu Contribution shall be paid at the same time of as other building permit issuance fees.
- e) The developer and/or owner may, by special application and review by the Public Arts Advisory Committee and approval by the Richmond Arts and Culture Commission, satisfy the in-lieu contribution with the inclusion of space within the development project that is generally open to the public during regular business hours and is dedicated by developer and/or owner for regular use as a rotating art gallery, free of charge and/or with developer and/or owner's provision, design and commitment of at least five hundred (500) square feet of space within the development project, to be made available to the public for the primary use of arts and cultural programming. If expenditures do not utilize the entire 1% of the Building Development Costs, the remainder shall be deposited into the Public Art Projects Account.

12.62.110 Inspection and Final Approval.

Before a Certificate of Occupancy or Final Inspection is issued for the development project,

the Public Art program staff shall inspect and confirm that either: (i) public art has been installed as required by the Richmond Arts and Culture Commission's approval; or (ii) in-lieu contribution has been paid in full. In addition, before a Certificate of Occupancy or Final Inspection is issued, the Public Art program staff shall confirm that the developer has executed and recorded a covenant as required by Section 12.62.090(f)

12.62.120 Public Art Projects Account

The fund entitled "Public Art Projects Account" shall account for in-lieu contributions made under Section 12.62.100. This fund and the interest thereon shall be maintained by the Finance Director according to standard governmental accounting requirements. The Public Art Projects Account shall be reserved for the design, acquisition, commission and installation of new works of art and art experiences in Richmond, or for such other equivalent artistic purposes approved by the Richmond Arts and Culture Commission. Funds may be used for project management and administration costs associated with acquisition of new works, not to exceed 20% of the project budget, and for the repair, maintenance, conservation and insurance of those works. Art works acquired through the Public Art Projects Account shall be owned by the City of Richmond and generally made accessible to the public.

The Arts and Culture Manager shall be required to seek approval from the City Council on spending from the Public Art Projects Account for amounts greater than \$10,000.

12.62.130 Regulations

The City Manager, or their designee, is authorized to adopt administrative regulations, procedures or guidelines that are consistent with and that further the terms and requirements of this Chapter.

~~12.62.060~~ 12.62.140 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 ~~Community Development Department Planning and Building Divisions, Public Works 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 approved Public Art in Private Development Program Policies and Procedures.

~~12.62.070~~ 12.62.150 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 in ~~Private Development Program~~ Policies and Procedures.

~~12.62.080~~ 12.62.160 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~~ 12.62.170 Implementing Body

- a) The Richmond Arts and Culture Commission (RACC) or its designee shall have the sole discretion for implementing the provisions of this Chapter according to the Public Art Program Policies and Procedures, subject to the review of adopted by the City

Council. The Public Art Advisory Committee, a subcommittee of the RACC, will provide approvals and recommendations on actions for the Richmond Arts and Culture Commission.

- b) The Richmond Arts and Culture Commission (RACC) ~~or its designee~~ shall be responsible for determining if On-Site Publicly Accessible Art complies with the Public Art Program Policies and Procedures. The Public Art Advisory Committee, a subcommittee of the RACC, will provide approvals and recommendations on actions for the Richmond Arts and Culture Commission.

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. California Environmental Quality Act. This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because the adoption of this ordinance is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and a project does not include the creation of a government funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378). In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Ordinance would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

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

First read at a meeting of the Council of the City of Richmond, California, held _____, and finally passed and adopted at a meeting thereof held _____, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney