
ITEM IV AGENDA REPORT

To: Public Art Advisory Committee
Attn: Kevin Chen and Nick Dong, Co-chairs
From: Kristen Zaremba, Public Art Program Staff
Date: January 9, 2017
RE: Public Art in Private Development – Proposed Revisions to Oakland Municipal Code

Overview

The Public Art Advisory Committee is asked to review and comment on the proposed amendment to the Oakland Municipal Code that would modify a policy requiring private developers to fund publicly accessible art within new development, or to pay an in-lieu contribution to the Public Art Projects Account. The proposed minor revisions will be heard by Council's Community & Economic Development Committee in February 2017.

This report addresses staff's proposed minor changes to the Public Art requirements 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 17.58, as described below.

The amendments would clarify ambiguities and procedures in the ordinance and adjust the fee that goes to the Public Art Fund in lieu of providing on-site public art.

Background

The City of Oakland has continuously administered a program for public art in City capital improvement projects, established by passage of the Public Art Ordinance No. 11086 C.M.S. in 1989. In 2014, that requirement was codified, along with new requirements pertaining to private development, and went into effect in February of 2015. Project applicants subject to the requirement have complied with the program policies and worked with City staff to meet the requirements in a timely manner.

The policy will continue to provide the developer with the option of commissioning public art on the site of development or making an in-lieu contribution to the City's Public Art Projects Account. Deposits to the Public Art Projects Account may be used for acquisition and placement of public art throughout the City, managed by Public Art Program staff with guidance from the Public Art Advisory Committee.

The City's current requirement 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 arts 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.

Current Proposed Changes:

Proposed changes, many of which address specific recommendations made by the PAAC in September 2014, include a proposal to reduce the art in-lieu fee for nonresidential development from 1.0 percent to 0.8 percent and for residential development from 0.5 percent to 0.3 percent of building development costs. This would incentivize funds going into the Public Art Account, which will allow for more flexibility in the placement of new public art projects administered through the City’s Public Art Program.

Other proposed changes made in response to PAAC and program staff discussions include:

1. Revision of the “Artist Verification” section to more accurately reflect City’s role and requirements;
2. More specific long-term maintenance and ownership requirements; and
3. A requirement for signage identifying the art at the site.

An important clarification to the current ordinance will be to explicitly permit public art to be placed in the public right of way directly adjacent to a project site.

Additional changes are proposed to be made to several definitions and terms in the Chapter to provide clearer direction to staff, the public, and developers, including: “affordable housing”, “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.

Impact

Adoption of these proposed revisions would minimally impact City staff in the Planning Department and the Public Art Program. Planning staff would continue to review the building permit application materials. Public Art staff would review the art project submittals including the

developer-artist contract. Public Art staff will charge applicants for this review time in accordance with the Master Fee Schedule. (Note: A detailed policy governing administration of the proposed new program has been developed and will be modified and distributed after adoption of any revisions.)

Action Requested

The Public Art Advisory Committee is asked to review, discuss, and comment on the proposed revisions, and to provide feedback.

Next Steps

Planning and Public Art Program staff will bring the changes to the Public Art Advisory Committee meeting and a community meeting to discuss the proposal. 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 February or March of 2017.

Respectfully submitted,

Kristen Zaremba, Senior Public Art Program Project Manager