

ORDINANCE 2017-###

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING CHAPTER 17.63 OF THE SAN PABLO MUNICIPAL CODE RELATING TO DEVELOPMENT REQUIREMENTS FOR ART IN PUBLIC PLACES

The City Council of the City of San Pablo does ordain as follows:

Section 1. The City Council makes the following findings, pursuant to Section 17.22.040 of the San Pablo Municipal Code:

- A. This ordinance was initiated by City of San Pablo staff to address implementation issues raised regarding Chapter 17.63, "Art in Public Places," and recommended by the Planning Commission of the City of San Pablo following a duly noticed public hearing on September 19, 2017.
- B. A duly noticed public hearing was held by the City Council on October 6, 2017 to consider this amendment to the Zoning Ordinance of the City of San Pablo codified as Title 17 of the San Pablo Municipal Code
- C. The Ordinance is consistent with the City of San Pablo General Plan.
The proposed ordinance meets the intent of the following policies:
ED-G-10: Support and contribute to a clean, attractive, and safe environment for residents, business owners, employees, and shoppers.
LU-G-3: Preserve and strengthen the City's overall image and create a safe, walkable and attractive urban environment for the current and future generations of residents.
- D. The Ordinance is consistent with the purposes of the Zoning Ordinance.
Pursuant to Zoning Ordinance Section 17.01.020 Purpose, the proposed ordinance promotes growth of the city in an orderly manner and promotes and protects the public health, safety, peace, comfort, and general welfare.

Pursuant to Zoning Ordinance Section 17.63.010 Purpose and intent of the Art in Public Places ordinance, the proposed amended ordinance is consistent with the intent that public art helps make cities more livable and more visually stimulating. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the city. Public art can illuminate the diversity and history of a community, and foster the economic development of the community. The proposed ordinance amends the ordinance to better implement these objectives.

- E. Chapter 17.63, "Art in Public Places," was part of the Zoning Code amendments adopted by the City Council on May 18, 2015 following CEQA review and adoption of an Addendum to the General Plan 2030 Environmental Impact Report (State Clearinghouse No. 2008082069). The proposed ordinance does not include any substantial changes to Chapter 17.63, "Art in Public Places," of the Zoning Ordinance, or substantial changes to the circumstances in which the Zoning Ordinance was adopted, or new information of substantial importance pursuant to 14 California Code of Regulations section 15162 to require the preparation of a subsequent EIR or even an Addendum to the EIR.
- F. Public notice of the hearing has been published in the *East Bay Times*, in accordance with the requirements of Government Code Section 65905. *A public hearing notice was published in the East Bay Times newspaper on Friday, October 6, 2017.*

Section 2. Chapter 17.63 of the San Pablo Municipal Code is amended in its entirety to read as follows:

Chapter 17.63 ART IN PUBLIC PLACES

Sections:

17.63.010	Purpose and intent.
17.63.020	Applicability.
17.63.030	Exemptions.
17.63.040	Public art requirement.
17.63.050	Public art criteria and regulations.
17.63.060	Eligible public art expenditures.
17.63.070	Installation and maintenance requirements.
17.63.080	Art permit approval process.
17.63.090	Establishment of the public art and mural fund.
17.63.100	Severability.

17.63.010 Purpose and intent.

This chapter regulates and establishes standards for inclusion of art in private development. The council finds that the environment, image, and character of the city would be improved by art and that the impacts associated with new development projects would be mitigated, in part, by provision of art in compliance with this chapter. The city council finds that public art helps make cities more livable and more visually stimulating. The presence of and access to public art enlivens the public areas of buildings and their grounds and makes them more welcoming. The visual and aesthetic quality of development projects has a significant impact on property values, the local economy and vitality of the city. Public art can illuminate the diversity and history of a community, and foster the economic development of the community. To achieve these goals, public art should be integrated into development projects citywide. For best results, consideration of public art should be integrated into project planning at the earliest possible stage,

and the selected artist should become a member of the project's design team early in the design process.

17.63.020 Applicability.

The provisions of this chapter apply to commercial development, including office and retail uses, and all industrial or light industrial uses, and any commercial portions of any new mixed-use development, with building development costs of two hundred thousand dollars (\$200,000) or more. The building development cost shall be as determined by the building official. In the event of multi-phased development, building development cost is based on the cost of all phases, even though all phases may not be completed at the same time. The provisions of this chapter do not apply to residential projects or the residential portions of a mixed-use project.

"Building development costs" shall mean those construction costs as declared on all building permit applications, and as accepted by the Building Official. Building permit applications shall include, but not be limited to, all building, plumbing, mechanical and electrical permit applications for the project.

17.63.030 Exemptions.

The following shall be exempt from the requirements of this chapter:

- A. Remodeling, repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity; although, the exemption is not meant to avoid the reconstruction of public art following a calamity;
- B. Financed with Public Funds. Alteration, construction, or repair of structures to perform rehabilitation of private property if that rehabilitation is primarily financed with public funds;
- C. Projects whose primary tasks are seismic retrofit or fire sprinkler installation;
- D. Capital Improvement Projects. Capital improvement projects performed by the city;
- E. Nonprofit Service Providers in Rented Facilities. Alteration projects that are undertaken by nonprofits organized under Section 501(c)(3) of the Internal Revenue Code where such nonprofits do not own the building.

17.63.040 Public art requirement.

- A. Provision of Art. Projects subject to this chapter shall provide publicly visible art on site that is equal in value to at least one percent of the building development costs. In some instances, the cost of artwork may not equate precisely to one percent of the building development costs. If the developer does not spend the entire one percent on public art, the remaining amount shall be contributed to the public arts fund.

- B. Alternative to Provision of Art. Developers may choose to make a contribution to the public arts fund in lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to one percent of the building development costs. The in-lieu fee is to be used for funding of the city's public art program, as set forth in Section [17.63.090](#). The in-lieu fee shall be paid prior to issuance of a building permit for the project.

17.63.050 Public art criteria and regulations.

- A. For purposes of this chapter, "art" may include works of art that are created uniquely by an artist and integrated into the development project on a large public scale, including but not limited to the following or any combination of the following:
1. Painting in all media including permanently affixed works such as murals or frescoes;
 2. Prints and drawings;
 3. Reliefs, including carvings, frescoes, mosaics, earth works;
 4. Sculpture, including statues, fountains, kinetic, electronic, mobiles and monuments, or other in any material or combination of materials;
 5. Arches or other structures intended for ornament or commemoration;
 6. Graphic and multi-media, including printmaking, photography, any combination or forms of electronic media in a large public scale;
 7. Mixed or conceptual media in any combination of forms or media including drawings, collages, prints, or the use of sound, light, or water. Water, neon, fiber optic and electronic sculpture generally should not be encouraged due to difficulty of maintenance. Such art may be permitted if adequate assurance of continued maintenance is provided;
 8. Video, electronic, holographic, or digital media;
 9. Crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials;
 10. Stained glass;
 11. Neon; or
 12. A landscape or architectural feature that has been specifically and originally designed as a unique artistic element for the project and is not a mass production or replication.
- B. The following are not considered public art for the purposes of this chapter:
1. Directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions;
 2. Objects which are mass produced of standard design such as banners, signs, playground equipment, benches, statuary, street barriers, sidewalk barriers, or fountains;
 3. Reproduction, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts. Permitted art may include, however, limited editions controlled by the artists of original prints, cast sculpture, photographs and other art forms;

4. Decorative, architectural, or functional elements which are not designed by the building architect or landscape architect as an original artistic design feature unique to the project;
 5. Landscape architecture, gardening, or materials, except where these elements are designed by the artist and are integral or part of the work of art created by the artist;
 6. Landscaping required by the city as part of the development entitlements; or
 7. Artwork that is similar to, reminiscent of or based on a corporate logo.
- C. **Artist Qualifications.** The artist is required to have experience and knowledge of monumental-scale art or murals intended for public viewing. The artist's qualifications will be evaluated and examples of past work may be reviewed to determine whether or not the artist has appropriate experience for the project. Efforts shall be made to reach out to local artists in San Pablo and the broader San Francisco Bay Area.
- D. **Artistic Preference.** The determination of artistic preferences is primarily a function of the owner or developer of the property. It is the intent of this chapter to provide for the public display of private art on private property without substituting the artistic preferences of the city for those of the owner or developer of the property. All financial arrangements related to the public art are negotiated between the artist and the developer as contracting parties and shall be verified by a written agreement.
- E. **Visibility and Locations.** Appropriate locations may include, but are not limited to, exterior vehicular entryways to the property, plazas, greenbelts and building facades. The location selected should allow reasonable accessibility to the art, including visibility of the art from the public street. The location shall be exterior and installation of the art piece shall enhance the art and allow for unobstructed public viewing from as many angles as possible. When located in proximity to major traffic thoroughfares, the art should be at a motorist's scale and oriented toward the view corridor of the motorist. The art shall be an integral part of the landscaping and/or architecture of the buildings.
- F. **Proportional Size.** The art shall be proportional to the scale of the development and designed to create an artistic, visual and aesthetic impact upon observers. Particularly in locations on major thoroughfares and major intersections, the art should be of such size and nature as to strengthen the urban design and aesthetic quality of life in the community.
- G. **Inoffensive.** Because the art will necessarily be highly visible to the public, will be associated with city requirements, and because the traveling public will have no real opportunity to avoid the visual aspects of the art, expressions of obvious bad taste or profanity is prohibited. It is the intent of this criterion to address proposed art which by its nature would generally be considered offensive to the public.

17.63.060 Eligible public art expenditures.

- A. Eligible Costs. When calculating the value of an art to be placed on a private development site, eligible costs include purchase price of the art; art consultant fees; installation costs, including transportation of the art to the site, pedestals or display costs; wiring, fixtures and other costs directly related to the installation of lighting the art; and identification plaques.
- B. Ineligible Costs. Ineligible costs include land acquisition, site preparation, travel costs for the artist, architect fees, utility fees associated with the installation or operation of the art, costs associated with dedication ceremonies, publicity, or educational components and operation or maintenance fees and repairs.

17.63.070 Installation and maintenance requirements.

- A. Timing of Installation. If art installation is impracticable prior to the anticipated date of building occupancy, the city manager may allow building occupancy; provided, that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to city manager.
- B. Permanence. The art shall be a permanent, fixed asset to the property. The composition of the art shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and weather resistant.
- C. Maintenance. The developer and subsequently the property owner shall continuously maintain the public art in good condition after its installation for the life of the project, and shall perform necessary repairs and maintenance to the satisfaction of the city. Maintenance of the art includes related landscaping, lighting and the identification plaque. The repair and maintenance obligations of the property owner shall be contained in a covenant and recorded against the property and shall run with the property.
- D. Plaque Required. Each piece of art shall provide an appropriate identification plaque or monument measuring at least eight inches by eight inches. The plaque shall be made of cast metal and be placed near the art piece. Information is limited to the date, title and artist. The requirement of this subsection may be waived by the city if determined in a particular circumstance to be unnecessary or inconsistent with the intent of this chapter.
- E. Removal. Removal of required art is prohibited without the city's approval. The city may require replacement of the art. Any removal, relocation, or replacement of the public art must be consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law. Developer or owner shall execute a restrictive covenant in a form acceptable to the city attorney, enforceable by the city,

which shall be recorded against the project site and shall run with the land for a period of twenty years from the installation date.

17.63.080 Art permit approval process.

- A. Art Permit. An art permit is required for installation of public art in private development.

Prior to issuance of the building permit for the development project, the proposed public art must be reviewed and approved by the City Council after a recommendation from the Planning Commission and consultation with the City Art Curator. The budget for the proposed public art must be approved to ensure that only eligible expenditures are proposed and that such expenditures total the amount of the public art contribution.

- B. Issuance of a permanent certificate of occupancy for the development project will be conditioned on completion and full installation of the public art at the development site in accordance with the public art permit approved by the city, and confirmation by the city that the developer expended the public art contribution in full on the public art and in accordance with this chapter. However, if art installation is impracticable prior to the anticipated date of building occupancy, the city may allow building occupancy; provided, that the art permit has been issued and the applicant has filed with the city adequate security to guarantee installation of the art. The security may take the form of a bond, letter of credit, cash deposit, or similar security instrument, along with an agreement to install the required art in such amount and form as is acceptable to the city.

- C. Application. The art permit application shall contain the following information:
1. An application signed by the owner of the affected property;
 2. Landscape and site plans indicating the location and orientation of the art, signage, utility boxes, fire suppression systems, and the landscaping and architectural treatment integrating the piece into the overall project design;
 3. Color elevation rendering clearly showing the artwork to scale in relation to its surroundings;
 4. A sample, model, or photograph and “to-scale” drawings or renderings of the proposed art piece;
 5. Material samples and finishes;
 6. A resume of the proposed artist including slides or photographs of the proposed artist’s past work which demonstrates similar work to the proposal;
 7. A written statement by the artist describing any theme or development of the art;
 8. A lighting plan including samples of lighting fixtures; and
 9. Other information as required by the development services manager.
- D. The application shall be approved, or approved with conditions, upon a finding that the proposed art is consistent with the standards and the purpose of this chapter.

- E. Appeals. Any determination to require public art may be appealed to the city council. The city council, at its discretion, may waive, wholly or partially, the requirements of this chapter. Any waiver of the public art requirement shall be based on a showing by the applicant that:
1. The strict application of the law would, under the extraordinary circumstances of the particular development, produce a unique hardship not experience by others subject to the provisions of this Chapter; and
 2. The waiver or modification of the requirements is consistent with the objectives of this Chapter.

17.63.090 Establishment of the public art and mural fund.

The city council authorizes the establishment of a public art and mural fund for the deposit of all fees paid under this chapter.

This fund uses one percent of the building development costs for the acquisition and installation of the art and administration of the public art program, including, but not limited to, improvements, site preparation, lighting and landscaping. Such funds may be used to acquire, place, and maintain public art on public property throughout the City, and to administer the Art in Public Places Program. Public art acquired through the Public Arts Fund shall be approved by the City Council following a recommendation from the Planning Commission and consultation with the City Art Curator.

Consideration shall be given to local artists in San Pablo or the broader San Francisco Bay area or art that reflects San Pablo history or culture.

17.63.100 Severability.

If any sections, subsections, sentences, clauses, phrases or portions of this chapter are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed this and each section, subsection, phrase or clause of this title whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

Section 3. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

Section 4. Effective Date; Publication. This ordinance shall become effective thirty (30) days following its adoption. The City Clerk's Office shall publish and post the ordinance in accordance with California Government Code section 36933.

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First read at a regular meeting of the City Council of the City of San Pablo on October 16, 2017, and finally passed and adopted at a regular meeting of said City Council held on the _____ by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

ATTEST:

APPROVED:

Elizabeth Pabon-Alvarado, City Clerk

Cecilia Valdez, Mayor