Ordinance amending the Administrative Code to define “art enrichment”; to allow aggregation of art enrichment funds for use on any City property rather than only the funding department’s property; to allow the Arts Commission to reserve up to 10% of the art enrichment budget for maintenance and conservation; to allow art enrichment funds to be used exclusively for maintenance and conservation under limited circumstances; and to clarify references to the Arts Commission’s jurisdiction over works of art consistent with the Charter; and making environmental findings.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 140623 and is incorporated herein by reference.

Section 2. The Administrative Code is hereby amended by revising Section 3.19 to read as follows:
SEC. 3.19. APPROPRIATION FOR ART ENRICHMENT OF PROPOSED PUBLIC BUILDINGS, ABOVEGROUND STRUCTURES, PARKS AND TRANSPORTATION IMPROVEMENT PROJECTS.

(a) Art Enrichment Allocation. Before proposing a bond issue or making a request for an appropriation for the construction of any of the projects set forth in Subsection (c) below, the officer, board or commission concerned shall add thereto for the art enrichment of the proposed construction, two percent of the gross estimated construction cost, exclusive of the items proposed for such art enrichment. Where funding eligibility is limited by law or funding agency rules, the art enrichment allocation shall be based upon two percent of eligible construction costs.

If the officer, board or commission concerned determines that two percent of the gross estimated construction cost is inappropriate for art enrichment, such officer, board or commission shall submit its recommendation regarding the art enrichment budget and the basis for its determination to the Arts Commission for the Arts Commission's review. If the officer, board or commission concerned is unable to resolve the matter with the Arts Commission, the matter shall be submitted to the Mayor by the Arts Commission for final determination within 60 days from the date the recommendation is made.

Failure of the Arts Commission to submit the matter to the Mayor for resolution within such time shall be deemed equivalent to the Arts Commission's acceptance of the recommendation made by the officer, board or commission concerned.

(b) Definitions. For purposes of this Section:

"Alteration" of a building, aboveground structure, or transportation improvement project shall include substantial changes to elements such as walls, partitions, or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial changes" shall include additions to, removal of, and modification of such elements.
“Art Enrichment” shall mean the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Arts Commission.

“Civic Art Collection” shall mean the various artworks owned by the City under the jurisdiction of the Arts Commission that are accessioned by Resolution of the Commission into the Civic Art Collection.

(2) "Construction cost" shall mean the total estimated construction contract award amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Arts Commission. "Construction cost" shall not include movable or personal property or construction cost contingency.

(3) "Transportation improvement project" refers to Municipal Railway and Department of Public Works projects which include both aboveground and below-ground transportation-related projects; new boarding ramps; new transit platforms; new terminals and transportation systems with their attendant passenger amenities, such as shelters, seating, lighting, landscaping, and signage; new transportation-related structures such as maintenance and operating facilities; power substations; and street/highway-related transit improvements such as bridges and overpasses.

(c) Application. This Section shall apply to the construction or alteration of the following: (1) a building; (2) an aboveground structure; (3) a new park; or (4) a transportation improvement project.

The requirements of this Section shall also apply to the alteration of a building, aboveground structure, or transportation improvement project.

(d) Exemptions. The following shall be exempt from the requirements of this Section:
(1) Transportation improvement projects limited to rail replacement, rehabilitation or extension of catenary wiring; sidewalk (including curbs and gutters), street paving, repair or improvements; or transit vehicle purchases;

(2) All mechanical, plumbing and electrical system upgrades, structural or seismic upgrades, and modifications for disabled access, unless occurring in conjunction with alteration of a building, an aboveground structure or transportation improvement project;

(3) All park and landscape renovation projects including, but not limited to court resurfacing; landscape renovation or replanting; sewer and water lines; drainage and irrigation systems; wells; erosion control; restrooms; repaving; new paving; stairway repair or replacement; utilities; community gardens; modifications for disabled access; signage; lighting; fence replacement or repair; replacement or repair of existing play structures; natural areas management; modifications to existing parks; and new land uses within existing parks;

(4) Annual CIP funded capital improvements for security/life safety and health deficiencies when not occurring in conjunction with alteration of existing public buildings, aboveground structures, parks and transportation projects which are supported by the General Fund;

(5) Aboveground pipelines and their supports, such as trestles, anchor blocks and saddles; valve lots; power transmission lines and towers; switchyards and substations; and dwellings in watershed areas;

(6) Airfields and Airports Commission equipment; and.

(7) Airports Commission signage when not occurring in conjunction with a larger construction contract subject to this Section.

(e) Administrative Fees. The Arts Commission shall supervise and control the expenditure of all funds appropriated for art enrichment and shall allocate up to 20 percent of said funds for all necessary and reasonable administrative costs incurred in connection
therewith, unless the Arts Commission agrees to a lesser amount on projects with art enrichment budgets in excess of $750,000, or unless such administrative fee is limited or prohibited by the funding source.

(f) Aggregation of Funds. When mutually agreed upon by the Arts Commission, the City department from whose capital project the art enrichment allocation was obtained, and any other City department with jurisdiction over a proposed alternative site, and where permitted by the funding source, the Arts Commission shall have the authority to aggregate art enrichment funds for use at a more publicly accessible facility under the jurisdiction of the participating City department on an alternative City property.

(g) Maintenance and Conservation Funds. When permitted by the funding source, the Arts Commission may set aside and expend up to fifteen percent of the total art enrichment allocation for each project for maintenance and conservation purposes of artworks in the Civic Art Collection. If the project has limited public access, or generates funds insufficient to acquire new artwork, or cannot otherwise be used judiciously for that purpose, the Arts Commission may use the entire project Art Enrichment allocation for maintenance and conservation (aggregating or transferring funds as per subsection (f) above). When permitted by the funding source, funds set aside pursuant to this Section shall be invested in an interest-bearing account when the total of such funds set aside exceeds $10,000.

(h) Miscellaneous Provisions.

(1) When a client department suggests a mitigation measure to address any perceived safety concerns relative to any element of the art enrichment, the Arts Commission shall work with the client department to ensure that such mitigation is implemented to the satisfaction of the client, the Arts Commission and the artist, if such safety concern is raised by the client department within 30 days after the element has been presented for review to the client department.
(2) If a City department can sufficiently demonstrate to the Arts Commission that a project is not appropriate for public access, the Arts Commission shall waive the art enrichment allocation for such project provided that the art enrichment funding cannot be aggregated for use at a more publicly accessible facility under the jurisdiction of the participating City department.

(§) Construction and installation of art enrichment shall comply with the requirements of all applicable building codes, laws, ordinances, rules and regulations.

(43) Nothing in this Section contained shall be construed to limit or abridge the legal powers of the governing boards of the War Memorial, the Fine Arts Museums, the Asian Art Museum or the Port of San Francisco.

(54) Nothing in this Section shall be construed to limit or abridge the jurisdiction of the officer, board or commission of the participating City department to supervise and control the expenditure of project funds other than the two percent allocation for art enrichment.

(65) This amendment shall not be applied retroactively to projects for which an art enrichment allocation previously would not have been required, nor to those projects for which project funding has been approved either by prior voter action or by airport revenue bond sales, but not yet appropriated or expended. Nor shall this ordinance be construed to allow for an increase in the total art enrichment allocation for a project that is already underway or for which the art enrichment allocation has already been established.

Section 3. The Administrative Code is hereby amended by revising Section 2A.150.1 to read as follows:

SEC. 2A.150.1. ARTS COMMISSION; ADDITIONAL RESPONSIBILITIES.

(a) Cataloging, Care and Maintenance of Public Art Media. The Consistent with Charter Section 5.103, the cataloging, care and maintenance of all sculptures, statues, murals, paintings and other art media belonging to the City and County of San Francisco, other than
and excepting those located on properties under the jurisdiction and control of the San Francisco Unified School District, the M. H. de Young Memorial Museum, the California Palace of the Legion of Honor charitable trust departments under Section 5.101 of the Charter, or the California Academy of Sciences, and the Recreation and Park Commission, shall be under the jurisdiction of the Arts Commission.

(b) Agreement with Recreation and Park Commission. The Arts Commission shall be authorized to enter into agreement with the Recreation and Park Commission, upon such terms as may be mutually agreed, for the cataloging, care and maintenance of any or all of the above media located on properties under the jurisdiction of the Recreation and Park Commission.

(c) Authorization for Sale of Works of Art. When the Arts Commission determines that it would be advantageous to the City and County, a work of art under the jurisdiction of the Arts Commission may be sold or exchanged as hereinafter set forth.

The Arts Commission may execute and accept all deeds of conveyance necessary and proper to effect a duly authorized sale or exchange. A work of art to be sold or exchanged shall be cataloged, listed and described with reasonable certainty and a copy of such catalog shall be furnished to the Purchaser of supplies.

(cd) Exchange of Works of Art. The Arts Commission may exchange a work of art on such terms as the Arts Commission, by a 2/3 vote of the members of the Arts Commission, determines appropriate; provided that any exchange is subject to the approval of the Purchaser of supplies.

d(e) Public Auction. A work of art under the jurisdiction of the Arts Commission may be sold at public auction to the highest and best bidder and the Arts Commission may contract with a licensed auctioneer for the purpose of conducting the sale or sales. The contract shall specify the compensation to be paid for the auctioneer's services and set forth
the terms and conditions under which the sale or sales are to be conducted. Each such contract shall be approved by the Purchaser of Supplies.

(ef) **Sale at Other Than Public Auction.** A work of art under the jurisdiction of the Arts Commission may be sold by private sale under the following circumstances:

1. If the work is offered at public auction and no bids are received, or if the bids are rejected; or
2. If the Arts Commission determines, by a 2/3 vote of the members of the Arts Commission, that the work may be sold on terms more advantageous to the City and County if sold through private sale. Any contract for the private sale of a work of art is subject to the approval of the Purchaser. A work of art on which bids have been rejected shall not thereafter be sold through private sale for less than the amount of the highest bid received.

(gf) **Reproductions or Adaptations.** The Arts Commission may license the making of reproductions or adaptations of works of art under its jurisdiction.

(gh) **Disposition of Proceeds from the Sale or Exchange of a Work of Art or of a Reproduction or Adaptation Thereof.** All moneys received from the sale of a work of art under the jurisdiction of the Arts Commission, or from the licensing of the making of a reproduction or adaptation thereof, shall be placed in the *public art media fund: Arts Commission Public Arts Fund* as provided for in Section 10.117-1 10.100-30 of the San Francisco Administrative Code. The monies in this fund attributable to the sale or exchange of a work of art shall be used exclusively for the purpose of acquiring or maintaining one or more other works of art for the same public building or purpose for which the original work was acquired.

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance would be subsequently declared invalid or unconstitutional.

Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: [Signature]
ADINE VARAH
Deputy City Attorney

Mayor Lee
BOARD OF SUPERVISORS
Ordinance amending the Administrative Code to define "art enrichment"; to allow aggregation of art enrichment funds for use on any City property rather than only the funding department's property; to allow the Arts Commission to reserve up to 10% of the art enrichment budget for maintenance and conservation; to allow art enrichment funds to be used exclusively for maintenance and conservation under limited circumstances; and to clarify references to the Arts Commission's jurisdiction over works of art consistent with the Charter; and making environmental findings.

June 19, 2014 Budget and Finance Committee - CONTINUED

June 20, 2014 Budget and Finance Committee - RECOMMENDED

July 08, 2014 Board of Supervisors - CONTINUED ON FIRST READING
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

July 15, 2014 Board of Supervisors - PASSED, ON FIRST READING
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

July 22, 2014 Board of Supervisors - FINALLY PASSED
Ayes: 10 - Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee
Excused: 1 - Avalos
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/22/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

[Signature]

Mayor

[Signature]

2/31/2014
Date Approved