

EXHIBIT 4: Current Alameda Municipal Code Section 30-65

Exhibit 1

CHAPTER XXX – DEVELOPMENT REGULATIONS
ARTICLE VIII. – PUBLIC ART CONTRIBUTION

30-30-65 – PUBLIC ART IN NEW COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND MUNICIPAL CONSTRUCTION.

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30-98.1 – Purposes.

The City Council finds and declares:

- a. Cultural and artistic assets should be included in private development projects because those projects diminish the availability of the community's resources for those cultural and artistic features, and because it is important that those projects contribute to the urbanization of private property in a manner that benefits the public.
- b. The visual and aesthetic quality of development projects has a significant impact on property values, the economic well-being of the City and its orderly development.
- c. The City provision of Alameda's public art supports and implements General Plan establishes cultural and historical, recreational, park and open space land use policies. This section is consistent with to support and enhance the cultural and historic component character of the City's General Plan by providing an opportunity for the community and ensure high quality architectural and artistic design in all new projects to incorporate public art development.
- d. The public's understanding, enjoyment and experience of cultural diversity will be increased by the variety of artistic projects provided in compliance with this section Article.
- e. The public art provided pursuant to this section shall include, without limitation, the preservation of Alameda's historic and maritime traditions.

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f. ef. The incorporation of public art into private and public development will create a unique sense of community as well as public identity and enhance the visual and aesthetic quality of such developments.

g. fg. The incorporation of public art and cultural programs in private and public development is in the public interest and enhances the general welfare of those persons living and working in City of Alameda.

(Ord. No. 2892 N.S. § 1)

30-~~6598~~.2 - Definitions.

For purposes of this ~~section~~Article, the following terms shall have the following meanings:

a. a. "Alameda Public Art Fund" shall mean a separate account into which all monies generated under this Article or derived from gifts or donations for Public Art shall be deposited.

b. "Artwork" shall mean art, including but not limited to, sculpture, painting, mosaics, photography, crafts, mixed media, and electronic arts. Artwork as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

c. "Artist" shall mean an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, media, or literary arts as judged by the quality of that professional practitioner's body of work, educational background and experience, public performances, past public commissions, sale of works, exhibition record, publications, and production of Artwork. The members of the architectural, engineering, design, or landscaping firms retained for the design and construction of a development project covered by this Article shall not be considered Artists for the purposes of this Part.

d. "Building Development Costs" shall mean those construction costs as declared on all building permit applications for new construction, and as accepted by the Chief Building Official, but shall not apply to costs solely attributable to tenant improvements. Building permit applications shall include, but not be limited to, all building, plumbing, mechanical and electrical permit applications for the project.

e. b. "'Cultural Facility" shall mean a structure that houses, and has as its primary purpose the presentation of one or more public art forms, and that is operated by public entities or non-profit organizations dedicated to cultural activities available to a broad public. Examples of acceptable facilities are museums, theaters, and performing arts centers, and other similar facilities as determined appropriate by the Public Art Commission. Facilities that do not meet this definition are churches, schools, commercial movie theaters, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and for-profit facilities used for profit activities.

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- f. "Applicant" shall mean the person or entity that is financially and legally responsible for the planning, development, and construction of any development project covered by this Article, who may, or may not, be the owner of the subject property.
- g. "Development Project" shall mean any development which requires the issuance of a building permit by the City of Alameda.
- h. "Maintenance" shall mean those activities required to conserve, repair, or preserve the integrity of the Artwork and setting with which the Artwork is located. Routine maintenance means the basic day-to-day care of the Artwork.
- i. "Non-profit agency" shall mean a corporation organized under Internal Revenue Code Section 501(c)(3), in good standing with the California Department of Corporations and in compliance with any and all federal, state, and local licensing, reporting, and tax requirements.
- j. e. "On-site Artwork" shall mean Artwork that is provided on a development site in conformance with this Article.
- k. "Program Allocation" shall mean the amount developer contribution value of the on-site public art required under subsection 30-65.398.4
- l. "Public Art" shall mean art that is accessible to the public, including but not limited to visual, performing, literary, and media arts.
 - a. d. "Public Art" shall mean art that is accessible to the public art programs described in subsection 30-65.4.
 - b. e. "Public Art In-Lieu Contribution" shall equal the percentage of building development costs required by this section.
(Ord. No. 2892 N.S. § 1), including but not limited to visual, performing, literary,
 - c. 30-65.3 Contribution Requirements.
 - a. Private and municipal developments with Building Development Costs of two hundred fifty thousand (\$250,000) dollars or more shall devote an amount not less than one (1%) percent of such costs for acquisition and installation of Public Art on the development site, subject to a maximum of one hundred fifty thousand (\$150,000) dollars. The Public Art shall be installed on the development site in a location that allows the Public Art to be visible from a public right-of-way or from other public property. This amount shall be the Program Allocation. media arts.
 - b. The contribution requirement of this section "Public Art Commission" shall apply to commercial meant the City of Alameda commission which advises the City Council on Public Art policies, procedures, and expenditures from the Alameda Public Art Fund.

30-98.3 – Applicability and Exemptions

- a. Applicability:

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1. Commercial, industrial, and municipal development projects, and residential having a Building Development Cost of \$250,000 or greater shall be subject to the provisions of this Article.
2. Residential development projects that create creating five (5) or more residential units, and having a Building Development Cost of \$250,000 or greater shall be subject to the provisions of this Article.
- c. An existing building that is remodeled with a construction value~~Building Development Cost~~ equal to or more than ~~fifty (50%) percent~~ of the replacement cost of the building ~~shall be subject to the requirements of this section~~.
3. ~~d. All non-profit and non-municipal governmental, and meeting the development thresholds established by subsections 1 and 2 above, shall be subject to the provisions of this Article.~~

b. Exemptions:

1. Affordable housing developments in which 100% of the units qualify as units affordable to very low, low or moderate income households shall be exempt from this Article.
2. Rehabilitation consistent with the requirements~~Secretary of this section~~Interior Standards of designated City Council may~~Monuments~~ shall be exempt ~~any municipal building~~from this Article.
3. Development or rehabilitation of structures that house a Cultural Facility shall be exempt from the requirements of this sectionArticle.
4. ~~e. In lieu of acquisition and installation of Public Art on the Development or rehabilitation of public parks are exempt from this Article, and other municipal development site, an owner~~projects may be exempted from the provisions of this Article if the City Council finds that:
 - a) A funding source of the project expressly prohibits contributions to Public Art; or
 - b) Based upon the characteristics of the project, including but not limited to budget constraints, it is in the best interests of the Alameda community to exempt the project from this Article, or;
 - c) The nature of the development project does not lend itself to public art.

30-98.4 - Contribution Requirements.

a. Program Allocation: Commercial, industrial and municipal development projects, and residential projects of five or more residential units, having Building Development Costs of \$250,000 or more shall make a contribution of not less than 1% of such cost for acquisition and installation of on-site Public Art. The contribution shall be referred to as the Program Allocation. The maximum per project Program Allocation shall be \$500,000. The maximum Program Allocation shall be adjusted each Fiscal Year

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starting in Fiscal Year 2017-18 by the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area published by the Bureau of Labor Statistics of the United States Department of Labor, or any successor to that index. The maximum amount of \$500,000 shall not be adjusted downward in case of deflation. In no case shall a developer be required to pay more than \$500,000 for the Program Allocation.

b. *In lieu Payments:* In lieu of acquisition and installation of on-site Public Art as required under subsection (a) above, the Applicant, at its discretion, may place a Public Art In-Lieu Contribution in an amount equal to 100% of the Program Allocation into the Alameda Public Art Fund, established by subsection 30-65.5 for acquisition and installation of Public Art. The Developer contributions to the Public Art In-Lieu Contribution Fund shall be paid prior to the issuance of a building permit for the project on the development site.

c. f. Subject to the approval of the Public Art Commission, an owner or developer An Applicant may incorporate into the development Public Art, at his or her discretion, provide On-site Artwork that has a value lower than 100% of the Program Allocation and pay a Public Art In-Lieu Contribution an in lieu payment to the Public Art Fund for the balance of the Program Allocation.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 1)

30-65.498.5 - Public Art Requirements.

a. Required On-site Public Art shall be installed on the development site in a location that allows the Artwork to be visible from a public right-of-way or from other publicly accessible property.

b. Required On-site Public Art shall be permanent in nature and shall be constructed of materials that are appropriate for the proposed location. The following Public Art Artwork may be used to satisfy the requirements of subsection for on-site Public Art installations required by Section 30-65.398.4:

a. On-site Projects:

1. _____

- i. _____ Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
- ii. _____ 2. Painting: All media, including but not limited to, murals;
- iii. _____ 3. Graphic and Multi-media: printmaking, drawing, calligraphy and photography including digital, any combination of forms of electronic media including sound, film, holographic, and video and other art forms but only when on a large public scale;
- iv. _____ 4. Mosaics;

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- v. 5. Crafts: in clay, fiber and textiles, wood metal, plastics and other materials;
- vi. 6. Mixed Media: any combination of forms or media, including collage; and
- vii. 7. Any other form determined by the ~~Recreation and Park~~Public Art Commission, or City Council on appeal, to satisfy the intent of this section.

b. On-site Cultural Programs:

- 1. Performance arts: theatre, dance, music;
- 2. Literary arts: poetry readings and story telling;
- 3. Media areas: film and video, screenings and installations;
- 4. Education: art lectures and presentations;
- 5. Special events: festivals and celebrations;
- 6. Artist-in-residence programs in the arts;

c. 7. The following facilities and artwork shall not be used to satisfy the requirements for on-site public art:

- i. Construction of indoor or outdoor stages or performance spaces.
- ii. Planned arts or cultural events that will require expenditure of Public Art Funds by the City to monitor to ensure compliance.

Any other art form of cultural program determined by the Public Art Commission to satisfy the intent of this section.

c. On-site Art Spaces or Cultural Facilities that include one or more of the following eligible components: gallery/exhibition spaces, resource libraries, visual arts slide registries, performance spaces, artist studio spaces and arts education facilities which are open and accessible to the public.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 2)

30-65.5 Alameda Public Art Fund.

- iii. a. There is hereby created the Alameda Public Art Fund to account for not to be appropriate for its location or that will require additional expenditures from the Public Art In-Lieu Contributions made pursuant to subsection 30-65.3(e) and (f) and any and all other revenues appropriated or received for Public Art. The revenues in such Fund shall be used solely for (i) the acquisition, commission, design, installation, improvement, maintenance and insurance of Public Art identified by subsection 30-65.4, (ii) the acquisition or improvement of real property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City, or (iii) other expenses associated with implementation of Public Art and the Public Art Plan fund to ensure compliance.

- b. The Alameda Public Art Fund shall be distributed annually as follows:

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1. ~~No more than twenty five (25%) percent of the annual Alameda Public Art Fund shall be used as an administrative fee for processing the Public Art application, approving the Public Art, coordinating and developing cultural programs, monitoring, compliance, or any other administrative task.~~
2. ~~The balance of the Alameda Public Art Fund shall be distributed for Public Art with seventy-five (75%) percent designated for on-site art and twenty-five (25%) percent for on-site cultural programs and on-site art spaces or cultural facilities.~~
- c. ~~If real property purchased with monies from the Alameda Public Art Fund is subsequently sold, the proceeds from the sale shall be returned to the Alameda Public Art Fund.~~
- d. ~~The Public Art Commission shall present annually to the City Council for approval a Public Art Plan that recommends the use of Alameda Public Art Fund monies consistent with the purpose of this section. The Public Art Plan shall be administered by the Planning and Building Department.~~

~~(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 3)~~

30-65.6 - Included and Excluded Expenses.

- a. ~~The following expenses may be included in the budget for the Program Allocation for Public Art: (i) the art itself including the artist's fee for design, structural engineering and fabrication; (ii) transportation and installation of the work at the sites; (iii) identification signs; and (iv) mountings, anchorages, containments, pedestals, bases, or materials necessary for installation of the art.~~
- b. ~~The following expenses shall not be included in the budget for the Program Allocation for Public Art: (i) the cost of locating the artist(s); (ii) architect and landscape architect fees; (iii) land costs; (iv) landscaping around Public Art not integral to its design; (v) publicity, public relations, photographs or dedication ceremonies; (vi) utility fees associated with activating the public art; and (vii) illuminating the art if not integral to the design.~~
- c. ~~No more than twenty five (25%) percent of the Program Allocation for Public Art determined on an annual basis shall be used as an administrative fee as described in subsection 30-65.5(b) above.~~

~~(Ord. No. 2892 N.S.)~~

30-65.7 - Reserved.

Editor's note—

~~Ord. No. 3029 N.S., § 2, adopted April 5, 2011, repealed 30-65.7, which pertained to Public Art Commission and derived from Ord. No. 2892 N.S., § 1; and Ord. No. 2942 N.S., § 4. Similar provisions can be found in 2-18.1 through 2-18.4~~

30-65.8

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30-98.6 - Application and Approval Procedures for Placing Public Art on Private Property. On-site Artwork.

a. An application for the installation of On-site Public Art on private property shall be submitted to the Planning and BuildingCommunity Development Department on forms furnished for that purpose and shall include the following information, as applicable:

- i. (i) Landscape and/or site plans indicating the location and orientation of the Public Art and that integrates the landscaping and architectural treatment integrating the piece artwork into the overall project design;
- ii. (ii) A sample, model, photograph or drawings of the proposed Public Art;
- iii. (iii) Material samples and finishes, if appropriate;
- (iv) A The artist's resume of the proposed artist;
- iv. (v) Slides and/or photographs and portfolio of the proposed artist's past Public Artwork, which demonstrates like Public Art to the competency with the materials and forms proposed for the on-site art proposal;
- v. (vi) A written statement by the artist describing any theme or development of the Public Art the Artwork, as well as a discussion of the manner in which the proposed Public Art meets the Guidelines described in Section 30-65.10, and the manner in which the Public Art will be displayed in an area that is visible from a public right of way or public property; or, if an on-site cultural program or art space or cultural facility, the means findings established by which the public will gain access to such programs, spaces, or facilities subsection (ed), below;
- vi. (vii) A written statement by the artist An itemized budget declaring the valuation of the Public Art Artwork pursuant to Section 30-98.85;
- vii. (viii) A maintenance plan and draft agreement for the Public Art; maintenance of the Artwork; and
- viii. (ix) Any such additional information or material as may be required by the Planning and BuildingCommunity Development Director, or designee;
- ix. Application fees set by City Council Resolution.

b. The application submitted pursuant to subsection (a) of this section shall be referred to the Planning and BuildingCommunity Development Director or his/her designee for preliminary review to determine whether the application is complete. The completed application along and in accordance with the recommendation requirements of staff and this Article. If the Director fails to make his or consultants her determination within 30 days, the application shall be forwardeddeemed complete. Once complete, the Director shall transmit the application to the Public ArtArts Commission for review and decision.

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c. ~~e.~~ The Public Art Commission shall review the permit application at a noticed public hearing within ~~sixty~~ (60) days of ~~receipt of a complete the~~ application. ~~The~~ being deemed complete.

d. ~~Public Art Commission may make recommendations regarding possible changes, modifications or additions to the proposal. Fourteen (14) days' prior written notice of the Public Art Commission meeting shall be provided to the applicant given consistent with the noticing requirements of the time and place~~Section 30-22.4 Notice of the meeting at which the Public Hearing.

In order to grant approval of an on-site public art application ~~will be considered~~.

e. ~~d.~~ The, the Public Art Commission shall ~~approve or deny~~make all of the application in accordance following findings:

- i. ~~The artist has demonstrated their qualifications to complete the proposed work with the Guidelines~~highest professional standards.
- ii. ~~There is sufficient public visibility and accessibility to the Artwork, and the proposed Artwork is compatible with and harmonious with the development project and surrounding environment.~~
- iii. ~~The proposed art is durable and cost effective to maintain using ordinary methods.~~
- iv. ~~The budget for Approval referenced in Section 30-65.10. the proposed art and any in-lieu fees proposed by the developer is equivalent to or exceeds the required program allocation.~~

f. The Public Art Commission may conditionally approve an application subject to such conditions that the Public Art Commission deems reasonably necessary to conform ~~the Public Art Guidelines for Approval~~to the findings for approval. Approvals of public art applications shall be by resolution of the Public Art Commission. The resolution shall include the findings required by this section, any conditions of approval, and the maintenance obligations of the property owner.

g. ~~e.~~ Failure~~Any final decision~~ of the Public Art Commission may be appealed to the City Council within 10 calendar days or may also be called for review by the City Council pursuant to the requirements of call for review process in Section 30-25.1.

h. ~~If the Public Art Commission is unable to act on an application and to notify the applicant within seventy five (75)60 calendar days of receipt of a complete application, or such and an extended period as may be mutually agreed upon by to the applicant and the Public Art Commission, shall be deemed a denial of such cannot be reached, the application shall be noticed for review and decision at the next available regularly scheduled meeting of the City of Alameda City Planning Board. The Planning Board shall act on the application pursuant to the requirements and findings of this Article.~~

i. ~~f.~~ The application required by this section shall be made, approval obtained, and the Public ArtArtwork installed prior to final building inspection or issuance ~~of approval~~ of

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a certificate of occupancy for the new construction. If installation prior to the date of occupancy is impracticable, as determined by the Planning and BuildingCommunity Development Director or his/her designee, a certificate of occupancy may be approved for the building or portion thereof if the application submitted pursuant to this section has been approved, the applicant has executed a written agreement with the City to install the Public ArtArtwork, and the applicant has filed security in an amount and equal to the Program Allocation, and in a form acceptable to the City Attorney to guarantee installation of the Public Art.

g._____

30-98.7 Maintenance Obligations.

- a. The property owner shall maintain, or cause to be maintained, in good condition the On-site Public Art continuously after its installation and shall perform necessary repairs and maintenance to the satisfaction of the City. The To insure continued maintenance obligations of the, the City shall require the applicant or property owner shall be contained in the covenant and recorded against to enter into a separate maintenance agreementThe maintenance obligations of the property owner shall be incorporated into the conditions of approval for the On-Site Public Art and recorded against the property by the applicant prior to issuance of a certificate of occupancy for the property by the applicant. Development Project.
- b. Should the property owner wish to remove the On-site Public Art, the City must be notified in advance. The property owner shall replace the Public ArtArtwork with Public ArtArtwork of equal or greater value, and consistent with the California Preservation of Works of Art Act and the Federal Visual Artists' Rights Act and any other relevant law.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 5)

- c. Guidelines and policies for application and review of public art applications, and public art administration shall be prepared by the City consistent with this Article.

30-98.8 - Included and Excluded Expenses.

- a. The following expenses may be included in the budget for the Program Allocation for On-site Public Art:
 - i. The art itself including the artist's fee for design, structural engineering and fabrication;
 - ii. Transportation and installation of the work at the sites;
 - iii. Identification signs; and
 - iv. Mountings, anchorages, containments, pedestals, bases, or materials necessary for installation of the art.
- b. The following expenses shall not be included in the budget for the Program Allocation for Public Art: 65

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- i. The cost of locating the artist(s);
- ii. Architect and landscape architect fees;
- iii. Land costs;
- iv. Landscaping around Public Art not integral to its design;
- v. Publicity, public relations, photographs or dedication ceremonies;
- vi. Utility fees associated with activating the public art; and
- vii. Illuminating the art if not integral to the design.

30-98.9 - Compliance.

a. Compliance with the provisions of this section shall be demonstrated by the owner or developer prior to the issuance of a certificate of occupancyDeveloper, as follows:

- i. a. Payment of the Public Art In-Lieu Contributionprior to the issuance of building permits; or
- ii. b. Installation of the On-site Public Art in accordance with approval of the application submitted pursuant tosection 30-65.898.68 prior to the issuance of a Certificate of Occupancy; or
- iii. c. Execution of an installation agreement and evidence that a maintenance covenantthe resolution of approval by the Public Art Commissionhas been recorded against the propertyprior to the issuance of a Certificate of Occupancy.

(Ord. No. 2892 N.S. § 1)

30-6598.10 - Alameda Public Art Fund.

a. GuidelinesThere is hereby created the Alameda Public Art Fund to account for Approval.

a. the Public Art Developer Contributions made pursuant to subsection 30.98.4 and any and all gifts, grants, donations, or other revenues appropriated or received for Public Art. The revenues in such Fund shall not be used for On-site Public Art provided through private development, but shall be used solely as follows:

- i. AAcquisition, commission, design, installation, improvement, maintenance and insurance of Public Art;
- ii. City Aacquisition of property or improvement of realpublic property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City;
 - The Alameda Public Art Fund shall be distributed for Public Art with seventy-five (75%) percent designated for physical art and twenty-five (25%) percent for cultural arts and arts programming, less time and resources charge pursuant to 30-98. 10d. Art and cultural programs including but not limited

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~~to performance arts, literary arts, media arts, art education, special community events, and/or artist in-residence programs;~~

iii.

iv. Grants to non-profit arts/cultural organizations to provide programming to benefit the Alameda community; or.

If Fund monies are granted to third-party entities, through contract with the City to provide arts and/or cultural programs, the contract shall limit administrative expenditures to 20% of the total contract amount.

v. Other expenses associated with implementation of Public Art.

b. The Public Art Commission shall present biennially to the City Council recommendations for the distribution of any or a portion of the Public Art funds by the City of Alameda, for approval a report that shall include the following an accounting of the Alameda Public Art Fund monies consistent with the purpose of this Article and recommended priorities for distribution of the Public Art Fund monies during the following two years.

c. The Alameda City Council shall authorize expenditures from the Public Art Fund consistent with the purpose of this Article.

d. All City time and resources spent administering the Public Art Fund shall be charged against the Fund.

e. If real property purchased with monies from the Alameda Public Art Fund is subsequently sold, the proceeds from the sale shall be returned to the Alameda Public Art Fund.

~~Guidelines for approval and maintenance of Public Art ("Guidelines for Approval") shall be adopted by the City Council, upon recommendation from the Public Art Commission. Guidelines shall be adopted within sixty (60) days of the ordinance codified in this chapter.~~

~~b. The Guidelines for Approval shall include standards for reviewing an application for the installation of Public Art in accordance with the following objectives:~~

- ~~1. Conceptual compatibility of the design with the site environment and City design standards;~~
- ~~2. Appropriateness of the design to the function and aesthetics of the site;~~
- ~~3. Compatibility of design and location within a unified design character or historic character of the site;~~
- ~~4. Creation of an integral and complementary unity with the environment;~~
- ~~5. Preservation and integration of natural features;~~
- ~~6. Appropriateness of scale, form, content, materials, textures, colors and design to the site and surrounding environment; and~~
- ~~7. Durability of material and ease of maintenance.~~

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(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 6)

30-65.11 - Appeal to the City Council.

Any final decision of the Public Art Commission may be appealed to the City Council within ten (10) calendar days following the decision of the Public Art Commission. Said appeal shall explain the grounds for the appeal in writing.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 7)