

## ARTICLE VIII. - PUBLIC ART IN NEW COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND MUNICIPAL CONSTRUCTION

*Footnotes:*

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**Editor's note**— Ord. No. 3199 N.S., § 1, adopted November 7, 2017, amended 30-65 in its entirety to renumbered it 30-98. Former 30-65, pertained to public art in new commercial, industrial, residential and municipal construction, and derived from Ord. No. 2892 N.S. and Ord. No. 2942 N.S.

## 30-98 - PUBLIC ART IN NEW COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND MUNICIPAL CONSTRUCTION.

## 30-98.1 - Purposes.

The City Council finds and declares:

- a. Public art contributes to the public's understanding, enjoyment and experience of cultural diversity, and helps to attract and anchor a large and diverse creative sector, enriching the City's cultural identity which is a key component of the City's economic vitality.
- b. 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.
- c. 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 the City of Alameda.
- d. The provision of public art supports and implements General Plan policies to support and enhance the cultural and historic character of the community and ensure high quality architectural and artistic design in all new development.
- e. 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.
- f. Cultural and artistic resources foster economic development and tourism, revitalize urban areas, increase real property values, and improve the overall business climate by creating a more desirable community within which to live and work.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

### 30-98.2 - Definitions.

For purposes of this article, the following terms shall have the following meanings:

*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.

*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.

*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.

*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.

*Building development costs* shall mean those construction costs as declared on all building permit applications for new construction or rehabilitation, 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.

*Cultural arts and arts programming* shall mean: Performance arts, including, but not limited to: Theatre, dance, music; literary arts: Poetry reading and storytelling; film and video; screenings and installations; education; art lectures and presentations; special events: Festivals and celebrations; and artist-in-residence programs in the arts.

*Cultural facility* shall mean a structure that houses, and has as its primary purpose the presentation of one (1) 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 for-profit activities.

*Development project* shall mean any development which requires the issuance of a building permit by the City of Alameda.

*Maintenance* shall mean those activities required to conserve, repair, or preserve the integrity of the artwork and setting within which the artwork is located. Routine maintenance means the basic day-to-day care of the artwork.

*Nonprofit organization* shall mean an organization 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.

*On-site artwork* shall mean artwork that is provided on a development site in conformance with this article.

*Program allocation* shall mean the value of the on-site artwork required under subsection 30-98.4.

*Public art* shall mean art that is accessible to the public, including but not limited to artwork and cultural arts and arts programming.

*Public Art Commission* shall mean the City of Alameda commission which advises the City Council on public art policies, procedures and expenditures from the Alameda Public Art Fund.

*Public art in-lieu contribution* shall mean a payment made to the Alameda Public Art Fund in lieu of providing on-site artwork required by Section 30-98.3.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

### 30-98.3 - Applicability and Exemptions.

#### a. Applicability.

1. Commercial, industrial and municipal development projects having a building development cost of two hundred fifty thousand (\$250,000.00) dollars or greater shall be subject to the provisions of this article.
2. Residential development projects creating or rehabilitating five (5) or more residential units and having a building development cost of two hundred fifty thousand (\$250,000.00) dollars or greater shall be subject to the provisions of this article.

#### b. The following shall be exempt from the provisions of this article:

- 1.

Affordable housing development projects in which one hundred (100%) percent of the units qualify as units affordable to very low-, low- or moderate-income households.

2. Rehabilitation of designated City monuments.
3. Development or rehabilitation of structures that house a cultural facility.
4. Municipal or Non-Profit Organization Development Projects, including parks, may be exempted (fully or partially) from the provisions of this article when the City Council finds that, based upon the characteristics of the project or the project budget, it is in the best interests of the Alameda community to do so.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.4 - Contribution Requirements.

- a. Program Allocation. Development projects subject to the provisions of this article shall expend not less than one (1%) percent of building development costs acquiring and installing on-site artwork. This expenditure shall be referred to as the program allocation. Notwithstanding the foregoing, the specific program allocation for a project subject to a development agreement or a disposition and development agreement shall be established in the project specific agreement as part of a negotiated comprehensive public benefit package.
- b. In-lieu Payments. In lieu of acquiring and installing on-site artwork as required under subsection a. of this section, the applicant, at the applicant's discretion, may pay into the Alameda Public Art Fund a public art in-lieu contribution in an amount equal to one hundred (100%) percent of the program allocation. If an applicant chooses to make the public art in-lieu payment, the applicant must make that choice prior to final approval of the development project application and fully pay the public art in-lieu payment to the City prior to the City's issuing the first building permit for the development project for which the contribution is required.
- c. If the applicant chooses to acquire and install on-site artwork, and the value of the on-site artwork is less than one hundred (100%) percent of the program allocation, the applicant shall pay into the Alameda Public Art Fund the difference between one hundred (100%) percent of the program allocation and the value of the on-site artwork.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.5 - Public Art Requirements.

- a. On-site artwork shall be installed on the development project site in a location that allows the artwork to be visible from a public right-of-way or from other publicly accessible property. Interactive art must be fully accessible to the public.
- b. On-site artwork shall be permanent in nature and shall be constructed of materials that are appropriate for the proposed location.
- c. On-site artwork installations required by Section 30-98.4 may include:
  1. Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
  2. Painting: All media, including but not limited to, murals;
  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;
  4. Mosaics;
  5. Crafts: In clay, fiber and textiles, wood metal, plastics and other materials;
  6. Mixed Media: Any combination of forms or media, including collage; and
  7. Any other artwork determined by the Public Art Commission, or City Council on appeal, to satisfy the intent of this section.
- d. The following facilities and artwork shall not be eligible to satisfy the requirements for on-site artwork:
  1. Construction of indoor or outdoor stages or performance spaces.
  2. Cultural arts and arts programming.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.6 - Application and Approval Procedures for On-site Artwork.

- a. Projects subject to the public art requirement shall declare their intention to install public art on-site or to contribute to the in-lieu fund as part of the initial discretionary permit for the project, or the submission of building permits, if no discretionary permits are required for the project. If an applicant chooses to install public art on-site, the applicant shall identify the proposed location(s) of the on-site public art on the submitted plans.
- b. An application for the installation of on-site artwork shall be submitted to the Community Development Department on forms furnished for that purpose and shall include the following information, as applicable:

1. Landscape and/or site plans indicating the location and orientation of the on-site artwork that integrates the artwork into the overall project design;
  2. A sample, model, photograph or drawings of the proposed on-site artwork;
  3. Material samples and finishes if appropriate;
  4. The artist's resume and portfolio of past work, which demonstrates competency with the materials and forms proposed for the on-site artwork proposal;
  5. A written statement by the artist describing the on-site artwork, as well as a discussion of the manner in which the proposed on-site artwork meets the findings established by subsection e. of this section;
  6. An itemized budget declaring the valuation of the on-site artwork pursuant to Section 30.98.8;
  7. A maintenance plan for the maintenance of the on-site artwork; and
  8. Any such additional information or material as may be required by the Community Development Director.
  9. Application processing fees set by City Council Resolution.
- c. The application submitted pursuant to subsection a. of this section shall be referred to the Community Development Director to determine whether the application is complete and in accordance with the requirements of this article. If the Community Development Director fails to make a determination within thirty (30) days, the application shall be deemed complete. Once complete, the Community Development Director shall transmit the application to the Public Art Commission for review and decision.
- d. The Public Art Commission shall review the permit application at a noticed public hearing within sixty (60) days of the application being deemed complete.
- e. Public notice of the Public Art Commission meeting shall be given consistent with the noticing requirements of Section 30-22.4 Notice of Public Hearing.
- f. In order to approve an on-site artwork application, the Public Art Commission must make all of the following findings:
1. The artist has demonstrated qualifications to complete the proposed on-site artwork with the highest professional standards.
  2. There is sufficient public visibility and accessibility to the on-site artwork, and the proposed on-site artwork is compatible with and harmonious with the development project and surrounding environment.
  3. The proposed on-site artwork is durable and cost effective to maintain using ordinary methods of maintenance.
  - 4.

The budget for the proposed on-site artwork and any in-lieu fees proposed by the applicant is equivalent to or exceeds the required program allocation.

- g. The Public Art Commission may conditionally approve an application subject to such conditions that the Public Art Commission deems reasonably necessary to conform 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 article, any conditions of approval, and the maintenance obligations of the property owner on which the on-site artwork is to be located. Any substantial changes to the approved artwork or location after Public Art Commission approval shall be subject to further review and approval by the Public Art Commission. The Community Development Director, in the Director's discretion, may make a determination regarding the substantiality of any changes.
- h. Any final decision of the Public Art Commission may be appealed to the City Council within ten (10) calendar days or may also be called for review by the City Council pursuant to the call for review process in Section 30-25.1.
- i. If the Public Art Commission is unable to act on an application within sixty (60) calendar days of receipt of a complete application, and an extended period mutually agreed to by the applicant and the Public Art Commission cannot be reached, the application shall be noticed for review and decision at the next available regularly scheduled meeting of the City of Alameda Planning Board. The Planning Board shall act on the application pursuant to the requirements of this article.
- j. The application required by this article shall be made, approval obtained and the artwork installed prior to final building inspection or issuance of the first certificate of occupancy for development project. If installation prior to the date of first occupancy is impracticable, as determined by the Community Development Director, a certificate of occupancy may be approved for the development project or portion thereof if the application submitted pursuant to this article has been approved, the applicant has executed a written agreement with the City to install the on-site artwork, and the applicant has filed security in an amount equal to the program allocation or the value of the proposed on-site artwork, whichever is greater, and in a form acceptable to the City Attorney to guarantee installation.
- k. The Community Development Director may adopt administrative regulations to implement this Ordinance and the Public Art Fund.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

30-98.7 - Maintenance Obligations.

- a. The property owner on which the on-site artwork is located shall maintain, or cause to be maintained, in good condition the on-site artwork continuously after its installation and shall perform necessary maintenance thereto to the satisfaction of the City. The maintenance obligations of the property owner shall be incorporated into the conditions of approval for the on-site artwork and shall be reflected in an agreement between the City and the owner of the property on which the on-site art work shall be located and the agreement shall be recorded against the property prior to issuance of the first certificate of occupancy for the development project.
- b. Should the property owner wish to remove the on-site artwork, the City must be notified in advance. The property owner shall replace the on-site artwork with on-site artwork 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. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.8 - Included and Excluded Expenses.

- a. The following expenses may be included in the budget for the program allocation for on-site artwork:
  1. The on-site artwork itself including the artist's fee for design, structural engineering and fabrication;
  2. Transportation and installation of the on-site artwork at the development project site;
  3. Identification signs; and
  4. Mountings, anchorages, containments, pedestals, bases, or materials necessary for installation of the on-site artwork art.
- b. The following expenses shall not be included in the budget for the program allocation for on-site artwork:
  1. The cost of locating the artist(s);
  2. Architect and landscape architect fees;
  3. Land costs;
  4. Landscaping around the on-site artwork not integral to its design;
  5. Publicity, public relations, photographs or dedication ceremonies;
  6. Utility fees associated with activating the artwork; and
  7. Illuminating the on-site artwork if not integral to the design.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.9 - Compliance.

- a. Compliance with the provisions of this article shall be demonstrated by the applicant, as follows:
  1. Satisfaction of the contribution requirements of Section 30-98.4; and
  2. If applicable, installation of the on-site artwork, or the execution of an agreement to install the on-site artwork, in accordance with Section 30-98.6; and
  3. If applicable, execution of maintenance agreement in accordance with Section 30-98.7 and evidence that the maintenance agreement has been recorded against the property prior to the issuance of the first certificate of occupancy.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)

#### 30-98.10 - Alameda Public Art Fund.

- a. There is hereby created the Alameda Public Art Fund to account for the public art in-lieu contributions made pursuant to Section 30-98.4 and any and all gifts, grants, donations, or other revenues appropriated or received for public art. The revenues in the Alameda Public Art Fund shall be used solely as follows:
  1. Acquisition, commission, design, installation, improvement, and insurance of public art;
  2. City acquisition of real property or improvement of public property for the purpose of displaying public art, which has been or may be subsequently approved by the City;
  3. Grants to provide publicly accessible cultural arts and arts programming to benefit the Alameda community.
  4. Other expenses associated with implementation, conservation, maintenance, or deaccession of public art. Funds for conservation, maintenance or deaccession of public art shall be prioritized for public art on public property.
- b. Public art shall be located in a publicly accessible place on private property, on land or in a building owned by the City of Alameda or on government-owned publicly accessible property. Cultural arts and arts programming shall be free of charge to the public.
- c. For public art, the property owner on which the public art is located shall maintain, or cause to be maintained, in good condition the public art for its lifetime and shall perform necessary maintenance to the satisfaction of the City, as established in a long-term maintenance plan approved by the Public Art Commission and reflected in a recorded maintenance agreement.

- d. Based on the Alameda Public Art Fund balance at the time a request for proposals is released, no more than twenty-five (25%) percent of the Alameda Public Art Fund shall be distributed for cultural arts and arts programming.
- e. The Public Art Commission shall present biennially to the City Council recommendations for the distribution of any portion of the Alameda Public Art Fund.
- f. The Alameda City Council shall authorize expenditures from the Alameda Public Art Fund consistent with the purpose of this article, except that the City Manager shall be authorized to approve expenditures within the City Manager's spending authority. All requisitions and purchases shall be authorized consistent with approval authorizations in the City of Alameda Purchasing Policy. The City Manager shall notify the Council of any expenditure approved by the City Manager for any new art work or project. Any two Members of the Council may call the City Manager's decision for review within ten days of the City Manager's notification. If no call for review is timely perfected, the City Manager's decision shall become final and effective.
- g. 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.

(Ord. No. 3199 N.S., § 1, 11-7-2017; Ord. No. 3303, § 2, 9-7-2021)