

Exhibit A

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CHAPTER XXX – DEVELOPMENT REGULATIONS

ARTICLE VIII. – PUBLIC ART CONTRIBUTION

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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 of Alameda's General Plan establishes cultural and historical, recreational, park and open space land use policies. This section is consistent with the cultural and historic component of the City's General Plan by providing an opportunity for the design of new projects to incorporate public art.
- 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 Article.
- e. The public art authorized pursuant to this section may include, without limitation, the preservation of Alameda's historic and maritime traditions.
- f. 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. 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.

30-98.2 - Definitions.

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

- a. "Alameda Public Art Fund" shall mean a separate account into which all monies generated under this policy 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. "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.
- f. "Developer" 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. "On-site Public Art" shall mean Artwork that is installed on a development site in conformance with this Article.

- j. "Program Allocation" shall mean the developer contribution required under subsection 30-98.4
- k. "Public Art" shall mean art that is accessible to the public, including but not limited to visual, performing, literary, and media arts.
- l. "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.
- m. "Public Art In-Lieu Contribution" shall equal the percentage of building development costs required by this Article.

30-98.3 – Applicability and Exemptions

a. Applicability:

- 1. Commercial, industrial, and municipal development projects, having a Building Development Cost of \$250,000 or greater shall be subject to the provisions of this Article.
- 2. Residential development projects creating five or more residential units, and having a Building Development Cost of \$250,000 or greater shall be subject to the provisions of this Article.
- 3. An existing building that is remodeled with a Building Development Cost equal to or more than 50% of the replacement cost of the building, and meeting the development thresholds established by subsections 1 and 2 above, shall be subject to the provisions of this Article.

b. Exemptions:

- 1. Non-profit housing and affordable housing developments, city monuments and non-municipal government development shall be exempt from the requirements of this Article.
- 2. Structures that house a Cultural Facility shall be exempt from the requirements of this Article.
- 3. Municipal development. The City Council may exempt municipal projects from the provisions of this Article if it finds either of the following:
 - a) The additive cost to the project would render the project financially infeasible;
 - b) A funding source of the project expressly prohibits contributions to Public Art.

30-98.4 - Contribution Requirements.

- a. 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 to Public Art. . The contribution shall be the Program Allocation, to be distributed as follows:
 - 1. \$250,000 to \$999,999. Commercial, industrial and municipal development projects and residential projects of five or more residential units, having a

Building Development Cost of \$250,000 to \$999,999 shall contribute 1% of the Building Development Cost to the Alameda Public Art Fund as established by section 30.98.10 of this Article.

2. \$1,000,000 and above. Commercial, industrial and municipal development projects, and residential projects of five or more residential units, having a Building Development Cost of \$1,000,000 or more shall contribute 1% of the Building Development Cost to public art as follows:
 - a) Eighty percent of the Program Allocation shall be used for acquisition and installation of On-site Public Art on the development site.
 - b) Twenty percent of the Program Allocation shall be contributed to the Public Art Fund as established by section 30-98.10.
 - c) In lieu of acquisition and installation of On-site Public Art as required under subsection (a)(2)(a) above, the Developer, at his or her 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.
 - d) Subject to the approval of the Public Art Commission, a Developer may incorporate into the development project Artwork that has a value lower than 80% of the Program Allocation and pay a contribution to the Public Art Fund for the balance of the Program Allocation.
- b. In no case shall a developer be required to pay more than \$500,000 for the Program Allocation.
- c. Developer contributions to the Public Art Fund shall be paid prior to the issuance of a building permit for the project on the development site.
- d. If a Developer of a Development Project with a Building Development Cost of \$250,000 to \$999,999 chooses to allocate less than 100% of its Program Allocation to the Public Art Fund (and thereby allocating such funds to On-Site Public Art) or, if a Developer of Development Project with a Building Development Cost of \$1,000,000 or more chooses to allocate less than 20% of its Program Allocation to the Public Art Fund (and thereby allocating such funds to On-Site Public Art, the Developer may do so. The Public Art Commission must confirm the cost of the Developer's On-Site Public Art reflects any reallocation of the Program Allocation.

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30-98.5 - Public Art Requirements.

- a. 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 public property.
- b. The following Public Art may be used to satisfy the requirements for on-site installations in subsection 30-98.4(a)(2):
 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 form determined by the Public Art Commission, or City Council on appeal, to satisfy the intent of this section.

30-98.6 - Included and Excluded Expenses.

- a. The following expenses may be included in the budget for the Program Allocation for On-site Public Art:
 1. the art itself including the artist's fee for design, structural engineering and fabrication;
 2. transportation and installation of the work at the sites;
 3. identification signs; and
 4. 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:
 1. the cost of locating the artist(s);
 2. architect and landscape architect fees;
 3. land costs;
 4. landscaping around Public Art not integral to its design;
 5. publicity, public relations, photographs or dedication ceremonies;
 6. utility fees associated with activating the public art; and
 7. illuminating the art if not integral to the design.

30-98.7 - Reserved.

30-98.8 - Application and Approval Procedures for Placing On-site Public Art.

- a. Application Procedures: An application for the installation of On-site Public Art 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 site plans indicating the location and orientation of the Public Art and the landscaping and architectural treatment integrating the piece into the overall project design;
 2. A sample, model, photograph or drawings of the proposed Public Art;
 3. Material samples and finishes if appropriate;
 4. A resume of the proposed artist;
 5. Slides and/or photographs of the proposed artist's past Public Art, which demonstrates like Artwork to the proposal;
 6. A written statement by the artist describing any theme or development of the Artwork, as well as a discussion of the manner in which the proposed Public Art meets the findings established by subsection (d), below;
 7. An itemized budget by the artist declaring the valuation of the Artwork;
 8. A maintenance plan for the Artwork; and
 9. Any such additional information or material as may be required by the Community Development Director, or designee.
- b. Approval Procedure. The application submitted pursuant to subsection (a) of this section shall be referred to the Community Development Director or his/her designee for preliminary review to determine whether the application is complete and is in accordance with the requirements of this section. The completed application along with the recommendation of staff and/or consultants shall be forwarded to the Public Art Commission for review and decision.
- c. The Public Art Commission shall review the permit application within 60 days of receipt of a complete application. The Public Art Commission may make recommendations regarding possible changes, modifications or additions to the proposal. Fourteen days' prior written notice shall be provided to the applicant of the time and place of the meeting at which the application will be considered.
- d. Findings: In order to grant approval of a public art application, the Public Art Commission shall make the following findings:
1. The aesthetic quality of the Artwork merits approval.
 2. The proposed Artwork is compatible with and harmonious with the development project and surrounding environment.
 3. There is sufficient public visibility and accessibility to the Artwork.
 4. The proposed art is durable and cost effective to maintain using ordinary methods.
- e. The Public Art Commission may conditionally approve an application subject to such conditions that the Public Art Commission deems reasonably necessary to conform with the findings for approval.

- f. Approvals of public art applications shall be by resolution of the Public Art Commission. The resolution shall include the findings required by this section, and conditions of approval, including the maintenance obligations of the property owner.
- g. Any final decision of the Public Art Commission may be appealed to the City Council within 10 calendar days following the decision of the Public Art Commission. The appeal shall be made in writing and filed with the Community Development Department along with the required appeal fees.
- h. Failure of the Public Art Commission to act on an application and to notify the applicant within 60 calendar days of receipt of a complete application, or such extended period as may be mutually agreed upon by the applicant and the Public Art Commission, shall be deemed a denial of such application.
- i. The application required by this section shall be made, approval obtained, and the Artwork installed prior to final building inspection or issuance of a certificate of occupancy for the new construction. If installation prior to the date of occupancy is impracticable, as determined by the Community 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 Artwork, and the applicant has filed security in an amount equal to the Program Allocation, and in a form acceptable to the City Attorney to guarantee installation.
- j. 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. To insure continued maintenance, the Public Art Commission's resolution of approval shall be recorded against the property by the property owner.
- k. 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 Artwork with 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.
- l. Guidelines for application and review of public art applications shall be prepared by the Community Development Department consistent with this Article.

30-98.9 - Compliance.

- a. Compliance with the provisions of this section shall be demonstrated by the Developer, as follows:
 - 1. Payment of the Public Art In-Lieu Contribution prior to the issuance of building permits; or
 - 2. Installation of the On-site Public Art in accordance with approval of the application submitted pursuant to section 30-98.8 prior to the issuance of a Certificate of Occupancy; or

3. Execution of an installation agreement and evidence that the resolution of approval by the Public Art Commission has been recorded against the property prior to the issuance of a Certificate of Occupancy.

30-98.10 - Alameda Public Art Fund.

- a. There is hereby created the Alameda Public Art Fund to account for 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 be used solely as follows:
 1. Acquisition, commission, design, installation, improvement, maintenance and insurance of Public Art;
 2. Acquisition or improvement of real property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City;
 3. Art and cultural programs including but not limited to performance arts, literary arts, media art, art education, special community events, artist in residence programs;
 4. Grants to non-profit arts/cultural organizations to provide programming to benefit the Alameda community; or
 5. Other expenses associated with implementation of Public Art.
- b. The Public Art Commission shall present each biennially to the City Council for approval an biennial report that shall include the following:
 1. Accounting of the Alameda Public Art Fund monies consistent with the purpose of this section.
 2. Priorities for distribution of the Public Art Fund monies during the following two years.
- c. The Alameda Public Art Fund shall be distributed as follows:
 1. Distribution of \$75,000 or less may be authorized by the City Manager if the expense is included in the adopted City Budget and/or in the priorities established by the Public Art Commission Biennial Report.
 2. Distributions not in the adopted City Budget or the priorities established by the Public Arts Commission, and distributions over \$75,000 must be approved by the City Council.
 3. No more than 15% of the annual Alameda Public Art Fund shall be used for administrative expenses for coordinating and developing cultural programs, or any other administrative task.
- d. 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.