

EXHIBIT 2: Current Alameda Municipal Code Section 30-65

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

30-65.1 - Purpose.

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 section.
- e. The public art provided pursuant to this section shall 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.

(Ord. No. 2892 N.S. § 1)

30-65.2 - Definitions.

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

- a. "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.
- b. "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.
- c. "Program Allocation" shall mean the amount required under subsection 30-65.3
- d. "Public Art" shall mean the public art programs described in subsection 30-65.4.
- e. "Public Art In-Lieu Contribution" shall equal the percentage of building development costs required by this section.

(Ord. No. 2892 N.S. § 1)

30-65.3 - Contribution Requirements.

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- 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.
- b. The contribution requirement of this section shall apply to commercial, industrial and municipal projects, and residential projects that create five (5) or more residential units.
- c. An existing building that is remodeled with a construction value equal to or more than fifty (50%) percent of the replacement cost of the building shall be subject to the requirements of this section.
- d. All non-profit and non-municipal governmental development shall be exempt from the requirements of this section. City Council may exempt any municipal building from the requirements of this section.
- e. In lieu of acquisition and installation of Public Art on the development site, an owner or developer, at its discretion, may place a Public Art In-Lieu Contribution in an amount equal to the Program Allocation into the Alameda Public Art Fund, established by subsection 30-65.5 for acquisition and installation of Public Art. The Public Art In-Lieu Contribution shall be paid prior to the issuance of a building permit for the project on the development site.
- f. Subject to the approval of the Public Art Commission, an owner or developer may incorporate into the development Public Art that has a value lower than the Program Allocation and pay a Public Art In-Lieu Contribution to the Public Art Fund for the balance of the Program Allocation.

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

30-65.4 - Public Art.

The following Public Art may be used to satisfy the requirements of subsection 30-65 .3:

- a. On-site Projects:
 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;
 7. Any other form determined by the Recreation and Park 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;

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7. Any other 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.

- a. There is hereby created the Alameda Public Art Fund to account for 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.
- b. The Alameda Public Art Fund shall be distributed annually as follows:
 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—

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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 - Application and Approval Procedures for Placing Public Art on Private Property.

- a. An application for the installation of Public Art on private property shall be submitted to the Planning and Building Department on forms furnished for that purpose and shall include the following information, as applicable:
 - (i) 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;
 - (ii) A sample, model, photograph or drawings of the proposed Public Art;
 - (iii) Material samples and finishes if appropriate;
 - (iv) A resume of the proposed artist;
 - (v) Slides and/or photographs of the proposed artist's past Public Art, which demonstrates like Public Art to the proposal;
 - (vi) A written statement by the artist describing any theme or development of the Public Art, 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 by which the public will gain access to such programs, spaces, or facilities;
 - (vii) A written statement by the artist declaring the valuation of the Public Art;
 - (viii) A maintenance plan for the Public Art;
 - (ix) Any such additional information or material as may be required by the Planning and Building Director, or designee.
- b. The application submitted pursuant to subsection (a) of this section shall be referred to the Planning and Building Director or his/her designee for preliminary review to determine whether the application is complete. 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 sixty (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 (14) 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. The Public Art Commission shall approve or deny the application in accordance with the Guidelines for Approval referenced in Section 30-65.10. 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.
- e. Failure of the Public Art Commission to act on an application and to notify the applicant within seventy-five (75) 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.
- f. The application required by this section shall be made, approval obtained and the Public Art installed prior to final building inspection or issuance of approval of a certificate of occupancy for the new construction. If installation prior to the date of occupancy is impracticable, as determined by the Planning and Building 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 Art, and the applicant

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has filed security in an amount and form acceptable to the City Attorney to guarantee installation of the Public Art.

- g. The property owner shall maintain, or cause to be maintained, in good condition the Public Art continuously after its installation and shall perform necessary repairs and maintenance to the satisfaction of the City. The maintenance obligations of the property owner shall be contained in the covenant and recorded against the property by the applicant. Should the property owner wish to remove the Public Art, the City must be notified in advance. The property owner shall replace the Public Art with Public Art 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)

30-65.9 - Compliance.

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

- a. Payment of the Public Art In-Lieu Contribution; or
- b. Installation of the Public Art in accordance with approval of the application submitted pursuant to section 30-65.8; or
- c. Execution of an installation agreement and evidence that a maintenance covenant has been recorded against the property.

(Ord. No. 2892 N.S. § 1)

30-65.10 - Guidelines for Approval.

- a. 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.

(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)