

CITY OF ALAMEDA

Memorandum

To: Honorable President and
Members of the Planning Board

From: Allen Tai, Secretary to the Public Art Commission
Andrew Thomas, Assistant Community Development Director

Date: November 23, 2015

Re: **PLN15-0050 – Amendments to City of Alameda Public Art Ordinance.**
Public hearing to consider a recommendation that the City Council approve amendments to Section 30-65 Public Art Ordinance. The proposed zoning amendment is categorically exempt from further environmental review pursuant to CEQA Guidelines 15305 Minor Alterations to Land Use Limitations.

BACKGROUND

Alameda Municipal Code (AMC) Section 30-65 Public Art in New Commercial, Industrial, Residential and Municipal Construction (the "Public Art Ordinance") was adopted in 2003, to require that major projects include on-site public art. The ordinance also permits an applicant to pay a fee in-lieu of providing the art on-site. Any in-lieu fees collected are deposited in the Public Art Fund (the "Fund"). The Fund can then be used by the City to provide or support public art.

Historically, the Fund has been quite small because most applicants choose to meet the ordinance requirements by commissioning public art to be placed on-site. The few applicants that do choose to pay the in-lieu fee do so because their public art requirement is minimal. For example, in a typical fiscal year, the Fund receives less than \$5,000.

In January 2011, the City Council authorized a study to review, assess and update the City art program. *Synergy: Public Art for Alameda*, was completed in November 2014. (The Synergy report is available on the City website at http://alamedaca.gov/sites/default/files/department-files/2014-10-29/synergy_public_art_report_final.pdf.) The report was funded through the Public Art Fund.

In November 2014, the City hosted a community meeting to discuss potential changes to the ordinance. In January 2015, the Public Art Commission (PAC) reviewed and recommended that the City Council approve a series of amendments to the ordinance. These amendments are discussed below.

Based upon the Synergy report, recommendations from the community and the PAC, and a review of other municipal public art ordinances, staff is recommending a series of amendments to the Public Art Ordinance to streamline and improve implementation of the ordinance and improve the City's ability to disperse funds from the Public Art fund. The revised ordinance is included as Exhibit 1 to this report. A strike-out/underline version of the ordinance identifying each specific change to the existing ordinance is included as Exhibit 2. The major changes are described below.

It should be noted that the General Fund does not fund the administration of the Public Art Ordinance. All city time and resources spent administering the Public Art Ordinance are funded through the Public Art Fund.

Staff plans to transmit the Planning Board's recommendations on the draft amendments to the City Council in January 2016, with a recommendation to proceed with a Request for Proposals for the use of the approximately \$65,000 in the Public Art Fund.

DISCUSSION

To facilitate the City's ability to disperse Public Art Funds, reduce the demands on the Fund to pay for City administration of the Fund, and improve the City's ability to make funds available for public art programs, staff is recommend the following major amendments:

- I. *Eliminate the requirement that Fund monies be split between physical public art (75%) and arts and programming or facilities (25%).*

The proposed change is designed to provide more flexibility for the use of the funds by the City Council. If there is a small amount of money in the fund, rather than wait for a number of years to have sufficient funds to commission a public art piece (the requirement to spend 75% of the funds on physical art), funds can be expended on an on-going basis for arts and programming, thereby expending the funds more efficiently. The ordinance has been in place for over 12 years and the Public Art Fund currently has a balance of \$85,000.

- II. *Expand the list of allowable uses for the Fund to include grants to non-profit arts and cultural organizations.*

Local non-profit arts organizations, cultural organizations, and/or educational organizations may be well positioned to use Public Art Fund grants to provide public cultural arts performances, events, and/or arts education.

- III. *Lower the cap on administration costs on public art fund programming.*

The proposed amendments specify that proposals for the use of public art funds may not include administration costs in excess of 20% of the overall budget. The current ordinance establishes a 25% cap. Reducing the cap on administration costs incurred by third-party art providers ensures that more of the public art funds will be used for actual arts or arts programming.

IV. Allow Fund monies to be used for maintenance and repair of municipal public art.

Public art comes with maintenance responsibilities. When a property owner chooses to build public art on his/her own site, the City requires an agreement for the maintenance of the art by the property owner. If the City chooses to commission art on public property, it will be necessary to identify funds to maintain the art. Neither Public Works, nor the Recreation and Parks Department has a dedicated funding source for maintenance of public art.

V. Change annual reporting requirements to coincide with the City's two-year budget cycle.

The amendments eliminate the requirement to develop a public art plan for the use of the Public Art Fund each year, and enable the PAC, through a biennial report on the Fund, to recommend to the City Council priorities for the expenditure of Fund monies.

Staff time to prepare reports and recommendations for review by the PAC and the City Council must be charged against the Public Art Fund. Less reporting and more efficient reporting will preserve Public Art funds for public art. Furthermore, given the small amount of money received into the Fund each year, it will be more cost-effective to establish a two-year funding and reporting program as opposed to the annual program.

To improve the review process for on-site public art proposals by project developers, staff is the following amendments:

I. Requirements and options for physical, on-site public art.

The proposed amendments include a more specific list of appropriate physical art forms to meet the on-site public art requirement. The proposed list specifically precludes temporary cultural events, performances, and construction of stages, outdoor performance spaces, and other physical structures that may support the arts.

II. Clarify ordinance exemptions.

Certain developments are exempt from the requirements of the ordinance. The amendments clarify the list of exempt developments to include:

- Affordable housing (100% affordable),
- Designated monuments (Landmarks),
- Cultural facilities, and
- City parks and public projects that meet specific conditions.

III. Increase the cap on maximum requirements from \$150,000 to \$500,000.

All projects with a development cost over \$250,000 are required to spend 1% of the development cost on public art. The current ordinance caps the maximum required

expenditure at \$150,000. The proposed amendments increase the cap to \$500,000 for larger projects. The higher cap brings the City of Alameda ordinance into alignment with the caps established in other California Public Art ordinances, and minimizes the need to negotiate separate side agreements through the Development Agreement process on larger projects in Alameda. For example, the City negotiated additional public art requirements in both the Alameda Landing Development Agreement and Alameda Point Site A Development Agreement.

IV. Clarify the Application and Review Process for Private Applications.

The proposed amendments clarify the application and permit approval process and timelines for private applications for on-site public art. The revisions better reflect the City's review process for public art.

ENVIRONMENTAL REVIEW

The proposed development code amendments are categorically exempt under California Environmental Quality Act Section 15305 – Minor Amendments to Land Use Limitations.

RECOMMENDATION

Recommend by motion that the City Council approve the ordinance (Exhibit 1) amending Section 30-65 Public Art Ordinance of the Municipal Code.

Respectfully submitted,

Allen Tai
Secretary to the Public Art Commission

Exhibits:

1. Draft Amended Public Art Ordinance
2. Draft Ordinance (Strike-out/Underline Version)