

CITY OF ALAMEDA ORDINANCE NO. ____

New Series

AMENDING CHAPTER 30 OF THE ALAMEDA MUNICIPAL CODE
(ZONING ORDINANCE) TO FACILITATE THE CITY'S ABILITY TO
DISPERSE PUBLIC ART FUNDS

BE IT ORDAINED by the Council of the City of Alameda as follows:

Section 1: Section 30.98 of Chapter 30 Article 8 of the Alameda Municipal Code, Public Art Contribution, is hereby amended to read as follows:

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

30-30-98.1 – Purposes.

30-98.2 - Definitions.

30-98.3 - Applicability and Exemptions.

30-98.4 - Contribution Requirements.

30.98.5 - Public Art Requirements.

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

30-98.7 – Maintenance Obligations.

30-98.8 - Included and Excluded Expenses.

30-98.9 - Compliance.

30.98.10 - Alameda Public Art Fund.

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 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.
- 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 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.
- f. 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 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. "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. "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. "On-site Artwork" shall mean Artwork that is provided on a development site in conformance with this Article.
- k. "Program Allocation" shall mean the value of the on-site public art required under subsection 30-98.4
- l. "Public Art" shall mean art that is accessible to the public, including but not limited to visual, performing, literary and media arts.
- a. "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.

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. 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 of designated City Monuments shall be exempt from this Article.
- 3. Development or rehabilitation of structures that house a Cultural Facility shall be exempt from the requirements of this Article.

4. Development or rehabilitation of public parks are exempt from this Article, and other municipal development 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 - 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 Program Allocation in Fiscal Year 2015-16 shall be \$500,000. The maximum Program Allocation shall be adjusted each Fiscal Year thereafter based on any increases in 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.
- b. *In lieu Payments:* In lieu of acquisition and installation of on-site Public Art as required under subsection (a) above, the Applicant, 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. 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.
- c. An Applicant may, at his or her discretion, propose On-site Artwork that has a value lower than 100% of the Program Allocation and pay an in lieu payment to the Public Art Fund for the balance of the Program Allocation.

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 publically accessible property.
- b. On-site Public Art shall be permanent in nature and shall be constructed of materials that are appropriate for the proposed location. The following Artwork may be used to satisfy the requirements for on-site Public Art installations required by Section 30-98.4:
 - i. Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;

- ii. Painting: All media, including but not limited to, murals;
 - iii. 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. Mosaics;
 - v. Crafts: in clay, fiber and textiles, wood metal, plastics and other materials;
 - vi. Mixed Media: any combination of forms or media, including collage; and
 - vii. Any other form determined by the Public Art Commission, or City Council on appeal, to satisfy the intent of this section.
- c. 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.
 - iii. Any other art form determined by the Public Art Commission not to be appropriate for its location or that will require additional expenditures from the Public Art fund to ensure compliance.

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

- a. 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:
- i. Landscape and/or site plans indicating the location and orientation of the Public Art that integrates the artwork 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. The artist's resume and portfolio of past work, which demonstrates competency with the materials and forms proposed for the on-site art proposal;
 - v. A written statement by the artist describing the Artwork, as well as a discussion of the manner in which the proposed Public Art meets the findings established by subsection (e), below;
 - vi. An itemized budget declaring the valuation of the Artwork pursuant to Section 30-98.8;
 - vii. A maintenance plan for the maintenance of the Artwork; and

- viii. Any such additional information or material as may be required by the Community 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 Community Development Director or his/her designee to determine whether the application is complete and in accordance with the requirements of this Article. If the Director fails to make his or her determination within 30 days, the application shall be deemed complete. Once complete, the Director shall transmit the application to the Public Arts Commission for review.
- c. The Public Art Commission shall review the permit application at a noticed public hearing within 60 days of the application being deemed complete.
- d. 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.
- e. In order to grant approval of an on-site public art application, the Public Art Commission shall make all of the following findings:
 - i. The artist has demonstrated their qualifications to complete the proposed work with the 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 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 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. 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 call for review process in Section 30-25.1.
- h. If the Public Art Commission is unable to act on an application within 60 calendar days of receipt of a complete application, and an extended period mutually agreed to 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 and findings of this Article.
- 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.

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 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 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 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.
- 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:
 - 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 Developer, as follows:
 - i. Payment of the Public Art In-Lieu Contribution prior to the issuance of building permits; or
 - ii. Installation of the On-site Public Art in accordance section 30-98.6; or
 - iii. 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:
 - i. Acquisition, commission, design, installation, improvement, maintenance and insurance of Public Art;
 - ii. City acquisition of property or improvement of public property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City;
 - iii. Up to 49% of the Fund may be used for art and cultural programs including but not limited to performance arts, literary arts, media arts, art education, special community events, and/or artist-in-residence programs; grants to non-profit arts/cultural organizations to provide programming to benefit the Alameda community.

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.
 - iv. 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.
- 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.

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance if, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsections, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared to be invalid and unconstitutional.

Section 3. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2016.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda