

# ITEM 4-A

## CITY OF ALAMEDA

### Memorandum

To: Honorable Chair and  
Members of the Public Art Commission

From: Allen Tai,  
Secretary to the Public Art Commission

Date: February 18, 2015

RE: **PLN15-0050 – City of Alameda Zoning Amendment Updating the Public Art Ordinance.** The Public Art Commission will consider modifications to the Development Regulations to update and improve the regulations governing the public art program. The proposed amendment is categorically exempt from further environmental review pursuant to State CEQA Guidelines 15305 Minor Alterations to Land Use Limitations

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### PROPOSAL SUMMARY

Zoning code amendments are proposed to improve the public art program by increasing the potential for the Public Art Fund revenues, expanding opportunities for the Fund to support public art activities, and streamlining the process for approving public art installations on development sites.

### BACKGROUND

On March 4, 2003, the Alameda City Council adopted Ordinance 2892 which created the public art program. The ordinance was subsequently amended by Ordinance 2942 on July 5, 2005. The program was developed and recommended by the then director of the Recreation and Park Department. The mission of the public art program is to provide public art, enrich the quality of life, and educate city residents and visitors about art while preserving and enhancing the history and diversity of the community.

The public art ordinance, located in the Alameda Municipal Code Section 30-65.3, requires that certain private and municipal developments with building development costs of \$250,000 or more devote an amount not less than one percent of such costs for public art through acquisition and installation of publicly accessible art on the development site. In lieu of providing on-site art, developers may choose to make an equivalent monetary contribution to the Public Art Fund. The ordinance applies to commercial, industrial, and municipal projects, and to for-profit housing projects of five dwelling units or more. The ordinance also establishes the Public Art Fund for receiving in-lieu contributions and any other funds appropriated for public art and cultural programs. Rules for distribution of these

funds are included in the ordinance. Also required are preparation annually of a public art plan and an annual report to the City Council providing information regarding the amount of fees collected and expended in the fund balance.

Alameda's public art ordinance is similar to those in other cities. In California alone, more than 48 cities have a percent for art policy for private development. Some of those in the Bay Area include Sunnyvale, San Mateo, Berkeley, Dublin, Emeryville, Livermore, Walnut Creek, San Francisco and San Jose. In Alameda staffing of the Public Art Commission and implementation of the public art ordinance is now the responsibility of the Community Development Department as successor to the Planning and Building Department.

During the recession years a lack of significant development in the City resulted in a prolonged gap in public art program activity. However, in recent years, with the upsurge in new development, art installations and contributions to the Fund have resumed. Within the community there have been recent concerns raised about some of the program's policies and procedures, and about the lack of disbursements from the Fund to support public art and cultural programs or facilities. It was determined that a study of existing policies and procedures was needed. In January 2011, the City Council authorized release of an RFP for a qualified art consultant to review, assess and update the City art program, and the following April the City entered into an agreement with Gail M. Goldman Associates. After extensive community input, the resulting study, entitled *Synergy: Public Art for Alameda*, was released to the public in November 2014, and is available on the City website ([http://alamedaca.gov/sites/default/files/department-files/2014-10-29/synergy\\_public\\_art\\_report\\_-\\_final.pdf](http://alamedaca.gov/sites/default/files/department-files/2014-10-29/synergy_public_art_report_-_final.pdf)). The study contains recommendations for improvements to the City's public art policies and programs. It includes recommendations for amending the public art ordinance, which were discussed at a November 2014 public workshop. Recommendations from the study are incorporated in this proposed amendment.

## DISCUSSION

The public art program has two primary functions. One is to create public art on development sites, and the other is to establish a fund for financing municipal art and/or arts and cultural programs or facilities, for broad community benefit. Currently both functions are supported solely through the development process. With the improved economy, the creation of on-site public art has been operating successfully. The City now has publicly accessible art installations on ten development sites as a result of the program. Some efficiencies in the evaluation and approval process for on-site art installations have been identified and are recommended in this ordinance amendment. The larger goal of this proposal is to grow the Public Art Fund so that it may be used for greater benefit to the community. The Fund's current balance is \$62,000, which is disappointing considering that the Fund has been in place for 12 years, and no distributions have been spent on public art, or arts and cultural programs or facilities. In addition to the development slump, the low balance can be attributed to developers choosing to provide on-site public art instead of paying an in-lieu fee into the Fund, and to depletions for on-going administration.

The objectives of the proposed amendment are:

- to help the Public Art Fund to grow, thereby accumulating additional funding to effectively support arts and culture in Alameda;
- to establish a clear and effective process for distribution of funds; and
- to improve efficiency for review and approval of on-site public art.

### **Proposed Changes**

This proposal includes the following changes to the Public Art Ordinance:

1. *Lowens the percentage of Fund monies that may be used for program administration from 25% to 15%. Although staff administrative expenditures have been necessary to implement the ordinance, efficiencies are recommended to reduce this need, so that more money be made available for public art purposes.*
2. *Allows Fund monies to be used for maintenance of municipal art. The cost of maintenance of City owned art is of concern and can impede the placement of art on public property. Establishing a funding source for maintenance would facilitate municipal art installations.*
3. *Increases the maximum obligation that a developer is required to expend from \$150,000 to \$500,000. Raising the cap on the obligation will lead to either more and better on-site art, or larger Fund contributions.*
4. *Modifies the developer obligation requirements as follows:*
  - a. *Projects with building costs between \$250,000 and \$1 million would not be required to install on-site art, and would be encouraged to contribute 1% of building costs to the Fund.*
  - b. *Projects with building costs of \$1 million or greater would be encouraged to split their 1% obligation; 20% to be deposited in the Fund and the remaining 80% to purchase, and install on-site, publicly accessible art. Alternatively, the developer may choose to deposit up to 100% of the contribution into the Fund*

These changes are also aimed to provide greater contributions to the Fund.

5. *Eliminates the requirement to expend Fund monies annually. Given the low levels of the Fund balance, the requirement to spend annually has been unfeasible and overly restrictive.*
6. *Changes reporting requirements from annually to every two years. Reducing the reporting requirement will reduce the administrative costs that are paid out of the Fund.*
7. *Enables the Public Art Commission to establish a list of priorities for the expenditure of Fund monies, and eliminates the requirement to develop a Public Art Plan each year. Preparation of an annual Public Art Plan is an onerous task. A biennial list of priorities would be more efficient and cost affective.*

8. *Provides for greater flexibility by eliminating the requirement that Fund monies be split between physical public art at 75% and arts and programming or facilities at 25%. Given the level of Fund monies, this requirement provides insufficient funding to support art programming and facilities. Also, eliminating the requirement will provide more flexibility for the Public Art Commission in setting priorities.*
9. *Allows the City Manager to approve distributions of up to \$75,000 from the Fund for projects that are included in the City Budget or listed as a priority in the Public Art Commission's biennial report. All other expenditures will require approval by the City Council. This proposal creates efficiency for the smaller expenditures, while ensuring the City Council will review and approve the larger projects.*
10. *Expands the types of things that the Fund may be used for, to include grant of funds to non-profit arts and cultural organizations. The City has no dedicated public arts staff to design and implement arts and cultural programming. Locally respected non-profit arts organizations are geared for such activity. Furthermore, Fund money granted to non-profit organizations can be used to attract other arts grants for greater benefit to the community. Often, the Fund balance is prohibitively low for purposes of installing physical public art, and thus goes unused.*
11. *Enables the Fund to accept gifts and donations. While the current ordinance does not preclude acceptance of gifts or donations to the Fund, this modification would provide clarification.*
12. *Limits "on-site" public art to physical art only. Contributions to on-site public art that are in the form of events, or dedication of art space or facilities for public use are not practical because continued monitoring is needed to ensure on-going compliance. On-site installations of physical art generally require only one site visit to verify compliance.*
13. *Requires that property owners who install on-site art record on the property deed its agreement with the City to maintain the art. This will ensure that future owners of the property are aware of maintenance obligations and any other conditions of approval.*
14. *Non substantive changes:*
  - a. Moves regulations to Article VIII of the Development Regulations.
  - b. Reorganizes code language for clarity and consistency with other zoning regulations.
  - c. Adds definitions for clarity.
  - d. Streamlines approval process for on-site art by simplifying the findings for approval.

In 2007, Alameda Public Art Policy Guidelines were prepared to describe the public art program's policies, procedures, and application process. These Guidelines will be modified by staff to remain consistent with amendments to the public art ordinance.

### ENVIRONMENTAL REVIEW

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

### PUBLIC NOTICE AND COMMENTS

A public hearing was advertised in the newspaper and posted on the City website. Notices of the hearing were mailed to the 128 addresses maintained on the public arts "interested parties" list.

Furthermore, a public workshop was held on November 12, 2014 to discuss these changes to the public art program, including proposed code amendments. Comments from the workshop are included as Exhibit 3.

### RECOMMENDATION

Staff recommends that the Public Art Commission hold a public hearing and approve the attached draft Resolution (Exhibit 1) approving the amendments to the Public Art Ordinance and recommending adoption by the City Council.

Respectfully Submitted,

Allen Tai  
Secretary to the Public Art Commission

### Exhibits:

1. Draft Resolution (PAC) with Exhibit A, Proposed Amended Public Art Ordinance
2. Current Alameda Municipal Code section 30-65, Public Art Contribution
3. Comments from Public Art Workshop on November 12, 2014