

Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Facilitate the City's Ability to Disperse Public Art Funds, and Amend the Fiscal Year 2016-17 Public Art Fund Budget by \$200,000 and Capital Improvement Projects Fund Budget by \$100,000. [The Proposed Amendments are Categorically Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 15305, Minor Alterations to Land Use Limitations.] (Community Development 285) [Continued from October 4, 2016]

To: Honorable Mayor and Members of the City Council

From: Jill Keimach, City Manager

Re: Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Facilitate the City's Ability to Disperse Public Art Funds, and Amend the Fiscal Year 2016-17 Public Art Fund Budget by \$200,000 and Capital Improvement Projects Fund Budget by \$100,000. [The Proposed Amendments are Categorically Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 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 "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 dedicated Public Art Fund (the "Fund"). The Fund can then only be used by the City to provide or support public art.

Since 2003, eleven public art installations have been completed on-site or are in progress by private and municipal development. Because so many developers have chosen to install art on-site, annual in-lieu contributions to the Fund have been minimal, and the fund balance has remained relatively low. Historically, the small size of the Fund has made dispersal of funds a challenge, and to-date the Fund has been used for consulting and administrative costs. Use of the Fund has also been hampered by unclear language in the Ordinance about the types of art that the Fund can support. However, in recent months, the Fund has increased significantly due to an in-lieu payment from a large development. As of August 2016, the Fund's accumulated available balance is \$224,276.

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/departments-files/2014-10-29/synergy_public_art_report_final.pdf.)

In November 2014, the City hosted a community meeting to discuss potential changes to the Ordinance based on recommendations in the consultant's report. On February 18, 2015, the Public Art Commission (PAC) recommended that the City Council approve the proposed amendments to the Ordinance, and on November 23, 2015, the Planning Board (PB) recommended that the amendments be forwarded to the City Council for adoption.

DISCUSSION

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 Ordinance. The goals of the recommended amendments are to clarify how Fund monies are to be used, and to improve the review process for on-site public art proposals by project developers. In addition, staff is recommending the appropriation of \$100,000 for public art at Jean Sweeney Park, and the appropriation of \$100,000 to contractual services in the Public Arts Fund for public art installation(s), and or cultural arts and arts programming.

A strike-out/underline version of the Municipal Code identifying each specific change to the existing Municipal Code is included as Exhibit 1. The specific amendments are discussed in the attached Planning Board Staff Report (Exhibit 2), and are summarized below, along with additional recommended staff changes to the Ordinance. Exhibit 3 contains a listing of on-site public art produced under the current Ordinance. Exhibit 4 contains a summary of similar public art ordinances in other northern California cities.

A prior staff report published on July 5, 2016 included a proposed change to the Ordinance to allow up to 49% of fund monies to be allocated for cultural arts and arts programming. Further research indicates that only a handful of cities allow their Public Art fund to be used for cultural arts and arts programming. Therefore, staff recommends maintaining the current requirement for cultural arts spending at 25%.

Proposed Ordinance Amendments

A. Staff is requesting Council input on the following proposed changes to the Public Art Ordinance regarding the Public Art Fund:

- I. *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, including events such as the Waterways projects sponsored by Rhythmix Cultural Works. The extent of the funds available to non-profit arts and cultural organizations will be determined annually by the PAC

II. Lower the cap on administration costs on Public Art Fund programming.

The amendments reduce the maximum share of budget that can be used by third-party providers for administrative costs. Reducing the cap on administrative costs incurred by third-party art providers ensures that more of the public art funds will be used for actual arts or arts programming. The draft amendment as attached lowers the maximum administrative costs from 25% to 20%. Staff is requesting Council input on whether the cap on administrative costs for third party providers be lowered, and if so, by how much.

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

Public art comes with maintenance responsibilities. Neither Public Works, nor the Recreation and Parks Department, has a dedicated funding source for maintenance of municipal public art. Staff recommends that funding requests for the maintenance of public art on public land be included in the biennial budget cycle and at that time the Council determine whether this cost be covered by this Public Arts Fund, the General Fund, or other identified funding sources.

IV. Change annual reporting requirements to coincide with the City's biennial 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.

Similar to the maintenance costs above, staff time to prepare reports and recommendations for review by the PAC and the City Council should be considered as part of the biennial budget cycle. Less reporting and more efficient reporting will preserve Public Art funds for public art.

B. To improve the review process for on-site public art proposals by project developers, staff recommends 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 *on-site* list specifically precludes temporary cultural events, performances, and construction of stages, out-door performance spaces, and other physical structures that may support the arts.

The PAC recommended inclusion of an amendment that would encourage developers to contribute their 1% directly to the Fund if the development project is worth between \$250,000 and \$1,000,000; and to split the money

80% for physical on-site art and 20% to the Fund if the development project is worth over \$1,000,000. This amendment is not being recommended because the Ordinance must allow developers the option of installing the art themselves or providing in-lieu funds. If developers are required to pay in-lieu funds, the Ordinance may be subject to the Mitigation Fee Act (Government Code 66000-66025) and would require a nexus study to justify the fee amount.

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 the following conditions:
 - a) A funding source of the project expressly prohibits contributions to Public Art; or
 - b) Based upon the characteristics of the project, it is in the best interests of the Alameda community to exempt the project from the Public Arts requirement.

III. Increase the cap on maximum public art expenditure from \$150,000 to \$500,000.

All projects with a development cost over \$250,000 are currently required to spend 1% of the development cost on public art, up to a maximum of \$150,000. The proposed amendments increase the cap to \$500,000 for larger projects, with annual adjustments tied to the San Francisco Area Consumer Price Index. Historically, the City has negotiated additional public art requirements for larger projects such as Alameda Landing and Alameda Point Site A. In addition, other northern California cities that staff researched did not include any cap on contributions through their Public Art ordinances (Exhibit 5). The higher cap brings the City of Alameda ordinance into closer alignment with other California Public Art ordinances, and minimizes the need to negotiate separate side agreements through the Development Agreement process on larger projects.

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.

V. *Remove the requirement for public art to focus on Alameda's historic and maritime traditions.*

The current Ordinance contains a requirement that Public Art relate to historic or maritime provisions, and the Planning Board recommended that the focus on maritime art be preserved. Staff requests Council input on both these requirements as a means to provide the Public Art Commission maximum flexibility in approving the design and installation of Public Art.

Appropriation of Public Art Fund Monies

The current balance of the Fund is \$224,274. Although City parks are exempt from the requirements of the Ordinance, the Jean Sweeney Open Space Master Plan approved by City Council notes multiple opportunities for public art within the park, to be provided as funding is identified. Given that public art in Jean Sweeney Open Space Park has been directed previously by Council and that it is eligible for public art funds, staff recommends appropriating \$100,000 for the design, installation and maintenance of public art in the park. This appropriation would jump start the Park's public art program as envisioned in the Jean Sweeney Open Space Master Plan approved by Council. The Recreation and Parks Department would issue a separate Request for Proposals for public art in the park, with all proposals brought to the PAC for evaluation, ranking and award. Staff is recommending the following appropriation of funds:

1. The appropriation of \$100,000 for the design and installation of public art in the Jean Sweeney Open Space Park.
2. The appropriation of \$50,000 for public art installation(s).
3. The appropriation of \$50,000 for cultural arts and arts programming.

As per the Ordinance, this appropriation of funds allocates 25% of funds to cultural arts and arts programming, and 75% of funds for the installation of physical, public art.

Requests for Proposals

Following adoption of the ordinance amending the Public Art Ordinance and the appropriation of the funds as described above, staff will issue a Request for Proposal (RFP) to solicit proposals from artists, and arts and cultural organizations for public art. The RFP will include two parts

1. \$50,000 for the installation of physical, public art, and
2. \$50,000 for cultural arts and or arts programming.

The proposals will be brought to the PAC for evaluation, ranking and award. Once recommended for funding, staff will administer the awarded contracts.

The RFP will require, at minimum, the following:

Concept of Proposed Art Piece, Cultural Art Activity or Art Program. Summary of the overall project being proposed, including:

- a) *Description and Work Plan:* A detailed description of each of the components of the overall plan for the proposed piece, activity or program. Description of the major component activities, timelines, and the roles and qualifications of key personnel, as well as involvement of any other partners or partner organizations.
- b) *Goals:* A statement of the goals and indication of the steps to be taken to achieve those goals. An indication of how progress toward goals would be evaluated or monitored.
- c) *Location:* A specific location for the project, including the public right-of-way, public parks, or other public property. The pieces, activities or programs may also be located on publicly accessible private property (e.g. a mural on the side of building, visible from a public street).
- d) *Proposed Budget:* A combination of narrative and table(s) that convey how Art Fund dollars would be dedicated to the various components of the proposed piece, activity or program and its administration. This would also show how other funding sources would be leveraged, if any.
- e) *Organizational Ability:* A description of the proposer's organization, including its history, track record for providing art, cultural art and or art programming, and ability to carry out the work proposed.

FINANCIAL IMPACT

There is no financial impact to the General Fund to adopt an ordinance amending Chapter 30 of the Alameda Municipal Code (Zoning Ordinance) to make clarifications and improvements to the Public Art Ordinance. In addition, the General Fund does not fund the administration of the Ordinance.

Staff is proposing to amend the Fiscal Year 2016-17 Public Art Fund Budget to appropriate \$200,000 from accumulated fund balance. The appropriations will be allocated as follows:

- \$100,000 to the Jean Sweeny Open Space Park for the design, installation and maintenance of public art at the Jean Sweeney Open Space Park
- \$100,000 for public art installation(s), and or cultural arts and arts programming

Fund/Account	Project	Amount
Public Arts Fund		
Transfer Out		\$100,000

Contractual Services		\$100,000
Capital Improvement Projects – Jean Sweeney Open Space Park		
Transfer In	91614	\$100,000
Contractual Services	91614	\$100,000

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The Zoning Ordinance is proposed to be amended consistent with the General Plan, Alameda Municipal Code, and State law.

ENVIRONMENTAL REVIEW

The proposed amendments to the Zoning Ordinance regarding public art are categorically exempt under California Environmental Quality Act (CEQA) Section 15305 – Minor Amendments to Land Use Limitations.

RECOMMENDATION

Introduce an Ordinance Amending Chapter 30 of the Alameda Municipal Code (Zoning Ordinance) to facilitate the City's ability to disperse Public Art Funds, and amend the Fiscal Year 2016-17 Public Art Fund Budget by \$200,000 and Capital Improvement Projects Fund Budget by \$100,000.

Respectfully submitted,
Debbie Potter, Community Development Director

By,
Andrew Thomas, Assistant Community Development Director
Allen Tai, Planning Services Manager
Lois Butler, Economic Development Manager

Exhibits:

1. Proposed Changes to Municipal Code (Strike-out/Underline Version)
2. Planning Board Staff Report, 11-23-2015
3. Public Art Brochure
4. Public Art Requirement Summary

Supplemental Report Regarding the Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Facilitate the City's Ability to Disperse Public Art Funds, and Amend the Fiscal Year 2016-17 Public Art Fund Budget by \$350,000 and Capital Improvement Projects Fund Budget by \$100,000. [The Proposed Amendments are Categorically Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 15305, Minor Alterations to Land Use Limitations.] (Community Development 285) [Continued from October 4, 2016]

To: Honorable Mayor and Members of the City Council

From: Jill Keimach, City Manager

Re: Supplemental Report Regarding the Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Facilitate the City's Ability to Disperse Public Art Funds, and Amend the Fiscal Year 2016-17 Public Art Fund Budget by \$350,000 and Capital Improvement Projects Fund Budget by \$100,000. [The Proposed Amendments are Categorically Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 15305, Minor Alterations to Land Use Limitations.]

BACKGROUND

This item has been continued from the October 4, 2016 City Council meeting. At the prior meeting, City Council heard a presentation from City staff describing the proposed changes to the Public Art Ordinance, and a recommendation for the following appropriation of Public Art funds:

- An appropriation of \$100,000 for the design and installation of public art in the Jean Sweeney Open Space Park.
- An appropriation of \$50,000 for public art installation(s).
- An appropriation of \$50,000 for cultural arts and arts programming.

The total recommended appropriation was \$200,000. As per the Ordinance, this proposed appropriation allocates 25% of funds to cultural arts and arts programming, and 75% of funds for the installation of physical public art. In this supplemental staff report, staff recommends the appropriation of an additional \$150,000 in public art in lieu funds.

DISCUSSION

On October 11, 2016, the City of Alameda received an in lieu fee of \$150,000 from City Ventures, the developer for the residential project at 2100 Clement. This fee will bring the Public Art Fund's accumulated available balance to \$374,065. As a result, staff is recommending that the appropriation of funds for FY 2016-17 be increased to a total of \$350,000, to be dispersed as follows:

- \$100,000 for the design and installation of public art in the Jean Sweeney Open Space Park.
- \$162,500 for public art installation(s).
- \$87,500 for cultural arts and arts programming.

Pursuant to the Ordinance and consistent with the previous recommendation, this appropriation of funds allocates 25% of funds to cultural arts and arts programming, and 75% of funds for the installation of physical public art. All funds, including those for Jean Sweeney Open Space Park, would be distributed through a Request for Proposals (RFP) process and brought to the Public Art Commission (PAC) for evaluation, ranking and award, as described in the October 4, 2016 staff report. The PAC will meet on October 26, 2016 to review the draft RFP and provide input on the selection process, evaluation criteria, and other elements of the RFP.

FINANCIAL IMPACT

There is no financial impact to the General Fund to adopt an ordinance amending Chapter 30 of the Alameda Municipal Code (Zoning Ordinance) to make clarifications and improvements to the Public Art Ordinance. In addition, the General Fund does not fund the administration of the Ordinance.

Staff is proposing to amend the Fiscal Year 2016-17 Public Art Fund Budget to appropriate \$350,000 from accumulated fund balance and current year revenue. The appropriations will be allocated as follows:

- \$100,000 to the Jean Sweeney Open Space Park for the design, installation and maintenance of public art at the Jean Sweeney Open Space Park
- \$250,000 for public art installation(s), and/or cultural arts and arts programming

Fund/Account	Project	Amount
Public Arts Fund		
Transfer Out		\$100,000
Contractual Services		\$250,000
Capital Improvement Projects – Jean Sweeney Open Space Park		
Transfer In	91614	\$100,000
Contractual Services	91614	\$100,000

RECOMMENDATION

Introduce an Ordinance Amending Chapter 30 of the Alameda Municipal Code (Zoning Ordinance) to facilitate the City's ability to disperse Public Art Funds, and amend the Fiscal Year 2016-17 Public Art Fund Budget by \$350,000 and Capital Improvement Projects Fund Budget by \$100,000.

Respectfully submitted,
Debbie Potter, Community Development Director

By,
Amanda Gehrke, Management Analyst