

## New Article VIII: Public Art Requirements

30-~~9865~~ - PUBLIC ART IN NEW COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND MUNICIPAL CONSTRUCTION.

[MOVED FROM THE SUBDIVISION SECTION (30-65) TO A STANDALONE SECTION OF THE CODE (30-98)]

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30-~~9865~~.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. Cultural and artistic resources foster economic development and tourism, revitalize urban areas, increase realThe 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 and improve the overall business climate by creating a more desirable community within which to live and work.

- 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. 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. ~~Public art contributes to T~~the public's understanding, enjoyment and experience of cultural diversity, and helps to attract and anchor a large and diverse creative sector, enriching the Alameda's cultural identity which is a key component of the City's economic vitality. ~~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.~~
- fg. 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-~~9865~~.2 - Definitions.

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

- a. ~~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. “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.
- c. “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.
- d. “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.

- e. "Building Development Costs" shall mean those construction costs as declared on all building permit applications for new construction or rehabilitation, 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.
- f. "Cultural Arts and Arts Programming" shall mean: performance arts, including but not limited to: theatre, dance, music; literary arts: poetry reading and storytelling; film and video; screenings and installations; education; art lectures and presentations; Special events: festivals and celebrations; and artist-in-residence programs in the arts.
- g. "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 for-profit activities.
- h. "Development Project" shall mean any development which requires the issuance of a building permit by the City of Alameda.
- i. "Maintenance" shall mean those activities required to conserve, repair, or preserve the integrity of the Artwork and setting within which the Artwork is located. Routine maintenance means the basic day-to-day care of the Artwork.
- a.—
- j. ~~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.
- ~~b.~~k. "On-site Artwork" shall mean Artwork that is provided on a development site in conformance with this Article.
- ~~e.~~l. ~~e.~~—"Program Allocation" shall mean the value of the On-site artwork amount required under subsection 30-~~9865.~~43.

~~m. d. "Public Art" shall mean the public art programs described in subsection 3-0-65.4, art that is accessible to the public, including but not limited to Artwork and Cultural Arts and Arts Programming.~~

~~n. "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.~~

~~o. "Public Art In-Lieu Contribution" shall mean a payment made to the Public Art Fund in lieu of providing on-site artwork required by Section 30-98.3.~~

~~d. e. "Public Art In-Lieu Contribution" shall equal the percentage of building development costs required by this section.~~

(Ord. No. 2892 N.S. § 1)

### ~~30-9865.3 — Contribution Requirements, Applicability and Exemptions~~

~~a. 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. Applicability:~~

~~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.~~

~~1.~~

~~1.2. b. The contribution requirement of this section shall apply to commercial, industrial and municipal projects, and residential projects that Residential development projects creating or rehabilitating five (5) or more residential units and having a Building Development Cost of \$250,000 or greater shall be subject to the provisions of this Article.~~

~~2. 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.~~

~~b. d. 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 the provisions of this Article.~~

~~2. Rehabilitation of designated City Monuments shall be exempt from the provisions of this Article.~~

3. Development or rehabilitation of structures that house a Cultural Facility shall be exempt from the provisions of this Article.

4. Municipal or non-profit agency development projects, including parks, may be exempted from the provisions of this Article if the City Council finds that, based upon the characteristics of the project or the project budget, it is in the best interests of the Alameda community to exempt the project from this Article.

~~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.~~

#### 30-98.4 – Contribution Requirements

~~a. Program Allocation:~~ Development projects subject to the provisions of this Article shall make a contribution of not less than 1% of Building Development Costs for acquisition and installation of On-site Artwork. The contribution shall be referred to as the Program Allocation.

~~a.~~

~~b. In lieu Payments:~~ In lieu of acquisition and installation of On-site Public Art Artwork as required under subsection (a) above, the Applicant, on the development site, an owner or developer, at his or her discretion, may place a Public Art In-Lieu Contribution in an amount equal to the 100% of 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 In-Lieu Contributions shall be paid prior to the issuance of a building permit for the project on the development site.

~~b.~~

~~c. Anf. Subject to the approval of the Public Art Commission, an owner or developer Applicant may, at his or her discretion, may incorporate into the development Public Art propose On-site Artwork that has a value lower than 100% of the Program Allocation and pay a Public Art In-Lieu Contribution 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-~~

#### 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 publicly accessible property. Any interactive art must be fully accessible to the public.

b. On-site Public Art shall be permanent in nature and shall be constructed of materials that are appropriate for the proposed location.

~~a.~~

~~a.c. The following Public Art may be used to satisfy the requirements On-site Public Art installations required by of subs~~Section 30-9865.4 may include<sup>93</sup>:

- ~~i. a. On-site Projects:~~
- ~~ii.i. 1. Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;~~
- ~~iii.ii. 2. Painting: All media, including but not limited to, murals;~~
- ~~iv.iii. 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;~~
- ~~v.iv. 4. Mosaics;~~
- ~~vi.v. 5. Crafts: in clay, fiber and textiles, wood metal, plastics and other materials;~~
- ~~vii.vi. 6. Mixed Media: any combination of forms or media, including collage; and~~
- ~~viii.vii. 7. Any other Artwork form determined by the Recreation and Park Public Art 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;~~
- ~~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. The following facilities and artwork shall not be eligible to satisfy the requirements for on-site public art:~~

- ~~i. Construction of indoor or outdoor stages or performance spaces.~~
- ~~ii. Cultural Arts and Arts Programming.~~

**[SECTION BELOW MOVED UP FROM 30.98.8]**

30-~~9865.68~~ - Application and Approval Procedures for ~~Placing Public Art on Private Property~~On-site Artwork.

- a. ~~a.~~—An application for the installation of On-site Public Art~~Artwork on private property~~ shall be submitted to the Planning and Building~~Community Development~~ Department on forms furnished for that purpose and shall include the following information, as applicable:
- i. ~~(i)~~—Landscape and/or site plans indicating the location and orientation ~~of the Public Art~~On-Site Artwork that integratesand the ~~landscaping and architectural treatment integrating the piece~~artwork into the overall project design;
  - ii. ~~(ii)~~—A sample, model, photograph or drawings of the proposed Public Art~~On-Site Artwork~~;
  - iii. ~~(iii)~~—Material samples and finishes if appropriate;
  - iv. ~~(iv)~~A resume of the proposedThe artist's resume and portfolio of past work, which demonstrates competency with the materials and forms proposed for the On-site Artwork proposal;
  - ~~i.~~ ~~(v)~~Slides and/or photographs of the proposed artist's past Public Art, which demonstrates like Public Art to the proposal;
  - v. ~~(vi)~~—A written statement by the artist describing ~~any theme or development of the Public Art~~the On-site Artwork, as well as a discussion of the manner in which the proposed Public Art~~On-Site Artwork~~ meets the findings established by subsection (e), below; ~~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;~~
  - vi. ~~(vii)~~—An itemized budget ~~written statement by the artist~~ declaring the valuation of the Public Art~~work pursuant to Section 30.98.8~~;
  - vii. ~~(viii)~~—A maintenance plan for the maintenance of the~~Public Art~~work; and
  - ~~viii.~~ ~~(ix)~~—Any such additional information or material as may be required by the Planning and Building~~Community Development~~ Director, or designee.
  - ~~viii.~~ix. Application processing fees set by City Council Resolution.
- b. ~~b.~~—The application submitted pursuant to subsection (a) of this section shall be referred to the Planning and Building~~Community Development~~ Director or his/her designee ~~for preliminary review~~ to determine whether the application is complete. ~~The completed application along 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 recommendation of staff and/or consultants shall be forwarded application to the Public Art Commission for review and decision and decision.

- c. ~~e.~~—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.~~ at a noticed public hearing within 60 days of the application being deemed complete.
- d. ~~d.~~—Public notice of the ~~The~~ Public Art Commission meeting shall be given consistent approve or deny the application in accordance with the noticing requirements of Guidelines for Approval referenced in Section 30-65.1022.4 Notice of Public Hearing.
- e. In order to grant approval of an On-site Artwork application, the Public Art Commission shall make all of the following findings:
  - i. The artist has demonstrated his or her 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 On-site Artwork is durable and cost effective to maintain using ordinary methods.
  - iv. The budget for the proposed On-site Artwork and any in-lieu fees proposed by the developer is equivalent to or exceeds the required program allocation.
- ~~d.f.~~—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 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 Article, any conditions of approval, and the maintenance obligations of the property owner.
- g. ~~e.~~—FailureAny 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.
- e.h. If the Public Art Commission is unable to act on an application and to notify the applicant within seventy-five (6075) calendar days of receipt of a complete application, or such and an extended period as may be mutually agreed upon to by 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. ~~deemed a denial of such application.~~

- i. ~~f.~~—The application required by this ~~section~~Article shall be made, approval obtained and the ~~Public Art~~Artwork 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~~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~~Article has been approved, the applicant has executed a written agreement with the City to install the ~~Public Art~~Artwork, and the applicant has filed security in an amount ~~and equal to the Program Allocation or the value of the proposed installation, whichever is greater, and in a~~ form acceptable to the City Attorney to guarantee installation ~~of the Public Art~~.
- j. The Community Development Director may prepare guidelines and policies for application and review of public art applications, and public art administration consistent with this Article.

### 30-98.7 – Maintenance Obligations

- a. ~~g.~~—The property owner shall maintain, or cause to be maintained, in good condition the ~~On-site Public Art~~work 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~~incorporated into in the covenantthe conditions of approval for the On-Site Artwork 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~~work, the City must be notified in advance. The property owner shall replace the ~~Public Art~~Artwork with ~~Public Art~~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.

a.—

~~(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 5)~~

### 30-98.8 - Included and Excluded Expenses.

- a. The following expenses may be included in the budget for the Program Allocation for On-site Artwork:

- i. The art itself including the artist's fee for design, structural engineering and fabrication;
  - ii. Transportation and installation of the work at the site;
  - 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 On-site Artwork:
  - i. The cost of locating the artist(s);
  - ii. Architect and landscape architect fees;
  - iii. Land costs;
  - iv. Landscaping around the Artwork 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 artwork if not integral to the design.

**[SECTION BELOW MOVED FROM 30.98.10]**

30-~~9865~~.9 - Compliance.

- a. Compliance with the provisions of this ~~section~~ Article shall be demonstrated by the ~~owner or developer prior to the issuance of a certificate of occupancy~~ Developer, as follows:
  - a. Payment of the Public Art In-Lieu Contribution prior to the issuance of building permits; or
  - b. Installation of the On-site Public Artwork in accordance with ~~approval of the application submitted pursuant to~~ section 30-~~9865.68~~; or
  - c. Execution of an installation agreement and evidence that the resolution of approval by the Public Art Commission ~~a maintenance covenant~~ has been recorded against the property prior to the issuance of a certificate of occupancy.

~~(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 2)~~

30-~~9865.105~~ - Alameda Public Art Fund.

- a. ~~a.~~—There is hereby created the Alameda Public Art Fund to account for the Public Art ~~In-Lieu~~ In-Lieu Contributions made pursuant to subsection 30-

~~9865.43(e) and (f)~~ 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. for (i) the a~~Acquisition, commission, design, installation, improvement, ~~maintenance~~ and insurance of Public Art;
- ~~ii. identified by subsection 30-65.4, (ii) the City~~ acquisition ~~or improvement~~ of real property or improvement of public property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City;

~~b. The Alameda Public Art Fund shall be distributed annually as follows:~~

~~1.~~

- ~~iii. 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. Grants to non-profit arts/cultural organizations to provide publicly accessible Cultural Arts and Arts programming to benefit the Alameda community.~~

~~iv. Other expenses associated with implementation of Public Art.~~

~~b. Public Art shall be located in a publicly accessible place on private property, on land or in a building owned by the City of Alameda or on government-owned publicly accessible property. Cultural Arts and Arts Programming shall be free of charge to the public.~~

~~c. For Public Art, the property owner shall maintain, or cause to be maintained, in good condition the Public Art for its lifetime and shall perform necessary repairs, maintenance, preservation and conservation to the satisfaction of the City, as established in a long-term maintenance plan approved by the Public Art Commission.~~

~~d. No more than twenty-five (25%) of the current Alameda Public Art Fund balance shall be distributed for Cultural Arts and Arts Programming.~~

- ~~a. 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. or (iii) other expenses associated with implementation of Public Art and the Public Art Plan.~~

~~e. c.~~—The Public Art Commission shall present biennially to the City Council recommendations for the distribution of any portion of the Public Art Fund by the City of Alameda.

f. The Alameda City Council shall authorize expenditures from the Public Art Fund consistent with the purpose of this Article.

a.g. 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.