

30-65 - PUBLIC ART IN NEW COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND MUNICIPAL CONSTRUCTION.

30-65.1 - Purpose.

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 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.
- 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 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.
- g. 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)

30-65.2 - Definitions.

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

- a. "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.
- 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.
- c. "Program Allocation" shall mean the amount required under subsection 30-65.3.
- d. "Public Art" shall mean the public art programs described in subsection 30-65.4.
- e. "Public Art In-Lieu Contribution" shall equal the percentage of building development costs required by this section.

(Ord. No. 2892 N.S. § 1)

### 30-65.3 - Contribution Requirements.

- 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.
- b. The contribution requirement of this section shall apply to commercial, industrial and municipal projects, and residential projects that create five (5) or more residential units.
- 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.
- d. 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.
- e. In lieu of acquisition and installation of Public Art on the development site, an owner or developer, at its discretion, may place a Public Art In-Lieu Contribution in an amount equal to 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 shall be paid prior to the issuance of a building permit for the project on the development site.
- f. Subject to the approval of the Public Art Commission, an owner or developer may incorporate into the development Public Art that has a value lower than the Program Allocation and pay a 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 - Public Art.

The following Public Art may be used to satisfy the requirements of subsection 30-65 .3:

- a. On-site Projects:
  1. Sculpture; such as in the round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
  2. Painting: All media, including but not limited to, murals;
  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;
  4. Mosaics;
  5. Crafts: in clay, fiber and textiles, wood metal, plastics and other materials;
  6. Mixed Media: any combination of forms or media, including collage;
  7. Any other form determined by the Recreation and Park 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.

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

#### 30-65.5 - Alameda Public Art Fund.

- a. There is hereby created the Alameda Public Art Fund to account for the Public Art In-Lieu Contributions made pursuant to subsection 30-65.3(e) and (f) and any and all other revenues appropriated or received for Public Art. The revenues in such Fund shall be used solely for (i) the acquisition, commission, design, installation, improvement, maintenance and insurance of Public Art identified by subsection 30-65.4, (ii) the acquisition or improvement of real property for the purpose of displaying Public Art, which has been or may be subsequently approved by the City, or (iii) other expenses associated with implementation of Public Art and the Public Art Plan.
- b. The Alameda Public Art Fund shall be distributed annually as follows:
  1. 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.
  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.
- c. 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. The Public Art Commission shall present annually to the City Council for approval a Public Art Plan that recommends the use of Alameda Public Art Fund monies consistent with the purpose of this section. The Public Art Plan shall be administered by the Planning and Building Department.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 3)

#### 30-65.6 - Included and Excluded Expenses.

- a. The following expenses may be included in the budget for the Program Allocation for 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.
- c. No more than twenty five (25%) percent of the Program Allocation for Public Art determined on an annual basis shall be used as an administrative fee as described in subsection 30-65.5(b) above.

(Ord. No. 2892 N.S.)

30-65.7 - Reserved.

**Editor's note**— Ord. No. 3029 N.S., § 2, adopted April 5, 2011, repealed 30-65.7, which pertained to Public Art Commission and derived from Ord. No. 2892 N.S., § 1; and Ord. No. 2942 N.S., § 4. Similar provisions can be found in 2-18.1 through 2-18.4.

30-65.8 - Application and Approval Procedures for Placing Public Art on Private Property.

- a. An application for the installation of Public Art on private property shall be submitted to the Planning and Building Department on forms furnished for that purpose and shall include the following information, as applicable:
  - (i) Landscape and site plans indicating the location and orientation of the Public Art and the landscaping and architectural treatment integrating the piece 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) A resume of the proposed artist;
  - (v) Slides and/or photographs of the proposed artist's past Public Art, which demonstrates like Public Art to the proposal;
  - (vi) A written statement by the artist describing any theme or development of the Public Art, as well as a discussion of the manner in which the proposed Public Art 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;
  - (vii) A written statement by the artist declaring the valuation of the Public Art;
  - (viii) A maintenance plan for the Public Art;
  - (ix) Any such additional information or material as may be required by the Planning and Building Director, or designee.
- b. The application submitted pursuant to subsection (a) of this section shall be referred to the Planning and Building Director or his/her designee for preliminary review to determine whether the application is complete. The completed application along with the recommendation of staff and/or consultants shall be forwarded to the Public Art Commission for review and decision.
- c. 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.
- d. The Public Art Commission shall approve or deny the application in accordance with the Guidelines for Approval referenced in Section 30-65.10. 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.
- e. Failure of the Public Art Commission to act on an application and to notify the applicant within seventy-five (75) calendar days of receipt of a complete application, or such extended period as may be mutually agreed upon by the applicant and the Public Art Commission, shall be deemed a denial of such application.

- f. The application required by this section shall be made, approval obtained and the Public Art 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 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 Public Art, and the applicant has filed security in an amount and form acceptable to the City Attorney to guarantee installation of the Public Art.
- g. The property owner shall maintain, or cause to be maintained, in good condition the 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 contained in the covenant and recorded against the property by the applicant. Should the property owner wish to remove the Public Art, the City must be notified in advance. The property owner shall replace the Public Art with Public Art 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.

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

#### 30-65.9 - Compliance.

Compliance with the provisions of this section shall be demonstrated by the owner or developer prior to the issuance of a certificate of occupancy as follows:

- a. Payment of the Public Art In-Lieu Contribution; or
- b. Installation of the Public Art in accordance with approval of the application submitted pursuant to section 30-65.8; or
- c. Execution of an installation agreement and evidence that a maintenance covenant has been recorded against the property.

(Ord. No. 2892 N.S. § 1)

#### 30-65.10 - Guidelines for Approval.

- a. Guidelines for approval and maintenance of Public Art ("Guidelines for Approval") shall be adopted by the City Council, upon recommendation from the Public Art Commission. Guidelines shall be adopted within sixty (60) days of the ordinance codified in this chapter.
- b. The Guidelines for Approval shall include standards for reviewing an application for the installation of Public Art in accordance with the following objectives:
  - 1. Conceptual compatibility of the design with the site environment and City design standards;
  - 2. Appropriateness of the design to the function and aesthetics of the site;
  - 3. Compatibility of design and location within a unified design character or historic character of the site;
  - 4. Creation of an integral and complementary unity with the environment;
  - 5. Preservation and integration of natural features;
  - 6. Appropriateness of scale, form, content, materials, textures, colors and design to the site and surrounding environment; and
  - 7. Durability of material and ease of maintenance.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 6)

30-65.11 - Appeal to the City Council.

Any final decision of the Public Art Commission may be appealed to the City Council within ten (10) calendar days following the decision of the Public Art Commission. Said appeal shall explain the grounds for the appeal in writing.

(Ord. No. 2892 N.S. § 1; Ord. No. 2942 N.S. § 7)

# 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. *Lowers 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

# ITEM 7-C

## 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](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)

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](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

<b>Fund/Account</b>	<b>Project</b>	<b>Amount</b>
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

<b>Fund/Account</b>	<b>Project</b>	<b>Amount</b>
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

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 4, 2016- -7:00 P.M.

Mayor Spencer convened the meeting at 7:05 p.m. and led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5.

Absent: None.

AGENDA CHANGES

(16-484) Mayor Spencer announced that the Community Facilities District ordinance [paragraph no. 16-499] would be heard first on the regular agenda.

Vice Mayor Matarrese suggested the Friends of the Alameda Animal Shelter (FAAS) Council referral [paragraph no. 16-501] be addressed after the FAAS Annual Report [paragraph no. 16-500].

Mayor Spencer inquired if that could be done, to which the Acting City Manager responded in the affirmative.

Vice Mayor Matarrese stated the public is present regarding the issue and should not have to come back again.

The City Attorney stated the FAAS matter is a presentation; even though there are people to speak on the item, it is not agendized to take any action; the Council referral does not allow for a robust conversation, only to direct staff to look into doing work with FAAS and the FAAS contract.

Councilmember Daysog inquired if the referral would follow the FAAS Annual Report, to which Vice Mayor Matarrese responded in the affirmative.

Councilmember Oddie inquired if staff is prepared to have the type of discussion that is needed on the referral.

The Acting City Manager responded staff can discuss the referral in general, but is not prepared to discuss the substance of the referral.

Mayor Spencer stated the discussion would be to decide if the Council wants to proceed with the referral.

Councilmember Ezzy Ashcraft inquired if the discussion would allow the Council to discuss possible budgetary constraints depending on November ballot measures.

The City Attorney responded staff is that not prepared to give any substantive

information; the referral is only to see whether Council would like to direct staff to have negotiations with FAAS or not.

Mayor Spencer repeated the order of the agenda items.

#### PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(16-485) Proclamation Declaring October 5, 2016 as Walk and Roll to School Day.

Mayor Spencer read and presented the proclamation to Bonnie Wehmann, Safe Routes to School, and students.

Ms. Wehmann made brief comments.

(16-486) Proclamation Declaring October 2016 as Domestic Violence Awareness Month.

Mayor Spencer read and presented the proclamation to Liz Varela, Building Futures with Women and Children.

Ms. Varela submitted information and made brief comments.

Councilmember Daysog thanked the Domestic Violence Task Force for their work.

In response to Mayor Spencer's inquiry regarding volunteers, Ms. Varela stated handouts would be available.

(16-487) Proclamation Declaring October 2016 as Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) History Month.

Mayor Spencer read and presented the proclamation to Olivia Higgins, Gene Kahane and Henry Villareal, Alameda Unified School District LGBTQ Roundtable.

Ms. Higgins and Mr. Villareal made brief comments.

(16-488) Presentation by the Port of Oakland regarding Fleet Week.

Doreen Stockdale, Port of Oakland, gave a Power Point presentation.

#### ORAL COMMUNICATIONS, NON-AGENDA

(16-489) Ken Peterson, Alameda, discussed Alameda Municipal Power's awards for safety and green projects.

(16-490) Kari Thompson, Alameda Chamber of Commerce, urged the Council to amend the call for review process.

## CONSENT CALENDAR

Mayor Spencer announced the Enterprise District report [paragraph no. 16-493] was removed from the Consent Calendar for discussion.

Councilmember Ezzy Ashcraft moved approval of remainder of the Consent Calendar.

Vice Mayor Matarrese seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(16-491) Minutes of the Special and Regular City Council Meetings Held on September 6, 2016. Approved.

(16-492) Ratified bills in the amount of \$3,185,898.03.

(16-493) Recommendation to Accept the Document Outlining the Approach to Attracting Development to the Enterprise District at Alameda Point and a Six-Month Status Update.

The Redevelopment Project Manager gave a Power Point presentation.

Councilmember Ezzy Ashcraft inquired if the City could connect with the Alameda Point tenants now instead of at the delivery phase; stated the Alameda Point tenants should be treated well; read comments from the July 20<sup>th</sup>, Economic Development Advisory Panel meeting minutes; stated attracting jobs to Alameda Point is a top priority; the City should lease property to businesses that will use the property now and not just purchase the property to keep their competition from expanding.

Councilmember Oddie inquired when Phase 2 would begin.

The Redevelopment Project Manager responded after the Site A infrastructure starts.

Councilmember Oddie inquired when the ground breaking will be.

The Redevelopment Project Manager responded October 24, 2016.

Councilmember Oddie inquired if people making inquiries on the property are genuine leads or just casual inquiries.

Ted Anderson, Cushman and Wakefield, responded inquiries run the gamut; there will be a lot of success at Alameda Point.

Councilmember Oddie encouraged the developer to be aggressive on the timeline; stated the development is a priority of the City.

Vice Mayor Matarrese stated that he would like to see an actual analysis on the inquiries; if there are inquiries from people that do not fit the current approach, there adjustments need to be made; the nature of the inquiry needs to be analyzed, put in a report and presented to Council to make necessary adjustments.

Councilmember Daysog stated the strategy being used is correct; the City Should continue working with Cushman Wakefield to identify prospects for the different parts of Alameda Point; he concurs with staff's recommendation.

Mayor Spencer stated that she is concerned about considering local businesses in Alameda that need larger spaces for the space; businesses should not be turned down because of the type of business; she would like more feedback shared; meeting the needs of the community is important.

Councilmember Oddie stated that he agrees the Council should have more complete reporting.

Mr. Anderson responded the request could be accommodated.

Councilmember Ezzy Ashcraft stated the project is still years away; a company is in need of immediate expansion space they should look elsewhere.

Vice Mayor Matarrese moved approval of the staff recommendation.

Councilmember Oddie seconded the motion, which carried by unanimous voice vote – 5.

(16-494) Recommendation to Authorize the City Manager to Execute an Agreement with CSG Consultants Inc. for Professional Plan Check Services for a 24-Month Term in an Amount not to Exceed \$600,000 and Appropriate \$150,000 for Fiscal Year 2016-17 to Fund the First Year of the Agreement. Accepted.

(16-495) Ordinance No. 3162, “Amending the Alameda Municipal Code by Amending Section 30-4.25(D).III.B Related to Setbacks for Side Street Property Lines on Corner Parcels.” Finally passed.

(16-496) Ordinance No. 3163, “Approving a First Amendment to a Lease and Authorizing the City Manager to Execute Documents Necessary to Implement the Terms of a First Amendment to the Lease Agreement with Pacific Automated LLC, a California Limited Liability Company, dba Brix Beverage (Pacific Automated, LLC) to Include a Portion of Building 25 (Unit 100), a Small Outbuilding Known as Building 491, and Additional Parking Common Areas as Part of the Original Premises at 1951 Monarch Street at Alameda Point.” Finally passed.

(16-497) Ordinance No. 3164, “Amending the Alameda Municipal Code by Amending

Chapter 30, Section 30-4.21 E, Estuary District.” Finally passed.

(16-498) Ordinance No. 3165, “Authorizing the City Manager to: (1)Execute a Memorandum of Understanding, Quitclaim Deed and All Other Necessary Documents Between the City of Alameda and the United States of America Acting By and Through the U.S. Army Corps of Engineers to Acquire 94 Parcels of Semi-Submerged and Submerged Land On the Alameda Side of the Oakland Inner Harbor Tidal Canal (“Tidal Canal”); (2) Execute Purchase and Sale Agreements, Quitclaim Deeds and All Other Necessary Documents Between the City of Alameda and Various Purchasers to Sell Approximately 92 Parcels on the Tidal Canal at Fair Market Value.” Finally passed.

### REGULAR AGENDA ITEMS

(16-499) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Subsection 3-70.5 (Establishment of a Community Facilities District (CFD) to Finance Certain Services) of Section 3-70 (Special Tax Financing Improvement Code), of Division I (General Provisions), of Article IV (Special Tax Financing), of Chapter III (Finance and Taxation) to Allow the Financing of Additional Services, including Transportation Services and Programs. Introduced.

The Base Reuse Director gave a brief presentation.

Councilmember Ezzy Ashcraft inquired if the taxes would be paid by just the property owners and businesses of the area, to which the Base Reuse Director responded in the affirmative.

Councilmember Ezzy Ashcraft inquired what the Community Facilities District would pay for.

The Base Reuse Director responded street resurfacing, bulk head maintenance and levy protection; transportation is the big item, including bus operations, purchasing easy passes, hiring transportation coordinators and funding multi-modal services and programs to carry out the transportation strategy for Alameda Point.

Councilmember Ezzy Ashcraft inquired whether the ordinance is a way to ensure, in addition to transportation, that flood and storm protection services are also financed, to which the Base Reuse Director responded in the affirmative.

Vice Mayor Matarrese inquired about the life span of the ordinance and the districts; stated there may be advantages to having a Citywide Transportation Demand Management (TDM), rather than a separate plan for part of the City; at some point the project may become obsolete.

The Base Reuse Director responded the taxes have to be voted in by property owners; stated the City owns Alameda Point so the City can include a condition that the property owner has to agree to participate in the CFD.

Vice Mayor Matarrese inquired whether the ordinance has a sunset.

The Base Reuse Director responded the CFD would continue as it provides financing for services.

Councilmember Oddie inquired if the Council is not creating a CFD today, to which the Base Reuse Director responded in the affirmative; stated staff will come back with the formation of the CFD's.

Councilmember Oddie inquired if the Council would vote to create the CFD's.

Councilmember Ezzy Ashcraft inquired if the process would be the same as what was done for Alameda Landing.

Paul Thimmig, Outside Counsel, responded under the ordinance there is a lot of flexibility; stated the Council as property owner would vote where to convey the property to a private party; the City does have the power to vote in the tax.

Councilmember Oddie inquired how the tax compares to a Mello-Roos.

Mr. Thimming responded a CFD is similar to a Mello-Roos, only it is done under Charter powers instead of State law.

Councilmember Daysog inquired whether the initial property owner would vote in the tax.

Mr. Thimming responded there are less than 12 registered owners in the territory of the District; stated the vote is of landowners; there is a required recordation of a lien on the property; real estate law requires disclosure; the homeowners are aware of the additional tax.

Councilmember Daysog stated dedicating money to the transit system is an exciting idea.

Mr. Thimming stated the tax is supported by a lien on real property; the revenue flow is more secure.

Mayor Spencer inquired if the tax is relating to Site A

The Base Reuse Director responded the tax will apply to all of Alameda Point.

Mayor Spencer inquired how the schools are being financed.

The Base Reuse Director responded schools are paid for through property tax; every residential or commercial development has to pay a school impact fee.

Mayor Spencer stated some districts or cities are negotiating a higher amount; inquired when the amount for new schools would be discussed.

The Base Reuse Director responded the conversation for Site A already took place; stated the amount for special taxes was included in the Disposition and Development Agreement (DDA) between the City and the developer.

Mayor Spencer inquired whether there is a way for the City to negotiate for the School District as part of the DDA; stated that she would like to do so as part of the DDA.

The Base Reuse Director responded the Sterling Act fees are school impact fees which are collected throughout the entire City for school facilities.

Councilmember Daysog moved introduction of the ordinance.

Councilmember Ezzy Ashcraft seconded the motion, which carried by unanimous voice vote – 5.

(16-500) Presentation by Friends of the Alameda Animal Shelter (FAAS) - Annual Progress Report.

Nancy Baglietto, FAAS, gave a presentation on the Animal Shelter and showed a video.

Mayor Spencer inquired what can and cannot be decided from Council.

The City Attorney responded the agenda item is for Council to view the presentation and hear the speakers.

Mayor Spencer read the referral; requested the speakers speak on the referral and the Annual Progress Report rather than speak twice.

Councilmember Oddie stated he is fine with the request.

Stated the Animal Shelter is for animals and people who love animals; expressed support for keeping the Shelter close and increasing funding: Dorothy Freeman, Alameda.

Stated the animals were not being taken care of properly under the Police Department; the level of care has increased and must be maintained: Nancy Evans, FAAS.

Outlined the increase in programs since FAAS has taken over the Shelter: John Lipp, FAAS Board.

Expressed support for FAAS programs: Steve Busse, FAAS and Park Centre Animal Hospital.



Stated FASS live release rate is the above 95%, which is above the national standard; expressed support for sustainable funding: Janet Davis, FAAS Board.

Stated an assessment was recently completed; encouraged Council to support providing needed funding: Ken Warner, FAAS Board.

Stated that she supports FAAS; the animal shelter needs support from the City: Maggie Caraceiolo, FAAS Volunteer.

Stated public private partnerships are a great model; FAAS is proud of leveraging private funds; the City has a responsibility to fund the shelter, which has increased demands and costs; FAAS cannot fundraise \$1 million; urged Council to support the Mayor's referral: Deb Knowles, FAAS.

Expressed support for FAAS; urged the City to fund the important work of FAAS: Merry Banks, Kelly Lux – State Farm.

Stated the benefit of FAAS is the animal's lives; he strongly supports FAAS: Tony Hernandez, Alameda Animal Mobile Care.

Stated FAAS supports animal facilities and programs; urged support from the City: Jim Gotelli, Volunteer.

Submitted information; stated FAAS has brought professionalism to the animal shelter: Jeff Marks, FAAS.

Stated FAAS is a great opportunity to volunteer; urged City support of FAAS: Matthew Pearce, Alameda.

Stated FAAS helps people connect with animals: Stephem Lowens, Alameda.

Stated the animal shelter is a welcoming and friendly facility; commended FAAS for the life of her adopted pet: Cheryl Hawkins, Alameda.

Stated that she strongly supports FAAS and appreciates FAAS taking over the animal shelter; it is important to have funding for animal services: Colette Lee, Alameda.

Stated FAAS is a great service; urged support for FAAS from the City: Mark Sorensen, Alameda.

Stated animals are a large part of the community in Alameda: Kari Thompson, Alameda.

Urged the full funding of FAAS to allow them to continue their work: Sarah Jo Neubauer, FAAS.

Urged support of FAAS for the different programs and events they hold: Jessica Warren, Alameda.

Stated FAAS is essential and a vital part of Alameda: Wes Warren, Alameda.

Urged support of FAAS and the animal shelter: Joyce Saad, Volunteer.

Stated FAAS is a great support for grief stricken animal owners: Linda Weinstock, Alameda.

Outlined the negotiation; urged the City to fund FAAS: Rena Rickles, FAAS.

Mayor Spencer inquired if there is a need for an independent consultant.

The Acting City Manager responded the discussions with FAAS addressed bringing in an outside consultant to see if things could be done differently to save money.

In response to Mayor Spencer's inquiry, the Acting City Manager stated the City is currently considering potential consultants and looking at other municipal shelters.

Councilmember Oddie inquired what is the request from staff; is the request only for sustainable funding.

The Acting City Manager responded staff is not prepared to have said conversation; stated the City will continue to have conversations with FAAS to determine needs; the City can come back to Council with some progress; the Utility Modernization Act (UMA) is on the ballot in November, which will determine a lot of the City's future.

Mayor Spencer stated the referral is not to make a substantive decision.

Vice Mayor Matarrese stated people need to know the cost of running the animal shelter; he would like direction to be given to staff to start negotiations so that by the June budget, what the City is facing is known.

Councilmember Ezzy Ashcraft stated the City stands to take a significant hit if the UMA does not pass in November and cuts will have to be made; the City is in a position of not knowing the budget; she would like staff to continue communicating and negotiating with FAAS.

Councilmember Daysog stated the success of FAAS speaks for itself; the City should negotiate with FAAS; it is imperative to start moving forward now to not go back to the dog pound model.

Mayor Spencer stated that she does not support the UMA; referred to the July staff report; she believes it is critical to proceed with the referral and direct staff to renegotiate the terms of the lease with FAAS; there has been an increase in the number

of animals going to the shelter; it is important to look at modernizing the animal shelter; Alameda needs a sustainable plan for how the animal shelter can meet the expectations and needs of the community and the animals.

[Refer to the Referral below [paragraph no. 16-501] for the motion.

### COUNCIL REFERRAL

(16-501) Consider Directing Staff to Renegotiate the Terms of the Friends of the Alameda Animal Shelter (FAAS) Lease and Relocate/Modernize the Shelter Facility, including Addressing Funding. (Mayor Spencer)

Refer to above FAAS Annual Progress Report [paragraph no. 16-500] for public comments and discussion.

Mayor Spencer moved approval of accepting the referral and having staff come back with a presentation.

Councilmember Daysog read the referral; stated he would change the referral to read "...consider directing staff to renegotiate the terms of the lease with FAAS commensurate with the business model and values now in place..."

Mayor Spencer accepted the friendly amendment.

Vice Mayor Matarrese stated direction needs to be given to guide what is already happening; negotiations are already on going; he wants a line by line presentation and a third party to inform staff which line item goes directly to the release rate and which are peripheral; Council cannot make decisions until the budget is explored.

Councilmember Oddie stated that he is not comfortable with the wording of the referral; he would like more information; he would like to look at the budget line items and know what Council is being asked to do; he would like to know the options for a replacement shelter.

Councilmember Daysog stated, by necessity, the City needs a prescriptive referral; suggested the following changes to the referral "...consider directing staff to renegotiate the terms of a lease with FAAS commensurate with the business model and values now in place, including reporting on relocating/modernizing the shelter facility and addressing funding with due diligence review of expenses and revenues..."; the City cannot begin to negotiate in February if the Shelter might close in March.

Mayor Spencer accepted the friendly amendment.

Councilmember Daysog seconded the motion.

The Acting City Manager stated if the caveat in the friendly amendment is to negotiate

in the current standard, the question is if the City can afford the standard.

Councilmember Daysog stated that the City has to enter into the negotiations with a certain value.

The Acting City Manager stated that setting the bar that high ties the City's hands.

Mayor Spencer stated that she does want to set the bar high; she made a motion and accepted the friendly amendment.

On the call for the question, the motion FAILED by the following voice vote: Ayes: Councilmember Daysog and Mayor Spencer – 2. Noes: Councilmember Ezzy Ashcraft, Councilmember Oddie and Vice Mayor Matarrese – 3.

Vice Mayor Matarrese moved approval of directing staff to renegotiate the terms of the FAAS lease, including: 1) the City's allocation and support of FAAS, 2) the requirement to have a third party expert provide the evaluation as suggested by both FAAS and the City to review the line items and to identify the target to which the City is going to hit, 3) an analysis of the relocation and modernization of the animal shelter and option for alternative funding sources, including, but not limited to, the items listed on the staff report, the development fee and other user fees.

Councilmember Oddie seconded the motion.

Under discussion, Councilmember Ezzy Ashcraft inquired if the motion includes the idea of expanding the animal shelter to bring in more revenue, to which Vice Mayor Matarrese responded in the affirmative.

Mayor Spencer inquired about the level of care is.

Vice Mayor Matarrese responded the motion is to have the independent consultant identify the standard which the City is targeting.

Mayor Spencer inquired if that is a lower level standard of care, and if the City is going to bring in someone from the outside to determine Alameda's standard.

Vice Mayor Matarrese responded in the negative; stated the consultant would advise the City of the standard.

Mayor Spencer stated the standard varies from shelter to shelter.

Vice Mayor Matarrese stated variation is not a standard, that is an output; a standard is a target rate for a good shelter; a standard is a target for people to measure performance against and determine which line items goes to keeping the level of service and how the City can stay above the standard; the budget is projected to get smaller and smaller.

Mayor Spencer inquired what would be the acceptable standard of care.

Vice Mayor Matarrese responded after the standard and cost are received, then the City can have a discussion; on the Annual Report there is no standard and he does not have a reference or information about the standard.

Councilmember Ezzy Ashcraft stated that she does not want to support anything that would support a lower kill rate; inquired if the target is a financial target; stated she does not want to change the live release rate; cuts could be made in other areas.

Councilmember Oddie stated there is a certain service level at the animal shelter; there could be a different service level and cost for that service level.

Vice Mayor Matarrese stated the starting point should be to maintain and improve the current level of service, but be ready to deal with costs.

Councilmember Daysog stated said idea is the same as the original motion: to aim high and make adjustments if there is a contingency plan.

Councilmember Ezzy Ashcraft stated the motion is giving staff more latitude to address relocation or modernizing the facility.

Councilmember Daysog stated as part of the negotiations staff should be prepared to ask about the follow up steps.

At the request of Council, the City Clerk repeated the motion.

Vice Mayor Matarrese stated a standard has not been identified, only the performance; Council needs to know the cost to maintain the performance if it is above the standard or to bring the standard up if it is below the standard.

Mayor Spencer stated the motion is similar to the previous motion.

Vice Mayor Matarrese responded he added having a third party consultant.

Mayor Spencer responded that the addition of the consultant could have been a friendly amendment.

Councilmember Oddie called for the question.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmember Ezzy Ashcraft, Councilmember Oddie and Vice Mayor Matarrese – 3. Noes: Councilmember Daysog and Mayor Spencer – 2.

At the request of Council, the City Clerk repeated the motion.

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Mayor Spencer called a recess at 10:17 p.m. and reconvened the meeting at 10:25 p.m.

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(16-502) Mayor Spencer stated a motion is needed to consider items past 10:30 p.m.

Vice Mayor Matarrese moved approval of hearing the Introduction of Ordinance first [paragraph no. 16-503], then address the Housing Element Annual Report [paragraph no. 16-505].

Under discussion, Mayor Spencer inquired if more items could be added at 11:00 p.m.

The City Clerk responded in the negative.

Mayor Spencer stated that she prefers to hear the Public Art Fund item first because there are people in the audience to speak on the issue.

Councilmember Oddie seconded the motion.

On the call for the question, the motion failed by the following voice vote: Ayes: Councilmembers Matarrese and Oddie – 2. Noes: Mayor Spencer – 1. Abstentions: Councilmember Daysog and Ezzy Ashcraft – 2.

There was a brief discussion about the vote.

Mayor Spencer moved approval of hearing the Public Art Fund item. [paragraph no. 16-503]

Councilmember Daysog seconded the motion.

Under discussion, Councilmember Ezzy Ashcraft inquired about potential November 1<sup>st</sup> agenda items, to which the City Clerk responded potential items include Phase Zero and the homeless encampment.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmembers Daysog, Ezzy Ashcraft, Matarrese and Mayor Spencer – 4. Noes: Councilmember Oddie – 1.

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## REGULAR ITEMS

(16-503) 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. Introduced.

The Community Development Director gave a Power Point presentation.

Vice Mayor Matarrese inquired if the Public Art Commission (PAC) made the recommendations to appropriate \$100,000 to Jean Sweeny Public Art and use part of the \$100,000 for maintenance.

The Community Development Director responded in the negative; stated the Council is the body that appropriates funds; the Public Art Ordinance states that maintenance of public art is an eligible expense of the public art fund.

Councilmember Daysog inquired whether the PAC makes recommendations to the Planning Board.

The Community Development Director responded the PAC expressed interest in the ordinance being drafted to create a mandatory requirement that money be paid into the art fund; because of the zoning ordinance, the City cannot dictate how a developer decides to use the funds; developers have to be given the choice between paying into the fund or providing art onsite.

Councilmember Daysog inquired if the PAC had input, to which the Community Development Director responded in the affirmative.

Councilmember Daysog inquired whether there discussion on how to capture cultural art.

The Community Development Director responded cultural art should be free and open to the public; the criteria could be added to the Request for Proposal (RFP) process.

Councilmember Daysog suggested codes could be implemented for people to look up and see cultural event that happened years ago.

Councilmember Oddie inquired if the Council adopted a Master Plan for Jean Sweeny Park, to which the Community Development Director responded in the affirmative.

Councilmember Oddie inquired if there was a public art component in the Master Plan, to which the Community Development Director responded in the affirmative.

Councilmember Oddie inquired if the estimated cost of the public art component was \$100,000.

The Community Development Director responded the \$100,000 is a way to jump start the public art design and fabrication.

Councilmember Oddie inquired whether the estimate is for the entire Jean Sweeny

project is \$17 million.

The Community Development Director responded the public art was not budgeted as part of the \$17 million; it would need to come out of a grant or fundraising.

Councilmember Oddie inquired if the public art is part of the plan but the City currently does not have a way of paying for it, to which the Community Development Director responded in the affirmative.

Councilmember Ezzy Ashcraft inquired if the \$100,000 expenditure for the public art at Jean Sweeny has not been heard by the PAC, to which the Community Development Director responded in the affirmative.

Councilmember Ezzy Ashcraft inquired if the decision to allocate almost half of the \$224,000 in the public art fund is a staff estimate.

The Community Development Director responded in the affirmative; stated Community Development and Park and Rec staff came up with the figure.

Councilmember Ezzy Ashcraft inquired if the figure is based on any particular art installation.

The Community Development Director responded the amount is based on the fact that four locations are being contemplated; stated staff does not know whether \$100,000 will cover one to four locations.

Councilmember Ezzy Ashcraft inquired what other park locations across the City have been considered for public art funding.

The Community Development Director responded the Master Plan did not have a public art component.

Councilmember Ezzy Ashcraft inquired whether public art could be anywhere in the City, not just public parks, to which the Community Development Director responded in the affirmative.

Councilmember Ezzy Ashcraft inquired if there was a public process so that the public could weigh in on where and what kind of public art they would like to see.

The Community Development Director responded there was a community workshop for the public where the proposed amendments to the ordinance were presented as well as the RFP process.

Councilmember Ezzy Ashcraft inquired whether the plans are set and if the allocations are made.



The Community Development Director responded that if the Council were to appropriate the funding for Jean Sweeny Park, the public process for the art would begin.

Mayor Spencer inquired if there are any other Master Plans in the City which include public art that has not been funded, to which the Community Development Director responded only Jean Sweeny Park.

Mayor Spencer inquired if public art was ever contemplated for any other park.

The Community Development Director responded public art would be a great idea in a number of City parks, which could be a part of the \$50,000 for capital art in the RFP.

Mayor Spencer inquired if any other parks have public art; stated she is unaware of any public art at any other parks.

The Community Development Director responded in the negative.

Mayor Spencer inquired whether the requirement for administrative costs could be reduced from 25% to 15%.

The Community Development Director responded in the affirmative; stated the cost is for the third party art providers, not the City's administrative expenses.

Mayor Spencer inquired whether staff reports to the PAC how much is being spent.

The Community Development Director responded the annual report includes the costs spent on administrative expenses; stated the cost is not approved by the PAC.

Mayor Spencer inquired if there is any preauthorization, to which the Community Development Director responded in the negative.

The Acting City Manager stated the amount is in the budget.

The Community Development Director stated the current budget includes \$10,000.

Councilmember Oddie inquired whether there has to be a cap, to which the Community Development Director responded in the negative.

Councilmember Oddie inquired if the cap can be eliminated.

The Community Development Director responded in the affirmative.

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(16-504) Mayor Spencer stated a motion is needed to continue past 11:00 p.m.

Councilmember Daysog moved approval of continuing the meeting.

Mayor Spencer seconded the motion, which failed by the following voice vote: Ayes: Councilmember Daysog and Mayor Spencer – 2. Noes: Councilmembers Ezzy Ashcraft, Matarrese and Oddie – 3.

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Councilmember Ezzy Ashcraft moved approval of continuing the matter to October 18th at 6:00 p.m.

Vice Mayor Matarrese seconded the motion which carried by the following voice vote: Ayes: Councilmembers Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 4. Noes: Councilmember Daysog – 1.

(16-505) Recommendation to Direct Staff to Transmit the City of Alameda 2015 Housing Element Annual Report to the State of California Department of Housing and Community Development. Not heard.

(16-506) Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Streamline Improvements to Existing Residential Properties and Minor Administrative, Technical, and Clarifying Revisions to the Zoning Ordinance Regarding Chimneys, Accessory Buildings, Windows, Existing Driveways and Parking, Non-Conforming Setbacks, Home Occupation Signage, and Other Miscellaneous Amendments. Not heard.

#### CITY MANAGER COMMUNICATIONS

None.

#### ORAL COMMUNICATIONS, NON-AGENDA

None.

#### COUNCIL REFERRALS

(16-507) Consider Directing the City Manager to Initiate and Begin the Process with the Planning Board to Propose Revisions to the Ordinance and Code Sections Defining Alameda's Inclusionary Housing for Residential Development. (Vice Mayor Matarrese) Not heard.

(16-508) Consider Directing the City Manager to Schedule a Priority Setting Work Session. (Mayor Spencer) Not heard.

(16-509) Consider Directing the City Manager to Immediately Hold a City Council Workshop on the Final Phase of the Bayport-Alameda Landing Disposition and Development Agreement (DDA)\Development Plan. (Councilmember Daysog) Not heard.

(16-510) Consider Directing the City Manager to Have the Social Service Human Relations Board (SSHRB) Review City Policies and Procedures for Aiding Alameda's Homeless in Order to Make Recommendations to the City Council for Policy Revisions and Additions. (Vice Mayor Matarrese) Not heard.

(16-511) Consider Directing the City Manager to Initiate Revisions to the Ordinances and Code Sections for Mixed-Use Zoning in the City of Alameda to Aid Retention of Beneficial Commercial Uses within Areas Zoned for Mixed Use. (Vice Mayor Matarrese) Not heard.

(16-512) Consider Directing Staff to Review Enacting a Minimum Wage Increase in Alameda. (Mayor Spencer) Not heard.

#### COUNCIL COMMUNICATIONS

None.

#### ADJOURNMENT

At 10:58 p.m., Mayor Spencer continued the meeting to October 4, 2016 at 6:00 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 18, 2016- -5:30 P.M.

Mayor Spencer convened the meeting at 5:06 p.m.

Roll Call – Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5.

[Note: Mayor Spencer recused herself and left the meeting at 5:50 p.m.]

Absent: None.

Public Comment

Eric Gantos, Hot Rod Shop Inc., submitted information; urged Council to proceed with the lease with Hot Rod Shop.

The meeting was adjourned to Closed Session to consider:

(16-513) Conference with Real Property Negotiators (Pursuant to Government Code § 54956.8); Property: Alameda Point – Building 530 – 120 W. Oriskany Avenue, Alameda, CA; City Negotiator: Nanette Mocanu/Cushman & Wakefield; Organizations Represented: Hot Rod Shop Inc., and NorCal Clean Tech, LLC; Issue under negotiation: Real Property Negotiations Price and Terms of Payment.

(16-514) Conference with Legal Counsel – Anticipated Litigation; Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 of the Government Code  
Number of cases: One (As Defendant - City Exposure to Legal Action)

Following the Closed Session, the meeting was reconvened and Mayor Spencer announced that regarding Real Property, direction was given to staff and regarding Anticipated Litigation, Council received a briefing.

Adjournment

There being no further business, Acting Mayor Matarrese adjourned the meeting at 5:57 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

MINUTES OF THE OCTOBER 4, 2016 CONTINUED  
REGULAR CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 18, 2016- -6:00 P.M.

Mayor Spencer reconvened the meeting at 6:05 p.m.

ROLL CALL - Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5.

Absent: None.

REGULAR ITEM

(16-515) 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;

(16-515A) 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.]

The Community Development Director gave a brief presentation on the supplemental report.

Mayor Spencer inquired whether there are two separate votes: 1) Introduction of the ordinance amending the Alameda Municipal Code and 2) Amend the Fiscal Year Budget by \$350,000.

The Community Development Director responded in the affirmative.

Mayor Spencer suggested addressing the two issues separately and having two separate votes, to which Council agreed.

Stated as a potential public art fund contributor, he would want his donation to be allocated to projects via direction from the Public Art Commission (PAC); urged Council to vote against the current proposal: Marcel Sengul, Alameda.

Reviewed the Performing Arts and Learning program (PAL); stated the PAL program serves schools and is run with no financial support from the City; urged the Council not to support the ordinance and develop a fair and transparent process: Laili Goharta.

Stated art is important to the health of a community; she advocates for a fair and transparent system to distribute public art funds and allow the community to experience the benefits of public art: Janet Koike, Alameda.

Stated neighboring cities have public art ordinances; urged Council to support a fair and transparent system for public art for the residents of Alameda: Elaine Fong.

Stated the much needed funds will enhance the legacy of Jean Sweeney Park; urged Council to approve the \$100,000: Jim Sweeney, Jean Sweeney Open Space Park Fund.

Stated the funds should go to fund cultural art: Katina Huston, Alameda.

Stated having art in public parks makes it available for everyone to enjoy; urged Council to approve the appropriation for Jean Sweeney Park, art installation and cultural art in Alameda: Dorothy Freeman, Alameda.

Urged Council to create a fair, transparent and sustainable Request for Proposal (RFP) process for art project funds; stated every artist deserves the chance to apply for funds: Julie Baron, Alameda.

Stated the City of Alameda's art budget is very small; other cities have a larger public art fund; urged Council to develop a fair process: Donna Layburn, Downtown Alameda Business Association.

Stated that she would like to see public art throughout the City; there needs to be a transparent funding program; other cities have an easy process for citizens to take part in public arts; Alameda needs to make a commitment to the arts in a fair and equitable way for all organizations: Audrey Lord-Hausman, Alameda.

Submitted petitions; stated that she would like to see a fair and equitable process in the distribution of public arts funds; urged Council to amend the current staff recommendation to call for an unbiased process to distribute the City's art fund: Tina Blaine, Alameda.

Expressed support for a fair and open process: Carolyn West.

Stated improvement is needed for an open application and a clear RFP process; the real issue is a fair, transparent and equal process to disburse the funds; urged Council to reject the proposal: Corey Hill, Alameda.

Stated that he supports public art; there should be a fair and open process; all funding should be directed to the PAC; urged Council to eliminate the developer cap: Amos White.

Urged Council to keep the historic requirement: Janet Gibson, Alameda.

Vice Mayor Matarrese stated when there was a vote in 2006, he understood the money would be distributed by the PAC; in the two years he has been on Council, not one recommendation has come from PAC on how to distribute the funds; the original intent of the ordinance was derailed; he wants to hear from the PAC on what to do with the money.

Councilmember Ezzy Ashcraft stated that she would like to hear from the PAC; it is not staff's role to decide where the \$100,000 should be disbursed; the process needs to be transparent; the decision is not Council's to make without hearing from the PAC; there is an entire City that is worthy of the placement of public art; the PAC should craft an RFP process; the requirement that public art must be maritime or historically themed should be removed; there needs to be a clear idea of the allowable amount of administrative fees.

Councilmember Daysog stated the challenge is that Jean Sweeney Park is a monumental project; the public needs to be involved and give input to the PAC; the PAC needs to be more involved; the PAC should work with the public to identify the elements everyone wants to celebrate.

Councilmember Oddie inquired whether there will be two votes: one on the budget allocation and one on the ordinance.

Mayor Spencer responded in the affirmative; stated she has not heard from all Councilmembers yet.

Councilmember Oddie stated expanding the non-profit organizations is a good idea; he would like to find a way to preserve the culture for future generations to enjoy; he agrees with the lower cap on administrative costs; spending PAC funds on maintenance and repairs is not a good idea; there is an obligation to preserve the maritime history through art; the City made a commitment to Jean Sweeney Park and the money should go to the park; there should be an RFP process for any artist that would like to put public art at Jean Sweeney Park.

Mayor Spencer stated that she would prefer to have a decision tonight; money has been sitting for years; she wishes the matter had gone through the PAC.

The Community Development Director stated the matter went to the PAC on February 18, 2015, then to the Planning Board, then to Council; PAC has reviewed the ordinance, but has not reviewed the RFP process.

Mayor Spencer inquired if the Jean Sweeney Park allocation went through the PAC, to which the Community Development Director responded in the negative; stated the allocation of funds did not go through any other advisory body, it came directly to the Council.

Mayor Spencer stated her preference would have been to have the allocation of funds go through the PAC, then to Council; inquired whether staff is not looking to raise the percentage to 1.5%; stated 1% is not sufficient; she would prefer to lower administration costs to 10%, rather than 20%.

The Community Development Director responded the fee is for third party administrators; if the funds are awarded to an art program or entity, it would be capped at 20%.

Mayor Spencer stated that she would like Council to consider a 10% cap on administrative costs; maintenance and repair costs should be a question for staff; she agrees with the division of the 75% for performing arts and 25% for physical arts; it is critical to remove the cap; suggested keeping the historic and maritime traditions since the PAC can approve projects that are not historic or maritime.

Councilmember Oddie stated his statements are very close to what Mayor Spencer is requesting.

The City Manager stated if there are changes that staff and Council can agree on, staff can bring the matter back to the PAC again with direction from Council; staff can make the changes in draft form, take the draft to the PAC, then back to Council for the second meeting in November or December.

Councilmember Daysog stated the matter should be brought to the PAC with all the concerns that were raised.

Mayor Spencer stated that she cannot support pulling the Jean Sweeney Park out of the process; it is unfortunate that staff made the recommendation; she feels it is critical to be impartial; it is critical that the proposal for Jean Sweeney Park go through the process.

Councilmember Daysog stated that he would like to hear what the PAC, the artists and the proponents have to say about Jean Sweeney Park.

Councilmember Ezzy Ashcraft suggested directing staff to take the input on amendments Council wants to see for the proposed ordinance.

Mayor Spencer inquired if Council could give direction to increase the 1% to 1.5%.

Councilmember Ezzy Ashcraft inquired whether the cap could be taken away and keep the 1%; stated there are other items the City might want developers to pay for.

Mayor Spencer responded her choice is to have 1.5% and no cap.

Councilmember Daysog stated the public is better served by having the PAC decide with all the input from the public and Council.



Vice Mayor Matarrese moved approval of having the ordinance go back to the PAC for a full discussion of each of the points raised by Council: the cap, the percentage of developer contributions, the administrative fees, the maintenance fees, the RFP process, making sure the percentage of what is performing arts and what is visual arts is discussed and making clear arts are offered to the general public free of charge; questions of the proposed allocations should go back to the PAC for their recommendation to the Council.

Councilmember Ezzy Ashcraft requested clarification whether the allocations would go back to the PAC; stated she would prefer the PAC come up with an application process and Council would make the final decision.

Vice Mayor Matarrese accepted the friendly amendment.

Councilmember Daysog stated if staff has viewpoints or recommendations for Jean Sweeney Park, they should come back to Council with recommendations.

Vice Mayor Matarrese stated said suggestion is the usual way the process works.

Councilmember Oddie seconded the motion.

Under discussion, Councilmember Oddie stated he would like to make sure his thoughts regarding the position on the historic and maritime are known to the PAC.

On the call for the question, the motion carried by unanimous vote – 5.

### ADJOURNMENT

There being no further business, Mayor Spencer adjourned the continued meeting at 7:23 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 18, 2016- -7:00 P.M.

Mayor Spencer convened the meeting at 7:32 p.m. and led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5.

Absent: None.

AGENDA CHANGES

(16-516) Councilmember Ezzy Ashcraft requested the Project Stabilization Agreement [paragraph no. 16-536] be addressed first under Regular Items.

Council agreed to move the Project Stabilization Agreement item to be heard first on the Regular agenda.

Councilmember Oddie requested to hear the lease of Building 21 [paragraph no. 16-537] before the Library Annual Report [paragraph no. 16-538] or the Ordinance regarding Chapter 30 [paragraph no. 16-540].

Mayor Spencer reviewed the new order of items to be heard: Project Stabilization Agreement, lease of Building 21, Annual Report and Ordinance regarding Chapter 30.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(16-517) Proclamation Declaring October 2016 as Disability Awareness Month.

Mayor Spencer read and presented the proclamation to Beth Kenny, Commission on Disability Issues.

Ms. Kenny made brief comments.

(16-518) Proclamation Declaring November 2, 2016 as Alameda Free Library Day.

Mayor Spencer read and presented the proclamation to Luzanne Engh, Friends of the Library.

Ms. Engh made brief comment.

(16-519) Presentation by the Alameda County Mosquito Abatement District.

Ryan Clausnitzer, Alameda County Mosquito Abatement District, gave a Power Point presentation.

Councilmember Ezzy Ashcraft inquired whether the street gutters on Gibbons Drive, Bay Street and Eagle Avenue are more prone to mosquitos.

The Alameda County Mosquito Abatement Field Operator for the City of Alameda responded the particular areas are constantly being tested because the sump pumps under the houses and the uneven grade of the street to cause water to collect there.

#### ORAL COMMUNICATIONS, NON-AGENDA

(16-520) Samuel Bray, Alameda, discussed a proposed bus stop on Buena Vista Avenue; stated the bus stop would preclude access to the house.

Barbara Bailey, Alameda, stated the proposed bus stop would hinder the ability of her disabled mother to exit the property; small children near the area cause a safety issue; she is looking into a disabled marking.

Chandra Bailey, Alameda, stated the bus stop at the proposed location is a hindrance on her family.

Vice Mayor Matarrese stated there is an AC Transit liaison committee meeting on October 26 that is open to the public.

(16-521) Catherine Pauling, Alameda Renters Coalition, submitted information; stated there is a lack of data Citywide in Alameda regarding the rental market; urged the local government to act and develop regulations to protect the City.

(16-522) Helen Sause, Alameda Home Team, gave the Councilmembers a calendar; stated the purpose of the calendar is to recognize the need for housing for children and seniors.

#### CONSENT CALENDAR

Mayor Spencer announced that the Housing Element Annual Report [paragraph no. 16-525] and the Draft Project List [paragraph no. 16-528] were removed from the Consent Calendar for discussion.

Vice Mayor Matarrese moved approval of the remainder of the Consent Calendar.

Councilmember Ezzy Ashcraft seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(\*16-523) Minutes of the Special and Regular City Council Meetings Held on September 20, 2016. Approved.

(\*16-524) Ratified bills in the amount of \$6,220,998.89.

(16-525) Recommendation to Direct Staff to Transmit the City of Alameda 2015 Housing Element Annual Report to the State of California Department of Housing and Community Development. Approval of an annual report is not subject to the review under the California Environmental Quality Act (CEQA), nor is an annual report defined as a “project” under CEQA. No future review is required.

Mayor Spencer inquired whether the report means that the City is agreeing to build any housing in the future, to which the Assistant Community Development Director responded in the negative; stated the report is telling the State what was built and what building permits were issued.

Mayor Spencer stated there is a misunderstanding on what Council is being asked to approve.

The Assistant Community Development Director stated under State law, the City has to ensure Council has seen the report.

Councilmember Ezzy Ashcraft inquired what a universal design ordinance is and when the ordinance would come back to Council.

The Assistant Community Development Director responded subcommittees from the Planning Board and the Housing Authority will set standards for all new housing in Alameda to ensure that a percentage of the housing is designed in a way to either allow someone with a disability to visit or allow someone with a disability to live independently; stated staff anticipates the matter will come to Council in January.

Councilmember Ezzy Ashcraft moved approval of directing staff to transmit the City of Alameda 2015 Housing Element Annual Report to the State of California Department of Housing and Community Development.

Vice Mayor Matarrese seconded the motion, which carried by unanimous voice vote – 5.

(\*16-526) Recommendation to Authorize the City Manager to Negotiate and Execute a Loan Agreement and Related Documents with Island City Development (ICD) for HOME Partnership Investment Program (HOME) Funds in the amount of \$248,740 at 3% Simple Interest for the Del Monte Senior Housing Project and Appropriate \$53,537 in HOME Program Income. Accepted.

(\*16-527) Recommendation to Amend the Contract with MV Transportation to Extend the Term by One Year and Amend the Amount by \$85,000 for a Total Compensation of \$301,999 Over Five Years for Paratransit Shuttle Services. Accepted.

(16-528) Recommendation to Approve the Draft Project List for the Alameda County Transportation Commission Call for Projects.

The Base Reuse Director gave a Power Point presentation.

Councilmember Daysog inquired whether the cost of an additional study would come from money outside of the grant money, to which the Base Reuse Director responded in the affirmative.

Councilmember Daysog inquired whether General Fund money would be used, to which the Base Reuse Director responded in the negative; stated there are other potential sources for funding.

Councilmember Oddie stated the community has provided input on bike sharing; inquired if there is going to be an update on bike sharing.

The Base Reuse Director responded that there will be an update on bike sharing; stated staff is still evaluating the matter, which will come back to Council as part of the Transportation Demand Management (TDM) plan later this year.

Councilmember Ezzy Ashcraft inquired whether there is a meeting that people could attend.

The Base Reuse Director responded staff is holding a community workshop for Citywide transit and TDM plans to get into the detailed strategies; stated staff will address proposed solutions to some issues raised by the community.

Mayor Spencer inquired about the navigational uses regarding all vessels that use the estuary, not just the Coast Guard vessels; requested clarification on specifications.

The Base Reuse Director responded the main issue is the Coast Guard vessels; there are specifications for other boats.

Mayor Spencer inquired about crane barges, to which the Base Reuse Director responded staff can look at crane barges more closely.

Mayor Spencer stated that she would like the community to understand the specifications; inquired why the City is not seeking assistance from regional leaders.

The Base Reuse Director responded staff can talk with regional leaders.

Stated traffic and congestion issues are getting worse; urged Council do something now to solve the West End egress issues; requested Council to support staffs work on the infrastructure project and prioritize the traffic, health and safety of the West End:  
Denyse Trepanier, Bike Walk Alameda.

Stated 1,700 people have signed a petition in favor of a West End estuary crossing that is safe and convenient for walking and biking; urged Council to recommit to taking the

next steps and prioritize the estuary crossing to solve the problem: Lucy Gigli, Bike Walk Alameda.

Stated the estuary crossing project is the best option and will have a transformative effect for residents and businesses on both sides of the estuary; there needs to be a solution and a commitment from the City: Brian McGuire, Bike Walk Alameda.

Mayor Spencer inquired when staff will figure out the plan for bicycle access across the estuary; stated the issue is not on the priority list; inquired whether the matter will be worked on independently, to which the Base Reuse Director responded in the affirmative.

Mayor Spencer inquired whether the matter is currently being worked on.

The Base Reuse Director responded direction can be given to staff by motion to continue to work with Bike Walk Alameda on the items specified in the email.

Mayor Spencer inquired whether staff will work with Bike Walk Alameda and all stakeholders, to which the Base Reuse Director responded in the affirmative.

Mayor Spencer inquired whether increased advocacy to all regional leaders could be included, to which the Base Reuse Director responded in the affirmative.

Councilmember Ezzy Ashcraft stated that she supports the idea of including a resolution of support for the Bike Walk Alameda direction.

Stated the Alameda Home Team is arranging a Cross Channel Panel on December 1st: Helen Sause, Alameda Home Team.

Councilmember Ezzy Ashcraft moved approval of the Draft Project List for the Alameda County Transportation Commission Call for Projects, as well as direction to staff to continue to pursue the items listed in the Bike Walk Alameda correspondence dated October 13, 2016, including, but not limited to, hiring a maritime engineer to get more information and working with the coalition of federal, State, county partners, and engage the Coast Guard, all towards the goal of building a bicycle/pedestrian bridge on the West End of Alameda.

Vice Mayor Matarrese seconded the motion.

Under discussion, Mayor Spencer inquired whether hiring a maritime engineer would come back to Council.

The City Manager responded only if the cost is over \$75,000.

Mayor Spencer inquired whether staff anticipates the cost being over \$75,000, to which the City Manager responded in the negative.

Councilmember Oddie requested a friendly amendment to the motion to seek out regional partners to share in the funding, and examine and pursue potential funding sources, including Regional Measure 3 (RM3).

Councilmember Ezzy Ashcraft inquired if Councilmember Oddie referring to RM3 is the additional bridge toll that might be on the 2018 ballot, to which Councilmember Oddie responded in the affirmative.

Vice Mayor Matarrese stated the funding needs to be identified; he does not want the project to take funds from Central Avenue; the case to the Coast Guard will be stronger if there are funds in hand to construct the bridge; stated his words are only comments not a friendly amendment to the motion.

Mayor Spencer inquired whether Councilmember Ezzy Ashcraft accepts Councilmember Oddie's friendly amendment, to which Councilmember Ezzy Ashcraft responded in the affirmative.

Councilmember Ezzy Ashcraft stated the City would not build the bridge, CalTrans would build it; the Coast Guard issue is not that the City wants the Coast Guard to pay for the bridge.

Councilmember Oddie stated the point is to start at the ground floor; the friendly amendment is in addition to doing the study and the City start identifying funding.

Councilmember Ezzy Ashcraft accepted the amendment.

Councilmember Daysog expressed how critical it is to move forward; thanked the Transportation Commission and Bike Walk Alameda.

Mayor Spencer thanked staff and Bike Walk Alameda; stated it is critical to come up with a better way to cross the estuary for bicyclists and pedestrians.

On the call for the question, the motion carried by unanimous voice vote – 5.

(\*16-529) Recommendation to Award a Five-Year Contract for City of Alameda Property Management Services to RiverRock Real Estate Group for Management of Commercial and Residential Properties at Alameda Point, Fleet Industrial Supply Center, Tidelands, Alameda Beltline, and Other City-Owned Commercial Properties. Accepted.

(\*16-530) Recommendation to Amend a Contract to Extend the Term for One Year to Coastland Civil Engineering, Inc. for Contract Engineering Services. Accepted.

(\*16-531) Recommendation to Amend a Contract with Brown Reynolds Watford Architects to Provide Professional Services for Design and Contract Management to Extend the Term Until January 31, 2017 for the Emergency Operations Center (EOC)

and Until December 31, 2016 for Fire Station 3 (FS3). Accepted.

(\*16-532) Resolution No. 15205, “Approving the Final Map, Accepting the Dedications and Easements, Authorizing Execution of the Subdivision Improvement Agreement and Approving Bonds for Tract 8254 (Del Monte Warehouse).” Adopted.

(\*16-533) Resolution No. 15206, “Approving the City of Alameda Local Hazard Mitigation Plan (LHMP), June 2016.” Adopted.

(\*16-534) Resolution No. 15207, “Amending the Alameda Management and Confidential Employees Association (MCEA) Salary Schedule Revising Titles for the Classifications of Public Safety Information Technology Systems Coordinator to Public Safety Information Technology Systems Analyst and Information Technology Systems Coordinator to Information Technology Systems Analyst Effective October 16, 2016.” Adopted.

(\*16-535) Ordinance No. 3166, “Amending the Alameda Municipal Code by Amending Subsection 3-70.5 (Establishment of a Community Facilities District to Finance Certain Services) of Section 3-70 (Special Tax Financing Improvement Code), of Division I (General Provisions), of Article IV (Special Tax Financing), of Chapter III (Finance and Taxation) to Allow the Financing of Additional Services, including Transportation Services and Programs. Finally passed.

### REGULAR AGENDA ITEMS

(16-536) Recommendation to Authorize the City Manager to Enter into a Citywide Project Stabilization Agreement on Public Works or Improvement Contracts Valued at Over \$1,000,000 Awarded by the City of Alameda with the Building and Construction Trades Council of Alameda County.

The Base Reuse Director gave a Power Point presentation.

Mayor Spencer inquired if the local hire includes the Charter school graduates or just School District graduates.

The Base Reuse Director responded however district graduates are defined.

Mayor Spencer inquired whether it is only Alameda Unified School District, to which the Base Reuse Director responded in the affirmative; continued the presentation.

Councilmember Ezzy Ashcraft stated the Joint Administrative Committee (JAC) is a committee of six, inquired what happens in the case of a tie vote.

Michael Vlaming, Outside Counsel, responded the JAC addresses issues before they become problems and before they go to a vote; issues are resolved by unit voting.

Councilmember Ezzy Ashcraft inquired if a tie vote has ever come up in one of the



Committees, to which Mr. Vlaming responded in the negative.

The Base Reuse Director continued the presentation.

Councilmember Daysog stated prevailing wage adds costs; the City of Alameda is a prevailing wage City; thanked staff for including information about prevailing wage and the risks involved.

The Base Reuse Director stated there is less risk on larger projects; there is a \$1 million threshold to help mitigate risk.

Councilmember Oddie inquired what projects might be impacted by the \$1 million threshold.

The Base Reuse Director responded Krusi Park renovation and Jean Sweeney Park Phase II.

Councilmember Oddie inquired whether the Emergency Operations Center (EOC)/Fire Station project would have been affected by the \$1 million threshold, to which the Deputy Public Works Director responded in the affirmative.

Councilmember Oddie inquired if the golf course renovation would be affected, to which the Deputy Public Works Director responded he is unsure about the golf course renovation; stated the annual street resurfacing, sidewalk repair contracts and sewer main replacements would be affected.

Councilmember Oddie inquired whether the second phase of the golf course renovation would be covered by the Project Stabilization Agreement (PSA).

The Base Reuse Director responded the golf course renovation is a public-private partnership; a private partner would be responsible for the golf course renovation, which would not be subject to the PSA.

Councilmember Oddie stated there is a PSA for Site A; inquired what is the outlook for a PSA for the rest of Alameda Point.

The Base Reuse Director responded there are some Public Works projects in the adaptive reuse area that will be subject to the PSA or any Disposition Development Agreements.

Councilmember Oddie stated staff and Council should continue to negotiate something for Alameda Point.

The Base Reuse Director concurred.

Mayor Spencer inquired who determines the relevant union master labor agreement, to

which Mr. Vlaming responded it depends on the type of work being done.

Mayor Spencer stated the Council negotiates contracts with employees that work for the City and determines benefits; inquired who determines the relevant union master labor agreement; inquired whether the City is relinquishing input on what employees are getting paid.

Mr. Vlaming responded in the negative; stated the projects are covered by prevailing wage rate determinations; there are different classifications for different types of construction work; the affiliate unions and their applicable local master agreements are the agreements negotiated between the affiliate union and the traditional bargaining party.

Mayor Spencer stated the PSA does not require the workers to be union workers; inquired whether the City gets input into the union master labor agreement or could the worker receive better benefits than City employees.

Mr. Vlaming responded the agreement does not require employees to become a union member but employees do have to be dispatched by particular union; the benefits would be under the particular labor union agreement; the employees under a particular contract are entitled to the prevailing wage and benefits specified under the particular contract; the relationship to City employee's benefits are very different.

Mayor Spencer inquired how non-union workers get jobs.

Mr. Vlaming responded anyone can use the union referral procedures; stated the contractors are responsible for hiring; the contractor goes to the applicable union hall and requests workers.

Mayor Spencer inquired if a worker is not in the union where would the worker be placed on the list.

Mr. Vlaming responded when a worker signs up and pays the association fees, they do not have to become a member; the list is in chronological order.

Mayor Spencer inquired whether the City has input in the union master labor agreement; inquired who negotiates the agreements with the union.

Mr. Vlaming responded the negotiation is with an employer association, which is a group of signatory employers; stated the association bargain the terms, conditions and wage rates applicable to the craft.

Mayor Spencer inquired whether the employer association is union workers or people on behalf of the union.

Mr. Vlaming responded the unions represent the members; stated the employers

negotiate individually or through an association that represents the employers or the contractors.

Mayor Spencer inquired who Mr. Vlaming's position works for.

Mr. Vlaming responded that he is a consultant for the City Attorney's office.

Stated that she is speaking on behalf of her husband who strongly supports the PSA; there are many reasons why the PSA supports union workers; urged Council to put the agreement into effect: Ingrid Dayton, Meat and Frost Insulators Local 16.

Stated that he strongly supports the PSA; the agreement keeps local money in Alameda and creates career opportunities for local residents; urged Council to pass the agreement: Andrew Slivka, Alameda resident and Carpenters Union.

Stated that he strongly supports the PSA; he would like to work in the community; he is proud to say he helped build parts of Alameda: Preston Dula, Alameda resident and Carpenters Union.

Stated that he is excited about the partnership with the City; there are apprenticeship programs at the high schools and a good partnership to develop construction careers for many Alameda residents; urged Council support: Andreas Cluver, Alameda County Building Trades.

Councilmember Ezzy Ashcraft stated that she supports the PSA; outlined the great features of the PSA and all of the people it helps.

Councilmember Daysog stated that he would only support the PSA if the wording is changed from "...local resident is a high school graduate of Alameda Unified School District" to "or any private or Charter schools in Alameda"; a student residing in Alameda attending school outside of Alameda should also be given the same opportunity.

Councilmember Oddie stated hearing from the speakers about the partnership between the City and its working families benefiting the workers lives is a highlight; parts of the program still need to be worked on.

Vice Mayor Matarrese stated any direction should include having a discussion about the public-private projects and ways to modify the agreement as it is being executed; the risk of increased costs due to lack of competition will be the difference between the paid wage and a paid pension; there is assurance that the wage and benefits are being paid.

Mayor Spencer inquired whether Councilmember Daysog's request to expand who would qualify for the apprentice program could be included; stated there are also students who drop out of high school and obtain a GED; inquired whether there is there a way to accommodate said students; stated the tax payers that live in Alameda will pay for the PSA; the offset is to have benefits like apprenticeship programs, good career

paths or helping students that are not going on to college and need jobs; she is concerned with limiting the program to AUSD graduates.

Mr. Slivka, responded that they support expanding the definition and working with disadvantaged residents to create careers.

Mayor Spencer requested the following changes to the PSA: page 18 paragraph 14.1: replace the word “goal”, with the word “hire”; the reference of “an Alameda High School graduate,” add some mention that a student living in Alameda with a GED would count towards the goal; more priority should not be given to the graduate as opposed to an Alameda resident who drops out and obtains a GED; residents that live in Alameda no matter where they go to school should also be included.

The City Manager stated the Council can direct the changes be made.

Councilmember Ezzy Ashcraft inquired how Mayor Spencer would propose the changes.

Mayor Spencer inquired whether the PSA could be modified or does Council have to accept the PSA as is.

Councilmember Oddie inquired if Council is negotiating the provisions.

The Base Reuse Director responded said provision is one that the Trade Council is okay to defer to the City to decide unless the provision is being drastically reworded and wants to ensure the changes are easy to enforce.

Mayor Spencer inquired whether the form would say: “When you graduated from high school, were you a resident in the City of Alameda?”

Vice Mayor Matarrese stated some AUSD students live in Oakland.

Mayor Spencer inquired whether Council wants to include students who live out of town.

Councilmember Daysog responded non-residents attending AUSD schools should count.

The City Attorney stated the provision is for local residents; there is an additional benefit if you happen to be a graduate of an Alameda school.

Mayor Spencer inquired whether a local resident that that drops out of high school but obtains a GED is included.

The City Manager responded a GED is a high school equivalent.

Mayor Spencer suggested adding the phrase “...or high school equivalent.”

Councilmember Daysog stated the staff report states: "...if the local resident is also a High School graduate of Alameda Unified School District those hours count as double towards meeting the goal"; requested adding "...if the local resident is also a high school graduate of a private high school in Alameda those hours will count as double towards meeting the goal".

The City Attorney inquired if Council is saying the person has to be a local resident, to which Mayor Spencer responded in the affirmative.

The City Attorney inquired whether Council's request is the extra benefit is for a student graduating high school or obtaining a GED in Alameda, or being an Alameda resident at the time they graduated high school.

Mayor Spencer responded in the affirmative.

Councilmember Ezzy Ashcraft inquired whether Council is reducing the number of required local hours worked; stated the hours for a graduate of AUSD will count as double, therefore, one person would have twice as much impact on the 25%; questioned if that is what Council wants to do.

Mayor Spencer stated maybe Council does not want the language to read double.

Councilmember Daysog stated the double phrase is needed because there needs to be an incentive to pull people from Alameda into the positions.

The City Manager inquired if the interest is to keep within the 25% and allow some double for all high school students or equivalent high school students of schools in Alameda, including private, charter and other schools.

Mayor Spencer inquired if that would exclude O'Dowd High School.

The City Manager responded in the affirmative.

Councilmember Daysog stated his concern is if you are a parent in Alameda and pay property taxes, your child should have as much right as any other child.

The City Manager responded said individual would qualify as a local resident.

Mayor Spencer stated there are special needs students that are not graduates of Alameda Unified going to school outside of the City.

The City Manager stated they would still be a resident.

Councilmember Daysog inquired whether the student would still receive the benefit for the future employer or trainer by being a local resident, to which the City Manager

responded in the affirmative.

Councilmember Daysog inquired if the student is a local resident and attends school in Alameda is there a double benefit, to which the City Manager responded in the affirmative.

In response to Mayor Spencer's inquiry, Councilmember Ezzy Ashcraft questioned whether the Council could agree to the request to modify a resident who attends a high school in Alameda and not specify if it was AISD.

All Councilmembers agreed.

Mayor Spencer expressed concerned with accumulating data; stated the project has a three year follow up; Section 20 addresses periodic review; the program is a pilot program and should be reviewed during the three year period; inquired whether data would be collected during the three year period, to which the City Manager responded in the affirmative.

Mayor Spencer inquired whether Council will know how many students were high school graduates when the matter returns in three years.

The City Manager responded in the affirmative.

Mayor Spencer inquired if the process is the same data would be collected for helmets to hardhats, to which the City Manager responded in the affirmative; stated the helmets to hardhats is given priority.

Mayor Spencer inquired where the PSA states data is being collected; inquired whether the data requirement is in the PSA or needs to be added.

The Base Reuse Director responded the data requirement is under section 14.3 related to local residents.

Mayor Spencer inquired whether the helmets to hardhats program is the same and data is collected.

Councilmember Ezzy Ashcraft responded the helmets to hardhats information regarding data collection is in paragraph 19.2.

Mayor Spencer stated said section refers to the database; she is looking for data on who received the jobs to see if the program is working; there needs to be data collection on the helmets to hardhats and the high school students.

The Base Reuse Director stated a sentence will be added in the PSA and the data will be collected.

Mayor Spencer inquired how it is determined who participates in the apprenticeship program.

Mr. Slivka responded each apprenticeship program is State certified with specific requirements that need to be met; an apprentice would choose a trade and meet the basic set requirements.

Mayor Spencer inquired whether that means students from Alameda schools would be on career pathways.

Mr. Slivka responded there could be a career day at the schools; stated the Trade Council could reach out to graduates and get the pathways going to the apprenticeship program.

Councilmember Ezzy Ashcraft inquired whether she and Mayor Spencer could bring the idea up to the School District since they sit on the subcommittee.

Mayor Spencer responded in the affirmative; stated the program is a pilot program and it is critical to collect data to evaluate if the program is working in three years.

Mr. Slivka stated the District is also looking to reach goals.

Vice Mayor Matarrese moved approval of authorizing the City Manager to enter into a Citywide Project Stabilization Agreement on Public Works or improvement contracts valued at over \$1,000,000 awarded by the City of Alameda with the Building and Construction Trades Council of Alameda County, including modification as described for graduates of schools in Alameda to broaden the scope in the section to refer to graduates of Alameda Unified School District and GED equivalents, also include gathering data for the helmets to hardhats targets and to include the evaluation of the program in a frequency to allow Council to renegotiate in three years.

Councilmember Oddie seconded the motion.

Under discussion, Councilmember Daysog inquired whether the language includes the private school and Charter school issue.

Vice Mayor Matarrese responded in the affirmative; stated the wording reads a graduate of a school in Alameda.

Mayor Spencer inquired whether the gathering of data for the local workforce development and apprenticeship programs is included.

Vice Mayor Matarrese responded in the affirmative.

Councilmember Oddie inquired whether Vice Mayor Matarrese included the private-partnerships.

Vice Mayor Matarrese responded the private-partnerships is not imbedded in the agreement, it is more of a direction to staff that there continues to be discussion about public-private partnerships.

Councilmember Oddie inquired whether Vice Mayor Matarrese would accept a friendly amendment to add the items regarding the private-partnerships mentioned previously.

Vice Mayor Matarrese responded in the affirmative.

Mayor Spencer inquired whether cost will be evaluated to see how much the program is costing the City.

The City Manager responded evaluating costs is very difficult because of the types of trades and the market.

On the call for the question, the motion carried by unanimous voice vote – 5.

(16-537) (A) Introduction of Ordinance Approving the Lease of Building 21, Located at 2601 Monarch Street at Alameda Point, with St. George Spirits, Inc., a California Corporation for: (1) A Ten-Year Term With One Five-Year Extension Option; (2) An Option to Purchase the Property for \$8 Million (or \$7.9 Million if a Restaurant is Constructed Within 2 Years of Lease Commencement); and (3) An Authorization for the City Manager to Execute Documents Necessary to Implement the Terms of the Lease. [Requires Four Affirmative Votes]; and (B) Recommendation to Consent to a Sublease Between St. George Spirits, Inc., a California Corporation, and Heads, Hearts, Tails, LLC, a California Limited Liability Company, for a Portion of the Leased Space. [In accordance with the California Environmental Quality Act (CEQA), this project is Categorically Exempt under the CEQA Guidelines Section 15301(c) - Existing Facilities.] Introduced.

The Assistant Community Development Director gave a Power Point presentation.

Councilmember Ezzy Ashcraft inquired whether there is more information regarding the sublease with the third party vendor.

The Assistant Community Development Director responded the third party vendor Heads, Hearts, Tails, LLC, would sell products on site.

Mayor Spencer inquired whether the lease has criteria on the restaurant, such as, how many the restaurant needs to accommodate.

The Assistant Community Development Director stated State law just changed to allow distillers to open restaurants inside distilleries; deferred question to the owner of St. George Spirits.



Mayor Spencer inquired whether there is more information regarding the restaurant.

Responded there is currently no information regarding the restaurant; stated there is a space of approximately 2,000 square feet and they would like to accommodate as many people as possible in the space; there is clean up legislation that needs to take place before plans could be made: Lance Winters, St. George Spirits.

The Assistant Community Development Director stated the owners were looking at a specific type of restaurant for the facility.

Mayor Spencer inquired whether Council could weigh in on the change in the legislation.

The Assistant Community Development Director responded that Mr. Winters has been working with local legislators to resolve the issue.

Stated St. George Spirits is happy to be at Alameda Point; thanked staff and the Council for their work and allowing them the opportunity: Lance Winters, St. George Spirits.

Mayor Spencer requested including a section that would allow Council to support the change in legislation; stated that she intends to submit a letter to the legislators.

Councilmember Oddie stated legislators are out of session; the matter will not be introduced until December or January.

Mayor Spencer stated that she does not have authority until she receives authorization from Council.

Councilmember Oddie stated there is nothing to support currently.

Mayor Spencer stated eventually there will be something to support.

Councilmember Oddie stated at that time there would be a report from the lobbyists on which bills the Council wants to support.

Mayor Spencer stated she would like to encourage the project to happen.

Councilmember Ezzy Ashcraft moved introduction of the ordinance approving the lease of Building 21 with St. George Spirits for: (1) a ten-year term with one five-year extension option; (2) an option to purchase the property for \$8 million (or \$7.9 million if a restaurant is constructed within 2 years of lease commencement); and (3) an authorization for the City Manager to execute documents necessary to implement the terms of the lease.

Vice Mayor Matarrese seconded the motion.

Under discussion, Councilmember Daysog thanked St. George Spirits for advertising the City of Alameda.

On the call for the question, the motion carried by unanimous voice vote – 5.

Councilmember Ezzy Ashcraft moved approval of the staff recommendation to consent to a sublease between St. George Spirits, Inc., a California Corporation, and Heads, Hearts, Tails, LLC, a California Limited Liability Company, for a portion of the leased space.

Vice Mayor Matarrese seconded the motion, which carried by unanimous voice vote – 5.

Councilmember Ezzy Ashcraft moved approval of authorizing Mayor Spencer to write an appropriately worded letter encouraging support of legislation that would allow Mr. Winter of St. George Spirits to be allowed to open a restaurant.

Mayor Spencer seconded the motion, which carried by unanimous voice vote – 5.

(16-538) Presentation of Alameda Free Library Fiscal Year 2015-2016 Annual Report.

The Library Director gave a Power Point presentation.

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(16-539) Mayor Spencer stated a motion is needed to consider remaining items.

Councilmember Ezzy Ashcraft moved approval of considering the Public Hearing to amend the Zoning Ordinance [paragraph no. 16-540].

Vice Mayor Matarrese seconded the motion, which carried by unanimous voice vote – 5.

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The Library Director continued the presentation.

Councilmember Oddie inquired what the increased budget was used for, to which the Library Director responded a lot of material was purchased.

Mayor Spencer inquired how the do-it-yourself bike station at the main library was paid for to which the Library Director responded the station was paid for with a grant received by the library cooperative.

Mayor Spencer stated that she has heard very good feedback on the station; inquired whether a station will be available at the other Alameda libraries.

The Library Director responded there is not currently a plan to add the station to the

other libraries, but it is a possibility.

Mayor Spencer stated there is equity involved to have a station at the Harbor Bay and West End libraries.

The Library Director stated the issue is finding a large enough space where someone could work on their bike and not impede the walking path.

Mayor Spencer inquired whether Alameda Science and Technology Institute (ASTI) will be included in the Student Success Card program.

The Library Director responded ASTI will not be included in the pilot phase.

Mayor Spencer inquired how long will the pilot phase be, to which the Library Director responded one year.

Vice Mayor Matarrese thanked the Library Director for keeping up with future needs.

(16-540) Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Streamline Improvements to Existing Residential Properties and Minor Administrative, Technical, and Clarifying Revisions to the Zoning Ordinance Regarding Chimneys, Accessory Buildings, Windows, Existing Driveways and Parking, Non-Conforming Setbacks, Home Occupation Signage, and Other Miscellaneous Amendments. [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]. Introduced.

The Planning Services Manager gave a brief presentation.

In response to Mayor Spencer's inquiry, the Planning Services Manager listed the ten amendments.

Mayor Spencer inquired whether there is any impact to the General Fund, to which the Planning Services Manager responded in the negative.

Councilmember Daysog inquired whether the floor area under amendment number 5 has to do with an accessory unit in the back.

The Planning Services Manager responded in the negative; stated the floor area refers to converted space that meets building space requirements.

Councilmember Daysog inquired whether a homeowner add space in the attic does not trigger a parking change.

The Planning Services Manager responded 750 square feet is the threshold for how

much new floor area triggers additional parking.

Mayor Spencer inquired whether the credit for ceiling height is 7 feet, to which the Planning Services Manager responded in the affirmative.

Councilmember Ezzy Ashcraft moved introduction of ordinance amending the Alameda Municipal Code by amending Chapter 30, Zoning Ordinance, to streamline improvements to existing residential properties and minor administrative, technical, and clarifying revisions to the Zoning Ordinance regarding chimneys, accessory buildings, windows, existing driveways and parking, non-conforming setbacks, home occupation signage, and other miscellaneous amendments.

Councilmember Oddie seconded the motion.

Under discussion, Councilmember Daysog stated he will support this motion but he would like to follow up on amendment number 5.

On the call for the question, the motion carried by unanimous voice vote – 5.

#### CITY MANAGER COMMUNICATIONS

(16-541) The City Manager announced the Public Utilities Board refund a geothermal bond that Northern California Power Agency bonded for in 2009, which is saving \$174,000 for Alameda Municipal Power; stated that she has asked Joe Ernst to give a presentation to Council and the public regarding the Building 9 and 91 leases.

#### ORAL COMMUNICATIONS, NON-AGENDA

None.

#### COUNCIL REFERRALS

(16-542) Consider Directing the City Manager to Initiate and Begin the Process with the Planning Board to Propose Revisions to the Ordinance and Code Sections Defining Alameda's Inclusionary Housing for Residential Development. (Vice Mayor Matarrese) Not heard.

(16-543) Consider Directing the City Manager to Schedule a Priority Setting Work Session. (Mayor Spencer) Not heard.

(16-544) Consider Directing the City Manager to Immediately Hold a City Council Workshop on the Final Phase of the Bayport-Alameda Landing Disposition and Development Agreement (DDA)\Development Plan. (Councilmember Daysog) Not heard.

(16-545) Consider Directing the City Manager to Have the Social Service Human

Relations Board (SSHRB) Review City Policies and Procedures for Aiding Alameda's Homeless in Order to Make Recommendations to the City Council for Policy Revisions and Additions. (Vice Mayor Matarrese) Not heard.

(16-546) Consider Directing the City Manager to Initiate Revisions to the Ordinances and Code Sections for Mixed-Use Zoning in the City of Alameda to Aid Retention of Beneficial Commercial Uses within Areas Zoned for Mixed Use. (Vice Mayor Matarrese) Not heard.

(16-547) Consider Directing Staff to Review Enacting a Minimum Wage Increase in Alameda. (Mayor Spencer) Not heard.

### COUNCIL COMMUNICATIONS

(16-548) Councilmember Ezzy Ashcraft announced that she attended the League of California Cities conference and she was sworn in as the At-Large Representative for the Easy Bay division.

(16-549) Councilmember Oddie stated that he attended the Alameda International Film Festival.

(16-550) Mayor Spencer stated that she attended the League of California Cities Conference and she just returned from Yeongdong-gun District in South Korea exploring whether to have a Sister City in said location; she participated in a four day cultural festival.

### ADJOURNMENT

There being no further business, Mayor Spencer adjourned the meeting at 10:53 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

# ITEM 4-A

## CITY OF ALAMEDA

### Memorandum

To: Honorable Chair and  
Members of the Public Art Commission

From: Lois Butler  
Economic Development Manager

Date: February 15, 2017

RE: **City of Alameda Amendment Updating the Public Art Ordinance.** The Public Art Commission will consider modifications to update and improve the regulations governing the Public Art Ordinance. 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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### BACKGROUND

Alameda Municipal Code Section 30-65 Public Art in New Commercial, Industrial, Residential and Municipal Construction (the "Ordinance,") was adopted in 2003, to require that major development projects include on-site public art. The Ordinance also allows 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 at various private and municipal developments. Because many developers have chosen to install art on-site, annual in-lieu contributions to the Fund have been minimal, and the fund balance remained relatively low. Historically, the small size of the Fund made dispersal of funds a challenge: from fiscal years 2003-04 to 2014-15, the average Fund balance was \$62,649, with a maximum balance of \$83,807. To date, the Fund was used for a consultant study, described below, and to cover City costs to administer the program. Only in the last year has the Fund increased significantly due to in-lieu payments from two large developments. As of October 11, 2016, the Public Art Fund's accumulated available balance was \$374,065.

In January 2011, the City Council authorized a study to review, assess and update the City art program. *Synergy: Public Art for Alameda* (the "Synergy Report") 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](http://alamedaca.gov/sites/default/files/department-files/2014-10-29/synergy_public_art_report_-final.pdf).)

In November 2014, the City hosted a community meeting to discuss recommendations in the consultant report for changes to the Ordinance, in order to facilitate the City's ability to disperse funds, 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.

At the October 4, 2016 City Council meeting, staff introduced the proposed Ordinance amendments and recommended that \$200,000 be appropriated for the design and installation of public art, and for cultural arts and arts programming through a public Request for Proposals (RFP) process in the City of Alameda. Discussion of the item was continued to the October 18, 2016 Council meeting. A supplemental staff report was prepared for the October 18<sup>th</sup> Council meeting recommending that the level of funding to be appropriated be increased from \$200,000 to \$350,000 to reflect the additional fees received in October of 2016. The staff recommendation for appropriation of funds was as follows:

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

Consistent with the Ordinance, this proposed appropriation of funds allocated 25% of funds to cultural arts and arts programming, and 75% of funds for the installation of physical public art.

At the October 18, 2016 meeting, based on testimony received at the public hearings, the City Council requested that the proposed amendments to the Ordinance be returned to the PAC for review and recommendation see. The Council directed staff to present the following topics to the PAC for its review and recommendation:

- Removing staff administrative costs as an allowable use of the Fund
- Removing maintenance costs as an allowable use of the Fund
- Preserving or removing the public art focus on Alameda's historic and maritime traditions
- Increasing or removing the cap on developer contributions
- Increasing the required public art contribution from 1% to 1.5% of project valuation
- Lowering the cap on administrative costs for third-party grantee organizations
- Ensuring cultural arts and arts programming funded by the Fund be free of charge to the general public

- Maintaining or changing the requirement that 25% of funds be allocated to cultural arts and arts programming, and 75% of funds be allocated for the design and installation of physical public art.
- Refining the RFP process, including the process for identifying locations for physical public art.

The topics listed above are discussed in more detail in the following section, with the exception of the RFP Process, which is discussed in the Public Art Request for Proposals staff report, also on the agenda for February 15, 2017. A compilation of the previous staff reports and analysis is provided in Exhibit 1.

The January 18, 2017 special meeting of the PAC was canceled due to lack of a quorum. Instead, a community meeting was held in lieu of the PAC meeting. Staff gave a presentation, followed by questions and comments from community members. A full summary of public comments is provided in Exhibit 2, but general comments included:

- Concerns and ideas about how to replenish and sustain the Public Art Fund once the current balance has been distributed.
- Suggestions to improve administration and marketing of the Public Art Program, including improvements to the website, public art tours, and an updated directory of Alameda-based artists for developers providing on-site public art.
- A desire for diversity of public art in Alameda, including support for removing the requirement that public art focus on historic or maritime themes.
- In general, support for the recommendations assembled in this staff report, and the Public Art Request for Proposals staff report.

Other than the summary of comments above, exhibit numbering and attached public comment, this is the same Public Art Ordinance staff report that was submitted for the January 18, 2017 PAC meeting.

## DISCUSSION

Staff is seeking PAC input and direction on the recommended changes to the Ordinance outlined below. These recommendations include the topics referred by the City Council (see above), as well as recommendations from the Synergy report. All of the recommended changes outlined below are reflected in the proposed revised Ordinance (Exhibits 3 and 4).

I. *Clarify and strengthen the purposes of the Ordinance to better connect the vision, values and strategies for public art to the broader ambitions of the City.*

The proposed purposes, recommended in the Synergy report, are intended to strengthen the understanding of the City's goals in establishing a public art ordinance.

II. *Clarify ordinance exemptions.*



The proposed amendments clarify the list of exempt developments to include:

- Affordable housing (100% affordable),
- Designated historic landmarks, and
- Cultural facilities, and
- Public and non-profit projects, including parks, that the City Council finds it is in the best interest of the Alameda community to exempt.

III. Clarify the requirements and options for physical, on-site public art.

The proposed amendment includes a more specific list of appropriate physical art forms to meet the on-site public art requirement for private and municipal development. The proposed on-site list specifically excludes temporary cultural events, performances, and construction of stages, outdoor performance spaces, and other physical structures that may support the arts but are not themselves forms of art.

IV. Clarify the application and review process for on-site public art applications.

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

V. Remove maintenance costs as an allowable use of the Public Art Fund.

Maintenance costs for public art include the cost of regular cleaning and service, as well as repairs, restoration and conservation of the artwork. The existing Ordinance allows the Fund to be used to maintain public art, and the Synergy Report recommends that 10% of the public art funding allocation for each city project be set aside for the preservation and maintenance of artwork on public property.

Removing maintenance costs as an allowable use of the Fund will ensure that the maximum share of Fund monies are used for the design and installation of public art. Maintenance costs for art on public property shall be the responsibility of the public entity accepting the public art. Maintenance of public art on private property shall continue to be funded by the private property owners.

VI. Remove City staff administrative costs as an allowable use of the Public Art Fund.

Staff administrative costs associated with the Ordinance include processing and facilitating approval of on-site public art applications by private developers, reporting to PAC and City Council, and releasing and administering any future Requests for Proposals for public art, among other costs. The existing Ordinance currently states that no more than 25% of the Fund can be used for City administrative costs, and the Synergy report recommends lowering the cap on City administrative costs from 25% to 20% of the Fund.

Removing City administrative costs as an allowable use of the Fund will ensure that the maximum share of Fund monies are used for the design and installation of public art, or for cultural arts and arts programming. For artwork funded by the Public Art Fund, City administrative costs shall be budgeted from the General Fund as part of the regular budgeting cycle. For on-site public art, staff recommends, as part of the permit fee, a processing fee for private development based on actual time and material costs.

Removing City staff administrative costs as an allowable use of the Public Art Fund does not preclude the use of grant funding for third-party administrative costs associated with cultural arts and arts programming (see Item XIV).

VII. Expand the list of allowable uses of 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 publicly accessible cultural arts performances, events, and/or arts education.

VIII. Require that all cultural arts and arts programming funded by the Fund be free of charge to the general public.

To be considered public art, it is important that cultural arts and arts programming be as publicly accessible as possible. The requirement that all cultural arts and arts programming be free of charge will ensure that all public art generated by the Ordinance is accessible to the general public.

IX. Change annual planning requirements and fund balance reporting to coincide with the City's biennial budget cycle.

The proposed amendment changes the requirement to develop a plan for the use of the Public Art Fund from annual to biennial, to better coincide with the City's biennial budget cycle. This change also minimizes administrative costs associated with the Public Art Fund.

Staff is seeking PAC input and recommendation on the issues outlined below, which include additional topics referred to the PAC by the City Council.

X. Shall the requirement for public art to focus on Alameda's historic and maritime traditions be removed or preserved?

The current Ordinance contains a requirement that public art relate to historic or maritime traditions. Preserving this requirement would ensure that public art consistently adhere to historic or maritime themes. Removing or modifying this requirement would allow for a diversity of public art in Alameda and provide the PAC maximum flexibility in approving the design and installation of public art. Council discussion on this topic was mixed, with several Councilmembers in favor

of preserving the focus on historic and maritime traditions, and others in favor of removing it.

In the draft Ordinance recommended by staff, the historic and maritime tradition requirement is removed in order to provide for maximum diversity of public art, and flexibility for the PAC in approving public art.

*XI. Shall the cap on the maximum public art contribution be maintained, increased, or removed?*

All projects with a development cost over \$250,000 are currently required to spend 1% of the development cost on public art or pay an in-lieu fee, up to a maximum of \$150,000. Historically, the City has negotiated higher public art requirements for larger projects such as Alameda Landing and Alameda Point Site A. Other northern California cities that staff researched do not include any cap on contributions through their Public Art ordinances (Exhibit 5).

The PAC can recommend to preserve the maximum contribution, increase it, or remove it altogether. Preserving the \$150,000 maximum cap would limit future contributions to the Fund, while maintaining current fees for new development. An increase in the maximum, with annual adjustments tied to the San Francisco Area Consumer Price Index, or removal of the maximum altogether would bring the City of Alameda ordinance into closer alignment with other California public art ordinances. It would also eliminate the need to negotiate individual caps for large projects through the Development Agreement process. Although increasing or removing the cap may result in greater contributions to the Fund, it may increase development costs for some projects, and therefore should be given careful consideration.

At the February 2015 meeting, the PAC recommended inclusion of an amendment that would encourage developers to contribute their 1% directly to the Fund if the development project is valued 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 valued over \$1,000,000. This amendment is not being recommended because legally 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.

In the draft Ordinance recommended by staff, the cap is removed in order to bring the Ordinance into closer alignment with other California public art ordinances and eliminate the need for individual negotiations. This change would not impact existing, legally binding agreements for recent or forthcoming developments.

*XII. Shall the required public art contribution be increased from 1% to 1.5% of development costs?*

All projects with a development value over \$250,000 are currently required to spend 1% of the development cost on public art or pay an in-lieu fee, up to a maximum of \$150,000. During the public comment period at the October 18 City Council meeting, community members asked whether the required contribution of 1% could be increased.

Supplementary research conducted by staff found that the 1% requirement is consistent with Public Art ordinances in many other Bay Area cities (Exhibit 5). Similar to increasing or removing the cap on the maximum public art contribution described above, increasing the required contribution from 1% to 1.5% may result in greater contributions to the fund, but would also increase development costs for most projects.

In order to keep the City's development fees and requirements comparable to and competitive with those of other Bay Area cities, the draft Ordinance recommended by staff maintains the required contribution at 1%.

*XIII. Should the current requirement that 75% of funds be allocated for the design and installation of physical public art and 25% to cultural arts and arts programming be maintained or changed?*

Maintaining the current distribution requirement would ensure that Fund monies contribute to cultural arts and arts programming in the City of Alameda. Changing or removing the current distribution requirement would provide the PAC more flexibility to allocate funds in response to changing priorities within the arts and culture community.

In the draft Ordinance recommended by staff, the requirement is changed to specify that no more than 25% of funds be allocated to cultural arts and arts programming, in order to allow the PAC maximum flexibility to allocate funds, particularly in years with a low Fund balance.

*XIV. For grants to third-party organizations, should there be a cap on the maximum share of budget that can be used by grantee organizations for administrative costs, and if so, what should it be?*

The proposed revisions to the Ordinance include allowing grants to non-profit and cultural institutions. Restricting the maximum share of the budget that can be used by third-party providers for administrative costs would ensure that the maximum amount of funding goes to the provision of public art. Standard caps on administrative costs for arts grants range from 10% to 20%, depending on how administrative costs are defined.

However, staff research suggests that many public and philanthropic arts grant programs are moving away from set caps on administrative costs (Exhibit 6). Proponents of this approach say that appropriate administrative costs can vary by organization and type of programming, and programs such as gallery exhibits,

dance concerts and film festivals can have much higher appropriate administrative costs (up to 50%). In programs without a set cap on administrative costs, the PAC would need to evaluate each application on a case-by-case basis, as part of the RFP process.

In the draft Ordinance recommended by staff, there is no set cap on third-party administrative costs. Rather, it is recommended that these costs be evaluated on a case-by-case basis as part of the application process.

In conclusion, staff recommends that the PAC hold a public hearing and approve the following recommended changes to the Public Art Ordinance:

1. Clarify and strengthen the purposes of the Ordinance to better connect the vision, values and strategies for public art to the broader ambitions of the City.
2. Clarify ordinance exemptions.
3. Clarify the requirements and options for physical, on-site public art.
4. Clarify the application and review process for on-site public art applications.
5. Remove maintenance costs as an allowable use of the Public Art Fund.
6. Remove City staff administrative costs as an allowable use of the Public Art Fund.
7. Expand the list of allowable uses for the Fund to include grants to non-profit arts and cultural organizations.
8. Require that all cultural arts and arts programming funded by the Fund be free of charge to the general public.
9. Change annual planning requirements and fund balance reporting to coincide with the City's biennial budget cycle.
10. Remove the requirement for public art to focus on Alameda's historic and maritime traditions.
11. Remove the cap on the maximum public art contribution.
12. Maintain the current public art contribution at 1%.
13. Specify that no more than 25% of funds can be allocated to cultural arts and arts programming.
14. Do not set a cap on the maximum share of budget that can be used by grantee organizations for administrative costs.

## 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.

### PUBLIC NOTICE AND COMMENTS

A public hearing was advertised in the newspaper and posted on the City website. On January 18, 2016, the City received an email from Robert McGillis, representing Boatworks, LLC., who opposes removal of the cap on maximum public art contribution and raises concerns over the increase in development costs as a result of the proposed ordinance amendments (Exhibit 7).

### RECOMMENDATION

Staff recommends that the Public Art Commission hold a public hearing and approve the recommended changes to the regulations governing the Public Art Ordinance and recommend adoption by City Council.

Respectfully Submitted,

Amanda Gehrke  
Management Analyst

#### Exhibits:

1. Background Information (Current ordinance and previous staff reports)
2. Public Art Community Meeting, Summarized Public Comments, 1-18-2017
3. Proposed Changes to Ordinance (Strike-out/underline version)
4. Proposed Changes to the Ordinance (Clean version)
5. Summary of Public Art Requirements
6. Summary of Administrative Caps for Arts and Cultural Grants Programs
7. Public Correspondence

# ITEM 7-A

## CITY OF ALAMEDA

### Memorandum

To: Honorable President and  
Members of the Planning Board

From: Lois Butler  
Economic Development Manager

Date: March 13, 2017

RE: **City of Alameda Amendment Updating the Public Art Ordinance.** The Planning Board will consider modifications to update and improve the regulations governing the Public Art Ordinance. 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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### BACKGROUND

Alameda Municipal Code Section 30-65 Public Art in New Commercial, Industrial, Residential and Municipal Construction (the "Ordinance,") was adopted in 2003, to require that major development projects include on-site public art. The Ordinance also allows 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. Staff is requesting that the Planning Board recommend approval of the amended Public Art Ordinance to the City Council. While the staff report also discusses the Public Art Commission's (PAC's) action on the Request for Proposals (RFP) for disbursing Public Art Fund monies, staff is not requesting any action from the Planning Board on that issue.

Since 2003, eleven public art installations have been completed on-site or are in progress at various private and municipal developments. Because many developers have chosen to install art on-site, annual in-lieu contributions to the Fund have been minimal, and the fund balance remained relatively low. Historically, the small size of the Fund made dispersal of funds a challenge: from fiscal years 2003-04 to 2014-15, the average Fund balance was \$62,649, with a maximum balance of \$83,807. To date, the Fund was used for a consultant study, described below, and to cover City costs to administer the program. Only in the last year has the Fund increased significantly due to in-lieu payments from two large developments. As of January 2017, the Public Art Fund's accumulated available balance was \$374,065.

In January 2011, the City Council authorized a study to review, assess and update the City art program. *Synergy: Public Art for Alameda* (the "Synergy Report") 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](http://alamedaca.gov/sites/default/files/department-files/2014-10-29/synergy_public_art_report_final.pdf).)

In November 2014, the City hosted a community meeting to discuss recommendations in the consultant report for changes to the Ordinance, in order to facilitate the City's ability to disperse funds, based on recommendations in the consultant's report. On February 18, 2015, the PAC recommended that the City Council approve the proposed amendments to the Ordinance, and on November 23, 2015, the Planning Board recommended that the amendments be forwarded to the City Council for adoption.

At the October 4, 2016 City Council meeting, staff introduced the proposed Ordinance amendments and recommended that \$200,000 be appropriated for the design and installation of public art, and for cultural arts and arts programming through a public RFP process in the City of Alameda. Discussion of the item was continued to the October 18, 2016 Council meeting. A supplemental staff report was prepared for the October 18<sup>th</sup> Council meeting recommending that the level of funding to be appropriated be increased from \$200,000 to \$350,000 to reflect additional fees received in October of 2016. The staff recommendation for appropriation of funds was as follows:

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

Consistent with the Ordinance, this proposed appropriation of funds allocated 25% of funds to cultural arts and arts programming, and 75% of funds for the installation of physical public art.

At the October 18, 2016 meeting, based on testimony received at the public hearings, the City Council requested that the proposed amendments to the Ordinance be returned to the PAC for review and recommendation. The Council directed staff to present the following topics to the PAC for review and recommendation. Because the Public Art Ordinance is part of the Zoning Ordinance, staff is requesting that the Planning Board review the proposed changes to the Public Art Ordinance and provide its recommendation on the topics below:

- Removing staff administrative costs as an allowable use of the Fund
- Removing maintenance costs as an allowable use of the Fund
- Preserving or removing the public art focus on Alameda's historic and maritime traditions
- Increasing or removing the cap on developer contributions
- Increasing the required public art contribution from 1% to 1.5% of project valuation



- Lowering the cap on administrative costs for third-party grantee organizations
- Ensuring cultural arts and arts programming funded by the Fund be free of charge to the general public
- Maintaining or changing the requirement that 25% of funds be allocated to cultural arts and arts programming, and 75% of funds be allocated for the design and installation of physical public art.

The topics listed above are discussed in more detail in the following section. A compilation of the previous staff reports and analysis is provided in Exhibit 1.

A January 18, 2017 special meeting of the PAC was scheduled to discuss the proposed changes to the Ordinance. The meeting was subsequently canceled due to lack of a quorum. Instead, a community meeting was held in lieu of the PAC meeting. Staff gave a presentation, followed by questions and comments from community members. A full summary of public comments is provided in Exhibit 2, but general comments included:

- Concerns and ideas about how to replenish and sustain the Public Art Fund once the current balance has been distributed.
- Suggestions to improve administration and marketing of the Public Art Program, including improvements to the website, public art tours, and an updated directory of Alameda-based artists for developers providing on-site public art.
- A desire for diversity of public art in Alameda, including support for removing the requirement that public art focus on historic or maritime themes.
- In general, support for the recommendations assembled in the PAC staff reports.

On February 15, 2017, the PAC reviewed and recommended that the City Council approve a series of amendments to the Ordinance. Those amendments are discussed below. The PAC also reviewed and recommended changes to a draft RFP for public art.

The discussion at the February 15, 2017 PAC Meeting was primarily supportive of the recommendations made by staff, particularly the recommendation to remove the requirement that public art have a historic or maritime theme. In addition, the PAC requested several changes be made to the draft RFP, including changing the evaluation criteria to include a greater weight for local preference, and to add a new criterion evaluating the artwork's association with Alameda's community and traditions. The PAC also requested that durability and suitability of materials be included in the evaluation process. Finally, the PAC made a recommendation to adopt staff's recommendations, with those modifications, and to ask Council to find ways to supplement the public art program with the General Fund.

## DISCUSSION

Staff is seeking Planning Board review of the recommended changes to the Ordinance outlined below. These recommendations include the topics referred by the City Council

(see above), as well as recommendations from the Synergy report. All of the recommended changes outlined below are reflected in the proposed revised Ordinance (Exhibits 3 and 4).

I. Clarify and strengthen the purposes of the Ordinance to better connect the vision, values and strategies for public art to the broader ambitions of the City.

The proposed purposes, recommended in the Synergy report, are intended to strengthen the understanding of the City's goals in establishing a public art ordinance.

II. Clarify ordinance exemptions.

The proposed amendments clarify the list of exempt developments to include:

- Affordable housing (100% affordable),
- Designated historic landmarks, and
- Cultural facilities, and
- Public and non-profit projects, including parks, that the City Council finds it is in the best interest of the Alameda community to exempt.

III. Clarify the requirements and options for physical, on-site public art.

The proposed amendment includes a more specific list of appropriate physical art forms to meet the on-site public art requirement for private and municipal development. The proposed on-site list specifically excludes temporary cultural events, performances, and construction of stages, outdoor performance spaces, and other physical structures that may support the arts but are not themselves forms of art.

IV. Clarify the application and review process for on-site public art applications.

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

V. Remove maintenance costs as an allowable use of the Public Art Fund.

Maintenance costs for public art include the cost of regular cleaning and service, as well as repairs, restoration and conservation of the artwork. The existing Ordinance allows the Fund to be used to maintain public art, and the Synergy Report recommends that 10% of the public art funding allocation for each city project be set aside for the preservation and maintenance of artwork on public property.

Removing maintenance costs as an allowable use of the Fund will ensure that the maximum share of Fund monies are used for the design and installation of public art. Maintenance costs for art on public property shall the responsibility of the

public entity accepting the public art. Maintenance of public art on private property shall continue to be funded by the private property owners.

- VI. Remove City staff administrative costs as an allowable use of the Public Art Fund.  
Staff administrative costs associated with the Ordinance include processing and facilitating approval of on-site public art applications by private developers, reporting to PAC and City Council, and releasing and administering any future Requests for Proposals for public art, among other costs. The existing Ordinance currently states that no more than 25% of the Fund can be used for City administrative costs, and the Synergy report recommends lowering the cap on City administrative costs from 25% to 20% of the Fund.

Removing City administrative costs as an allowable use of the Fund will ensure that the maximum share of Fund monies are used for the design and installation of public art, or for cultural arts and arts programming. For artwork funded by the Public Art Fund, City administrative costs shall be budgeted from the General Fund as part of the regular budgeting cycle. For on-site public art, staff recommends, as part of the permit fee, a processing fee for private development based on actual time and material costs.

Removing City staff administrative costs as an allowable use of the Public Art Fund does not preclude the use of grant funding for third-party administrative costs associated with cultural arts and arts programming (see Item XIV).

- VII. Expand the list of allowable uses of 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 publicly accessible cultural arts performances, events, and/or arts education.

- VIII. Require that all cultural arts and arts programming funded by the Fund be free of charge to the general public.

To be considered public art, it is important that cultural arts and arts programming be as publicly accessible as possible. The requirement that all cultural arts and arts programming be free of charge will ensure that all public art generated by the Ordinance is accessible to the general public.

- IX. Change annual planning requirements and fund balance reporting to coincide with the City's biennial budget cycle.

The proposed amendment changes the requirement to develop a plan for the use of the Public Art Fund from annual to biennial, to better coincide with the City's biennial budget cycle. This change also minimizes administrative costs associated with the Public Art Fund.

Staff is seeking Planning Board input and recommendation on the issues outlined below, which include additional topics referred to the PAC and Planning Board by the City Council.

X. *Shall the requirement for public art to focus on Alameda's historic and maritime traditions be removed or preserved?*

The current Ordinance contains a requirement that public art relate to historic or maritime traditions. Preserving this requirement would ensure that public art consistently adhere to historic or maritime themes. Removing or modifying this requirement would allow for a diversity of public art in Alameda and provide the PAC maximum flexibility in approving the design and installation of public art. Council discussion on this topic was mixed, with several Councilmembers in favor of preserving the focus on historic and maritime traditions, and others in favor of removing it.

In the draft Ordinance recommended by staff, and supported by the PAC, the historic and maritime tradition requirement is removed in order to provide for maximum diversity of public art, and flexibility for the PAC in approving public art.

XI. *Shall the cap on the maximum public art contribution be maintained, increased, or removed?*

All projects with a development cost over \$250,000 are currently required to spend 1% of the development cost on public art or pay an in-lieu fee, up to a maximum of \$150,000. Historically, the City has negotiated higher public art requirements for larger projects such as Alameda Landing and Alameda Point Site A. Other northern California cities that staff researched do not include any cap on contributions through their Public Art ordinances (Exhibit 5).

The Planning Board can recommend to preserve the maximum contribution, increase it, or remove it altogether. Preserving the \$150,000 maximum cap would limit future contributions to the Fund, while maintaining current fees for new development. An increase in the maximum, with annual adjustments tied to the San Francisco Area Consumer Price Index, or removal of the maximum altogether would bring the City of Alameda ordinance into closer alignment with other California public art ordinances. It would also eliminate the need to negotiate individual caps for large projects through the Development Agreement process. Although increasing or removing the cap may result in greater contributions to the Fund, it may increase development costs for some projects, and therefore should be given careful consideration.

At the February 2015 meeting, the PAC recommended inclusion of an amendment that would encourage developers to contribute their 1% directly to the Fund if the development project is valued 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 valued over \$1,000,000. This amendment is not being recommended because

legally 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.

In the draft Ordinance recommended by staff, and supported by the PAC, the cap is removed in order to bring the Ordinance into closer alignment with other California public art ordinances and eliminate the need for individual negotiations. This change would not impact existing, legally binding agreements for recent or forthcoming developments.

*XII. Shall the required public art contribution be increased from 1% to 1.5% of development costs?*

All projects with a development value over \$250,000 are currently required to spend 1% of the development cost on public art or pay an in-lieu fee, up to a maximum of \$150,000. During the public comment period at the October 18 City Council meeting, community members asked whether the required contribution of 1% could be increased.

Supplementary research conducted by staff found that the 1% requirement is consistent with Public Art ordinances in many other Bay Area cities (Exhibit 5). Similar to increasing or removing the cap on the maximum public art contribution described above, increasing the required contribution from 1% to 1.5% may result in greater contributions to the fund, but would also increase development costs for most projects.

In order to keep the City's development fees and requirements comparable to and competitive with those of other Bay Area cities, the draft Ordinance recommended by staff, and supported by the PAC, maintains the required contribution at 1%.

*XIII. Should the current requirement that 75% of funds be allocated for the design and installation of physical public art and 25% to cultural arts and arts programming be maintained or changed?*

Maintaining the current distribution requirement would ensure that Fund monies contribute to cultural arts and arts programming in the City of Alameda. Changing or removing the current distribution requirement would provide the PAC more flexibility to allocate funds in response to changing priorities within the arts and culture community.

In the draft Ordinance recommended by staff, and supported by the PAC, the requirement is changed to specify that no more than 25% of funds be allocated to cultural arts and arts programming, in order to allow the PAC maximum flexibility to allocate funds, particularly in years with a low Fund balance.

XIV. For grants to third-party organizations, should there be a cap on the maximum share of budget that can be used by grantee organizations for administrative costs, and if so, what should it be?

The proposed revisions to the Ordinance include allowing grants to non-profit and cultural institutions. Restricting the maximum share of the budget that can be used by third-party providers for administrative costs would ensure that the maximum amount of funding goes to the provision of public art. Standard caps on administrative costs for arts grants range from 10% to 20%, depending on how administrative costs are defined.

However, staff research suggests that many public and philanthropic arts grant programs are moving away from set caps on administrative costs (Exhibit 6). Proponents of this approach say that appropriate administrative costs can vary by organization and type of programming, and programs such as gallery exhibits, dance concerts and film festivals can have much higher appropriate administrative costs (up to 50%). In programs without a set cap on administrative costs, the PAC would need to evaluate each application on a case-by-case basis, as part of the RFP process.

In the draft Ordinance recommended by staff, and supported by the PAC, there is no set cap on third-party administrative costs. Rather, it is recommended that these costs be evaluated on a case-by-case basis as part of the application process.

In conclusion, staff recommends that the Planning Board hold a public hearing and approve the following recommended changes to the Public Art Ordinance, these changes were previously recommended for approval by the PAC:

1. Clarify and strengthen the purposes of the Ordinance to better connect the vision, values and strategies for public art to the broader ambitions of the City.
2. Clarify ordinance exemptions.
3. Clarify the requirements and options for physical, on-site public art.
4. Clarify the application and review process for on-site public art applications.
5. Remove maintenance costs as an allowable use of the Public Art Fund.
6. Remove City staff administrative costs as an allowable use of the Public Art Fund.
7. Expand the list of allowable uses for the Fund to include grants to non-profit arts and cultural organizations.
8. Require that all cultural arts and arts programming funded by the Fund be free of charge to the general public.
9. Change annual planning requirements and fund balance reporting to coincide with the City's biennial budget cycle.

10. Remove the requirement for public art to focus on Alameda's historic and maritime traditions.
11. Remove the cap on the maximum public art contribution.
12. Maintain the current public art contribution at 1%.
13. Specify that no more than 25% of funds can be allocated to cultural arts and arts programming.
14. Do not set a cap on the maximum share of budget that can be used by grantee organizations for administrative costs.

### 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.

### PUBLIC NOTICE AND COMMENTS

A public hearing was advertised in the newspaper and posted on the City website.

### RECOMMENDATION

Staff recommends that the Planning Board hold a public hearing and approve the recommended changes to the regulations governing the Public Art Ordinance and recommend adoption by City Council.

Respectfully Submitted,

Amanda Gehrke  
Management Analyst

#### Exhibits:

1. Background Information (Current ordinance and previous staff reports)
2. Public Art Community Meeting, Summarized Public Comments, 1-18-2017
3. Proposed Changes to Ordinance (Strike-out/underline version)
4. Proposed Changes to the Ordinance (Clean version)
5. Summary of Public Art Requirements
6. Summary of Administrative Caps for Arts and Cultural Grants Programs