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ORDINANCE NO. 07-04

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
CHAPTER XX, PLANNING AND ZONING
OF THE ALBANY MUNICIPAL CODE
TO INCLUDE REGULATIONS FOR
ART IN PUBLIC PLACES PROGRAM**

WHEREAS, the City of Albany has adopted a Zoning Ordinance in the form of Chapter XX of the Albany Municipal Code, Planning and Zoning; and

WHEREAS, the Conservation, Recreation and Open Space Element of the Albany General Plan includes Policy 10.1 “Consider establishing a fund for public arts projects from a variety of sources including grant monies”; and

WHEREAS, the purpose of the Albany Art in Public Places Program is to promote the acquisition, construction, installation, restoration, and maintenance of public art pieces in Albany that will foster creativity, freedom of expression, cultural awareness, civic pride, and a strong sense of community; and

WHEREAS, Public Art improves the aesthetic appearance of a city, contributing to the city’s positive identity and image, and with the enhancement of the city’s image, the city becomes a more desirable place to work, live, and visit; and

WHEREAS, an additional goal of the Public Art ordinance is to incorporate the vision of artists into the design of civic buildings and spaces from the initial planning stages so that the artwork is well integrated into project design; and

WHEREAS, pursuant to California Environmental Quality Act Guidelines Section 15061 (b)(3) and Section 15378(a), the City Council finds that this ordinance is not a project that has the potential for causing a significant effect on the environment; and

WHEREAS, on June 26, 2007, the Planning and Zoning Commission adopted a Resolution of Intent pursuant to the requirements of Planning and Zoning Code Section 20.100.070; and

WHEREAS, the Planning and Zoning Commission held a public hearing on July 24, 2007, duly noticed pursuant to California Government Code section 65090 and 65091; and

WHEREAS, following the close of said public hearing the Planning and Zoning Commission performed a detailed review of the draft ordinance, and recommended City Council approval of the draft ordinance; and

1 **WHEREAS**, the proposed ordinance does not involve a commitment to or
2 require a significant physical change in future projects, and thus is not a “project” as
3 defined by California Environmental Quality Act (CEQA) Guidelines Section 15378;
4 and

5
6 **WHEREAS**, on September 17, 2007, the Albany City Council held a duly
7 noticed public hearing on the draft ordinance to amend Chapter XX regarding Art in
8 Public Places; and

9
10
11 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
12 **ORDAIN AS FOLLOWS:**

13
14 **Section 1: Purpose**

15
16 Chapter XX of the Albany Municipal Code is hereby amended to include a new
17 Subsection 20.58.010 titled “Purpose” to consist of the following text:

18
19 An Albany Art in Public Places Program is hereby established on issuance of certain
20 building permits for development in the City of Albany. The Albany Art in Public
21 Places Program shall be in addition to all other charges for approvals and permits
22 required by other ordinances and resolutions of the City of Albany.

23
24 **Section 2: Definitions**

25
26 Chapter XX of the Albany Municipal Code, Section 20.08 titled “Definitions” is
27 hereby amended to include the following text:

28
29 Public Art Project Threshold - The City Council shall adopt by resolution, standards
30 that set forth the size and types of building permits upon which the ordinance is
31 imposed.

32
33 Construction Cost - Construction cost shall be based on building valuation per square
34 foot, as contained in the City Master Fee Schedule, as it may be amended from time
35 to time, excluding land valuation and off-site improvement costs.

36
37 Public Artwork – may include sculpture, monument, mural, fountains, fresco, relief,
38 painting, drawing, etching, original print and collage, mosaic, ceramic, weaving,
39 carving, stained glass, wood, metal, plastic, textile, earthworks, digital art, or
40 electronic art. The following items are not to be considered Public Artwork:

- 41
42 1. Normal landscaping, paving, architectural ornamentation, or signage, except
43 where these elements are designed by the artist and are an integral part of the
44 fine art works by the artist.
45

- 1 2. Decorative, ornamental, or functional building elements that are advertising in
2 intention, or that includes a business name or logo.
- 3
- 4 3. Directional elements such as super graphics, signage, or color-coding except
5 where these elements are integral part of original fine art works.
- 6
- 7 4. Art objects that are mass-produced from a standard design such as playground
8 equipment, fountains, flags, or banners.
- 9
- 10 5. Decorative, ornamental, or functional building elements that are designed by
11 the building architect or designer except where these elements are designed by
12 the artist and an integral part of the fine art works by the artist.
- 13
- 14 6. Works of art that are perceived by the Arts Committee or review panel as
15 offensive and not of interest to the general community.
- 16

17 **Section 3: Exemptions**

18
19 Chapter XX of the Albany Municipal Code is hereby amended to include a new
20 Subsection 20.58.020 titled “Exemptions” to consist of the following text:

21
22 The requirements of this section shall not apply to:

- 23
- 24 1. Projects that have an active building permit application on or before the
25 effective date of the ordinance.
- 26
- 27 2. Projects that are determined by the Community Development Director to be
28 exempt from Design Review, pursuant to Section 20.100.050B.2.
- 29
- 30 3. Projects with project size or building valuation less than the Public Art Project
31 Threshold.
- 32
- 33 4. A single family home that is the primary residence of the owner of the
34 property.
- 35
- 36 5. Projects initiated to comply with Section 12-6.3.f (unreinforced masonry
37 bearing wall).
- 38
- 39 6. Public improvement projects or publicly-assisted project in which the
40 Community Development Director determines that the public source of funding, or
41 other applicable regulation or policy, prohibits the use of funds for public art.
- 42
- 43 7. Underground public works projects, street or sidewalk repair, street lighting,
44 or landscaping, including American Disabilities Act (ADA) mandated improvements
45 and energy efficiency improvements to existing facilities.
- 46

1 **Section 4: Art in Public Places Program Requirement**
2

3 Chapter XX of the Albany Municipal Code is hereby amended to include a new
4 Subsection 20.58.030 titled “Art in Public Places Program Requirement” to consist of
5 the following text:
6

7 A. Applicants for all new development projects, except projects exempted in
8 Section 3, are required to include a Public Art feature valued at the percentage of
9 project construction cost set by Resolution of the City Council, or if eligible, pay an
10 in-lieu fee pursuant to Section 5..
11

12 B. Valuation of Public Art Feature. An applicant is responsible for providing
13 documentation of the value of a Public Art Feature. Such documentation shall be
14 provided by an independent third party with qualifications acceptable to the
15 Community Development Director. The cost of services or utilities necessary to
16 operate or maintain the artwork over time shall not be included in the valuation of the
17 Public Art Feature.
18

19 C. Nothing in this section shall prohibit an applicant from placing an approved
20 Public Art Feature in a project with a valuation less than required, provided that the
21 applicant pays to the Art in Public Places Fund an amount equal to the difference
22 between the actual valuation of the Public Art Feature and the required valuation,
23 pursuant to implementation procedures to be adopted by the City Council.
24

25 D. All Public Art Features installed on private property shall remain the property
26 of the owner of the parcel. The obligation to maintain the Public Art Feature shall
27 remain the property owner, may be incorporated into conditions of approval of the
28 project, and shall be documented in the form of covenant recorded against the
29 property. Failure to maintain Public Art Feature may be declared a public nuisance,
30 and subject to the enforcement provisions of Chapter XVIII (Nuisances) of the
31 Municipal Code.
32

33 **Section 5: Art in Public Places Fund**
34

35 Chapter XX of the Albany Municipal Code is hereby amended to include a new
36 Subsection 20.58.040 titled “Art in Public Places Fund” to consist of the following
37 text:
38

39 A. The Finance and Administrative Services Director shall establish and
40 administer an Art in Public Places Fund, which shall be used for the acquisition,
41 installation, improvement, and maintenance of Public Art Features. The Fund shall be
42 maintained in a separate account and not co-mingled with other funds.
43

44 B. For proposed projects on sites of less than 10,000 square feet, at the discretion
45 of the project applicant, in lieu of developing an on-site Public Art feature, a project

1 applicant may pay an in-lieu fee to the Art in Public Places Fund equal to the
2 percentage of project construction cost set by Resolution of the City Council.

3 C. For proposed projects on sites of 10,000 square feet or more, at the discretion
4 of the City and subject to Arts Committee review, a project applicant may request
5 permission pay an in-lieu fee to the Art in Public Places Fund according to the
6 schedule contained in Section 4 (B). The entity with overall project decision-making
7 authority for the project may approve the request, if on the basis of the application
8 and evidence submitted, the decision-making body makes one or more of the
9 following findings, insofar as they are applicable:

- 10
- 11 a. The appearance, installation, access to, or maintenance of the public art
12 feature would adversely affect the character of the site or nearby properties.
- 13 b. The installation, access to, or maintenance of the public art feature cannot be
14 reasonably achieved in compliance with applicable Building and Housing
15 Regulations (Chapter XII of the Municipal Code) or Planning and Zoning
16 Regulations (Chapter XX of the Municipal Code).
- 17 c. The size, configuration, or land use on the site limits reasonable public access
18 to a public art feature
- 19 d. The appearance, installation, access to, or maintenance of the public art
20 feature conflicts with the applicant's reasonable ability to comply with other
21 adopted policies of the City, including but not limited to the Green Building
22 Program and development of affordable housing.
- 23 e. The appearance, installation, access to, or maintenance of the public art
24 feature would have a detrimental impact on a historic resource, have the
25 potential to be an attractive nuisance, or have a detrimental impact on public
26 safety.
- 27

28 **Section 6. Maintenance and Relocation**

29
30 Chapter XX of the Albany Municipal Code is hereby amended to include a new
31 Subsection 20.58.050 titled "Maintenance and Relocation" to consist of the following
32 text:

33
34 A. Maintenance of Public Art Features installed on private property shall be the
35 sole responsibility of the property owner, taking into account the recommendations of
36 the artist as stated in the maintenance criteria provided during installation.
37 Maintenance criteria shall be documented in conditions of approval associated with
38 the project, and if appropriate, documented in the form of a written memorandum
39 recorded on the parcel(s) with the County Recorders Office.

40
41 B. Title to all artworks required and installed pursuant to this section shall pass to
42 successive owners of the real property

43
44 C. In the event that a property owner wishes to replace or relocate a Public Art
45 Feature approved pursuant to this section, the property owner must pay for
46 replacement public art feature of equal or greater value, or pay for the relocation of

1 the Public Art Feature to an alternative site in the City. Any replacement or relocation
2 shall abide by all state and federal laws governing the rights of artists. The
3 replacement or relocation of the art work shall be subject to an agreement with the
4 City, which shall include a timeline for replacement or relocation, and shall comply
5 with the requirements of this Section.
6

7 **Section 7. Implementation Procedures**
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9 Chapter XX of the Albany Municipal Code is hereby amended to include a new
10 Subsection 20.58.060 titled "Implementation Procedures" to consist of the following
11 text:
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13 A. Based on recommendations prepared by the Arts Committee and the Planning
14 and Zoning Commission, the City Council shall adopt by resolution procedures for
15 implementation of the requirements of this section, including Arts Committee
16 responsibilities, selection and implementation of art on City property, use of Public
17 Art funds, application requirements, procedures for repair, restoration, or relocation
18 of Public Art Features approved pursuant to this section, and annual review of the
19 Public Art program. Changes to implementation procedures shall be reviewed by the
20 Arts Committee and the Planning and Zoning Commission prior to action by the City
21 Council.
22

23 B. Approval of the public art component of a project shall be incorporated into
24 the design review process pursuant to Section 20.100.050. A Public Art Feature may
25 be approved by the Planning and Zoning Commission, based on a recommendation of
26 the Arts Committee, if on the basis of the application and evidence submitted, the
27 Commission makes the following findings, insofar as they are applicable:
28

- 29 1. The proposed Public Art Feature is consistent with any applicable design
30 review standards or guidelines adopted by the City;
- 31 2. The Public Art Feature is an original work of high aesthetic quality;
- 32 3. The Public Art Feature is designed and constructed, in a manner and with
33 materials that are adequate for the long-term integrity of the art and that will
34 require a low level of maintenance to ensure that it remains in good condition
35 for the intended life of the public art feature;
- 36 4. The scale, material, form, color, and content of the proposed Public Art
37 Feature is compatible and in harmony with the its location and its
38 surroundings; and
- 39 5. There is reasonable public accessibility or visibility to the Public Art Feature.
40

41 C. All Public Art Features shall meet applicable government requirements,
42 including building code requirements.
43

44 D. In the event of delays beyond the reasonable control of a building permit
45 applicant, the Building Official may issue a certificate of occupancy if the applicant

1 provides financial security in a form acceptable to the Community Development
2 Director, which is equivalent to the valuation of the approved Public Art Feature.

3
4 **Section 8. Hardship or Infeasibility Exemption.**

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6 Chapter XX of the Albany Municipal Code is hereby amended to include a new
7 Subsection 20.58.070 titled “Hardship or Infeasibility Exemption” to consist of the
8 following text:
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10 A. Exemption. If an Applicant for a non-exempt project believes that
11 circumstances exist that make it a hardship or infeasible to meet the requirements of
12 this Section, they may apply for an exemption or reduction in requirements as set
13 forth below. In applying for an exemption, the burden is on the Applicant to show
14 hardship or infeasibility.

15
16 B. Application. If an Applicant for a non-exempt project believes such
17 circumstances exist, the Applicant may apply for an exemption at the time of
18 application submittal.

19
20 C. Meeting with Arts Committee. The Arts Committee shall review the
21 information supplied by the Applicant, may request additional information from the
22 Applicant. The Arts Committee shall make a recommendation to the overall project
23 decision-making authority. If the Arts Committee recommends that it is a hardship or
24 infeasible for the Applicant to meet fully the requirements of this Chapter based on
25 the information provided, the Arts Committee shall recommend the maximum
26 feasible valuation of public art achievable for the Project.

27
28 D. Granting of Exemption: The granting of an Exemption shall be made by the
29 overall project decision-making authority. If an exemption is granted, the Applicant
30 shall be required to comply with this Chapter in all other respects and shall be
31 required to achieve the maximum feasible valuation of public art achievable for the
32 Project.

33
34 E. Denial of Exemption. If the Arts Committee determines that it is possible for
35 the Applicant to fully meet the requirements of this Chapter, they shall so notify the
36 Applicant and the overall project decision-making authority in writing.

37
38 **Section 9. Severability.**

39
40 If any section, subsection, sentence, clause or phrase of this ordinance is for
41 any reason held to be invalid, such decision shall not affect the validity of the
42 remaining portions of the ordinance, and each section, subsection, sentence, clause or
43 phrase thereof, irrespective of the fact that any one or more sections, subsections,
44 sentences, clauses or phrases be declared invalid.
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Section 10: Publication and Effective Date.

This ordinance shall be posted at three public places within the City of Albany and shall become effective thirty days after the date of its posting.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 1st day of October 2007, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Mayor Robert S. Lieber