

CITY OF OAKLAND

ORDINANCE No. 11086 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

PERCENT FOR PUBLIC ART ORDINANCE

An ordinance authorizing the allocation of 1 ½% of the City's capital improvement projects costs for the commissioning of public art works and artists' services in the construction of public works; establishing a method for calculating public art appropriations of capital projects, establishing a public art project account; establishing method of administering public art program; and establishing general guidelines for the administration of the public art program.

Whereas, The Oakland City Council, in accordance with the provisions of the Charter of the City of Oakland, the state law, and applicable ordinances of the City, have reviewed and recommended this ordinance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OAKLAND THAT:

SECTION 1. PURPOSE

The City of Oakland accepts responsibility for expanding the opportunities for its citizens to experience public art and other projects resulting from the creative expression of its visual artists in public places throughout the City. A policy is hereby established to direct the inclusion of works of art in public spaces throughout the City and/or the design services of artists in certain City capital improvement projects.

SECTION 2. DEFINITIONS

- A. CITY CAPITAL IMPROVEMENT PROJECT means any capital improvement project paid for wholly or in part by funds appropriated by the City of Oakland to construct or remodel a building, decorative or commemorative structure, park, street, sidewalk, parking facility, or utility or any portion thereof, within the City limits of, or under the jurisdiction of, the City of Oakland.
- B. CAPITAL IMPROVEMENT COSTS include all construction costs as well as architectural and engineering fees and site work associated with capital improvement projects. Capital improvement costs do not include administrative costs or costs related to the investigation and remediation of hazardous materials.
- C. PUBLIC ART is a process which results in the incorporation of original works of art by visual artists in public spaces and which involves the public from selection process to dedication serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals, is of highest quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; is unique to its moment in time and place.

- D.** PUBLIC ART PROJECTS are projects which involve visual artists working through the public art process that result in the creation of original works in public spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Works of art may be temporary as well as permanent. Public Art projects also include artists serving on design and development teams to identify opportunities to incorporate art in the public space.
- E.** PUBLIC ART PROJECTS PLAN means prioritized list of visual arts projects to be undertaken in any given year with budgets and recommended site and design approach, developed by the Cultural Arts Division in conjunction with the Public Art Advisory Committee of the Oakland Arts Council, and in consultation with City departments anticipating capital projects, to be approved by the City Council.
- F.** PUBLIC ART ADVISORY COMMITTEE means a professionally qualified citizen committee recommended by the Oakland Arts Council and approved by City Council to oversee quality control of the public art program, its projects, and to recommend to the Cultural Arts Division the sites, scope of project, artworks and artists for the public art projects.
- G.** DEMOLITION COSTS means payment for any work needed for the removal of buildings or other existing structures from City property.
- H.** EQUIPMENT COSTS means payments for any equipment or furnishing that are portable and of standard manufacture; it shall not mean items that are custom designed for, or that create new use for, a facility, whether portable or affixed.
- I.** PUBLIC ART PROJECT ACCOUNT IN THE CULTURE ARTS DIVISION BUDGET means a project account which is established by the City to receive monies (the 1 1/2%) appropriated from the capital improvement project budgets to the public art program.
- J.** REAL PROPERTY ACQUISITION COSTS means payments made for the purchase of parcels of land, existing buildings or structures, and costs incurred by the City for appraisals or negotiations in connection with such purchases.

SECTION 3. FUNDING

- A.** APPROPRIATIONS. All appropriations for City capital improvement projects, including all bond projects and all other capital projects funded from other sources excluding sewer repairs funded from sewer service charge fees shall include an amount equal to one-and-one-half percent (1.5%) of the total capital improvement project cost to be dedicated to the Public Art Project Account. Funds appropriated will be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation, examination and/or display of original artworks, for the maintenance of artworks, for educating the public about the artwork and the Cultural Arts Division administrative costs to manage the program.

The 1 ½% appropriation shall include but not be limited to General Fund funded capital improvements, gas tax funded capital improvements, Measure B funded capital improvements, off street parking funded capital improvements and any and all other capital improvements funded from other revenues including grants which may be so appropriated.

- B.** METHOD OF CALCULATION. The minimum amount to be appropriated to the Public Art Project Account to fund artists' services and /or artworks, maintenance, administration, and education shall be the total capital project appropriation including all construction costs as well as architectural and engineering fees and site work expenses multiplied by 0.015, excluding amounts budgeted for real property acquisition; demolition; and financing costs.
- C.** POOLING. Funds appropriated as part of any one project, but not deemed necessary or appropriate in total in part for public art at said project site, by the Cultural Arts Division in consultation with the Public Arts Advisory Committee and the capital improvement project manager, may be expended on other projects approved under the Public Art Project Plan when such funds are eligible to be so used.
- D.** EXCLUSIONS. If the source of funding or other applicable law or regulation with respect to any particular capital improvement project or portion thereof prohibits or restricts the use of the 1 ½% dedication of such funds for public art, this ordinance shall not apply to the projects expenses, so prohibited or restricted.
- E.** GRANT APPLICATIONS. All City departments shall, from the effective date of this ordinance, include in applications for capital improvement projects to outside granting authorities, amounts for artists' services and/or artworks as specified herein, where permitted or unless otherwise waived by the City Council. Receipt of such funds shall be administered as part of the City's Public Art Program.

WAIVER. The City Manager may request that the City Council exclude certain capital improvement projects from the provisions of this ordinance by the passage of a resolution authorizing such a waiver.

SECTION 4. USE OF FUNDS

It is intended that funds in the Public Arts Project Account will be appropriated in the annual budget obtain and install visual art in public places, to maintain and refurbish visual art in public places when the cost of such maintenance exceeds funds currently available for the maintenance of public property in general, to fund staff time in the Cultural Arts Division necessary to administer the public art program, and to defray such other expenses which are, or may become, an integral part of the public art program including programs to educate the public about the public art.

- A.** ELIGIBLE COSTS. Monies appropriated under this ordinance may be used for hiring artists to develop design concepts and for the selection, acquisition, purchase, commissioning, placement, installation, exhibition, and/or display of artworks. Artworks may be permanent or temporary and integral to the architecture. Integration of the artists' design concepts and/or the artworks into the project architecture should be insured insofar as feasible, by concurrent selection of the artist(s) with the architect or designer. All of the above are considered eligible expenses for the Public Art Program artists fees. Artist fees for such projects can include the following:

Structures which enable the display of artwork(s).

Artistic design and fabrication fees.

Labor of assistants, materials and contracted services required for the production and installation of the work of art.

Any required permit or certificate fees, business and legal costs directly related to the project.

Dealer's fees, if necessary and where appropriate CAD, in concurrence with the National Endowment for the Arts and several other arts agencies around the country, recommends that no more than 10% of the artist's fee be paid as a dealer/gallery commission.

Communication and other indirect costs (insurance, utilities).

Transportation of the work of art to the site.

Preparation of site to receive artwork.

Installation of the completed work of art.

Administrative fees can include the following:

Cultural Arts Division's administration costs incurred in the process of administering the Public Art Program including staff time, direct costs and administrative overhead.

Documentation (color slides and black and white photographs) of the artwork's fabrication and installation and plaques to identify the artwork.

B. INELIGIBLE COSTS. Monies appropriated under this ordinance may not be used for the following:

Directional elements such as supergraphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.

"Art objects" which are mass produced of standard design such as playground equipment or fountains.

Reproduction, by mechanical or other means, or original works of art, except in cases of film, video, photography, printmaking or other media arts.

Decorative or functional elements which are designed by the building architect as opposed to an artist commissioned for this purpose.

Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist.

SECTION 5. PUBLIC ART PROJECT ACCOUNT

Monies appropriated pursuant to this ordinance shall be transferred by the City Manager or his designee to the project account within the Cultural Arts Division designated "Public Art Project" into which monies appropriated hereof shall be deposited. Funds so appropriated, if not expended in any given Fiscal Year shall be carried over to the next Fiscal Year. Funds appropriated from sources placing time restrictions on expenditure of such finds shall be expended according to such restrictions or be forfeited, unless an extensions is granted.

Disbursements from the Fund shall be made in accordance with the Annual Public Art Projects Plans/Budgets adopted by the City Council.

Each proposed appropriation for the visual art in public places program each disbursement from the Public Art Project Account shall receive the prior review and advice of the Public Art Advisory Committee. Contracts and disbursements shall be in accordance with the City's fiscal and purchasing policies and procedures.

SECTION 6. ANNUAL PUBLIC ART PROJECTS PLAN

The City's Cultural Arts Division (CAD) staff in consultation with appropriate city capital project staff and the Public Art Advisory Committee shall regularly review all new and projected capital improvement project allocations from the general fund, City bond funds, grants and other sources at least once a year. A Public Art Projects Plan, including project descriptions, budgets, locations, and recommended design approaches, will be submitted by staff for review to the Oakland Arts Council and in turn to the City Council for approval and implementation.

SECTION 7. RESPONSIBILITIES

A. The Oakland City Council shall:

1. Appropriate funds annually to the Public Art Project Account from the 1 ½% of the capital improvement projects for the Oakland Public Art Program.
2. Approve appointments to the Public Art Advisory Committee
3. Review and adopt annual Public Art Project Plans.
4. Approve contracts over \$15,000 with selected artists.

B. The Oakland Arts Council shall:

1. Recommend to the City Council persons to serve on Public Art Advisory Committee striving toward ethnic/gender balance.
2. Be responsible for recommending guidelines for implementation of the Oakland Public Art Program.
3. Submit the Annual Public Art Projects Plan based on the Cultural Arts Division staff and Public Art Advisory Committee recommendations to the City Council.
4. Recommend an annual maintenance program based on staff and Public Art Advisory Committee's recommendations
5. Appoint the artist-selection juries based on the Public Art Advisory Committee's recommendations.
6. Recommend acceptance of proposed gifts, exhibitions, and loans based on the Public Art Advisory Committee's review.
7. Create a nine-member Public Art Advisory Committee, approved by the City Council, which will serve as a subcommittee of the Oakland Arts Council and be responsible for advising

the City regarding its public art program. The Oakland Arts Council shall develop the nomination procedures to recruit members.

C. The Cultural Arts Division (CAD) shall:

1. Be responsible for the administration of the Public Arts Program.
2. Hire the Public Art Coordinator. Public Arts Advisory Committee members may be asked to serve as part of the interview panel.
3. Provide staff support for the management and implementation of annual Public Arts Projects Plan.
4. Develop with the Public Art Advisory Committee, an annual Public Art Projects Plan, Art Maintenance Survey and Work Plan.
5. Develop and submit annual budgets, administer budget and contracts, oversee the jury process, implement program policies and guidelines working with Public Art Advisory Committee and Oakland Arts Council.
6. Coordinate the artists recruitment, jury-selection and review process, and community information-education sessions.
7. Serve as liaison between the Oakland Arts Council, Public Art Advisory Committee, City Managers' Office, other city department and City Council.
8. Seek additional grant funds from foundations, corporations, individuals, public agencies such as the N.E.A. and California Arts Council, for public art projects.
9. Draft new policies and programs as requested by the Oakland Arts Council and Public Art Advisory Committee.

D. The City Agencies collaborating on the Public Art projects shall:

1. Determine in consultation with Cultural Arts Division staff and the Public Art Advisory Committee, whether a project is to be developed by a design team and/or if public art is appropriate at the capital improvement project site.
2. Review annual maintenance needs survey of the public art collection in consultation with Cultural Arts Division staff and Public Art Advisory Committee to determine a work plan.

E. The Public Art Advisory Committee shall:

1. Advise the City in matters pertaining to the quality, quantity, scope, and style of art in public places.
2. Advise the City regarding the amounts to be expended on art in public places;
3. Advise and assist the CAD in obtaining financial assistance for art in public places from private, corporate, and governmental sources;
4. Review plans for the installation of art in public places;

5. Recommend the retention of consultants, consistent with City's consultant selection procedures, to assist the City and the visual arts jury in making decisions concerning the art in public places program;
6. Advise and assist private property owners who desire such advice and assistance regarding the selection and installation of works of art to be located on their property in the public view;
7. Act as a liaison between local artists and private property owners desiring to install works of art on their private property in the public view; and
8. Maintain and promote an inventory of meritorious works of art in the public view.

F. Artist-Selection Juries shall:

1. Be comprised of a minimum three persons from the following categories:
 - a. Voting Members
 - 1) One representative from the neighborhood in which the artwork or artplace will occur.
 - 2) Two artists, or one artist and one arts professional (designer, curator, collector, etc.)
 - b. Non-Voting Advisors
 - 1) The design architect, if selected at this point.
 - 2) The project manager from the City agency collaborating on the project.
 - 3) Other design team members, if selected at this point.
 - 4) A member of the Public Art Advisory Committee.
2. Be chaired by a Public Art Advisory Committee member.
3. Meet in open session.
4. Review credentials, proposals and/or materials submitted by artists.
5. Recommend to the Public Art Advisory Committee, an artist or artists to be commissioned for the project or an artist whose existing work is to be purchased for the project.

G. The Artist(s) shall:

1. Submit credentials, proposals, and/or materials as directed for considerations by the artist-selection panel.
2. If selected, execute and complete the work, or transfer title of an existing work, in a timely and professional manner.
3. Work closely with the project manager and/or other design professionals on commissioned project.

4. Submit to the Public Art Advisory Committee for review and approval, prior to preliminary design approval by the project's City agency, any significant change in the scope of the project, color, material, design, or siting of the work.
5. Be responsible for all phases of the project as stipulated in the contract.
6. Participate in appropriate forums in the community where the art work will be placed or the project will occur.

SECTION 8. STANDARDS FOR REVIEW

In performing its duties with respect to the public arts program, the Public Art Advisory Committee and artist selection juries shall give special attention to the following matters:

1. Conceptual compatibility of the design with the immediate environment of the site;
2. Appropriateness of the design to the function of the site;
3. Compatibility of the design and location within a unified design character or historical character of the site;
4. Creation of an internal sense of order and a desirable environment for the general community by the design and location of the work of art;
5. Preservation and integration of natural features with the project;
6. Appropriateness of the materials, textures, colors, and design to the expression of the design concept;
7. Representation of a broad variety of tastes within the community and the provision of a balanced inventory of art in public places to insure a variety of style, design, and media throughout the community that will be representative of the eclectic tastes of the community;
8. Strive to reach the City's goals for the awarding of professional service contracts with respect to minority participation and Oakland residency.

SECTION 9. IMPLEMENTATION OF POLICIES FOR PUBLIC ART PROJECTS

Implementation of Policies and Procedures for the administration of Public Art Program shall be accomplished in accordance with procedures to be established by resolution of the City as recommended by the Oakland Arts Council.

SECTION 10. OWNERSHIP

All art objects acquired pursuant to this ordinance shall be acquired in the name of the City of Oakland and title shall vest in the City of Oakland.

SECTION 11. SEVERABILITY

Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, FEBRUARY 28, 19 89

PASSED BY THE FOLLOWING VOTE:

AYES- BAZILE, CANNNO, HASKELL, GILMORE, MOORE, OGAWA, RILES, SPEES, AND
PRESIDENT WILSON

NOES- NONE

ABSENT- NONE

ABSTENTION- NONE

ATTEST: _____

ARRECE JAMESON
City Clerk and Clerk of the Council
of the City of Oakland, California