

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

PORT ORDINANCE NO.3694

AN ORDINANCE ESTABLISHING A PUBLIC ART PROGRAM, A PUBLIC ART COMMITTEE AND GUIDELINES, RULES AND REGULATIONS FOR INCORPORATING PUBLIC ART INTO THE PORT'S MAJOR EXPANSION AND DEVELOPMENT GOALS AND PRIVATE AND PUBLIC DEVELOPMENT WITHIN THE JURISDICTION OF THE PORT OF OAKLAND, POLICY AND PROCEDURE FOR ACQUISITION, REVIEW AND ACCEPTANCE OF GIFTS AND LOANS, AND DE-ACCESSIONING OF PUBLIC ART

WHEREAS, artistic and cultural resources enhance the quality of life for individuals living in, working in and visiting the Port of Oakland; and

WHEREAS, economic benefits are to be gained by the Port in the form of public pride, increased tourism, enhancement of public spaces, increases in retail and other commercial activity and enhanced economic growth of and in the Port Area and affected by the Port Area enhancements to commerce, shipping and navigation resulting from the development by the Board of artistic and cultural resources; and

WHEREAS, the Board is committed to commissioning a wide range of artistic styles, forms, media, and disciplines that characterize the breadth of contributions an artist can make to public arena; and

WHEREAS, the Board is committed to providing uniform procedures for the review and acceptance of gifts and loans of artwork to the Port; and

WHEREAS, the Board is committed to evaluating the collection of public art as a whole on a regular basis to determine the current condition of the artwork, maintenance needs, and to consider the de-accessioning of individual artwork;

WHEREAS, the Board hereby delegates to the Director of Communications the responsibility for the implementation of this ordinance;

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

ARTICLE I. POLICY AND PROCEDURE FOR ACQUISITION OF PUBLIC ART

Section 1. Purpose.

This ordinance is enacted to provide an opportunity for the public to experience high quality art of enduring value that reflects the diversity of the region served by the Port of Oakland and its people.

This ordinance is enacted to establish a Public Art Program, a Public Art Committee and guidelines, rules and regulations for (1) including works of public art in certain public improvement projects in the Port's Capital Improvement Program and in certain private commercial, industrial and revitalization developments in the Port's Commercial Real Estate Program; and (2) meeting the on-going day-to-day maintenance and conservation needs to preserve the works of public art.

Section 2. Definitions.

a. "Administrative Costs" shall mean all costs incurred in connection with the development and implementation of the Public Art Program established by this Ordinance and the selection, creation, acquisition, installation, maintenance, and presentation of, including publicity and community education about, works of Public Art in the Port's Collection.

b. "Artist" shall mean a person who has established a reputation of artistic excellence in the visual, performing, media or literary arts, as judged by peers, through a record of exhibitions or performances, public commissions, sale of works, and/or educational attainment.

c. "Artist Selection Panel" shall mean the panel appointed by the Public Art Committee (PAC), on a project-by-project basis, to review and recommend to the PAC appropriate artists and artwork according to the criteria and procedures set forth in the Administrative Procedures.

d. "Administrative Procedures" shall mean the process and procedures that govern the implementation of this Ordinance, including detailed information on the composition and responsibilities of the Public Art Committee and Artist Selection Committee, criteria for artist and artwork selection, and process for approval of artists and artwork.

e. "Building Valuation" shall mean the total value of all construction work for which a building permit is issued, and includes all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanently installed work of permanently installed equipment.

f. "Conservation" shall mean the treatment of a deteriorated or damaged artwork to approximate as nearly as possible its original form, design, color, and function with minimal further sacrifice of aesthetic and historic integrity.

g. "Construction Costs" shall mean the cost of a Port Development Project or Public Facility, excluding "Demolition Costs", "Equipment Costs", "Debt Issuance" and "Permits and Fees".

h. "De-accessioning" shall mean the procedure for the removal of an artwork from a location on Port property or within the jurisdiction of the Port.

i. "Debt Issuance" shall mean those expenses incurred by the Port for the issuance of bonds for a Port Development Project or Public Facility.

j. "Demolition Costs" shall mean payments for any work required for the removal of buildings or other existing structures from the Port Development Project or Public Facility site.

k. "Development Project" shall mean any project involving construction of a new permanent structure located on Port owned property and requiring issuance or approval of a building permit or a zoning permit.

l. "Donor" shall mean an individual or group who proposes a donation of a work of art or funded project for placement on a public site under the jurisdiction of the Port.

m. "Equipment Costs" shall mean payments for any equipment or furnishings that are portable or of standard manufacture. Equipment does not mean items that are custom designed or that create a new use for a Port Development Project or Public Facility, whether portable or affixed.

n. "Executive Director" shall mean the Executive Director of the Port of Oakland or his or her designee.

o. "Fee" shall mean a monetary exaction other than a tax or special assessment that is collected under the terms of this ordinance to provide funds for public art.

p. "Gift" shall mean an existing or proposed work of art or funded project offered as a donation by someone to the Port for placement at a public site under the jurisdiction of the Port.

q. "Lifetime of the Artwork" shall mean for each work of art, the period of time a work of art can be reasonably maintained to accurately represent the condition of the artwork when it was first installed.

r. "Long Term Loan" shall mean a loan of artwork for a period of two years or more.

s. "Maintenance" shall mean actions taken to retard or prevent deterioration or damage to artwork by control of the environment and/or treatment of the artwork on a routine basis.

t. "Non-archival" shall mean does not meet accepted artwork preservation standards, practices, and principles.

u. "Permits and Fees" shall mean payments made for all permits and fees associated with a Port Development Project or Public Facility.

v. "Program Administrator" shall mean the staff person designated by the Communications Division to oversee all functions of the Port Public Art Program and to provide vision for the program. This person works with division directors in the development of public art goals and with private developers to include public art in private projects located on Port property.

w. "Public Art Account" shall mean the account created with separate sub-accounts allocating funds to be used for the selection, acquisition, installation, and substantive structural repair and maintenance of art and art projects in, upon, and adjacent to Port facilities. One Public Art Account shall be created with separate sub-accounts for each Port Revenue Division. The Executive Director or designee, and, as appropriate, the Board of Port Commissioners, shall authorize all disbursements from the Public Art Account.

x. "Port of Oakland" or "Port" shall mean the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners and the officers, employees and agents, authorized to act for and on behalf of the Board with respect to the matter for which the term is used.

y. "Port Property" shall mean parcels of land, buildings and structures owned in fee or held in trust by the Board of Port Commissioners.

z. "Port Revenue Division" shall mean the following divisions of the Board: Aviation, Maritime and Commercial Real Estate and such other divisions as may be established from time to time by the Board of Port Commissioners which are expressly made subject to this ordinance.

aa. "Public Amenities" shall mean areas designated for public access, public traffic, and/or public accommodation within private or public development projects upon Port owned lands.

bb. "Public Art" shall mean original works of art accessible to the public and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

cc. "Public Art Collection" shall mean all works of art owned by the Port of Oakland, located on Port property, and within the jurisdiction of the Port.

dd. "Public Art Committee" shall mean a standing committee appointed by the Port to develop overall Public Art Program policy and procedures, as required, to provide review responsibility for the provisions of this Ordinance such as acceptance of gifts of art and de-accessioning of artwork, and to advise the Port on the Public Art Program.

ee. "Public Art Project" shall mean any initiative for the creation, presentation and/or performance of public art, recommended by the Public Art Committee and approved by the Board of Port Commissioners for expenditure from the Public Art Account for the purposes of this ordinance.

ff. "Public Facility" shall mean any publicly accessible, capital project paid for wholly or in part by the Port of Oakland that results in the construction or remodel of any building, decorative or commemorative structure, parking facility and any portion thereof.

gg. "Quality of Artwork" shall mean the overall accomplishment in the art form, content and craftsmanship, as judged in accordance with accepted standards within the professional arts discipline.

hh. "Real Property Acquisition Costs" shall mean payments made for the purchase of parcels of land, existing building and structures, and costs incurred by the Port for the appraisals or negotiations in connection with such purchase for a Port Development Project; provided, however, that a Port Development Project for the acquisition and/or development of parkland or parks shall have included in its construction cost the Real Property Acquisition Costs, as defined above.

ii. "Short Term Loan" shall mean a loan of artwork not exceeding two years.

jj. "Temporary Art" shall mean a work of art displayed for a limited amount of time, generally not exceeding two years.

kk. "Work of Art" shall mean all forms of art created by an Artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

Section 3. Establishment Of A Public Art Requirement.

There is hereby established a Public Art requirement applicable to the Port's Revenue Divisions covering respectively, their Development Projects and Public Facilities identified in the Port's Capital Improvements Program and, within their respective areas, covering other private and public development projects upon Port owned lands that include Public Amenities or provide for access to the general public as more fully set forth below.

a. Aviation

(1) The Director of Aviation shall include in all estimates for necessary expenditures and all requests for authorization or appropriations for Port Development Projects and Public Facilities, excluding construction of roadways, utilities, airfield projects and non-Port funded tenant developments, an amount to be set aside and made a part of the Public Art Account and used for the selection, acquisition and display or works of art equal to at least one percent (1%) of the related Construction Costs.

(2) Funding set aside for Public Art as defined above shall be expended for Public Art within one-year from the date of completion of the Development Project or Public Facility from which the funds were derived.

(3) For projects or programs that have been approved by the Board of Port Commissioners before the approval of this policy, but not yet completed, the Board shall determine on a case by case basis whether or not to apply this policy retroactively.

(4) If the rules or limitations governing a source of funding or appropriate law governing any particular project does not permit the expenditure of such funds on art or certain forms of art, the amount of funds so restricted shall be excluded from the Construction Cost, as defined herein, in making the aforesaid calculations.

b. Maritime

(1) The Maritime Director shall include in all estimates for annual budget expenditures an annual budget allocation of not less than \$150,000 to be set aside and made a part of the Public Art Account and used for the commission, acquisition and performance of Public Art.

(2) Funding set aside for Public Art as defined above shall be expended for Public Art in projects that include Public Amenities.

c. Commercial Real Estate

The majority of CRE land was given in trust to the Port under the state Tidelands Trust. To uphold the public trust, the Port requires developers who buy tidelands or lease tidelands on a long-term basis to do the following:

(1) The Developer shall provide and maintain public art in a publicly accessible place on or in the vicinity of the project site pursuant to this chapter. The cost of such Public Art shall be as follows:

(i) For development projects with 50,000 square feet or more of new construction, the developer shall commit 0.5% of the building valuation up to \$150,000 toward the purchase or commission of Public Art for the project site.

In lieu of purchasing or commissioning public art for the project site, the developer may elect to pay 0.5% of the building valuation up to \$150,000 to the Public Art Account, as identified below.

(ii) For development projects with less than 50,000 square feet of new construction, the developer is required to commit 0.5% of the building valuation up to \$50,000 toward the purchase or commission of Public Art for the project site.

In lieu of purchasing or commissioning public art for the project site, the developer may elect to pay the amount required by this ordinance to the Commercial Real Estate Public Art Account, as identified below.

(2) For any project, the developer may request that the Board of Port Commissioners consider an alternate approach to Public Art if the terms of this policy pose unnecessary hardship to the ability of the development project to be realized.

(3) If a development project is required to purchase or commission Public Art by both the Port of Oakland and the City of Oakland, the developer only will be required to participate in the City of Oakland public art program.

(4) Applicability.

The provisions of this ordinance shall apply only to public and private development projects for which a building permit has not been issued as of the effective date of this ordinance.

(5) Public Art Standards.

(i) The Public Art of a private developer subject to this ordinance is to be privately owned and maintained by developer or his successor(s), including the future occupants or owners of the Development Project, and such private ownership and maintenance shall be adequately provided for by written agreement, or other appropriate provisions shall be made based on the characteristics of the Public Art.

(ii) The Public Art may be used or viewed by or is freely accessible to the patrons, occupants and owners of the development project;

(iii) The Public Art shall be in an area open and freely accessible to the general public during business hours at least eight (8) hours each day of at least five (5) days per

week (to the extent there are five business days in each week), except for holidays, or public accessibility shall be otherwise provided in an equivalent manner based on the characteristics of the Public Art or its placement on the site;

(iv) The Public Art shall be in substantial compliance with any policies and implementation procedures adopted by the Board of Supervisors.

(6) Ineligible Costs

(i) The architecture of the building or facility, or any portion thereof, including decorative, ornamental or functional elements, unless designed by an artist specifically commissioned for this design enhancement purpose;

(ii) Landscape architecture and landscape gardening, except where these elements are designed by an artist specifically commissioned for this design enhancement purpose; or

(iii) Costs for services or utilities necessary to operate or maintain the Public Art over time.

Section 4. Public Art Account.

a. A Public Art Account shall be established in the Capital Improvement Program (CIP) and shall continue from year to year unless specifically terminated by the Board of Port Commissioners. The Public Art Account shall consist of separate sub-accounts established by the Finance Division.

(1) A separate sub-accounts for each of the three Port Revenue Divisions shall be established from which expenditures may be made for the creation, acquisition, presentation, and performance of works of Public Art.

(2) A separate Administration - Maintenance sub-account shall be established into which shall be deposited funds appropriated as provided pursuant to Section 5 of this Ordinance not to exceed 35% of the aggregate of the Revenue Division subaccounts together with such other funds as the Board may appropriate, for Public Art Program staff costs and administrative costs that are associated with developing and implementing this Ordinance including restoration and conservation of Public Art in the Port's collection.

(3) A separate Proceeds from Sales of Public Art sub-account shall be established and expended for future creation, acquisition, presentation, and performance of works of Public Art.

b. For non-capital projects, funds may be moved out of Maritime and Commercial Real Estate from the CIP into the Port's operating budget for expenditures related to said projects.

c. The use of fees collected shall be as follows:

(1) The Executive Director shall make recommendations to the Board of Port Commissioners for expenditures from the Public Art Account in accordance with Port budgetary procedures and adopted Public Art program policies and implementation procedures, which expenditures shall be exclusively for the commission, acquisition, installation, improvement, maintenance and insurance of works of Public Art, or for the restoration or preservation of existing Public Art, and for the Administration of the Public Art Program.

(2) The Executive Director shall provide an annual report to the Board of Port Commissioners on the provision of on-site art installations and arts services, programs, facilities and amenities, and the use of all funds collected and deposited in the Public Art Account, including identification of all income, expenditures, and balances of each of the accounts in the fund during the prior fiscal year and its recommendations for proposed expenditures for the subsequent fiscal year. Upon receipt of such report, the Board of Port Commissioners shall authorize expenditures from the Public Art Account.

Section 5. Administration.

a. Implementation Responsibility

The Board hereby delegates to the Director of Communications responsibility for the implementation of this Article.

b. Public Art Committee

The Executive Director shall appoint a Public Art Committee (PAC), subject to approval by the Board of Port Commissioners, to provide review responsibility for the provisions of this Ordinance and to advise the Port on the Public Art Program. The PAC shall:

(1) Promulgate Public Art program policies and implementation procedures for adoption by the Board of Port Commissioners.

(2) Prepare the annual Public Art Plan for approval by the Board of Port Commissioners. The plan shall include, but not be limited to, a prioritized list of public art projects to be commenced during the current fiscal year and a budget for each project.

c. Artist Selection Panel

An Artist Selection Panel shall be appointed by the PAC, on a project-by-project basis, to recommend appropriate artists and artwork

according to the criteria and procedures set forth in the Administrative Procedures.

(1) The Artist Selection Panel functions in an advisory capacity to the PAC.

(2) The PAC reviews recommendations by the Artist Selection Panel, making further recommendations to the Board of Port Commissioners.

(3) All final decisions and approvals concerning the acquisition of artwork rest with the Board of Port Commissioners.

ARTICLE II. POLICY AND PROCEDURE FOR REVIEW AND ACCEPTANCE OF GIFTS AND LOANS OF PUBLIC ART

Section 1. Summary.

When gifts of works of Public Art are proposed for placement on Port property within the jurisdiction of the Port of Oakland, an artwork proposal is submitted by the potential donor for review by the Port. This procedure also applies to works of Public Art proposed for long-term loan to the Port. The objectives of this policy are to:

a. Provide uniform procedures for the review and acceptance of gifts and loans of works of Public Art to the Port of Oakland.

b. Maintain high artistic standards for works of Public Art located in the jurisdiction of the Port.

c. Acquire works of Public Art that contribute and enhance the Port's Public Art Collection.

d. Insure that the works of Public Art is adequately maintained.

e. Facilitate planning for the placement of works of Public Art within the jurisdiction of the Port of Oakland.

f. Vest in a single Port division the responsibility for insuring the management and maintenance of the Port's public works of Public Art.

The Program Administrator is responsible for implementation of this Article.

The review of proposed gifts is conducted by a Gifts Review Panel appointed by the PAC. The Gifts Review Panel is comprised of three to five arts professionals (artists, museum curators, art historians, conservators) and three representatives of Port revenue division staff.

The PAC reviews all recommendations of the Gifts Review Panel regarding proposed gifts and loans of works of Public Art. Following PAC

review, the Program Administrator makes a recommendation for acceptance or rejection of the proposed gift to the Port Commission for review and action.

Funds to maintain works of Public Art in the Port's collection are limited. Therefore, in accepting a gift, the Port requires that the donor sign a maintenance agreement or establish a maintenance endowment to insure an adequate quality of care for the work of Public Art.

Section 2. Acceptance Conditions.

a. The Port will consider gifts of works of art for placement on Port property and locations under the jurisdiction of the Port with the understanding that no Port funds will be required for production, sitting, installation or maintenance of the work of Public Art.

b. No gift of an work of Public Art will be accepted by the Port until all funds required for production, sitting, installation and maintenance of the work of Public Art have been secured by the donor.

c. The Port will be the owner of the work of Public Art and reserves the right to move or alter the work to meet public safety or other Port concerns.

d. The Port will consider the following types of proposals for works of Public Art intended for placement a public site under the Port's jurisdiction:

(1) A donor's offer of an already completed work of art.

(2) Art by a specific artist or artists.

(3) A donor's offer to commission a work of Public Art by means of a public competition as described in the Public Art Program Implementation Guidelines.

Section 3. Review Process.

a. The donor discusses the nature of the gift and the Port procedures with the Program Administrator. Working with Port division staff, the donor develops a proposal for review by the Gifts Review Panel.

b. The Program Administrator will review each offer of a work of Public Art with Port division staff to determine whether it meets initial criteria as defined in this Article.

c. Each proposed gift of art is reviewed by the Gifs Review Panel on the basis of the criteria established below. Evidence that all issues are satisfactorily addressed will be required from the donor before a recommendation for acceptance or rejection of the gift is made.

d. Before presenting the Gifts Review Panel recommendation to the PAC, the Program Administrator may request further and more detailed information to be considered at additional review sessions. The PAC also may attach conditions to its recommendation of acceptance.

e. Based on the recommendation of the PAC, the Program Administrator recommends acceptance or rejection of the gift to the Port Commission.

f. The Port will accept donated works of Public Art only when accompanied by a legal instrument of conveyance of title, enumerating any conditions of the gift that the Port has agreed to accept, and the appropriate warranty of originality.

g. In general, gifts will be accepted without restrictions as to future use or disposition. Loans and temporary displays of a work of Public Art are not considered gifts, for the purposes of this Article.

h. The Program Administrator will forward copies of the conveyance of title and the stated insurance value for gifts of a work of Public Art to the appropriate Port divisions. The stated value of any loaned work of Public Art will be provided to the Port's Risk Management Office.

i. If the gift of art is accepted, the division under whose jurisdiction the work of Public Art will be placed is responsible to oversee the installation of the work of Public Art.

Section 4. Placement.

If a site for the work of Public Art has not been identified by the donor or if the site is deemed inappropriate in accordance with the criteria listed below, the placement of works of art will be determined by the PAC in consultation with Port division staff.

Section 5. Costs.

All costs of the proposed donation of art, including production, acquisition, sitting, installation, and maintenance must be provided by the donor and be detailed in the proposal.

Section 6. Timeline.

If a proposed gift is not completed within the timeline originally established, or if significant changes in content, presentation, or financing of the gift of art occur, the gift must be reviewed again by the panel. The Port is authorized to request that a proposal be resubmitted.

Section 7. Legal.

Consideration will be given to the proposed terms of donation, legal title, copyright authenticity, artist right to reproduce, liability and other issues as appropriate.

Section 8. De-Accession.

Gifts of works of Public Art will be reviewed on a regular basis and de-accessioned if necessary, through steps provided in Article III of this Ordinance and in accordance with national standards for de-accessioning works of art.

Section 9. Exceptions.

a. Gifts of State

(1) Gifts of State presented to the Port by foreign governments are exempt from the provisions of this Article and may be accepted by the Port Commission.

(2) Appropriate recognition and publicity will be the responsibility of the Program Administrator.

b. Temporary Exhibitions in Port-Managed Facilities

(1) The Port shall control the content and arrangement of all temporary exhibitions, and reserves the right to reject any part of an exhibition or to change the manner of display if the items to be exhibited are contrary to the Port's community responsibility.

(2) Every aspect of the exhibition must meet the Port's standards of quality, as defined in the Public Art Program Administrative Procedures.

(3) Artwork of exhibitions loaned for display on Port property for 60 (sixty) days or less will not be subject to the standard review process.

(4) Review and approval are the responsibility of the Program Administrator and the division with jurisdiction over the space where the work of Public Art is exhibited. It is understood that all decisions will be based on the standards recommended in this document.

(5) During the period of time that a work of art is displayed on Port property, the owner of the work of art must provide one of the following documents:

- (i) An insurance rider covering the specific work of art for the entire negotiated display time OR

- (ii) A signed waiver holding the Port harmless in the event of vandalism, damage, or theft.

Section 10. Donor Submittal Requirements.

The donor must submit a cover letter explaining why she/he is offering the gift of artwork to the Port.

a. Aesthetic Quality

- (1) Written narrative proposal with detailed description of artwork.

- (2) Information on the context of the artwork, provenance, history (where it comes from and where it has been previously displayed, if at all).

- (3) Detailed drawings of the site plan, elevation and section view of artwork, as appropriate.

- (4) Photographs, sketches, and/or model of the artwork.

- (5) Dimensions, materials, and colors.

b. Intrinsic Value

- (1) Background information and credentials of the artist.

- (2) Other examples of the artist's work.

- (3) A letter of authentication from the artist, stating that it is her/his own work.

- (4) Statement of the current value of the artwork prepared by a certified art appraiser.

- (5) A valid, signed contract between the donor and the artist that guarantees full payment for artwork by the donor, as appropriate.

c. Installation

- (1) Construction and installation method.

- (2) Power, plumbing or other utility requirements.

- (3) Qualifications and insurance coverage of the contractor installing the artwork.

- (4) Written commitment that the donor will cover all costs associated with installation of the artwork.

(5) Budget indicating cost of installation.

d. Maintenance

(1) A maintenance plan prepared by a qualified conservator.

(2) Written permission from the artist or artist's estate for a qualified conservator to conserve the artwork when necessary.

Section 11. Panel Review Criteria.

a. Aesthetic Quality

(1) Does the proposed gift of art have strong artistic merit?

(2) Strong, inherent aesthetic quality as measured against the recognized standards of excellence in the field.

(3) Qualifications, credentials, and other pertinent information on the artist.

(4) Warranty of originality of the artwork (artwork must be an original creation or limited edition)

(5) Durability and craftsmanship of the artwork.

b. Site and Environmental Considerations

(1) If a site for the artwork has been identified by the donor, is the relationship between the site and the artwork in the best interest of both?

(2) Appropriateness of artwork scale to the proposed site.

(3) Appropriateness of artwork to other aspects of its surroundings.

(4) Impact on ecology.

c. Relationship to the Port's Art Collection

(1) How is the proposed gift compatible or incompatible with the Port of Oakland's public art collection?

(2) Contribution to the diversity and breadth of the Port's art collection.

(3) Current representation of the artist in the Port's art collection.

d. Liability and Safety Considerations

(1) How susceptible is the artwork to vandalism and safety hazards?

(2) Potential safety hazards and how they are being addressed.

(3) Potential for graffiti and other vandalism and how it is being addressed.

(4) Special insurance requirements, if any.

e. Durability

(1) How has the donor provided for maintenance during the lifetime of the artwork?

(2) Expected life span of artwork in a public, non-archival exhibition setting.

(3) Durability of similar artworks constructed of the same materials.

(4) Environmental conditions and suitability of artwork materials to the conditions of its proposed site.

(5) Seismic safety considerations through report prepared by a licensed engineer.

(6) Adequate attention to unusual conditions of the site, such as poor drainage, steep slope, etc.

f. Maintenance

(1) Are the maintenance needs of the artwork reasonable and can they be adequately managed by the Port?

(2) On-going maintenance requirements and cost.

(3) Provision of maintenance funds or maintenance agreement by the donor.

(4) Artwork installation and removal specifications.

(5) Written permission from the artist or artist's estate for a qualified conservator to conserve the artwork when necessary.

(6) Written permission granted by the artist or artist's estate for removal of the work as a result of safety emergencies and changes in the future use of the site.

Section 12. Administration.

Implementation Responsibility

The Board hereby delegates to the Director of Communications responsibility for the implementation of this Article.

ARTICLE III. POLICY AND PROCEDURES FOR THE DE-ACCESSIONING OF PUBLIC ART

Section 1. Purpose.

This ordinance is enacted to provide Provision of procedures for periodic review and evaluation by the Port of Oakland of the Port's Collection of Public Art.

Section 2. De-Accessioning Policy.

De-accessioning is a procedure for the withdrawal of a work of Public Art from public exhibition for an indefinite duration. De-accessioning must be cautiously applied to avoid the influence of fluctuations of taste and the premature removal of a work of Public Art from the collection.

De-accessioning may occur only after a careful and impartial evaluation of the work of Public Art, and may be accomplished through storage or loan of the work of Public Art, or on a permanent basis through several methods of disposition available. Since artworks are acquired by the Port as a result of a thorough review process by impartial peer panels -- based on the quality of the artwork and the value of the work to the collection as a whole -- deaccessioning may be considered only after ten years have elapsed from the date of installation of a permanent work of Public Art, and five years after acceptance of a loan of work of Public Art subject to review by the Port Attorney for compliance with acquisition and/or deaccession covenants from funding and/or lending sources, if any.

Section 3. Eligible Works Of Public Art.

Works of Public Art eligible for consideration for de-accession through this Article include:

a. Works of Public Arts purchased or commissioned in accordance with Article I.

b. Gifts of works of Public Art accepted by the Port in accordance with Article II.

c. All other works of Public Art in the Port's Collection of Public Art purchased separately by Port divisions or received as gifts prior to the passage of this ordinance. Port evaluation of a work of Public Art may be requested by the division under whose jurisdiction the work of Public Art is located or may be initiated as an advisory action by the Board of Port Commissioners.

Section 4. Deaccession Procedure.

a. At least a minimum of once every five years the Director of Communications will review the Port's Collection of Public Art.

b. The Director of Communications shall designate an advisory panel comprised of visual art professionals (artists, museum curators, art historians, conservators) to review specific items proposed for de-accession and make recommendations to the Board of Port Commisisoners about the disposition of these works.

c. The De-accession Advisory Panel may consider the de-accessioning of works of Public Art for one or more of the following reasons:

(1) A work of Public Art is not, or is only rarely, on display because of lack of a suitable site.

(2) The condition or security of the work of Public Art cannot be reasonably guaranteed in its present location.

(3) The work of Public Art has been damaged or has deteriorated to the point that it can no longer be represented to be the original work of art.

(4) The work of Public Art has been damaged and repair is impractical or unfeasible, or the cost of repair or renovation is excessive in relation to the original cost of the work.

(5) The work of Public Art endangers public safety.

(6) Significant changes in the use, character or actual design of the site require a re-evaluation of the relationship of work of Public Art to the site.

(7) The work of Public Art has been determined to be of inferior quality relative to the quality of other works in the collection, or has been determined to be incompatible with the rest of the collection.

(8) The Port wishes to replace the work of Public Art with a work of more significance by the same artist.

(9) The work of Public Art requires excessive maintenance or has faults of design or workmanship.

Section 5. Sequence Of Action To De-Accession.

a. The Communications Division appoints a De-accession Advisory panel.

b. The De-Accession Advisory Panel and/or staff determines that a work of Public Art meets one of the criteria listed above.

c. The Communications Division staff prepares a report that indicates:

(1) Any restrictions that may apply to this specific work, based on contract review.

(2) An analysis of the reasons for de-accessioning.

(3) Options for storage or disposition of the work.

(4) Appraised value of the work, if obtainable.

d. The De-Accession Advisory Panel reviews the report at its next scheduled meeting. The panel may seek additional information regarding the work from the artist, art galleries, curators, appraisers or other professionals prior to making a recommendation to the Board of Port Commissioners.

e. A recommendation for action is sent to the Board of Port Commissioners.

f. The Board of Port Commissioners considers the recommendation at a regularly scheduled meeting.

g. Upon confirmation of its recommendation, the Communications Division will consider the following actions (in order of priority):

(1) Sale or trade:

(i) Sale through auction, art gallery or dealer resale, or direct bidding by individuals, in compliance with Port and city law and policies or requirements governing surplus property and any limits to which bonds are subject.

(ii) Trade through artist, gallery, museum, or other institutions for one or more other work(s) of Public Art(s) of comparable value by the same artist.

(2) Indefinite loan to another governmental entity.

(3) Destruction of work deteriorated or damaged beyond repair at a reasonable cost, and deemed to be of no or only a negligible value, in accordance with national standards for conservation and deaccession.

(4) Re-donation, sale or other arrangement agreed upon with the donor or artist at the time of the Port's acquisition of such work of Public Art.

Section 6. Restrictions.

No works of art shall be sold or traded to members or staff of the Port, consistent with Port conflict of interest policies.

Section 7. Proceeds.

Proceeds from the sale of Public Art shall be deposited into the Public Art account for Public Art acquisitions. Any pre-existing contractual agreements between the artist or donor and the Port regarding resale will be honored.

Section 8. Administration.

Implementation Responsibility

The Board hereby delegates to the Director of Communications responsibility for the implementation of this Article.

ARTICLE IV. EFFECTIVE DATE.

This ordinance shall be effective sixty (60) days after adoption.