

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE RELATING TO THE REVIEW OF PUBLIC ART PROPOSALS, ESTABLISHING CRITERIA AND SELECTION PROCESSES FOR THE ACQUISITION, ACCEPTANCE, OR REMOVAL FROM THE ASHLAND PUBLIC ART COLLECTION**

Annotated to show deletions and **additions** to the code sections being modified. Deletions are **~~bold lined through~~** and additions are in **bold underline**.

**WHEREAS**, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop, 20 Or. App. 293; 531 P. 2d 730, 734 (1975); and

**WHEREAS**, the City of Ashland wishes to enhance the artistic vitality of the City through the placement of art in public areas; and

**WHEREAS**, processes and criteria for the acquisition and removal of public art are needed to govern the acquisition and removal of artworks from the Ashland Public Art Collection.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 2.01.005 [Purpose] is hereby amended to read as follows:

**2.17.005 Purpose**

The mission of the Public Arts Commission is to enhance the cultural and aesthetic quality of life in Ashland by actively pursuing the placement of public art in public spaces and serving to preserve and develop public access to the arts. The continued vitality of the arts in the City of Ashland is a vital part of the future of the city as well as of its citizens. The arts are an important part of the cultural and economic life of the entire community of Ashland and enrich the participants in the arts as well as those who observe them. Several organizations which exist in Ashland are active in the arts and provide leadership to the community on arts related matters. The creation of a Public Arts Commission for the City of Ashland

will assist those organizations, and other organizations and individuals, to make arts a more important part of the city's life. Recommendations from the Commission regarding the acquisition and placement of public art should be based upon accepted standards and guidelines as opposed to personal opinion. This chapter will create a Public Arts Commission and adopt standards and guidelines for selecting, commissioning, placing, maintaining, and removing public art.

**SECTION 2.** Section 2.01.008 [Definitions] is hereby added to read as follows:

**2.17.008 Definitions.**

- A. "Acquisition" means the inclusion of an artwork in the Ashland Public Art Collection by any means including direct purchase, commission or acceptance of a gift.
- B. "Artwork" means visual works of public art as defined herein.
- C. "Ashland Public Art Collection" means all public art acquired by the City by any means.
- D. "Capital improvement program (CIP)" means the city's program for advance planning of capital improvements.
- E. "City project" or "project" means any capital improvement project in an amount over \$25,000 paid for wholly or in part by the city of Ashland to purchase or construct any public building, decorative or commemorative public structure, sidewalk, or multi-use pathway construction, park facility construction, or any portion thereof, within the limits of the city of Ashland. "City project" or "project" does not include public utility improvements, (e.g. electric, water, sewer, or stormwater), LID improvements, including but not limited to streets, sidewalks and associated improvements, property acquisition, earth work, emergency work, minor alterations, rehabilitation, minor or partial replacement, remodeling or ordinary repair or maintenance necessary to preserve a facility. Notwithstanding the above limitation, the Council or responsible contracting officer may include any new city street or utility project (limited to water, sewer and storm water projects) in an amount over \$25,000 as a city project under this article, by either vote of the Council or inclusion in the contract solicitation documents prepared by the responsible contracting officer.
- F. "Commission" means the Ashland Public Arts Commission created by AMC 2.17.010, consisting of seven members appointed by the mayor and confirmed by the Council.
- G. "Eligible funds" means a source of funds for projects from which art is not precluded as an object of expenditure.
- H. "Participating department" means the department that is subject to this article by its sponsorship of a city project.
- I. "Percent for art" means the program established by this article to set aside a percentage of the total cost of city projects for public art.
- J. "Public art" means all forms of original works of art in any media that has been planned and executed with the specified intention of being sited

or staged on City Property or on property owned or controlled by the City of Ashland, usually outside and accessible to the public.

K. "Public art account" means the city of Ashland public art account in the city budget established by this article into which all moneys donated, appropriated or derived pursuant to the percent for art program shall be deposited. Funds within the public art account shall be utilized for the purposes outlined in this article.

L. "Removal" means the exclusion of an artwork from the Ashland public art collection by the removal and disposal through any available means, such as relinquishing title through sale, gift or destruction.

M. "Selection Panel" means a group of individuals selected by the Commission that will evaluate the proposals associated with a particular project in a public meeting.

N. "TOT Funds" means the portion of transient occupancy tax funds allocated for public art.

O. "Commercial Development Fee" means funds deposited by a commercial developer into the Public Art account when the developer prefers not to incorporate public art into the project and follow the public art process for art acquisition and approval.

P. "Total cost" means the entire amount of the city's financial contribution toward construction and maintenance of a project.

**SECTION 3.** Section 2.17.100 through Section 2.17.180 are hereby added to read as follows:

**2.17.100 Process for acquiring public art.**

A. **General.** The Public Art Commission will call for entries by issuing a request for proposal, a request for qualification or by invitation. The call for entries will include specific guidelines and criteria for the specific project. Every call for entry must comply with the City's public contracting rules.

1. **Acquisition.** Acquisition of public art will generally result from:  
a. The commissioning or purchasing of a work of public art by the city using city funds or donated funds, in accordance with public contracting laws and AMC Chapter 2.50; or  
b. An offer made to the city to accept a work of public art as a gift, donation, or loan.

2. **Removal.** Removal of public art may be by request or owing to some damage or destruction of the artwork.

B. **Selection Panel.** A selection panel, separate from the Public Art Commission, consisting of art professionals and enthusiasts, residents near the proposed site, community members, and city administrators will be chosen to evaluate the proposals received from artists. A different selection panel shall be chosen for each project by the Commission after the following notifications have been made:

1. An ad is placed in a newspaper of general circulation in the city,

2. Postcards are sent out to all property owners located within 300 feet of the proposed site, and

3. A notice is placed on the city's website.

The Commission shall pick the Selection Panel by examining applications received from interested parties.

C. Evaluation of Acquisition Proposals. Proposals which meet the minimum requirements set forth in the call for entries will be given to the Selection Panel for review. The proposals for acquisition shall be evaluated based upon criteria set forth in the call for entries at a public meeting. The Selection Panel will evaluate the proposals and make a recommendation to the Public Art Commission regarding which proposals to accept. The Commission shall forward that recommendation to the City Council for final selection. This ordinance does not exclude land use approval processes when required for the use or structure.

D. Removal and Disposal Process. Except as provided in AMC 2.17.140(B), neither the Council nor the Commission is bound to follow any particular process for removal and disposal of art in the Ashland Public Art Collection.

2.17.110 Review process for gifts or donations.

The Commission may solicit gifts and bequests of public art or funds to benefit the Ashland Public Art Collection. The Council shall decide whether to accept all such gifts of art work on behalf of the city and the Ashland Public Art Collection on its own motion or upon a recommendation by the Commission based on its own evaluation, or by recommendation of the Commission after the Selection Panel has evaluated the artwork using the guidelines in AMC 2.17.130 and the total cost over the life of the artwork.

All art works or funds shall be administered by the city in accordance with its terms. Funds donated to the Commission shall be placed in a special account to be used exclusively for the purposes of the Commission or as designated by the donor. Funds in this account may only be expended after they have been properly budgeted or approved by the city.

2.17.120. Public Art on Private Property.

Before public art can be placed on private property the Commission shall determine whether the site is appropriate for public art under the Site Selection criteria in AMC 2.17.130. If the site is found to be appropriate for public art, the City shall secure authorization to use and access the private property where the public art will be located before the acquisition process for public art is initiated. There shall be a written agreement or legal instrument, granting the City permission and control of the property so that the property can be used for public art purposes, including access for installation, maintenance and removal of the artwork. Public art can then be acquired for placement on private property by following the process for:

A. Acquisition in AMC 2.17.100, or

B. Gifts and donations in AMC 2.17.110.

## **2.17.130 Guidelines for recommendation by the Commission.**

### **A. Selection Guidelines for Works of Public Art.**

- 1. Quality. The artwork should be of exceptional quality and enduring value.**
- 2. Site. The artwork should enhance the existing character of the site by taking into account scale, color, material, texture, content, and the social dynamics of the location.**
- 3. History and Context. The artwork should consider the historical, geographical, and cultural features of the site, as well as the relationship to the existing architecture and landscaping of the site.**
- 4. Initial Cost. The total cost of the artwork, including all items related to its installation, should be considered.**
- 5. Maintenance and Durability. The durability and cost to maintain the artwork should be considered and quantified, particularly if the work is servicing, repainting, repairing or replacement of moving parts.**
- 6. Permanence. Both temporary and permanent art works shall be considered.**
- 7. Media. All forms of visual media shall be considered, subject to any requirements set forth by city ordinance.**
- 8. Public Liability. The artwork should not result in safety hazards, nor cause extraordinary liability to the city.**
- 9. Diversity. The artwork in the Ashland Public Art Collection should encourage cultural diversity.**
- 10. Commercial Aspect. The artwork shall not promote goods or services of adjacent or nearby businesses.**
- 11. Compliance. Artworks shall not violate any federal, state, or local laws, including specifically AMC Chapter 18.96.**

### **B. Guidelines for Site Selection.**

- 1. Ownership or Control. Public art should be placed on a site owned or controlled by the city, or there should be a written agreement or legal instrument, granting the City permission to use the property for public art purposes, including access for installation, maintenance and removal.**
- 2. Visual Accessibility. Public art should be easily visible and accessible to the public.**
- 3. Visual Enhancement. Public art should visually enhance the overall public environment and pedestrian streetscape.**
- 4. Pedestrian Accessibility. Public art should experience high levels of pedestrian traffic and be part of the city's circulation paths.**
- 5. Circulation. Public art should not block windows, entranceways, roadways or obstruct normal pedestrian circulation or vehicle traffic.**
- 6. Scale. Public art should not be placed in a site where it is overwhelmed or competing with the scale of the site, adjacent architecture, large signage, billboards, etc.**

**2.17.140 Standards for the Ashland Public Art Collection.**

**A. Acquisitions. The following minimum standards and criteria shall apply to the acquisition of artworks.**

**1. Artworks may be acquired by direct purchase, commission, gift or any other means.**

**2. Acquisition, whether by direct purchase, commission, gift, or otherwise, shall occur by a legal instrument of conveyance or other writing transferring title of the artwork to the City and clearly defining the rights and responsibilities of all parties.**

**3. The city shall obtain the rights of ownership and possession without legal or ethical restrictions on the future use of the artwork upon final acceptance of the artwork, except where expressly provided in the contract with the artist. The artists shall retain all rights and interests in the artwork except for the rights of ownership and possession.**

**4. The City shall only acquire artworks if: 1) the artist warrants that he will not make a duplicate of the artwork, or permit others to do so, without written permission by the City, and 2) the artist gives permission to the City to make a two-dimensional reproductions as long as all such reproductions provide the copyright symbol, name of the artist, title of the artwork, and the date of completion.**

**5. Complete records, including contracts with artists, shall be created and maintained for all artworks in the Ashland Public Art Collection.**

**B. Removal.**

**1. The Commission may recommend removal and/or disposal based on one or more of the following conditions. No public hearing is required for a removal recommendation.**

**a. The site for an artwork has become inappropriate because the site is no longer accessible to the public or the physical site is to be destroyed or significantly altered.**

**b. The artwork is found to be forged or counterfeit.**

**c. The artwork possesses substantial demonstrated faults of design or workmanship.**

**d. The artwork causes excessive or unreasonable maintenance.**

**e. The artwork is damaged irreparably, or so severely that repair is impractical.**

**f. The artwork presents a physical threat to public safety.**

**g. The artwork is rarely displayed.**

**h. A written request for removal has been received from the artist.**

**2. Council Removal Process.**

**a. On its own motion, or following receipt of a recommendation from the Commission the Council may remove and dispose of any artwork previously accepted into the Ashland Public Art Collection in their sole discretion.**

b. Acceptance or placement of donated art by the city does not guarantee continuous public display of the artwork regardless of physical integrity, identity, authenticity, or physical condition of the site.

c. Removal officially deletes the work from the city of Ashland Public Art Collection by a relinquishment of title to the artwork; thus, eliminating the city's obligation to maintain and preserve the artwork.

d. Notwithstanding the above, Artwork shall be disposed of in accordance with any specific terms for removal and disposal set forth in the contract with the Artist.

3. Removal and Disposal.

a. The city may donate the artwork to another governmental entity or a nonprofit organization.

b. A work that is deemed to have retained sufficient monetary value to warrant resale, shall be disposed of through a public sale, auction, or any other means as established by city ordinance.

c. Artworks removed from the Ashland Public Art Collection may be disposed of through any appropriate means, including the city's procedures for the disposition of surplus property.

C. Borrowing of Artworks.

1. The Commission may also recommend artworks be borrowed.

2. With the exception of ownership, the eligibility, review criteria, and procedure for borrowed works shall be the same as those established in this article for acquisition.

3. The borrowing of artworks shall be pursuant to written agreement between the city and the artist.

4. Nothing herein prohibits the city from securing other works of art or art exhibitions for display inside its facilities.

2.17.150 Maintenance of the Ashland Public Art Collection.

A. Except where expressly provided in a contract or warranty for public art the city shall be responsible for all maintenance of all artworks in the Ashland Public Art Collection.

B. Within the limitation of the city budget the city shall provide necessary and appropriate maintenance of the Ashland Public Art Collection, including, but not limited to, regular custodial care and landscape maintenance. Maintenance shall be performed in accordance with any special instructions or procedures necessary for the preservation of the work.

C. Any evidence of damage, deterioration, vandalism or theft of artworks in the Ashland Public Art Collection shall be immediately reported to the appropriate City Department. City staff shall keep the Commission and Council informed of damage to City property.

2.17.160 Parks commission.

The standards and procedures in this article are in addition to, not in derogation of, the Ashland parks commission review responsibilities for projects proposed in city parks. Nothing herein exempts public art projects

from compliance with all applicable federal, state, and local laws including, but not limited to, land development regulations and building code compliance.

**2.17.170 Development of guidelines.**

The Commission shall have the ability to establish further guidelines concerning its operations; however, only the criteria and processes of this ordinance will be legally binding.

**2.17.180 Creation, funding and use of Ashland public art account.**

**A. Establishment. The Council hereby establishes a separate account entitled the Ashland public art account to be reflected in the city budget. All funds donated, appropriated or generated for the purpose of public art acquisition and education shall be deposited in this account and used solely for such purposes, in accordance with this article and other applicable law. Funds generated pursuant to the Commercial Development Fee in lieu established in Chapter 18, as well as the Transient Occupancy Tax Resolution authorized in Chapter 4.24, and the Percent for Art dedication in this section shall all be deposited into the Ashland Public Art Account.**

**B. Permitted Purposes of Public Art Account. The public art account shall be used solely for the acquisition, placement, maintenance, and removal of artworks for inclusion in the Ashland Public Art Collection and for art education purposes, such as community outreach presentations and workshops, in accordance with the provisions of this article and other applicable law.**

**C. Requirement for Dedication of a Percent for Art. Any city official or employee who authorizes or appropriates expenditures on behalf of a participating department for a city project shall, to the degree that there are eligible funds, include within the budget for the project a monetary contribution for the public art account equal to one-half percent (0.5%) of the total cost of the project.**

**1. One-half percent (0.5%) of the total cost of a qualifying city project shall be dedicated to the public art account. Such funds shall be deposited into the public art account by the city official or employee acting on behalf of the participating department no earlier than the time that budgeted funds are encumbered for construction of the city project and no later than final inspection of the completed city project.**

**2. The participating department shall consider the siting of public art as part of the design and engineering phase of any city project. If costs are incurred by the participating department to comply with this article requirement prior to transfer of the one-half percent (.5%) dedication for the city project to the public art account, the participating department may deduct such costs (not to exceed one-half percent) from the one-half percent (.5%) dedication at the time such funds are transferred.**

**D. Restricted Funds.** If funding for a particular city project is subject to legal restrictions that preclude public art as an object for expenditure, the portion of the city project that is funded with the restricted funds shall be exempt from the dedication requirements of this article.

**E. Phased Projects.** As a general rule, where a city project will be constructed in phases, the one-half percent (0.5%) dedication shall be applied to the estimated total cost of each phase of the city project at the time that funds for the phase are appropriated and encumbered. However, nothing in this section prevents the Council from deciding to hold or set aside all or part of the entire dedication from the funds of a particular phase, as the Council deems appropriate. In determining when to hold or set aside the funds for a phased project, the city will consider an overall public art plan for the project to ensure that art is not located on a piecemeal basis with phase construction.

**F. Monetary contributions for public art shall be deposited in separate accounts within the public art account if separate accounting is deemed appropriate by the Administrative Services Director (Finance) or is required by law.**

**G. Monetary contributions or appropriations made other than through the percent for art program shall be deposited in the public art account and may be dedicated to or earmarked for a specific education program or work of art, subject to acceptance by the Council.**

**H. Disbursements from the public art account shall be made only after authorization of the City Administrator or the Administrative Services Director (Finance), and shall be made according to this article and other applicable city ordinances, including but not limited to the public contracting code (AMC Chapter 2.50).**

**I. The Council may adopt by resolution case specific waivers or guidelines for administration of the percent for art program, including case-by-case waivers of the required dedication set forth herein based on the availability of public funds, as well as any other matters not specifically addressed herein and appropriate or necessary to the administration of the program.**

**SECTION 4. Severability.** If any section, provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses, or paragraphs of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 5. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (ie: Sections 4-5) need not be codified.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
John W. Morrison, Mayor

Reviewed as to form:

\_\_\_\_\_  
Richard Appicello, City Attorney