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Title: An Ordinance to Add a New Section 1:238 to Chapter 8 (Organization of Boards and Commissions) of Title I and to Add a New Chapter 24 to Title I of the Code of the City of Ann Arbor (Public Art Ordinance) (Ord No. ORD-07-47)

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11/5/2007	2	City Council	Adopted on Second Reading	Pass
10/15/2007	1	City Council	Approved on First Reading	Pass

An Ordinance to Add a New Section 1:238 to Chapter 8 (Organization of Boards and Commissions) of Title I and to Add a New Chapter 24 to Title I of the Code of the City of Ann Arbor (Public Art Ordinance) (Ord No. ORD-07-47)

In their Strategic Plan for 2004-2005 the Commission on Art in Public Places (CAPP) advanced the concept of a sustainable source of revenue to support public art in the Ann Arbor community. In the spring of 2006 staff shared with council a conceptual outline of options and approaches to creating a funding source for art in public places as a percent of capital projects. Council endorsed such an approach for City projects and since that time staff has worked with representatives of CAPP in preparing the attached ordinance that establishes this new program.

The ordinance provides that:

- All capital improvement projects funded wholly or partly by the city will include funds for public art equal to 1% of the construction costs, to a maximum of \$250,000 per project.
- Funds for public art that are included as part of a General Fund capital project may be used to fund public art sited with the project or, if not expended for that project, may be pooled in a separate public art fund within the General Fund.
- Funds for public art that are included as part of capital project financed by other than the City's general fund may be used to fund public art sited with the project or, if not expended for that project, may be pooled in a separate public art fund within that fund.
- Public art funds that are held within a city fund other than the general fund shall be expended only on projects that are related to the purposes of that fund.

In discussion with CAPP, it was noted that the program must recognize the need for ongoing maintenance of public art. As a result, the ordinance provides that normal maintenance of the art will

be provided by the Services Area responsible for the location where the art is installed. Additionally, funds in pooled public art funds may be used for extraordinary maintenance, repair or refurbishment, including structural reconstruction, and for relocation, alteration and removal of public art.

CAPP also recognized that with this sustainable approach to funding public art comes the need to provide staff support for the efforts of the oversight agency. The ordinance provides that pooled public art funds may be used to fund the administration of the city's public art program and projects. This provision would allow the City to assign staff or contract for staff support to the oversight body.

The ordinance provides for a new Ann Arbor Public Art Commission, which would replace CAPP and whose members would be appointed by the mayor with the approval of council. The Ann Arbor Public Art Commission would serve as the oversight body for the public art program.

Adoption of the ordinance at this time will permit the calculation of public art funds based on the FY 2008 adopted capital budget.

With adoption of these ordinance provisions, Ann Arbor will join over 130 other communities across the country that have recognized the value of public art in improving the aesthetic quality of public spaces, providing cultural and recreational activities, contributing to the local heritage, stimulating economic activity and promoting the general welfare of the community.

Prepared by: Sue McCormick, Public Services Administrator
Reviewed by: Sue McCormick, Public Services Administrator
Approved by: Roger W. Fraser, City Administrator
ORDINANCE NO. 07-47

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PUBLIC ART

AN ORDINANCE TO ADD A NEW SECTION 1:238 TO CHAPTER 8 OF TITLE I AND TO ADD A NEW CHAPTER 24 TO TITLE I OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That a new Section 1:238 be added to Chapter 8 of Title I of the Code of the City of Ann Arbor to read as follows:

1:238. Ann Arbor Public Art Commission.

(1) *Intent.* The Ann Arbor Public Art Commission is established to serve as the oversight body provided for in chapter 24, the Public Art Ordinance.

(2) *General.*

- (A) The Ann Arbor public art commission shall consist of nine (9) members nominated by the mayor and approved by the city council. Members shall serve for three-year terms. In making appointments of members of the Ann Arbor public art commission, the mayor and city council shall appoint persons who, insofar as possible, have experience and/or an interest in the placement, creation, or design of public art. The terms of office of the first Ann Arbor public art commission members appointed hereunder shall be fixed by the mayor and city council so that the terms of three (3) members will be for one (1) year, three (3) members will be for two (2) years, and three (3) will be for three (3) years. After the initial commission is formed, all members thereafter will be appointed for three-year terms.
- (B) The city administrator or her/his designee shall be a nonvoting ex-officio member of the commission and provided adequate support staffing to the commission.
- (C) The Ann Arbor public art commission may establish subcommittees, as appropriate, to assist it relative to its powers and duties under the provisions of chapter 24, provided, that all recommendations to the city council shall be made by the commission and not by a subcommittee of the commission. The commission may, by majority vote of the members, appoint persons who are not members of the Ann Arbor public art commission to be non-voting members of such subcommittees.

(3) *Powers and duties.* The Ann Arbor public art commission shall have the powers and duties as set forth more specifically in Chapter 24.

Section 2. That a new Chapter 24, entitled Public Art, be added to Title I of the Code of the City of Ann Arbor to read as follows:

Chapter 24 PUBLIC ART

1:830. Title.

This chapter shall be known as the Public Art Ordinance of the City of Ann Arbor.

1:831. Intent and Purpose.

The state of Michigan has recognized, through the enactment of The Faxon-McNamee Art in Public Places Act (MCL 18.71 et. seq.), the importance of promoting art in government spaces and facilities. City council has determined that the creation of public art will improve the aesthetic quality of public spaces and structures, provide cultural and recreational opportunities, contribute to the local heritage, stimulate economic activity and promote the general welfare of the community.

City council recognizes the responsibility of government to foster the development of culture and the arts. It is therefore declared to be municipal policy that a portion of expenditures for capital improvement projects be devoted to the purchase and maintenance of public art.

1:832. Definitions.

The following words are defined for purposes of this chapter.

Capital improvement project means any construction or renovation of any public space or facility including buildings, parks, recreation areas, parking facilities, roads, highways, bridges, paths, sidewalks, streetscape improvements and utilities. This definition includes only those projects designed to create a permanent improvement or betterment, and does not include projects that are primarily for the purpose of ordinary maintenance or repair. This definition also does not include capital improvement projects that are below-grade storm water detention facilities.

Construction costs means all costs necessary to complete a capital improvement project, excluding costs allocated for:

- (1) the acquisition of real property;
- (2) soil remediation;
- (3) demolition;
- (4) the issuance of debt;
- (5) permits and administrative fees;
- (6) fixtures, equipment and furnishings;
- (7) contingencies.

Initial project estimate means the amount calculated as the construction costs for a capital improvement project at the time the project is first authorized in a capital project budget.

Public art means works of art created, purchased, produced or otherwise acquired for display in public spaces or facilities. Public art may include artistic design features incorporated into the architecture, layout, design or structural elements of the space or facility. Public art may be any creation, production, conception or design with an aesthetic purpose, including freestanding objets d'art, sculptures, murals, mosaics, ornamentation, paint or decoration schemes, use of particular structural materials for aesthetic effect, or spatial arrangement of structures.

1:833. Art funding requirements for capital improvement projects.

(1) Except as otherwise provided in this section, all capital improvement projects funded wholly or partly by the city shall include funds for public art equal to one percent (1%) of the construction costs identified in the initial project estimate, up to a maximum of \$250,000 per project. Where a capital improvement project is only partly funded by the city, the amount of funds allocated for public art shall be one percent of that portion of the project that is city-funded, up to a maximum of \$250,000 per project. All appropriations for capital improvements falling within the provisions of this chapter shall be deemed to include funding to implement the requirements of this section 1.

(2) Where federal or state grants are to be used to fund a capital improvement project, those grants shall, to the extent possible, be treated as subject to the public art funding requirements of this chapter. Where the terms of the grant do not forbid it, the grant application shall include a request for public art funds in the same amount as for city-funded projects under the terms of this chapter. If a grant does not include funds specifically earmarked for public art, any grant funds received shall be used to fulfill the public art requirements of this chapter, unless such use is prohibited by the terms of the grant.

(3) A capital improvement project funded by special assessments or improvement

charges is not subject to the requirements of subsection (1) of this section.

(4) The requirements of subsection (1) of this section shall not apply to a capital improvement project or to a portion of a capital improvement project funded with funds that do not permit an expenditure for public art, whether by law or by restrictions placed by the source of the funding, and the requirements of subsection (1) shall be subject to any other restrictions imposed by law or by the source of the funding.

1:834. Inclusion of public art as part of a capital improvement project; pooling of funds for public art; use of pooled funds.

(1) Funds for public art that are included as part of a capital improvement project financed from the city's general fund may be used as part of that capital improvement project for the creation, purchase, production or other acquisition of art incorporated as a part of the capital improvement project, including art located on the site where the project is located.

(2) Funds for public art that are included as part of a capital improvement project financed from the city's general fund may instead be pooled in a separate public art fund within the General Fund.

(3) Funds for public art that are included as part of a capital improvement project financed from a city fund other than the city's general fund shall be accounted for within that fund and may be used as part of that capital improvement project for the creation, purchase, production or other acquisition of art incorporated as a part of the capital improvement project, including art located on the site where the project is located.

(4) Funds for public art that are included as part of a capital improvement project financed from a city fund other than the city's general fund may instead be pooled in a separate public art fund within that fund. Public art funds that are held within a city fund other than the general fund shall be expended only on projects that are related to the purposes of that fund.

(5) Funds in pooled public art funds may be used for the creation, purchase, production or other acquisition of art for display in public spaces or facilities; for extraordinary maintenance, repair or refurbishment, including structural reconstruction, and for relocation, alteration and removal of public art.

1:835. Disbursement of public art funds.

(1) Funds for public art that are included as part of a capital improvement project or that are in a pooled public art fund may be used for the purposes identified in section 1:834.

(2) Funds for public art that are included as part of a capital improvement project or that are in a pooled public art fund also may be used to fund the administration of the city's public art program and projects, including staff time.

(3) Funds for public art that are included as part of a capital improvement project or that are part of a pooled public art fund may be not be transferred to any other fund, encumbered or utilized for any purpose except the purposes specifically set forth in this chapter.

(4) Contracts, including but not limited to those for the creation, production, purchase or other acquisition of public art, and to install, maintain, alter, repair, refurbish, relocate or remove public art, shall be processed and approved in accordance with all applicable city requirements.

1:836. Ownership and maintenance of work.

(1) No work of art shall be considered for acquisition under this chapter without an estimate for future maintenance costs.

(2) Routine maintenance of public art shall be provided for and funded by the service area responsible for maintenance of the facility or space where the art is located. Routine maintenance shall include periodic cleaning, regular mechanical maintenance, operational costs and other necessary upkeep resulting from normal use. Funds for extraordinary maintenance or refurbishment, including structural reconstruction, shall be drawn from the public art funds. No extraordinary maintenance, repair, relocation or alteration of public art shall be undertaken without prior written consent of the oversight body.

(3) All art acquired pursuant to this chapter shall be the sole property of the city unless an alternative arrangement is recommended by the Oversight Body and approved by city council.

1:837. Oversight Body.

(1) The oversight body shall be the Ann Arbor Public Art Commission as established by section 1:238 of chapter 8.

(2) The oversight body shall:

- (A) Promulgate guidelines, subject to the approval of city council, to implement the provisions of this chapter, including procedures for soliciting and selecting public art and for determining suitable locations for public art;
- (B) By April 1 of each year, submit to city council a plan detailing potential projects and desirable goals to be pursued in the next fiscal year;
- (C) Make determinations, subject to the approval of the city administrator, for each proposed project in the capital improvement program as to whether it is eligible for public art funding under this chapter and, if so, calculate the total construction costs of the project and the total amount of art funding required;
- (D) Make recommendations, subject to the approval of the city administrator, regarding disbursement of public art funds to acquire, produce, install, maintain, alter, relocate or remove public art;
- (E) Raise funds above and beyond the funds for public art that are included as part of a capital improvement project or that are in a pooled public art fund, interact with donors of funds or art works on behalf of the city, and foster public/private partnerships to support public art;
- (F) Promote awareness of public art;
- (G) Present an annual report to city council within sixty (60) days after the end of each fiscal year containing:
 - (i) A report on the status of all public art incorporated into or funded by capital improvement projects in progress or completed during the preceding fiscal year;
 - (ii) A maintenance report on each work of public art presently under city management detailing maintenance costs for the preceding fiscal year, anticipated maintenance costs for the next fiscal year, and any significant future maintenance concerns, including prioritized recommendations for the maintenance, repair or renovation of particular works;

- (iii) A review of the city's public art with regard to the purposes stated in this chapter;
 - (iv) A report on the oversight body's efforts to promote awareness of public art;
 - (v) A report on donations of art and where such art was placed;
 - (vi) A report on additional funds raised and how such funds were used; and
 - (vii) Any other matter of substantial financial or public importance relating to the public art in the city.
 - (H) Perform any related duty delegated by city council; and
 - (I) Provide advice to and assist both potential donors of art and other governmental entities regarding possible public locations for placement of art when such art cannot be placed on any city property or incorporated into a capital project of the city.
- (3) On an annual basis, the city administrator shall provide the oversight body with information regarding the authorized capital projects budget for that fiscal year, including information regarding the dollar amounts included in capital improvement projects for public art and information regarding the dollar amounts available in the pooled public art funds. On an annual basis, following the annual audit of city funds and financial report to city council, the city administrator will provide the oversight body with an update regarding the authorized capital improvement projects and the pooled public art funds, based on the audit.

Section 3. That this ordinance shall take effect on the tenth day following legal publication.