

2019 JUN 13 PM 4:49

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13562 C.M.S.

---

**ORDINANCE AMENDING AND RESTATING THE PERCENT FOR PUBLIC ART ORDINANCE NO. 11086 C.M.S. TO CLARIFY THE DUTIES MEMBERSHIP AND APPOINTMENT OF THE PUBLIC ART ADVISORY COMMITTEE AND ITS RELATIONSHIP TO THE CULTURAL AFFAIRS COMMISSION, FORMERLY KNOWN AS THE OAKLAND ARTS COUNCIL**

**WHEREAS**, in 1980 the City Council adopted Ordinance No. 9969 C.M.S. which established the Oakland Arts Council to develop and foster support for the arts and humanities throughout the City of Oakland; and

**WHEREAS**, on February 28, 1989 the Oakland City Council adopted Ordinance No. 11086 C.M.S., The Percent for Public Art Ordinance, which (1) authorized the allocation of 1.5% of the City's capital improvement projects costs for the commissioning of public art works and artists' services in the construction of public works, (2) established a method for calculating public art appropriations of capital projects, (3) established a public art project account, (4) established a method of administering the public art program, and (5) established general guidelines for the administration of the public art program; and

**WHEREAS**, the Percent for Public Art Ordinance also established a Public Art Advisory Committee as 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 Oakland Arts Council the sites, scope of project, artworks and artists for the public art projects"; and

**WHEREAS**, in 1991 the City Council passed Ordinance No. 11323 C.M.S. rescinding Ordinance No. 9969 and establishing the Cultural Affairs Commission; and

**WHEREAS**, the Public Art Advisory Committee has operated independently of the Cultural Affairs Commission, taking on some of the responsibilities of the Cultural Affairs Commission outlined in the Percent for Art Ordinance during the Commission's hiatus; and

**WHEREAS**, staff is introducing companion legislation in order to redefine the duties, membership, and quorum of the Cultural Affairs Commission, and to elevate the Public Art Advisory Committee from a "subcommittee" of the Cultural Affairs Commission to an independent committee; and

**WHEREAS**, staff recommends that the City Council formally establish the Public Art Advisory

Committee as an independent City Committee advising the Mayor, City Council, and the City Administrator on matters pertaining to the public art program and public art funded by the City or located on City property and in the public right of way, including on property owned by other public agencies such as Caltrans and Bay Area Rapid Transit (BART); and

**WHEREAS**, staff recommends, consistent with national best practices, that the bodies have one member in common to ensure that the members of each body understand and respect the advisory process of the other and the Public Art Advisory Committee and the Cultural Affairs Commission can function harmoniously;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and hereby adopts and incorporates them into this ordinance.

**SECTION 2.** Ordinance No. 11086 C.M.S. is hereby amended and restated to add, delete or modify sections as set forth below; additions are indicated by double underscoring and deletions are indicated by ~~strike-through type~~.

**SECTION 3. 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. The City further recognizes the substantial economic benefits to be gained through aesthetic enhancement of its public spaces and consequent retail activity 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 4. 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; and 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 Affairs 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 established pursuant to section 601 of the City Charter recommended by the Oakland Arts Council with members appointed by the Mayor and approved by City Council to oversee quality control of the public art program, its projects, and to recommend to the Cultural Arts Affairs 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 in the Cultural Affairs Division budget, which is established by the City to receive monies (the 1.5%) appropriated from the capital improvement project budgets, funds contributed to the City in compliance with the Master Fee Schedule and Oakland Municipal Code Chapter 15.78, Public Art Requirements for Private Development (Ordinance No. 13491 C.M.S.), and private contributions 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.
- K. CULTURAL AFFAIRS DIVISION means the Division of the City that oversees the programs related to the arts and cultural development of the community, or as otherwise defined by the City Administrator.

## SECTION 5. FUNDING

- A. APPROPRIATIONS TO PUBLIC ART PROJECT ACCOUNT. 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 Affairs Division administrative costs to manage the program.

The ~~4-1/2%~~ 1.5% appropriation shall include but not be limited to General Fund funded capital improvements, gas tax funded capital improvements, ~~Measure B~~ bond funded capital improvements when allowed by law, off street parking funded capital improvements and any and all other capital improvements funded from other revenues including grants which may be so appropriated.

Funds so appropriated pursuant to this section, if not expended in any given fiscal year, shall be carried forward to the next fiscal year.

- 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 or in part for public art at said project site, by the Cultural Arts Affairs Division in consultation with the Public Art 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 1.5% dedication of such funds for public art, this ordinance shall not apply to the project 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.
- E. WAIVER. The City ~~Manager~~ Administrator 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 6. USE OF FUNDS

It is intended that funds in the Public Art Project Account will be appropriated in the annual budget to 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 Affairs 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:

1. Structures which enable the display of artwork(s).
2. Artistic design and fabrication fees.
3. Labor of assistants, materials and contracted services required for the production and installation of the work of art.
4. Any required permit or certificate fees, business and legal costs directly related to the project.
5. Dealer's fees, if necessary and where appropriate. GAD-The Cultural Affairs Division, 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.
6. Communication and other indirect costs (insurance, utilities). Transportation of the work of art to the site.
7. Preparation of site to receive artwork.
8. Installation of the completed work of art.
9. Administrative fees can include the following:
10. Cultural Arts Affairs Division's administration costs incurred in the process of administering the Public Art Program including staff time, direct costs and administrative overhead.
11. Documentation, (~~color slides and black and white photographs~~) printed and digital, 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 7. PUBLIC ART PROJECT ACCOUNT**

Monies appropriated pursuant to this ordinance shall be transferred by the City Manger Administrator or his designee to the project account within the Cultural Arts Affairs Division designated "Public Art Project Account" 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 extension is granted.

## **SECTION 8. ANNUAL PUBLIC ART PROJECTS PLAN**

The City's Cultural Arts Affairs 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~~ as new projects are implemented. A Public Art Project Plan, including project descriptions, budgets, locations and recommended design approaches, will be submitted by staff for review to the Public Art Advisory Committee and in turn to the City Council for approval and implementation.

## **SECTION 9. PUBLIC ART ADVISORY COMMITTEE**

Pursuant to Section 601 of the Charter of the City of Oakland, the City Council hereby establishes the Public Art Advisory Committee (the "Committee"). As further described herein, it shall be the duty of the Committee to provide advice and recommendations to the City Council, City Administrator, and Cultural Affairs division related to public art funded by the City, and public art placed on City property and in the public right of way, including on property owned by other public agencies. The Committee shall advise on matters such as proposed sites, scope of project, artworks, and artists.

## **SECTION 10. PUBLIC ART ADVISORY COMMITTEE MEMBERSHIP, APPOINTMENT, AND VACANCIES**

- A. MEMBERSHIP. The Committee shall be composed of nine (9) members. Members shall be appointed by the Mayor and confirmed by the City Council pursuant to Section 601 of the City Charter. Members shall serve without compensation.
- B. QUORUM. A quorum for the conduct of Committee meetings shall be four (4) members. Any action by the Committee shall require an affirmative vote of a majority of the members present at the meeting.
- C. TERMS.
  - 1. Length of Terms. Terms shall be for a period of three (3) years. All terms shall commence on the date following the expiration of the prior term. An appointment to fill a vacancy created by the premature departure of a Committee member shall be for the unexpired portion of the departed Committee member's term only.

2. Limit on Consecutive Terms. No person shall be appointed to serve more than two (2) consecutive terms as a member of the Public Art Advisory Committee.
  3. Holdover. In the event an appointment to fill a vacancy has not occurred by the conclusion of a Committee member's term, that member may continue to serve as a member of the Committee in a holdover capacity for a period not to exceed one year, to allow for the appointment of a new Committee member. Pursuant to Section 10.C.1, above, the newly appointed Committee member's term shall commence on the date following the expiration of the prior three-year term notwithstanding any holdover period.
- D. REMOVAL. A member of the Committee may be removed for cause pursuant to Section 601 of the Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three (3) consecutive regular meetings except on account of illness or when absent at the approval of the Public Art Advisory Committee, may constitute cause for removal. To assure participation of Committee members, attendance by the members of the Committee to all regularly scheduled and special meetings of the Committee shall be recorded.
- E. VACANCIES. A vacancy on the Committee shall exist whenever a member reaches the term limit, including any holdover period, dies, resigns, or is removed.

## SECTION 11. 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. ~~2. 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.B. The Cultural Arts Affairs Division (CAD) shall:

1. Be responsible for the administration of the Public Art Program.
- ~~2. Hire the Public Art Coordinator. Public Arts Advisory Committee members may be asked to serve as part of the interview panel.~~
32. Provide staff support for the management and implementation of annual Public Arts Projects Plan.
43. Develop with the Public Art Advisory Committee, an annual Public Art Projects Plan, Art Maintenance Survey and Work Plan.
54. 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~~ Cultural Affairs Commission.
65. Coordinate the artists recruitment, jury-selection and review process, and community information-education sessions.
76. Serve as liaison between the ~~Oakland Arts Council~~ Cultural Affairs Commission, Public Art Advisory Committee, City Managers' Administrator's Office, other ~~e~~City departments and City Council.
87. Seek additional grant funds from foundations, corporations, individuals and public agencies ~~such as the National Endowment for the Arts (N.E.A.) and California Arts Council,~~ for public art projects.
98. ~~Draft new policies and programs as requested by the Oakland Arts Council and Public Art Advisory Committee.~~ Refine policies and programs related to the Public Art Program.

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

9. 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.
10. 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.C. 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 GAD Cultural Affairs Division 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.
9. Recommend guidelines for implementation of the Public Art Program.
10. Advise Cultural Affairs Division on the Public Art Projects Plan to be submitted to the City Council.
11. Make recommendations to the Cultural Affairs Division on an annual maintenance program for artwork in the Civic Art Collection.
12. Recommend appointments to the artist-selection juriespanels.
13. After review, recommend acceptance of proposed gifts, exhibitions, and loans.

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.~~
- B. ~~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 artwork will be placed or the project will occur.~~

## **SECTION 12. STANDARDS FOR REVIEW**

In performing its duties with respect to the public arts Public Art 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 13. IMPLEMENTATION OF POLICIES FOR PUBLIC ART PROJECTS**

~~Implementation of The City Administrator is hereby authorized to adopt Policies and Procedures consistent with this Ordinance for the administration of the Public Art Program and to take other steps as needed to implement this 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 14. 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 15. 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,

**JUL 16 2019**

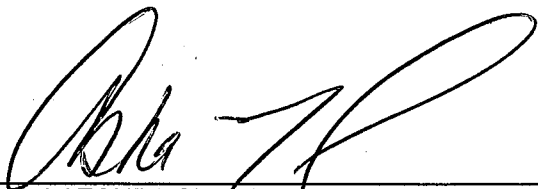
PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN **-8**

NOES - **0**

ABSENT - **0**

ABSTENTION - **0**

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Introduction Date

**JUL - 9 2019**

Date of Attestation: **July 23, 2019**

## **NOTICE AND DIGEST**

### **ORDINANCE AMENDING AND RESTATING THE PERCENT FOR PUBLIC ART ORDINANCE NO. 11086 C.M.S. TO CLARIFY THE DUTIES OF THE PUBLIC ART ADVISORY COMMITTEE AND ITS RELATIONSHIP TO THE CULTURAL AFFAIRS COMMISSION, FORMERLY KNOWN AS THE OAKLAND ARTS COUNCIL**

This Ordinance would amend and restate Ordinance No.11086 C.M.S. to make various changes to the Public Art Advisory Committee and the Cultural Affairs Commission, formerly known as the Oakland Arts Council, including to define the duties of the Public Art Advisory Committee, clarify that Committee membership is no longer recommended by the Cultural Affairs Commission, and establish that the Committee would no longer operate as a subcommittee of the Cultural Affairs Commission.