

ORDINANCE No.

Amend Acquisition of Public Art Code to expand eligible uses of the 2% funds, explicitly prioritize underserved communities and clarify City accountability (Ordinance; amend Chapter 5.74)

The City of Portland Ordains:

Section 1. The Council finds:

1. Through partnership with the Regional Arts and Culture Council (RACC), the City of Portland's 2% for Art program leverages capital construction projects to place public art throughout the community.
2. Art and cultural activity unite communities and celebrate diversity, and should equitably reach all neighborhoods.
3. In February 2018, the Portland City Council accepted *A Plan for Preserving and Expanding Affordable Arts Space in Portland*. The recommendations included item number 10, "Tailor the 2% For Art Program," which stated:

"RACC and City bureaus will prioritize placing art in underserved neighborhoods as part of the 2% for Art requirement. This option already exists under the program, but bureaus and RACC will prioritize opportunities to place art in neighborhoods that have historically lacked public art. The City will also consider changes to the 2% for Art program that would include the option to develop space, rather than add discrete art installations."
4. In May 2018, in its first audit of RACC, the City Auditor found, in part, that the City's cultural goals and our mutual roles and responsibilities should be better defined.
5. In response to the recommendations in both the Affordable Art Space Plan and the RACC audit, the City of Portland should:
 - a. Explicitly prioritize underserved communities' access to art;
 - b. Expand eligible uses of the 2% funds to include Creative Space and more clearly allow activities like artists-in-residence;
 - c. Clarify Portland City Code to make explicit the roles and responsibilities of the Portland City Council, the eligible Bureaus, and the Arts Council.

NOW, THEREFORE, the Council directs:

- a. Amend Portland City Code Chapter 5.74 as shown in Exhibit A.

- b. The Office of Management and Finance shall draft and adopt administrative rules and procedures to related to Public Art and Creative Space procedures, which to the greatest extent practicable shall set forth procedures to be followed by all Participating Bureaus.
- c. The Regional Arts and Culture Council shall amend Public Art Guidelines to reflect criteria outlined in section 5.74.060.

Passed by the Council:
Commissioner Fish
Commissioner Eudaly
Prepared by: Tracy Schreiber
Date Prepared: 6/11/2019

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

EXHIBIT A
CHAPTER 5.74 - ACQUISITION OF PUBLIC ART

(Chapter replaced by Ordinance No. 161537;
amended by Ordinance Nos. 168591 and 179869,
effective February 10, 2006.)

Sections:

- 5.74.010 Purpose.
- 5.74.020 Definitions.
- 5.74.030 Dedication.
- 5.74.040 Public Art Trust Fund.
- 5.74.045 Funds for Creative Space.
- 5.74.050 Siting.
- 5.74.060 Guidelines.
- 5.74.070 Ownership.
- 5.74.080 Decisions.
- 5.74.090 Implementation.

5.74.010 Purpose.

It is the purpose of this Chapter and the policy of the City of Portland to dedicate two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (whichever is less) to ~~the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art.~~ Public Art contributes to experiences that enrich the social, physical and cultural environment of Portland and promotes dialogue among people of all ages and backgrounds. This Chapter shall be implemented in a manner that benefits all Portlanders, including historically underserved communities and neighborhoods.

5.74.020 Definitions.

(Amended by Ordinance No. 178946, effective January 7, 2005.)

A. As used in this Chapter:

1. Improvement Project means any project paid for wholly or in part by a Participating Bureau in which the Participating Bureau's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk or parking facility or any portion thereof within the limits of the City of Portland.
2. Maintenance and repair does not constitute an Improvement Project.
3. Improvement Projects which are developed privately and leased back to the City of Portland are not exempt from the provisions of this Chapter.

4. The purchase of improved or unimproved property by the Portland Development Commission solely for resale or redevelopment, in which property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.

B. Artist-in-Residence means an artist in any discipline who explores new working methods to develop socially engaging, interactive art experiences with City Bureaus through either permanent or temporary artworks.

C. Creative Space means a physical location or a mobile location like a truck that is owned, leased, rented by, donated to, or otherwise made available to the City of Portland that has the exclusive purpose of facilitating the creation or display of visual, performing, cultural or other artworks.

B.D. Eligible Costs means the Participating Bureau’s capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: ~~design and engineering~~, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.

C.E. Eligible Funds means a Participating Bureau’s monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.

D.F. Public Art means original creative artwork, which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland. This definition shall be liberally construed to support this Chapter’s purpose, including but not limited to physical art works, Artists-in-Residence and Creative Space.

E.G. Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.

F.H. Selection Panel means a group responsible for reviewing proposed Public Art. The Selection Panel will make a recommendation on the selection of Public Art and making recommendations to the Regional Arts & Culture Council on the selection of Public Art. Selection Panels shall include a representative of the Participating Bureau, the Improvement Project architect or engineer, one or more artist(s), and citizens one or more Portland resident.

5.74.030 Dedication.

(Amended by Ordinance No. 187570, effective March 4, 2016.) Any City of Portland official or employee acting on behalf of a Participating Bureau who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and except as provided herein for funds used to generate Creative Space, disburse to the Regional Arts & Culture Council, a monetary contribution for Public Art equal to ~~two~~ two percent (2%) of the total Eligible Costs or two percent (2%) of the total Eligible Funds of the Improvement Project, whichever is less. When all or a portion of the funds are used to generate Creative Space, the Participating Bureau will not disburse those funds to the Regional Arts & Culture Council; rather, those funds used to generate Creative Space will stay with the Improvement Project.~~The City Budget Office and the Portland Development Commission shall each adopt administrative rules and procedures to implement this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus, including the Portland Development Commission.~~

- A. The Participating Bureau representative shall authorize using the contribution of Eligible Costs or Eligible Funds for:
 - 1. Public Art sited in, on or about the subject Improvement Project; or
 - 2. Public Art on another property owned, leased, rented by, donated to or otherwise made available to the City of Portland; or
 - 3. Artists-in-Residence; or
 - 4. Creative Space; or
 - 5. Any combination of subsections 1. through 4.
- B. The Office of Management and Finance shall adopt administrative rules and procedures to implement this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus.
- C. The Regional Arts & Culture Council shall develop project plans for Eligible Costs or Eligible Funds that take into account the views of the Participating Bureau, with final approval of the project plans from the Commissioner-in-Charge of the Participating Bureau.

5.74.040 Public Art Trust Fund.

The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art, excluding Creative Space, pursuant to section 5.74.030 shall be deposited.

- A. Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
 - 1. For all Public Art that is not Creative Space, as follows:

~~1. a.~~ 63 percent shall be used by the Regional Arts & Culture Council for costs associated with acquisition and production of Public Art including, but not limited to the procurement, creation ~~acquisition~~, fabrication, and installation of Public Art.

~~2. b.~~ 27 percent shall be used by the Regional Arts & Culture Council for costs of administration and management associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.

~~3. c.~~ 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.

- B. Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the Participating Bureau or required by law.
- C. Disbursements from the Public Art Trust Fund shall be made by the Regional Arts & Culture Council.
 - 1. Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts & Culture Council.
 - 2. If an Improvement Project is funded by revenue sources whose expenditure is restricted by the City Charter or other law, the Regional Arts & Culture Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
 - 3. The Regional Arts & Culture Council will report annually and as requested to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

5.74.045 Funds for Creative Space.

Participating Bureaus wishing to dedicate Eligible Costs or Eligible Funds towards the creation or improvement of Creative Space must obtain written approval from the Bureau's Commissioner-in-Charge. Requests must be submitted to the City Arts Manager at the Office of Management and Finance. Funds may not be used for programming or staffing.

Bureaus are responsible for operations and maintenance of Creative Space generated through this program and must submit an operations plan, 5-year programming plan, estimated annual budget and equity statement for the Creative Space.

If any part of an Improvement Project is a Creative Space, the Participating Bureau may, after obtaining written approval from the Bureau's Commissioner-in-Charge, opt to dedicate its Eligible Costs or Eligible Funds for future maintenance of the Creative Space.

The Office of Management and Finance shall adopt administrative rules and procedures to implement this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus.

5.74.050 Siting.

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Portland in accordance with any restrictions placed on siting by the Participating Bureau.

5.74.060 Guidelines.

The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, and after receiving written approval from the Office of Management and Finance and Arts Commissioner, adopt guidelines to:

- A. Provide for annual reporting to Participating Bureaus;
- ~~B. Develop an annual plan for Public Art that takes into account the views of the Participating Bureau;~~
- C.B.** Provide a method for the appointment of representatives to Selection Panels;
- ~~D.C.~~ Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- ~~E.D.~~ Determine the dedication and disbursement process for the Public Art Trust Fund;
- ~~F.E.~~ Determine a process for the ongoing care, maintenance and conservation of Public Art;
- ~~G.F.~~ Determine a process to deaccession art;
- H.G.** Set forth any other matter appropriate to the administration of this Chapter.

5.74.070 Ownership.

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Portland, and title shall vest in the City of Portland.

5.74.080 Decisions.

Except as limited by other sections of this Chapter, the Regional Arts & Culture Council's shall make decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall be final. Notwithstanding the above, the Director of the Office of Management and Finance, in consultation with the Arts Commissioner and Participating Bureau, has exclusive final decision-making authority.

5.74.090 Implementation.

(Amended by Ordinance No. 187570, effective March 4, 2016.) The Regional Arts & Culture Council, or its designee, shall implement and be held accountable for the provisions of this Chapter, in cooperation with the Office of Management and Finance ~~City Budget Office~~ and all Participating Bureaus.

IMPACT STATEMENT

Legislation title: Amend Acquisition of Public Art Code to expand eligible uses of the 2% funds, explicitly prioritize underserved communities and clarify City accountability (Ordinance; amend Chapter 5.74)

Contact name: Tracy Schreiber

Contact phone: 503-823-4367

Presenter name: Tracy Schreiber, Jamie Dunphy, Pollyanne Birge

Purpose of proposed legislation and background information:

A Plan for Preserving and Expanding Affordable Arts Space in Portland recommended changes the 2% for Art Program, and the 2018 RACC audit recommended increased clarity about City goals and about roles and responsibilities between the City and RACC. Along with grants and the Arts Tax, Percent for Art is a core program administered by RACC.

The proposed changes address both the Plan and the audit and will:

- (1) expand eligible uses of the 2% funds to include Creative Space and more clearly allow activities like artists-in-residence;
- (2) clarify the Code so that Council, bureaus, and RACC understand who is accountable for which parts of the program and who has decision-making authority at certain junctures;
- (3) explicitly prioritize underserved communities' access to art.

Financial and budgetary impacts:

N/A

Community impacts and community involvement:

Public Art and creative activity enhance City livability, contributing to a prosperous, educated, healthy and equitable Portland. The amendment prioritizes underserved communities and neighborhoods in Public Art and Creative Space Citing. Participating Bureaus, the Office of Management and Finance and the Regional Arts and Culture Council were consulted on how to most effectively achieve the goals of the amendment.

100% Renewable Goal:

N/A

Budgetary Impact Worksheet

Does this action change appropriations?

- YES:** Please complete the information below.
 NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount