

Memo

To: John Hieftje, Mayor; Stephen Powers, City Administrator
Re: Public Art Task Force findings, recommendations and concerns
From: Sabra Briere, member of City Council

The Public Art Task force has met seven times since it was appointed. The first four meetings were primarily fact finding – How is public art administered? How do other communities fund art in public places? What types of activities are supported by what types of funding? What doesn't work with the current ordinance? What types of changes would bring about the outcomes we want?

The draft ordinance is a reflection of those discussions.

Members of the task force are aware that the Council expects a report on February 19th. The draft ordinance has not yet been finally evaluated by the City Attorney's office, although with this memo the current version is being shared with that staff. At the February 19th meeting, the task force will provide an update. Our next meeting – one that we hope will finalize the language – is March 1st. Once the draft language has been approved by the City Attorney's office for structure and legal impact, the task force will bring a resolution (regarding some recommendations, below) and a draft change to the ordinance. At this time, I hope these items can be on the Agenda on March 18 (for first reading of the ordinance) and April 1 (for the resolution and final reading of the ordinance).

Findings: Although there isn't only one successful model that the City could follow, there are many communities with successful public art programs. In those cities where public art is funded, in part, by a percent for art funding mechanism, those funds are limited and restricted. The funds based on capital improvements don't accumulate quickly. Many communities use the percent for art mechanism as only one part of their entire funding mechanism for art in public places.

Community acceptance and enthusiasm for public art grows in those communities where the selection and funding for art are part of a larger community process. Engaging the community in the selection and funding of some art in public places provides for a larger discussion of art and its place in the public arena. The task force heard that having some art projects arise from the community (in much the same way the Water Hill Music Festival and the Skatepark have arisen) enriches the entire process.

Recommendation: establish a community funding mechanism that allows members of the community to propose and raise funds for a specific piece of art (imagine that Adirondack Chair in memory of Coleman Jewett) as well as to contribute more generally toward art that can be selected and placed in a public location without connection to a capital improvement. The task force has named this fund the Art in Public Places Trust Fund.

Recommendation: The City doesn't have a mechanism to accept tax-exempt funds (such as a 501(c)(3) organization). The Task Force recommends working with an organization such as the Ann Arbor Area Community Foundation to establish a fund into which donations for public art may be placed. This fund should also be able to accept direct donations through one or more 'crowdfunding' websites.

Findings: Public Art programs, however they are funded, rely heavily on professional staff. This reliance increases if the expectation is that public (tax) dollars will be used to provide public art built in connection with capital improvement projects. The amount of lead time required to discuss art as part of a project, include it in an RFP, and evaluate any and all proposals for their responsiveness to community visions can be significant. In addition to any administrative functions, a public art professional is often expected to help raise public awareness, collaborate in the design of projects with representatives from other governmental units as well as other municipalities, and to work closely with both artists and the public.

Recommendation: a professionally trained public art administrator can provide this level of support, but needs to be employed more than 50% of the time. The Public Art Task Force agrees that the program would benefit from the services of a trained administrator, either as a contract employee or a direct hire.

Recommendation: As funding for art in public places may be constrained, finding ways to pay the salary and benefits of a full-time public art administrator may become an increasingly difficult problem. The Percent For Art pooled funds include over \$400,000 of currently unallocated dollars. The Task Force recommends, if the ordinance changes are approved by Council, that these funds be placed in the Art in Public Places Trust Fund, and that funding for no longer than two (2) years' salary and benefits be paid from the Trust Fund for a full-time administrator to help reorganize the program and establish new relationships with systems planning staff, as needed for any enhanced capital improvement projects.

Findings: Pooled percent for art funds place an unanticipated burden on systems planning and financial staff to effectively account for each funding stream. A limited percent, available for only a portion of all capital improvements where the art is 'baked in' may not provide sufficient funding to either enhance the architecture or add visible and notable art.

Recommendations: Eliminate pooled funding, and remove any reference to a specific percentage of a project budget for art. Instead, staff should work to determine whether a specific capital improvement project should have enhanced design features – including either enhanced architectural work or specific public art. The funding for any enhanced design elements should be included in the budget for the project, and the need to include either enhanced architectural design features or public art selection and installation should become part of the RFP process.

Recommendations: The staff should review the successful implementation of any changes in the ordinance after 36 months. This timing is based on the task force's awareness that capital improvements may take longer than two years to move from inception to completion.

Concerns: The task force desires to include temporary and performance art in the list of types of public art that could be funded – through the Art in Public Places Trust Fund. However, members of the task force are aware that adding these types of art could create an administrative problem for the Public Art Commission. The task force has not yet determined a solution to this concern.

Concerns: Some task force members voiced a concern that, if each project that includes enhanced architectural design or public art needs to be approved by Council, future Councils may not honor the consensus position that some public dollars can be used to enhance Ann Arbor's public spaces. The task force did not determine a solution to this concern.

Concerns: Some task force members believe that the best funding mechanism remains a millage for art. The task force requests that this concept not be permanently shelved.

Chapter 8: Organization of Boards and Commissions

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 9 members nominated by the mayor and approved by the city council. Members shall serve for 3-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, [curation](#) 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 3 members will be for 1 year, 3 members will be for 2 years, and 3 will be for 3 years. After the initial commission is formed, all members thereafter will be appointed for [no more than two \(2\) consecutive 3-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](#)

Chapter 24: Public Art

1:830. - Title.

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

(Ord. No. 47-07, § 2, 11-5-07)

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 role that government can play and the support that government can offer to foster the development of culture and the arts.

Funding for Public Art may come from private donations of cash or collateral (specific objects of art), crowdfunding for specific art projects, the Art in Public Places Trust Fund (as defined in section 1:834) or up to 1% of a capital improvement project specifically designated for architectural enhancement or design. This architectural enhancement or design should be integral to the capital improvement.

~~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.~~

(Ord. No. 47-07, § 2, 11-5-07)

1:832. - Definitions.

The following words are defined for purposes of this chapter.

Architectural enhancement means the highest application of skill and aesthetic principles to the physical embellishment of the public areas of a building, which may include the placement of works of art, or specially designed plazas, atriums, or other public spaces,

Capital improvement project means any construction or renovation of any public space or facility. Capital improvements may include, but are not limited to

Gateway and Signature Streets
Street Vistas (dead ends, roundabouts, "T" intersections)
Street Medians
Sidewalks and Sidewalk Ramps
Street Furniture

[Street Lights, Manhole Covers, Tree Grates, Fence Railings](#)
[Paving, Water Features, Bridges, Overpasses](#)
[Parks, Squares, Plazas](#)
[Parking structures](#)
[Signs](#)
[Public Buildings and Building Lobbies](#)

~~including buildings, parks, recreation areas, parking facilities, roads, highways, bridges, paths, sidewalks in locations where sidewalks do not already exist or as part of a larger capital improvement project, 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. It does not include sidewalk crack repair, sidewalk cold patching, sidewalk slab replacement, sidewalk leveling or sidewalk slab grinding. This definition also does not include capital improvement projects that are below-grade storm water detention facilities.~~

[Collaboration means working with non-governmental entities to define, design, and fund the creation and maintenance of public art.](#)

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.

[Crowdfunding is a form of fundraising for a specific purpose, using media as a means of reaching prospective donors, and using those donations to provide the some or all of the funds to design, build and maintain public art.](#)

[Enhanced project](#) mean a capital improvement project that includes architectural enhancements, public art, and/or material aesthetic design elements.

[Major renovation](#) means a renovation with a construction budget of \$100,000 or more.

Public art means [both temporary and permanent](#) works of art created, purchased, [performed](#), produced or otherwise acquired for display in public spaces or facilities. Public art ~~may~~ [means the unique product of a skilled artist \(or group of artists\) who works according to](#)

aesthetic principles and includes, but is not limited to, architectural enhancements, special landscape treatments, paintings, sculpture, engravings, murals, mobiles, photographs, drawings and works in fabric. Public art may also include performance art. The following shall not be considered works of art: mechanical or other reproductions, commercially produced items, architectural rehabilitation or historic preservation. ~~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 objects d'art, sculptures, murals, mosaics, ornamentation, paint or decoration schemes, use of particular structural materials for aesthetic effect, or spatial arrangement of structures.~~

(Ord. No. 47-07, § 2, 11-5-07; Ord. No. 11-23, § 1, 12-5-11)

1.833. – Establishing local governmental funding Capital Improvement Project Planning

(1) Staff shall work with the Public Art Commission to develop criteria by which to evaluate whether a capital improvement project should be an enhanced project. Upon completion and/or subsequent modification of these criteria, the criteria shall be communicated to City Council in the Clerk's Report of Communications, Petitions, and Referrals.

[During the project development] of each capital improvement project [Staff] shall consider whether and to what extent it is appropriate to designate such capital improvement project as an enhanced project. Designated enhanced projects elements shall be included in any relevant design RFP. [This section needs to be clarified.]

In the event that Staff determines that a capital improvement project is suitable to be an enhanced project, then Staff [shall work with the Public Art Commission to finalize design and project management proposals] [improve language]. Each capital improvement project shall be evaluated for appropriate architectural enhancements, and if deemed appropriate, the design RFP will be use to articulate the need for and the value of the proposal received as designated for specific artistic, architectural or design elements.

Each enhanced project budget submitted to City Council shall indicate that it is an enhanced project and shall identify that portion of the project budget attributable to architectural enhancements, public art, and/or material aesthetic design elements.

~~project shall be evaluated for appropriate architectural enhancements, and if deemed appropriate, the design RFP will be use to articulate the need for and the value of the for up to 1% of the value of the proposal received as designated for specific artistic, architectural or design elements.~~

~~-(1) All capital improvement projects funded wholly or partly by the City may include funds for architectural enhancement up equal to 1% of the construction costs. The determination of whether a specific capital improvement project includes 1% for architectural~~

~~enhancement will be determined by the City Council. Funds designated for public art through local governmental funding will remain in their original accounts and will be expended as part of the intended capital improvement. The total appropriation for art in public places the trust fund from any single project shall not exceed \$100,000.00. All city departments and agencies shall include, in all budgets or applications for funding for capital improvement projects to granting organizations or governmental agencies, an amount equal to at least one percent of eligible construction costs for the art in public places trust.~~

1.834. – Other sources of funding for art in public

(a) *The Art in Public Places Trust Fund.* There is hereby created an art in public places trust fund that is authorized to accept gifts, grants and donations made to the city for art in public places.

1. All appropriations, gifts, grants and awards of moneys for art in public places shall be deposited in an interest bearing account entitled the City of Ann Arbor Art in Public Places Trust Fund Account, which shall be a separate account established and maintained apart from the general revenue funds and accounts of the city. All interest earned in said account shall accrue to the use and benefit of the trust fund account. Funds deposited or credited to the art in public places trust fund account and not expended by the close of any fiscal year shall be carried forward into the next succeeding fiscal year. These funds may be donated to the fund for a specific piece of art, or to help provide support to a specific public art project.
2. *Terms of existence.* The art in public places trust fund account shall be self-perpetuating from year to year unless specifically terminated by the city commission.
3. *Trust fund expenditures.* Monies may be used in accordance with the requirements of this section for all costs associated with acquiring and commissioning art for public places, including costs for administration, travel, training, postage, printing, grants match, and education workshops. These costs may not exceed 20 percent of the total budget. Bond funds shall be appropriated and accounted for in the bond capital project accounts. Any gifts, grants and awards received subject to a condition shall be expended strictly in accordance with that condition.

(b) *Crowdfunding* may be used to solicit donations to the Art in Public Places Trust Fund as well as to solicit donations that are intended to fund wholly or in part a specific piece of art for public display.

~~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 1% of the construction costs identified in the initial project estimate, up to a maximum of \$250,000.00 per project. Where a capital improvement project is only partly funded by the City, the amount of funds allocated for public art shall be 1% of that portion of the project that is City-funded, up to a maximum of \$250,000.00 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 subsection (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.

(Ord. No. 47-07, § 2, 11-5-07; Ord. No. 11-23, § 1, 12-5-11)

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

(1) — Prior to July 1, 2012, 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. New capital improvement projects financed on or after July 1, 2012, from the City's general fund shall not be subject to the requirements of this subsection (1).

(2) — Prior to July 1, 2012, 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. New capital improvement projects financed on or after July 1, 2012, from the City's general fund shall not be subject to the requirements of this subsection (2). Any funds in this pooled public art fund as of June 30, 2012, that are not allocated on or before June 30, 2015, shall be returned to 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.~~

(Ord. No. 47-07, § 2, 11-5-07; Ord. No. 11-23, § 1, 12-5-11)

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. [This section needs to be clarified.](#)

(4) [Funds from the Public Art Trust Fund may be used to select, install and maintain permanent or temporary public art.](#)

(5) [The interest earned on funds in the Public Art Trust Fund may be used for performance art.](#)

(46) 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.

(Ord. No. 47-07, § 2, 11-5-07; Ord. No. 11-23, § 1, 12-5-11)

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.

(4) All temporary art shall belong to that person or those persons who have created the art or offered it for display.

(Ord. No. 47-07, § 2, 11-5-07)

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. Mechanisms for fund raising include but are not limited to crowdfunding, grants, and gifts from corporations, foundations and individuals;

(F) Make an annual determination that any interest income generated by the Art in Public Places Trust Fund will be reinvested or allocated for a specific use.

~~(FG)~~ Promote awareness of public art;

~~(GH)~~ Present an annual report to City Council within 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

(J) 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.

(K) For art proposed under this Chapter, seek public input through the City's public engagement process. This process includes, but is not limited to, electronic messages to registered neighborhood associations; public meetings, forums and workshops; surveys through SurveyMonkey or some other vendor; and OpenCityHall.

(L) For architectural enhancements proposed under this Chapter, work collaboratively with planning staff, project management staff, systems planning staff, the City Administrator and the Chief Financial Officer to develop a proposal for those enhancements. This proposal shall be submitted to the City Council as part of the approval process for any Capital Improvement.

(3) ~~On an annual basis~~Upon request, 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.

(Ord. No. 47-07, § 2, 11-5-07)