

DRAFT

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____ Creating Section 4.30 of the Madison General Ordinances to create a program for funding public art projects for certain public works projects.	PRESENTED REFERRED	_____ May 16, 2017 Madison Arts Commission, Finance Committee, Board of Public Works, Common Council Executive Committee
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Drafted by: Roger Allen

Date: May 10, 2017

SPONSORS: Mayor Soglin, Aids. Bidar-Sielaff, Carter, Cheeks, Eskrich & Verveer

DRAFTER'S ANALYSIS: This ordinance would create a program for funding public art projects whenever the City invests in a capital project meeting the criteria set forth in the ordinance. The ordinance would apply to certain enumerated public works projects whose anticipated construction costs exceed five million dollars. The funding for the arts would be in addition to the project budget and would not come from nor reduce the original project budget itself. Project budgets would be increased under this ordinance. The ordinance requires that an additional one percent be added to an eligible project's budget (by GO funds) for expenditure on art development at the project. The ordinance would allow, with Common Council approval, the expenditure of such funds at a site other than the eligible project under certain limited criteria and it would allow for the deposit of some or all such funds into the Art Aggregated Fund (for new art projects) or the Art Maintenance and Conservation Fund (for conservation and maintenance of the City's Art). These two segregated funds are established by this ordinance. The ordinance also allows the Common Council to reduce the amount of the arts funding under extraordinary circumstances but prohibits the complete elimination of this funding for the arts. The ordinance would also require that artists funded under this program consensually modify waive any Visual Artists Rights Act (VARA) applicability so as to recognize the unique fiscal and managerial responsibilities of municipal government that the City has complete ownership and discretion over the location, display and maintenance of artwork acquired under this ordinance. However artists may not be required to enter into such modifications so long as the Arts Administrator obtains the consent of the City Attorney and the Madison Arts Commission. The Arts Administrator is charged with drafting a written City policy (to be approved by MAC and CC) for the acquisition, accessioning and deaccessioning of public art. The Arts Program Administrator shall file an annual report, with the Capital budget, that addresses the implementation of this ordinance. The ordinance would become effective beginning with eligible projects that are first let two years after the passage of the ordinance.

The Common Council of the City of Madison do hereby ordain as follows:

Section 4.30 entitled "Percent for Art Ordinance" of the Madison General Ordinances is created to read as follows:

4.30 PERCENT FOR ART ORDINANCE. This ordinance shall be known as the Percent for Art Ordinance.
(1) Purpose. The Common Council finds that expanding the public's experience with visual art and enhancing the aesthetics of public places increases the quality of life for all residents.

Approved as to form:

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Through the proper presentation of public art, places become destinations and enhance the visitor's understanding of the unique space and community they occupy. Public art has the capacity to promote cultural heritage and understanding, enhance the environment, contribute to economic development and increase civic involvement. This ordinance creates a mechanism for funding and including public art projects in the City's public works projects. The Common Council encourages the incorporation and funding of public art in all public works projects regardless of whether they are subject to the terms of this ordinance. City staff should ensure that public artwork is consistent with the Madison Public Art Framework (Resolution File ID No. 30476, March 19, 2002) and the Madison Cultural Plan (Resolution File ID No. 24233, August 6, 2013) as those documents may be amended from time to time.

(2) Definitions.

"Artist" means an individual who created original art and is recognized by professional peers and critics as a professional practitioner of art, as judged by the quality of that practitioner's body of work and experience.

"Artwork" means all permanent, temporary or functional original works of the visual arts conceived in any medium, material or combination thereof, commissioned, purchased in whole or in part by or donated to the City. These terms include but are not limited to paintings, photographs, etchings, carvings, murals, bas-reliefs, statues, sculptures, busts, light works monuments, fountains, arches, unique architectural treatments, aesthetic enhancements to infrastructure or extraordinary landscaping/environmental treatments.

"Capital Improvement Project" means any capital project included in the City's capital budget that is paid for, wholly or in part, by the City.

"Commission" means the Madison Arts Commission as established in Sec. 33.35, MGO.

"Percent for Art Expenditure" shall be an amount of one percent (1%) of the overall construction budget of an eligible Capital Improvement Project for the incorporation of public artwork as a component of the public works project.

"Percent for Art Program" shall mean a Public Art Program funded as provided herein.

(3) Determining Project Eligibility For Inclusion In The Percent For Arts Expenditure.

(a) Project Design Incorporation of Public Art. Every project subject to this ordinance shall incorporate artwork as integral or integrated components of the project. Such artworks, to the maximum extent possible, should be publicly accessible and/or viewable and integrated into the design aesthetics of the public works project. The acquisition and installation of artwork shall comply with all applicable local, state and federal rules, regulations and statutes concerning public works projects and public expenditures.

(b) Types of Capital Projects Eligible for Percent for Art Expenditure. Every Capital Improvement Project meeting the criteria below, and with anticipated construction costs exceeding five million dollars (\$5,000,000), shall include the Percent for Art Expenditure:

1. Construction of a new City facility (City Building);
2. Renovation or remodeling of fifty percent (50%) or more of the square footage of a City owned/leased facility;
3. Improvement of any City owned/leased outdoor site improvement project to which there will be public access but excluding public right of way, utility easements, and highway easements.
4. The following City Facilities and Projects are not eligible for the Percent for Art Program:
 - a. Madison Water Utility well, tower, reservoir, and buildings primarily containing well and pump equipment;
 - b. Madison Sewer Utility pumping stations;
 - c. Repair of parking structures;
 - d. Landfill remediation projects.

(c) Anticipated Construction Costs to be Considered in Determining Capital Project Eligibility. Determining whether anticipated construction costs exceed the five million dollars (\$5,000,000) eligibility threshold for applicability of this ordinance shall be determined using anticipated construction costs including contingencies, indexed by the Construction Cost Index (CCI) as published by the Engineering News Record.

The City Engineer shall determine the cost on January 1st of each year following the implementation of this ordinance and the cost shall remain fixed for the entire calendar year. The anticipated construction costs, including contingencies, shall not include the following costs/expenditures:

1. Real property acquisitions;
 2. Demolition of existing buildings or structures;
 3. Environmental remediation;
 4. Equipment and fixture costs;
 5. Legal, design and accounting fees.
- (d) Time of Determining a Project's Eligibility. A project shall be determined eligible two (2) years prior to the anticipated bid letting date and shall be based on the portion of the project budget anticipated for construction, as determined by the Project Engineer or Architect. Once the project is determined eligible or ineligible, the project status in the Percent for Art Program remains unchanged unless the project scope is significantly modified.
- (4) Calculating the Percent For Art Expenditure.
- (a) Determining the Amount of the Project Budget to Apply the Percent for Art Expenditure. The Percent for Art Expenditure is calculated using the estimated cost of construction including contingencies as determined by Project Engineer or Architect following the completion of the schematic design phase of the project development process and shall not be revised later if the actual construction cost is lower or higher. When calculating the Percent for Art Expenditure, the following funding sources shall be subtracted from the construction estimate prior to calculating the Percent for Art Expenditure:
 1. State funds;
 2. Federal funds;
 3. Assessable funds;
 4. Funds derived from other municipal entities;
 5. Funds provided by private individuals and entities;
 6. Madison Sewer Utility underground infrastructure costs;
 7. Madison Storm Utility underground infrastructure and stormwater management costs;
 8. Madison Water Utility underground infrastructure costs;
 9. Donated funds unless the donation includes an expenditure for art.
 - (b) Calculating the Percent for Art Expenditure. The amount of the construction estimate that is eligible for the Percent for Art Expenditure shall be multiplied by one percent (1%) and the resulting amount shall be added to the overall project budget and shall be restricted or dedicated for use as set forth in this ordinance.
 - (c) Reduction of Percent for Art Expenditure. Upon approval by the Mayor and Common Council by resolution, the eligible amount for the Percent for Art Expenditure may be reduced where extraordinary budgetary constraints require the reduction of project scope to ensure a viable project, but may not be cut altogether.
- (5) Percent for Art Aggregated Fund and Designation of Alternative Sites. There is hereby created a segregated account called the Art Aggregated Fund. When mutually agreed upon between the Arts Administrator, the City department from whose budget the Percent for Art Expenditure was obtained, and any City department with jurisdiction over a proposed alternative site, and where permitted by the funding source, the Common Council may reallocate the Percent for Art Expenditure to the proposed alternative site or to the Art Aggregated Fund for the purchase, installation and maintenance of public art projects. Such reallocation shall be on the recommendation of the Arts Administrator, who shall present to the Common Council a proposal outlining the reason that the Percent for Art Expenditure be expended at a site other than the site which generated the Percent for Art Expenditure. Such reallocation may occur where the original project has limited public access, or generates funds insufficient to acquire new artwork, or for any other reason deemed compelling by the Common Council. All unused Percent for Art Expenditure funds, upon final completion of the Eligible Capital Improvement Project, shall transfer to the Art Aggregated Fund or the Art Maintenance and Conservation fund, where permitted by the funding source.
- (6) Art Maintenance and Conservation Fund. There is hereby created a segregated account called the Art Maintenance and Conservation Fund. When permitted by the funding source,

the Commission may set aside and expend up to ten percent (10%) of the Percent for Art allocation for each project for the maintenance and conservation of artworks that are part of the City Art Collection.

(7) Arts Program Administrator Responsibilities.

(a) Determination of Project Eligibility and Plan for Use of Percent for Art Expenditure.

The Arts Program Administrator ~~or the designee of the Director of Planning and Community and Economic Development in the absence of the Arts Program Administrator~~ shall be consulted by the City's project development teams on each project subject to this ordinance. The Arts Program Administrator or designee may refer the artworks component of such projects to the Madison Arts Commission for comment. The resolution approving the plans and specifications for the Eligible Capital Project shall contain within the fiscal note the Percent for Art Expenditure amount. The resolution shall be accompanied by a report by the Arts Program Administrator or designee which outlines how the funds are to be allocated for art and whether the project satisfies the requirements of this ordinance. The Arts Program Administrator may also comment on the appropriateness of public art expenditures on projects not strictly subject to the terms of this ordinance.

(b) Annual Report to the Mayor and Common Council. The Arts Program Administrator shall file an annual report as part of the Capital Budget that details:

1. A description of the artwork completed, obtained or commenced under this ordinance program during the preceding twelve (12) months;
2. A description of the capital improvement projects designated for inclusion in this program during the upcoming two (2) years;
3. An accounting of the expenditures for the projects identified in subs. (a) and (b) above, or funded through the Art Maintenance and Conservation Fund or Art Aggregated Fund;
4. An accounting of the status of the Art Maintenance and Conservation Fund and the Art Aggregated Fund;
5. A description of any changes to this program for the upcoming year;
6. A recommendation for any adjustment to the Percent for Art Expenditure percentage rate and/or any other recommended amendments to this ordinance.

(8) Ownership of Completed Works of Art.

(a) Modified VARA Rights. Any contract under this program shall recognize the unique responsibilities of a municipality by including a consensual modification of the applicable provisions of the Title and copyright to all completed artworks commissioned under this ordinance shall be conveyed to the City. As a condition of any contract under this program the artist shall sign a waiver of all copyrights, moral rights and rights arising under the Visual Artists Rights Act of 1990 (17 U.S.C. §106A). The City shall have the unencumbered authority to sell, move or remove the artwork at its sole discretion, even where such actions could cause physical defacement or destruction.

(b) Non-Modification of VARA Rights. With the consent of the City Attorney and the approval of the Madison Arts Commission, the Arts Administrator may enter into an agreement with an artist that waives any of the provisions of sub. (a) whenever the benefits of doing so outweigh the risks of proceeding without the modifications of VARA rights set forth in sub (a).

(9) Expenditures on Art Projects not Limited. Nothing within this ordinance shall be intended to limit the amount of expenditure used on art undertaken on projects eligible under the Percent for Art Program or on projects not eligible under the program.

(10) Arts Acquisition, Accessioning and Deaccessioning Policy. The Arts Administrator shall create a written policy to guide the City's acquisition, accessioning and deaccessioning of works of art. This policy shall be reflective of the best practices of municipal art curators. Such policy shall be approved by the Madison Arts Commission and the Common Council prior to its implementation.

(11) Effective Date. This ordinance shall become effective for all eligible projects first let two (2) years after the date on which this ordinance was adopted."

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