

## **CHAPTER 15 PUBLIC ART**

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**15.001. Purpose.** The City Council recognizes that visual arts contribute to and provide experiences that enrich and better the social and physical environment of the community, and desires to foster an advancement of the visual arts within the City of Salem. It is the purpose of this Chapter, and the policy of the City to dedicate one-half of one percent of the total eligible costs of all improvement projects to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of public art. (Ord No. 6-10)

**15.010. Definitions.** Unless the context otherwise specifically requires, for purposes of this Chapter, the following words and phrases mean:

(a) Alteration means any change to a public mural, including but not limited to any change to the image(s), materials, colors or size of the public mural. Alteration does not include naturally occurring changes to the public mural caused by exposure to the elements or the passage of time, or maintenance or repair of the public mural that includes slight and unintended deviations from the original image, colors or materials that occur when the public mural is repaired due to the passage of time, or after damage resulting from vandalism.

(b) Artist means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces works of art, and who is not a member of the improvement project's architectural firm or the Salem Public Art Commission. The term "artist" shall include an artist's agent and a representative of the estate of an artist.

(c) City building means any building owned or leased by the City, or area therein, which is open to the public; provided, however, "City building" does not include motor pools, surface parking lots, roads, bridges, utility lines, service facilities, maintenance sheds, pump stations, treatment plants and utility facilities, or buildings that have the primary purpose of displaying historical artifacts, cultural items, or works of art.

(d) City Manager means the City Manager of the City of Salem, or the City Manager's designee.

(e) Deaccessioning means relinquishing title to a work of public art.

(f) Eligible costs means the costs for completion of an improvement project, including costs for capitalized tenant improvements, that are paid from eligible funds. Eligible costs does not include costs for: land acquisition, 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.

(g) Eligible funds means any funds expended by the City, from whatever source, for an

improvement project and for which public art is not precluded as an object of expenditure in connection with the improvement project.

**(h)** Improvement project means any project paid for wholly or in part by the City where the amount of eligible funds equals \$100,000 or more for the construction, rehabilitation, remodeling, improvement or purchase of a City building. An improvement project does not include maintenance and repair projects or remodeling or renovation projects in which more than seventy-five percent of the project cost represents improvements to mechanical systems.

**(i)** Oregon artist means an artist that makes Oregon his or her primary residence or principal place of business.

**(j)** Public art means original works of art owned or acquired by the City.

**(k)** Public mural means an original, two-dimensional work of visual art, comprised of paint, ceramic or glass tiles, or tesserae, executed by hand directly upon, or affixed directly to an exterior wall of a building, which has been approved by the Salem Public Art Commission and accepted by the City into its public art collection pursuant to this Chapter. A public mural is not an original work of visual art if it is mechanically reproduced or computer generated and printed on a base that will be attached to the wall, such as, by way of illustration but not limitation, limited images digitally printed on vinyl.

**(l)** Works of art means all forms of original creations of visual art, including and not limited to, painting, sculpture, prints, ceramics, drawings, stained glass, mosaics, photography, fiber and textiles, calligraphy, mixed media, and any combination of media, including collage. (Ord No. 6-10; Ord No. 10-10; Ord No. 13-11)

#### **15.020. Salem Public Art Commission.**

**(a)** There is hereby created a seven-member Salem Public Art Commission, who shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The City Manager shall serve as an ex officio non-voting secretary to the Commission. The appointed members of the Salem Public Art Commission shall consist of two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education; two members who have experience, training or expertise in museum curation, art restoration, or art appraisal; and two members who have experience, training, or expertise in architecture or landscape architecture, commercial real estate or development, or experience with foundations and cultural development; and one at-large member.

**(b)** Members of the Salem Public Art Commission shall serve three-year terms, but the terms shall be staggered so that not more than three members' terms of office shall expire in any one year. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until one full year after the date of expiration of his or her immediate previous term of office. In case of a vacancy, a successor to serve the remainder of the term shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The members of the Commission shall not receive any compensation for their services.

**(c)** Except for the first year, the Salem Public Art Commission shall elect a chair and a vice-chair from among its members who shall hold office at the pleasure of the Commission. The first chair and vice-chair will be appointed by the Mayor. The Salem Public Art Commission shall adopt rules of procedure and organization of the Commission, and rules for the conduct of meetings that are consistent with generally recognized principles for the orderly conduct of business by a deliberative body. All meetings of the Commission shall be open to the public.

**(d)** The Salem Public Art Commission shall have the authority to select, acquire, receive, borrow, commission the design or fabrication of, and maintain, deaccession, document and register all works of art within the City's public art collection with funds from the Public Art

Trust Fund. The Commission shall have the authority to advise the City Manager on the management, execution, installation, or placement of works of art, and administration of public art education activities.

- (e) The Salem Public Art Commission shall recommend guidelines for adoption by the City Council for the selection, acquisition, commissioning and deaccessioning of public art that give preference to Oregon artists and that shall include consideration of the following:
  - (1) Whether the work of art is compatible with the design of the City building;
  - (2) Whether the work of art is of exceptional quality and enduring value;
  - (3) Whether the work of art promotes a broad range of artistic styles and media in order to maintain an overall balance within the City;
  - (4) Whether the work of art presents a safety hazard to the public; and
  - (5) Whether the work of art requires extraordinary maintenance, including, but not limited to, periodic adjustment, repainting, repair or replacement of moving parts.
- (f) The Salem Public Art Commission shall establish procedures for the maintenance, management, documentation and registration of all works of art within the City's public art collection and such other procedures and guidelines consistent with this Chapter to facilitate the implementation of the Commission's responsibilities under this Chapter.
- (g) Each year at a time specified by the City Manager, the Salem Public Art Commission shall prepare and submit to the City Manager a recommended budget for the Public Art Trust Fund for the ensuing fiscal year, which the City Manager shall forward to the Salem Budget Committee. The budget shall estimate income and expenditures for the Public Art Trust Fund for that year, conform to the requirements of SRC 15.030, and be in a form prescribed by the City Manager.
- (h) Except as limited by other sections of this Chapter, the Salem Public Art Commission's decisions as to the acquisition, fabrication, deaccessioning, and registration of public art, including public murals, shall be final. (Ord No. 6-10; Ord No. 13-11)

#### **15.030. Public Art Trust Fund.**

- (a) There is established a special fund designated as the Public Art Trust Fund from which expenditures may be made for the acquisition, fabrication, installation, maintenance, conservation, management, deaccessioning, community education, documentation and registration of public art. The Public Art Trust Fund shall consist of funds appropriated by SRC 15.040, other funds as the City Council may appropriate, and funds given to the City from public or private sources.
- (b) Monetary contributions shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is deemed appropriate by the City Manager, is required by law, or is a condition of any gift or donation. Prior to disbursing funds from a segregated account in the Public Art Trust Fund, the Salem Public Art Commission shall adopt written findings demonstrating that the proposed disbursement complies with any applicable conditions for the expenditure of those funds.
- (c) Excluding funds from conditional gifts or donations, funds deposited into the Public Art Trust Fund, shall be allocated as follows:
  - (1) Seventy percent shall be used for costs associated with acquiring public art, including, but not limited to the acquisition, fabrication, and installation of public art.
  - (2) Twenty percent shall be used for costs associated with managing public art, including, but not limited to costs of selection, program management, community education and registration of public art.
  - (3) Ten percent shall be used for the maintenance, conservation and deaccessioning of public art.
- (d) Disbursements shall be made according to the terms of this Chapter and any procedures

adopted by the Salem Public Art Commission. The Salem Public Art Commission will report annually to the City Council on the disbursement of funds from the Public Art Trust Fund. (Ord No. 6-10; Ord No. 13-11)

**15.040. Dedication to Public Art Trust Fund.** Any city official or employee who authorizes or appropriates expenditures for an improvement project shall include in the total construction budget, and cause to be deposited in the Public Art Trust Fund, a monetary contribution for public art equal to one-half of one percent of the total eligible costs. Where an improvement project will be constructed in phases, the one-half of one percent dedication shall be applied to the estimated total cost of each phase of the project at the time that funds for the phase are encumbered. Nothing in this section prevents the City Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase. (Ord No. 6-10)

**15.050. Title to Art Work.**

(a) Title to works of art acquired under this Chapter shall be acquired in the name of the City and vest in the City. Acquisition of a work of art shall be accompanied by an assignment of copyright to the work of art; provided, however, the artist may retain a non-exclusive right to make reproductions of the work of art for professional advertisement and promotional purposes.

(b) Except as otherwise agreed by the Public Art Commission, no artist, by virtue of the sale of a work of art to the City, shall be deemed to have acquired any right in the continued ownership of the work of art, or to the continued placement of the work of art in any location or venue, notwithstanding the fact that the work of art may have been created as a site-specific work of art. (Ord No. 6-10; Ord No. 13-11)

**15.060. Siting.** Subject to any applicable ordinances, public art obtained pursuant to this Chapter may be sited in, on or about any improvement project, public right of way, easement, or other property owned, leased, or otherwise under the control of or made available to the City. (Ord No. 6-10)

**15.070. Public Mural Program Intent and Purpose.** The intent and purpose of SRC 15.070-15.100 is to encourage the production of public murals for acquisition by the City. Public murals are a medium of expression which serves the public interest in unique ways, including, but not limited to: enhancing the aesthetics of the City; providing avenues for original artistic expression in the City; providing public edification through access to original works of public art; encouraging community participation in the creation of original works of art; and reducing the incidence of graffiti and other crime. Public murals can increase community identity and foster a sense of place if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood involvement process. (Ord No. 10-10)

**15.080. Public Murals; Creation; Approval by Salem Public Art Commission.** No person shall commence creation of any public mural without first obtaining approval from the Salem Public Art Commission, and agreeing to donate the public mural to the City's public art collection, as provided in SRC 15.090. Murals that are created without approval from the Salem Public Art Commission or are inconsistent with the conditions of approval from the Salem Public Art Commission are not public murals and are subject to SRC Chapter 62. Approval of a public mural does not require historic design review. (Ord No. 10-10; Ord No. 13-11)

**15.090. Procedures, Mandatory Criteria for Public Murals.** The Salem Public Art Commission shall adopt procedures and standards setting forth the requirements for creation, approval, donation, and acceptance of public murals into the City's public art collection. At a minimum, the standards shall include the following:

(a) Public murals shall remain in place, without alterations, for a period of not less than seven years, except as may be specified by the Salem Public Art Commission in the conditions of approval.

(b) In historic districts, public murals may only be allowed on buildings that are non-historic non-contributing buildings or structures. Murals in historic districts shall not be allowed on a building façade. For purposes of this paragraph, the building façade is defined as the wall that contains the main entrance onto the premises.

(c) No public murals shall be allowed on single family dwellings, duplexes, or multi-family dwellings. As used in this subsection, single family dwellings, duplexes, or multi-family dwellings do not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings.

(d) No public mural may contain electrical components, three dimensional structural elements; employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance of the public mural or changes the mural image or message.

(e) Public murals shall be located in a manner that is accessible to the public.

(f) The approval and acceptance of each public mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the mural will be located, in a form approved by the City Attorney. The terms of the easement shall grant the right to create the public mural on the wall of the building and provide that the person granting the easement will maintain and restore the public mural in its original condition for the period of the easement, and state that upon termination of the easement, the mural shall be removed and the building restored to its prior condition. (Ord No. 10-10; Ord No. 13-11)

**15.100. Public Mural Neighborhood Involvement.** Prior to approving a public mural for the City's public art collection, the Salem Public Art Commission shall hold a public hearing at which interested members of the public may review and comment upon the proposed public mural. Written notice of the hearing shall be provided to the neighborhood association in which the public mural is proposed to be located, and public notice shall be given no later than thirty days before the hearing. (Ord No. 10-10; Ord No. 13-11)