

ORDINANCE NO. \_\_\_<sup>1</sup>

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING CHAPTER X.X, PUBLIC ART PROGRAM, TO THE RICHMOND MUNICIPAL CODE AND REPEALING RESOLUTION 70-97**

The Council of the City of Richmond does ordain as follows:

**SECTION I. Findings and Determinations.**

1. Public art fosters economic development, enhances community vitality and enriches the quality of life throughout the City.
2. Since 1997 Richmond has had a policy requiring City capital improvement projects to devote 1.5 percent of the project's construction budget to public art, and in 2017 extended this requirement to private developments.
3. The City wishes to confirm and strengthen its municipal public art program to enhance the funds available for public art and to increase flexibility to provide art experiences that are timely and relevant throughout the community.

**SECTION II. Amendment of Article X.** Article X of the Municipal Code of the City of Richmond is hereby amended by adding Chapter X.X to read as follows:

**CHAPTER X.XX  
PUBLIC ARTS PROGRAM**

Sections:

- X.XX.010 Definitions.
- X.XX.020 Public Art for Municipal Projects
- X.XX.030 Standards for review.
- X.XX.040 General rules for art in public places.
- X.XX.050 City Council review of artistic matters in the Public Arts Program
- X.XX.060 Public Art Program Funds
- X.XX.070 Ownership of Public Art
- X.XX.080 Implementation Guidelines

X.XX.010 Definitions

For purposes of this article, the following definitions shall apply:

- (a) "Artist" means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, performances, commissions, exhibition record, publications, and production of Artwork.
- (b) "Art in public places" means any visual work of art displayed for two weeks or more in an open city-owned area, on the exterior of any city-owned facility, within any city-owned facility in areas designated as public area, lobbies, or public assembly areas, or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city
- (c) "Artwork" that may be used to satisfy the requirements of this Chapter includes, but is not limited to, the following:
  - (1) Sculpture: Of any material or combination of materials; freestanding, wall-supported,

**Commented [A1]:** Definition from Richmond 12.62 ordinance, Public Art in Private Development

<sup>1</sup> This document is pending legal review.

suspended, mounted, installed, kinetic, electronic, or mechanical.

- (2) Murals or paintings: Made of any material or variety of materials including traditional or non-traditional materials and means.
- (3) Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, books, literary and performing arts, calligraphy, found objects, any combination of media, including audio, video, film, CD-ROM, DVD, holographic or computer-generated technologies, or other genres currently known or which may come to be known.
- (4) Artwork may be permanent, temporary, fixed, or portable; may be an integral part of a building, facility, or structure; and may be integrated with the work of other design professionals.
- (5) For the purposes of this policy, the following, unless specified or designed by an Artist, are not considered Artworks:
  - i. Reproductions, by mechanical or other means, of original Artworks; however, limited editions controlled by the Artist, or original prints, cast sculpture, or photographs, may be included.
  - ii. Decorative, ornamental, or functional elements that are not designed by an Artist.
  - iii. Elements generally considered to be components of architecture or landscape design, such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc., which are not designed by an Artist.
  - iv. Art objects that are mass-produced, ordered from a catalog, or of standard design (such as benches or fountains), directional items or other functional elements such as graphics, signage, or maps.
  - v. Corporate logos.

- (d) "City Capital Improvement Projects" includes any capital improvement project with a budget or anticipated costs of \$300,000 or more, including any acquisition, leasing, rental, construction or remodeling of any building, structure, park, utility, street, sidewalk, or parking facility, or any other type of capital project or any portion thereof within the geographical limits of the city, paid for wholly or in part by the City of by any board, commission, agency or department the City (including without limitation the Richmond Redevelopment Agency, the Richmond Housing Authority, the Port of Richmond and the Richmond Surplus Property Authority)
- (e) "Commission" means the City of Richmond Arts and Culture Commission (and by extension the Public Art Advisory Committee, a subcommittee of the Richmond Arts and Culture Commission), which was established in 1997 to serve in an advisory capacity to the Mayor, City Council, and City Manager to promote, encourage, and increase support for arts and culture.
- (f) "Permanent installation" means a work of art in a public place intended to remain or remaining for one year or more.
- (g) "Private Development" means a building project that is funded by private funds, except where the Private Developer is in partnership with the City.
- (h) "Public Art" means any Work or Art integrated into the design of or places in, or about the site of a City Capital Improvement Project or Private Development in a place accessible to the general public for two weeks or more in an open city-owned area, on the exterior of any city-owned facility, within any city-owned facility in areas designated as public area, lobbies, or public assembly areas, or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city.
- (i) "Public Art Projects Account" means a separate account established in the City Treasury (formerly called the Public Art Fund) into which money acquired through the Percent for Art Resolution No. 70-97 (as may be amended) is deposited for the exclusive use of the Public Art Program.

**Commented [A2]:** From Richmond 12.62 ordinance, Public Art in Private Development

**Commented [A3]:** From Richmond ordinance 70-97 establishing public works improvements arts program

**Commented [A4]:** From Resolution 70-97, establishing public works improvements arts program

**Commented [A5]:** From Richmond 12.62 ordinance, Public Art in Private Development

**Commented [A6]:** From Richmond 12.62 ordinance, Public Art in Private Development

**Commented [A7]:** From Resolution 70-97, establishing public works improvements arts program

**Commented [A8]:** From Richmond 12.62 ordinance, Public Art in Private Development

- (j) "Temporary installation" means a work of art in a public place intended to remain for less than one year.
- (k) "Work of art" means the work of a practitioner in the fine arts, generally recognized by peers as one who produces professional quality works of art.

**Commented [A9]:** From Resolution 70-97, establishing public works improvements arts program

X.XX.020 Public Art for Municipal Projects

- (a) Percent Allocated and Applicability.  
From the effective date of this Ordinance, all budgets and appropriations for City Capital Improvement Projects and, where permitted, all City bond measures for the construction of City Capital Improvement Projects and all City applications for City Capital Improvement Projects to outside granting authorities shall include an allocation equal to one and one-half percent (1.5%) of the total cost of the City Capital Improvement Project for Public Art. All CIP projects shall be subject to this policy, including but not limited to buildings, shelters, parking garages and lots, restrooms, small structures, parks, medians, landscaping, plazas, gateways, bridges, walls, tunnels, and street and road construction. Salaries and benefits of public employees supporting CIP projects shall not be included in the CIP budget subject to this ordinance. If the project is deemed ineligible for a public art appropriation, the Finance Director and Participating Bodies must submit a letter of explanation to the Arts and Culture Commission explaining why the project has been deemed ineligible, or why funds must be restricted to a specific site.

**Commented [A10]:** Adapted from Resolution 70-97, establishing public works improvements arts program

- (b) Method of Calculation.  
The amount to be allocated for Public Art with respect to each City Capital Improvement Project shall be a portion of the total cost of the City Capital Improvement Project, including all construction costs, architectural and engineering fees and site work expenses and excluding any budgeted costs of real property acquisition, demolition and financing, equal to 1.5% of such total cost. The 1.5% portion of the total cost of a City Capital Improvements Project allocated to Public Art may include, without limitation, costs of structural elements of the project which qualify as Public Art, the cost of acquisition and installation of Works of Art on, about or near the project site, title cost of the services of artists involved in the design of the project or in the production of Works of Art related to the project and the cost of administrative services provided by the Richmond Arts and Culture Manager in connection with the Public Art component of the Project.

If any applicable law or the source of funding (such as, for example, FEMA) with respect to any particular City Capital Improvements Project prohibits use for the arts as an object of expenditure of certain funds, such funds shall be excluded from the total project budget for the purpose of calculating the expenditure for arts.

**Commented [A11]:** Adapted from Resolution 70-97, establishing public works improvements arts program

- (c) Nothing in this Section is intended to prohibit the City Council from adopting an ordinance or resolution establishing a public art contribution for any project otherwise excluded from this policy or setting the public art contribution for any project at greater than 1.5 percent of the CIP budget.
- (d) Funds. Funds shall be deposited into the Public Art Projects Account. The Arts and Culture Manager, in consultation with the Richmond Arts and Culture Commission, as appropriate, shall determine public or publicly-accessible sites for art funded by the 1.5 percent for art policy. Funds shall be used for art and cultural services as set forth in the Public Art Program Policies and Procedures. Funds may be expended on public art at any appropriate site within the City. Funds from two or more CIP projects may be pooled to fund a single work of art. Funds may be used for permanent or temporary public art. The Richmond Arts and Culture Commission may utilize the funds for inclusion of space that is generally open to the public during regular business hours and is dedicated for regular use as a rotating art gallery, free of charge and/or space within the project, to be made available to the public for the primary use of arts and cultural programming.
- (e) The City Manager or their designee may adopt administrative regulations to implement this Section.

X.XX.030 Standards for review.

- (a) In performing its duties with respect to the Public Arts Program, the Richmond Arts and Culture Commission and the Public Art Advisory subcommittee shall give special attention to the following manners:
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.

X.XX.040 General rules for art in public places.

- (a) Review of Permanent and Temporary Installations. Permanent installations shall receive the prior review and advice of the Richmond Arts and Culture Commission as recommended by sub-committee PAAC. Temporary installations (including performing art) shall receive the prior review and advice of the Arts and Culture Manager. Extensions of time for temporary installations to remain for one year or more may be granted by the Arts and Culture Manager in consultation with the Richmond Arts and Culture Commission. Permanent installations shall not be removed, altered, or changed without the prior review and advice of the Richmond Arts and Culture Commission.
- (b) Private Sites for Art In Public Places. No work of art financed or installed either wholly or in part with city funds or with grants procured by the city shall be permanently installed on privately owned property without a written agreement between the city and the owner specifying the proprietary interests in the work of art, binding the owner to the general rules for art in public places, and specifying other provisions deemed necessary or desirable by the city attorney. Additionally, such written agreements shall specify that the private property owner shall assure:
1. That the installation of the work of art will be done in a manner which will protect the work of art and the public;
  2. That the work of art will be maintained in good condition; and
  3. That the insurance and indemnification will be provided as is appropriate.
- (c) Consultation with the Artist. Installation, maintenance, alteration, refinishing, and moving of art in public places shall be done in consultation with the artist while following all regulations
- (d) Inventory of Art in Public Places. The Arts and Culture Manager shall maintain a detailed record of all art in public places, including site drawings, photographs, designs, names of artists, and names of architects whenever feasible. The Arts and Culture Manager shall attempt to give appropriate recognition to the artists in publicity and promotion regarding art in public places.
- (e) Database of Artists. The Arts and Culture Manager shall maintain a database of artists available for public art projects.

X.XX.050 City Council review of artistic matters in the Public Arts Program.

- (a) Recognizing that professional expertise is necessary and desirable in artistic matters, such as the selection of artists for a project, the selection of particular works of art, and the approval of designs and plans for works of art under the Public Arts Program, it is a policy that:
1. Decisions on artistic matters will be made by city staff and the Richmond Arts and Culture Commission;

2. The City Council will not exercise its independent judgment on artistic matters unless the City Council requests that the matter be agendized for its review;
3. Unless the City Council determines to exercise its independent judgment as provided above, sketches, designs, photographs, precise plans, art examples, and similar items on artistic matters will not be transmitted to the City Council as a matter of course in conjunction with projects before the City Council;
4. The City Council will refer questions, suggestions, requests, complaints, and similar items pertaining to the Public Arts Program to city staff and the Richmond Arts and Culture Commission for their review and response.

X.XX.060 Public Arts Program Funds

(a) Establishment of Richmond Public Art Projects Account

**Commented [A12]:** Adapted from Resolution 70-97, establishing public works improvements arts program

The Finance Director is hereby directed to establish a non-General Fund account, which shall be known as the Richmond Public Arts Projects Account, into which will be deposited funds as contemplated by X.XX.020 above, together with such other funds as the Council may from time to time appropriate for expenditures related to Public Art in the City of Richmond and any gifts or grants received by the City of Richmond and its boards, agencies, commissions and departments for the purpose of acquiring, creating, installing or maintaining Public Art.

Monies to be expended for Public Art in connection with City Capital Improvement Projects may be used to pay for all expenditures related to Public Art including payment for artists' services, the acquisition, installation, maintenance and conservation of Works of Art, and the administration of Arts and Culture policies and programs. In the case of City Capital Improvement Projects where the incorporation of Public Art into the design of the project or the inclusion of Public Art on the project site are infeasible or inappropriate, the City Manager may release the 1.5% of the project budget allocated to and appropriated for Public Art to be used for other Public Art projects in under-served neighborhoods of the City. However, if the transfer of monies from one project to another is not authorized, or illegal restrictions on the source of the funds prohibit such transfers, or if funds must be restricted to a specific site, the one and one-half percent (1.5%) appropriation shall be restricted to a specific City Capital Improvement Project and shall be placed in a project fund earmarked for that project. Monies to be expended for Public Art in connection with the One Percent for Public Art on Private Projects program shall be deposited into the Public Art Projects Account in accordance with RMC 12.62.120 and the adopted Public Art in Private Developments Policies and Procedures.

Monies to be expended for Public Art in connection with specific City Capital Improvement Projects shall be deposited into the Richmond Public Arts Projects Account in accordance with X.XX.060(b) below.

The Arts and Culture Manager shall be required to seek approval from the City Council on spending from the Public Art Projects Account for amounts greater than \$10,000.

(b) Procedures and Payments into Richmond Public Arts Projects Account.

**Commented [A13]:** Adapted from Resolution 70-97, establishing public works improvements arts program

Except as provided in X.XX.060(c), no board, commission, agency or department of the City shall permit or cause work to be commenced on any City Capital Improvements Project prior to depositing the amount required by X.XX.020 into the City of Richmond Public Arts Projects Account. The requirements of this section shall apply to City Capital Improvements Projects, whether or not a final inspection or a certificate of occupancy is required for the project. Compliance with the requirements of this section shall be a condition precedent to design approval required by Richmond Municipal Code See. 15.04.205 and any successor provisions thereto and, whenever a building permit is required by applicable provisions of the Richmond Municipal Code, shall also be a condition precedent to the issuance of the permit.

Prior to hiring an architectural team for the design of any such City Capital Improvements Project, the project manager or managers shall meet with the Richmond Arts and Culture Manager for the purpose of determining how Public Art shall be incorporated into the proposed project. At the request of the Richmond Arts and Culture Manager, the project manager(s) shall include an artist in the architectural design team for the proposed project. The Arts and Culture Manager shall assist the project manager(s) in the selection of an appropriate artist or artists for the project.

(c) Annual Plan and Administration of Funds.

Within thirty (30) days after approval of the City's annual operating budget by the City Council, the Finance Director shall submit the authorized annual budget for capital improvements to the Richmond Arts and Culture Manager, specifying the total appropriation dedicated to the "Richmond Public Arts Projects Account" for the current fiscal year. Based upon this submission, the Richmond Arts and Culture Manager, with the advice of the Richmond Arts and Culture Commission and based on any meetings with project managers of City Capital improvements Projects, shall develop a one-year plan for Public Art (the "Annual Plan") and shall submit this Annual Plan to the Richmond City Council for its approval within six (6) months of the date of approval of the City's annual operating budget.

The funds placed into the Public Arts Projects Account shall be administered by the Arts and Culture Manager in accordance with the Annual Plan as approved by the Richmond City Council. The Annual Plan shall reflect the policies established by this ordinance with respect to City Capital improvement Projects

(d) Review of Disbursements. Each proposed appropriation for the Public Art program and each disbursement from the Public Arts Projects Account shall receive the prior review and advice of the Public Art Advisory Committee and Richmond Arts and Culture Commission.

(e) Additional Funding. The Arts and Culture Manager shall explore on a continuing basis the availability of funds for the Public Arts Program from such organizations as the National Endowment for the Arts, the California Arts Commission, and other public and private agencies.

**Commented [A14]:** Adapted from Resolution 70-97, establishing public works improvements arts program

X.XX.070 Ownership of Public Art.

All Works of Art, including design elements, and other objects acquired and funded by the City of Richmond or any of its boards, commissions, agencies or departments pursuant to this ordinance shall be acquired in the name of the City of Richmond and title shall vest in the City of Richmond. Copyright shall be maintained by the Artist.

**Commented [A15]:** Adapted from Resolution 70-97, establishing public works improvements arts program

X.XX.080 Implementation Guidelines.

The Arts and Culture Manager shall establish procedures to administer this policy, including procedures for selecting sites, artists and art works. Procedures for the implementation of the policies adopted by this ordinance shall be developed by the Arts and Culture Manager, with the advice and approval of the Richmond Arts and Culture Commission, and shall be submitted to the Richmond City Council for approval.

**Commented [A16]:** Adapted from Resolution 70-97, establishing public works improvements arts program

**SECTION II. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

**SECTION III. CEQA.** This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because the adoption of this ordinance is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and a project does not include the

creation of a government funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378). In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Ordinance would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

**SECTION IV. Effective Date.** This ordinance becomes effective thirty (30) days after its final passage and adoption.

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DRAFT

First read at a meeting of the Council of the City of Richmond, California, held  
held , and finally passed and adopted at a meeting thereof  
, by the following vote:

AYES: NOES:

ABSTENTIONS:

ABSENT:

CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney