

**BY-LAWS
CITY OF MISSOULA PUBLIC ART COMMITTEE**

Article I. Authority

The Missoula Public Art Committee was created in 1985 by Mayor John Toole as a committee designated to review, advocate and develop public art projects in the public domain for the City of Missoula. It was reaffirmed on December 23, 2003 as a standing city committee with the passing of Section 2.94.060 of the Missoula Municipal Code, Ordinance 3221.2002:

An ordinance creating chapter 2.94 of Missoula Municipal Code entitled “Public Art” establishing a Percent for Art program to include works of art within certain city projects, setting procedures to commission and select public art, requiring 1% of construction project funds for certain city projects for public art, providing a funding source for ongoing maintenance of Public Art and prescribing a procedure for deaccession of public art.

Article II. Purpose

The purpose of the Missoula Public Art Committee is to affirm the City’s role as an advocate for public art; to foster and enrich the cultural aesthetic of the City of Missoula; to recognize and value the contributions of visual artists to the community; and to further the objectives of Missoula City Ordinance 3221.

Section 1. Responsibilities

- A. Administer the City’s Public Art Ordinance
- B. Expand awareness in the community of public art and the activities of the Missoula Public Art Committee
- C. Commission and select artists for the City and assist private entities in the commission and selection of artists
- D. Serve in an advisory capacity to other organizations and businesses pursuing public art projects
- E. Administer the Public Art Fund
- F. Prepare an Annual Report of the Missoula Public Art Committee’s activities to the community
- G. Care for and maintain the City’s public art collection

Section 2. Activities

Membership. Pursuant to Ordinance 3221, the Missoula Public Art Committee shall be made up of 7 members to be nominated by the Mayor with the advice of the Public Art Committee and confirmed by the City Council. Terms shall be for 4 years, except that the Mayor may designate shorter terms initially in order to insure that the terms are

staggered. One member shall be a member of the Missoula City Council. Other members shall be selected because of their expertise in historical preservation, visual arts, architecture, or affiliation with a local business association or public entity.

Meetings. The Committee shall meet at least monthly, and as needed, to carry out its purpose at a suitable place mutually agreeable to the members and accessible to the public. In addition, the Committee shall meet at such times and places as the Chairperson shall direct or within five (5) days, upon request of a Committee member, provided that the Chairperson concurs.

In considering all matters lawfully before it, the Committee may:

1. schedule and hold informal working sessions and consult with City staff, Councilpersons, interested parties, or technical advisors;
2. provide notice and hold formal public hearings, if necessary, and record the proceedings of these hearings;
3. request reports from City staff persons;
4. make on-site visits;

and do all other things necessary and convenient to carry out its duties.

All business of the Committee shall be conducted by voice vote of seconded motions. A simple majority of those present and voting shall prevail in all questions, except as may otherwise be provided consistent with these by-laws. The Chairperson and Vice Chairperson shall vote on all matters properly before the Committee.

All meetings of the Committee shall be conducted in accordance with the provisions of the Montana Open-Meeting Law, and public notice shall be provided in coordination with the city clerk's office 48 hours before the meeting.

Officers. Officers of the Committee shall be a Chairperson, Vice-Chairperson (who shall preside in the absence of the Chairperson) and Secretary/Treasurer (who shall keep the minutes of committee meetings). Officers shall be elected by the Committee at its first meeting following the beginning of the City's fiscal year.

Quorum. A majority of the Committee, at least four members, shall constitute a quorum. No business shall be transacted in the absence of a quorum.

Subcommittees. The Committee may form subcommittees as needed which shall report to the Committee. Meetings of subcommittees shall be in accordance with these by-laws, except subcommittees may transact business in the absence of a quorum of the subcommittee.

Conflict of Interest. Any member of the Committee who has an actual or apparent conflict of interest with respect to any matter before the Committee shall disclose this conflict to the Committee and shall disqualify him or herself from participation in

consideration of the matter, if appropriate. A motion duly made and passed by the Committee may disqualify a member of the Committee for conflict of interest.

Agendas. Committee officers shall see that complete agendas and documents relating to business on the agenda are published and reach Committee members in a reasonable time before each meeting. The Committee may not consider matters not on the agenda of that meeting unless a majority of members vote otherwise.

Minutes. The Secretary/Treasurer, or a staff person designated by the Committee, shall record, prepare and issue accurate summary minutes of each meeting of the Committee. The minutes shall reflect with reasonable completeness, all matters discussed, parties appearing and actions taken at the meeting. A copy of the minutes shall be provided to the city clerk.

Consultation. The Committee may consult with experts in relevant technical areas.

Finances. Funds may be available from time to time from various sources to assist the Committee with its purpose. To the extent that funds are available, the Committee may disburse funds, following a duly made and passed motion, that advance the Committee's purpose. All funds expended by the Public Art Committee shall pass through the City of Missoula Public Art Fund. All claims for indebtedness or obligations for the payment issued in the name of the Committee shall be approved by the Committee, signed by the Chairperson, and submitted to the City of Missoula for payment. The Committee will prepare an annual budget.

Amendments to By-laws. These by-laws may be altered, amended or repealed and new by-laws may be adopted by a vote of a simple majority of those present and voting at a regular or special meeting, if at least two-day's written notice is given of intention to alter, amend or repeal, or adopt new by-laws at the meeting.

ORDINANCE 3221

AN ORDINANCE CREATING CHAPTER 2.94 OF MISSOULA MUNICIPAL CODE ENTITLED “PUBLIC ART” ESTABLISHING A PERCENT FOR ART PROGRAM TO INCLUDE WORKS OF ART WITHIN CERTAIN CITY PROJECTS, SETTING PROCEDURES TO COMMISSION AND SELECT PUBLIC ART, REQUIRING 1% OF CONSTRUCTION PROJECT FUNDS FOR CERTAIN CITY PROJECTS FOR PUBLIC ART, PROVIDING A FUNDING SOURCE FOR ONGOING MAINTENANCE OF PUBLIC ART AND PRESCRIBING A PROCEDURE TO DEACCESSION PUBLIC ART.

Chapter 2.94

PUBLIC ART

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Section 1.

2.94.010 Purpose. The purpose of this ordinance is to establish a public art program for City of Missoula funded capital improvement projects and to provide for the funding, selection, creation and maintenance of public art and establishing responsibilities relating to administering the City’s public art program.

The City of Missoula recognizes and accepts responsibility for beautification of its public areas. The City Council has found that such enhancement adds greatly to the enhancement of the quality of life of Missoula’s citizens, attracts tourism, and provides incentives to business to locate in the City, thereby expanding Missoula’s economic base.

Section 2.

2.94.020 Policy. It is hereby declared to be the policy of the City of Missoula to include works of art within City of Missoula public works projects equal to one percent (1%) of construction project funds for public art.

Section 3.

2.94.030 Percent for Art Program established. There is hereby established a Percent for Art Program. The Mayor is responsible for directing the program and shall appoint a Public Art

Committee, with the advice of the Public Art Committee and the advice and consent of the City Council, to coordinate and administer the program.

The Percent for Art Program focuses on the outside and the inside of new and remodeled City owned public spaces. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the City of Missoula.

A. The Percent for Art Program requires one percent (1%) of eligible construction costs of City capital improvement projects paid wholly or in part by the City of Missoula to construct or remodel any public or city building, structure, park or any portion thereof to be allocated for public art. No less than eighty percent (80%) of this one percent (1%) will be used for on-site Artwork. No more than twenty percent (20%) will be deposited in a Public Art Trust Fund used to fund additional art projects and provide maintenance for existing works. In cases where the eligible construction costs of a City capital improvement project is less than \$100,000, and at the discretion of the Public Art Committee, a particular piece of on-site art is not required and one hundred percent (100%) of the one percent (1%) may be deposited in the Public Art Trust Fund.

The Percent for Art Program shall be implemented without discrimination based on race, religion, sex, marital status, color, national origin, ancestry, or creed.

Section 4.

2.94.040 Exemptions from the Percent for Art Program. The following categories of projects are exempt from the Percent for Art requirements:

- A. Water, stormwater or wastewater facilities, except for office buildings.
- B. Street construction and repair, inclusive of the public right of way improvements, such as curb, sidewalk and traffic control facilities and landscaping.
- B. Maintenance projects.

These exemptions do not preclude the Department from proposing and including funding for art in a project. Departments are encouraged to include art to some degree in these exempted categories.

Section 5.

2.94.050 Definitions.

A. "Architect" is the person or firm designing the Project to which the one percent (1%) funding applies. Where the architect is a firm, the term Architect shall mean the principal of that firm in charge of designing the Project for which the one percent (1%) funding applies.

B. "Artist" is a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability who produces Artworks and is not a member of the Project architectural/design firm.

C. "Artwork" includes but is not limited to, paintings, murals, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures

intended for ornament or commemoration. Also included are carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Landscape items include the artistic placement of natural materials or other functional art objects. Works of art may be portable as well as permanent.

D. "Capital Improvement Program" (CIP) means the annual Capital Improvement Program adopted for City financed public improvement projects.

E. "City" is the City of Missoula.

F. "Construction Cost" is the contracted sum for construction of the designated project including any change orders. Construction costs do not include costs such as professional fees, cost of land, rights of way and financing.

G. "Construction Project" means any capital improvement project paid wholly or in part by the City of Missoula to construct or remodel any public or city building, structure, park or any portion thereof.

H. "Consultant" is any firm, individual, joint venture or team of firms or individuals with which the City contracts for design or other consulting services related to construction projects.

I. "Public Art Trust Fund" is a funding mechanism which aggregates portions of the individual private, site-specific Percent for Art requirement and redistributes these funds to promote, finance and maintain public art projects throughout the City. This money is limited to not more than twenty percent (20%) of the original one percent (1%) per project allocation.

J. "Visual Arts Professional" shall mean any of the following who is respected in his/her field and knowledgeable about (contemporary) visual arts: artist, curator, art critic, art historian, architect, landscape architect, or fine arts professional.

K. "Deaccessioning" is a procedure for the withdrawal of an artwork from the public collection.

L. "Eligible Construction Cost" is that portion of the construction cost of any construction project paid for by the City of Missoula to construct or remodel any building, decorative or commemorative structure, parking facility, recreational facility, or any portion thereof, located on City property, provided that the source of funds for such project(s) is not restricted by law or regulation as to its use for artworks.

M. "Missoula Public Art Committee" is a committee created in 1985 by Mayor John Toole and reaffirmed by this ordinance as a standing city committee designated to review, advocate and develop public art projects in the public domain for the City of Missoula. It will develop a formal structure in which to create, develop and maintain public art as well as further public accessibility to the arts.

N. "Maintenance" is the periodic work on a facility required to maintain its original functionality.

O. "Remodel" is work required to substantially change or enhance the functionality of a facility.

P. "Staff Representative" is the designated professional within the Office of Planning and Grants responsible to advise and assist the City of Missoula and the Missoula Public Art Committee.

Section 6.

2.94.060 Public Art Committee established. The Missoula Public Art Committee shall be made up of 7 members to be nominated by the Mayor with the advice of the Public Art Committee and confirmed by the City Council. Terms shall be for 4 years, except that the Mayor may designate shorter terms initially in order to insure that the terms are staggered. One member shall be a member of the Missoula City Council. Other members shall be selected because of their expertise in historical preservation, visual arts, architecture, or affiliation with a local business association or public entity.

Section 7.

2.94.070 Duties and responsibilities of the Public Art Committee. The Public Art Committee shall endeavor to develop a collection of public art that is of the highest quality, that will encompass a broad aesthetic range reflecting the City and the minds of its citizens, that will improve the quality of life in the area, that will be accessible to all individuals and be a source of pride to all residents. The Public Art Committee shall seek to develop this Percent for Art Program and the associated collection in such a way so that it is intimately integrated into the fabric of the City of Missoula and reflects a broad range of community input and involvement by artists and art professionals. The Public Art Committee is responsible for reviewing, advocating and developing public art projects in the public domain for the City of Missoula. It will develop a formal structure in which to create, develop and maintain public art as well as further public accessibility to the arts.

- A. Specifically, the Percent for Art Program objectives include:
- B. Develop a public art program that is unique to Missoula.
- C. Increase the understanding and enjoyment of public art by Missoula residents.
- D. Invite public participation in the interaction with public spaces.
- E. Provide unusual and challenging employment opportunities for artists.
- F. Encourage collaborations between artists and architects, and artists and engineers.
- G. Support artist participation on design teams for planning public projects.
- H. Encourage variety of art forms: temporary and permanent, object and event, single or dispersed locations.
- I. Spread commissions among a wide number of Artists and strive for overall diversity in style, scale and intent.

All Public Art Committee meetings shall be conducted in accordance with the Montana Open Meetings Law.

Section 8.

2.94.080 Procedure to commission public art for eligible projects.

A. Upon adoption of the Capital Improvement Plan the Finance Office shall immediately alert the Missoula Public Art Committee of all plans for construction or renovation projects. The Finance Office will also identify all projects for which the Percent for Art Ordinance applies. This should be done in a timely fashion so the Percent for Art Committee can assist the City in developing any particular project requirements and/or bond language.

B. Architects/Engineers invited to submit a proposal for construction or renovation project which includes the Percent for Art should be advised of requirements and guidelines. The Architect shall work closely with the Missoula Public Art Committee and the Selection Committee on the designation of appropriate sites and shall incorporate the Artist's or Artwork's special requirements within the construction documents, including the time of delivery and installation of the Artwork.

C. Upon the designation of an Artist or an Artwork by the Selection Committee, the Artist shall enter into a contract with the City for the Artist's services or for the purchase and installation of the Artwork. This contract shall require the Artist to produce or deliver the Artwork for a price guaranteed to be no greater than the maximum contracted cost.

D. Where the Selection Committee determines that an expenditure from a specific Project is inappropriate, funds from that Project may be transferred to other Percent for Art projects, with the approval of the Contracting Agency.

Section 9.

2.94.090 Eligible expenses for the Percent for Art Program. Appropriations for Percent for Art Program projects may be spent for:

A. The Artwork itself, including but not limited to:

1. Artist's design fees.
2. Additional labor and materials required for production and installation of Artwork.
3. Artist's operating costs.
4. Travel related to the Project.
5. Transportation of the Artwork to the site and installation.
6. Any required permit or certificate fees.

B. Identification plaques and labels.

C. Frames, mats, mountings, anchorages, containments, pedestals, or materials necessary for the installation, location or security of the Artwork.

D. Photographs of completed Artworks.

E. Communication and other indirect costs including insurance.

F. Expenses for special advisors or consultants.

G. Historical artifacts displaced by construction.

Appropriations for Percent for Art Program projects may not be spent for:

A. Reproduction, by mechanical or other means, or original Artworks, except in cases of film, video, photography, printmaking or other media arts.

B. Decorative, ornamental, or functional elements which are designed by the Architect or consultants engaged by the Architect, as opposed to an Artist commissioned for this purpose.

C. Those elements generally considered to be components of a landscape architectural design or landscape gardening.

D. "Art Objects" which are mass produced of standard design, such as playground sculpture.

E. Directional or other functional elements, such as supergraphics, signs, color coding, maps, etc., except where a recognized Artist is employed.

F. Those items which are required to fulfill the basic purpose of a Resident Agency. Examples would be Artworks in the collection of the Missoula Museum of the Arts, or Artworks fulfilling an interpretive or educational role in a City park, library or University gallery.

Section 10.

2.94.100 Selection of artwork(s). All Percent for Art Program projects, whether they are permanent or temporary Artworks, will be developed to respond to a specific site or building location, with the exception of Artworks that are conceptually intended to circulate among various sites or facilities within the Project Area.

The Public Art Committee in conjunction with the Agency Representative and the Project Architect shall analyze and discuss appropriate locations, amount to be spent for purchased or commissioned Artworks, suitable art forms, Artists' prerequisites, specifics of Artist/Artwork selection process which includes open competition, limited/invitational competition and direct purchase.

A prospectus will be prepared and advertised by the Public Art Committee. The competitions may be in stages, with the final selection chosen from a group of finalists.

In making the final selection, the Selection Committee shall be guided by the goals and purposes of this ordinance and the criteria set forth in this document and any regulations promulgated to fulfill the criteria. The Committee shall select Artworks which will be technically feasible to produce and display; the selection of Artist(s) who will provide art integral to the project will be made as early in the conceptual design stage as practical, so Artist(s) will be able to work with the Architect from the beginning of the project.

If necessary, the Public Art Committee may advertise nationally or internationally for proposals.

The Selection Committee has the option of making no selection. If no proposal is accepted, the Committee has the right to reopen the competition or to propose other methods of selection.

All Selection Committee meetings shall be conducted in accordance with the Montana Open Meetings Law.

Each proposed Percent for Art project will also be evaluated as to: its artistic excellence, appropriateness in terms of scale, material and content relative to the immediate and general architectural, social and historic context; and long term durability against vandalism, weather, theft and excessive maintenance.

Acting on behalf of the City of Missoula and the advice of the Selection Committee, the Missoula Public Art Committee will make the final determination of selected work(s).

Section 11.

2.94.110 Criteria to be used in selecting public art.

A. Artists will be selected on the basis of their qualifications as demonstrated by past work, appropriateness of the proposal to the particular project, and its probability of successful completion as determined by the Selection Committee.

B. In selecting Artists and Artworks, the Selection Committee shall select those Artists and Artworks of the highest aesthetic quality, and those which fulfill the purposes of the Percent for Art Program.

C. In all cases, consideration will be given to materials, construction, durability, maintenance, public access and safety.

Section 12.

2.94.120 Selection Processes for public art. Selections of Artworks will be made by one of the following methods:

A. Open Competition: Site and program advertised; proposals accepted from all artists; no proposal fee is paid to artist unless stipulated.

B. Limited/Invitational Competition: One or more artists is invited to submit proposals; no proposal fee is paid to artists unless stipulated.

C. Direct Purchase: A completed Artwork is purchased

Section 13.

2.94.130 Public Art Management/Maintenance.

A. All Artworks remain under ownership by the City of Missoula.

B. Recipients of Works of Art must notify the Missoula Public Art Committee if an Artwork is damaged or stolen.

C. The Resident Agency will be responsible for the ongoing care and maintenance of all Artworks purchased or commissioned for the Project in accordance with the Guidelines established for the Missoula Public Art Committee's collection of art.

D. Monies to maintain works of art shall come from the Public Art Trust fund, established at up to twenty percent (20%) of the initial one percent (1%).

Section 14.

2.94.140 Deaccessioning Deaccessioning will be considered only after a careful and impartial evaluation of the artwork within the context of the collection as a whole. At the beginning of the process, the Missoula Public Art Committee will make a reasonable effort to notify any living artist whose work is being considered for deaccessioning.

The Missoula Public Art Committee may consider the deaccession of artwork for one or more of the following reasons in the event that it cannot be resited:

- A. The artwork has been damaged or has deteriorated and repair is impractical or unfeasible.
- B. The artwork endangers public safety.
- C. In the case of site-specific artwork, the artwork is destroyed by severely altering its relationship to the site.
- D. The artwork requires excessive maintenance or has faults of design or workmanship.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a 10 Ayes, 1 Naye, 0 Abstain, 1 Absent vote and

APPROVED by the Mayor this 23rd day of December, 2002.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein
City Clerk

/s/Mike Kadas
Mike Kadas
Mayor

(SEAL)

ORDINANCE NUMBER 3387

AN ORDINANCE OF THE MISSOULA CITY COUNCIL AMENDING CHAPTER 2.94, MISSOULA MUNICIPAL CODE ENTITLED "PUBLIC ART " AMENDING SECTIONS 2.94.060 TO INCREASE THE NUMBER OF PUBLIC ART COMMITTEE MEMBERS FROM SEVEN TO NINE MEMBERS.

BE IT ORDAINED THAT SECTION 2.94.060, MISSOULA MUNICIPAL CODE, IS HEREBY AMENDED AS FOLLOWS:

Section 1

2.94.060 Public Art Committee established. The Missoula Public Art Committee shall be made up of nine (9) members. Six (6) members will be nominated by the Mayor with the advice of the Public Art Committee and confirmed by the City Council, and two (2) of the members will be appointed by the City Council. Terms shall be for 4 years, except that the Mayor and/or Council may designate shorter terms initially in order to insure that the terms are staggered. The City Council President shall appoint a City Council member to the board after each municipal election. Other members shall be selected because of their expertise in historical preservation, visual arts, architecture, or affiliation with a local business association or public entity.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a 12 Ayes, 0 Nays, 0 Abstain, 0 Absent vote, and

APPROVED by the Mayor this 10th day of November, 2008.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein
City Clerk

/s/ John Engen
John Engen
Mayor