

Ordinance 2022-49

SHORT TITLE:

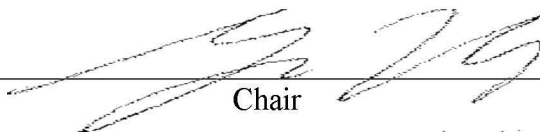
AN ORDINANCE AMENDING PROVO CITY CODE TO ENACT CHAPTER 3.15 "PERCENT-FOR-THE-ARTS" PUBLIC ART PROGRAM. (22-061)

I  
PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

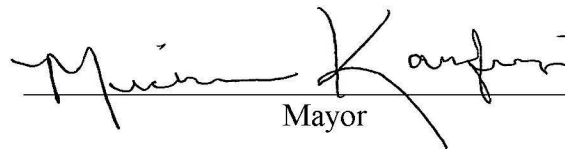
DISTRICT	NAME	FOR	AGAINST	OTHER
CW 1	KATRICE MACKAY	✓		
CW 2	DAVID SHIPLEY	✓		
CD 1	BILL FILLMORE			Excused
CD 2	GEORGE HANDLEY	✓		
CD 3	SHANNON ELLSWORTH			Excused
CD 4	TRAVIS HOBAN	✓		
CD 5	RACHEL WHIPPLE	✓		
TOTALS		5	0	

This ordinance was passed by the Municipal Council of Provo City, on the 15<sup>th</sup> day of November 2022, on a roll call vote as described above. Signed this 1st day of December 2022.

  
Chair

II  
APPROVAL BY MAYOR

This ordinance is approved by me this 1st day of December 2022.

  
Mayor

Ordinance 2022-49

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the 3rd day of January 2023 and was published on the Utah Public Notice Website on the 18<sup>th</sup> day of November 2022. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2022-49.



*Heidi Allman*

\_\_\_\_\_  
City Recorder



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44 END OF ORDINANCE.

## Exhibit A

### Chapter 3.15 “Percent-for-the-Arts” Public Art Program

#### **3.15.010 Purpose**

This policy is designed:

- (1) For the integration of art into public spaces, including in the design of public facilities, and the acquisition and preservation of public art;
- (2) To establish a program which administers that portion of appropriations for capital expenditures that is set aside for the acquisition of works of art used for public buildings and facilities;
- (3) To enhance the quality of life in the city by placing art of the highest quality in public spaces where it is seen by the general public;
- (4) To promote and preserve appreciation for and exposure to the arts;
- (5) To promote the development and support of arts in the community, and
- (6) To foster cultural development in the city and encourage the creativity and talents of its artists and craftspeople.

#### **3.15.020 Definitions**

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

“Art” includes all forms of original artistic creations, which are integrated into major public projects or funded by appropriations under this policy including, but not limited to, work by an artist in the following areas:

- (1) Design work that is integrated into the construction or improvement of a public project, including, but not limited to:
  - (a) Interior or exterior surfaces, fixtures, and functional elements; and
  - (b) Outdoor space design elements in areas such as plazas, arcades, and pedestrian passageways.
- (2) Artistic design of public spaces and public facilities, including roadways, parkways, pedestrian or bicycle paths, transit system improvements, water and wastewater facilities, and publicly owned sites with historic, archeological, and unique geological features.
- (3) Forms of visual art, including, but not limited to:
  - (a) Sculpture: in the round, bas-relief, high relief, mobile, fountain, environmental, kinetic, electronic, etc., in any material or combination of materials;
  - (b) Painting: all media, including portable and permanently affixed works such as murals and frescoes;
  - (c) Photography and film;
  - (d) Graphic arts: printmaking, drawing, and calligraphy;
  - (e) Art forms in clay, fiber and textiles, wood, metal, plastics, glass, mosaics, and other materials;
  - (f) Mixed media: any combination of forms or media;
  - (g) Other categories or new technologies that may develop through artistic pursuit such as computer/audio/video generated work, use of lasers, etc.; and
  - (h) Temporary art installations and/or art-centered events.



**"Artist"** means a practitioner in the visual arts, generally recognized by critics and the artist's peers as a professional who is committed to producing high quality work on a regular basis, and who is not the project architect or a member of the project's architectural firm.

**"City building or facility"**

- (1) means a city building, permanent structure, facility, park, or appurtenant structure thereof, wholly or partially enclosed, that includes, but is not restricted to a space or facility used, or to be used, for carrying out the functions of a department, board, commission, institution, or agency of the city, including offices, hearing or meeting rooms, auditoriums, libraries, courtrooms, classrooms, workshops, and utility and infrastructure accessory structures such as lamp posts, utility boxes, sidewalks, crosswalks, parking lots, and roads;
- (2) does not include motor pools, sewers, repair and maintenance focused projects on existing buildings and facilities, underground utility infrastructure, or buildings used solely for storage or warehousing.

**"Principal user"** means the department, board, commission, institution, or agency of the city which will primarily be using a city building or facility.

**"Program"** means the Percent-for-Art Program created in this part.

**"Project"** means a project whereby one or more city buildings or facilities is acquired, constructed, renovated.

**3.15.030 Creation of Program – Collections and Use of Appropriations**

- (1) A Percent-for-Art Program and the funds acquired through the program, shall be administered by the Provo Arts Council. Funds acquired through the program shall be held in the Parks and Recreation Department's budget under the Covey Center Division in a separate function.
- (2) Any appropriation received through the Percent-for-Art Program shall be used to acquire existing works of art or to commission the creation of works of art placed in or at appropriate city buildings or facilities as recommended by the Arts Council and with the advice of the principal user of the city facility or building that will house the art. Any unexpended funds remaining at the end of the fiscal year shall be non-lapsing and not revert to the General Fund.
- (3) Funding for the program shall follow the following structure:
  - (a) 1% of the original planned construction budget for a building or facility that the Art Council determines has sufficient public use or access, especially where the design and technical construction of the building or facility lend themselves to works of art, will be directed towards the Percent-For-Art program budget.
    - (i) "Original planned and/or anticipated construction budget" does not include those parts of the budget funded through grants or other specific funding sources,

inasmuch as doing so would violate the agreement/terms of the grants and/or specific funding source.

- (ii) All funds set aside and administered by the program from appropriations for any city building or facility of which any part is obtained from the issuance of bonds shall be used only to acquire works of art that will be placed in or at, and remain a part of, that building or facility, to the extent necessary to preserve the federal income tax exemption otherwise allowed for interest paid on the bonds.
- (b) The 1% contribution is the assumed contribution from each project selected to the Percent-for-the-Arts fund.
  - (i) If public art is a part of a new project's design and/or construction, the project's 1% contribution to the public art fund can be off-set or exempted. The exemption from the contribution, or an appeal for specific contribution amounts, will need final approval from the Arts Council after their review.
    - (A) If exemptions or specific contribution off-sets are granted due to the project's planned artistic elements, such elements may not be removed from the project or changed (except for de minimis changes of minor details that do not change the substance of the project) without review by the Arts Council. During such review, the Arts Council may rescind the exemption or off-set or otherwise determine how the 1% contribution or its equivalent shall be met by the project.
  - (ii) The funds collected through the program will go into a central arts fund located within the Covey Center's budget under the Department of Parks and Recreation to be used for public art projects throughout the city; however, priority and primary use of funds may go towards art acquisition for the projects from which funds were collected.

### **3.15.040 Selection and Placement of Art**

- (1) Art selected pursuant to the provisions of this policy for a public project may:
  - (a) Be placed in, on, or above any such project;
  - (b) Be attached or detached within or about such property; and
  - (c) Be either temporary or permanent.
- (2) The process of selection and placement of art shall proceed as follows:
  - (a) The Arts Council shall take applications and solicit submissions of art from artists. While priority will be placed on submissions for the newest or upcoming project from which funds were collected from, submissions can be ongoing and for anywhere in the city.
  - (b) The Arts Council shall create procedures, rules, and guidelines as they see necessary and fit to ensure the screening process of the submitted art proposals are fair and transparent as well as all other administrative duties including, but not limited to, ensuring the proper installation, maintenance, accessibility, retirement, and/or disposal of an art piece.
- (3) Location of Public Arts Projects:
  - (a) All public arts projects shall be located on:
    - (i) Property owned, leased, used, or otherwise occupied by the City or the Provo City Redevelopment Agency and within the corporate limits of the City; or

- (ii) Private property, subject to a license or easement approved by the City Attorney, allowing for maintenance and public access to the art project for the life of the project.

**3.15.050 Program Guidelines**

The Provo Arts Council shall follow these guidelines in administering the program:

- (1) Works of art shall be acquired under the program for use only with respect to those buildings or facilities that the Provo Arts Council determines to have significant public use or access, especially where the design and technical construction of the building or facility lend themselves to works of art.
- (2) Selection and placement shall consider the distribution of works of art throughout the various social, economic, and geographic communities of the city.
- (3) The Provo Arts Council:
  - (a) shall give first preference to Provo artists.
- (4) The Provo Arts Council shall be the administrator of the program including the acquisition and review of potential art, selecting artwork, the placement of the art, and the collection and distribution of funds needed for the acquisition and potential maintenance of public art. Final appropriation for the art acquisition and placements shall be at the Municipal Council's discretion.
  - (a) In selecting artwork, the Provo Arts Council shall consider the community values of Provo and may reject any submissions or proposals on the basis they do not meet or uphold those values.
- (5) Any relocation of art placed under this program shall be done with participation from the Public Works Department and Facilities Division, as needed, and approval from the Director of the principal user and the Provo Arts Council.

**3.15.060 Title to Work of Art Vests in the Name of the City — Title Subject to Restrictions and Interests.**

- (1) Title to a work of art acquired by or created for the program vests upon its completion, installation, and final acceptance in the name of the city.
- (2) Title to a work of art acquired from appropriations for any city building or facility of which any part is obtained from the issuance of bonds, and placed in or at that building or facility, is subject to the same restrictions and interests as title to that building or facility, to the extent necessary to preserve the federal income tax exemption otherwise allowed for interest paid on those bonds.

**3.15.070 Responsibility for Maintenance and Security of Public Art.**

- (1) The principal user of the building or facility in which the art is located is responsible, in cooperation with the Provo Arts Council, for the conservation, maintenance, and security of all works of art placed in or at each building or facility under the program.
- (2) Up to 15% of the funds acquired through the program may be used for the maintenance of public art, but this does not have to be the only source of funds needed for maintenance.

**3.15.080 Rights of artist commissioned by program.**



An artist who is commissioned by the program to create a work of art has the following rights with respect to that work of art:

- (1) all rights secured to the artist under federal copyright laws;
- (2) the right to claim authorship of the work of art;
- (3) the right to photographic reproduction of the work of art;
- (4) the right of first refusal:
  - (a) to conduct all repair and conservation work on the work of art in accordance with accepted principles of professional conservation; and
  - (b) to purchase the work of art if the city decides to sell it; and
- (5) the right to deny further association of the artist's name with or authorship of the work of art if conservation or repair work is done by a person other than the artist, which in the opinion of the artist damages its integrity.