

ORDINANCE NO. 16324

AN ORDINANCE PROVIDING FOR ART IN MUNICIPAL PLACES, ESTABLISHING THE EL PASO PUBLIC ART COMMITTEE AND DESCRIBING ITS POWERS AND DUTIES, AND ESTABLISHING A MEANS OF FUNDING ACQUISITION OR COMMISSIONING OF ART FOR MUNICIPAL PLACES AND REPEALING ORDINANCES 15245 AND 15073

WHEREAS, Ordinance No. 15073 was adopted by the El Paso City Council on April 9, 2002, for the purpose of promoting private and public programs to further the development of the fine arts and cultural properties and to encourage the integration of art into the architecture of municipal structures by providing that two percent (2%) of the total funding available under bonds for Capital Improvement Program projects be allocated for the acquisition of art for municipal property; and,

WHEREAS, Ordinance No. 15245, adopted by City Council on October 8 2002, amended Ordinance No. 15073 to provide that certificates of obligation for capital improvement projects also constitute a source of funding; and,

WHEREAS, it is now the desire of council to repeal Ordinance No. 15245 and Ordinance No 15073 and adopt a new ordinance incorporating provisions of the old ordinances and adding new provisions,

NOW, THEREFORE, BE IT ORDAINED BY CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

1. That Ordinance No. 15073, adopted on April 9, 2002 and Ordinance No. 15245, adopted on October 8 2002, are hereby repealed.
2. That the following provisions apply to the establishment of a Public Art Committee and the acquisition of, the funding of, and the commissioning of art in municipal places.

SECTION 1. PURPOSE.

The intent of this ordinance is to promote and encourage private and public programs to further the development and public awareness of, and interest in, the fine arts and cultural properties, to increase employment opportunities in the arts, to encourage the integration of art into the architecture of municipal structures for the City of El Paso ("the City"), and to provide for the citizens of the City high quality, publicly accessible works of art, which contribute to the urban landscape and symbolize the City's sense of place.

SECTION 2. DEFINITIONS.

- A. "Acquisition" means the acquiring of works of art by purchase, exchange, or gift.
- B. "Capital Improvements Program" means all projects financed by general obligation bonds and revenue bonds, and certificates of obligation, except for capital acquisitions and the

Plaza Theatre Project.

C. "Project" means any construction activity undertaken pursuant to the Capital Improvements Program

D. "Commission" means the selections and contracting of an artist or artist team to the task of creating a work of art for a fee.

E. "Cultural Affairs Advisory Board" (CAAB) means the board established under the provisions of Chapter 2.40 of the City of El Paso Municipal Code.

F. "Public Art Committee" (PAC) means a subcommittee of the cultural affairs advisory board appointed to oversee quality control of the public art program and projects and to recommend the scope of projects, artworks, and artists for the public art program

G. "Public Art Program" means the process for administration, selection, approval, funding, acquisition, or commissioning of public works of art under this ordinance.

H. "Public Art Plan" means an annual prioritized list, to be recommended by the CAAB and approved by the city council, of public art projects, including budgets and recommended design approaches, developed by the PAC in consultation with city departments anticipating capital improvement projects.

I. "Work of art" means any public art project that is a work of visual art, including but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching), works in clay, textile, fiber, wood, metal, plastic, glass, stone, concrete, and like materials, or mixed media (including a collage, assemblage, or any combination of the foregoing art media). For projects which involve no structure, a work of art may include a combination of landscaping and landscape design (including some natural and manufactured materials such as rocks, fountains, reflecting pools, sculpture, screen, benches, and other types of streetscapes. A work of art may include an artist participating in master planning, conceptual development, design development, construction drawings, or construction oversight for any municipal project. Except as provided herein, the term "work of art" excludes the performing arts of dance, music, theatre, or the literary arts, unless expressed in or combined with a work of visual art or design.

SECTION 3. FUNDING OF THE PUBLIC ART PROGRAM

A. Projects in the Capital Improvements Program shall include an amount for works of art equal to two percent (2%) of the total funding available for the project whether funded by general obligation bonds, revenue bonds or certificates of obligation, but shall not include capital acquisitions or the Plaza Theatre Project; provided, however, that if the bond election ordinance, the bond ordinance authorizing revenue bonds, other appropriate laws or regulations, or an official interpretation by the State Attorney General regarding allowable uses for funds which it is providing for the project precludes art as an expenditure of funds, the amount of funds so restricted shall be excluded from the total funding available in calculating the amount to be committed to works of art.

B. In order to ensure that works of art have sufficient public visibility and impact, funds generated from the various Capital Improvements Program projects, if allowed by law, may be pooled or aggregated together and utilized for one or more large works of art as recommend by the CAAB and PAC and upon approval by City Council.

C. Funds generated as described in Section 3.A above shall be budgeted as part of the Capital Improvements Program budget. Additional private or public contributions for works of art may be added to these funds and shall be budgeted in a similar manner. Such contributions

may be earmarked for particular projects. A fund or funds will be established within the Museums and Cultural Affairs Department (MCAD) for Public Art Program funds to be administered by the Director of the MCAD.

D. No more than fifteen percent (15%) of the total amount for works of art may be expended for the administrative costs of the Public Art Program. Examples of administrative costs shall include, but not be limited to, direct administrative costs of conducting a competition or search for a work of art, education and marketing efforts, and of employing consultants for planning and research and project management.

E. The CAAB shall submit an annual Public Art Plan to the City Council for approval. The public art plan shall include new projects to be initiated in the following fiscal year, and shall describe the planned location, proposed budget, and timetable and artist selection process for each project; as well as updates on public art projects in progress.

F. An artist or artist team will be contracted for the commissioning or purchase of art. Progress payments may be made to the artist for works of art which have been recommended by the CAAB and approved by the City Manager and/or Council. Such payments may reimburse the artist for the cost of materials. A final payment of no less than 25% will be paid to the artist or artist team upon completion of the work and accession into the City's public art collection. If feasible, and if the law allows, a payment of twenty percent (20%) of the total project cost should be provided to the artist once the contract is signed for the purchase of material or labor.

G. Nothing contained herein shall preclude funding the acquisition of art for municipal property in other ways.

SECTION 4. ADMINISTRATION OF THE PUBLIC ART PROGRAM

A. The City hereby designates the Director of the Museums & Cultural Affairs Department to administer the Public Art Program including appropriate staffing and administrative support of the program, , subject to budget appropriations approved by the City Council including, but not limited to, the appointment of, a Public Art Coordinator. The Coordinator shall be housed within the Museum & Cultural Affairs Department, and will coordinate activities among the various City departments, the Public Art Committee, and artists or others providing services under the Public Art Program.

B. The CAAB, acting in coordination the Director of the Museums and Cultural Affairs Department, shall, in addition to the duties specified in Chapter 2.40.060 of the City Code, have the following duties and responsibilities associated with the administration of the public art program:

1. Review and provide recommendations on the selection of citizen members of a PAC, the establishment of program policies and guidelines, the recommendation of program budgets, and the approval of all selection juries and all other recommendations made by the PAC to the CAAB.
2. Review and provide recommendations for the establishment of policies and guidelines to facilitate and encourage the donation of high quality artworks to the city.

3. Review and provide recommendations for the establishment of policies and guidelines to ensure that the long-term collection of artworks by the city represents a broad range of artistic schools, styles, tastes and media, without giving exclusive support to any particular one, and gives consideration to diverse representation.

4. The compilation of a survey to be updated annually of the condition of the public art collection. The survey must include a report of the condition of each artwork, prioritized recommendations for the restoration, repair and maintenance of the artwork and estimated costs.

5. The recommendation of an annual designation of funds for repair and maintenance of the public art collection.

6. May recommend the creation of a separate entity to seek private donations utilizing the name of this Program and may advise the City regarding additional sources of public funds for this Program; provided, however, that any such public funding shall be subject to approval by City Council and to the City's financial review and control.

C. Public Art Committee

1. The El Paso Public Art Committee (PAC) is hereby established and shall serve as a standing committee of the CAAB. The PAC shall consist of nine members appointed as follows: The Chair of the CAAB shall appoint three (3) members to the PAC, from the CAAB, one of which shall be appointed as Chair. The additional six (6) members will be appointed by the Chair of the CAAB from a list of qualified citizen candidates provided by the Museums and Cultural Affairs staff and approved by the CAAB. All PAC members must be qualified/credentialed professionals and represent the following: three (3) members of the PAC shall be representatives of the of the architecture, landscape architecture, urban planning or engineering, construction or development industries; three (3) members of the PAC shall be representatives of the visual arts, such as visual artists (by means of a currently demonstrable record of exhibitions, work sold/collected and/or commissioned), curators, art historians or critics, arts advocates/collectors or arts administrators. The categories for membership listed above are not exclusive and more than one category may be represented by one member. No member shall be appointed to the PAC prior to the enactment of this ordinance. Members of the PAC shall be appointed to serve staggered terms from the date of appointment and are eligible to serve two-consecutive terms; after which a PAC member must sit out for one term before reappointment.

2. Except as provided in this ordinance, the qualifications, appointment and conduct of the members of the PAC and any of its sub-committees shall be governed by Title 2.04 of the El Paso Municipal Code. The initial terms of the members, as well as all other PAC procedures shall be established under the PAC's established operating procedures, provided that nothing in the operating procedures shall conflict with Title 2.04 of the El Paso Municipal Code.

3. Conflict of Interest. This paragraph supplements the City's Ethics Ordinance, as codified in Chapter 2.92 of the El Paso Municipal Code. A PAC member or a member of a PAC sub-committee having a financial interest in the outcome of any policy, decision, or determination before the PAC or PAC sub-committee on which the member serves shall, as soon as possible after such interest becomes apparent, disclose to each of the other members voting on the matter the nature of the financial interest in the issue, and such member shall be disqualified from participating in any debate, decision or vote relating thereto.

4. The PAC shall have the following duties and responsibilities associated with

the administration of the public art program, with all decisions and recommendation made by the PAC subject to the review by and recommended approval of the CAAB, and when required, the city council:

a. Establish a system of active coordination with the City's Capital Improvements Program and other building activities to ensure that works of art are properly integrated into the building environment at the earliest reasonable time in the planning process.

b. Recommend written regulations as are necessary to carry out the purpose of this ordinance. The regulations shall include, but not be limited to, criteria for selection of artists and works of art, maintenance of a file of interested artists, payment practices, procedures for artistic competitions, and requirements for the maintenance of works of art.

c. The commission of artworks, the review of the design, execution and the placement of artworks and the oversight of the removal of artworks from the public art collection.

d. The designation of sites for the implementation of the public art program; the determination of the scope and budget of public art projects; and the oversight of the artist selection process.

e. The selection of juries, sub-committees or ad hoc advisory bodies to be composed of professionals in the visual arts and design fields and member of the community who will recommend artists and artworks to be funded from the Capital Improvements Program as provided for in Section 3.A of this ordinance.

f. Recommend public art projects to be funded from the Capital Improvements Program as provided for in Section 3.A of this ordinance, including public art projects at the El Paso Public Library, the El Paso Museum of Art, El Paso Museum of Archaeology, and the El Paso Museum of History.

g. Make recommendations to the City on the acquisition of works of art from funding sources other than the Capital Improvements Program for City-owned facilities, except works of art acquired for the permanent collections of or exhibitions within the El Paso Public Library, the El Paso Museum of Art, El Paso Museum of Archaeology, and the El Paso Museum of History.

h. The education of the community on the public art program and recommendation to the City of programs and activities to further the development and public awareness of art in public places.

i. The review and recommendation for approval any artworks proposed to be acquired or donated to the city, as gifts or long-term loans, for placement on municipally owned property, except works of art acquired for the permanent collections of, or exhibitions within, the El Paso Public Library, the El Paso Museum of Art, the El Paso Museum of Archaeology, and the El Paso Museum of History.

SECTION 6. SELECTION OF ART TO BE PURCHASED BY CAPITAL IMPROVEMENTS PROGRAM FUNDS

A. Selection Process.

1. Once the annual Public Art Plan is approved by City Council, the MCAD, with review by the PAC and CAAB, shall solicit artists for project proposals.

2. The PAC shall consult with the user agency and the project architect (if any) and involve them in the selection process in the manner that appears most feasible. The PAC may

recommend purchasing a completed work of art, commissioning a work of art, holding a competition to select a work of art, or creating some other timely and appropriate mode of selection. MCAD, with appropriate feedback from the PAC, will assemble review panels/juries to review project proposals and recommend artists to the PAC. The PAC will review recommendations and forward them to the CAAB. The CAAB recommendation(s) will be forwarded to the City Manager and/or Council for review and approval.

3. The City Council may accept or reject any portion of the annual public art plan or a subsequent recommendation of the CAAB and PAC. If the City Council rejects the recommendation, the CAAB and PAC shall make another recommendation in accordance with the standards and procedures outlined in this ordinance. The CAAB and PAC shall make its recommendations in a timely manner in accordance with the annual Public Art Plan as approved by City Council.

B. Selected Works of Art

1. The work of art may be an integral part of a structure, attached to a structure or detached from the structure within or outside of it. It may also be located on municipal grounds where there are not structures.

2. Any work of art which is chosen must comply with the following standards in addition to any regulations, guidelines, and timetables approved by City Council for the Program:

a. The work of art must be located in a public place with visibility and impact.

b. Works of art funded by general obligation bonds, revenue bonds, or certificates of obligation shall have a permanence at least comparable to the lifetime of the project and shall be likely to remain a thing of value for this time period. Works of art funded from other sources may be permanent or temporary.

c. The work of art shall enhance the environment of the City of El Paso.

SECTION 7. OWNERSHIP/MAINTENANCE OF WORKS OF ART.

The City shall have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, remove, move, replace, transport, or transfer in whole or in part, the final artistic work when the City deems necessary within its discretion in order to exercise the City's powers and responsibilities in regard to public works and improvements, in furtherance the City's operations or for any other good cause. The artist may retain copyright and other intellectual property rights in and to the final design and the final artistic work itself. The Artist shall grant to the City a perpetual, irrevocable license to graphically depict or display the final artistic work for any non-commercial purpose whatsoever.

Maintenance of public art shall be the responsibility of the City, not the artist, and the City shall commit to keeping them in well-maintained condition. The City may request as part of the contract process that the artist or artist team, include maintenance provisions for a term of one-year that includes repairs. The artist, or artist team, will also be required to provide a maintenance manual and the artist will be allowed first-refusal rights on repair contracts with a

fair-market rate of remuneration.

SECTION 8. APPLICABILITY.

This ordinance is not intended to amend or effect any previously approved or issued bonds.

SECTION 9. SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance, and such remaining portions shall continue in effect. The City Council, the governing body of the City of El Paso, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise valid.

SECTION 10. COMPILING CLAUSE.

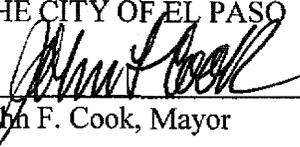
This ordinance shall be incorporated in and compiled as a part of the El Paso Municipal Code.

SECTION 11. EFFECTIVE DATE AND PUBLICATION.

This ordinance shall become effective immediately after approval by City Council.

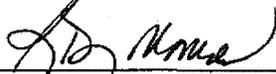
PASSED AND APPROVED this 4th day of April 2006.

THE CITY OF EL PASO



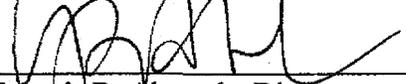
John F. Cook, Mayor

ATTEST:



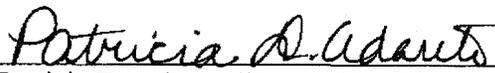
Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:



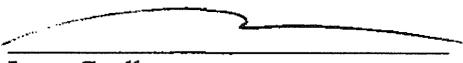
Yolanda R. Alameda, Director
Museums & Cultural Affairs Department

APPROVED AS TO CONTENT:



Patricia D. Adauto, Deputy City Manager
Development and Infrastructure Services

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney