CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: Regular Agenda for Introduction on 9/14/10 and Public Hearing on 9/21/10

CONTACT PERSON NAME AND PHONE NUMBER: Sean McGlynn, MCAD Director, 541-4898

DISTRICT(S) AFFECTED: All

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.
An Ordinance amending Title 2 (Administration and Personnel), Chapter 2.40 (Department of Museums and Cultural Affairs), Section 2.40.030 (Advisory Board – Created – Members – Appointment), Section 2.40.040 (Advisory Board – Members - Terms), 2.40.050 (Advisory Board – Officers and Quorum), 2.40.060 (Art Museum Advisory Board – Duties), 2.40.070 (Cultural Affairs Advisory Board – Duties), 2.40.080 (Museum of History Advisory Board), and 2.40.090 (Museum of Archaeology Advisory Board) of the El Paso City Code to sunset the current boards and to create a central board for the Museums and Cultural Affairs Department to be called the Museums and Cultural Affairs Advisory Board; to codify and clarify the Ordinances creating the Public Art Program and the Public Art Committee and to repeal Ordinances Nos. 16324 and 17165.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?
This amendment will sunset four existing boards and will create one unified board for the Museums and Cultural Affairs Department; will codify the Public Art Program; and will clarify the Public Art Committee (PAC) establishment as a stand-along committee of the Museums and Cultural Affairs Advisory Board (MCAAB).

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
Ordinance No. 16324 adopted by City Council in April 2006; and Ordinance No. 17165 adopted by City Council in August 2009. In addition, MCAD's budget proposal for FY11 included the proposal to create a unified MCAD Advisory Board, and codify the Public Art Program and the Public Art Committee establishment within the El Paso City Code; which was adopted by City Council during Budget Hearings on August 24, 2010.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
N/A

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A
N/A

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.40 (DEPARTMENT OF MUSEUMS AND CULTURAL AFFAIRS), SECTION 2.40.030 (ADVISORY BOARD – CREATED – MEMBERS – APPOINTMENT), SECTION 2.40.040 (ADVISORY BOARD – MEMBERS - TERMS), 2.40.050 (ADVISORY BOARD - OFFICERS AND QUORUM), 2.40.060 (ART MUSEUM ADVISORY BOARD – DUTIES), 2.40.070 (CULTURAL AFFAIRS ADVISORY BOARD – DUTIES), 2.40.080 (MUSEUM OF HISTORY ADVISORY BOARD), AND 2.40.090 (MUSEUM OF ARCHAEOLOGY ADVISORY BOARD) OF THE EL PASO CITY CODE TO SUNSET THE CURRENT BOARDS AND TO CREATE A CENTRAL BOARD FOR THE MUSEUMS AND CULTURAL AFFAIRS DEPARTMENT TO BE CALLED THE MUSEUMS AND CULTURAL AFFAIRS ADVISORY BOARD; TO CODIFY AND CLARIFY THE ORDINANCES CREATING THE PUBLIC ART PROGRAM AND THE PUBLIC ART COMMITTEE AND TO REPEAL ORDINANCES NOS. 16324 AND 17165

WHEREAS, on or about March 3, 1992, the City established a Museum Advisory Board to provide guidance from individuals with expertise in the area of museum administration, which duties were expanded in August of 1993 and in December of 1996, and on or about October 30, 2007, the duties were again expanded and amended and the name of this board was clarified as the El Paso Museum of Art Advisory Board;

WHEREAS, on or about November 1, 2005, the City codified the creation of the Cultural Affairs Advisory Board and its duties to address goals, objectives and strategies outlined in the Strategic Agency Plan adopted in July 19, 2005;

WHEREAS, on or about October 30, 2007, the City codified the creation of the El Paso Museum of History Advisory Board, and created the El Paso Museum of Archaeology Advisory Board in order to assist the museums;

WHEREAS, the functions of the Museum of Art Advisory Board, the Museum of History Advisory Board, the Museum of Archaeology Advisory Board, and the Cultural Affairs Advisory Board would more efficiently and productively be done by one central departmental board, and the duties assigned to each board will be placed on one central board to be called the Museums and Cultural Affairs Advisory Board;

WHEREAS, on or about April 12, 2005, the City Council adopted a Public Art Master Plan pertaining to the development and administration of the City's Public Art Program;

WHEREAS, on or about April 4, 2006, the City adopted Ordinance 16324 providing for art in municipal places and establishing a public art committee, which was amended by Ordinance 17165 on or about August 11, 2009, but these ordinances were not codified; and

WHEREAS, during the 2010 City Council budget hearings, the City Council approved the consolidation of the above listed boards.

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

1. That the following sections of the El Paso City Code are hereby amended as follows:

2.40.030 - Advisory board—Created—Members—Appointment.

A. In order to assist the city council, there is created a Museums and Cultural Affairs advisory board of eighteen members composed of two members nominated by each district representative and the mayor;

B. Each member shall be appointed based upon their professional competence and experience in the arts and culture and may include concerned members of the public.

1. At least two-thirds of the board members appointed by the city council will be required to demonstrate an interest, knowledge of, or experience in the following areas and professional fields: performing arts, visual arts, media or literary arts, arts education, architecture or landscape architecture, visitor industry, community nonprofit sector (non-arts), marketing and public relations and organizational or strategic planning. At least two of these persons shall demonstrate experience, education, or expertise in archaeology, and at least two of these persons shall demonstrate experience, education or expertise in history. Such persons shall submit a written statement to the city manager or her/his designee detailing the requisite interest, knowledge or experience.
2. Individuals appointed pursuant to subsection 1 above may be artists, business owners, professional consultants, architects, design professionals and other professionals.
3. To avoid possible conflicts of interest in administering the mission of the department and the distribution of funds by or through the department, a nominee for appointment to the board shall not be an officer or board member of any local organization that is receiving or applying for city funding.

2.40.040 - Advisory board—Members—Terms.

A. On October 1, 2010, the Cultural Affairs advisory board, the El Paso Museum of Art advisory board, the El Paso Museum of History advisory board and the El Paso Museum of Archaeology advisory board shall sunset, and the terms of all such board members shall expire.

B. The members of the Museums and Cultural Affairs advisory board will serve staggered terms that will coincide with their appointing City Council Member. The Museums and Cultural Affairs advisory board members may not serve more than two consecutive terms. The initial terms of the members nominated by the Mayor and the District

Representatives from Districts 2, 3, 4 and 7 shall run from October 1, 2010 through October 1, 2013. The initial terms of the members nominated by the District Representatives from Districts 1, 5, 6 and 8 shall run from October 1, 2010 through October 1, 2011. Thereafter, all terms shall be four years, except for appointments made to fill vacancies occurring during any term, which shall be for the remainder of the unexpired term.

2.40.050 - Advisory board—Officers and quorum.

A. Officers. Each year members shall elect presiding officers of the Museums and Cultural Affairs advisory board. The director of the Museums and Cultural Affairs Department or an appointee shall attend the advisory board meetings and have the right to take part in discussion but shall not vote. The director will assign a secretary to the Museums and Cultural Affairs advisory board.

B. Quorum. A quorum of the Museums and Cultural Affairs advisory board shall be a majority of the total number of the board members who have been appointed by city council at the time of the board meeting; provided however, a quorum shall not be less than seven.

2.40.060 - Museums and Cultural Affairs advisory board—Duties.

A. The Museums and Cultural Affairs advisory board is established to advise the department on matters pertaining to, but not limited, to the cultural funding program, public art programming, and other departmental matters, as determined by the director.

B. The Museums and Cultural Affairs advisory board shall make recommendations to city council on policies and decisions regarding collection management for each of the City of El Paso Museums and shall annually assign a member to each of the City of El Paso Museums who will work with the Director or a designee of the Museums and Cultural Affairs Department on a quarterly basis regarding these matters. Such recommendations shall include, but not be limited to, policies and decisions on:

1. Acquisition/deaccession,
2. Loans,
3. Conservation,
4. Insurance,
5. Use of collections, and
6. Documentation of collections;

C. The Museums and Cultural Affairs advisory board shall 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 Public Art Committee ("PAC"), the establishment of program policies and

guidelines, the recommendation of program budgets, and the approval of recommendations made by the PAC as required herein.

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 the public art program and may advise the City regarding additional sources of public funds for the public art 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.

D. The board shall select from among its members a chairman and a vice-chairman, and the board may adopt rules and regulations for the government of its own proceedings to carry out the purposes for which this board is created, not inconsistent with the charter and ordinances of the city. The board shall hold regular meetings on a monthly basis, with the exception of January and July, and keep a written record of its proceedings. Members of the board, , shall not hold any public offices of honor, trust or profit in the government of the city or county during their term of office. Members shall receive no compensation and shall have advisory powers only.

2.40.70 - Art in Municipal Places.

A. Purpose - The intent of this section 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, 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.

B. For this section, the following definitions apply -

1. **"Acquisition"** means the acquiring of works of art by purchase, exchange, or gift.

2. **"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.
3. **"Project"** means any construction activity undertaken pursuant to the Capital Improvements Program.
4. **"Commission"** means the selections and contracting of an artist or artist team to the task of creating a work of art for a fee.
5. **"Museums and Cultural Affairs Advisory Board"** means the board established under the provisions of Chapter 2.40 of the City of El Paso Municipal Code.
6. **"Public Art Committee"** (PAC) means a subcommittee of the museums and 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.
7. **"Public Art Program"** means the process for administration, selection, approval, funding, acquisition, or commissioning of public works of art under this section.
8. **"Public Art Plan"** means an annual prioritized list, to be recommended by the museums and cultural affairs advisory board and approved by the city council, of public art projects, including budgets, location, artist selection process and recommended design approaches, developed by the PAC in consultation with city departments anticipating capital improvement projects.
9. **"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 that 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.

C. Funding of the Public Art Program:

1. 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.

2. 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 Museums and Cultural Affairs advisory board and PAC and upon approval by City Council.

3. Funds generated as described in Section C.1 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.

4. 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.

D. Public Art Plan: The museums and cultural affairs advisory board 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, timetable and artist selection process for each project; as well as updates on public art projects in progress.

E. 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 that have been recommended by the Museums and Cultural Affairs advisory board and approved by the City Manager and/or Council. Such payments may reimburse the artist for the cost of materials. The City, through MCAD, may negotiate a final payment to the artist or artist team that will be withheld until completion of the work and accession into the City's public art collection. The final payment shall be no less than 15%. If feasible, and if the law allows, the City, through MCAD, may negotiate a payment of up to twenty percent (20%) of the total project cost to the artist once the contract is signed for the purchase of material, design work, or labor.

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

2.40.080 - Administration of the Public Art Program and Establishment of the Public Art Committee.

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 El Paso Public Art Committee (PAC) is hereby established and shall serve as a standing committee of the Museums and Cultural Affairs advisory board. The PAC shall consist of eleven members appointed as follows: The Chair of the Museums and Cultural Affairs advisory board shall appoint three (3) members to the PAC from the Museums and Cultural Affairs advisory board, one of which shall be appointed as Chair. The additional eight (8) members will be appointed by the Chair of the Museums and Cultural Affairs advisory board from a list of qualified citizen candidates provided by the MCAD staff and approved by the Museums and Cultural Affairs advisory board. All PAC members must be qualified/credentialed professionals and represent the following: four (4) members of the PAC shall be representatives of the architecture, landscape architecture, urban planning or engineering, construction or development industries; four (4) 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. Members of the PAC shall be appointed to serve staggered two year 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.

C. 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 this 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 this Code.

D. Conflict of Interest. This paragraph supplements the City's Ethics Ordinance, Chapter 2.92 of this 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.

E. The PAC shall have the following duties and responsibilities associated with the administration of the public art program, and when required by this section or any other City Ordinance, the PAC's decisions and recommendations will be subject to the review

by and recommended approval of the Museums and Cultural Affairs advisory board, or the city council:

1. Recommend written regulations as are necessary to carry out the purpose of this section. The regulations shall include, but not be limited to, criteria for the selection of artists and works of art and maintenance of a file of the works of art that are in the public art collection..
2. Make recommendations regarding the commission of artworks, the review of the design, and the placement of artworks and the removal of artworks from the public art collection.
3. Subject to the review and approval of the Museums and Cultural Affairs advisory board, the PAC shall make recommendations regarding 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.
4. Make recommendations for the selection of Artist Selection Panels who will recommend artists and artworks to be funded from the Capital Improvements Program as provided for in Section C.1. The Artist Selection Panels are to be composed of 3 to 7 persons who are professionals in the visual arts and design fields and members of the community, and must include one member of the PAC.
5. Make recommendations to the CAAB for public art projects to be funded from the Capital Improvements Program as provided for in Section C.1.
6. Make recommendations on the acquisition of works of art to include in the Public Art Collection 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.
7. Make recommendations for programs to educate the community on the public art program and make recommendations programs and activities to further the development and public awareness of art in public places.
8. Make recommendations regarding works of art 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.

F. Selection Process.

1. MCAD, with appropriate feedback from the PAC, will assemble Artist selection panels to review project proposals and recommend artists to the PAC. The PAC will review recommendations and create the annual public art plan to be presented, through MCAD, to the Museums and Cultural Affairs advisory board for review and approval, which will then be presented to the City Council for review and approval.

2. For Works of art that are commissioned and are listed in the annual public art plan, Artists will be selected by the approved artist selection process stated in the annual public art plan in accordance with the written regulations for the criteria for selection of artists and works of art.

3. For all works of art, the PAC shall consult with the department that oversees the site where the work of art will be located and involve them in the artist and art selection process in the manner that appears most feasible.

4. In addition to Works of art that are on the annual public art plan, 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. These items will be presented, through MCAD, to the City Manager or City Council as appropriate under City Ordinances.

G. 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 that is chosen must comply with the following standards in addition to any regulations, guidelines, and timetables approved by City Council for the public art 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.

H. Ownership and maintenance of works of art

1. 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.

2. Maintenance of works of 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.

2.40.090 (reserved)

2. Ordinances 16324, 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 Ordinance 17165 amending ordinance 16324 are hereby repealed.

3. Except as herein amended, the El Paso City Code remains in full force and effect.

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:

Sean P. McGlynn, Director
Museums & Cultural Affairs Department