

COUNCIL BILL NO. 3058

ORDINANCE NO. 2555

AN ORDINANCE ESTABLISHING A PUBLIC ARTS AND MURAL PROGRAM; CREATING THE WOODBURN PUBLIC ARTS AND MURAL COMMITTEE; PROVIDING FOR A PROCESS FOR THE CITY'S CONSIDERATION OF PUBLIC ART AND MURALS; AND REPEALING ORDINANCE 2491

WHEREAS, Ordinance 2491 currently controls the review process and procedures for the City's mural program, including the creation and composition of a mural committee; and

WHEREAS, the City Council, through the City's Urban Renewal Agency, has undertaken a goal of setting aside funds to develop and foster a public art program; and

WHEREAS, the City Council now finds it to be in the best interest of the City to expand the scope and role of the Mural Program and Mural Committee to also include the review and acceptance of Public Art; **NOW THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For purposes of this ordinance, the following mean:

(A) Deaccession: Relinquishing title to a work of Public Art or withdrawing a piece of Public Art from the City's control.

(B) Public Art: All forms of original works of art accessible to the public and/or public employees that can be experienced free of charge, including:

(1) Paintings of all media, including both portable and permanently fixed works, such as murals;

(2) Sculpture which may be in the round, bas-relief, high-relief, mobile, fountain, kinetic, electronic and others, in any material or combination of materials;

(3) Other visual media including, but not limited to, prints, drawings, stained glass, calligraphy, glass works, mosaics, photography, film, clay, fiber/textiles, wood, metals, plastics or other materials or combination of materials, or crafts or artifacts; and

(4) Works of a wide range of materials, disciplines and media which are of specific duration, including performance events, and which are documented for public accessibility after the life of the piece has ended.

(C) Public Mural: A work of art, such as a painting, applied to and made integral with or attached to a wall or building surface that is visible to, and accessible to the public and/or public employees.

Section 2. Creation of Woodburn Public Arts and Mural Committee. The Woodburn Public Arts and Mural Committee ("the Committee") is hereby created by the Woodburn City Council and is delegated power and authority pursuant to this Ordinance.

Section 3. Composition of Woodburn Public Arts and Mural Committee.

A. The Woodburn Public Arts and Mural Committee shall consist of seven to nine members appointed by the Mayor to a full or unexpired term, and confirmed by the City Council. Any vacancy in the Committee shall be filled by appointment by the Mayor with the consent of the City Council for the unexpired portion of the term.

B. The Woodburn Public Arts and Mural Committee shall consist of two City Council/Urban Renewal Agency members, two representative members from the local art community, and one member from the City Planning Commission. Additional committee members may include representatives from the Chamber Board, Woodburn Downtown Association, Downtown Advisory Review Subcommittee (DARS), the Woodburn Tourism Advisory Committee, a member of a local-area educational institution (e.g. Woodburn School District), and at-large community member(s) who have experience, training or expertise in the visual arts, art history, art criticism, or art education.

C. All members of the Committee shall be legal residents of the City of Woodburn, except those members representing the arts community, who may or may not reside within the Woodburn City limits.

Section 4. Terms of Office.

A. The terms of office of each Committee member shall be three years, or until a successor is qualified and appointed. The terms of Committee members shall be staggered so that the term of office of not more than four (4) members will expire in the same year. The terms of office shall expire at midnight on

December 31.

B. Members of the Committee shall receive no compensation for their services.

Section 5. Organization of the Committee.

A. The Committee shall elect a Chair and a Vice Chair.

B. The Economic Development Director shall serve as Secretary to the Committee. The Secretary, supported by other city staff, shall provide notice of public meetings and public hearings, and keep minutes of all proceedings of the Committee in accordance with state law and city ordinances.

C. Five members of the Committee shall constitute a quorum.

D. The regular meeting place of the Committee shall be at Woodburn City Hall.

E. Meetings of the Committee shall be convened by the Chair of the Committee or by the Economic Development Director.

Section 6. Functions and Duties of the Committee. The Woodburn Public Arts and Mural Committee is delegated the authority pursuant to this Ordinance to select, acquire, receive, document and register Public Art and Public Murals on behalf of the City of Woodburn.

The Committee shall also be responsible for creating opportunities for the placement of art in public locations by developing and promoting a City-wide Public Art Master Plan.

The Committee shall not be responsible for, and shall not regulate the placement or approval of signs, structures, or other design media that fall outside the scope or definition of public art or public murals.

Section 7. Approval by Woodburn Public Arts and Mural Committee. No person shall commence creation of or installation of any Public Art or Public Mural without first obtaining approval from the Woodburn Public Arts and Mural Committee and agreeing to convey (e.g. license, donate, etc.) the art or mural to the City of Woodburn as provided in this Ordinance. Public Art or Public Murals that are created or exist without approval from the Woodburn Public Arts and Mural Committee or are inconsistent with the conditions of approval from the Woodburn Public Arts and Mural Committee are not considered Public Art or a Public Mural and are therefore subject to the regulations contained in the

Woodburn Development Ordinance and other applicable ordinances.

Section 8. Public Arts and Mural Selection Criteria. The Woodburn Public Arts and Mural Committee shall consider and apply the following selection criteria in selecting and acquiring Public Art and Public Murals:

1. Strength of artist's concept for, and originality of, proposed public art or mural;
2. Demonstrated craftsmanship and experience of the artist;
3. Demonstrated quality and enduring value of the public art or mural;
4. Whether the artwork factors in historical, geographical, and/or cultural features of the community;
5. Site Selection Considerations:
 - a. Appropriateness of scale of the public art or mural to the property/location on which the proposed art or mural will be installed;
 - b. Appropriateness of the scale of the public art or mural to the surrounding neighborhood;
 - c. Architectural, geographical, socio-cultural and/or historical relevance of the Public Art or Public Mural to the site;
 - d. Whether the proposed public art or mural will be located on or within visual sightlines of a single family dwelling, duplex, or multi-family dwelling; as used in this subsection, single family dwellings, duplexes, or multi-family dwellings does not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings;
 - e. Whether the proposed public art or mural will be located in a manner that makes it readily visible to the public;
6. General support/advocacy for the public art or mural from the property owner, surrounding neighborhood, adjacent businesses, and arts community;
7. Ability to complete the proposed public art or mural;

8. Whether the proposed public art or mural will contain electrical components, which generally will not be approved unless specially used in the design and/or placement of the art, including flashing or sequential lighting any automated method that causes movement or periodic changes in the appearance, image, or message of the public art or mural; and

9. The responsibility for maintenance of the public art or mural, including any extraordinary operations or maintenance costs associated with the public art or mural.

Section 9. Public Arts and Mural Selection Process.

A. Types of Acquisitions. The Woodburn Public Arts and Mural Committee shall have authority to approve the selection and acquisition of Public Art and Public Murals that fall under one of the following categories:

1. City Acquisition of a Public Mural to be placed on City-owned or third-party property regardless of funding source.
2. City acquisition of Public Art to be placed on City-owned property that is funded through a gift or donation.
3. City acquisition of Public Art to be placed on City-owned or third-party property that is funded through the City's Urban Renewal Agency.

B. Decision-Making Procedure. The Committee shall hold a public hearing on the proposed Public Art or Public Mural. After the conclusion of the public hearing, the Committee shall deliberate and make a final decision on the proposal based upon the selection criteria outlined in Section 8. The final decision by the Committee shall be in written form and shall contain findings and conclusions explaining how the public art or mural selection criteria were applied to the application.

C. Call-Up Review by the City Council. For all Public Art or Public Mural proposals being considered under this ordinance, the City Council may, by majority vote, initiate a review of the Committee's final decision on the art or mural application. The Procedure for this call-up includes:

1. A summary of all final decisions by the Committee involving an application for Public Art or a Public Mural shall be forwarded to the City Council as an information item by the Economic Development Director at the time notice of a Final Decision is provided by this ordinance.

2. Review under this Section shall be initiated before the adjournment of the first regular City Council meeting following the date the City Council receives notification of the decision.
3. The City Recorder will set a hearing date for the City Council review.
4. The notice, hearing, and decision procedure for a City Council review shall follow the provisions of this ordinance provided for the initial hearing by the Committee.

Section 10. Notice of Public Hearing. When the Committee or City Council holds a public hearing on a proposal for Public Art or Public Mural, written notice of a public hearing shall be published once in a newspaper of general circulation and shall be posted on the property where the Public Art or Public Mural will be placed. Public notice shall be given no later than thirty (30) days before the public hearing. The notice shall explain the purpose of the hearing, and state that the public art and mural application is available for inspection at the office of the Economic Development Director.

Section 11. Public Hearing. At a public hearing held on a proposal for Public Art or Public Mural, any interested person shall be afforded the opportunity to speak or to present written evidence to the Committee or City Council.

Section 12. Notice of Final Decision. The Committee and City Council shall provide notice of its final decision to the applicant and all persons who presented testimony or submitted written evidence at a public hearing.

Section 13. Public Art and Mural Application. An application for conveyance of proposed Public Art or a Public Mural to the City will be submitted on a form prepared by the Economic Development Director. The application will include:

1. General information regarding the public art or mural, such as, the location, materials, size/dimensions, written description of the public art or mural, and an explanation of how the public art or mural meets the selection criteria specified in this ordinance;
2. A legal instrument of conveyance, setting forth an adequate description of the objects involved (artist, title, medium, dimensions, date, the precise condition of transfer, and maintenance instructions); and
3. A description of the overall funding source(s) contributing to the conveyance of the public art or mural.

Where Public Art or a Public Mural is proposed to be installed on third-party property, an Easement Agreement shall be submitted that includes: a legal description of the property upon which the public art or mural will be installed, a sketch of the public art or mural as it will be placed on the property, proof of ownership of the property (i.e. a copy of the deed), and proof of identity of the person who has the authority to sign the easement.

Section 14. Public Arts and Mural Application Fee. The application fee for proposed public art or mural is initially set by the City Council at \$100. This fee may be adjusted by the City Council as appropriate as part of the Master Fee Schedule. This fee may also be refunded at the discretion of the Economic Development Director where an application is withdrawn or the project fails to be approved by the Committee.

Section 15. Easement & Automatic Renewal. The approval and acceptance of each Public Art or Public Mural installation upon third-party property shall be contingent upon the conveyance of an easement to the City from the owner of the property upon which the public art or mural will be located. The easement shall be for a period of seven years (7) and shall automatically renew and continue for successive seven year (7) terms unless either party terminates it within thirty days after the expiration of any seven-year term.

Section 16. Termination of Easement by Property Owner. The easement may be terminated by the Property Owner at any time with the City's written consent upon the Property Owner's showing of any of the following: (i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or (ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or (iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the public art or mural; or (iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the public art or mural substantially impedes the Property Owner's reasonable use and enjoyment of the property. The City shall not unreasonably withhold consent to termination upon the Property Owner's satisfactory demonstration of any of the foregoing conditions of termination.

Section 17. Termination of Easement by City. The City may terminate the easement at any time at its sole discretion upon thirty-days written notice should the Property Owner fail to substantially perform its obligations under a Public Arts and Mural Easement Agreement.

Section 18. Deaccession.

A. General Policy. While the intent of the acquisition of Public Art or Public Murals is to acquire the work for a permanent lifespan, circumstances may arise in which the City decides to relocate or withdraw a piece of artwork from public display. It should be the policy of the City not to remove or relocate a piece of artwork prior to the work having been in place for at least seven (7) years. The City reserves the right to deaccession works of Public Art where it determines it is in the best interests of the public and deaccession provides a means of improving the overall quality of the City's Public Art collection. At the beginning of the process, the City will make reasonable effort to notify any living artist whose work is being considered for deaccession.

B. Criteria for Deaccession. Public Art or a Public Mural may be considered for deaccession if one or more of the following conditions apply:

1. The public art or mural presents a threat to public safety;
2. The condition or security of the public art or mural cannot be guaranteed;
3. The City cannot properly care for, maintain, or store the artwork;
4. The public art or mural requires excessive maintenance beyond what was budgeted for when the application was approved;
5. The public art or mural has serious faults in design or workmanship;
6. The public art or mural is in such a deteriorated state that restoration would prove unfeasible;
7. The site of the public art or mural is no longer appropriate or accessible to the public, is unsafe, or is due to be demolished;
8. Sustained and overwhelming public objection to the public art or mural has been received;
9. Evidence is presented that the public art or mural was acquired illegally; or
10. A written request from the artist has been received to remove the public art or mural from public display.

C. Process for Deaccession. The Committee shall hold a public hearing to determine if one or more of the criteria for deaccession has been met. The Committee reserves the option of hiring a consultant to advise on whether the Public Art or Public Mural meets the deaccession criteria. The procedure and notice requirements for the deaccession hearing shall follow the same process for proposals under Sections 9 - 12. A final decision by the Committee for deaccession of a piece of Public Art or a Public Mural shall be in written form and shall contain findings which include:

1. A detailed report on the condition of the public art or mural;
2. An estimate or appraised value of the art or mural, if any;
3. Justification for deaccession, according to the criteria set out above;
4. A suggested method of deaccession (e.g. sale, transfer, return, auction);
5. Documentation of notification to the original artist, if living, or any related correspondence; and
6. Alternatives to deaccession and costs of doing so.


Section 19. Judicial Review of Final Decisions. The final decision of the Committee or City Council under this Ordinance is not a land use decision and is reviewable exclusively by Writ of Review filed in the Marion County Circuit Court as provided in ORS 34.010 to ORS 34.102.

Section 20. Repeal of Prior Ordinance. Ordinance 2491 is repealed in its entirety.


Section 21. Severability. The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 22. Savings. The repeal of any ordinance by this Ordinance shall not preclude any action against any person who violated the ordinance prior to the effective date of this Ordinance.

Approved as to form:



City Attorney



Date

Approved:

Kathryn Figley, Mayor



Passed by the Council

February 24, 2018

Submitted to the Mayor

February 27, 2018

Approved by the Mayor

February 28, 2018

Filed in the Office of the Recorder

February 28, 2018

ATTEST:



Heather Pierson, City Recorder
City of Woodburn, Oregon