

RESOLUTION NO. 90-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE
ESTABLISHING GUIDELINES FOR IMPLEMENTATION OF THE
CONTRIBUTIONS FOR THE ART IN PUBLIC PLACES PROGRAM
FOR PRIVATE AND MUNICIPAL DEVELOPMENTS

WHEREAS, the City Council of the City of Emeryville, at its regular meeting on December 18, 1990, has adopted Ordinance No.90- , creating and establishing a Contributions for the Art in Public Places Program for Private and Municipal Developments; and

WHEREAS, Section 9-4.91.9 of the aforementioned Ordinance requires that the Guidelines for Implementation of the Art in Public Places Program shall be promulgated by the Public Art Committee to be approved by the Emeryville City Council; and

WHEREAS, at its Special Meeting on November 13, 1990, the City Council directed the Public Art Committee to review the proposed Guidelines for Implementation and to bring the Committee's recommended Guidelines to the Council for consideration; and

WHEREAS, the Public Art Committee has reviewed the proposed Guidelines and has submitted the Committee's recommended Guidelines to the Council for approval; and

WHEREAS, the City now desires to adopt the recommended Guidelines for Implementation of the Art in Public Places Program; now, therefore, be it

RESOLVED by the City Council of the City of Emeryville, that the attached Guidelines for Private and Municipal Developments (per the attached Exhibit A) be approved for Implementation of the Art in Public Places Program.

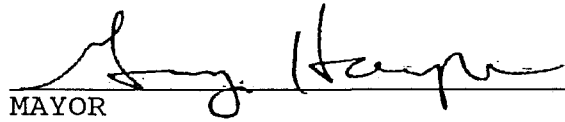
ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, December 18, 1990 by the following vote:

AYES: Mayor Harper, Vice Mayor Savage, Council Members Bukowski, Davis, Fertig

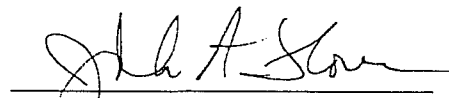
NOES: None ABSENT: None

EXCUSED: None ABSTAINED: None

Resolution for Guidelines Implementation
December 18, 1990
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MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

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**CITY OF EMERYVILLE
ART IN PUBLIC PLACES PROGRAM
POLICY AND PROCEDURE**

A. GUIDELINES FOR PRIVATE DEVELOPERS

1. THE POLICY AND LAW

In 1990, the City Council adopted Ordinance # 90-20 establishing the Emeryville Art in Public Places Program. This Ordinance requires that certain development projects expend a minimum of 1.0 percent of the building development costs on art work accessible to the public. Private development projects subject to the Art in Public Places Program shall enter into an Agreement. Private development contributions to the Art in Public Places Program shall be used to finance an art project or commission artwork for placement in publicly accessible or visible places either at that development site or elsewhere in the city.

2. PURPOSE

To establish procedures and responsibilities for the implementation of the Emeryville Art in Public Places Program.

3. PROGRAM GOALS

Develop a public art program that is unique to Emeryville.

Increase the understanding and enjoyment of public art by Emeryville's residents.

Invite public participation, in and interaction with, public spaces.

Provide unusual and challenging employment opportunities for artists.

Encourage collaborations between artist and architects, and artist and engineers.

Encourage and support participation by women and minority groups that have been traditionally under-represented.

Support artist participation on design teams for planning public projects.

Encourage and support Emeryville's pluralistic culture, which includes artists.

Encourage a variety of art forms.

4. DEFINITIONS

- 4.1 **Artist** means a practitioner in the Arts, generally recognized by critics and peers as one who produces works of art.
- 4.2. **Art work** means all forms of original creations of visual arts, including but not limited to: 1) sculpture in any material or combination of materials; 2) painting - all media including portable and permanently affixed works, such as murals and frescoes; 3) graphic arts - print making and drawing; 4) mosaics; 5) photography; 6) crafts in clay, fiber and textiles, wood, metal, plastics, and other materials; 7) calligraphy; 8) stained glass; and 9) mixed media - any combination of forms or media, including collage.
- 4.3 **Consultant** is any firm, individual, joint venture or team of firms or individuals with which the Developer/City or Agency contracts for design or other consulting services related to the Art in Public Places Program.
- 4.4 **Designer** is any consultant providing design services for the execution of a public art project or subsequent renovation.
- 4.5 **Building Development Costs** means the construction costs for a project as declared on all building permit applications, including but not limited to electrical, plumbing, mechanical permits, for the project, and as accepted by the Building Official, but shall not apply to costs solely attributable to tenant improvements.
- 4.6 **Project** means a proposal for the development of improved or unimproved real property including but not limited to offices, hotels, motels, but excluding all residential developments and "live-work" units.
- 4.7 **Public Art Fund** means a separate fund established to receive monies for the public art program generated through the Art in Public Places Program.
- 4.8 **Public Place** means any area or property (public or private) which is accessible or visible to the general public a minimum of 8 hours a business day.
- 4.9 **Visual Art Professional** shall mean any of the following: artists, curator, art critic, art historian, architect with a visual art background, or fine art collector.

5. ART WORK SELECTION/PAYMENT PROCEDURE

5.1 Selection of the artist/artwork will be the responsibility of the private developer.

5.2 All financial arrangements are negotiated between the artist and the private developer as contracting party and will be verified by a written agreement.

6. ASSESSMENT OF PRIVATE DEVELOPMENT FOR ART IN PUBLIC PLACES CONTRIBUTION

The total amount expended on public art by the developer shall not be less than 1.0% of the building development costs.

The private developer may fulfill the Art in Public Places Program obligation by one of two methods:

6.1 ON-SITE PLACEMENT OF ART WORK

The selection/commission and placement of a publicly accessible artwork on the development site. The private developer shall provide written proof of compliance (such as purchase agreement, or the installed artwork, etc.) to the City Building Official prior to issuance of the Certificate of Occupancy for the construction project, unless the City has approved some other method of assuring compliance with the provisions of this Ordinance, Section 9-4.91.10.

6.2 IN-LIEU CONTRIBUTION FOR OFF-SITE ARTWORK

In lieu of developing an on-site art program, a 100% cash contribution of the total Art in Public Places obligation, that is, 1% of the building development costs, unless the City has approved some other method of assuring compliance with the provisions of the Ordinance, Section 9-4.91.10.

7. APPEAL PROCEDURE

7.1 If any dispute arises between a developer and the City regarding interpretation of these Guidelines or the method of computing the obligation for a project, resolution of the dispute shall be conducted in the following manner:

7.11 The developer may appeal by submitting a written statement of the dispute and the evidence supporting his/her position and request a hearing on the matter. The City Council shall schedule the matter for a hearing.

8. MAINTENANCE AND OWNERSHIP

Title to all artworks required by the Art in Public Places Program shall pass to the successive owners of the development. Each successive owner shall be responsible for the custody, protection and maintenance of such works of art.

9. REPLACEMENT PROCEDURES

9.1 If for any reason the current owner shall choose to replace any art work installed pursuant to these guidelines, the following requirements shall be met before the art work is replaced:

9.11 The cost of the replacement shall be equal to, or greater than, the cost of the art to be removed, and

9.12 The location of the replacement shall meet the then current requirement for public accessibility, and

9.13 The replacement art shall conform, in every respect, to all the then current standards of these guidelines, and

9.14 The replacement work, location and installation shall violate no other ordinance.

9.2 The replacement art shall be available for public view not more than 180 days after the existing art was removed, unless this period shall be extended by the Building Official for good reason, such as major construction at the site.

10. TEMPORARY REMOVAL OF ART WORK

Any art required under these guidelines may be temporarily removed upon written notice to the Building Official.

11. PERIODIC REVIEW

The City Council shall review the Art in Public Places Program after one year from the date of adoption of the Art in Public Places Program ordinance.

12. WAIVER PROVISIONS

The City Council may grant a waiver or may modify any of the requirements of this chapter upon a showing by the applicant that:

12.1 The strict application of the law would, under the extraordinary circumstances of the particular development, produce a unique hardship not experienced by others subject to the provisions of this Chapter; and

12.2 The waiver or modification would not constitute a grant of special privilege to the applicant inconsistent with the application of the law upon other developments in the City; and

12.3 The waiver or modification is consistent with the objectives of the Chapter.

This section is permissive in nature, and shall not be construed to compel the City Council to grant relief under this section.

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**CITY OF EMERYVILLE
ART IN PUBLIC PLACES PROGRAM
POLICY AND PROCEDURE**

B. GUIDELINES FOR MUNICIPAL (ERA/CITY) DEVELOPMENTS

13. THE POLICY AND LAW

In 1990, the City Council adopted Ordinance # 90-20 establishing the Emeryville Art in Public Places Program. This ordinance requires that certain municipal (Agency/City) development projects expend a minimum of one and one-half percent (1.5 %) of the building construction costs on art work accessible to the public.

14. PURPOSE

To establish procedures and responsibilities for the implementation of the Emeryville Art in Public Places Program.

15. PROGRAM GOALS

Develop a public art program that is unique to Emeryville.

Increase the understanding and enjoyment of public art by Emeryville's residents.

Invite public participation in and interaction with public spaces.

Provide unusual and challenging employment opportunities for artists.

Encourage collaborations between artist and architects, and artist and engineers.

Encourage and support participation by women and minority groups that have been traditionally under-represented.

Support artist participation on design teams for planning public projects.

Encourage and support Emeryville's pluralistic culture, which includes artists.

Encourage a variety of art forms.

16. DEFINITIONS

- 16.1. **Artist** means a practitioner in the Arts, generally recognized by critics and peers as one who produces works of art.
- 16.2. **Art work** means all forms of original creations of visual arts, including but not limited to: 1) sculpture in any material or combination of materials; 2) painting - all media including portable and permanently affixed works, such as murals and frescoes; 3) graphic arts - print making and drawing; 4) mosaics; 5) photography; 6) crafts in clay, fiber and textiles, wood, metal, plastics, and other materials; 7) calligraphy; 8) stained glass; and 9) mixed media - any combination of forms or media, including collage.
- 16.3 **Consultant** is any firm, individual, joint venture or team of firms or individuals with which the Developer, City or Agency contracts for design or other consulting services related to the Art in Public Places Program.
- 16.4 **Designer** is any consultant providing design services for the execution of a public art project or subsequent renovation.
- 16.5 **Building Development Costs** means the construction costs for a project as declared on all building permit applications, including but not limited to electrical, plumbing, mechanical permits, for the project, and as accepted by the Building Official, but shall not apply to costs solely attributable to tenant improvements.
- 16.6 **Emeryville Public Art Committee** is the committee appointed by the City Council which advises the Council on selection of art work and expenditures from the Public Art Fund.
- 16.7 **Gallery** means an inside space specifically designed for the temporary exhibition of art work, including that of local artists, providing public accessibility, appropriate lighting, wall space and security.
- 16.8 **Jury** means a group convened to recommend the selection of art work, consisting of three to five

members. The group consists of visual arts professionals. Other individuals may be appointed to a Jury as ex officio members, acting in an advisory capacity unless designated a voting member of the jury.

- 16.9 **Project** means a proposal for the development of improved or unimproved real property including but not limited to offices, hotels, motels, but excluding all residential developments and "live-work" units.
- 16.10 **Public Art Fund** means a separate fund established to receive monies for the public art program generated through the Art in Public Places Program.
- 16.11 **Public Place** means any area on property (public or private) which is accessible or visible to the general public a minimum of 8 hours a business day.
- 16.12 **Visual Art Professional** shall mean any of the following: artists, curator, art critic, art historian, architect with a visual art background, or fine arts collector.

17. ADMINISTRATION

- 17.1 The Public Art Fund shall be administered by the City Council with the advice of the Emeryville Public Art Committee. The Emeryville Public Art Committee is an ad hoc committee, appointed by the City Council for their expertise in the visual arts.
- 17.2 The Emeryville Public Art Committee shall consist of a core group of a core group of five (5) members which shall be the same for all public art projects. The core group may recommend up to four (4) additional voting members subject to City Council approval on a project-by-project basis.
- 17.3 Any vacancy occurring on the Committee shall be filled according to the method of the original selection of the member and any new members shall serve at the pleasure of the City Council for the remainder of the unexpired term of the new member's immediate predecessor.

18. RESPONSIBILITIES

18.1 The Committee shall:

18.11 . Make recommendations to the City Council on public places within the City of Emeryville and its Redevelopment Project Areas which shall be considered for art work; Spaces that are accessible to the public a minimum of 8 hours a business day, may be considered suitable locations for public art. Spaces may be interior or exterior. Locations can include surface treatments of buildings, retaining walls and bridges. The definition of "location" can also be expanded by an artists' ability to extend the possibilities for public art, and would then be determined on a case-by-case basis. However, the primary objective of visual or interactive public accessibility must be realized for a specific number of hours per day.

18.12 The primary role of the Public Art Committee is to advise City Council or Agency and inform the community on the selection of public art. To fulfill this responsibility it will determine Jury Panel composition for actual art selection, or assist city/agency departments in selecting appropriate art consultants. In Section 19, the selection of artwork process is further defined.

18.13 Review art plans for art work to be located within a public place by the agency/city. In making this determination, the Committee shall consider the following criteria:

18.131 Whether the art work is appropriate as art in public places and compatible in scale, material form, and content with the surroundings within which it is to be located;

18.132 The inherent quality of the work itself.

18.133 Consideration of the structural and surface soundness of the art work and its prominence in terms of relative proof against age, theft, vandalism, weathering, or excessive maintenance or repair costs; and

18.134 Whether reasonable diversity in the type of art work in public places is being attained in terms of style, scale, media, and materials represented.

18.135 The Public Art Committee shall have further responsibility for reviewing and recommending for approval of any art work proposed to be donated to the Redevelopment Agency or City. Policies and Guidelines shall be established by the Committee and approved by the agency to govern donation of art work.

18.14 Hire consultants as may be needed to advise and/or assist the Public Art Committee with specific projects (subject to the approval of the City Manager/Executive Director) for such purposes as:

18.141 Professional appraisal of art work

18.142 Performance of feasibility studies, specific to execution of proposed art work

18.143 Packing and shipping of art work

18.144 Review of engineering specifications

18.145 Conservation and maintenance

18.146 Collection documentation

18.147 Installation design

18.148 Presentation assistance

19. **ART WORK SELECTION/PAYMENT PROCEDURE**

19.1 The Emeryville Public Art Committee shall choose art or select a jury, subject to City Council approval, to select art works. Art work may be selected by any of the following methods, depending on which is most appropriate for the situation.

- 19.11 **Open Entry** - Any Artist is eligible to enter (with recognition of possible requirements for local or regional residence).
- 19.12 **Limited Entry or Invitational** - A limited number of artists are selected and paid to develop proposals for a site. One of the proposals is selected.
- 19.13 **Direct Selection** of the artist(s) or completed work.
- 19.14 Not eligible to be selected for commissions are the members of the jury, members of the Public Art Committee, or members of their immediate families, or employees of the City of Emeryville or its Redevelopment Agency.
- 19.2 All financial arrangements are negotiated between the artist and the contracting party and will be verified by a written agreement.

20. **STAFFING**

- 20.1 An outside coordinator may be hired by the City upon the recommendation of the Public Art Committee to provide staff support during the duration of the public art process for the specific project. The consultant shall be responsible for project coordination including:
 - 20.11 Project Development
 - 20.12 Administer Artists Selection Process
 - 20.13 Negotiate Contracts with Artists for Design Phase
 - 20.14 Facilitate Interaction between the artists, Architects, City Staff, Community Members
 - 20.15 Present Artists Design to Appropriate Committees
 - 20.16 Negotiate Artists Contract for Execution Phase
 - 20.17 Monitor Project Progress
 - 20.18 Oversee On-site Activity in connection with the Art Work Installation

- 20.19 Develop Strategies for Community
relations/education

21. METHOD OF JURY SELECTION

21.1 A method of selecting Jurors shall be established by the Emeryville Public Art Committee taking into consideration the following:

- 21.11 The duties and responsibilities of Jurors relating to the project.
- 21.12 Jury payments will be up to \$100 per full day and up to \$50 per one-half day; the jury shall be compensated for no more than three (3) days.
- 21.13 Criteria for Jury Selection of Art work - Criteria used by the Jury shall include the quality of the art work; style and nature of the art work being compatible to the environment; media; permanence; public liability; diversity of all art work; and technical feasibility.
- 21.14 Jury Voting Procedures (i.e. majority vote, process for tie, etc.)
- 21.15 The Art Committee shall not be compensated if it constitutes itself as a jury.

22. USE OF THE PUBLIC ART FUND BUDGET FOR MUNICIPAL DEVELOPMENTS

22.1 Within the Public Art Fund, two separate accounts shall be established: the Public Art Fund Acquisition Account and the Public Art Administrative Account.

22.11 **Public Art Fund Acquisition Account.**
A portion of the funds received (equal to one percent [1.0%] of the building development costs) for a municipal development project shall be set aside for acquisition of publicly accessible art.

22.111 **Permissible Expenditures.** Acquisition Fund expenditures may include, but are not limited to:

- (a) The cost of the art work and its installation;
- (b) Identification plaques and labels;
- (c) Waterworks, electrical and mechanical devices and equipment which are an integral part of the art work;
- (d) Frames, mattes, and single pedestals necessary for the proper presentation of the art work;
- (e) Walls, bases, pools, or other architectural elements on or in which the art work are placed or affixed and which, in the opinion of the Emeryville Public Art Committee are an integral part of and contribute to the aesthetic and structural support of the art work; and
- (f) Fire retardant treatments (when required).

22.112 **Inappropriate Expenditures.** Acquisition Fund Expenditures which would not be appropriate include, but are not limited to:

- (a) Reproductions by mechanical or other means of original art work (however, limited editions controlled by the artist, or original prints, cast sculpture, photographs, may be included);
- (b) Decorative ornamental or functional elements which are designed by the architect or consultants engaged by the architect;
- (c) Those elements generally considered to be components of the landscape architectural design, vegetative materials, pool(s), paths, benches, receptacle, fixtures, planters,

etc., except when designed by artists;

- (d) Art objects which are mass produced or of standard design, such as playground sculpture or fountains; directional or other functional elements; such as signing, color coding, maps, etc., except when designed by artists;
- (e) Walls, bases, pools, or other architectural elements on or in which the art work is placed or affixed, except as provided in Subsection 22.117(b) and (c) above;
- (f) Preparation of the site necessary to receive the art work; electrical, water, or mechanical service for activation of the art work;
- (g) Exhibitions and educational programs relative to the art work before or after installation (lighting, registration, dedication, unveiling, insurance, security, and publicity or publications); and
- (h) Consultant or Designer costs related to public art projects.

22.113 Nothing shall preclude gifts, grants, bequests, donations or other cash received by the Emeryville City Council or Redevelopment Agency for art purposes (such as contributions referenced in Section 8 of the Private Development Guidelines of the Public Art Program) being placed in a separate fund. Specific components or activities for use of this fund shall include: 1) temporary and permanent art work and events; 2) producing art exhibitions; 3) cultural programming by organizations; 4) events to further artist participation in Art in Public Places program; 5) performing arts program.

22.12 Public Art Fund Administrative Account.

A portion of the funds received (equal to one half percent [.50%] of the building development costs) for a municipal development project shall be set aside for administration of the Art in Public Places Program, and for maintenance costs of the art work for municipal developments.

23. INSTALLATION OF ART WORK

23.1 On-site activity in connection with the art work installation shall be coordinated by the department or developer having jurisdiction over the site and/or construction.

23.2 So far as practical, in the event repair of a work is required, the City shall make reasonable attempts to contact the responsible artist who shall be given the opportunity to do that work for a reasonable fee and on reasonable terms. In the event the artist refuses to make that repair for such a fee and on such terms, the department may proceed to solicit proposals from conservators. Anyone who performs the repair work (including the artist) is to proceed on a reasonable schedule. If emergency repairs are necessary for safety reasons or in order to prevent loss of or damage to a work, such repairs shall not be deemed to constitute an artistic alteration and repair opportunity need not go the artist first.

23.3 Art work may be relocated only as approved by the Art in Public Places Committee.

24. OWNERSHIP/SALES

24.1 The title to all art work commissioned or purchased by the City of Emeryville shall be transferred to the City of Emeryville. The City is charged with the custody, supervision, maintenance and preservation of art work in accordance with the California Art Preservation Act, Civil Code Section 987.

25. DEACCESSIONING OF CITY OR AGENCY-OWNED WORKS OF ART

25.1 At a minimum of once every five years the Emeryville Public Art Committee will review the City's

and/or designate an advisory panel composed of visual art professionals to assist in the evaluation.

25.2 The Emeryville Public Art Committee may consider the deaccessioning of art work for one or more of the following reasons:

25.21 A work is not, or is only rarely, on display because of lack of a suitable site.

25.22 The condition or security of the art work cannot be reasonably guaranteed in its present location.

25.23 The art work has been damaged and repair is impractical or unfeasible.

25.24 The art work endangers public safety.

25.25 Significant changes in the use, character or actual design of the site require a re-evaluation of the relationship of art work to the site.

25.26 The art work has been determined to be of inferior quality relative to the quality of other works in the collection.

25.27 The City or Agency wishes to replace the art work with a work of more significance by the same artist.

25.28 The art work requires excessive maintenance or has faults of design or workmanship.

25.3 Sequence of action to deaccession:

25.31 The Public Art Committee determines that an art work meets one of the criteria in 25.2, above.

25.32 A review shall be made of: 1) any legal restrictions which may apply to this specific work; 2) An analysis of the reasons for deaccessioning; 3) Options for storage or disposition of the work; 4) Appraised value of the work, if reasonably obtainable.

25.33 The Public Art Committee may seek additional information regarding the work from the artist, art galleries, curators, appraisers

or other professionals prior to confirming a recommendation for action.

25.4 Upon confirmation of its recommendation; the Public Art Committee shall consider the following actions (in order of priority):

25.41 Relocation of the art work

25.42 Storage

25.43 Sale or Trade

- a) Sale may be through auction, or gallery resale, in compliance with City law and policies governing surplus property.
- b) Trade may be through artist, gallery, museum or other institutions.

25.44 Proceeds from the sale of a work of art shall be returned to the Municipal Public Art fund from which the original purchase was made if acquired through the Percent for Art program. Funds from the sale of gifts shall go for future art work projects. Any preexisting contractual agreements between the artist and the City or Agency regarding resale shall be honored.

26. PERIODIC REVIEW

The City Council shall review the Art in Public Places Program after one year from the date of adoption of the Art in Public Places Program ordinance. At that time, the Committee shall prepare a short- and long-range planning program to go to the City Council for approval.

27. WAIVER PROVISIONS

The City Council may grant a waiver or may modify any of the requirements of this chapter upon a showing by the applicant that:

- 27.1 The strict application of the law would, under the extraordinary circumstances of the particular development, produce a unique hardship not experienced by others subject to the provisions of this Chapter; and

27.2 The waiver or modification would not constitute a grant of special privilege to the applicant inconsistent with the application of the law upon other developments in the City; and

27.3 The waiver or modification is consistent with the objectives of the Chapter.

This section is permissive in nature, and shall not be construed to compel the City Council to grant relief under this section.

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