



**ORDINANCE NO. 2056**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA ESTABLISHING A PERCENT FOR ART PROGRAM AND AMENDING CHAPTER 2, ARTICLE 6 OF THE BOZEMAN MUNICIPAL CODE TO ADD DIVISION 11, PUBLIC ART.**

**WHEREAS**, the City of Bozeman (the “City”) is authorized by the City Charter and Montana law to establish administrative programs designed to enhance and protect the public welfare; and

**WHEREAS**, the City finds it promotes and protects the public welfare to enhance the beauty of public areas of the City; and

**WHEREAS**, the City finds that such enhancement adds to the quality of life of the City’s citizens, attracts tourism, and encourages businesses and other organizations to locate in the City, adding to the City’s economic vitality.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:**

**Section 1**

That the Bozeman Municipal Code be amended by adding a new division 11, Public Art, to Chapter 2, Administration, Article 6, Finance, as follows:

## **DIVISION 11. – PUBLIC ART**

### **2.06.1960. – Title and purpose.**

This division shall be known as the “City of Bozeman Percent for Art Ordinance.” The purpose of this division is to establish a Percent for Art Program for city-funded capital improvement projects and to provide for the funding, selection, and maintenance of public art and establish responsibilities relating to administering the Percent for Art Program. The purpose of the Percent for Art Program is to include works of art within certain city capital improvement projects equal to one percent (1%) of construction costs of the project.

### **2.06.1970. – Percent for Art Program established.**

There is hereby established a Percent for Art Program. The city manager or their designee shall be responsible to administer the Percent for Art Program as described in this division and in 2.05.1420. The City shall endeavor to develop a collection of public art of high quality, encompassing a broad aesthetic range reflecting the city, in order to improve the quality of life in the area, be accessible to all individuals, and be a source of pride to residents.

- A. The Percent for Art Program shall apply to both new and remodeled city-owned public spaces and structures.
- B. The following categories of projects are exempt from the Percent for Art Program requirements:
  - 1. Water, stormwater, or wastewater facilities, except for office buildings.
  - 2. Street construction and repair; public right of way improvements, such as curb, sidewalk, trails, pedestrian pathways, and traffic control facilities; and landscaping.
- C. The Percent for Art Program requires one percent (1%) of eligible construction costs of city capital improvement projects over \$500,000 to construct or remodel any public or city building, structure, park or any portion thereof, to be allocated for public art. No less than eighty percent (80%) of the one percent appropriation will be used for on-site artwork; up to twenty percent (20%) of this one percent shall be held in a public art operations fund to be used for program administration and maintenance of the art, as determined necessary by the city manager to carry out the provisions of this division.

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- D. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the city.
- E. The city manager is authorized to adopt such additional processes and policies by Administrative Order not inconsistent with this division 11 as they may deem necessary to implement the Percent for Art Program in accordance with the objectives of this division.

**2.06.1980. – Objectives.**

The Percent for Art Program objectives include:

- A. Develop a public art program that is unique to Bozeman.
- B. Increase the understanding and enjoyment of public art by Bozeman residents.
- C. Invite public participation in the interaction with public spaces.
- D. Provide challenging employment opportunities for artists.
- E. Encourage collaborations between artists and architects and engineers.
- F. Support artist participation on design teams for planning public projects.
- G. Encourage a variety of art forms: temporary and permanent, object and event, single or dispersed locations.
- H. Spread commissions among a wide number of artists and strive for overall diversity in style, scale and intent.

**2.06.1990. - Definitions.**

- A. “Architect” is the person or firm designing the project to which the one percent (1%) funding applies. Where the architect is a firm, the term architect shall mean the principal of that firm in charge of designing the project for which the one percent (1%) funding applies.
- B. “Artist” is a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability who produces artworks and is not a member of the project architectural/design firm.
- C. “Artwork” includes but is not limited to, paintings, murals, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, arches, or other structures

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intended for ornament or commemoration. Also included are carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Landscape items include the artistic placement of natural materials or other functional art objects. Artwork may be portable as well as permanently sited.

- D. “Capital Improvement Plan” (CIP) means the annual capital improvement plan adopted for city-financed public improvement projects.
- E. “Capital Improvement Project” means any public works project undertaken by the city to construct or remodel any public or city building, structure, park or any portion thereof.
- F. “Construction Cost” is the contracted sum for construction of the designated project including any change orders included in the initial contract notice of award. Construction costs do not include costs such as professional fees, cost of land, rights of way and financing.
- G. “Contractor” is any firm, individual, joint venture or team of firms or individuals with which the city contracts for design, engineering, or construction services.
- H. “Deaccessioning” is a procedure for the withdrawal of an artwork from the public collection.
- I. “Eligible Construction Cost” is that portion of the construction cost of any capital improvement project paid for solely by the city to construct or remodel any building, decorative or commemorative structure, parking facility, park, recreational facility, or any portion thereof, located on city property, provided that the source of funds for such project(s) is not restricted by law or regulation as to its use for artworks.
- J. “Maintenance” is the periodic work on a facility or asset required to maintain its original functionality.
- K. “Remodel” is work required to substantially change or enhance the functionality of a facility.

**2.06.2000. – Procedure to select public art for eligible projects.**

- A. Upon adoption of the capital improvement plan the finance director will identify all projects for which the Percent for Art Ordinance applies.

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- B. All Percent for Art Program projects, whether they are permanent or temporary artworks, will be developed to respond to a specific site or building location, with the exception of artworks that are conceptually intended to circulate among various sites or facilities within the project area.
- C. The selection of artist(s) who will provide art integral to the project will be made as early in the conceptual design stage as practical, so artist(s) will be able to work with the contractor from the beginning of the project.
- D. The city manager or their designee is responsible for identifying, investigating, and selecting the artist(s) or artwork(s). For each project, the city manager or their designee will develop a formal structure in which to select, develop and maintain public art as well as further public accessibility to the arts in accordance with the objectives of the Percent for Art Program. The city manager may choose to work in cooperation with an independent contractor or nonprofit arts organization in the selection process.
- E. The city manager or their designee shall work with city staff and/or the independent contractor or nonprofit arts organization to analyze and discuss appropriate locations, suitable art forms, artists' prerequisites, and specifics of artist/artwork selection process.
- F. A call for artists, request for proposals, or other form of advertisement as provided by the city's procurement policy will be prepared by city staff and/or the independent contractor or nonprofit arts organization and advertised by the city clerk. The proposals will be evaluated by the city manager or their designee. The city manager may form a selection committee for this purpose. If the city manager has enlisted an independent contractor or nonprofit arts organization to assist in the selection process, that contractor or organization will evaluate the proposals and make a recommendation regarding the final selection to the city manager. The city manager will make the final selection determination.
- G. In the response to the city's request for proposals, artists must include information relating to the proposed artwork's lifecycle.
- H. The city manager is responsible for providing staff and other resources to meet the city's obligations under this division. In the event of a disagreement as to whether an expense is eligible pursuant to 2.06.2020, the city manager shall make the final determination.

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- I. Contractors invited to submit a proposal for an applicable construction or renovation project shall be advised of the requirements of this division. The contractor shall work closely with the city manager or their designee on the designation of appropriate sites and shall incorporate the artist's or artwork's special requirements within the construction documents, including the time of delivery and installation of the artwork. The selected artwork must be placed so that it is the public view.
- J. Artists will be selected in accordance with the city's procurement policy, on the basis of their qualifications as demonstrated by past work, appropriateness of the proposal to the particular project, and its probability of successful completion as determined by the selection committee.
- K. The city has the option of making no selection. If no proposal is accepted, the city has the right to reopen the competition or to propose other methods of selection.
- L. Upon the selection of an artwork, the artist shall enter into a contract with the city for the artist's services or for the purchase and installation of the artwork. This contract shall require the artist to produce or deliver the artwork for a price guaranteed to be no greater than the maximum contracted cost, and shall require the transfer of all rights in and to the artwork to the city, including all intellectual property rights. The contract must be reviewed by the city attorney.
- M. Where the city manager determines that an expenditure for a specific artwork is inappropriate, the city manager may approve the transfer of those funds to another Percent for Art project.

**2.06.2010. – Criteria for selection of artwork(s).**

- A. In making the final selection, the city shall be guided by the goals and purposes of this ordinance and the criteria set forth in this document and any regulations promulgated to fulfill the criteria.
- B. Each proposed artwork will also be evaluated as to its artistic excellence, appropriateness in terms of scale, material and content relative to the immediate and general architectural, social and historic context; technical feasibility; and long term durability against vandalism, weather, and theft. Consideration must be given to materials, construction, durability, maintenance costs, public access and safety.

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**2.06.2020. – Conflict of interest.**

- A. No artist sitting on a nonprofit arts organization’s board of directors may submit for Percent for Art projects over which that organization has approval authority or administrative responsibility during his/her tenure.
- B. No staff member of a nonprofit arts organization or member of a staff member’s household may submit for Percent for Art projects over which that organization has approval authority or administrative responsibility.
- C. No artist sitting on a selection committee may submit for the project for which the committee was formed.
- D. The selection process must comply with the Code of Ethics, article 3, division 4 of this chapter.

**2.06.2030. - Eligible expenses for the Percent for Art Program.**

- A. Appropriations for Percent for Art Program projects may be spent for:
  - 1. The artwork itself, including but not limited to:
    - a. Artist’s design fees.
    - b. Additional labor and materials required for production and installation of the artwork.
    - c. Artist’s operating costs.
    - d. Travel related to the project.
    - e. Transportation of the artwork to the site and installation.
    - f. Any required permitting fees.
  - 2. Identification plaques and labels.
  - 3. Frames, mats, mountings, anchorages, containments, pedestals, or materials necessary for the installation, location or security of the artwork.
  - 4. Photographs of completed artworks.
  - 5. Communication and other indirect costs including insurance.
  - 6. Expenses for special advisors or consultants.
  - 7. Historical artifacts displaced by construction.

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8. Expenses related to the administration of carrying out the directives of this division, including but not limited to:
  - a. Technology services and subscriptions (e.g., a web-service for promoting an art-call).
  - b. Advertising, publicity, promotion, and invitation expenses.
  - c. Expenses related to public events related to artwork (e.g., rental of public address equipment and catering expenses).
  - d. Due diligence expenses required for the responsible consideration of artwork (e.g., engineering or environmental consultation).
  - e. Expenses related to augmenting artwork (e.g., addition of lighting, landscaping or general enhancements to artwork), if such components are not included in the artwork itself.
- B. Appropriations for Percent for Art Program projects may not be spent for:
  1. Reproduction, by mechanical or other means, of original artworks, except in cases of film, video, photography, printmaking or other media arts.
  2. Those elements generally considered to be components of a landscape architectural design or landscape gardening.
  3. “Art objects” which are mass produced of standard design, such as playground sculptures.
  4. Directional or other functional elements, such as supergraphics, signs, color coding, maps, etc. except where a recognized artist is employed.
- C. The city manager shall make the final determination of the eligibility of a particular expense.

**2.06.2040. – Public Art Management/Maintenance.**

- A. All artworks remain under the ownership of the city. Artworks will be insured for property damage in accordance with the city’s policies for insuring city property.
- B. The city will be responsible for the ongoing care and maintenance of all artworks purchased or commissioned pursuant to this division.
- C. The city manager or their designee shall inform the city attorney if an artwork is damaged or stolen.

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D. Monies to maintain artworks shall come from the public art operations fund.

**2.06.2050. – Deaccessioning.**

Deaccessioning will be considered only after a careful and impartial evaluation of the artwork within the context of the collection as a whole. At the beginning of the process, the city manager or their designee will make a reasonable effort to notify any living artist whose work is being considered for deaccessioning. The city manager may consider the deaccession of artwork for one or more of the following reasons in the event that it cannot be re-sited:

- A. The artwork has been damaged or has deteriorated and repair is impractical or unfeasible.
- B. The artwork endangers public safety.
- C. In the case of site-specific artwork, the artwork is destroyed by severely altering its relationship to the site.
- D. The artwork requires excessive maintenance or has faults of design or workmanship.

**Section 2**

**Repealer.**

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 3**

**Savings Provision.**

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

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**Section 4**

**Severability.**

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

**Section 5**

**Codification.**

This ordinance shall be codified as indicated in Section 1.

**Section 6**

**Effective Date.**

This ordinance shall be in full force and effect 30 days after final passage and approval.

**PROVISIONALLY ADOPTED** by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 27th day of October, 2020.

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**CYNTHIA L. ANDRUS**  
Mayor

ATTEST:

DocuSigned by:  
  
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**MIKE MAAS**  
City Clerk

DocuSigned by:  


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**FINALLY PASSED, ADOPTED AND APPROVED** by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 10<sup>th</sup> day of November, 2020. The effective date of this ordinance is December 10, 2020.

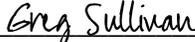
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**CYNTHIA L. ANDRUS**  
Mayor

ATTEST:

DocuSigned by:  
  
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**MIKE MAAS**  
City Clerk

DocuSigned by:  


APPROVED AS TO FORM:

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**GREG SULLIVAN**  
City Attorney