

ORDINANCE NO. 14,005

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a new Article IX to Chapter 82, establishing a Public Arts Program and Public Arts Commission.

WHEREAS, public art makes places memorable and appealing. Our built environment reflects the time, energy, resources, and the spirit of the community. Public art can help make that commitment of resources more effective; and,

WHEREAS, the City of Des Moines Public Arts Program works in partnership with City departments, developers, and other public and private-sector organizations and agencies to develop, plan and implement public arts projects that benefit all the citizens of Des Moines; and,

WHEREAS, the City of Des Moines Public Arts Program seeks to provide opportunities for citizens of the City of Des Moines to experience and participate in the cultural and artistic legacy of this region by including works of art in public places and in designated City and private sector construction projects; and,

WHEREAS, the City of Des Moines is considering the adoption of ordinances and regulations that set aside a percentage of appropriations for public art in eligible city projects; and,

WHEREAS, the Public Arts Program is intended to establish and ensure a process to govern public sector projects and assist when appropriate private sector projects, that sustain interest and support for public art within the City of Des Moines; and,

WHEREAS, when coordinated with the private sector and governmental agencies, quality arts are a tool for the encouragement of economic development, business relocation and tourism. Public arts programs have compatible and complementary purposes and responsibilities. These programs should be coordinated to promote efficiencies within the government and to build upon their respective successes and experience; NOW THEREFORE,

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa, as follows:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, be and is hereby amended by adding and enacting a new Article IX to Chapter 82, establishing a Public Arts Program and Public Arts Commission, as follows:

**CHAPTER 82. PLANNING**

**ARTICLE IX. PUBLIC ARTS COMMISSION\***

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\***Cross reference(s)**—boards, commissions, committees and agencies, §2-1046 et seq.  
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**Sec. 82-400. Establishment of a public arts program.**

There is hereby established a public arts program as set forth in this article. The public arts program will ensure that the work, thinking, creative skills, and unique perspectives of artists are included in the planning, design and construction of city property, facilities, and in public spaces.

**Sec. 82-401. Purpose.**

The purpose of the public arts program is to:

- (a) Enhance the city's physical environment and public spaces;
- (b) To provide an educational component to each public art project.
- (c) Integrate the work and thinking of artists into the planning, design and construction of eligible city facilities, buildings, infrastructure, parks and other public facilities and spaces, and private sector projects;
- (d) Celebrate the multi-cultural and diverse character of the city's residential and commercial neighborhoods and citizens;
- (e) Contribute a sense of citizen ownership and pride in public facilities and spaces;
- (f) Mitigate potential adverse impacts of construction;
- (g) Engage the citizens, neighborhoods, businesses, and community organizations of the city in creative partnerships with artists;
- (h) Support, educate, and assist citizens, neighborhoods, businesses, and organizations with their community activities;
- (i) Complement and enhance city planning documents; and

(j) Serve as a collaborating partner with all city commissions, departments, task forces, and teams.

(k) Integrate public art and aesthetic elements in city projects that stimulate the eye, mind and spirit of the public, and serve as cultural, educational, and tourism resources that celebrate and promote Iowa and the city's unique qualities, its character, cultural heritage, history, pride and sense of place.

(l) Assist in community initiated projects.

### **Sec. 82-402. Definitions.**

All words shall have their ordinary and usual meanings except those defined in this section which shall have, in addition, the following meanings. In the event of conflict, the specific definitions set forth in this section shall presumptively, but not conclusively, prevail.

(a) "Administrator" means the staff position established by section 82-405 and responsible for the public arts program.

(b) "Client department" means the city department or division responsible for construction or custodial management of a city facility or capital improvement project after construction is complete.

(c) "Commission" means the public arts commission established by section 82-403.

(d) "Commissioner" means an individual appointed by the city council to serve on the commission.

(e) "Panel" means a specific group appointed by the city council to plan a public art project, determine opportunities for the involvement of artists, opportunities for public art, determine the process and review criteria to select artists and project designs, review and recommend candidates and project designs.

(f) "Panelist" means an individual appointed by the city council to serve on a panel.

(g) "Percent for art" means a percentage of the general obligation funds of the city appropriated for capital improvements as included in the adopted capital improvement program that is set aside for the enhancement of the city's physical environment and public places and the integration of works of art by artists.

(h) "Private sector project" means any project initiated by an individual, organization or business not affiliated with the city, paid for-by the private sector to construct, remodel or maintain any building or project within the jurisdiction of the city.

(i) "Public art" is a work of art for the public realm which is accessible to the public and which possesses artistic and aesthetic qualities. Public art can be temporarily or permanently placed in an indoor or outdoor setting and may include works of art in any medium, infrastructure, performances, and other types of art as defined by the commission.

(j) "Public arts fund" means the separate city account created to hold any funds allocated by the city or received from any other source which are held exclusively for the purpose of implementing the programs and policies described in this article.

(k) "Public arts program" means the undertakings by the city pursuant to this article to support public art.

(l) "Public space" is any place or property within the city which is open to the general public for its use, or which is in public view, or is generally accessible to the public.

#### **Sec. 82-403. Public Arts Commission.**

(a) There is created in and for the city a public arts commission to be comprised of fifteen members. The commission shall serve as an advisory body to the city council. The mission of the commission, as stewards of the city, is to enhance the appearance of the city through the selection and integration of art in a public environment. The fifteen members shall include:

1) Seven members nominated by the city council. Each member of the city council may nominate candidates for one position on the commission.

2) Eight members nominated by the following organizations: Des Moines Art Center, Des Moines Arts District, Des Moines Neighbors, Inc., Downtown Community Alliance, Inc., Greater Des Moines Partnership, Iowa Chapter of the

American Institute of Architects,  
Iowa Chapter of the American  
Society of Landscape Architects, and  
Metro Arts Alliance of Greater Des  
Moines. Each such organization may  
nominate candidates for one position  
on the commission.

(b) The city council shall seek the recommendation of eligible candidates from the community.

(c) The persons nominated and appointed to the commission should reflect the cultural, ethnic and gender diversity within the city. Each person appointed to the commission should possess the following qualifications:

- 1) Broad cultural perspective.
- 2) Commitment to the importance of public art in the public realm.
- 3) Strong interest in and/or knowledge of public art, art, arts education, architecture, community development, design arts, and urban design and planning.
- 4) Experience in collaborative decision making and consensus building.
- 5) Willingness to represent the commission in public.
- 6) Ability to deal with conflict.
- 7) Ability to assess the overall needs of city residents.

(d) Commissioners shall be appointed to three-year terms commencing the first day in June. For the initial commission, five members shall be appointed to one-year terms, five members shall be appointed to two-year terms, and five members shall be appointed to three-year terms.

(e) The commission shall serve as an advisory body to the city council, city departments, commissions and boards. The commission shall:

- 1) Be responsible for advising the administrator, city manager, city departments, commissions and boards, and the city council regarding the public arts program;
- 2) Advocate for a high quality public arts program and works acquired through the public arts program;
- 3) Serve as a liaison with all city planning committees, task forces, boards, and commissions responsible for developing and implementing master plans, annual plans, studies, and other planning documents and reports for the city;
- 4) Develop programs, policies, procedures, guidelines and review criteria to guide the public arts program, subject to section 2-1055;
- 5) Review and advise all parties involved in the acquisition, accession, placement, and de-accession of public arts projects;
- 6) Review and make recommendations on all public art matters submitted to the city, or under the jurisdiction of the city or public arts program;
- 7) Provide oversight for the implementation of elements of the public arts program relating to civic and private sector development and other community initiatives submitted to the city;

8) Study proposed public arts-related projects of artistic and aesthetic concern to the community and city and prepare recommendations for the city council's consideration;

9) Identify projects that have the potential of benefiting from artists' involvement;

10) Recommend artists and project designs to the city council;

11) Serve as an advisory body to the city council regarding disputes involving aesthetic judgment relative to the public arts program;

12) Provide oversight for the maintenance of public artwork owned by the city after the work is in place;

13) Provide oversight for gifts and donations of public art and funds for the acquisition of public art made to the city;

14) Develop a public art training program for commission members, city council and staff, members of panels, and the community; and

15) Recommend to the city an annual program plan and budget for the public arts program.

(f) In addition to the requirements of section 2-1054 regarding conflicts of interest, any commissioner involved in a project or otherwise having a financial interest in a project which requires action by the commission, shall notify the commission chair of the conflict of interest, and shall remove themselves from the room during deliberations of the commission regarding the project. The commission chair shall report any violations of this section to the city council.

(g) The commission shall timely submit its report and recommendation to the city council on all matters referred to the commission pursuant to this article. If the city council finds that the commission has failed to timely respond on any matter referred to the commission, the city council may proceed without the commissions' response.

#### **Sec. 82-404. Meetings.**

(a) The commission shall hold regular meetings, at least once each month, at a time and place it may determine by resolution. Special meetings of the commission may be held upon the call of the chair or upon written request signed by three commission members. At least 24 hours' notice shall be given of any special meeting.

(b) The commission shall select a chair and vice-chair from its members, who shall serve in such capacities for a period of one year or until their successors shall be elected.

(c) The commission shall utilize rules adopted by the commission pursuant to section 2-1055 for the transaction of its business. The commission shall keep minutes of its regular public meetings and records of all official actions. Such rules, minutes, and records of official actions shall be filed in the office of the commission and shall be open to the public to the extent required by law.

#### **Sec. 82-405. Administrator.**

(a) The public arts program shall be under the direction and supervision of the administrator, who shall be appointed by and responsible to the city manager.

(b) The responsibilities of the administrator, shall include, but are not limited to:

1. Work with the public arts commission to establish the philosophy and goals for the public arts program.
2. Prepare and carry out implementation strategies to achieve established goals.
3. Provide or oversee administrative support to develop and implement projects, competitions, and other activities relating to the public arts program.
4. Prepare and distribute requests for proposals, requests for qualifications, and other program guidelines, procedures, rules, and other related activities.
5. Serve as a liaison to the city boards, commissions, taskforces, and groups involved in planning, implementing, reviewing, and modifying city plans and projects as well as coordinate with all city departments.
6. Promote the public arts program and opportunities for public art in the city.

7. Coordinate public arts projects funded through the city's capital improvement program budget and other public arts projects approved by the city council.

**Sec. 82-406. Panels.**

(a) Advisory panels may be formed by the city council to plan public arts projects, determine opportunities for public art, recommend the process and criteria to select artists and project designs, review candidates and project designs, and recommend artist(s).

(b) Any proposal to form a panel shall be submitted to the commission for report and recommendation to the city council. Proposals to form a panel may be initiated by the commission or by any interested person. The commission, with recommendations from the client department and/or the project initiators, shall report to the city council on the need and appropriateness for the formation of a panel, the size and makeup of the panel, and shall seek to identify qualified members for appointment by the city council to the panel. Individuals wishing to be considered for membership on panels are asked to submit a letter of interest and qualifications to the commission. Members of the commission may be appointed to serve on panels.

(c) Individuals appointed to a panel should possess the following qualifications:

- 1) Commitment to the importance of public art in the public realm.

- 2) Strong interest in and/or knowledge of public art, art, architecture, community development, design arts, and/or urban design/planning.

- 3) Ability to deal with conflict.

- 4) Ability to assess the overall needs of the project as they relate to the goals of the city, client department, and/or sponsors of public sector projects.

(d) Commissioners and other individuals who have a conflict of interest or vested interest in the project shall not serve on a panel.

This does not include the project architect, landscape architect, and representatives of the client department, and/or representatives of public sector projects.

(e) Panel members may be removed by the city council for the following reasons:

- 1) Failure to attend at least three succeeding meetings and/or at least 75% of regularly scheduled panel meetings in any calendar year.
- 2) Panel members who have a conflict of interest or a vested interest in the project.
- 3) Any other conduct which is determined by the city council to be detrimental to the work of the panel or the public arts program.

(f) Panels shall utilize rules adopted by the commission pursuant to section 2-1055 for the transaction of its business. Panels shall keep minutes of its regular public meetings and records of all official actions. Such rules, minutes, and records of official actions shall be filed in the office of the commission and shall be open to the public to the extent required by law.

### **Sec. 82-407. Artists' Involvement**

Whenever possible, the commission and panels will involve artists at the earliest opportunity of all eligible projects. The commission and panels shall seek the most appropriate way to involve qualified artists in projects, including, but not limited to:

- (a) Planning. Artists may be selected to assist in the development of options, strategies, limitations and opportunities for art and aesthetic design opportunities in capital projects before project plans and budgets are fixed.
- (b) Collaboration with project design team. Artists may be selected as consultants on construction or project work in which the creation, documentation, and construction of the project is collaboratively developed with the city's project managers, design team, and the community with the goal of improving the aesthetics of the entire project.

(c) Site specific artwork. Artists may be selected to design artwork for a specific location.

(d) Individual works of art. Artists may be commissioned to create a work of art, or existing works of art may be purchased.

**Sec. 82-408. Selecting Artists.** The commission, after considering the recommendation of the panel involved, if any, may recommend to the city council the most appropriate way to identify and select qualified artists for a project, including, but not limited to:

(a) Open competition. The commission or designee may solicit, through public advertisement, requests for artists' qualifications, letters of interest, or applications or proposals. The commission or designee will review submittals and recommend artists and designs based upon established criteria.

(b) Invitational or limited competition. The commission or designee may invite a limited number of artists to submit qualifications, letters of interest, applications or proposals. From this limited pool of applicants, the commission or designee may recommend artists and designs based upon established criteria.

(c) Consultants. The commission may utilize the services of an independent advisor or consultant for a project that requires specific expertise, to recommend artists and designs based upon established criteria. From this pool of applicants, the commission or designee may recommend artists and designs based upon established criteria.

**Sec. 82-409. Funding, Appropriations, and Use of Funds.**

(a) The goal of the public arts program is to annually fund the public arts fund at a level equal to one and one-half percent of the amount of general obligation funds appropriated for capital improvements through the city's capital improvement program, for the purpose of enhancing the city's physical environment and public spaces and achieving the other objectives identified in section 401. The public art program shall also include an educational component in each public art project.

(b) Commencing with the preparation of the capital improvement program for the 2002/2003 fiscal year, the city manager shall provide to the city council and the public arts commission estimates of the total amount of general obligation funds to be allocated for capital improvements in the capital improvement program, and the amount of funds proposed by the city manager to

be allocated to the public arts fund in each of the next five fiscal years.

(c) The commission shall timely submit its budget recommendations for the public arts program to the city manager and city council for receipt by the city council at its first meeting in September of each year. The commissions budget recommendations shall identify and prioritize proposals for use of the public arts funds.

(d) Appropriate use of program funds. The public arts fund shall support the following uses:

1) The selection, acquisition and display of works of art, which may be an integral part of the project, or placed in, on or about the project or other public space.

2) Design, planning and pre-design service contracts, fees and commissions of artists, architects, engineers and other design professionals.

3) Expenses for technical assistance provided by architects and/or engineers to artists, in order to design, document and/or certify the artwork.

4) Repair and maintenance of city public artworks.

5) public arts program administrative expenses, relating to acquiring, developing, or maintaining public art.

6) Participation by citizens or costs of communicating with and receiving input from citizens, working with professional artists, introduction of public art to children, and education of the public about the county's rich cultural and artistic heritage.

7) Documentation and public education material for the public arts program.

8) Pilot or demonstration projects of the public arts program.

(e) Distribution of funds. Following approval of the annual budget and annual public art fund appropriation approved by the city council, the commission in cooperation with the client department(s) shall submit a public arts program plan which describes the art projects to be initiated from the fund, the budget recommended for each art project, and any special project or

demonstration categories to allow for program flexibility and responsiveness. The program plan shall be transmitted by the administrator to the city council in sufficient time to be reviewed by the city council for each fiscal year.

(f) Contract and spending authority. Approval of the public arts program plan by the city council will constitute approval for the administrator to develop and propose contracts, subject to the approval of the city council, for services or purchases necessary to carry out the stated policies and implement the public arts program.

**Sec. 82-4010. Annual Plan.** Development of the annual plan, determination of project budgets and identification of opportunities for public art shall be done by the administrator and the commission working in partnership with city departments and citizens. The annual plan and budget shall be submitted to the city council for review and approval.

**Sec. 82-411. Authority to accept donations.** The city may receive offers of donations of artwork or funds for public art. Potential donors will be referred to the commission to discuss the nature of the gift and procedures and criteria for review and approval. The commission will review the proposal and recommend consideration or rejection of the offer, and make a site recommendation where applicable. Commission recommendations shall be forwarded to the city council for review and approval. Financial gifts, bequests, and donations approved by the city council shall be credited to the public arts fund, maintenance and donation fund or special fund of the public arts program.

**Sec. 82-412. Inclusion of a public arts component in grants or incentives to other public and private entities.** City funds and/or incentives that are awarded by the city to another public or private entity for use in planning and constructing a capitol project over \$250,000 shall include a requirement for inclusion of public art. To ensure compliance with this section, the public or private entity shall consult and collaborate with the administrator prior to submitting a formal request or application to the city for city funds or incentives. All plans for including public art in a project, as well as specific design concepts, proposals, working drawings and specifications shall be reviewed by the commission.

**Sec. 82-413. Validity of contracts.** The failure of the city council, commission or any panel to comply with any of the sections of this article shall in no sense or manner invalidate any contract or obligation of the city otherwise valid and, shall not be any basis of objection or reason for failure to pay any special assessment that may be levied or any other obligation due and owing to the city, and shall in no manner affect the validity of any improvements pending.

**Sec. 82-414. Severability.** The provisions of this article shall be effective in all cases unless otherwise provided by state or federal law. The provisions of this article are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or other portion of this article or the invalidity of the application thereof to any person or circumstance shall not

affect the validity of the remainder of this article or the validity of the application to other persons or circumstances.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

Preston Daniels, Mayor

Attest:

I, Diane Rauh, Chief Deputy City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 01-3210), passed by the City Council of said City at a meeting held October 22, 2001, signed by the Mayor on October 22, 2001, and published as provided by law in the Business Record on November 5, 2001. Authorized by Publication Order No. 1937.

Diane Rauh, Chief Deputy City Clerk