

ORDINANCE NO. 2013-40

**AN ORDINANCE AMENDING THE PUBLIC ART POLICY ADOPTED BY
ORDINANCE NO. 2007-24 THAT CREATED A PUBLIC ART ADVISORY COMMITTEE
AND GOVERNS DISPLAY OF ARTWORK ON CITY-OWNED PROPERTY**

WHEREAS, Ordinance No. 2007-24, adopted on February 13, 2007, adopted a Public Art Policy that created a Public Art Advisory Committee and governs the display of artwork on city-owned property, and,

WHEREAS, the Public Art Advisory Committee and City of Bentonville Staff Attorney has reviewed the policy and recommends changes,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS:

Section 1. That the City of Bentonville is hereby amending the Public Art Policy adopted by Ordinance No. 2007-24 with the following Attachment "A", an electronic copy and paper copy of which is on file with the City Clerk and which is hereby adopted by reference as though it were copied herein fully.

Section 2. This Ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this 14th day of May, 2013.

APPROVED:


Mayor Bob McCaslin

Attest:

Linda Spence, City Clerk

ATTEST:



City Clerk

City of Bentonville Public Art Policy

A. Purpose. Art enhances Bentonville’s identity as a community that values creative and diverse expressions. It builds our sense of pride and enriches our lives. Public art supports the creative industries, creating opportunities for artists, designers and fabricators. In recognition of the importance of integrating public art into the daily lives of the citizens of Bentonville, the City Council establishes the following policy for the purpose of providing opportunities for displaying public art to create exciting and attractive public spaces. The goals of the policy are:

- To ensure that artwork and the creative concepts of artists are supported.
- Serve as an act of public trust and stewardship for public art.
- To increase public awareness and enjoyment of the visual arts.
- Establish a process for selecting and exhibiting art on city-owned property.
- Guide the city staff in the implementation of a public art program.

B. Applicability. These regulations shall apply to all public art, as defined by this policy, that is visually or physically accessible to the public and that is acquired by City funds, donated to the City, borrowed or on-loan to the City, and/or placed on ~~city-owned~~ **maintained** property. **Though perhaps broadly falling within the definition of “public art,” these regulations are not intended to apply to and shall not apply with respect to pictures, decorations, or other displays placed or allowed by City or other government officials or employees on public property. The control of such displays shall be solely within the discretion of City staff or other governmental officials based on City policies, procedures, agreements, and customs as well as any applicable law.**

C. Definitions

1. Artist (Visual)

- One who works in, is skilled in, or conceptually creates in any area of the fine arts, such as painting, drawing, sculpture, etc., but also including one whose skill and primary focus are cross-disciplinary.
- A practitioner in the visual arts generally recognized by critics and peers as a professional possessing serious intent and ability.
- A “professional artist” is any person who by virtue of professional training, exhibition history, and/or critical review is recognized as skilled in creating works of art.
- A person who has a reputation of artistic excellence, as judged by peers, through a record of exhibitions, public commissions, sale of works, educational attainment, or other means.
- A person who is a working professional making the majority of their income from creating artworks.

2. Artwork or Work of Art. All forms of original creations of visual art which may be portable as well as permanent. To include but not be limited to:

- Paintings of all media, including both portable and permanently affixed works such as frescoes and murals;
- Sculpture of any form and in any material or combination of materials. To include statues, monuments, fountains, arches, or other structures intended for ornamentation or commemoration. Also included are reliefs, mobiles, kinetic, and electronic sculptures;
- Other works of visual art, such as inscriptions, stained glass, fiber works, carvings, mosaics, photographs, drawings, collages, assemblage, textile works, and prints. Also included are crafts,

both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials;

- Artist designed landscapes and earthworks, including the artistic placement of natural materials or other functional art objects;
- Media and electronic arts.

3. **Public Art.**

- Artworks or art places created by an artist, artists, and/or a collaboration of artists and design professionals, for a public place for the public to experience, or for a public purpose.
- Art or design that is created specifically for a public context or place which, through a public process, influences that context or place in a meaningful way.
- Artwork that is publicly visible and accessible for a minimum of eight hours per day.

4. **City-owned Maintained Property.** Any structure, land, infrastructure, or open space that is owned and/or maintained by the City of Bentonville, including, but not limited to, buildings, parks, and street right-of-way.

D. **Public Art Advisory Committee**

1. **Role.** The Public Art Advisory Committee (PAAC) serves in an advisory capacity to:

- (a) Review artist proposals for placement of artworks on city-owned maintained property, making recommendations for fabrication and acquisition.
- (b) Serve as a jury for artwork competitions, making recommendations of finalists to the City Council.
- (c) Provide technical advisement to staff to develop a public art program.

2. **Membership.** At least three people recommended by the Mayor and approved by the City Council shall serve on the Public Art Advisory Committee (PAAC). Membership shall be made up of arts professionals and members of the community. Arts professionals for these purposes are defined as: curators, visual artists, art critics, art historians, art collectors, art fabricators, architects, landscape architects, art educators, and other persons with visual arts backgrounds, respected in their field and willing to engage effectively in a panel process. The Bentonville Convention and Visitors Bureau and the Bentonville Public Schools may have one ex-officio, non-voting member serve on the committee. Other organizations and agencies, such as Downtown Bentonville, Inc. and Benton County, may be requested to participate in discussions should a piece of artwork directly impact that organization or agency. Benton County, through the County Judge's Office will be asked to participate should a piece of artwork impact the Bentonville Square.

3. **Terms.** Terms shall be limited to three years. No member shall serve more than two, three-year terms.

4. **Bylaws.** The Public Art Advisory Committee shall adopt bylaws and rules of order.

5. **Staff Support.** City of Bentonville staff shall provide support to the Public Art Advisory Committee to establish meeting date, times, and locations; prepare agendas, provide necessary documents, and provide meeting minutes. At least one representative from the Bentonville Parks and Recreation Department and at least one representative from the Community Development Department shall serve on the Public Art Advisory Committee as staff support, non-voting members.

6. **Meetings.** The Public Art Advisory Committee shall meet at least quarterly.

- E. **Selection Criteria:** The Public Art Advisory Committee (PAAC) will use the following criteria in reviewing works of art:

- (a) **Artistic Quality and Merit:** Due consideration will be given to the strength of the artist's concept, vision, innovation, execution and craftsmanship.
- (b) **Context:** Consideration should be given to the architectural, historical, geographical and socio-culture of the City. The PAAC may also take into consideration the theme and context of the display in terms of scale, form, content, and materials.
- ~~(c) **Original Works:** All works of art on temporary display on city owned property shall be original works of art and *not* a reproductive print or copy of another artist's work. The work must comport with themes and/or artists or groups of artists selected by the PAAC.~~
- ~~(d) **Residency:** Only works submitted by artists currently residing in Arkansas or by native Arkansans living elsewhere, or by artists who have chosen Arkansas as the subject matter for the image presented will be considered for display.~~
- (e) **Prohibitions:** The PAAC shall reject for display works of art that are obscene (as defined by A.C.A. § 5-68-302 *et seq.*) or violate other state or federal laws.

F. Displays of Art on city-owned property

1. ~~**City Council Approval.** All requests to display artwork on city-owned~~ **maintained** property shall be approved by the **Bentonville** City Council, **the Public Art Advisory Committee and if required, the Parks and Recreation Advisory Board and/or other city boards and commissions.**
2. **Insurance.**
 - a. **Temporary Works of Art.** The City is self-insured and does not insure ~~the~~ **temporary** artwork displayed on city-owned **maintained** property. The artist who loans **temporary** artwork for display on city-owned **maintained** property shall bear the risk of loss from damage, destruction, or theft of the artwork while it is in the care of the City of Bentonville. The artist shall agree in writing to assume sole liability or responsibility for loss, damage, or theft of the artwork.
 - b. **Permanent Works of Art.** Insurance details relating to permanent works of art shall be outlined in the contract agreement.
3. **Assumption of Risk and Public Safety.** Display of artwork shall not ~~compromise the safety of city employees or the citizens of Bentonville~~ create an unnecessary safety hazard to the public or city employees and shall be displayed in a manner that does not unreasonably impede traffic or interfere with public safety.
4. **Types of Display.** Art displays hosted or coordinated by the City may include competitions sponsored by the City, art displays featuring individual artists, themes and art displays featuring groups of artists.
5. **Location.** Artwork may be displayed in public places approved by City Council. ~~Artwork shall be displayed in a manner that does not unreasonably impede traffic or interfere with safety.~~ Artwork may be physically separated from the main exhibit when, in the opinion of the City Council, warranted under current community standards. **Artwork, other than works of art currently in place at the time of adoption of this ordinance, shall not be displayed on the Bentonville Square.**
6. **Compatibility.** Proposed public art shall be evaluated for its compatibility relative to the following:
 - o **Visibility and public access**

- Public safety
- Traffic patterns
- The relationship of the proposed public art project to the site's existing or future architectural features, its natural features, its historical, geographic and social/cultural context
- The function and use(s) of the facility of site
- The nature of the site's surrounding neighborhood and potential impact of the public art project on residents, businesses, existing works of art or design elements within the site's vicinity.
- Future development plans for the area which may affect the public art project.

7. **Identification of Artwork.** Works of art may should be identified in an appropriate manner to the context of the artwork consistent signage details shall be outline in the contract. with a title and the name of the artist in no greater than 14 point Times New Roman or Courier format. The artist may submit a one page (no larger than 8 1/2" x 11") description of the work of art. For each exhibit, there may be a one page (no larger than 8 1/2" x 11") biography of the artist that may include contact information.

8. **Sales Prohibited.** Art shall not be sold on city-owned maintained property, except as part of an city-approved organized event. Sales information shall not be posted or displayed with a work of art; interested buyers shall contact the artist directly for sales information.

9. **Payments Prohibited.** The City (or any organization or person affiliated with the City) shall not accept payments to have art displayed on city-owned maintained property. Furthermore, the display of public art on city-owned maintained property shall not be used by any organizations for fundraising.

~~10. **Coordination.** The City may work with the Walton Arts Center, Crystal Bridges Museum of American Art or other local art centered groups as appropriate.~~

10. **Presentation.** As outline in the contract, all art shall be finished and ready for display and artists shall remain responsible for all costs associated with presenting, setting up and taking down.

11. **Set-up/take down.** As outlined in the contract, it shall be the responsibility of the artist to coordinate a time with the City to set up and take down all works of art for display. adhere to the details for presenting, set up and take down.

12. **Pick-up and Delivery/Abandonment.** As outlined in the contract, the artist shall be responsible for delivering all pieces to be displayed at a date and time to be coordinated by the City and the artist adhere to the details for pick-up and delivery location and time. Furthermore, the artist shall be responsible for picking up their artwork once the exhibit is over. The City shall set a deadline for pick up of artwork once the exhibit is over and shall provide notification of the deadline to the artist prior to set up. Any piece that is not picked-up by the deadline shall be treated as abandoned property subject to disposal without further notice under applicable laws.

~~12. **Two-Dimensional Works of Art:** The City shall provide the means for display of two-dimensional works of art. Two-dimensional works shall not be mounted on the physical structure, such as walls and ceilings of any public space.~~

~~13. **Three-Dimensional Works of Art.** The artist may be required to provide the means for display of three-dimensional works of art.~~

- 13. Complaints.** If the City receives signed, written complaints from ~~three (3)~~ **ten (10)** or more ~~employees or~~ citizens of Bentonville about a work of art on display, then the City shall notify the artist about the complaint and allow the artist an opportunity to immediately withdraw the work. Should the artist choose not to withdraw the work, the City shall hold a meeting between the artist and complainants during which they will be given an opportunity to address the appropriateness of the display of the work of art. After the meeting, if the issue is still unresolved, the City Council shall make the final decision on whether the work of art shall be removed, relocated, relabeled, or otherwise modified giving due regard and consideration to the artists freedom of expression and due process under the First and Fourteenth Amendments in accordance with the forum in which that artwork is displayed.
- 14. Removal.** **As outlined in the contract,** there shall be no removal or disguise of a work of art once it is placed on display unless and until the City Council decides to do so, subject to the right of the artist to remove it.