



## Administrative Regulations

Number AR9-1  
Issue 1

### **Subject: Regulation Governing Percent for the Arts Program**

On December 20, 2016, City Council approved recommendations to establish a Citywide Percent for the Arts Program (Program). The Program will fund public art installations, small grants, and support for local arts groups paid for by a percentage of costs on all capital construction projects funded with the General Fund and other eligible funding sources.

The Arts Council for Long Beach (ACLB), governed by a Board of Directors, is the facilitator for art grants programs, public art, arts education, arts advocacy, and arts programming for the City of Long Beach. The ACLB is a publicly held 501(c)3 nonprofit corporation that receives and distributes public (City and County) funds and raises funds through private donations, foundations, corporate donations, and fee for service contracts. City funding is provided through annual contracts for specified services.

### **I. Purpose**

The purpose of this regulation is to record the goals for the City of Long Beach's Percent for the Arts Program, and identify a process for review, approval, and selection of public art in connection with construction projects. This regulation will also identify methods for funding, selection of location, installation, and maintenance for art projects eligible under the Program.

### **II. Scope**

This regulation is applicable to all City departments and offices responsible directly to the City Manager. It is also requested that elective offices and other independent offices and departments of the City comply with this procedure in the interest of administrative uniformity.

### **III. Amendment**

The City Manager may amend the procedures and contents set forth in this regulation as required.

## IV. Policy

### A. Goals

1. To commission artists and artwork which represent the cultural diversity of international populations, recognize the values and contributions of various cultures to the community, and contribute to the characteristics, aspirations and unique expressions of the values of the City of Long Beach.
2. To encourage local artistic endeavors and support of local artists.
3. To ensure commissions of artwork are distributed equitably throughout the City of Long Beach.
4. To integrate artists and local community stakeholders into the inception of local art projects.

### B. Applicability of Guidelines

These guidelines do not apply to private development projects or donated works of art.

### C. Allowable Funding Sources

Funding sources for the Program will be subject to specific review of individual capital construction projects and funding requirements. Allowable funds with eligible capital projects may include, but are not limited to:

- General Fund, including any Divide by Nine funding contributing to eligible projects.
- Uplands Oil Fund
- Tidelands Funds (for public projects in the Tidelands area)
- Airport Fund (for public art on Airport Property)
- Gas and Oil Fund (for capital facilities that benefit the Gas and Oil funds)
- Refuse Fund (for capital facilities that benefit the Refuse Fund)
- SERRF Fund (for capital facilities that benefit the SERRF Fund)
- Belmont Shore Parking Meter Fund (for capital projects in that jurisdiction)
- Community Development Block Grants (subject to HUD requirements)
- Health Fund (for Health Capital Projects and subject to grant restrictions)
- Towing Fund (for capital facilities at the tow yard)

- Water Fund (for capital facilities that benefit the Water Fund)
- Harbor Fund (for public art on Port of Long Beach Property or as determine to be eligible to support the Harbor Fund)

Restricted funds that cannot be assessed a Percent for the Arts allocation include, but are not limited to:

- Gas Tax Street Improvement Fund (i.e., Gas Tax and SB-1)
- Regional Transportation Funds (i.e., Prop A, Prop C, Measure R, Measure M)
- State and Federal grants, unless specifically allowed under the grant
- AB 2766 (State Air Quality funding)
- Internal Service Funds

#### D. Program Funding and Allocations

Program allocations will be an amount equal to one percent (1%) of the total original construction contract amount of all eligible funded new City-managed capital construction projects. The Program will be developed in accordance with the following procedures:

##### 1. Fees:

- a. A one percent (1%) fee will be assessed on all eligible City-managed capital construction projects with direct construction costs in excess of \$100,000 of eligible funds.
- b. Eligible Program fees will be assessed on all capital construction projects using General Fund and other eligible funding sources as described below. Eligible projects are those with direct construction costs in excess of \$100,000 funded, in part or whole, by eligible funding sources.
- c. Program fees will be calculated on only direct construction costs, that is they will exclude costs associated with the purchase of equipment and other soft costs such as architectural, engineering, inspection, administration, fees and permits, and indirect costs.
- d. To ensure the fee does not generate an undue burden on large projects, the fee will not exceed \$500,000 on any particular project.
- e. Fees derived from restricted non-General Fund funds will remain within the restricted fund and will not be allotted to the ACLB. These funds will be used by the City for public art installations in connection to the eligible

facility or use of the fund (e.g., Tidelands funds can only support activities within the Tidelands area).

- f. In lieu of contributing the fee, projects may incorporate a significant art component in the design, itself, of approximately equal value, as determined by the City Manager. This waiver-in-kind contribution should be identified and approved before construction has been initiated.

2. Allocations:

- a. Forty percent (40%) of unrestricted funds will be dedicated for the creation of public art in the public domain.
- b. Twenty percent (20%) of unrestricted funds will be awarded as small grants for capacity building and matching grants for art institutions and artists to promote a variety of arts throughout Long Beach, per the existing Agreement between the City and ACLB.
- c. Forty percent (40%) of unrestricted funds will be dedicated for support of established arts groups in the City of Long Beach eligible for receiving operating grants, to be distributed by the ACLB, per the existing Agreement between the City and ACLB.

3. Fund Management:

- a. The Program will be developed consistent with the City's Fiscal Year (FY) (October to September) and budget development process. The allocation and expenditure account, which holds monies generated by CIP projects, will be established in the General Fund and/or any restricted fund in which assessment has been made.
  - i. For the first full fiscal year, the Program budget will be based on eligible prior year capital construction project actuals for projects (with a direct project construction cost over \$100,000, up to \$50 million). For example, for the Fiscal Year 2018 budget, staff will use eligible CIP project expenditures from FY 2017. Refer to Section D.1.c. for a description of direct construction costs.
  - ii. In subsequent years, the Project Manager (refer to Section F, Roles and Responsibilities) will calculate the estimated Percent for the Arts Program fee for all new eligible capital construction projects (with a direct project construction cost over \$100,000, up to \$50 million) to be included in bids for work. Refer to Section D.1.c. for a description of direct construction costs.

- b. All budgeted Program funds will be treated as one-time expenditures each year to prevent adverse effects caused by fluctuating construction costs.
- c. The City Manager's Office will disperse Program funding from the General Fund to the ACLB at the start of each Fiscal Year based on funds collected in the prior year. Program allocations from non-General Funds will be used for appropriate public art projects, once identified and approved.
- d. ACLB will manage allocation of the funds to the various entities pursuant to Section D.2 above, the necessity of spending, and determine the appropriate distribution of funds, as envisioned by their long-standing operating agreement with the City.

E. Project Identification, Review and Approvals

It is the goal of the City to develop high caliber art projects that meet the diverse interests of the residents of Long Beach. The City Manager will identify project opportunities and notify the ACLB of desired projects and its respective budget.

Review and approval of art projects funded by the Program will be governed by a Memorandum of Understanding (MOU) established between the City and ACLB. Project specifications will be outlined in the MOU.

ACLB will make every effort to equitably solicit public art opportunities to members of all backgrounds, ethnicities, religions, orientation and gender identification. To the extent possible, ACLB will also engage new artists to participate in the public art application process.

The public art review and selection process will be coordinated by ACLB in accordance with the MOU. The process is designed to provide for input and participation by representatives from local stakeholders and community members in order to ensure that each project accommodates the complex requirements of the public place where it is located, and that public art reflects general input from the community.

The following factors should be taken into account by ACLB when reviewing proposals for new works:

1. Public art proposals will reflect input gathered from local community and neighborhood stakeholders through open forums to provide the artist inspiration and potential concepts and themes. Gathering public input and appropriately transmitting the input to the artist will be the responsibility of the ACLB.

2. Public art proposals will outline reasonable maintenance requirements as suggested by the artist (i.e. ongoing touch-up work, etc.), and these requirements shall be compatible with routine and urgent maintenance procedures performed by City staff, as described in Section H.
3. Artworks will be designed in consideration of public safety. Public art proposals will take into consideration issues associated with public spaces such as security, theft, vandalism, etc.
4. Public art proposals will reasonably consider the specific needs and use patterns of the public space in which they will be located. For example, in parks, artworks will not block critical view corridors or impede public usage of key open space. The City will identify specific needs and use patterns for potential public art sites.
5. Public art shall be compatible with the host community, and public input shall be received and considered as part of the design process.
6. Public Art in the rights-of-way or on City property need to be reviewed and approved by the Public Works Department.

The ACLB Public Art Committee, appointed by its Board of Directors, will be responsible for implementing the process to ensure proposed public art projects are reviewed, selected, and approved in a timely manner.

The City Manager will provide feedback when initial design proposals are recommended by ACLB. The City Manager will approve the final project design prior to the start of any work. The City reserves the right, with the approval by the City Manager, to use other contractors or organizations to engage in public art projects to achieve certain project objectives, including, but not limited to, budget goals, unique timelines, and specific design goals.

#### F. Roles and Responsibilities

##### 1. Arts Council for Long Beach (ACLB):

- a. Under the Program, ACLB will assume the role of the primary vendor contracted by the City to administer and manage all Program projects. Accordingly, the City and ACLB will enter into a MOU, as described above, to define project scope of works, timelines, and deliverables.
- b. ACLB will maintain a database or catalogue of public art created on behalf of the City. The City will display the art and general description of the Program on the City's website, as well as include public art locations on the City's OpenLB open data portal.

- c. ACLB will provide annual reports on grants awarded involving Program projects, pursuant to its Agreement with the City.

2. Project Manager:

- a. A designated Project Manager will be responsible for performing various functions within the Public Works Department to ensure capital construction projects are eligible and compliant with Percent for the Arts Program funding, including:

- i. Determine if a capital construction project's funding source, or components of the funding source, is eligible for Percent for the Arts funding.
- ii. Plan for one percent (1%) of the total eligible capital construction costs in the City's annual budget, delineated by Fund type.
- iii. Transfer one percent (1%) of the total contract bid amount of a capital construction project to the City Manager's Office upon award of the bid.
- iv. Determine whether the capital construction project will include an equal or greater value of art in the project itself, and if so, request a waiver from the City Manager. This waiver must be granted prior to project construction.
- v. If not a General Fund project, determine how to create an art component into the project or surrounding area, either by working with the contractor or electing to use ACLB to create a stand-alone public artwork.
- vi. Provide to the City Manager's Office annual reports on Program projects not funded by the General Fund.

3. Office of the City Manager:

- a. Oversee the transfer of funds between City departments.
- b. Coordinate with ACLB for disbursement of funds.
- c. Provide direction and authorize project opportunities and notify ACLB of desired projects and its respective budget.

- d. Provide feedback when initial design proposals are recommended by ACLB. The City Manager will approve the final project design prior to the start of any work.

G. Eligible Expenses for Projects

The following costs for approved new art projects are eligible expenses under the Program:

1. Work including:
  - Design fee and materials.
  - Any additional labor and contracted services required for the production and installation of the work.
  - The artist's operating expenses related to the project.
  - Transportation of the work to the site.
  - Installation of the work.
2. Administrative Fees not to exceed ten percent (10%) of the overall project costs for the recovery of project management.
3. Identification, including labels, plaques, etc.
4. Materials necessary for the installation.
5. Permits, insurance, or engineering necessary for the installation of the artwork.

H. Maintenance, Conservation, and Waiver of Rights

The City Manager, or designee, will retain the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the artwork in whole or in part, in City Manager, or designee's, sole discretion. Each artist under the Percent for the Arts Program will be required to sign a City of Long Beach Artist Waiver form waiving artists' rights under Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA").

Routine daily maintenance is the responsibility of the host department. The artist shall submit an artwork maintenance plan with their proposal for public art.



Routine and scheduled conservation efforts will be coordinated in conjunction with ACLB and City staff. In the event the artwork requires repair, the City shall give the artist the opportunity to do that work for a reasonable fee. If the artist is not available, chooses not to preserve the work, or a professional conservationist is required, City staff shall secure the services of an appropriate party adhering to City contract services policies.

APPROVED:

  
\_\_\_\_\_  
CITY MANAGER

  
\_\_\_\_\_  
DATE