

Ordinance 2010-15

Public Art Ordinance

AN ORDINANCE AMENDING PART II OF THE MUNICIPAL CODE OF THE TOWN OF WAKE FOREST TO ADD A NEW CHAPTER 25 ENTITLED “PUBLIC ART” AND TO ESTABLISH A ONE PERCENT ALLOCATION FOR PUBLIC ART

The Legislative Section of the Municipal Code of the Town of Wake Forest is hereby amended to add a new Chapter 25 to read as follows:

Chapter 25. PUBLIC ART

ARTICLE I. IN GENERAL

Sec. 25-1. Purpose and Intent.

The Town of Wake Forest recognizes the importance of facilitating the creation and installation of art for public spaces that evokes social and aesthetic interaction. It is intended that works of Public Art will enliven public space, promote community identity and sense of place, and contribute to a vibrant and engaging Town. The goal for the Public Art Program is a transparent and directed public process for commissioning and acquiring art for public spaces that will contribute to the Town’s cultural and economic vitality.

Sec. 25-2. Definitions.

The following words, terms and phrases when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context indicates a different meaning:

Annual Public Art Plan. An annual plan that prioritizes new Public Art projects and reports on the status of all works in planning, development, design, and installation.

Capital Cost of the Project. The term “Capital Cost of the Project” includes architectural and engineering fees, site work, direct construction costs and contingency allowances for a Capital Project, but shall exclude land or building acquisitions, taxes, legal fees, insurance costs, costs of compliance with regulatory requirements, and other costs unrelated to actual construction; and shall also exclude the cost of subsequent changes to the project unless any single subsequent changes exceeds fifteen (15%) percent of the initial budgeted cost of the Capital Project.

Capital Project. The term “Capital Project” means any capital project paid for wholly or in part by the Town for the construction or substantial renovation of any building, facility or open space to which the public is generally invited. For purposes of this Article, a substantial renovation project is one that has been included in the Town’s capital improvements program.

Commission. The term “Commission” is the Town of Wake Forest Public Art Commission.

Eligible Project. The term “Eligible Project” means Capital Project with the exception of those Capital Projects that have statutory, contractual or other restrictions that prohibit expenditure for Works of Art from all portions of Capital Project funds.

Public Art. The term “Public Art” means any Work of Art acquired by the Town and integrated into the design of, or placed or performed in, on or about a place generally accessible or visible to the general public.

Staff. The term “Staff” shall refer to that employee of the Town designated by the Town Manager to administer the day-to-day operations of the Public Art Program. This position resides within Town government, where it can facilitate planning, communications, and projects across municipal departments to achieve design coherence.

Town. The term “Town” shall mean the Town of Wake Forest unless otherwise stated.

Work of Art. The term “Work of Art” means any application of skill and taste to the production of tangible objects according to aesthetic principles, including but not limited to paintings, sculptures, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, statues, bas-reliefs, tapestries, photographs, drawings and ceramics, but excluding purely structural or supportive elements, advertising, or those required by applicable law, code, rule or regulation.

Sections 25-3 -- 25-30 are reserved.

ARTICLE II. PUBLIC ART COMMISSION

Sec. 25-31. Established.

There is established a public arts commission.

Sec. 25-32. Membership; terms of office; ex-officio members; compensation.

The Commission shall consist of nine members. The Board of Commissioners shall appoint members from a list of qualified applicants who have submitted an advisory board application. Members shall be residents of the town with the exception of a minimum of one member and a maximum of three members residing outside the corporate limits. Members shall serve three-year staggered terms with three members to be appointed or reappointed each year. No member shall serve more than two full three-year consecutive terms. Once a member has served two full consecutive terms, the member must be off the public arts commission for a minimum of one year before being eligible to serve again. If any member shall fail to attend three consecutive meetings or more than half of the meetings in one calendar year without just cause, then that member shall be replaced by the Board of Commissioners. Any vacancy that occurs during a term shall be filled for the unexpired term by the Board of Commissioners. An unexpired term or term of less than three years shall not count towards the term limit provision. Notwithstanding any provision of this section, all members shall serve at the pleasure of the

Board of Commissioners. The Board of Commissioners shall appoint one elected official as an ex-officio member. The town manager shall appoint one member of the town staff as an ex-officio member. Members shall receive no compensation for their services.

Sec. 25-33. Organization; meetings; quorum; votes.

- (a) The Public Art Commission shall meet for the purpose of organization as soon as reasonably possible after January 1 of each year. The public art commission shall elect its own officers who shall include a chairman and vice-chairman. The role of secretary shall be filled by the town staff member appointed as ex-officio. The members shall propose bylaws for the transaction of business subject to the approval of such bylaws by the board of commissioners. A copy of the bylaws shall be filed with the town clerk and shall constitute a public record.
- (b) The public art commission is a public body and shall meet on a regular basis but not less than quarterly. A special meeting may be called by the chairman, vice-chairman or three members of the public art commission. All meetings shall be held in accordance with G.S. 143-318.9 et seq. Minutes shall be kept by the secretary and filed with the town clerk.
- (c) A quorum shall consist of a majority of the members currently appointed. No proxies shall be allowed.

Sec. 25-34. Duties.

- (a) The Commission advises Town residents and its elected officials about Public Art projects, planning, and program management. Commission members are expected to provide leadership to enhance the experience of public space, be an effective decision-making body to recommend and implement approved Public Art policy and procedures, and to maintain thoughtful public participation, outreach, and communications concerning Public Art.
- (b) The Commission is charged with creating Public Art guidelines and annually submitting the Annual Public Art Plan to the Board of Commissioners in accordance with Section 25-36 below. Additionally, the Commission may prepare a proposed Public Art plan for review and consideration by the Board of Commissioners during the Board of Commissioners' annual budget review and deliberations.
- (c) Specifications, procedures, standard forms and guidelines for implementation of the Public Art Program may hereafter be developed and adopted by the Commission, taking into consideration the advice and recommendations of the Town Manager and finance director. The Public Art Program will follow national standards of best practice for all artist selection processes for projects under consideration, if such practices are permitted by applicable law.
- (d) Commission members define the scope of each Public Art project and approve the selection of all artists recommended to the Mayor and Board of Commissioners for project commissions. As needed, the Commission may designate an Artist Selection Committee to identify the type of calls for artists that will be issued and the criteria for artist selection. In addition, Commission

members advise on the acquisition, loan, placement, maintenance, display and disposal of Public Art and Works of Art contracted for, placed on, erected on Town property, or which may become the property of the Town through acquisition or otherwise in the custody of the Town, for example, by loan. No Public Art shall be acquired, loaned, or installed, nor shall existing Public Art be deaccessioned or removed from public places without prior review by the Commission.

(e) The Commission shall have the authority to solicit gifts of art on behalf of the Town and to encourage public-spirited citizens to contribute funds, as well as permanent Works of Art, to the Town and thereby help to beautify the Town and the public buildings and grounds situated therein.

(f) The Commission may designate liaisons from the Commission to relevant Town advisory boards, including but not limited to Recreation, Greenways, Planning, and Urban Forestry

Sec. 25-35 Authority

The Public Arts Commission has those powers specified in Chapter 25 of the Code of Ordinances.

Sec. 25-36 Annual Arts Plan

Within thirty (30) days after approval of the Town's annual budget by the Board of Commissioners, the finance director shall submit to the Commission the authorized annual budget for Eligible Projects, specifying the total appropriations dedicated to and available in the Municipal Public Art Account for the current fiscal year. The Commission shall thereafter formulate an annual Public Art plan. The Commission shall be prepared to approve the Annual Public Art Plan at its next meeting, not more than thirty (30) days after adoption of the Town's annual budget and shall request that the Annual Public Art Plan be placed on the agenda for the next meeting of the Board of Commissioners for review and approval. The Annual Public Art Plan shall reflect the policies established by the Board of Commissioners, the Town's laws and policies, and shall take into consideration the recommendations of the Commission.

Sec. 25-37. Conflicts of Interests.

Any conduct that creates an appearance of impropriety or may otherwise impair a Commission member's or Artist Selection Committee member's judgment in the selection of a project site, finalist, or artist is prohibited. It is understood that the Board of Commissioners requires anyone in a position to receive financial gain from the selection of Works of Arts or artists to be ineligible to serve on the Artist Selection Committee. Furthermore, Artist Selection Committee members and participating panelists must declare any conflict of interest and recuse themselves if a conflict of interest arises.

Sections 25-38 -- 25-50 are reserved.

ARTICLE III. ACQUISITION OF PUBLIC ART.

Sec. 25-51. Approval of Proposed Public Art.

At a regularly scheduled meeting of the Board of Commissioners, Staff or a Commission designated representative will present the Commission's recommendation for (a) acquisition, commission, or acceptance of a loan or donation, in each case providing the Commission's recommendation regarding siting, and (b) when applicable, deaccession. The Board of Commissioners will vote to accept or decline the recommendation of the Commission.

Sec. 25-52. Artist Selection Committee.

- (a) With respect to any proposed Public Art project, the Commission may designate an Artist Selection Committee to evaluate potential artists or acquisitions. Arts professionals who have knowledge of the visual arts and/or design (public art administrators, artists, architects, landscape architects, art historians, museum and exhibition curators, art critics, educators) should be considered by the Commission for service on the Artist Selection Committee.
- (b) The Commission may invite, or instruct the Artist Selection Committee to invite, arts professionals to provide input with respect to each phase of Public Art project identification, artist selection, design reviews, and interim approvals of project deliverables from conceptual design through fabrication and installation.
- (c) The Artist Selection Committee, utilizing professional consultants when necessary, will review materials submitted by the artist to determine the technical feasibility and needs of the work. The Artist Selection Committee will prepare and submit to the Commission a written report to include at a minimum: technical feasibility, projected budget, maintenance needs, durability and anticipated life span of the Work of Art, safety hazards and potential for vandalism, artistic quality, proposed site, context within the Town's collection, professional credentials of the artist, and the impact on collection diversity.

Sec. 25-53. Siting Public Art.

- (a) Proposals for the siting of Public Art are reviewed and considered by the Commission. After such review and consideration, the Commission will make its recommendation to the Board of Commissioners in accordance with Section 25-51 of this Chapter.
- (b) Site selection for Public Art will be reviewed with the following criteria, which may include, but are not limited to: the safety and security of the proposed site; ease of access for routine maintenance using standard Town equipment; visibility and accessibility by a broad public audience; the context of the proposed Work of Art at the proposed site (taking into account social, cultural, historical, ecological, physical and functional context); the support of the Town agencies and departments responsible for operating and maintaining the site; the

support of officially recognized advisory bodies that are responsible for making recommendations concerning the use of Town-owned property; and community support for the proposed site.

(c) The Town may elect to site Works of Art in public space on public easements should the Board of Commissioners determine that the site is of significant public benefit and visibility.

Sec. 25-54. Commission Review of Capital Projects Incorporating Public Art.

The Town's approval of site and building plans for Capital Projects incorporating Public Art shall be conditioned upon the Commission's prior approval of the artistic and aesthetic components of the Public Art to be incorporated.

Sec. 25-55. Ownership; Documentation of Public Art.

(a) All Works of Art commissioned or purchased by the Town shall be owned by and vested in the name of the Town, and title therein shall be and remain vested in the Town. Notwithstanding the foregoing, all copyrights to the Work of Art shall be retained by the artist of the Work of Art unless specifically acquired by the Town.

(b) Staff will provide complete records of accession, deaccession, loan, or donation including, but not limited to, a signed bill of sale, deed of gift, acknowledgment of receipt, registration information, location card, exhibition record, photographs or slides, and independent appraisal; verification that the Work of Art is unique and an edition of one (unless stated to the contrary in the contract and accepted by the Town); and whether there is an endowment fund for the Work of Art's maintenance.

Sec. 25-56. Deaccession of Public Art.

(a) The Commission shall review all proposals for deaccession, which should be a seldom-used action that operates with a presumption against removing works from the collection. Adverse public reaction should be carefully weighed and, in general, not be the cause for deaccession of Public Art. Review for deaccessioning purposes shall include consideration of the following: condition or security of the Work of Art, need for excessive and cost-prohibitive maintenance or repair, flaws in design or construction making repair unfeasible, or whether the Work of Art's physical or structural condition endangers public safety.

(b) If deaccession of a Work of Art is recommended by the Commission, options for its disposition must be considered, including: sale, trade, transfer to another suitable institution, or destruction. Destruction should be recommended only when the Work of Art is so compromised as to no longer represent its original state. The Commission shall include its recommendation for disposition (and the basis therefor) when it recommends deaccession to the Board of Commissioners in accordance with Section 25-51 above. The Commission may adopt additional procedures regarding deaccession and disposition. Any disposition of Public Art will be conducted in compliance with applicable law, including the provisions of Chapter 160A, Article 12 of the North Carolina General Statutes.

Sections 25-57 -- 25-70 are reserved.

ARTICLE IV. FUNDING OF PUBLIC ART.

Sec. 25-71. One Percent for Public Art.

(a) All allocations of funds for Eligible Projects shall include an amount equal to one percent of the projected Capital Cost of the Project at the time the project is included in the Town's capital improvement program to be used for the selection, acquisition, commissioning and display of Works of Art. If the source of funding, applicable law governing any particular Eligible Project or the expenditure of such funds precludes art as a permissible expenditure, the amount of funds so restricted shall be excluded from the Capital Cost of the Project in determining the amount to be allocated as provided in this Section.

(b) The Town's finance director shall establish a special fund designated the "Municipal Public Art Account" into which funds appropriated as set out in subsection (a) of this Section (the "Capital Project Art Appropriation") or derived from gifts or donations to the Town for Public Art shall be deposited. For the budget year that the Board of Commissioners appropriates funding for the Eligible Project and that the Eligible Project is instituted, the Capital Project Art Appropriations shall be deposited into the Municipal Public Art Account in accordance with procedures established by the Town's finance director.

(c) Monies collected in the Municipal Public Art Account shall be budgeted and expended in the same manner as other Town revenues and used for Public Art projects commissioned pursuant to this Chapter. Each disbursement from such account or from other appropriations for artwork shall be recommended by the Commission and authorized in accordance with applicable law and accounting principles governing expenditures from the Town's budget. Separate accounts shall be established whenever funds are required to be used at a designated Eligible Project.

Sec. 25-72. Use of Funds.

Funds allocated in accordance with this Article may be used for the selection, acquisition, purchase, commissioning, fabrication, placement, installation, exhibition, display, repair, maintenance or deaccession of Works of Art. To the extent practical, artist selection should be concurrent with selection of the architect or designer to ensure integration of the Work of Art into the project architecture.

Sec. 25-73. Unsuitable Projects; Reallocation of Funds.

If a particular Capital Project is deemed inappropriate for the placement of Public Art by the Commission or by the Board of Commissioners, if not otherwise prohibited by law, the funds appropriated for Works of Art may be used at other more appropriate public sites as determined by the Commission and approved by the Board of Commissioners.

Sec. 25-74. Maintenance and Conservation.

To ensure that works in the Public Art collection have adequate long-term care, the Commission will set aside sufficient funds for this purpose. In the event that the finance director deposits these funds for maintenance and conservation in one or more accounts separate from the Municipal Public Art Account, the rules and procedures applicable to disbursements from the Municipal Public Art Account will govern disbursements from the maintenance and conservation account(s).

Sec. 25-75. Notification of Town Manager.

(a) When planning a Capital Project, the project manager for such Capital Project shall send a written notice to the Town Manager and to the Commission setting forth the following information:

- (1) The name and address of the owner of the property which is the site of the intended Capital Project;
- (2) The specific location and description of the project site;
- (3) A description of the intended Capital Project;
- (4) The cost of the Capital Project, including an accurate summary or a copy of the budget of the Capital Project; and
- (5) The calculation of the amount of the Capital Project Art Appropriation for the intended Capital Project.

(b) Within thirty (30) days after receipt of such notice, the Town Manager, a representative of the Commission, and the project manager for such Capital Project shall consult for the purpose of determining how Public Art might be incorporated into the intended Capital Project or an alternative site and whether the Capital Project qualifies as an Eligible Project.

(c) At the request of the Commission, the project manager shall include a consulting artist, mutually agreeable to the project manager, the Town Manager, and the Commission, in the design team for the intended Eligible Project. The cost of engaging such consulting artist may be deducted from the Capital Project Art Appropriation for the Eligible Project.

Sec. 25-76. Power Reserved by Board of Commissioners.

While it is the intention of the Board of Commissioners to fund Public Art with the equivalent of one percent of the cost of Eligible Projects, it is recognized that there may be extenuating or emergency circumstances where the Board may wish to increase or decrease the percentage allocated to Public Art, alter siting criteria, or exclude certain Capital Projects altogether from consideration as an Eligible Project. By a majority vote of the Board of Commissioners, any or all Capital Projects may be excluded from the requirements and provisions of this Chapter.

Sections 25-77 -- 25-90 are reserved.

(Not a part of the ordinance; for the Commission for use once formed.)

Possible procedures to be adopted by Commission for acquisition of art.

RFP/RFQ Procedures

The Public Art Program will follow national standards of best practice for all artist selection processes for projects under consideration. It is standard practice to issue either a Request for Qualifications (“RFQ”) or a Request for Proposals (“RFP”) and not to commission Works of Art using a sequential RFQ – RFP process except insofar as project budgets permit adequate compensation to artists for proposal development and with the understanding that proposals may be altered after acceptance.

(a) The use of RFQs will be the preferred method of artist selection. RFQs can be an effective and efficient method to issue a call for artists. RFQs require minimal expenditures of time and money from artists. RFQs primarily rely upon examples of an artist’s previous work and typically include an artist’s vita, selected references, and a statement of interest about the project. When RFQs are reviewed, considered, and evaluated by the Artist Selection Committee, a short-list of qualified artists to interview for a proposed project may be compiled. The RFQ process may include in-person interviews or offering a reasonable fee to compensate development of conceptual ideas for the project. The RFQ process does not anticipate that artists prepare or present specific ideas based on limited information provided in the call for artists; rather, conceptual artistic proposals for the project are developed only after learning more about the project through site visits and interactions with project personnel and constituent interests. It is expected that short-listed artists be compensated for travel expenses when invited to interview.

(b) The use of RFPs can be an effective way to consider and evaluate the appropriateness of an artist when a limited number of artists are invited to participate in a selection process, the criteria for selection is explicit and uniform, and there is an honorarium paid to the artist for each submission. The Commission will not assume that artists will have sufficient time and information to develop site-specific proposals that are informed by substantial client interaction unless the proposals and/or competition affords at least four to six weeks of preparation time. Proposals will only be requested when the Town or Commission is prepared to consider the proposal only as a conceptual approach to the project and not the final design. All proposal materials will be returned to those artists not selected for the project.

Deaccession

Deaccession should only be considered after the life of the project, generally considered to be 30 years as an industry standard and only after communication with the artist or the estate of the artist as to the proper disposition of the piece.

Budget considerations.

As the Board of Commissioners fills the Cultural Arts position, the public art program will

undoubtedly need financial support (annual or multi-year municipal grants and budgets) for public education about public art, staff, materials, meeting expenses, and etc. The costs associated with deaccession are generally administrative costs and should not be taken from funds appropriated for new works.