

ORDINANCE NO. 17-16

AN ORDINANCE REPEALING OLATHE MUNICIPAL CODE CHAPTER 2.82 PERTAINING TO OLATHE PUBLIC ART AND CULTURE COMMISSION; AND ADDING A NEW CHAPTER 2.82 PERTAINING TO OLATHE PUBLIC ART COMMITTEE AND PUBLIC ART FUND.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: Existing Chapter 2.82 of the Olathe Municipal Code is hereby repealed.

SECTION TWO: A new Chapter 2.82 is hereby added to the Olathe Municipal Code and shall read as follows:

“CHAPTER 2.82

OLATHE PUBLIC ART COMMITTEE AND PUBLIC ART FUND

Sections:

2.82.010	Definitions
2.82.020	Public Art Committee - Creation
2.82.030	Public Art Committee - Purpose
2.82.040	Public Art Committee - Size
2.82.050	Appointment to Public Art Committee
2.82.060	Term of Office
2.82.070	Filling of Vacancies
2.82.080	Removal
2.82.090	Compensation
2.82.100	Organization
2.82.110	Powers and Duties
2.82.120	Public Art Fund
2.82.130	Public Art Associated With Development Incentives

2.82.010 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 clearly indicates a different meaning:

City means the City of Olathe, Kansas.

Development Incentives means:

- A. The issuance of industrial revenue bonds and real property tax abatement under City Council Policy F-5 when the City issues such bonds;

B. The creation of a transportation development district (“TDD”) under City Council Policy F-6 when the Governing Body authorizes the reimbursement of TDD-eligible expenditures within such TDD;

C. The creation of a tax increment financing (“TIF”) district under City Council Policy F-7 when the Governing Body adopts a TIF project plan related to such district; or

D. The creation of a community improvement district (“CID”) under City Council Policy F-9 when the Governing Body authorizes the reimbursement of CID-eligible expenditures within such CID.

Governing Body means the Governing Body of the City.

City Project means any capital improvement project of the City with a project budget over \$1,000,000 (including architectural and engineering fees, site work and contingency allowances, but excluding land acquisition costs) which is bid, constructed, and accepted as complete by the City which meets the following criteria:

A. The project is for a new or a major renovation of a City park or park facility.

B. The project is for new City trail construction. Trail funds may be pooled to commission public art at key locations along the trail system.

C. The project is a City building, facility or other vertical construction that:

1. is purpose-built for community use, or
2. is in a highly-visible location.

D. The project is for transportation infrastructure that:

1. is pedestrian-oriented,
2. is at a gateway location to the City,
3. is at a gateway location to downtown Olathe,
4. includes a significant median or roundabout intended for traffic-calming or beautification purposes, or
5. provides an opportunity to partner with Kansas Department of Transportation (KDOT), Johnson County, private developers, businesses or other institutions to commission a project of great community interest.

E. The project is for utility infrastructure that provides an opportunity to enhance or educate about the City's water resources.

A City Project does not include:

A. Construction of or repair to underground utilities (e.g., water or sewer lines);

B. The addition of traffic lanes or geometric improvements at intersections;

C. Street or sidewalk repair or reconstruction;

D. Property acquisition;

E. Equipment or vehicles;

F. Streetlight replacement or conversions; or

G. Traffic signals.

Public Art means Artwork on real property owned by the City and/or real property freely available to view by the general public. Public Art includes elements of a public place that are designed by a professional artist or artist team. Public Art can be permanent, temporary or functional. Public Art can be stand-alone or integrated into the architecture, landscape or infrastructure such as public buildings, bridges and parks. Public Art can be the sole creation of the artist or it may result from a design team approach in which artists work on project teams with architects, engineers, landscape architects and others to design and create public places.

Public Art Program means the program approved by the Governing Body of the City designed to foster the commissioning, acquisition presentation and preservation of permanent and temporary Public Art; act as a steward of the City's Public Art collection; and engage the public in the collection.

Reconstruction means alterations or repairs made to a commercial or municipal structure within any twelve-month period, which alterations or repairs exceed fifty (50) percent of the value of the existing structure.

Work of Art or Artwork means an aesthetic creation of permanent or temporary medium or combination of media resulting from the skill and creativity of an artist or artists.

2.82.020 Public Art Committee – Creation. There is hereby created and established an Olathe Public Art Committee for the City.

2.82.030 Public Art Committee – Purpose. The purpose of the Olathe Public Art Committee is to support the mission of the Olathe Public Art Program, which is “to foster the commissioning, acquisition presentation and preservation of permanent and temporary public art, act as a steward of the City’s public art collection, and engage the public in the collection.” The Committee’s purpose also includes execution of the vision of the Olathe Public Art Program, which states, “Public art in Olathe is an amenity that helps build the overall identity of the city, activates public spaces, and connects people to the community.” This vision builds upon three fundamental ideas:

A. *Identity.* Public art will make Olathe a more memorable place, distinct from anywhere else in the region. Public art will signal that Olathe is a place where culture is appreciated and enjoyed.

B. *Activate.* As the City is developing and, in some cases, re-envisioning Olathe’s main gathering places, public art can be a tool to make these distinctive environments that people want to inhabit.

C. *Connect.* Public art can help tell Olathe’s stories, engage people in meaningful ways and provide valuable, interactive experiences.

2.82.040 Public Art Committee – Size. The Olathe Public Art Committee shall consist of between 7 and 15 members.

2.82.050 Appointment to Public Art Committee. The members of the Committee shall be appointed by the Mayor with the consent and approval of the remainder of the Governing Body.

2.82.060 Term of Office.

A. The term of office for the members of the Committee shall be for three years, except those members of the Committee first selected. Two shall serve one year, three shall serve two years, two or more shall serve three years. Each member shall serve until a successor is appointed.

B. Members of the Committee shall not serve more than three (3) complete successive terms.

2.82.070 Filling of Vacancies. Vacancies occurring before the expiration of term shall be filled by appointment by the Mayor with the consent of the remaining members of the Governing Body in the same manner as such member received the original appointment.

2.82.080 Removal. The Mayor, with the consent of the remaining members of the Governing Body, may remove any appointed member to the Committee at any time for good and sufficient cause. Cause shall

include, but be not limited to, violations of the conflict of interest laws, any violation of any applicable law, regulation or policy, neglect of duty, and failure to comply with the City's attendance policy as set forth in City Council Policy CC-5.

2.82.090 Compensation. Members of the Committee shall serve without pay. The City may pay the cost of travel on official business, City staff time, and storage space for documents and Works of Art, along with paper and office supplies for the Committee.

2.82.100 Organization.

A. A majority of the members of the Committee shall constitute a quorum for the transaction of business.

B. The Committee may meet as often as necessary to deal with its business, but shall meet no less than two (2) times a year.

C. The officers of the Committee shall be selected by the Committee members as set forth in City Council Policy CC-5. The staff liaison is a non-voting member of the Committee. No officer shall serve in the same capacity for more than two (2) consecutive one-year terms.

D. The meetings of the Committee shall be subject to the Kansas Open Meetings Law; its records subject to the Kansas Open Records Law; its members bound by the City's Code of Ethics and the State of Kansas Conflict of Interest Statutes; and any financial or property transactions or records subject to review by the City's auditors.

2.82.110 Powers and Duties. The Committee shall have the following powers and duties:

A. To assist and advise the Governing Body in the establishment of essential policies, rules and regulations relating to public art in Olathe. In addition, the Committee may recommend policies related to the presentation, acquisition, disposition, maintenance, use, care and promotion of public arts within the City.

B. To accept, on behalf of the City, gifts, contributions, donations and gratuities to the Committee. Such gifts, contributions, donations and gratuities shall be set aside in a special fund known as the Public Art Fund and shall be distributed only upon approval of the Governing Body. Such gifts, contributions, donations and gratuities shall be used solely for purposes consistent with this Chapter and the regulations established herein.

C. To submit to the City Manager by October 30th of each year a written work plan, a report on activities for the preceding year, and a report on attendance of members in accordance with City Council Policy CC-5.

2.82.120 Public Art Fund.

A. **Creation.** There is hereby created a Public Art Fund of the City to receive monies appropriated for the City's Public Art Program. The Public Art Fund will consist of the following:

1. Up to one (1) percent of the construction cost of an eligible City Project (not to exceed \$500,000 to the Public Art Fund from any one City Project);
2. All funds donated to the City by private developers/owners or by others; and
3. Other funds allocated by the Governing Body.

B. **Use.** The Public Art Fund may be used solely for the costs of or associated with:

1. Artist fees and artist travel and expenses that are related to the City's commissioning of a Work of Art as stipulated in a contract with the artist.
2. Artwork fabrication, storage and installation per contract.
3. Site work necessary for the installation of Artwork, including landscape and hardscape improvements not covered by the base budget of a related Capital Project.
4. Acquisition of existing Works of Art.
5. Required permits and insurance during the fabrication and installation of the Artwork per contract.
6. Project consultants and contracted services if related to the commissioning, acquisition or conservation of Artwork.
7. Artist selection costs, such as artist travel and honoraria.
8. Education and outreach, including collateral materials, symposia and special events.
9. Publicity for Public Art projects.
10. Curatorial and appraisal services.
11. Conservation and maintenance.
12. Public Art planning.
13. Plaques and interpretative signage related to the Artwork.
14. Other purposes recommended by the Public Art Committee and approved by Governing Body for the successful implementation of the Public Art Program.

C. **Appropriation of Funds.**

1. All appropriations of funds for City Projects will be made in accordance with the City's applicable procurement policies as set forth in Chapter 3.50 of the Olathe Municipal Code, and may include an amount of up to one (1) percent of the cost of a City Project, but not to exceed the sum of Five Hundred

Thousand Dollars (\$500,000) for any single City Project; provided that the Public Art Committee may recommend to the Governing Body an increased expenditure for those projects of exceptional size, unique function, or community-wide benefit.

2. The Public Art Committee may recommend to the Governing Body the amount of monies to be allocated for selection, commissioning, acquisition and installation of individual Works of Art to be incorporated as a part of a City Project for which the monies were appropriated.

3. Monies appropriated pursuant to this Section as part of a particular Public Art project but not spent in connection with such project may be utilized to supplement other appropriations for the acquisition of Works of Art or to place Works of Art in, on or near City-owned property and/or City facilities which have already been constructed.

4. Unexpended monies in the Public Art Fund may be used for Works of Art at existing City-owned properties and facilities as deemed appropriate by the Governing Body based on the recommendation of the Public Art Committee.

D. Expenditure of Funds. The Committee shall have no authority to expend funds from the Public Art Fund or any other fund of the City unless and until the Governing Body has given specific advance authorization for such expenditures.

2.82.130 Public Art Associated with Development Incentives.

A. Any private developer/owner who requests and obtains Development Incentives for a commercial development project must commit ten cents (\$0.10) per square foot for all buildings and fifteen dollars (\$15.00) per parking space for above or below-ground parking structures (whether self-standing or integrated) not to exceed Five Hundred Thousand Dollars (\$500,000) to the provision of Public Art in conjunction with such project.

B. If the private developer/owner receiving Development Incentives does not wish to have Public Art in conjunction with its commercial development project, such developer/owner must pay to the City an amount equal to seventy-five percent (75%) of the cost it would have otherwise been required to pay for the provision of Public Art as part of its commercial development project under subsection A. of this Section. Such payment will be deposited into the City's Public Art Fund."

SECTION THREE: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this 7 day of March, 2017.

SIGNED by the Mayor this 7 day of March, 2017.

/s/ _____
Mayor

ATTEST:

/s/ _____
City Clerk

(SEAL)

APPROVED AS TO FORM:

/s/ _____
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.

**PUBLICATION SUMMARY OF ORDINANCE NO. 17-16, PASSED BY THE
GOVERNING BODY OF THE CITY OF OLATHE, KANSAS ON THE 7TH DAY OF
MARCH, 2017.**

SUMMARY

On March 7, 2017, the Governing Body of the City of Olathe, Kansas passed Ordinance No. 17-16 repealing Olathe Municipal Code Chapter 2.82 pertaining to the Olathe Public Art and Culture Commission and adding a new Chapter 2.82 pertaining to the Olathe Public Art Committee and Public Art Fund.

The ordinance establishes the Public Art Committee and sets forth its purpose, size, appointment procedure, term of office, procedures for filling of vacancies and removal, compensation, organization, and powers and duties. The ordinance also creates a public art fund, which would include up to one (1) percent of the construction cost of an eligible city project (not to exceed \$500,000) as well as donated funds or other funds allocated by the Governing Body. The ordinance sets forth requirements for the use of the Public Art Fund as well as procedures for the appropriation and expenditure of funds. Finally, the ordinance provides requirements for public art associated with development incentives. The complete text of this ordinance may be obtained or viewed free of charge at the office of the Olathe City Clerk, Olathe City Hall, 100 East Santa Fe Street, Olathe, Kansas, or on the City's official website address <http://www.olatheks.org/government/city-clerk/public-notices>, where a reproduction of the original ordinance will be available for a minimum of one week following this summary publication.

This summary is certified this 8th day of March, 2017.

/s/ Ronald R. Shaver
Ronald R. Shaver
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.