

Bill No. 9246-15

No. 35-15-OR

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending Ordinance 39-05-OR in order to revise the County's policy regarding the inclusion of public art in certain eligible capital projects.

WHEREAS, on September 6, 2005, Allegheny County Council passed Ordinance 1728-04, an ordinance intended to provide guidance regarding the potential inclusion of public art in a narrow category of capital projects involving the new construction or improvement of certain County structures; and

WHEREAS, former Chief Executive Onorato signed Bill No. 1728-04 into law on September 15, 2005, and the bill was assigned enactment number 39-05-OR; and

WHEREAS, while Ordinance 39-05-OR was well-intentioned, it has become apparent over time that the ordinance as enacted creates significant – and likely unresolvable – issues including, but not limited to, applicability to certain types of projects, calculation of eligibility thresholds, waiving the ordinance's requirements by subsequent enactment; and

WHEREAS, in addition, Ordinance 39-05-OR as drafted did not adequately account for potential administrative burdens inherent in its application or potential issues relating to conditions attached to funding that the County may use to complete capital projects; and

WHEREAS, because the County's capital projects are largely paid for through bond issuances, paying for the inclusion of public art in capital projects necessarily requires that the County would ultimately be forced to pay interest on the bond funds used for the inclusion of public art, and it is the judgment of Council that the interests of the County's residents and taxpayers are not served by increasing the amount of debt service payments due to project design features that do not enhance the utility of the structures involved; and

WHEREAS, while the County of Allegheny still believes that investing in the arts is crucial to revitalization and development of a strong community and economy and is an important measure of the success of a region, it is the judgment of Council that the framework established is both impractical and contrary to the financial interests of the County's residents and taxpayers; and

WHEREAS, it is, however, still the desire of Allegheny County Council, in cooperation with the Chief Executive, to continue to improve the experiences of its residents through its support of visual art, improving the aesthetics of the County by seeking advice from the local artistic community regarding County projects and facilities.

The Council of the County of Allegheny hereby amends the provisions of Ordinance 39-05-OR as follows:

Section 1. Policy Providing for Public Art in Allegheny County

- A. It shall be the policy of Allegheny County to seek the advice of the local artistic community regarding the means by which the County might ~~provide a specific allocation for public art when the County, or its defined authorities, provide appropriations for capital improvement projects, including eligible bond projects, eligible grant-funded projects, and other eligible capital projects funded from other sources. Such allocation shall be used to~~ promote the cultural heritage and artistic development of the County by enhancing its character and identity, contribute to economic development and tourism, and increase the opportunities for its citizens to participate in the arts.

- B. It shall be the policy of Allegheny County to encourage ~~allocation for~~ consideration of including public art by private developers within the County. Such action by private developers ~~will~~ would impact upon the cultural heritage and artistic development of the County by enhancing its character and identity, contributing to economic development and tourism, and increasing the opportunities for the County's citizens to participate in the arts.

Section 2. Definitions

The following words and phrases when used in this ordinance shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

ART – See “Public Art.”

ARTIST(S) – An individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, public performances, past public commissions, exhibition record, publications, and production of artwork.

ARTS BOARD – See “Allegheny County Arts Board.”

ARTS ORGANIZATIONS – Those associations generally recognized by artists and art patrons as an administrative and functional structure of persons having a common interest in art.

ARTS PATRONS – Those individuals that are generally recognized as being socially or financially supportive of art and/or artists.

ALLEGHENY COUNTY ARTS BOARD – The agency created pursuant to this ordinance and vested with the responsibilities set forth in § 5.

BUILDING – A roofed and walled structure built for a permanent use.

EDUCATORS – One skilled in the theory, practice, and administration of teaching.

PARK – A piece of ground in or near a municipality kept for ornamental and recreational purposes or maintained in its natural state as a public property.

PROJECT – The construction or improvement of any building, park, or public facility, other than routine or periodic maintenance.

PUBLIC ART – Works in a variety of media produced by professional visual artists that may be permanent, temporary, or functional in nature. Public art encompasses the broadest possible range of expression, media, and materials and is displayed or provided in a public facility. The term shall also include any historical restoration of existing buildings, parks, or public facilities with the exception of work to the façade.

PUBLIC FACILITY – The part of any building owned or operated by Allegheny County to which the public has access during normal operating hours. The term shall also include open spaces which are an integral part of the building, such as atriums or courtyards.

~~**SPECIAL ACCOUNT** – A restricted account with the Grants & Special Accounts Budget of the County that has an undefined entitlement period and revenues that are based on a particular funding source.~~

WORKS OF ART – See “Public Art.”

Section 3. — Eligible Projects and Set Asides

~~A. — Any project that is paid for wholly, or in part, by the County, or the issuance of bonds by the County, for the construction or improvement of any building, park, or public facility, other than routine or periodic maintenance, shall set aside at least two percent (2%) of the County’s authorized allocation, but in no event shall more than one hundred thousand dollars (\$100,000) be required to be set aside, for the inclusion of public art when the County’s contribution to said project exceeds \$50,000, to the extent that such set aside would not violate local, state or federal law.~~

- ~~B. Any project that is directly paid for wholly, or in part, by the Redevelopment Authority of Allegheny County, the Allegheny County Industrial Development Authority, the Allegheny County Residential Finance Authority, the Allegheny County Hospital Development Authority, and the Allegheny County Higher Education Building Authority, or the issuance of bonds by such authority, for the construction or improvement of any building, park, or public facility, other than routine or periodic maintenance, shall set aside at least two percent (2%) of the County's authorized allocation, but in no event shall more than one hundred thousand dollars (\$100,000) be required to be set aside, for the inclusion of public art when the Authority's contribution to said project exceeds \$50,000, to the extent that such set aside would not violate local, state or federal law. For avoidance of doubt, this Section 3B does not apply to funds which are the subject of a loan, or any similar transaction, by any such authority to a third party.~~
- ~~C. No set aside shall be required to be made until such time that the contract or agreement for completion of a specific project that meets the qualifications of this Ordinance is executed.~~
- ~~D. County Council may by Resolution, by majority vote, exempt any project from the scope of this ordinance prior to the execution or authorization of any project agreement.~~

~~*Section 4. Use of Set Asides*~~

- ~~A. There shall be no general requirement that funds appropriated pursuant to this ordinance be used for the specific projects that generated the funds, although such use shall be preferred, promoted, and encouraged.~~
- ~~B. In each contract or agreement for the construction or improvement of any building, park, or public facility, the department in charge of the project shall meet with the architect or engineer employed for the project to determine whether works of art, as defined within this ordinance, are desirable and in the public interest. If so, the department shall include the works of art in the plans for the project.~~
- ~~C. In the event that a determination is made that works of art are not desirable or not in the public interest for a specific project, an amount equal to the two percent (2%) set aside, in the amount set forth in Sections 3A and 3B, shall be placed into a special account to be utilized for public art or maintenance of public art in furtherance of the purposes of this Ordinance.~~
- ~~1. The expenditure of funds in the special account shall be authorized through the Grants & Special Accounts Budget or amendment thereto on a per project basis.~~

~~2. All funds in the special account shall be allocated within three years from the date that the funds are deposited and shall be subject to annual or bi-annual audit by the Controller's Office.~~

~~3. At the request of the Board, the time frame by which funds shall be expended may be extended with the approval of the Chief Executive and Council.~~

~~D. Funds expended from the special account shall be used in accordance with the legal parameters established by the individual funding sources from which the set-asides were made.~~

Section 5 3. Allegheny County Arts Board Created & Purpose Established

There is hereby created as an agency of the County to become effective the first business day of January 1, 2006, a new "Allegheny County Arts Board," hereinafter referred to as the "Arts Board." The purpose of the Arts Board shall be to:

- A. Recommend to the Chief Executive and County Council the ~~use of funding within the designated special account for~~ potential for including public art in furtherance of the purposes of this ordinance;
- B. Advise on the acquisition and placement of works of art on property of the County of Allegheny, including the promotion of public performances and the public exhibition of the arts on County property, to the appropriate members of the Administration; and
- C. Designate items as public art and approve the location of such public art, subject to the approval by County Council and the Chief Executive, via validly enacted resolution.

Section 6 4. Appointments, Qualifications, & Terms of the Arts Board

- A. The Arts Board shall consist of nine members. In making appointments to the Arts Board, the racial, geographic, age, and gender diversity of the County shall be considered. All members shall be residents of Allegheny County for at least the immediate year preceding appointment and shall remain a resident for the duration of their terms.
- B. The members of the Arts Board shall be: Two (2) members who are artists that are eminent in their respective professions; one (1) member who represents an arts organization; two (2) members who are architects or landscape architects; one (1) member who is an arts patron, one (1) member who is an educator, one (1) member who represents the business community, and one (1) member who represents the general public. The Director of Public Works and the Director of Economic Development, or their designees, shall serve as ex-officio members of the Arts Board.

- C. The appointed members of the Arts Board shall not be employed by the County, an elected official of a municipality or school district, a member of any other County agency or authority, and may not hold employment or engage in business with the County outside of their positions on the Arts Board.
- D. Five members of the Arts Board shall be appointed by the County Council. Four members shall be appointed by the Chief Executive, with the consent of at least a majority of the seated members of County Council. All terms shall be for three years, but no appointed member shall serve beyond the expiration of his or her term. Initial appointments to the Arts Board shall be made at least thirty (30) days prior to the organization of the Arts Board.
- E. If a vacancy occurs on the Arts Board, the vacancy shall be filled in the same manner in which the appointment was made, except that the new member shall serve a full three-year term.

Section 7.5. Organization of the Arts Board

- A. The Arts Board members shall ~~be sworn in and~~ organize on or before ~~January 17, 2006~~ the last day of January in each calendar year. At such organization, one member shall be selected as the Chair and one as Vice-Chair. ~~The Board shall reorganize within thirty days (30) following the expiration of the terms of the majority of the members.~~
- B. All appointed members shall serve without compensation, except that they shall be reimbursed for actual and necessary travel expenses incurred provided that the expenditure is incurred for attendance at a regularly scheduled Board meeting in accordance with the County's travel policy.
- C. A majority of the seated members of the Arts Board shall constitute a quorum for the transaction of any business or the decision of any matters within their jurisdiction.
- D. The Arts Board may adopt its own rules and regulations, not inconsistent with any law or ordinance, and shall make such rules and regulations available pursuant to the provisions of the Open Records Law, 65 P.S. § 66.2, *et seq.* All meetings and hearings shall be made open to the public subject to the provisions of the Sunshine Act, 65 P.S. § 271, *et seq.*
- E. The Chair of the Arts Board shall ensure that appropriate measures are taken to keep minutes of the Board's proceedings and records of other official actions. Such records shall be kept and preserved in accordance with applicable law.
- F. The Administration shall make all determinations regarding furnishing the Arts Board with necessary clerical assistance, supplies, and other appropriate and reasonable administrative support, ~~except that it shall be required to designate at least one person to~~

~~staff the Arts Board on, at least, a part-time basis. The Administration shall also make all determinations regarding reimbursable travel expenses within the parameters reference within § 7B.~~

Section 8. — Establishment of Program Guidelines

~~Within thirty (30) days of the enactment of this Ordinance, the Chief Executive and County Council shall designate staff to draft program guidelines for the Public Art Program. The guidelines shall be provided to the Executive Committee to review and subsequent introduction to the full Council, in resolution form, for approval. The guidelines shall be approved at least thirty (30) days prior to the organization of the Arts Board and shall be adopted by reference by the Arts Board at its first meeting.~~

Section 9. — Parameters for the Use of Funds within the Public Art Special Account

~~A. — The funds within the Public Art Special Account, upon the recommendation from the Arts Board, shall be used for purposes within the following parameters:~~

- ~~1. — For artist design services;~~
- ~~2. — For the selection, acquisition, purchase, commissioning, placement, installation, exhibition, maintenance, conservation, and display of works of art;~~
- ~~3. — For related education programs;~~
- ~~4. — For the administration of the Arts Board within the parameters established within § 7F;~~
- ~~5. — For the development of design concepts and models; or~~
- ~~6. — For project support and community participation of public art related activities on public owned property.~~

~~B. — County Council may provide for the specific appropriation of the funds contained in the public art special account by resolution.~~

Section 10 6. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

Section ~~11~~ 7. No Private Right of Action. Allegheny County, Pennsylvania shall have the sole right and authority to enforce this Ordinance. This Ordinance does not grant any individual, group of individuals, organization, entity or any other person any right to bring any action in or before a court, administrative agency or board or any similar body to enforce the provisions of this Ordinance.

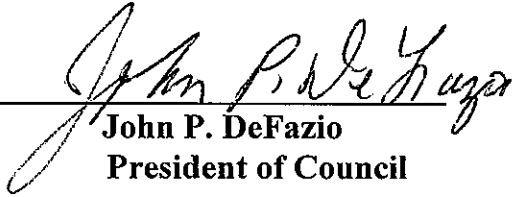
Section ~~12~~ 8. Any resolution or Ordinance or part thereof confliction with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

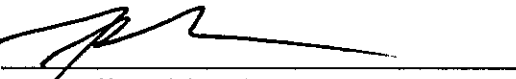
PRIMARY SPONSOR: COUNCIL MEMBER FINNERTY

CO-SPONSOR(S):

Enacted in Council, this 17th day of November, 2015,


Council Agenda No. 9246-15.


John P. DeFazio
President of Council

Attest: 
Jared Barker
Chief Clerk of Council

Chief Executive Office November 25, 2015

Approved: 
Rich Fitzgerald
Chief Executive

Attest: 
Sonya Dietz
Executive's Secretary