

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTIONS 22.08.010 AND 22.08.020 OF
CHAPTER 22.08 OF TITLE 22 OF THE SAN JOSE
MUNICIPAL CODE TO PROVIDE THAT THE CITY
COUNCIL MAY ADJUST THE PUBLIC ART ALLOCATION
FOR CAPITAL PROJECTS OUTSIDE THE ANNUAL
CAPITAL BUDGET APPROVAL PROCESS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 22.08.010 of Chapter 22.08 of Title 22 of the San José Municipal Code is amended to read as follows:

22.08.010 Funds For Works Of Art In Public Places

- A. [Except as provided in Subsection E below,](#) ~~t~~he City Council and the Redevelopment Agency Board shall provide in their respective annual capital improvement budgets for amounts of not less than two percent (2%) of the total amount budgeted for each “eligible construction project” to be set aside and identified as sources of funds to be appropriated and expended for acquisition of works of art in accordance with the provisions of this Title. Appropriations for purposes of acquiring works of art in order to carry out the provisions of this Title shall be made in accordance with law and the budgeting procedures of the City and the Redevelopment Agency.
- B. Appropriations for works of art may be expended to acquire works of art for any public place if the terms of a contract, federal or state grant, law, or regulation do not limit or restrict the funds so appropriated to use for a specific “eligible construction project.” Appropriations for works of art shall only be expended for acquisition of works of art to be located on the premises of a specific “eligible

construction project” if the terms of a contract, federal or state grant, law, or regulation do limit or restrict the use of funds to a specific “eligible construction project” only.

C. Subject to applicable law, appropriations and expenditures for works of art may include, but are not limited to, the costs and expenses incurred in the process of selecting, installing, and maintaining works of art in public places.

D. The City Manager or the City Council, as appropriate, shall approve the acquisition of works of art to be funded under the City's capital improvement budget. The Redevelopment Agency Executive Director or the Redevelopment Agency Board, as appropriate, shall approve the acquisition of works of art to be funded through the Redevelopment Agency's capital improvement budget.

E. The City Council may determine, in its sole discretion, to allocate an amount which is less than two percent (2%) of the total amount budgeted for one or more “eligible construction projects” for the acquisition of works of art. Any funds that have been encumbered shall not be subject to reduction unless the encumbrance may be liquidated without liability to the City. Any reduction in the allocation for the acquisition of a work of art shall be by an appropriation ordinance.

SECTION 2. Section 22.08.020 of Chapter 22.08 of Title 22 of the San José Municipal Code is amended to read as follows:

22.08.020 Exclusions From and Additions to the Art In Public Places Program

A. The City Manager and the Redevelopment Agency Executive Director in conjunction with the submission of the annual capital budgets of the City and

Redevelopment Agency, respectively, and subject to the provisions of any applicable law, each may:

1. Determine that certain proposed capital improvement projects not be deemed “eligible construction projects” for purposes of this Title if the anticipated public visibility and/or public traffic usage of the capital improvement project is too minimal to warrant expenditures of funds for works of art; or
 2. Designate funds to be added to the art in public places program, which funds may be utilized to place works of art in existing public places which do not otherwise qualify as “eligible construction projects.”
- B. In conjunction with submission of the City's and Redevelopment Agency's proposed annual capital improvement budget to the City Council, and to the Redevelopment Agency Board, respectively, the City Manager and the Redevelopment Agency Executive Director shall notify the arts commission of: (i) those proposed capital improvement projects in said budgets which are not designated “eligible construction projects” for purposes of this Title due to low anticipated public visibility and/or public traffic usage; (ii) those capital improvement projects which are designated “eligible construction projects” in said budgets; and (iii) any proposed discretionary funds added to the art in public places program. [The City Manager shall also inform the Arts Commission in conjunction with the submission of any proposed reductions in public art allocations to the City Council pursuant to Section 22.08.010 E.](#)
- C. The following provisions shall apply to the calculation of the not less than two percent (2%) to be expended for works of art pursuant to this Title only in those circumstances in which the City or the Redevelopment Agency receives funds

from persons, firms, organizations or other agencies which are restricted as to the use of said funds for expenditures for works of art, or which said funds are otherwise restricted by law or regulation:

1. If the terms of a contract, federal or state grant, law, or regulation prohibit or restrict the use of funds in connection with an “eligible construction project” for expenditures upon works of art, then the not less than two percent (2%) to be budgeted, appropriated and expended for purposes consistent with this Title shall be calculated so as to exclude from the total cost of said project any funds which are so prohibited or restricted.

2. If the terms of a contract, federal or state grant, law, or regulation provide that any additional expenditure by the City or the Redevelopment Agency on works of art for an otherwise “eligible construction project” shall affect the amount of funds received by the City or Redevelopment Agency for said project, then the cost of said project may be excluded in its entirety from the calculations of the not less than two percent (2%) to be budgeted, appropriated and expended for works of art pursuant to this Title.

RD:BKJ
12/6/07

DRAFT

PASSED FOR PUBLICATION of title this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk