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TO: The Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: March 29, 2022

RE: Funding Sources for Public Arts

The Legislative Policy Division, (LPD) has been requested by Council Member Latisha Johnson to provide a report/case study regarding potential funding sources for public art based on similar efforts nationwide. In addition, the request calls for an analysis of the City of Detroit's (City) ability to implement a "Percent-For-Art" program fund.

The City of Detroit's authority to expend dollars from its general fund is guided by the State of Michigan Constitution, state law, and the City Charter. The state constitution prohibits the City from utilizing general fund dollars to fund "any private purpose or, except as provided by law, for any public purpose." However, the Home Rule City Act may provide an avenue for public funds to be used for public art projects. MCL 117.4(e)(3) allows a city to provide in its charter:

For the maintenance, development, operation, of its property and upon the discontinuance thereof to lease, sell or dispose of the same subject to any restrictions placed thereupon by law.

The Home Rule City Act allows for the City to provide for the maintenance, development, operation of its property. This would include the funding for the maintenance, development, and operation of that property. This statutory provision allows by law the City to use its finances for the public purpose of maintenance, development, and operation of its property.

The City Charter under Section 8-202, *Capital Agenda*, provides in pertinent part:

1. On or before November 1 of each even numbered year, the Mayor shall submit a proposed Capital Agenda for the next five (5) fiscal years to the City Council.
2. The Capital Agenda shall state:
 - a. All physical improvements and related studies and surveys, all property of a permanent nature, and all equipment for any improvement when first erected or acquired, to be financed during the next five (5) fiscal years in whole or in part from funds subject to control or appropriation by the City, along with information as to the necessity for these facilities;
 - b. Capital expenditures which are planned for each of the next five (5) fiscal years;
 - c. The estimated annual cost of operating the facilities to be constructed or acquired; and
 - d. Other information pertinent to the evaluation of the capital agenda.

If part of the physical improvements to City owned property either when first erected or improved thereafter, include an artistic component, this artist installation may be financed as part of the capital improvement planning budget. This method of financing public art, as well as other ways in which states and localities fund public art is addressed below.

Public art has been recognized as an essential part of our society for centuries, from the ancient Greek sculptures to the world renown Heidelberg Project. Public art captures our history and reveals many things about society and the times we live in. Public arts programs can be funded in a wide variety of ways. The most common funding mechanism is “percent for art programs” which as the name implies, these programs set aside a percentage, “typically between 0.5 and 2 percent of cost allocated for construction or renovation projects utilizing public dollars for the creation and acquisition of public art”¹.

In fact, over twenty-eight states have instituted “percent for art” programs and many cities across the country have passed ordinances enacting percent for art programs. Consequently, there are hundreds of these programs in effect across the country. In addition to percent for art programs, nonprofit organizations and private/public collaboratives offer viable options for funding public art projects and have been widely used throughout the country.

LPD has looked at the funding sources and structure of various percent-for-art programs sponsored at both the state and local levels, as well as some non-percent-for-art programs, identifying the oversight agency and its duties.

¹ Nikitin, Cynthia. “Funding Sources for Public Art.” Project for Public Spaces, Dec. 2008

1. State Percent-for-Art Programs

District of Columbia

Through the D.C. Commission of Arts and Humanities, DC Creates reviews and approves all proposals and recommendations made by a selection committee made up of commission board member, artist, art professionals, city agency staff, and other program stakeholders. Projects receive funding from an allocation of up to one (1) percent of the capital budget for the commission and acquisition of artwork. The selection committee reviews submissions and recommends one finalist to the commission for final approval for site-specific placement of public art works.

Florida

Through the State Division of Arts and Culture, the Art in State Buildings program uses up to 0.5% of the construction appropriation to acquire artwork for permanent display in the interior or exterior of public access facilities, not to exceed one hundred thousand dollars. Artist are solicited by either invitation or competition. A local selection committee is formed for each project, which then determines placement, reviews submissions, and makes selections.

Illinois

Through the State Capital Development Board, the Art-in-Architecture program, the Capital Development Board reserves one-half of one percent of the construction cost of state building and renovation projects to purchase public art. Each Art-in-Architecture project is tied to a specific construction or renovation project funded by the state of Illinois. Artists are selected and commissions are awarded based upon the recommendations of a committee made up of community members, art professionals, the project architect, and representatives of the using agency where the artwork will be located.

Louisiana

Through the Office of Cultural Development Division of the Arts, the Percent for Art program allocates one (1) percent of state money to be used to acquire, conserve, and restore and install works of art for display in, on or around the grounds of state buildings when the state funds used for the project is equal to or greater than two million dollars. Selection is determined by the Assistant Secretary of the Office of Cultural Development, in consultation with the primary building tenant, the state agency and architect with preference given to local artist.

Minnesota

Through the Minnesota State Art Board, the Percent for Art in Public Places program allocates up to one (1) percent of state capital projects costing more than five hundred dollars and financed wholly or in part by the State of Minnesota for the acquisition and installation of original art works. Both new construction and renovation projects are eligible. However, the percent-for-art

allocation is optional. A site selection committee selects artwork for a site. Members of the committee must have familiarity with public art issues and acquisition procedures or experience with community-based visual arts projects. The committee is comprised of client agencies, the architect, artists, and individuals with expertise in a number of arts-related disciplines.

2. Percent-for-Art Ordinances²

Atlanta, GA

In the city of Atlanta's program one-and-one-half percent of the estimated cost of eligible construction projects is deposited into the municipal arts account to be expended as prescribed by the municipal arts plan, to fund public art works.

Agency: Bureau of cultural affairs

The Bureau of Cultural Affairs prepares for review by the mayor and council, a municipal arts plan outlining the expenditure of funds from the municipal arts accounts.

The Bureau reviews and approves all capital construction projects for compliance with the percent for art section of the code of ordinances and determine if the percent for art funds shall be utilized on a specific project or pooled with other funds for larger public arts projects located within the city.

In addition, the Bureau is tasked with alerting city council to any proposed work of art requiring extraordinary operation or maintenance expenses and offering recommendations regarding the placement of art works, artist selection, and advance cost associated with contracted art projects.

Charlotte, NC

Charlotte's program allocates for eligible projects an amount equal to one (1) percent of the projected construction costs at the time the project is included in the city's capital improvement program to be used for the selection, acquisition, commissioning, and display of artwork.

Agency: Public art commission

The public arts commission has powers and duties to oversee and administer a public art program to ensure the inclusion of artwork in appropriate capital improvement projects. In addition, the public arts commission also administers a public art program for the county wherein the city of Charlotte is located.

Los Angeles, CA

Agency: Department of Building and Safety

Under the Los Angeles percent-for-art program, the collection of an arts fee is based upon the following criteria:

² [Percent for art Examples.doc \(americansforthearts.org\)](#)

1. Office or research and development building: Office or research development, the arts fee shall be \$1.57 per square foot.
2. Retail: Retail developments pay an arts fee of \$1.31 per square foot.
3. Manufacturing: A manufacturing building shall pay an arts fee of \$0.51 per square foot
4. Warehouse: For a warehouse building, the arts fee is \$0.39 per square foot
5. Hotel: For a hotel building, the arts fee is \$052 per square foot.

In no event shall the arts fee exceed either \$1.57 per gross square foot of any structure authorized by permit of one percent of the valuation of the project designated on the permit, whichever is lower.

Where there are combined uses within a development, the arts fee shall be the sum of the fee requirements of the various uses. The cultural affairs department revises the arts fee annually by an amount equal to the CPI for Los Angeles.³

Oklahoma City, OK

Oklahoma City's percent-for-art program allocates not less than one (1) percent of the total cost of any new buildings or major revisions to existing buildings to be constructed or erected on property owned or leased by the City utilizing public funds are budgeted for works of art.

Agency: The Arts Commission

The Arts Commission consist of 15 members appointed by the mayor subject to approval by the Council, five members at large, one member shall represent the Arts Council of Oklahoma City, one representative of the Oklahoma City Convention and Visitor's Commission, one member representing the Allied Arts Foundation, three members shall be professional artists, performers and/or architects, and four members from other arts and cultural organizations.

Funds are placed in a separate account to be established by the City treasurer. These funds must be used exclusively for the purchase of works of art. All works of art to be incorporated into the building, structure, or grounds, or to be purchased with funds must be reviewed, selected, and recommended by the Arts Commission, with the final approval to be given by the Council. The works of art may be placed upon any property owned or leased by the city.

Philadelphia, PA

Agency: Arts Commission

The nonprofit Association for Public Art is the oldest entity dedicated to integrating public art and urban planning in the United States, established in 1872.

Under the City of Philadelphia's percent-for art program, an amount not to exceed one percent of the total dollar amount of any construction contracts for a building, bridge and its approaches, arc, gate or other structure of fixture to be paid for either wholly or in part by the City, is devoted

³ LPD notes that under Michigan laws, fees must be relative to the cost incurred to provide a particular service or program. It is otherwise deemed a tax of which the City has no authority to levy without State authorization.

to the Fine Arts; provided that the Art Commission certifies in writing that the ornamentation is fitting and appropriated to the function and location of the structure.

Phoenix AZ

Agency: Phoenix Arts and Culture Commission

The Arts and Culture Commission provides a recommendation to the City Manager and City Council, for inclusion in the capital budget an amount not to exceed one (1) percent of the total capital improvement cost for each eligible capital improvement program to be expended upon art and art services and the annual art plan.

The recommendation on funding is developed in conjunction with the department involved and the Budget and Research Department. The Mayor and City Council will review these plans in a policy session. City Council has authority to approve the final plans to increase or decrease the amount of money allocated for art projects.

Portland, OR

Agency: The Regional Arts and Cultural Council

The Regional Arts and Cultural Council oversees the Public Art Trust Fund. The fund receives 1.33 percent of the total costs of improvement projects. One percent of the total costs of improvement projects is to be used by the Regional Arts and Cultural Council for costs associated with acquisition, siting, maintenance and deaccessioning public art. While .33 percent of the total costs of improvement projects are to be used for costs associated with public art, including but not limited to costs of selection, administration, community education and registration of public art.

San Jose, CA

Agencies: City Council and Redevelopment Agency Board

The board provides an annual capital improvement budget for amounts not less than two (2) percent of the total amount budgeted for each eligible construction project for the acquisition of works of art to be publicly displayed.

The city manager or the city council, as appropriate, approves 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, approves the acquisition of works of art to be funded through the redevelopment agency's capital improvement budget.

Tampa FL

The city of Tampa's Public art fund allocates one percent of the construction cost of municipal building projects as bid, contracted and accepted by the city. but not to exceed the sum of two hundred thousand dollars (\$200,000.00) for any single municipal building project; provided that the public art committee may recommend to the mayor an increased expenditure for those projects of exceptional size or unique function, however, in no event shall the appropriation exceed one (1) percent.

Agency: Public Art Committee

The Public Art Committee shall recommend to the mayor 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 the municipal construction project for which the monies were appropriated. Unexpended monies in this fund may be used for works of art at existing public properties and facilities as deemed appropriate by the public art committee.

3. Non-Percent Public Art

Houston, Texas

The Cultural Arts Council of Houston also receives a percentage on the hotel/motel tax for art. In addition, the Council contracts with a variety of city agencies, as well as with Harris County.

New Orleans, Louisiana

The Arts Council of New Orleans funds public-art projects through a partnership between public/private sectors to create more stable funding basis. City of New Orleans, local and state governmental agencies, as well as other non-profit arts organizations are funding sources for the public-art program.

San Antonio, Texas

The San Antonio Design Enhancement Program (DEP) is operated through the city's Public Works Department's City Architects' Office. The DEP program is maintained by art allowances and budgets that are identified and developed by each project-design team.

Phoenix, AZ

Phoenix's public art program is funded through the city's general-purpose funds, public art funds, state lottery revenue, and regional and federal grants.

San Diego, CA

The public art program in San Diego is a department of the San Diego Commission for Arts and Culture. Administrative costs are covered by a portion of the city's Transient Occupancy or Hotel/Motel Room Tax, which helps to fund the operating and personnel expenses of nearly ninety arts and cultural organizations.

4. Can a "Percent-for-Art" effort be legally implemented in Detroit?

According to the Project for Public Spaces article "Funding Sources for public Art"

Passing percent for art legislation encumbers a percentage (usually .5 to 2.) of CIP (publicly funded capital improvement projects) per year for the commission of public artworks, which will usually be sited in, on, or adjacent to the building or project being constructed. Percent-for-art ordinances guarantee a funding stream for public art projects regardless of what happens to the city budgets or arts funding. The policy also guarantees

that public art projects will be planned each year, as long as CIPs are under way and municipal construction continues.

The Home Rule City Act Section 117.4e (3) allows a city to provide in its charter;

For the maintenance, development, operation, of its property and upon the discontinuance thereof to lease, sell or dispose of the same subject to any restrictions placed thereupon by law; Provided, That on the sale of any capital asset a municipally owned utility the money receive shall be used in procuring a similar capital asset, or placed in the sinking fund to retire bonds issued for said utility.

Pursuant to the City Charter, Section 8-202, *Capital Agenda*, provides in pertinent part:

3. On or before November 1 of each even numbered year, the Mayor shall submit a proposed Capital Agenda for the next five (5) fiscal years to the City Council.
4. The Capital Agenda shall state:
 - e. All physical improvements and related studies and surveys, all property of a permanent nature, and all equipment for any improvement when first erected or acquired, to be financed during the next five (5) fiscal years in whole or in part from funds subject to control or appropriation by the City, along with information as to the necessity for these facilities;
 - f. Capital expenditures which are planned for each of the next five (5) fiscal years;
 - g. The estimated annual cost of operating the facilities to be constructed or acquired; and
 - h. Other information pertinent to the evaluation of the capital agenda.

For each separate purpose, project, facility, or other property there shall be shown the amount and the source of any money that has been spent or encumbered or is intended to be spent or encumbered before the beginning of the next fiscal year and also the amount and the source of any money that is intended to be spent during each of the next five (5) years. This information may be revised and extended each year for capital improvement still pending or in process of construction or acquisition.

The City Charter also provides under Section 9-201. - Council of the Arts the following language:

The Council shall act as an advisory body to the Mayor and the City Council and as advocate for the arts and aesthetics in all aspects of City life. It shall advise and support cultural institutions and groups interested in cultural activities. It shall encourage, develop, and support a wide variety of programs which reflect the cultural needs and experiences of all citizens and shall encourage participation by all citizens in the cultural activities carried on in the City.

The City has the authority to include as part of the Capital Agenda a percentage of the appropriation for Capital improvements to allow for public art to be included as part of the development, maintenance, or physical improvement of the City's publicly owned land.

A variety of options exist for the city to implement such as program. There are many successful programs throughout the country. Some restrict works of art to government buildings and/or land owned or leased by the government entity, while other public art programs require developers include a public art component as part of their site-specific development proposal which might not include a government property. If the city chooses to pursue this effort, necessary discussions must take place regarding the overall structure and funding of the program, including the amount of funding to be set aside, placement of artwork, and selection of artists.