

## RESOLUTION 25-11297

### A RESOLUTION OF THE CITY OF BILLINGS ESTABLISHING A PUBLIC ART POLICY AND ESTABLISHING AN EFFECTIVE DATE

**WHEREAS**, the City of Billings is supportive of public art and the many benefits it provides to the community including neighborhood beautification, economic development, crime prevention, increased safety, community health, community pride, and inclusion.

**WHEREAS**, it is in the best interest of the citizens of the City of Billings that the City have a policy on the placement of art on city property outdoors that is clear, concise, equitable, and as easy as possible to navigate.

**WHEREAS**, it is not the intention of this Resolution to create any public forum for the expression of speech, and any placement of art pursuant to this Resolution shall be within the sole discretion of City Council.

**WHEREAS**, this policy shall apply to any art commissioned by the City or donated to the City.

**WHEREAS**, Section 22-101, BMCC, provides that is unlawful for any person, without the permission of the City Council, to paint, mark, or write any sign, letters or words with crayon, paint, or other material upon any sidewalk, curb, or pavement within the City of Billings. This Resolution is intended to provide Council's consent in situations that comply with all City regulations, resolutions, ordinances, the policy established by this Resolution and approved by the City Administrator.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Billings, that a public art policy is hereby adopted as follows:

#### SCOPE

This policy applies to public art projects located, or proposed, on property owned or controlled by the City of Billings; this property will be referred to as "Public Property." These may be projects commissioned by the City, or art donated to the City. Public art may be created through a communal process, or in collaboration with the community to reflect the ideas and values of those for whom public art is created and to engage in creative problem solving.

#### PURPOSE

This policy establishes the basis on which public art projects are commissioned or approved. It seeks to establish the key criteria for informed, transparent and high-quality decision-making when approving or declining proposed public art projects which will form a long-term aspect of the City's citizens' and visitors' experience and cultural enhancement.

## **POLICY**

1. Any review of public art proposals will generally follow the process described in Attachment A - *Public Art Review Process Flow Chart*. It is understood that the public art needs of the City of Billings may change resulting in an update to the process, which shall be approved by the City Council. However, minor changes, such as in staff or software used to process reviews, will not require a vote by City Council. Public art does not include advertising displayed with the permission of the City, including, but not limited to, signs, banners, vehicle wraps, etc. promoting events, organizations or businesses.
2. Public Art is defined as an original artwork which is visually or physically accessible to the public and which does not require a fee or other prerequisite to observe.
3. Public Art is inclusive of a variety of media, however, for the purpose of this policy, performance, music, and dance are not included.
4. This policy regulates Public Art placed on Public Property. This policy also regulates any Public Art placed on City owned property located on private property, for example City owned commercial garbage containers.
5. Public Art can be privately or publicly funded.
6. Public Art should:
  - i. connect to the community or community identity;
  - ii. create vibrant places for people to gather;
  - iii. be an intentional use of art or place making; and embody community aspirations, both past and present.
7. Public Art comes in many forms and may include, but is not limited to, the following:
  - i. Sculpture in the round, bas relief, mobiles, fountains, kinetic and electronic work.
  - ii. Paintings in all media, including oils and acrylics, that are portable or permanently affixed, such as murals.
  - iii. Graphic arts, such as printmaking, drawing and banners.
  - iv. Mosaics, including works executed in tile, glass, stone or other materials.
  - v. Works using clay, fiber and textiles, wood, metal, plastics, stained glass and other materials, both functional and ornamental.
  - vi. Photography, including digital and traditional photographic print media.
  - vii. Mixed media, which may include any combination of two- and three-dimensional forms of media, including collage.
  - viii. Earth works, environmental installations and environmental art.
  - ix. Ornamental or functional decorative elements designed by practicing artists or other persons submitting as artists, including design professionals who are not members of the City design team for the project.

- x. Portable art that may be displayed at locations other than a substantially permanent location.
- 8. A seven-person Public Art Committee, consisting of the following representatives, is established. The members will be appointed by the Mayor with the consent of the City Council in accordance with BMCC Article 2-500.

The committee shall consist of the following representatives:

- a. One artist at large.
- b. One representative from the economic or community development field.
- c. One representative referred by the Billings Arts Association or, alternatively, any other art-related organization designated by the City Council.
- d. One representative referred by the Native American Development Corporation or, alternatively any other organization representing the interests of Native Americans designated by the City Council.
- e. One representative from the engineering, architecture, landscape architect, or three-dimensional art field.
- f. Two members of the public that have an interest in public art.

Members of historically underrepresented groups are encouraged to apply.

Three of the founding members of this committee will be assigned three-year terms; the other four will be assigned four-year terms. The length of each member's initial term shall be established at the first meeting of the committee through a random process by having the members draw straws (or the equivalent) designating either a three-year or four-year term. All subsequent members will be assigned four-year terms as required by BMCC Article 2-500.

Members of the Public Arts Committee shall be residents of the City of Billings and meet the minimum qualifications set forth in BMCC Article 2-501.1.

Public Art Committee members serve at the pleasure of the City of Billings City Council and may be removed as set forth in BMCC Article 2-500.

The Public Art Committee will be formed and operational within 6 months of the signing of this resolution.

- 9. The Public Art Committee, with input from staff, is responsible for making recommendations for approval or denial of Public Art pieces in outdoor spaces of Public Property consistent with this policy. Staff may not advance a project to the Public Art Committee if it violates applicable city, state or federal codes, regulations, resolutions or ordinances or results in a safety issue that cannot be resolved. Artwork placed on property that has been paid for with federal funds may be subject

to additional review criteria prior to approval. Staff must document efforts to work with the artist(s)/community members to find mutually acceptable modifications to any project which does not meet minimum criteria, but it may not be possible to move all projects forward. Staff will determine the most appropriate location for the proposed artwork, should it be approved, before it goes to the Public Art Committee.

10. The Public Art Committee will report to the City Council a minimum of once per year on projects approved in the past year. The Public Art Committee will also provide feedback on the implementation of this policy and shall suggest relevant updates to City Council.
11. The Public Art Committee will meet monthly but may cancel meetings due to a lack of applications to review.
12. Any proposed Public Art project requiring review under this policy must be submitted by the applicant to the City of Billings Planning Division. An example of the application is available in Attachment B – *City of Billings Public Art Proposal Application and Waiver*. This application may be updated from time to time by city staff and will be available at the Planning Division. All applicants must provide a written license and waiver executed by the artist along with the application to allow the City to display, reproduce, modify, relocate, remove, etc. the proposed Public Art project.
13. Public Art will be reviewed on how well it adheres to the principles below.
  - a. The project will have a positive impact in the Billings community.
  - b. The project is accessible to the community and connected to its surroundings.
  - c. The project enhances the beauty and/or comfort of its location.
  - d. The project activates a place to make it more engaging.
  - e. The project brings people together or encourages people to gather and linger.
  - f. The project has artistic merit.
14. Consideration must be given to the appropriateness of artwork in the context of local community standards and values. For that reason, art that does the following is prohibited:
  - a. Defames, denigrates, or invades the rights of any person living or dead
  - b. Could be construed as harmful to a third party, including but not limited to illegal activity or pornographic images or images depicting alcohol, tobacco or drug use or unnecessary violence
  - c. Depicts living political figures
  - d. Depicts false, misleading, or deceptive material

- e. Contains speech that is objectional under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of, or interference with the primary purpose of the Public Property
- f. Contains art that is demeaning, derogatory, or has an exclusionary reference to any group based on race, religion, sex, gender identity, ethnicity, ability level, national origin, or other category
- g. Promotes messages appearing to advertise or promote a product or private entity (corporation, neighborhood business, or other community organization). This is considered a sign and will be reviewed under the City of Billings sign code.
- h. Images that create a driver distraction or could be confused with traffic signs
- i. Desecrates significant cultural symbols

Additionally, if the proposed artwork includes religious subject matter, the artwork must be able to be displayed in such a manner that the work does not violate any legal prohibition applicable to public property, is not likely to be revered, and is solely for the purpose of exhibiting cultural or historical traditions.

15. Whether to allow an applicant to display their work lies solely within the discretion of the City in accordance with this Resolution. The City may enter into a written agreement with any applicant to memorialize terms for displaying Public Art, including location, period of time for the display, maintenance, circumstances for deaccession, etc. Any such agreement for artwork where the total cost of materials plus installation, not including the artist's fee to create the work, is less than \$25,000 shall be executed by the City Administrator. For any artwork where the total cost of materials plus installation is equal to or more than \$25,000, such agreement shall be executed by the Mayor with the consent of the City Council.
16. Should an applicant disagree with the final determination of the City Administrator, the applicant may appeal the decision to City Council within 15 days of the notice of denial by submitting a written notice of appeal to the City Clerk at 316 N 26<sup>th</sup> St, Billings, MT. The City Clerk will notify the appropriate city staff and then place this matter on a Council agenda within thirty (30) days of receipt of the notice of appeal at which time the applicant will have an opportunity to present information to Council. The City Clerk will provide written notice to the applicant at least ten (10) days prior to the appeal hearing by causing the notice to be personally served or by delivering it to the physical address or email address applicant provided on the written notice of appeal. Council's determination will be based on whether the Public Art Committee's recommendation and the City Administrator's decision aligns with the policy and procedure set forth in this resolution. Council will make a determination on any appeal within sixty (60) days of receipt of the notice of appeal. City Council's determination is final.

17. To the extent that any art is placed and displayed on Public Property, it is not intended to communicate a message to the public on behalf of any artist, individual, or entity. Therefore, any message conveyed intentionally or unintentionally by the City of Billings or inferred by the public constitutes governmental speech and does not create rights of expression by other persons under the First Amendment. By adopting this policy, the City does not intend to open a forum for expression by the public.

18. Artwork fails to meet professional standards for acceptable public art practice and shall not be approved by the Public Art Committee if any of the following applies:

- a. Faults of design or workmanship pose a public health or life safety hazard or diminish the value of the work.
- b. The artwork is fraudulent, inauthentic, or appears to be of inferior quality relative to the quality of other works in the City's collection.
- c. The artwork is not an original work of art. If the artwork is one of a multiple, it will be accepted only as an authorized limited edition. In the case of fine art prints and photographs, a limited edition is 200 or fewer.

19. Deaccessioning of artwork.

- a. Absent other contractual requirements which shall have been previously approved by the City Council, Public Art may be deaccessioned by the City for any reason. The Public Art Committee may consider the following criteria when making a recommendation to the City Administrator or his/her designee for deaccession:
  - i. Irrelevance to the permanent collection
  - ii. Duplication
  - iii. Inferior quality or poor condition – items found to be fragile or those that are potential targets for vandalism and may not be appropriate for display in public places
  - iv. Public safety concerns
  - v. Inability for the City of Billings to meet a standard of care, display, maintenance, or storage
  - vi. Issues with authenticity, attribution, or provenance
  - vii. Ethical, political or legal concerns
  - viii. Financial burden associated with maintenance and preservation
  - ix. Changes in artistic or aesthetic styles, tastes, standards, or trends
  - x. A request by City Council approved by a vote of a majority of council members
  - xi. Any other criteria deemed reasonable in the discretion of the committee.

- b. Artwork posing a threat to public safety may be removed immediately by the City department responsible for the property. All other cases of deaccessioning, except for murals, which may be painted over in the discretion of the City, should be reviewed by the Public Arts Committee before approval by the City Administrator.
  - c. Murals in poor condition may be painted over by the City department if they have exceeded their expected lifespan of 1-5 years.
- 20. With the exception of art placed on City owned property located on private property, art donated to the City shall include a maintenance plan along with a maintenance and/or removal budget donated by the applicant to a fund at the City. Unless a higher or lower amount is approved by the City and memorialized in a written agreement with the applicant, the maintenance budget shall be 10% of the approximate cost of materials and installation. The City may, but is not required to, credit in-kind maintenance services by the artist or other volunteers toward the 10% requirement. Funds collected pursuant to this paragraph will be available to perform minor maintenance on any of the City's outdoor Public Art collections and will be available for the removal of Public Art.
- 21. Minor maintenance of Public Art may be performed by the City as needed and determined by City staff. In instances where detailed touch-ups are required, staff will attempt to contact the artist to provide a reasonable opportunity to repair the work. Any other regular maintenance desired by the artist should be specified in the maintenance plan and staff will determine if an additional fee is needed to complete these tasks, or the applicant may commit to completing these tasks at their own expense.
- 22. In the event of damage or vandalism to artwork donated to or commissioned by the City, staff agree to attempt to contact the artist to discuss the extent of damage and, if necessary and whenever possible, attempt to provide an opportunity for the artist to repair damage within a timely manner. If available, the City may elect to use any maintenance funds that were donated for the benefit of the City by the applicant for this project or by other donors for other projects involving Public Art. City staff reserve the right to decommission the Public Art installation if damages due to graffiti, vandalism, weather, or other associated causes, are beyond minor repair. City staff must maintain City property as necessary to preserve its appearance and integrity, which may warrant decommissioning the public art installation in some circumstances. Staff will attempt to provide the artist with a reasonable opportunity to demobilize the art installation as appropriate if/when necessary.
- 23. Maintenance for artwork placed on City owned property located on private property will be entirely the responsibility of the private property owner and a maintenance fee will not be assessed at the time of art approval. This is mainly expected to include

art wraps of commercial garbage containers. The private property owner will be allowed to replace the wrap with one of an identical design without submitting a new public art application, but any change in the design shall require a new application.

24. The Airport property in its entirety is excluded from this policy due to the security and federal regulations it must follow. The Airport should be contacted directly for any questions relating to Public Art on Airport property.
25. Any selection or placement of art within the City's rights-of-way that involves painting, marking, or writing any sign, letters or words with crayon, paint, or other material upon any sidewalk, curb, or pavement, shall comply with all criteria set forth in Resolution 21-11015 and require the approval of the Public Works Director and, if applicable, MET Transit before it is considered by the Public Art Committee.
26. The City Council delegates acceptance of donations of Public Art to the City Administrator, and approval of Public Art will imply an acceptance of the donation. The donor will be issued an appropriate receipt of the donation.

**EFFECTIVE DATE**

This Resolution shall be effective immediately.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 22<sup>nd</sup> day of September, 2025.

ATTEST:

By: Denise R. Bohlman  
Denise R. Bohlman, City Clerk



CITY OF BILLINGS

By: William A. Cole  
William A. Cole, Mayor