

**ARTICLE 28. Percent for Art Bylaw  
(Public Art Commission)**

A. To see if the Town will amend the Town of Amherst General By-Laws by adding the following new by-law:

**PERCENT FOR ART BYLAW**

**Section 1 -- Purpose**

The purpose of this bylaw is to (a) promote the enjoyment of the arts by the residents of and visitors to Amherst by increasing the quantity and quality of the visual and performing arts available in public buildings, facilities and spaces; (b) improve and expand the value and use of public buildings and facilities through the placement in and around such buildings and facilities of new distinguished works and creations of artistic endeavor; (c) contribute to the cultural vitality of the Town; and (d) create a funding program that will ensure that arts are acquired, created, developed, maintained and otherwise made available for the enjoyment of Amherst's residents and visitors.

The Bylaw authorizes the allocation of one-half percent (0.5%) of the capital costs of any eligible town construction, renovation or capital improvement project for the creation and maintenance of public art in the Town of Amherst. Such projects must be budgeted at a minimum of \$100,000 to qualify. The purpose of this bylaw is to direct the integration of artwork into public spaces and public works projects in the Town of Amherst through a well-administered and appropriately funded public art program.

**Section 2 -- Definitions**

For the purposes of this bylaw the following words and descriptions shall have the following meanings:

- a. "Construction project" means any capital project paid for in full or in part by the Town through its own eligible funds to construct or remodel any building, decorative or commemorative structure, park, or any portion thereof within the corporate limits of the Town and with respect to the construction of which bidding is required under State law.
- b. "Eligible funds" means the funds for construction projects from the Town's General Fund, including any funds to be borrowed that will be repaid from the General Fund unless excluded as an appropriate purpose for expenditure.
- c. "Public Art Fund" means the fund set aside by this Bylaw in the Town treasury for the purpose of allocating moneys for the development and creation of art in and upon public space in the Town.
- d. "Public art" means art to be funded from the Public Art Fund. Such projects may be an integral part of a building, attached to a building, placed within or outside of a building, or within a public space, or in the case of performing arts performed in a public building or space. Such art may include but shall not be limited to paintings, sculpture, engravings, carvings, frescoes, stained glass, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, drama, instrumental or vocal music, dance, readings and landscape items, including the artistic placement of natural materials or manmade fountains or objects or other functional art objects.
- e. "Public place or space" shall mean publicly accessible landscapes, structures and infrastructure. Public places include, but are not limited to, public parks, plazas, streets, libraries,

bridges, stairways, public fountains and buildings.

f. “Capital improvement” means a tangible asset or project as outlined below:

- New public buildings, or additions to existing buildings, including land acquisition costs and equipment needed to furnish the new building or addition for the first time;
- Major alterations, renovations, or improvements to existing buildings that extend the useful life of the existing buildings by ten years.

g. “Qualified arts jury” means a group, with preference given to Amherst residents, that includes at least three professionals from the fields including arts education, art criticism or administration, arts dealership or designing, art making, art history or arts curating, fine art collecting, architecture, urban planning or landscape architecture, who is well respected in his/her field, knowledgeable regarding visual art, and willing to participate effectively in a panel process.

### **Section 3 -- Funding**

All eligible funds for construction or capital improvement projects budgeted at \$100,000 or greater shall include and set aside in a designated Public Art Fund an amount equal to one-half percent (0.5%) of the total eligible, estimated costs of such projects, as determined by the Town Manager or his or her designee, for public art. This calculation shall be made no later than when funding for the construction of this project is voted At Town Meeting. If estimated project costs rise after the designated percent for art is determined, that amount designated for percent for art will not increase; but if estimated project costs decrease, the amount will be recalculated based on the lower estimated project costs.

Copies of all estimated project costs shall be delivered to the Amherst Public Art Commission as soon as possible during the planning stages of the project in order to include an artist as part of the project team. The estimates shall include all construction costs, architectural and engineering fees and sitework expenses. To the extent possible, the public art shall be located at the site of the facility, or within or upon the facility associated with the construction project, so long as the public art is in a public place or space.

Funds appropriated may be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation, examination and/or display of original artworks, for necessary jurying fees or payments to artists for submitting proposals, for necessary travel by the artist during the selection or art development process, for site permits or fees, for plaques, labels or other identification materials, for the maintenance of artworks, for educating the public about the artwork, and administrative costs to manage the program.

Additionally, Percent for Art funds derived from capital improvement or renovation projects or unused Percent for Art funds from capital building projects that are not otherwise returned to the funding source as per the last paragraph in this section, may be used to support performing arts or other public art needs as determined by the Amherst Public Art Commission.

Excluded from this source of funding are the following: Decorative or functional elements which are designed by the building architect as opposed to an artist commissioned for this purpose; landscape architecture except where designed by the artist as an integral part of the work of art by the artist; mass produced art objects of standard design such as playground equipment or fountains; directional elements such as supergraphics, signage, or color coding, except where they are parts of the original work of art by the artist.

Any moneys appropriated to the Public Art Fund for a particular municipal art project which have not been spent within three years of such appropriation, or, upon special approval by the Select Board, within five years, shall then become available for the purposes of the general public art needs of the Town, as recommended by the Amherst Public Art Commission. However, if such funds are derived from a Note or Bond authorized by the Select Board or from other special purpose or dedicated funds, they shall revert to the funds from which they derive at the expiration of the three- or five-year period, whichever applies.

#### **Section 4 -- Public Art Ownership and Liability**

Ownership of artwork selected in accordance with this bylaw shall transfer to the Town of Amherst upon final installation in the public domain. In accepting ownership of public art, the Town also accepts responsibility for its maintenance, insurance, and for upholding contractual agreements made between the artist and the Town. Copyright privileges in accordance with the U.S. Copyright Act shall remain with the artist, with reproduction rights allowed the Town for appropriate promotional and educational purposes.

The artist selected for the public art project shall provide and maintain insurance coverage for the duration of the creation, fabrication and installation of the artwork. Upon completion and installation at the prescribed site, the finished artwork shall be insured by the Town of Amherst until such time as it is deaccessioned from the public art inventory. Any decision concerning deaccessioning shall be made by the Amherst Public Art Commission in consultation with the Town Manager. Any funds generated from such deaccession shall revert to the Public Art Fund.

During the artwork and site selection process, due consideration shall be given to maintenance requirements including structural and surface soundness, inherent resistance to theft, vandalism and weathering, as well as the cost and amount of ongoing maintenance and/or repair anticipated. The artist shall be responsible for providing any and all requested information regarding maintenance requirements that are unique to the particular public art project. Five percent of the total cost of approved art projects shall be set aside in a pooled maintenance account within the Public Art Fund for ongoing maintenance and conserving of additions to the public art inventory, and up to ten percent of the total cost of approved art projects shall be reserved for project administration.

#### **Section 5 -- Responsibilities**

##### **I. Amherst Public Art Commission**

a. The overall public art program shall be administered by the Amherst Public Art Commission (APAC), under the supervision of the Town Manager or his or her designee, with the assistance of a qualified arts jury that the APAC shall appoint as needed and appropriate. Administering the public art program shall include the following responsibilities: Meeting with relevant Town departments, nonprofit organizations, neighborhood organizations and interested Amherst citizens and artists as appropriate in relation to developing recommendations for public art plans for the Town; holding public hearings as needed to determine public art needs and placement; developing recommendations for prioritizing the creation and placement of works of art in public buildings and public spaces within Amherst; developing guidelines for the selection of artists and projects for the Town; developing programs to exhibit art in existing public spaces; and lending support to and promoting the performing arts, such as but not limited to drama, instrumental or vocal music, dance, and literary readings.

b. Regarding Percent for Art projects in particular, APAC shall be responsible for the

following:

1. Developing appropriate guidelines to manage the Percent for Art program, including guidelines for accepting and deaccessioning artworks from the Town's inventory.
2. Soliciting proposals for reviewing and selecting public art projects, following consultation with key project stakeholders, such as but not limited to the project architect(s), project manager, users of the proposed building when completed, neighbors of the project, appropriate Town officials, landscape architect, with the assistance of a qualified arts jury, as appropriate.
3. Developing criteria for the selection of the artwork, including but not limited to: artistic quality, originality, context, maintenance needs, feasibility, public opinion, diversity of artists regarding race, gender identity and cultural background, relationship of the artist to Amherst and the surrounding area. Final decision on the project artwork shall be by majority vote of the Public Art Commission, following input from the qualified arts jury and appropriate Town officials.
4. Developing recommendations for the geographic location of such works of art, and the location within individual sites and buildings where such works shall be placed or created, subject to the approval of the Town Manager.
5. Establishing budgets, subject to Town Manager approval, for all commissioned projects, including budgets for materials, fees, operating and maintenance expenses, and other reasonably contemplated items of expense in the acquisition, development, creation, implementation and, where applicable, ongoing maintenance of such projects.
6. Overseeing, with the appropriate Town department(s), the art installation and coordination of the artist with the project team.
7. Approving dispersal of funds to the artist(s) at appropriate stages of the art project development.
8. Establishing and maintaining art project records at Town Hall.
9. Making recommendations to the Town Manager for procedures to be followed by other departments for the maintenance and preservation of such works of art.

## II. Town of Amherst

Town staff shall provide administrative and technical support through various departments, including but not limited to Finance, Public Works, and Planning.

### **Section 6 – Implementation**

This bylaw shall apply to all construction or capital improvement projects for which eligible funds are authorized after the adoption of this bylaw; AND

**B.** To see if the Town will authorize the Select Board to petition the General Court to request a Special Act of the Legislature authorizing the Town of Amherst, notwithstanding any general or special law to the contrary, to establish a Public Art Fund as defined in the Percent for Art Bylaw, and further to establish One-Half Percent (0.5%) for Art pursuant to the terms of this Bylaw as an expense eligible for borrowing, and for any other purposes necessary to implement said bylaw; and to authorize the General Court to make clerical or editorial changes of form only to the bill, unless the Select Board approves amendments to the bill before enactment by the General Court, and to authorize the Select Board to approve amendments which shall be within the scope of the general public objective of the petition.