



## Legislation Text

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Clerk 01/24/2018

AN ORDINANCE related to the cultural development authority; identifying responsibilities of the county council; amending Ordinance 14482, Section 34, and K.C.C. 2.46.180, Ordinance 14482, Section 38, and K.C.C. 2.48.065, Ordinance 14482, Section 39, and K.C.C. 2.48.075, Ordinance 14482, Section 40, and K.C.C. 2.48.085, Ordinance 14482, Section 5, as amended, and K.C.C. 2.49.020, Ordinance 14482, Section 7, as amended, and K.C.C. 2.49.060, Ordinance 14482, Section 9, and K.C.C. 2.49.080, Ordinance 14482, Section 15, and K.C.C. 2.49.100, Ordinance 14482, Section 11, and K.C.C. 2.49.110, Ordinance 14482, Section 17, and K.C.C. 2.49.160, Ordinance 14482, Section 18, as amended, and K.C.C. 2.49.170, Ordinance 14482, Section 19, and K.C.C. 2.49.180, Ordinance 14440, Section 3, and K.C.C. 2.49.200, Ordinance 14482, Section 58, as amended, and K.C.C. 4.40.015 and Ordinance 17527, Section 57, as amended, and K.C.C. 4.40.110, adding a new section to K.C.C. chapter 2.49, decodifying K.C.C. 2.49.070 and repealing Ordinance 14482, Section 10, and K.C.C. 2.49.090.

### STATEMENT OF FACTS:

1. The King County council established the cultural development authority of King County in 2002 by adopting Ordinance 14482 in order to continue support for cultural resources, including arts, heritage, historic preservation and public art.

2. The purpose of supporting cultural resources, according to Ordinance 14482, is to create a vibrant cultural community that enhances King County's livability and reputation as a national and international cultural center.
3. The cultural development authority of King County, known as 4Culture, makes the region vibrant by administering and supports programs for King County's arts, heritage, preservation and public art.
4. 4Culture's work includes: funding individual artists, artist groups and arts organizations that provide access to art experiences for all King County residents and visitors; helping communities recognize, preserve and explore our shared heritage; supporting the preservation of historic places that give King County its character; and commissioning and collecting for the King County Public Art Collection, bringing artists' thinking to the shared spaces and offering consulting to the region.
5. 4Culture provides annual arts and heritage grants to over four hundred individuals and organizations in King County, putting public resources to use all over King County.
6. The 4Culture board, executive director, staff and advisory committees have demonstrated a commitment to addressing racial, geographic and income-related funding inequities and creating an environment in which all King County residents participate actively in cultural opportunities.
7. In May 2011, the Washington state Legislature passed ESSB 5834, which guaranteed that lodging taxes would fund King County cultural programs for the long-term by allocating 37.5 percent of lodging taxes beginning in 2021 for arts and culture.
8. The King County council has determined that public funding for cultural programs necessitates greater oversight and accountability to the public. To increase oversight and accountability, the council wishes to have the opportunity to annually review and accept the cultural development authority's budget while maintaining the authority's existing ability to

implement grant awards, projects and programs independently.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 14482, Section 34, and K.C.C. 2.46.180 are hereby amended to read as follows:

The cultural development authority shall establish a public art advisory committee to advise the authority's board regarding policies and public art, as set forth in K.C.C. 2.46.160. Committee members shall ~~((be conversant with))~~: have a demonstrated commitment to and knowledge of public art((;)); be active and experienced with community and civic issues and concerns((;)); and be sought from a range of professionals including artists, architects, landscape architects, arts administrators, urban planners and designers((;)) and community arts activists ((as well as business professionals and others)). The appointment process and terms of service shall be established by the cultural development authority as set forth in the authority's charter.

SECTION 2. Ordinance 14482, Section 38, and K.C.C. 2.48.065 are hereby amended to read as follows:

The cultural development authority shall establish an arts advisory committee to advise the authority's board regarding policies and cultural programs. Committee members shall ~~((be conversant with))~~: have a demonstrated commitment to and knowledge of arts practices and programs; be experienced with community issues and civic and concerns((;)); and be sought from a range of professionals including individual artists, arts administrators, educators and community arts activists ((as well as business professionals and others)). The appointment process and terms of service shall be established by the cultural development authority as set forth in its charter.

SECTION 3. Ordinance 14482, Section 39, and K.C.C. 2.48.075 are hereby amended to read as follows:

The cultural development authority shall establish a heritage advisory committee to advise the authority's board regarding policies and cultural programs. Committee members shall ~~((be conversant with))~~:

have a demonstrated commitment to and knowledge of heritage practices and programs; be experienced with community and civic issues and concerns; and be sought from a range of professionals including educators, heritage specialists, historians and community heritage activists ((as well as business professionals and others)). The appointment process and terms of service shall be established by the cultural development authority as set forth in its charter.

SECTION 4. Ordinance 14482, Section 40, and K.C.C. 2.48.085 are hereby amended to read as follows:

The cultural development authority shall establish a historic preservation advisory committee to advise the authority's board regarding policies and cultural programs. Committee members shall ~~((be conversant with ))~~: have a demonstrated commitment to and knowledge of historic preservation practices and programs; be experienced with community and civic issues and concerns; and be sought from a range of professionals including educators, historic preservationists, historians and community heritage activists ((as well as business professionals and others)). The appointment process and terms of service shall be established by the cultural development authority as set forth in its charter.

SECTION 5. Ordinance 14482, Section 5, as amended, and K.C.C. 2.49.020 are hereby amended to read as follows:

Words in this chapter have their ordinary and usual meanings except those defined in this section, which have, in addition, the following meanings. If there is conflict, the specific definitions in this section shall presumptively, but not conclusively, prevail.

A. "Board of directors" or "board" means the governing body vested with the management of the affairs of the cultural development authority.

B. "Director" means a member of the board of the cultural development authority.

C. "Bylaws" means the rules adopted by the county for the regulation or management of the affairs of the cultural development authority and includes all amendments adopted by the board or the county council.

D. "Charter" means the articles of organization of the cultural development authority adopted by the county and all amendments thereto.

E. "Cultural bonds" means bonds issued by the county before December 31, 2002, backed by hotel-motel tax revenues to support the construction of cultural facilities.

F. "Cultural development authority" or "authority" means the public authority created under this chapter and doing business as 4Culture.

G. "Cultural resources" means community and regional programs and projects relating to:

1. Performing, visual, literary and other arts;
2. Public and civic art;
3. Heritage;
4. Museum and archival collections;
5. Historic preservation;
6. Cultural education; and
7. Cultural organizations, institutions and attractions.

H. "Executive director" means the chief executive officer of the authority.

I. "Heritage" means King County's history, ethnic history, indigenous and traditional culture, folklore and historic and archaeological resources and those projects and programs initiated by the authority to preserve King County's heritage and to support community and regional heritage organizations and public agencies in those efforts.

~~((F))~~ J. "Historic preservation" means the preservation or conservation of the county's historic and archaeological resources and those programs and projects initiated by the authority to foster such preservation or conservation through nonregulatory activities such as interpretation, community education and outreach, cultural tourism and rehabilitation of historic resources.

~~((F-))~~ K. "Hotel-motel tax revenues" means funds designated for cultural purposes as described in RCW

67.28.180 and deposited into the arts and cultural development fund and used for the purposes described in K.C.C. chapters 2.48 and 4.42.

~~((K-))~~ L. "Resolution" means the form of action taken by the board ~~((of the cultural development authority))~~.

SECTION 6. Ordinance 14482, Section 7, as amended, and K.C.C. 2.49.060 are hereby amended to read as follows:

The charter of the cultural development authority, as set forth in Attachment A to ~~((Ordinance 18513))~~ this ordinance, is hereby approved. The clerk of the council shall, within ten days of ~~((May 12, 2017))~~ the effective date of this ordinance, issue the charter in duplicate originals, each bearing the county seal attested by the clerk of the council. The clerk of the council shall file and record one original charter with the records and licensing services division and provide one original charter to the county executive on behalf of the cultural development authority. The county may amend the charter by ordinance after providing notice to and an opportunity for the directors to be heard and present testimony.

SECTION 7. K.C.C. 2.49.070 is hereby decodified.

SECTION 8. Ordinance 14482, Section 9, and K.C.C. 2.49.080 are hereby amended to read as follows:

A board consisting of fifteen directors and five ex officio members, as provided in the charter, is hereby established to govern the affairs of the cultural development authority. ~~((The directors shall be appointed by the county executive and serve their terms as provided in the charter.))~~ Appointments occurring as a result of a vacancy or expired term shall be filled in accordance with the charter. Appointments shall be subject to confirmation by the county council. All corporate powers of the authority shall be exercised by or under the authority of the board of directors, except those reserved for the county council under this chapter. The business, property and affairs of the authority shall be managed under the direction of the board, except as may be otherwise provided for by law or in the charter.

NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 2.49 a new section to read as

follows:

An executive director shall be the chief executive officer of the cultural development authority as provided in the bylaws. The executive director shall be appointed by the executive, subject to confirmation by motion by the council. The executive director shall be recruited and recommended for selection by the board of directors through the process established in the authority's bylaws.

SECTION 10. Ordinance 14482, Section 10, and K.C.C. 2.49.090 are hereby repealed.

SECTION 11. Ordinance 14482, Section 15, and K.C.C. 2.49.100 are hereby amended to read as follows:

If, after a full public hearing, the council for any reason determines that any or all of the directors or executive director should be removed from office, the council may by ordinance remove the director, directors or executive director((s)). The term of any director removed under this section expires when the removal ordinance takes effect. Vacancies created under this section shall be filled in the manner provided in the charter.

SECTION 12. Ordinance 14482, Section 11, and K.C.C. 2.49.110 are hereby amended to read as follows:

The ~~((initial))~~ bylaws of the authority, as set forth in Attachment B to ~~((Ordinance 14482))~~ this ordinance, are hereby approved. The board may alter, amend or repeal the bylaws or adopt new bylaws, except as otherwise provided in this chapter. The bylaws shall be consistent with the charter. The county may amend the bylaws by ordinance to conform the bylaws to amendments to the charter and only after the council has provided notice to the board and an opportunity for any or all of the directors to present testimony.

SECTION 13. Ordinance 14482, Section 17, and K.C.C. 2.49.160 are hereby amended to read as follows:

A. By April 15 of each year, the authority shall submit an annual report to the county executive and the county council containing:

- ~~1. ((, income and expenditures and changes in its financial position during the previous year;~~
- ~~2.)) A summary of significant accomplishments;~~
- ~~((3.)) 2. An updated estimate of expenditures for the current fiscal year; ((A list of depositories used;~~
- ~~4. A projected operating budget for the current fiscal year;~~
- ~~5.)) 3. A summary of cultural programs, public art projects and all other projects and activities to be undertaken during the current year; and~~
- ~~((6.)) 4. Other information as may be required in the charter of the authority.~~

B.1. The authority shall meet with the county council's committee of the whole two times per year, once to discuss the authority's annual report and once to discuss the authority's plans and proposed expenditures for the following year.

2. The authority shall meet:
  - a. at least one time per year with the county executive; and
  - b. at least one time per year with directors and administrators of county departments and agencies that interface with the authority.

C. The authority shall respond to requests for additional information from the executive or from the council. The council shall make its request by motion.

SECTION 14. Ordinance 14482, Section 18, as amended, and K.C.C. 2.49.170 are hereby amended to read as follows:

~~((A. On January 1, 2003, King County shall transfer to the authority balances in the following funds, reserving only sufficient funds to meet current county obligations:~~

- ~~1. All hotel-motel tax revenues designated by the state of Washington and appropriated by the county council for cultural purposes in King County, including, but not limited to, all encumbered and unencumbered hotel-motel tax revenues in the arts and cultural development fund;~~
- ~~2. All current expense fund revenues designated or appropriated for cultural purposes, including, but~~

not limited to:

~~a. fees for all government-to-government agreements for public art; and~~

~~b. the fund balance in the arts and cultural education fund (116);~~

~~3. All state and federal funds for cultural purposes, other than those listed in subsection A.1 of this section; and~~

~~4. All other funds and fees designated or appropriated for cultural purposes, except for funds that contain bond revenues and excess interest earnings as of December 31, 2002.~~

~~B. In addition to the transfer of fund balances on January 1, 2003, described in subsection A of this section, King County shall transfer future fund balances as follows:))~~ A. At least ninety-five days before the end of each fiscal year, the cultural development authority shall transmit its budget for the following fiscal year to the clerk of council in both electronic and hard copy form. The clerk shall distribute the budget to all councilmembers and the lead of the budget and fiscal management committee or its successor committee. The cultural development authority shall transmit its budget to the county council after it has been approved by the cultural development authority board.

B. The cultural development authority budget shall identify the budgeted operating expenditures and full-time equivalent positions for the following fiscal year and the budgeted capital expenditures for the next six fiscal years. The cultural development authority shall also transmit supporting data, including but not limited to a statement of assets and liabilities, a description of significant changes from the previous fiscal year budget and a financial plan that includes actual expenditures, revenues and reserves for the preceding fiscal year and estimates of all expenditures, revenues and reserves for the current fiscal year and the following five years.

C. If the council accepts the cultural development authority budget by motion before the end of the fiscal year, in the following fiscal year, the county shall transfer to the authority balances in the following moneys:

1. Hotel-motel tax revenues designated by the state of Washington for cultural purposes in King

County shall be transferred to the authority within ten business days of receipt by King County from the state of Washington and appropriated by the county council. ~~((By December 1, 2002, the King County office of budget and the office of cultural resources shall develop a schedule of the transfers.))~~ Twice each year while cultural bonds remain outstanding, the authority shall transfer back to King County sufficient hotel-motel tax revenues to allow the county to make required payments on the bonds;

2. Current expense amounts appropriated to the arts and cultural development fund, which shall be transferred to the authority not later than January 10 of the year for which those amounts have been appropriated;

3. Public art revenues, which shall be transferred to the authority not later than February 1 of the year for which those revenues have been appropriated;

4. Except for funds listed in subsection ~~((B-))~~C.1. of this section, state and federal funds for cultural purposes, which shall be transferred to the authority within ten business days of receipt by King County of the funds from the federal or state governments; and

5. All other funds and fees appropriated to the arts and cultural development fund and for cultural purposes, which funds and fees shall be transferred to the authority within ten business days of receipt by King County.

D. If the council does not accept the cultural development authority budget for the next fiscal year by motion before December 31 of the current fiscal year, then, in the next fiscal year, the county shall not transfer to the authority any balances in any of the funds referenced in subsection C.1. through C.5. of this section until after the council accepts by motion a cultural development authority budget.

~~((C. King))~~ E. The ~~((C))~~ county shall not transfer moneys and fees designated or appropriated to the King County landmarks commission for land use regulation and archaeological management purposes.

SECTION 15. Ordinance 14482, Section 19, and K.C.C. 2.49.180 are hereby amended to read as follows:

~~((A. On January 1, 2003, the county shall transfer without charge county personal property used by the office of cultural resources on December 31, 2002, to the cultural development authority. The property shall include, but not be limited to, computers and software, electronic equipment, telephones and office furnishings, equipment, materials and supplies. The office of cultural resources and the office of budget shall complete a property transfer inventory on or before December 1, 2002, and the inventory shall be used to effect the transfer.~~

B.)) The county shall allow access by the cultural development authority to the county's information and telecommunications systems, including, but not limited to, telephone service, voice mail, electronic mail and the ~~((county wide))~~ countywide area network, including all databases required by the cultural development authority to effectively carry out its work. The cultural development authority shall make payment for telephone system services upon billing by the county. ~~((By December 1, 2002, the King County office of budget and office of cultural resources shall develop a schedule for the payments.))~~ King County shall allow the cultural development authority access to the wide area network at no charge.

~~((C. The county shall allow the cultural development authority to use the office space in the Smith Tower used by the office of cultural resources on December 31, 2002, for the remaining period under the county's lease for the space. The county shall determine through its annual budget process whether to pay the lease cost with current expense fund or other revenues. At the end of the lease period, the authority shall relocate to office space it acquires at its own expense or commence to pay for office space that, if available, may be provided by the county to the authority.))~~

SECTION 16. Ordinance 14440, Section 3, and K.C.C. 2.49.200 are hereby amended to read as follows:

A. Hotel-motel revenues deposited in The King County arts and cultural development fund, created under ~~((K.C.C. 4.08.190))~~ K.C.C. 4A.200.140, shall be administered by the cultural development authority.

B. Hotel-motel revenues deposited in the King County arts and cultural development fund shall be used

to support the cultural programs described in K.C.C. chapter 2.48: cultural facilities; cultural education; special projects; and sustained support. The hotel-motel revenues in the fund shall also support related administration of those programs by the cultural development authority.

~~C. ((Through December 31, 2012, at least forty percent of the hotel-motel revenues appropriated to the arts and cultural development fund and transferred to the cultural development authority shall be deposited in an account and used to establish cultural endowment. Principle and interest shall be managed by the cultural development authority in accordance with RCW 67.28.180(3)(a).~~

~~D.))~~ After allocating the hotel-motel portion of the arts and cultural development fund to administer cultural programs, the cultural development authority shall divide the hotel-motel revenues in the arts and cultural development fund between arts programs and heritage programs, but at least twenty percent of the revenue shall be allocated to heritage programs.

~~((E. Beginning January 1, 2002, using revenues generated in 2001, outstanding debt service obligations shall be financed from hotel-motel revenues in the arts and cultural development fund. The obligations incurred before December 31, 2002, shall be managed by the department of executive services and paid by the cultural development authority.~~

~~F.))~~ D. After deducting the amount necessary to meet debt service obligations, the cultural development authority shall allocate hotel-motel revenues intended to support arts programs from the arts and cultural development fund as follows:

1. For cultural facilities and sustained support, eighty percent of remaining arts program revenues, but sustained support shall receive at least thirty percent of the eighty percent; and
2. For special projects and cultural education, twenty percent of remaining arts program revenues, but special projects shall receive at least thirty-four percent of the twenty percent.

~~((G.))~~ E. After deducting the amount necessary to meet debt service allocations, the cultural development authority shall allocate hotel-motel revenues intended to support heritage programs from the arts

and cultural development fund as follows:

1. For cultural facilities and sustained support, seventy percent of remaining heritage program revenues, but sustained support shall receive at least twenty percent of the seventy percent;

2. For special projects, thirty percent of remaining heritage program revenues, and

((H.)) F. Hotel-motel revenues from the arts and cultural development fund shall not be used to support services and programs to be provided by the King County landmarks commission for land use regulation and archaeological resource management purposes as described in K.C.C. chapter 20.62.

SECTION 17. Ordinance 14482, Section 58, as amended, and K.C.C. 4.40.015 are hereby amended to read as follows:

A. All capital improvement projects that are publicly accessible and visible, or for which there is a need for mitigation, shall contribute to the county's public art program.

1. The amount of the annual appropriation for public art shall be equal to one percent of the eligible project costs of those capital improvement projects that meet the criteria of public visibility and accessibility or need for mitigation. For the purposes of calculation, eligible project categories shall include capital improvement program projects for new construction, reconstruction or remodeling of buildings, parks and trails, commemorative structures, pedestrian and vehicular bridges, surface water management projects, wastewater treatment projects, transit facility construction projects and solid waste transfer stations.

2. The following project categories shall be considered ineligible and may be excluded from the public art program calculation base: roads; airport runways; sewers; and solid waste landfills. This ineligibility shall not preclude a client department, in cooperation with the cultural development authority, from proposing a public art project for a road, airport runway, sewer or solid waste landfill project that presents an opportunity for the inclusion of public art.

3. At a minimum, the amount budgeted for public art in a capital improvement project shall be equal to one percent of the following project elements: conceptual design, design, contracted design, preliminary

engineering, construction, contingency, county force design and project administration and construction engineering. Costs associated with the predesign phase of the county's capital planning projects meeting the above criteria and anticipated to result in construction, shall be included in the calculation for public art.

4. The following project elements may be excluded from the budget calculation for public art: acquisition equipment and furnishings; and county force acquisition. Asbestos abatement may also be excluded from the budget calculation for art when the costs for asbestos abatement have been calculated and a line item budgeted for asbestos abatement as been established within the project budget.

5. In all cases, where a capital improvement project has a scope of work that includes both eligible and ineligible project elements and eligible and ineligible project categories, the budget for public art shall be calculated, at a minimum, in the eligible portions of the project.

B. At the time a capital improvement project is proposed, the client department shall calculate and include a budgeted line item for public art in each eligible project described in this section. The executive's budget representative shall confirm the calculations with the cultural development authority and include the agreed-upon appropriations for public art in the executive's proposed budget. The amounts budgeted for public art in particular projects may be adjusted to reflect council changes to the county capital improvement program budget or supplemental budgets. The appropriation for public art shall be transferred to the arts and cultural development fund and from there to the cultural development authority as soon as the appropriation is made for the capital improvement project, and as soon as funds are available, except as otherwise provided in K.C.C. 2.49.170.

C. The source of the funds shall not affect the calculation for public art for a capital improvement project unless the conditions under which the revenue is made available prevent its use for artistic purposes. In this case, the revenue shall be excluded from the eligible project costs on which the one percent calculation for art is based.

D. A policy is hereby established to direct the pooling of all public art program revenues on a

departmental basis. Interest generated by public art revenues shall not be pooled on a departmental basis. However, interest from all revenues shall be pooled collectively and used for the purposes established in this section.

Pooling affords the opportunity to look at the needs of the county as a whole and use the public art revenues only in those projects that may have the greatest impact on communities or offer the best opportunities for artist involvement. Pooling on a departmental basis affords the opportunity for the cultural development authority and client departments to work collaboratively on projects that reflect the missions and goals of individual departments and to ensure that public art projects are adequately funded. The decision regarding capital improvement projects that will include a public art project shall be determined jointly by the cultural development authority and the client department according to the procedures and criteria in this section and K.C.C. 2.46.150.

E. Revenues shall support the following uses:

1. The selection, acquisition and display of works of art, that may be an integral part of the project or placed in, on or about the project or other public space;
2. Artist fees, design, planning and predesign service contracts and commissions;
3. Expenses for technical assistance provided by either architects or engineers, or both, and to artists in order to design, document or certify the artwork;
4. Repair and maintenance of public artworks accessioned into the county's public art collection to the extent permissible under generally accepted accounting principles, grants, contracts and law;
5. Public art program administrative expenses relating to acquiring, developing or maintaining public art to the extent permissible under generally accepted accounting principles, grants, contracts and law;
6. Participation by citizens or costs of communicating with and receiving input from citizens, working with professional artists, introduction of public art to children, and education of the public about the county's rich cultural and artistic heritage;

7. Documentation and public education material for the public art program;
8. Liability insurance for artists; and
9. Pilot projects approved by the cultural development authority.

SECTION 18. Ordinance 17527, Section 57, as amended, and K.C.C. 4.40.110 are hereby amended to read as follows:

In the case of any county construction project that meets the eligibility criteria for public art established in K.C.C. 4.40.015 that involves the use of general obligation bond proceeds, the resolution, resolutions, ordinance or ordinances submitted to the voters or the council shall include an allocation for public art equal to one percent of the eligible project cost. Bond revenues for public art shall be transferred to the cultural development authority as described in K.C.C. 4.40.015 to the extent consistent with arbitrage requirements and other legal restrictions, except as otherwise provided in K.C.C. 2.49.170.