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Asmara M. Tekle

INTRODUCTION

People are flocking to the American city to delight in its charms and to feast on its seductions. Yet, many an American urban streetscape can only be characterized as soul-crushing and distressed—scarred by grey, lifeless street lights, beat-up, pock-marked wooden utility poles, and traffic signals hanging from wires strung out like last year’s Christmas lights. Many hours of the day, American urban streets

1 Professor, Texas Southern University, Thurgood Marshall School of Law. The author is grateful for feedback received at the 2014 meetings of the Association of Law, Property, and Society (ALPS), the Lutie A. Lytle Writing Workshop, and a faculty workshop at the William H. Bowen School of Law at the University of Arkansas. The author also thanks TMSL librarians, Danny Norris, Daniel Drackman, Nanette Collins, Itunu Sofidiya, for research assistance, as well as to Tre Meredith, Class of 2016 at Thurgood Marshall School of Law. Finally, the author is grateful to Cassandra L. Hill, Tom Kleven, Spearit, and Katherine T. Vukadin for comments.

2 See J. Peter Byrne, The Rebirth of the Neighborhood, 40 FORDHAM URB. L.J. 1595, 1595–96 (2013) (noting that “many cities have experienced phenomenal population growth and economic development over the past decade. Washington, D.C. has reversed a population decline dating to 1950, and many other cities, from Boston to San Diego, and from Seattle to Miami, have seen renewed investment in residential, retail and business real estate, often in areas recently blighted with abandoned warehouses and decaying housing.”). But see Thomas B. Edsall, Opinion, Will Liberal Cities Leave the Rest of American Behind?, N.Y. TIMES (Apr. 29, 2014), http://www.nytimes.com/2014/04/30/opinion/edsall-will-liberal-cities-leave-the-rest-of-america-behind.html (comparing the greater resources and more liberal policies of cities such as Minneapolis, Boston, New York City, Seattle, Pittsburgh, and Santa Fe to lesser-resourced cities such as St. Louis, Baltimore, Camden, Birmingham, and Peoria); Sabrina Tavernise, A Gap in College Graduates Leaves Some Cities Behind, N.Y. TIMES (May 30, 2012), http://www.nytimes.com/2012/05/31/us/as-college-graduates-cluster-some-cities-are-left-behind.html?_r=0 (noting that in contrast to cities such as Raleigh, North Carolina, San Francisco, and Stamford, Connecticut, cities such as Dayton, Bakersfield, California, and Youngstown, Ohio, are struggling in part because of a deficit of college graduates in this post-manufacturing era). See generally BRUCE KATZ & JENNIFER BRADLEY, THE METROPOLITAN REVOLUTION: HOW CITIES AND METROS ARE FIXING OUR BROKEN POLITICS AND FRAGILE ECONOMIES (2013) (discussing examples of economic, social, and political transformations in American cities and how they attract new migrants).

3 See generally CITY OF AUSTIN ECON. GROWTH & REDEVELOPMENT CULTURAL ARTS DIV., AUSTIN ART IN PUBLIC PLACES RESOURCE GUIDE (2012), available at https://www.austintexas.gov/sites/default/files/files/Redevelopment/aipp_resourcguide_512.pdf (last visited June 17, 2016) (explaining that a streetscape encompasses the public right-of-way, and that enhancements to the streetscape often focus on the “pedestrian experience” and might include improvements to sidewalks, trees, light fixtures, signs, and street furnishings). This Article and many sources often use the term “street” as shorthand for the “streetscape.” Both convey an image of places where people can gather, not just their motor vehicles. E.g., id.
are bereft of people and of street life—and the retail and rooftops that tend to follow—as they are of the pedestrian-oriented design, architecture, transportation, and planning that would enhance vibrancy.4

The physical environment is arguably a mirror of our collective selves—who we are and what we value;5 yet, frankly, in the face of these urban streetscapes of struggle, it's not a good look. More importantly, these streetscapes lay bare values that prioritize private vehicles over people and personal retreat over community, arguably breeding alienation and social isolation.6 They also subtly communicate to the citizenry its seeming lack of value—that it is just not worth the modest price of beauty.

In contrast, municipal percent-for-art ordinances have done wonders to beautify the urban public realm by providing a dedicated, consistent stream of taxpayer-supported funding for public art in public development7 such as fire stations, police stations, and libraries.8 Many operate by mandating that a percentage (anywhere from 0.5% to 2%) of capital improvement funds or funds for a capital improvement project, such as the construction or renovation of buildings or conventional public spaces like parks, airports, and convention centers, be slated

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4 See generally JAN GEHL, CITIES FOR PEOPLE (2010) (discussing the inclusion of attractive and welcoming facades and storefronts, traffic engineering that accommodates safely and equally all users of the street, including private motor vehicles, riders of public transport, cyclists, children, senior citizens, the able-bodied, and pedestrians with physical challenges people-oriented design and planning); ALEXANDER GARVIN, THE AMERICAN CITY: WHAT WORKS, WHAT DOESN'T 3, 10 (1996) (stating that design is one of the six “ingredients” (along with others such as market, location, and financing) for a public urban planning intervention to succeed as measured by a “sustained and widespread private market reaction” to it).
5 See Spiro Kostof, His Majesty the Pick: The Aesthetics of Demolition, in STREETS: CRITICAL PERSPECTIVES ON PUBLIC SPACE 9, 18 (Zeynep Celik et al. ed., 1994); see, e.g., CITY OF AUSTIN ECON. GROWTH & REDEVELOPMENT CULTURAL ARTS Div., supra note 3, at 4 (noting that “[p]ublic art . . . generally serves as a reflection of the city’s values, collective memory, and diversification”); CLEVELAND, OHIO, CODE OF ORDINANCES § 186.01(b) (2015) (reasoning that a reason for the percent-for-art ordinance is “[t]o give expression to the history, values, identity and diversity of the City, its neighborhoods, its districts, its buildings and places.”).
7 See generally Funding Sources for Public Art, PROJECT FOR PUB. SPACES, http://www.pps.org/reference/artfunding/ (last visited June 17, 2016). The issue of the funding of public art in private development is beyond the scope of this Article, yet increasingly there are funding and zoning regimes aimed at addressing this issue. For example, these include public art trust funds to which private developers contribute money in exchange for variances. See id.
8 See Stephen R. Miller, Percent-For-Art Programs at Public Art’s Frontier, 35 ZONING PLAN. L. REP., May 2012, at 1, 1 (“Fifty-eight percent of public art programs received revenues from a percent-for-art program. Of those programs receiving such percent-for-art funding, 73% of the programs’ total funding arose from the percent-for-art revenue sources. This indicates that percent-for-art programs are not only the dominant source of funding for government-funded public art, but for the field as a whole. This is an inversion of arts funding generally where private funding is three times that of public funding. Because of public art’s unusual funding, the structure of percent-for-art programs has an inordinate effect on how public art is deployed in our communities that does not affect general arts funding.”).
for public art.9 As a result, it is a rare big-city airport, for example, that has no art to provide a dash of whimsy, amusement, and delight en route to one’s gate or, more temptingly, the airport shops or froyo stand.

In spite of percent-for-art ordinances, there is much work to do to rectify these aesthetically “mean streets.”10 This Article argues that the street, and more precisely the streetscape, is as much urban public space and urban public realm as the more conventional park, airport, convention center or local police station.11 Indeed, streets are the city’s largest land use,12 and until the private automobile’s hegemony

9 See id. (“Percent-for-art programs, in essence, require that a percentage of a development project’s overall construction costs, typically between 0.5 and 2.0 percent, are set aside to fund publicly-accessible art.”). Thirty-five out of the fifty U.S. largest cities have percent-for-art ordinances. See infra Part II. Jurisdictions mandating 2% funding include El Paso and Ft. Worth, Texas; San Francisco, Sacramento, and San Jose (redevelopment authority projects), California; and Portland, Oregon. El Paso, Tex., CODE OF ORDINANCES § 2.40.070(C)(1) (2016); FORT WORTH, TEX., CODE OF ORDINANCES § 2-61 (2014); S.F., CAL., ADMIN. CODE § 3.19(a) (2015); SACRAMENTO, CAL., CITY CODE § 2.84.120(A) (2016); SAN JOSE, CAL., MUNICIPAL CODE § 22.08.02(B) (Supp. 2015) PORTLAND, OR., CITY CODE § 5.74.030 (2015). Houston accords 1.75% of funds to public art. CITY OF HOUS., TEX., 2011-2014 CAPITAL IMPROVEMENT PLAN 39, http://www.houstontx.gov/cip/10cipadpft/vol1/civicart.pdf. 1.5% jurisdictions include San Diego, California; Oakland, California; Cleveland, Ohio; and Atlanta, Georgia. San Diego, Cal., Council Policy 900-11 (Apr. 27, 2004); OAKLAND, CAL., CODE OF ORDINANCES § 15.70.120(A) (2016); CLEVELAND, OHIO, CODE OF ORDINANCES § 186.03(a) (2015); ATLANTA, GA., CODE OF ORDINANCES § 46-76 (2016). Chicago allocates 1.33% of the budget for an eligible capital project to public art. CHI., ILL., MUNICIPAL CODE § 2-92-090 (2016). 1% regimes include Charlotte, North Carolina; Oklahoma City, Oklahoma; Nashville, Tennessee; Pittsburgh, Pennsylvania; Milwaukee, Wisconsin; Seattle, Washington; Kansas City, Missouri; Baltimore, Maryland; Phoenix, Arizona; Los Angeles, California; Las Vegas, Nevada; San Jose, California (city capital improvement projects). CHARLOTTES, N.C., CODE OF ORDINANCES § 15-244(a) (2016); OKLA. CITY, OKLA., MUNICIPAL CODE § 38-488(a) (2016); NASHVILLE, TENN., CODE OF ORDINANCES § 5-10.020 (2016); PITTSBURGH, PA., CODE OF ORDINANCES § 175.08(a) (2016); MILWAUKEE, WIS., FINANCE CODE § 304-27(2)(a) (2013); SEATTLE, WASH., MUNICIPAL CODE § 20.32.030 (2016); Kan. City, Mo. Council Res. No. 52393 (Jan. 23, 1981); BALT., MD., CITY CODE § 5-21-16(A) (2007); PHX., ARIZ., CITY CODE § 2-700(A) (2016). L.A. DEP’T CULTURAL AFF., CITY PROGRAMS FOR FUNDING OF PUBLIC ART PROJECTS (2006), http://clkrec.lacity.org/onlinedocs/2005/05-2733_rpt_cad.pdf, LAS VEGAS, NEV., CODE OF ORDINANCES § 2.34.140(B) (2016). Jurisdictions providing less than 1% include Jacksonville, Florida (0.75%) and Raleigh, North Carolina (0.5%). JACKSONVILLE, FLA., CODE OF ORDINANCES § 126.911(a) (2016); RALEIGH, N.C., CITY CODE § 9-10007 (2011). Within the most populous fifty cities in the U.S., fifteen jurisdictions appear to have no percent-for-art ordinances, including Louisville, Kentucky; Mesa, Arizona; Tucson, Arizona; Fresno, California; Long Beach, California; Virginia Beach, Virginia; Colorado Springs, Colorado; Indianapolis, Indiana; Columbus, Ohio; Boston, Massachusetts; Wichita, Kansas; Detroit, Michigan; New Orleans, Louisiana; Washington, D.C.; and Omaha, Nebraska. Washington, D.C. does not have a percent-for-art ordinance per se, but the D.C. Commission on Arts and Humanities funds public art projects on the basis of grants from a public art fund to which sales tax revenues are allocated. D.C. CODE § 39-205.01 (LEXIS through Apr. 5, 2016); D.C. Comm’n on Arts & Humanities, Public Art, D.C.gov, http://dcarts.dc.gov/service/public-art (last visited June 19, 2016).

10 I use this term throughout the Article, playing on Martin Scorsese’s breakout 1973 film, starring a baby-faced Robert De Niro and Harvey Keitel. MEAN STREETS (Warner Brothers 1973).

11 Cf. ALLAN B. JACOBS, GREAT STREETS 6 (1993) (“Streets are almost always public: owned by the public, and when we speak of the public realm we are speaking in large measure of streets.”).

12 See infra text accompanying notes 67-70.
of it not too long ago, were prime places of public gathering and community. They therefore merit as much aesthetic attention, and more importantly, as dedicated and consistent a source of public funding, as these other areas of the urban public realm.

Accordingly, this Article advocates that the scope of percent-for-art ordinances be broadened to encompass the streetscape as well as the street furnishings that comprise much of it. These street furnishings are the often-overlooked utilitarian elements of the modern American street, responsible for the people’s quiet bidding of collecting trash and recyclables (rubbish and recycling bins), lighting the way (street and pedestrian lights), protecting us from the elements (bus and transit shelters), lending a hand (benches), and ensuring steadiness on our feet (pavement). They are a so-old-its-new medium of public art that integrates

13 See infra text accompanying notes 71–81.
14 Cf. S.D. Adshead, The Decoration and Furnishing of the City: No. XI—Utilitarian Furnishings, 4 TOWN PLAN. REV. 192, 192 (1913) [hereinafter Adshead, Utilitarian Furnishings] (“But there are other features [of the city] whose function is not merely to enraputhe emotions [such as traditional public art like statutory and monuments], but which, set up to contribute to the work-a-day needs of the citizen, have at the outset a definite utilitarian purpose to perform.”).
15 Other types of street furnishings include bollards, parking meters, gates and fences, traffic signals, street signs, planters, manhole covers, bike racks, and tree grates. A bollard is “a short post around 3 feet tall, usually intended to provide traffic control. Placed parallel with the road, they prevent vehicles from being parked on curbs and accidentally entering the pedestrian right of way. . . . [They] provide both a visual barrier and a structural deterrent to vehicles.” BILL MAIN & GAIL GREET HANNAH, SITE FURNISHINGS 150–51 (2010).
16 See Adshead, Utilitarian Furnishings, supra note 14, at 192–94; see also CHARLES MULFORD ROBINSON, MODERN CIVIC ART: THE CITY MADE BEAUTIFUL 138 (1903) (“There still remain other factors to mar the prospect [the street] or to adorn it. These are the street furnishings—details, indeed, but in as far as civic art is art it does not dare to scorn them. Rather, it will expend upon them that loving care, that fond attention, which art must ever give to the particulars which fill in and complete the picture after the main lines have been laid down and the dominating features are established.”); JOHN WILLETT, ART IN A CITY 231 (1967) (citing to L’art public (Public Art), a European public art scholarly review advocating for the improvement of standards for not only traditional monumental public art, but also of street furniture generally and, particularly, telegraph poles and street lamps).
17 See MALCOLM MILES, ART, SPACE AND THE CITY 1, 4 (1997) (noting that public art can be defined by its sitting outside of conventional locations, such as museums and galleries, and by being available to the public without a fee); see also TOM FINKELPEARL, DIALOGUES IN PUBLIC ART x–xi (2000) (defining public art through a class lens and arguing that “it is art that includes people from the lower classes in its creation, consumption, or both [though it does not exclude other classes]” in contradiction to the stereotyped consumption of art by socioeconomic elites such as museum attendees and art collectors); HILDE HEIN, PUBLIC ART: THINKING MUSEUMS DIFFERENTLY 49–53 (2006) (defining public art by its intended audience noting that it “gathers a congregation” moved to protest or agree, as opposed to the intimate audience of private art); CHER KRAUSE KNIGHT, PUBLIC ART: THEORY, PRACTICE AND POPULISM 20, 22 (2008) (focusing on the message of public art and rejecting “reductive” definitions in which funding, location, and cost are central, instead focusing on “its ability to stimulate the intellects, senses, and emotions of viewers regardless of location”; also noting that the art is intended to “edify, commemorate, or entertain,” and its message is intended to be understood by a general audience). Cf. Robin Pogrebin, Museum Director to be Commissioner of Cultural Affairs, N.Y. TIMES (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/arts/design/mayor-de-blasio-names-tom-finkelpaar-of-the-queens-museum.html (noting that upon being named New York City’s Commissioner
form and function, utility and beauty, transcending the banality of conventional and functionless public art such as “plop” public art and expressions of state power such as the man-on-a-horse,\textsuperscript{19} statutory,\textsuperscript{20} and the cannon-in-the-park.\textsuperscript{21}

Ronald Fleming, the noted thinker and practitioner of public art, urban design, and historic preservation,\textsuperscript{22} notes that a measure of the maturity of a public art program is its move “from large stand-alone works by big-name artists” to modest projects such as “artist-designed street furniture.”\textsuperscript{23} On the other hand, this public art is infinitely more ordinary than famous examples of public art such as the Eiffel Tower, Statue of Liberty, AIDS Memorial Quilt,\textsuperscript{24} or Vietnam Veterans Memorial.\textsuperscript{25}
This change in scope of percent-for-art legal regimes, along with the addition of components such as placemaking,\textsuperscript{26} non-visual arts such as soundscapes or performing art,\textsuperscript{27} and ephemeral or temporary,\textsuperscript{28} and interactive art,\textsuperscript{29} amounts to a micro-design intervention in the streetscape. This artistic intervention enhances the value added to the street by reflecting the local history of a site or its surrounding community (placemaking)\textsuperscript{30} or injecting variety, humanity, dignity, whimsy, and a sense of play into it. It is thus distinguished, for example, from the current fad of injecting into the streetscape ersatz elements of days gone by, such as faux-Victorian street lamps.\textsuperscript{31}

This Article unpacks these topics in several parts. Part I of this Article delves into the literature of urban planning and public art and provides a multi-disciplinary foundation for analyzing the intersection of these subjects with law. For instance, it peeks into urban planning and public art by discussing the primacy of the street in the nature of the city, the evolution of the streetscape and urban public art, and the integration of function and form in human settlement. Part II then concentrates on one aspect of public art law, percent-for-art ordinances, and

\textsuperscript{26} RONALD LEE FLEMING & RENATA VON TS HARNER, PLACEMAKERS 1-2 (1987) (letting us know “we have arrived somewhere” by transforming monotonous, placeless urban spaces into vibrant public places (quoting Roger Kennedy, director of the National Museum of American History)); id. at 8 (stating that “[p]lacemaking should be the handmaiden of urban design” and has four objectives: providing direction, creating connection, strengthening site identity, and animating space). See generally What is Placemaking?, PROJECT FOR PUB. SPACES, http://www.pps.org/reference/what_is_placemaking/ (last viewed June 17, 2016).

\textsuperscript{27} Miller, supra note 8, at 7 (“An increasing number of public artists are looking to utilize our ability to transport sound—through iPods and Smartphones—to create soundscapes for walking through the city. Such ‘cinematic listening’ creates a new experience of our environment through site-specific music.”).

\textsuperscript{28} E.g., id. at 6 (discussing the Tribute in Light memorial in New York City, “which temporarily sent two towers of light into the space” where the World Trade Center towers once stood). Cf. id. (“The rise of the ephemeral and interactive is likely the most important trend in public art . . . . The emphasis of public art, increasingly, is to work with and celebrate the transience of city experiences.”).

\textsuperscript{29} E.g., WILLET, supra note 16 (noting to L’art public (Public Art)’s advocacy for the improvement of standards for not only traditional monumental art, but also of street furniture generally and particularly telegraph poles and street lamps). An example of interactive art is Cloud Gate in Chicago’s Millennium Park, which is a sculpture but “takes on a fun-house mirror effect [to visitors] when viewed up close.” Miller, supra note 8, at 6. The idea of construing street furniture as a media for public art is not a new one.

\textsuperscript{30} See, e.g., FLEMING, supra note 23, at 244 (“Some of the best examples of place-related street furniture tell specific stories about their sites, reiterating or reinforcing information that was already known about the place.”).

\textsuperscript{31} See id. (“This new wave of artist-designed street furniture is in part a reaction to the mass-produced faux-Victorian street furniture purchased in the 1970s, 1980s, and 1990s as part of main-street revitalization projects. Some of these projects are recognized to be already out of style, as this main-street aesthetic is, rather ironically, already dated.”). But cf. CLIFF MOUGHTIN ET AL., URBAN DESIGN: ORNAMENT AND DECORATION 130 (2d. ed. 1999) (noting that in some historic areas, “the Victorian lamppost has been adapted to or copied for use with electric street lighting with some success.”).
surveys them in the nation's fifty largest cities.\textsuperscript{32} This part asserts that a number of these regimes are normatively biased against the street and streetscape as public space and its utilitarian furnishings as public art. In contrast, several regimes are at the vanguard of embracing these ideas in their percent-for-art funding schemes. Part III has a prescriptive focus, weighing the social, aesthetic, and economic costs and benefits of the expansion in scope of percent-for-art ordinances to include the streetscape and street furniture. Part III also suggests additional components to these legal regimes, such as placemaking, non-visual, and ephemeral art.

To be sure, the idea that street furniture has utilitarian \textit{and} expressive or aesthetic potential is not novel. A century ago, urban planners and scholars of public art were writing that just because street furniture was functional, did not mean that it had to be designed

in the crudest way. Because these objects have form and colour they at once assume expression, they fire the imagination and like the scent of a city set the mind running on associations of ideas. They arouse emotions which may be consciously or but sub-consciously felt. It is in endowing such things with form and colour that we announce their expression, and it is here that the artistic faculty of their designer is called into play; and therefore it is as necessary to pay attention to the design of these utilitarian features as it is to those others [such as more traditional forms of public art] whose function is purely aesthetic.\textsuperscript{33}

In the 1960s, August Heckscher, the Kennedy administration's special consultant on the arts as well as a former Administrator of Cultural Affairs and

\begin{footnotesize}
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\item\textsuperscript{33} Adshead, \textit{Utilitarian Furnishings}, supra note 14, at 192; see also Robinson, supra note 16, at 138 ("[T]here still remain other factors to mar the [street] or to adorn it. These are the street furnishings—details, indeed, but in as far as civic art is art it does not dare to scorn them. Rather, it will expend upon them that loving care, that fond attention, which art must ever give to the particulars which fill in and complete the picture after the main lines have been laid down and the dominating features are established."); Willett, \textit{supra} note 16, at 231.
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Parks Commissioner of New York City,34 advocated similarly.35 In the late twentieth century, street furniture came to be seen as another medium for public art.36 The placemaking possibilities of street furnishings were also recognized.37 Fleming writes that street furnishings can lend meaning and continuity to a space38 and translate a site’s narrative into tangible, utilitarian form.39

Today, cities use the expressive and placemaking potential of street furnishings in patchwork fashion—in one or two types of street furniture, in certain urban districts, or in “privately owned public spaces” such as corporate plazas or private university campuses.40 For instance, in Chinatowns and in historic, university, or central business districts, street signage beyond the standard-issue green and white is often found.41 Certainly, this hodgepodge approach means that local governments are cognizant of the benefits to the street and cityscapes of the aesthetic and placemaking impact of street furniture. This cognizance arguably bodes well for the reception accorded the expansion of percent-for-art ordinances to include the streetscape as an eligible project (and street furniture as public art), thereby taking one small step in rectifying the all too often aesthetically “mean” U.S. street.

35 HECKSCHER, supra note 25, at 264 (“Indeed the whole question of appropriate street furnishings has been neglected. Signposts, lighting, bus shelters, telephone booths, disposal baskets and many other separate facilities now litter the open spaces, whereas with some coordination and an imaginative effort they could be used to create attractive small centers for meeting and talking.”).
36 See KNIGHT, supra note 17, at 1–21 (discussing the placement of the Tiled Arc and other examples of street furniture during the late twentieth century).
37 See MOUGHTIN ET AL., supra note 31, at 127 (“An important purpose of all street equipment is to establish, support or strengthen the genius loci [(the geographical, historical, social, and aesthetic character) of a place . . . . The choice of sets of compatible street furniture can give identity to a particular city, district in a city or institution of a city.”); id. at 14 (referencing the “Art Nouveau street furniture of the Parisienne (sic) metro; . . . the Venetian Gothic lining that city’s canals, or in the classical detailing of Bath’s elegant eighteenth century streets,” and stating that the “[d]ecoration can, therefore, represent collective identity, signify place, and make places distinct from one another”); Adshead, Utilitarian Furnishings, supra note 14, at 193 (“We are only commencing to realise that the placing of town furnishings both ornamental and useful can be made a potent factor in adding dignity, formality, and beauty to the public thoroughfare and ‘place.’”).
38 FLEMINING, supra note 23, at 244 (“Good street furniture may not ‘make’ a place, but it can certainly add meaning, as well as a richer image of continuity.”).
39 See id. at 250.
40 See, e.g., KNIGHT, supra note 17, at 29–32.
41 See, e.g., MOUGHTIN, supra note 31, at 127–28 (explaining that the city with clearly identifiable and distinct districts lends itself to the creation of a strong perceptual image in the viewer). Other features are banners, usually in the central business district, that hang from streetlights and communicate a visual story of a city’s sights, history, or unique event, or pavers in the street that connote the pedestrian area for walking.
I. MULTI-DISCIPLINARY CONTEXT: CITY-BUILDING

"Man is man’s greatest joy." – Háamál (1,000-year-old Icelandic Eddic poem)42

This section provides a multi-disciplinary foundation for examining urban planning and public art within a legal framework. In particular, this section will highlight the purpose of the city and the primacy of the street in achieving this purpose, as well as the value of aesthetics to the city and the evolution of the urban streetscape.

A. The Nature of the City and the Primacy of the Street

1. The Nature of the City—The city is a place to meet people,43 to confront the strange, 44 and to gather intelligence about others and society at large.45 Jan Gehl, the famed Danish urban designer whose urban design firm has been engaged by many cities the world over and who recently helped New York City re-imagine its streets to be more equitably used by pedestrians and cyclists,46 describes a taxonomy of social meetings that the city facilitates.47 These meetings range from passive to active, social to civic, spontaneous to planned, and quiet to boisterous. Of them, the most pervasive, yet most passive,48 is people watching. We like to watch and to be watched, “hovering in the [grey] zone between strangers and intimates.”49

More active yet casual and spontaneous meetings include the exchange of greetings, asking for directions, chance meetings, and small talk about the weather

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42 See GEHL, supra note 4, at 23.
43 See id. at 22; see also JACOBS, GREAT STREETS, supra note 11, at 4 (“And streets are places of social and commercial encounter and exchange. They are where you meet people—which is a basic reason to have cities in any case. People who really do not like other people, not even to see them in any numbers, have good reason not to live in cities or to live isolated from city streets.”).
44 JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 238 (1961) [hereinafter JACOBS, DEATH AND LIFE] (quoting Paul J. Tillich, professor of theology at Harvard, who stated, “[b]y its nature, the metropolis provides what otherwise could be given only by traveling; namely, the strange.”); SENNETT, supra note 6, at 57 (noting that confrontation with the strange and difference invariably brings conflict and lends the city complexity and richness).
45 See GEHL, supra note 4, at 23.
46 See Cases, GEHL ARCHITECTS, http://gehlarchitects.com/work/cases/ (last visited June 17, 2016) (referencing projects in New York City, New York; San Francisco, California; Istanbul, Turkey; Chongquing, China; Mexico City, Mexico; and Christchurch, New Zealand).
47 GEHL, supra note 4, at 22–23.
48 GEHL, supra note 4, at 22; JACOBS, GREAT STREETS, supra note 11, at 4 (“The street is movement . . . It is possible to stand in one place or to sit and watch the show. The show is not always pleasant, not always smiles or greetings or lovers hand in hand. There are cripples and beggars and people with abnormalities, and, like the lovers, they can give pause: they are reasons for reflection and thought.”).
49 MONTGOMERY, supra note 6, at 152.
on benches or where people have to wait, as for a bus.\textsuperscript{50} Serendipity offers chance meetings between colleagues, acquaintances, and old neighbors that may promise renewed contact.\textsuperscript{51} Seeing others over and over again also gives rise to the sprouting of less casual, more intense and intentional new friendships.\textsuperscript{52} Children play and teenagers hang out.\textsuperscript{53}

Like New York City's Wall Street or London's City, the urban realm is a living, breathing physical space in which to exchange capital; though in the city, the exchange is not of financial capital, but of "cultural capital—[live] music, performance, [and the] sharing of talent with others," whether on the street, grand concert hall, or sweaty local dive.\textsuperscript{54} Yet, the human comedy on display is tinged with tragedy, as the city is a place to confront homelessness, mental illness, struggles with addiction, and poverty.\textsuperscript{55} In this sense, the city is formative in developing empathy, tolerance, and social trust.

It also is an important gathering place for "democratic exchanges" in which denizens have an opportunity to meet, march, demonstrate (via the street party), parade or protest.\textsuperscript{56} Gehl cites, for example, the silent protest marches in the 1980s in Leipzig, Germany, as precursors to the Cold War's end, and the silent protest of mothers in May Square in Buenos Aires, Argentina.\textsuperscript{57} In this country, LGBTQI Pride parades, St. Patrick's Day parades celebrating Irish heritage, and MLK day parades celebrating black American heritage and Dr. Martin Luther King, Jr. are common.

For that matter, who wants to parade as a party of one—in the countryside?\textsuperscript{58} We come together in the city, in part, because we want to feel part of something

\begin{itemize}
  \item \textsuperscript{50} GEHL, supra note 4, at 22.
  \item \textsuperscript{51} See id. at 22–23.
  \item \textsuperscript{52} See id. at 23.
  \item \textsuperscript{53} Id.
  \item \textsuperscript{55} See JACOBS, GREAT STREETS, supra note 11, at 4 ("It is possible to stand in one place or to sit and watch the show. The show is not always pleasant, not always smiles or greetings or lovers hand in hand. There are cripples and beggars and people with abnormalities, and, like the lovers, they can give pause: they are reasons for reflection and thought.").
  \item \textsuperscript{56} See GEHL, supra note 4, at 157; JACOBS, GREAT STREETS, supra note 11, at 5 ("The street is a political space. It's on Elm Street that neighbors discuss zoning or impending national initiatives, and on Main Street, at the Fourth of July parade as well as at the antinuclear march, that political celebrations take place.").
  \item \textsuperscript{57} See GEHL, supra note 4, at 157. Other scholars have also cited to similar themes. JACOBS, GREAT STREETS, supra note 11, at 5 ("Lest we minimize the importance of the public street as a political place in favor of more up-to-date electronic methods of communication, recall where the demonstrations and actions and marches of the late 1980s took place in eastern Europe: in public places and most especially in streets.").
  \item \textsuperscript{58} AUGUST HECKSCHER, OPEN SPACES: THE LIFE OF AMERICAN CITIES 332 (1977) ("Who wants to parade in the isolation of a countryside?").
\end{itemize}
larger than our individual selves.\textsuperscript{59} We obtain pleasure from the close, but not-too-close, jostling of the crowd.\textsuperscript{60}

It is perhaps because of all of these social and physical meetings, what Richard Sennett, the eminent urban and labor sociologist, calls the "multiplicity of contact points,"\textsuperscript{61} that cities are also engines of wealth\textsuperscript{62} and loci (at least certain ones) for the creative class.\textsuperscript{63} Another frame for the city is as a system "to improve human well-being,"\textsuperscript{64} a variation of Aristotle's maxim that "[a] city should be built to give its inhabitants security and happiness."\textsuperscript{65} For humans, happiness is building and strengthening bonds between "friends, families, and strangers," a feat at which the city excels.\textsuperscript{66}

2. The Primacy of the Street—The traveled way (streets, roads, and sidewalks) is arguably one of the most important and intense land uses in the city. The great numbers of users include pedestrians, cyclists, public transport riders, and drivers of private vehicles. Consequently, this land is among the most valuable urban real estate, and its owners (city government in the form of the Department of Transportation or Public Works) are some of the city's largest real estate developers.\textsuperscript{67} For instance, it is estimated that in the United States, 25–35\% of urban land is dedicated to public rights-of-way, largely streets.\textsuperscript{68} Indeed, 25\%, or six

\textsuperscript{59} See id. ("A crucial role of the city is precisely this: to set the comings and goings of men within a frame that enlivens them; to impart to events and occasions a dimension beyond themselves."); see also JONATHAN HAJD, THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY RELIGION AND POLITICS 220–24, 253–55 (2012) (stating that evolutionary biology supports human desire to move beyond the individual (the profane) to the group (the sacred)). See generally EDWARD O. WILSON, THE SOCIAL CONQUEST OF EARTH (2012) (discussing among humans natural selection at both group and individual levels).

\textsuperscript{60} See HECKSCHER, supra note 25, at 265.

\textsuperscript{61} SENNETT, supra note 6, at 57.


\textsuperscript{64} MONTGOMERY, supra note 6, at 42.

\textsuperscript{65} CAMILLO SITTE, THE ART OF BUILDING CITIES 1 (Charles T. Stewart trans., Reinhold Publ'g Corp. ed. 1945) (1889) (quoting Aristotle).

\textsuperscript{66} MONTGOMERY, supra note 6, at 43.

\textsuperscript{67} See id. at 223 ("When she was hired in 2007, Janette Sadik-Khan [NYC Dept. of Transportation commissioner from 2007–2014 and cycling advocate], mused that she was now the city's largest real estate developer. It was true. The Department of Transportation controlled six thousand miles of street, more than a quarter of New York City's land base.") (emphasis added).

\textsuperscript{68} See JACOBS, GREAT STREETS, supra note 11, at 6 ("In the United States, from 25 to 35\% of a city's developed land is likely to be in public rights-of-way, mostly in streets. The percentages may be more varied in European cities, but the amounts are always significant."). Peter Wolf, RETHINKING THE URBAN STREET: ITS ECONOMIC CONTEXT, in ON STREETS 377, 380 (Stanford Anderson ed. 1978) (noting that streets "comprise 30 to 35\% of the city surface.").
thousand miles, of New York City's land base is street.\(^{69}\) Because sidewalks often parallel streets, the sidewalk and the street, along with the built environment (buildings), shade trees, and street furniture, constitute what is termed the streetscape.\(^{70}\)

The street is a social institution, and is "human movement institutionalized."\(^{71}\) While one person may carve out a path in the wilderness, it is not a road or a street until others follow in it.\(^{72}\) In addition, the public realm or domain traditionally has included squares or plazas, streets, and parks.\(^{73}\) For historical reasons, however, American cities favored private lots and public roads as opposed to public plazas and parks;\(^{74}\) thus the street and the sidewalk in the American urban environment have added importance as meeting places and stages for the human drama or "scenes of public life."\(^{75}\) In the United States, the street is the public realm and the "public living room of the city."\(^{77}\) Streets have the capacity to be, and indeed once were, urban public space as much as public parks.\(^{78}\)

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\(^{69}\) **MONTGOMERY**, *supra* note 6, at 223.

\(^{70}\) Others refer to this montage as simply the street. *See* Robert Gutman, *The Street Generation*, in *ON STREETS* 249, 249 (Stanford Anderson ed. 1978) ("When one speaks of the three-dimensional quality of the street, what one is pointing out is the fact that the street includes not just the road or sidewalk surfaces, but the buildings located along it, the street furniture, the arches, and other ceremonial structures that mark its length or define its beginning and end."); JACOBS, *DEATH AND LIFE*, *supra* note 44, at 29 ("Streets in cities serve many purposes besides carrying vehicles, and city sidewalks—the pedestrian parts of the cities—serve many purposes besides carrying pedestrians.").


\(^{72}\) *Id.*

\(^{73}\) *See* GEHL, *supra* note 4, at IX ("A city's public domain—its streets, squares, and parks—is the stage and the catalyst for these activities [meetings 'to exchange ideas, trade, or simply relax and enjoy oneself']"); SITTE, *supra* note 65, at 2 ("Public squares, or plazas were then [during ancient Greece in the time of the agora] of prime necessity, for they were the theaters for the principal scenes of public life . . . .").

\(^{74}\) **MONTGOMERY**, *supra* note 6, at 304–05 ("The [Federal] Land Ordinance of 1785 did not have provisions for parks or open space. Its cities comprised private lots and public roads, as though the city existed purely for commerce rather than for the people that commerce was thought to enrich. In town after town, planners subdivided, overlooked, or avoided public parks and plazas. Cities that wanted parks actually had to buy the land from private holders.").

\(^{75}\) *Cf.* SITTE, *supra* note 65, at 2 ("Public squares, or plazas were then [during ancient Greece in the time of the agora] of prime necessity, for they were the theaters for the principal scenes of public life . . . .").

\(^{76}\) JACOBS, *GREAT STREETS*, *supra* note 11, at 6 ("Streets are almost always public: owned by the public and when we speak of the public realm we are speaking in large measure of streets."); JACOBS, *DEATH AND LIFE*, *supra* note 44, at 29 ("Streets and their sidewalks, the main public places of a city, are its most vital organs. Think of a city and what comes to mind? Its streets. If a city's streets look interesting, the city looks interesting; if they look dull, the city looks dull."); Elizabeth Moule & Stefanos Polyzoides, *The Street, the Block and the Building*, in *THE NEW URBANISM TOWARD AN ARCHITECTURE OF COMMUNITY* xxi, xxi (1994) (noting that the public realm is "shared space in society which brings people to gather together, to relate to one another and/or to be separate.").

\(^{77}\) **MONTGOMERY**, *supra* note 6, at 305 ("The result was that in most neighborhoods, the streets themselves became the only shared public space. As they came to be dominated by cars, the public living room—and the village that might have been born within it—disappeared."); LOS ANGELES
This state of affairs was especially apparent before the private motor vehicle dominated the street. Until the 1920s, the urban American street was a shared space: "The road was a market, a playground, a park, and yes, it was a thoroughfare, but there were no traffic lights, painted lanes, or zebra crossings. . . . Anyone could use the street, and everyone did." The result was "a chaotic environment littered with horse dung and fraught with speeding carriages, but a messy kind of freedom reigned." More recently, we may remember playing in the street as children. Our private backyards were too boring, and a park perhaps too inaccessible on our own. The neighborhood street, however, was where we could meet, and where the action was.

In today’s hyper-connected world, we inhabit so much global digital space via Facebook, Snapchat, Tinder, and Twitter. Yet, we can’t seem to quit our longing for face-to-face meetings in real life with friends (who are real or could be) to whom we actually talk instead of text and who are so physically close, we feel a part of community.

In a blast to the past, the street is resurging. As meeting place and public living room, the private motor vehicle is ceding space to the pedestrian. For instance, the streets in New York City’s Times Square have become site of a human global crossroads after they were pedestrianized by forward-thinking (ironically looking to

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79 MONTGOMERY, supra note 6, at 305 (“The result was that in most neighborhoods, the streets themselves became the only shared public space. As they came to be dominated by cars, the public living room—and the village that might have been born within it—disappeared.”); see Heckschler, supra note 25, at 262 (“The streets of the contemporary city have largely lost their primary functions as places to shop, to walk in and to meet for public and private business. They have been given over to the automobile and the truck, and everything else has been subordinated to their role as carriers of traffic.”); Ray Gindroz, City Life and New Urbanism, 29 FORDHAM URB. L.J. 1419, 1424 (2002) (stating that in the Motor Age following World War II, there were “no longer . . . urban spaces that were rooms,” but instead “disjointed pieces of furniture,” and that “[m]ore often than not, the results were failed attempts to turn traditional Main Streets into shopping malls”); see also STREETS: CRITICAL PERSPECTIVES ON PUBLIC SPACE 6–7 (Zeynep Celik et al. eds., 1994) (stating that some scholars have decried “the death of the street” and noting that “[t]he chief actor in encouraging the demise of the street has been the automobile, which has overemphasized the function of the street for the circulation and storage of vehicles to the detriment of the social uses of its space. . . . The subsequent proliferation of architectural typologies that are not connected to streets, such as the enclosed shopping mall, both in the suburbs and in center cities, have prevailed as internalized, privately managed surrogates for the public street.”).

80 MONTGOMERY, supra note 6, at 70.

81 Id.

82 MOUGHTIN ET AL., supra note 31, at 134 (“For many generations the street has provided urban communities with public open space right outside their homes.”).
the past) local government. In Paris, sand and palm trees are imported as decorations of the expressway bordering the Seine, creating Paris Plages, a day at the beach, and community on the street. In Portland, Oregon, neighborhood residents defied city government to occupy an intersection and to create Share-It-Square that included a tiny library, produce market, message board, and tea stand. In 2005 in San Francisco, somebody fed the meter and took over an on-street parking space, turning it into a park and starting the global Park-It movement where parking spaces are transformed into all manner of public meeting spaces, including barbershops. As Montgomery notes, "[T]here is simply no substitute for actually being there," and "there" is the street.

“Outside is where art should live, amongst us . . . Don’t we want to live in a world made of art, not just decorated by it?” - Banksy

B. Aesthetics and the City

Throughout human history, art has worked in human settlement to inspire, educate, honor, and celebrate identity and values. It has been viewed not only as a means of beautifying the public realm, but also as composing part and parcel of life—and funded accordingly. Art was integrated with engineering and architecture instead of segregated in the museum, gallery, and private collection. As Heckscher notes, art and the city have a symbiotic relationship; each needs the other—art to enliven and humanize the city, and the city to spur innovation and to provide audience.

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83 MONTGOMERY, supra note 6, at 223–24.
84 Id. at 256.
87 What is the Lab?, BMW GUGGENHEIM LAB, http://www.bmwguggenheimlab.org/what-is-the-lab (last viewed June 17, 2016).
88 MONTGOMERY, supra note 6, at 155.
89 See James Panero, Art: Taking It Beyond the Street, WALL ST. J. (Nov. 5, 2013), http://www.wsj.com/articles/SB10001424052702304391204579177633863686424. Banksy, an elusive U.K.-based street artist, is known for his whimsical use of stenciling, often on underused urban space such as exterior walls. Photographs of his October 2013 artist-in-residency in New York City, entitled “Better Out than In,” have attracted 878,000 followers on his Instagram account. Id.; BANKSY, http://instagram.com/banksy (last viewed June 14, 2016).
Aristotle, perhaps one of recorded history's earliest urban planners, stated that a city exists to provide "security and happiness."91 Yet as long ago as 1889, Camillo Sitte in *The Art of Building Cities* bemoaned that the city's ability to deliver happiness was imperiled by the monotony and dullness of the modern "engineer-controlled city."92 Sitte, therefore, advocated a return to the "artistic fundamentals" of what he deemed the more harmonious urban form of the Renaissance, Middle Ages, and ancient Greece.93 In the 1960s, Heckscher appealed to architects and planners to inject greater attention to aesthetics and art in urban composition to humanize the interminable, barren, and "depressing" street lengths of the engineered modern city.94

In what Charles Jencks terms the "Egyptian equation of culture," art and design were valued to such an extent that they consumed up to an estimated 95% of a building's budget.95 For instance, the temple housing the remains of the Egyptian pharaoh, Tutankhamen, was covered inch-to-inch with reliefs and paintings, in addition to the golden mummies and artist-inspired memories of his life.96 Similarly, only 18% of the budget for the Athenian Parthenon was devoted to architecture while 82% was allocated to art, including the structure's "frieze sculptures, paintings, and entasis of the columns" as well as to Phidias, the artist who designed the building's tall gold and ivory statue of Athena.97 Jencks estimates that the art and design budget for the 13th-century cathedral at Chartres was well over 50%, given that "the architects sacrificed seven towers to allow the artists to complete the portal culture and stained glass."98 Early twentieth-century Modernism reversed the equation, however, insisting that architecture was the art and claiming 95% of the budget.99 At present, public arts ordinances dictate that

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91 Sitte, supra note 65, at 1.
92 Id. at vii ("The present day qualities of the city were well envisioned in 1889 by Sitte. The monotonous building lines, the endless streets, the rigid gridiron, the small amount of open space, were all indicated to him in the trends toward the engineer-controlled city.").
93 Id. at 1 ("The science of the technician will not suffice to accomplish [inhabitant security and happiness]. We need, in addition, the talent of the artist. Thus it was in ancient times, in the Middle Ages, and in the Renaissance, wherever fine arts were held in esteem. It is only in our mathematical century that the construction and extension of cities has become a purely technical matter.").
94 Heckscher, supra note 25, at 264-65 ("The ultimate force must not be utilitarian but aesthetic... But the infinitude of most streets is depressing, unvaried as they are by any openings down their length or often by any towers that break the sky. It is within the field of art to introduce some elements of composition into these barren corridors.").
96 Id. Jencks estimates that this art was 95% of the building's budget. Id.
97 Id.
98 Id.
99 Id. ("But the serious rot didn't occur until the early twentieth century and the Modern Movement when the whole Egyptian equation of culture was reversed. At the Bauhaus, despite Gropius's protestations about a building team, the architecture got 95% of the budget and such artists as Paul Klee
anywhere from 0.5% to approximately two percent of the budget for public works is devoted to art and design.\textsuperscript{100}

Art and design claimed such a hold on ancient public works budgets likely because it was the norm for architect and artist to collaborate on projects from the beginning or for the two to be the same person. For instance, Jencks notes that “[a]t the Parthenon or St Peter’s . . . architects, sculptor, and painter either worked together, or were the same person.”\textsuperscript{101} De Herrera goes further to say that “[h]istorically, artists were the primary designers of the public domain. The work of Michaelangelo, Bernini, and others provide examples of how art and design were married, each part of a continuum in which one discipline was a natural extension of another.”\textsuperscript{102} Art and design were subsequently fragmented into different urban-oriented professions such as planning, architecture, and engineering.\textsuperscript{103}

Although today we admire in a secular way Notre Dame de Paris, Chartres, the Parthenon and the Egyptian pyramids as examples of beautiful art and design, these masterpieces were not simply art for art’s sake—the art worked,\textsuperscript{104} to educate, to inspire, to empathize, and to uplift. For instance, Jencks notes that the friezes, paintings, and golden statues of the Egyptian temples educated the citizenry of “the good life (and [the good] death) as conceived by priests and poets.”\textsuperscript{105} Similarly and until the sixteenth century, the Catholic Church used many art forms—sculpture, literature, architecture, music, painting, and theatre to make “visible and striking the great drama of the Christian soul.”\textsuperscript{106} The Church was certainly influential because of its doctrine and its innovations in law, yet it was its full onslaught use of art that transformed the intellectual teachings into lived experience and gave meaning to everyday life.

[A] sense of unity was constituted . . . by sacraments, by song and pictures, by rite and ceremony, all having an esthetic strand, more than any other thing. Sculpture, painting, music, letters were found in the place where worship was performed. These objects and acts were much more than works of art to the worshipers who gathered in the temple. They were in all probability much less works of art to them than they are today to believers and unbelievers. But because of the esthetic strand, religious teachings were the more readily conveyed and their effect was more lasting. By the art in them, they were changed from doctrines into living experiences.\textsuperscript{107}

\textsuperscript{100}See Miller, supra note 8, at 1.

\textsuperscript{101}JENCKS, supra note 95, at 15.

\textsuperscript{102}HERRERA ET AL., supra note 18, at 635.

\textsuperscript{103}Id.

\textsuperscript{104}Cf. ROGER G. KENNEDY & DAVID LARKIN, WHEN ART WORKED 223 (2009) (“Art worked—hard—in hard times.”).

\textsuperscript{105}Jencks, supra note 95, at 17.

\textsuperscript{106}HECKSCHER, supra note 25, at 278; cf. GENERALLY ALAIN DE BOTTON & JOHN ARMSTRONG, ART AS THERAPY (2013) (arguing that art is a tool to accomplish seven things, among them—to remember, to inspire hope, to empathize, and to understand oneself).

\textsuperscript{107}JOHN DEWEY, ART AS EXPERIENCE 329 (1934).
Even outside of religion, art worked in the Middle Ages. Beauty was built into everyday objects such as weaponry, banners, and manuscripts. Therefore, art for art's sake? No, this was nary a thought in the minds of the ancients, as art and design were married with everyday life and art lived in the public realm instead of isolated in the museum, private home, or gallery. The "split between art and life" began in the Renaissance and widened over time, ultimately becoming, in Heckscher's parlance, "a heresy of the modern age" in comparison to the rest of human history.

We are primed to value beauty, lest we dress in rags and live in caves. There goes fashion, the multi-billion dollar makeup industry, aesthetic surgery, and Home and Garden television. As Willett notes, art is "an indelible human habit." Yet, art is more than just a pretty surface and face; it illuminates the lived experience, engages and soothes the human mind and spirit, and transmits values. During the widespread economic despair of the Great Depression,
President Roosevelt used the grand art programs of the New Deal not only to provide work to artists, but also to uplift the American people.\textsuperscript{116}

Gathering places of humanity, the ancient temple, Church, and forum married art and life to teach, inspire, and to commune. Though far removed from religion, the urban American street is a gathering place of another kind, pockmarked as it is by the steel poles and grey, hulking freeway overpasses, testament to the feats of efficiency, engineering, and planning. As it was with the ancients, art and design can work to similar effect in the streetscape, tempering the generic, engineered city and laying bare the humanity within it.

\textbf{C. Evolution of the Urban Streetscape}

The expansion of applied public art in the streetscape in the form of artfully designed street furniture enabled by percent-for-art ordinances is arguably a response to the trends of the current age. These trends favor density and urban environments accommodating the pedestrian, cyclist, and transit-user,\textsuperscript{117} populations in the best position to experience the artful streetscape. Within the context of urban planning and traffic engineering, this can be considered yet another adaptation of the urban street to the demands of the times, beginning with the introduction in seventeenth century Renaissance Europe of street trees, now a fundamental organizing principle of the city street.\textsuperscript{118}

Beginning in the 1820s, gas-powered street lamps, themselves reinterpretations of the ancient Roman candelabra,\textsuperscript{119} began to dot the urban streetscape.\textsuperscript{120} Before this time, the urban street was lit by infrequently placed oil lamps hung on private

\textsuperscript{116} \textit{Kennedy & Larkin, supra} note 104, at 26 (noting that the genius of the New Deal was “to provide hope grounded in common purposes” and “to coax the soul of America back to life.” (quoting Harry Hopkins and Gutzon Borglum, respectively)).


\textsuperscript{118} S.D. Adshead, \textit{The Decoration and Furnishing of the City: No. 16.—Trees}, \textit{5 Town Plan. Rev.} 300, 300–06 (1915); \textit{id.} at 303 (“It may come as a surprise to some to be told that previously to 1850 the planting of trees in the built-up streets of towns was practically unknown. . . . The idea of planting tree-lined avenues, of which one of the earliest examples was the Cour de la Roine in Paris, laid out by Marie de Medicis in 1616, seems to have been a development of the practice of bordering with trees the parterres of the early French Renaissance and Italian gardens. When Bullet and Blondel razed the fortifications of Paris and converted them into tree-lined boulevards in 1676, they instituted a system which was rapidly followed by all other important cities of Europe whose artistic relation with Paris was sufficiently close.”).


\textsuperscript{120} \textit{id.} at 292–96.
homes that left the public way unevenly lit. Electric streetlights subsequently became the standard in the early twentieth century.

The lowly curb was added in the mid-1800s to stop vehicles with wheels from crashing into pedestrians and buildings. In the streetcar age of the late nineteenth and early twentieth centuries, subsequent to horse-drawn public transport and prior to the injection and domination of the private motor vehicle after the 1920s, the need for transit shelters arose to afford waiting passengers dignity and protection from the elements. At the same time, traffic islands and bollards evolved to protect pedestrians from the speed of electric public transport. Even today, bus and light rail shelters, traffic islands at intersections, and bollards protecting buildings from motor vehicles are mainstays of the urban streetscape.

The urban streetscape also adapted to accommodate the demands of the motor age and numerous private vehicles in the street by (1) wrapping commercial signs in bright, sometimes flashing, neon light so that they would be visible to cars whizzing by and (2) placing parking meters for the temporary storage of vehicles on the street. Asphalt roads and the ubiquitous asphalt parking lot were other adaptations of the urban streetscape. Concrete sidewalks replaced those constructed of wood.

In sum, the urban streetscape evolved from "an occasional sign post and a horse trough" to include all of these adaptations. The urban street is a work in progress, and law can help it evolve.

II. ANALYZING PERCENT-FOR-ART ORDINANCES

Public art and urban planning scholarship provide a foundation for approaching these topics from a legal perspective. This section builds on this foundation to

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121 See id. at 292; see also ROBINSON, supra note 16, at 140–41 (noting that gas-powered lighting overseen by the municipality led to no "individual delinquiries" in contrast to the private oil lamp lighting regime).

122 Adshead, Lamp Standards, supra note 119, at 292–95.

123 Gutman, supra note 70, at 250.

124 S.D. Adshead, The Decoration and Furnishing of the City: No. 14.—Shelters, 5 TOWN PLAN. REV. 139, 139 (1914).

125 S.D. Adshead, The Decoration and Furnishing of the City: No. 15.—Refuges and Protection Posts, 5 TOWN PLAN. REV. 225, 225 (1914) ("In the old days, when the horse-drawn vehicle passed along in what could certainly not be described as a continuous procession, the street was crossed with comparative safety, and there was no need for such things; but to-day islands and refuges are in the wide and busy thoroughfare an absolute necessity.").


127 See id. at 741–42.

128 Id. at 743.

129 Adshead, Utilitarian Furnishings, supra note 14, at 193; see also CLIFF MOUGHTIN ET AL., supra note 31, at 128 ("The eighteenth-century street would have been free from obstructions such as street furniture. The only exceptions would have been the occasional inn sign and local horse trough.").
analyze percent-for-art ordinances, the prime regulatory vehicle for siting and spending for public art in the U.S. city.

Percent-for-art ordinances are instruments to beautify the urban public realm. They bring art out of the enclosed confines of the museum, art gallery, and private collection and into public spaces such as parks, libraries, and airports. Unlike other public art ordinances, however, such as those establishing a municipal art commission, calling for a review or study of public art in a jurisdiction, or facilitating a public art annual or master plan, percent-for-art ordinances are distinguished by the creation of a dedicated, consistent source of funding for public art in the public realm. These public art legal schemes, therefore, have an outsized impact on the field, funding many U.S. cities' public art programs.

Discussion on the expansion of public art to the urban street is incomplete without understanding these legal schemes. There are indeed different categories of percent-for-art ordinances in many of the nation’s fifty largest cities; they may implicitly or explicitly exclude or include the urban street and, to a lesser degree, street furniture. These degrees of exclusion and inclusion in percent-for-art regimes ultimately are reflective of a normative bias against the urban street as public space—an old idea to be sure, but one that is positively on the cutting edge and contemporarily on-trend in the wake of the private motor vehicle's seventy-year hegemony of the U.S. street.

A. Express and Effective Exclusion of the Streetscape

Of the thirty-five cities with percent-for-art ordinances in the United States' fifty most populous cities, the percent-for-art ordinances of fourteen of them (or 40%) appear to exclude on their face the urban street as a capital project triggering percent-for-art funds. These funds allocate a certain percentage of the project's budget to public art. The street is expressly excluded because it does not satisfy the definition of an "eligible construction project." Indeed, capital projects passing muster under this definition often are centered around the construction or

130 See supra note 17 and text accompanying notes 17–21.
131 Miller, supra note 8, at 1 ("Fifty-eight percent of public art programs received revenues from a percent-for-art program. Of those programs receiving such percent-for-art funding, 73% of the programs' total funding arose from the percent-for-art revenue sources. This indicates that percent-for-art programs are not only the dominant source of funding for government-funded public art, but for the field as a whole. This is an inversion of arts funding generally where private funding is three times that of public funding. Because of public art's unusual funding, the structure of percent-for-art programs has an inordinate effect on how public art is deployed in our communities that does not affect general arts funding.").
132 See supra note 79 and accompanying text.
133 See supra note 32.
134 See infra note 136 and accompanying text.
135 See infra note 136 and accompanying text.
renovation of (a) a physical structure, such as a parking garage, community center, school, jail, hospital or clinic, police or fire station, or airport, or (b) conventional public spaces ordinarily lacking traditional structures such as parks, trails, or mass transit.136

The effect of these streetscape bans is to deny a significant part of the urban public realm a dedicated stream of public art funding. This funding, however, has enabled other public spaces such as parks, libraries, and airports. Further, the public is denied an opportunity to have easily accessible art—so accessible that it is unconfined to the constraints imposed by a physical structure. This consistent, dedicated funding for art in the street could enable the addition of enhanced warmth and humanity to the hyper-utilitarian, yet aesthetically mean, urban street. At a minimum, this addition of emotional feeling to the urban street nods to a

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136 The following fourteen regimes out of the thirty-five cities with percent-for-art ordinances in the United States's fifty most populous cities effectively have excluded the street from the scope of eligible "capital projects." CHARLOTTE, N.C., CODE § 15-233 (2003) (articulating that an eligible project involves "construction or substantial renovation of any building, facility or open space to which the public is generally invited"); San Diego, Cal., Council Policy 900-11 (Apr. 27, 2004) (defining an eligible construction project as "the construction of any building, park, median, bridge, transit or aviation facility, trail, parking facility, or above grade utility, to which the public has access or which is visible for a public right of way"); OKLA. CITY, OKLA., MUNICIPAL CODE § 38-488 (2016) (articulating eligible projects as "any new building or park development or major renovation thereof"); NASHVILLE, TENN., CODE OF ORDINANCES § 5.10.010 (2016) (defining construction project as a "building or erection of any public building, structure, park or parking facility"); N.Y.C., N.Y., RULES tit. 43, § 2.01 (2016) ("Eligible project means a capital project . . . which involves the construction or substantial reconstruction of a city-owned building or structure . . ."); JACKSONVILLE, FLA., CODE OF ORDINANCES §§ 126.902, 126.904 (2016) (referring to "public buildings" and referencing a "percentage of the total allocation . . . for construction costs of a public facility"); MILWAUKEE, WIS., FINANCE CODE 304-27(2)(d) (2013) (defining construction project as "any capital project paid wholly or in part by the city of Milwaukee to construct or remodel any building, decorative or commemorative structure, or major portion thereof"); MIAMI-DADE CO., FLA., CODE OF ORDINANCES § 2-11.15.1(a) (2013) (tying the acquisition of works of art to the "construction cost of new governmental buildings"); S.F., CAL., ADMIN. CODE § 3.19(c) (2015) (mandating public art funds for projects tied to a building, park or mass transit); Kan. City, Mo., Res. No. 32393 (Jan. 23, 1981) (mandating application of the percent-for-art ordinance to the construction or remodeling of any municipal building); SACRAMENTO, CAL., CITY CODE § 2.84.120 (2016) ("Eligible construction project means any capital project . . . to construct or remodel any building, decorative or commemorative structure, parking facility, recreational facility, or any portion thereof . . ."); Phila. Exec. Order No. 08-14 (Oct. 2014) (defining a construction project as "[a]ny capital project to construct or remodel any building, bridge and its approaches, arch, gate, or other structure, or public space"); TULSA, OKL., CODE OF ORDINANCES tit. 5, § 308(A) (2016) ("No less than one percent (1%) of the cost of any new building or major revisions to existing buildings to be constructed or erected on property owned by the City, utilizing public funds, shall be budgeted and expended for works of art . . ."); CITY OF HOUS., TEX., 2011-2014 CAPITAL IMPROVEMENT PLAN 39, available at: http://www.houstontx.gov/cip/10cipadopt/voll/civicart.pdf ("Not all CIP projects are eligible under the ordinance. In general, the civic art allocation will not be applied against the following type projects: paving projects, street resurfacing, runways and ramps, parking lots, signal and traffic control projects, underground projects, land acquisition, equipment purchases, and projects with budgets amounts under $500,000.").
recognition that, as John Maeda notes, objects, society, and systems must have a level of emotional intelligence in order to relate to their users.\textsuperscript{137}

Moreover, the aesthetic investment in the urban street that may be facilitated by percent-for-art ordinances would similarly let the city communicate to the citizenry that the public is worth the relatively minimal cost of beauty.\textsuperscript{138} Like the art of the ancients and the New Deal,\textsuperscript{139} streetscape art enabled by percent-for-art ordinances similarly could transmit communal values, inspire, and even reflect identity.

The street and the streetscape are amorphous and not structures. In contrast to the airport, the parking garage, or the library, they do not fit the structure-centric orientation of many percent-for-art ordinances. Rather, they are "unstructured" structures, enabling the public to meet, play, congregate, and demonstrate in the absence of a building's physical limitations.\textsuperscript{140} Unlike parks and trails, which also are not buildings, however, the street and streetscape are not conceived by contemporary culture as urban public spaces composing the public realm. The rejection of the streetscape as a site worth beautifying reflects a normative and cultural bias against the street. As an urban public space, the street has been dominated by the private motor vehicle for nearly a century and remains so today.\textsuperscript{141}

\textbf{B. Implicit Inclusion of the Streetscape}

Unlike outright bans of the streetscape and street from percent-for-art funding, some jurisdictions take a softer stance. These jurisdictions implicitly include the street for funding by articulating that capital projects involving a street or sidewalk, without articulating the term "streetscape," trigger percent-for-art coverage.\textsuperscript{142}

\begin{flushright}
\textsuperscript{137} See John Maeda, The Laws of Simplicity 71 (2006) ("Emotional intelligence is now considered an important facet of leaders today, and the expression of emotion is no longer considered a weakness but a desirable human trait to which everyone can immediately relate. Our society, systems, and artifacts require active engagement in care, attention, and feeling. . . .").

\textsuperscript{138} See supra text accompanying notes 5–7.

\textsuperscript{139} See supra text accompanying notes 91–116.

\textsuperscript{140} See supra text accompanying notes 71–87.

\textsuperscript{141} See supra note 79 and accompanying text.

\textsuperscript{142} The following nine regimes out of the thirty-five with percent-for-art ordinances implicitly include the street as a capital project: Dallas, Tex., City Code § 2-103(a) (2014) (allocating "0.75 percent of the total appropriation for a project that is exclusively for street . . . or sidewalk improvements, to be used for design services of artists for the selection, acquisition, commissioning and display of artworks"); Las Vegas, Nev., Code of Ordinances § 2.34.015 (2016) (defining capital improvements as "any City capital project including, but not limited to, those paid for wholly or in part by the City to construct, remodel, renovate, or repair any building, park, street, sidewalk . . . within the limits of the City boundaries"); Oakland, Cal., Code of Ordinances § 15.70.020 (2016) (referring to the construction or remodeling of a street or sidewalk within the city limits of Oakland, California); Portland, Or., City Code § 5.74.020(A)(1) (2015) (defines improvement project as "any project . . . for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk . . . within the limits of the City of Portland");}
\end{flushright}
Others are broadly worded, allowing the inclusion of almost any type of capital project within the city limits, to come within the scope of the percent-for-art ordinance. Contrary to jurisdictions with explicit street and streetscape bans, these more inclusive percent-for-art legal regimes arguably demonstrate a normative bias, or at least a normatively neutral attitude, in favor of the streetscape as urban public space worthy of aesthetic investment.

On the other hand, the addition of a "street" as a capital project that would activate percent-for-art funding could simply mean the repair or reconstruction of the physical street. This conception of the street is rooted in its all too present cultural sense as a roadway—or space purely for facilitating motorized vehicles—instead of as urban public space. In light of this prevalent yet changing cultural attitude toward the street as urban public space, it remains an open question as to whether decision-makers, namely city council members and local public works, transportation officials, and public arts administrators, interpret ordinances expressly articulating "street," but not "streetscape," broadly enough to include the streetscape.

SEATTLE, WASH., MUNICIPAL CODE § 20.32.020 (2016) (referring similarly to the street or sidewalk within the city limits); San Antonio, Tex., Ordinance 04-02-0238 (Apr. 2, 2015) ("Capital improvement program means any permanent public improvement project paid for wholly or in part by monies appropriated by the City to design, construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a street, a sidewalk, a parking facility, a utility, or any portion thereof, within the City limits or under the jurisdiction of the City."); MEMPHIS, TENN., CODE OF ORDINANCES § 2-87 (2016) ("An art percent of one percent ... shall be allocated to the public art fund for use in the development of . . . design concepts and models, an artist in residency program, the selection, acquisition, purchase, commissioning, placement, installation, exhibition and display of artwork, an architectural and engineering design associated with artwork), BALT., MD, CITY CODE § 5-21-2(G) (2007) (classifying the construction, reconstruction, or renovation of any street or footway as a construction project); L.A., CAL., BUILDING CODE § 106.4.1(7) ("[P]ublic works capital improvement project... includes any capital project paid for wholly or in part by the City of Los Angeles or by any board, bureau or department of the city authorized by the City Charter or other law to construct or remodel any building, structure, park, utility, street, sidewalk or parking facility, or any other type of capital project or any portion thereof, within the geographical limits of the City.").

See, e.g., CHI., ILL., MUNICIPAL CODE § 2-92-090 (2016) (referring an "outdoor site improvement project"); EL PASO, TEX., CODE OF ORDINANCES § 2.40.070(B)(9) (2016) ("A work of art may include an artist participating in master planning, conceptual development, design development, construction drawings, or construction oversight for any municipal project."); FORT WORTH, TEX., CODE OF ORDINANCES §§ 2-56, 2-61(a) (2014) (noting that the Fort Worth Public Art Program is aimed at promoting "tourism and economic vitality in the city through the artistic design of public spaces" and including no restrictions on what kinds of projects may trigger percent-for-art funding); ALBUQUERQUE, N.M., CODE OF ORDINANCES § 10-5-2 (2016) (defining a capital improvement program as "[a]ll capital projects of the city"); PHX., ARIZ., CITY CODE § 2-702 (2015) (noting that the project "shall be placed at a site substantially related to the purpose of the bond or other fund from which the percent for art funds are derived"). But see CHI. DEP'T OF CULTURAL AFFAIRS AND SPECIAL EVENTS, THE CHICAGO PUBLIC ART GUIDE 67 (2014) (indicating that only one percent-for-art project has been related to streetscape furniture—benches, dating from 1996).

See supra text accompanying notes 71–87.

See supra text accompanying notes 83–87.
C. Express Inclusion of the Streetscape

An easy, blunt-force way to mitigate the cultural bias in favor of the street-as-roadway instead of as public space is to articulate the streetscape as a distinct urban space triggering funding under a percent-for-art ordinance.\(^\text{146}\) Under such a regime, there is little room for ambiguity or interpretations of the law that may be skewed by cultural and personal biases against the streetscape and street as part of the urban public realm and ultimately deserving of taxpayer-funds.

Raleigh, North Carolina, and Austin, Texas, exemplify this direct method. For instance, Raleigh’s ordinance expressly articulates “streetscape projects” as eligible for percent-for-art funding.\(^\text{147}\) Further, it embraces the dual identity of the street as roadway and public space by also expressly stating that streetscape projects “shall include, but not be limited to, all roadway improvements” for certain large thoroughfares.\(^\text{148}\)

Austin’s percent-for-art ordinance goes even further—not only articulating the term “streetscape” in several places, but also defining the term.\(^\text{149}\) The clear effect is to endorse the notion of the street-as-public-space and its aesthetic and civic importance contrary to the more conventional stance of street-as-roadway. For instance, Austin’s percent-for-art ordinance states that it applies to a capital project funded by the city “for a street improvement project, other than street repair or reconstruction” and “for an improvement to a streetscape.”\(^\text{150}\) The legislation similarly refers to the streetscape, versus a mere physical street, as a site that can be enhanced by art or an art feature funded under percent-for-art.\(^\text{151}\) As a result, in at least two major streetscapes in the central districts of the city, the ordinance has funded artfully-designed paving and bike racks, in addition to numerous free-

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\(^{146}\) See, e.g., CLEVELAND, OHIO CODE OF ORDINANCES § 186.02(c) (2015) (enabling percent-for-art funding for “the streetscape component of any street reconstruction project”); DENVER, COLO., REV. MUNICIPAL CODE §§ 20.86(b), 20.87(a) (2016) (articulating that capital improvement projects mean “the construction of or improvement to viaducts, roads and streets, streetscape projects, pedestrian malls and plazas . . . whose budgeted cost of construction and design . . . is equal to or greater than one million dollars”); Atlanta, Ga., Code of Ordinances 08-0-1884 § 1 (Nov. 17, 2008) (defining eligible projects as “street improvements . . . or [as] streetscape improvements”).


\(^{148}\) § 9-10007.

\(^{149}\) AUSTIN, TEX., CODE OF ORDINANCES § 7-2-1(4) (2016) (defining streetscape as “an improvement to a public right-of-way, including a sidewalk, tree, light fixture, sign, and furniture”).

\(^{150}\) Id. at § 7-2-1(2).

\(^{151}\) Id. at § 7-2-1(1) (“ART] means a work of art or an artistically designed art feature that enhances the aesthetics of a building, bridge, streetscape, park . . . .”).
standing works enhancing the streetscape. Their location, however, in only the central districts of the city begs also the question of spatial equity in siting these aesthetically enhanced street furnishings.

San José, California, however, takes a more indirect approach than Austin and Raleigh. While the city’s percent-for-art ordinance eschews the specific articulation of the streetscape as this Article advocates, it refuses to specify any specific urban site for percent-for-art funding, unlike a number of similar ordinances in other cities. Instead, the legislation applies broadly to any “public place constructed as [a] city or redevelopment agency project” and states that the ordinance’s broad purpose is to beautify the city generally.

Such an approach might otherwise be ripe for confusion and set the table for the same sort of biases that arguably could hinder the application of other jurisdictions’ percent-for-art regimes to the streetscape in the absence of its express articulation, except that San José’s legislation expressly incorporates the city’s far-ranging 2007 public art master plan. The public art master plan defines the streetscape as a public space, noting that public spaces are designed and built for the public and constitute the public realm. In addition, the public arts master plan expressly calls for percent-for-art funded streetscape improvements in several areas of the city. Yet, it is still to be determined whether San José’s progressive and normatively broad interpretation of public space in the city’s percent-for-art law actually extends to the streetscape, absent an express articulation of the term in the law. Despite the expansive language in the public arts master plan and percent-for-art ordinance, the city’s public art program’s current efforts largely appear to be

153 See infra text accompanying note 211.
154 SAN JOSE, CAL., MUNICIPAL CODE § 22.08.010 (2015). Fort Worth, Texas, has a similar approach—declining to define specific sites and opting instead for “public spaces” as the sites for percent-for-art funds. FORT WORTH, TEX. CODE OF ORDINANCES § 2-56(b) (2016). In addition, the city’s Public Art Master Plan includes at least one streetscape project (North Main Street) as a future project. CUICK CONSULTING & ASSOCs. ET AL., FORT WORTH PUBLIC ART MASTER PLAN § 4 (2003). http://www.fwpublicart.org/UserFiles/File/Master_Plan_And_Appendicies.pdf.
155 See supra note 136.
156 SAN JOSE, CAL., MUNICIPAL CODE § 22.08.010(A).
157 Id. at § 22.08.010(B).
158 See supra text accompanying notes 142–145.
159 § 22.08.010(D) (defining as a fourth purpose of the percent-for-art ordinance to “implement the provisions of the public art master plan adopted by city council on March 13, 2007, as it may be amended from time to time, to the extent that the master plan is consistent with the provisions of this Municipal Code”).
160 TIED BRELLI & MERIDETH MCKINLEY, PUBLIC ART NEXT! SAN JOSE’S NEW PUBLIC ART MASTER PLAN 28, 49–50 (2007). http://www.sanjoseca.gov/DocumentCenter/View/29733 (defining as a public space “[a]ny element of the public realm, community facilities, or civic infrastructure that is visible to public view” and defining the public realm as “public spaces designed and built for the use of the general public,” for example “parks, playgrounds, sports fields, plazas, streetscapes, trails”).
161 Id. at 10, 13, 24 (articulating as sites downtown San Jose, North San Jose and Martha Gardens).
focused on conventional public spaces such as libraries, community centers, parks, the airport, and fire stations.\textsuperscript{162} San José’s stance, however, puts publicly funded public art within the realm of possibility in the streetscape.

Unlike percent-for-art regimes that reject or ignore the streetscape and street as public space, Raleigh, Austin, and San José embrace of the concept of street-as-public space is cutting-edge, though this notion is ancient. The implications of this awareness are huge, given that it implicitly recognizes the street as not just a gathering place of motor vehicles, but also of people, and with it, an era of more human-centered urban planning and design.

\textit{D. Street Furnishings as Public Art}

Once percent-for-art ordinances broaden coverage to capture the street and the streetscape, how exactly should the art get there? One way is to incorporate a grand-scale, stand-alone, purely aesthetic art work into the streetscape, as was public art practice in the public spaces of yesteryear.\textsuperscript{163} Public art practice has transformed to prefer the small—for example, considering street furniture as public art\textsuperscript{164}—and the utilitarian. For the latter, the underserved block in Houston’s Third Ward\textsuperscript{165} or Chicago’s South Side\textsuperscript{166} is the artistic medium\textsuperscript{167} for a cutting-edge public art known by different names, including “socially cooperative art,”\textsuperscript{168} “social practice art,”\textsuperscript{169} or “art-based community making.”\textsuperscript{170} These terms reference the


\textsuperscript{163} See supra text accompanying notes 18–25.

\textsuperscript{164} See supra text accompanying notes 18–25.

\textsuperscript{165} See About Project Row Houses, PROJECT ROW HOUSES, http://archive.org.com/page/3489545/2014-01-07/http://projectrowhouses.org/about/ (archived on Jan. 7, 2014) (referring to Houston’s Project Row Houses’s history that began with the transformation of a collection of abandoned row houses in Houston’s Third Ward into artist’s space and now includes a program and housing for single mothers, a research institute, park, fruit and vegetable co-op, and community center).


\textsuperscript{167} Theaster Gates, Founder, ReBuild Found., Address at Social Practice, Social Justice Symposium: In Conversation (Jan. 24, 2014) (stating that the “city is my medium”).

\textsuperscript{168} Tom Finkelpearl, WHAT WE MADE: CONVERSATIONS ON ART AND SOCIAL COOPERATION 343 (2013) (“Cooperative art is created through shared action, not by active artists for inactive spectators.”).

social impact of this new type of public art. Street furniture, however, combines both worlds—generally smaller in size than the conventional stand-alone public art piece, and so functional that its aesthetic possibilities often escape planners and engineers in the urban American streetscapes of struggle. For these reasons, therefore, the expansion in scope of percent-for-art ordinances to encompass as artwork artist and craftperson-designed street furnishings is well within current trends in public art practice.

There are other more practical reasons to broaden the type of artwork funded under percent-for-art ordinances to include street furniture. In contrast to the conventional large-scale public art piece, the furnishings of the street are already part of the streetscape—in fact, they comprise its primary part. With street furniture, therefore, there is nothing additional that need be added to the already cluttered streetscape. Rather, the addition of any stand-alone piece, particularly one that is large-scale, likely will add negatively to the urban street's visual cacophony.

Moreover, since the furnishings of the street comprise so much of the streetscape, the urban street and its letterboxes, traffic signals, street lamps, pavement, bus shelters, and bike racks represent the easiest way to accessorize the urban street. As the space has to be occupied, it is an already existing target for injecting warmth, humanity, whimsy, and play into the street and balances its all too often cold, hard auto-centric utility. In adding more humanity to the street, one might also add more humans, fulfilling the city's promise and enhancing its pleasure.

Just as certain jurisdictions are in the vanguard of expanding percent-for-art ordinances to apply clearly to the streetscape, others are in a similar position with respect to their percent-for-art ordinances' expansion of artwork to street furniture. Here again, Austin, Texas, stands out. Its ordinance articulates that art funded pursuant to it comprehends not just the conventional stand-alone purely aesthetic


170 George Lipsitz, Professor, Dep’t of Black Studies, Univ. of Cal., Santa Barbara, Keynote Address at Social Practice, Social Justice Symposium: Decorating the Way to Other Worlds: Project Row Houses at Twenty (Jan. 25, 2014).

171 See supra INTRODUCTION.

172 CITY OF AUSTIN, CULTURAL ARTS DIV., AUSTIN ART IN PUBLIC PLACES ARTIST RESOURCE GUIDE 49 (2014), http://www.austintexas.gov/sites/default/files/files/EGRSO/aipp_resourceguide_20141026_sm.pdf (including a definition for streetscape encompassing public right-of-ways, sidewalks, and other enhancements “intended to enhance the pedestrian experience”).

173 Id.

174 See MAEDA, supra note 137, at 66–67.

175 Id. at 67 (noting that humans are compelled to accessorize their personal electronic gadgets, such as iPods and mobile phones, in order to “balance the subzero coolness of the ideal consumer electronics gadget with a sense of human warmth. While the core object retains its pure, simple, and cool nakedness; its clothing can keep it warm, vivacious, and simply outrageous if so intended.”).

176 See supra text accompanying notes 43–65.
public art piece, but also an “artistically designed art feature” or “work of art” that enhances the streetscape and that is utilitarian.\(^{177}\)

Similarly, Albuquerque, New Mexico’s percent-for-art ordinance is remarkable for its elasticity in defining art. Its ordinance states broadly that “a work of art may be an integral part of a structure, attached to a structure or detached from the structure within or outside of it. It may also be located on publicly-owned property where there are no structures.”\(^{178}\) In a twist, Albuquerque’s definition of art in the ordinance appears also to capture the streetscape as a site for it. On its face, however, Albuquerque’s percent-for-art ordinance does not capture the streetscape expressly\(^{179}\)—in contrast to Raleigh’s, Austin’s, or San José’s clear articulation in statute or policy.\(^{180}\)

In the realm of public art policy and in lieu of articulating street furnishings, the Los Angeles Civic Art Policy lists types of street furniture, such as grates and street lights, that are considered “civic art” if “rendered by an artist for unique or limited editions.”\(^{181}\) The public art master plans of other cities refer to results of public surveys evidencing a desire for public art that is also street furniture.\(^{182}\) These public art master plans and their references to public opinion arguably reflect the aspirations of the jurisdictions’ percent-for-art programs in favor of functional, applied public art (as opposed to its purely aesthetic brethren) in keeping with current trends in the practice.\(^{183}\)

The question of broadening the definition of artwork in percent-for-art ordinances to capture the furnishings of the street is purely academic. Only two ordinances—Chicago, Illinois, and Raleigh, North Carolina—ban “furnishings.” Raleigh’s, however, could not apply to street furnishings, as the percent-for-art ordinance funds streetscape improvements.\(^{184}\) Chicago’s ordinance is also

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178 Albuquerque, N.M., Code of Ordinances § 10-5-6(A) (2016).
179 See id. A similar approach has been taken in El Paso. El Paso, Tex., Code § 2.40.070(B)(9) (2010) (allowing the percent-for-art ordinance for structureless projects to benefit from the ordinance and defines a work of art, in part, as a “combination of landscaping and landscape design,” including some natural and manufactured materials such as “rocks, fountains, reflecting pools, sculpture, screen, benches, and other types of streetscapes”); id. § 2.40.070(A) (mentioning “urban landscape”).
180 See supra text accompanying notes 142–159.
182 See, e.g., City of Albuquerque, Public Art Strategic Plan 21 (2013) (stating that public survey results indicate that 66.9% want more functional art (e.g. playground, street furniture) and 47.7% want art with a playful and whimsical theme); D.C. Comm’n on the Arts & Humanities, D.C. Creates! Public Art Master Plan 23 (2009) (“Numerous communities have expressed an interest in turning ordinary streetscape elements, such as manhole covers, into unique elements designed by artists.”); Bressi & McKInley, supra note 160, at 8 (“The priorities for the Public Art Program are . . . to . . . reinforce the city’s important connective fabric and high traffic areas—such as trails, transit hubs and pedestrian priority areas— with art that is integrated into functional elements such as street furniture, banners and paving.”).
183 See supra text accompanying notes 161–170.
ambiguous with respect to the streetscape, permitting "outdoor site improvement project[s]," but banning "street[s]" as projects qualifying for percent-for-art money. The ordinance also excludes "furnishings." Indeed, many ordinances already define as art the sort of functional, standardized pieces (such as benches and street lamps) that are commonly ordered via a manufacturer's catalogue, provided that they are artist-designed.\textsuperscript{187}

Because the furnishings of the street comprise so much of the streetscape, they are an inescapable part of the urban public realm. Viewed another way, they are blank canvases and platforms for a type of public art practice that marries beauty and utility, function and form. As with the ancients, the art simply works.\textsuperscript{188}

III. THE VISION AND WEIGHING ITS COSTS

Having reviewed the percent-for-art ordinances of the nation's fifty largest cities and advocated for their expansion, this section moves the discussion from theory to practice by highlighting the aesthetic possibilities of artistically rendered street furniture in the urban streetscape. It also offers a scheme for the expansion of percent-for-art ordinances to cover the streetscape and street furniture, weighs its costs, and discusses additional subtleties.

\textit{A. Aesthetic Vision}

In deference to artists, craftspersons, and designers, and the specific communities they may serve, this Article shies away from providing any particular design prescription and simply offers individual examples of the ideal aesthetic vision. Ultimately, the hope is that similar pieces are not commissioned in isolation, but replicated on a scale that saturates the streetscape with applied public art.

Examples of extant street furnishings as public art include Post Oak Divan, a bench of ceramic tile with a map of the site as it appeared a century ago in Houston, Texas.\textsuperscript{189} Bollards in Harvard Square commemorate the beloved puppet
of a passed-on street puppeteer. Other examples the cast-iron tree guards on Main Street in Louisville, Kentucky, that mirror the city's cast-iron façades, its local production of hand-carved wooden walking sticks, and historic nearby buildings. These examples draw on the site or the city's local history—an aspect of placemaking—and incorporate history into the art.

In contrast, the following photographs illustrate the whimsical possibilities of street furnishings as utilitarian public art. For instance, Figure 1 displays Parking Squid, a hugely popular bicycle rack in the shape of a steel squid, in downtown Seattle. Figure 2 shows Meeting Bowls, a temporary public art installation in Times Square that transformed the ordinary bench into a merry-go-round whirl of fun and play. Figure 3 similarly presents Bus Stop, a literal bus stop in Baltimore, Maryland, that is playground and bench.

FIGURE 1. Parking Squid (Photo Credit: Kevin Van Dyke)
FIGURE 2. Meeting Bowls (Photo Credit: mmmm...)

FIGURE 3. Bus Stop (Photo Credit: mmmm...)
B. Additional Features

In addition to broadening the scope of percent-for-art ordinances to include the streetscape and street furniture, city council members and local government decision-makers may wish to consider additional reform to these legal regimes that enhance not only the applied public art of the streetscape funded by them but also public art commissioned under these ordinances and sited throughout the city. For instance, and perhaps providing particular resonance for the streetscape and the street, given their service as crossroads and repository of community and the prime role that they play in forming and shaping identity, this Article suggests that placemaking be an articulated normative goal for percent-for-art legal schemes.

Placemaking is an urban design ethos that aims to transform "placeless" generic or negative urban spaces into animated and distinct public places, often by examining or referring to geographic, historical, and social context. The effect, therefore, is to perform the original purposes of art, as conceived by the ancients—celebrate the identity of the space and surrounding communities, educate those unfamiliar with the localized context, uplift those whose identities are often neglected in more conventional iterations of public art such as those commemorating state power and abstract art, and inspire the larger society by the quality of art and the communities and space honored. In lieu of the religious values celebrated in yesteryear, secular contemporary values of the city may be remembered in returning the often dead, generic urban space of the streetscape into a lively, humane destination and public place in itself.

Because placemaking eschews the global in favor of the local, the generic to the custom, street furniture designed with these principles in mind necessarily will be

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196 See supra text accompanying notes 71–87.
197 For instance, it is not uncommon to hear a person say that she is "from" a particular block, street, or neighborhood.
198 See, e.g., JACKSONVILLE, FLA., CODE OF ORDINANCES § 126.902(b) (2016) (permitting art to "relate . . . to the history or population of its neighborhood"); METRO. NASHVILLE ARTS COMM’N, PUBLIC ART GUIDELINES (2000), referenced in NASHVILLE, TENN., CODE OF ORDINANCES § 5.10.010(d) (2016) (deciding what public art may be funded under the percent-for-art ordinance); id. at 1 (articulating that a goal of the percent-for-art program is to “[p]romote distinctive and diverse artwork that will create a sense of place and contribute to the visual character and texture of the community”); id. (explaining that additional goals of the program are to “[g]ive visual expression to local values and cultural diversity,” and to “[u]se public art as a means to further the community’s sense of spirit and pride”).
199 See supra notes 26, 30 (explaining placemaking).
200 See supra text accompanying notes 92–117.
201 See supra text accompanying notes 18–21 & 24–25 (discussing types of public art).
artisanal as opposed to the generic, mass-produced "clones" found in furnishings catalogues. There is, thus, a return to a time when craft and artisanship were integral in urban design. Fortunately, a number of percent-for-art ordinances reviewed define as public art items that often are standardized, such as fountains, benches, and lights as long as they are artist-designed.

Artist-designed street furniture might well yield greater collaboration between the artist or artisan, urban planner, and public works or traffic engineer—again harking back to the days of yesteryear when artisans played key roles in urban design. Fleming notes anecdotally that as public arts commissioning matures, "artists and artisans are involved in collaborative designs that affect entire environments." In addition, a design team might want to seek input from the local community in which the street furniture might be sited (perhaps via a standing review committee, an ad hoc advisory committee, or members of a business improvement district), storytellers, and historians, who likely may add richer detail and further insight into the art as well as enhanced respect for the site's and surrounding community's history. This community dialogue is important, given that the public is an "involuntary audience" of public art, unlike the audiences who willingly enter the gallery and the museum. In the case of public art, one must be cognizant of the strong feelings of ill or good that it can spur.

The design of street furnishings under percent-for-art regimes should be one that is accessible and inclusive of all or most life stages and abilities in conformity

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202 MARK C. CHILDS, URBAN COMPOSITION DEVELOPING COMMUNITY THROUGH DESIGN 70 (2012) ("Built-form clones . . . are mass-produced products or the results of highly specific standards.").
203 FLEMING, supra note 23 ("We live in an age of catalogues. No wonder, then, that generic street furniture arrives in large numbers in our public spaces and along the street corridors of our communities."); see also id. at 22 ("We are also encouraged by street furniture that breaks away from that advertised in the catalogues that fall out of architectural magazines. Set down carelessly on American streetscapes, such generic models often condemn a site to an instant and dating banality. All of those Main Street projects begin to look the same because most civic programs did not deploy street furniture as a way of defining place.").
204 See id. at 244 ("Artist- or artisan-designed street furniture may seem old fashioned; certainly, some of the richest examples of furniture craft in cities date from the nineteenth rather than the twentieth century."); see also CHILDS, supra note 202, at 130–33 ("In the 1920s, street lights and traffic signals were part of local urban composition [such as through design competitions], not a generic industrial design and engineering exercise.").
205 See, e.g., SAN DIEGO, CAL., MUNICIPAL CODE § 26.0702 (2016) (rejecting mass-produced items found often in catalogues such as benches or fountains, yet permitting "decorative, ornamental or functional elements" that are artist-designed).
206 FLEMING, supra note 23, at 248 (noting that today’s norm is the result of less interaction between artists, craftsperson, architects, and landscape professionals, as in contrast to the Beaux-Arts period, they do not work in the same studios); see also supra Part I.B.
207 FLEMING, supra note 23, at 248.
208 Id. at 22 (suggesting use of "folklorists and historians as well as artists, designers, artisans, and engineers" on placemaking teams).
209 CHILDS, supra note 202, at 90–91 ("However, buildings, landscapes, and public works also have significant involuntary audiences, including nonowner users, neighbors, passersby, and citizens.").
to the tenets of the Universal Design movement.\textsuperscript{210} Though artisanal, these products are utilitarian, and therefore must also be durable and resistant to graffiti or vandalism. It is a bonus if they are made of sustainable or repurposed materials. To ensure social equity in siting, decision-makers should consider siting street furniture commissioned under a percent-for-art ordinance in almost all areas of the city, not just the central business district.\textsuperscript{211} Moreover, percent-for-art ordinances might also articulate a preference for local and regional artists, who likely are more in sync with local tastes, sites, and histories.\textsuperscript{212}

Furthermore, reformed percent-for-art ordinances could demand, to the extent possible, that street furniture commissioned under them do double and triple duty, thereby forgoing the mono-functional design of too much of it. Utility as well as economy would be enhanced. For instance, a parking meter could do quadruple duty—serving as a clock, an electric car charge point and incorporating “a loop for leashing a dog” and “a step for tying shoes.” A street light would not just be a light, but a resting place for weary bodies (either through a base for weary feet or a bench one can pull down) that could also have a trash or recycling receptacle attached to it.\textsuperscript{214} A series of steps, under which is coughed a vendor selling Broadway tickets, adds additional functions by providing seating for the global human spectacle and serving as a meeting point for the global crossroads in New York City’s Times Square.\textsuperscript{215}

In tandem with multiple uses, expanded percent-for-art legal regimes could express a preference for street furniture that engages multiple senses and is

\textsuperscript{210} MAIN & HANNAH, supra note 15, at 177–78, see also Cit. for Universal Design, The Principles of Universal Design, N.C. St. U. (Apr. 1, 1997), http://www.ncsu.ncsu/design/cud/about_ud/udprinciples.txt.htm. \textsuperscript{211} See, e.g., PLANNING & SUSTAINABILITY COMM’N, RECOMMENDED DRAFT: PORTLAND PLAN 20 (2011) (“Many people expressed their hope for more . . . public art located within their neighborhoods, not just downtown. Currently, the majority of city-owned public art is located in the central city. To build community and emphasize social inclusion art and art organizations need to be equitably located across Portland to match demand as closely as possible while balancing the need to invest significant concentrated funds into singular world-class attractions.”). \textsuperscript{212} See, e.g., Kan. City, Mo. Res. No. 95075 (2013) (“Missouri artists and students studying art in Missouri schools or institutions shall be given priority consideration for the award of contracts under the One Percent for Art Program.”); MEMPHIS, TENN., CODE OF ORDINANCES 5488, § 2-88(1) & 2-87 (2007) (mandating that 60% of artwork funded under the ordinance be by local artists—defined as artists who have lived or worked in Memphis for two years); id. at § 2-88(1) (extending Memphis’s preference demands even further by requiring “significant” participation by artists who are women or of color). \textsuperscript{213} CHILDs, supra note 202, at 71. \textsuperscript{214} Cf. ROBINSON, supra note 16, at 164–65; CHILDs, supra note 202, at 68–69 (discussing how the water tower in Seattle’s Volunteer Park stores water and provides pressure but is an “observation point” on the hill top, and is an entrance gate to the park and how cell phone towers also serve as church steeples or water tanks). \textsuperscript{215} KEITH MOSKOW & ROBERT LINN, SMALL SCALE: CREATIVE SOLUTIONS FOR BETTER CITY LIVING 118–23 (2010).
interactive, in keeping with trends in public art.\textsuperscript{216} Too many percent–for-art ordinances reviewed favor visual art over the non–visual.\textsuperscript{217} Metal railings could be tuned to play songs—becoming musical instruments, engaging touch, sight, and sound and providing a sense of play.\textsuperscript{218} Benches and trash receptacles could sing.\textsuperscript{219} In Brooklyn, New York, one installation goes well beyond the staid historical marker: abolitionist history in the borough captures the imagination of passers-by through larger-than-life images of individuals projected from streetlamps and onto close-by blank walls, sidewalks, and buildings.\textsuperscript{220} The visual experience is enhanced aurally by recordings recounting abolitionist stories that are accessed by plugging into embedded headphone jacks or texting a number.\textsuperscript{221} Street furniture, therefore, enables an alternative soundscape—not just a visual experience.\textsuperscript{222}

Similarly and in contrast to the permanent art often favored currently in percent–for-art schemes,\textsuperscript{223} the ephemeral—or transient experience—could be encouraged.\textsuperscript{224} Pulse Park in New York City, which included "pulses of light responding to a visitor's pulse,"\textsuperscript{225} is one example of this type of temporary experience.

In the big picture, reform of percent–for-art ordinances to include the streetscape, street furniture, and additional features, signifies an investment in environments that provide equal respect to the pedestrian, transit rider, cyclist, and private motor vehicle. Relative to the pedestrian, transit user, and cyclist, a motorist

\textsuperscript{216} See Miller, supra note 8, at 6.
\textsuperscript{217} See, e.g., SACRAMENTO, CAL. CITY CODE § 2.84.020 (2016) (noting that eligible artwork are "all forms of the visual arts"); OMAHA, NEB. CODE OF ORDINANCES § 27-124(1) (2016) (stating that public art includes "all forms of visual art"); id. § 27-124(4) (stating that an artist is "[a] practitioner of the visual fine arts, recognized by his or her peers as a professional who produces visual art"); MILWAUKEE, WIS. FINANCE CODE § 304-27(2)(e) (2013) ("'Works of Art' shall mean all forms of original creations of visual art . . . ."); N.Y.C., N.Y. RULES tit. 43 § 2-01 (2016) ("'Work(s) of art' means all forms of visual arts . . . .").

\textsuperscript{218} See, e.g., MOSKOW & LINN, supra note 215, at 184–85.

\textsuperscript{219} See, e.g., id. at 166–67 (noting that in the U.K. project "Bins and Benches," the garbage cans form a "baritone barbershop quintet and the benches a high soprano choir").

\textsuperscript{220} Id. at 134–39.

\textsuperscript{221} Id. Cf. Miller, supra note 8, at 1 ("An increasing number of public artists are looking to utilize our ability to transport sound—through iPods and smartphones—to create soundscapes for walking through the city. Such 'cinematic listening' creates a new experience of our environment through site-specific music.").

\textsuperscript{222} See supra text accompanying note 217 (referencing a preference for the visual in existing percent–for-art ordinances).

\textsuperscript{223} See, e.g., PITTSBURGH, PA. CODE OF ORDINANCES § 175.02 (2016) (noting that works of art include "items of a permanent or fixed character").

\textsuperscript{224} See, e.g., SAN DIEGO, CAL., MUNICIPAL CODE § 26.0702 (2016) (noting that "[a]l[art]works may be permanent, fixed, temporary, or portable"); CHARLOTTE, N.C., CODE OF ORDINANCES § 15-233 (2016) (defining artwork as "permanent, temporary, or functional, may stand alone or be integrated into the architecture or landscaping and should encompass the broadest range of expression, media and materials.").

\textsuperscript{225} Miller, supra note 8, at 6.
is likely uninterested in the street and its scene—what Jane Jacobs calls the street's intricate ballet.\textsuperscript{226} Indeed, each user forms different images of the visual composition, namely because of speed.\textsuperscript{227} A driver sees only "fleeting pictures" of the streetscape while the pedestrian, public transport rider, and cyclist, faced with the limits of human locomotion,\textsuperscript{228} experience it at a much slower pace that mandates opportunity to "stand and stare" and wander mentally.\textsuperscript{229} People, in turn, bring more people, resulting in the jostling of crowds\textsuperscript{230} and the purpose of the city.\textsuperscript{231}

The pedestrian, transit rider, and cyclist seek stimulation in eye and mind. Ornament and decoration, therefore, take on heightened importance.\textsuperscript{232} Street furnishings can help to adorn and to add vitality to the streetscape while simultaneously serving utilitarian purposes.\textsuperscript{233} With an emphasis on the private motor vehicle, however, the street and its scene in many U.S. cities were ignored and blank walls, empty lots, and industrial highway overpasses, accompanied by perfunctory, uninviting street furniture, ruled the day. American cities were set back for decades. Yet still the street rises and claims its place.\textsuperscript{234}

\section*{C. Rationale and Costs of Statutory Expansion}

One reason to expand the scope of percent-for-art ordinances to include the streetscape as an eligible project and street furniture as public art is that heretofore neglected public spaces would have, in theory, equal opportunity to be injected with a boost of vitality and visual enhancement. The urban street, therefore, would achieve normative parity with conventional public spaces and likely at relatively modest cost. The addition of applied public art in the streetscape likely would help draw people and the private investment, or rooftops and retail, that often follow them, thus enhancing sales and property tax receipts.

Moreover, dedicated and consistent funding for artist-created street furniture also might have an ameliorative effect on the city's aesthetically mean streets—for instance, redressing the social sins and aesthetic scars of mid-century urban renewal

\textsuperscript{226} \textit{Jacobs, Death and Life}, supra note 44, at 50 (likening the flow of "movement and change" on the city sidewalk "not to a simple-minded precision dance with everyone kicking up at the same time, twirling in unison and bowing off en masse, but to an intricate ballet in which the individual dancers and ensembles all have distinctive parts which miraculously reinforce each other and compose and orderly whole").

\textsuperscript{227} See \textit{Moughtin et al.}, supra note 31, at 23.

\textsuperscript{228} See \textit{L.A. CTY.}, \textit{supra} note 78, at 12–15 ("Human energy limits people to slow and local movement.").

\textsuperscript{229} \textit{Moughtin et al.}, supra note 31, at 23.

\textsuperscript{230} See \textit{supra} text accompanying notes 58–59.

\textsuperscript{231} See \textit{supra} text accompanying notes 44–57, 64–66.

\textsuperscript{232} See \textit{Moughtin et al.}, supra note 31, at 23.

\textsuperscript{233} See \textit{L.A. CTY.}, supra note 78, at 6-23, 11-42.

\textsuperscript{234} See \textit{supra} text accompanying notes 84–88.
that resulted in grey, hulking overpasses in many an urban inner core. Furthermore, expanding the demand for commissioned art might also boost the local and regional creative economy and art market, particularly if there are preferences for local and regional artists, artisans, or craftspersons. In addition, art would be brought out of the walled confines of the gallery, private collection, museum, and structures generally and literally into the streets. Reminiscent of the New Deal’s focus on “cultural democracy,” not only is the audience for art expanded, but also, many more people are provided occasion “to have art in their daily lives.” By the same token and in this vein of “cultural democracy,” the addition of placemaking requirements in the streetscape furnishings funded by percent-for-art ordinances also may have the effect of expanding the audience for art by validating communities and sites whose histories are under-recognized.

In reality, however, the broadening of percent-for-art ordinances to include the streetscape and street furniture amounts to the possibility of a very small design intervention in the city and the streetscape. It is, therefore, no magic bullet and without other changes to the street or site, might not yield the desired aesthetic effect that will in turn draw or increase people and private investment to the site.

Because it is a micro-design intervention, the costs likely should be modest. Yet, by no means are these modest costs an invitation to waste taxpayers’ money, and streets or sites selected must be carefully targeted and analyzed, not only to ensure geographic and spatial equity but also to ensure a reasonable return on investment. Speck calls this strategic investment of resources in the streetscape, “urban triage.” For instance, it would make little sense to intervene artistically in a streetscape lacking the potential for or a modicum of existing vitality or density or positive trends in private investment.

If the cost to the public of expanding percent-for-art ordinances to capture the streetscape and street furniture, however, is an issue for jurisdictions, then it may first be wise to place in perspective the general cost of public art relative to the art and design budgets of the ancients. The modern day allocation of 0.5 to 2% of the budget of an eligible project to art is significantly lower than the 90% or even 50% allocated in centuries and millennia past. In comparison to these art and design budgets, contemporary ones seem beyond parsimonious, and arguably signify the lesser importance placed on aesthetics, art, and design, relative to pure

215 See supra note 212.
216 See KNIGHT, supra note 17, at 5.
217 See id.
218 See supra text accompanying notes 17–21, 25 (discussing types of public art).
219 GARVIN, supra note 4, at 10, 15 (articulating the six ingredients of success in urban planning initiatives); see also infra text accompanying notes 251–252.
221 See supra text accompanying notes 95–98.
222 See supra text accompanying notes 95–98.
utility. On the other hand, the fact that percent-for-art regimes have swept the nation underscores the value that local governments see to the city in them.

Moreover, trends in public art dictate that the percentage allocated to it under percent-for-art regimes is heading northward to 2% of the cost of an eligible project. In contrast, a number of jurisdictions reviewed are squarely in 1% (or even lower) territory. Therefore, it would not be unreasonable to expand the percentage devoted to art to 2% or higher as time goes on.

Taking a page from examples of artist-designed infrastructure, the expense of such projects is not so costly relative to their size and value generated. For instance, $90,000 of the $13 million Thread Bridge in Willimantic, Connecticut, was devoted to the design and construction of artist-designed placemaking elements that consisted of four frogs atop spools of thread on the bridge. These frogs, subsequently, have generated “a modest tourist industry,” creating a landmark and serving as premier examples of “American roadside kitsch.” Moreover, in Phoenix, the artist-designed $18 million Twenty-seventh Avenue Solid Waste Management Facility and Recycling Center came in $2 million under budget, even though it veered substantially from conventional engineer-generated designs. This facility has gone on to become a landmark in public architecture and, quite unexpectedly, a site for wedding receptions and parties because of its design.

Almost equal in importance to cost is the value generated. The urban planner Alexander Garvin measures value for public urban planning projects by whether they result in a sustained and desirable reaction by the private market, such as increased development, retail, or rooftops. In the case of applied public art in the streetscape, another way to measure value is the increase or absolute number and cross-section of people attracted to an area since the injection of the public art.

Garvin, however, is quick to point out that a design intervention cannot stand alone. Ultimately, value is affected by the six ingredients to urban planning success, and even then it is not foreordained because unexpected variables can arise. A

243 See supra note 9.
244 FLEMING, supra note 23, at 25–6.
245 Id. at 25 (citing to the Connecticut roads website).
246 FINKELPEARL, supra note 17, at 198–99, 227.
247 Id. at 198 (citing a review by New York Times architecture critic Herbert Muschamp).
248 Id. at 207.
249 GARVIN, supra note 4, at 10–12.
250 Id. Another example of the success of a public intervention as measured by the response of the private market is “[w]hen Pittsburgh cleared its downtown of the clutter of railyards and warehouses; reduced air and water pollution; and built new highways, bridges, and downtown garages, businesses responded by rebuilding half the central business district.” Id. at 3. “When Portland invested in a riverfront park, a light-rail system, and pedestrianized streets, the private sector responded by erecting office buildings, retail stores, hotels, and apartment homes.” Id.
251 Id. at 10 (“Even when all the ingredients are properly combined, they may be insufficient to guarantee project success because city planners, unlike chefs, cannot keep unexpected ingredients from getting into the pot.”).
market must exist for the intervention and there should be adequate financing for it; it must be located in the right location in a place in which the design makes the area safe and pleasant for the public to gather; the public agency responsible for the intervention must have the necessary wherewithal to see it through (entrepreneurship); and short-term and long-term temporal implications and effects of the intervention must be considered. GIS mapping may assist with assessing these ingredients and hence the right placement for the introduction of applied public art in the streetscape.

In addition to the modest economic costs of broadening percent-for-art ordinances to encompass the streetscape and street furniture, one potential social cost is change to the demographic makeup of a streetscape’s environs and gentrification. These consequences may occur if the streetscape intervention is sited in a transitioning or historically undervalued urban area and in combination with the right ingredients of urban planning success. The concern is not gentrification per se, but the displacement of existing residents that is often feared to accompany neighborhood change and enhanced private and public investment. While this fear is valid, data show that what explains neighborhood change and gentrification is not who is forced out, displacement, but who moves in—settlement, particularly white child-free college graduates who are under forty and middle-class black and Latino householders with children or who are seniors. Neighborhoods gentrify without widespread displacement.

252 Id. at 9–28.
253 See, e.g., PHX. OFF. OF ARTS & CULTURE, 2013–18 PUBLIC ART PROJECT PLAN 32 (2012) available at https://www.phoenix.gov/artssite/Documents/100586.pdf (including the development of “a comprehensive computerized mapping system (GIS mapping) . . . to identify key opportunities to cluster public art funds and projects, increasing the public benefits of integrating art with the design of City buildings, parks, streetscapes and other public spaces”).
254 See supra text accompanying note 252 (giving six ingredients of planning).
256 Lance Freeman, Displacement or Succession? Residential Mobility in Gentrifying Neighborhoods, 40 URB. AFF. REV. 463, 467, 487 (2005) (using the “geocoded version of the Panel Study of Income Dynamics (PSID) that is linked to the decennial census”).
258 Freeman, supra note 256, at 487–88; McKinnish et al., supra note 257, at 3 (“We find [sic] no evidence of disproportionate exit of low-education or minority householders, but do find evidence that gentrifying neighborhoods disproportionately retain black householders with a high school degree . . . ”).
CONCLUSION

This Article endeavors to break new ground and spur a broader conversation in the legal academic discourse on public art and the city. In broadening the scope of percent-for-art ordinances to capture the streetscape and its furnishings, the city’s largest land use—the street—takes its rightful place in the law as urban public space worthy of public art and the price of beauty. The street’s accessories, in the form of street furniture, become a form of applied public art that marries function and form and injects dignity, humanity, and play into the aesthetic desert of the modern urban American streetscape.

In a return to the ancients—albeit at more modern cost—the art aims to work by facilitating community and strengthening the urban fabric, celebrating identity and the power of place in urban space, and ultimately tempering the cold, hard engineered utility of the aesthetically mean street. The city and its citizenry are indeed worth the price of beauty and the power of art, and the streetscape evolves once again.