

RESOLUTION NO. 2013-05-___ (R)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY,
TEXAS, AUTHORIZING THE REVISION OF THE PUBLIC ART
GUIDELINES**

WHEREAS, the City Council of the City of McKinney, Texas, finds that public art enhances the beauty and economic vitality of public spaces, and

WHEREAS, the City Council finds that the placement of art in public spaces creates a unique sense of space; and

WHEREAS, the City Council finds that it is important to establish policies and procedures by which public art shall be acquired, maintained and controlled; and

WHEREAS, the City Council imparts upon the McKinney Arts Commission the responsibility of utilizing the policies and procedures set forth in the Public Art Program when making recommendations for the acquisition and placement of public art.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas hereby adopts the amended Public Arts Program guidelines (Exhibit A).

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 21ST DAY OF MAY, 2013.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit A

**City of McKinney
Public Art Program**

I. Mission

The City of McKinney (“City”) is committed to promoting the cultural, aesthetic, and economic vitality in the city by integrating art into public places, civic infrastructure, and present and future development which may be achieved by the creation of a public art program (“Public Art Program”).

II. Goals

A Public Art Program will enrich the community through the integration of the vision and work of artists into the planning, design and construction of public spaces. The City’s commitment to the arts through the Public Art Program will endeavor to:

1. Further the development of art throughout the community, create gathering places for McKinney residents, connect people with the place and with each other, and provide engaging, educative experiences; and
2. Enhance the natural beauty of McKinney through visual art, reinforce the high quality of the City’s built environment and reflect the uniqueness of its natural landscape; mark important civic features such as streams, civic facilities and infrastructure; enhance the City’s appeal, image and identity in the eyes of residents and businesses; and encourage excellence in private development; and
3. Nurture and enhance the arts community and affirm the educational environment of public arts; and
4. Provide opportunities for local and regional artists to create new works, to reach new audiences and to present their work alongside the work of other nationally recognized public artists; and
5. Involve artists from the region, nationally and internationally in the overall planning and urban design of the community and its infrastructure from an arts perspective; and
6. Promote tourism and economic vitality through the artistic design and enhancement of public spaces; and
7. Allow the community to express its identity and values in promoting diversity and pluralism in public art; and
8. Increase public access to the region’s best artists and artwork.

III. Definitions

1. Artist – A practitioner in the visual arts generally recognized by critics and peers as a professional of serious intent and recognized ability, who produces artwork.
2. Artist Services – Professional services by artists to develop designs for artworks or other architectural or urban design elements, either individually or as a member of a project design team.
3. Artist Registry – A pool of artists pre-qualified by the Arts Commission from which it can choose artists.
4. Artplace – Art, accessible to the public, which adds to the distinction of a place such as a plaza or the incorporation of art into the design element of light standards, walkways, bridges or other improvement projects.

5. Commission – The McKinney Arts Commission.
6. Deaccessioning – The removal, relocation, selling or trading of artworks owned by the City.
7. Donations (and gifts) – Art donated to the City from a private individual or institution and or other outside sources.
8. Loan – Artworks provided to the City for its use for a period of time and to be returned to the owner after the loan period expires.
9. Privately Placed Public Art – Art pieces located on private property for public enjoyment. These pieces are not maintained by the City, nor does it have to go through this program’s art selection process.
10. Public Accessibility – Areas that are readily accessible to the public for purposes of viewing and enjoying art.
11. Public Art – Any work of art displayed:
 - a) in an open City-owned area, or
 - b) on the exterior of any City-owned facility, or
 - c) inside any City-owned facility in areas designated as a public area, or
 - d) on non-City property if *the work of art* is installed or financed, either wholly or in part, with City funds or grants procured by the City.
12. Regional – Within the boundaries of the State of Texas.
13. Work of art or art – Includes works in any permanent medium or combination of media produced by an artist. It is a mode of communication. High quality works of art exhibit several, if not all, of the following: a sense of innovation, technical proficiency, sensitivity to and an understanding of subject matter, perception, distinctive personal vision, expressive language, and a vocabulary of form – style. For the purpose of this policy, Art does not include landscaping or the performing or literary arts such as dance, music, drama, or poetry unless expressed through visual art.

IV. General Policies

General Liability, Workers Compensation and Bonding Requirements

The City recognizes that it is both difficult for artists to obtain the necessary general liability, workers compensation and bonding (“Insurance”) required for City projects. The following guidelines shall govern Insurance for Public Art:

1. When an artist is selected by a City contractor, Insurance may be provided directly by the prime contractor, architect, engineer, etc., responsible for contracting with the artist.
2. When an artist is selected directly by the City to produce an artwork or artplace, insurance requirements shall be the responsibility of the artist.
3. If the artist is unable to provide the necessary insurance, the artist may execute and provide the City with a waiver and hold harmless agreement freeing the City from any responsibility for harm arising from injuries sustained on City property during the course of the contract.

An artist, or a collaborative team of artists, shall be liable for his/her/their own acts and omissions during the creation, construction, fabrication and/or installation of a work of art or

artplace. However, artists must have all construction drawings, plans, specifications and installation methods reviewed and certified by an engineer licensed in the State of Texas to guarantee stability and safety prior to acceptance of a work of art or artplace by the City.

V. McKinney Art Commission

The Commission will oversee the art selection process for the Public Art Program and will also make final recommendations to the City Council on all public art commissions, artist selections, and design proposals. The City Council will have the final approval authority on all public art and artist selections.

Powers and Duties

1. The Commission will oversee the program and act in an advisory capacity to the City Council on matters pertaining to the Public Arts Program.
2. On behalf of the City of McKinney, the Commission may solicit gifts, revenues, bequests or endowments of money and/or property as donations and/or grants from persons, firms or corporations, subject to the guidance, approval and acceptance by the City Council.
3. The Commission shall make both an oral and written report annually to the City Council concerning its activities during the past year and its proposal for the coming year.
4. The Commission shall advise and make recommendations to the City Council pertaining to, among other things, artist selection; commission and placement of artworks; and maintenance and de-accessioning of artworks.
5. The Commission may convene a Selection Panel for art selection to include artists, designers, community members and other pertinent experts relative to the specific proposal.

VI. Works of Art for City-owned Facilities and Spaces

Artist Responsibilities

On any City project including public art, the contract with the artist shall require the artist to warrant that:

1. The work of art, artplace or art concept is the result of the artist's personal creative efforts except in the case of design collaboration.
2. The art is unique and original and does not infringe upon any copyright. The artist must agree to hold the City harmless against any claims for copyright infringement.
3. The art or an exact duplicate has not been accepted for sale elsewhere.
4. The art is free and clear of any liens.
5. The execution and fabrication of the art will be performed in a professional manner.
6. The art as fabricated and installed will be free of defects in material and craftsmanship, including, but not limited to, any defects constituting "inherent vice" or qualities which cause or accelerate deterioration.

City Responsibilities

1. The artist shall have no responsibilities, other than as set forth herein, to maintain city-owned public. The City will endeavor to maintain the public art

in good condition.

2. Any repairs, restoration and/or conservation determined necessary by the City may be performed by the City, if funds are appropriated for such purpose. The City reserves the right to perform maintenance or make minor and/or emergency repairs without consulting the artist(s). The City shall endeavor to perform any repair, restoration and/or conservation work according to maintenance and materials information provided by the artist at the time of acquisition.
3. The City shall have absolute, unrestricted rights incidental to its full ownership of public art, enabling the City to alter, change, modify, destroy, remove, move, replace, transport or transfer, in whole or in part, the final artistic work when the City deems it necessary within its discretion in order to exercise the City's powers and responsibilities in regard to public works and improvements, in furtherance of the City's operations or for any other good cause. When an artwork is acquired by the City after the City Council's adoption of this Public Art Policy, and the artwork is a painting, drawing, print or sculpture, or a photographic image created for exhibition purposes only, existing in a single copy, and the artwork either is not an integral part of a City-owned facility, or is part of a City facility but can be reasonably removed without distortion, mutilation or other modification, the artist shall have the right to: 1) prevent any intentional distortion, mutilation or other modification of the artwork that would be prejudicial to the artist's honor or reputation, or 2) prevent destruction of the work when it is of recognized stature.

Selection of Artists

1. Eligibility Requirements.
 - a) Artists will be selected on the basis of their qualifications as demonstrated by past work, appropriateness of the proposal to the particular project, the probability of successful completion and practicality of long-term maintenance of the work of art.
 - b) Local and regional qualified artists may be given preference on projects, but are not guaranteed selection.
 - c) Specifically excluded for eligibility are the design architect (or other design professional) or members of the firm(s) utilized for selection of the work of art, City employees or their relatives, and artists who are members of, or related to members of the Commission, or works of art by any of the above.
 - d) The Commission may establish specific requirements for each project.
2. Methods of Selecting Artist(s).
 - a) Direct election – artist(s) chosen directly by the Commission.
 - b) Limited competition – artist(s) or artist/design teams invited by the Commission to submit proposals.
 - c) Open competition – any artist(s)/design team applies, subject to limitations established by the Commission.
 - d) Artist Registry – pool of artists pre-qualified by the Arts Commission from which it can choose artists for Direct election, Limited competition or Open competition.

Criteria for Selection of Artists or Artworks

1. Artistic Excellence – Accepted works of art shall be original works of exceptional quality and enduring value based upon consideration of its artistic, social, and/or historical significance, as judged by the Commission.
2. Appropriateness to site – relationship of the work of art to the site shall be considered in respect to the social, cultural, historical and physical context of the site, either existing or planned.
3. Media – All visual art forms may be considered, subject to limitations set by the Commission.
4. Artwork – Artwork of all genres, styles, and tastes should be considered for the City collection.
5. Permanence – Consideration may be given to structural and surface integrity and stability, to permanence, protection against theft, vandalism and weathering, as well as to the probability of excessive maintenance and repair costs.
6. Elements of Design – Consideration may take into account that in addition to complying with aesthetic standards, public art may also serve to establish focal points, terminate vistas, modify, enhance or define spaces, or establish identity.
7. Safety – Artworks and artplaces must be devoid of any unsafe conditions or factors.
8. Diversity – The Public Art Program shall strive for diversity of style, scale, media and artists, including ethnicity and gender as well as equitable distribution of artworks and artplaces throughout the city.

Public Art Master Plan

The Commission will spearhead the creation of a comprehensive, five-year Public Art Master Plan. The Plan will review, identify, and target specific areas throughout the City where public art would be an enhancement to the current, unique beauty of the community.

The creation of the Public Art Master Plan will require awareness, cooperation, and involvement from City Departments, community artists, and additional resources as the Commission so chooses.

The plan will encourage deliberate planning at the earliest stage of both municipal and private development projects, through early identification of public art opportunities.

Funding

All funding shall be accomplished through grant/donation support and developer contribution.

1. Public art and design monies shall be used solely for expenses associated with the selection, commissioning, acquisition, installation, maintenance, administration, removal and insurance of the works of art in relation thereto. Such funds shall be administered by the City.
2. A Public Art Trust Fund will be set up through the City. Funds will be designated for public art projects — whether from public or private sources, or donated or bequeathed to the city for works of art — into this Fund. The City may contract with artists and pay them from this Public Art Trust Fund.

3. The Commission will spearhead fundraising efforts from private persons and developers for the acquisition, construction, and maintenance of public art in public spaces.
4. The City of McKinney encourages, but does not require, all private developers who apply to the city for building permits to construct or reconstruct a commercial or municipal structure to donate to the Public Art Trust Fund or to elect to establish publicly accessible privately placed art.

Donations and Loans of Artwork

1. The City of McKinney encourages donations and loans of works of art for public places. Any and all loans, gifts or donations of a work of art proposed for placement with any City agency or department shall be made through the Commission, with final approval for any gift, donation and/or loan reserved by the City Council.
2. The Commission will review a proposed donation, gift or loan according to the following considerations and supporting information:
 - a) Aesthetic.
 - 1) Written proposal with detailed description of artwork, sketches and/or a model of the artwork and photographs.
 - 2) Artist qualifications.
 - 3) Evidence of prior works of art.
 - b) Financial.
 - 1) Cost of fabrication and installation.
 - 2) Source of funding.
 - 3) Estimated maintenance costs and funding source.
 - 4) Statement of value of the artwork.
 - c) Safety and Maintenance.
 - 1) Susceptibility of the artwork(s) to normal wear and to vandalism.
 - 2) Potential dangers to the public.
 - 3) Special insurance requirements.
 - d) Environmental.
 - 1) Appropriateness to the site, both specific and general.
 - 2) Scale of the artwork in relation to site.
 - e) Timeliness.
 - 1) Allowance of sufficient time for normal review process by the McKinney Arts Commission.
 - 2) Timely and appropriate response to Commission and staff requests for additional materials.
3. Exceptions to the Review Process may be granted to exhibitions of 90 days or less and gifts of state presented by foreign governments (municipal, state or national); notwithstanding this exception, the City Council must authorize any proposed gift, donation, loan or exhibition.

Deaccessioning of Work of Art

The Commission shall review the entire public art collection at least once every 5 year period to assess the condition of each piece of the collection; however, at any time the

Commission may recommend the decommissioning of a work of art on a case-by-case basis.

* This policy shall be reviewed on an as-needed basis by the City Council.