



Public Art Guidelines

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I. Purpose and Goals

- A. Purpose: To promote and encourage private and public programs to further the development and public awareness of, and interest in, the fine arts and cultural properties, to increase employment opportunities in the arts, to encourage the integration of art into the architecture of municipal structures for the City of El Paso (“the City”), and to provide for the citizens of the City high quality, publicly accessible works of art, which contribute to the urban landscape and symbolize the City’s sense of place.
- B. Goals:
 - A. To enhance the quality of life of residents through the thoughtful infusion of artists at a neighborhood level and in the design of publicly financed infrastructure.
 - B. To promote economic revitalization by adding value to municipal facilities, creating ongoing opportunities for artists and artisans to enhance the visitor experience.
 - C. To define, enhance, and improve authentic images of El Paso as a unique place, community, and destination.

II. Definitions

- A. Acquisition: The acquisition of works of art by purchase, exchange, or gift.
- B. Capital Improvements Program: All projects financed by general obligation bonds and revenue bonds, and certificates of obligation, except for capital acquisitions and the Plaza Theatre Project.
- C. Project: Any construction activity undertaken pursuant to the Capital Improvements Program.
- D. Commission: The selection and contracting of an artist or artist team to create a work of art for a fee.
- E. Cultural Affairs Advisory Board (CAAB): The board established under the provisions of Chapter 2.40 of the City of El Paso Municipal Code.
- F. Public Art Committee (PAC): A subcommittee of the Cultural Affairs Advisory Board appointed to oversee quality control of the public art program and projects and to recommend the scope of projects, artworks, and artists for the public art program.
- G. Public Art Program: The process for administration, selection, approval, funding, acquisition or commissioning of public works of art under this ordinance.

- H. Annual Public Art Plan: An annual prioritized list of public art projects, including budgets and recommended design approaches, developed by the PAC in consultation with city departments anticipating capital improvement projects, to be recommended by the CAAB and approved by the City Council.
- I. Work of art. Any public art project that is a work of visual art, including but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching), works in clay, textile, fiber, wood, metal, plastic, glass, stone, concrete, and like materials, or mixed media (including a collage, assemblage, or any combination of the foregoing art media). For projects which involve no structure, a work of art may include 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). 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. Except as provided herein, the term “work of art” excludes the performing arts of dance, music, theatre, or the literary arts, unless expressed in or combined with a work of visual art or design.

III. Public Art Committee

- A. Definition. The PAC is a standing committee of the CAAB to oversee the public art program. With CAAB approval, the PAC directs the selection, placement, maintenance, relocation, and deaccession of artwork acquired through the public art program, and recommends revisions to the Public Art Guidelines.
- B. Appointment. The PAC shall consist of eleven (11) members appointed as follows: The Chair of the CAAB shall appoint three (3) members to the PAC from the CAAB, one of which shall be appointed as Chair. The additional eight (8) members will be appointed by the Chair of the CAAB from a list of qualified citizen candidates provided by the Museums and Cultural Affairs staff and approved by the CAAB. Members are appointed to a three-year term (initially staggered one, two and three years) and can be reappointed for one consecutive three-year term with each member serving no more than six consecutive years. Terms for the CAAB members serving on the PAC will correspond to their CAAB terms.
- C. Composition. All PAC members must be qualified credentialed professionals and represent the following: Four (4) members of the PAC shall be representatives of the visual arts, and the other four (4) members of the PAC shall be representatives of the architecture, landscape architecture, urban planning or engineering, construction or development industries.
- D. Meetings. The PAC shall hold regular meetings on a monthly basis, at a minimum. All meetings, minutes, and records of official action of the PAC shall be open to the public. When a member is absent from three consecutive meetings, the Chair, shall report this fact to the CAAB so that consideration may be given to the removal of such member.

See 2.04 El Paso Municipal Code.

E. Responsibilities. PAC will:

1. Recommend written regulations to include, but not be limited to, criteria for selection of artists and works of art, maintenance of a file of the Works of Art that are in the public art collection.
2. Commission of artworks, review of the design, and the placement of artworks and to oversee the removal of artworks from the public art collection.
3. Subject to the review and the approval of the CAAB, make recommendations regarding the designation of sites for the implementation of the public art program, the determination of the scope and budget of public art projects, and the oversight of the artist selection process.
4. Make recommendations to the Department for the selection of Artist Selection Panels who will recommend artists and artworks to be funded from the Capital Improvements Program. The Artist Selection Panels are to be composed of 3 to 7 persons who are professionals in the visual arts and design fields and members of the community, and must include one member of the PAC.
5. Make recommendations to the CAAB for public art projects to be funded from the Capital Improvements Program.
6. Make recommendations to the City on the acquisition of works of art to include in the Public Art Collection from funding sources other than the Capital Improvements Program for City-owned facilities, except works of art acquired for the permanent collections of or exhibitions within the El Paso Public Library, the El Paso Museum of Art, El Paso Museum of Archaeology, and the El Paso Museum of History.
7. Make recommendations to the Department for programs to educate the community on the public art program and recommendation to the City of programs and activities to further the development and public awareness of art in public places.
8. Make recommendations regarding Works of art proposed to be acquired or donated to the City, as gifts or long-term loans, for placement on municipally owned property, except works of art acquired for the permanent collections of, or exhibitions within, the El Paso Public Library, the El Paso Museum of Art, the El Paso Museum of Archaeology, and the El Paso Museum of History.

IV. Museums and Cultural Affairs Department (MCAD) Staff

A. Responsibilities. MCAD staff will:

1. Manage the public art program and facilitate communication among the Cultural Affairs Advisory Board (CAAB), Public Art Committee (PAC) and Artist Selection Panels (ASP).
2. Identify public art project opportunities.
3. Participate in briefings for capital construction projects.
4. Initiate and coordinate each public art project so that its process is compatible with any related project timelines.
5. Present project briefings to PAC.
6. Administer the artist' recruitment and selection process.
7. Compile a pool of potential ASP and recommend a selection panel for each project.
8. Provide public art program overview and project summary to selection panel.
9. Facilitate selection panel meetings.
10. Present semifinalists identified by the ASP to the PAC for approval.
11. Provide report supporting finalist selection that PAC presents to CAAB.
12. Coordinate publicity with department having oversight responsibility for artwork.
13. Direct the public relations and general education of the public art program.

V. Artwork & Artists Selection Panels (ASP)

A. Definition. A group of individuals, including artists, art and design professionals and non-artist citizen representatives established by the Public Art Committee (PAC) to select artists to provide works or services.

B. Responsibilities. The ASP shall:

1. Review and examine proposals submitted by artist applicants.
2. Recommend an artist to be commissioned to create artwork or select an existing work to be purchased, based on the established criteria, subject to confirmation by the PAC.

3. Provide to the PAC a report on the reasons for its selection(s), addressing the Committee's stated objectives, parameters, and criteria.
 4. Serve as public art ambassadors to the community.
- C. Composition. In general, the ASP shall be composed of three to five voting members, depending upon the size and complexity of the project. The majority of the panelists shall be art and design professionals. All panels shall include at least one representative from the community where the artwork(s) will be sited.
- D. Voting. Each voting panelist shall have one vote. Advisors to the panel may participate freely in discussion and debate but shall not vote. Observers shall not vote nor participate in the deliberations or discussions.
1. In the event the ASP is unable to arrive at a consensus in a reasonable period of time, the public art coordinator shall call for a vote and the majority vote shall rule.
 2. The ASP has the option to make no selection if, in its opinion, there is insufficient merit in the entries.
- E. Advisors to the ASP. Whenever possible, each ASP will be assisted by non-voting advisors including, but not limited to, the project architect, the project manager and other representatives from the client department, the design team, the PAC, and the community.
- F. Qualifications and Eligibility. The MCAD staff shall establish and maintain a file of potential panelists containing information on the experience and expertise qualifying individuals to serve as panelists. For each project, the PAC shall review staff recommendations and appoint panel members.
1. In general, it is the intent that an ASP be appointed for each artist selection process and a Public Art Committee member shall serve as an advisor to the panel; however, in situations of extenuating circumstances, such as extreme time limitations, the PAC may serve as the ASP.
 2. At the discretion of the PAC, an ASP may be asked to serve on more than one artist(s) selection process or project.
 3. The City is committed to participation by multicultural and ethnic artists in public art. Therefore, the PAC will ensure that juries and commissioned artists reflect the ethnic diversity of the population of the City.
- G. Meetings. During the evaluation of application materials, the ASP shall meet as often as necessary.
1. ASP meetings shall be chaired by a PAC member who will not vote.

2. Panelists shall not discuss any application or panel deliberation with any project applicant unless asked to do so by the Public Art Program Coordinator, and these requests shall occur only after the panel recommendations have been acted on by the PAC.

H. Artist Selection Process.

1. Eligibility requirements and review criteria will be established by the PAC for each project.
2. Artists will be selected on the basis of their qualifications as demonstrated by their application materials.
3. The following individuals may not apply: employees of the MCAD, the project architect and/or other project personnel, members of the PAC, members of the ASP, and the immediate family members and business partners of all the above.

VI. Guidelines for Selecting Artwork and Artists.

A. Introduction. The CAAB presents an Annual Public Art Plan to the City Council for review and approval. The Annual Public Art Plan includes recommendations for acquisition or commission of artwork for the public art collection. Once the site and concept of an acquisition or commissioned artwork project is approved as part of the Annual Public Art Plan, the PAC will establish an Artist/Artwork Selection Panel (ASP) for each project. The ASP will make a recommendation for artist/artwork selection to the PAC. The PAC will review the recommendation according to the review criteria and will accept, accept with conditions, or not accept the recommendation of the ASP. In case the recommendation is not accepted, the PAC will work with the ASP to resolve issues concerning the recommendation.

B. Summary of Artwork Selection Process

1. A project is identified in the Annual Public Plan, and is approved by the City Council. The project may be the acquisition of artwork for a site, or the commissioning of an artwork for a site.
2. The PAC appoints an ASP for the project to coordinate the selection process.
3. The ASP makes a recommendation to the PAC regarding the selection of an artist or artwork.
4. Upon acceptance of the ASP's recommendation, the PAC and planning staff will manage the project through installation.

C. Artists/Artwork Selection Methods. There are several methods for selecting art and artists: Open Competition, Limited or Invitational Competition, Direct Selection, Mixed Process

and Pre-Qualified Artists List. The method of selecting artists for individual projects shall be determined by the MCAD staff, in consultation with the PAC, in accordance with the adopted public art program guidelines. Any of the following methods may be used, depending upon the requirements of a particular project which may include but are not limited to: budget, timeline, geographic location, and scope of work.

1. **Open Competition:** An open competition is a call for artists for a specific project in which artists are asked to submit evidence of their past work. Any artist may submit credentials, subject to any limitations established by the ASP or PAC. Call for entries for open competitions will be sufficiently detailed to permit artists to determine whether their work is appropriate for the project under consideration.
2. **Limited or Invitational Competition:** A limited number of artists shall be invited by the ASP to submit credentials for a specific project. Artists shall be invited, based on their past work and demonstrated ability, to successfully respond to the conditions posed by the particular project (i.e., water features, light works, paintings, sound works, landscape works, design team efforts, etc.), or based on other non-aesthetic Public Art Program goals (i.e., artists who reside in a particular community or neighborhood where a project is occurring, local artists or regional artists, etc.).
3. **Direct Selection:** At times the PAC and MCAD staff may elect to recommend a direct selection in which it contracts with a specific artist for a particular project. Such an election may occur for any reason, but will generally occur when circumstances surrounding the project make either an open or limited competition unfeasible (for example; project timeline, community or social considerations, client demand, etc.).
4. **Mixed Process:** A mixed process may include any combination of the above approaches.
5. **Pre-Qualified Artists List:** The PAC will establish a pre-qualified list of artists for City projects. The list will be updated every two years and will include categories for established as well as emerging artists. The list will include local, regional and national artists. Artists interested in being considered for City projects will be invited to submit their qualifications every two years. An ASP, composed of three to five people, will be appointed by the PAC to review and select the applicants. Once selected, artists will be able to remain on the eligibility list for four years before they need to re-apply. Artists will not be eligible for more than two projects at any given time

VII. Selection Criteria for Artists and Artwork

- A. **General criteria.** Projects undertaken by artists or acquisitions of artwork whether by commission, purchase, gift, or other means should further the purpose and goals of the MCAD public art program. The PAC will determine the appropriate recruitment strategy

to establish a pool of artists for each project. The ASP will apply the following criteria when selecting artists, considering acquisitions or siting artwork:

1. Artistic Merit – The inherent quality and excellence of a proposed artwork together with the strength of the artist’s concept and design capabilities are the program’s highest priorities.
2. Context – Artwork must be compatible in scale, material, form, and content with its surroundings. When serving a functional purpose, artworks may establish focal points; modify, enhance, or define specific spaces; establish identity or address specific issues of civic design. Consideration should also be given to the architectural, historical, geographical and social/cultural context of the site or community, as well as the way people may interact with the artwork.
3. Relevant experience – Experience and professional record of the artist(s) should provide convincing evidence of ability to successfully complete the project as proposed. Particularly on collaborative or design team projects artists should demonstrate ability to:
 - a. Communicate effectively and elicit the ideas of team members;
 - b. Exhibit flexibility and problem-solving skills;
 - c. Work with architectural drawings and construction documents;
 - d. Engage community representatives in a project.
4. Permanence/maintenance – Due consideration will be given to the structural and surface soundness, operational costs and inherent resistance to theft, vandalism, weathering and excessive maintenance.
5. Technical feasibility – An artist must exhibit a successful track record of construction and installation of artwork or show that an appropriate professional has examined the proposed artwork and confirmed feasibility of construction and installation.
6. Budget - An artist’s proposal should provide a budget adequate to cover all costs for the design, fabrication, insurance, transportation, storage, maintenance costs and installation of the proposed artwork, plus reasonable unforeseen circumstances. Artists should have a history of completing projects within budget.
7. Diversity – Artwork will be sought from artists of diverse ethnic and cultural identities and from local, regional, national, and international artists. The PAC encourages applications from artists working in both established and experimental art forms.
8. Fabrication and installation schedules – The artist proposal should include a project timeline that incorporates design review, fabrication, delivery and

installation in accordance with project schedule. The artist should have a history of completing projects on time.

9. The PAC and ASP may recommend rejection of all submissions, if none are considered satisfactory, and a new pool of artists may be established.

VIII. Conflict of Interest. This section supplements the City's Ethics Ordinance, as codified in Chapter 2.29 of the El Paso Municipal Code.

A. MCAD staff. Employees of the MCAD are ineligible for public art commissions or projects as long as they are employed by MCAD.

B. PAC members and PAC sub-committee.

1. Members of PAC or a member of a PAC sub-committee having a financial interest in the outcome of any policy, decision, or determination before the PAC or PAC sub-committee on which the member serves shall, as soon as possible after such interest becomes apparent, disclose to each of the other members voting on the matter and the nature of the financial interest in the issue, and such member shall be disqualified from participation in any debate, or vote.

C. Other participants. Members of the project management, project architect, or consulting firms and employees of City of El Paso are ineligible to receive public art funds for design services or public art commissions.

D. Artists.

1. Artists who were previously involved in the development of a public art project or public artwork plan may be eligible for consideration for that particular project or plan provided there is disclosure of the prior involvement and approval of the PAC.
2. An artist is ineligible to serve on the ASP while under consideration for a public art commission or project.
3. An artist is precluded from having his/her work considered for a public art commission or project once selected for or while serving on the ASP.

IX. Placement of Artwork

A. Process. When public art funds are generated from a construction project, the MCAD staff and PAC will meet to determine whether a public art project will be located at the construction site or if those funds will be pooled for future projects. MCAD staff will propose site option(s) for artworks from pooled funds for review by the PAC that will present the recommended site for CAAB approval.

B. Factors. In determining a site for artwork commissioned, purchased, donated or loaned, the PAC will consider the following factors:

1. Visibility and civic prominence.
2. Public accessibility to proposed artwork for all individuals, including facility users, surrounding community members and those with special needs.
3. Public safety and liability issues.
4. Vehicular and pedestrian traffic patterns.
5. Relationship to architectural and natural features, landscape design, environmental impact and concerns, and future plans for the area.
6. Social context and other uses of the artwork or space.
7. Existing artwork within the proposed site vicinity.

C. Other considerations.

1. In selecting a site for a Two Percent for Public Art project, first consideration will be given to the location of the construction project which generated the funds.
2. The PAC and MCAD staff will coordinate the placement of the art with the department having oversight responsibility.
3. Appropriate recognition and publicity of the artwork will be the dual responsibility of the department having oversight responsibility and MCAD staff.

X. Funding of the Public Art Program

A. Sources of funds.

1. The public art ordinance dedicates two percent (2%) of the net proceeds of any revenue bond or certificates of obligation issued for construction projects to fund the public art program.
2. Donations from the private sector or grants from the private or public sector shall be encouraged as a means to broaden the existing program potential. These funds shall be maintained in a separate fund for the public art program.

B. Funding process. Funds will be dispersed in accordance with the City of El Paso Financial Services Department policies and procedures.

- C. Related costs. Bond proceeds generated for Two Percent for Public Art projects may be spent for the acquisition of artwork, including:
1. Artist-related costs consisting of:
 - a. Artist's design fee
 - b. Operating and overhead costs
 - c. Labor and materials
 - d. Proposals, drawings, or maquettes
 - e. City required permits related to construction or erection of artwork
 - f. Project-related travel
 - g. Transportation of artwork to the site
 - h. Installation
 - i. Site preparation or modification when not included in construction costs
 - j. Frames, mats, mounting, anchorage, pedestals, cases or other material necessary for the installation, display and /or security of the artwork (such as fire retardant or graffiti resistant treatment)
 - k. A portion of the budget for the artwork may be set aside for contingency at the beginning of a project and returned to the public art fund if unused.
 2. Administrative costs, at fifteen percent (15%) of project funds, based on size and complexity of project, consisting of:
 - a. Public Art staff salaries and benefits
 - b. Office overhead
 - c. Cost of conducting a competition
 - d. Cost of conducting a search for work of art
 - e. Employing consultants for planning and research and project management
 - f. Education and marketing
 3. Architectural and engineering design services when they cannot be included in construction costs.
 4. Insurance costs.
 5. Capital maintenance and restoration of artwork acquired through the public art program.
 6. Storage and disposal costs for resited or deaccessioned artwork acquired through the public art program.
 7. Special projects and other purposes directly related to a specific Two Percent for Public Art project and recommended by the PAC for CAAB approval.

D. Exclusions. No public art funds may be spent for:

1. “Art objects” which are mass produced or of standard manufacture, such as playground equipment, fountains, or statuary elements, unless incorporated into an artwork by a project artist.
2. Decorative or functional elements by the project design professionals such as architects, landscape architects, engineers, or their consultants.
3. Directional elements such as signs, maps, color coding, unless designed or executed by an artist and integral to a specific project.
4. Utility costs.

XI. Maintenance, Conservation and Ownership

- A. Maintenance. Maintenance of public art shall be the responsibility of the City, not the artists, and the City shall commit to keeping them in well-maintained condition. The City may request as part of the contract process that the artist or artist team, include maintenance provisions for a term of one-year that includes repairs. The artist, or artist team, will also be required to provide a maintenance manual and the artist will be allowed first-refusal rights on repair contracts with a fair-market rate of remuneration.
- B. Conservation. The PAC will establish policies and procedures to evaluate the public art collection on a regular basis for purposes of conservation and assessment of the collection’s future.
- C. Ownership. The City shall have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, remove, move, replace, transport, or transfer in whole or in part, the final artistic work when the City deems 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. The artist may retain copyright and other intellectual property rights in and to the final design and the final artistic work itself. The Artist shall grant to the City a perpetual, irrevocable license to graphically depict or display the final artistic work for any non-commercial purpose, unless otherwise specified by contract.

XII. Resiting and Deaccessioning

- A. Policies. MCAD will retain the right to resite or deaccession any artwork in accordance with Visual Artists Rights Act regardless of the source of funding or method of acquisition. While the intent of acquisitions for long-term public display, circumstances and/or conditions may arise that make it prudent for the MCAD, on behalf of the public interest, to remove an artwork from public display. However, the review process will insure that resiting or deaccessioning will be a seldom-employed action that operates

from a strong presumption against removing artwork from the public art collection, insulating the collection from fluctuations in taste.

B. Reasons for resiting or deaccessioning. The PAC will recommend to the CAAB that a specific artwork be resited or deaccessioned only if one or more of the following criteria are met:

1. The site is being eliminated;
2. The site is being altered such that the artwork is no longer compatible with the site;
3. The security of the artwork can no longer be reasonably guaranteed at its current site;
4. The artwork has become a danger to public safety;
5. The cost of maintaining or updating the artwork's operation technology is cost prohibitive;
6. Significant adverse reaction to the artwork from the community has continued for an extended period (at least two years).

C. Procedures. Once the PAC has determined that an artwork meets one or more of the above criteria and with the approval of the CAAB, the following process is initiated:

1. The PAC and MCAD staff make a good faith attempt to discuss resiting with the artist;
2. If the artist does not agree to the proposed resiting, he/she will have the right to prevent the use of his/her name as the author of the artwork or to buy back the work as addressed in the artist contract;
3. If, in the opinion of MCAD, there is not another appropriate site, the artwork may be stored or deaccessioned.
4. If deaccessioned, all rights will revert to the artist, where consistent with contractual agreements. If the artist waives those rights the MCAD will dispose of the artwork.
5. If the structural integrity or condition of an artwork, in the opinion of the PAC and MCAD staff, presents an eminent threat to public safety, the MCAD director may authorize its immediate removal, without CAAB action or the artist's consent. The director would have the work placed in temporary storage. The artist and the CAAB must be notified of this action within 30 days. The PAC will then recommend options for disposition (e.g., repair, reinstallation, maintenance

provisions or deaccessioning) to the CAAB for approval.

6. In the event that the artwork cannot be removed without being irreparably damaged or destroyed, and if artist rights are not waived in the contractual agreement, the MCAD staff must attempt to gain such written permission before proceeding. In the event that this cannot be accomplished before action is required in order to protect the public health and safety, the MCAD director will proceed according to the advice of the City' Legal Department.

XIII. Review and Amendment

- A. These guidelines are subject to periodic review and revision by the PAC and subsequent approval by the CAAB.



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