

## Art Donation Policy

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This policy is intended to govern the process for acceptance of works of art by the Civic Enhancement Committee for recommendation to the City Council for inclusion in the city's public art collection. This policy outlines the process for reviewing and evaluating works of art under consideration to determine the suitability of artwork, appropriate locations for possible installation and evaluating future maintenance and safety requirements. These guidelines are intended to ensure that public art accepted by the city (i) is of the highest quality, (ii) enhances the aesthetic character of the community's public spaces, (iii) advances the public understanding of art, (iv) meets with the overall feel and themes of the city, and (iv) does not place an undue burden on the city for the artwork's maintenance, security or public safety.

### A. General Standards

Public art is defined as the work of a visual artist located in a publicly accessible space. Public art includes, but is not limited to: paintings, murals, statues, stained glass, fiber art, relief or other sculpture, fountains, arches and other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, landscape art, and crafts both decorative and utilitarian. Public art may be temporary or permanent in nature.

Regardless of the method of acquisition, certain fundamental criteria will be universally applied to any work of art under consideration including the following points:

- Artistic Merit
- Physical condition of the artwork
- History and provenance of the artwork as it relates to the city of Prescott
- Compatibility with the city's existing public art
- Availability of an appropriate location for siting on city property
- Requirements for installation, storage and maintenance
- Liability considerations and issues of public safety
- Final determinations related to acceptance of public art will be at the sole discretion of the City Council by a majority vote of its members

Acceptable forms of art ("Acceptable Art") shall include the following:

- All forms of limited edition or one-of-a-kind original creations of visual art created by an artist
- Project features and enhancements which are unique and produced by a professional artist such as benches and fountains
- Murals or mosaics covering walls
- Professional artist sculptures which can be freestanding, wall-supported or suspended and made of durable materials suitable to the site and the climate
- Other suitable artworks as presented in a catalogue and previously approved by the Civic Enhancement Committee

The following non-exclusive list describes those items not considered Acceptable Art (“Not Acceptable Art”)

- Business logos or art that incorporates a logo for the primary purpose of advertising a business
- Directional elements such as supergraphics, signage or color coding except where these elements are integral parts of the original works of art
- Mass-produced art objects, such as fountains, statuary objects or playground equipment
- Reproduction by mechanical or other means of original works of art
- Art exhibitions and educational activities
- Security and publicity concerning works of art
- Standard landscape or hardscape elements that would normally be associated with another improvement project

#### B. Accepting Gifts, Bequests and Loans of Artwork

This process begins with the Civic Enhancement Committee and is finalized by the City Council. Upon receipt of an offer, the Civic Enhancement Committee will provide the prospective donor with a copy of this Policy.

Eligible offers of artworks from artists, owners, businesses, organizations, individuals or other entities shall be submitted by the donor to the Civic Enhancement Committee for processing. Eligible offers shall include the following:

- A letter of intention stating that the donor wishes to donate, loan and/or bequest art to the city. The donor may suggest locations for the artwork’s placement on city property
- A written description of the artwork, including a definition (ie painting, sculpture, fabric, hanging, etc); the date medium was created; the name of the artist who

created the artwork; the artwork's dimensions, physical condition and any relevant background information about the artwork and the artist

- The name, address and phone number of the donor
- Visual documentation of the artwork (ie color photographs or videotapes) and shall include electronic copies
- Donor may be asked to provide additional documentation to verify originality and legal title of the work

Once all items have been received for processing, the Civic Enhancement Committee will review the offer at their next available quarterly meeting, and notify the donor in writing of the date and time of such meeting. The donor will have an opportunity to make a brief informational presentation to the Committee.

Following review and examination of the artwork and donation proposal, the Civic Enhancement Committee shall make a recommendation to the City Council regarding acceptance or non-acceptance of the artwork, placement and cost of the artwork, and responsible party for any ongoing maintenance costs to be considered at the next available Voting Meeting following a 60-day public comment period.

The City Clerk's Office will open the 60-day public comment period regarding the proposed donation within one week of the Civic Enhancement Committee recommendation; collect any received public comments and compile along with the recommendation regarding acceptance or non-acceptance of the artwork (including placement and maintenance requirements), a draft Art Donation Agreement and any other supplemental materials to be presented to the City Council.

The City Council will consider the Civic Enhancement Committee recommendations at a regular Voting Meeting and shall accept or decline acceptance of the artwork for the city. After the Council's determination, the City Clerk's Office will notify the donor.

Prospective donors should understand that artwork will not be accepted by the city with attached conditions or restrictions. Neither the Civic Enhancement Committee nor the city is obligated to accept bequeathed items that, in its opinion, would be an inappropriate fit for the city's public art collection. No object will be accepted for the city's art collection if ownership is in question. Art objects will be accessioned only when they have been collected, exported and imported in full compliance with the laws and regulations of the country or countries of origin, and with the laws and regulations of the city, Yavapai County, State of Arizona and the United States. Under no circumstances will individuals of the Civic Enhancement Committee or city personnel give appraisals of art objects.

### C. Site Selection Requirements

**Determination of Site Locations.** When evaluating potential art sites it should be asked whether art at a particular location has the ability to: (i) reveal a unique or special quality about Prescott, (ii) enhance the daily routine of the commuter, pedestrian, worker or resident, (iii) contribute to awareness of Prescott's history and cultural identity, (iv) add aesthetic quality and interest to Prescott's infrastructure, (v) serve as a landmark or place-maker, (vi) engage the public in an entertaining, educational, or contemplative way, or (vii) make a statement about the identity, character or values of a particular area or community within Prescott.

Site location for the placement of donated works is also an involved process. All necessary parties including the Civic Enhancement Committee, city departments and staff will work to identify priority sites within the city limits that will be appropriate for the proposed donation. The location must be compatible with the piece to be donated. If no feasible site is identified for the proposed donation, the donation will not be accepted.

**Stakeholder Review.** Following recommendations being made by the Civic Enhancement Committee, the City Clerk's Office will open a 60-day public comment period during which citizens will be able to submit comments on the artwork and location recommended via the city website. These comments will be presented to the City Council will all appropriate documents and recommendations at the Voting Meeting during which they consider the donation of the artwork.

**Interference with Other Facilities.** The artwork must not interfere with other uses or with utility lines. Art pieces and related locations may be rejected because the artwork interferes with above or underground wiring or pipes, building maintenance or window washing activities, regular use or programming of a facility or with the normal flow of pedestrian traffic. For example, locations may be rejected because of interference with existing or future planned park uses.

**ADA Compliance.** The location of the artwork must conform to the American's with Disabilities Act including any applicable provisions relating to visual access and physical access to the installed artwork.

**Site Maps.** Site maps for the suggested location of the artwork will be required. In all cases, the final site for the artwork must be approved by the City Council and must meet required standards, and, if the artwork is to be located within a city facility the appropriate parties must also agree to placement. Any relocation of artwork must be approved by the City Council at the expense of the donor. Site approval must take place

concurrent with acceptance of the artwork donation; if a site cannot be identified the donation will not be accepted.

**Relocation of Artwork.** The initial placement of artwork is not necessarily permanent. If, in the future, a more appropriate location becomes apparent the Civic Enhancement Committee will review the possibility and present a recommendation to the City Council. Relocation of artwork is subject to approval of the City Council.

**Engineering Requirements.** If it is determined by the city that a particular installation of donated artwork requires the services of a licensed contractor, or professional engineering the donor will be required to cover all costs associated with installation.

#### D. Installation Costs

Installation costs shall be covered by the donor, unless otherwise agreed upon by the City Council and donor as part of the Art Donation Agreement.

#### E. Responsibility After Installation

Artwork located on city-owned property shall be dedicated to the city and the city shall be responsible for the costs of all future maintenance costs.

#### F. De-accession

Any proposal to remove or relocate artwork, art spaces or art concepts should be reviewed according to this Policy, except that, in cases of urgent need for de-accession, proposals may be submitted without following the formal process but meeting the following criteria:

- Extreme controversy
- Irreparable vandalism
- Artist request
- Irreparable damage from other causes

When all steps for de-accession recommendations have been taken, the recommendation shall be considered for approval by the Council. De-accession shall be implemented by the City Manager or his/her designee based on the following considerations:

- The site of the artwork has become inappropriate because it is no longer accessible to the public, the physical setting has changed or the site is to be destroyed
- Artwork has received adverse public reaction

- De-accession has been requested by agency displaying the artwork
- Artwork is discovered to be fraudulent or not authentic
- Artwork possesses faults of design or workmanship, and repair or remedy is unfeasible or impractical
- Artwork causes excessive or unreasonable maintenance or repair
- Artwork is damaged irreparably, or to the extent that repair is unreasonable or impracticable
- Written request from the artist has been received
- Security for the artwork cannot be reasonably guaranteed, and the work cannot be reasonably moved to a safer location

#### De-accession Recommendation Procedures:

- Review artist contract and other relevant agreements
- Obtain legal opinion from City Attorney
- Review written correspondence, media coverage and other evidence of public debate
- Investigate that no restrictions apply prior to de-accession
- Investigate if clear title exists to artwork prior to de-accession

#### De-accession Recommendation Checklist:

- Notification of donor
- Reasons for suggested de-accession, and acquisition method and cost
- Informed estimate of the current value of the work
- Hold a Committee meeting for input
- Recommend specific measures and timeframe for relocation or removal
- Review options for possible relocation
- Suggested and alternative courses of action
- Sale – proceed with sale of de-accessioned artwork according to the ARS Statute on disposal of public property, seek bona fide appraisal, advertise sale and seek competitive bids
- Alternatives – dispose through surplus property procedures, remove artwork from display and store it, if above is not feasible and all other de-accession steps have been taken, artwork will be destroyed

#### G. Artists' Rights

The artist retains all rights under 17 USC 106A (commonly referred to as the "Visual Artists Rights Act") and all other copyrights to the artwork under 17 USC 101, et seq.

(commonly referred to as the “Copyright Act of 1976”) with the following exceptions: 1) ownership, 2) possession and 3) those rights limited by this policy.

The city shall have no liability for copyright infringement claims by third parties against the artist or donor. The city will not be responsible for prosecution of copyright infringement claims by any artists, individuals or entities. The city will not assume any liability for copyright infringement claims. The city will not defend or indemnify any artist, individual(s), or entity(ies) claiming a copyright interest in the public art, including but not limited to the donating artist.