

ORDINANCE NO. 3703

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, ADOPTING A PUBLIC ART POLICY THEREBY AUTHORIZING THE CITY COUNCIL TO DETERMINE WHICH OF THE CITY'S CAPITAL IMPROVEMENT PROJECTS ("PROJECTS") SHOULD HAVE A PUBLIC ART COMPONENT AND ALLOCATING TWO PERCENT OF THE PROJECTS' COSTS FOR THE COMMISSIONING OF PUBLIC ART WORKS AND ARTISTS' SERVICES IN THE CONSTRUCTION OF PUBLIC WORKS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council views public art as integral to the complex underlying structure of a community by recognizing its potential to strengthen economic development and tourism, enhance neighborhood identity, educate children and adults, support a public process for incorporating artist services and artworks in the design of civic spaces and facilities, and enrich the spirit and pride of its citizens; and

WHEREAS, the City Council accepts responsibility for expanding the opportunities for its citizens to experience public art and other projects resulting from the creative expression of its visual artists in public places throughout the City of Mesquite.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council shall hereby determine which of the City's capital improvement projects ("Projects") should have a public art component and shall hereby authorize the allocation of two percent of the City's Projects' costs for the commissioning of public art works and artists' services in the construction of public works.

SECTION 2. That the Public Art Policy, attached hereto as Exhibit "A," is hereby established to direct the inclusion of works of art in public spaces throughout the City and/or the design services of artists in certain City Projects.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall be affected and shall remain in full force and effect.

SECTION 5. That this ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,  
on the 20th day of December, 2004.



Mike Anderson  
Mayor

ATTEST:

APPROVED:



Judy Womack  
City Secretary



B. J. Smith  
City Attorney

# City of Mesquite Public Art Policy

## I. MISSION.

The City of Mesquite is committed to the creation of a Public Art Policy which views public art as integral to the complex underlying structure of a community by recognizing its potential to:

- A. Strengthen economic development and tourism;
- B. Enhance neighborhood identity;
- C. Educate children and adults;
- D. Support a public process for incorporating artist services and artworks in the design of civic spaces and facilities; and
- E. Enrich the spirit and pride of its citizens.



MESQUITE ARTS COUNCIL



MESQUITE ARTS CENTER

## II. GOALS.

A Public Art Policy will create a better visual environment for the residents and visitors of Mesquite. With its commitment to the highest aesthetic standards and the broadest involvement of artists, the Public Art Policy will endeavor to:

- A. Implement public art as a tool to strengthen economic development and tourism;
- B. Engage the local community and educate the public about public art and the commissioning of artworks;
- C. Educate children and adults through public art by providing avenues for expressing that which is unique to communities;
- D. Involve artists from the region and elsewhere in the overall planning and urban design of the community and its infrastructure;
- E. Demonstrate and recognize the unique spirit of the community and self-regard of the citizens of Mesquite by commissioning artists to create works that directly respond to the vitality of the region and its diverse cultural heritage;
- F. Commission artists to explore new relationships between art and architecture as integral elements of the public art process;
- G. Create possibilities for collaboration between artists and design professionals, including architects, landscape architects, planners, engineers, citizens and city officials; and
- H. Provide opportunities for artists to create new works, to reach new audiences and to present their work side-by-side with the work of other nationally recognized public artists.

## III. DEFINITIONS.

- A. **Artist:** A practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability, who produces artworks.
- B. **Artist Services:** Professional services by artists to develop designs for artworks or other architectural, landscape or urban design elements, either individually or as a member of a project design team.



- C. Artists' Registry: A local, regional, national and international slide and digital collection of artists and artworks used as a resource for art, art activities and for the public art selection process.
- D. Artplace: Art that 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.
- E. Artwork: A work of visual art created by or under the direction of one or more artists, including a painting, drawing, print, sculpture, photographic image or multimedia work, whether 2 or 3 dimensional, existing in a single copy or in a limited edition of 200 or fewer copies that are consecutively numbered by the artist and bear the signature or other identifying mark of the artist.
- F. De-accessioning: The removal, relocation, selling or trading of artworks owned by the City.
- G. Donations (and Gifts): Art donated to the City from a private individual or institution and/or other outside sources.
- H. 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.
- I. Policy: This Public Art Policy as adopted by the City Council, including any future additions, deletions or revisions thereto.
- J. Public Art Committee: The committee that makes recommendations through the Mesquite Arts Council Board of Directors to the City Council regarding public art.
- K. Public Art Project: A commission, acquisition, loan or donation of artwork to the City of Mesquite pursuant to this policy, including the process by which such event is initiated, developed, evaluated, conducted and completed.

#### IV. GENERAL POLICIES.

##### A. Diversity.

It is the policy of the City of Mesquite to involve qualified Minority and Women-Owned Enterprises to the greatest extent feasible in the City's construction, procurement and professional services programs. The City, its contractors and subcontractors shall not discriminate on the basis of race, color, religion, national origin, gender or sexual orientation in the award and performance of contracts. All administrators of the City's Public Art Policy will uphold this policy.

B. General Liability, Workers Compensation and Bonding Requirements.

The City recognizes that it is both difficult and extremely costly for artists to obtain the kinds and amounts of insurance and bonding coverage required for City projects. When the artist is a member of a design team, this coverage, if available, shall be provided directly by the prime contractor, architect, engineer, etc., responsible for contracting with the artist. For artists contracting directly with the City to produce an artwork or artplace, insurance requirements shall be the responsibility of the artist.

Except as set out in the preceding paragraph or as required by state law, in lieu of requiring workers compensation insurance, artists shall be required to execute a hold harmless agreement freeing the City from any responsibility for harm arising from injuries sustained on City property during the course of the contract, (*see Attachment A, "Release and Hold Harmless Agreement"*).

It is the current practice for construction projects bid out by the City to require the contractor to sign an affidavit before receiving payment from the City stating that all subcontractors and suppliers have been paid, and to show proof of this if there is doubt. The execution of this affidavit is required before the City makes final payment on any contract, even when there is a payment bond (*see Attachment B, "Contractor's Affidavit of Final Payment and Release"*).

Artists or collaborative teams of artists shall be liable for their own negligent acts and omissions during the fabrication and installation of an artwork 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.

V. PUBLIC ART COMMITTEE.

The Public Art Committee is an ad hoc committee of the Mesquite Arts Council, (a 501(c) 3, nonprofit organization) which has been designated as the official arts agency for the City of Mesquite.

A. Responsibilities.

1. Oversee quality control of the Public Art Policy and projects.
2. Review and recommend for approval by the Mesquite Arts Council Board of Directors, through a majority vote of the Public Art Committee, all Public Art Projects that will be subject to approval or rejection by the City Council.

3. Make recommendations regarding any issues that arise from a specific artwork or art project.

B. Composition of Public Art Committee.

The Public Art Committee is composed of voting and ex-officio (non-voting) members. Voting members may include one City Council member or his/her designee and three artists. The committee will be appointed by the Mesquite Arts Council Board of Directors. Ex-officio members shall include an Arts Center/Arts Council staff member, the Arts Council Board Chair, the City department director responsible for the associated construction project or his/her designee, and the architect and/or landscape architect associated with the project.

C. Qualifications for Membership on the Public Art Committee.

All appointments to the Public Art Committee will be recognized as visual artists (by means of a currently demonstrable record of effort, exhibitions, work sold/collected and/or commissioned) or as an architect, landscape architect, art historian or critic, arts advocate/collector, urban planner or engineer, with appropriate professional credentials, and some combination of the following:

1. Knowledge of and/or skills in the visual arts.
2. Knowledge of regional and national individual artists and their work.
3. Demonstrated experience as an advocate for the visual environment.
4. Evidence of willingness to encourage and promote experimentation and new artistic and design expressions.
5. Evidence of community activities significant enough to confirm knowledge of cultural and artistic issues and individuals within the City.
6. Understanding and empathy toward ethnic and gender diversity.
7. Knowledge of the Public Art Policy and its implications for the City.
8. In addition, all members of the Public Art Committee must be registered voters.

D. Term of Membership.

Members shall be appointed on a project-by-project basis for a term of one year and shall be eligible for reappointment until the project is completed.

E. Education and Community Involvement.



A process for community involvement in public art projects shall be established to create mutual educational opportunities for the residents of the neighborhood and the artists.

The Public Art Committee must recognize that the project is for a public space and that the public will be involved. It is recognized that public art can provoke radically different viewpoints. The Public Art Committee should be prepared to respond to community feedback.

VI. ADMINISTRATION OF THE PUBLIC ART POLICY.

Mesquite Arts Council/Arts Center staff will administer the Public Art Policy for the City of Mesquite in a non-voting capacity.

VII. WORKS OF ART FOR CITY FACILITIES AND SPACES.

A. City Responsibilities.

1. Maintenance of public artworks and artplaces shall be the responsibility of the City of Mesquite, not the artist, and the City shall commit to keeping them in a well-maintained condition.
2. Repairs, restoration and/or conservation shall be the responsibility of the City. The City shall reserve the right to perform maintenance or make minor and/or emergency repairs without consulting the artist(s), provided this work is done according to maintenance and materials information provided by the artist at the time of acquisition.
3. In general, the artist may retain copyright and other intellectual property rights in and to the final design and the final artistic work itself, although the City shall retain the right, consistent within the framework of a "work for hire," to make the determination as to copyright ownership on an individual basis. In those cases where the artist retains the copyright, he shall grant to the City a perpetual, irrevocable license to graphically reproduce, depict or display the final artistic work for any non-commercial and/or promotional purpose whatsoever. When a work of visual art is incorporated in or made part of a City-owned building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work, 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 it necessary within its discretion in order to exercise the City's powers and



responsibilities in regard to public works and improvements, in furtherance or 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, or in signed, consecutively numbered limited editions of no more than 200 copies, 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. These rights may be waived by the artist through a signed, written instrument. The City shall make a diligent, good faith effort to notify the artist of the intended action affecting the artwork, to include providing such notice in writing to the artist by registered mail before proceeding with its plans.

At the City's option, an artist or collaborative team involved with creating an artwork or artplace may coordinate construction/fabrication, installation or application of designs or concepts when carried out by third parties. This will ensure the quality and design control specified by the artist(s), who shall have the right to provide specifications/qualifications for the fabricators. However, this coordination must be managed through the appropriate construction management personnel when the artwork is an integral part of the construction/renovation project. Artist coordination for installation, fabrication or application of artwork should not result in delays to the construction schedules. Any material delays to construction schedules must be approved by Mesquite Arts Council Managing Director and the Director of the City department responsible for construction.

B. Artist Responsibilities.

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

1. The artwork, 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 a 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.
7. Reasonable maintenance of the art will not require procedures or materials substantially in excess of those described in the maintenance recommendations submitted by the artist(s).

C. 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, its probability of successful completion and practicality of long-term maintenance.
- b. Specifically excluded are undergraduate students, the design architect (or other design professional) or members of the firm(s), City employees or their relatives, and artists who are members of, or related to members of the Public Art Committee or the Mesquite Arts Council, or artworks by any of the above.
- c. The Public Art Committee may establish specific requirements for each project.

2. Methods of Selecting Artist(s).

If possible, when art is to be integrated into the design and construction of new and renovated facilities, the artist(s) shall be selected at the same time as other members of the design team.

- a. Direct election – artist(s) chosen directly by the Public Art Committee.
- b. Limited competition – artist(s) or artist/design teams invited by the Public Art Committee to submit proposals.
- c. Open competition – any artist(s)/design team applies, subject to limitations established by the Public Art Committee.

D. Criteria for Selection of Artists or Artworks.

1. Quality – Of the highest priority are capabilities of the artist(s) and the inherent quality of their artwork(s).
2. Media – All visual forms may be considered, subject to limitations set by the Public Art Committee.
3. Style – Artworks of all schools, styles, and tastes should be considered for the City collection.
4. Nature – Artworks and artplaces should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they are to relate.
5. Permanence – Consideration should 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 should take into account that in addition to measuring up to 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 free as far as reasonably possible from any unsafe conditions or factors.
8. Diversity – The Public Art Policy 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.

E. Funding.

Arts Center staff shall work with the appropriate City departments to review the annual capital improvement program projects of the City, including those funded by bond propositions and by City funds from other sources. City Council will determine which capital improvement projects should have a public art component. Upon declaring a project with a public art component, City Council will designate two percent of the total construction budget be set aside for art.

Public art is an eligible expenditure, although with provisions, under many federal and state grant programs, for example, Community Development Block Grant or Transportation Enhancement (T-21) funds. It is recommended that the staff of the Arts Center/Arts Council work with staff from all the departments with capital programs to identify potential grant funding that might be used to supplement City public art projects.



F. Donations and Loans of Artwork.

1. The City of Mesquite encourages donations and loans of works of art for public places. When gifts or donations of major artworks are proposed for placement with any City agency or department, the proposal shall be reviewed by the Public Art Committee and the Mesquite Arts Council Board of Directors. This procedure shall also apply to works of art proposed for long-term loan to the City. The objectives of this policy are:
  - a. To provide uniform procedures for the review and acceptance of gifts and loans.
  - b. To maintain high artistic standards in works of art displayed.
  - c. To vest in a single City agency the responsibility for ensuring the management and maintenance of the City's public artworks.
  - d. To facilitate planning for the placement of works of art in the City facilities.
  - e. To provide for appropriate recognition of artists and of donors of works of art to the City of Mesquite.
2. Procedures for Donating or Loaning Artworks.
  - a. The donor discusses the nature of the gift and City procedures with Arts Center/Arts Council staff and, working with staff and the receiving agency or department, prepares and submits a proposal for review by the Public Art Committee.
  - b. The Public Art Committee reviews the proposal according to the following considerations and supporting information:
    - (1) Aesthetic.
      - (a) Written proposal with detailed description of artwork, sketches and/or a model of the artwork and photos or slides.
      - (b) Qualifications and other pertinent information regarding the artist, as presented in artist's resume plus appropriate publicity materials.
      - (c) Provenance for an existing artwork.
    - (2) Financial.

- (a) Cost of fabrication and installation.
  - (b) Source of funding.
  - (c) Estimated maintenance costs and funding source.
  - (d) Statement of value of the artwork.
  - (e) Revenues generated by any collateral material other than that used for educational purposes.
- (3) Safety and Maintenance.
- (a) Susceptibility of the artwork(s) to normal wear and to vandalism.
  - (b) Potential dangers to the public.
  - (c) Special insurance requirements.
  - (d) Hold harmless agreement (for loaned artwork only) in favor of the City addressing damage that may occur to a loaned art object.
- (4) Environmental.
- (a) Appropriateness to the site, both specific and general.
  - (b) Scale of the artwork in relation to site.
  - (c) Impact on ecology.
- (5) Timeliness.
- (a) Allowance of sufficient time for normal review process by the Public Art Committee, Arts Council Board of Directors and any other agencies or departments involved.
  - (b) Timely and appropriate response to committee and staff requests for additional materials.
3. The Arts Council Board of Directors reviews the Public Art Committee's recommendations of acceptance or non-acceptance. Before making a

recommendation to City Council, the board may request further or more detailed information to be considered at additional review sessions and/or it may attach conditions to its recommendation of acceptance. For example, the Public Art Committee may suggest suitable sites for placement of artwork(s), stressing the need for equal distribution throughout the City.

4. The Arts Council Board of Directors shall review all recommendations of the Public Art Committee regarding proposed loans or donations of artworks.
5. The City shall accept donated artworks only when accompanied by a legal instrument of conveyance of title, enumerating any conditions of the gift that the City has agreed to accept, and the appropriate warranty of originality. In general, gifts shall be accepted without restrictions as to future use or disposition. The Arts Center/Arts Council staff shall forward copies of the conveyance of title and the stated insurance value for donated artwork(s) to the appropriate City departments, document the artwork(s) and assign an accession number.
6. Exceptions to the Review Process.
  - a. Exhibitions of 90 days or less – Any artwork or exhibition of artworks to be displayed on City property for 90 days or less will not be subject to the above outlined review process. Review and approval will be the responsibility of the department or agency with jurisdiction over the space involved.
  - b. Gifts of State – Gifts of State (artwork) presented to the City of Mesquite by foreign governments (municipal, state or national) may be accepted by the Mayor or the City Manager on behalf of the City of Mesquite. Appropriate placement shall be determined jointly by the Mayor's or City Manager's Offices, the Mesquite Arts Center/Arts Council staff with the advice of the Public Art Committee and the Mesquite Arts Council Board of Directors. Appropriate recognition and publicity shall be the responsibility of the department or agency with jurisdiction over the placement site.

G. Accessioning of Artwork.

The following process shall be followed in accessioning artwork:

1. Assign accession number according to the following plan (for example: CM2004.1);



2. Complete documentation of the artwork and incorporate it into the documentary library located at the Mesquite Arts Center (including color photos or digital files); and
3. Forward documentation information, including a value amount, to the City's Risk Management Division.

H. De-accessioning of Artwork.

The Public Art Committee shall review the entire public art collection at least once in every ten-year period to assess condition, however, it may be recommend that de-accessioning of specific artworks be done on a case-by-case basis at any time.

1. The Public Art Committee may recommend any of the following courses of action as a result of de-accessioning review:
  - a. Relocate artwork;
  - b. Sell or trade artwork (secure professional appraisal and advertise sale; seek competitive bids; dispose of work via surplus property procedures);
  - c. Remove work from display and store; and
  - d. If no other alternative is evident, remove and permanently dispose of artwork. Disposal could include return to the artist or donation to charity or other local government entity.
2. Artists whose work is under consideration for de-accessioning shall be notified by reasonable means, to include written notification by registered mail, and shall have the right of first refusal to purchase the artwork(s).

**Attachment A**

**RELEASE AND HOLD HARMLESS AGREEMENT**

THE STATE OF TEXAS     §  
  §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS     §

THAT I, THE UNDERSIGNED, \_\_\_\_\_, a private person, as an inducement to the City of Mesquite, Texas ("CITY"), and for and in consideration of the CITY's consent, to allow me to enter onto CITY-owned property in order to \_\_\_\_\_

\_\_\_\_\_ and recognizing the inherent danger and risks in doing so, do hereby for myself, my heirs, assigns, personal representatives, executors, administrators, and next of kin, agree to assume any and all risks, including but not limited to potential injuries, death or damaging event, which may occur in connection with my actions, and to release, waive, covenant not to sue, indemnify, hold harmless, and forever discharge the CITY, its officers, agents, employees, or assigns, from any and all liability, accident, claim, loss, lien, suit, demand, damage, or cause of action and expenses, including court costs and attorney's fees and other reasonable costs ("liabilities"), which may arise from or by any injury to any person or damage to any property, during or as a result of my actions.

I understand that the CITY does not assume any such liabilities for harm, injury, or any damaging event which is directly or indirectly attributable to premise defects or conditions, real or alleged, on the CITY-owned property where entry has been consented to, which may now exist or which may hereafter arise upon said premises, responsibility for any and all such defects being expressly assumed by me.

I further understand and agree that the execution of this RELEASE shall apply to any such liabilities arising out of, or resulting from, my entry onto CITY-owned property, whether or not there is negligence on the part of the CITY or any other person or entity. I further agree to indemnify, hold harmless and defend the CITY, its officers, agents, employees, or assigns, from any and all liabilities, which may arise out of, or result from, my actions, where such liabilities are caused by the sole negligence of the CITY or the joint negligence of the CITY and any other person or entity. It is my express intention that the indemnity provided for in this paragraph is indemnity by me to protect the CITY from the consequences of the CITY's own negligence, whether that negligence is the sole or a concurring cause of the liability.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_





AFFIANT:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

(P.O. Box is not acceptable)

\_\_\_\_\_  
City State Zip Code

Phone Number: \_\_\_\_\_

Dallas County Telephone Number

SUBSCRIBED AND SWORN TO BEFORE ME, this the \_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public, in and for the State of Texas)

Notary Seal:

\_\_\_\_\_  
(Printed Name of Notary)

My commission expires: \_\_\_\_\_