

I. HISTORY AND PURPOSE

Incorporated in Chapter 12.80 of the Santa Cruz Municipal Code, the Public Art Program was established in 1998 to provide a funding mechanism for public art through the City's Capital Improvement Program (CIP). In 2013, Council updated the Public Art Ordinance (Ord. 2013-12), reducing the calculation for public art from 2% of *projected* eligible capital spending to 1% of *actual* eligible capital spending based on an average of the prior three years in each fund. This key change was intended to help clarify and streamline the budgeting and planning process for Public Art projects and reduce the volatility of the funding.

Public art can be acquired by the City through a variety of methods but all work of art *accessioned* into the public art collection is subject to criteria set forth in the Public Art Ordinance and this policy. The Public Art Ordinance directs annual appropriations for public art to be transferred into a designated public art fund. In addition to receiving moneys for City public art, this fund shall also be authorized to accept gifts, grants and donations made to the City for works of art. The fund balance shall be automatically carried over from year to year unless specifically terminated by the City Council.

The Public Art Ordinance is based upon the City of Santa Cruz's firm commitment to accept a responsibility for expanding its citizens' experience with public art and for enhancing economic and community vibrancy in public spaces.

The City of Santa Cruz desires to establish a diverse Public Art Collection of the highest quality. It is expected that over time this Collection will be established through various means, including direct commissions or purchases made by the City of Santa Cruz, as well as private donations of work of art made to the City. Therefore, the City of Santa Cruz hereby establishes a set of policies and procedures regarding the acquisition and deaccessioning of works of Public Art.

Copyright and Residual Rights

The City of Santa Cruz does not claim the copyright for any work of art accessioned into the public art collection. The copyright remains with the artist or with any other individual or entity already in possession of it. The City of Santa Cruz retains a non-exclusive license to copy or reproduce all work of art in the collection for standard collection purposes including education and publicity. The City of Santa Cruz may not copy or reproduce work of art for commercial purposes without seeking permission from the copyright holder. Unless it is required for its own purposes, the City does not assume responsibility for determining copyrights for any of the works of art in the collection or for any of the images included in City of Santa Cruz publications, including electronic media.

In order to maintain flexibility in the Public Art Collection, works of art generally are acquired without restrictions as to their further use and disposition. All copyrights and other clearly defined residual rights

shall be defined and assigned contractually between the City of Santa Cruz and the artist(s) and/or donor(s). The assignment of residual rights to both the artist/donor and the City of Santa Cruz is specifically provided for in all Public Art Program contracts. Similarly, a legal instrument of conveyance transferring title of the work of art to the City of Santa Cruz and clearly defining the rights and responsibilities of all parties involved should accompany all acquisitions, regardless of the method of acquisition.

A. Permanently Sited

Site specific pieces are selected for their ability to relate to their surroundings. While it is the intent that a site specific work will remain in the location for which it was created, the City of Santa Cruz reserves the right to re-site a piece if circumstances dictate and will make every attempt to work with the artist/s and partner agencies. The City will comply with all applicable laws including, but not limited to, the Visual Artists Rights Act (VARA) and the California Arts Preservation Act (CAPA) when considering the relocation of work of art.

B. Temporary Works

Temporary Works do not become an accessioned part of the collection; however, they are of equal importance as accessioned work of art and are thoroughly documented by the City of Santa Cruz.

Temporary Works include work of arts on loan and/or installed for a limited period of time, such as those rotating as part of SculpTOUR and the "Graphic Traffic" signal box art program. Works of art created through these programs can be catalysts for conversations about art, pique public awareness of an important issue, explore the convergence of the "art of work" and the "work of art," or simply add momentary beauty to a site.

C. Murals

The Santa Cruz City Murals Program is administered through the Economic Development Department. The Santa Cruz City Arts Mural Program Policy and Procedures outlines separate policies regarding acquisition and deaccessioning procedures.

II. METHODS OF ACQUISITIONS

The City of Santa Cruz's public collection will be established primarily under the auspices of the city's Public Art Program and managed through the Economic Development Department. This Program provides for the City to commission new works of art, as well as purchase existing works. The Public Art Program Guidelines establish a process for the selection, acquisition, placement and maintenance of works of art through the expenditure of funds generated by the Public Art Ordinance.

Works of art may also be acquired through donations. Such donations to the City of Santa Cruz Public Art Collection can be an existing work of art or the commissioning of a new work of art. A separate Gifts, Loans and Unsolicited Proposals Policy governs the acquisition of such works of art.

III. ACQUISITIONS POLICY

Including a work of art in the City's Public Art Program implies a commitment to its maintenance, preservation, protection, and appropriate display for the public benefit. This commitment of appropriate care and permanent possession shall be upheld by the City of Santa Cruz as long as the work of art retains its physical integrity, authenticity, identity and usefulness to the purposes of the Public Art Collection of the City of Santa Cruz.

Consistent with the goals of the City of Santa Cruz and the Arts Commission, acquisitions shall at all times be directed toward works of art of the highest quality. The criteria outlined in the Public Art Program Guidelines should be utilized in considering the acquisition of all works of art.

Criteria for evaluation:

- Consistency with the City of Santa Cruz Public Art Program Guidelines and Arts Master Plan.
- The artistic merit of the work of art, including considerations of the work's artistic, social and historical significance.
- The compatibility of the work of art within the context of the Public Art Collection.
- The suitability of the work of art for exhibition, especially as related to its proposed site, including consideration of the work's scale, form, content and design with respect to its immediate and general, social and physical environment.
- The installation and maintenance requirements of the work of art, as indicated by its materials and construction.
- The potential liabilities associated with the public display of the work of art, including considerations regarding security, public access and safety.
- Compliance with federal, state and local laws.

The process for acquiring public art, as outlined by the Public Art Guidelines, involves appropriation and allocation of funds, development of a Public Art project including coordination with sponsoring

department(s) and a determination of artist selection method. The Public Art Guidelines lay out a variety of options for selecting artists and/or work of arts.

IV. DEACCESSIONING

A. Introduction

As an agent of public trust, the City of Santa Cruz, Arts Commission and the Arts Commission are charged with overseeing the acquisition, proper conservation and maintenance of the City's Public Art Collection. The City of Santa Cruz and the Arts Commission recognize the serious and wide-reaching implications associated with removing a work of art from the Collection. Therefore, it is the City of Santa Cruz's intent that the deaccessioning of work of art be a careful and deliberate procedure.

B. Purpose

Deaccessioning is considered an integral and necessary part of responsible collections management. The City of Santa Cruz recognizes the importance of protecting the deaccessioning process from being employed merely on the grounds of fluctuations in taste, as the merits of a work of art are often only recognized with the passage of time. Time frequently helps a community to embrace a work of art that may have initially inspired controversy. Therefore, it is the City of Santa Cruz's policy that no work of art in a public place be considered for deaccessioning within ten (10) years of acquisition unless presentation of the work or public safety requires otherwise. Similarly, at least once every ten years, the entire City of Santa Cruz Art in Public Places Collection shall be evaluated, and its potential expansion shall be assessed. This evaluation shall be performed under the auspices of the Arts Commission, and independent expertise shall be sought as required.

C. Evaluation of Deaccessioning

In order for the deaccessioning of a work of art to be considered, the City of Santa Cruz must undertake a careful evaluation of the work of art. Based on that evaluation, a work of art may be considered for deaccessioning if one or more of the following conditions are found to be applicable.

Conditions for Consideration of Deaccessioning:

1. Expert opinion has deemed the work of art to be of substandard quality and/or incompatible with its historical, social or cultural context.

2. The work of art is duplicative of a substantial holding of work of that type or by a particular artist.
3. The work of art has been documented by a licensed conservator or curator as fraudulent or not an authentic work.
4. The work of art possesses substantial and irrevocable faults of workmanship which have been documented by a licensed conservator.
5. The work of art has deteriorated beyond usefulness, or is irreparably damaged to an extent where repair is either unreasonable or impractical.
6. The work of art requires excessive or unreasonable maintenance on an on-going basis, exceeding the anticipated maintenance requirements.
7. The work of art has been assessed to represent a threat to public safety or is hazardous to other items in the collection or staff.
8. A suitable and appropriate place for display of the work of art no longer exists.
9. The work of art is not displayed, or has not been consistently displayed for a period of five or more years.
10. The work of art does not exist due to theft, accident or natural disaster.
11. The work of art can be used to finance the acquisition of a work of art of greater importance in the context of the City's Collection, either through sale or trade, provided that this is permissible under the contractual agreement associated with the work of art. This must be accompanied by an independent expert determination of the relative value of both works of art within the context of the Collection.
12. The work of art has consistently received adverse public reaction for a period of ten or more years.
13. The City has received a written request for deaccessioning from the artist or one or more artists who co-authored a work of art, citing a specific reason for the request.

D. Deaccessioning Procedure

All requests for consideration of the deaccessioning of a work of art in the City's Public Art Collection must be filed in writing with the Arts Program Manager. The Arts Program Manager may also initiate a request for consideration of deaccession according to the same procedure.

This written request must be initiated by a resident of the City of Santa Cruz, artist, or Administrator of the Public Art Program, and specifically state the grounds on which deaccessioning is being requested, as well as the relationship of the individual(s) making the request to the work of art. If the request is made by the artist, the residency requirement does not apply. Once a deaccessioning request is filed, then the Arts Program Manager shall prepare a written report within ninety (90) days regarding:

1. Conditions that initiated deaccessioning consideration.
2. Opinion of the City Attorney regarding the potential deaccessioning of the work of art.
3. Conditions of acquisition – method, date and cost.
4. An independent appraisal of the current value of the work of art, if the intent is to sell or trade the work of art.
5. Evaluation of the work of art itself, and its importance and relevance within the context of the overall Public Art Collection.
6. A recommendation as to the appropriateness or need of public opinion and cultural significance and the need for a public hearing related to the deaccession.
7. Written opinion of the User Department and/or the Director of the Economic Development Department.
8. Suggested course of action.

The deaccession request and background report shall then be presented to the Arts Commission. If, after careful examination, one or more of the twelve conditions for consideration of deaccessioning has been proven to exist, then the work of art may be considered for deaccessioning.

Deaccessioning proceedings by the Arts Commission shall be publicized in advance and open to the public at all times. In addition, all reasonable attempts shall be made to notify the artist and/or donors whose work is being considered for deaccessioning, to invite participation in the process.

The City Department responsible for displaying the work of art shall also be notified and invited to attend. General public input at these proceedings shall also be permitted. All notifications and public proceedings shall be conducted in compliance with Federal and State laws.

The Arts Commission may initiate deaccessioning by a majority vote. The findings from the Arts Commission discussion will be forwarded to the City Manager. If a majority of the Arts Commission votes in favor of deaccessioning a work of art, this recommendation shall be forwarded to the City Council with a written explanation outlining the relevant facts. A decision by the City Council to deaccession a work of art must be approved by adoption of a resolution; however, the City Manager is authorized to remove artwork from the collection if the value of the art is equal to or less than his purchasing authority.

E. Deaccessioning Options

The Arts Commission, a subcommittee of the Arts Commission or a separate jury shall be assembled to oversee the deaccessioning proceedings. Subcommittees and juries shall make a recommendation to the Arts Commission. The following courses of action are listed as possibilities, but are not intended to be comprehensive:

1. Relocate the work of art to another appropriate site.
2. Give the artist the opportunity to buy back the work at its current appraised value, if allowed by agreement. If donated, return the work of art to the donor.
3. Seek bona-fide appraisal and advertise sale of the work, or sell through acceptable, sealed competitive bids.
4. Give the artist the opportunity to recover the work of art at no cost to the City, if allowed by agreement.
5. Dispose of the work through City of Santa Cruz surplus property procedures.
6. Remove the work from public display and place it in storage.

F. Deaccessioning a Work of Art

If the deaccessioning of a work of art is accomplished through the sale of the piece, then the proceeds from the sale of the piece shall be deposited in the appropriate Public Art Fund. These funds shall subsequently be placed in the Public Art Fund for the purposes of new project

construction, maintenance, repairs, or conservation. Sale of the work at an appreciated value shall be included and negotiated in all contracts related to the acquisition of a work of art.

If the deaccessioning of a work of art is because it creates a public safety concern or poses a threat to other items in the Public Art Collection, the City of Santa Cruz may implement procedures to ensure the safety of the public and the safety of other works of art during the deaccession process.

In the event that the work of art creates an imminent public hazard and it is not possible to contain the hazard without immediately removing the work of art, the work of art may be removed immediately and the decision regarding deaccession may be made subsequently.