

CITY OF SEGUIN

ORDINANCE NO.:

STATE OF TEXAS

AN ORDINANCE OF THE CITY COUNCIL OF SEGUIN, TEXAS ESTABLISHING A PUBLIC ART PROGRAM AS A NEW APPENDIX B TO THE SEGUIN CODE OF ORDINANCES; PROVIDING FOR PUBLICATION OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE FOR SUBMISSION AS A SUPPLEMENT TO THE CODE OF ORDINANCES

WHEREAS, Public art tends to be a highly competitive field which requires a high level of professionalism and project management skills; and

WHEREAS, working in the public realm requires interaction with many different decision-makers including bureaucrats & elected officials, community members, construction professionals, site visitors, users of public space, and other designers; and

WHEREAS, working in the public realm requires patience and willingness to accept comments and critiques from non-arts professionals thereby also requiring flexibility, good negotiating skills and a willingness to work outside the studio; and

WHEREAS, working on public art projects with public funding requires a high level of professional integrity as it necessitates the management of large sums of taxpayer money, sometimes over a long period of time thus participating artists must to be prepared to answer to the commissioning agency and the media; and

WHEREAS, if an artist is awarded a project, they'll have to enter into a comprehensive contract with rigid insurance and legal requirements; and

WHEREAS, many public artworks will be in place for years if not decades. Long-term maintenance and engineering are crucial considerations for which artists are primarily responsible.

NOW THEREFORE BE IT ORDAINED by the City Council of Seguin, Texas:

SECTION ONE. The Seguin Code of Ordinances is hereby amended by adding a new Appendix B as follows:

APPENDIX B – SEGUIN PUBLIC ART PROGRAM

Article One. Purpose and Program

Sec. 1. Purpose.

The purpose of this policy is to establish a Public Art Program through which the City of Seguin can acquire and accept artwork by commission or as a gift. This policy establishes the goals and

objectives of the City's public Art Program and provides guidelines for acquiring existing artwork, commissioning artists to create new art work for the City and sponsoring temporary art exhibits on City property. The policy applies to the acquisition and exhibition of all artwork loaned, donated to, purchased by, or commissioned by the City of Seguin.

The policies outlined below will be subject to periodic review. From time to time, the City may adopt and incorporate into this policy such additional guidelines as it deems necessary.

Sec. 2 The Seguin Public Art Program Goals and Objectives

The goals of the Public Art Policy are to promote public art to enhance, enliven and enrich the City while reflecting the values of the community. In keeping with the duties and powers of the Seguin Commission on the Arts in administering this Program the Commission shall endeavor to:

1. Enhance community identity and pride;
2. Provide the highest quality artwork available, promoting excellence and demonstrating diversity and variety of media;
3. Increase public exhibition opportunities for artists who live or work in and around Seguin;
4. Encourage public participation and interactions with public spaces identified by the City Council, kindling awareness of how surroundings impact experience;
5. Enrich the public environment for both residents and visitors through incorporation of the arts; and
6. Strive for diversity, reflecting the social, ethnic and cultural fabric of the city.

Sec 3. Potential Funding Sources

Public art projects may be funded through a variety of sources approved by the City Council, including, public funds, private contributions, grants, corporate sponsorships, matching gifts, gifts of art, and fundraising.

Article II. Administration

Sec. 1. Seguin Commission on Arts.

The Seguin Commission on the Arts ("SAC") under the direction of the Seguin Main Street Program shall administer the Public Art Program, coordinating with other City agencies and commissions as necessary. SAC will:

1. Participate in identifying and developing possible public art sites for City Council approval;
2. Draft and distribute Calls for Artists, stating project goals and site plan;

3. Select art for approved projects;
4. Participate in all City Council meetings where public art is discussed;
5. Prepare and monitor all tracking documents, including artist records, art inventories, and contracts;
6. Coordinate all physical and logistical components of artwork installations;
7. Coordinate preparation of all necessary signage, including identification labels and/or plaques;
8. Coordinate publicity and media attention for artwork installations;
9. Serve as a conduit between artists, project and building managers, City staff and others as necessary to ensure a trouble-free flow;
10. Serve as resource, guide, and counsel to the City Council and City staff regarding all issues related to the Public Art Program;
11. Conduct a bi-annual review during odd years of all holdings in the art collections. During this review the SAC will:
 - a. Inventory the collection
 - b. Examine the condition of each piece to determine any restoration or preservation needs; and
 - c. Examine the display or storage conditions of each piece.

Sec. 2. Maintenance, Protection, and Display of Artwork

The City will be responsible for the proper maintenance, protection, and display of all artwork accepted by the City as part of the Public Art Program. These activities will be conducted in accordance with any written instructions provided by the artist/donor at the time of delivery of the work to the extent feasible. In fulfilling these duties, the City will:

1. Exert reasonable efforts to protect the artwork from theft, vandalism, and other damages;
2. Under appropriate circumstances primarily driven by value, maintain insurance policies providing coverage for theft vandalism, or other damages to the artwork;
3. Exert reasonable efforts to ensure that acquired artwork is available for public viewing - and when available for public viewing, displayed in an appropriate and respectful manner; and
4. Provide official acknowledgement of receipt of artwork to artist or donor

The City will not intentionally destroy, damage, alter, modify, or otherwise change a piece of artwork accepted by the City as part of the Public Art Program. If any alteration occurs after receipt of the work by the City, the artist has the right to request that the work no longer be represented to be the work of the artist.

Article III. Acquisitions

Sec. 1. Artwork Selection Criteria.

Artistic integrity and highest quality of aesthetic experience will be the primary considerations in the selection of public art in Seguin. The following criteria shall be applied by SAC in the selection process:

1. *Media*: All visual art forms and materials consistent with the purpose of acquisition will be considered.
2. *Quality*: Artwork shall be of lasting value and artistic merit that will enhance the City's collection.
3. *Audience*: The artwork will be suitable for display to a diverse audience including children. It should enhance its setting and help create a sense of place. The City may not acquire public art that would, when displayed, create a hostile environment.
4. *Style*: The artwork should be suitable in scale materials and form for its surroundings, or capable of being suited in a variety of public areas. Artwork selected for the City's collection should advance the purpose specified by SAC at the time an acquisition project is undertaken.
5. *Range*: Artwork may be functional or non-functional; conceptual or tangible; portable or site specific; folk art, craft or fine arts; temporarily or permanently installed
6. *Condition and Permanence*: The artwork will be of materials and method of construction suitable to the setting. Artwork for outdoor exhibition will be resistant to theft, vandalism, weathering, and constructed to avoid extensive maintenance and repair. At the time of acquisition, the artwork will be in good condition or worthy of restoration.
7. *Technical Feasibility*: The City will consider only such artwork for commissions from those artwork proposals it finds likely to be completed according to design. The City will only select artworks for which it has an immediate location.
8. *Fiscal Feasibility*: The City will consider only such artworks for which it possesses adequate funding for appropriate installation, display, maintenance, insurance and safeguarding. Prior to acceptance of a work, an estimate based upon past experience or knowledge of maintenance expenses associated with the proposed artwork shall be presented to the City Council by the SAC in its Acquisition Recommendation.
9. *Public Safety*: The City will not consider works that the City determines may pose a threat to public safety.

Sec. 2. Artwork Selection Process

The City may acquire artwork for specific purpose (e.g. for a particular location or to commemorate an event) or in response to an offer of donation separate from a specific acquisition process. All acquisitions shall be approved by City Council.

1. *Specific Purpose Acquisitions:* When artwork is to be acquired for a specific purpose, SAC shall adopt a resolution stating the purpose of the acquisition and the process to be used for selecting artwork to be recommended to the City Council for acquisition. In the selection process, the SAC shall provide an opportunity for review of the proposed acquisition by any other City Agency or Commission that might be affected. All recommendations to the City Council shall be adopted by SAC at a regular or special meeting of SAC.
2. *Proposed Donations:* When artwork is proposed to be donated to the City, the proposed donation shall be reviewed by SAC. SAC may recommend immediate acceptance or rejection of the offer or may adopt a resolution establishing a process for further review of the offer. SAC shall consult with any other city agencies affected by the proposed donation. All recommendations to the City Council shall be adopted by SAC at a regular or special meeting.
3. *SAC procedures.* The SAC shall make recommendations by way of majority vote on the recommendation regarding the selection at issue; If it finds there is insufficient merit in the submission, make no selection.
4. *Conflict of Interest.* The SAC may not consider art owned or created by any member of the Commission. A Commission member who maintains a close personal or professional relationship with the artist submitting a proposal must recuse him/herself from the review.
5. *Historic District.* For any art that is proposed to be located in the Downtown Historic District, the SAC shall present the project for approval by the Historic Design Review Committee before making a recommendation to the City Council.

Sec. 3. Acquisition Methods.

Artwork may be acquired by purchase, commission, donation, as follows:

1. *Purchase:* When an existing artwork satisfies the selection criteria of the Public Art Program or a specific public art project, SAC may recommend that the City Council authorize direct purchase of the artwork.
2. *Commission:* Based on a recommendation from SAC the City Council may award commissions by competition or invitation. The selected artist would be commissioned to create original work consistent with the artist's proposal. Commissions may be awarded as follows:
 - a. *Juried invitational:* Artists may be chosen through a competition, for which selected artists are invited to submit proposals according to criteria established by SAC. Such criteria will reasonably expedite the goals of the competition without unduly excluding qualified participation; or

b. *Open Competition*: Artists may be chosen through a competition whereby all artists are invited to submit their qualifications (RFQ) as demonstrated by past work, past experience with public art, and successful completion of previous projects similar in scope and demand. Those artists meeting the qualification requirements established by SAC will then be asked to submit a proposal; or

c. *Invitation*: Artists chosen by SAC on the basis of their qualifications, as demonstrated by past work, past experience with public art, and successful completion of previous projects similar in scope and demand will be asked or paid to develop a proposal; or

3. *Donation*: SAC may recommend that the City Council accept artwork offered as a contribution to the City by a citizen if the work satisfies Public Art Program selection criteria and an appropriate site exists to exhibit the work; or

4. *Proposal*. Artist may propose to the Commission specific artwork to be displayed at a specific location. The proposal should include design, list of materials and construction or installation costs. The Commission may review such proposal, including location, to see that it fits within the set criteria and budgetary restraints.

Sec. 4. Ownership of Purchased, Commissioned or Donated Artwork

1. Artwork purchased, commissioned, or accepted as a donation will be the property of the City of Seguin. Title for each work will be transferred to the City as necessary.

2. Upon acquisition of an artwork, the relationship between the City and the artist will be defined by a contract addressing the terms of the acquisition, any instructions for proper care and maintenance of the work, and any special agreements regarding copyright, reproduction and resale issues, and the manner in which the work may be deaccessioned.

Sec. 5. Responsibilities of Artists/Donors

1. When an artwork has been selected for inclusion in the Public Art Program, the artist or donor must agree to:

a. Sign and abide by the terms stated within the Acquisition Contract;

b. Execute, complete and deliver the work at agreed upon date and time;

c. Maintain an effective working relationship with the project team and City staff;

d. Advise SAC immediately of any significant changes to the scope, materials or design of the work after contract is signed (all changes must be reviewed and approved prior to completion);

e. Personally design and execute the work, working with City staff in connection with site preparation and installation, unless otherwise stipulated in the contract;

f. Warrant that the work is the original product of the designated artist's creative efforts and does not infringe on any third party's copyrights or other intellectual property rights; and

g. Correct or allow correction of any safety issues not foreseen in the installation of the artwork, or that develop after the artwork has been on public view.

Sec. 6. Criteria for Artwork Placement

When identifying the proposed location of artwork, SAC shall consider, public safety, visibility, lighting, traffic patterns (including interior, exterior, foot and auto), function of the existing facility or site, relationship of the proposed artwork to pre-existing artworks on the site, future development plans for the area, landscape design, environmental assessment, public accessibility, appropriateness of the physical characteristics of the site; and relationship of the social and cultural identity of the immediate local community.

With regard to public safety no Artwork will be displayed before the City has inspected it and ascertained that it poses no threat to public safety. Through evaluation by qualified staff, the City will ascertain that no aspect of the installed artwork creates a substantial risk of injury when the work and any adjacent property are used with due care and in a reasonably foreseeable manner. The City will further ascertain that installation of the work will not pose a substantial or unreasonable risk of serious bodily harm to persons near the work or on adjacent property with due care appropriate to their age in a reasonably foreseeable manner. After an artwork has been installed, the City will monitor the installation as needed to ensure that no such risks are created due to changed circumstances.

Sec. 7. Relocation or Removal of Purchased or Commissioned Artwork

The City may, as necessary or appropriate, transfer or remove a City-owned artwork from one public site to another, remove artwork to storage, or make a temporary loan of artwork to another agency or organization.

1. SAC will review proposals to relocate or remove a city-owned artwork and make a recommendation to the City Council. Considerations include, but are not limited to:

- a. Security of the artwork can no longer be reasonably guaranteed;
- b. Maintenance costs are higher than can be reasonably absorbed by the City;
- c. Faults of design or workmanship make repairs unfeasible;
- d. The artwork has been damaged and repair is unfeasible;
- e. As erected, the artwork poses risks to public safety not identified in the selection process;

- f. Significant changes in the use, character, or design of the site have occurred, affecting the integrity or appeal of the artwork;
 - g. The authenticity of the artwork is called into question;
 - h. SAC wishes to replace the artwork with a more appropriate work by the same artist;
 - i. Receipt of written request from the donor to deaccession the artwork.
2. In reviewing proposals for relocation or removal, SAC will:
- a. Consult the Acquisition Contract and other pertinent agreements;
 - b. Discuss with the artist the circumstances prompting the relocation proposal;
 - c. Review written correspondence, press, and other public suggestions;
 - d. Explore means of resolving the concerns prompting the relocation proposal short of relocation or removal;
 - e. If no such means are satisfactory, seek a suitable relocation of the artwork. If the artwork was designed for a specific site, SAC will endeavor to relocate it to a site consistent with the artist's intention. If possible, SAC will obtain the artist's assistance in making this determination; and
 - f. If no relocation is suitable, SAC will seek to store the work or deaccession it consistent with the deaccession policy below.

Nothing in this policy shall limit the City's ability to take whatever action is deemed appropriate to protect human health and safety in the event of an emergency.

Article IV. Deaccession of City-owned Artwork

The City of Seguin recognizes that the deaccession of artwork must be handled with great care, as concern that public art might be disposed of to pay operating expenses or satisfy changing desires of the City could discourage potential donors or artists. Moreover, haphazard deaccession could cause irreparable harm to the City's collection. The City of Seguin has a fiduciary obligation to maintain the collection for the benefit of its citizens.

SAC may recommend that an artwork should be permanently removed for from the City's collection according to the procedures established in this article.

Sec. 1. Criteria for Selecting Works for Deaccessioning.

A work may be deaccessioned if at least one of the following applies:

- a. The city cannot properly care for or store the work;

- b. Security of the artwork can no longer be reasonably guaranteed;
- c. There is no suitable site for relocation of a work that must be moved;
- d. Maintenance costs are higher than can reasonably be absorbed by the City;
- e. The artwork requires repairs that are unfeasible;
- f. The artwork's condition requires restoration in excess of its aesthetic value;
- g. The work is so deteriorated that restoration would prove unfeasible or misleading;
- h. As erected, the artwork poses risks to public safety not identified in the selection process;
- i. It is determined that the work lacks significant aesthetic, historical and/or cultural value;
- j. The City's collection contains a large quantity of work by a single artist of minor stature (in such case, SAC may find it sufficient to retain only a representative collection);
- k. The work is determined to be a duplicate (e.g. prints or multiples) of lesser quality than other works in the collection;
- l. The work is determined to be a copy or pastiche without significant historical, documentary, or aesthetic value; or
- m. The work is determined to be a forgery or fake. SAC is responsible for ensuring that any such forgery or fake is identified as such when it leaves the City's collection.

Sec. 2. Deaccessioning Review

Every five years, or as needed, the SAC will review the City's collection and compile a list of those artworks it recommends by deaccessioned. SAC may also review and recommend that individual works be deaccessioned as necessary. The following procedures will apply:

- a. SAC will prepare a written report for each artwork it recommends for deaccessioning, to be circulated to each SAC member one month prior to the meeting at which deaccession will be formally considered. The report will include:
 - i. Title, artist, medium, dimensions, and location of the work;
 - ii. Provenance;
 - iii. Slide(s) and/or photograph of the work;
 - iv. Report on the condition of the work by an expert in the field;

- v. Estimated fair market value (if the work is of high monetary value, SAC may solicit opinions by independent consultants);
 - vi. Copy of the City's title to the work;
 - vii. Reason for the proposed deaccession; and
 - viii. Recommendation for method of disposal.
- b. Each member of SAC will physically inspect the work before voting to recommend deaccession;
- c. After appropriate deliberation, SAC will approve or reject the recommendation by a majority vote;
- d. The City Attorney will review SAC's recommendation to verify that no legal restrictions prevent deaccession. The City Attorney's written approval must be obtained before a work is deaccessioned;
- e. For artwork with the value of \$500 or more. SAC will forward its report and the City Attorney's approval to the City Council for action by the City Council. Artwork with a value of less than \$500 may be deaccessioned without Council approval; and
- f. When the formal decision to deaccession has been reached, the work will be removed from the City's insurance log and the acquisition file will be retrieved, annotated in red as "Deaccessioned", and transferred to a deaccessioned file located in the Department of Recreation. All documentation regarding the deaccession of the work, including the report of SAC, the approval of the City Attorney, and the correspondence with the donors or heirs will be filed herein.

Sec. 3. Notifying Donors/Heirs

Once it is determined that a work is to be deaccessioned, the City will make all reasonable effort to locate the donor or his/her heirs. The city will explain in writing its decision to deaccession the work and the other appropriate assurance that:

- a. If the work is sold, the City will attempt to use any monies realized to purchase other works for the collections; and
- b. Every effort will be made to honor the wishes of the donors/heirs concerning the sale. Written concurrence of donors/heirs will be solicited, but is not required.

Sec. 4. Disposal Procedures

If an artwork's Acquisition Contract specifies terms of deaccession, the City shall dispose of the work accordingly. Otherwise, the City may dispose of deaccessioned works by any of the following means:

a. *Sale.*

i. The artist/donor will be given the right of first refusal to reacquire the work at fair market value, original price or gratis, depending on the recommendation of SAC. The cost of removal of the work will be borne by the buyer;

ii. The City may sell the work through a dealer

iii. The City may sell the work through competitive bidding; and

iv. The City may sell the work at a Public Sale.

b. *Trade.* Trade or Exchanges may be negotiated under special circumstances with a dealer or artist. The City may also trade a work to be deaccessioned for another work by the same artist.

c. *Destruction.* If a marginally significant work has deteriorated to such an extent that it is irreparable and unsuitable for exhibition SAC may, with the approval of City Council, elect to destroy it upon deaccession.

d. *Negotiation.* The City Council may authorize SAC to determine the best manner to negotiate the sale or trade of a deaccessioned work. After soliciting estimates from at least three dealers, SAC shall choose the offer most favorable to the City and negotiate terms with the agent on behalf of the City. Copies of all such agreements will be filed in the deaccession folder of the relevant work.

No works may be sold, traded or transferred to a member of the Seguin Municipal Arts Commission., its support staff, or its agents, or the City Council. Once deaccessioned from the City's collection, the work may not be installed on City property. SAC will remove all acquisition numbers and labels from the work and coordinate its physical departure from the City's collections. The Commission will transmit a final report informing City Council of the removal of the object from the City's collection.

Sec. 5. Monies Raised from the Deaccession

All monies raised from the deaccession will be deposited into the City's General Fund. The City will endeavor to use such funds for future acquisitions. If a deaccessioned artwork is sold at a price greater than its purchase price, five percent (5%) of the sale price of any work valued over \$1000 will be paid to the artist who created the work, provided the artist can be located by reasonable means. If the artist cannot be found, the royalty will revert to the City's General Fund.

Sec. 6. Acknowledgements

In acquiring an object through trade or through monies raised from the sale of deaccessioned objects, the City will acknowledge, in the credit of the newly acquired object, the donor(s) of the original object or objects.

Questions and comments can be addressed to the Seguin Commission on Arts.

SECTION TWO. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION THREE. All ordinances and resolution or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION FOUR. City staff is authorized to prepare this Ordinance for submission as a supplement to the Seguin Code of Ordinances.

SECTION FIVE. This ordinance shall be effective upon ten (10) days following passage on second reading.

PASSED AND APPROVED on first reading on the 2ND day of June, 2015.

PASSED, APPROVED AND ADOPTED on second reading on the 16TH day of June, 2015.

DON KEIL
Mayor

ATTEST:

Thalia Stautzenberger
City Secretary