RESOLUTION NO. 4279-1488

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, ADOPTING A POLICY TO GOVERN THE PROCESS FOR ACCEPTANCE OF PUBLIC ART.

RECITALS:

WHEREAS, that certain document entitled "Guidelines for Acceptance of Public Art", (the "Guidelines"), a copy of which is filed in the office of the City Clerk, is hereby declared to be a public record, with said copy to remain on file with the City Clerk; and

WHEREAS, the Guidelines are intended to govern the process for acceptance of works of art by the Art in Public Places Committee for recommendation to the City Council for inclusion in the public art collection of the City; and

WHEREAS, the Guidelines outline 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; and

WHEREAS, the 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, and (iv) does not place an undue burden on the City for the artwork's maintenance, security or public safety; and

WHEREAS, it is in the best interests of the health, safety and welfare of the City to have a policy in place setting forth the process for acceptance of public art.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT certain document entitled "*Guidelines for Acceptance of Public Art*", is attached hereto as Exhibit A, and is hereby declared to be a public record.

Section 2. THAT the City Clerk is hereby directed to maintain a copy of the above referenced public document on file at all times for inspection by the public.

Section 3. THAT the "*Guidelines for Acceptance of Public Art*" is the official policy of the City of Prescott governing the process for the acceptance of public art.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 24th day of February, 2015.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

DANA R. DeLONG , City Clerk

APPROVED AS TO FORM:

JON M. PALADINI, City Attorney

Exhibit A – Guidelines for Acceptance of Public Art

This policy is intended to govern the process for acceptance of works of art by the Art in Public Places Committee for recommendation to the City Council for inclusion in the City's public art collection. The guidelines outline 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 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
- Compatibility with the City's public art program and collection
- Availability of an appropriate location for siting on City property
- Requirements for installation, storage, and maintenance
- Liability considerations and issues of public safety

1. Acceptable Art. Acceptable forms of art ("Acceptable Art") shall include but are not necessarily limited to, 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 Art in Public Places Committee.

2. Not Acceptable Art. The following, non-exclusive list describes those items not considered 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. (these items are general considered for acceptance as part of the City's "general donation policy")
- 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.

If the gift or donation is not considered public art, the City's "general donation policy" may still apply.

B. Accepting Gifts, Bequests and Loans of Artwork

This process begins with the Art in Public Places Committee and is finalized by the City Council. Upon receipt of an offer, the Art in Public Places Committee will provide the prospective donor with a copy of these Guidelines.

1. Eligible offers of artworks from artists, owners, businesses, organizations, individuals or other entities shall be submitted by the donor to the Art in Public Places Committee for proper processing. Eligible offers shall include the following elements:

    - A Letter of Intention stating that the donor wishes to donate, loan and/or bequest an artwork 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 (i.e., painting, sculpture, fabric hanging, etc.); the date medium was created; the name and, if possible, a resume of the artist who created the artwork; its dimensions; physical condition, and any relevant background information about the artwork and the artist.
    - The name, address and phone number of the prospective donor.
    - Visual documentation of the artwork (i.e., color photographs, 35 mm slides, videotapes, etc., including electronic copies when possible).
    - Donor may be asked to provide additional documentation to verify originality and legal title to the work.

2. Soon thereafter, the Art in Public Places Committee will schedule a review of the offer, notifying the prospective donor in writing of the date and time for the review. The prospective donor will have an opportunity to make a brief informational presentation to the Committee. Some projects may require certain expertise outside the scope of the standing Art in Public Places Committee. On such occasions, the Art in Public Places Committee will enlist the services of necessary experts to assist in the review process. Review may require several steps, including consultation with

pertinent staff members, other City commissions and committees, and related stakeholders in order to appropriately review site locations. The Pre-Application Guidelines of the Community Development Department may apply, dependent on the site, and scope of the artwork. In some cases artwork may be declined prior to reviewing possible site locations based on the type of artwork or other factors.

3. Upon reviewing and examining the artwork and evaluating the proposed gift, loan and/or bequest according to the criteria detailed below, as soon as it is practicable, the Art in Public Places Committee will make a recommendation to the City Council regarding acceptance or non-acceptance of the artwork, including a draft written donation agreement, which outlines the responsibilities of each party and related scope if the artwork being donated has not yet been created.

4. The City Council will consider the recommendations of the Art in Public Places Committee during a regular City Council Meeting, at which time, public comment may be accepted.

5. The City Council shall accept or decline the artwork for the City. After receipt of the City Council's decision, the Art in Public Places Committee will formally notify the prospective donor of the City Council's decision in writing.

6. Prospective donors should understand that artwork will not be accepted by the City with attached conditions or restrictions, except in extraordinary circumstances, which will be noted and approved by the Art in Public Places Committee in advance of the acceptance. Neither the Art in Public Places Committee nor the City is obligated to accept bequeathed items that in its opinion would be inappropriate in 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, the State of Arizona and the United States. Under no circumstances will individuals of the Art in Public Places Committee or City personnel give appraisals of art objects.

C. Site Selection Requirements.

1. 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. This requires close cooperation between members of the Art in Public Places Committee, other affected City boards, committees and commissions and City personnel. The Art in Public Places Committee, upon acceptance will work with the aforementioned parties to identify priority sites throughout Prescott. A draft will be brought to various affected groups for comment and input and finalized by approval of the City Council.

The Art in Public Places Committee will consider several factors when determining an acceptable location for the art. The location must be compatible with the piece to be acquired. In some cases, the proper site will be obvious. There may or may not be an ideal or feasible location that meets all of the requirements. If no feasible site is identified for a potential donation, the donation will not be accepted.

2. Stakeholder Review. After an appropriate site is identified, the Art in Public Places Committee shall notify the City personnel responsible for staffing any related City Commission or who is the liaison to various stakeholder groups as appropriate (for example the Parks and Recreation Advisory Commission, Historic Preservation Commission, Prescott Downtown Partnership, Youth Sport League Associations, or other related stakeholder groups depending on the recommended site). The appropriate staff member shall prepare the item for consideration at a stakeholder meeting, or invite stakeholders to an Art in Public Places Committee meeting for consideration. Concurrence of related City Commissions, City personnel responsible for the maintenance and operation of various public property, and input from important stakeholder shall be required prior to recommending the site to the City Council.

3. Interference with Other Facilities. The piece 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.

4. ADA Compliance. The location of the work must conform to the Americans with Disabilities Act ("ADA") including any applicable provisions relating to visual access and physical access to the installed work of art.

5. Site Maps. Site maps for the suggested location of public art will be required. These maps will be established by agreement between City personnel and the Art in Public Places Committee setting forth acceptable sites, and upon approval of the City Council. In all cases, the final site for a work must be approved by the City Council and must meet the required standards and, if the piece is to be located within a City facility, the appropriate parties must agree to have the artwork located within the facility; any relocation of an art work must be approved by the City Council.

6. Relocation of Art Work. The initial placement of a work is not necessarily permanent. If a more appropriate location becomes apparent, the Art in Public Places Committee will review the possibilities and present a recommendation, including related costs, to the City Council. Relocation of any work is subject to approval by the City Council, which shall determine, in its sole discretion, whether the cost of relocation may be paid for with City funds.

7. Engineering Requirements. If it is determined by the City, in the City's sole discretion, that a particular installation of donated art requires the services of a licensed contractor, or professional engineer, the donating individual(s)/entity(ies) will be required to provide City with acceptable proof that the City's requirements have been met in this regard, at the sole expense of the donating individual(s)/entity(ies).

D. Installation Costs

Most items have little or no installation cost. However, some installations may require significant expense due to the type of artwork, location, or site conditions. If a piece of art is to be donated by one or more individuals, then the cost of installation shall be borne by the individual, individuals, entity, or entities donating the public art. If funds are required from the City, the source must be allocated from an eligible source of City funds and approved at the sole discretion of the City Council. If deemed in the best interests of the City, at the City's sole discretion, appropriate insurance coverage may be required of the individual(s)/entity(ies) as determined by the City's Risk Management Division. Failure to procure required insurance shall be grounds for the City to deny the installation and donation.

E. Responsibility after Installation

Art located on City-owned property shall be dedicated to the City. The art's final location will be reviewed by appropriate City personnel and approving bodies to ensure compliance with the ADA, if applicable, various City codes and safety standards, and to minimize conflicts with public utilities in City rights-of-way. The City will insure and maintain all pieces on City-owned property. In certain instances, by agreement of the City and donor, the donor may be required to perform certain maintenance duties, which will be defined within the approved donation agreement. As owner of the artwork, the City reserves the right to make all final decisions on the method and timing of maintenance and to relocate or remove artwork in the event that maintenance or other factors so warrant, at the sole discretion of the City.

F. De-accession

Any proposal to remove or relocate art work, art spaces, or art concepts should be reviewed according to the following procedures, except that, in cases of urgent need for de-accession, a request may be submitted without following the formal process. Criteria for "Urgent Need" may include:

- Extreme controversy (within a specified time frame)
- 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 the City Manager's designee.

Reasons for Consideration of De-accession (non-exclusive):

- The site of the art work has become inappropriate because it is no longer accessible to the public, the physical setting has changed, or the site is to be destroyed
- Art work has received adverse public reaction
- De-accession has been requested by agency displaying the art work
- Art work is discovered to be fraudulent or not authentic
- Art work possesses faults of design or workmanship and repair or remedy is unfeasible or impracticable
- Art work causes excessive or unreasonable maintenance or repair
- Art work 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:

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

De-accession Recommendation Checklist:

- Notification of donor, if gift
- Reasons for suggested de-accession, and acquisition method and cost (if any)
- Informed estimate of the current value of the work
- Hold a Committee meeting for input on art works valued at more than $1,000.00
- Recommend specific measures and time frame for relocation/removal
- Review options for possible relocation
- Suggested and alternative courses of action:

Sale: Proceed with sale of de-accessioned art work according to the A.R.S. statute on disposal of public property.

- Seek bona fide appraisal
- Advertise sale
- Seek competitive bids

Alternatives:

- Dispose through surplus property procedures
- Remove art work from display and store it
- If the above is not feasible and all other de-accession steps have been taken, art work will be destroyed

G. Artist's Rights:

The artist retains all rights under 17 USC 106A (commonly referred to as the "Visual Artist Rights Act") and all other copyrights to the art work 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 donating individual(s)/entity(ies). 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(s).