

# **Town of Yucca Valley**

## **Public Art Policy**

Recommended for approval by the Parks, Recreation & Cultural Commission 10/02

Adopted by the Town Council 10/17/02

Amended by the Town Council 9/11/08

Amended by the Town Council 06/19/12

### **POLICY STATEMENT**

The Town of Yucca Valley desires to enhance its identity as an artistic community. It is intended that the Town of Yucca Valley, through its Public Arts Program, will celebrate its artistic heritage and vital art community, embrace cultural responsibilities, and guarantee future generations a rich artistic legacy through the acquisition and exhibition of quality works of art.

### **POLICY OBJECTIVE**

The Public Art Policy is directed, in part, towards developing a high-quality permanent art collection for the community. Public Art is hereby defined as:

Any work of art displayed for two weeks or more in an open Town-controlled area, on the exterior of any Town-maintained facility, within any Town-owned facility, and/or in areas designated or commonly regarded as public areas, lobbies, and public assembly areas. The work of art may include, but not be limited to murals, sculptures, monuments, lighting, frescoes, fountains, paintings, stained glass, and ceramics.

### **POLICY GOALS**

- To enrich the public environment for residents and visitors by providing access to, and promoting an appreciation of, the visual and performing arts.
- To educate the community about the value of public art as a means to foster community spirit and pride consistent with the Town's desert environment, pioneering history and cultural heritage, enhance cultural tourism, and contribute to economic development.
- To facilitate the use of public art as a vehicle for expressing and preserving Yucca Valley's desert environment, pioneering history and cultural heritage.
- To position Yucca Valley as a center for artistic expression through a variety of styles, design and media.
- To foster a positive environment for the pursuit of funding for public art initiatives.

### **POLICY PROCEDURES**

#### **1. Public Art Advisory Committee**

The Parks, Recreation and Cultural Commission and, when applicable, the Planning Commission shall select, review, and make recommendations for the acquisition and placement of public art; and shall make every effort to recommend a broad variety of artistic disciplines and acknowledge the wealth of artists within the local community.

## **2. Public Review Period**

Prior to forwarding a recommendation to the Town Council to take action regarding a piece of art for loan, or acquisition by purchase or donation, there shall be a minimum 30-day public review period. During the public review period, the work itself, a copy of the work, or a photograph, videotape, slide, drawing, model or other representation of the artwork must be available for inspection by the public during regular hours at Town Hall or at a place reasonably close to Town Hall, and at other appropriate Town locations. In addition to any other method, notice of the public review period shall be published in the local newspaper. Public comments shall be forwarded to the Parks, Recreation and Cultural Commission for consideration.

## **3. Criteria**

The Parks, Recreation and Cultural Commission and, when applicable, the Planning Commission (hereinafter referred to as the "appointed Commission") shall consider the following criteria when reviewing works of art for purchase, gift, or loan to the Town collection; the appointed Commission shall thereby make a recommendation to the Town Council for its final decision as to the purchase, gift, or loan of such art. The Town Council shall utilize the same criteria when considering whether to accept or reject the appointed Commission's recommendation. In considering the following criteria, each subsection may be considered independently. In no way must a recommendation be made pursuant to the satisfaction of all of the subsections.

- A. The artistic or historical significance of the object as related to the Town's natural desert environment, pioneering history and unique cultural heritage.
- B. The object's physical condition (i.e., a non-deteriorated and safe physical condition) and whether the object is of exhibition quality.
- C. Whether the Town already owns sufficient examples or better examples of this type of object or objects by a particular artist or a particular style or medium.
- D. Whether the Town has the facilities necessary to properly care for and keep the object safe. (The Town has limited storage space and must consider the cost of processing, insuring, maintaining, displaying, installing or storing artwork). If there are any special costs or special methods associated with maintaining or storing the artwork, such cost and methods must be made known to the Town Council prior to a vote to acquire the artwork.
- E. Compliance with signage protocol. (Signage for artwork to be displayed in public areas shall be limited to the artist's name, title and date of work, and where appropriate, a dedication. The name of the donor or lender may be part of the installation.)
- F. Whether sufficient funds are available for the purchase and/or installation and/or care of the artwork.

- G. Appropriateness of the proposed display site (i.e., that the art works well within the scale and nature of the display site).
- H. Whether the artwork encapsulates the natural beauty of the Town and the Hi-Desert region.
- I. Particular consideration will be given to local artists and artwork that represents Town celebrations and traditions (i.e., stary nights, mining history, military traditions, Grubstake Days, etc.), nearby desert landscape (i.e. Joshua Tree National Park), and/or other identified community themes.

#### **4. Town Responsibility**

In acquiring works of art by purchase or gift, or accepting a loan of artwork, the Town has the responsibility to:

- A. Determine optimum locations and display methods for pieces of public art in the Town's collection.
- B. Preserve, conserve and maintain the objects in the collection. If there are any special costs or methods associated with preserving, conserving or maintaining the artwork, those costs and methods shall be made known to the Town Council prior to acquiring the artwork.
- C. Catalogue the objects in the collection. Complete records shall be made and maintained of all artworks acquired.
- D. Make the objects in the collection known to the public through display, publication and/or other educational means.
- E. Ensure that the interests of all concerned parties are represented, including the public, the artist, and the Town.
- F. Ensure that a loan agreement or legal instrument of conveyance, necessary waiver, and documents transferring title and ownership of the artwork and clearly defining the rights and responsibilities of all parties accompany all acquisitions.

#### **5. Acquisition Procedures**

- A. Acquisition is hereby defined as the inclusion of new works of art into the Town's permanent collection by purchase or gift. Permanent collection refers to work intended to remain two years or longer.
- B. Members of the appointed Commission may submit work of art, created by someone other than the member of the appointed commission or a Town official, for consideration for acquisition or loan, but that member must abstain from voting on the decision whether or not to recommend the object for acquisition or loan. Additionally, members of the appointed Commission submitting a work of art

created by someone other than the member of the appointed Commission or a Town official, for consideration for acquisition or loan, must not benefit financially from the submittal. Nothing in this Policy shall allow a member of the appointed Commission or a Town official to submit their own art for consideration for acquisition or loan. Furthermore, any person submitting a work of art for consideration for acquisition or loan must comply with all federal and state conflict of interest laws, particularly California Government Code Section 1090.

C. Any individuals having business with or desiring to request a particular work of art be considered through the acquisition procedure must submit a written request or offer of such art to the Town Clerk of Yucca Valley and the Town Clerk shall provide the artist or the artist's representative and copy of this Public Art Policy; the artist or the artist's representative shall acknowledge in writing that he or she has received a copy of this Public Art Policy and has reviewed and understood it. The rules of loans and acquisitions are as follows:

1. The work itself, a copy of the work, or a photograph, videotape, slide, drawing, model or other representation of the artwork must be available at a regular meeting of appointed Commission for examination.
2. Members of the appointed Commission(s) must make a reasonable attempt to inspect the actual/physical artwork being considered for acquisition or loan. When objects being considered cannot be directly examined by the Committee, the vendor shall provide one or more photographs, videotapes, slides, drawings, models or other representations of the artwork.
3. The Public Art Fund or the Town's general fund must have funds available to cover all costs associated with the purchase, transportation, installation, and insurance of the art.
4. The recommendation(s) of the appointed Commission(s) will be forwarded to the Town Council for final determination regarding acceptance and/or placement of the artwork.
5. Subsequent to the Town Council's decision, staff and the appointed Commission(s) shall act in accordance with the provisions herein.
6. Staff shall notify the artist/vendor of the Town Council's determination and initiate appropriate acquisition or loan procedures.
7. Once all appropriate loan or acquisition documents have been signed and received the Town shall initiate payment if applicable for the art, transportation, installation and all expenses pertaining to the loan or acquisition. Insurance responsibility for both parties will be established before shipping and installation of loaned or acquired artwork.
8. The object shall be cataloged into the Town's collection and photographed and documented accordingly.

- D. For all acquisitions to its collections, the Town must obtain free and clear title to the acquired artwork. Acquisitions will be free of limiting conditions and restrictions concerning their fair use. Unless specifically agreed to otherwise, items acquired may be exhibited, preserved, conserved, stored, offered for sale, used for fundraising, or otherwise utilized in the best interests of the Town, at the Town's sole discretion
1. The artist shall retain all rights and interest in the artwork under the Copyright Act of 1976 except for rights of ownership and possession, which shall be passed to the Town. The artist shall warrant that the artwork is his/her sole and original creation which does not infringe upon any copyright or trademark. The artist shall grant the Town the irrevocable license to make reproductions of the artwork for archival or promotional purposes. An artist credit line shall be utilized for images of the artwork in published materials.
  2. Town staff shall ensure that the artwork is properly installed. The artist or the artist's agent must guarantee reasonable durability of materials, and shall agree to consult with Town staff on the installation method and site preparation prior to installation of the artwork.
  3. The artist shall submit maintenance guidelines for the artwork to the Town. In turn, the Town shall make every reasonable effort to maintain the artwork and make any decisions regarding repairs and restoration based on the maintenance guidelines submitted by the artist and in consultation with the artist when feasible (as per the Visual Artists Rights Act of 1990).
- E. Acquisition by Purchase. Documents of ownership transfer for purchased artwork shall contain the following minimum information: Name and address of the owner from which title will pass to the Town via sale, date of sale, description of the artwork, and purchase price of the acquisition.
- F. Acquisition by Gift or Donation. The donation of works of art is a major source of enrichment for the Town's collection. Although a far greater range of possible acquisitions is likely to be offered to the Town as gifts than would be considered for purchase, equally high artistic regard should be applied to them.
1. Title to donated acquisitions shall be passed to the Town via a Deed of Gift form or other Town-approved document which contains explicit language regarding the outright and unconditional nature of the gift.
  2. Donations to the Town of Yucca Valley are tax deductible to the extent allowed by law. The Town, however, assumes no responsibility for appraisals or tax consequences resulting from the submission of art to the Town. No acquisition shall be appraised by a Town employee, Commission member, or Town Council member, or any other Town-affiliated person associated with the donation. This subsection in no way prohibits a Town

employee, Commission member or Town Council member from appraising a work of art donated to the Town of Yucca Valley for the sole purpose of deaccessioning, as described in Section 9 of this Policy.

## **6. Loan Procedures**

- A. The review and approval procedures, rules 5.C. 1-8, shall apply to all works of art offered for loan to the Town. Although loaned art will not be included in the Town's permanent collection as is art from gifts or purchases, an equally high artistic regard shall be applied to loaned objects. Members of the appointed Commission(s) share responsibility to make the Town's needs and restrictions known to potential public art lenders. The prospective lender shall receive a copy of this Public Art Policy.
1. The lender will be responsible for entering into a loan agreement with the Town upon approval of the loan by Town Council. Loan documentation, signed by both the Town and the lender, will identify the authorized lender, describe the artwork borrowed, state the duration of the loan, specify the credit line for published images of the artwork, assign responsibility for insurance, and state insurance values. Incoming and outgoing condition reports will be completed on each artwork loaned to the Town.
  2. Artwork will be loaned for periods up to one year in duration, with renewal negotiations conducted between the Town and lender if both parties desire to extend the loan. The Town will exercise with respect to the artwork the same security precautions and care as the Town does in the case of comparable objects in its own collection.
  3. The Town must receive from the lender assurance that the artwork loaned is in such condition as to withstand ordinary strains of packing, shipping, installation, and exhibition. No alteration, restoration, or repair will be undertaken without the written authorization of the lender.
  4. Insurance responsibility will be determined at the time of the loan agreement. In the case of the Town insuring the artwork, insurance will cover only those risks against which the Town insures its own property under such policy. The lender agrees that in the event of loss or damage, recovery, if any, shall be limited to such amount as may be paid by the insurer, thereby releasing the Town, its officers, agents, and employees from liability for any and all claims arising out of such loss or damage. If the lender elects to maintain his/her own insurance, the Town must be supplied with a Certificate of Insurance with and endorsement naming the Town as additional insured with respect to the artwork.
  5. Unless permission to do so has been specifically refused in writing by the lender, the Town is authorized to photograph or otherwise reproduce in any media images of the artwork on loan for archival or promotional purposes.

For published images the credit line specified by the lender in the loan form will be utilized.

**7. Public Art Fund**

- A. Any financial appropriations or donations to a Public Art Fund will be maintained by the Town of Yucca Valley with the fund balance identified in the annual budget.
- B. At such a time when deemed necessary and appropriate by the Town Council, the Public Art Fund may receive allocations from the Town for acquisitions, operating expenses, workshops, sponsorships, fund raising events, and other endeavors pertinent to public art.
- C. The Public Art Fund shall be held in a separate account and not commingled with other funds.

**8. Deaccessioning**

- A. Deaccessioning is the process by which the Town, acting in accordance with Town policies and procedures, approves and effectuates the disposal of a work of art from the Town of Yucca Valley's collection.
- B. It is recognized that the deaccessioning of artworks is a very delicate matter, and must be handled with diplomacy, so not to discourage and alienate potential donors and/or artists.
- C. Notwithstanding any other provision in this policy, if, in the judgment of a majority of the Town Council, an artwork is deemed at any time to be detrimental to the public interest due to one of the criteria listed in Section 8.D below, it may be removed immediately from public display and deaccessioned.
- D. Criteria for selecting works of art for deaccessioning.

The Town shall review works of art for deaccession if the artwork meets at least one of the following criteria:

- 1. If the Town cannot properly care for or store the work.
- 2. If the artwork does not meet the policy goals as described earlier in this Policy.
- 3. If the work is duplicative (e.g., prints sculptures, multiples) of other works in the Town's collection.
- 4. If the Town identifies a work of art as a copy or pastiche, a fake or forgery, without significant value.

5. A work whose condition requires restoration in excess of its value or a work in such a deteriorated state that restoration would be either unfeasible or misleading.
6. A work whose condition has become a threat to public safety, either through improper installation, deterioration or other defect in the work that renders it reasonably foreseeable that the work could cause injury to persons or property.

**9. Deaccessioning Procedures**

- A. Except where the Town Council has initiated deaccessioning of an artwork pursuant to Section 8.C above, the appointed Commission(s) and/or Town staff shall periodically review the Town's art collection and compile a list of those objects recommended for deaccessioning.
- B. Staff shall prepare a written report for each object recommended for deaccessioning. This report shall include:
  - Title, artist, medium, dimensions, and current location of the work
  - Provenance
  - Slide(s) and/or photograph(s) of the work
  - The condition of the work
  - Estimated fair market value, as determined by Town staff
  - Copy of ownership documents for the work
  - Justification for disposal, conforming to the provisions herein (in the case of certain objects of high monetary value, independent consultants may be invited to provide opinions)
  - Recommendation for disposal method of the work
- C. A copy of the report shall be distributed to each member of the appointed Commission(s) for review prior to the meeting at which the deaccessioning of the work will be considered.
- D. Each member of the appointed Commission(s) shall physically inspect the work before voting to recommend deaccession.
- E. After appropriate discussion, the appointed Commission will recommend approval or disapproval of the deaccessioning by a majority vote. Town staff will forward the recommendation to the Town Council for its review and approval. Town Council approval must be obtained for the deaccessioning of any object regardless of its value or intended disposition
- F. Subsequent to approval by the Town Council, staff shall make every reasonable effort to locate the artist or donor/heir advising them in writing of the Town's intention to deaccession the work giving reasons and appropriate assurances that:



1. In the case of sale, the monies realized will be used to purchase other works for collection or to restore works already owned by the Town, and to adhere to the California Resale Royalties Act (Civil Code 986).
2. A reasonable effort shall be made to honor the wishes of the artist or donors/heirs concerning the sale. Written concurrence of donors/heirs will be solicited.

## **10. Disposal of Deaccessioned Art Procedures**

The Town may take any of the following courses of action. The Town shall not be limited to these, and may suggest other methods as may be decided by a particular set of circumstances.

### **A. Sale**

1. The artist/donor shall be given the right of first refusal to acquire the work at fair market value, original price, or gratis, depending on the recommendation of the appointed Commission and approval of the Town Council. The cost of removal of the work may be reflected in the amount set.
2. Sell the work through a dealer.
3. Sell the work through a public auction or a sealed competitive bid process.
4. All revenues shall be designated for the Town's Public Art Fund.

### **B. Trade or Exchange**

1. The Town may negotiate a trade or exchange under special circumstances with a dealer or artist. Acquisition of an artwork through trade or exchange shall be subject to the provisions of this Public Art Policy.
2. The Town may trade a deaccessioned work for another piece by the same artist or another artist. Acquisition of an artwork through trade or exchange shall be subject to the provisions of this Public Art Policy.
3. In acquiring an object through trade or through monies raised from the sale of deaccessioned objects, the Town shall acknowledge the donor(s) of the original object or objects.
4. In keeping with the California Resale Royalties Act, if a deaccessioned work of art is sold, traded, or exchanged, five percent (5%) of the sale price of any work valued over \$1,000 will be given to the artist who created the work or the artist's heirs as governed by law, provided that the artist can be located by reasonable means. If the artist cannot be found, the Resale Royalty shall revert to the California State Arts Council. It is the obligation of the artist to keep the Town informed of a current address.

C. General Provisions

1. There may be instances in which the artwork has deteriorated to such an extent that it is irreparable and is unsuitable for exhibition and has therefore lost its function within the Town's collection. Once a work of this nature has been fully deaccessioned, a recommendation may be made by the appointed Commission(s) and/or staff to dispose of the object.
2. Staff will negotiate the terms with the agency or agencies for sale or exchange of deaccessioned objects.
3. Staff shall remove acquisition numbers and labels from the deaccessioned work, arrange and coordinate its physical departure from the Town's collection.
4. Staff shall notify Town Council of the removal of the piece from the Town's collection.
5. All proceeds from the sale of deaccessioned works of art will be used to purchase other works for the collection, or to restore works already owned by the Town.
6. All funds from deaccessioning shall be maintained in the Town of Yucca Valley's Public Art Fund.
7. All legal instruments for the purchase, donation, loan or disposition of an artwork shall be subject to the prior review and approval of the Town Attorneys' Office.