

ARTICLE I
General Provisions

§ 232-1. Title.

This chapter shall be known as "Public Arts."

§ 232-2. Intent and purpose.

- A. The purpose of this chapter is to facilitate and encourage public art in the City of Auburn by creating a streamlined application and review process, and guidelines for siting, installation and maintenance of public art.
- B. The provisions of this chapter are applicable to public art that is installed on publicly owned land within the City of Auburn including, but not limited to, City parks, streets and sidewalks within the public right-of-way, and any City-owned property. Murals on private property shall be regulated by Chapter 305, Article V, Signs.

§ 232-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABANDONED PUBLIC ART — Public art that is not removed from the site by the owner or artist within 60 days of the stated agreement, or upon written notification from the City. The City is authorized to dispose of any abandoned public art pieces that have been stored by the City.

ARTIST — A practicing fine artist, generally recognized by critics and peers as a professional of serious intent and ability. Indications of a person's status as a professional artist include, but are not limited to, income realized through the sole commission of artwork, frequent or consistent art exhibitions, placement of artwork in public institutions, receipt of honors and awards, and training in the arts.

ARTWORK — See "public art."

DEACCESSION — The formal process used to permanently remove an artwork owned by the City from the public art collection, usually through sale or exchange or any other transaction by which title of the outgoing artwork is transferred from the City to an individual, institution, agency, gallery, vendor or dealer. Under certain conditions, it may also include disposal by intentional destruction.

DEED OF GIFT — A formal, legal agreement that transfers ownership of and legal rights in the property to be donated.

DONATION — A charitable contribution to the City, during lifetime or testamentary transfer, whether whole or fractional interest, including, but not limited to, cash and cash equivalents, real property, personal tangible property, publicly traded equity and debt securities, closely held securities, restricted securities, life insurance policies, intellectual property, artifacts and/or artworks which would contribute to the City's goals and priorities outlined in the Public Art Plan.

EXTRAORDINARY ARTWORK MAINTENANCE — Any nonroutine repair, restoration or conservation to the sound condition of artworks that requires specialized

services.

MURAL — A hand-painted, hand-tiled, or digitally printed image which is on the exterior wall of a building located on public or private property and is visible from a City park, sidewalk, street or other right-of-way. Murals on private property are regulated by Chapter 305, Article V, Signs.

PERMANENT ARTWORK — Artwork exhibited with the expectation of indefinite duration.

PUBLIC ART —

- A. Refers to all forms of visual art that are located within the City right-of-way or on public land within the City of Auburn. Murals and artwork on private property are not regulated by this chapter.
- B. The aforesaid forms of visual art include, but are not limited to, the following mediums:
 - (1) Paintings of all media including both portable and permanently affixed works such as frescoes and murals;
 - (2) A sculpture of any form and in any material or combination of materials, including, but not limited to, statues, monuments, fountains, arches, reliefs, mobiles, kinetic, electronic and neon sculptures.
 - (3) Other public art shall include inscriptions, stained glass, fiber works, carvings, mosaics, photographs, drawings, collages, textile works, prints and crafts, both decorative and utilitarian, in any medium including, but not limited to, clay, fiber, wood, metal, glass, stone, plastic and other materials; and
 - (4) Artist-designed landscapes and earthworks, including the artistic placement of natural materials or other functional art objects.

PUBLIC ART COMMISSION — The regulating entity appointed by the City Council to establish policy and procedures to administer the Public Art Plan and program.

PUBLIC ART PLAN — A comprehensive guidebook for public art in the City which is intended to be the major tool by which the Public Art Commission achieves its mission. The Public Art Plan is a working document that will assist the Public Art Commission, City Common Council and other public bodies in planning and funding for art-related projects and identifying key sites for public art, and will provide artists guidance when responding to proposals and projects.

PUBLIC ART PROGRAM — All responsibilities and activities of the Public Art Commission in accordance with this chapter (Ordinance No. 5 of 2017, adopted December 21, 2017).

PUBLIC PROPERTY — All spaces owned by the City of Auburn, indoor or outdoor, that are accessible and visible to the general public.

REQUEST FOR PROPOSAL (RFP) — A process in which artists are asked to submit a detailed proposal for a specific site or project.

ROUTINE MAINTENANCE — Regular routine inspection and care of artwork, such as cleaning and applying protective surface coatings. A trained technician, City employee

or third party contracted by the City trained to provide such services will carry out any required maintenance procedures.

TEMPORARY ARTWORK — Artwork exhibited for a limited duration.

ARTICLE II
PROCEDURE

§ 232-4. Design criteria.

There are no absolute criteria for acceptable public art, except for general tenets which include:

- A. Artistic merit and quality as evidenced by an artist's past history of exhibitions or sales, awards or other recognition, or an outstanding first work; as well as the inherent quality in terms of timelessness, vision, design, aesthetics, and excellence.
- B. Intentionality of the artist concerning the meaning and proposed or desired effect of the work as public art upon the viewing public.
- C. Local significance and site-specificity by creating a sense of excitement on public property and presenting fresh ways of seeing the community and City, while also recognizing the historic and environmental context of the site.
- D. Representation of a variety of styles and tastes in the collection by acknowledging existing works in the public art collection, striving for cultural diversity of style, scale, and media, and representing the eclectic tastes of the community.
- E. Unrestricted public viewing, primarily the opportunity for public access, but also suitability for public participation, social and political attitudes, and functional considerations.
- F. Safety and durability including the ability and structural integrity of the artwork to withstand weather conditions, minimize the possibility of injury, and protect against theft and vandalism.
- G. Installation and maintenance of work from practicality of fabrication and transport, to installation and long-term maintenance and associated costs.
- H. Compatibility with established patterns of use at the site by situating artwork such that it is accessible, visible, and appropriately scaled to the site, and such that it does not seriously disrupt the flow of pedestrian or vehicular traffic or adversely alter the environmental conditions of the selected site.

§ 232-5. Approval process.

- A. Prior to the installation of any artwork, a complete public art application must be submitted electronically to the City Manager's Office, including all requirements as detailed in Subsection B, Application requirements.
- B. Application requirements.
 - (1) Project description, including purpose, artist's rationale and/or intention for the proposed work; history and provenance of the artwork; relationship of the project to other community interests and activities; as well as potential materials and media.
 - (2) Illustrative and/or construction drawings of the proposed work. A scale model

of the proposed work is strongly recommended (if applicable).

- (3) For 3d artwork, scaled site plan and color images of the proposed installation location and its context.
 - (4) Scaled illustrative drawings or model showing the artwork in relation to the proposed site.
 - (5) Description of short- and long-term maintenance requirements and costs. For temporary installations, a general liability insurance certificate listing the City of Auburn as additionally insured with at least \$1,000,000 of general liability coverage must be included.
 - (6) Artist resume, annotated exhibition list, and digital images of other works.
 - (7) Project timeline, including (as applicable) fabrication, delivery, installation, maintenance schedule, and removal.
 - (8) Project budget, including both committed and anticipated funding sources.
 - (9) General letters of support. Applicants are encouraged to include letters of support, particularly from neighborhood groups. For murals on nonresidential private property, a letter of support from the private property owner is required.
- C. Review procedures.
- (1) Within 30 days of receipt of an application, the City Manager's Office shall review the application for completeness.
 - (a) Shall the application be deemed incomplete, the City Manager's Office shall provide the applicant with written notification and a detailed description of the determination.
 - (b) If the proposed application is not complete, the applicant has the right to change the proposed site or design of the public art installation and have the application reconsidered.
 - (c) Once an application is deemed complete, the City Manager's Office shall forward the application to the applicable City departments, the Public Art Commission, and other related agencies for approval of the installation's proposed site.
- D. The Public Art Commission shall review the application at its next regularly scheduled meeting to determine if the submission fulfills the design criteria and requirements detailed herein. Either the Public Art Commission or, upon invitation, the artist may present the application at a public meeting for comment and review.
- E. Upon considering community input, economic feasibility, maintenance requirements, and the appropriateness of the design, the Public Art Commission shall either approve, approve with modifications, or deny the application. Failure to act on an application does not result in a default approval. An application may only be denied based upon objective criteria as set forth in this chapter. If the Commission denies the application, the Commission shall provide the applicant

with written reasons as to why the application was denied within 10 business days of its decision.

ARTICLE III
Establishment of Public Art Commission

§ 232-5.1. Public Art Commission.

A. Powers and duties.

- (1) The Public Art Commission (herein referred to as the Commission) shall provide leadership to enhance the experience of public space, be an effective decision-making body to recommend and implement approved Public Art policy and procedures, and maintain thoughtful public participation, outreach, and communications concerning public art.
- (2) The Commission shall approve all public art applications and said approval shall be necessary prior to the installation of public art in the City of Auburn unless exempted by the terms of this chapter.
- (3) The Commission shall initiate and develop proposals to receive recommendations and to solicit contributions for additions to the existing collection of public art.
- (4) The Commission shall be responsible for the development and oversight of a Public Art Plan including criteria and guidelines for the selection, acquisition, exhibition, and display of new public art, either temporary or permanent. The criteria and guidelines shall relate but are not limited to economic feasibility, maintenance, security, and aesthetics. No public art shall be acquired, loaned, or installed, nor shall existing public art be deaccessioned or removed from public places without prior review by the Commission.
- (5) The Commission is authorized to establish a jury or advisory group, or consult with public artists when reviewing an application or acquiring a piece of public art.
- (6) The Commission shall submit an annual report to the City Council on its activities and shall report to the Mayor on a regular basis.

B. Membership.

- (1) The Commission shall consist of a minimum of five voting members who must be residents of the City of Auburn.
- (2) The Commission shall be composed of the following members:
 - (a) When possible, two individuals chosen from the following disciplines: landscape architecture, architecture, urban planning, interior design, engineering, or a related design discipline.
 - (b) Two professional artists.
 - (c) One citizen knowledgeable in the field of public art, education, or community affairs.
 - (d) One citizen knowledgeable of the real estate and development community.

- (e) One at-large citizen.
 - (3) Nonvoting members of the Commission shall include at least one representative from the Planning and Economic Development and a member of the Department of Public Works.
 - (4) Members of the arts community may serve as nonvoting, at-large members of the Commission to provide specific knowledge and expertise.
 - (5) All members of the Commission shall be residents of the City of Auburn.
- C. Terms of office.
- (1) The membership of the first term of the Commission shall be filled by the City Council of the City of Auburn with the following appointments:
 - (a) Two members to serve a two-year appointment;
 - (b) Two members to serve a three-year appointment;
 - (c) One member to serve a four-year appointment.
 - (2) Terms shall be two years in length with the exception of four members of the first established Commission, staggered such that not more than three of the two-year terms expire in any calendar year.
 - (3) Once a person has served three full and consecutive terms on the Commission, that person shall not be eligible for reappointment for a length of time equal to one full term on the Commission.
 - (4) If any member shall fail to attend three consecutive meetings or more than half of the meetings in one calendar year without just cause as determined by the Commission, then that member shall be replaced by the Chairperson of the Commission.
 - (5) Any vacancy that results from an expired term or resignation shall be filled by the City Council.
- D. Officers.
- (1) The Commission shall have a Chairperson and a Vice Chairperson, as elected by a majority vote of the Commission.
- E. Compensation of members.
- (1) The members shall receive no compensation for their services.
- F. Meetings.
- (1) The Commission shall meet for the purpose of organization as soon as reasonably possible after January 1 of each year.
 - (2) The Commission shall meet at such times as it finds necessary throughout the year, but not less often than once every quarter.
 - (3) All meetings of the Commission must be open to the public as required by

the New York Open Meetings Law. A quorum shall consist of a majority of appointed voting members of the Commission.

- (4) Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be conspicuously posted in one or more designated public locations at least 72 hours before such meeting.
- (5) The Commission shall establish and publish rules and regulations governing the conduct of its meetings, the procedure and criteria to be utilized in approving or denying public art applications and any other matters within its power and duties, provided that the rules and regulations are not contrary to the terms and intent of this chapter.

G. Conflicts of interest.

- (1) All members of the Public Art Commission shall abide by the adopted City of Auburn Code of Ethics.
- (2) Any conduct that creates an appearance of impropriety or may otherwise impair a Commission member's judgment in the selection of a project site, artist, or artwork is prohibited.
- (3) Anyone in a position to receive financial gain from the selection of sites, artists, or artworks shall abstain or recuse themselves from the Commission.
- (4) Committee members must declare any conflict of interest and recuse themselves if a conflict of interest arises.
- (5) A Committee member may not participate in discussion or voting on an application submitted by said member.

ARTICLE IV
Standard of Review

§ 232-6. Public art guidelines and regulations.

A. Ownership of public art.

- (1) All artwork commissioned and/or acquired by the City of Auburn will be owned by the City of Auburn.
- (2) Artwork loaned to the City will be covered by the City's insurance for the duration of the loan.
- (3) Acceptance of a gift or loan of artwork by the City of Auburn means a commitment to its preservation, protection, and display for public benefit within the reasonable resources of the City of Auburn.

B. Acquisitions.

- (1) An acquisitions program is the most active and visible means of promoting and enhancing the public art collection. By purposefully acquiring individual works, the Commission can make a broad variety of art available and distribute installation locations across the City. Attending to site-specific themes will enhance sense of place and strengthen community character while citizen involvement will advance a greater appreciation for public art and a high-quality physical environment.
- (2) Acquisitions of public art shall be free of restrictive conditions by the artist or donor unless, at the discretion of the Commission, such conditions are reasonable and not detrimental to the City.
- (3) The artist is the rightful owner with all power and authority to loan, donate, or sell to the City and will indemnify and hold the City harmless from any actions, claims, or proceedings challenging title to ownership.
- (4) All acquisitions of art work must be accompanied by the following statement:

The donor or the artist, in cases where an artist loans or makes a donation, or a piece is purchased by the City, represents and warrants to the City of Auburn, New York, that it intends to loan, donate, or sell (as the case may be) the artwork to the City. The donor or artist also represents that he has not entered into any agreement that may impair this agreement. The City recognizes and respects artists' rights as set forth in the Visual Arts Rights Act of 1990 (VARA) and Section 14.03 of the New York State Arts and Cultural Affairs Law, including, but not limited to, the right to claim authorship, the right to not have his name used on any work not created by the artist, and the right not to have his work intentionally distorted, mutilated or modified so as to prejudice the artist's reputation. However, the City expressly reserves the right, in its sole discretion, to relocate or remove from display visual art, and an artist shall sign a waiver to allow such relocation or removal.

- (5) Through the Public Art Plan, once established, the Commission and community will identify potential locations for public artwork across the City,

as well as the highest priority sites. As resources become available, individual acquisition efforts will focus on these sites.

- (6) Once specific site selection occurs, the Commission will select an artist using one of the following methods:
 - (a) Open request for proposals. Artists submit proposals in response to a public advertisement, which includes a detailed project description and budget, explanation of honorarium, and application requirements. Submissions will include, at a minimum, the artist's resume and slides of his work. After reviewing the responses, the Public Art Commission will extend interview invitations to a number of the artists, ultimately selecting one for the Commission.
 - (b) Limited invitational/curated pool of artists. A select group of artists submits proposals in response to a direct invitation, which includes a detailed project description and budget, explanation of honorarium, and application requirements. Submissions will include the artist's resume, slides of his work, and a written narrative of his proposal. After reviewing the responses, the Commission will extend interview invitations to a small number of the artists, ultimately selecting one for the Commission.
 - (c) Blind request for proposals. Artists submit proposals in response to a public advertisement, which includes a detailed project description and budget, explanation of honorarium, and application requirements. Submissions will include narrative and two-dimensional depictions of the proposed concept, but not contain any artist information; each submission will have an identification number for evaluation purposes. After reviewing the responses, the Commission will extend interview invitations to a number of the artists, ultimately selecting one for the Commission.
 - (d) Direct invitation. A single artist submits a proposal in response to an invitation, which includes a detailed project description and budget, explanation of honorarium, and proposal requirements. The Commission will interview the artist, who will present his concept using both two- and three-dimensional portrayals.
- (7) After the Commission agrees on the artist selection method, it will prepare materials for advertisement and distribute them as required. The Commission will review each submission to determine if it is complete and responsive to the request. The Commission will return incomplete submissions to the artist, noting why the proposal is incomplete.
- (8) The Commission will review complete submissions and, except when using direct invitation, select artists for interviews. Given the scope of some projects as well as the number of respondents, the Commission may first establish a jury which will be responsible for the selection of the public art. The Commission and/or jury may develop a short list for consideration and subsequently identify those to be interviewed. The Commission and/or jury may ask interviewees, in addition to a formal meeting with the Commission and/or jury, to make a public presentation regarding their body of work and

initial concepts for the Commission.

- (9) Following the interviews and consideration of public comments and compatibility with the design criteria set forth in § 232-5, the Commission and/or jury will either approve or deny the submission. Following approval, the selected artist will enter into a contract with the City which will facilitate acquisition and will clearly stipulate the rights and responsibilities of both parties.
- (10) When the artist and the City have satisfied contractual requirements, fabrication and installation can begin immediately. The appropriate City agency will monitor all work. The Commission will initiate any related marketing and outreach programs and will encourage community dialogue regarding the commissioned artwork.

C. Donations and unsolicited offers.

- (1) The City may also obtain public art through donations, as well as unsolicited offers. Gifts that artists or owners offer must conform to the Public Art Plan's goals and objectives, and public participation will help achieve community acceptance of a proffered piece.
- (2) All costs for installation shall be negotiated by the City and the donor at the time of donation.
- (3) Should the City choose to remove a piece of donated artwork from public display for a period of at least one year, the City shall make a good faith effort to attempt one of the following actions:
 - (a) Negotiate with the donor an extended period of time for the piece to remain out of public display; or
 - (b) Offer to return the piece, at donor expense, to the donor. If the original donor cannot be contacted after reasonable efforts or chooses not to accept the return of the piece, the City reserves the right to sell, convey, or otherwise discard the piece.
- (4) The City has the authority to decline gifts, donated pieces, and unsolicited pieces of public art.

D. On-loan items.

- (1) Displaying works that an artist or owner has loaned is an effective way to expand public art in the community. The on-loan program allows the City to complement or supplement the permanent pieces in the collection for a limited time. It provides opportunities to display well-known works and those that are new or unfamiliar, and it offers the chance to highlight aspiring artists and experienced masters alike.
- (2) The Commission and artist shall agree upon a reasonable length of time, not to exceed the negotiated agreement, for the art to be displayed.
- (3) At the end of the agreed time period, as contracted between the City and the

artist, the artist is responsible for removing the installation.

- (4) Should the artist fail to remove the installation within the negotiated time period, the piece will be considered abandoned. The City retains the right to remove the installation in accordance with § 232-9 of this chapter.

§ 232-7. Siting, installation, and maintenance.

A. Siting.

- (1) The siting and location of all public artwork will be the responsibility and right of the City. Decisions on siting will be made by the Commission in consultation with appropriate City staff.
- (2) Site selection for public art will be reviewed with the following criteria, which may include, but is not limited to:
 - (a) The safety and security of the proposed site;
 - (b) Ease of access for routine maintenance using standard City equipment;
 - (c) Visibility and accessibility by a broad public audience;
 - (d) The context of the proposed artwork at the proposed site as it relates to social, cultural, historical, ecological, physical and functional context; and
 - (e) Community support for the proposed site.
- (3) Public art shall be identified with suitably designed and sized plaques approved by the Commission.

B. Installation.

- (1) Installation, maintenance, alteration, refinishing, moving, and removal of artwork in public places shall be done in consultation with the artist.
- (2) Installation of individual works will be through the combined efforts of the artist and City staff, or other contractor as specified in the contract.
 - (a) The artist will be responsible for installation with the appropriate City department(s) providing oversight. If the artist is not able to direct the installation, then City staff shall consult with an expert in art handling and maintenance to assist in the installation at the expense of the artist.
 - (b) The artist will provide the City with detailed drawings of the piece and descriptions of transportation, unpacking and/or handling methods and scheduling.
- (3) The Commission will encourage donors to cover installation costs associated with proposed gifts. In all cases, donors must provide sufficient information to generate accurate estimates of such costs.

C. Maintenance.

- (1) The City of Auburn will be responsible for routine maintenance and emergency response for all public art acquired, donated, or on-loan to the City.
- (2) For all acquired pieces, the artist will define techniques, methods, materials, schedules and costs for regular repairs, and will provide this information at or before installation. Donations and/or loans of public art must include sufficient funding to adequately cover maintenance.
- (3) In some circumstances, the artist might elect to engage a particular technician for repairs, and therefore must include special provisions allowing the technical access to the piece in contracts between the artist and the City. The City or Commission reserves the right to require the artist (and/or donor or owner) to assume all costs for specialized or extraordinary artwork maintenance.
- (4) When emergency repair of artworks is necessary, the City will contact the artist regarding proposed remedies. Absent such advice, recommendations from the Commission for routine maintenance will serve as the principal guide for addressing emergency conditions.
- (5) Artwork loaned or acquired by the City shall be insured by the City's insurance to cover damage, vandalism, theft, fire, and damage from natural disasters. Normal wear and tear are excluded from insurance coverage by the City. Therefore, repairs and maintenance for normal wear and tear of pieces acquired or loaned by the City and put on public display shall be provided by the City at its discretion. "Wear and tear" includes such things as normal aging or exposure to the elements, or similar circumstances (e.g., rust, cracks, fading). The City shall make a good faith effort to maintain the artwork, pedestal, and plaque in good condition, on par with other art works on public display owned by or loaned to the City.
- (6) The City of Auburn Department of Public Works is responsible for maintaining all files related to the installation, routine maintenance and emergency response of public art pieces.

ARTICLE V
Appeals Process

§ 232-8. Process.

The Public Art Commission recommends an appeals step as part of the public art acquisition process. The intention is to ensure that public art process and criteria are followed. Therefore, appeals would be based on process issues only.

- A. Information about the appeal and selection procedures will be shared with the public at the start of each acquisition process in order to promote understanding of public art and to ensure an open process. In addition, should it be necessary, Commission decisions may be appealed in writing based on the following criteria:
 - (1) The decision was based on something other than the established review criteria;
 - (2) The required information or other pertinent supporting material was not used during the review process; and/or
 - (3) Conflict of interest procedures were not followed.
- B. Appeals should be submitted in writing after the appellant has first consulted with the Commission to review the considerations that went into the acquisition or donation process. Appeals should be submitted to the Common Council in writing within two weeks of written notification or public announcement of the selection, acquisition, or donation.
- C. Upon receipt of the appeal letter, the Common Council and the Commission Chairperson will meet within two weeks with the appellant to hear their grounds for reconsideration. The Common Council has the authority to determine whether or not there are grounds for reconsideration based on the appeal criteria listed above. If there are grounds, the Common Council will review the process and decision. After the reconsideration, a letter will be sent to the appellant.
- D. Notice of appeals will be shared with the City Council.
- E. All appeals will be reported in the annual report.
- F. Since this is a City program, only City residents have the ability to submit appeals.

ARTICLE VI
Deaccession Policy and Procedure

§ 232-9. Deaccession of artwork.

- A. The Commission will not plan to deaccession permanent artwork from the public art collection, whether acquired by direct purchase or through donation.
- B. Deaccessioning public art should be an action seldom used and should not be used due to fluctuations in taste.
- C. After due consideration, the Commission can recommend such action, however, in cases that meet one or more of the following criteria:
 - (1) The artwork has been abandoned;
 - (2) The Commission finds the artwork to be fraudulent or inauthentic;
 - (3) The artwork possesses substantial demonstrated faults in original design or workmanship;
 - (4) The current condition of the artwork presents a public or environmental hazard and repair/restoration is not feasible due to physical conditions and/or the expense would be disproportionate to the value of the artwork;
 - (5) The building housing the artwork or other architectural support system for the piece is slated for demolition and relocation is not feasible;
 - (6) The artwork encumbers the use of public property; and/or
 - (7) Public use and/or ownership of the site have or will change, rendering the artwork incompatible with the property.
- D. Should the Commission justify deaccessioning, it will seek opinions on the disposition of the subject piece from the artist community and general public.
- E. The Commission will give priority consideration to returning works to the artist or their heir, or in the case of donations, to the donor or his/her heirs.
- F. The City will store deaccessioned pieces as time and space allow.
- G. The Commission will disclose both the deaccession criteria and possible disposition of such artwork to the artist and/or donor before finalizing any contractual agreements.
- H. In the case the City chooses to sell a piece of public art, all proceeds from the sale will be placed in a City account for acquisition of new works of public art or maintenance of the existing collection.