

# City of Del Mar Public Art Program



*The Del Mar Public Art Program seeks to ensure the highest quality of design, where public art has a constant presence in our community.*



## CITY OF DEL MAR CITY COUNCIL POLICY BOOK

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### SCOPE:

The original concept of public art in Del Mar included art on public property (i.e. City Hall, Camino del Mar, parks and greenspace), and regulation of public art on private property and as a part of private development. The proposed course of action is to start slowly – displaying art on public property, and thereby demonstrating success – and at a later time consider art in conjunction with private development.

### ACKNOWLEDGEMENTS:

These proposed guidelines are based on the very thorough work of the Del Mar Village Association (DMVA) Art Committee who researched the art policies of other successful programs in the country.

### PROCESS:

This policy is the byproduct of grassroots community interest. The following steps are critical to successful implementation:

1. Concept and draft proposed by DMVA and interested community members
2. Draft discussed and modified by the City Council Ad-Hoc Committee
3. Draft reviewed by key community stakeholders
4. Draft reviewed and approved by the City Council, and implemented by City staff and the Art Advisory Committee

### I. PROGRAM INTENT

It is the intent of the City of Del Mar to create a Del Mar Public Art Program (hereinafter “the Program”) with guidelines specifically designed to promote the arts in public places in the Commercial Zones (including the Visitor, Central, North, and Beach Commercial Zones hereinafter Commercial Zones), Public Facility Zones (including the City Hall and Del Mar Shores properties) and public parks in Del Mar. It is intended that art will serve as cultural enrichment to the residents of the City and the community life along with enhancing the economic vitality of the City.

The Program seeks to ensure the highest quality of design where public art has a constant presence. The City wishes to advance Del Mar’s reputation as a unique community by expanding



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residents' appreciation of art, reflecting the City's aspiration to improve the quality of life, enhancing public spaces for all residents and visitors and becoming a city recognized for innovation and creativity. The Program works to integrate art and the ideas of artists into the development of public settings by collaborating with local and nationally known artists to include the values and history of our community into their work.

The Program will be implemented as a pilot program to last five (5) years from the date of adoption by City Council. The first two years will be focused on art donated to the City or purchased with donated funds. After the two year period, the Policy will be expanded to include pieces purchased by the City. At the end of the five-year pilot program, the City Council should evaluate the Program and determine if the program should be continued or expanded.

### II. PROGRAM GOALS

The City of Del Mar aims to develop a Program that represents a wide range of artistic styles and disciplines through a process that encourages community dialogue and involvement. All of these actions will help identify Del Mar as a community committed to art and culture. The goals of the Program include:

- **To acquire and commission quality and diverse works of art for community enrichment that is site specific and environmentally responsive.**
  - Five works acquired in three years
- **To support and involve artists in developing, collaborating and implementing Del Mar's public spaces and community development projects.**
  - 80% of Del Mar artists rate involvement high or very high on survey
- **To encourage collaboration between artists and architects, landscape architects and civil engineers for public projects.**
  - 60% of Del Mar artists, architects and engineers see improvement in collaboration
- **To encourage an environment for artistic creativity in Del Mar and promote Del Mar as a leader in arts, culture and public art.**
  - 70% of visitors rate Del Mar high or very high as leader in arts, culture and public art.
- **To increase awareness of Del Mar's art in public places as an integral component for attracting business and visitors to Del Mar.**
  - 80% of visitors aware of Del Mar's Public Art Program



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### III. ELIGIBLE FORMS OF PUBLIC ART

The City of Del Mar wishes to encourage the broadest interpretation of art and the diverse venues used by artists. Art may include all forms of original creations of visual art, which may be temporary as well as permanent. The media and materials eligible to be used by artists include, but are not limited to, the following:

- Sculpture: Free standing, wall supported or suspended; kinetic, electronic, etc., in any material or combination of durable materials.
- Murals or portable paintings: In any material or variety of materials, with or without collage or the addition of non-traditional materials and means.
- Earthworks, fiber works, neon, glass, mosaics, photographs, prints, calligraphy, any combination of forms of media including sound film, holographic and video systems, hybrids of any media and new genres.
- Standardized fixtures such as gates, streetlights, etc., may be contracted to artists for unique or limited editions, provided the work is designed specifically for the city as public art.
- Architectural elements designed and executed by visual artists in collaboration with an architect or landscape architect; which may be incorporated into, upon or adjacent to publicly funded structures or projects such as streetscapes, walls, and other development efforts.
- Design elements incorporated into a Capital Improvement Project, designed by an artist for fabrication and execution by the project contractor.
- Musical, sound and visual effects that highlight or accentuate a piece of art.

### IV. INELIGIBLE FORMS OF PUBLIC ART

The following items are identified as ineligible for inclusion in the Program. (These items may be funded through other programs or departments within the city, but they do not fall within the parameters of public art):

- Directional elements such as super graphics, signage or color-coding except where these elements are integral parts of the original work of art.
- “Art objects” which are mass-produced as a standard design such as playground equipment, fountains or statuary objects.

### V. COMMUNITY STANDARDS

All artwork considered by the Art Committee for inclusion in the Program shall be reviewed in the context of the contemporary, community standards of the City of Del Mar. No art will be selected that is obscene as determined by the aforementioned standards in the sole discretion of



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the Art Committee and the City Council. Further, it shall be the policy of the City of Del Mar that once artwork is selected by the Art Committee (after an opportunity for the public to comment) and approved by the City Council (which is a further opportunity for the public to comment), said artwork will be displayed by the City of Del Mar for the time period set forth in an agreement with the artist. No artwork will be removed from display before expiration of the agreed time based upon its content. All art will be displayed pursuant to a written agreement between the City and the artist/owner. All such agreements will contain waivers from the artist of the artists rights under 17 U.S.C. 106A, 17 U.S.C. 113(d) and California Civil Code Section 987. None of the foregoing will apply if the City of Del Mar is the owner of the work of art.

The Art Committee shall use the following criteria for determining if a work of art complies with community standards:

1. Is the art work appropriate for the site at which it is intended to be displayed?
  - a. Does the work fit with the architecture of the site?
  - b. Does the theme of the art complement the character of the site and the City?
2. Is the art work secular in nature?
  - a. Does the work fit with religious diversity in the City?
  - b. Does the work neither advance nor inhibit religion?
  - c. Does the work avoid excessive entanglement of the City in religious matters?
3. Does the art work fit with diversity of opinion within the City?
  - a. Is the work inclusive of all citizens of the City?
  - b. Does the work allow differing viewpoints and opinions?
  - c. Does the work promote a positive image of the community and its citizens?
4. Is the art work obscene?
  - a. Does the work avoid appealing to the prurient or sexual interest?
  - b. Is this a work that is suitable for viewing by children?
  - c. Would a large number of citizens find the work offensive because of sexual content or sexual suggestiveness?

All art submitted to the City for consideration for display on public property shall be initially evaluated by the Art Committee using the above criteria. If, in the sole discretion of the Art Committee, a work of art does not meet the initial criteria as set forth above, the work of art shall no longer be considered by the Art Committee. If any artist feels that the Art Committee has not appropriately applied the above criteria, the artist may seek review by the City Council. Public art owned by the City is a form of government speech from the City to the public which is protected by the First Amendment.

The City of Del Mar has the right to monitor and govern such speech in its sole discretion.



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### VI. ART ADVISORY COMMITTEE

The Art Advisory Committee (AAC) plays an integral role in the implementation of the Program. The AAC serves in an advisory capacity to City Council as the review body for all public arts projects. The AAC advises the City of Del Mar on matters pertaining to public art and acts as the selection committee for public art projects. The AAC may be convened by the City of Del Mar on a project-specific basis, or to serve on multiple public art projects.

1. The AAC is composed of seven (7) members appointed by the City Council. AAC members serve at the will of the City Council and may be removed from office by the City Council at any time, without cause.
2. The term of office for AAC members shall be for a three (3) year period commencing on the actual date of appointment and ending on June 30 of the 3rd year thereafter. Members' terms shall be staggered, so that annually, two (2) or three (3) of the seven (7) members are subject to reappointment.
3. The members of the AAC will be selected on the basis of each member's specific expertise relating to public art.
  - a. Members shall be Del Mar residents, or individuals with a business located in one of the Del Mar Commercial Zones, and to whom one or more of the following apply:
    - i. Knowledgeable about contemporary art or related fields;
    - ii. Willing to represent the local community's interest in a public art project;
    - iii. Willing to become familiar with the public art process;
    - iv. Willing to be available for multiple or follow-up meetings if necessary.
  - b. The ideal make-up of the AAC will be a balanced membership consisting of four (4) residents (preference given to those with art backgrounds/experience), one (1) business owner (preference given to art-related business), One (1) DMVA representative, one (1) Del Mar Foundation representative.
  - c. Each member appointed to the AAC will be required to certify in writing that s/he has read the Public Art Policy and understands it.
4. The AAC shall appoint a chairperson and shall designate ex officio advisers to assist in the AAC functions without vote.
5. Non-voting ex-officio advisers may include:
  - a. A visual artist;
  - b. An architect or urban designer; and
  - c. An art professional such as a curator, fine arts collector, art critic or art educator.
6. The AAC will follow all guidelines for meetings specified in the Brown Act, including agendas, meeting notices, and public testimony.
7. The AAC shall not conduct any business unless a quorum is present. A quorum shall be a majority of the then-available seats on the AAC.
8. All selections and siting of public art approved by the AAC shall be subject to approval by the City Council.



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### VII. REVIEW OF PUBLIC ART PROPOSALS

In general, acceptance and placement of art in Del Mar should be in accordance with these guidelines, current or historic use, community plans, and City Council goals. The location and design of the art should be consistent with the character and design intentions of the proposed site. The quality, scale and character of the art should be at a level commensurate with the particular setting.

The AAC may make requests for art proposals using the following methods:

1. Open Competition
2. Limited Invitation (a few artists)
3. Invitation (one artist)
4. Direct Purchase

All proposals for the display of public art on public property must be submitted to the AAC. The AAC shall consider the following criteria when reviewing art for permanent or temporary placement in the public spaces in Del Mar. The City Council shall utilize the same criteria when considering whether to accept or reject an AAC recommendation.

- The artistic quality, uniqueness, style and nature, aesthetic and/or historical significance of the art.
- The art's physical condition and whether the art is of exhibition quality.
- Whether the City already owns sufficient examples or better examples of this type of art by a particular artist in a particular style.
- Whether the signage for art on public property conforms to the City of Del Mar plaque standards to include 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.
- [Note: City of Del Mar Plaque Standards will need to be developed]
- Whether sufficient funds are available for insurance and maintenance
- Appropriateness of the site and location (working well within the scale and nature of the site).
- Whether there are any public safety or accessibility issues.
- Whether the art is permanent or temporary.
- Whether the art is thematically appropriate for the context of the site. The AAC will review artwork for its context and artistic expression, and assess for local thematic significance, such as Del Mar history, natural environment (beach, lagoons, bluffs, canyons, Torrey Pines, etc.), and/or fairgrounds (horses, agriculture, etc.).
- Whether the art is appropriate for the general public based upon contemporary community standards (in the case of obscenity) as determined at the sole discretion of the AAC and the City Council at the time of consideration pursuant to the criteria set forth in Section V above.



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During the review process, the AAC can request modifications to proposals before further consideration.

### VIII. SITE SELECTION FOR PUBLIC ART

The AAC shall carefully consider all new proposals for public art as to the location where the art will be displayed. Sites may include areas within the Commercial Zones and public property. Particular attention will be given to displaying art along the Camino Del Mar, Public Facilities (City Hall) and parks.

In addition to a location's aesthetic possibilities, the following factors shall be considered when deciding the site and placement or presentation of the art.

- Lighting and visibility
- Public safety
- Future development plans for the area
- Landscape design
- Availability of utilities
- Existing art within the vicinity
- Environmental concerns/impact
- Public accessibility to the work
- Social/community context
- Significance to the proposed site
- Site appropriateness (fitting with the scale & nature of the proposed site)
- Traffic patterns (interior and exterior)
- Relationship to existing planned architectural and natural features
- Interior or exterior placement.
- Appropriateness of materials in relationship to the overall project. This includes consideration such as durability and resistance to vandalism.
- Historical, environmental and cultural factors of the project area.
- Environmental factors such as land forms, geographic features or predominate or pre-existing structures or landmarks.

All sites selected for public art must be on public property and accessible to the public. The Parks & Recreation Committee may be engaged to provide recommendations for siting of artwork in City parks and greenspaces.

The City shall, where feasible and at the discretion of the City Council, include public art as part of Capital Improvement Projects funded by the City.





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### IX. PERMANENT SITING OF PUBLIC ART

The City will use the following guidelines when acquiring public art:

1. Most public art is temporary. Whether the art work is installed at a site for 4 months, 4 years or 40 years, it is temporary. It can be moved or relocated by the City, based on the recommendations of the Art Advisory Committee and pursuant to agreement with the artist if the art is not owned by the City. Ownership of a temporary piece of art may or may not be retained by the City. Notwithstanding the foregoing, temporary works of art may be removed, pursuant to agreement with the artist, at the end of the agreed upon display time and pursuant to any other terms regarding removal in the agreement. The City will not remove works of art based on content after a work of art has been considered and selected for display by the Advisory Committee and the City Council. Any work of art owned by the City may be moved, removed or decommissioned at the sole discretion of the City.
2. Art located on permanent structures such as buildings, walls and sidewalks will be owned by the City. The City reserves the right to remove the art piece if the permanent structure must be changed or demolished for public improvements.

### X. MAINTENANCE OF PUBLIC ART

Art located on public property shall become the responsibility of the City of Del Mar, except in cases of any separate agreements with loaned or temporary-exhibition artists. Unless otherwise specifically agreed upon in advance, the City shall provide all maintenance necessary to preserve the work in good condition.

The City will pay for lighting, cleaning and security of public art.

Stolen or vandalized art shall be replaced or repaired in a manner that conforms to the originally approved art. In the event of repair, the original artist(s) shall be notified and given the opportunity to perform the repair work.

The artist or sponsoring organization will pay for restoring the site to original condition when the artwork is removed.

Additional maintenance details will be specified in artist and/or donor agreements on a case by case basis.



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### XI. REMOVAL OF PUBLIC ART

- The City Council, acting in accordance with City policies and procedures, can approve and implement the disposal/removal of a work of art from the City of Del Mar.
- The City of Del Mar retains the right to convey art owned by the City to another site or to storage or for conservation. The City may also elect to remove the art from the inventory of the City collection by sale or other appropriate means, including discard. If the City decides to remove art from its inventory, then the procedures outlined in this section must be followed before removal can occur.
- Notwithstanding any other provision in the Program, if, in the judgment of a majority of the City Council an art piece is deemed to be detrimental to the public good due to a deteriorated condition, it may be removed immediately from public display.
- Works of art on display by agreement with an artist/owner will be removed pursuant to the terms of such agreement or when the agreement terminates unless the display period is extended pursuant to agreement of the parties.

City staff will administer the removal of any art with a value of less than \$1,500. City Council approval must be obtained for any work with a value of more than \$1,500. City Council will consult with the AAC before deciding to approve a removal of public art. Art removal may be approved if the art meets at least one of the following criteria:

1. The City cannot properly maintain or store the art.
2. The art medium (e.g., prints, sculptures, multiples) is duplicative of works already in the collection.
3. The City identifies a work of art as a copy or imitation, a fake or forgery, without significant value.
4. The art requires restoration in gross excess of its aesthetic value or the art is in such a deteriorated state that restoration would be unfeasible.
5. The art has been on display for a period greater than outlined in the original artist or donor agreement, there is no new agreement for continuing display of the art, and the AAC recommends replacing it with a new piece of art.

In the event of a permanent removal from public view and subsequent to approval by City Council, City staff shall make every reasonable effort to locate the artist or donor/heir advising them in writing of the City's intention to permanently remove the art. Every effort shall be made to honor the wishes of the artist or donors/heirs concerning disposition of the art after its permanent removal. Written concurrence of the artist or donor/heir shall be solicited but not required for removal.



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The artist/donor shall be given the right of first refusal to reacquire the work at fair market value subject to approval by the City Council. The cost of removal of the work may be considered by the City Council in determining the fair market value of the work.

If the City sells a work of fine art, as that term is defined in California Civil Code Section 986, the City shall comply with the payment of royalties to the original artist pursuant to the terms set forth in California Civil Code Section 986 unless the artist waives the right to receive said royalty.

All revenue generated from art sales shall be deposited in the City of Del Mar Public Art Program Reserve Fund.

If authorization to remove a work of art is approved by the City Council, every attempt will be made to replace the original piece with art of comparable value. Said value will be determined through a "qualified appraisal" such as the Art Advisory Panel (used by the IRS) to substantiate the value or by the original building valuation, or approved budget for the prior art, plus an inflation factor for construction and material costs based on the Engineering News Record.

### XII. FUNDING FOR PUBLIC ART

In order to sustain annual funding for the Program, the following mechanisms/options may be considered. A combination of funding options enables the City to coordinate a consistent and enriching Program. Reliable funding for art may be provided by using a variety of sources described below. The funds may be allocated to the City of Del Mar Public Art Program Reserve Fund (hereafter "Reserve Fund") to cover short-term and long-term capital, operations, and maintenance costs.

#### **1. General Fund Appropriation**

Funds may be appropriated by the City Council during the budget process or at mid-year budget review. The AAC may recommend an annual budget allocation, however, final appropriation will be set by the City Council.

#### **2. Sponsorships/Fundraising and Donations**

Sponsorships, donations, and fundraising efforts are an integral aspect to public art throughout the world. These monies contributed for public art can be designated for a specific public art project location or pooled with other unrestricted contributions in the Reserve Fund to be allocated as determined by the City Council. Contributors can remain anonymous or be recognized appropriately depending upon the use of their donation for visual, music or the performing arts.

#### **3. Consignment Art**



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Another means to provide public art and funding for the Program is by consignment. This allows an artist to display their art for purchase at a public location. An agreement between the City and the artist, in accordance with this policy, will be negotiated to accommodate this arrangement, including installation, maintenance and removal/relocation after the art is sold or the designated time period has elapsed. A minimum display period of six (6) months is required with time extensions of up to two (2) years may be granted by the AAC. Additional public display time exceeding the two (2) year maximum must be approved by City Council.

- a. Consignment Art must go through the AAC selection process, and would be offered for sale with a discrete sign.
- b. Upon sale of the consignment art, the purchase transaction will be conducted by the City's Finance Department and a twenty five percent (25%) consignment fee will be withheld and placed in the Reserve Fund.
- c. The remaining proceeds from the art sale will be sent to the artist by the Finance Department within 30 days after the sale transaction.

#### 4. Public/Private Partnerships

Cooperation among the City, artists, nonprofit organizations, cultural organizations, other agencies, and the private sector is essential to ensure a healthy arts environment. The City's primary role is one of "assistance or exposure to" rather than "responsibility for" the provision of public art. With this in mind, it is recommended that collaboration with private or corporate sponsors/partners be encouraged for community benefit. These joint activities, temporary exhibitions, or more permanent public art, can/will include negotiated fees that will be placed in the Reserve Fund.

#### 5. Grants

Grants and/or matching grants should be sought from national, state and local foundations, arts agencies and other organizations to promote and guarantee a thriving Program.

### XIII. AUDITING OF PUBLIC ART FUNDS

The City requires annual audits of its finances. A report of the audit is prepared by the auditor each year. The City shall request that the auditor specifically address the Reserve Fund as part of the annual audit and include a section in the audit reporting on the Reserve Fund. The auditor's report will be given to the Art Advisory Committee, the City Council and the public each year.



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#### XIV. CHILDREN'S ART

It is the intent of the City's Program that children's art be on display in our community at least one time per year.