

City of Houston, Texas, Ordinance No. 2006- 731

**AN ORDINANCE RELATING TO THE CITY'S CIVIC ART PROGRAM; AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, the City Council finds that art has enabled people in all societies to better understand their communities and individual lives; and

**WHEREAS**, the City Council finds that the City's standing as a national leader in public art will be enhanced by encouraging artists to create public works of art that improve the quality of life in Houston; and

**WHEREAS**, the City Council recognizes that once art is placed throughout the City, it is necessary to provide for the ongoing maintenance and conservation of the City's art collection; and

**WHEREAS**, the City Council first established a Municipal Art Commission by City of Houston Ordinance No. 64-1665, which was later amended by City of Houston Ordinances No. 65-2360, No. 78-65, No. 78-740, No. 91-1634, and No. 2000-1030, and is now codified as Division 2 of Article XI of Chapter 2 of the Code of Ordinances, Houston, Texas; and

**WHEREAS**, the City Council established a Civic Art Program by the adoption of City of Houston Ordinance No. 99-1351, which was later amended by City of Houston Ordinance No. 2000-1031; and

**WHEREAS**, the City Council desires to continue the City's Civic Art Program, as well as provide funding for both acquisition and conservation of civic art; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That Division 2 of Article XI of Chapter 2 of the Code of Ordinances, Houston, Texas, is hereby repealed in its entirety.

**Section 3.** That the Civic Art Program for the City of Houston that was established by City of Houston Ordinance No. 99-1351 is hereby amended in its entirety and restated to read as set forth in Exhibit A, attached hereto and incorporated herein.

**Section 4.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 5.** That City of Houston Ordinances No. 64-1665, No. 65-2360, No. 78-65, No. 78-740, No. 91-1634, No. 2000-1030 and No. 2000-1031 are hereby repealed.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

**PASSED AND ADOPTED** this 28<sup>th</sup> day of June, 2006.

**APPROVED** this 28<sup>th</sup> day of June, 2006.



\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

Prepared by Legal Dept.  
RJS:asw 06/21/2006  
Requested by Honorable Mayor Bill White  
L.D. File No. 0420600092001

*Rachel Suarez*  
\_\_\_\_\_  
Senior Assistant City Attorney

AYE	NO	
✓		<b>MAYOR WHITE</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

MAY 017 Rev.1/04

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: JUL 03 2006

## CIVIC ART PROGRAM FOR THE CITY OF HOUSTON, TEXAS

### Section 1. DEFINITIONS.

The following words, terms, and phrases, when used in this ordinance shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

*Capital Improvement Plan Project ("CIP Project")* means a project in the City of Houston's then-current adopted Capital Improvement Plan to be undertaken within a particular fiscal year or other designated period.

*City* means the City of Houston, Texas, a municipal corporation principally located in Harris County, Texas.

*City Collection* means the City of Houston's public art collection comprised of works of art in all media that are purchased, commissioned, or gifted to the City and accepted by City Council for inclusion in the City's public art collection. The City Collection may include portable artwork, artwork commissioned for specific sites, or design team projects where artists work collaboratively with other artists, architects, engineers, and/or planners.

*Civic Art/Civic Art Project* means a work of visual art or master plan for art work for the City or a particular City department or location developed by a professional artist acknowledged by critics and peers as a professional of recognized ability appropriate for the Civic Art Project, who produces art in any permanent medium or material. Civic Art/Civic Art Projects include, but are not limited to, paintings, murals, prints, drawings, photographs, videos, films, or works in other media, decorations, stained glass, statues, bas-reliefs or other sculptures, monuments, fountains, arches or other structures of a permanent character intended for ornament or commemoration, and now located or hereafter placed on City property. Civic Art must be of a permanent nature and may be integral to the architecture or incorporated into an Eligible Project.

*Civic Art Plan* means that portion of the Civic Art Program related to Civic Art, including a prioritized list of Civic Art Projects, budget and recommended design approaches prepared and approved by HAA and the affected Departments and presented to City Council for approval, describing all Civic Art Projects to be started during a fiscal year, subject to available Civic Art Program Appropriations.

## EXHIBIT A

*Civic Art Program* means those Civic Art Projects and Conservation Projects approved by the Director of the affected City departments and City Council for funding under this Ordinance.

*Civic Art Program Appropriation* means an amount equal to 1.75% of the amount appropriated by City Council for an Eligible Project, which shall be dedicated to Civic Art Program purposes in accordance with City of Houston Ordinance No. 2006-731.<sup>1</sup>

*Conservation/Conservation Project* means the treatment of deteriorated or damaged artwork to approximate as nearly as possible its original form, design, color, and function with minimal further sacrifice of aesthetic and historic integrity.

*Conservation Plan* means that portion of the Civic Art Program related to Conservation, including a prioritized list of Conservation Projects and a budget prepared and approved by HAA and the affected Departments and presented to City Council for approval, describing all Conservation Projects to be started during a respective fiscal year, subject to available Civic Art Program Appropriations.

*Eligible Project* means a CIP Project that is not an Excluded Project.

*Excluded Projects* means all paving projects, street resurfacing projects, runways, ramps, and parking lots, signal and traffic control projects, underground projects, demolition projects, environmental assessment or remediation projects, projects for the rehabilitation or replacement of a single building system (such as a project for roofing only), as well as individual CIP Projects with an estimated cost less than \$500,000 and combined CIP Projects where individual CIP Projects within the combined CIP Project have an estimated cost less than \$500,000.

*HAA* means the Houston Arts Alliance, a Texas non-profit corporation.

*Maintenance* means actions taken by each City department to retard or prevent deterioration or damage to that portion of the City Collection under its control by controlling the environment and/or treating the structure to maintain such portion of the City Collection in as unchanging a state as possible.

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<sup>1</sup>The City Secretary shall insert the Number of the Ordinance establishing this Program.

## **Section 2. FUNDING OF THE CIVIC ART PROGRAM.**

(a) For the fiscal year beginning July 1, 1999, 1.75% of the appropriation for an Eligible Project may be appropriated for Civic Art Program purposes as provided in this Ordinance. For the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, 1.75% of the appropriation for an Eligible Project shall be appropriated for Civic Art Program purposes as provided in this Ordinance. Such appropriations shall be made at the same time that the City Council appropriates funds for one or more Eligible Projects.

(b) The Civic Art Program Appropriation shall be calculated based on the cost of design services and construction services amount for an Eligible Project. Calculation of the Civic Art Program Appropriation shall be based on the original appropriation for design services and construction services and shall not include any subsequent amounts appropriated for amendments/change orders, unless the scope of work is clearly contemplated in the original contract (such as a design-build project or project to be accomplished in phases).

(c) The City Controller shall establish procedures for accounting for the Civic Art Program Appropriation and shall report to City Council, the affected departments and HAA at least quarterly the amounts appropriated, encumbered and expended for Civic Art Projects. Amounts appropriated for Civic Art Program purposes for distinct portions of the CIP, including Public Improvements (Fire, Library, Parks, Police, Health and General Government), Convention and Entertainment Facilities, Airport System, and Water and Sewer System, shall be kept separate to be spent for Civic Art Projects associated with the original purpose of the funding. Any amount appropriated from bonds, debt issuance or other legally restricted funding sources shall be kept separate and shall be spent in accordance with applicable legal restrictions related to such funding sources.

(d) Funds appropriated for Civic Art Program purposes shall be expended on any project included in the Civic Art Program, but if the funds in question are derived from bond proceeds, debt issuance or enterprise funds, the expenditure must constitute a lawful use of such funds (e.g., funds from the Airport System enterprise fund or the Water and Sewer System enterprise fund may only be appropriated for Eligible Projects within the same enterprise fund; similarly, funds from voted park bonds may only be expended for Eligible Projects in the Park System).

(e) Effective immediately, each City department shall include in every application to a granting authority to fund an Eligible Project, a request that 1.75% of the grant amount be authorized for Civic Art Program purposes in accordance with this Ordinance. All Eligible Projects financed with grants or contributions from private persons or governmental or public agencies are subject to this Ordinance unless expressly provided otherwise in the conditions of the granting or contributing person or agency. If Civic Art Program purposes are not allowed as an authorized purpose of such grant or contribution, then only the City-funded portion of the Eligible Project shall be subject to this Ordinance.

### **EXHIBIT A**

### **Section 3. APPLICATION OF FUNDS IN CIVIC ART ACCOUNT.**

(a) Civic Art Program Appropriations shall be applied to pay the costs and expenses of Civic Art in accordance with the Civic Art Plan, which may include costs and expenses for: artists' design concepts, architects' fees where collaboration is involved; incremental costs for art integrated into functional items; and the acquisition, purchase, commissioning, fabrication, manufacture, erection, placement, installation, exhibition, and display of Civic Art. If Civic Art is acquired as a part of a general contract (i.e., where the provider of the Civic Art is a subcontractor), amounts appropriated for Civic Art Program purposes may be used to pay that portion of the amounts due the general contractor for the cost of the Civic Art.

(b) Costs and expenses of a Conservation Project included in the Conservation Plan shall be paid from Civic Art Program Appropriations. Such costs and expenses may include, but are not limited to fees, costs and/or expenses for: assessment of condition and conservation needed for a work of art included in the City Collection; conservation of a work of art, including conservation fees and expenses; and preparation of a condition report and method of treatment.

(c) Civic Art Program Appropriations may be used to pay HAA for administrative fees or costs related to the Civic Art Program pursuant to any contract entered into between the City and HAA in connection with the administration of the Civic Art Program.

### **Section 4. MAYORAL APPOINTMENT OF DESIGNATED DIRECTORS OF HAA BOARD.**

(a) The Mayor shall appoint six directors of the HAA Board of Directors, in positions one through six. Such Mayoral appointees shall be confirmed by City Council.

(b) The term of office for the Mayoral appointed directors of HAA shall normally be three years and shall expire as follows:

- (1) For positions one and two, the terms shall expire on June 30, 2007, and every three years thereafter, subject to the limitation of subpart 4(d) below.
- (2) For positions three and four, the terms shall expire on June 30, 2008, and every three years thereafter, subject to the limitations of subpart 4(d) below.
- (3) For positions five and six, the terms shall expire on June 30, 2009, and every three years thereafter, subject to the limitations of subpart 4(d) below.

(c) Any director appointed by the Mayor and confirmed by City Council may be removed by the Mayor at any time for good cause.

### **EXHIBIT A**

(d) Any director appointed by the Mayor and confirmed by City Council shall be eligible to serve as a director of HAA for no more than two consecutive terms; provided, however, any director serving in a position for which the term has expired shall continue to serve until the director's successor in that position is appointed and confirmed. Any vacancy in a Mayoral appointed director position shall be filled for the unexpired term.

(e) The failure of the Mayor to appoint, or City Council to confirm, all or any of such six directors shall in no way affect the ability of HAA to conduct its business in accordance with state law and its governing documents or the rights, duties or benefits of HAA to perform its duties and obligations and receive the benefits of any contracts between HAA and the City in connection with the administration of the Civic Art Program.

#### **Section 5. TEMPORARY PLACEMENT OF WORKS OF ART ON CITY PROPERTY.**

The City may permit temporary placement of a work of art on City property for a period of time not to exceed 90 days, subject to the approval of the Director of the City department having jurisdiction over the site upon which the work of art will be placed.

- (1) The Director of the City department having jurisdiction over the site may extend the temporary placement of a work of art for two consecutive periods of time not to exceed 90 days each;
- (2) A written application by the person or group responsible for the placement and removal of such work shall be approved in writing by the City department having jurisdiction of the site.
- (3) Each application shall contain a detailed timetable covering placement and removal of the work and a clear commitment for its timely removal.
- (4) If the Director of the affected City department determines it advisable and requires it, a bond not to exceed \$2,000.00 conditioned on the timely removal of the object shall be posted by the applicant.
- (5) The City department approving such temporary placement of art shall promptly forward the relevant applications to the Secretary of HAA.
- (6) The City department making the approval shall promptly forward notice of removal or delay in removing the temporary placement of works of art to the Secretary of HAA.
- (7) Nothing in this section regarding the temporary placement of works of art shall prevent a City department from requesting HAA to formulate a recommendation with respect to the temporary placement of a work of art on City property in a specific case.

#### **EXHIBIT A**

## **Section 6. ADMINISTRATION OF THE CIVIC ART PROGRAM.**

The City may enter into one or more contracts with HAA, each for a term of not less than one year nor greater than five years, to administer the Civic Art Program. Administration of the Civic Art Program will include, but not be limited to, the following services:

- (1) The development of policies and procedures for the implementation of the Civic Art Program, subject to the approval of the Directors for whom such contracts exist.
- (2) The development of the annual Civic Art Program and the submission of the Program to City Council for approval, in coordination with the Directors of each City department for which Civic Art Program Appropriations are available. HAA, in coordination with such Directors, shall present the Civic Art Program to City Council on or before June 30<sup>th</sup> of each year.
- (3) The development of an annual report to be presented to the Mayor and City Council on or before September 30<sup>th</sup> of each year. The annual report will set forth the prior year's Civic Art Program activities, including a detailed accounting of expenditures for the Civic Art Program and administrative expenses related thereto.
- (4) The provision of staff support to City departments with regard to implementation and administration of the Civic Art Program.
- (5) The performance of professional artist services to provide Civic Art and Conservation to the City either directly or under a subcontract. If services are performed under a subcontract, they must be procured in accordance with City ordinances and applicable state law.
- (6) The examination of all works of art or designs or models of same that are proposed for permanent or long-term placement on City property or that are to become the property of the City by purchase, gift or otherwise (other than those works to be placed in a museum or gallery), together with recommendations to the Mayor and City Council for the proposed location and suitability of such works of art.

HAA shall have no duties, responsibilities or obligations with respect to the Civic Art Program unless and until the City and HAA have entered into a contract setting forth the terms under which HAA shall perform such services that may be funded with Civic Art Program Appropriations. If the City and HAA have not entered into such contract, the contract has been terminated, or funds have been exhausted, the City shall assume such duties, responsibilities and obligations with respect to the Civic Art Program.

### **EXHIBIT A**

**Section 7. PROGRAM EVALUATION.**

After a period of five (5) years from the date the ordinance establishing this Civic Art Program is passed and adopted (6-28-06<sup>2</sup>), the City Council Quality of Life Committee shall undertake a formal evaluation of the program and present the findings of the evaluation to the Mayor and City Council.

**Section 8. MAINTENANCE OF CITY COLLECTION.**

Maintenance shall be the responsibility of each department having jurisdiction over a Civic Art Project or work of art included in the City Collection. Such maintenance activities undertaken by the City departments shall not include Conservation of the City Collection. HAA shall have no duties and responsibilities with respect to the maintenance of the City Collection unless, and then only to the extent, specifically provided for by contract between the City and HAA that provides funding for such services.

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<sup>2</sup>The City Secretary shall insert the date of passage and approval of the Ordinance establishing this Program.