

ORDINANCE NO. 08-017-00

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, ADOPTING ARTICLE 1.1400 OF CHAPTER 1 OF THE CODE OF ORDINANCES; PROVIDING FOR A PUBLIC ART COMMITTEE; PROVIDING CERTAIN DUTIES AND RESPONSIBILITIES OF THE PUBLIC ART COMMITTEE; FOR A PUBLIC ARTS FUND AND FOR CONTRIBUTIONS TO THAT FUND; PROVIDING FOR ART IN PUBLIC PLACES; PROVIDING FOR SEVERABILITY, OPEN MEETINGS AND RELATED MATTERS

Whereas, the City of Leander ("City") has identified a need for a Public Art Committee to encourage public programs to develop the fine and performing arts;

Whereas, the Public Art Committee will make recommendations to the City Manager, Mayor and City Council in connection with cultural and artistic endeavors involving the City;

Whereas, this Public Art Committee will act as the City's advocate and advisor in connection with cultural and artistic endeavors involving the City;

Whereas, the Public Art Committee will encourage donations, grants and other support to expand the arts in the community;

Whereas, the Committee will assist, advise the City Manager, Mayor and City Council, and monitor the Public Art initiative, as approved by the City Council, throughout the City;

Whereas, it is the intent of this ordinance to establish a policy for the City, in keeping with the vision for which it is nationally recognized, and in order to enhance its aesthetic environment, to encourage private developers/owners of commercial properties to provide a work of art for each new development or mall or commercial structure or, in lieu thereof, to donate monies to the City for the Public Art Fund;

Whereas, the private developers/owners should be encouraged to invest time, effort and money into the art displayed on their sites, recognizing that the art not only will become integral, lasting components of the cityscape but will be of intrinsic value to their developments; and

Whereas, the City, desiring to expand public experience and exposure to culture through various art forms and to enhance the appearance of public facilities and improve the environment of the City on behalf of its citizens, intends to provide for the incorporation of visual art in the design and construction of public facilities within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:**

**Section 1.** Chapter of the City of Leander Code of Ordinances is hereby amended to add Article 1.1400, to read as follows:

## Article 1.1400 Public Art Committee

**Sec. 1 Public Art Committee Established.** (a) The Public Art Committee is hereby established and shall be composed of seven (7) members who shall be residents of the City and who shall be appointed by the Mayor and approved by the City Council. Each member of the Public Art Committee shall be appointed for a term of four (4) years, and no member shall serve more than two (2) terms. If a vacancy shall occur on the Public Art Committee, a successor shall be appointed to serve for the remainder of the unexpired term of the member previously appointed to the vacant position. Any member of the committee that consistently fails to attend meetings without good cause shown (as determined by the committee), or without prior approval of the chair of the committee (based on the good cause criteria established by the committee) may be referred by the committee to the City Council for removal from the committee. The City Council shall consider the referral and committee recommendation and may, in its sole discretion by majority vote, remove the referred member of the committee. The committee shall be composed of the following members:

- (1) One (1) City Council member;
- (2) One (1) Executive Director of an active local Arts Non Profit Corporation;
- (3) One (1) landscape architect, architect, urban planner, or related design professional.
- (4) One (1) active professional artist, and;
- (5) Three (3) citizens, supportive of and educated or active in the field of public art, education or community affairs.

### **Sec. 2 Organization, Support, Meetings and Reports.**

(a). **Expense Reimbursement.** Members of the Public Art Committee shall receive reimbursement for reasonable expenses, for travel outside the corporate limits and extraterritorial jurisdiction of the City, that are incurred with the advance approval of the Committee. Such reimbursement shall not be inconsistent with City policy.

(b) **Quorum and Conduct of Meetings.**

(1) **Organization.** The presence of four (4) or more members of the Public Art Committee shall constitute a quorum.

(2) **Conduct of meetings.** The Public Art Committee may adopt rules to govern the conduct of its meetings in accordance with the provisions of this chapter and the City Charter

(3) The officers of the Committee shall be a chair, a vice-chair and a secretary. The first officers shall be appointed by the Mayor and approved by the City Council, provided that the City Council member shall not serve as an officer of the Committee. Thereafter, the Committee shall elect the officers of the Committee. The only limitation on the number of terms of office to which the officers may be appointed is the limitation of the number of terms each member of the Committee may serve.

(4) The chair of the Committee may call meetings of the Committee. Meetings may also be called by notice signed by two (2) members of the Committee.

(5) The Committee shall convene no less frequently than once each month, unless deemed unnecessary by a majority of the Committee voting at a Committee meeting. The Committee may meet more often, should the need arise.

(6) The Committee shall comply with the Open Meetings Act.

(7) The Committee may, at any meeting, set a future meeting date(s).

(8) Minutes shall be kept of all meetings, including the vote taken by each member upon any action by the Committee.

(9) The City shall furnish administrative support and office space to the Committee for the purpose of assisting in the implementation of recommendations and advice of the Committee; and, the City Manager shall provide for the employment or assistance of an administrator and staff members to assist the Committee, as required.

(10) Any policy decision requiring approval by the Committee shall be by motion and shall require the approval by a majority of those members present and voting, provided that at least four (4) members must vote for the action to be approved.

(11) The Public Art Committee shall provide monthly reports to the City Council with recommendations of policy(s) the Committee recommends the City Council consider and implement.

(12) Legal counsel. The legal department shall provide legal counsel as may be reasonably required by the Committee for the performance of its functions.

(c) It is specifically provided that no word, term, phrase or provision of this Article shall be interpreted or construed in a manner to be inconsistent with, or to conflict with, the City Charter of the City. In the event of the appearance of any inconsistency or conflict, this Article shall be read and construed consistent with the City Charter.

**Sec. 3. Rules of Procedure.** The Public Art Committee may adopt procedural rules governing the transaction of its business. The rules may include provisions for the date, time and place of regular meetings of the Committee, maintaining minutes of meetings, and records of all Committee reports, conclusions recommendations. After the expiration

of the one year term of the initial officers, the Committee shall elect officers annually. The officers shall include a Chair, Vice-Chairperson and Secretary who shall each be elected to serve a one year term. All Committee meetings shall be open to the public except as provided by the Open Meetings Act, and notice of meetings shall comply with the Open Meetings Act. The Committee may adopt procedures that address the receipt and processing of citizen proposals and requests.

**Sec. 4 Authority of Public Art Committee. The purpose, functions and responsibilities of the Public Art Committee are as follows:**

- (a) On behalf of the City, to encourage, conduct, sponsor or cosponsor public nonprofit programs to further the development and public awareness of, and interest in, fine arts and the performing arts;
- (b) To provide recommendations to the Mayor and City Council in connection with cultural and artistic endeavors and projects in which the City may become involved, and act as a representative of the community in such matters;
- (c) To encourage donations, grants and other financial support to further expand the arts and cultural services and programs available to citizens of Leander and members of the Leander community;
- (d) To review and make recommendations to the City Council with respect to all public and private banner proposals that request to utilize City of Leander graphics
- (e) To work diligently and aggressively to receive funding from state and national endowments to provide for continuous funding for the City's Public Art Programs.
- (f) To create and recommend guidelines to the City Council regarding any area or activity of a public arts program, and once the guidelines are approved by the City Council, to distribute, manage, and allocate funding to applicants with a high level of accountability pursuant to the Committee's guidelines, and which place priority on projects that meet more than one community need, e.g., Art for youth outreach and services; provided that all funds shall be subject to the budget and audit process.
- (g) The Committee shall prepare implementation guidelines, selection procedures and organizational policies to facilitate Art in Public Places, subject to the approval of the Mayor and the City Council.
- (h) The Committee shall be responsible for program planning; designation of sites for Public Art; determining project scope and budget for Council approval; overseeing the artist selection process; commissioning artworks; reviewing design, execution and placement of artworks; and overseeing maintenance of the artworks and the process for removal of artworks from the City's Public Art collection, provided, however, that any decision to contract, purchase or remove artwork shall all be subject to the City Manager's recommendation and final review and approval by the City Council.

(i) The Committee, acting on behalf of the Mayor and City Council, shall include within its scope of authority and activities, the invitation of professionals in the visual arts and design fields, to serve (as reviewers and an advisory panel) in the artist selection process in order to ensure works of highest quality, or to assist in the determination or artistic merit of works of art offered to the City as a donation or for purchase. The Committee shall also establish guidelines for appropriate community participation in this process and public education activities as part of the Public Art projects.

(j) The Committee shall coordinate, investigate, review and recommend to the Mayor and City Council other means by which artworks may be obtained, including but not limited to, donations to the Public Art fund, gifts of artwork, and grant applications for Public Art projects.

(k) The Committee shall act as the liaison with private developers to encourage and facilitate private contributions and private art installations within corporate construction and reconstruction projects.

(l) The Committee shall include in its mission the encouragement of Public Art throughout the City and shall seek through its programs to educate and stimulate the participation of all citizens in a joint public and private effort to promote art in public places.

(m) Prior to the recommendations to the City Council for the selection and commissioning of artists, review of design and the recommendation of the acceptance of works of art relative to municipal construction projects, the Committee shall submit the action proposed to be taken to the Mayor for his recommendation to the City Council.

(n) The Committee shall record, over the chairman of the Committee's signature, its recommendations on each matter considered and submitted to the City Council.

(o) The Committee shall adopt rules and regulations, including the creation of subcommittees, to implement this chapter of the City Code.

(p) The Committee shall take such other actions as the City Council may direct from time to time.

## **Sec. 5. Implementation and Funding**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Commercial Structure" means any building or structure, all or part of which is to be used as an auditorium, private convention center, professional or commercial office, bank, private library (other than school), manufacturing plant, factory, assembly plant, processing plant, mill, warehouse, shopping mall, store, shop, market, hotel, storage

building, freight depot, and/or private automobile parking structure which is not connected to or incorporated in other structures.

(A) "Commercial Structure" shall include developmental projects that involve more than one (1) phase of construction.

(B) "Phase", when used with respect to a Commercial Structure, shall mean that portion of a developmental project that represents a completed portion of the entire commercial structure.

(2) "Construction Costs" means the total value of the construction of, or reconstruction work on, commercial structures as determined by the chief building inspector in issuing a building permit for the construction or reconstruction. Relative to a municipal construction project, construction costs shall include architectural and engineering fees, site work and contingency allowances. It does not include land acquisition cost and/or subsequent cost changes to the construction contract. All construction costs shall be calculated as of the date the contract [which contract?] is executed.

(3) "Municipal Construction Project" means any project to be paid for wholly or in part by the City, regardless of the source of the monies, to construct, remodel or reconstruct any public buildings, decorative or commemorative structures, parking facilities and/or parks, or any portion of any of such buildings, structures, facilities or parks, belonging to the City within its geographical boundaries as they now exist or shall exist in the future.

(4) "Reconstruction" means alterations or repairs made to a Commercial Structure or Municipal Construction Project within any twelve-month period in which alterations or repairs exceed fifty (50) percent of the value of the existing structure, so that such structure is required to conform to the requirements for new buildings pursuant to this Code.

(5) "Works of Art" or "Artworks" means tangible creations by artists exhibiting the high quality of skill and aesthetic principles, including but not limited to paintings, sculptures, stained glass, statues, bas reliefs, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, tapestries, photographs, drawings, monuments and fountains.

(b) Public Art Fund.

(1) There is hereby created a Public Art Fund which shall be a separate account set up by the City to receive monies appropriated for the Public Art program. The Public Art Fund shall consist of the following:

(A) One (1) percent of the construction cost of a Municipal Building Project as bid, contracted and accepted by the City. Unexpended monies in this fund may be used for works of art at existing public properties and facilities as deemed appropriate by the Public Art Committee and approved by the City Council.

(B) All funds donated to the Public Art Fund by the private sector.

(C) Other funds allocated by the City for Public Art through the budgetary process.

(D) The Public Art Fund shall be used solely for the selection, commission, acquisition, installation, maintenance, administration and insurance of the works of art or in relation thereto; and the administration of such funds shall be recommended to the Mayor and City Council by the City Manager after the City Manager receives the recommendation of the Public Arts Committee. The decision of the Mayor and City Council shall be final.

(2) Appropriations for Municipal Construction Projects.

(A) All appropriations for Municipal Construction Projects shall include an amount of up to one (1) percent of the construction cost of a Municipal Construction Project as bid, contracted and accepted by the City, but not to exceed the sum of two hundred thousand dollars (\$200,000.00) for any single Municipal Construction Project; provided that the Public Arts Committee may recommend to the Mayor and City Council an increased expenditure for those projects of exceptional size or unique function, however, in no event shall the appropriation exceed one (1) percent.

(B) The Public Art Committee shall recommend to the Mayor and the City Council the amount of monies to be allocated for selection, commissioning, acquisition and installation of individual works of art to be incorporated as a part of a Municipal Construction Project for which monies are appropriated under C(1) above.

(C) Monies appropriated pursuant to this section as part of a Municipal Construction Project but not spent in connection with the project may be utilized to supplement other appropriations for the acquisition of works of art or to place works of art in, on or near either existing City facilities or other City properties.

(3) Commercial Structures.

(A) Any private developer/owner who applies to the City for a building permit to construct or reconstruct a Commercial Structure shall be encouraged to commit one (1) percent of the construction or reconstruction costs of the Commercial Structure, up to, but not limited to, the sum of two hundred thousand dollars (\$200,000.00), for the acquisition of fine art to be included on the same property as the Commercial Structure or to be contributed to the Public Art Fund

(B) Private developers/owners constructing Commercial Structures, to be accomplished in phases, will be encouraged to contribute only one (1) percent of construction or reconstruction costs up to but not limited to two hundred thousand dollars (\$200,000.00) for the Phase.

(C) If the private developer/owner constructing or reconstructing a Commercial Structure does not wish to have fine art located on the property with the Commercial Structure, he/she may donate to the Public Art Fund an amount equal to the percentage of the construction cost of the commercial structure as a charitable donation.

(D) Each building permit issued by the City for any Commercial will include data relative to the developer/owner participating in the Public Art program.

(E) The Building Official shall report building permits issued for the construction or reconstruction of a Commercial Structure to the Public Art Committee.

#### Sec. 6. Ownership and Maintenance of Public Art.

(a) Ownership of all works of art acquired by the City shall be vested in the City which shall obtain title to each work of art. The Public Art Committee shall develop a process for acceptance of any and all works of art and for cataloging all such works.

(b) Artists, as a part of any contractual agreement with the City for the provision of a work of art, shall be required to submit to the Public Art Committee a "Maintenance and Inventory Sheet," including annual cost projections, which details the maintenance and ongoing care of the artwork.

(c) All donations of art or funds shall be subject to acceptance and approval by the City Council.

**Sec 7. Meetings and Staff Services.** Subject to the directions of the City Manager, the Parks Department shall be responsible for providing administrative and staff services for the Committee and may assign Parks Department staff to provide services to the Committee.

**Sec. 8. Budget.** The Public Art Committee programs and operating expenses shall be funded from the City General Fund, grants, donations and admission charges. The Parks Department shall be responsible for submitting the annual operating budget to the City Manager for submission and recommendation to and Mayor and City Council. Donations, receipts and monies contributed to the Public Art Fund shall be expended only as authorized by the budget and appropriations approved by the City Council.

**Section 2 Amendment of Ordinances.** All ordinances or parts thereof conflicting or inconsistent with the provisions of this Article are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Article and any other code or ordinance of the City, the terms and provisions of this Article shall govern.

**Section 3. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Article are severable and, if any phrase, sentence, paragraph or section of this Article should be found to conflict with the City Charter, or declared invalid by the final judgment or decree of any court of competent jurisdiction, such

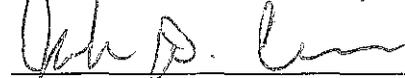
invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Article, since the same would have been enacted by the City Council without the incorporation in this Article of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Article shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision, and to this end the provisions of this Article are declared to be severable. This Article shall be read, construed and interpreted in a manner consistent with the City Charter of the City, and, if any term, provision or condition of this Article is inconsistent with or conflicts with any term, provision or condition of the City Charter, the City Charter shall govern and control.

**Section 4. Effective Date.** This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

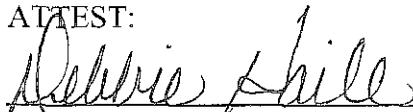
**Section 5. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED on First Reading this the 18<sup>th</sup> day December 2008.

THE CITY OF LEANDER, TEXAS

  
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John D. Cowman, Mayor

ATTEST:

  
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Debbie Haile, City Secretary