



City of *Downey*



City of Downey
Art in Public Places Policy Manual

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City of Downey

Art in Public Places Program

The goal of Downey’s Art in Public Places Program is to provide original artworks that are easily accessible to the general public throughout the City. The Art in Public Places Program is designed to offer a wide range of artistic styles, themes, and media, all of outstanding quality. The unique variety of artistic styles is chosen to provoke discussion and encourage comment. The Art in Public Places Program is dependent on public-private cooperation between the City, artists, and the developer. All art are privately owned, and are designed to enhance property values, encourage pride in ownership, and add value to the community. The Art in Public Places Program shall also provide the Downey City Council with the flexibility to initiate public art projects on City-owned property consistent with the artwork criteria set forth in this Manual and to provide for facilities where public art is displayed.

The Downey City Council adopted the original Art in Public Places Policy Manual by Resolution No. 05-6882 on November 22, 2005 and amended by Resolution No. 06-6894 on January 24, 2006; Resolution No. 11-7284 on July 12, 2011; and Resolution No. 12-7327 on March 13, 2012. This Manual describes the program policies, guidelines and application process.

I. Art in Public Places Program

A. Program Goals

1. Distinguish Downey as a special place to live, work, play and visit.
2. Integrate the vision of artists with the perspective of other design professionals into the planning and design of the urban landscape.
3. Provide every member of the community easy visual access to art.
4. Provide a means to counterbalance what many consider to be the “negative” effects of development (e.g. construction noise, traffic, congestion, and pollution).
5. Strengthen cultural awareness, creativity, and innovative thinking in the community.

B. Definitions

1. Commercial Building means any building or structure, all or part of which contains a commercial or light industrial use.
2. Residential Building means any building or structure, all or part of which contains an element of housing and also consists of more than four dwelling units, attached or detached, the total value of which exceeds \$500,000.

3. Reconstruction means all alternations or additions made to an existing commercial building within any twelve (12) month period that exceed fifty percent (50%) of the value of the existing building's current valuation as determined by the Building Official.
4. Construction costs means the total value of building construction work as determined by the Building Official using the same methods as those applied to determine the building permit fee and building valuation. The costs of any associated parking structure, which does not include any other use, will be excluded from such calculations.
5. Reconstruction costs means the total value of building improvement work as determined by the Building Official using the same methods as those applied to determine the building permit fee and building valuation. The costs of the following activities shall be excluded from such calculations: parking structure, building maintenance, and building repair made due to natural disasters or fire damage.
6. Public Art Fee shall mean one percent (1%) of the construction or reconstruction costs as determined by the Building Official. The maximum fee per project is \$150,000.
7. Value of art work means the total expenses incurred for the art work as established in section I.F.

C. Public Art Requirement

All developments that involve the construction or reconstruction of commercial and multi-family buildings shall be subject to the public arts program. Developers will either pay a cash payment equal to the public art fee or install public art (minimum value of \$30,000) on their property in accordance with the provisions of this manual.

D. Payment of Fee

Developers who do not participate in the development of public art on their property shall make a cash payment equal to the public art fee. The cash payment will be made when a building permit is issued.

All cash payments will be deposited into a special Public Art Account maintained by the Finance Department. The funds in the Public Art Account will be reserved for public art. The Community Development Department will be responsible for developing public art projects that will be funded by the Public Art Account. Also, all public art projects and the amount of funding used for such projects must be approved by the City Council.

E. Installation of Public Art by Developer

Developers who wish to provide public art as part of their project will comply with the procedures described in this Manual. The developer must provide public art with a value equal to or greater than the public art fee. In order to guarantee that the

developer will fulfill the public art obligation, the developer shall pay a cash deposit equal to the public art fee when a building permit is issued. After the developer installs the public art, the Director of Community Development shall request that the Finance Department refund the deposit paid by the developer.

If the developer fails to install a public art piece as approved by the City Council within six months of receiving a final building inspection approval on the project's building permit, then the deposit shall be forfeited and the amount will be deposited in the Public Art Account.

F. Public Art Account Expenses

1. Allowable Expenses from Public Art Account

- a) The work of art itself, including the artist's fee for design, structural engineering, and fabrication.
- b) Transportation and installation of the artwork.
- c) Identification plaque(s) for the artwork.
- d) Mountings, pumps, motors or subterranean equipment, pedestals, bases, or materials directly necessary for installation of the artwork.
- e) Lighting specifically illuminating the art piece.
- f) Art consulting fees. This fee shall not exceed 20% of the total art expenses.
- g) Art appraisals requested by City staff.
- h) Facilities where public art is displayed (refer to Section V)

2. Expenses Not Allowed from Public Art Account

- a) Expenses to locate the artist (e.g. airfare for artist interviews, etc.)
- b) Architect and Landscape Architect fees.
- c) Landscaping around a sculpture, that is not included as part of the Artist's sculpture furnishings, including, but not limited to, functional structures, prefabricated water or electrical features not created by the artist, and ornamental enhancements.
- d) Utility fees associated with activating electronic or water generated artwork.
- e) Lighting elements not integral to the illumination of the art piece.
- f) Publicity, public relations, photographs, educational materials, business letterhead or logos bearing artwork image.

- g) Dedication ceremonies, including sculpture/artwork unveilings or grand openings.

G. Artist and Artwork Selection

1. Artist and Artwork

The developer is responsible for selecting the artist(s) and artwork, provided both meet the program criteria (see pages 7-9). The City has a list of art consultants and resource guides with artist listings available for developers. However, the City does not keep a list of “approved” artists from which developers may choose. City staff shall consider each artist and proposed artwork on a case-by-case basis.

2. Art Consultant

The developer may choose to hire an art consultant to assist with the selection of the artist and the application process. The role of the art consultant is to research and present to the developer, qualified artists who are able to create an appropriate artwork for their specific project. The art consultant is responsible for providing written and visual collateral on the artist(s) for the application. The developer may not apply more than twenty percent (20%) of the total art allocation toward consulting fees. Consulting fees in excess of twenty percent (20%) of the allocation shall be absorbed by the developer.

H. Value Verification

If City staff cannot verify the value of a proposed art piece (by past records of comparable work sold, etc.), the City may choose to have the artist’s proposal and/or other completed works appraised by a qualified art appraiser selected by the City. The applicant shall pay up front for any art appraisal service fees. This expense may be deducted from the total art allocation.

II. Application Process

A. Overview

Successful public art projects involve collaboration and cooperation between the developer, the artist, and the City. The developer selects an artist and submits an application for review by the Director of Community Development, who either approves or denies application. The application process shall take place in the early phases of the development review process in order to allow for integration of the artwork into the overall project design and ensure timely completion of the project and artwork. The artwork must be approved and permanently installed at the site prior to the issuance of interior improvement building permits.

B. Application Steps

1. Plan Review

The developer formally submits a development proposal for plan approval to the City's Planning Division of the Community Development Department. If the project is valued at \$500,000 or more, staff informs the developer of the estimated 1% art allocation for their project. The developer contacts the City's Community Development Department, to receive full program details including the Art in Public Places Policy Manual and Application.

2. Artist Selection

The developer (or art consultant) researches and selects an artist(s) who meets the program criteria. The developer and selected artist collaborate in packaging the art application for Community Development Department review. The application is included at the back of this Manual.

3. Preliminary Review with Staff

The developer submits the Art in Public Places Application to the City's Community Development Department. City staff reviews all materials and advises the developer of any incomplete items prior to the review meeting. City staff shall review within thirty (30) days of the date all application materials are submitted in their complete form (see pages 23-24, Submittal Requirements). If any items are found incomplete, the 30-day period will not begin until all outstanding items are received. City staff shall inform the developer of the date, time and location of the review meeting.

4. Art in Public Places Review Process

The developer, artist and/or art consultant present their application materials and answer City staff questions at the review meeting. City staff reviews the application utilizing the criteria listed in Section III, on pages 7-9 and 22. The applicant must be prepared to make an oral presentation which clearly supports their art proposal. The presentation shall include both written and visual materials. It is important for the developer to be present at the meeting to receive City staff's comments and suggestions should the application not be approved in full. City staff retains the right to ask the developer and/or art consultant to provide further information or demonstrate how their application meets the review criteria, prior to giving their final decision. It may be necessary to reconvene the meeting at a later date to review a revised application.

5. Notification and Follow-up

The developer shall be notified in writing of the Director of Community Development's recommendation to the City Council within ten (10) days of the review meeting. If the art piece is recommended for approval, any outstanding items that must be completed by the installation date will be listed and given to the developer/art consultant. If the art piece is not recommended for approval,

the reason(s) for denial will be noted, including possible modifications or additions which could lead to recommended approval. Should the developer and/or consultant agree to the modifications, he/she may resubmit an application to the Director for reconsideration. City staff shall inform the developer of the date, time, and location of the meeting to review the revised application. Once the artwork is recommended for approved it shall be submitted for City Council approval at its next available regular meeting date. Once approved by the City Council, the developer shall inform the City of the approximate date the piece will be installed.

6. Unveiling Plans

The developer shall contact the Director of Community Development regarding any unveiling or dedication ceremonies for the art piece. An unveiling or dedication is strictly optional. In the event the developer chooses to conduct an unveiling or dedication, City staff shall provide the developer with an invitation list of City Council Members, Commissioners, and other appropriate guests. City staff shall work with the developer to promote press opportunities and public interest in the art project.

C. If the Proposed Application Is Not Approved

1. Developer Options

- a) Accept the Director's recommendations and make the requested modifications.
- b) Select a different artist to create a new design and resubmit the application to the Director of Community Development.
- c) Appeal the Director's recommendation to the Downey City Council (see Appeal Process below).

2. The Appeal Process

The developer must file a written request for an appeal within ten (10) days of notification of the Director of Community Development's recommendation. All items for appeal should be addressed to the City Council. Upon filing an appeal, the Director of Community Development shall set the hearing date and notify the applicant. The City Council may affirm, reverse, or modify in whole or in part the Director's recommendation or requirement. Downey City Council's decision shall be final and conclusive.

III. Review Criteria and Requirements

A. Artist Qualifications

1. Experience

Artists must be working artists, who have a portfolio which includes monumental outdoor public art commissions and collections, and exhibition

records. In addition, the artist must demonstrate that he/she had formal sculpture or art training. Qualified artists should have experience in design concept, fabrication, installation, and long-term durability of large-scale exterior artworks. Artists must be able to successfully collaborate with design teams, architects, art consultants, developers, engineers, fabricators, and landscape architects, and meet scheduled deadlines. Artists should also have experience in negotiating and contracting their work responsibly. Artists who do not meet these criteria will not be approved.

2. Verification of Past Works

Artists must be able to verify the value of the proposed artwork, based on their previous and current public art commissions. City Staff will look for purchase prices of similar works sold by the artist (by size, medium, etc.) which progressively increase toward, or exceed, the proposed commission amount. The City may request records, including but not limited to, sales contracts, invoices, and payments. Gallery list prices or asking prices of works are not necessarily comparable, as they are not records of a willing buyer. If the value of the proposed art piece cannot be verified (by records of past comparable sold works, etc.), the City may choose, at its sole discretion, to have the artist's proposal and/or other completed works appraised by a qualified art appraiser. This expenditure shall be counted toward the total art expenditure, and shall be borne by the developer. The value of the proposed artwork shall be verified prior to review as to not delay the approval process.

B. Artwork Criteria

1. Artistic Expression and Innovation

Proposed artworks shall demonstrate how they will effectively engage the public, and invite a "second look." Works engaging to the public are often described as thought provoking, inspiring, entertaining, clever, whimsical, powerful, reflective or symbolic. Innovation and originality are encouraged and expected. City staff takes interest in the artist's creative thought process in relationship to the specific development project. Therefore, existing works are not generally encouraged. Artists shall be able to thoroughly discuss the following elements of their proposal with City staff: expressive properties (mood, feeling, message, symbolism) and formal properties (balance, emphasis/dominance, repetition/rhythm, unity, form/shape, texture, color).

2. Scale and Content

Artworks must be appropriate in scale, material, form, and content to their immediate, general, social, and physical environments. The artwork shall not look like an afterthought to the development. Sculptures must be three-dimensional and monumental in scale (excluding base). Monumental is defined as five (5) feet or larger in one dimension. Artwork not traditionally classified as a "three-dimensional sculpture" is acceptable. The following are not acceptable:

- a) Mass produced reproductions or replicas of original works of art. Exceptions are signed sculptures by the original artist for reproduction. (Edition limit: 5).
- b) Functional equipment, which may be considered part of an amenities package, such as benches, chairs, etc.
- c) Decorative or ornamental pieces which are not designed by a qualified, acceptable artist, including historical markers or bells, bell towers, obelisks, minor architectural ornamentation, and garden sculpture.
- d) Art as advertisements or commercial signage mixed with imagery.
- e) Busts – Statutory memorials generally are not encouraged and will be subject to additional review criteria (see page 14, Donation of Artwork to the City).

3. Permanence and Materials

- a) Recommended materials: bronze, stainless steel, high-grade aluminum, hard stone.
- b) Materials not recommended: Corten steel, wood, soft stone (e.g. alabaster). Rebar will not be acceptable for internal support of sculptures.
- c) Other materials not listed may be considered, in the event the artwork application includes a comprehensive maintenance plan, which meets the interest and standards of the City and staff.
- d) Rust proof materials must be used whenever possible. Artists will be asked to provide a breakdown by percentage of metal alloys for bronzes from foundries. Thickness and grade/quality of steel works will be reviewed for rust proof durability. Artists shall take note of which materials (including nuts, bolts, and other metal fixtures) will be in contact with each other that may produce oxidation and rust.
- e) Artists must be able to clearly demonstrate the quality, craftsmanship, and durability of their artwork. Substantial consideration shall be given to structural and surface integrity and stability, permanence and weathering, resistance against theft, vandalism, and the probability of excessive maintenance and repair costs. Artworks must be constructed of durable, long-lasting materials that are able to withstand outdoor display, and require low levels of maintenance. When selecting an art piece, developers shall keep in mind that property owners are legally responsible for the maintenance of the artwork for its lifetime.

4. Multiple Editions

If the proposed sculpture is one of multiple editions, the applicant shall include the edition number of the piece, and provide the location of all other editions. To maintain the value of the proposed work, similar editions may not be

publicly displayed within a fifty (50) mile radius of the Downey project site, unless both the City and the owner of existing and/or future editions grant permission.

5. Public Liability and Safety

The artist and developer must bear in mind the artwork will be displayed along major public streets. In order to be acceptable, artworks must not disrupt traffic or create unsafe conditions or distractions to motorists and pedestrians, which may expose the City or property owner to liability. Consideration should be given to sharp or protruding edges that may pose a danger to pedestrians. Attention should also be given to durability and ability to withstand weight, as owners are held responsible for repairs resulting from persons climbing, sitting, or otherwise damaging the artwork.

C. Site and Installation Requirements

1. Visibility

Artwork is to be located outdoors and easily visible to both motorists and pedestrians from a major public street. Distance from the artwork to the public street should typically not be greater than fifty (50) feet. Artwork may not be placed near monumental signs, sign walls, or bus benches, as these structures may impede the public's view from the street or diminish the aesthetic value of the artwork. Lettering, symbols or signage are not permitted upon the art sculpture or its foundation, except as intended by the artist. Visibility to the general public is the key criteria in approval of artwork location. Exceptions can be made for large open or enclosed public areas such as shopping malls, which may have their art piece(s) in an interior public location.

2. Signage

Permanent signage of any type is not permissible in or around the immediate area of the sculpture. This includes the foreground, background, or adjacent areas of the sculpture. Signage should not distract or diminish the aesthetics of the artwork, when the public views the work from the most accessible vantage points (e.g. intersections, entryways). City Staff will review all signage plans and ask the applicant to provide alternative locations should the signage interrupt the public's view.

3. Lighting and Electrical

Artwork shall be properly lit during evening and nighttime hours. All lighting and electrical elements should be in good working condition and meet all current safety conditions. Lighting and electronic elements, not integral to the artwork, will not be included as part of the art allocation. Lighting plans must be submitted as part of the application.

4. Landscaping and Base

Landscaping and artwork base should be well integrated and securely installed. The artwork must also be secured to the base. A licensed structural engineer must approve and certify the installation plans as structurally sound, safe, and durable. The base shall only house artwork, and plaque, if applicable.

5. Identification

Each art piece shall be identified by a cast bronze plaque approximately 8" x 8". The plaque shall be placed in a ground location near the art piece, listing only the title, artist, and date of installation. City staff must approve any additional plaques that may be requested.

D. Budget and Contract

1. Budget Breakdown

The developer is required to submit a line item Budget Breakdown, reflecting costs of the artwork and artist design fees, transportation and installation fees, art consultant fees, and any other fees as applicable and necessary, (see Appendix B, Sample Budget Breakdown). The Budget Breakdown should total or exceed the 1% minimum art allocation.

2. Contract of Sale

The developer must also submit an unsigned copy of the Contract of Sale, including the long-term care and maintenance instructions for the artwork, with their application. Upon approval by the City Council, the Contract of Sale shall be modified, if necessary, and signed by the property owner, artist, and homeowner's association, if applicable (see Appendix C, Sample Contract of Sale).

E. Maintenance

1. Responsibilities

All property owners are legally responsible for maintaining their art piece for its lifetime and replacing the art piece should it be damaged beyond repair, destroyed, or stolen (see page 13, Replacement of Artwork). The applicant should demonstrate that the selected artwork is constructed for permanent outdoor display and that provisions have been made for its long-term care. The Contract of Sale should address the following areas of long-term care and maintenance:

- a) Maintenance instructions – Artist's recommendations for on-going and long-term care.
- b) Restoration – length of time (typically one year) the artist or art conservator will be responsible for repairs.

- c) Maintenance funds – how the owner will provide a funding source for maintenance.
- d) The City shall regularly inspect each art piece for any damage or maintenance concerns. Current property owners will be informed of the results of inspection including recommendations for maintenance and for repair, and a referral to an art conservator who can treat the art pieces to preserve their longevity. Property owners will be subject to code enforcement for failure to comply with the maintenance requirements of this program.

2. Maintenance Instructions

The artist is required to provide maintenance instructions as a condition in the Contract of Sale, which specifies the on-going and long-term maintenance requirements for the artwork. These guidelines will be used for routine cleaning and occasional treatments to prevent damage from weather elements, bird guano, tree droppings, spray from sprinklers, and aging. The Maintenance Instructions shall include:

- a) Materials for the maintenance and/or repair of the artwork, including but not limited to, brands and mixes of pigment, color samples, material finishes, types of brushes, bolts, and other needed materials.
- b) Methods of cleaning: how to apply cleaning agents, paint, wax, or other materials. Specify number of coats and drying time. Specify whether the work can be performed by a general maintenance service or must be performed by a professional art conservation service.
- c) Frequency of routine cleanings per year; how often to repaint (usually 2-3 years or 3-5 years); and frequency of long-term preventative treatments (usually between 5-10 years).

3. Maintenance Conditions

- a) Water or electronic sculptures or fountains must always be operating in good working order. Complete instructions for maintenance and repair of kinetic or water components must be included in the maintenance instructions.
- b) Artwork shall be properly lit during evening and nighttime hours. Lighting fixtures used to illuminate the art piece must always be in good condition and working order.
- c) All artwork shall be cleaned on the property where the art piece is permanently installed, unless agreed upon by the City. The City prohibits removing art pieces from the site for any reason without explicit authorization.

4. Payment of Maintenance

The property owner is required to establish a source of funding to maintain the artwork on a routine and long-term basis, for its lifetime. The maintenance and long-term care of the artwork is not the responsibility of the City.

IV. Property Owner Responsibilities

A. Art Insurance

Public art must remain permanently installed at the site as a condition of project approval, as stated in the Covenants, Conditions, and Requirements (CC&R's), if applicable, and if not, in a recordable agreement, binding on successors to title to the subject property, in form reasonably approved by the City Attorney. In the event the artwork is damaged, destroyed, or stolen, the property owner is legally responsible for repairing or replacing the artwork, with an art piece or art pieces of equivalent value. The City strongly suggests owners insure their art pieces.

B. Damaged Artwork

The property owner is responsible for repairing the artwork in the event of damage and/or vandalism. Artwork damaged or vandalized shall be repaired as closely as possible to the original approved artwork. If repair is needed, the original artist must be given first refusal on repair(s) for a reasonable fee. If the original artist is not available or is unwilling to perform the required repair(s) for a reasonable fee, the owner shall make arrangements for repair(s) with a reputable art conservator. The owner shall be responsible for notifying City staff of the steps that will be taken to repair the work.

C. Replacement of Artwork

In the event the art piece is destroyed, damaged beyond repair, stolen or otherwise removed from the site, the owner shall replace the art piece with a new work of art (see next section, Removal of Artworks). The owner shall submit an application to the City for review by the Director of Community Development. The new artwork shall comply with all of the requirements of the Art in Public Places Program in effect at the time the work is replaced. The allocation for the new (replacement) art piece shall be calculated at 1% of the current total building valuation, as computed by the most current Building Valuation Data set forth by the International Conference of Building Officials (ICBO). As ICBO figures typically increase each year, property owners are advised to take steps to replace damaged or destroyed art pieces immediately. The replacement process shall be completed within a six (6) to twelve (12) month time frame unless otherwise agreed to by the City.

D. Removal of Artwork

The City will not authorize removing public art, except under the most extenuating circumstances. The indefinite removal of an artwork from permanent display, whether or not it is disposed, affects the artist's rights, and has serious legal consequences for the property owner. Owners wishing to remove, modify, destroy, or in any way alter their artwork must first seek legal consent from the original

artist and must provide a compelling reason for taking such action with the artwork. All such requests must also be submitted to the Director of Community Development for his/her consideration and approval. Factors to be considered by the Director shall include but not be limited to: reasons and costs of relocation, risk of damage to the artwork, maintenance costs, and artist and owner rights and responsibilities.

6. Donation of Artwork to the City

Individuals, businesses, and/or groups wishing to donate artwork of any style, size, or medium, with an estimated value over \$2,000 shall provide a written request of their offer. The Director of Community Development shall use established review criteria to evaluate the proposed work of art, artist, and proposed location. Other considerations may include costs to the City (e.g. transportation, installation, insurance, routine maintenance, and long-term conservation) and the impact of the donation on existing art programs (e.g. number of existing donations by the same artist). In addition to the established review criteria, donations of memorials shall be reviewed based on the following: Does the memorial represent broad community values? Does the significance of the person(s) or event being memorialized have a timeless quality and make a statement to future generations? Is there some specific geographic justification for the memorial being placed at the proposed location?

If the donation is an outdoor artwork or is a proposal to create an outdoor artwork for display on public property (e.g. Downey Civic & Cultural Center, Downey Community and Senior Center, City parks), the proposal shall first be referred to the Community Development Department, then to the City Council. Formal gifts presented to the City Council by government's contacts and sister cities shall only be reviewed according to this procedure at the sole discretion of City Council.

V. Art Venues

A. Use of funds

At their sole discretion, the City Council may approve the use of funds from the Public Art Account for the operation of an art venue. Allotted funds shall only be used for establishment (permits & construction) and operating expenses (rent, utilities, operating cost, etc) of the venue.

B. Performance Standards

In considering the art venue, the City Council shall consider the following performance standards:

1. The art venue shall be open to the public. The City Council, however, may authorize the Art Venue to charge an entrance fee to recoup operating costs.
2. The art venue shall display physical art, such as paintings, sculptures, and the like, with an emphasis on art from Downey-based artists.

3. The art venue should be within the boundaries of the Downtown Downey Specific Plan. Notwithstanding this, the City Council may approve an alternative location if they find it will better serve all the residents of the City.
4. As part of the approval of the art venue, the City Council may authorize art related programming at said venue.

APPENDIX A

Visual Art Laws for Artists and Owners

Several federal and state laws protect the rights of visual artists and art owners. The following is only a partial listing. For more details, the City recommends that the artist and/or owner consult a lawyer specializing in visual art and copyright laws.

I. 1980 California Art Preservation Act

California Civil Code Section 987 et seq. applies to artwork sold or created after 1980. The Civil Code states that no person except the artist can deface, mutilate, alter or destroy a piece of art. "...The physical alteration, or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation and therefore have an interest in protecting their works of fine art against any alteration or destruction."

II. Visual Artists Rights Act of 1990

The Visual Artists Rights Act of 1990 (VARA) 17 USC Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506, amends copyright law providing new rights for visual artists for artworks sold or created after June 1, 1991. The rights contained in the law extend for the life of the artist. The legislation creates a uniform, national standard for protecting visual artists' rights. It provides a mechanism for the visual artist to claim authorship of a work he or she created, as well as to prevent the use of his or her name on a work he or she did not create. The bill makes clear that this right includes the right to publish a work anonymously or under a pseudonym. The artist also has a right to demand that his or her name be removed from a work in the event of a distortion, mutilation, or other modification of the work to which the artist has not consented, and is prejudicial to his or her honor or reputation. In addition, the Act provides for a legal course of action to allow an artist under specified circumstances to prevent the destruction, distortion, mutilation, or modification of a work of visual art. In any such action, the artist has the burden of establishing that the alteration of the work is harmful to his or her professional honor or reputation.

A. Works Covered

The Visual Artists Rights Act of 1990 is limited only to "work of visual art," defined as a painting, drawing, print, or sculpture existing in a single copy or in a limited edition of 200 copies or less. The copies of a limited edition must be signed and consecutively numbered by the artist. In the case of multiple casts, carved or fabricated sculptures, the work must be a limited edition of 200 or less, be consecutively numbered by the artist, and bear the signature or "other identifying mark" of the artist.

The destruction of a work of recognized stature by an intentional act or an act of gross negligence is a violation of the artist's right and would subject the person destroying the work to suit for damages by the artist.

This law states several exceptions to the artist's rights. First, a modification of a work that is a result of the passage of time or the inherent nature of the materials is not actionable. Second, the modification of a work that is the result of conservation or the public presentation of the work including lighting and placement is not actionable unless the modification of the work is caused by gross negligence.

If a work was created prior to the effective date, the rights under the statute apply if title to the work has not been transferred prior to the effective date.

B. Transfer and Waiver

Only the artist has the rights created by VARA 1990. No rights may be transferred under this Act. Rights may be waived if the artist agrees to waive his/her rights in writing. In the case of a joint work, a waiver made by one artist waives the rights for all artists of the joint work. The transfer of ownership of a copy of a work of visual art does not constitute a waiver of rights.

C. State Law Preemption

The Visual Artists Rights Act attempts to create a uniform national standard with respect to the rights of integrity and attribution. Therefore, the Act preempts or extinguishes all legal or equitable rights that are equivalent to the rights conferred by the Visual Artists Rights Act. This general rule of preemption is subject to three important exceptions. First, the Act does not preempt rights, which are not equivalent to the rights contained in the bill; for example, California's resale royalty statute would not be preempted by this Act. Second, the statutes, which extend rights beyond the life of the artist, are not preempted by this Act. Finally, this Act does not preempt a cause of action arising from undertakings commenced before the effective date of the statute.

D. Remedy

Like copyright infringement, an artist who seeks to assert his or her rights under the statute may do so by filing a lawsuit in federal court. An artist may seek an injunction to claim authorship or disclaim false authorship of a work or to prevent distortion, mutilation or destruction of a work as outlined above. If the distortion, mutilation or destruction has already occurred, the artist can sue for damages. The artist can either establish the actual damage to his or her honor or reputation or claim the statutory damages of up to \$10,000. If the artist prevails in court, the judge may also order the defendant to pay the artist's attorney fees.

E. Removal of Visual Art from Buildings

1. If a work of visual art has been incorporated or made part of a building in such a manner that removal of the work would cause the destruction, distortion, mutilation or other modification of that work, the rights shall not apply if the artist consented to the installation of the work in the building before the effective date of the law. In addition, these rights shall not apply if the artist and the building owner have executed a written statement that installation of work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal.
2. If the owner of building wishes to remove a work from a building and the work can be removed without its destruction, distortion, etc., the artist's rights will apply but there are exceptions. The right will not apply if the owner has notified the artist, in writing, that he or she intends to remove the work, and the artist has failed to respond to the owner's notice that the artist must either remove the work or pay for

its removal within ninety days after receiving the owner's written notice. The written notice must be sent by registered mail to the artist at his or her most recent address. If the work is removed at the artist's expense, title to that copy of the work belongs to the artist.

3. In order to give the artist the practical opportunity to remove works which have been incorporated into buildings, the Register of Copyrights has established a system or records whereby the artist of work that has been incorporated in or made part of a building can record his or her identity and current address. This system provides the artist with the opportunity to update his/her personal information. In addition, the system provides the owners of buildings with the opportunity to record evidence of their efforts to comply with the law.

F. Law Codes

A copy of the law can be found: Federal Code; Visual Rights Act of 1990, 17 USC Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506. Materials written above were excerpted from "Congress Passes Visual Artists Rights Act," National Artists Equity, autumn 1990.

APPENDIX B

SAMPLE

**City of Downey Art in Public Places
Budget Breakdown**

Artist Design	\$_____
Artwork Material	\$_____
Fabrication	\$_____
Art Consultant – not to exceed 20% of allocation (if applicable)	\$_____
Transportation of Artwork	\$_____
Concrete or Base	\$_____
Structural Engineering	\$_____
Lighting/Electrical (for artwork only)	\$_____
Water Related Expenses (if applicable)	\$_____
Art Related Expenses (if applicable)	\$_____
Other Expenses (please list)	\$_____
_____	_____
_____	_____
_____	_____
_____	_____
TOTAL	\$_____

The total should equal or exceed the minimum 1% art allocation for the project.

APPENDIX C

SAMPLE

CONTRACT OF SALE OF A WORK OF ART

AGREEMENT made as of the _____ day of _____ in the year _____ between _____ (herein referred to as the Collector) located in _____ and _____ (herein referred to as the Artist) located in _____, with respect to the sale of an art piece (herein referred to as the Work).

WHEREAS the Artist has created the Work and has full right, title, and interest therein; and
WHEREAS, the Artist wishes to sell the Work; and
WHEREAS, the Collector has viewed the Work and wishes to purchase it.
NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations, covenants, and conditions hereinafter set forth, and other valuable considerations, the parties hereto agree as follows:

1. DESCRIPTION OF THE ARTWORK:

[Include title, style, medium, dimensions, weight, year of creation, and any other description.]

2. SALE AND PAYMENT

The Artist hereby agrees to sell the Work and Collector agrees to purchase the Work for a purchase price of _____. Payment shall be made in _____ installments:

- a. A deposit of \$_____ (____%) upon the signing of this Agreement.
- b. A payment of \$_____ (____%) upon _____.
- c. A final payment of \$_____ (____%) upon delivery of the completed Work.

3. DELIVERIES AND INSTALLATION

[Specify location of delivery and who is responsible for shipping and installation charges.]

4. RISK OF LOSS AND INSURANCE

The risk of loss or damage to the Work and the provision of any insurance to cover such loss or damage shall be the responsibility of the Collector upon installation.

5. MAINTENANCE

The Collector agrees to abide by the Maintenance Instructions of the Artist listed below, as a condition of sale of the Work.

[Artist instructions, including methods, materials, frequency of routine cleaning, and suggested practices for occasional preservation treatments or conservation.]

6. NON-DESTRUCTION

Owner will not undertake or permit any intentional destruction, damage, or modification to the Artwork.

7. RESTORATION

Artist agrees to be responsible for repairs, not arising from intentional damage or neglect, for up to ____ year(s) (typically one year), without charge to the Owner. Owner agrees to notify Artist before any restoration is undertaken and the Artist shall have first opportunity to restore the Work, for a reasonable fee, if beyond the aforementioned time limit.

8. FUNDING SOURCE

The Owner agrees to establish a funding source for necessary on-going maintenance. A Homeowner’s Association has been designated (if applicable) to fund and care for the art piece on the owner’s behalf, as specified by the Artist in this Agreement.

9. COPYRIGHT AND REPRODUCTION

The Artist reserves all reproduction rights, including the right to claim statutory copyright, in the Work. All approved reproduction shall bear copyright notice with the Artist’s name and date.

10. MISCELLANEOUS

The Agreement shall be binding upon the parties hereto, their heirs, successors, assigns and personal representatives. The Agreement constitutes the entire understanding between the parties; only an instrument in writing assigned by all parties can modify its terms. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof. The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF the parties hereto have signed this Agreement as the date first set forth above.

ARTIST _____ DATE _____

COLLECTOR _____ DATE _____

ART CONSULTANT _____ DATE _____

_____ DATE _____

HOMEOWNER’S ASSOCIATION (If applicable)

Art-Maintenance Contact (**the City will contact this person for future needs**)

Person Name, Title: _____

Company: _____

Mailing Address: _____

Phone/FAX: _____

E-mail: _____

APPENDIX D

***Note: This form for use by the City Staff at the Review Meeting.**

**City of Downey Art in Public Places
Review Checklist**

PROJECT:
Artist: _____ Artwork Title: _____
Date Reviewed: _____
City Staff: _____

CRITERIA	MEETS CRITERIA	DOES NOT MEET CRITERIA	COMMENTS
I. Art Piece			
Scale: life-size 5' or larger (excluding base)			
Permanent and weather resistant media, armature and framework of rust free materials, foundry materials and metals breakdown by percentage.			
Artistic Content (for discussion only): <ul style="list-style-type: none"> • Expressive properties (mood, feeling, message, symbolism). • Formal properties (balance, emphasis, color, repetition/rhythm, unity, form/shape, texture). 			
Proposal shows how work will engage public interest (provokes discussion, a closer look, intrigues, entertains, etc.). Is public input/survey requested?			
Liability and Safety conditions			
Original work of art (Editions limited to 5)			
II. Artist			
Education/training in the visual arts or sculpture			
Exhibit records and collections			
Experience with large scale outdoor artwork			
Verification of purchase price of past works			
III. Site/Installation			
Clearly visible to motorists and pedestrians from major public street.			
No more than 50 feet from public street(s)			
Base well integrated to landscape			
Lighting instruments and lighting plan			
No signs, utility boxes, or other conditions limiting public view.			
Plaque			
Installation design approved by structural engineer.			
Landscape plan will not pose future visibility or conservation problems.			
Sprinkler plan assures no water spraying on art.			
V. Artist/Developer Contract of Sale			
VI. Maintenance Instructions/Maintenance Fund			

APPENDIX E

***Note: This form for applicant use only. Please keep for your records.**

City of Downey Art in Public Places Application Checklist

Date:
Applicant:
Project:

For description of each item see Appendix FG, Application Instructions.

- 1. Application – Form A
- 2. Site plan indicating public art location.
- 3. Photographs or computer enhanced image of site/public art location.
- 4. Landscape plan
- 5. Lighting plan (specific instruments)
- 6. Artist statement
- 7. Maquette(s) or drawings of proposed work
- 8. Sample materials or finishes of proposed work
- 9. Installation design (to be approved by structural engineer)
- 10. Artist’s current resume
- 11. Artist’s history of public art commissions – Form B
- 12. Slides and photographs of artist’s previous works
- 13. Edition number and locations of other pieces in the series (if applicable).
- 14. Budget breakdown
- 15. Maintenance instructions
- 16. Draft contract of sale

APPENDIX F

***Note: This form for applicant use only. Please keep for your records.**

City of Downey Art in Public Places Application Instructions/Submittal Requirements

Please submit the following application materials to the City of Downey, Community Development Department. City of Downey staff must receive all application materials prior to scheduling a review meeting. The review meeting will be set within thirty (30) days once all application materials are complete.

1. Application – Form A
2. Site plan of the development, including the following:
 - a. Proposed placement of the public art.
 - b. Distance in measurement between the artwork and public streets.
 - c. Placement of any existing and/or future monumental or temporary signs, utility boxes, nearby street signals, or structures which may impede public view of the artwork from the public street.
3. Photographs or computer enhanced design of the site, which clearly shows the public art in relation to the site/building, as the public at ground level would see it. An image of the public art may be superimposed on a photograph of the site. Please make to scale.
4. Landscape plan, including the location(s) and type(s) of trees and shrubbery, in relation to the artwork.
5. Lighting plan for public art, specifying location, number, and type of fixtures to be used.
6. Artist statement, describing artist's style, artistic concept and content, relationship between proposed artwork and the project. The developer should explain why the proposed work was chosen and how it will enhance the development, complement the existing art program, and engage public viewing and comments.
7. Drawings, or maquette(s), of the proposed artwork. The maquette may be brought to the review meeting.
8. Sample materials or finishes of the proposed artwork.
9. Installation design of the proposed artwork, stamped by a licensed Structural Engineer, certifying the art as structurally sound, safe, and durable.
10. Current and complete curriculum vitae of the artist (including art training and education, group and solos exhibitions, private and public collections).

11. Artist's history of public art commissions. The value of the proposed piece is verified by previous commissions of similar style work (by medium, style, and size). Records should indicate commissions progressing toward or exceeding the proposed commission amount. City staff will verify the artist's records of past sales of similar artwork. If the value of the proposed work cannot be verified, due to inconsistencies in the record, a certified art appraiser at the developer's expense may review the proposed artwork (see page 3, Allowable Expenses from Art Allocation).
12. Slides, photographs, or other collateral (reviews, critiques, articles) of past works, corresponding to the listings in items 10 and 11.
13. Edition number of the proposed work (if part of a limited edition series) and locations of all other pieces in the series.
14. Budget breakdown including artist fees for design concept, materials, fabrication, transportation, installation, and art consultant fees (if applicable). The total budget should equal or exceed the minimum 1% art allocation.
15. The artist's maintenance instructions for routine and long-term preservation shall be included in the contract of sale (see pages 12, Maintenance Instructions). The instructions may be amended as needed, pending the results of the review meeting.
16. Draft contract of sale (see Appendix C, Sample Contract of Sale). The draft contract may be amended as needed, pending results of the review meeting. After approval by the City Council, a final contract must be signed by the property owner, artist, and art consultant (if applicable), and submitted to the City of Downey.

APPENDIX G

FORM A City of Downey Art in Public Places Application

DATE SUBMITTED:	
Minimum Art Expenditure:	
Project Name:	
Development Location/Address:	
Location of Art Piece (be specific):	
Developer:	Contact Person:
Address:	
Phone:	Fax:
Property Owner:	
Address:	
Phone:	Fax:
Artist:	
Address:	
Phone:	Fax:
Title of Art Piece:	
Selling Price: (includes consultant fees)	
Description of Art Piece:	
Dimensions:	
Media:	
Percentage breakdown of metal alloys (for bronzes):	
Armature Material:	
Paint type, brand, color (if applicable):	
Description of Art Foundation or Base:	
Landscape Description:	
Lighting Description:	
Sprinkler Description at Sculpture Base:	
Distance between Public Street and Art Piece:	
Installation Date:	
Dedication/Unveiling Plans:	

APPENDIX H

FORM B

Artist's History of Public Art Commissions

Please list in order of most recent. Use additional sheets if needed.

Artist Name _____ Project _____

No.	Title	Medium	Dimensions	Purchaser and Phone Number	Location	Date of Commission	Commission Amount
1.	Proposed work for Downey:					To be determined	
2.							
3.							
4.							
5.							
6.							
7.							
8.							