



MEMORANDUM

TO: Mayor and City Council Members

FROM: Liana Kallivoka, PhD, PE, Interim Director
Austin Parks and Recreation Department

DATE: July 31, 2019

SUBJECT: Chicano Rock Sculpture – Update

LKallivoka

The purpose of this memo is to provide an update regarding the *Chicano Rock* Sculpture located at Waterloo Park, within the Waller Creek District. Staff from the City of Austin Parks and Recreation Department (PAR) along with Council Member Harper-Madison met with the artist and owner, David Santos, to discuss options for the sculpture. Attached is an Executive Summary outlining the history of *Chicano Rock*, current issues and constraints, and proposed options.

PAR is optimistic that one of the presented options, or a different joint amicable option will provide satisfactory resolution to the longstanding issues surrounding *Chicano Rock*. PAR has requested that Mr. Santos respond in writing within two weeks. PAR will provide an update to the Waller Creek Local Government Corporation at their August 14, 2019, meeting.

Should you have additional questions, please contact Anthony Segura, Assistant Director, at (512) 974-9411, or via e-mail at Anthony.Segura@austintexas.gov.

cc: Spencer Cronk, City Manager
Elaine Hart, Deputy City Manager
Chris Shorter, Assistant City Manager
Rodney Gonzales, Assistant City Manager

In an effort to resolve decades of discord surrounding the *Chicano Rock* sculpture at Waterloo Park, the Austin Parks and Recreation Department (PAR) continues to work with the Waller Creek Conservancy (WCC) and the Art in Public Places Program (AIPP) within the Economic Development Department (EDD) to find an amicable solution. PAR recognizes the longstanding contextual sensitivity surrounding this sculpture and recognizes the artist, David Santos, and his artistic contributions to the City of Austin. The City has two primary issues that require resolution: (1.) To resolve long-standing conflicts related to ownership and stewardship of the sculpture, and (2.) To ensure that *Chicano Rock* is in compliance with Capitol View Corridor regulations.

Chicano Rock, also known as *Big Rock*, is a limestone sculpture that was created by David Santos and other local artists in the late 1980s. Mr. Santos had the sculpture installed in Waterloo Park in the mid-1990s, but it does not appear that the City's formal review process was followed, nor were required permits obtained. There is a long, tangled and complicated history of interactions between Mr. Santos and the City about the ownership and stewardship of the sculpture. The City's position is that it has not accepted the donation of *Chicano Rock*. Mr. Santos maintains that he donated the sculpture to the City, but has also repeatedly declined to complete the requirements of the AIPP program that are necessary to effectuate a donation.

It should be noted that the WCC and its design team attempted to engage Mr. Santos during the primary design phase for the redevelopment of Waterloo Park, with the intention of incorporating the sculpture's placement into the park plan; however, this attempt at collaboration was unsuccessful. Mr. Santos also worked with former District 1 City Council Member Ora Houston on the preservation of *Chicano Rock*.

Mr. Santos more recently requested access to make modifications to the sculpture, and, without approval, began doing so in 2018. He states his sculpture is not finished and that he wants to continue adding additional height. In December 2018, the City of Austin Law Department submitted a certified-mail cease and desist letter to Mr. Santos that outlined the need for him to obtain a permit and liability insurance for the sculpture, and to advise him that the Waterloo Park construction would start in January 2019, effectively surrounding the sculpture with an active construction site. Mr. Santos submitted liability insurance in May 2019, but it does not meet the subcontractor requirements of the Construction Manager-at-Risk, DPR, and he will not be allowed to make modifications to *Chicano Rock* during construction at Waterloo Park. The WCC has indicated that a final resolution needs to be implemented by October 2019, as completed site work in the area occupied by *Chicano Rock* will make modifications or removal of the sculpture difficult and costly after that time.

As the Waterloo Park redevelopment project obtained its Site Development Permit in late 2018 and construction commenced, PAR and WCC were made aware that the *Chicano Rock* sculpture, which is sited in the southeast corner of the park near the intersection of 12th and Red River Streets, violates the Capitol View Corridor (CVC) Statute, Texas Government Code, Chapter 3151, as well as the corresponding City Code, Section 25-12-162 in its current location and configuration. Specifically, the sculpture exceeds the Waterloo Park CVC by two (2) feet, 4.7 inches (at its greatest height). In order to be in compliance with State statute and City code, the sculpture must be removed or lowered. The CVC violation, while a relatively recent discovery, compounds what was already an untenable situation and underscores the need for resolution.

The City, in collaboration with Mr. Santos, has an opportunity to resolve the long-standing disagreement surrounding the ownership and maintenance of the sculpture, while also bringing it into compliance as required. PAR plans to schedule a meeting with District 1 City Council Member Natasha Harper-Madison

to present and discuss the City's proposed options in this matter. Subsequently, PARD proposes a joint meeting with Mr. Santos and Council Member Harper-Madison to present the proposed options. PARD will provide an update to the Waller Creek Local Government Corporation (LGC) at their August 14, 2019, meeting.

PROPOSED OPTIONS

In order to find an amicable solution, PARD, working in collaboration with the WCC and EDD, proposes the following options to Mr. Santos with hopes of resolving the discord surrounding *Chicano Rock*. To maintain the current schedule for the Park's opening, Mr. Santos must consent to one of the following options by **August 13, 2019**:



1. Lower (as necessary) *Chicano Rock* at its current location within Waterloo Park.

City Ownership:

- Mr. Santos will need to complete the City of Austin's Artwork Donation and Loan Policy requirements necessary to effectuate a donation of *Chicano Rock* to the City of Austin. Failure to comply with this process will result in the City's withdrawal of this option.

Process:

- PARD will hire a structural engineer to perform a structural analysis and provide recommendations for lowering the sculpture's overall height.
- Mr. Santos will be retained to consult on the lowering of the sculpture with a stipend that is equivalent to 10% of the construction budget, not including other professional services. PARD will make the final determination of means and methods, but will thoroughly document and evaluate Mr. Santos's recommendations.
- PARD will hire a contractor to complete the work in coordination with the Waterloo Park construction already underway.

2. Relocate *Chicano Rock* to another PARD location subject to appropriate levels of stakeholder engagement.

City Ownership:

- Mr. Santos will need to complete the City of Austin's Artwork Donation and Loan Policy requirements necessary to effectuate a donation of *Chicano Rock* to the City of Austin, with the City's acceptance of a proposed new location. Failure to comply with this process will result in the City's withdrawal of this option.

Process:

- Given the construction timeline for Waterloo Park, it will be necessary to relocate the sculpture into a PARD storage facility until the Artwork Donation and Loan Policy process is finalized.
- Stakeholder engagement may be required as part of vetting a potential new location. This scenario may allow Mr. Santos the opportunity to continue making modifications to the sculpture with a stewardship agreement.
- PARD will hire a structural engineer to perform a structural analysis and provide recommendations for lowering the sculpture's overall height.
- Mr. Santos will be retained to consult on the relocation of the sculpture with a stipend that is equivalent to 10% of the construction budget, not including other professional services.

PARD will make the final determination of location as well as means and methods, but will thoroughly document and evaluate Mr. Santos's recommendations.

- PARD will hire a specialty art relocation service to move the sculpture to the agreed-upon location.
- PARD will hire a contractor to relocate the sculpture in coordination with the Waterloo Park construction already underway.

3. Relocate *Chicano Rock* to an approved private property within the Austin metro area.

Private Ownership:

- Mr. Santos will retain ownership of *Chicano Rock*.

Process:

- This option allows Mr. Santos the opportunity to continue making modifications to the sculpture and gives him the ability to add to its current height as he has previously expressed.
- PARD will hire a specialty art relocation service to move the sculpture to the agreed-upon location.

PARD will fund all of the above options in an effort to alleviate any financial burdens to Mr. Santos as he is currently deemed the owner of *Chicano Rock*. Should relocation be selected, PARD will work with a reputable moving company, which specializes in moving artwork and largescale sculptures.

Should Mr. Santos decide not to select any of the options above: to maintain the sculpture's current location with the understanding that it will be lowered, to relocate to another PARD parkland, to relocate to private property within the Austin Metro area, or reach a different joint amicable option, the City will proceed with removing *Chicano Rock* without his consent. In this scenario, in order to maintain PARD's compliance, the sculpture will be moved to an off-site PARD storage facility until September 30, 2020, pending further future determination.

The City of Austin is proposing these options in good faith toward an agreeable solution that will work for all parties, and PARD is optimistic that one of the options outlined above will be amenable to Mr. Santos, in the spirit of resolving the outstanding issues surrounding *Chicano Rock*. Finally, PARD requests that Mr. Santos submits a written decision by close of business on **August 13, 2019**, to PARD Assistant Director, Anthony Segura at Anthony.Segura@austintexas.gov.