

CITY OF BOULDER

POLICIES AND PROCEDURES

EFFECTIVE DATE: Aug. 1, 2011

Interim Policy on Public Arts


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I. GENERAL POLICY

It is the policy of the City of Boulder (“City”), as a form of government speech, to accept, display, maintain and remove public art on City-owned or managed property consistent with the procedures outlined below.

II. PURPOSE

Public art can significantly contribute to the cultural and economic vibrancy and traditions of the Boulder community. This policy was created to increase the likelihood of attaining such goals and to ensure that appropriate and uniform consideration is given to the financial obligations, safety concerns and community interests associated with public art decisions. It provides procedures for City responsibilities beginning with acquisition of public art through deaccessioning (removal) of the art. Enjoyment of such art is entirely left to the beholder.

III. APPLICABILITY & SCOPE

This policy applies to all departments within the City that work with art that is currently part of the City’s public art collection or that is proposed for inclusion in that collection and that is or has been displayed, or is proposed for display, on City-owned or managed property. However, the scope of the policy’s application does not extend to:

- A. **Functional Art** – Artworks that have been integrated or incorporated into projects or facilities that primarily serve a functional purpose such as retaining walls, windows, floors, ceiling, or underpasses.
- B. **Indoor Art** – Artworks that are displayed on the inside of a City building that has closely regulated access and is closed at regular times on one or more weekdays.
- C. **Performance Art** – Live performances of music, film, dance, or any other expressive activity performed by individuals.

- D. **Temporary Private Displays of Art** – Artworks temporarily displayed by private entities on City-owned or -managed property where the owner of such artwork has or intends to: retain ownership of the work; assume all responsibility associated with that display; remove it within a short period of time, and; receive any necessary City permit required to display such artwork.
- E. **Leased City Facilities** – Artworks that are displayed at City facilities leased to another entity.

IV. DEFINITIONS

As referenced in this policy, the following terms are defined as follows:

- A. **Artwork** - Physical paintings, sculptures or works or designs in any media created for the purpose of expression.
- B. **City's Public Art Collection** – Artwork that has been acquired and approved through the City's acquisition process with the specific intention of being physically placed in a public setting and accessible to the community.
- C. **Collection File** – A currently existing or future database or physical record of the City's public art collection. This may include photo documentation of the artwork, title, artist, dimensions, media, value, provenance, display location, maintenance information, and any other pertinent details about the artist and/or artwork.
- D. **Commission** – The City of Boulder's Arts Commission.
- E. **Deaccessioning** – The act of removing artwork from the City's public art collection through any method (i.e. sale, return to the artist, donation, auction, demolition). This includes the removal from its public site, removal from a maintenance cycle, and transferring of all associated records, both hard copy and electronic, into the City's deaccessioned collection file.
- F. **Deaccessioned Collection File** – A currently existing or future database and/or physical record of any artwork removed from the City's public art collection. These records will normally explain the reason for the removal, the method of removal used, and ultimate disposition of the works.
- G. **Donated Public Art** – Existing artwork that has been given free and clear of any liens to the City for inclusion in its art collection.
- H. **Donated Funds** – Financial contributions that have been given to the City with or without the expectation that they be used for the purchase or commission of one or more specific pieces of public art.
- I. **Donated Services** – Unremunerated contribution of services to the City for the partial or complete creation or maintenance of public art.

- J. **Public Art** – Artwork displayed in an open exterior area or inside any building in an area designated as a public common area.
- K. **Unauthorized and Abandoned Public Art** – The surreptitious and anonymous, creation and installation of public art on City-owned or -managed property without the City’s approval. This can consist of reclaiming space and changing its dynamics with images or counter images, such as the placement of sculptures in public squares or images on walls.

V. **LIMITATIONS**

The placement of public art on public property is a form of government speech and as such, is not subject to scrutiny under the Free Speech Clause. Therefore, the City has broad discretion to make decisions related to public art on public property.

Nevertheless, the city shall honor other local, state and federal laws that may apply, including but not limited to the Colorado Fair Campaign Practices Act. The City shall exercise final approval authority over all decisions regarding public art on public city property.

In addition, the City shall recognize that artists have certain rights related to City-acquired art by virtue of the federal Visual Artists Rights Act of 1990 (“VARA,” 17 U.S.C. §106A, et al.) including and not limited to prohibited modification or destruction of that artwork. The City will also recognize that an artist may waive their VARA rights pursuant to a contractual agreement.

VI. **ACQUISITION OF PUBLIC ARTWORK**

- A. **Methods of Acquisition** – The City may acquire artwork through a variety of means, including through competitive or non-competitive purchases or commissions as well as through donation.
- B. **Funding for Acquisitions** – Except in the case of donated services, donated funds or donated public art, the individual department operating budget will serve as the primary funding source for acquisitions.
- C. **Acquisition Criteria** – The following criteria shall be used when considering acquisition of artwork by purchase, commission or donation:
 - 1) ***Inherent artistic quality***: The assessed aesthetic merit of the piece as an artwork, independent of other considerations.
 - 2) ***Context***: The compatibility of the artwork in scale, material, form and content with its surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
 - 3) ***Ability to Install and Maintain***: The anticipated cost required to install the artwork as well as the anticipated cost and amount of maintenance and repair and the City’s ability to provide that maintenance. Particular consideration will be given toward whether or not the proposed artwork includes an adequate

maintenance plan. Any proposed artwork that is determined to require extraordinary operations or maintenance expense is subject to prior review by the appropriate department director.

- 4) **Public Safety:** Each artwork should be evaluated to ensure that it does not represent a hazard to public safety. Generally, such evaluation entails coordination with the City's Risk Manager.
- 5) **Americans With Disabilities Act:** Each artwork should be evaluated to ensure that it complies with applicable building codes and physical accessibility requirements including the American With Disabilities Act.
- 6) **Accessibility by the General Public:** Consideration should be given to the accessibility of the artwork site so as to ensure the broadest possible public access to the artwork. However, under special circumstances, such as concerns for security, the artwork may be located in public locations with limited access.
- 7) **Diversity:** The City is committed to acquiring artworks that reflect diverse cultural communities and perspectives. To that end, the City shall seek artwork from artists of diverse racial, gender and cultural identities, and strive for diversity in style, scale, and media. The City shall also encourage both experimental and established art forms and recognize emerging artists whenever feasible.
- 8) **Feasibility:** Proposed public art shall be evaluated relative to the feasibility, constructability and receipt of convincing evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to: project budget, timeline, artist's experience, soundness of material.
- 9) **Community Support:** The level of current or anticipated community support, acceptance or opposition of the proposed artwork is to be evaluated.
- 10) **Uniqueness:** To ensure that the artwork is not be duplicated, the City shall require the artist to warrant that the work is unique and limited to an edition of one unless stated to the contrary in a contract.

D. **Selection** – A decision to add artwork to the City's public art collection, regardless of the manner in which it is to be acquired, requires adherence to the following selection process. It is incumbent on the departmental staff proposing the acquisition to communicate the need to initiate this process to the Library/Arts Director or his/her delegee.

- 1) **Public Art Selection Panels:** A Public Art selection panel shall be convened by the Library/Arts Director, or his/her delegee. While certain acquisitions may require less members, the panel should normally include a representative of the Arts Commission, an independent artist, an arts professional/educator, a

representative of the sponsoring City department, and one community and/or neighborhood member or facility user. A conservator and a member of an appointed board and/or elected official may also be invited to participate as a selection panel member. Members of the Arts Commission are encouraged to serve on at least one selection panel per year. In order to avoid a tie-vote on the panel, an odd number of members are recommended for the panel. The panel shall be moderated by the Library/Arts Director, or his/her delegee.

2) **Decision-Making:** Final decisions to select public art shall be made by the City Manager and follow the following process:

- i. **Recommendation by Public Art Selection Panel** – A recommendation on whether public art conforms to the acquisition criteria shall be made by the City’s public art selection panel. If the panel recommends in favor of acquisition, a presentation of that recommendation, along with documentation of how the criteria were met, shall be provided to the Commission.
- ii. **Review by Commission and Advisory Boards** – A review of the selection panel’s recommendation shall be conducted by the Commission and, when applicable, one or more of the relevant city advisory boards. The Commission and boards may choose to support or disagree with that recommendation. In reviewing the recommendation, the Commission and boards are not expected to repeat the work of the selection panel but to ascertain whether the selection panel properly followed the acquisition process detailed in this section and appropriately applied the acquisition criteria to the work in question.
- iii. **Decision** – The selection panel’s recommendation and any input provided by the Commission or advisory boards shall be forwarded in writing to the City Manager. The City Manager may decide to approve, reject, or delay an acquisition based on whether he or she determines the acquisition process was adequately followed.

E. **Contracts** – A contract or waiver shall be concluded before acquisitions are finalized and will require coordination with the City Attorney’s Office. Of specific importance is ensuring that the contract or waiver addresses the potential implications of the Visual Artists Rights Act on the obligations and responsibilities assumed by the city in accepting such artwork.

F. **Unauthorized and Abandoned Public Art** – The City is under no obligation to review or consider for acquisition unauthorized and abandoned public art. Instead, the City Manager may choose, at his or her full discretion, to remove it using any of the options described below in Section X or to consider it for acquisition consistent with the process outlined by this Section VI.

VII. DOCUMENTATION OF COLLECTION

Proper documentation of the City's Public Art Collection should, at a minimum, address and detail the following information about each artwork whenever possible:

A. Identifying information about the artwork, including:

- 1) Title of artwork, (edition, if appropriate);
- 2) Artist's name, address, phone numbers, email address, website address;
- 3) Date completed;
- 4) Measurements/Weight;
- 5) Narrative description of artwork including media/fabrication materials;
- 6) Purchase price and insurance value;
- 7) Artist's biography;
- 8) Other descriptive or identifying information;
- 9) Location of artwork;
- 10) Photographic, architectural/engineering documentation of the artwork in its displayed location, and;
- 11) Information detailed on identification plaques.

B. Conservation information of the artwork, including:

- 1) Materials, and sources of the materials, used in the artwork;
- 2) Methods of fabrication and the name of any individual other than the artists who was involved in the construction or creation of the artwork;
- 3) Installation specifications;
- 4) Method and frequency of required maintenance, and;
- 5) Additional contacts for maintenance issues, if warranted.

C. Administrative information about the artwork, including:

- 1) Legal instrument of ownership transfer (including provenance details, i.e. gift, donation of the artist, etc.);
- 2) Origin of the funding used for acquisition of the artwork;
- 3) Artist contract;
- 4) Risk documentation;
- 5) Significant agencies or organizations involved in the acquisition, their roles and responsibilities, contact information;
- 6) Significant dates;
- 7) Permits and project costs, key personnel involved in selection/installation process;
- 8) Insurance information;

The City's Public Art Collection should be inspected on an annual basis to develop a report that represents the current conditions of the artworks.

VIII. SITING AND ACCESS

- A. **Public Access** – Artworks in the City's Public Art Collection should be sited on City-owned or -managed property in a manner that ensures public access to such works.
- B. **Transfer of Property** – When City-owned artworks are sited on property that has been or will be conveyed to another entity, the City may either remove the work prior to the conveyance of the property or enter into an agreement with that entity to specify the rights, responsibilities and remedies of all parties with regard to stewardship, maintenance, and presentation of the artwork.
- C. **Transfer of City Land** – When a transfer of the land on which the City artwork is located, or a transfer in city management of such land occurs, an evaluation should be conducted to determine to appropriate course of action. This could include the re-siting of the artwork to City land or negotiating with the non-City owner to assume the ownership and responsibilities over the artwork. If title to the object is conveyed, the artwork will be formally deaccessioned in accordance with Section X, below.

IX. CONSERVATION, PRESERVATION AND MAINTENANCE

- A. **Conservation and Preservation of Existing Artwork** – The City should by its own qualified staff or through a professional services contract with an arts conservator specialist:
- 1) Develop a comprehensive inventory and maintenance plan/program of all existing artwork in the City’s public art collection;
 - 2) Conduct an annual inventory update and periodic conservation/preservation assessment of its public art collection, and;
 - 3) Develop an annual plan to assure a regular schedule of maintenance for its public art collection.
- B. **Maintenance Plan for New Acquisitions** – All public art contracts entered into after the date of this policy’s execution shall be required to include a maintenance plan that outlines how the proposed artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
- C. **Maintenance Funding** – Individual department operating budget will serve as the primary maintenance funding source for the maintenance of each department's public art collection.

X. DEACCESSIONING

- A. **Grounds for Deaccessioning** – The following are examples of grounds that the City may use to deaccession artwork from its public art collection.
- 1) **Theft** – A piece was stolen from its location and cannot be retrieved.
 - 2) **Damage Beyond Reasonable Repair** – The public art has been damaged beyond repair, damaged to the extent that it no longer represents the artist's intent, or damaged to the extent that the expense of restoration and repair are found to equal or exceed current market value of the public art. This determination will be made by the Library/Arts Director or his/her delegatee with input provided by the artist, if possible.
 - 3) **Lack of Suitable Site** – The public art is not, or is only rarely, on display due to lack of a suitable site.
 - 4) **Site Alteration** – For site-integrated or site-specific works of art, the site for which the public art was specifically created: is structurally or otherwise altered and can no longer accommodate the public art; is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or; has its

surrounding environment altered in a way that significantly and adversely impacts the public art.

- 5) **Site Acquisition or Sale** – For site-integrated or site-specific public art, the site for which the public art was specifically created is sold or acquired by an entity other than the City.
- 6) **Temporary Acquisition** – The public art was acquired as a semi-permanent acquisition and the City’s predetermined period of obligation is terminated.
- 7) **Safety** – There is a documented history of incidents that show the public art is a threat to public safety.
- 8) **Disassociation Under VARA** – The artist legally exercises the right of disassociation granted by VARA, preventing the use of his or her name as the creator of the public art.
- 9) **Excessive Maintenance** – The public art requires excessive maintenance. This determination will be made by the Library/Arts Director or his/her delegee with input provided by the artist.
- 10) **Comparable Quality** – The public art is of inferior quality relative to the quality of other works in the collection or the City wishes to replace the public art with a work of more significance.
- 11) **Provenance** – At the time of accessioning, complete information on the provenance of the public art was not available and more information has since become available indicating that the public art should not be part of the City’s Public Art Collection.

B. **Deaccessioning Advisory Committee** – As needed, a deaccessioning advisory committee should be convened by the Library/Arts Director, or his/her delegee. At a minimum, the committee should consist of the City’s Arts Manager and the departmental custodian in charge of maintaining the work of art under consideration. Additional City and non-City professionals may be added to the committee with consideration given to the expertise necessary to review the grounds under which deaccessioning is being considered.

C. **Procedures for Deaccessioning**

- 1) **Notice to Artist** – Artists whose works are being considered for deaccessioning should be notified by first class mail using the address provided by the artist, of the process being used for such consideration and their ability to provide input on the matter.

2) **Recommendation by Deaccessioning Advisory Committee** – The deaccessioning advisory committee should create a recommendation and a report on art that it is proposed for deaccessioning that includes the following information:

- a) The grounds for the proposed deaccessioning, accompanied by such other documentation and information as may be relevant;
- b) Identification of the existence or non-existence of VARA limitations as determined by the City Attorney’s Office;
- c) Acquisition method, cost and estimated current market value;
- d) Documentation of correspondence with the artist;
- e) Photo documentation of site conditions (if applicable);
- f) In the case of damage, a report that documents the original cost of the public art, estimated market value and the estimated cost of repair;
- g) In the case of theft, an official police report and a report prepared by the agency responsible for the site of the loss, and;
- h) Suggested removal approach and justification for that option.

3) **Review by Commission and Advisory Boards** – A review of the recommendation on deaccessioning should be made by the Commission and, as relevant, the appropriate departmental advisory boards. In the event the artist disagrees with the comments of the Commission and/or advisory boards, the artist may request further consideration of the matter. This request must be filed in writing with the Library/Arts Director, or his/her delegee, within 30 days of the Commission’s deaccession comments, and it must be based on information that was not considered during the Commission’s meeting on the deaccession.

4) **Decision** – A decision to deaccession public art shall be made by the City Manager after he or she has had an opportunity to review the recommendation and all comments by the Commission and advisory boards. The City Manager may decide to accept, reject or delay a deaccessioning recommendation based on whether or not he or she determines the deaccessioning process described above was adequately followed.

D. **Removal Options** – Any contractual agreements between the artist and the City regarding resale should be honored. To the extent removal is not addressed by a contract, the City may choose to use any of the following methods to remove public art that was either deaccessioning or never accessioned.

- 1) Trade through artist, gallery, museum, or other institutions for one or more other public art(s) of comparable value.
- 2) Long term/indefinite/permanent loan to museum collection or governmental agency.

- 3) Sale through art auction, art gallery, dealer, or direct bidding by individuals. Any revenue generated from such sale shall be directed to the budget of the Library/Arts Director, or his/her delegee.
- 4) Gift to another governmental agency or museum.
- 5) Destruction or recycling of materials comprising the public art. This method should only be used as a last resort after considering the possible historical significance of relics of the work. If this method is used, it is recommended that no piece be recognizable as part of that public art.

E. **Deaccessioning Collection File** - Documentation of the above grounds, decision and removal option should be preserved in the City's Deaccessioning Collection File.

XI. CONSTRUCTION AND INTERPRETATION

Employees who have questions concerning the interpretation of application of this policy should be directed to the City Manager's Office or the Library/Arts Director.

XII. EXCEPTIONS/CHANGE

This policy supersedes all previous policies covering the same topics. Only the City Manager may grant exceptions to this policy. This policy may be reviewed and changed by the City Manager at any time. It is adopted as an interim document with limited scope in anticipation that a more comprehensive final policy will be developed in the near future.