

FINAL DRAFT

Proposal CITY OF NEW ORLEANS **POLICY GUIDELINES FOR DONATIONS OF ARTWORK**

BACKGROUND

In 2008, the Arts Council of New Orleans received funding from the Joan Mitchell Foundation to administer the Art In Public Places project. The intent was to commission area Artists to create sculptures and paintings to enhance the public landscape of a rebuilding New Orleans. The commissions were to also help Artists in the rebuilding of their studios and their careers. Eighteen new pieces of public art were installed in neighborhoods throughout the city with attention to all Council districts. Also, as per agreement with the city or with individual city departments, the pieces will remain in place for up to two years. Because many of the pieces were to be in the public venue for an extended period of time, each project whether planned for installation on City of New Orleans' property or private property, was subjected to the review of an engineer for durability of materials and installation techniques. Each piece also went through a city review and approval process and there was an open dialogue established by the Arts Council with the residents, community groups or property owners in each area where work was installed. At this point, it is uncertain if the pieces will remain after their contracted exhibition period although it is desired that they will be so accepted by the public that they will become permanent installations, donated to the City of New Orleans by the Arts Council and the Joan Mitchell Foundation.

Looking ahead and considering similar past challenges with the acceptance of donated artwork for public placement, the Arts Council along with the City Planning Commission believes that it is imperative to establish a formal Artwork Donation Policy for New Orleans. Examples of similar donation policies were gathered from around the country for review prior to creating this proposal draft.

PURPOSE

New Orleans is a city of vibrant traditions, music, and art. Over the years donations and commissions of public artworks have contributed to the development of the unique landscape of the city's streets and parks. The Artwork Donation Policy establishes guidelines for a Donation Review Committee to make efficient decisions regarding the acceptance of gifts of artwork proposed to the city. The review process is essential in maintaining a high standard of excellence for the city's collection of public art as well as ensuring the most economic and appropriate use of funding to support the maintenance and installation of the collection.

DONATION REVIEW PROCESS

I. REVIEW COMMITTEE

The Donation Review Process (hereafter, DRP) will review all artwork to be donated to the City of New Orleans and to be permanently installed in the public venue on City owned and/or operated facilities, neutral grounds or green spaces. Artwork is defined as three dimensional sculptures, two dimensional bas relief, murals and street amenities designed by Artists as part of an overall improvement plan. The DRP will be overseen by the members of the Design Advisory Committee, (DAC) established in accordance with CAO Policy Memorandum #29. Members of the Committee shall include the original DAC designees and others as added since the Policy Memorandum was issued including the following individuals or their designees as follows:

- Chair: Executive Director of the City Planning Commission
- Vice Chair: Capital Projects Administrator
- Planning Administrator of the City Planning Commission
- Director of Property Management
- Director of the Historic District Landmarks Commission
- Chief Landscape Architect of the Department of Parks and Parkways
- Representative of the Arts Council of New Orleans Public Art Program
- Up to three others to act as non-voting advisors and by invitation of the DAC as warranted by the specifics of the project in question, such as representatives of the city agency under whose control the artwork will be placed, project designer, community representative, etc. to include but not limited to:
 - 1) A professional Artist respected by the arts community for mastery of a specific medium [painting, sculpture, ceramics, glass, etc.]. NOT the creator of the artwork under consideration.
 - 2) Art or cultural historian to provide background on the importance or significance of the Artist, or the event or subject matter represented by the artwork to be considered.

The DRC will meet within the regularly scheduled DAC meetings. Should a DAC not be scheduled, then a special meeting of the DRC will be called and will take place within 30 days of the applicant submitting all required proposal materials for review. Results from DRC will be passed on to the City's Planning Advisory Committee (PAC) for further review.

II. PROPOSAL REQUIREMENTS

Any person wishing to donate artwork to the City must submit the following information to the DRC:

- Resume and biography of the Artist to include contact information for Artist or Artist representative;
- 35mm color slides or a disc containing images in jpeg format illustrative of Artist's range of past work;
- Maquette or sketch of the proposed work in relationship to proposed site;
- Letter of authentication of proposed work, ensuring that it is a unique edition;
- Statement of value for artwork for proposed permanent installation. Minimum fair market value of artwork to be considered: \$10,000 for a mural; \$25,000 for permanent exterior

three-dimensional sculptures, two-dimensional bas relief, murals and/or street amenity; and \$5,000 for interior mural or wall-hung artwork.

- Technical description of the work (approximate dimensions, list of materials composing the work, etc.);
- Instructions for and estimated costs of installation;
- Information about the Sponsor or Donor of the proposed work (if not the Artist)
- Long term conditions at the request by Sponsor or Donor – to be reviewed by DRC on a case by case basis;
- Warranty from the Sponsor, Donor or Artist ensuring the integrity of the materials, installation, and fabrication of the work for up to ten years.
- Maintenance Plan to include a schedule and detailed written instructions for and estimated costs for appropriate routine maintenance and preservation of the artwork including the following:
 - a) a color chart with complete paint color specifications and product information;
 - b) materials information, formulas, and if necessary, ten [10] extra items that are part of the completed work, such as tiles [to be stored at the offices of the Arts Council of New Orleans]. Also for proposed conservation of artwork should major repairs be needed over and above routine maintenance;
- MAINTENANCE ENDOWMENT as per requirements of Property Management;
- INSURANCE? For installation process only - liability and workman's comp while working on City property.

III. REVIEW CRITERIA

In review for acceptance or rejection of a proposed artwork donation, the DRC will consider the following criteria:

- Artistic merit of the proposed work
- Relationship of the work to the city's collection as a whole; does the piece contribute to or lend diversity to the collection?
- Uniqueness of the work; is it one-of-a-kind?
- Relationship to and availability of the proposed site
- Budgetary concerns; are the costs of maintenance and installation reasonable and feasible?
- Durability of the work; are the materials long lasting; is the piece resistant to hurricane damage and other weathering?
- Potential for vandalism or theft of the work

Installation plan and process may require review by a licensed engineer or architect and determined to meet all City requirements for public safety to include but not limited to hurricane force winds.

Proposed artworks that require any pre-existing restoration or repair will not likely be considered for acceptance. Artworks must presently be in good to excellent condition. Works of art in poor to good condition may be considered by the DRC depending upon the importance of the Artist and the relationship that the Artist and/or the artwork has to the City. Also, consideration may depend

upon the value of the City assuming the artwork as part of the “official” City of New Orleans Public Art Collection.

Approval will not be finalized until any and all provisions for installation and future maintenance plan and endowment have been satisfied.

IV. SITE CRITERIA

The artwork should contribute to the overall aesthetic and meaning of the proposed setting. Following acceptance of the artwork by the DRC, review of the proposed site for installation of the proposed artwork will be overseen by the Planning Advisory Committee (PAC) as established by the City Planning Commission (CPC).

In review for acceptance or rejection of a proposed installation site for a proposed donation of artwork, the PAC will consider the following criteria:

- Availability of the proposed site;
- Acceptance from the city department that oversees the proposed site;
- Appropriateness of the site regarding physical, social, and historical context as well as works pre-existing at the site;
- Public safety;
- Public accessibility to the work that may include compliance with ADA requirements;
- Visibility of the piece;
- Traffic patterns potentially blocked or impeded by the piece;
- Future development plans for the area;
- Any necessary landscape design or redesign ;
- Letter of Support from the community/neighbors/stake holders where the artwork will be permanently installed.

Additionally, the artwork must not interfere with the installation of any City utility or cable/communication lines. Installation plan and process should be reviewed by a licensed engineer and determined to meet all City requirements for hurricane force winds.

Additionally, when appropriate Property Management and/or the City department with which the donated work will be located must agree to the installation techniques and maintenance responsibilities as outlined in the donation proposal.

V. FINAL ACCEPTANCE

Once the DRC and PAC have completed their review of a proposal, a joint recommendation will be made to CPC based on the final decisions of these two committees. The CPC will have the authority to accept artwork donations valued up to \$50,000. Artworks of greater value, will be recommended to the full City Planning Commission for final consideration and acceptance.

Should the proposed artwork for donation not receive a favorable response from the DRC, PAC or the CPC, an appeal can be made to the City Council as per the following appeal procedure:

A Letter of Communication must be submitted to the Clerk of Council requesting placement on the City Council agenda with a copy to the City Planning Commission.

Once the artwork is accepted, a letter of acceptance will be issued by the Director of the CPC. The City shall become the legal owner of the artwork through the conveyance of the title with a Deed of Gift from the Sponsor or Donor. Property Management will be responsible for maintaining all materials and records pertaining to each donated work of art.

The Artist retains all rights under the Copyright Act of 1976 (17 USC Section 101) and the Visual Artists Rights Act of 1990, known as VARA(17 USC Section 106A).

The duration of copyright in the United States is currently the life of the author plus seventy (70) years. Title to the Artwork passes to the City of New Orleans upon their written acceptance of and the conveyance of the title with a Deed of Gift from the Sponsor or Donor to the City. Copyright belongs to and remains with the Artist. Although the City may “own” the work of art, the Artist who created the work owns the copyright to the work of art, including all ways in which the work is represented, other than in situ. Artists may wish to register their copyright with the Federal government.

The Artist is the sole author of the work for the duration of the copyright. Additionally, VARA assures an Artist’s protection of his/her “visual art” especially as it effects post-sale rights including all drawings, sketches, and prototypes. Under VARA, Artists have the right to prevent any intentional distortion, mutilation, or other modification to their work. In some cases where the art is integrated (building, landscape, infrastructure, etc) the City may ask the Artist to waive their VARA rights.

REPRODUCTION PROVISIONS

The City has the right to publish two-dimensional reproductions of the artwork for non-commercial or educational purposes only. The City in turns agrees to include a credit to the Artist and a notice of copyright on all such reproductions. The City cannot reproduce of artwork for financial gain without the explicit approval of the Artist and/or the Donor.

MEMORIAL PROVISIONS

In the event that a proposed donation is to memorialize a person or event, the piece and the person/event represented must display timeless qualities and/or represent broad community values relevant to the community. The person to be memorialized shall have been deceased for no less than five years prior to the time of installation of the piece. The event to be memorialized shall have taken place no less than two years prior to the time of installation of the piece.

Need to review City’s policy for street naming -

MAINTENANCE PROVISIONS

While the DRC and PAC does their best to accept artworks that are durable and long-lasting, the natural conditions of the City's climate as well as public interaction with public works will inevitably require repairs and maintenance from time to time.

A Maintenance Plan provided by the Donor of the Artwork is required for final acceptance. This plan will outline:

- expected timelines and conditions for maintenance
- procedures and instructions for anticipated maintenance
- estimated costs of maintenance

The Donor of the work will contribute a minimum of 5% of the total stated value of the piece to be deposited into a special maintenance fund under the control of Property Management. As per the submitted Maintenance Plan, or upon the advice of New Orleans Museum of Art (NOMA) or the Arts Council of New Orleans (ACNO), Property Management will oversee all required maintenance of the piece while it remains in the City's collection

DEACCESSIONING PROVISIONS

Once accepted and transfer of title is made to the City of New Orleans, the City retains full rights of removal, relocation and de-accessioning of the donation should future conditions of the artwork or the site require review and approval of the Design Advisory Committee for such action. De-accessioning is only appropriate if one or more of the following conditions apply:

- The work of art is damaged where repair is impractical or costs exceed the value of the work;
- The artwork has faults that require repeated and excessive maintenance efforts;
- The artwork becomes a hazard of liability that endangers public safety;
- The site or community has changed in a way that no longer safely or respectfully accommodates the artwork;
- Where public protest has continued unabated over a period of five years, a public hearing will be held. De-accessioning in this case is one of a number of solutions;
- The request to de-accession must come to the DRC and/or CPC from the Director of Property Management. However, the final review and approval/recommendation to de-accession rests with the DRC and/or CPC.
- Working with Property Management, the CPC will notify the Donor and/or the Artist of the artwork, if alive or available, in writing of the reason artwork must be removed from the site and provide the Donor 90 days to respond.
- If the Donor and or the Artist do not respond, the City is authorized to remove the artwork. Yet, prior to final disposal of the artwork, the City will again make every reasonable effort to notify the Artist's heirs in writing of the reason for removal of artwork from the public venue.
- The City, as owner, is responsible for all costs associated with the removal of the artwork from the site. On the advice of NOMA or ACNO, the City will seek responsible methods for disposal of all materials associated with the artwork and installation materials.

The City agrees not to intentionally alter, modify, change, destroy, or damage the work of art without first obtaining permission from the artist. If the artist's work is accidentally damaged, the artist has the right to request that the work not be attributed to the artist until such time as the work is fully restored.

ACCEPTANCE OF TEMPORARY PLACEMENT OF ARTWORKS

Should it be so desired by community leaders, artists or non-profit or for-profit groups and organization to place artwork in the public venue on a temporary basis as defined as:

1) Less than 90 days –

a) Artwork installed for less than 90 days will be considered temporary and will not have to follow the full criteria for installation as required in this document.

b) All artwork installations must be secured with attention to public safety. Should the threat of a hurricane be imminent, the artwork shall be removed within 24 hours prior to said hurricane. *Does Safety and Permits already have such a requirement?*

2) More than 90 days –

a) Artwork shall be considered permanent and subject to review by the process set forth in this document and must adhere to all criteria including but not limited to the engineering review of installation requirements for permanent artworks in consideration of public safety and withstanding hurricane conditions.

b) The Donor or Artist submitting the artwork for review, shall establish the length of time for installation to be agreed upon by the city agency and/or community in which the artwork will be placed.

No matter the length of time the artwork is installed in the public venue, the Donor must assume responsibility for all maintenance during the agreed upon installation period, and shall not be required to establish a maintenance endowment. The Donor will carry liability insurance on the installed artwork with the City of New Orleans listed as an additional insured throughout the period of temporary installation. The Donor agrees to remove artwork or repair any damage or defect to the artwork during temporary installation within ten (10) days of notification of need for said repair or maintenance.

Following the extended time of installation (more than 90 days), should the Donor or community in which the artwork has been temporarily placed desire that the work become a permanent fixture, the Donor shall now submit to the DAC a letter of support from the community and the required city agency stating full acceptance of the artwork. Prior to a transfer of title to the City of New Orleans, the Donor shall submit any additional information above that previously required in the original DAC/PAC review process. Information may include any of the following:

- Resume and biography of the Artist to include contact information for Artist or Artist representative;
- 35mm color slides or a disc containing images in jpeg format illustrative of Artist's range of past work;
- Maquette or sketch of the proposed work in relationship to proposed site;
- Letter of authentication of proposed work, ensuring that it is a unique edition;
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