

The City of Fargo
Arts and Culture Commission



Public Art Policy Guide

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Regulations and Codes

Ordinance Number 4049-

On November 24, 2014, the City Commissioners of Fargo, North Dakota adopted ordinance No. 4049 effectively creating the Arts and Culture Commission. Article §20-0805 of the ordinance was adopted on April 13, 2015. The purpose of establishing the commission and ordinance is to ensure that public art continues to be a valuable part of Fargo; encourages the display of public art by citizens, developers, property owners, architects and builders; provide a review and recommendations to the City Commission for the commissioning and placement of public art owned by the city; ensure existing public art is properly displayed, maintained and accessible to the general public.

The goals of the Fargo Arts and Culture Commission (ACC) is to foster citizen engagement and interest in public art and provide an alternative platform for the city's strong arts and culture contingency. Additionally, the ACC will utilize public art as a method to promote tourism, economic development, and creative agencies.

The commission will specifically seek to accomplish these goals through the following initiatives:

1. Continue developing current projects
2. Build the capacity of the Public Arts Program and Arts and Culture Commission
3. Provide adequate care and maintenance for city-owned art
4. Establish a clear and easily accessible process for artists
5. Identify and secure permanent funding and support systems
6. Ensure that public art is citywide
7. Pursue skilled Artists', aesthetic quality, and openly consider diverse forms of public art
8. Cultivate private and public partnerships
9. Remain sensitive to the cultural geography of The City of Fargo

Bylaws-

On April 15, 2015, Bylaws governing the internal operations of the Fargo Arts and Culture Commission were adopted. Such Bylaws ensure the commissions' ability to fulfill their Power and Duties and implementing this public art policy in accordance with Ordinance #4948.

Specific responsibilities of the commission are as follows:

1. Manage and facilitate new public art commissions or works of art gifted to the City.
2. Manage available funds and engage in active pursuit of public art grants and other relevant funding opportunities.
3. Report to the city commission annually the status of donations, monies received and expended, and the purpose of all expenditures.
4. Guide the development of a public art master plan and maintaining said master plan.
5. Identify opportunities for public art within current and future capital improvement projects.
6. Manage a public art collection.
7. Promote public art through education.
8. Employ qualified city staff to support the activities of the council.
9. Make recommendations to the board of city commissioners for any additional ordinances or administrative procedures required to implement the stated purpose and intent of this section.
10. The acceptance of gifts or grants that may be appropriate towards the fulfillment of the purpose and intent of the Arts and Culture Commission.
11. Maintain public art as needed.
12. Perform any other functions, which may be assigned or delegated to it by the board of City Commissioners.

Commission Structure

The ACC will work in conjunction with the following commissions and administrative departments in order to achieve the goals outlined within this policy:

1. City Commission- The decision making body which may review and take action on recommendations made by the Arts and Culture Commission. May assign or delegate to the Arts and Culture Commission other functions as it sees fit.
2. City Administration- The individuals holding this position lead all City departments in developing operating policies for City functions and personnel and report directly to the Mayor.
3. Planning and Development Department- Guides the growth and change of The City of Fargo. Implements City planning documents including the Comprehensive Policy Plan, Downtown Framework Plan, and relevant growth plans. Will incorporate public art into planning and development guidelines and incentives when possible.
4. Public Works Department- Oversees the maintenance of all city streets, boulevards, and other City owned property, which may be affected by the Public Art Policy.
5. Engineering Department- Oversees the design, inspection, construction and replacement of the city's infrastructure, which may be affected by the Public Art Policy.
6. Forestry Department- Manages and maintains all trees located on city owned property which may be affected by the Public Art Policy.
7. Buildings and Grounds Department- Oversees the maintenance and upkeep of all city buildings. Will work with other city departments to ensure art placed within city buildings is properly cared for.

Intended Use of Policy

The intended use of this policy is to outline the guidelines and procedures related to public art owned and administered by The City of Fargo herein known as 'City'. The specific objectives of this policy are to:

- Define the policies and procedures utilized for the acquisition, loan, donation/ gift and temporary installation of public art owned by the city, as well as, project selection criteria, site selection, and artist selection.
- Provide for the care and preservation of art owned by the City through maintenance, accessioning, and de-accessioning procedures.

Policy Review

The Commission shall review this policy at least once every three years. All forthcoming amendments shall be approved by the Arts and Culture Commission majority vote and submitted to the City Commission for final approval.

Defining Public Art

Public Art is defined as an original artwork or artist-designed event which is visually or physically accessible to the public and which does not require a fee or other prerequisite to observe. Public Art is inclusive of a variety of media, including but not limited to; performance, music, dance, visual, temporary, or participatory art; as well as artist designed infrastructure and structures. Public Art can be privately or publicly funded.

Public art should connect to the community or community identity; create vibrant places for people to gather; be an intentional use of art or place making; and embody community aspirations, both past and present. The work can be created through a communal process, a collaboration, with the community in order to reflect the ideas and values of those for whom public art is created and to engage in creative problem solving.

(Adapted from: *Americans for the Arts, Association for Public Art*)

To include:

Sculpture, paintings, collage, earthworks, neon, glass, fiber, mosaic, clay, wood, photographs, print, literacy arts, calligraphy, film, holographic images, video, computer projections, drawing, any hybrid or mixed media.

Categories:

Functional (benches, bicycle racks, shelters, gates), object/ sculpture, integrated (bridges, retaining wall, walkways, buildings), interpretive (educating: self-explanatory, supplemental panel of facts), monument (traditional themes: war, civic, and charitable heroes), murals, sensory art (visual, auditory, touch or combination senses), digital (technology based public art- video projection, smart phone capabilities), temporary (intended for a specific time period), serial (installation of multiple objects, a collection of artwork related to one another).

The following shall be excluded from the definition of Public Art:

- Mass produced objects, excluding limited edition works created by an artist.
- Artwork that communicates a commercial message.
- Monuments, commemorative plaques and architectural (non-utilitarian) or utilitarian elements not intended for display as works of art.

Architectural elements serve no other function but to be a site of remembrance and take the form of plaques, sculptures, arches, pillars, etc. The Utilitarian serves as function, memorializes and commemorates. Examples include: clocks, parks, bridges, hospitals, and ornamental sculptures. Architectural and utilitarian reside at a place of historical significance to signify a person, event or cultural heritage of an area.

Defining the Public Art Master Plan

The intention of the Public Art Master Plan is to bring together community and government ideas and to be a tool to aide in prioritizing and providing recommendation on the placement of visual projects within the City of Fargo.

1. Goals and vision for art within public places
2. Identify appropriate and significant sites for public art and public gathering places.
3. Offer methods for utilizing art as a problem-solving tool to enhance a sense of community, correct vandalism and decline, as well as develop a prioritization of public spaces.
4. Outlining incentives for developers wishing to integrate public art into their projects.
5. Identifying education opportunities and programs that may work in conjunction with public art opportunities/ sites.
6. Determining artist and project selection criteria.

Defining Funding for Public Art

Capital Investment

(Public)- Public capital improvement project paid for solely or in part by means of monies appropriated by the City to design, construct, and install public art.

(Private) Private developers incorporating public works of art into their improvement projects throughout the city. Investing in public art increasing the creative capital within the community and demonstrates a civic commitment to the city.

Eligible Appropriations

Any capital improvement project outlined in a bond proposition approved by the voters pertaining to public art projects and programs benefiting the citizens and City of Fargo. This excludes capital projects designated real property acquisition, demolition, equipment, normal major maintenance, financing, below-grade water or wastewater improvements, and costs of repairing existing streets, sidewalks, and drainage facilities.

Grants and Non-City Sources

Capital improvement projects financed through grants or private contributions is subject to the conditions of the granting or contributing persons' or agency. Contributions from private sources should be documented and noted within the capital improvement project fund allocated to public art programs.

Methods of Fine Art Acquisition

The City may acquire art by the following methods:

1. *Commission*: An artist or group of artists authorized by the city to create an original work of art.
2. *Purchase*: An original work of art is acquired by means of a monetary payment. Artwork may be purchased for exhibits or brought forth by the City Commission.
3. *Donation (Gift)*: A work of art, which is offered by the owner without compensation or stipulations.
4. *Private Partnership*: The city enters into a partnership with a private entity in order to undertake projects where resources, projects, or expertise may be shared or outsourced to said private entity in order to support or supplement a city funded public art project.
5. *Accept Existing Artwork Owned by the City*: Existing artwork, which is owned by the City but has not been previously documented or accessioned into a permanent collection, is accepted into the permanent collection.

Acquisitions of Artwork

The first step in the acquisition of artwork process is the completion of an Artwork Acquisition Application outlining information applicable to the art piece, place of origin, ownership, and either statement of donor intention or artist statement. Information included on the application is as follows:

- Photograph- clear representation of artwork that is free of glare and obstruction
- Title, Medium, Dimensions, Weight (if applicable) Year, Value, Signature/Inscriptions
- Artist: Name, Biography including birthplace and date of birth and death, if applicable.
- Artist or Donor Information
 - Name, Address, Phone Number and Email Address
 - Artist Statement or Donor Intention (for items which are gifted to the city)
 - Certificate of Ownership
- Maintenance
 - Special care procedures and installation
 - Expected cost of continued care

- Expected budget
 - Total expected cost of artwork and appraisal value
 - Insurance
 - Installation

All potential acquisitions of public art must be reviewed by the Commission, working in conjunction with designated City Staff and in consultation with outside art professionals, if needed. The following line items will be conferred during the discussion and information gathering process.

- Any conditions relating to gift, long- term or temporary loan
- Determine the most appropriate location for the artworks' public display
- Issues pertaining to display, framing, and mounting
- Maintenance and preservation
- Security and any potential safety risk to the public

Once determined, all recommendations must follow The City of Fargo's purchasing policy for final approval.

Acceptance of Fine Art Guidelines

The City of Fargo envisions a livable community where public art is integrated into area neighborhoods as a revitalizing step towards improving quality of life, creative expression, and providing opportunities for the public to freely experience the visual arts. As such, there are considerations to take into account when choosing artwork for public display: placement, length of time for the display, display removal, publicity, artwork consistent with the City's policies, needs, and available space, return of loaned art, and the relocation of artwork for any reason deemed necessary.

Artwork created by Committee members or his/her immediate family shall not be acquired by the City, whether through purchase or donated gift, while the member is serving the Committee. Should a conflict of interest occur the welfare of the Arts and Culture Commission and the City of Fargo will prevail.

The Commissioners cannot accept personal gifts of Artwork from Artist or donors to be incorporated into the City owned art collection.

Temporary Installation and Art on Loan

All artwork Loaned-Out by the City, Loaned-In or on temporary displayed upon city property must have a complete written Loan Agreement. The loan agreement must be completed by both the authorized loaner and the authorized loanee including details for duration, placement, security, and return of the item once the loan period is over. The Loan Agreement shall be administered by the Department of Planning and Development for The City of Fargo. All Loan-Out, Loan-In, and temporary installation proposals must be reviewed in accordance with the policies of The City of Fargo.

Loan In

Loans to The City of Fargo will be considered if the Artwork is deemed useful for exhibition and meets the criteria for public art Site Selection and Project Selection outlined in this Public Art Policy.

Loaned Artwork will be received when completed documentation can be presented defining the time frame of the loan, cost associated with transport and maintenance, insurance coverage, conditions of loan and its return. Proof of ownership will be retained by the loaner.

Conservation or other necessary repairs of the loaned item will not be carried out without the written

consent of the lender. It is the responsibility of the loaner to notify City Staff of any change of address, ownership, or contact person affecting any objects on loan. The City of Fargo will not alter artwork received on temporary loan in anyway or reproduced without written permission, nor will they exceed “fair-use” which may result in copyright infringement, if applicable.

Loan- In Artwork must meet the following criteria:

- Meet the selection criteria of the Arts and Culture Commission
- Not incur financial strain on operations of The City of Fargo
- Ability to provide proper display and care
- The City of Fargo will carry insurance for the duration of the loan period
- All loan-In agreements will be reviewed prior to renewal

Loan-Out

Official request for loans of artwork within The City of Fargo permanent collection must be made in writing to the Fargo Arts and Culture Commission. The ACC will present the request to City Commissioners for final approval or denial of the requested loan. The loan may be denied based on the loanees’ inability to meet conditions and/ or provide standard care. Loanee will be responsible for all costs related to transportation and maintenance, including any necessary repairs needed while under loan. Any damage or alter in condition must be reported to the Arts and Culture Commission and City Staff immediately. No repair work can be done without written authorization from The City of Fargo. Additionally, loaned artwork may not be altered in anyway or reproduced without written permission. Any use of loaned artwork exceeding “fair-use” may constitute copyright infringement, if applicable.

Loan-Out Artwork must meet the following criteria:

- A qualified art professional will ensure that all Artwork selected for loan is documented and is in good condition and capable of transport. * See- *Collection Maintenance and Archival Care Guidelines*: V. Shipping- for packing instructions.
- Artwork on loan as part of a traveling exhibit will be at the discretion of The City of Fargo.
- The duration of the loan must be noted on the agreement. Extending the loan once the initial loan period has ended may be allowed once the artwork has been inspected for damage by a qualified representative of The City of Fargo.
- Ownership of the artwork(s) will be retained by The City of Fargo.

Gifts of Artwork/ Donations

The Arts and Culture Commission will consider the acceptance of fine art as gifts that are categorized as; paintings, sculpture, wall hangings, photographs, and other original works in various mediums. Gifts of works of art will be accepted without limitations or conditions placed on the City by the donor or artist. The ownership of all gifts of art will be transferred to The City of Fargo without restriction. Such art works will be used at the discretion of the Commission and the City.

Any Commission member wishing to donate artwork that they own, have created, or have direct or indirect monetary or professional interest in, must disclose this information to the Commissioners prior to any discussion. Once discloses, the committee member must recuse him or herself from discussion, influence, and voting pertaining to the artwork.

If the artwork is determined to benefit The City of Fargo permanent art collection, City Staff acknowledging receipt of the artwork will complete a Donation of Fine Art form. Donors who wish to receive a tax credit are responsible for the appraisal of all donated artworks. It is recommended that donors consult their personal financial advisor for specific advice about any gifts to The City of Fargo

Project Reports

Artwork recommended for acquisition or proposed public art project must be documented and, if necessary, presented to City Commission. The City's purchasing policy must be adhered to when it comes to the dollar amount pertaining to goods and services. Staff within the Planning and Development Department facilitates action pertaining to the City's purchasing policy. Designated City Staff shall present the following items:

1. Project location
2. Project budget, including cost of installation and maintenance
3. Designated funding sources, if applicable
4. Projected timeline for approval and installation
5. Artist expertise in a particular medium and level of experience
6. Compatibility with the public art master plan

When applicable, the following items may also be required:

1. Project Selection Criteria
2. Artist selection method and approval criteria
3. Site Selection Criteria
4. City Departmental review and approval, including additional approvals required.
5. Additional public engagement
6. Additional conditions of approval, including the waiver of certain VARA Rights (Visual Artist Rights Act of 1990), lease or encroachment agreements, artist contracts, etc.

Project Selection Criteria

The ACC will review all public art proposals. The overall character of the work should align with the following considerations:

1. *Aesthetic Quality*: Objective property with subjective response, meaning aesthetics is based on personal taste and the emotional response one has from observing the object. Aesthetic quality is often determined by conducting an *aesthetic evaluation* of the object by observing the structural qualities: tone, shape, color, line, form, and texture.
2. *Quality and Elements of Design*: The artwork must complement, enhance or modify a public space towards becoming a focal and increasing its function. Attention should be paid to style, scale, material, form, durability and safety. Principles of Art and Design; balance, contrast, emphasis, movement, pattern, rhythm, unity/variety, and space. Additionally, the Artist reputation, experience, and craftsmanship should be taken into consideration.
3. *External Factors*: Will the Artwork encourage public participation, negatively impact social and political attitudes, and will the object function within its public space?
4. *Fabrication*- the Artist possesses the ability to meet the specific criteria established in the RFP. Failure to produce the approved artwork established in the RFP will lead to the artist forfeiting the monies allotted for the commissioned work.
5. *Cultural Geography*: If relevant, does the Artwork take into account the cultural values, history, traditions, diversities, and identities of the region. Does the Artwork contribute to building a sense of place within the cultural landscape of the City of Fargo?
6. *Public Art Master Plan*- The work aligns with ideas and themes outlined within the Public Art Master Plan.

7. *Content*-The message the Artwork is conveying is clear and appropriate for public display and does not contain advertisement for any commercial, political, or other established organizations.
8. *Public Liability*: Works will not be selected or accepted that has the potential to create a public safety issue to the public or hold the City of Fargo liable.

Site Selection Criteria

The ACC will review all proposed performance and exhibition sites in order to determine the compatibility with the following considerations, as applicable:

1. Artwork must be installed in a safe and durable manner within a public space for the duration of its lifespan as outlined in the agreement.
2. The Artwork must also be compatible with existing public infrastructure, including drainage, grading, and maintenance.
3. The Artwork must enhance the quality of life and visual aesthetic for the public, neighborhood, and community.
4. If applicable, appropriate consideration will be given to the use and needs of adjacent property owners. Should the site be deemed too intrusive to surrounding property owners due to the Artworks excessive of light, sound, smell, or overpowers in scale or appearance, the site will be denied.
5. The selected site has been identified as a focal point of the community or neighborhood and will be visible and accessible to the public. If a selected site is only accessible for a duration of time, those hours will be posted. Compliance with applicable ADA requirements shall be required.
6. The same public spaces should not be continually selected for public art display unless the public space has been specifically designed for a project. Ex: Sculpture Garden.
7. The *Public Art Master Plan* will be the guiding document for public art selection.

Artist Selection Methods

The City of Fargo shall seek opportunities to help develop a growing population of professional public artists in the Fargo area. The City will strive to award contracts for public art projects amongst Fargo-based artists only if the Artist is able to meet the qualifications for the public art project and the artist selection criteria.

If it is found that there is a lack of qualified local artists within The City of Fargo, eligibility will be opened up in the following order: Fargo-West Fargo-Moorhead area, Cass County, State of North Dakota. Factors such as the size of the project, the level of visibility, the availability of funding, and other conditions, all may influence the selection of artists.

1. Open Call for Artist is an open invitation to artists to participate in a public arts program. The invitation will outline the scope of work, project criteria, and budget.
2. Limited Call for Artists will be utilized when projects requiring a specialized skill, working within a short time frame, or the parameters of private partnership require only a select number of individuals be invited to apply.
3. The Direct Selection of an Artist may take place when time and resources are limited, the Artist possesses the skill, knowledge, and experience needed for a specific project.

For both Open and Limited Calls, the artist must submit their qualifications for consideration; Professional resume, images, drawings or other visual representations of past work, a written Artist's statement addressing the artwork, subject matter and how it pertains to the project (inspiration, community influence, previous experience creating public art), and references.

Artists who have completed past public art projects with the City of Fargo shall submit an inventory of past works.

For public art projects, The City of Fargo and the ACC shall notify the public through a Request for Proposals (RFP) or Request for Qualifications (RFQ)

1. RFP: A Request for Proposals will require the artist to submit their qualifications and an initial proposal for a specific project.
2. RFQ: A Request for Qualifications will require the artist to submit only their qualifications to be considered by the selection panel. A detailed proposal may be developed at a later phase within the selection process, either prior to or after the final artist(s) has been selected.

Artist Selection/Criteria

The artist selection process shall ensure that the interests of all concerned parties are represented, including the public, the art community and the City departments. All artists selected by either Open Call, Limited Call, or Direct Select will be reviewed based on the following criteria:

1. *Quality of Completed Works*- Artists will be selected based on the quality of completed works of art with the following considerations: Artistic merit, design originality, elements of design, fulfillment of intent, and inherent meaning.
2. *Previous Experience*- Artists will be able to provide evidence of their artistic skill and ability to complete projects within specified time frame. Past experience can be presented through a variety of documents, such as, exhibition or performance records, past commissions, public reviews, and recommendations or awards.
3. *Preferred Qualifications*- There may be instances where preference will be given to an Artist possessing a specific skillset or experience in a designated medium. In those cases, the selection committee may designate additional qualifications during the Artist Selection Process.

Accession of Artwork

For the purposes of this policy, a work of art acquired by the city will be *accessioned* into the City's public art collection with the creation of a permanent record. The creation of a permanent record for an artwork acknowledges The City of Fargo has custody and title of ownership.

Accessioned objects are held in permanence as long as:

- They support the Arts and Culture Commission mission statement
- They retain physical integrity, authenticity, public importance, and relevance to the collection
- They can be properly stored, preserved, and utilized

The artwork will be assigned an accession number which will be applied to the backside and, if applicable, be visible on the Artwork exhibit label. City Staff will secure the documentation of all works accessioned into the public art collection. The documentation shall be kept in the office of the Planning Department via the department share drive- Arts and Culture Commission- Collection Management. In addition, physical copies will be forwarded to the Auditors office for record keeping purposes.

Documentation of all artwork accessioned shall include:

Accession Number	Location
Accession Date	Donor/Artist Contact Information when applicable
Title	Value or Project Budget- funds to install and ongoing upkeep
Artist	Photographic Record
Medium	All loan or copyright agreements
Dimensions	Conservation or historic records when applicable
Year of Completion	Project Maintenance Procedures as outlined in the “Installation and Maintenance” section of this policy

Artist Documentation shall also be provided in conjunction with all artwork accessioned and shall include:

1. Contact information for the artist, if applicable
2. Artist Biography and artist Statement, if applicable
3. Artist information
4. Signed Contract with artist, if applicable

On-Site Identification shall be provided for all permanent artwork owned by the City to the extent that it is reasonably possible. Identification shall include:

1. Name
2. Artist
3. Medium
4. Date

It is also encouraged that an artist biography, artist statement, or the context of the artwork be included alongside the artwork in order to provide education opportunities to the public.

Deaccessioning of Artwork

Deaccessioning shall be approached with caution on a case-by-case basis. Artwork for deaccessioning is determined and presented with a full justification to the ACC by an authorized member of the City Staff. The justification must contain the criteria for deaccessioning and the method of disposal. Prior to the ACC meeting it must be determined that there are no legal restrictions or stipulations regarding the deaccessioning and/ or disposal of the artwork. If there are uncertainties, the City attorney may be consulted to review all agreements between the artist, the grantor of the artwork and the City.

Criteria for Deaccession:

- Irrelevance to the Permanent Collection
- Duplication
- Inferior Quality or Poor Condition- items found to be fragile or those that are potential targets for vandalism and may not be appropriate for display in public spaces.
- Undesirable Public Response that undermines the Mission, Vision, and Goals of the Commission
- Public Safety Concerns
- Inability for the City of Fargo to meet a standard of care or storage
- Issues with authenticity, attribution, or provenance
- Ethical, Political and Legal Concerns
- Financial burden associated with maintenance and preservation

Prior to Deaccessioning, the artwork must be properly documented, including the justification presented to the ACC and notification to accounting for insurance purposes. Reasonable effort should be made to the original donors' immediate family of the City's plan to deaccession artwork. If the immediate family has no interest in reacquiring the artwork, the process for disposal may proceed.

Disposal Methods:

- Donation to or exchange with another done
- Sale by public auction
- Intentional Destruction- inauthentic, reproduction, of no monetary value, physical integrity and is beyond the point of reasonable preservation.
- Donate back to donor/ immediate family

CHAPTER 40-01-03 DEACCESSION AND DISPOSAL OF COLLECTIONS <http://www.legis.nd.gov/information/acdata/pdf/40-01-03.pdf>

History: Effective September 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-01-02(3)

40-01-03-02. General method of deaccession and disposal - Exception.

With the exception of those articles constituted by human skeletal remains and associated grave goods, the state historical board may deaccession articles from its collections upon the assessment of the director. The director, in making such an assessment to deaccession articles, shall also discuss the method of disposal. Methods of disposal must be as follows:

"Deaccession" means the process of permanently removing articles from the collections of the state historical society of North Dakota; it involves state historical board action, records management procedures, and disposal of the articles.

1. In the case of donated articles, unless other conditions are specified in a deed, gift, or other conveyance, deaccessioned articles will first be offered back to the donor if the donor is alive.
2. Articles may be transferred to another educational institution through gift, or exchange for other articles, or purchase by that institution.
3. Articles inappropriate to the collecting policy of the state historical board and other articles of no value to the state historical society or other institutions may be physically destroyed.
4. Articles of monetary value may be sold or traded for articles of similar value.

History: Effective September 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-01-02(3)

40-01-03-03. Records of deaccession.

A permanent record will be kept of all articles deaccessioned in accordance with section 40-01-03-02.

Installation and Maintenance

As outlined within the Site Selection Approval Criteria, all projects approved by the City must outline the parties responsible for installation and maintenance. When selecting a work of art to purchase or determining if a donation may be accepted, the ACC and the City will take into consideration any security issues, the cost of installation, and the cost of maintaining the work over its lifetime. This includes start-up and ongoing costs for cleaning, mounting, framing, or any item required for proper display. Consideration should be given to structural and surface integrity, permanence and protection of the artwork against theft, vandalism, weathering, and excessive maintenance and repair costs.

When necessary, a preservation plan, which outlines the maintenance procedures and projected funds for required maintenance, will be established. This plan will include the projected staff time required for maintenance, which will include time required for regular cleaning, as well as staff time required to solicit and secure contracts with specialists and conservators.

All works of art not on public display will be kept in storage located at _____ with access being given to authorized City Staff within the _____ Department associated with the Arts and Culture Commission.

Understanding the Rights of Art and Artists

Copyright

Copyright is a form of intellectual property that provides legal protection to the owner of copyrights and specific work. If applicable, it is the responsibility of the City of Fargo to properly manage these forms of intellectual property and understand the separation of ownership rights from the fair use of copyrighted images within collections and exhibitions.

Under the *U.S. Copyright Right Act of 1976*- www.copyright.gov

Ownership of copyright: Initial Ownership belongs to the initial author or authors of the work. The authors of a joint work are co-owners of copyright in the work.

Works Made for Hire: The employer, commissioner, or person for whom the work was created for is considered the author and owner unless the parties have expressly agreed otherwise in writing, signed by both parties, and stating who owns all of the rights comprised in the copyright.

Visual Artists Rights Act of 1990 (<https://www.congress.gov/bill/101st-congress/house-bill/2690>)

Amends the copyright law to define a "work of visual art." Grants the author of a work of visual art the right to claim authorship of such work when publicly displayed, independent of other exclusive rights, and to disclaim authorship of such work because of substantial distortion or alteration that harms his or her reputation. Grants such an author the right to prevent any destruction, distortion, mutilation, or other modification of that work which would harm his or her reputation or honor. Extends such rights 50 years beyond the author's death (or co-author's, in the case of a joint work) with respect to visual art works created as of the effective date of this Act. Waives artists' rights when a work cannot be removed from a building without distortion, mutilation, or alteration. Directs the Register of Copyrights to establish a recordation system for authors of visual art works that have been incorporated into a building.

Declares that this Act preempts equivalent rights under State law:

Includes within the scope of copyright infringement violations of the rights conferred by this Act.

Declares that: (1) criminal infringement penalties do not apply to such violations; and (2) registration is not a prerequisite to copyright infringement actions for violations of this Act.

Directs the Register of Copyrights to report to the Congress the results of: (1) a study regarding the extent to which authorship rights have been waived, and (2) a feasibility study regarding new requirements enabling authors of works of visual art to participate in the commercial exploitation of their work after its first sale. Requires submission of such report within 18 months after enactment of this Act.

Transfer of Ownership

The ownership of a copyright may be transferred by means of conveyance or by law, and may be bequeathed by will or passed as personal property by donation, commissioning, and monetary acquisition.

Fair-Use for Visual Art Loans

Fair-Use is a legal doctrine that promotes freedom of expression by permitting the use of copy-right protected works in certain circumstances for the purposes of criticism, comment, news reporting, educational, research, and parody. Artwork on temporary loan to the City of Fargo and artwork loaned out from the City of Fargo's permanent collection may not be altered, used for commercial activity, profited from, or deny credit to the original creator.

Managing Controversy

First Amendment of the U.S. Constitution

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Under the First Amendment, in a free and democratic society individual adults must be free to decide for themselves what to read, write, see, hear, paint and draw. ⁱ

Free Speech and Press Clause

“The Supreme Court has interpreted “speech” and “press” broadly as covering not only talking, writing, and printing, but also broadcasting, using the Internet, and other forms of expression. Paintings, sculptures, prints, installations, drawings, and photography are all considered protected speech under the First Amendment.”

<https://www.whitehouse.gov/about-the-white-house/the-constitution/>

Censorship

“The suppression of words, images, or ideas that are "offensive," happens whenever some people succeed in imposing their personal political or moral values on others. Censorship can be carried out by the government as well as private pressure groups. Censorship by the government is unconstitutional.” ⁱⁱ

American Civil Liberty Union- <https://www.aclu.org/other/what-censorship>

Funding Public Art Program

U.S. Supreme Court

National Endowment for the Arts v. Finley found Title 20 U.S.C. § 954(d) - 524 U.S. 569 (1998)

“While the government may decide to not fund art at all, if it does decide that government support of the arts is essential, it cannot fund only art that expresses a viewpoint government official like. In brief, the government may not fund art in a way that discriminates based on viewpoint.”

-Censorial Community Values: The Ohio State Law Journal, Vol. 61. 2001.

“The withdrawal of funds or access to art through the application of censorial community values is indeed a penalty against a disfavored viewpoint. Through the use of censorial community values, a government entity punishes art, a museum, or an artist by withdrawing money or access to art because the government entity believes the art conflicts with the community’s values. Thus, the use of censorial community values is unconstitutional under the dicta in *Finley* because a government entity uses censorial community values to coerce or penalize a museum or artist because of the viewpoint expressed in the art.”

<https://supreme.justia.com/cases/federal/us/524/569/case.html>

Best Practices: National Coalition Against Censorship

“To exhibit a work of art is not to endorse the work or the vision, ideas, and opinions of the artist. It is to uphold the right of all to experience diverse visions and views. If and when controversies arise from the exhibition of a work of art, we welcome public discussion and debate with the belief that such discussion is integral to the experience of the art. Consistent with our fundamental commitment to freedom of speech, however, we will not censor exhibitions in response to political or ideological pressure.”ⁱⁱⁱ

Guidelines for Managing Controversy

- Exhibits are funded by the Arts and Culture Commission and managed by City Staff of the Planning and Development Department.
- Artwork or collections that have generated controversy should remain on display until the Planning Director, Planning and Development staff and the Arts and Culture Commission, has reviewed the reported issue.
- If applicable, the Communications Manager and Public Relations Department should be notified if controversy cannot be mitigated within the Planning and Development Department.
 - The artists and, if applicable, the curator/ project manager should be notified and prepared for possible press attention. It is recommended to not comment on the issue and defer to the Communication Manager and Public Relations.
- Construct a statement of support for freedom of speech. Refrain from partaking in disputes about content or interpretation of the artwork on display.
- Evaluate the complaint/ concern: Who is reporting? What are their credentials? Is the complaint sincere, an act of political opportunism, a group leveraging controversy to serve a goal, or personal bias?
- Prepare and publicize talking points, questions, and answers. Provide exhibit materials and selection guidelines.
- Establish a learning opportunity and engage in thoughtful discussion with stakeholders.
- Call on supporters and utilized the Arts and Culture Commission to advocate. Reach out to free speech and arts organizations.
- Develop an exhibit feedback form to enable complaints or questions regarding the exhibit, the artist’s intent or public art and the First Amendment to be addressed immediately.

ⁱ Cohen v. California. 403 U.S. 15. 18-19 (1971) (“The constitutional right of free expression..., is designed and intended to remove governmental restraints from the arena of public discussion.”) Managing Controversy p.13

ⁱⁱ Mach, Daniel. The Bold and the Beautiful: Art, Public Spaces, and the First Amendment. New York University Law Review. Vol. 72:383. 1997.p.387 “When artistic expression conveys a perceptible message, it enjoys full First Amendment protection. 20. Art functions as any other speech, assisting in the pursuit of truth, encouraging public debate, and fostering individual self-realization. 21 Artistic ideas operate with the same force and under the same constitutional guarantees as classic written or spoken communication.”. Managing Controversy p.13

ⁱⁱⁱ National Coalition Against Censorship. <http://ncac.org/resource/museum-best-practices-for-managing-controversy>. Managing Controversy p.14

Appendix A:

Funding Public Art Projects

Individual artists, artist groups, and organizations may apply for funding of their public art ideas and projects from the ACC by completing a Creative Capital Sponsorship (CCS) form, Memorandum of Understanding, and a Project Proposal. In the event that funds are committed, applicant(s) must adhere to the terms of the CCS form and the Project Proposal in which the ACC has agreed to. If for any reason the applicant(s) must alter the terms, prior to administering changes, the City Staff point of contact and the ACC must have notification. Any changes to the agreed upon terms without notification may lead to the ACC withdrawing project funding.

Appendix B:

Sub-Committee (City Initiated Public Art Project)

Members of the public are welcome to join the ACC's sub-committee roster. The sub-committee engages in constructive discussions pertaining to the public art projects Call for Artist or Request for Proposals and artwork submissions.

Participants of the sub-committee may be a member of the Fargo community; neighborhoods, citizen with visual arts and/or design expertise or interest, citizen with arts and humanities expertise or interest, architects, landscape architects, urban designers, graphic designers, arts professionals, a member of a Commission, educators, or citizens interested in engaging in public art initiatives.

- Four to seven (4-7) participants of the sub-committee roster are selected for each public art project to review artwork submissions.
- The project sub-committee utilizes a criteria reference guide and scoring rubric to review artwork submissions.
- The selected sub-committee is only active for the duration of the public art projects artwork discussion and selection process.
- A new group of four-seven participants are selected for each new public art project.
- Participants are asked to review artwork submission for a public art project no more than twice per year.
- Expected time commitment per year is two-four (2-4) hours. Note: This time commitment is dependent upon the number of City initiated public art projects release per year and the number of participants of the sub-committee roster. An increase in public art projects and a decrease in the sub-committee roster may increase the time commitment slightly.

Participants of the sub-committee roster may submit artwork for a City initiated public art project, but may not participate on the projects sub-committee. Participants of a project sub-committee for a City initiated public art project may not submit artwork for the project.

Arts and Culture Commission members participating in a sub-committee for a public art project, an extension of the ACC or through other local art agencies in which the ACC is involved with, may not submit artwork for the project. If the Commission member wishes to submit artwork for the project, the member must reclude himself or herself from participating on the sub-committee.