



Civic Arts Program

## Memo to the Policy Committee

January 29, 2019

The City of Berkeley has a number of existing policies for the implementation of Public Art that are compiled in the Public Art Process Guide. These policies have been adopted in parts over time by City Council including: the 1985 Ordinance on Visual Art in Public Places; the 1991 Ordinance establishing the Civic Arts Commission; and the 1999 Resolution establishing percent for art funding. The Public Art Process Guidelines may be found on the Civic Art Program [website](#). Because these policies were created and adopted over time decades ago, staff proposes to work with the Public Art Committee and Civic Arts Commission to update them to reflect current best practices and to ensure that the Public Art process serves the City of Berkeley well.

Due to the pending artwork gift proposals, the proposed commemorative projects, and the Civic Arts Commission's desire to better manage the artwork under its purview, staff has prioritized the development of the following three policies:

- Artwork Gifts Policy
- Monuments, Memorial Artwork and Commemorative Plaques Policy
- Deaccession Policy

The intention is to have these three policies approved so that the pending proposals may be reviewed. Once that is complete, staff will develop a new comprehensive Public Art Guidelines document which will include an update to the mission and definitions. Staff may propose to make updates to the Berkeley Municipal Code as well.

The timeline for approval of the three new Public Art Policies is as follows:

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| • First Draft Discussed at Public Art Committee | January 17, 2019 |
| • First Draft Discussed at Policy Committee     | February 1, 2019 |
| • Review by City Attorney Complete              | March 18, 2019   |
| • Final Draft Approved by Public Art Committee  | March 21, 2019   |
| • Final Draft Approved by Civic Arts Commission | March 27, 2019   |
| • Final Draft Approved by City Council          | April 23, 2019   |

For more information, please contact Jennifer Lovvorn, Chief Cultural Affairs Officer.

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## **ARTWORK DEACCESSION POLICY**

### **1. INTRODUCTION**

The term “deaccession” applies to the disposition of public artworks that are no longer appropriate for display, and to the specific process by which a decision is made to remove an artwork from the City of Berkeley’s civic art collection. The City of Berkeley, through its Civic Arts Commission, reserves the right to deaccession works of art in its civic art collection in the best interest of the public and as a means of improving the overall quality of the City’s civic art collection. Removing artwork from the City’s civic art collection by deaccession should be cautiously applied only after careful and impartial evaluation of the artwork to avoid the influence or fluctuations of taste and the premature removal of a work from the collection. Except in the case of a safety emergency, no artwork in the collection will be deaccessioned until the policies set forth below have been observed.

### **2. DEFINITIONS**

For the purposes of this Policy, the following definitions apply:

- **Artwork:** Per the Berkeley Municipal Code, Section 6.14.101, Artwork is an original work by an artist and includes, but is not limited to, functional art integrated into public improvements, a sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, weaving, stained art glass, multi-media, computer-generated art, electronic and media art, video, and earth art, installation art, performance and time based works of visual art, and social practice art.
- **Deaccession:** The procedure for the removal of an artwork owned by the City and the determination of its future disposition.
- **Deaccession Notification:** A written letter to the artist or donor referencing the applicable conditions of the artwork and describing reasons why the deaccession review is being undertaken.

### **3. CONDITIONS FOR DEACCESSION**

A work of art may be considered for deaccessioning if one or more of the following conditions apply:

- The work presents a threat to public safety.
- Condition or security of the work cannot be guaranteed, or the City cannot properly care for or store the work.

- The work requires excessive or unreasonable maintenance, or has faults in design or workmanship.
- The condition of the work requires restoration in gross excess of its market value, or is in such a deteriorated state that restoration is infeasible, impractical, or would be so extensive as to fundamentally transform the work from the artist's original intent.
- Significant changes in the use, character or actual design of the site require reevaluation of the artwork's relationship to the site.
- No suitable alternate site for the work is available.
- The work interferes with the operations of the City.
- Significant adverse public reaction over an extended period of time (5 years or more).
- The work is judged to have little or no aesthetic and/or historical or cultural value, or is judged to have negative historical or cultural value.
- The Civic Arts Commission wishes to replace a work with a more appropriate work by the same artist.
- The work can be sold to finance or traded for a work that refines and improves the quality and appropriateness of the City's collection and better serves the Civic Arts Commission's mission.
- Written request from the artist has been received to remove the work from public display.
- The work is duplicative in a large holding of work of that type or of that artist.
- The work is fraudulent or not authentic.
- The work is rarely or never displayed.

#### **4. PROCEDURES**

The following steps shall be followed for works being considered for deaccessioning:

4.1 Absence of Restrictions: Before disposing of any objects from the collections, reasonable efforts shall be made to ascertain that the City is legally free to do so.

4.2 Deaccession Notification: City staff shall comply with any applicable state or federal notice requirements and shall make every reasonable effort to contact the artist whose artwork is being considered for deaccession, and any other known parties with a vested interest in the artwork. Staff shall make reasonable effort to notify the artist of the Public Art Committee and Civic Arts Commission meetings where the issue will be discussed.

4.3 Civic Arts Program Staff Report: The Civic Arts Program staff shall prepare a report which includes a staff evaluation and recommendation along with the following information:

- Artist's name and biographical information, samples of past work and resume.
- Written description and images of artwork.
- Information about and images of the artwork's site.
- City Attorney's Opinion: The City Attorney shall be consulted regarding any restrictions that may apply to a specific work.
- Rationale: An analysis of the reasons for deaccessioning and its impact on the Collection and the artist, and an evaluation of the artwork.
- Community Opinion: If pertinent, public feedback on the dispensation of the object in question.
- Independent Appraisal or other documentation of the value of the artwork: Prior to deaccessioning of any object having a value of \$10,000 or more, Civic Arts Program staff should obtain an independent professional appraisal, or an estimate of the value of the work based on recent documentation of gallery, comparable public commissions and/or auction sales.
- Related Professional Opinions: In cases of where deaccessioning or removal is recommended due to deterioration, threat to public safety, ongoing controversy, or lack of artistic quality, it is recommended that the Commission seek the opinions of independent professionals qualified to comment on the concern prompting review (conservators, engineers, architects, critics, safety experts etc.).
- History: Provide written correspondence, press and other evidence of public debate; Original Acquisition method and purchase price; Options for Disposition; and Replacement Costs.

4.4 Considerations for Disposition of a Work of Art: Civic Art Program Staff shall research and present to the Civic Arts Commission all feasible alternatives for the disposition of the proposed deaccessioned object. Recommendations shall adhere to the following principles:

- The manner of disposition is in the best interest of the Civic Arts Commission and the public it serves.
- Preference should be given to retaining works that are a part of the historical, cultural, or artistic heritage of Berkeley and the Bay Area.
- Consideration should be given to placing the art objects, through gift, exchange, or sale, in another tax-exempt public institution where they may serve the purpose for which they were acquired initially by the Civic Arts Commission.

- Objects may not be given or sold privately to City employees, officers, members of the governing authority, or to their representatives.

## **5. DEACCESSION CRITERIA**

The following criteria will be used by the Civic Arts Commission to evaluate whether to deaccession an artwork:

- **Inherent Artistic Quality:** The assessed aesthetic merit of the piece as a work of art, independent of other considerations.
- **Cultural or Historical Impact:** Whether the artwork has negative cultural or historical impact.
- **Context of Artwork within the Civic Art Collection:** Proposed artwork should be evaluated within the context of the larger collection, and whether it is judged to strengthen the collection.
- **Context of Artwork with Site:** Accessibility, public safety, and social, cultural, historical, ecological, physical, and functional context of the artwork in relation to the site, both existing and planned.
- **Availability of City Support:** The availability of necessary funding for conservation, maintenance, repair, storage or required staff support.
- **Legal Considerations:** Issues related to liability, insurance, copyright, moral rights, warranties, ownership, theft, vandalism, loss, indemnification, and public safety. The City Attorney shall review the recommendation of the Civic Art Program staff to determine whether there are any known legal restriction that would prevent deaccession the object. The City Attorney's approval must be obtained prior to deaccessioning an object.
- **Timing:** Safety of hazard emergencies, relevant construction schedules, and the allowance of sufficient time for a normal review process.
- **Acquisition process:** method by which the artwork was acquired and accessioned in the City's collection (i.e. by donation, loan, commission).
- **Community feedback:** Community feedback about the artwork, its site, and its condition solicited via a publicly-noticed meeting or place on the agenda of the Public Art Committee.
- **Restrictions:** Any recognized restrictions associated with the artwork.

## **6. PUBLIC HEARINGS**

The proposed deaccession will be heard at two public meetings, which are open to the public.

6.1 Public Art Committee: The recommendation to deaccession a work of art will be considered by the Public Art Committee as part of the Committee's regular or special meeting. The Committee shall make its recommendation to the full Civic Arts Commission.

6.2 Civic Arts Commission: The Commission must approve the Public Art Committee's recommendation that a work of art owned by the City should be deaccessioned.

## **7. DISPOSITION OF ARTWORK**

7.1 Right of First Refusal: In all cases, the Artist or Artist's legally recognized representative or heir shall be given, when possible and within a reasonable time frame, the opportunity to purchase the artwork for the fair market value (as determined by a qualified appraiser), or if the artwork is determined to be of negligible value, the artist shall be given the opportunity to claim the artwork at the artist's own cost.

7.2 When the artist does not purchase or claim the deaccessioned artwork, the Civic Arts Commission at its discretion, may use any of the following methods to remove the Artwork:

- Sale: Proceeds from the sale shall be deposited into the City's public art fund.
  - Sale through a dealer.
  - Sale through a public auction.
- Trade or exchange of a deaccessioned artwork for another by the same artist.
- Donation of deaccessioned artwork to a nonprofit institution or organization.
- Destruction: for the following instances:
  - The entire artwork or the majority of the artwork has been damaged or has deteriorated and repair or remedy is impractical or infeasible, and artist is not willing to claim the remaining artwork at artist's own cost.
  - Public safety consideration support destroying the artwork.
  - Every reasonable effort to locate the artist, the artist's heirs or next of kin, or donor has failed.
  - The Civic Arts Commission determined that no other methods of disposition are feasible.

7.3 Civic Arts Program staff duties for all deaccessioned artworks:

- Update Civic Art Collection database: The artwork will stay in the database, but be noted as deaccessioned and include the years during which it was displayed.

- Coordinated the removal of identification plaques from artwork site and coordinate the artwork's physical removal from the City's collection.
- Report on the sale or exchange at the next regularly scheduled Public Art Committee and Civic Arts Commission meetings.
- Transmit a report informing City Council of the removal of the artwork from the City's collection.
- Maintain a deaccession file that includes documentation on the artwork and all associated deaccession documents.
- If the art work is in good enough condition to yield quality photographic documentation, that documentation will be kept in the deaccession file and offered to the artist.

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## **ARTWORK GIFTS POLICY**

### **1. INTRODUCTION**

The Artwork Gifts Policy provides the process for reviewing proposed gifts of artwork, or dedicated funds for the specific purpose of purchasing or commissioning artwork for the City of Berkeley; guidelines for prospective donors regarding their responsibilities; and procedures for the placement, care, and disposition of artwork acquired through this process. This policy aims to ensure that all donated artworks that are accepted into the City's Civic Art Collection and installed in Berkeley's public realm demonstrate outstanding aesthetic values, meet technical criteria that ensure safety and sustainability, convey clear relationships to the City of Berkeley or to the region, and are appropriate to the surroundings in which the work will be located. While the City appreciates all offers of donations of artwork, it is not able to accept every proposed gift due to the economic and administrative obligations inherent in responsible art collection management and ownership.

The City's acceptance of gifts of Artwork or Commemorative Elements is a three step process that requires review and approval by the Public Art Committee, the Civic Arts Commission and for gifts valued at more than \$1,000, approval by City Council. The process to obtain these approvals is detailed within this Artwork Gifts Policy.

### **2. DEFINITIONS**

For the purposes of this policy, the following definitions apply:

- Artist: as defined in the Berkeley municipal Code, Section 23C.23.040 "means an individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales."
- Artwork: Per the Berkeley Municipal Code, Section 6.14.101, Artwork is an original work by an artist and includes, but is not limited to, functional art integrated into public improvements, a sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, weaving, stained art glass, multi-media, computer-generated art, electronic and media art, video, and earth art, installation art, performance and time based works of visual art, and social practice art.

- **Civic Art Collection:** The Civic Art Collection is comprised of artworks that have been accessioned by the Civic Arts Commission on behalf of the City, or are otherwise under the jurisdiction of the Commission.
- **Civic Art Collection Maintenance Endowment:** An endowment fund to ensure the continued care of the City's artworks.
- **Commemorative Element:** A term which includes Monuments, Memorial Artworks and Commemorative Plaques.
- **Civic Arts Commission:** Per the Berkeley Municipal Code Chapter 3.12, the commission consists of nine members appointed to by council members and charged with a variety of duties related to fostering programs for the cultural enrichment of the City, including approval of artwork gifts to the City. The Civic Arts Commission appoints the four person Public Art Committee from its members which reports back to the full Commission.
- **Civic Arts Program:** The Civic Arts Program administers and develops projects which accomplish the mission of the Civic Arts Commission, which advises the City Council on all matters affecting the beauty and culture of the City of Berkeley.
- **Public Art Committee:** The Public Art Committee (PAC) is comprised of four members of the Civic Arts Commission selected by the Civic Arts Commission for their expertise. The Public Art Committee is responsible for reviewing and recommending to the Civic Arts Commission the acceptance or rejection of all proposed gifts of artwork to the City.

### **3. CRITERIA**

The criteria for the City's final acceptance of gifts of Artwork or Commemorative Elements are as follows:

- **Project Costs:** Acceptance of a gift is contingent upon receipt of payment from the donor for all costs associated with the gift.
- **Quality:** The overall aesthetic quality and craftsmanship of a proposed gift will be an important consideration for acceptance.
- **Compatibility with Site Context:** Proposed gifts must be compatible in scale, material, form, and content with their surroundings. Attention shall be given to the social context of the work and the manner in which it may interact or contribute to the use of the site.

- **Media:** All forms of visual art executed in permanent materials may be considered. Works may be either portable or installed in the built environment.
- **Durability:** Due consideration shall be given to the structural and surface soundness, and to inherent resistance to theft, vandalism, weathering, and excessive maintenance or repair costs.
- **Compatibility with Collection:** Proposed gifts shall be evaluated within the context of the existing Civic Art Collection.
- **Public Safety:** Each work shall be examined for unsafe conditions or factors that could impact potential for liability arising from danger or injury to members of the public.
- **Duplication:** It shall be the policy of this Commission to accept unique, one-of-a-kind works of art with the noted exception of prints, photographs or a desirable high quality limited edition work of art by a renowned artist.

#### **4. GIFT PROPOSAL REVIEW PROCESS**

Proposed gifts of Artwork or Commemorative Elements will be considered for acceptance into the Civic Art Collection through the following process.

4.1 **Proposal:** The prospective donor must submit a written proposal to the Civic Arts Program which includes:

- Information about the Artist including biographical information, history of exhibitions and/or gallery representation, other public art projects or commissions, and any other pertinent facts which highlight why this Artist should be included in the City's Civic Art Collection.
- Description of the Artwork or Commemorative Element (size, materials, etc.) and photograph or drawing of the proposed gift.
- Proposed site, if any.
- Condition assessment and information regarding maintenance requirements.

**Note:** Proposals for gifts of large scale artworks or public monuments require careful consideration and may require additional documentation, multiple meetings, and significant public comment before a final decision can be made.

4.2 **Preliminary City Department Approval:** For Artworks or Commemorative Elements proposed for installation on sites under the jurisdiction of other City departments, a letter of preliminary approval

from the head of the department must accompany the proposal. Donors must comply with any guidelines the department has in regard to the acceptance of Artwork of Commemorative Elements and final approval for the installation of artwork may be subject to additional approvals by City Departments or Commissions.

4.3 Evidence of Community Support: For Artwork or Commemorative Elements proposed for installation in the public realm, the donor must provide evidence of input from stakeholders which must be submitted with the proposal. The amount and quality of the evidence of support will depend on the project nature, scope and size and may include letters of support from key stakeholders or petitions with names, addresses and signatures from neighboring residents, businesses and organizations. Other forms of documented community support will also be considered.

4.4 Consultation with Civic Art Program: Civic Art Program staff meets with the prospective donor to review the proposed gift prior to the proposal being submitted to the Civic Arts Commission's Public Art Committee for action. After review of the proposed gift, staff will prepare a written report to the Public Art Committee with a recommendation to either accept or decline the gift.

4.5 Public Art Committee Approval: The gift proposal will be reviewed by the Public Art Committee. The Committee may recommend to accept or decline the proposed gift based upon the criteria. Committee recommendations are forwarded to the full Civic Arts Commission for approval.

4.6 Civic Arts Commission Approval: Upon recommendation of the Public Art Committee, the gift proposal will be reviewed by the Civic Arts Commission for approval.

4.7 City Department Approval: Once approved by the Civic Arts Commission, Civic Arts Staff will prepare a report for consideration by the department who has jurisdiction over the proposed site. Said department will review the proposed installation site for approval and will facilitate any additional site approvals necessary from any other entities having jurisdiction over the site such as other City Commissions or regulatory bodies.

4.8 City Council Approval: For proposed gifts valued at more than \$1,000, Civic Arts Program staff will seek approval by City Council as required per Berkeley Municipal Code Section 2.06.150.

4.9 Notwithstanding the foregoing, the City may, in its sole discretion, reject a gift proposal and/or determine the appropriate site for any and all Artwork and Commemorative Elements accepted into its collection.

## **5. RELATED POLICIES FOR COMMEMORATIVE ELEMENTS**

Proposed gifts of Commemorative Elements are subject to the Monuments, Memorial Artwork and Commemorative Plaques Policy.

## **6. DONOR'S FINANCIAL RESPONSIBILITIES**

All costs associated with the gift must be borne by the donor. Costs may include, but are not limited to:

- The costs associated with design, engineering, building permits, fabrication, and insurance.
- The cost of design and fabrication of a pedestal, base, or structural support, and identification plaque.
- The cost of artwork installation by the City, including (but not limited to) any alterations to the landscape or installation site that are needed to allow the artwork to appear aesthetically appropriate in its chosen location and any architectural or engineering services required for safe installation.
- The donor must provide a contribution to the Civic Art Collection Maintenance Endowment Fund equal to 10% of the value of the Artwork as determined by a qualified appraiser approved by the City or an amount as mutually agreed by the City and donor.
- For gifts of large scale Artwork or Commemorative Elements, the City may also require an administrative fee to cover costs associated with staff coordination and oversight of the project.
- The City may consider on a case by case basis accepting an agreement from a donor to maintain an Artwork or Commemorative Element in perpetuity and in accordance with City standards rather than a cash contribution to the Civic Art Collection Fund; however, this will require the City to incur additional effort and cost. In any maintenance agreement, the City will require an up-front deposit to cover at least one year's maintenance of the Artwork to protect the City against future default.

**7. ACCEPTANCE OF MONETARY GIFTS FOR THE ACQUISITION OF ARTWORK**

The commissioning of Artwork and Commemorative Elements paid for by donated private funds will be implemented according to the Public Art Guidelines. The following funding requirements apply to proposed monetary gifts to the City for the purpose of acquiring artwork:

- Proposed monetary gifts shall be referred to the Public Art Committee and the Arts Commission for review and approval.
- Proposed monetary gifts of \$1,000 or more shall be referred to the City Council for final approval and acceptance.

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# **MONUMENTS, MEMORIAL ARTWORKS AND COMMEMORATIVE PLAQUES POLICY**

## **1. INTRODUCTION**

The purpose of this policy is to establish criteria and guidelines for the consideration of monuments, memorial artwork and commemorative plaques to be permanently installed on City property.

Permanent placement of a monument, memorial artwork or commemorative plaque conveys the City's recognition of the cultural or historic significance of the person or event being commemorated. It is therefore important that the placement of commemorative elements be limited to circumstances of the highest community-wide importance, both to maintain the significance of such commemorative elements and to minimize conflicts with the active and variable use of public spaces.

## **2. DEFINITIONS**

For the purposes of this policy, the following definitions apply:

- **Commemorative Element:** A term which includes Monuments, Memorial Artworks and Commemorative Plaques.
- **Commemorative Plaque:** A commemorative plaque is a plate of metal, ceramic, stone, or other durable material as approved by the City, typically attached to a wall, or other vertical surface, or mounted on a stanchion and bearing text or an image in relief, or both, to commemorate a person, event, or a site's history.
- **Memorial Artwork:** Sculpture, two-dimensional artwork or other object created by a professional practicing Artist to commemorate a person or event. Memorial artworks may be in various forms including sculpture, bas relief, earthworks, mosaic murals, or other forms of artwork as approved by the City.
- **Monuments:** Structures, architecturally designed spaces, or other three dimensional objects explicitly created to commemorate a person or event. Monuments may be in various forms including structures, built spaces, fountains or gardens among other forms of monuments as determined by the City.

## **3. CRITERIA**

3.1 **Content Criteria.** Commemorative Elements will be evaluated according to the following content criteria:

- The person, group of people, event or idea being commemorated must have made a substantial

impact upon the City of Berkeley; or must have a significant connection to Berkeley and have made an important historic or cultural contribution beyond or outside the City of Berkeley.

- Whether the person, group of people, event or idea being memorialized is deemed by the City to have made a significant enough contribution to merit the scale, cost and visibility of the proposed Commemorative Element.
- The proposed Commemorative Element does not duplicate existing Commemorative Elements.
- Evidence of community support gathered by the proposing group or persons through a community outreach process and evidence that the proposed Commemorative Elements is not objectionable to persons or community that it is intended to honor.

3.2 Presentation Criteria: Commemorative Elements will be evaluated according to the following criteria:

- The Commemorative Element represents broad community values and has timeless qualities that will be meaningful to future generations.
- Commemorative Elements shall reflect the highest aesthetic standards and craftsmanship.
- The Commemorative Element has been designed by or under the direct supervision of a qualified professional in the art or design field. Qualified professionals include registered architects, engineers, landscape architects and artists who can demonstrate professional recognition in the form of public commissions or permanent public installations.

3.3 Site: The location under consideration is an appropriate setting for the Commemorative Element and shall be evaluated according to the following criteria:

- Geographic justification for the Commemorative Element to be located in a specific site.
- The scale and character of the Commemorative Element are at a level commensurate with the proposed setting.
- Public accessibility and visibility.
- Prominence of installation location within architectural hierarchy of building or site.
- Compatibility with use of the site for programs and special events and proximity to existing artwork.
- Ability to ensure the safety and protection of the Commemorative Element.
- Compatibility with historical context of site.

#### **4. ADDITIONAL AND RELATED CONDITIONS & POLICIES**

In addition to satisfying the criteria set forth in section 3 above, any Monument, Memorial Artwork or

Plaque proposed for installation on City property must additionally comply with the City's Artwork Gift Policy; the requirement that any gift of funds, goods or services valued at more than \$1,000 must be approved by City Council; any Public Art Guidelines; and any other pertinent administrative guidelines or procedures. Under no circumstances is the City under any obligation to accept proposed donations of Commemorative Elements even if all required criteria are met. The City reserves the right to relocate, remove or destroy any Commemorative Elements acquired pursuant to this Policy and any applicable requirements set forth in the Deaccession Policy or required by State or Federal law.

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