

**Metropolitan Government of Nashville and Davidson County**

# **Public Art Guidelines**

Administered by the  
**Metropolitan Nashville Arts Commission**

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# Public Art Guidelines

Metropolitan Nashville and Davidson County

## I. Introduction

Public Art Guidelines and a funding vehicle for public art projects are provided for in an ordinance signed into law by Mayor Bill Purcell on June 2, 2000. The Guidelines outline the policies the Metropolitan Nashville Arts Commission will follow to administer a public art program on behalf of the Metropolitan Government of Nashville and Davidson County. These Guidelines apply to public art acquired after the document's adoption.

A bill creating the public art ordinance was announced on March 24, 2000, by the Mayor and adopted on May 16, 2000, as BL2000-250 by the Metropolitan Council of Nashville and Davidson County. The ordinance dedicates one percent (1%) of the net proceeds of any general obligation bond issued for construction projects to fund public art. Construction project means the building or erection of any public building, structure, park, or parking facility and will also include the reconstruction, replacement, extension, repair, betterment or improvement of any public building, structure, park or parking facility where the cost of the improvement exceeds fifty percent (50%) of the value of the existing entity. In addition to a percent for art process, the ordinance expands the public art program to include the ability to receive donations of cash and/or tangible art to fund or place public art in Nashville.

## II. Purpose and Goals

- A. **Purpose.** The purpose of the public art program is to strengthen the positive reputation of the community, enhance the civic environment, and enrich the lives of citizens and visitors through the involvement of professional artists to integrate public artwork throughout Metropolitan Nashville and Davidson County.
- B. **Goals.** Metropolitan Nashville's public art program is committed to the highest artistic standards in form and content and the broadest involvement of artists. Specifically, the public art program seeks to:
  - 1. Enhance the visibility and stature of Nashville in local, regional, national and international arenas;
  - 2. Use public art as a means to further the community's sense of spirit and pride;
  - 3. Contribute to cultural tourism through public art;
  - 4. Promote distinctive and diverse artwork that will create a sense of place and contribute to the visual character and texture of the community;

## II. Purpose and Goals (continued)

5. Integrate public art concepts, artwork, and artists into community and neighborhood planning processes;
6. Encourage early collaboration on projects among artists, architects, landscape architects, engineers and other design professionals;
7. Enrich the individual's experience of public spaces;
8. Advance citizen understanding of public artwork and its civic role;
9. Engage citizens in the public art process in meaningful and responsive ways;
10. Stimulate public dialogue about issues raised by public art;
11. Foster collective memory and give meaning to place by recalling local and regional history;
12. Give visual expression to local values and cultural diversity;
13. Ensure that public artwork is accessible to all individuals including those with special needs.

### C. **Future goals.**

1. Develop a plan of potential locations for public art throughout Metropolitan Nashville;
2. Create an inventory of local public artworks;
3. Establish policies for collection management, maintenance, and conservation.

## III. Definitions

- A. *Accessioning*. The procedure used to accept and record an artwork as part of the collection.
- B. *Acquisition*. The accession of an artwork into Metro's public art collection, whether by commission, purchase, gift or other means.
- C. *Artist team*. Two or more artists working collaboratively on a public art project.
- D. *Artwork*. Original visual art produced by professional artists, using a variety of media; can be free standing, integrated into architecture, functional, non-functional, temporary or permanent.
- E. *Construction project*. The building or erection of any public building, structure, park, or parking facility and will also include the reconstruction, replacement, extension, repair, betterment or improvement of any public building, structure, park or parking facility where the cost of the improvement exceeds 50 percent of the value of the existing entity. (See Appendix A for complete definition.)
- F. *Consultant*. An individual or firm hired for advice or to undertake a specific task.

- G. *Deaccessioning*. The procedure followed to remove an artwork from the public art collection.
- H. *Department having oversight responsibility*. Department which has authority over the site of a completed public art project.
- I. *Design team*. The collaborative team that includes but is not limited to an artist and at least one other design professional, such as architect, landscape architect, or engineer.
- J. *Maquette*. A scale model of a proposed public artwork.
- K. *Metro*. Metropolitan Government of Nashville and Davidson County.
- L. *Metro construction project liaison*. Metro representative who manages a construction project to which public art funds are allocated.
- M. *MNAC*. The Metro Nashville Arts Commission, a department of Metropolitan Government of Nashville and Davidson County established by ordinance in 1978 and led by a fifteen-member body appointed by the mayor and approval by Metro Council with authority to carry out its functions and duties.
- N. *MNAC staff*. Metro Nashville Arts Commission employees.
- O. *PAC*. Public Art Committee, a standing committee of the MNAC responsible for making recommendations to the MNAC about the implementation of the public art program.
- P. *Percent for Public Art project*. A public art project to which bond funds are allocated for public art, in accordance with the Public Art Guidelines.
- Q. *Public art*. Artwork that is accessible to the public and created through a public process that considers the social and physical context of the site and addresses the goals of the public art program.
- R. *Public art collection*. Artwork on public land or in public facilities owned by Metropolitan Government of Nashville and Davidson County.
- S. *Public art funds*. Separate funds established by Metro Government to receive and account for monies that are appropriated to or received for the public art program. Metro Government shall maintain separate funds as required to account for bond proceeds, donations, and monies from state and federal sources.
- T. *Public Art Guidelines*. Guidelines for the governance of the public art program as required by Section 5.10.030 of the public art ordinance. (See Appendix A.)
- U. *Public art ordinance*. The ordinance enacted by Metro Council BL2000-250 providing a vehicle for funding of public art and creation of Public Art Guidelines (see Appendix A).

III. Definitions (*continued*)

- V. *Public art program.* A program of the MNAC established by the public art ordinance and governed by the Public Art Guidelines.
- W. *Public art project.* The creation of public artwork in accordance with the Public Art Guidelines.
- X. *Selection panel.* Individuals appointed by the PAC to recommend artists, propose artwork and budget expenditures for a public art project.
- Y. *Site sponsor.* Metro department which oversees the site where a proposed public art project will be located.

IV. **Public Art Committee**

- A. **Definition.** The Metropolitan Nashville Arts Commission (MNAC) establishes the Public Art Committee (PAC) as a standing committee to oversee the public art program. With MNAC approval, the PAC directs the selection, placement, maintenance, relocation, and deaccessioning of artwork acquired through the public art program, and recommends revisions to the Public Art Guidelines.
- B. **Appointment.** The MNAC Chair with the advice of the Executive Committee appoints Public Art Committee members and names the chair as stated in the MNAC bylaws. Members are appointed to a three-year term (initially staggered one, two and three years) and can be reappointed for one consecutive three-year term with each member serving no more than six consecutive years. Terms for the MNAC members serving on the PAC will correspond to their MNAC terms. In addition to the seven voting members, the MNAC Chair, the MNAC Executive Director and designated MNAC staff members will serve as ex-officio, non-voting members of the PAC.
- C. **Composition.** The PAC will have a total of seven members: two MNAC Commissioners, one who serves as committee chair, and five community members. At least one committee member will be a visual artist. Other members include individuals with specific professional expertise in public art or the visual arts such as contemporary arts curator, museum director, or professor of art or art history and design professionals such as architects, landscape architects, or urban planners.
- D. **Responsibilities.** The PAC will:
  - 1. Review project briefings organized by MNAC staff that describe the construction project, the social and physical context of the site, the project timeline and funding;
  - 2. Initiate public forums where appropriate for determining thematic approaches and location options for public art;

3. Determine recruitment strategy to establish a pool of artists for each project (see Appendix C for standard methods);
4. Approve selection panel members recommended by MNAC staff;
5. Review MNAC staff reports documenting selection panel decisions and make recommendations to MNAC for approval;
6. Review projects at conceptual, schematic and design development stages if needed and report regularly to MNAC on the status of public art projects and activities;
7. Review periodically and recommend to MNAC changes to Public Art Guidelines, and other public art policies and procedures;
8. Review the inventory of public art, including assessing the status of maintenance, and prepare recommendations as to location, relocation, and deaccessioning of public art;
9. Compile a list of potential sites for public art projects.

## V. Selection Panels

- A. **Appointment.** The Public Art Committee (PAC) will recommend for MNAC approval a selection panel proposed by MNAC staff for each project. With PAC direction, each selection panel recommends artists or artwork for specific public art projects based on the public art program goals and selection criteria.
- B. **Prospective panelists.** MNAC staff will compile and maintain a file of prospective panelists from professional knowledge and recommendations from the MNAC, the PAC, selection panel members, arts professionals and the community at large.
- C. **Composition.** Each selection panel will consist of five to nine members with the number and make-up determined by the size and complexity of the project and will include members who bring diverse perspectives. At least one panel member will be a visual artist. Other members may include project architect or lead design professionals, arts professionals, one member representing the site sponsor and the department having oversight responsibility, and a representative from the community in which the proposed project will be located. The Metro construction project liaison serves ex-officio, non-voting. In some circumstances, the PAC may elect to appoint a regionally or nationally recognized public artist or public art professional to serve on the panel. In addition to the panelists, the PAC chair or designated PAC

V. Selection Panels  
(continued)

member will serve as an ex-officio, non-voting panel member. MNAC staff members will serve as panel facilitators.

- D. **Responsibilities.** The selection panel will:
1. Review project summary by MNAC staff;
  2. Review artist submissions for the project, according to the Public Art Guidelines for artist selection;
  3. Choose semi-finalists which MNAC staff presents for PAC approval, outlining how the artists and/or the artists' proposals meet the criteria for the project;
  4. Name finalist(s) and review MNAC staff-prepared report to the PAC documenting the selection;
  5. If needed, review progress of project depending on size, scope, and budget;
  6. Make decisions in conformance with federal and state law.

**VI. MNAC Staff**

- A. **Responsibilities.** MNAC staff will:
1. Manage the public art program and facilitate communication among the MNAC, PAC and selection panels;
  2. Identify public art project opportunities;
  3. Participate in briefings for capital construction projects;
  4. Initiate and coordinate each public art project so that its process is compatible with any related project timelines;
  5. Present project briefings to PAC;
  6. Administer the artists' recruitment and selection process;
  7. Compile a pool of potential selection panelists and recommend a selection panel for each project;
  8. Provide public art program overview and project summary to selection panel;
  9. Facilitate selection panel meetings;
  10. Present semifinalists identified by the selection panel to PAC for approval;
  11. If artwork requires extraordinary operation or maintenance expenses, secure written approval from the Director of Finance and the department having oversight responsibility prior to implementation of project;
  12. Provide report supporting finalist selection that PAC presents to MNAC for approval;
  13. Act as liaison with Metro Department of Law in negotiating artist contract;
  14. Develop guidelines for the content and format of identification plaques and oversee their fabrication;
  15. Officially accept artwork from artist or donor for the department having oversight responsibility and ensure artwork is included under Metro's insurance coverage;

16. Coordinate publicity with department having oversight responsibility for artwork;
17. Administer the public art fund;
18. Direct the public relations and general education of the public art program.

## **VII. Conflict of Interest**

- A. **MNAC staff.** Employees of the Metropolitan Nashville Arts Commission (MNAC) are ineligible for public art commissions or projects as long as they are employed by MNAC. Family and household members also are ineligible for public art commissions or projects over which the MNAC has approval authority or administrative responsibility.
- B. **MNAC and PAC members.**
  1. Members of the MNAC or its Public Art Committee are ineligible for public art commissions or projects during their tenure and for one year following their term of service. Family and household members also are ineligible for public art commissions or projects over which the MNAC has approval authority or administrative responsibility. These restrictions will extend indefinitely for any specific commission or projects that were reviewed or otherwise acted upon during membership on the MNAC or PAC.
  2. Members of MNAC or PAC must declare any potential conflict of interest, including personal or business relationships, and withdraw from participating or voting on any competition, commission, or project with which they are involved that come before the MNAC, PAC, or selection panels.
- C. **Other participants.** Members of the project management, project architect, or consulting firms and employees of Metropolitan Government of Nashville and Davidson County are ineligible to receive public art funds for design services or public art commissions.
- D. **Selection panelists.** Selection panels will exclude family or household members or those who have personal or business relationships with an artist or artwork under consideration for a public art project by that panel. Business relationships include but are not limited to gallery owners, brokers, artist representatives, agents, fabricators, suppliers, and employers.
- E. **Artists.**
  1. Artists who were previously involved in the development of a public art project or public artwork plan may be eligible for consideration for that particular project

VII. Conflicts of Interest  
(continued)

or plan provided there is disclosure of the prior involvement and approval of the PAC.

2. An artist is ineligible to serve as a selection panelist while under consideration for a public art commission or project.
3. An artist is precluded from having his/her work considered for a public art commission or project once selected for or while serving on a selection panel.

**VIII. Selection Criteria for Artists and Artwork**

A. **General criteria.** Projects undertaken by artists or acquisitions of artwork whether by commission, purchase, gift, or other means should further the purpose and goals of the MNAC public art program. The Public Art Committee (PAC) will determine the appropriate recruitment strategy to establish a pool of artists for each project based on standard methods described in Appendix C. The selection panel will apply the following criteria when selecting artists, considering acquisitions or siting artwork:

1. *Artistic Merit* – The inherent quality and excellence of a proposed artwork together with the strength of the artist's concept and design capabilities, are the program's highest priorities.
2. *Context* – Artwork must be compatible in scale, material, form, and content with their surroundings. When serving a functional purpose, artworks may establish focal points; modify, enhance, or define specific spaces; establish identity or address specific issues of civic design. Consideration should also be given to the architectural, historical, geographical and social/cultural context of the site or community, as well as the way people may interact with the artwork.
3. *Relevant experience* – Experience and professional record of the artist(s) should provide convincing evidence of ability to successfully complete the project as proposed. Particularly on collaborative or design team projects artists should demonstrate ability to:
  - a. Communicate effectively and elicit the ideas of team members;
  - b. Exhibit flexibility and problem-solving skills;
  - c. Work with architectural drawings and construction documents;
  - d. Engage community representatives in a project.
4. *Permanence/maintenance* – Due consideration will be given to the structural and surface soundness, operational costs and inherent resistance to theft, vandalism, weathering and excessive maintenance.

5. *Technical feasibility* – An artist must exhibit a successful track record of construction and installation of artwork or show that an appropriate professional has examined the proposed artwork and confirmed feasibility of construction and installation.
  6. *Budget* – An artist's proposal should provide a budget adequate to cover all costs for the design, fabrication, insurance, transportation, storage, and installation of the proposed artwork, plus reasonable unforeseen circumstances. Artists should have a history of completing projects within budget.
  7. *Diversity* – Artwork will be sought from artists of diverse ethnic and cultural identities and from local, regional, national, and international artists. The PAC encourages applications from artists working in both established and experimental art forms.
  8. *Fabrication and installation schedules* – The artist proposal should include a project timeline that incorporates design review, fabrication, delivery and installation in accordance with project schedule. The artist should have a history of completing projects on time.
  9. The PAC and selection panel may recommend rejection of all submissions if none are considered satisfactory and a new pool of artists may be established.
- B. **Gift proposals.** A potential donor of artwork will consult with MNAC staff then submit a written proposal or letter of intent to the MNAC for review by the PAC. Whenever possible the donor will present the actual artwork for approval. Following PAC review, a selection panel will evaluate each proposed gift of artwork based on the selection criteria and make a recommendation to the PAC for MNAC approval. All gift proposals will include:
1. A site plan that locates the artwork if a specific location is proposed;
  2. Description of actual materials which may include drawings, photographs or samples;
  3. Installation details, including architectural drawings and/or construction documents;
  4. Recommended maintenance plan;
  5. Proposals for large or monumental works will include a maquette of a 3-D work or drawings of 2-D work;
  6. Funding provisions:
    - a. Any display or placement of artwork gifts or bequests, whether temporary or permanent, must be covered by insurance, endowment, or contractual agreement for maintenance, so that the gifts or be-

VIII. Selection Criteria for Artists and Artworks  
(continued)

- quests will remain in a condition satisfactory to the donor and the MNAC;
- b. The insurance, endowment or contractual agreement must also cover costs of installation, storage and/or removal;
- 7. An estimate of value by a certified art appraiser or from a source acceptable to the MNAC.
- C. **Monetary gifts.** Donors may contribute monetary gifts to the public art funds. If the donor proposes a project or commission, a written proposal or letter of intent will be submitted to the MNAC for review by the PAC, then a selection panel will evaluate the proposal based on the selection criteria and make a recommendation to the PAC for MNAC approval.

IX. Placement of Artwork

- A. **Process.** When public art funds are generated from a construction project, the MNAC staff and PAC will meet to determine whether a public art project will be located at the construction site or if those funds will be pooled for future projects. MNAC staff will propose site option(s) for artworks from pooled funds for review by the PAC, that will present the recommended site for MNAC approval.
- B. **Factors.** In determining a site for artwork commissioned, purchased, donated or loaned, the Public Art Committee will consider the following factors:
  - 1. Visibility and civic prominence;
  - 2. Public accessibility to proposed artwork for all individuals, including facility users, surrounding community members and those with special needs;
  - 3. Public safety and liability issues;
  - 4. Vehicular and pedestrian traffic patterns;
  - 5. Relationship to architectural and natural features, landscape design, environmental impact and concerns, and future plans for the area;
  - 6. Social context and other uses of the artwork or space;
  - 7. Existing artwork within the proposed site vicinity.
- C. **Other considerations.**
  - 1. In selecting a site for a Percent for Public Art project, first consideration will be given to the location of the construction project which generated the funds;
  - 2. A location opportunity plan will provide other site options (refer to II.C, Future Goals, page 2);
  - 3. The PAC and MNAC staff will coordinate the placement of the art with the site sponsor and department having oversight responsibility;

4. Appropriate recognition and publicity of the artwork will be the dual responsibility of the department having oversight responsibility and MNAC staff;
5. Review and approval of temporary artwork or exhibitions will be the responsibility of the department having oversight of the display or exhibition. These projects will not be subject to the Public Art Guidelines. Temporary artwork or exhibitions are those loaned or created for display on Metro-owned property for ninety (90) days or less.
6. Temporary artwork should be documented by the site sponsor, responsible department, or the artist(s) for the MNAC inventory through appropriate media, such as photographs, slides, or digital record.

## **X. Funding**

### **A. Sources of funds.**

1. The public art ordinance dedicates 1 percent of the net proceeds of any general obligation bond issued for construction projects (as defined in the Ordinance) to fund the public art program (See Ordinance BL2000-250 in Appendix A.) Bond funds shall be maintained in a separate fund for each bond issue in order for Metro Government to track properly the expenditure of bond proceeds in accordance with U.S. Treasury rules and regulations pertaining to arbitrage provisions.
2. A portion of funds received by Metro from state and federal sources may be allocated to the public art program. If required, these funds shall be maintained in a separate fund based on the terms and conditions of the funding.
3. Donations from the private sector or grants from the private or public sector shall be encouraged as a means to broaden the existing program potential. These funds shall be maintained in a separate fund for the public art program.

**B. Funding process.** Funds will be dispersed in accordance with Metro Finance Department policies and procedures.

### **C. Application of public art funds.**

1. Bond proceeds generated for Percent for Public Art projects may be spent for the acquisition of artwork, including:
  - a. Artist-related costs consisting of:
    - i. Artist's design fee;
    - ii. Operating and overhead costs;
    - iii. Labor and materials;
    - iv. Proposals, drawings, or maquettes;

X. Funding (*continued*)

- v. Metro required permits related to construction or erection of artwork;
  - vi. Project-related travel;
  - vii. Transportation of artwork to the site;
  - viii. Installation;
  - ix. Site preparation or modification when not included in construction costs;
  - x. Frames, mats, mounting, anchorage, pedestals, cases or other materials necessary for the installation, display and/or security of the artwork (such as fire retardant or graffiti resistant treatment);
  - xi. A portion of the budget for the artwork may be set aside for contingency at the beginning of a project and returned to the public art fund if unused.
- b. Project management costs, at fifteen to twenty percent (15-20%) of project funds, based on size and complexity of project, consisting of:
    - i. Artist recruitment costs;
    - ii. Fees for consultants to a selection panel;
    - iii. Pre-contract artists' costs;
    - iv. Permanent identification plaques and labels;
    - v. Documentation directly related to the acquisition or to establish ownership of the artwork;
    - vi. Educational activities directly pertaining to the project.
  - c. Architectural and engineering design services when they cannot be included in construction costs;
  - d. Insurance;
  - e. Capital maintenance and restoration of artwork acquired through the public art program under the bond laws (See XI. Maintenance and Conservation for policy.);
  - f. Storage and disposal costs for resited or deaccessioned artwork acquired through the public art program;
  - g. Special projects and other purposes directly related to a specific Percent for Public Art project and recommended by the PAC for MNAC approval.
- 2. Non-bond funds may be spent for:
    - a. Public relations and general education, such as locator guides, web-site or documentation catalogs;
    - b. Review and management of the public art collection;
    - c. Dedications and publicity;

- d. Special public art projects recommended by the PAC for MNAC approval.
- 3. Exclusions. No public art funds may be spent for:
  - a. Reproductions of original artwork;
  - b. Decorative or functional elements by the project design professionals such as architects, landscape architects, engineers, or their consultants;
  - c. Art objects that are mass-produced of standard design, such as playground equipment or fountains;
  - d. Directional elements such as signs, maps, color coding, unless designed or executed by an artist and integral to a specific project;
  - e. Utility costs;
  - f. Building or maintaining cultural facilities;
  - g. Ongoing routine maintenance and restoration of artwork.

**XI. Maintenance and Conservation**

**A. Maintenance policies.**

- 1. Prior to acceptance of a new artwork by Metro, the artist will submit in writing a routine maintenance plan for the department having oversight responsibility, and provide appropriate training where necessary;
- 2. Routine maintenance of permanently installed artwork will be the responsibility of the department having oversight and will be done according to artist's maintenance plan;
- 3. Maintenance will be guaranteed by the artist against all defects of material and workmanship for a minimum of one year following installation or according to the artist's contract;
- 4. The artist will have the opportunity to comment on, and participate in, all repairs and restorations that are made during his/her lifetime;
- 5. On an annual basis, Metro Nashville Arts Commission (MNAC) staff will track routine maintenance activities on artwork acquired through the public art program.
- 6. The department with oversight will be responsible for keeping the MNAC staff informed about changes in the condition of the artwork and the site;
- 7. Responsible departments will not clean or repair artwork beyond what is specified in the artist's maintenance plan without the prior written authorization of the MNAC staff or PAC;
- 8. Any proposed public art project requiring operation or maintenance expenses shall include a maintenance plan

XI. Maintenance and Conservation (*continued*)

with estimates of annual operating and maintenance expense and be submitted for prior approval by:

- a. The Director of Finance, as to the availability of funds;
- b. The department head responsible for such operation or maintenance;
- c. The Metropolitan Council, of funds appropriate to cover such operation and maintenance expenses.

B. **Conservation policy.** The PAC will establish policies and procedures to evaluate the public art collection on a regular basis for purposes of conservation and assessment of the collection's future.

**XII. Resiting and Deaccessioning**

A. **Policies.** The Metro Nashville Arts Commission (MNAC) will retain the right to resite or deaccession any artwork in accordance with Visual Artists Rights Act (see Appendix E: VARA copyright law), regardless of the source of funding or method of acquisition. While the intent of acquisition is for long-term public display, circumstances and/or conditions may arise that make it prudent for the MNAC, on behalf of the public interest, to remove an artwork from public display. However, the review process will insure that resiting or deaccessioning will be a seldom-employed action that operates from a strong presumption against removing artwork from the public art collection, insulating the collection from fluctuations in taste.

B. **Reasons for resiting or deaccessioning.** The Public Art Committee will recommend to the MNAC that a specific artwork be resited or deaccessioned only if one or more of the following criteria are met:

1. The site is being eliminated;
2. The site is being altered such that the artwork is no longer compatible with the site;
3. The security of the artwork can no longer be reasonably guaranteed at its current site;
4. The artwork has become a danger to public safety;
5. The cost of maintaining or updating the artwork's operating technology is cost prohibitive;
6. Significant adverse reaction to the artwork from the community has continued for an extended period (at least ten years).

C. **Procedures.** Once the PAC has determined that an artwork meets one or more of the above criteria and with the approval of the MNAC, the following process is initiated:

1. The PAC and MNAC staff make a good faith attempt to discuss resiting with the artist;

2. If the artist does not agree to the proposed resiting, he/she will have the right to prevent the use of his/her name as the author of the artwork or to buy back the work as addressed in the artist contract;
3. If, in the opinion of MNAC, there is not another appropriate site, the artwork may be stored or deaccessioned;
4. If deaccessioned, all rights will revert to the artist, where consistent with contractual agreements. If the artist waives those rights the MNAC will dispose of the artwork;
5. If the structural integrity or condition of an artwork, in the opinion of the PAC and MNAC staff, presents an eminent threat to public safety, the MNAC executive director may authorize its immediate removal, without MNAC action or the artist's consent. The executive director would declare a state of emergency and have the work placed in temporary storage. The artist and the MNAC must be notified of this action within 30 days. The PAC will then recommend options for disposition (e.g., repair, reinstallation, maintenance provisions or deaccessioning) to the MNAC for approval;
6. In the event that the artwork cannot be removed without being irreparably damaged or destroyed, and if artist rights are not waived in the contractual agreement, the MNAC staff must attempt to gain such written permission before proceeding. In the event that this cannot be accomplished before action is required in order to protect the public health and safety, the MNAC executive director will proceed according to the advice of the Metropolitan Government Department of Law.

### **XIII. Review and Amendment**

- A. These guidelines are subject to periodic review and revision by the Public Art Committee and subsequent approval by the MNAC.



## Appendix A

### Ordinance No. BL2000-250, Public Art Ordinance

**An ordinance amending Title 5 of the Metropolitan Code of Laws relative to providing funding for public art projects and providing for public art guidelines.**

Whereas, public art enhances the built environment of a city and enriches the lives of its citizens; and

Whereas, the presence of public art encourages the careers of local professional artists and provides possible opportunities for their employment and career advancement; and

Whereas, a dedicated funding source for an established program of public art enhances the reputation of a city and serves as a vehicle for attracting new businesses; and

Whereas, the Metropolitan Council believes that the citizens of Nashville and Davidson County will benefit from an increased presence of public art in and around publicly owned facilities, structures and public ways.

Now, therefore, be it enacted by The Council of The Metropolitan Government of Nashville And Davidson County:

Section 1. That Title 5 of the Metropolitan Code of Laws be amended to add a new Chapter 5.10 Public Art Financing, as follows:

#### Chapter 5.10. Public Art Financing

##### Section 5.10.010 Definitions.

- (a) "Commission" means the Metropolitan Nashville Arts Commission.
- (b) "Construction Project" means any capital project, approved in the Capital Improvements Budget involving the building or erection of any public building, structure, park, or parking facility, which project is funded in compliance with federal and state law. Construction Project shall also include the reconstruction replacement, extension, repairing, betterment or improvement of any public building, structure, park or parking facility where the cost of the improvement exceeds fifty percent of the value of the building, structure, park or parking facility before the reconstruction, replacement, repair or improvement. "Construction Project" shall not include capital projects required to be undertaken by the Metropolitan Government in conformance with agreements in existence on the effective date of this ordinance.
- (c) "Public Art Guidelines" means the guidelines required by Section 5.10.030 of this ordinance.
- (d) "Public art project" means a project funded as part of a general obligation bond issue that has been approved in accordance with the Public Art Guidelines.

##### Section 5.10.020 Sources of funding.

- (a) One percent (1%) of the net proceeds of any general obligation bond issued to fund Construction Project(s) shall be deposited and set aside to fund public art. Proceeds so deposited may be expended, in conformance with existing agreements and state and federal law, on the building, erection, reconstruction, replacement, extension, repairing, betterment or improvement of public art projects prescribed by the Public Art Guidelines. If one percent (1%) of a particular bond issue is insufficient to fund a public art project, proceeds so deposited may, in conformance with state and federal law, accumulate until they are sufficient to fund a public art project. Proceeds deposited for public art projects may be used for architectural and engineering

**Appendix A – Public Art Ordinance**

design associated with the public art project. No part of the general fund reserve fund of the general services district ("Four Percent funds") may be used for debt service payments on the portion of bonds issued that include public art projects as an eligible expenditure.

- (b) In addition to general obligation bond funds, donations from private persons or entities and state or federal monies may be expended on public art projects in accordance with the Public Art Guidelines. No part of the general fund reserve fund of the general services district ("Four Percent funds") may be used to finance public art projects.

Section 5.10.030 Duties of the Commission.

The Commission shall:

- (a) Adopt Public Art Guidelines, which shall include criteria for accepting donations or gifts, both cash and tangible art, a method or methods for the selection of artists or public art projects and for placement of public art projects.
- (b) Acting through the Department of Finance, Division of Purchasing, purchase public art projects or commission the design, execution and/or placement of public art projects. The Commission shall consult with the department responsible for a particular construction project regarding the design, execution and/or placement of a public art project in connection with such construction project.
- (c) Require that any proposed public art project requiring operation or maintenance expenses receive prior approval of the Director of Finance as to availability of funds, the department head responsible for such operation or maintenance and approval by the Metropolitan Council of funds appropriate to cover such operation and maintenance expenses as required by law.
- (d) Promulgate rules and regulations consistent with this ordinance to facilitate the implementation of its responsibilities hereunder, which rules and regulations shall be approved by a resolution approved by a majority of the Metropolitan Council.

Section 2. That this ordinance shall take effect from and after its passage, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it. (See Appendix G for Rules and Regulations of the Metro Nashville Arts Commission.)

Sponsored by: Eileen Beehan, Phil Ponder, Chris Ferrell, Leo Waters, David Briley, Ludye Wallace, Bettye Balthrop, Melvin Black, Edward Whitmore, J.B. Loring, Tony Derryberry, Ronnie Greer, Feller Brown, Bob Bogen, Carolyn Baldwin Tucker, Brenda Gilmore, Howard Gentry.

**Legislative History**

Introduced:	April 4, 2000
Passed First Reading:	April 4, 2000
Referred to:	Budget & Finance Committee
Passed Second Reading:	April 18, 2000
Passed Third Reading:	May 16, 2000
Approved:	June 2, 2000

## Appendix B

# Metro Ethics Policy

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

BILL PURCELL, MAYOR

EXECUTIVE ORDER NO. 006

(AMENDED EXECUTIVE ORDER NO. 91-08, REVISED)

SUBJECT: Ethics, conflicts of interest, and acceptance of gifts on the part of employees of Metropolitan Government.

WHEREAS, the maintenance of high standards of honesty, integrity, impartiality, and conduct by employees and agents of Metropolitan Government is essential to ensure the proper performance of government business and the maintenance of confidence by citizens in their government; and

WHEREAS, the avoidance of misconduct and conflicts of interest on the part of employees of Metropolitan Government is indispensable to the maintenance of these standards;

NOW THEREFORE, I, Bill Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, by virtue of the power and authority vested in me, do hereby direct and order the following:

1 Employee responsibilities. Each employee of Metropolitan government shall avoid any action, whether or not specifically prohibited by this order or departmental codes of ethics, which might result in, or create the appearance of:

- (i) using public office for private gain;
- (ii) giving preferential treatment to any person;
- (iii) impeding government efficiency or economy;
- (iv) losing complete independence or impartiality;
- (v) making a Metropolitan government decision outside of official channels; or
- (vi) affecting adversely the confidence of the public in the integrity of the government.

2 Persons covered. This Executive Order applies to all employees of Metropolitan Government except: employees of the Board of Education, Nashville Electric Service, Metropolitan Nashville Airport Authority, Metropolitan Development and Housing Agency, and elected officials and their employees.

3 Mayor's office covered. This order applies to the Mayor and employees of the Mayor's office.

4 Gifts, entertainment and favors. No employee shall solicit or accept, directly or indirectly, on behalf of himself, herself, or any member of the employee's household, any gift, gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value from any person who:

- (i) has, or is seeking to obtain, contractual or other business or financial relations with the department or agency of Metropolitan Government by which the individual is employed; or
- (ii) conducts operations or activities that are regulated by the department or agency of Metropolitan Government by which the employee is employed; or

## **Appendix B – Metro Ethics Policy**

(iii) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

5 Exceptions: gifts, entertainment and favors. The prohibitions on accepting gifts, entertainment or favors in (4) do not apply to:

(i) family members or friends of long standing when the circumstances make it clear that it is the relationship, rather than the business of the persons concerned, which is the motivating factor for making the gift, and where the value of the gift, entertainment or favor is appropriate to the circumstances and consistent with the parties historical relationship.

(ii) loans from established financial institutions made in the ordinary course of business on usual and customary terms so long as there are no guarantees or collateral provided by any person described in (4);

(iii) unsolicited advertising material of nominal value;

(iv) food and refreshments of nominal value when they are part of the employee's participation in a community, civic, charitable, or political event which bears a relationship to the employee's office and the employee is attending in an official capacity.

A business lunch or dinner is not an "event" for the purposes of this exception. On those occasions, the employee must buy his or her own meal or refreshment. If the meal is held at a private club where the employee may not pay the establishment directly, the employee must reimburse the member of the establishment for the equivalent cost of the meal or refreshment.

6 Financial Interests.

(i) No employee of Metropolitan Government shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with Metropolitan Government or any of its agencies. In recognition of the fact that many husbands and wives have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with Metropolitan Government shall not be considered a "benefit" to the Metro employee, provided the contract with Metropolitan Government was procured without any participation, assistance or influence by the Metro employee.

(ii) No employee of Metropolitan Government shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her government duties or responsibilities.

"Indirect financial interest" in this case includes a substantial interest on the part of a parent, spouse, or child of the employee.

7 Use of Information. No employee of Metropolitan Government shall, directly or indirectly:

(i) use, disclose, or allow the use of official information which was obtained through or in connection with his or her government employment, and which has not been made available to the general public, for the purpose of furthering the private interest or personal profit of any person, including the employee; or

(ii) engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her government employment.

8 Use of government property. No employee shall use the facilities, equipment, personnel, or supplies of Metropolitan government or its agencies for other than officially approved activities, except to the extent that they are lawfully available to the general public.

9 Questions on interpretation of this order. When an employee is in doubt as to the proper interpretation of this order, he or she is expected to seek the advice of the applicable Department Head or the Internal Auditor if time permits, or to use good judgement in accordance with (1) above and to report the gift, entertainment or favor to the Internal Auditor within 7 days.

10 Departmental ethics standards. Any department or agency of Metropolitan government may establish such additional ethics guidelines and standards as may be lawfully applied and may in the opinion of the head of the department or agency be appropriate for the proper operation of the department. Such additional standards should be filed with the Internal Auditor and any other person required by law as soon as practicable after adoption.

This Executive Order does not supersede or revoke those portions of any existing departmental or agency policies regarding ethical standards which are stricter than, or cover areas additional to, the standards set out herein.

11 Ethics guidelines published by Personnel Director. The personnel director is requested, with the permission of the Civil Service Commission, and Hospital and Health Boards and their Civil Service Commissions, to inform each covered employee of the requirements of this order, to distribute the order to covered employees and have them sign a statement that they have received and read it, and to modify personnel manuals to incorporate these standards as soon as practicable.

12 Supervisors Responsible. Each employee of Metropolitan Government who acts in a supervisory capacity is responsible for ensuring compliance with the Executive Order by those persons in his or her line of authority.

13 Required contractual provision. Department heads and others who approve contracts for their departments shall include in every employment contract the provision that employees provided to Metropolitan Government under such contract are covered by this Executive Order.

14 Effective date. This amended order shall become effective 20 November 1999.

Ordered, Effective and Issued:

Bill Purcell

Metropolitan County Mayor

Date: November 19, 1999

## **Appendix C**

# **Methods of Recruiting and Selecting Artists**

### **Open Competition**

(Request for Qualifications or Request for Proposals). An open competition is a "Call to Artists" for a specific project in which artists are asked to submit evidence of their past work. Any artist may submit credentials and/or proposals, subject to any limitations established by the Public Art Committee. Calls for entries for open competitions will be sufficiently detailed to permit artists to determine whether their work is appropriate to the project under consideration.

### **Limited Competition**

A limited number of artists shall be invited by the PAC to submit credentials and/or proposals for a specific project. Artists shall be invited based on their past work and exhibited abilities to meet situations posed by particular project requirements or based on other non-aesthetic, public art program goals.

### **Invitational Competition**

In an invitational competition, a very small number of artists (usually between three and six) are invited to submit credentials and/or proposals for a specific project. Invited artists shall be selected directly by staff or identified by the PAC through an initial slide review process. Artists shall be included in the slide review process based on their ability to meet situations presented by the given project.

### **Direct Selection**

At times, the PAC may elect to make a direct selection in which they contact a specific artist for a particular project. Such an election may occur for any reason, but will generally occur when circumstances surrounding the project warrant either an open or invitational competition unfeasible (for example: project timeline, community or social considerations, client demand, etc.). Over time an ongoing list of eligible artists will be developed and approved by the PAC for use in direct selection projects.

### **Mixed Process**

A mixed process includes any combination of the above approaches.

## **Appendix D**

### **Funding Process**

#### **Receipt of Bond Funds**

Each bond issue will be assigned a separate fund number for tracking purposes by Metro Finance, Department of Accounts. When those funds are received for construction projects referenced by the public art ordinance BL2000-250, one percent will be dedicated and budgeted to a business unit managed by the Metro Nashville Arts Commission (MNAC) for use in accordance with the Public Art Guidelines.

Once funds are budgeted, the MNAC will appropriate when possible the funds before the ending date of the bond issue, typically twenty (20) years, according to the arbitrage spend-down test.

Interest earnings from bond proceeds dedicated to the public art program, net of arbitrage rebate requirements, shall be made available annually, after completion of the annual arbitrage rebate calculation.

Donations received for the public art program shall be assigned to a special business unit, unless donated with restriction. Restricted donations will be assigned their own business unit for tracking purposes.

#### **Disbursement of Bond Funds**

As bond issues are assigned to the MNAC, public art funds will be expended in order of issuance, oldest first. Unused funds at completion of project will be allocated to future projects.

Disbursement of funds for capital maintenance will be at the discretion of the Public Art Committee, according to the Public Art Guidelines maintenance policy.

Expenditures not directly related to a specific public art project must be disbursed from a non-bond fund.

## Appendix E

# Visual Artists Rights Act of 1990

### I. From Monty Python to Leona Helmsley: A Guide to the Visual Artists Rights Act

by Cynthia Esworthy, NEA Office of General Counsel, JD Washington & Lee Law School 1997

Source: [www.arts.endow.gov/artforms/Manage/VARA.html](http://www.arts.endow.gov/artforms/Manage/VARA.html)

*You are a sculptor. On commission, you create a bronze frieze for a city park. A year later, you discover that the center of the frieze has been covered by a copy of the city seal. Can you force the city to remove the seal?*

*You have just purchased an office building. In the central lobby there is a large, permanently fixed sculpture that you find aesthetically displeasing. Can you remove it?*

*You are a well-known painter. You discover that a company that has purchased one of your canvasses is advertising one-inch square portions of it so that buyers can "own an original painting" by you. Can you stop them?*

*You are an airport. You commission a giant mobile, specifically designed for the interior of your central terminal. You would like to relocate the mobile to the front exterior entrance of the terminal, which will require weatherproofing, removal of the motor and rendering the mobile stationary, and repainting it to match the color scheme. Can the artist prevent the move or modifications?*

*You are a photographer. You discover that a limited edition triptych you created and sold has been separated into three pieces for resale. Can you require that the piece be sold as a whole?*

*You are a county arts agency. You commission a mural for the side of a county building. You later discover that a state law requires you to build a handicapped access ramp blocking the lower part of the mural. Can you paint over the lower part of the mural?*

*You are a printmaker. A collector has just sold one of your prints for 100 times the original cost. Are you entitled to a royalty on the sale?*

What rights does an artist have once the work is sold? Until 1990, with rare exceptions – such as Monty Python, which won a lawsuit preventing broadcast of edited programs – artists in the United States had virtually no power to protect their work from mutilation, misattribution, or destruction. For example, in 1966, Maryland commissioned William Smith to create nine murals highlighting the state's history, subsequently installed but altered the central panel, and then refused to remove his name from the piece. He had no recourse. In 1980, the Bank of Tokyo commissioned and then removed Isamu Noguchi's 1,600 pound sculpture, *Shinto*, from its Manhattan lobby, sliced it into pieces, and warehoused it, without notifying the artist. He had no recourse. In 1979, the General Services Administration commissioned and then, after office workers complained about it, removed Richard Serra's *Tilted Arc*, a site-specific sculpture bisecting Manhattan's Foley Square. He had no recourse.

With the 1990 passage of the Visual Artists Rights Act (VARA), protecting the moral rights of attribution and integrity, the successors of Smith, Noguchi, or Serra have a far greater ability to protect against similar threats to their work. But, as three artists who spent several years creating a massive sculptural installation learned after Helmsley-Spear purchased the building, these rights are not absolute: the Supreme Court recently ruled that VARA does not prevent the removal and destruction of their work. VARA applies only to a restricted category of visual artworks, extends only limited rights, and is subject to loopholes, exclusions, and waiver provisions that substantially erode its powers.

### **What are moral rights?**

Property ownership does not necessarily convey absolute rights over the thing bought. Real estate ownership, for example, is restricted by zoning legislation. Preservation legislation recognizes society's interest in preserving its architectural treasures, despite private ownership. Similarly, moral rights legislation recognizes that art ownership is not an absolute property right.

The term **moral right** itself comes from the French *le droit moral*, an 18th century French concept referring to rights of a non-economic but spiritual or personal nature, existing independently of an artist's copyright. Such rights are based on what the court in *Carter v. Helmsley-Spear, Inc.* explained as "a belief that an artist in the process of creation injects his spirit into the work and that the artist's personality as well as the integrity of the work, should therefore be protected and preserved." Moral rights include (1) disclosure or divulgation, which allows the artist to determine when a work is complete and may be displayed; (2) paternity or attribution, which allows an artist to protect the identification of his name with his own work, and to disclaim it when applied to another's; (3) the right of withdrawal, which permits the artist to modify or withdraw a work following publication; and (4) integrity, which allows the artist to prevent his work from being displayed in an altered, distorted, or mutilated form.

### **Works covered by VARA**

VARA covers only limited, fine art categories of "works of visual art": paintings, sculptures, drawings, prints, still photographs produced for exhibition. Within this group, only single copies or signed and numbered limited editions of 200 or less are actually protected. VARA does not apply to any of the following: works made for hire, posters, maps, globes or charts, technical drawings, diagrams, models, applied art, motion pictures, books and other publications, electronic publications, merchandising items or advertising, promotional, descriptive, covering, packaging material or container, nor does it cover any work not subject to general copyright protection.

### **Rights conferred by VARA**

Of the moral rights panoply conferred by other nations, VARA recognizes only attribution and integrity as legal causes of action. Attribution includes the rights to claim authorship of a work, to prevent attachment of an artist's name to a work which he did not create, and, where there has been a subsequent distortion, mutilation, or modification of the work prejudicial to the artist's honor or reputation, the right to disclaim authorship and to prevent identification of the artist's name with the work. Congress did not define the term prejudicial to one's honor or reputation, but the House Report on VARA advised focusing on "the artistic or professional honor or reputation of the individual as embodied in the work that is protected. While no per se rule exists, modification of a work of recognized stature will generally establish harm to honor or reputation." The court in *Carter v. Helmsley-Spear*, one of the few cases filed under VARA, relied on expert testimony, focusing on "good name, public esteem, or reputation in the artistic community."

The right of integrity gives the artist the right to prevent any intentional distortion, mutilation or other modification of his work prejudicial to his honor or reputation. Where the work is of recognized stature, the right of integrity further includes the right to prevent any intentional or grossly negligent destruction of the work. Again, Congress left the definition of recognized stature open, so the courts will have the responsibility of fashioning an explanation on a case-by-case basis.

### **Exceptions to VARA coverage**

Congress was careful to delineate several exceptions. For example, natural modifications resulting from aging or the inherent nature or quality of the materials used do not constitute statutory modification, distortion or mutilation. Similarly, modification resulting from conservation or public presentation involving lighting and placement is not a

## *Appendix E – Visual Artists Rights Act of 1990*

prohibited modification unless caused by gross negligence. So, for example, while some natural fading is unavoidable for textiles, excessive fading of especially fragile materials caused by overexposure to direct sunlight could trigger the statute. Similarly, the natural melting of an ice sculpture falls into the inherent nature exception and would not trigger the statute, but loss could be prohibited separately by contract.

The rights to claim or disclaim authorship of a work and to prevent the use of one's name on a distorted, mutilated, or modified work prejudicial to one's honor or reputation do not apply to a reproduction, depiction, portrayal, or other use of a work of visual art outside the statute's limited protected class. Nor do they constitute a mutilation.

Congress also made VARA rights subject to 113(d) of the copyright law, which addresses problems arising where the work is part of a building. For example, the right of integrity does not apply if the artist either consented to the installation of the artwork before VARA's trigger date [December 1, 1990], or both the artist and the building owner executed a written agreement on or after the trigger date, specifying that installation of the artwork may subject the work to damage by reason of removal.

If the building owner wants to remove an artwork which can be safely removed, the artist's rights apply unless (1) the building owner has made a diligent, good faith but unsuccessful attempt at notification of the artist of his removal intent, or (2) the building owner did provide notice, but the artist either failed to remove the work or to pay for its removal within 90 days after receiving notice. A "diligent, good-faith attempt" involves sending notice by registered mail to the artist at his most recent address as recorded by the Register of Copyrights. This record is part of a system, established by Congress, which permits an artist whose work is incorporated in a building to record his identity and address, with available update procedures, and similarly permits building owners to record evidence of their efforts to comply.

Another exception involves Congress' specification that the VARA rights are wholly independent of the copyright owner's exclusive rights (1) to reproduce the copyrighted work in copies; (2) to prepare derivative works based on the copyrighted work; (3) to distribute copies to the public by sale or other forms of ownership transfer, e.g., barter, or by rental, lease, or lending; and (4) to display the work publicly. While the artist retains VARA rights, these rights transfer to whoever owns the copyright in the artwork.

Congress further provided that VARA rights were subject to 107 fair use limitations on exclusive rights. If the artwork is copyrighted, there are permissible fair use purposes for which the work may be reproduced, and which constitute a defense to infringement, including "criticism, comment, news reporting, teaching, scholarship, or research." In given circumstances, artistic parody may also be a defense subject to the four-factor fair use analysis. The statute sets forth four factors which must be considered in determining whether a use is permissible: the purpose and character of the use, the nature of the copyrighted work itself, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use on the potential market for or value of the copyrighted work.

### **Exercise of rights, including transfer and waiver**

VARA restricts the exercise of the rights of attribution and integrity to the author or joint authors of the artwork, regardless of whether he/they hold title either to the copyright or the artwork itself. Thus while both copyright and physical ownership are property rights which may be transferred, moral rights may not be transferred.

Moral rights may, however, be waived. The waiver instrument must be very specific: the creator must consent in a written and signed instrument specifically identifying the artwork, the uses of that work, and with a clause limiting the waiver to both aspects. Where the artwork is created by more than one author, any one creator's waiver binds the group.

## **Duration**

For works created on or after December 1, 1990, (VARA's trigger date) VARA's moral rights are granted for the life of the author, or in the case of a joint work, until the death of the last surviving author. Works created before that date, but still owned by the author on that date, are coextensive with and expire at the same time as the copyright.

## **Remedies**

The legal remedies available for a violation of moral rights are the same as the civil (but not criminal) remedies available for copyright infringement: injunction, impounding, damages, profits or statutory damages, costs and reasonable attorney's fees. Statutory damages range from a \$500 minimum to a \$20,000 maximum, increasing to \$100,000 for willful infringements and decreasing to \$200 for innocent infringements.

Under VARA (unlike copyright infringement), an artist has a cause of action in a federal court even if his artwork is not registered with the Copyright Office. Because the burden of proof on the artist diminishes and the amount of monetary damages could increase if an artwork is registered before an infringement, an artist should register his copyright as soon as possible.

It's important for artists to be aware that, while VARA establishes specific federal causes of action, additional protections are often available under state statutes. In addition, they can negotiate even more expansive rights enforceable by contract. For example, an artist could negotiate a resale royalty and specify an intent to retain rights of reproduction, even though additional contractual obligations are normally limited to the first sale.

Buyers and art owners should equally understand that VARA does not intrude on the standard protections available to them through contracts to purchase or commission, but in fact allows moral rights waivers. Those entering a commission arrangement can further specify that the work is for hire, which would put the work outside VARA protection, but they must meet the other criteria for that category.

## **Further Information**

The text of the Visual Artists Rights Act can be found in 17 U.S.C. §§ 101 et seq. ([www.law.cornell.edu/usc/17/overview.html](http://www.law.cornell.edu/usc/17/overview.html)). Key sections are 101 (definitions), 106 (basic moral rights), and 113 (artworks incorporated into buildings). You can also contact the Copyright Office ([www.loc.gov/copyright/](http://www.loc.gov/copyright/)) for further information. If you are an artist facing VARA issues, you may want to contact an organization such as Volunteer Lawyers for the Arts or the Washington Area Lawyers for the Arts that provides legal assistance to artists. You may also want to consult organizations in your field, such as the International Sculpture Center for sculptors.

## **2. Title 17, Section 106 (VARA- Basic Provision)**

Source: [www.loc.gov/copyright/title17/92chap1.html#106a](http://www.loc.gov/copyright/title17/92chap1.html#106a)

§ 106A. Rights of certain authors to attribution and integrity

(a) Rights of Attribution and Integrity.- Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art-

(1) shall have the right-

(A) to claim authorship of that work, and

**Appendix E – Visual Artists Rights Act of 1990**

- (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
  - (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
  - (3) subject to the limitations set forth in section 113(d), shall have the right-
    - (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
    - (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right
- (b) Scope and Exercise of Rights.-Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work
- (c) Exceptions.
- (1) The modification of a work of visual art which is the result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).
  - (2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.
  - (3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).
- (d) Duration of Rights.
- (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.
  - (2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.
  - (3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

- (4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.
- (e) Transfer and Waiver.
  - (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.
  - (2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

### **3. Title 17, Section 113 (VARA- exception for artworks fixed to buildings)**

Source: [www.loc.gov/copyright/title17/92chap1.html#113](http://www.loc.gov/copyright/title17/92chap1.html#113)

#### § 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

- (a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.
- (b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.
- (c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.
- (d) (1) In a case in which-
  - (A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and
  - (B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that

**Appendix E – Visual Artists Rights Act of 1990**

installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal, then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless-

(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

## Appendix F

### Excerpts from the

# Local Government Public Obligations Act

## Title 9, Chapter 9, Tennessee Code Annotated

9-21-105. Definitions.

As used in this chapter, unless the context otherwise requires:

(4) "Construction" means building, reconstruction, erection, replacement, extension, repairing, betterment, equipment, development, embellishment, improvement, acquisition by gift, lease, purchase or the exercise of the right of eminent domain, or any one (1) or more or all of the foregoing, including the acquisition of land and of rights in land, and including acquisition of all of the outstanding capital stock of any corporation whose assets consist entirely of one (1) or more public works projects which together constitute a waterworks, sewer system, natural gas system, electric system, or any combination thereof, including, but not limited to, a water, sewer, natural gas and/or electric distribution system, or any combination thereof, serving a local government and assets related to the operation thereof and whose liabilities consist entirely of those related to the ownership and operation thereof; provided, that upon any such acquisition of stock by a local government, the corporation thus acquired shall be promptly liquidated by the local government, which shall thereupon acquire its assets and assume its liabilities;

(21) (A) "Public works project" includes any one (1) or any combination of the following: abattoirs, acquisitions of land for the purpose of providing or preserving open land, airports, alleys, ambulances, auditoriums, bridges, city and town halls, local government stables or garages, community houses, corrective, detention and penal facilities, including, but not limited to, jails, workhouses and reformatories, courthouses, culverts, curbs, dispensaries, drainage systems, including storm water sewers and drains, electric plants and systems, expositions, facilities for the handicapped, including physically and mentally handicapped, facilities for the indigent, fairgrounds and fairground facilities, fire department equipment and buildings, fire alarm systems, flood control, garbage collection and disposal systems, gas and natural gas systems and storage facilities, heat plants and systems, harbor and riverfront improvements, health centers and clinics, including medical and mental health centers and clinics, highways, major roads, highway and street equipment, hospitals, hotels and supporting or incidental facilities built by local governments which are built adjacent to and as a supporting facility of civic or convention centers located in municipalities which have created a central business improvement district under the provisions of the Central Business Improvement District Act of 1971, compiled in title 7, chapter 84, improvements made pursuant to a plan of improvement for a central business improvement district created pursuant to the Central Business Improvement District Act of 1971, compiled in title 7, chapter 84, incinerators, law enforcement and emergency services equipment, levees, libraries, markets, memorials, museums, nursing homes, parks, parking facilities, parkways, playgrounds, plazas, port facilities, docks and dock facilities, including any terminal storage and transportation facilities incident thereto, public art, public buildings, preserves, railroads, including railway beltlines and switches, reclamation of land, recreation centers and facilities, reservoirs, rights-of-way, river and navigation improvements, roads, sanitariums, schools, transportation equipment for schools, sewers, sewage and waste water systems, including, but not limited to, collection, drainage, treatment and disposal systems, ship canals, sidewalks, stadiums, streets, swimming pools, thermal transfer generating plants and/or distribution systems, tunnels, viaducts, voting machines, water treatment distribution and storage systems, wharves and zoos;

(B) "Public works project" also includes:

- (i) "Business park," which includes lands and rights, easements and franchises relating thereto, and may include roads and streets, water, sewer, electric and other utilities, landscaping and related elements as required for the orderly development and use of corporate or professional office space by one (1) or more commercial, financial or service business, and such appurtenant land for necessary incidental use. "Busi-

*Appendix F – Local Government Public Obligations Act*

- ness park" does not include a retail operation except for an incidental retail use. A "business park" shall contain not less than five (5) acres of land. The building finance committee in the industrial development division of the department of economic and community development is authorized and empowered to determine whether a local government shall have the right to engage in any or all of the rights and privileges accompanying such a public works project. Before a local government may undertake the financing of such a public works project, it shall apply to the committee for a certificate of public purpose and necessity. The committee shall issue such a certificate once it is affirmatively determined that:
- (a) There are adequate property values and suitable financial conditions so that the total bonded indebtedness of the local government, solely for this authorized purpose and those other purposes authorized by title 7, chapter 55 and title 13, chapter 16, shall not exceed ten percent (10%) of the total assessed valuation of all the property in the local government ascertained by the last completed assessment at the time of the issuance of such bonds; and
  - (b) The project is well conceived, has a reasonable prospect of success, will provide economic development and employment, will tend to encourage businesses to locate there and will not become a burden upon the taxpayers of the local government;
- (ii) "Industrial park," which includes lands, rights, easements and franchises relating thereto, and may include adequate roads and streets, water and sewer facilities, utilities and docks and terminals. Any of the foregoing improvements which are to be located within the geographic boundaries of the industrial park may only be financed after compliance with title 13, chapter 16, part 2;
  - (iii) "Urban renewal project" which means the same as such projects which are defined in §§ 13-20-209 - 13-20-215. Any local government is hereby authorized to contribute money, property, and municipal services to any public agency engaged in the development of urban renewal projects in that local government;
  - (iv) "Urban transit facility" which includes any or all real and personal property needed to provide public passenger transportation by means of street railway, electric railway, incline railroad, trolley coach, bus, motor coach, or any combination thereof, including terminal, maintenance and storage facility, whether owned and operated by a local government or owned by a local government and leased to private operators, all of which are hereby found and determined to be in the public interest and a proper public purpose;
  - (v) Facilities for the storage and maintenance of any of the items of equipment which constitute public works projects; and
  - (vi) All property real and personal, appurtenant thereto or connected with any public works project, work or undertaking and the existing public works project, work or undertaking, if any, to which such public works project, work or undertaking is an extension, addition, betterment, or improvement;
- (C) This enumeration does not exclude any other project for the benefit of the people at large of any local government where any state or federal agency will match the funds of the local government with grants-in-aid or gratuities to subsidize or assist the development of a public works project;

9-21-107. Powers of local governments

All local governments have the power and are authorized, either singly or jointly with any one (1) or more other local governments, local government instrumentalities, the state, or a state or federal agency or jointly with one (1) or more of the above, to:

Engage in the construction of any public works project which may be constructed within or without the local government, or partially within and partially without the local government. However, no local government shall engage in the construction of a public works project wholly or partly within the legal boundaries of another local government except with the consent of the governing body of the other local government; provided, that any county or metropolitan government may construct a public works project within a municipality within the county or metropolitan government without the permission of the governing body of the municipality;

9-21-109. Determination of costs of public works projects

In determining the costs of any public works project for which bonds or notes are to be issued, the following items may also be included as a part of the cost of the public works project to be financed by the issuance of bonds or notes:

- (1) Engineering, architectural, art design services, inspection, legal and accounting expenses, and relocation expenses in connection with construction of a public works project;
- (2) The cost of issuance of the bonds or notes, including engraving, printing, advertising, credit enhancement, legal, fiscal and other similar expenses;
- (3) Any interest costs during the period of construction of a public works project and for six (6) months thereafter on any money borrowed or estimated to be borrowed;
- (4) Any moneys already spent by the local government from any of its funds for any of the foregoing expenses enumerated in subdivisions (1), (2) and (3), and upon the actual construction of a public works project in order to permit the construction of public works projects by the use of the funds of the local government if desired, and the later replacement of those funds by the sale of bonds or notes authorized by this chapter; and
- (5) The establishing of a reasonably required reserved fund for the payment of the principal of and interest on the bonds or notes.

[Acts 1986, ch. 770, § 1-9; 1988, ch. 743, § 1; 1998, ch. 751, § 2.]

## Appendix G

# Rules and Regulations of the Metro Nashville Arts Commission

### Summary and Goals

The Metropolitan Nashville Arts Commission ("MNAC") exists to provide leadership that stimulates and advances the arts to enrich the human experience for all Nashville/Davidson County residents. The MNAC's purpose is set forth in Metropolitan Code Section 2.112.030. The MNAC's goals are to promote organizational stability and growth, to foster excellence, to generate awareness, to increase accessibility, to respond to diverse community needs and to facilitate cooperation and partnerships that create a vibrant, vigorous, healthy community where all the arts flourish and grow.

The MNAC has oversight responsibilities for carrying out the department's mission and setting its policies.

Rule 1: The MNAC shall award funds to nonprofit civic and charitable organizations that assist the Arts Commission in carrying out its purposes, as stated in Metropolitan Code Section 2.112.030, and its goals, as stated herein, and provide artistic benefit to the general welfare of the Metropolitan community. These grants shall be made in accordance with Metropolitan Code Section 2.112.040(H).

*(Authority: Tennessee Code Annotated, Section 6-54-111; Metropolitan Code, Section 2.112.040(H).)*

Regulation 1.1: Grants made under the authority of Metropolitan Code Section 2.112.040(H) shall be made in accordance with the following criteria: excellence; need in the community; inclusive planning; community outreach and impact; educational merit; innovation; administration, development and financial management. These criteria shall be set forth in MNAC's Grant Guidelines.

Regulation 1.2: The MNAC shall regularly review its Grant Guidelines.

Rule 2: The MNAC shall provide funding for public art projects to enhance the built environment of the city and to enrich the lives of its citizens.

*(Authority: Tennessee Code Annotated, Section 9-21-105; Metropolitan Code, Section 5.10.020.)*

Regulation 2.1: The MNAC shall adopt Public Art Guidelines consistent with the Metropolitan Code, Section 5.10.030.

Regulation 2.2: The MNAC shall regularly review its Public Art Guidelines.

Rule 3: Organizations that apply for MNAC grants authorized by Metropolitan Code Section 2.112.040(H) must:

- a. Be a not-for-profit organization chartered in the State of Tennessee with 501(c)(3) IRS tax-exempt status;
- b. Serve Nashville/Davidson County citizens and be headquartered in and have a substantial portion of its programming within Nashville/Davidson County;
- c. Produce, present and/or directly support programs, projects and/or works in the arts that enrich the artistic experience of Nashville citizens in a significant way;
- d. Have, or be in the process of creating, a diverse board of directors;
- e. Show a demonstrated and continuing ability to build a base of financial support through earned income plus public and private support as needed.

*Rules and Regulations of the Metro Nashville Arts Commission – Appendix G*

Rule 4: Projects undertaken by artists or acquisitions of artwork whether by commission, purchase, gift, or other means shall further the purpose and goals of the Metro Arts Commission public art program. The MNAC Public Art Guidelines describe the approved process to be followed to select and administer the public art program on behalf of Metropolitan Nashville and Davidson County Government.

*(Authority: Metropolitan Code, Section 5.10.030.)*

Rule 5: The Metro Nashville Arts Commission establishes guidelines for all grant programs in the Contributions for the Arts program and the Public Art program. These guidelines establish procedures on application, funding criteria, review process, and appeals process. The Arts Commission shall evaluate these programs and revise the guidelines from time to time as set forth in the guidelines and the MNAC by-laws. Copies of the guidelines are available to the public by contacting the Arts Commission.

Rule 6: The Arts Commission staff, including the Executive Director, has powers limited to executing and carrying out MNAC policies, procedures, rules and regulations.

*Approved by the Metro Nashville Arts Commission, Thursday, April 19, 2001.*



For accommodation requests, please contact  
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