

City of Burlington
Art in Public Places Guidelines and Policies
Adopted _____

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I. PURPOSE.

The purpose of The Art in Public Places Guidelines and Policies is to establish guidelines for commissioning new Public Art works and managing the City’s Public Art collection and related use of the percent for public art fund pursuant to Burlington City Ordinances, Chapter 21, Article X (Percent for Public Art).

II. GOALS AND INTENT.

The Art in Public Places Program of Burlington City Arts (or “BCA”) incorporates works of Public Art into public spaces owned or managed by the City of Burlington and manages the City’s collection of Public Art works. On behalf of the City, Burlington City Arts endeavors to support the creation of high quality works of art within its public spaces that encourage community dialogue, enhance the aesthetic experience of Burlington’s public spaces, make art accessible to the broadest audience possible, and conform to best practices in the field of Public Art.

A. The Goals of the Art in Public Places Program are to:

1. Use Public Art as a means to build community and further the community's sense of pride
2. Build a sense of belonging among Burlington’s residents from a broad range of identities and cultures
3. Contribute to cultural tourism through Public Art
4. Enrich the individual's experience of public spaces
5. Advance citizen understanding of Public Art and its civic role
6. Engage citizens in the Public Art process in meaningful and responsive ways
7. Stimulate public dialogue about issues raised by Public Art
8. Foster collective memory and give meaning to place by recalling local and regional history
9. Ensure that Public Art is accessible to all individuals

B. These goals are met by activities such as:

1. Commissioning artists and works of art that contribute to the City’s sense of place and represent an expression of our time
2. Supporting artists with appropriately funded opportunities to create new work in public places
3. Commissioning and promoting Artwork that is reflective of a range of cultural, racial, ethnic, and other identities in Burlington
4. Incorporating Artwork into the built environment that encourages interaction and establishes vibrant and unique public spaces
5. Commissioning Artwork in neighborhoods and public spaces that are accessible throughout the City
6. Encouraging early collaboration on projects among artists, architects, landscape architects, engineers and other design professionals
7. Helping city departments budget to include appropriate Artwork in capital projects and manage the commissioning of Artworks using best practices in the field
8. Encouraging a broad range of community participation in the commissioning and creation of Public Art works citywide
9. Cultivating collaboration among artists, design consultants, planners and

engineers

10. Integrating Public Art concepts, Artwork, and artists into community and neighborhood planning processes.

III. DEFINITIONS.

"ANNUAL PLAN FOR PUBLIC ART" – A plan proposed by the Public Art Administrator and approved by the Public Art Committee that includes and prioritizes a series of projects that may be completed with available department resources, including the Percent for Public Art Fund. The plan will outline the timeline, expense budgets, and sources of funding related to each Public Art project that will occur in a fiscal year, any conservation or maintenance projects that will be completed, and any other administrative activities that will be undertaken by the department including but not limited to photography, documentation, research, writing and website development. The plan is approved annually by the Public Art Committee and adopted in the City budgeting processes.

"ART IN PUBLIC PLACES PROGRAM" – The program of the City of Burlington managed by Burlington City Arts that is charged with commissioning or acquiring Public Art for any projects funded wholly or in part by the City of Burlington through the Percent for Public Art Fund whether placed on city property or elsewhere, and with managing the collection of the city's Public Art.

"ARTIST" – A practitioner in the arts generally recognized by critics and peers as a professional possessing serious intent and ability who is not a member of the Project Consultant's team or employed thereby.

"ARTIST TEAM" – A collaboration of two or more Artists working together on a project.

"DESIGN TEAM" – The consultant architects, landscape architects, engineer, project manager and any other professionals involved in the visioning and design of the capital project.

"DESIGN TEAM APPROACH" – A type of Public Art process in which an Artist or Artist Team is selected at the initiation of the capital project design process and is engaged to function as a member of the Design Team.

"ELIGIBLE PROJECT" – A capital project as defined in the Percent for Public Art Ordinance.

"MANAGING DEPARTMENT" – The City Department responsible for the implementation of design and/or construction of a City construction project.

"PARK ARTS AND CULTURE COMMITTEE" – A committee of the City Council that reviews guidelines and processes for Public Art.

"PERCENT FOR PUBLIC ART FUND" – A fund established by the Percent for Public Art Ordinance that sets aside 1% of capital project funds into a reserve fund dedicated to the creation, management and maintenance of Public Art.

"PROJECT CONSULTANT/ ARCHITECT" – Any firm, individual, joint venture or team of firms or individuals with which the City of Burlington contracts for design consulting services related to City construction projects.

"PROJECT MANAGER" – The City staff person charged with the responsibility for the implementation of the design and/or construction of the City of Burlington project which meet the definition provided herein for an Eligible Project.

"PUBLIC ART COMMITTEE" – A committee created by the BCA Board of Advisors that includes the Public Art Administrator and certain members of the BCA Board of Advisors. The BCA Board of Advisors may appoint other individuals to the Public Art Committee, such as Project Managers, members of the Park Arts and Culture Committee and other City staff, provided that a majority of the Public Art Committee members shall be residents or taxpayers of the City of Burlington. The Public Art Committee reviews Public Art Projects and makes recommendations related to the Art in Public Places Program to the BCA Board of Advisors for approval.

"PUBLIC ART REVIEW PANEL (PARP)" – An independent jury of Arts Professionals established by the Public Art Committee for the purpose of selecting an Artist or Artwork in accordance with these Guidelines.

"PUBLIC ART ADMINISTRATOR" – The BCA staff person(s) or consultant hired by the BCA Executive Director responsible for Public Art project coordination.

"PUBLIC ART PROJECT" – A project, including any Eligible Project, that includes the planning, administration, accessioning, fabrication and installation of an Artwork that meets the goals of the Art in Public Places program and that is intended to remain accessible to the public on a permanent or longstanding basis.

"PUBLIC ART or ARTWORK" – Original art produced by professional artists, conceived in any medium, material, or combination thereof, which may be portable as well as permanent. Such Public Art or Artwork may include, but shall not be limited to: paintings, drawings, and murals in any media; stained glass, statues, bas relief or other sculptures; environmental Artworks; monuments, fountains, arches or other structures intended for ornament or commemoration; integrated and functional architectural elements designed by the Artist; video and multi media-based works. Also included are mobile, kinetic, electronic and neon sculptures. Other works of art such as inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints are included. Also included are crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials, as well as artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself. These guidelines are not intended to address music, festivals and other types of performing art that may be commissioned by the City or occur in public spaces.

"USER DEPARTMENT" – The City Department which will occupy or otherwise administer the use of the project upon its completion. Where more than one department or entity is involved, each user department will be consulted.

"ARTS PROFESSIONAL" – An Artist, arts educator, art critic, arts administrator, art dealer, designer, art historian, curator, fine art collector who is respected in his/her field, knowledgeable with respect to contemporary art and willing to participate effectively in a committee process without conflict of interest.

IV. GENERAL GUIDELINES FOR ACQUISITION

A. Annual Plan for Public Art. All Public Art accessioned into the City’s Public Art collection should be included in an Annual Plan for Public Art as defined in Section III of these Guidelines. The Public Art Administrator will develop the budget and priorities for the Annual Plan for Public Art in advance in collaboration with city departments with capital projects in planning stages. Budgets will itemize available funding sources, including from the Percent for Public Art Fund.

B. Interdepartmental Collaboration. All Project Managers of Eligible Projects or projects included in the Annual Plan for Public Art shall notify the Public Art Administrator of the initial meeting with the Project Consultants/Architects selected for the project. The Project Managers and appropriate Project Consultants/Architects shall work closely with the Public Art Administrator in the development of the Public Art Project Call to Artists. In addition, the Public Art Administrator shall be notified of all progress meetings to facilitate optimum coordination of the Public Art component.

C. Timeline. The Public Art Administrator shall follow the timeline for accessioning established in the Annual Plan for each Public Art Project.

D. Acquisition. Public Art may be acquired by commissioning through open call, limited entry competition, direct selection of the artist/direct purchasing, or as a gift to the city, as defined in Section V.

E. Projects Developed by Other Organizations or Individuals. Public Art may also be developed by organizations, individuals, for-profit and not-for-profit organizations, or state or federal agencies. BCA encourages the use of a review process for such projects similar to those described under Section V of these Guidelines (“Process for Acquisition of Public Art through commissioning”), or Section V (“Acquisition of Public Art through Gifts”). When located on City property or using City grant funds of any kind, such projects must be considered part of the City’s Public Art collection and follow the same process described in Section V of these Guidelines (“Acquisition of Public Art through Gifts”), including funding a budget for maintenance.

F. Temporary Public Art. Temporary Public Art is defined as an Artwork that is proposed to be on exhibition in a public space for less than 1 year. These guidelines are not intended to address temporary Public Art proposals or installations. Temporary Public Art proposals must be coordinated with the City Department that manages the proposed site.

G. Criteria for Public Art. All Artwork accessioned into the City’s Public Art collection is subject, at minimum, to the following criteria:

1. Inherent Artistic Quality: The assessed aesthetic merit of the piece as a work of art, independent of other considerations.
2. Context: Artwork must be compatible in scale, material, form and content with their surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
3. Media: All forms of art shall be considered. Artwork may be either portable or permanently attached.
4. Durability: Due consideration shall be given to the structural and surface soundness of permanent Artwork, and to inherent resistance to theft, vandalism and weathering.
5. Ability to Maintain: Significant consideration shall be given to the cost and amount of ongoing maintenance and/or repair anticipated, and to the City's ability to provide adequate maintenance.
6. Public Safety and Accessibility: All Artwork shall be evaluated to ensure that it

does not present a hazard to public safety and complies with all applicable building codes and accessibility requirements. In general, the following safety considerations shall be included in the PARP's selection and the BCA Board of Advisors final approval:

- a) Artwork does not sharp points, features that could pinch, crush or entrap a body or clothing, tripping hazards, or other features that could injure a member of the public
- b) Artwork cannot be easily damaged
- c) Artwork does not invite playing or climbing unless specifically designed to do so with appropriate consultation and standards for playground use.

7. Equity and Inclusion: The City is committed to advancing equity in the field of Public Art. To that end, the Art in Public Places Program shall actively seek to add Artwork to its public collection by artists from a range of races, gender identities, socioeconomic backgrounds, ages and abilities, and cultural identities. The Art in Public Places Program shall also strive for a range of style, scale and media. There shall be encouragement of exploratory types of work as well as established art forms, provided that such work meets the definition of Public Art or Artwork as defined in these Guidelines.

8. Environmental Impact: Evaluation of each Public Art Project shall consider the environmental impact related to the creation and life of the work, including use and sourcing of materials, manufacturing processes, potential to cause pollution, energy use, and noise or other features that may adversely affect the health of surrounding biodiversity or inhabitants.

9. Feasibility: Public Art Project proposals shall be evaluated relative to their feasibility and convincing evidence of the Artist's ability to successfully complete the Artwork as proposed. Factors to be considered include, but are not limited to: project budget, timeline, Artist's past experience, soundness of materials, City or other approval requirements, and level of community support.

10. Duplication: To assure that the Artwork will not be duplicated, the Artist will be asked to warrant that the work is unique and an edition of one unless stated to the contrary in the contract.

11. Other criteria may be established by the Public Art Administrator and User Department as dictated by a Public Art Project's particular requirements. Any additional criteria shall be outlined in the Public Art Review Panel's written instructions.

V. PROCESS FOR ACQUISITION THROUGH COMMISSIONING

The process for acquisition of Public Art through commissioning is as follows:

- A. Developing the Call to Artists. The Public Art Administrator shall consult with the User Department, Project Consultant/Architect, Project Manager and any community representatives, to determine the following:
 1. Recommended format for participation of the Artist or Artist Team in the Public Art Project's design process, if appropriate.
 2. Recommended Artist residency requirements, if any.
 3. Method of Artist Selection to be used for the Public Art Project from the following general guidelines:
 - a) Open Call Competition: Any Artist is eligible to enter, with recognition of the possible residency requirements. The Call to Artists is appropriately

advertised and a Public Art Review Panel juries the selection.

b) Limited Entry Competition: BCA invites a limited number of Artists to participate in the selection process. The Artists selected may be asked to submit digital images of past work, resumes, and letters of intent related to the specific project or specific proposals for the project under review. A Public Art Review Panel juries the selection.

c) Direct selection of the Artist: An Artist is invited to participate in the project and may be asked to develop a proposal for the project. If desired, a team of several artists may be selected. This option requires sole source approval in accordance with the City's purchasing policy.

d) Direct Purchase of an Existing Artwork: A completed work of art is purchased that meets the needs and goals of the specific project. This option requires sole source approval in accordance with the City's purchasing policy.

4. The Public Art Administrator shall develop a Call to Artists, outlining the overall approach, budget, timeline and selection process. The Call to Artists shall strive for a solution which will allow for the Artwork, whether purchased or commissioned, to be appropriate to the particular project site. Once finalized, the Call to Artists shall be provided in a timely fashion as an item for information to the Public Art Committee.

5. When work is commissioned for the City's Public Art Collection, eligible costs for Public Art will be the same as those outlined in Section VII, and ineligible costs will be those outlined in Section VIII, regardless of whether or not the project uses Percent for Public Art Funds.

6. Artists selected to develop a proposal shall be paid an artist's stipend or proposal fee in keeping with best practices. In general, no more than five percent (5%) of the total Public Art project commissioning budget should be paid in proposal fees to participating artists.

7. The Public Art Administrator shall determine the jury format most appropriate to each Public Art Project, by establishing the number of jurors, the necessary qualifications of jurors and by selecting the jurors, with input from partnering City Departments or project managers.

B. Jury Selection and Responsibilities. For each Public Artwork installation subject to jury selection (e.g., Artwork commissioned via open call or limited entry competition), a Public Art Review Panel (PARP) of arts professionals and stakeholders shall be established to serve as an independent jury for the purpose of making an Artist/Artwork recommendation. The recommendation of the jury is ultimately presented to the Public Art Committee for review and the BCA Board of Advisors for approval.

1. The following guidelines shall be used by the Public Art Administrator in the development of a PARP for each project and in determining the PARP's responsibilities:

a) The Public Art Administrator shall maintain a file of potential "pre-qualified" jurors containing information on the interest, experience and expertise qualifying individuals to serve in this capacity, and shall solicit pre-qualified jurors on an ongoing basis. No person may serve as a juror if they have a conflict of interest. Jurors may be from Burlington and from other towns, but a majority of any jury must be a resident or taxpayer in Burlington.

b) In general, each PARP shall be comprised of five to seven members,

depending upon the size and complexity of the individual project.

c) In general, a PARP should include representation as follows: at least one local juror who works or resides in the neighborhood where the project will occur; one member of the project Design Team/person with the most technical understanding of the site, one or two jurors that are Arts Professionals. Panelists should be included who will bring multiple perspectives to the selection process, including from a range of races, gender identities, socio-economic backgrounds, ages and abilities.

d) In general, the PARP may be buttressed by advisors, including members of the User Department, the Project Manager, or a community member where appropriate, who shall provide information about the planned use of the project, the User Department, and the context, to supplement the jurors' full understanding of the project. The advisory panelists' recommendations should be weighted considerably in the jury's consideration of a proposal.

2. A modest honorarium may be provided for jury participation. Anyone receiving compensation from the City, as either a full-time employee or a consultant, who serves as a juror shall not receive compensation for such service.

3. The Public Art Administrator shall serve as staff to the PARP and shall provide written instructions to the PARP detailing the jury's duties and responsibilities relating to the project. These instructions shall outline the method by which the PARP is to make its selection, as well as the technical and aesthetic criteria on which that selection is to be based. The PARP shall adhere to these written instructions and criteria in making its recommendation.

4. Each juror shall have one vote, with no juror possessing the right of veto. If a consensus cannot be reached by the PARP within a reasonable amount of time as determined by the Public Art Administrator, then a vote shall be taken with the majority carrying the decision. The PARP's final recommendation is presented to the Public Art Committee for review at the earliest feasible Public Art Committee meeting.

5. The jury shall have the option of making no recommendation, if there is no proposal judged to be of sufficient merit. In such instances the matter shall be considered by the BCA Executive Director for resolution, which may include a new selection process or the abandonment of the project and the assignment of any allocated Percent for Art funds to another project.

6. In the case of a Design Team Approach, jurors may not be tasked with selecting from proposals for specific Artwork, but may be asked to interview artists in conjunction with the Design Team with the goal of selecting the best match for the team and the project.

C. Criteria for Selection of Artists

1. All open call competition Public Art Projects are open to any professional Artist or Artist Team, within a project's specific requirements. Members of the Project Consultant/Architect's firm or anyone employed thereby, members of the jury, or employees of the City of Burlington or immediate family members of any of these, unless the project criteria specifically state otherwise, shall be excluded from consideration.

2. For all acquisition processes, the Public Art Administrator will encourage proposals from artists who have not proposed through BCA in the past. The Public Art

Administrator will also conduct outreach whenever possible to encourage submissions by Artists who have not had equitable access to opportunities in the arts.

3. The Public Art Administrator may prescreen and evaluate applicants, relative to the minimum candidate criteria and qualifications outlined in the Call to Artists. The Public Art Administrator shall present the slate of qualified candidates for review by the PARP. Along with the candidates recommended for review, the PARP may request a list of all project applicants, including a list of those applicants screened out by the Public Art Administrator, along with a reason for their elimination.

4. Artists shall be pre-screened on the basis of the appropriateness of their proposal to the specific project and the probability of its successful completion, as indicated by the merit of their past work. In the case of a Design Team approach, Artists shall be pre-screened on the basis of their previous work, their proven ability to work as a member of a Design Team, their preliminary idea(s) or approach to the project, and their willingness to fully participate in a collaborative process. In the case of a community-based art approach, an artist's track record in such and probability of its successful completion, as indicated by the merit of his/her past work shall also be considered a criterion for selection.

5. In making its selection, the jury shall bear in mind the goals and intent of the Art in Public Places Program outlined in Section II.

6. The PARP shall, in making its selection, give due consideration to all aspects of the proposed Artwork, including the appropriateness of the proposed design, its materials and construction for questions of maintenance, durability, potential for vandalism, public access, appropriateness, safety and security.

D. Review of the PARP's Selection

1. Once the PARP's selection is made, the Public Art Administrator will forward the recommendation to the Public Art Committee for review.

2. The Public Art Committee shall review the recommendation of the PARP. In reviewing the PARP's recommendation, the Public Art Committee shall take into account the Program's goal of developing a diverse collection, its commitment to the jury process and role of the process in best practices. These considerations should outweigh individual aesthetic preferences in the Committee's review of the jury's recommendation. The Public Art Committee shall make a recommendation to the BCA Board of Advisors, and upon its approval of the selection the Board shall certify in writing that said proposal is fitting and appropriate to the function and location. In the event that the Public Art Committee or the BCA Board of Advisors has questions regarding the jury's recommendation, those questions shall be referred, in writing, to the Public Art Administrator for clarification.

3. The BCA Board of Advisors' approval shall then be provided in writing to the Executive Director, whereby the request for an Artist's contract shall be initiated. The appropriate contract, either a Design Team, a direct purchase, or a commission contract, shall subsequently be drafted by the City of Burlington Attorney's Office in consultation with BCA staff. Contracts will be approved in accordance with the City's purchasing policy.

E. Contracting with Artists

1. Upon submittal of the approval to the Executive Director, the City shall contract with the Artist(s). Depending upon the scope of professional work to be undertaken by

the Artist and the nature of the agreement, several contractual arrangements are possible:

- a) In those instances where an Artist(s) is commissioned to participate in a Design Team project, a contract for professional design services shall be employed. The contract shall require that the Artist(s) work collaboratively with the Project Consultant/Architect to produce an Artwork proposal that meets the functional, aesthetic and fiscal requirements of the project. In return, the Artist will be paid a design fee for his/her professional services. Upon approval of the Artwork proposal by the City of Burlington, the Artist and the City may subsequently enter into a contract for the creation and installation of the Artwork.
 - b) In those instances where an Artist(s) is commissioned to create a proposed work of art, a contract for the commission of a work of art shall be employed. This contract shall require that the Artist(s) design, produce, deliver and install a work of art for a guaranteed maximum cost and by a predetermined time which is in keeping with the construction project schedule.
 - c) In those instances where an existing work of art(s) is directly purchased from an Artist, a contract for the purchase of an existing work of art shall be employed. This contract shall indicate that the City agrees to pay a specified sum of money in return for the work of art.
2. All contracts shall clearly assign the following rights to the Artist and the City:
- a) Generally, all copyright privileges associated with a work of art shall be assigned to the Artist. The Artist(s) shall in turn grant the City the right to reproduce the work of art, as needed, in two-dimensional form for non-commercial purposes.
 - b) In addition, the Artist will agree that the City may move, remove, or modify the setting of the art work without notice, except that if the site is integral to the work and its concept, the City will first seek the Artist's written permission. However, if the Artist does not consent, and declines to accept the return of the art work and move or remove it at the Artist's own expense, the City may proceed with its plans. If the work is significantly altered without the Artist's written permission, the Artist shall have the right to disclaim authorship of the work of art. Other specific provisions may be requested, depending on the situation.
3. All contracts should include, among others, at least the following representations by the Artist:
- a) The work of art is the result of the artistic effort of the Artist, except in the case of a design team collaboration.
 - b) The work of art is unique and original.
 - c) The work of art, or a duplicate thereof, has not been created and sold elsewhere.
 - d) The work of art will be executed and fabricated in a professional manner.
 - e) The work of art, as fabricated and installed, will be free of any defects in material and craftsmanship, including any defects associated with "Inherent vice", or other characteristics which might cause or accelerate deterioration of

the work of art. This shall include a guarantee against such occurrences for a period of at least one year from the date of installation of the work of art.

4. Prior to acceptance by the City of the work of art, the Artist shall issue a statement certifying that the art is free and clear of any liens.
5. The Artist shall provide the City with suggested maintenance guidelines for the art work.
6. Generally, unless required by state or federal law, an Artist will not be required to post performance bonds. Performance by the Artist may be contractually ensured through phased payment for work completed.
7. General liability, automobile worker's compensation, and other insurance requirements shall be based on City standards.
8. The City of Burlington may require that the working drawings for a work of art be certified by an independent licensed engineer, at the Artist's expense. Where questions arise as to the structural integrity of the work, the City may instruct the Artist to make the appropriate modifications.
9. During the period of time the work of art is being fabricated and prior to its being fully installed and accepted by the City, the burden of insuring the work against risk of loss or damage shall be borne by the Artist.

F. Project Implementation

1. The Public Art Administrator shall work with the Artist to determine the appropriate budget for each project to ensure that all necessary costs are met. The Public Art Administrator shall approve the final budget.
2. Where appropriate, the Project Consultant/Architect shall incorporate the requirements of the work of art into the construction documents, including time of delivery and installation.
3. The Artist may be asked to make a public presentation at an appropriate time and venue in the community where the Artwork is to be sited.
4. Prior to the fabrication of the Artwork, the Artist must obtain approval of the final design by the Public Art Committee as specified in the Artist's contract with the City.
5. In the case of a Design Team approach, it will be the primary responsibility of the Artist and the Project Consultant/Architect to collaborate on the design of the Artwork and its relationship with the site and to bring the design, in its formative stages, to the Public Art Committee for review in collaboration with the Public Art Administrator, and approval by the BCA Board of Advisors. The review and approval shall, whenever possible, appropriately parallel the Project Consultant/Architect's presentation of schematic, design development and construction documents to the user and managing departments. The stage at which final approval of the design occurs will vary from project to project, and shall be specifically set out in the Artist's contractual agreement with the City of Burlington.
6. On-site activity in connection with the installation of the Artwork shall be handled by the Artist and/or their installer, the Public Art Administrator and the appropriate City representatives within the departments having jurisdiction over the site and/or construction.
7. Periodic milestone meetings between the Artist, the Public Art Administrator, and the Project Manager shall be held to ensure the proper integration of the Artwork into the building/site.

8. The Public Art Administrator shall function as a liaison between the Artist and the various City Departments involved in the completion of each Artwork. In instances where construction matters cannot be resolved between the Artist and the Project Consultant/Architect, the Project Manager shall consult with the Public Art Administrator, and the Executive Director shall make the final decision on the conflict.

G. Project Documentation

1. The Public Art Administrator shall establish and maintain appropriate records on each project, which shall include records of the PARP's and the BCA Board of Advisors actions, interdepartmental agreements, and all billing and correspondence related to the project. In addition, the Public Art Administrator shall establish and maintain records to ensure adequate standards of acquisition, documentation, registration, care and installation of the work of art.

2. The Public Art Administrator shall establish and maintain a system for cataloging Artwork acquired by the City that is in keeping with the standards in the field.

3. All records submitted to the Public Arts Administrator in connection with this process shall be public records of the City of Burlington.

VI. PROCESS FOR ACQUISITION OF PUBLIC ART THROUGH GIFTS

Before a gift of Artwork may be accepted by the City into its Public Art collection, it must meet certain standards and processes. These guidelines are not intended to address Artwork gifted for the purposes of resale.

A. Proposed gifts of Public Art require a Public Art submission to begin a review process. Submissions must include:

1. Gift Value. A statement of gift value, including the value of the work, costs associated with the gift, and the value of a maintenance endowment.

2. Materials. A maquette of any large three-dimensional work and perspective drawings that demonstrate the relationship of the Artwork to the architecture and/or site or a complete drawing of the two-dimensional work. Material samples for the Artwork and any relevant construction materials should be provided.

3. Site Plan. A two dimensional plan that shows the proposed location of the Artwork, and a photograph of the proposed installation site and surrounding environment.

4. City Department Support. A letter of support from the Department Head charged with managing and maintaining the proposed location.

5. Construction Documents: Utility connections, site modifications, structural reinforcements or other engineering requirements or site modifications should be described in the gift proposal and reflected in the construction plans and specifications. The donor/sponsor is responsible for providing and submitting engineering and architectural plans, as required according to Building Code or as requested by the City. Such plans must be prepared, signed and stamped by the appropriate design professional licensed in the state of Vermont.

6. Recommended maintenance plan.

B. Accepting Gifts of Artwork. The following procedure for acceptance shall be used when a proposed gift submission is received:

1. Consultation with Staff. The Public Art Administrator shall refer the item to the BCA Executive Director and/or BCA Development Director to consult with the donor about the proposed gift.

2. Public Art Committee Review. The Submission shall be reviewed based on the Criteria for Selecting Artists and Art Work outlined in Section V and recommended for acceptance to the appropriate approval body.

3. Acceptance. Acceptance must follow the City's policy for accepting gifts. Acceptance will be coordinated with the Annual Plan for Public Art. Submissions that are accepted by the Public Art Committee will be referred to the Public Art Administrator for management. Acceptance is contingent on receipt of payment from the owner for all costs associated with the gift, including transportation, installation, and maintenance endowment and staff time.

4. Review of Fabrication and Installation. Works of art that are accepted will be subject to review by the Public Art Administrator throughout fabrication and installation. Specific plans for site design, installation, maintenance and protection will be submitted for approvals. The completed Artwork may not deviate in any way from the proposal reviewed by the Public Art Committee unless the Committee approves the change. Deviation from the reviewed design is cause for rejection of the gift.

C. Costs Associated with the Gift. Generally, 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, installation, general insurance and maintenance. The donor/sponsor will also be responsible for the design and cost of any pedestal, identification plaque, base, structural support and landscaping of site that may be required and must provide a maintenance endowment for the Artwork. BCA may also require an administrative fee to cover costs associated with staff coordination and oversight of the project.

D. Maintenance Endowment. Generally, an endowment fund adequate to ensure the continued care of gifts of art shall be required for all outdoor Artworks and may be required for indoor Artworks to maintain the gift in a condition satisfactory to the donor and the City. The amount of the maintenance endowment shall be negotiated with the donor on a project to project basis. Scale, material, location, value of the work and potential for vandalism will be considered in determining the maintenance endowment.

E. Removal, Relocation or Deaccessioning of Gifts of Public Art. In accepting a gift of Artwork, the City shall not be bound by any agreement with the donor that restricts the City's ability to act in the best interests of the City. Nothing in the acceptance of a gift of Artwork shall prevent the City from approving subsequent removal, relocation or deaccessioning of such gifts if it serves the City's best interest to do so. The City shall deaccession and dispose of works of art in its collection in accordance with the Deaccessioning policies as described in Section XII.

F. Memorial gifts shall be referred to the City Council for review and acceptance.

VII. PERCENT FOR PUBLIC ART FUND CALCULATION

A. Per the Percent for Art Ordinance, 21-122 Eligible Projects, all City Department heads shall, after consultation with the Chief Administrative Officer, include a Percent for Art allocation in all estimates of necessary expenditures and requests for authorizations and appropriations for Eligible Projects.

B. Percent for art allocations for Eligible Projects shall be budgeted as an expense within the Eligible Project budget line 9500.807 and transferred upon annual budget approval to Capital restricted fund account 807.

1. Of the total of any amount transferred Account 807, up to 15% of the total may be allocated to Administration – Public Art, to fund expenses including

a) photographs and digital images of the completed work for the purposes of

routine documentation of projects,

b) website development for the collection,

c) staff and/or consultant time dedicated to managing Public Art

2. Of the total any amount transferred to Capital Account 807, up to 15% of the total may be allocated to Maintenance - Public Art to fund expenses for repair, restoration, conservation and maintenance.

C. Eligible Projects that calculate a Public Art percentage of less than \$10,000 generally shall not include a work of Public Art in the project and the funds shall be pooled in the unallocated Capital restricted fund Account 807 to be applied to another project budget, or to be combined with other funding sources to establish a realistic project budget to be considered for inclusion in the Annual Plan for Public Art.

E. City staff shall use reasonable efforts to obtain appropriate approvals from any funding source for any capital improvement project, to allow use of one percent (1%) of such funds for the acquisition of Public Art. Such efforts shall include, without limitation, identifying Public Art in grant applications for capital improvement projects, efforts to include expenditures for Public Art in developer-funded infrastructure projects, and efforts to include Public Art in developer-constructed infrastructure and public facilities.

F. If the City enters into an agreement with another public entity, whereby City funds are transferred to such other public entity for the capital improvement project that would otherwise be deemed subject to the Public Art requirements under this title, City staff shall use reasonable efforts to include in such agreement, whenever it is lawful to do so, a requirement that the recipient entity or its successor in interest shall take appropriate measures to insure that not less than one percent (1%) of the city funds so transferred are expended for acquisition of Public Art.

VIII. EXCLUSIONS FROM PERCENT FOR ART CALCULATION.

Consistent with the Percent for Public Art Ordinance, the following costs that may be related to a capital project are generally not required to be included in the calculation of the Eligible Project budget for the project from which the 1% for Public Art is calculated:

- A. Funds that are limited by law, regulation, bond covenant, grant terms, or funding agency rules
- B. Projects funded by a bond for which the voters did not authorize the use of funds for Public Art
- C. The City Council specifically determines that a particular project will not fund the 1% for Public Art.

IX. ELIGIBLE AND INELIGIBLE COSTS AND USAGE OF THE PERCENT FOR PUBLIC ART FUND

A Public Art Project that has been approved in the Annual Plan may transfer funds from Capital Account 807 into a project account established for that Public Art Project under 807 Commissioning – Public Art.

- A. Eligible costs for Percent for Public Art Fund include:
 - 1. The work of art itself
 - 2. Artist's design fees
 - 3. Additional labor, materials, and contracted services required for the production and installation of the work of art
 - 4. Artist's operating expenses related to the project, including community-involvement activities, where applicable

5. Artist's travel related to the project
6. Transportation of the work of art to the site;
7. Installation of the work of art
8. Identification plaques and labels
9. Frames, mats, mounting, anchorages, pedestals, containments, foundations, footings, or materials necessary for the installation, location or security of the work of art.
10. Permits or fees necessary for the installation of the work of art.
11. Legal costs directly related to the project.
12. Insurance premiums related to the project.
13. Costs associated with performing a structural analysis of a proposed work of art.

B. Ineligible Costs. In addition to the ineligible costs in Section 21-24 of the Percent for Public Art Fund ordinance, the following costs are ineligible percent for Public Art allocations:

1. Reproduction, by mechanical or other means, of original Artworks, except in cases of film, video, photography, printmaking or other media arts.
2. Decorative, ornamental, or functional elements which are designed by the architect or consultants engaged by the architect, as opposed to an artist commissioned for this purpose.
3. Those elements generally considered to be components of a landscape architectural design or landscape gardening.
4. "Art Objects" which are mass produced of standard design, such as playground sculpture.
5. Directional or other functional elements, such as supergraphics, signs, color coding, maps, etc., except where included by the artist as an integral part of an artist's work.
6. Those items which are required to fulfill the basic purpose of a Department. Examples would be works of art that are fulfilling an interpretive or educational role in a City facility or park.
7. Landscape architecture and landscape gardening except where these elements are designed by or in collaboration with the artist and are an integral part of the work of art.
8. Services or utilities needed to routinely maintain or operate the Artwork over time.
9. Design fees for the overall capital project or capital project consultant/architect's fees.
10. Agent/gallery commissions or fees.

X. OTHER FUNDING SOURCES FOR PUBLIC ART PROJECTS

Public Art Projects may have sources of funding independent from or in addition to the Percent for Art Fund. Other sources may include:

A. Grants. Wherever not limited by law or funding agency rules, grant applications for federal, state or private support of Eligible Projects shall include a request for funds for the purposes of the Percent for Public Art allocation. Additionally, the City of Burlington shall encourage its partners in all public/private ventures to participate in the Percent for Art Program.

B. Departmental Budgets and Donations. Nothing is intended to prohibit the mayor or any other city official in conjunction with the submission of the annual capital or operating budgets of the city, respectively, and subject to the approval of the city council, from designating

additional funds including donated funds, subject to applicable restrictions, to be utilized to purchase or commission Public Art. These funds shall be accounted for in expense line 9500.807.

C. Financing districts. Subject to any applicable legal restrictions on such financing, the city shall use reasonable efforts to provide that the formation documents for future financing districts include a requirement that one percent (1%) of the cost of the capital improvement projects financed by the financing district shall be expended for the acquisition and installation of Public Art.

D. City assisted private project. CEDO and any other department of the City assisting in private development projects shall use reasonable efforts to provide for Public Art funding during negotiations with developers for development agreements. The City shall offer the developers the option of (i) expending one percent of the total estimated project costs on Artwork to be located onsite or (ii) placing six-tenths of one percent (0.6%) of the estimated total project costs in the Public Art Fund, to be used by the City for Public Art in accordance with these guidelines.

The Mayor, in consultation with the Executive Director of BCA and with the input of the City Attorney's Office on any legal barriers, will resolve disagreements between departments regarding whether a funding source may be spent upon Public Art.

XI. COLLECTION MANAGEMENT, CONSERVATION & MAINTENANCE

A. The cataloging, care and maintenance of all sculptures, statues, murals, paintings and other art media belonging to the City, other than and excepting those located on properties under the jurisdiction and control of the Burlington School District and the Burlington International Airport, shall be under the jurisdiction of BCA.

B. BCA shall be authorized to enter into agreement with the Parks Department, upon such terms as may be mutually agreed, for the cataloging, care and maintenance of any or all of the above media located on properties under the jurisdiction of the Parks, Recreation and Waterfront Department.

C. BCA is authorized to propose to the Council to sell or exchange works of art under its jurisdiction on behalf of the City with the concurrence of the BCA Board of Advisors under the terms specified under Section XII. Planned sales may be authorized through the Annual Plan for Public Art.

D. The City, through BCA, may license the making of reproductions or adaptations of works of art under its jurisdiction. Note: BCA must confirm that it has an appropriate license from the artist who holds the copyright to make reproductions or adaptations of a work of art.

E. The Public Art Committee reviews collections issues and makes recommendations to the BCA Board and Park Arts and Culture Committee relative to all aspects of the management of the collection that require Council Resolution, including, but not limited to, the approval to deaccession Artwork through sale or exchange, or authorize the removal, alteration, or destruction of any Artwork under the City's jurisdiction.

F. The Public Art Administrator shall coordinate the care and maintenance of the collection, including:

1. Developing and maintaining an inventory of the collection's maintenance needs
2. Identifying funds for maintenance and conservation needs and applying for grants
3. Contracting for and managing maintenance and conservation contracts
4. Maintaining an inventory of the City's collection

G. The BCA Executive Director may authorize the emergency removal, alteration or

destruction of an Artwork without Park Arts and Culture Committee's approval under the conditions specified in Section XII.

XII. DEACCESSION, REMOVAL, ALTERATION, AND DESTRUCTION POLICIES AND PROCEDURES

It is the objective of the Art in Public Places Program to acquire works of art of the highest quality. Acquisition by the City implies a commitment to the preservation, protection and display of the Artwork for the public benefit. Acquisition implies permanency within the collection, as long as the work maintains its physical integrity, identity and authenticity, and as long as it remains useful to the purposes of the people of the City of Burlington. When any of these conditions is no longer present, the Public Art Committee may propose removal from public display and/or deaccessioning to the City Council's Park Arts and Culture Committee.

- A. Removal from Public Display: If the Artwork is removed from public display, the City may consider the following options:
 1. Removal: The BCA Board, with recommendation from the Public Art Committee, may determine that an Artwork must be removed from its original site.
 2. Relocation: If its condition is such that it could be re-installed, BCA may attempt to identify another appropriate site. If the Artwork was designed for a specific site, BCA may attempt to relocate the work to a new site consistent with the artist's intention. If possible, the artist's assistance will be requested to help make this determination.
 3. Storage: Store object until a new site has been identified or the City Council decides to deaccession the Artwork.
 4. Sale or Trade of Object after deaccession.
- B. Provisions for Emergency Removal: In the event that the structural integrity or condition of an Artwork is such that, in the opinion of the BCA's Executive Director, the Artwork presents an imminent threat to public safety, the Director may authorize its immediate removal or other steps to eliminate the threat, without action by the BCA Board or the City Council's Park Arts and Culture Committee or the Artist's consent, and have the work placed in temporary storage. The Artist must be notified of this action, including an explanation of the threat, as soon as practical, but at least within 30 days.
- C. Deaccessioning: In general, works of art contained in the City's collection will not be deaccessioned within 10 years after acquisition, unless the work was commissioned to be in public view for a defined period of time. The City shall deaccession and dispose of works of art in its collection only in the public interest and as a means of improving the quality of the collections.
- D. Consideration of Alternatives for Disposition of Public Art: In considering various alternatives for the disposition of deaccessioned objects, the City should be concerned that:
 1. The manner of disposition is in the best interests of the City and the public it serves.
 2. Preference should be given to retaining works that are a part of the historical, cultural, or scientific heritage of the City of Burlington and the State of Vermont, even if the works are not permanently displayed.
 3. 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 City.
 4. Objects may not be given or sold privately to City employees, officers, members of the governing authority, or to their representatives, except as specified below.
- E. Conditions: A work of art may be considered for removal from public display and/or

deaccessioning if conditions such as the following apply:

1. The work no longer fits within the Art in Public Places Program's mission, goals, or guidelines for the City's art collection.
2. The work presents a threat to public safety.
3. Condition or security of the work cannot be guaranteed, or the City cannot properly care for or store the work.
4. The work requires excessive or unreasonable maintenance, or has faults in design or workmanship.
5. The condition of the work requires restoration in gross excess of its aesthetic value, or is in such a deteriorated state that restoration would be unfeasible, impractical or misleading.
6. No suitable site for the work is available, or significant changes in the use or character of design of the site have affected the integrity of the work.
7. The work interferes with the operations of City government.
8. The work is judged to have little or no aesthetic and/or historical or cultural value, or its value is outweighed by negative considerations.
9. The City wishes to replace a work with a more appropriate work by the same artist.
10. The work can be sold to finance, or can be traded for, a work of greater importance to the Art in Public Places Program's mission or goals.
11. Written request from the Artist has been received to remove the work from public display or public ownership.
12. The work is duplicative in a large holding of work of that type or of that artist.
13. The work is fraudulent or not authentic.
14. The work is rarely or never displayed.

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

G. Absence of Restrictions: Before disposing of any objects from the collections, BCA will consult with the City Attorney's Office, the Chief Administrative Officer, and the Mayor to ensure that all legal requirements are met. If the work was donated, BCA should notify the donor if it intends to dispose of a donated object within ten years of receiving the gift or within the donor's lifetime, whichever occurs sooner. If there is any question as to the intent or force of a donor's restrictions, BCA shall seek the advice of the City Attorney.

H. BCA Staff Report: BCA staff shall prepare a report which includes a staff evaluation and recommendation along with the following information:

1. City Attorney's Opinion: The City Attorney shall be consulted regarding any restrictions that may apply to a specific work.
2. Rationale: An analysis of the reasons for deaccessioning and its impact on the Collection and the artist, and an evaluation of the Artwork.
3. Community Opinion: If pertinent, public and user department and commission feedback on the dispensation of work in question.
4. Independent Appraisal or other documentation of the value of the Artwork: Prior to disposition of any object having a value of \$10,000 or more, BCA staff should obtain an independent professional appraisal, or an estimate of the value of the work based on recent documentation of gallery and auction sales.
5. Related Professional Opinions: In cases where deaccessioning or removal is recommended due to deterioration, threat to public safety, ongoing controversy, or lack

of artistic quality, it is recommended that BCA seek the opinions of independent professionals qualified to comment on the concern prompting review (conservators, engineers, architects, critics, safety experts etc.).

6. History:
 - a) Provide written correspondence, press and other evidence of public debate.
 - b) Original Acquisition method and purchase price.
 - c) Options for Disposition.
 - d) Replacement Costs.

I. Public Art Committee Hearing: The BCA staff's recommendation to deaccession a work of art will be considered by the BCA Board of Advisors, and it shall make a recommendation to the City Council's Park Arts and Culture Committee.

J. Park Arts and Culture Committee and Resolution: The City Council's Park Arts and Culture Committee will then consider whether to recommend deaccession to the Council. The Council must then by resolution make the final decision that a work of art should be deaccessioned through sale or exchange.

K. Sale or Exchange of Artwork: When the City Council determines that it would be advantageous to the City, a work of art under the City's jurisdiction may be sold or exchanged as follows:

1. Exchange: BCA may exchange a work of art on such terms as the City Council, upon recommendation by the Public Art Committee, determines appropriate, provided that any exchange is subject to the approval of the other individual or entity party to the exchange.
2. Sale at Public Auction: A work of art under the jurisdiction of the City may be sold at public auction to the highest bidder, and the City may contract with a licensed auctioneer for the purpose of conducting the sale or sales. The contract shall specify the compensation to be paid for the auctioneer's services and set forth the terms and conditions under which the sale or sales are to be conducted.
3. Private Sale: If the work is offered at public auction and no bids are received, or if the bids are rejected, or if the City Council determines that the work may be sold on terms more consistent with the City's goals if sold through private sale, a deaccessioned work may be sold at a private sale. A work of art on which bids have been rejected shall not thereafter be sold through private sale for less than the amount of the highest bid received.

L. Proceeds from Sale of Public Art: All proceeds from any sale or auction shall be credited to the Percent for Public Art Fund to support future Public Art uses allowed by the fund.

M. Adequate Records: An adequate record of the conditions and circumstances under which objects are deaccessioned and disposed of should be made and retained as part of the collections management records.

N. Alteration, Modification, or Destruction of Artwork: It is the primary responsibility of BCA as a department of the City to preserve and protect the art collections under its management for the people of the City of Burlington. However, under certain conditions, and in accordance with the constraints of applicable law, the Public Art Committee may propose actions that would alter, modify or destroy an Artwork.

O. Conditions: Removal and disposal, destruction, alteration or modification of an Artwork may be considered under unusual circumstances, such as the following:

1. The work has faults of design or workmanship, or is damaged so that repair or

remedy is impractical, unfeasible or an unjustifiable allocation of resources.

2. The work poses a threat to public safety, or in some other way poses a potential liability for the City. In the event that the condition of the Artwork represents an eminent safety hazard, and cannot be removed without risk of damage or destruction, the Public Art Administrator will proceed in accordance with the provisions specified under "Emergency Removal."

3. BCA deems it necessary in order for the City to exercise its responsibilities in regard to public works and improvements, or in furtherance of the City's operations, or for any other good cause.

P. Options: If, for any of the above reasons, the City finds it necessary to pursue plans that would modify, remove, destroy or in any way alter an Artwork, and the Park Arts and Culture Committee approves such action, then BCA shall make a reasonable effort to notify the Artist by registered mail of the City's intent and outline possible options, which include, but are not limited to the following:

1. Transfer of Title to the Artist: The Artist will be given the first option of having the title to the Artwork transferred to them. If the Artist elects to pursue title transfer, they are responsible for the object's removal and all associated costs.

2. Disclaim Authorship: In the case where the City contemplates action which would compromise the integrity of the Artwork, the Artist shall be given the opportunity to disclaim authorship and request that their name not be used in connection with the given work.

3. Alteration, Modification or Destruction: If alteration, modification, or destruction of an Artwork protected under the Visual Artists Rights Act of 1990 is contemplated, BCA must secure a written waiver of the artist's rights under this Section. In the case of an emergency removal that may result in destruction or irreparable damage, the Director will act in accordance with the advice of the City Attorney.

XIII. AMENDMENTS TO THE GUIDELINES

Substantive amendments to these guidelines must be approved by the BCA Board of Advisors and the City Council pursuant to Burlington City Ordinances, Chapter 21, Article X (Percent for Public Art).