

# Public Art in Madison

## Collection Guidelines, Programs & Stewardship

Adopted by the Commission on January 4, 2024

Approved by the Common Council on February 6, 2024

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**MADISON**  
*Indiana*

**The Living Tree** by  
Jacob Louden  
(2021) at  
Mulberry Mural  
Plaza



**Sandhill Crane** by  
Jenna Watkins  
and Ryan Lanham  
(2023) near  
ShIPLEY'S Tavern



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# Letter from the Chair

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On behalf of the Madison Public Arts Commission, I am pleased to present this set of Public Arts Guidelines, Programs, and Stewardship to the community. It is our hope that this will be a tool to encourage new public art expressions, while maintaining and protecting our beloved existing public art in Madison.

Our community has an amazing history of supporting art centric development and expressions of art and beauty. From its inception, our community attracted artisans and builders to craft some of America's most beloved architecture. Public art pieces like the Broadway Fountain and the famous George Grey Barnard sculpture in Springdale Cemetery stand as testament of that commitment. Recent additions such as the Kindness Mural and Birdman at Sunrise Crossing, help us to stretch in new directions and encourage a new generation of artists.

The Madison Public Arts Commission will continue this legacy, elevating and encouraging new public art projects by using this document as a guide to encourage good, sound, and timeless installations.

As next steps, the Commission will develop the City's Public Art Master Plan and specific site recommendations, create a collection management program, and work to implement an easement and maintenance plan.

A special thanks to the Mayor and the office of Economic Development staff for their leadership; fellow Commission members for their dedication and hard work; and consultant Sara A. Peterson for blending best practices and our local needs for a wonderful set of Guidelines that are uniquely Madison's.

Most Sincerely,

Kim Franklin Nyberg, Chair  
*(volunteer and one of Madison's most adoring fans)*

## Prepared By

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Sara A. Peterson facilitated the Madison Public Arts Commission process to develop these guidelines.

Sara has been a management consultant for twenty-five years. Her portfolio includes board development, planning and facilitation, program development and evaluation, organizational assessments, and more. The bulk of that work is for arts and culture nonprofits, local government, and - on her best days - where the two meet.

<https://www.sarapetersonconsulting.com>

# 1. Introduction

## 1.1 What is Public Art?

**Public art is art in public spaces. It is any artwork installed in publicly accessible spaces where it can be experienced by everyone for free.** The term may conjure images of historic bronze statues of a soldier on horseback in a park. Today, public art can take a wide range of forms. It can vary by –

- **Duration** – permanent, long term, temporary, or rotating
- **Scale** – intimate, pedestrian, vehicular, monumental
- **Location** – along the river and throughout downtown, at major gateways and neighborhood entrances, at or in city buildings, integrated into streets, trails, infrastructure, *et cetera*
- **Form, style, genre and more...**

It often interprets the history of the place, its people, and perhaps addresses a social or environmental issue. Public art can include murals, sculpture, memorials, integrated architectural or landscape architectural work, community art, and digital new media.

## 1.2 Why Does it Matter?

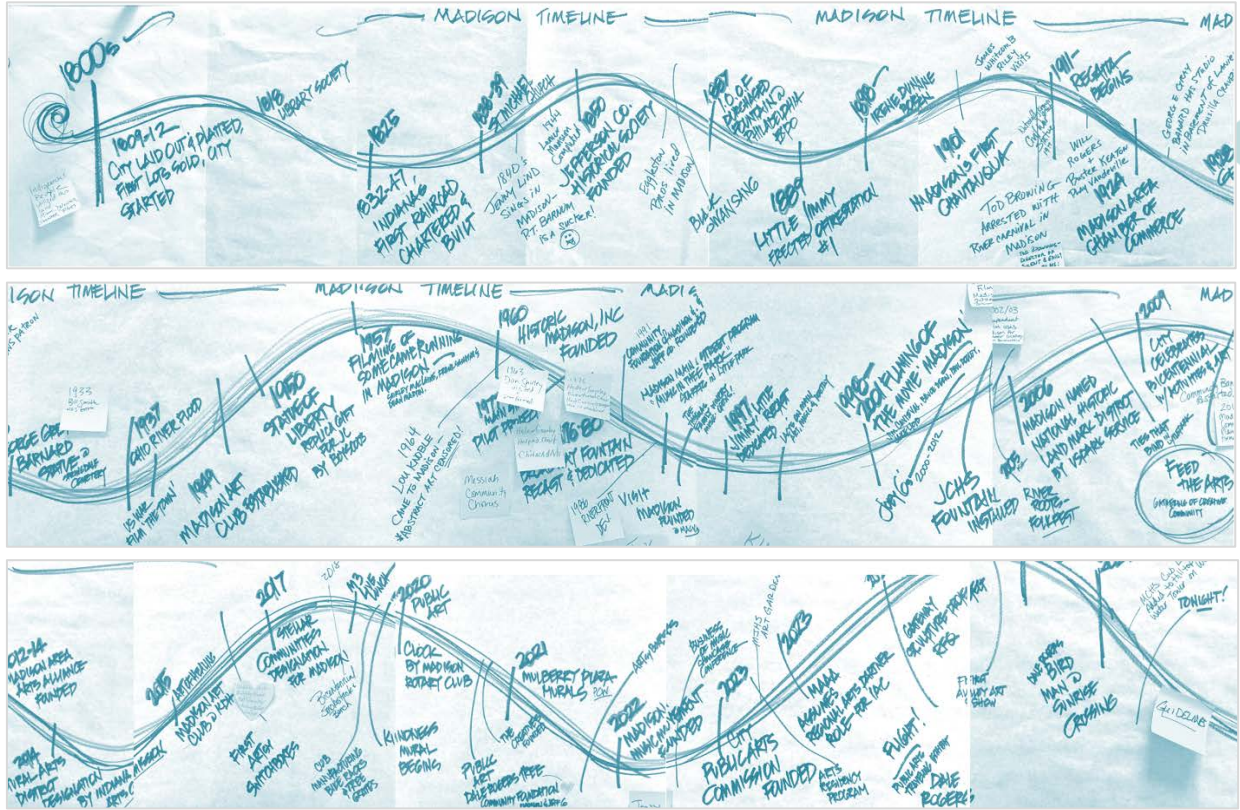
**It has proven benefits for communities.** Public art instills meaning—a greater sense of identity and understandings of where we live, work, and visit—creating memorable experiences for all. It humanizes the built environment, provides an intersection between past, present, and future, and helps communities thrive.

- **Economic Growth & Sustainability** – By engaging in public art as a tool for growth and sustainability, communities thrive economically. Public art boosts cultural tourism, creates jobs, and increases revenue of local businesses. Arts, culture, and creativity improve a community's competitive edge, attract new and visiting populations, and integrate the visions of both community and business leaders.
- **Attachment & Cultural Identity** – Public art directly influences how people see and connect with a place, providing access to aesthetics that support its identity and making residents feel appreciated and valued. Public art encourages attachment to a location for residents through cultural and historical understanding, and by highlighting what is unique about the places where people live, work, and play.
- **Artists as Contributors** – A public art ecosystem supports artists and other creatives by validating them as important contributors to the community.
- **Social Cohesion & Cultural Understanding** – Public art provides a visual mechanism for understanding other cultures and perspectives, reinforcing social connectivity with others.
- **Public Health & Belonging** – Public art has been shown to have clear public health impacts including decreased stress, eliciting awe, developing shared identity, reinforcing self-

efficacy, and promoting positive health behaviors. Public art also slows pedestrians down enough to enjoy their space and providing a positive impact on mood.

### 1.3 Background

Madison's commitment to art and culture dates to its founding.



In recent years, Madison has been making a concerted effort to develop its public art on a project-by-project basis. The efforts have been successful, and new works have been well-received. The Madison Common Council (the Council) recognized the importance of these efforts when it resolved to create a Public Arts Commission (MPAC or the Commission):

- WHEREAS** the City of Madison recognizes the importance of public art to promote the culture and uniqueness of Madison; and
- WHEREAS** Madison's growing collection of public art reflects the dynamic evolution of a community in which people of diverse generations, nationalities, cultures, interests, and lifestyles choose to live, work and play; and
- WHEREAS** Madison was designated a Cultural District by the State of Indiana; and
- WHEREAS** the City of Madison recognizes and accepts responsibility for the beautification of its public areas, finding that such investments add greatly to the enhancement of the quality of life of its citizens, attract tourism, and provide incentives to business to locate in the city, thereby expanding Madison's economic base; and
- WHEREAS** the City of Madison is wishing to establish a Public Arts Commission.

When Council established MPAC, they gave us an assignment to:

***Develop and maintain a collection of public art that is of the highest quality, that encompasses a broad aesthetic range reflecting the city and the minds of its citizens, that improves the quality of life in the area, that is accessible to all individuals and that is a source of pride to all residents.***

The Council specifically asked that we develop, adopt, and administer policies and procedures re: 1) Planning, selection, placement, maintenance, relocation, and deaccessioning of public art that is located on public or publicly controlled land or in public facilities. 2) The use of city funds spent on public art, selection of artists, review of designs, installation of artwork, and the adoption of protocols and other policies as may be deemed necessary. There is a lot to think about from beginning to end.



**Conservation by Replacement**

Little Jimmy  
erected 1889, recreated in 1997

**Administration & Funding**

- Roles & Responsibilities
- Bylaws, Funding & Other Fiscal Matters

**Collection Guidelines**

- Purpose & Principles
- Eligible Works: Madison's Art Collection
- Selection of Works: Acquisition *or* Inclusion
- Site Selection & Relocation
- Cataloguing & Documentation
- Community Access & Information
- Maintenance & Conservation
- Rotation & Storage
- Removal from the Collection & Disposition

**Master Plan & Programs**

- Public Art Master Plan
- Public / Private Development
- Madison's Art Murals
- Art in the Right-of-Way
- Support Programs

Not to mention

- Materials selection to survive time and weather;
- Distinctions between murals/art and commercial signs and other forms of speech;
- Design and site safety, lighting, site lines, and so much more.

This document is our first iteration of those policies and procedures.

## 1.4 Process

Developing these guidelines included four steps:

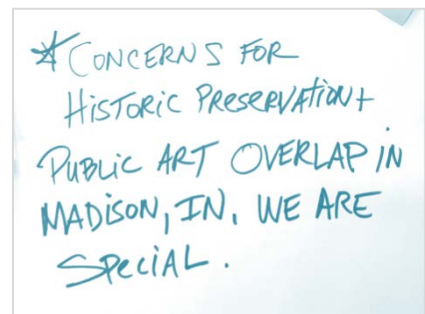
1) **Questions** – MPAC discussions began with broad questions:

Question	MPAC Answer
What do we include in public art?	This took quite a bit of discussion and is presented in “Inclusion in the Collection” (beginning page 15).
What is important for public art in Madison?	It should align with Madison without overwhelming the community or crowding out discovery.
What is (isn’t) our role as public arts commission?	Our job is to educate, inspire and elevate the art. We are not an arts council or expected to regulate taste.
What do we want the guidelines to do (or avoid)?	The guidelines should be simple, fair, and transparent. They should clearly define and communicate standards that focus on craftsmanship and technical quality.

2) **Research** – MPAC read and discussed guidelines and plans from a lot of cities in every corner of the country<sup>1</sup> and some from Canada and Australia. We drew from the National Endowment for the Arts, Americans for the Arts Public Art Network, Bloomberg Philanthropies, and Forecast Arts. Along the way we read ordinances, guidelines, plans, toolkits, legal review articles, as we looked for examples that we liked and ones that we wanted to avoid. Doing so made clear that they had a lot in common - from topics covered, to processes used, even language carried from one city to the next. These guidelines similarly “borrow” from others.

3) **Engagement** – MPAC hosted an open house to explain the process and gather input on select questions. The responses (*Appendix*) were clear and consistent with MPAC goals.

- What are your hopes for public art in Madison?
- What are your concerns?
- What questions do you have for the City?
- What are your favorite works?



4) **Final Product** – Consultant drafting was then followed by several rounds of review, comment, and revision.

<sup>1</sup> Arizona, California, Colorado, District of Columbia, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Washington, Wisconsin

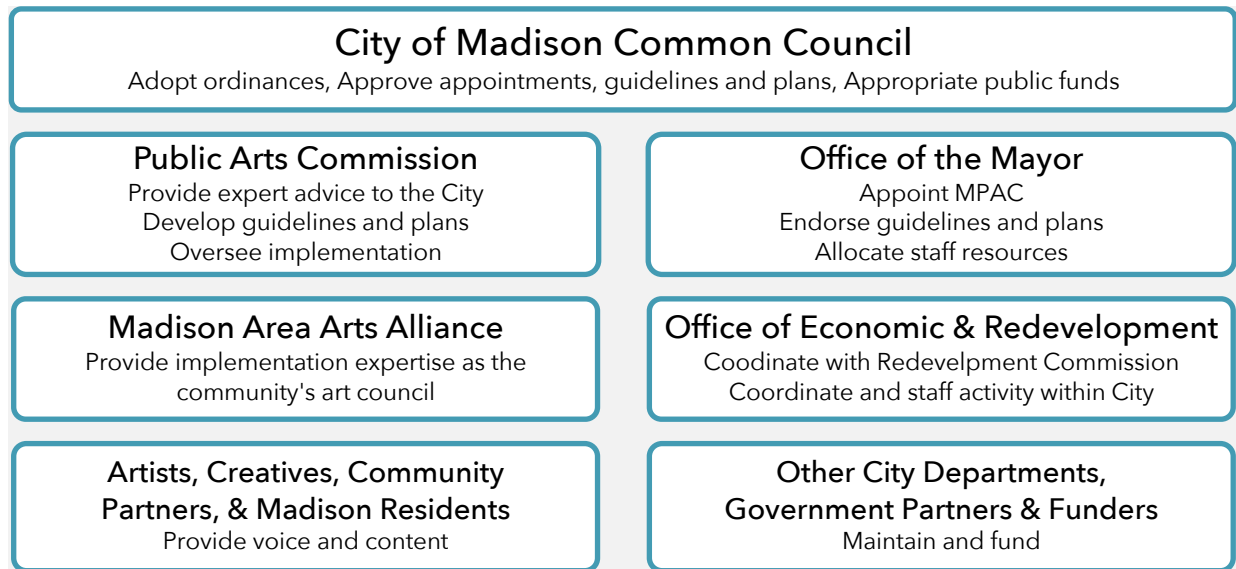


## 2. Administration & Funding

### 2.1 Roles & Responsibilities

While the City has tasked MPAC with developing and maintaining a collection of Public Art (the Collection), success will require many more hands and voices than just the Commissioners. This section sets forth those roles and responsibilities.

At its simplest, Madison's Collection and public art programs require the following:



In practice, the relationships and relative importance of each requires more detail.

#### City of Madison Common Council (the Council)

Under Madison's public art ordinances, the Common Council is responsible for:

- Establishing the Commission and its non-reverting fund
- Approving appointments to MPAC as well as its policies and procedures
- Adopting the City budget and therefore the budget for MPAC

This sounds straightforward. However, MPAC intends to partner with the Council. We will work to ensure that the Council understands and supports MPAC's vision and goals, is a source of ideas and relationships, and provides a forum for community input into MPAC projects and programs.

#### Office of the Mayor

Under Madison's public art ordinances, the Mayor is responsible for:

- Appointing individuals to the Commission
- Appointing a City employee to staff MPAC
- Implementing the City budget and therefore the budget for MPAC

Again, relatively straightforward, but again MPAC will partner with the Mayor to ensure success. We will work together toward common goals, sharing ideas, and vision re projects and programs.



Dedication of *Kindness* by Steve Bickis, Kevin Carlson, and Jane Vonderheide (2021)

### Office of Economic & Redevelopment (OER)

Under Madison's public art ordinances, the Mayor is expected to appoint a City employee to staff MPAC. That employee is the Director of Economic Development.

By necessity, this appointment is somewhat broader than a single employee. The Office of Economic & Redevelopment (OER) will be responsible for staffing MPAC, implementation of these guidelines, Master Plan projects, and related programs. The OER will be the primary point of contact for the public and external partners engaged in this work. In particular, the Director of Economic Development is responsible for activity such as:

- Providing administrative and operational services to ensure the operations
- Maintaining the Collection catalogue and documentation
- Maintaining accurate records regarding expenditures and budget
- Disseminating information about public art and the benefits of public art in general
- Providing an annual report to the City Council and community

OER will also coordinate resources within the City, across departments, and among boards / commissions as appropriate. For example, specific projects may require involvement from Parks & Recreation, Streets, Utilities, the Historic District Review Board, and others.

### Madison Area Arts Alliance (MAAA)

The Madison Area Arts Alliance has been a driving force for the arts in the City since 2013. It is our local arts council and should be the central hub for Madison's artistic community. Working with local artists, community organizations, as well as state/local government, MAAA has:

- Led public art projects across the City
- Supported new efforts and organizations such as the Madison Music Movement
- Secured Madison's Cultural District designation, and
- Is Regional Arts Partner for the Indiana Arts Commission

Its connections, expertise, and creativity will be vital for MPAC project and program success. MPAC and the OER expect to lean on MAAA as their implementation partner on a regular basis. But



MAAA will not be the only community partner. We anticipate working with the Community Foundation of Madison and Jefferson County, Historic Madison Inc., Jefferson County Historical Society, Jefferson County Tourism Alliance, and others.

### Artists & Creatives

It may seem obvious, but it is important to state that every MPAC project and program will directly involve artists and creatives at every stage. They will be members of MPAC, serve on selection committees, provide input in planning, respond to calls, and work with volunteers - all before the artwork is even created.



Robert Saurensig posing with his alley mural (2010).

In this way we will be sure Madison's collection of public art is of the highest quality, encompasses a broad aesthetic range reflecting the city and the minds of its citizens, improves the quality of life in the area, is accessible to all individuals, and that is a source of pride to all residents.

### Community Participation

Just as artists and creatives are central to this work, so too is the community as a whole. To ensure that public artworks reflect the character, aspirations, and attributes of the community, MPAC and its selection committees must provide the artist with necessary information about the community, its needs, and sensitivities.

A well-designed comprehensive community relations and public information program is a necessary component of any successful public art program. Works of art significantly alter public spaces and add to visual character and function of the environment. Therefore, master planning and individual public art projects will take steps to involve the many different segments of the community:

- Civic leaders, including Mayor and Council, have visions consistent with what is needed.
- Cultural institutions are a great asset.
- The business and corporate community, individual residents and/or neighborhood associations, special interest groups, and community leaders are also extremely important.

By the time a new work is unveiled, the public should have seen the initial designs, and have had an opportunity to talk with and question the artist and the committees involved. The process of bridging the gap of understanding between the artist and the public through public education should be a part of every public art project.

***No public artwork should suddenly appear overnight. Public engagement must precede, accompany, and follow every installation.***

#### Community Participation

Volunteers working on **Local Color** at Mulberry Mural Plaza (2021)



### The Public Arts Commission (MPAC or the Commission)

That brings us to MPAC. Under Madison's public art ordinances, MPAC shall develop and maintain the Collection. Specifically, MPAC is expected to:

1. Develop, adopt, and administer policies and procedures pertaining to the planning, selection, placement, maintenance, relocation, and deaccessioning of public art that is located on public or publicly controlled land or in public facilities.

2. Develop, adopt, and administer policies and procedures regarding the use of city funds spent on public art, selection of artists, review of design, installation of artwork, and the adoption of protocols and other policies as may be deemed necessary.
3. Function as the selection committee to direct the recruitment, review, selection, conceptual schematic design, and construction for public art projects. MPAC may form a subcommittee of at least two members to oversee the process of public art projects.
4. Create and maintain a public art master plan.
5. Approve expenditures from MPAC's Non-Reverting Fund

In general, MPAC is responsible for making recommendations to the City and the Council on all public art policy matters. It is our job to elevate public art in our community and to do so with the full life cycle of each piece in mind. ***We - MPAC - are art; the City is the rest.***

## 2.2 MPAC Bylaws <sup>2</sup>

- 1) **Purpose** – Develop and maintain a collection of public art that is of the highest quality, that encompasses a broad aesthetic range reflecting the city and the minds of its citizens, that improves the quality of life in the area, is accessible to all individuals and is a source of pride to all residents.

### **IT IS NOT OUR JOB TO:**

- 1) **Regulate** business signs or installation, tastes, content, speech, or private property;
- 2) **Create bureaucracy** or barriers that limit art in our community; or
- 3) **Overwhelm** Madison with so much that visual noise undermines the joy of discovery.

### **IT IS OUR JOB TO:**

- 1) **Curate** a high-quality public art collection for Madison, simply and transparently.
- 2) **Ensure professional stewardship** of the Collection - from catalogue through conservation.
- 3) **Encourage community engagement** in public art projects and stewardship.
- 4) **Advise** on related matters (e.g., Madison's Streetside History marker program).

- 2) **Membership** – MPAC shall be composed of five members appointed by the Mayor and approved by the Madison Common Council. Members serve without compensation.

*What are Commission term limits?  
How are members appointed?*

- 3) **Terms** – Members will serve for three-year terms and may be reappointed for one consecutive three-year term. No member may serve more than two consecutive three-year terms, but he or she is eligible to be appointed to MPAC again after at least a one-year absence.
- 4) **Vacancies** – If a vacancy occurs, a successor shall be appointed in the same manner as the departed member, and the successor shall serve the remainder of the vacated term.

<sup>2</sup> These bylaws come directly from Madison's public art ordinances with the addition of the inset box and a conflict-of-interest policy.

- 5) **Chair** – The Chair is a current member of MPAC, elected by the members of the Commission.
- 6) **Meetings** – MPAC shall meet at least once in each calendar year with frequency determined by the members. Meetings shall comply with the Indiana Open Door Law, I.C. 5-14-1.5.
- 7) **Funds** – Any funds needed for projects, acquisition, administration, or enforcement under this subchapter shall be subject to the standard processes and policies that govern the City of Madison's budgeting and expenditures.
- 8) **Expenditures** – The express and written approval of the Madison Public Arts Commission shall be obtained prior to the expenditure of funds from its non-reverting fund accounts.
- 9) **Conflict of Interest** – A member who believes they have a conflict of interest on a matter about to come before MPAC shall state the interest, leave the room before the discussion begins, and return after the vote. All questions should be referred to the City Attorney or designee. Decisions of the City Attorney or designee are binding.

## 2.3 Funding & Other Fiscal Matters

### Policy

#### Fiscal responsibilities in general:

- 1) City-owned works are explicitly the responsibility of the City. However, City-owned artworks may be funded by any source below and will be insured by the City. For example, individuals, groups, or other entities may “adopt” individual works via contracts with the City.
- 2) Privately-owned works are generally the responsibility of the owner and should be funded by private contributions, insured by the private owner, and maintained by the private owner unless specifically contracted otherwise. However, the City may accept responsibility for maintenance costs as part of an easement<sup>3</sup>, loan, or other contractual agreement.

#### Budgeting:

- 3) There will be a number of costs to consider over and above the artwork itself such as collection management systems, lighting, maintenance, conservation, insurance, publicity, and staffing. To ensure a sustainable and well-maintained Collection, MPAC will consider all current and future costs at the start of each project.
- 4) MPAC should evaluate funding annually and incorporate strategic increases as necessary and submit them as part of the annual budget process.
  - Evaluate opportunities available through state and federal arts organizations and develop recommendation for potential projects
  - Continue to evaluate grants sources and/or partnerships as they become available
  - As available and appropriate, funding outside of City funding shall be considered. Possible opportunities might include grant funding through federal and state arts organizations

<sup>3</sup> An easement agreement is one that provides a right to cross or otherwise use someone else's land for a specified purpose.

- 5) The Council will be responsible for allocation of funds as part of the annual budget process and as recommended by the Mayor.

#### Prohibited expenses:

- 6) MPAC funds may not be expended for
- Land acquisition
  - Expenses related to the ongoing operation of works such as electrical, water or mechanical service required to activate or display the artwork(s).
  - Professional graphics, mass produced works, works not produced by an artist, artistic details designed by the architect, and reproductions of other works.

#### Funding Sources:

- 7) There are no limits on the potential sources of funding that MPAC may pursue. For example, the work may be funded by:

- **Municipal Allocations** – The City may dedicate funds for projects and administration according to standard processes and policies that govern budgeting and expenditures.
- **Government Grants** – (e.g., IAC or OCRA)
- **Private Contributions** – The City, MPAC or its partners may seek out public or private contributions, for example:
  - Individual donations
  - Corporate sponsorships
  - Private grants (e.g., Patronicity)
  - In-kind support (e.g., adopting corridors)
- **Public Funding Mechanisms** – The City may create funds based upon contributions from certain city-supported eligible redevelopment projects, such as:
  - Parks/Greenway bond referendums with percent tied to art
  - Tourist Development Authority Room Tax for art
  - Matching funds through public and private donations, grants, or other sources.
- **Private Development Mechanisms** – These might include Public Art Giveback Programs, Percent for Art, incentives in lieu of design elements (light fixtures, paving, furnishings, etc.) and/or trading art for development square footage



#### Designated Funds & Fiscal Agents:

- 8) The Council has already created a non-reverting fund that MPAC may use to hold project and administration funds once allocated without getting caught in use/lose cycles. MPAC shall propose additional funds designated for commissioning, maintenance, conservation, and the like as appropriate and necessary to fully implement these guidelines.
- 9) The City may also identify and contract with fiscal agents to receive and hold program funds (e.g., Community Foundation of Madison and Jefferson County or MAAA).

# 3. Collection Guidelines

## 3.1 Purpose

These guidelines provide the policies and procedures MPAC will use to govern the acquisition, care, and disposition of works in Madison's Art Collection. They underscore Madison's commitment to maintaining a professional approach to the management of the Collection. Any agreements the City develops with property owners or other public art partners shall be consistent with these guidelines.

## 3.2 Guiding Principles

The City of Madison's Collection and public art programs will **elevate** Madison's expectations of public art and offerings by upholding the following principles:

- 1) **Merit & Innovation**– Projects shall be chosen on technical merit and uphold high artistic standards. The public art program shall enable participation by professional artists throughout the design process of selected or eligible capital improvement projects.
- 2) **Collaboration & Engagement** – Implementation will be a joint effort between the City and the community. MPAC will encourage joint participation by artists and the community, as well as from other levels of government and the private sector. MPAC will consult the community on master plans, individual projects, panels, and guidelines and maintain transparency in its work
- 3) **Sustainability** – They will be appropriately funded for long-term stewardship.
- 4) **Fairness & Professionalism** – Projects will be chosen in a fair and equitable manner. Individuals engaged in this work will exhibit the highest degree of dedication and competence in the execution of their assigned duties.
- 5) **Collection Diversity** – The Collection will be diverse in artist and committee member selection, site selection, media, scale, and style of artwork, through experimentation with new art forms as well as traditional forms, and through the work of emerging as well as established artists.

## 3.3 Eligible Works: Madison's Art Collection

### Policy

- 1) To be eligible for inclusion in the Collection the work must:
  - First be in the public view with free access to the community.
  - Further determination of what is eligible for inclusion depends on a combination of several elements: who owns the work, who owns the property, how the work was funded, what agreements are in place, and if there are exceptional circumstances. (*See Definition & Categories below*).
- 2) Once a work is eligible, MPAC's Selection Criteria and Processes determine inclusion.



## Definition & Categories

Madison's ordinance defines public art as:

*"Artwork that is accessible or visible to the public. Public art may be located on public land, in public facilities, or on private land that is accessible or visible to the general public. This may include sculptures or murals but would not include art hanging in a gallery. Public art may or may not be city owned."*

Because that definition is so broad, these guidelines clarify what is (and is not) contemplated for the Collection and MPAC's programs as follows:

1) **Ineligible** – The following will not be included in the collection unless an exception applies:

- Performing or literary arts
- Mass-produced objects, reproductions, or directional signs
- Decorative, ornamental, functional, or architecture objects
- Works of art in galleries or museums
- Works that conflict with Historic District Guidelines
- Signs in violation of either City ordinance or Historic District guidelines
- Unauthorized works involving vandalism, trespass, or dumping
- Services or utilities (e.g., those necessary to operate or maintain the artwork) in perpetuity
- Work that MPAC determines unsuitable for public viewing

2) **Included by Definition or Agreement** –

- a) **Public Ownership** – Any work of art owned by the City, its Boards, Commissions or Authorities (e.g., Port Authority, Aviation Board, Madison Railroad) (e.g., painting in City Hall, a mural on public property, or a sculpture in the public right of way) is public art by definition.



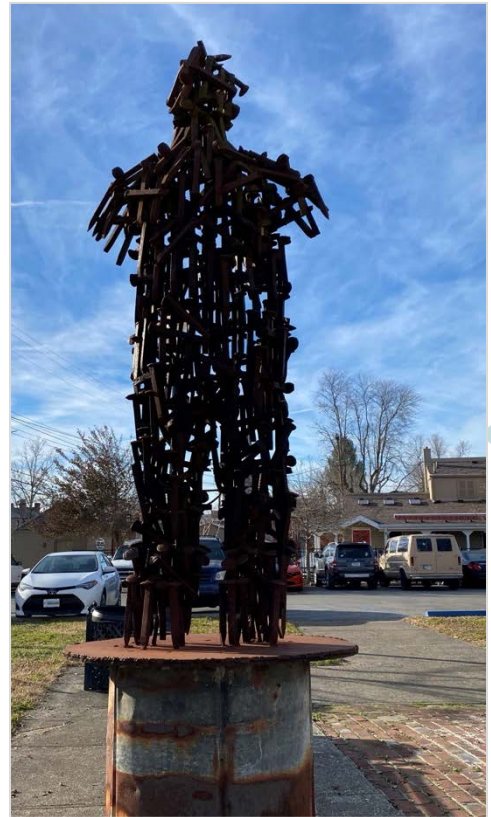
Various Portraits by William McKendree Snyder



Jefferson County Civil War Memorial designed by Sigvold Asblornsen (1907-1908)

- b) **Public Permission to Display** – Any work of art displayed on public property is also included in Madison’s Art Collection - it is public art, by definition.

The difference here is that it may be privately owned work that the City has contracted with the work’s owner to display on public property.



**Ties that Bind** by Eric Phagan (2007)  
at Lytle Park

- c) **Private Permission to Display** – Privately owned works which the City has contracted (easement, development agreement) with a property owner to display on private property in public view or right-of-way (including loans) are included because of the contract.



**Kindness** by Steve Bickis, Kevin Carlson, and Jane Vonderheide (2021)  
MAAA commissioned **and** displayed on private property per public agreement

- d) **Public Funding** – *Privately owned* works which the City has funded for public display are included because of the funding. A funding agreement will detail responsibilities for the work and its maintenance.



*Flight* by Dale Rogers on loan to the City, placed public property, and funded by the City

### 3) Allowable Categories

- a) **Request & Approval** – *Privately owned*, on private property, in public view without public funding or easement, **ONLY IF** the artist, property owner, or owner of the work have requested and MPAC has approved its inclusion in the Collection.

A work that would otherwise not fit into one of the included categories but it:

- Has been deemed of historic, artistic, or community importance via a public process (e.g., Immortality as a monument of artistic importance) and needs conservation
- Is a ghost sign under Madison’s Historic District guidelines that needs conservation
- Is already widely recognized as part of Madison’s public art reputation or is owned by a party who would like it to be

The City, the owner, or a community group can identify a work for request/approval and suggest that MPAC and the owner begin a conversation that reveals their interests and agree on a process forward.



Above: **Spring Awakening** by Dale Rogers sited near the community foundation (Bill Barnes pictured)  
Below: Gallery 115 Sign by Steve Bickis and **Immortality** by George Grey Barnard (1928)



b) **Other Exceptions** – The following can be included in the Collection ONLY IF incorporated by the artist AND integral to the work, project, or artistic process:

- Lighting or landscape elements
- Directional elements (e.g., graphics, signs)
- Art objects which are mass-produced of standard design (e.g., playground equipment, fountains, or statuary objects)
- Reproductions, by any means, of original works of art, except where such reproduction is inherent in the art process (e.g., films, photography, printmaking, computer imagery).
- Decorative, ornamental, functional, or architecture elements unless designed by the artist, integral part of the work, or are the results of collaboration among design professionals, including at least one artist.



## 3.4 Selection of Works: Acquisition or Inclusion

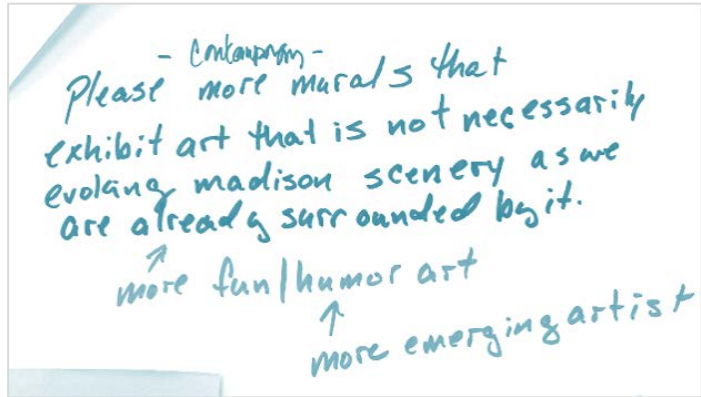
### Policy

- 1) **Acquisition** – The City is free to use any number of tools for acquiring works of art (e.g., competition, purchase, acceptance of a donation). In each case, the City becomes the owner of the work. Acquisition of an artwork:
  - Places the work into the Collection, implies a permanent, ongoing commitment, and is an explicit responsibility to display, maintain, preserve, and inform.
  - When artworks are viewed as no longer useful to the purposes of the public and/or the City, they must be reviewed under the "Removal from Collection" before disposal.
- 2) **Inclusion by Loan or Other Agreement** – The City has additional tools for including works in the Collection without gaining ownership, as outlined in "Inclusion in the Collection." In each case, the work remains the property of the property owner or the artist. Inclusion in the Collection brings the expectation that the entirety of guidelines applies to a work. However, it does not automatically require the City to fund, maintain or conserve the work. Private owners remain responsible for the work unless specifically agreed to in a contract with the City.
- 3) **MPAC Review** – MPAC is responsible for reviewing all gifts, loans, and public art exhibitions proposed by individuals, organizations, and neighborhood and community groups. The same policies, criteria and processes used apply in all these situations (e.g., loaned artworks are treated and displayed in a manner consistent with those artworks that are owned by the City) unless an agreement provides otherwise.

## Criteria

The following selection criteria apply to any artwork being considered for acquisition or inclusion regardless of process (e.g., commission, purchase, loans, and donations of work to the City). A work or proposed work must:

- 1) **Be eligible for inclusion** (above)
- 2) **Meet MPAC's goals and requirements** set forth with the project, scope of work, master plan, or program guidelines
- 3) **Demonstrate artistic and technical merit:**
  - Strength of concept and vision
  - Enduring value
  - Durability and craftsmanship in fabrication
  - Artist's credentials and recognition
- 4) **Be consistent with the remainder of MPAC's guidelines** (e.g., siting p 25-26, removal p. 30-31)
- 5) **Be relevant to Madison**, compatible with the Collection, and support MPAC's mandate to:



***Develop and maintain a collection of public art that is of the highest quality, that encompasses a broad aesthetic range reflecting the city and the minds of its citizens, that improves the quality of life in the area, that is accessible to all individuals and that is a source of pride to all residents.***

- 6) **Be feasible** regarding the artist's ability to successfully complete all aspects of the proposed work, and regarding available funds for purchase, transportation, documentation, conservation, liability, and storage of the work of art. The cost should be commensurate with the importance of the work to the public art collection.

## Processes

The City is free to use any number of processes, including but not limited to the following. Each requires a formal agreement (e.g., purchase, easement, gift, loan) with the City.

### COMMISSIONS

- 1) Contracting of an artist(s) to create a "new" original artwork for a specific site or project can happen via:
  - **Open Competition** – Using a Call for Artists / Request for Qualifications to which any artist may respond subject to project-specific limitations.

- **Limited/Invitational Competition** – Inviting a limited number of artists to proposals on a project – based on past work and demonstrated ability to meet project requirements or other non-aesthetic goals.
  - **Direct Selection** – Contracting with a specific artist for a project without competition. MPAC may create a list of eligible artists for such projects.
- 2) Procedures for commission works will vary and be dependent upon criteria established methods for selecting artists. Entry into any selection process constitutes agreement to the conditions set forth during the selection process.
  - 3) In general, when a public art project opportunity is identified, MPAC will appoint a Selection Committee. These ad-hoc panels will be formed for a limited period and will be charged with recommending individual artists for commission. Committees generally consist of five to seven members that include representatives from MPAC, the project design team, and the community at large. MPAC will approve and forward all recommendations on to the City. However, MPAC may also serve as a Selection Committee.

#### PURCHASES

As opposed to commissioned works which are new works created specifically for project sites, purchased works are existing works that are acquired and then placed at sites.

- 1) Artworks under consideration for purchase shall be forwarded to MPAC for review and recommendation to the City.
- 2) Processes for purchase of artworks shall be as deliberate as those for the commissioning of artworks.

#### DONATIONS

Private individuals and agencies can offer works of art as donations to the City.

- 1) Proposed donations are referred to the Director of Economic Development who will discuss what is necessary to submit a proposal for review.
- 2) MPAC will review the proposal according to the selection criteria – those used for but not limited to those used for any other acquisition. Even works in a previously juried exhibition will be subjected to these criteria.
- 3) MPAC may recommend to either accept or reject the proposal at its discretion and may attach conditions to its recommendations. For example, donors may be required to sign a maintenance agreement or establish a maintenance endowment to allow for the ongoing maintenance of the artworks. Donors may contribute monetary gifts to the City for maintenance of the Collection or towards the acquisition of a work of art at the discretion of MPAC.
- 4) MPAC will consult/coordinate with boards (e.g., Historic District), departments, legal counsel, or experts as appropriate to the situation and its deliberation.
- 5) All gifts to the Collection require a contract stipulating the conditions under which the work is transferred to the ownership of the City.



**LOANS**

- 1) MPAC will review the proposal according to its selection criteria - those used for but not limited to those used for any other acquisition. Even works in a previously juried exhibition will be subjected to these criteria.
- 2) All lenders shall enter a loan contract with the City that details the conditions under which the artwork is borrowed.
- 3) All loans to the City shall have a stated expiration date. Before the conclusion of the loan period, MPAC, or other designated representative, will discuss with the lender the return of the work, extension of the loan period, or the conversion of the loan into a gift.
- 4) Lenders should be encouraged to accept the costs of packing and transporting loaned artworks. Subsequent costs for maintenance and conservation should be negotiated with the lender.
- 5) Loans to the City shall be insured by the City for the declared value of the artwork. If questions should arise over the fair market value of the artwork, an independent fine art appraiser will be hired to provide a value. The cost of the appraisal will be divided between the City and the lender.
- 6) All loans will be reviewed annually by MPAC to ensure the continued relevance of the artwork to the stated criteria of MPAC.

### 3.5 Siting & Relocation

#### Policy

- 1) **Purpose** – To encourage public enjoyment of the Collection, MPAC will place artwork in, on, or about any municipal building or other municipally owned, leased, or rented property.
- 2) **Authority** – MPAC has authority to select sites for works and to move works from one site to another. No work of art in the Collection may be moved without MPAC approval. Relocations, which follow the same criteria as site selection, can be:
  - The result of the Master Plan process,
  - Included as provision within a City contract (e.g., purchase, easement, loan, gift),
  - An alternate solution to a request for removal from the collection.
- 3) Neither site selection nor relocation requires Council approval.

#### Criteria

The site or location priorities shall be based on specific criteria that include, but are not limited to:

- 1) **Public Access & Safety**
  - Does the site allow good vantage points for viewing the work?
  - Is it accessible to the general public as well as to persons with special needs?
  - Does the site provide safety for the work and the public?

## 2) Appropriateness & Stewardship

- Will the work enhance the site?
- Is it compatible with the type, scale, and scope of potential public projects?
- Would it suffer from competing visual distractions, activities, or movement?
- Can it offer appropriate protection from improper or unnecessary physical contact?
- Is it protected from the elements (unless the work is designed for such exposure)?
- Can it be easily maintained?
- Can it be permanent or easily relocated, if necessary?

## 3) Alignment with City Goals

- Does it align with formal City plans?
- Does it align with proposed or potential private sector projects?
- What developments or changes to the built or natural environment are expected? (If the work is site-specific, is the location likely to remain unneeded for other public purposes in the foreseeable future?)
- Can installation at the proposed site be undertaken within budget and on time?
- What maintenance will be required for the artwork and any other related costs?

## 4) Potential Impact

- How will it benefit – physical, social, and economic – the community?
- Could it interfere with City functions (e.g., mowing, irrigation, snow removal)?
- Could it negatively impact the environment, adjacent properties, use of the space, vehicular or pedestrian sight lines, or traffic patterns?

## 3.6 Cataloguing & Documentation

### Policy

Once a work of art is included into the Collection, it shall be catalogued (formally known as accessioning) using a professional collection management system (CMS) such as Public Art Archive. Accurate and up-to-date records on all artworks will be maintained by the City, consistent with its stewardship obligations and commitment fiscal transparency.

### Process

- 1) The Director of Economic Development and OER (under the guidance of the MPAC) shall be responsible for cataloguing the work, documentation as below, safekeeping of all records (hard copy and/or electronic) and ensuring that the catalogue is publicly accessible.

This may be in collaboration with a MPAC designated partner (e.g., Jefferson County Historical Society).



- 2) The file for every accessioned work of art shall include documentation of:

- **Artist & Artwork Information** – As part of accession, the artists will provide a detailed description of the work, its fabrication, and installation. This along with details about the artist shall be reflected in all agreements. The description should include all specifications of the work designed, created and/or installed by the artist as well as bases, lighting, and landscape elements.

- **Ownership & Legal Documentation** (e.g., deed of gift, loan, copyright, or other agreements)
- **Selection Documentation** (e.g., process, funding)
- **Maintenance & Conservation Records** (e.g., Maintenance Specifications, Condition Assessments, Conservation Reports, and Maintenance Schedules)
- **Other Historical Records** (e.g., photographs, deaccession reports, records of community engagement with the work, or media coverage)

## 3.7 Community Access & Information

### Policy

The City of Madison and MPAC have a responsibility to see that a minimum level of interpretation relating to all artworks owned by the City is conveyed to the public. It includes:

- 1) **Identification** – The work should be clearly identified in writing, including title, artist, date, donor, and any other appropriate information. A label, plaque, or other appropriate means of communicating such information should be installed near the artwork, though its design must be sensitive so that it does not detract from the work itself.

Madison's Streetside History markers are examples of appropriate identification for public artworks.

Though Madison's Streetside History markers include non-artwork, the overlap of those markers with those for public artworks make it appropriate for MPAC to advise OER in their oversight.



- 2) **Physical & Visual Access** – The work must be in a location that is easily accessible to the public. Public buildings, shrubbery, signs, or other features should be maintained and not impede physical or visual access to the artwork. However, the City may impose access limitations on

works displayed within public buildings (e.g., building hours, restricted access areas). Continuing access to public art by the public, although the City may also limit availability due to circumstances such as maintenance, conservation, funding, public safety, display space and deaccession

- 3) **Lighting** – As appropriate, the artwork shall be lit so that it can be seen at night.
- 4) **Public Access to Catalogue** – Collection records will be available to the public by appointment. When possible, information on the Collection shall be made available to the public in the form of press releases, brochures, leaflets, website information, etc.

## 3.8 Maintenance & Conservation

### Policy

- 1) It is the policy of the City to efficiently maintain and preserve the Collection in the best possible condition as understood by the City. Specifically, the City seeks to assure the ongoing integrity of the artwork and the sites for which they were created, to the greatest extent feasible, in accordance with the artist's original intentions.
- 2) Therefore, it is the City's intent to:
  - Regularly inspect the condition of the Collection
  - Ensure appropriate routine maintenance and timely conservation of works
  - Establish a treatment and maintenance procedures, agreements, and documentation
  - Integrate maintenance requirements into acquisition, loan, and easement agreements
  - Use public funds wisely by avoiding costly conservation expenses resulting from neglect
  - Leverage private and volunteer support for maintenance of public art, whenever possible
- 3) Responsibility for maintenance and conservation of individual works in the Collection remain with the owner of the work. (*See Funding & Other Fiscal Matters.*)

### Process

Once a work of art is accessioned, the Director of Economic Development (under the guidance of the MPAC) shall be responsible for the long-term stewardship of the Collection as follows –

- 1) **Maintenance Specifications** – A detailed description of each public artwork shall be created by the artist(s), shall be reflected in all agreements, and shall include maintenance specifications. These specifications detail maintenance requirements including schedule and suggested products to be used. The artist should provide these specifications and include detailed specifications of the work, its base, lighting, landscape, etc.
- 2) **Biennial Assessment /Inventory** – The City conducts a biennial assessment of the Collection.
  - Condition assessments are inspections of works in their current location. They assess and record the current condition. They form the basis of maintenance and conservation



prioritizing within the Collection. Assessments may be carried out by City staff, but thorough assessments should occasionally be conducted by a professional.

- This process provides an inventory of the Collection, summarizes needs, and presents a maintenance and conservation plan for the coming biennium. It may result in deaccession recommendations. Assessments are also documented within the file of each individual work.
- 3) **Maintenance** – Trained staff carry out routine maintenance according to MPAC-established guidelines and/or Maintenance Specifications of individual artworks. MPAC must approve any deviation from the routine maintenance procedures in advance.
  - 4) **Conservation** – Works in need of a higher level of maintenance, repair, replacement, or conservation require conservation proposals (bids). A professional usually carries out treatments, often in collaboration with artists or other experts.
    - Conservation is repair is done to return public art to its original condition and integrity. This may be the result of flaws, neglect, aging, damage, or vandalism.
    - Proposals shall be filed in the appropriate individual object files. The treating conservator will document in writing any treatment carried out. Such reports shall be filed in the appropriate individual object files with photographic documentation of the object before, during, and after treatment.
  - 5) **Review & Approval** – MPAC reviews, approves, and acts on reports and recommendations resulting from the above.

Set timeline for replacing art? - Related 10; 100; 1,000 years?

#### **Conservation by Replacement**

The Broadway Fountain designed by J. P. Victor Andre was erected in 1886, recast in 1977, and should be maintained for another 100 years.



## 3.9 Rotation & Storage

### Policy

- 1) **Agreements** – The City may include a plan for rotation in any acquisition/accession agreement.
- 2) **Rotation** – Should the City develop rotation policies in the future, the MPAC will revise this document and present it to the Council for approval.

- 3) **Conditions** – Whenever, the City must store a work of art outside the public view, it will do so ensuring appropriate climate-controlled conditions.
- 4) **Partners** – Storage may be provided and overseen by a MPAC designated partner organization such as the Jefferson County Historical Society.

### 3.10 Removal from the Collection

Removal from the Collection (formally known as deaccessioning) should be a deliberate and uncommon process. Its standards must be just as stringent as those for acquiring works of art.

#### Policy

- 1) Any work being considered for removal from the Collection must meet at least one (1) of the six (6) criteria below.
- 2) It is generally the policy of the City **NOT** to remove a work from the Collection:
  - Simply because it is not currently in fashion
  - Within five (5) years of its acquisition or whose worth might not yet be recognized
  - Without a clear understanding of title to the object
  - Without approval by the Council (resolution)

#### Criteria

- 1) **Program Goals** – It is outside of the goals of the Collection. For example, the work:
  - Is of clearly inferior quality;
  - Has not displayed for five or more years, and there are no plans for future display; or
  - Has received consistent adverse public reaction over a period of five or more years; or the prevailing climate of public opinion recommends a review.
- 2) **Life Span** – It has exceeded its life span. For example:
  - It was purchased as a temporary acquisition and the City's obligation is terminated;
  - The period for the artwork's existence as agreed to by the artist and City is at an end; or
  - It is site-specific or environmental and significant changes planned for the use or character of the site will negatively affect the integrity of the work.

Murals approved through the Murals Program may be deaccessioned upon the termination of the Art Easement (five years with possible renewals in five-year increments). If the Easement is terminated exclusively on the initiative of the property owner, the deaccession is exempt from the deaccession criteria and does not require approval. If MPAC proposes the termination, then the requirements for deaccession stated in this policy must be met.

- 3) **Legitimacy** – Either the artwork or title to it is illegitimate. For example:
  - It is proved to be fraudulent, not authentic, or in violation of existing copyright laws;
  - There is a valid challenge to title;
  - The City has received a written request from the artist that it be removed; or
  - It no longer exists because of theft, accident, or an act of God.

- 4) **Safety** – It endangers public safety, the environment, or its security cannot be guaranteed
- 5) **Condition** – Its condition (e.g., damage, deterioration) is such that:
  - It can no longer be represented to be the original artwork;
  - Restoration is objectively unfeasible, impossible, or would render the work false
  - It requires excessive maintenance, has significant design or workmanship faults; or
  - Its security cannot be guaranteed, or the City cannot properly care for or store it.
- 6) **Context** – Its site has been destroyed or so changed in use, character, or design that:
  - Its continual display is prohibited;
  - The artwork’s survival is threatened;
  - Continued display would significantly diminish its artistic integrity and effectiveness;
  - The architectural support (building, wall, plaza) is to be destroyed and the artwork cannot be removed intact for relocation.

## Process

The process involves removing the work from its public site, from the inventory and maintenance cycles, and transferring records, both hard copy and electronic, into a deaccession file. Specifically –

- 1) **Biennial Assessment/Inventory** – *See Maintenance & Conservation.*
- 2) **Staff Report** – If, during its Biennial Assessment /Inventory, the City recommends deaccession of a work, staff will prepare a report that includes, but is not limited to:
  - **Overview & Reasoning** – Overview of the work and review of its records/history (e.g., accession, donor forms, artist information) along with reasons for deaccessioning from among the above criteria.
  - **Legal Opinion** – Before removing any works from the Collection, the City will make efforts to ascertain that it is legally free to do so. The City Attorney will be consulted regarding any contracts, donor restrictions, or other limitations that may apply to the work.
  - **Community Opinion** – If relevant, public and City comments on the artwork in question including documented public responses to the work.
  - **Condition & Appraisal** – Report of current condition, the estimated cost of repair, suggested and alternative course of action (for example, relocation). An appropriate appraisal or an estimate of the current value of the artwork based on recent documentation of gallery and auction sales should be sought prior to deaccession or disposition of any object.
  - **Expenses** – Estimated costs (e.g., removal; site remediation; relocation; or storage).
- 3) **Notifications** – Where applicable and reasonably achievable, the work’s artist, sponsor, and/or donor will be notified and invited to comment on the process by a specified deadline.
- 4) **MPAC Review** – MPAC will review staff recommendations with particular attention to:
  - Impact on the Collection overall as well as the artist
  - Reasonable efforts made to resolve the problem(s) that led to the recommendation
  - Opportunities to relocate the work, retaining ownership by the City
  - Alternatives for the long-term disposition of the artwork short of deaccessioning
  - Other recommendations that are agreeable to the artist and/or donor.

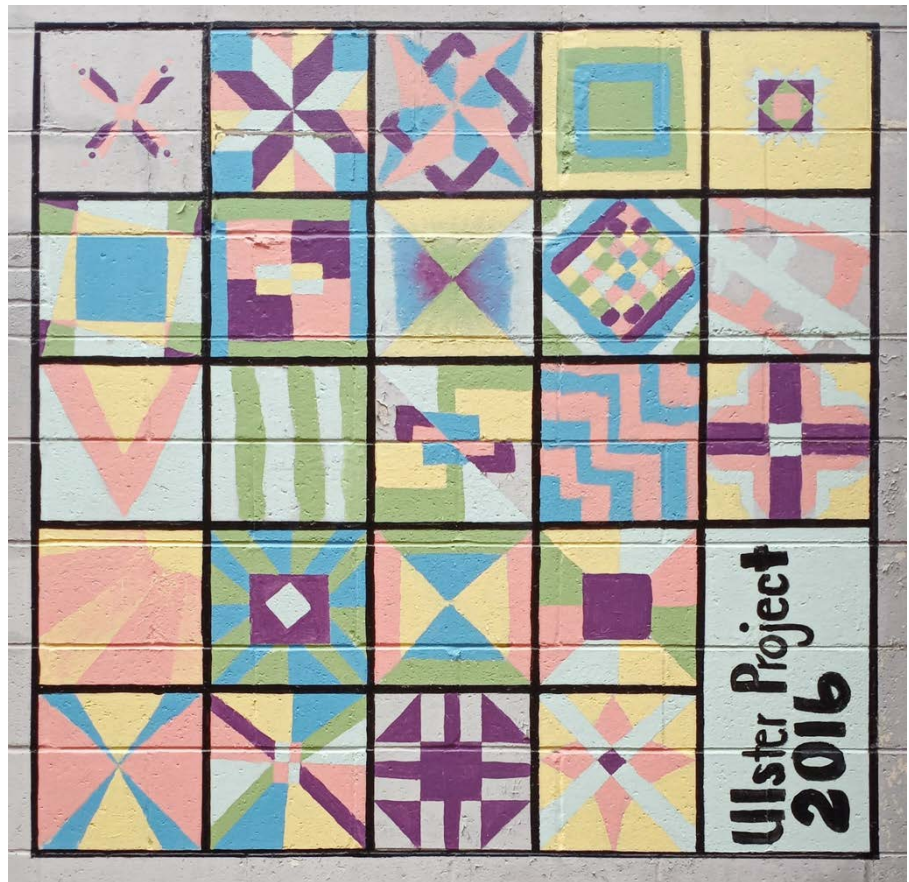
- 5) **Council Resolution** – If, after review, the artwork is deemed appropriate for deaccession, MPAC will make a formal recommendation for deaccession to the Council for approval by resolution.

### 3.11 Disposition of Works

#### Policy

Once the removal process is complete and has been approved by the Council, disposition of the work will follow Madison’s standard procedure for disposing of any other City property with the following additions:

- 1) **First Options** – Whenever possible, the artist or donor will be notified of plans for disposition and given first option of acquiring the artwork through purchase, trade, or other means.
- 2) **Methods** – Should the artist or donor not wish to acquire the artwork, MPAC will recommend one of these options: sale (public auction, sealed or open bid), trade, loan or donation to another institution, disposal, or destruction.
- 3) **Costs** – The City will be responsible for all costs involved in removal, relocation, and/or destruction unless the artist, donor, or other individual or institution acquiring the artwork agrees to assume such costs.
- 4) **Proceeds** – Any profits from the sale of artworks by the City must be credited toward future acquisitions of art and/or care and conservation.





# 4. Master Plan & Programs

## 4.1 Public Art Master Plan

The bulk of MPAC activity and public art projects will be guided by a Master Plan for Public Art that:

- Includes permanent, temporary, and rotating placement of appropriate work within the City
- Outlines specific projects and/or programs for implementation
- Identifies, and prioritizes:
  - Specific sites for future artwork placement of public art throughout the City
  - Goals for projects to be implemented in the first 3-5 years of the plan
  - Opportunities for community engagement tied to those projects
  - Funding needs and opportunities that leverage City of Madison appropriations
- Includes a schedule for updating the plan every 3-5 years

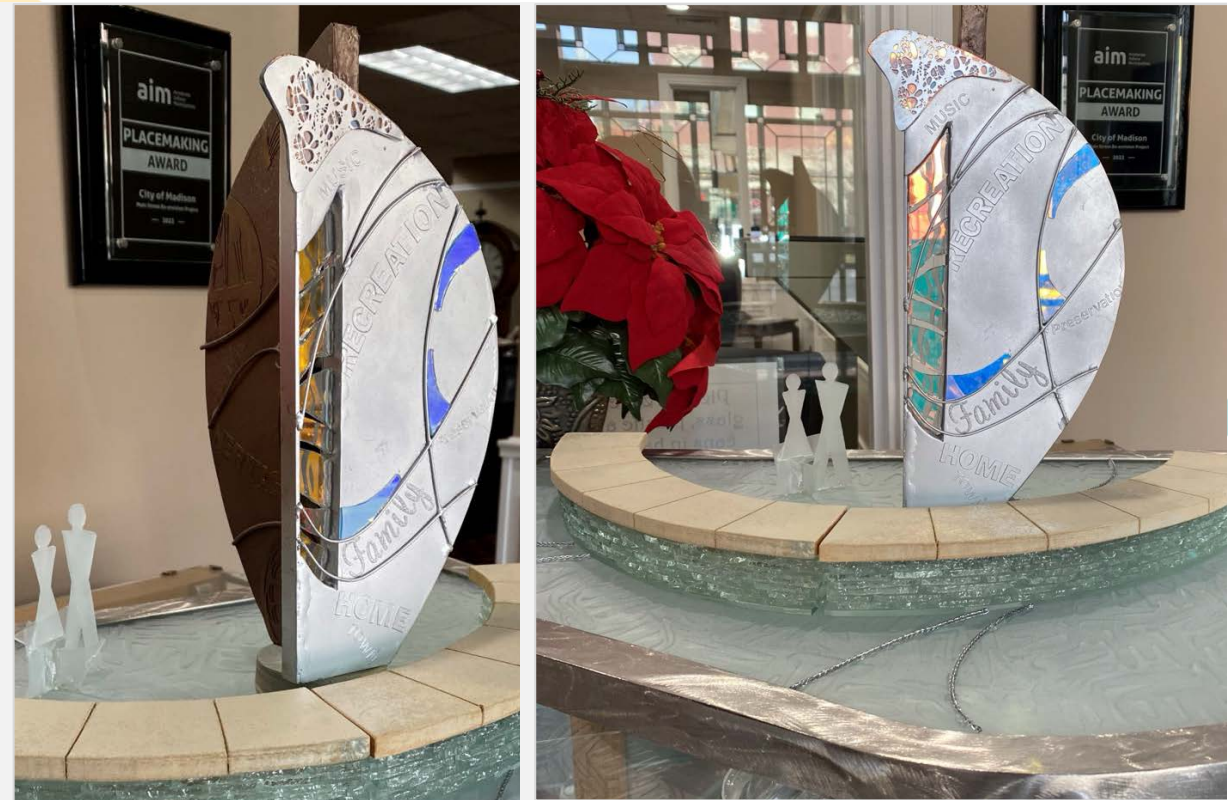
Creating this plan will be one of MPAC's first priorities. MPAC will engage the community in this process while:

- Encouraging public confidence for and appreciation of the arts in Madison
- Engaging the creative sector in tourism and economic development
- Building partnerships and collaborations throughout the City's creative community.
- Making recommendations concerning all aspects of public art, including policy, projects, acquisition, siting, maintenance, adoption, deaccessioning, education, and outreach.

The Council will approve the final product.



**Chautauqua** by Eric Phagan, recreated with Bob Saueressig, Steve Bickis, and Kevin Carlson (2013)



Model for **River's Edge** by Beverly Strucker Precious

### **Gateway Project**

The City of Madison's Public Arts Commission selected Beverly Stucker Precious's sculpture proposal, "River's Edge," for the Madison/Milton Bridge Gateway Public Art Project.

Precious's design is a two-part sculpture consisting of a stainless steel plane representing our bright future and a perpendicular plane of oxidized steel indicative of tradition and heritage. The sculpture highlights a converging intersection of these elements, revealing carved, fired, and fused dichroic glass representing the river itself. This unique form of glass reveals varying colors through different angles of light depending on the viewer's perspective, reflecting the constant yet ever-changing waters of the Ohio River.

Standing approximately 16 feet tall, "River's Edge" integrates the concept of old and new, past, and future, with modern and traditional elements complementing the nature of our city. This abstract design will stand as a beacon to traffic coming into Indiana as they cross over from Kentucky but will reveal further details to pedestrians at a closer view.

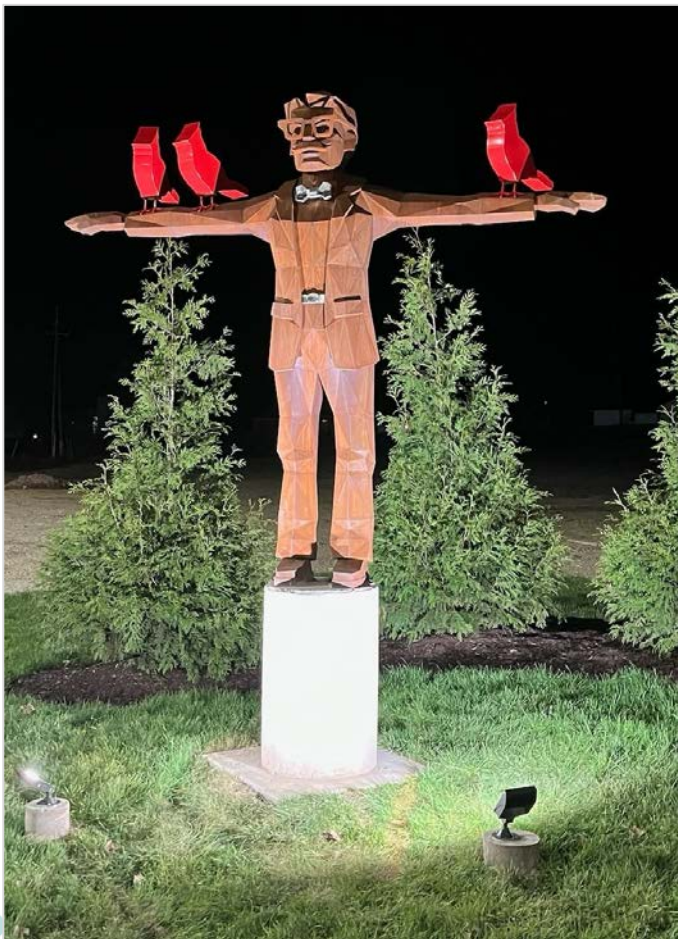
The sculptor, Beverly Strucker Precious, is from South Bend, Indiana, and has a B.F.A. in sculpture and painting from the Herron School of Art at Indiana University. She is a professional member of the International Sculpture Center and the Chicago Sculpture International groups. Precious has earned dozens of awards nationwide, including the American Institute of Architects Design Award in Denver, CO, and she was also awarded as a Festival Walk Complex Ltd. Sculpture Finalist in Hong Kong.

"This sculpture will be the finishing touch to all the work that has been done near the bridge over the past several years and will make an incredible impression on those passing through this gateway. I am very pleased with the impact our Public Arts Commission is already having on our community," said Mayor Bob Courtney.

## 4.2 Public / Private Development

### Policy

It is already the policy of the City to include public art requirements in every development project and contract. This practice will continue and may expand with MPAC oversight.



*Birdman* by Dale Rogers (2023) installed at Sunrise Crossing

## 4.3 Madison's Art Murals

Madison already has a rich collection of murals. As such there is an immediate need for policy and process that defines the collection and provides for its maintenance.

The definitions of signs and murals are often debated. (See Appendix: American Bar Association Article re Legal Considerations). **The following are true about murals wherever they are:**

- Anyone who wants to paint one must obtain permission from the property owner.
- Those put on public or private property without the owner's permission are illegal.
- Conservation and maintenance are the responsibility of the property owner.
- If the site is in a historic district, special rules apply.

For these guidelines murals are:

- One-of-a-kind works of art that meet criteria for inclusion in the Collection
- NOT signs that advertise a business, product, political message, or service



Example of a Commercial Sign



Example of an Art Mural

Sponsor recognition alone does not make it a sign (e.g., Shipley's Tavern mural)



### Policy

- 1) **Guiding Principles** – As MPAC inventories Madison's existing murals and considers future mural projects it will apply the following:

- a) Works should reflect, be unique to Madison, and lift up local artists. They should enhance community identity, contribute to the visual quality of the City, and delight passers-by.
  - b) Every mural involving more than one party should have an easement agreement in place. Our standard will be a five-year agreement with options for renewal.
  - c) A vibrant collection is well-cared for, includes a variety of styles and artists, is not overly dense in number, and does not have too much red tape hindering projects
    - o The location, scale and content of a mural should be in keeping with its environment.
    - o A sign with a mural should not dominate or compete with the principal mural theme.
    - o A mural should not be where an adjacent sign or development may detract from it.
    - o No two murals, with or without signs in conjunction, should be located too close to one another when facing the same traffic direction unless directly related.
    - o A mural should be properly maintained and cleaned or repaired as necessary.
- 2) **Additional Guidelines** – Madison’s Historic District Design Guidelines (HDDG) include seven provisions regarding murals. MPAC agrees with these provisions, incorporates them into these guidelines, and will generally apply them to murals throughout the City.

16.13 Historic painted wall signs, also known as “ghost” signs should be preserved and maintained. Restoration of ghost signs is appropriate.

16.14 Murals should be located only on planar or flat surfaces of buildings and shall not overlap architectural features such as cornices, columns, trim, windows, doors, vents, control joints in plaster, etc.

16.15 Murals should reinforce the size, shape, and proportions of building features such as column bays, window proportions and placement, planar wall proportions, etc.

16.16 Murals should not be located on the primary street façade of buildings.

16.17 For buildings located on corners, murals should not be located on the primary street façade but may be located on the secondary street façade.

16.18 New murals should not be painted over “Historic” murals or “ghost signs.”

16.19 The design and placement of new murals should be coordinated between both the HDBR and Public Arts Commission.

- 3) **Existing Ordinances** – Nothing in these guidelines changes existing ordinances, guidelines, permitting processes, or their interpretation. In fact, MPAC believes its guidelines can only be fully understood in the context of the City’s sign ordinance and historic district standards such as:

**Madison City Code** [https://codelibrary.amlegal.com/codes/madisonin/latest/madison\\_in/0-0-0-11421](https://codelibrary.amlegal.com/codes/madisonin/latest/madison_in/0-0-0-11421)

**Title IX General Regulations:** Chapter 98: Streets and Sidewalks

**Title XV Land Use:** Chapter 150 Building Regulations – Signs

**Title XV Land Use:** Chapter 151 Historic District – Development Standards

**City Zoning Ordinance** [https://www.madison-in.gov/egov/documents/1677252942\\_20191.pdf](https://www.madison-in.gov/egov/documents/1677252942_20191.pdf)

**Lighting Standards** [https://www.madison-in.gov/egov/documents/1614101818\\_87751.pdf](https://www.madison-in.gov/egov/documents/1614101818_87751.pdf)

**Historic District Design Guidelines** [https://www.madison-in.gov/egov/documents/1614186913\\_20004.pdf](https://www.madison-in.gov/egov/documents/1614186913_20004.pdf)

Any process or permit application that would apply under those regulations apply for art murals.

**Planning and Approvals Example**



“Planning for this project was extensive. As the town of Madison is national historic landmark, the research required to gain approval from the town's historic board was extensive. The entire community was involved through public forums, sponsorship opportunities, and the planning of fundraising events and concerts. The contractors I sought out to help restore the wall and seal it from additional water damage rallied around the cause and donated their time and services. The project was a true community effort and is now considered a local landmark.”

**West Street Mural** by Tiffany Black (2009)

<https://www.tblack.co/west-street-mural> and <https://www.codaworx.com/projects/the-west-street-mural-shipley-s-tavern/>

- 4) **Exceptions** – Madison may have works that the owner, community, or MPAC accept into the collection of art murals according to the policies of “Eligibility and Selection above.

For example, ghost signs are not included in the Madison’s Art Collection unless specific conditions are met.



## 4.4 Art in the Right of Way

Madison also has “art in the right-of-way” because of MAAAs ARTsy Switch Box Project.



### Switchbox Projects

The Madison Area Art Alliance’s ARTsy Switch Box Project” has represented the creative vibrancy and artsy spirit of Madison, Indiana. Introduced in 2017, the Switch Box Project transformed plain electrical switch boxes into public pieces of art, first throughout Madison’s Arts & Cultural District downtown, and on Madison’s Hilltop and in Hanover. The metal boxes were “slip covered” and locally fabricated. This project turned background urban utilities into conversational pieces that celebrate the ARTS, our creative community, and add beauty to our public spaces.

Switchbox cover by MMSP Girls Weekend Community Art from Bernie Kreger image

The Arts in the Right-of-Way (AROW) programs include various forms of art on public amenities and facilities such as bike racks, utility boxes, and pedestrian areas. They can also include asphalt art applied directly to the street to highlight crosswalks.

### Policy

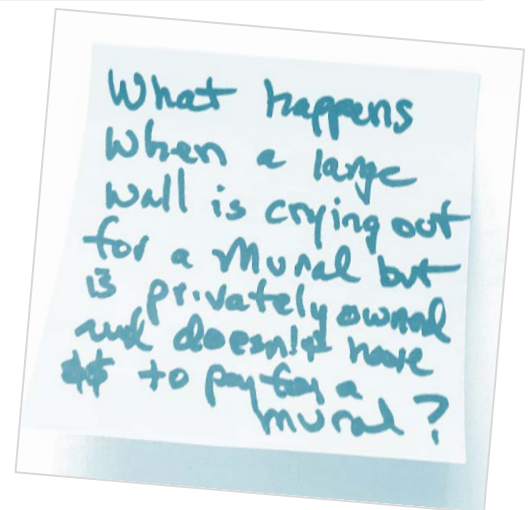
The City intends to continue to develop this program in collaboration with local, state, and federal government agencies; property owners; and implementation partners as appropriate to the project.

## 4.5 Support Programs

### Policy

MPAC intends to develop programs that will be used to support private projects. Their purpose would be to ensure the highest quality installation, maintenance, and appeal of works for Madison (e.g., fund site preparation, surface protection, lighting, maintenance).

We will look to examples such as Madison’s PACE Grant Program and Vancouver’s Mural Support Program (next page) as models.



## Example of a Mural Support Program

Vancouver, BC, CA

<https://vancouver.ca/parks-recreation-culture/make-an-outdoor-mural.aspx>

**Application:** The Program supports projects led by artists, property owners and community groups. Your project may be eligible for services, including wall priming, paints and supplies, and application of anti-graffiti coating provided at no cost. Projects are considered temporary and approved applicants are required to maintain the mural for a minimum of two years.

**Goals:** 1) Offering low barrier opportunities to produce murals by prioritizing and expediting mural applications; providing supplies and services to reduce applicant cost; taking on bureaucratic processes on behalf of the applicant. 2) Improving public space by facilitating art in the City. 3) Supporting community groups creating murals in their neighborhoods.

**Eligibility:** Must be an artistically driven project led by an artist or arts organization; fully visible from public space; property owner consent is required.

Public property sites are eligible if the applicant has secured a City or Park Board grant or commission or are in partnership or led by tenants of a City owned property.

Applications for murals on [Historic] buildings are subject to a lengthy process with no guaranteed approval. If your proposed mural contains an element of Signage, apply to ... for a Sign Permit.

### Not Eligible

- Content offensive to community standards
- Content that contradicts [...] values
- Elements of advertising, promotion, signage, branding, or product placement for a business
- Artwork that memorializes specific people ...
- Copyrighted material without permission ...
- Designs that confuse drivers
- Large areas of negative space

**Site Considerations:** Applicants are responsible for:

- Obtaining sidewalk, street... closure permits...
- Arranging lifts or scaffolding
- Securing access to adjacent private property when doing work if needed
- Ensuring safe working conditions, such as wearing masks, considering electrical wires, dumpsters, and other obstructions
- General liability insurance is recommended but not required.

### Services Offered

- Mural permitting
- Wall priming
- Paints and supplies
- Anti-graffiti coating
- Notifying neighbors

**How to Apply:** Artists must first contact the staff coordinator to determine eligibility and to access the application form.

### The following components will be required:

- Signed Mural Support Contract
- Recent Wall Photos ...
- Wall dimensions on photo
- Draft artwork
- Rendering (draft artwork superimposed on the photo of the wall)

**Timeline:** Painting begins approximately five weeks after application approval and community notification timeframe.

**Repair Support:** If an existing mural is damaged after the two-year Mural Support Contract has expired, you may sign a Mural Repair Contract providing:

- Professional graffiti removal
- Paints and supplies
- Anti-graffiti coating

Send an email ... with ... [r]ecent photograph of damaged mural, Signed Mural Repair Contract



# 5. Appendix

## 5.1 FAQs

We expect Madison's collection of public art along with MPAC's programs to become one of the most active and diverse in Indiana. Below are some frequently asked questions about the program:

### Working with Artists

**Q: How are artists selected?**

**A:** Most artists are selected through a competitive process that begins with an open call, also known as a request for qualifications (RFQ). This ensures that professional artists have the broadest possible access to City public art opportunities. A selection committee is assembled to recommend artists for each project. The committee includes artists, arts professionals, staff from the city department and representatives of the community where the project is located. Other selection methods may be used for projects requiring highly specialized talents or approaches.

**Q: What is the committee's role?**

**A:** The committee screens applicants for the quality of their work, their suitability for the project, and their ability to work well with the community and other design professionals. The committee can directly recommend an artist or team after reviewing the talent pool, or it can select finalists to develop concepts and interview before making a final recommendation.

**Q: What occurs after the committee makes a recommendation?**

**A:** Recommendations are reviewed by MPAC, a volunteer citizen advisory board, and approved before artists are placed under contract.

**Q: Where are the opportunities for Madison artists?**

**A:** MPAC is committed to providing opportunities for professional artists from Madison and across Indiana. Both are encouraged to compete for all City public art projects. We hope that some who gain recognition here will go on to advance their careers through projects nationwide.

**Q: Why don't you make all public art projects available only to Madison artists?**

**A:** Keeping our cultural doors open to the world brings Madison the best return on its cultural investments. It also helps to assure that other cities will continue to welcome and hire Madison artists, enabling our artists to build careers nationwide.

### Project Selection Process

**Q: How are projects picked?**

**A:** MPAC will work with the community, other city departments and the Mayor and Council to develop Madison's Master Public Art Plan. The plan will identify capital improvement projects and sites that could benefit the most from public art enhancements. Projects may sometimes focus on specific areas of the city to maximize the benefits of where multiple capital improvement projects are underway.

**Q: Who approves the annual public art plan?**

**A:** MPAC and City staff will review the Master Public Art Plan each year based on adopted budgets.

**Q: How can Madison residents participate in public art projects or the selection process?**

**A:** Artists work directly with city residents and other stakeholders to create projects that contribute to Madison's unique sense of place. Community meetings are held wherever projects are developed, so that residents can share their thoughts and insights with artists. Whenever possible, artists use those community insights to develop their designs. If you would like to become involved in public art, contact the Madison Area Arts Alliance.

**Q: Where have art projects been placed?**

**A:** Artwork has been integrated into a wide range of public buildings and spaces. One of MPAC's the first tasks will be to catalogue the collection and make it available to the public.

**Q: Can private businesses or neighborhoods also contribute to public art?**

**A:** Absolutely! The City encourages private developers to voluntarily participate in the Public Art Program by installing public art on their private properties consistent with these guidelines.

## About Public Art & the Program

**Q: What is the City of Madison Public Art Program?**

**A:** The Council established MPAC to involve artists with other design professionals in making Madison a more beautiful and vibrant city. MPAC works on the public's behalf to select the highest quality artwork, create distinctive community landmarks, and involve the community in the design of essential public buildings, systems, and spaces.

**Q: When was MPAC established?**

**A:** MPAC was created in 2021. We have worked through 2023 to develop these guidelines and will continue in 2024-25 to develop our Master Public Art Plan & Programs.

**Q: Does the City's public art investment affect the local economy?**

**A:** Yes. By engaging in public art as a tool for growth and sustainability, communities can thrive economically. Public art boosts cultural tourism, creates jobs, and increases revenue of local businesses. Arts, culture, and creativity can improve a community's competitive edge, attract new and visiting populations, and integrate the visions of both community and business leaders. And because public art enhances city buildings and infrastructure, most of the work is carried out by local construction and fabrication trades.

**Q: I don't like some public art. What can I do?**

**A:** Public art is no different from other public works in its power to stir discussion and controversy. For everyone who likes a project, it might be easy to find someone else who doesn't. In the end, public art is about community engagement and dialogue. Over time, artworks that are initially met with mixed public reaction eventually become accepted as part of the community's cultural fabric.

**Q: Why should I care about public art?**

**A:** Public art plays an important role in shaping our city and surroundings. By involving the public in improving the appearance and function of key civic buildings, spaces, and systems, it can help make Madison a better place to live.

## 5.2 Defined Project Categories

### Public Art Projects by Duration of Display

<b>Permanent</b>	Long-term projects with expected display life span of five years or more. These involve artists in the design, construction, and installation of permanent works of art that will either be site specific, integrated, or respective of the sites they inhabit.
<b>Temporary</b>	Projects that present new or existing work for short periods of time (up to five years) in locations including both indoor and outdoor areas that are selected based on visibility and their ability to adequately display art (e.g., pop-up).
<b>Rotating</b>	These works may be permanent parts of the Collection but only on public display on a rotating basis or in rotating locations.

### Works of Art by their Scale

<b>Intimate</b>	Works that provide moments for discovery, surprise, or personal interaction. They may not be immediately recognizable but happen upon or engage as in an intimate conversation. Examples: words, poetry, or pictographs inlaid in functional elements or places, as well as sound and visual experiences that create moments of pause, reflection, and serenity.
<b>Pedestrian</b>	Works that engage at pedestrian scale function for and interact with walkers, strollers, cyclists, rollerbladers, and other pedestrian activities.
<b>Vehicular</b>	Works that engage at the vehicular scale function for or interact with auto, motorcyclists, and transit riders, or vehicular encased "moving" people.
<b>Monumental</b>	Works that are grand in scale and engage viewers most effectively from a distance. Although they may be created to work at other scales, they are generally most effective when viewed from a distance that allows understanding of their entirety.

### Public Art Projects by their Location

<b>Building</b>	Public art integrated into the initial capital and development project design phasing and where artists are collaborative members of the building design teams
<b>Gateway</b>	These can enhance the character and distinction of an area by either marking or defining entrances into the city, significant areas, and individual neighborhoods.
<b>Greenspace</b>	Park, trails, and greenway projects invite tactile experiences, interaction, and participation, resting places, focal points, or connection with their natural elements or landscape features.
<b>Streetscape</b>	Projects such as street furnishings, seating, trash receptacles, lighting, signage, paving patterns, and plantings create pleasing and pedestrian friendly features and places.
<b>Infrastructure</b>	Storm sewers, water distribution mains and freeway overpasses and such can be designed so they become pleasing public symbols of community pride.
<b>Neighborhood</b>	These relate, celebrate, or record the shared experiences, community diversity, history, unique flavor, and authenticity of a specific area - creating neighborhood distinction.

**Community-Wide**

Participatory projects can promote Madison's history, present and future, make beautiful places, ease circulation and way finding, celebrate cultural diversity and expression, foster community pride, and most importantly create memorable places and experiences.

**Works of Art by Form**

<b>Environmental</b>	Artworks that engage or become the landscape or "place." In general, it refers to landscaping works, earthworks, and place works that are broad and multi-layered.
<b>Functional</b>	Artworks that provide function for people or place either through application on existing functional elements or by becoming functional elements. Some possible options for functional art installations include bike racks, benches, signal boxes, medians, subdivision walls, transit stops, storm drains, manholes, installations within parking garages, highway detail, highway gateway signage, monument signage, sidewalk treatments and more.
<b>Interactive</b>	In general, these works are created with a specific intention for user participation and are most successful during the act of interaction. A sound work activated by pedestrian footsteps on a pathway, or a water feature that invites people to play, fit within this venue.
<b>Light Installations</b>	Artists use lighting to manipulate the built environment with limited physical impacts. Light installations may be used on existing buildings, in park spaces on substantial landscape features, or as part of a larger installation of sculpture.
<b>Multimedia</b>	Multimedia installations may combine many art types in ways that expand the imagination. Video, lighting, sculpture, murals, and more can be combined. Multimedia installations are especially useful for temporary or pop-up installations.
<b>Mural</b>	Ephemeral works such as murals allow for the exposure of many artists over a short period of time rather than a few artists over a long period of time. Semi-permanence also allows for integration of mediums not typically included in mural installation, such as photography.
<b>Sculptural</b>	Artworks that are three dimensional and free standing in either an indoor or outdoor setting. In general, the term "sculptural" refers to works that are visually engaging, but not functional or interactive in nature. Whether contemporary, irreverent, traditional or something more, sculptures are often the highlights and focal points of civic art.
<b>Serial</b>	Artworks that are repetitious, continuing, narrative, or create culminating or wayfinding experiences. In general, these artworks are viewed as a collection of individual components, that, when taken together create an interactive journey (e.g., a series of words on steps that creates a poem or story, or a series of artworks on a path, sidewalk, or road).
<b>Site-Specific</b>	Site-specific art is created to enhance and celebrate its surroundings in which an artist considers the site first before anything else. It uses the surroundings to enrich the experience of the place itself. It can help to tell the story of the location or simply exist to elevate the site.

## 5.3 Madison's Public Art Ordinances

[https://codelibrary.amlegal.com/codes/madisonin/latest/madison\\_in/0-0-0-11421](https://codelibrary.amlegal.com/codes/madisonin/latest/madison_in/0-0-0-11421)

### Title III: Chapter 33 Other Departments, Boards, Commissions & Authorities

#### **NO. 2021-10 – AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MADISON, INDIANA ESTABLISHING THE PUBLIC ARTS COMMISSION**

WHEREAS, the City of Madison recognizes the importance of public art to promote the culture and uniqueness of Madison; and

WHEREAS, Madison's growing collection of public art reflects the dynamic evolution of a community in which people of diverse generations, nationalities, cultures, interests, and lifestyles choose to live, work and play; and

WHEREAS, Madison was designated a Cultural District by the State of Indiana; and

WHEREAS, the City of Madison recognizes and accepts responsibility for the beautification of its public areas, finding that such investments add greatly to the enhancement of the quality of life of its citizens, attract tourism, and provide incentives to business to locate in the city, thereby expanding Madison's economic base; and

WHEREAS, the City of Madison is wishing to establish a Public Arts Commission.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Madison, Indiana as follows:

**§33. 180 PUBLIC ART COMMISSION ESTABLISHED.** The Madison Public Arts Commission is hereby created for those purposes set forth in this chapter. The Madison Public Arts Commission shall be staffed by a city employee, appointed by the Mayor, in accordance with Indiana law.

#### **§ 33.181 MEMBERSHIPS; TERMS.**

- A) Membership. The Madison Public Arts Commission shall be composed of five members appointed by the Mayor and approved by the Madison Common Council. Members serve without compensation.
- B) Terms. Members will serve for three-year terms and may be reappointed for one consecutive three-year term. No member may serve more than two consecutive three-year terms, but he or she is eligible to be elected to the Public Arts Commission again after at least a one-year absence. If a vacancy occurs, a successor shall be appointed in the same manner as the departed member, and the successor shall serve the remainder of the vacated term. Initially, terms will be staggered as follows:
- 1) Two members to serve for one year;
  - 2) Two members to serve for two years; and
  - 3) One member to serve for three years.
- C) Chair. The Chair of the Public Arts Commission is a current member of the Public Arts Commission. The Chair will be elected by the members of the Commission.

#### **§ 33.182 PURPOSE AND GOALS.**

- A) Purpose. The primary purpose of the Madison Public Arts Commission is to integrate artworks into the public realm and assist with city-led beautification efforts. The secondary purpose of the Madison Public Arts Commission is to serve in an advisory role to private property owners who wish to integrate artworks in the development or improvement of publicly accessible or visible

private property.

- B) Goals. The goals of the Madison Public Arts Commission are as follows:
- 1) Enhance the visual environment of public spaces for residents and visitors;
  - 2) Strengthen the positive reputation, brand, and stature of the City of Madison and its neighborhoods;
  - 3) Promote distinctive and diverse artwork that communicates the community's sense of spirit, identity, and pride;
  - 4) Improve access to the arts for all citizens of the city and advance citizen understanding of public artwork and its civic role;
  - 5) Create opportunities for engagement and civic dialogue among diverse citizens of the city;
  - 6) Commemorate the city's collective memory and history;
  - 7) Commemorate the community's cultural and ethnic diversity;
  - 8) Promote and support programs for tourism, culture exchange and goodwill;
  - 9) Promote and support the economic development and vitality of the community; and
  - 10) Celebrate and advocate for artists and the important role that the arts play in our community.

### **§ 33.183 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"ARTIST." A practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability who produces artworks.

"DEACCESSIONING." A procedure for the withdrawal of an artwork from the public collection.

"PUBLIC ART." Artwork that is accessible or visible to the public. "PUBLIC ART" may be located on public land, in public facilities, or on private land that is accessible or visible to the general public. This may include sculptures or murals but would not include art hanging in a gallery. "PUBLIC ART" may or may not be city-owned.

"PUBLIC ART PROGRAM GUIDELINES." Rules and processes established by the Public Arts Commission for the governance of the public art program.

"PUBLIC ART PROJECT." Creation, commission or acceptance of a specific work of art for a specific public location.

"SIGN." A sign which directs attention to a business, commodity, service, activity or product sold, conducted or offered on the premises listed on such sign.

### **§ 33.184 RESPONSIBILITIES.**

- A) The Public Arts Commission shall develop and maintain a collection of public art that is of the highest quality, that encompasses a broad aesthetic range reflecting the city and the minds of its citizens, that improves the quality of life in the area, that is accessible to all individuals and that is a source of pride to all residents. The Public Arts Commission will not regulate business signs. Specifically, the Public Arts Commission is entrusted with the following responsibilities:
- 1) Develop, adopt, and administer policies and procedures pertaining to the planning, selection, placement, maintenance, relocation, and deaccessioning of public art that is located on public or publicly controlled land or in public facilities;
  - 2) Develop, adopt, and administer policies and procedures regarding the use of city funds spent on public art, selection of artists, review of designs, installation of artwork, and the adoption of protocols and other policies as may be deemed necessary. This will not include

the installation of business signage or billboards;

- 3) Function as the selection committee to direct the recruitment, review, selection, conceptual schematic design, and construction for public art projects. The Public Arts Commission may form a subcommittee of at least two members to oversee the process of public art projects; and
  - 4) Create and maintain a public art master plan.
- B) The City of Madison Common Council shall approve all policies and procedures adopted by the Public Arts Commission including, but not limited to, any guidelines, enforcement and penalties.

**§ 33.185 MEETINGS.** The Commission shall meet at least once in each calendar year with frequency determined by the members. Meetings shall comply with the Indiana Open Door Law, I.C. 5-14-1.5.

**§ 33.186 FUNDING SOURCES AND USES FOR THE PUBLIC ARTS COMMISSION.** Any funds needed for projects, acquisition, administration, or enforcement under this subchapter shall be subject to the standard processes and policies that govern the City of Madison's budgeting and expenditures.

### Title III: Chapter 35 Administrative & Finance Procedures, City Funds

#### **NO. 2023-6 – AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MADISON, INDIANA ESTABLISHING THE PUBLIC ARTS COMMISSION NON-REVERTING FUND**

WHEREAS, the City of Madison will incur certain expenses related to the Public Arts Commission and its promotion of public art; and

WHEREAS, the City of Madison wishes to establish a fund in order to deposit grant funds and other funds and pay expenses on marketing, grant matches, public art installations, beautification of public areas, travel, and special projects for the promotion and recruitment of public arts.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Madison, Indiana as follows:

#### **§ 35.41 PUBLIC ARTS COMMISSION NONREVERTING FUND.**

- (A) An account is established for the purpose of depositing monies from donations, grants, appropriations from City accounts or from any lawful source for paying the required obligations for the City of Madison Public Arts Commission.
- (B) The account shall be named the Public Arts Commission non-reverting fund and all funds contained in the account shall be expended only for the exclusive purpose of paying expenses related to marketing, grant matches, public art installations, beautification of public areas, travel, and special projects for the promotion and recruitment of public arts.
- (C) The express and written approval of the Madison Public Arts Commission shall be obtained prior to the expenditure of funds from the account.
- (D) The account shall be non-reverting and exist perpetually unless terminated by a subsequent ordinance enacted by the Common Council.
- (E) If the account is terminated by a subsequent ordinance enacted by the Common Council, the remaining balance of the terminated account shall revert to the general budget of the Common Council.

## 5.4 Summary of Input from Open House (July 2023)

Question	Open House Participant Responses
What are your hopes for public art in Madison?	<ul style="list-style-type: none"> <li>• Works that are timeless, high quality, authentic, iconic (e.g., Kindness), interactive (e.g., fun light installation), thought provoking (e.g., abstract sculptures in glass, metal, wood), include BIPOC and LGBTQ+ artists</li> <li>• Works that tell Madison’s story (e.g., honoring manufacturing heritage)</li> <li>• Continuing to include the Hilltop</li> <li>• Even more murals and commissions</li> <li>• More fun, humor, emerging artists</li> <li>• Love the asphalt art idea</li> <li>• Unearth old ideas, make things happen</li> <li>• Art that can be seen from boats on the river; Art at the city campgrounds, murals on the old water pumps; Think of small things, alleys, and little niches</li> <li>• Think about community involvement – art happenings and such</li> </ul>
What are your concerns?	<ul style="list-style-type: none"> <li>• Local artists being overlooked not celebrated</li> <li>• Not having a variety of styles, artists - or engaging the next generation</li> <li>• Having generic work that is not unique to Madison, could be anywhere</li> <li>• Limiting work to Madison scenery and landscapes</li> <li>• Overload “cacophony” – not all blank walls should be painted</li> <li>• Preserving Madison’s historical character</li> <li>• Too much red tape hindering cool art projects</li> <li>• Works that aren’t maintained and cared for</li> <li>• If politics become an issue</li> </ul>
What questions do you have?	<ul style="list-style-type: none"> <li>• What is the difference between mural, art v. sign?</li> <li>• How will we fund, support, sustain it for the long term?</li> <li>• How will City Council be involved?</li> <li>• How could a change in administration affect this?</li> <li>• What is the timeline for replacing art, maintenance, etc.?</li> <li>• What happens when a large wall is crying out for a mural but is privately owned and doesn't have money to pay for a mural?</li> <li>• What are commission term limits? How are members appointed?</li> </ul>
What are your favorite works?	<p><b>In Madison:</b> Murals – Kindness, around new parking lot, Crane, Switchboxes; Chautauqua, Shipley’s; George Grey Barnard at cemetery, Broadway fountain, Cub logo on Water Tower (Wilson Avenue); Work of Brenda Guess Shropshire, Bob Saueressig, Bill Borden; Bubble man doing bubbles on river and parades; Ties that Bind; Madison river walk and Hubbard Mosaic; Peddie and Fish window</p> <p><b>Across Indiana:</b> Louisville: Lights on the Big Four Bridge, Indianapolis: Dancing lady signs at intersections, Clifty Falls: Taxidermy, Columbus: Chaos, Chihuly Chandelier, Stained Glass (First Christian Church), New Harmony, Historic murals in French Lick, Richmond, and Cambridge</p> <p><b>Elsewhere in the World:</b> MoMA NYC, HoMA Honolulu, Central Park Gardens, Chinaru Shiota’s installations, Buckingham Fountain, Middleton’s civil war statue, Rodin and Michelangelo’s “David”, Shepard Fairey “Make Art Not War” mural – or something original, Vietnam War Memorial in DC, St. Mark’s square Venice</p>



## 5.5 ABA Article re Legal Considerations

### Understanding the First Amendment Limitations on Government Regulation of Artwork

From American Bar Association, *State & Local Law News*, Winter 2017 (link on page 56)

Local government control of art<sup>1</sup> arises frequently: for example, in the regulation of murals as a form of outdoor signage or advertising, in graffiti abatement, or in government selection of artwork for display in public parks or public buildings. These controls present many familiar First Amendment concerns. Because art has been characterized by the courts as a form of First Amendment-protected speech, regulations pertaining to artwork must be content neutral, contain adequate procedural safeguards, and may not be unconstitutionally vague. Artwork differs from other forms of speech, however, particularly signage, in one critical respect: in the case of artwork, the medium is commonly the message. While a written message on a sign could theoretically be conveyed regardless of the height, size, location, color, materials, or brightness of the sign structure, artwork is different. In many cases, the size, orientation, color, or materials comprising the work are of critical importance to the piece's communicative intent. Thus, while local government aesthetic regulatory interests are implicated in the regulation or control of art, the appropriateness of aesthetic interests in regulating artwork is debatable under the First Amendment.

While the First Amendment broadly applies to artistic media, First Amendment concerns regarding the regulation of architecture are still in an antenatal state. Few court cases have considered First Amendment challenges to local design review requirements, building design mandates, or ordinances that restrict the extent to which buildings may look similar or different from one another. Because First Amendment protections have generally expanded since the Constitution was ratified, First Amendment challenges to architectural controls may increase in the coming years.

This article reviews First Amendment issues associated with regulation of artwork. The government practitioner, however, should review the First Amendment doctrines applicable to regulations of all forms of speech, such as content neutrality. The case law pertaining to local government controls of artwork and architecture is actually quite sparse. Cases generally applicable to speech regulation and, as discussed further herein, the government speech doctrine and public forum law, provide additional guidance in this area.

**Forms of Local Government Regulation of Art and Architecture:** Local governments regulate or control artwork in myriad ways. On private property, art regulation frequently arises via zoning codes, sign regulations, and nuisance abatement controls. Murals, paintings, and other two-dimensional works of art located on private property and that may be affixed to building walls, on signposts, or elsewhere are frequently regulated specially as "murals" or other forms of artwork, or as a form of signs under local sign regulations. Three-dimensional works of art located on private property, including sculptures or statuary, may be regulated by zoning regulations that restrict the placement or size of structures, or by building or fire codes. Additionally, artwork may be regulated by local governments pursuant to their general authority to regulate nuisances; for example, many local governments prohibit graffiti and other nontraditional forms of artwork under their nuisance control codes. In some circumstances, nuisance regulations such as those prohibiting the location of trash or junk cars on private property may limit displays of artwork. Some local governments completely exempt works of art on private property from regulation under zoning or sign codes.

Similarly, local governments may have ordinances or other laws controlling private individuals' use and placement of objects, including artwork, within public property. Local governments may also control artwork on public property through procurement and selection processes for art displays in

public buildings. Some local jurisdictions have additionally initiated programs that *require* public art, or cash payments into public art funds, in connection with private development applications. Some such ordinances require review of private developments' public art installations by local art committees. Additionally, recognizing the benefits of publicly-accessible art, many local governments have adopted "percent-for-art" ordinances, requiring that governmental expenditures on public works include public art.

**First Amendment Application to and Protections for Art:** Courts frequently err in favor of affording artists' subjective viewpoints significant latitude in determining the First Amendment's application to artwork.<sup>2</sup> Music, theater, film, and visual art—including paintings, prints, photographs, and sculpture—as well as several other forms of expressive conduct, including tattooing, have been found to merit First Amendment protection.<sup>3</sup> One court observed that "[v]isual art is as wide ranging in its depiction of ideas, concepts and emotions as any book, treatise, pamphlet or other writing, and is similarly entitled to full First Amendment protection."<sup>4</sup> A particular work need not be immediately and obviously identifiable as a work of art, i.e., it could be fairly abstract, to be protected.<sup>5</sup>

The scope of First Amendment protection for artwork, while expansive, is not boundless. The same carve-outs from First Amendment protection applicable to other media of speech, including for obscenity, fighting words, and incitement, exist with respect to artwork. The First Amendment does not protect obscenity.<sup>6</sup> The Supreme Court has defined obscenity as "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value," as determined by an "average person, applying contemporary community standards."<sup>7</sup> The foregoing test does not provide bright-line clarity as to what types of artwork are obscene for constitutional purposes. The Supreme Court has found "hard core" pornography<sup>8</sup> and child pornography<sup>9</sup> to be outside of the scope of First Amendment protection, but courts have struck down local ordinance limitations on speech and expressive conduct as they related to poetry with a sexual content,<sup>10</sup> pornography that may be understood as degrading toward women,<sup>11</sup> depictions of animal cruelty,<sup>12</sup> virtual depictions of child pornography,<sup>13</sup> films or artwork in which obscene images are paired with non-obscene material, and parody material.<sup>14</sup> Artwork that depicts nudity, violence, or thought-provoking portrayals containing sexual content is not likely to fall outside the scope of First Amendment protection. But, to the extent art exhibits material of a vulgar, pornographic nature, it may not enjoy First Amendment protections.

As with artwork of an obscene nature, artwork containing elements of "fighting words," incitement, or defamation also falls outside the umbrella of First Amendment protection. When a work of art is intended to counsel viewers toward criminal violence, it may lack First Amendment protection. But, when an artist does not intend for her work to provoke unlawful action, and when the risk of such unlawful action is not great, the work would presumably be constitutionally protected.<sup>15</sup>

An artist's free speech rights may be limited additionally by state common law limitations on "verbal torts," including defamation—slander or libel—as well as torts such as intentional infliction of emotional distress.<sup>16</sup> Specifically, when defamatory speech is on a matter of private concern and involves private individuals, the First Amendment generally does not protect the defendant speaker.<sup>17</sup> Conversely, when speech critical of another relates to a matter of public concern<sup>18</sup> or when such speech involves a public figure,<sup>19</sup> the speaker may have a First Amendment defense against a tort claim. Thus, artwork that criticizes a public figure or addresses a matter of public concern would likely carry First Amendment protections that would be unavailable if the work criticized or parodied a private individual on a matter of private concern.

While the foregoing exceptions relate to all speech, another exception to First Amendment protection pertains specifically to artwork. In recent decades, courts have established boundaries between art meriting First Amendment protection and commercial merchandise that is not protected speech.<sup>20</sup> Many of these cases arise in the context of street vendors of clothing or other souvenirs that claim that local licensing requirements interfere with protected speech. Commercial merchandise lacking “a political, religious, philosophical or ideological message” falls outside the scope of the First Amendment’s protections.<sup>21</sup>

However, artwork does not lose its First Amendment protection simply because it is commercial in nature.<sup>22</sup> Commercial speech receives First Amendment protection, albeit less than noncommercial speech.<sup>23</sup> Commercial speech has been defined by the Supreme Court as “expression related solely to the economic interests of the speaker and its audience,”<sup>24</sup> or speech that otherwise proposes a commercial transaction.<sup>25</sup> Art in the form of commercial advertising, which bears the logo or trademark of a particular business or firm, or that otherwise proposes a commercial transaction, retains First Amendment protection.

**First Amendment Limits on Regulation of Art:** The First Amendment’s application to specific works of art is based in large part on the ownership—public or private—of the underlying property where the artwork is being displayed. Regardless of whether artwork is displayed on public or private property, developing code definitions that meet First Amendment limitations is the most important and difficult task in regulating artwork. Many local regulations contain definitional distinctions between signage and artwork. Because it is almost impossible to distinguish between signage and artwork without reference to the content of the message, these provisions defining artwork are likely content based and may be legally questionable following *Reed v. Town of Gilbert*.<sup>26</sup>

#### Art on Private Property

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Artwork on private property that is subject to local regulation typically falls into two categories: two-dimensional artwork such as wall murals or signage displaying murals or paintings and three-dimensional artwork such as sculpture or statuary. Graffiti is another form of artwork that frequently occurs on private property.

The First Amendment doctrine relating to regulation of artwork located on private property mirrors the doctrine associated more generally with signage on private property. In reviewing local regulations applicable to art, courts will generally look first to whether a regulation of noncommercial artwork on private property is content and viewpoint neutral,<sup>27</sup> and if so, whether it is tailored to serve a significant governmental interest and whether ample alternative channels of communication are available.<sup>28</sup> If the regulation is content based, strict scrutiny applies, requiring a compelling governmental interest and least restrictive means of achieving that interest.<sup>29</sup> For commercial works, courts apply the *Central Hudson* test requiring such regulations to serve a substantial governmental interest, directly advance that regulatory purpose, and not restrict more speech than is necessary.<sup>30</sup>

Other concerns that might arise in the regulation of artwork on private property include whether the regulation effects an unconstitutional prior restraint,<sup>31</sup> or whether the regulation is vague<sup>32</sup> or overbroad.<sup>33</sup> If a local regulation is content based, the government has failed to establish a substantial regulatory interest, or the regulation is not appropriately tailored to the regulatory interest, it will most likely be invalidated.<sup>34</sup> Similarly, if the regulation does not provide adequate procedural safeguards, such as a concrete review timeframe, or if the regulation leaves administrative officers with unbridled discretion to approve or deny the display of certain artwork, the regulation may be an unconstitutional prior restraint.<sup>35</sup> Moreover, if the regulation is vague or

overbroad,<sup>36</sup> or if the regulation suppresses too much speech,<sup>37</sup> it may also be found unconstitutional.

***Avoiding Content Bias: Definitions and Other Problems.*** Content concerns arise in many areas of art regulation, but the most common problems relate to definitions of “sign,” “mural,” “art,” or “artwork.” In *Neighborhood Enterprises, Inc. v. City of St. Louis*,<sup>38</sup> the owner of a mural protesting alleged eminent domain abuses by St. Louis, Missouri, challenged the city’s enforcement of its sign ordinance against the mural. The Eighth Circuit held that the city’s definition of “sign,” which exempted from its definition all flags, civic crests, and similar objects, was content based because the code’s application to the mural rested on the message of the mural.<sup>39</sup> A similar problem arose when the Norfolk, Virginia, sign ordinance exempted from regulation “works of art which in no way identify or specifically relate to a product or service.”<sup>40</sup> The Fourth Circuit found, “On its face, the former sign code was content-based because it applied or did not apply as a result of content, that is, ‘the topic discussed or the idea or message expressed.’”<sup>41</sup> The court went on to find that the city’s differential regulation of works of art was not narrowly tailored, since artwork could have the same detrimental impact on community aesthetics or traffic safety that garish signage might have.<sup>42</sup>

Case law also provides an example of content neutral treatment of artwork. In *Peterson v. Village of Downers Grove*,<sup>43</sup> the court upheld a local government’s ban on “painted wall signs.” The court found the ban content neutral because it did not contain references to the message on a given sign.<sup>44</sup> *Peterson* is instructive for local governments regarding the need to establish code definitions that do not create content based distinctions, particularly in the arena of regulating artwork on private property. After *Reed*, it will be challenging for a local government to distinguish between, say, a “mural” and a “sign,” or between a “sculpture” and a “structure,” in a content neutral manner, although it may be possible to identify specific media of artwork in the same manner as was done in *Peterson*.

Content neutral regulations of artwork should focus on the non-communicative aspects of the artwork. Examples of content neutral regulation of art include regulating the size, height, placement, or lighting of works of art.<sup>45</sup> Unlike with signage, however, regulating some of the locational aspects of art may give rise to claims of content discrimination, particularly when a particular work of art is alleged to be context- or location-specific.<sup>46</sup> Similarly, regulation of materials or color may be problematic, as the materials and colors used in the creation of a work of art are often central to the message of the particular work.<sup>47</sup> More broadly, regulating noncommercial artwork differently from other forms of noncommercial speech may violate the First Amendment. When a local sign code contains different size, height, or other display limitations on murals as compared with political signage, that code is at risk of being found to be content based.<sup>48</sup>

***Analysis of Content Neutral Regulations of Artwork.*** Content neutral regulations must be supported by a substantial or significant regulatory interest, and the regulation must be narrowly tailored to that interest.<sup>49</sup> In the context of sign and visual display cases, the Supreme Court has found both aesthetic and traffic safety significant and/or substantial as they relate to sign regulation.<sup>50</sup> But there is scant case law on the governmental interests supporting regulation of artwork. While traffic safety may suffice as a governmental interest for purposes of regulating works of art, aesthetics is likely less sound given that the aesthetic concerns of a local government may be at odds with the message of a particular work of art. If the government is in the business of making the community beautiful, can the government prohibit “ugly” artwork whose ugliness is a critical part of its message? A local government’s restriction on the size, height, or color of murals for aesthetic purposes may directly conflict with the central message of a muralist’s work. Similarly, whereas many sign codes regulate the placement of signs within property and with respect to street right-of-ways in order to preserve a

particular community character, an artist's placement of a sculpture or mural—if the artwork is site-specific—may help to articulate the message that the artist wishes to convey with his or her work.<sup>51</sup>

Furthermore, building safety, nuisance control, and other purposes underpinning zoning and building restrictions have not been widely reviewed for whether they are significant governmental interests in First Amendment litigation. In *Kleinman v. City of San Marcos*,<sup>52</sup> a Texas city had an ordinance prohibiting property owners from keeping junked vehicles on their properties. A novelty store placed a wrecked Oldsmobile 88 in its front lawn, planted it with vegetation, and painted the car colorfully with the message “Make Love Not War.” After ticketing the property owner and the commencement of litigation, the city stipulated to the fact that the car planter had some artistic expressive value. The Fifth Circuit found that the car's expressive value was secondary to its utility as a junked vehicle.<sup>53</sup> Applying the intermediate scrutiny test for expressive conduct, the court found that the junked vehicle ordinance was content neutral in purpose and narrowly tailored to serve the government's interest in preventing attractive nuisances to children, prevention of rodents and other pests, and reducing urban blight, vandalism, and depressed property values.<sup>54</sup> While the city's interests in blight prevention and preserving property values may have had some aesthetic component, the court did not analyze whether aesthetic interests alone could support prohibiting the creative car-planter as a form of artwork.

Narrow tailoring requires that the regulation in question directly advance the interest(s) asserted by the government. In the context of artwork, problems may arise where local codes treat murals differently from other forms of noncommercial speech, and where the regulatory interests at stake are not directly served by the differential treatment.

***Distinguishing Between Non-Commercial and Commercial Artwork.*** When a municipal code requires a property owner to obtain a permit for a commercial wall sign, but does not require a permit for a non-commercial mural, how does one address artwork displayed on the wall of a building that contains images of products sold inside the building? Business owners often use blank wall space on the side of a building to advertise products sold inside the building, beautify the premises of their properties, or to convey non-commercial or political messages. Determining whether such images constitute commercial or non-commercial speech is rarely simple.<sup>55</sup>

Case law provides several illustrations of this problem. When a city attempted to prohibit a fuel station owner's mural depicting “the geography, indigenous plants, and archaeology of Mexico, [the] social advancements of the Mexican people in contemporary society as well as reflections upon a colonial period of Mexican history,” placed in an effort to beautify the property and to attract customers to the station, a California court found the mural to be noncommercial speech.<sup>56</sup> And when a shop that sold fishing equipment, including bait and tackle, displayed a painted wall mural depicting fish and other aquatic plant and animal species, the mural was determined to be noncommercial speech: “[A]s the evidence demonstrate[d] . . . it reflects a local artist's impression of the natural habitat and waterways surrounding [the subject shop], and also alerts viewers to threatened species of fish.”<sup>57</sup>

Conversely, a mural in Ohio depicting a “mad scientist” outside of a shop that sold nitrous oxide for racing cars was found to constitute commercial speech.<sup>58</sup> In arriving at that conclusion, the court stated, “the crucial inquiry is whether the expression depicted in the appellants' mural either extends beyond proposing a commercial transaction or relates to something more than the economic interests of the appellants and their customers.”<sup>59</sup> The court found that “[t]he sign plainly is intended to attract attention to [the racing shop], which directly relates to that company's economic interests.”<sup>60</sup> In another case, a Virginia pet day-care owner displayed a mural depicting dogs playing

on the side of the building, in plain view of a dog park. The Fourth Circuit concluded that the mural was commercial speech because the mural was intended to attract attention of potential customers, it depicted images relating to services provided on the premises, and the owner had an economic motivation for displaying the mural.<sup>61</sup>

Courts are generally more deferential to governmental regulations of commercial speech as compared with regulations of non-commercial speech, in part because the commercial speech doctrine does not require an initial determination regarding the content neutrality of the regulation in question. But local governments should take care to define the boundary between commercial and non-commercial speech, using distinctions found in case law applicable to the local government.

**Special Considerations.** An area that has been mostly unexplored in case law relates to local anti-graffiti ordinances. Many local governments have taken measures to prevent graffiti, based primarily on aesthetic concerns and an interest in preventing vandalism and property-related crime. In a 2007 case, a group of graffitiists challenged New York City's prohibitions on the sale of aerosol paint cans and broad-tipped markers to persons under 21 years of age, and persons under 21 from possessing such objects in public places, which were intended to control unwanted graffiti in the city.<sup>62</sup> The Second Circuit upheld the district court's determination that regulation was content neutral, but also agreed with the conclusion that the ordinance provisions burdened more speech than was necessary to achieve the city's goals.<sup>63</sup> Earlier cases found similar restrictions to pass constitutional muster, although not on First Amendment grounds.<sup>64</sup> To the extent anti-graffiti ordinances regulate in a content neutral manner and do not burden more speech than necessary, they are likely to be upheld by courts. Local governments should beware, however, that many current anti-graffiti ordinances likely contain content based definitions of the term "graffiti." An example of a definition of "graffiti" that likely passes muster is one that references graffiti based on its unauthorized nature.<sup>65</sup>

Another area that has received little judicial attention relates to public art programs in private development projects. Some local governments require that private development projects include public art, require dedications of money or artwork in connection with private development projects, or undergo design review of artwork. The constitutionality of these arrangements has not been fully vetted. In a case originating in Washington state, a federal district court found that the city's requirement that signs be of a Bavarian style was not content based, did not constitute forced speech, and that a design review board charged with reviewing signs and architecture in the community did not constitute an unlawful prior restraint despite having "somewhat elastic" criteria for review.<sup>66</sup> Similarly, the Oregon Court of Appeals held that the City of Portland's design review process as applied to billboards did not constitute an overbroad regulation or unconstitutional prior restraint due to the narrow construction of the design review board's purview.<sup>67</sup>

#### Private Art on Public Property

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The regulation of artwork on public property carries different considerations than artwork on private property. Two special problems arise in the regulation of artwork on public property: the sale or display of artwork on public property such as parks, sidewalks, or streets and government selection of artwork for public property, including government buildings, plazas, and parks.

**Sale or Display of Private Artwork by Private Individuals on Public Property.** Many local codes prohibit the sale of commercial products or the solicitation of business on public property. Some of these code provisions create express exemptions for nonprofit organizations or other forms of noncommercial speech. In cases addressing such regulations, courts first review where the property

falls within the public forum doctrine, i.e., whether the property is a traditional, designated, limited, or non-public forum.<sup>68</sup> If the property is a traditional or designated public forum, restrictions must be content neutral and narrowly tailored to serve significant governmental interests, and these restrictions may regulate only the time, place, and manner of speech.<sup>69</sup> If the property is a limited public forum or a non-public forum, the restrictions must only be viewpoint neutral and reasonable, a far more deferential standard than that which is applied in traditional and designated public fora.<sup>70</sup>

In a 2000 case, *St. Augustine, Florida*, attempted to enforce its ordinance prohibiting “selling, displaying, offering for sale or peddling any goods, wares or merchandise” on public property, including streets and sidewalks, against a street artist displaying and selling newspapers and art that contained political messages.<sup>71</sup> The code provision exempted nonprofit and religious organizations, but did not contain any exemption for political speech. In a cursory analysis, the court found that the artist’s visual art and newspapers were protected by the First Amendment, and found that the public property regulated by the ordinance was a traditional public forum, thus requiring the regulation to be content neutral and narrowly tailored to a significant governmental interest.<sup>72</sup> Because the ordinance favored nonprofit and religious organizations over other forms of non-commercial speech, the court held the restriction content based.<sup>73</sup>

Similarly, a New York City law requiring street vendors to obtain a license for the sale of items on city sidewalks was found not to be narrowly tailored or to provide sufficient alternative channels for communication.<sup>74</sup> The restriction capped the total number of licenses available to sidewalk vendors citywide.<sup>75</sup> After finding that the works being sold by sidewalk vendors were subject to First Amendment protection<sup>76</sup> and that the traditional public forum analysis applied to the case,<sup>77</sup> the Second Circuit found that the license requirement and cap were not narrowly tailored to the city’s goals of reducing congestion and ensuring clear passage on the sidewalks.<sup>78</sup> The court reasoned that the city could have employed time, place, and manner restrictions to ensure clear passage on the sidewalks while still offering vendors the opportunity to obtain a license, and that exceptions to the licensing cap called into question the rule’s tailoring.<sup>79</sup> The court also found that the restriction did not provide ample alternatives, and that the sale of artwork on the street was more accessible than sales in galleries or elsewhere.<sup>80</sup>

To the extent local governments prohibit the sale or display of commercial products on sidewalks or other public properties, exceptions made for non-commercial speech, including non-commercial artwork, should not distinguish among forms of non-commercial speech. Moreover, an outright ban or severe limitations on the display of non-commercial artwork in traditional public fora, such as streets or sidewalks, is likely to fail the narrow tailoring part of the intermediate scrutiny test. Time, place, and manner restrictions are permissible where necessary to ensure safe passage for pedestrians along public sidewalks, or to limit traffic congestion along public streets. Additionally, where the regulation of artwork is taking place in a limited or nonpublic forum, restrictions and prohibitions can be much broader, so long as they are viewpoint neutral.

***Government Selection of Artwork for Public Property.*** Government agencies, from federal agencies to local governments, often beautify public properties through the use of artwork, including murals, sculpture, and other works of art. In some cases, these works of art are commissioned by the government, and in other cases, they are selected through an artwork selection process. Generally, the government has wide latitude to choose artwork for government properties and to relocate or remove that artwork in the event the government chooses to redevelop or otherwise modify government properties.

Cases addressing questions of government acquisition and placement of artwork have generally held that artwork acquired by the government for display on public property becomes the property and expression of the government,<sup>81</sup> or alternatively, that the government's acquisition and display of artwork creates a nonpublic forum, where the acquisition process need only be viewpoint neutral and reasonable.<sup>82</sup> One court found that a sculpture located on the grounds of a federal government building constituted the expression of the government, and could be relocated freely without the consent of the artist.<sup>83</sup> That court additionally found that even if the sculpture's location had been a public forum, the sculpture's relocation was a time, place, and manner restriction because the government's purpose in relocating the sculpture was related to free passage of pedestrians on the plaza where the sculpture was located.<sup>84</sup> Other cases have held that government acquisition of artwork for display in public buildings or galleries creates a nonpublic forum, and government decisions to reject or remove artwork that could be offensive or critical are permissible when the purposes of the forum are undermined by the artwork's offensive or critical nature.<sup>85</sup>

The foregoing judicial approach to government control of artwork on government property was recently reaffirmed by the First Circuit in the case of *Newton v. LePage*.<sup>86</sup> There, the Maine labor department sought to remove a mural from a waiting room within its offices on the grounds that the mural did not depict evenhanded treatment of organized labor issues. In its analysis, the court did not rely on the public forum doctrine, but rather on the government speech doctrine, which was articulated by the Supreme Court just three years earlier.<sup>87</sup> Although the court did not conclude that the mural was government speech, it nonetheless deferred to the government's choice to remove the mural and concluded that there was no First Amendment violation in so doing.<sup>88</sup>

The government speech doctrine, which carves out from First Amendment application any speech promulgated by the government, lends additional support to local governments engaged in the selection and ownership of artwork on public property.<sup>89</sup> With the adoption and expansion of the government speech doctrine by the Supreme Court, it can be expected that government decisions regarding the acquisition, display, relocation, and removal of works of art on public property will be subject to even lesser scrutiny.<sup>90</sup> The Supreme Court has found that donated monuments in a public park constitute government speech,<sup>91</sup> as do specialty license plates.<sup>92</sup> Given this recent case law, artwork selected by the government for display on public property is likely to be considered by a court to be government speech.

**Conclusion:** This article's review of artwork through a First Amendment lens occurs on the frontier of constitutional jurisprudence. Yet as First Amendment protections expand, we may be witnessing an expansion of First Amendment applicability that may sweep up previously unchecked governmental controls on artwork and architecture. Local governments are therefore advised to carefully consider how their zoning codes and other regulations affect the ability of artists and architects to speak through their work and to ensure that local efforts to make regulations content neutral and otherwise consistent with the First Amendment preserve free speech rights of all speakers.

**For Endnotes See:** Understanding the First Amendment Limitations on Government Regulation of Artwork (ABA, 1/02/2017) [https://www.americanbar.org/groups/state\\_local\\_government/publications/state\\_local\\_law\\_news/2016-17/winter/understanding\\_first\\_amendment\\_limitations\\_government\\_regulation\\_artwork/?q=&wt=json&start=0](https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/winter/understanding_first_amendment_limitations_government_regulation_artwork/?q=&wt=json&start=0)

**Additional Sources:** De-"coding" the Visual Landscape: Municipal Sign Ordinances, Murals, and the First Amendment. Shannon T. O'Connor, Esq., (Municipal Lawyer, Jan/Feb 2018 Vol. 59 No. 17) <https://www.vaughanbaio.com/wp-content/uploads/2021/11/sto-de-coding-the-visual-landscape-municipal-sign-ordinances-murals-and-the-first-amendment-municipal-lawyer.pdf>

Public Art and the Law: A Primer (Center for the Art & Law) <https://itsartlaw.org/2021/06/18/public-art-and-the-law-a-primer/>



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