



MEMO

Date: 1/9/2017
RE: CRA Public Art Deaccession Policy Research and Recommendations
To: CRA Board
From: CRA Staff

The following CRA recommended deaccession policy language was assembled reviewing the City of Cambridge Public Arts Commission deaccession policy as well as model language suggested by Americans for the Arts, which is the nation's leading nonprofit organization for advancing the arts and arts education.

RECOMMENDED POLICY LANGUAGE

Deaccessioning is a procedure for the withdrawal of an artwork from public exhibition and is intended to maintain the value of the CRA's collection and guard against the arbitrary disposal of any of its pieces. Deaccessioning is a legitimate part of the formation and care of collections, and, when practiced, should be done in order to refine and improve the quality and appropriateness of the collection to better serve the CRA and the City of Cambridge. Standards applied to deaccessioning and disposal must be at least as stringent as those applied to the acquisition process and should not be subject to changes in fashion and taste. Whenever possible, artists should be notified of the withdrawal of their artwork from public exhibition or its relocation to a different site. In some cases such relocation may happen prior to the deaccession process commencing, as re-siting may be necessary when an artwork is in danger of being destroyed in its original location.

The CRA Board decides when a work of art should be deaccessioned after a careful and impartial evaluation of the artwork as per the criteria listed below and in accordance with the Visual Artists Rights Act of 1990. The Visual Artists Rights Act of 1990 (VARA) established specific artist rights once an artwork is sold. VARA protects the moral rights of attribution and integrity. Property ownership does not necessarily convey absolute rights over the thing bought. Real estate ownership, for example, is restricted by zoning legislation. Preservation legislation recognizes society's interest in preserving its architectural treasures, despite private ownership. Similarly, moral rights legislation recognizes that art ownership is not an absolute property right. Moral rights established by VARA include: 1) disclosure or divulgation, which allows the artist to determine when a work is complete and may be displayed; 2) paternity or attribution, which allows an artist to protect the identification of his name with his own work, and to disclaim it when applied to another's; 3) the right of withdrawal, which permits the artist to modify or withdraw a work following publication; and 4) integrity, which allows the artist to prevent his work from being displayed in an altered, distorted, or mutilated form, this includes a restriction to prevent any destruction of a work of "recognized stature," and any intentional or grossly negligent destruction of that work.

The CRA Board may review specific artworks proposed for deaccession and make recommendation about the disposal of these artworks when the artwork's present condition poses a safety hazard to the public or two or more of the conditions outlined in the attached policy are met and documented by CRA Staff.

RECOMMENDED LANGUAGE FOR FUTURE PUBLIC ART CONTRACTS

The following is language recommended as a best practice for public agencies to use in contracts with artists by Americans for the Arts in their *Model Public Art Agreement for Public Agencies* published in June 2005. The language has been slightly modified to be more specific to the CRA. This language should be used in any future CRA contracts with artists for the production of site-specific artwork.

This model language takes into consideration that the Artwork is site-specific. Site-specific means that the Artist designed the Artwork specifically to display at a particular Site and only that Site. The meaning of the Artwork is directly tied into the Site. A change in location of the Artwork may alter its meaning as imagined by the Artist or alter the Artist's statement as imbued in the Artwork.

The two alternative options provided below take into consideration that the Agency may insist on an unencumbered right to remove, relocate or destroy the Artwork to ensure that any current or future construction at the Site is not hindered.

[Option I]

Alterations of Site or Removal of Artwork

- a. The Agency shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The Agency shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The Agency shall make a reasonable effort to maintain the integrity of the Artwork.
- b. The Agency agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the Agency with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

[OR] [Option II]

Alterations of Site or Removal of Artwork

- a. The Agency shall notify the Artist in writing upon [adoption of a plan of construction or alteration of the Site] which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the Agency, the Artist may disavow the Artwork or have the Artwork returned to the Artist at the Artist's expense.
- b. As part of the third step in the *Steps for Deaccessioning* of the CRA Deaccession Policy, the CRA and the Artist shall engage in good faith negotiations concerning the Artwork's removal or relocation for a period not to exceed [90] days after written notice to the Artist. If an agreement can be made, the artist shall sign a Deaccession Agreement in accordance with the fifth step in the *Steps for Deaccessioning* of the CRA Deaccession Policy. However, the artwork may be removed or relocated or destroyed by the Agency should the Artist and the Agency *not* reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed [90] days after written notice to the Artist.
- c. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the Agency may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, the Agency may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.

- d. If the Agency reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of the Agency's failure to maintain the Artwork as required under this Agreement, the Agency may authorize the removal of the Artwork without the prior approval of the Artist.
- e. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.