**94-088 MAINE ARTS COMMISSION**

**Chapter 3: RULES TO CARRY OUT THE PERCENT FOR ART ACT**

**SUMMARY**: The following rules to carry out *The Percent for Art Act* outline the purpose, selection procedures, standards, eligibility of artists, inclusions and exclusions, and contracting procedures.

**SECTION 1. Purpose and Scope**

The following rules have been established to assure the expeditious and equitable selection of works of art for public buildings and other facilities, and shall be implemented with the guidance of the Maine Arts Commission (“Agency”). Definitions for Agency, Commission, Review Committee and Director are as defined in Chapter 2.

**SECTION 2. Selection Procedures**

**A. Advisory Committee**

Selection shall be by the contracting agency which shall consider the recommendations presented by an advisory committee composed of members chosen by the contracting agency and by the Director of the Agency.

I. **Size**: The number serving shall be no less than three and no more than five, except that in the case of projects with Percent for Art budgets of less than $7,000, the number shall be three.

II. **Composition**: The project architect, a representative chosen by the contracting agency, and a representative chosen by the Director of the Agency shall be members of all advisory committees. Additional advisory committee members shall be selected equally by the contracting agency and by the Director of the Agency from any of the following areas in whatever combination best applies to the project; museum director or curator, art historian, critic, collector, artist not in competition, art educator, or lay member of the public, except that in the case of any public school, vocational school, or university construction, a student may be appointed by the contracting agency.

III. **Responsibilities**

a. **Contracting Agency Representatives**: Committee members representing the contracting agency may serve as chair and secretary of the committee. A single committee member may serve in both capacities.

i. **Chair**: The committee chair serves as the liaison to the contracting agency, keeps records, administers the budget, publicizes the project, and files final reports.

ii. **Secretary**: The committee secretary serves as the liaison among committee members, keeps and distributes minutes of each meeting, and prepares requests for proposals and other correspondence with artists.

b. **Maine Arts Commission Representatives**: Committee members appointed by the Director of the Agency shall participate in all committee decisions and shall provide artistic and technical advice. As per 27MRSA §458(4), the Agency shall collect an administrative fee to administer the projects.

c. **Architect**: A representative of the architectural firm shall participate in all committee decisions, and shall provide technical assistance. Engineering and design changes required for installation or display shall be compensated separately. See section 3.B., Inclusions and Exclusions.

d. **Maine Arts Commission**: The Director of the Agency, or the Director's designee, coordinates and records the Percent for Art program, interprets the *Percent for Art Act*, provides information and technical assistance, may act as committee chair and/or secretary, and prepares reports and makes presentations to the Commission for approval of the selection process.

IV. **Remuneration**: Committee members not appointed by the contracting agency shall be reimbursed for their necessary travel expenses at current state government rates or contracting agency rates, whichever is greater. In the case of necessary off-site travel, committee members appointed by the contracting agency may also be reimbursed for their travel expenses. Reimbursable administrative costs incurred by advisory committee members and by the contracting agency shall include but may not be limited to: honoraria or design fees, postage, duplication, advertising, and telephone costs. The total cost of advisory committee expenses for each project shall not exceed 10% of the amount allocated for the purchase of works of art except in certain circumstances approved in advance by the Director of the Agency.

V. **Commission Approval**: The Commission delegates final selection of the artists and artwork to the advisory committee and approves the procedures followed for the project under the rules and regulations.

VI. **Local Approval**: It the contracting agency is a public school or school district which does not delegate final selection of the artists and artwork to the advisory committee, it shall appoint at least one representative from its governing board to sit as a voting member on the advisory committee.

VII. **Documentation**: Each contracting agency or Commission shall document the process of selecting works of art and artists. Minutes of each advisory selection committee meeting shall be forwarded to the Maine Arts Commission office by the committee secretary. Final written documentation shall be forwarded to the Agency within thirty (30) days of the completion and/or installation of any project by the committee chair. Artists shall provide photographic documentation of the artwork installed to the Agency in the form of six (6) professional quality slides and two 8" x 10" black and white photographs and/or other means based on technological requirements of the Agency.

VIII. **Conflict of interest**: All committee members shall disclose all potential conflicts of interest and shall disqualify themselves if such conflicts violate state law or established standards for juried competitions. All committee members have the responsibility to avoid direct and indirect private interest which is at variance with the impartial performance of their public duty. Members also have responsibility to avoid the appearance of a conflict of interest by disclosure or by abstention. At the same time, since members of the committee have keen interest in the arts and in arts organizations in the state, they should not disqualify themselves from either ongoing participation in the arts and arts organizations of their choice, or from general policy-making discussions and decisions which carry out the statewide obligations of the Agency.

a. Advisory committee members (including spouses and dependents) must not have direct or indirect interest, financial or otherwise, or engage in any business or transaction, or incur any obligation of any nature that conflicts with the selection of artists and artwork for the designated Percent for Art project.

b. Artists under consideration shall not be affiliated with advisory committee members, with the contracting agency, with the architectural or design firm involved with the project, or with the Commission staff member assigned to the project. Affiliation which constitutes conflict of interest shall include but not be limited to:

i. An employee, employer, agent, or dealer relationship;

ii. A relationship by blood, marriage, business, partnership or collaboration;

iii. Any other relationship that may compromise the objectivity of members of the advisory committee.

c. Artists who are full-time employees of the University of Maine and Maine Community College Systems shall be ineligible only for Percent for Art projects at the campus where they are employed.

**B. Eligibility of Artists**

I. **Maine Residency**: Preference may be given to artists who are Maine residents as outlined in Chapter 2 of the Agency Rules.

**C. Methods of Selection**

I. **Direct Selection**: The advisory committee recommends the purchase of a completed work of art or the commissioning of a specific artist.

II. **Limited Competition**: The advisory committee recommends that a limited number of artists selected from the Artists Registry be interviewed or submit proposals on a competitive basis.

III. **Open Competition**: A competition to which artists must apply directly. A prospectus, appropriate to the specific project, is prepared and its availability is widely publicized. A limited number of applicants are then selected to prepare detailed proposals.

IV. **Disapproval**: If the advisory committee's recommendation is not approved by the local contracting agency, or If the selection process is not approved by the Commission, the process must begin again. Any of the above Methods of Selection may be used in this case.

V. In all projects in which the total art purchase budget is less than $7,000, the advisory committee shall select artwork either by direct purchase of existing artwork, or by a limited competition in which a commission is awarded.

**SECTION 3. Standards**

**A. General Criteria for Selecting Works of Art**

I. **Style and Nature**: Works of any aesthetic persuasion which are appropriate as Art in Public Spaces and compatible in scale, material, form, and content with their surroundings will be considered. Works may be participatory in nature.

II. **Quality**: The consideration of highest priority is the inherent quality of the work itself.

III. **Media**: All art forms may be considered.

IV. **Elements of Design**: The advisory committee and the artist will take into account the fact that, as differentiated from works in a museum context, Art in Public Spaces may function as focal points, modifiers, or definers of specific spaces, and/or establishers of identity.

V. **Conservation**: Due consideration shall be given to structural and surface soundness and to permanence in terms of relative proof against theft, vandalism, weathering, or excessive maintenance or repair costs.

**B. Budgetary Inclusions and Exclusions**

I. **Inclusions**: The portion of the capital appropriation reserved for works of art may be expended for the following:

a. **The cost of the work of art**: Generally, if the artist is commissioned to create a new work, the following are taken into account in the contract:

i. Artist's professional design fee;

ii. Labor or assistants;

iii. Materials required for production of work;

iv. Studio and operating costs of the artist, including rent, depreciation, utilities, communications, insurance. and other direct and indirect costs;

v. Travel of the artist for site visitation and research;

vi. Transportation of the work to the site;

vii. Installation of the completed work;

viii. Photographic documentation required by the Commission.

ix. Engineering, codes compliance, and other regulatory costs associated with the creation of the work of art.

x. Administrative costs, including but not limited to, Percent for Art site administrative contractor’s time and expertise, administrative materials/supplies, contractor’s travel expenses, meeting expenses and related facility charges, etc.

b. Identification plaques and labels.

c. Waterworks and electrical and mechanical devices or equipment which are integral parts of the work of art.

d. Frames, mats, or pedestals necessary for the proper presentation of the works of art.

e. **Honoraria and Design Fees**: Artists selected as finalists shall be paid honoraria or design fees for written proposals or models at rates to be established by the advisory committee, with a minimum of $100, and shall be reimbursed for necessary travel expenses at current state government rates.

f. Other items the Commission approves as appropriate to the particular work of art.

II. **Exclusions**: The portion of the capital appropriation reserved for works of art may not be expended for the following:

a. Reproductions by mechanical or other means of original works of art. Included, however. may be limited editions, controlled by the artist, of original prints, cast sculptures, photographs, etc.

b. Decorative, ornamental, or functional elements which are designed by the building architect or consultants engaged by the architect.

c. Those elements generally considered to be components of a landscape architectural design: plant materials, pools, paths, benches, receptacles, fixtures, planters. etc., unless they function as integral components of an earthwork or environmental public art installation.

d. "Art objects" which are mass produced or of a standard design, such as playground sculpture or fountains.

e. Directional or other solely functional elements, such as supergraphics, signage, color coding, maps, etc.

f. Those items which are required to fulfill the basic purpose of the contracting agency. Examples would be works of art in the collection of a state museum or works of art fulfilling an interpretive or educational role in a state park, the state library, or a college or university art museum or gallery.

g. Electrical, water, or mechanical service for activation of the work.

h. Exhibitions and educational programs related to the work.

i. In connection with the works of art, before or after they are installed: lighting. registration, dedication, unveiling, insurance, security, publicity or publications, and maintenance (preservation, conservation, restoration, repair), site preparation for exterior works including ground preparation such as concrete slabs or landscape grading.

**C. Long Term Care**

I. **Insurance**: Upon installation, the contracting agency shall insure the work against loss, damage, or theft.

II. **Maintenance**: The contracting agency shall maintain works of art in accordance with a maintenance agreement negotiated with the artist at the time of installation. The contracting agency shall not alter works of art in any way whatsoever without prior approval by the Agency.

III. **Conservation**: The contracting agency shall make every reasonable effort to consult with the Agency, the artist and a professional conservator in all matters concerning repairs and restoration of works of art. All restoration work shall be done in accordance with the Code of Ethics and Standards of Practice of the American Institute of Conservation, 3545 Williamsburg Lane, NW, Washington, D.C. 20008, as amended.

IV. **Relocation and removal**: Works of art shall be placed in the locations for which they are selected. The Agency and the Artist shall be notified if, for any reason, a permanently installed work of art must be removed or moved to a new location. The Agency and the Artist shall have the right to advise the contracting agency or Its designee regarding this treatment of the work.

a. **Relocation**: If the work was created for a specific site, the new site to which it is to be moved must be consistent with the artist's original intent.

b. **Removal**: Works of art acquired in the Percent for Art program may be removed only with the approval of the Commission and/or Agency. Requests for permission to remove works of art shall be made in writing and shall be reviewed at the next regular meeting of the Commission as it relates to the process.

V. **Transfer of Ownership**: If a work of art acquired in the Percent for Art program is removed, ownership shall be transferred by sale of the work. Proceeds from the sale of the work shall be used to acquire new works of art in the Percent for Art program. Sale shall be made, in order of priority. to one of the following parties:

a. **Artist**: To the artist who created the work. The artist shall have the right to purchase the work for its appraised fair market value. In the case of a work of art whose removal could require destruction of the work, the artist shall have the right to acquire the work or its surviving components for that portion of the cost of removal which exceeds the cost of destruction of the work.

b. **Nonprofit Organization**: If the artist does not choose to purchase the work of art, a nonprofit organization whose mission includes the presentation of works of art may acquire the work under the same conditions as those that apply to the artist.

c. **State of Maine**: If neither the artist nor a qualified non-profit organization wishes to purchase the work of art the State of Maine may acquire the work under the same conditions as those that apply to the artist, except that the State of Maine shall pay only that portion of the appraised fair market value equal to the portion of the original purchase price paid by the original acquiring Institution.

d. **Other**: In the event that none of the above parties wish to acquire the work of art, then the work may be offered to the public under the same conditions as those that apply to the artist.

**SECTION 4. Contracting Procedures**

**A. Artists' Contracts**: All artists' contracts shall follow the form and substance of the model Percent for Art contract provided by the Agency.

**B. Public School Construction**: A public school construction project is subject to this Act only upon the affirmative vote of the governing board of the school administrative unit prior to the granting of concept approval by the State Board of Education. After the granting of concept approval to a school construction project to include Percent for Art funds, exclusion of Percent for Art will be allowed only under extenuating circumstances and with the approval of the Commissioner of the Department of Education who shall consider the recommendation of the Director of the Maine Arts Commission.

**C. Other Actions**: All requests by the contracting agency for actions to be considered by the Commission shall be made in writing.

STATUTORY AUTHORITY: 27 MRSA §458

EFFECTIVE DATE:

February 1, 1981

AMENDED:

August 17, 1982 - Sec. 2 & 5 (EMERGENCY)

November 1, 1982

March 31, 1985

July 26, 1988

September 28, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 21, 1996

AMENDED:

February 7, 2006 – filing 2006-61

March 14, 2018 – filing 2018-038