



Public ART

Master Plan

Commerce City, Colorado



Commerce City Cultural Council

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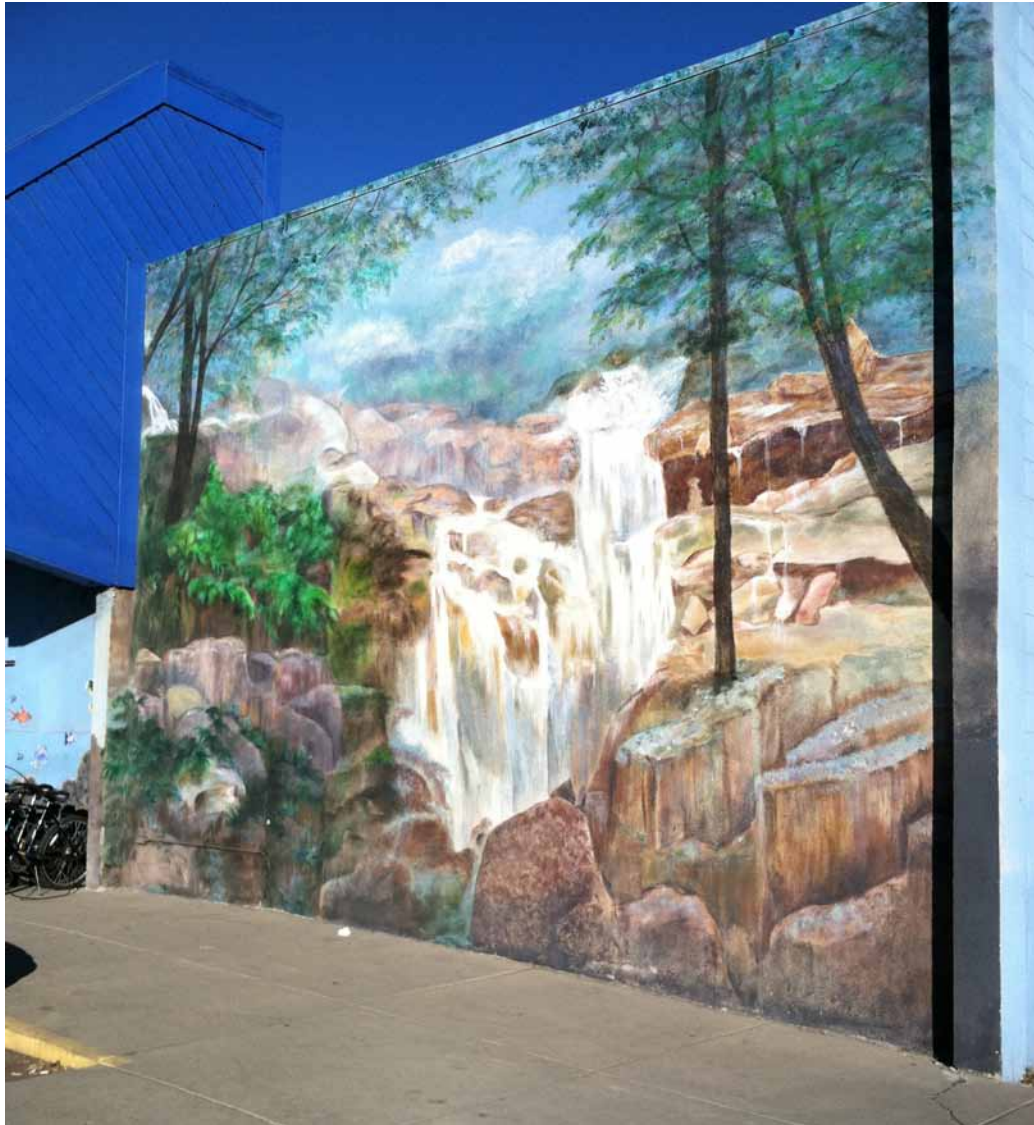
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**Commerce City Cultural Council
Meetings held 6 p.m the second Tuesday of each
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Approved / /



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Commerce City is a community that has qualities and heritage unlike other municipalities within the Denver-metro area. Several characteristics, such as our industrial nature, historic core city, Rocky Mountain Arsenal National Wildlife Refuge, and the Northern Range, set this community apart and should be expressed for current and future residents and visitors.

Commerce City is excited about Public Art and the creation of a Public Art Plan. Our commitment to a “*quality community for a lifetime*” directly corresponds with why public art is important within our city.

Public art demonstrates a community’s commitment to enhancing the quality of life for its residents. It is a tool to educate, inspire, challenge and stimulate creativity within the community. Public art influences people of all ages and can be a benefit to our schools and our workplaces. Research shows that public art has far reaching impacts that include attracting businesses and a qualified workforce. A traditional reason for implementing public art is for the enjoyment and visual delight of residents and visitors within a community.

Public art highlights public spaces within a community and encourages walking, gathering, and enjoying destinations. Strategic placement of attractive, thoughtfully designed artwork throughout the City brings vitality to public spaces and engages the community. Several reasons for initiating public art programs exist, but some may include:

- Enhancing the public’s appreciation for the arts,
- Elevating the quality of urban living,
- Strengthening community identity and pride,
- Illustrating the rich visual heritage of the region,
- Providing opportunities for education and learning, and
- Stimulating economic growth,

As public art is created and placed throughout the community, distinct attributes may include:

- Cultural and historic significance of the area,
- Area’s amenities, infrastructure, and surrounding natural/artificial landscape,
- Possibility of alternative uses for the site,
- Site dynamics and any features that connect contrasting elements with the surrounding environment, and
- Scale of the work as it relates to the dimensions of the site.



Public art is an investment in our community and may stimulate local economic development. While public art may not be a primary economic generator, its contribution as a secondary generator is invaluable. Through the enrichment of public space within the community, public art increases the quality of life for residents and appeals to potential employers and employees alike. Utilizing a public art plan crafted specifically for Commerce City not only will shape the community, but serve as a catalyst for new businesses seeking the quality of life that our city can provide.

Sincerely,

A handwritten signature in black ink, reading "Brian K. McBroom". The signature is written in a cursive style.

Brian McBroom
City Manager

PLAN BACKGROUND

WHY DO WE NEED A PUBLIC ART PLAN?

A public art plan is an investment into the values of the Commerce City community. While a public art plan meets a goal within the Cultural Facilities and Tourism section of the City's Comprehensive Plan, it also provides an opportunity for the community to capture its unique qualities and important history through public art. Adopting a public art plan creates visual appeal to public spaces, stimulates creativity in artists and art viewers alike, and reinforces the community's commitment to a quality lifestyle. Furthermore, our community is unique and has attributes that should be memorialized through public art. The heritage of this region, along with the character of Commerce City, can and should be incorporated into public art.

PLAN FRAMEWORK:

The following elements provide a practicle and sustainable framework for this plan, including action items and amendment procedures.

ART FOR THE PRESENT AND THE FUTURE

Identifying public art as an amenity to our community and as a method to display the rich heritage of the region is essential to the Public Art Plan. Through obtainable goals and creative vision, public art will not only enhance the quality of life for current residents, but also impact future generations.

OBTAINING AND PLACING ART

Clear processes and procedures for selecting artists, art, and sites are detailed within this plan. Criteria for selection and maintenance ensures fairness to artist and longevity for art pieces throughout Commerce City.

IMPLEMENTATION OF THE PUBLIC ART PLAN

With procedures for selecting and maintaining art, the plan identifies action items and funding mechanisms to provide for and sustain public art throughout the community.



UPDATING AND AMENDING THE PUBLIC ART PLAN

As public art is implemented throughout Commerce City, new ideas, themes, or forms of artwork may be identified for the community. The plan is a living document, created to meet the needs of the community and to reflect a rich history, while looking towards a prosperous future. Amendments and updates to this plan are encouraged and should be considered routine, in order to implement public art in a variety of creative ways.



WHAT IS ART?

BACKGROUND – WHAT IS ART?

Art may be different things to different people. For the purpose of this plan, art will be limited to “public artwork.” Public artwork is art that people encounter in their everyday lives. It could be a standalone sculpture in a park, a mosaic in a civic plaza, or even an artistic concrete pattern used to designate a transit station. Public art is meant to be inspiring and accessible.

DEFINITION

“Public artwork” is defined as artwork in the public realm, which is accessible to the public and possesses aesthetic qualities. Public artwork may be permanent, semi-permanent, functional, or temporary and includes, but is not limited to, the following:

- A. Sculpture: in the round, bas-relief, mobile, fountain, kinetic, and electronic or digital, in any material or combination of materials.
- B. Painting: all media, including portable and permanently affixed works.
- C. Graphic arts: printmaking and drawing; mosaics; photography.
- D. Crafts: clay, fiber and textiles, wood, metal, plastics, glass, and other materials both functional and nonfunctional.
- E. Mixed media: any combination of forms or media, including collage.
- F. Media art: film, video, audio, or any combination of electronic media.
- G. Decorative or ornamental embellishments designed by professional artists.
- H. Earthworks and environmental installations.

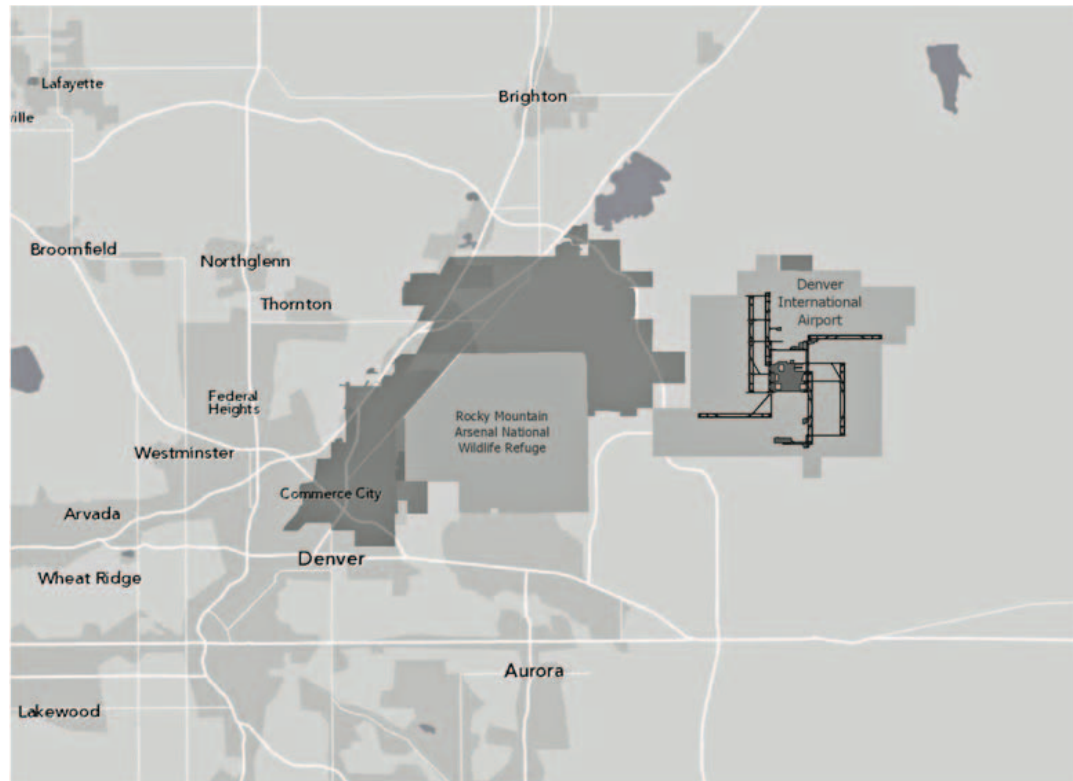
COMMERCE CITY CONTEXT

The City of Commerce City is located in the rapidly growing Denver-metro area, northeast of Denver in Adams County.

The city is surrounded by the communities of Brighton, Denver, Aurora, and Thornton, several wildlife parks (Barr Lake State Park to the north and the Rocky Mountain Arsenal National Wildlife Refuge to the east), and Denver International Airport (DIA).

After a period of rapid growth over the past decade, Commerce City is home to more than 45,913 people (2010 population from the U.S. Census Bureau) and occupies nearly 41-square miles. Additional land for growth will bring the city to a long-range total of almost 62-square miles.

A key feature of the city is its location along major regional travel routes (roadways (I-76, I-270, and E-470), railways (Burlington Northern/Santa Fe and Union Pacific), and air (Denver International Airport), which helped retain a strong industrial base for the city's economy.



WHAT IS NOT ART?

The following elements generally will not be considered acceptable forms of art under this program:

- Directional elements such as supergraphics and signage;
- Objects that are mass produced in a standard design such as playground equipment, bike racks, benches, and chairs (functional artwork is acceptable);
- Reproductions of original works of art, except in such cases as printmaking, film, video, photography, or other media arts;
- Landscape architecture and gardening, except where the elements are designed by an artist and are an integral part of a larger piece of the commissioned artwork;
- Renovation of historic façades or other historical elements functional to the project;
- Services or utilities necessary to operate or maintain artwork over time.





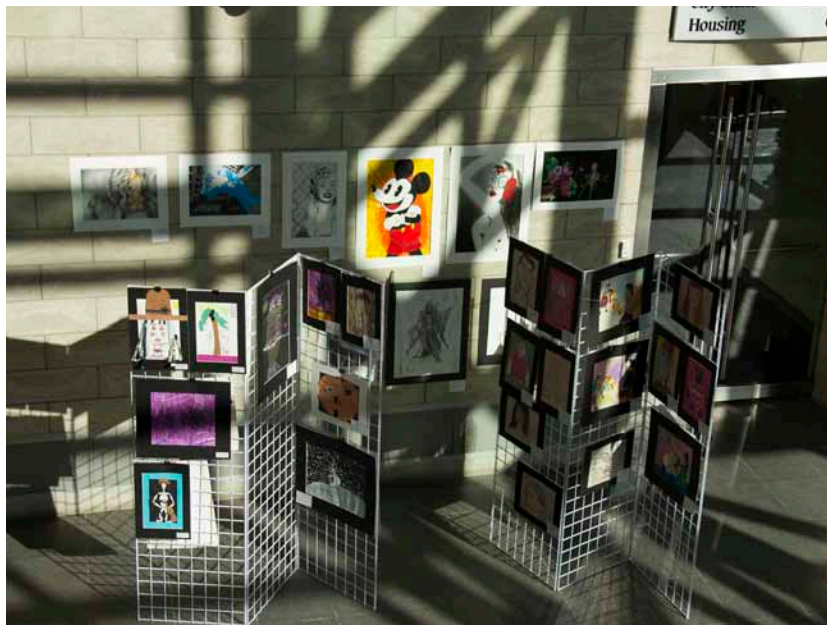
Buffalo Bulls
Wild West
August 18, 1887
Dorby, Colorado

PLAN VISION AND GOALS

The purpose of the Commerce City Cultural Council is to advance charity and education for preservation of art, music, theater, and dance in Commerce City.

BACKGROUND

The Cultural Council envisions developing and administering a strong public art program as an opportunity to support the city in creating a “quality community for a lifetime” by adding visual appeal and artistic elements to public spaces within the city’s boundaries for residents and guests to enjoy. Welcoming, well-integrated communities thrive, and public art has shown to be an effective tool for cultivating such a community.



VISION

Commerce City will be a community that brings people together and engages citizens of all ages in cultural activities that occur in all parts of the city. This lively environment also will attract visitors to cultural programs and events throughout the year.

The residents of Commerce City take pride in their community, appreciating the benefits of its growth and also valuing its history and heritage. An expanded collection of public art invites informal gatherings in parks and civic spaces. The City’s economic development efforts incorporate and promote the abundant cultural amenities within the community.

The Commerce City Cultural Council will continue to be the catalyst for all cultural activity through strategic partnerships, expanded networks, and financial support from civic organizations, businesses, and government.

Vision for Commerce City includes:

- Students thriving within robust arts education options in the school’s curriculum.
- Youth and adults alike taking advantage of studio classes and performance opportunities at the cultural center.
- Attracting local artists to career and development workshops at the cultural center.



PUBLIC ART MASTER PLAN OBJECTIVE

Provide a framework to guide the Commerce City Cultural Council in selecting the most appropriate public artwork that reflects the community's values and culture for designated locations throughout Commerce City.

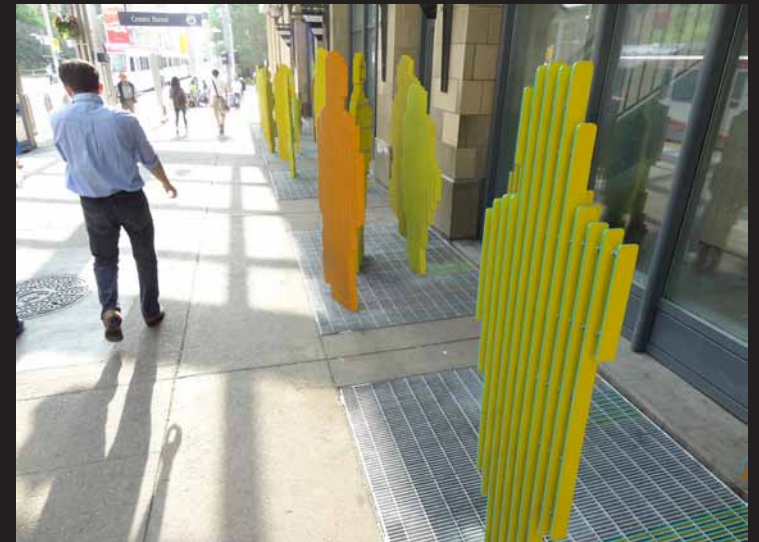


GOALS FOR PUBLIC ART IN COMMERCE CITY

Acquire public art unique to Commerce City that reflects community values, and place it within public spaces for the community and visitors to enjoy. This public art will generate community pride and contribute to the vitality of the community by enhancing quality of life. Also, public art may remind us of our heritage, serve as a source of celebration, and prompt new ways of seeing and inspiring conversation and reflection.

Goals specific to each individual plan element are contained within that element. General goals that will be referenced throughout the plan include:

- Giving preference to local artists in the selection process, whenever possible,
- Finding art that speaks to the location and context,
- Celebrating Commerce City's heritage, natural environment, and multi-cultural population, while still looking ahead and being innovative, and
- Never limiting artistic potential.



ARTWORK AND SITE SELECTION

PUBLIC ART ADMINISTRATION

BACKGROUND

Commerce City’s public art program, while administered by the Cultural Council, will require collaboration with city government. The purpose of this section is to outline roles and responsibilities, as well as general administrative procedures, related to a Commerce City public art program.

ROLES

CULTURAL COUNCIL

A Conflict of Interest Policy will guide the work of the Commerce City Cultural Council. This policy is available as a separate document prepared by the Cultural Council.

ADMINISTRATION

The public art program for Commerce City is administered by the Commerce City Cultural Council.

- 7 to 15 citizens interested in Culture and the Arts
- Appointed by the city
- 3-year terms
- Commerce City Residents or Employees within the city

SELECTION

To implement the public art master plan, the Cultural Council will initiate public art projects and govern the site and artwork selection processes. The Commerce City Cultural Council will assemble for each project an art selection committee to conduct the artwork acquisition process.

PROJECT INITIATION/FUNDING

The Commerce City Cultural Council will initiate public artwork projects for distribution throughout Commerce City by seeking out and applying for grant money, soliciting corporate sponsorships and fundraising, assessing the viability of a site, and managing potential changes to the public art site.



COMMERCE CITY

OWNERSHIP

The City of Commerce City shall be the owner of all public artwork that is subject to this policy, except for any public artwork that the city may accept on loan “for public display.”



INSURANCE

The city will insure pieces that are on loan as well as permanent installations.

SELECTION

The City Council will observe the artwork selection procedures set forth in this public art master plan. If permanent funding programs are implemented in the future, the City may assume a role in collecting and managing those funds.

MAINTENANCE

The City will be responsible for the ongoing upkeep and maintenance of public artwork. To ensure the integrity of artwork, the Cultural Council will be notified of and approve any maintenance activity other than routine upkeep and care.

PROCESS/GUIDELINES - ADMINISTRATIVE PROCEDURES

PROJECT CONTRACT

If public artwork is to be commissioned or donated, a written contractual agreement between the city and the selected artist will be executed. The city will initiate the contract. The agreement will outline the purchase price, detail the responsibilities of the artist and the city, provide a warranty of at least three years, outline reproduction and copyright issues, and stipulate timelines and deadlines for completion of the public artwork. The terms of the contract will be consistent with the Visual Artists Rights Act of 1990.

Unless otherwise notified in writing by the artist, the owner, or the lender, as appropriate, and subject to copyright restrictions, it is understood that the city may photograph and reproduce borrowed material for publicity and educational purposes, and for use in its publications. Artists submitting work shall agree to allow images of the accepted work in exhibition publication documents. It is understood that public artwork on loan may be photographed by the general public, subject to the city's requirements.



ARTIST'S EXPENSES

Expenses will be handled on a case-by-case basis. Generally, each artist will be responsible for all expenses associated with the design, labor, materials, contracted services, operation, and travel required to complete the work, as well as transportation of the work to the site in accordance with contractual arrangements with the City.

MAQUETTES

Finalists may be asked to submit a maquette, or model, of the proposed public artwork. Maquettes created pursuant to this section, which are not picked up by the artist or their agents within a specified time period, will become the property of the City and may be destroyed.

SITE SELECTION PROCESS

BACKGROUND

In order to select the most appropriate sites for public artwork within Commerce City, it is important to first understand the City's origins and future direction.

COMMERCE CITY CONTEXT

Commerce City is a relatively new city incorporated in 1952, although its past can be traced to a number of smaller, historic communities that emerged nearly 100 years ago.

The first settlements in the area were Fort Convenience (1832), established by Louis Vasquez as a trading post for the lucrative beaver pelts in the area. Henderson Island (1859) along the South Platte River was developed as a trading post to provide supplies during the Pike's Peak Gold Rush.

Years later in the late 1880s, the Burlington Northern and Union Pacific Railroads constructed rail lines through the area to connect Denver with the rapid development of the Great

Plains. The railroads brought population and industry that created original communities like Dupont, Commerce Town, and Irondale (1889), were established. Others, like Rose Hill, Derby, and Adams City (1903), started as agricultural communities, benefiting from their proximity to the railroad.

During the 1930s and 1940s, burgeoning industrial uses emerged along the railroad, as Denver's industrial development began to spread north from Denver along Brighton Boulevard. Heavy industries such as refineries, grain elevators, and flour mills found the Sand Creek area most suitable for their growing business needs.

World War II brought massive changes to the area, as the Rocky Mountain Arsenal was established and relocated hundreds of families from the surrounding area. The U.S. Army established a chemical weapons facility in 1942 and operated the site into the 1960s when it was converted into a chemical facility for Shell Petroleum. As a result of the Arsenal, the expansion of Stapleton Airport, and the surrounding industry, substantial residential growth in the area ensued. The Adams City and Derby areas redeveloped in the late 1940s, as new residents and new jobs filled the area.

GOAL: *To select sites for public art throughout Commerce City to ensure that the artwork will be seen to its best advantage and be available to the public.*

In 1952, faced with potential annexation from Denver, which was anxious to capture additional industrial revenue, the area voted to incorporate Adams City, Rose Hill, and Commerce Town neighborhoods into Commerce Town. With the annexation of Derby in 1962, the name became Commerce City.

The city remained fairly small and contained until the last decade of the 20th Century, when several major events transpired. Undeveloped land east of the Rocky Mountain Arsenal was selected as a site for the new Denver International Airport (DIA) and the previously used Stapleton Airport was closed and redeveloped. A perimeter beltway, E470, opened for public use in 1998. It provided a quick route to the airport and to the northeast quadrant of the Denver-metro area. Even the previously contaminated Rocky Mountain Arsenal changed for the better with the passage of the Rocky Mountain Arsenal National Wildlife Refuge Act in 1992, which stipulated that the site become a national wildlife refuge under the jurisdiction of the U.S. Fish and Wildlife Service. The new Rocky Mountain Arsenal National Wildlife Refuge is the largest urban wildlife refuge in the country.

After the development of both DIA and E-470, Commerce City found itself ready for development and expansion. Between its year of incorporation in 1952 until 2000, the city grew to 21,000 residents. From 2000 to 2008, the population more than doubled, adding 21,470 new residents, resulting in an estimated population of 42,470 people in 2008. The city grew so quickly that *Forbes Magazine* designated it as one of the top 20 fastest growing cities in America. This rapid growth brought about significant opportunities and challenges for Commerce City.



TIMELINE

- **1850** – First settlers.
- **1889** – Derby and Irondale established.
- **1903** – Adams City established.
- **1942** – Army creates chemical weapons facility known as Rocky Mountain Arsenal
- **1952** – Incorporation of Commerce Town.
- **1962** – Annexation of Derby into Commerce Town, creating Commerce City
- **1992** – Rocky Mountain Arsenal National Wildlife Refuge Act passed, converting the Arsenal into a Wildlife Refuge.
- **1995** – Denver International Airport opens just east of the City.
- **1998** – E-470 beltway opens along City's northern and eastern boundaries.
- **2000-2008** – City population doubles (21,000 to 42,470).

CRITERIA

Potential locations for public art are identified and prioritized by the Commerce City Cultural Council in consultation with city staff, and according to the following criteria:

- Locations must be visible and accessible to the general public, including persons with disabilities.
- Locations for public art will create a supportive setting for the artwork and remain relatively free of other visual distractions that compete with the artwork.
- Locations selected for artwork placement shall not endanger public safety nor interfere with pedestrian or vehicular traffic.
- Evaluation of the location shall include the impact of a public art installation on the current environment or properties, and usage.
- The possibility of future development plans, whether built environment or potential changes to the natural environment, also shall be considered.
- Placement of the artwork should not interfere with routine maintenance, landscaping maintenance, or snow removal in the area.



POTENTIAL LOCATIONS

Possible locations for public art could include and are not limited to:

- Parks and open space areas,
- Public buildings to which the public has access - interior and exterior sites,
- Trails and trailheads,
- Traffic circles/medians,
- Bridges and overpasses,
- Sidewalks – benches that are functional and decorative,
- Street corners or civic plazas, and
- Gateways

CITY FACILITIES

Artwork installed in city facilities shall comply with city's facilities policies, meet safety requirements, and be coordinated with appropriate city staff.



THEMES

BACKGROUND

Throughout the City, public art has the ability to create a sense of place and engage the community by telling a story through its creativity. Commerce City has a unique history, but also embraces the present and welcomes the ever-changing future, all of which should be displayed through public art. The use of themes in public art provides a framework for artists and the community to create and select art that is true to Commerce City.

DEFINITION

Themes shall consist of a style or content that are appropriate for a specific location and address the city's and community's interests.

IDENTIFICATION

Themes for public art may be limitless, and new themes may be created as the community grows and incorporates new elements into its identity. While themes are not required for all public art, they may add value and create a sense of place for some sites and developments. Artists may be asked to address specific themes identified within this plan or other themes that are created to enrich the entire community or specific development. A different theme can be determined for each location, as long as the piece is appropriate for the site.

GOAL: *To implement artwork that embraces the unique character of the community and encourages creativity and responsiveness from residents.*

OUTREACH

Themes identified within this plan, along with themes proposed for the future, should be explored through a public outreach process. Public input may be gathered in a variety of ways, including but not limited to:

- Electronic survey
- Organized events
- Mailed questionnaires

Public outreach and input is vital to creating themes for public art. This process not only gives ownership to the community, but also implements themes that demonstrate the true pulse of the city. Continual evaluation and community outreach for public art themes are necessary as additional public art is implemented, and as the community continues to grow.



The Commerce City Cultural Council has identified the following potential theme ideas:

- Local History
- Future/Innovation
- Cultural Diversity
- Pedestrian Corridors
- Natural Environment
- Historical Communities



ART WORK SELECTION PROCESS

BACKGROUND

Choosing appropriate and exceptional public artwork is of paramount concern to the Commerce City Cultural Council. A strong, effective, and flexible process to select art, as described in this plan, will allow Council to add the best possible artwork pieces to the collection.

Eligibility: Artists of any level of expertise will be considered. When commissioning permanent installations, preference will be given to professional artists familiar with creating public art.



Notice of Anti-Discrimination: The city and Cultural Council will comply with all federal, state, and local anti-discrimination laws in the administration and implementation of the public art master plan.

Advertisement: Each new project will be publicized to the visual arts community through existing artists' registers, such as www.artistsregister.com, and through electronic and print media. The Cultural Council may limit eligibility to Colorado artists.

SELECTION COMMITTEE

At a minimum, the selection committee for each public art project is composed of:

- One or more members of the Commerce City Cultural Council
- Visual artists (2-dimensional work)
- Visual artists (3-dimensional work)
- Department or agency representative(s)
- Technical advisors
- Site representatives
- Community members
- Business representatives
- Other professional representatives, as needed
- Architect and/or landscape architect
- Donor representative, if appropriate to the project

It is important to note that City Council's role is to ensure that the procedures for artwork selection, as set forth in this public art master plan, have been observed. Furthermore, the appropriate city staff members will advise the selection committee as to the artwork's suitability to the potential site, the safety and ease of maintenance of the piece and the piece's resistance to damage.

SELECTION PROCESS

Selection of artwork will employ one or both of the following processes for each project: commissioning of new artwork or direct purchasing of existing artwork.

GOAL: *To select artwork that comprises excellent quality and craftsmanship and is appropriate for the intended site.*



COMMISSION

The selection committee identifies the site, develops the criteria and budget level for the project, issues the call, reviews the application materials and images, and selects three to five semifinalist artists/artist teams for the project based on the criteria established for the project. Project proposals will not be requested or accepted at this stage of the process.

Semifinalist artists are expected to visit the project site and speak with designated committee members about the project. Each artist will prepare a proposal, budget, and project time line for the committee. In advance of the interview meeting, the committee will check references for each semifinalist.

Each semifinalist artist will present his/her proposal and be interviewed by the selection committee. Each semifinalist may be given a design fee to compensate for the site visit, proposal preparation, and interview. Travel stipends also may be offered to artists located outside a 100-mile radius of Commerce City. The committee will select a finalist for the project.

DIRECT PURCHASE

The selection process applies to artwork for projects with a budget of over \$5,000. The selection committee will identify the site, develop the criteria and budget level for the project, issue the call, review the application materials and images of artwork available for direct purchase, and select a specific piece or pieces for installation at the site. The selection committee reserves the right to reject artwork if, upon inspection of the actual piece, it is not as represented in the submitted images.

Direct purchases under \$5,000 will be reviewed and approved by the Commerce City Cultural Council, in accordance with selection policies and criteria.

The budgets of several small projects may be aggregated to create a fund for a larger project.



ARTWORK SELECTION CRITERIA

Criteria for selecting artwork will include, but are not limited to, the following:

- Artistic excellence
- Technical competence
- Suitability to potential site
- Conceptual compatibility
- Relationship to the function of the site
- Relevance of contribution to the historic, ethnic, cultural, or other characteristics of the site
- Scale, material, form, and content
- Structural integrity
- Accessibility to the public
- Resistance to damage by vandalism, weather, or theft
- Ease of maintenance, minimal- and low-cost maintenance
- Compliance with applicable public safety codes



PROCEDURE FOR REVIEW OF PROPOSALS

The following criteria will be applied to the selection of proposed public artwork:

QUALITY

The consideration of highest priority is the inherent artistic excellence of the public artwork, as well as its broad range of appeal to the general public.

TIMELESSNESS

Public artwork will have aesthetic relevance to the community in future years, and reflect enduring artistic quality.

SITE COMPATIBILITY AND APPROPRIATENESS

Public artwork must be appropriate in scale, material, form, and content for the immediate and general social and physical environment in which the public artwork will be placed.

ELEMENTS OF DESIGN

Public artwork may have considerations beyond the aesthetic. It may serve to establish focal points, define spaces, or establish a cultural identity.

PERMANENCE AND SAFETY

Consideration will be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, and excessive maintenance and repair costs. During the review of proposed public artwork projects, maintenance issues will be identified and addressed regarding the use of materials, fabrication techniques, structural engineering, foundation and site design, and any other considerations related to longevity and durability. Artists will be asked to describe maintenance recommendations, including material specifications, estimates of material longevity, material durability, and appropriate methods and materials for cleaning the public artwork.



DIVERSITY

Consideration will be given to diversity in style, scale, media, and artists.

PLACEMENT

Placement will take into account geographic diversity of the collection and will determine appropriate geographical distribution.

ARTIST SELECTION

The following criteria will guide the procedure for selection of the artist:

COOPERATION. The artist's ability to work closely and cooperatively with the Cultural Council, Commerce City staff, and the community.

TECHNICAL FEASIBILITY. The artist's ability to carry out the concepts described in the proposed artwork.

BUDGET. The artist's ability to create the proposed artwork within the planned budget.

PRESENTATION. The artist's ability to clearly describe concepts, both verbally and through quality written materials.

TIME LINES. The artist's ability to deliver the artwork according to the agreed-upon schedule.

FINAL ACCEPTANCE OF PROJECT

For purposes of insurance, promotion, education, and maintenance of the integrity of the public artwork, once the artist has completed and installed the project per the contract, the artist will provide Cultural Council with detailed maintenance instructions and professional quality images of the public artwork.

Prior to the artist's work being considered for acceptance by the city, all city departments affected by the public artwork installation must sign off on the completion of the project.

The Cultural Council will have the right to recommend to City Council withholding acceptance of an artist's work until it clearly meets standards of artistic achievement agreed upon by the Cultural Council.

The Cultural Council will review the selections and recommendations of the art selection committee and present them to the Commerce City Council for its final review and approval.

ART DONATION AND GIFT POLICY

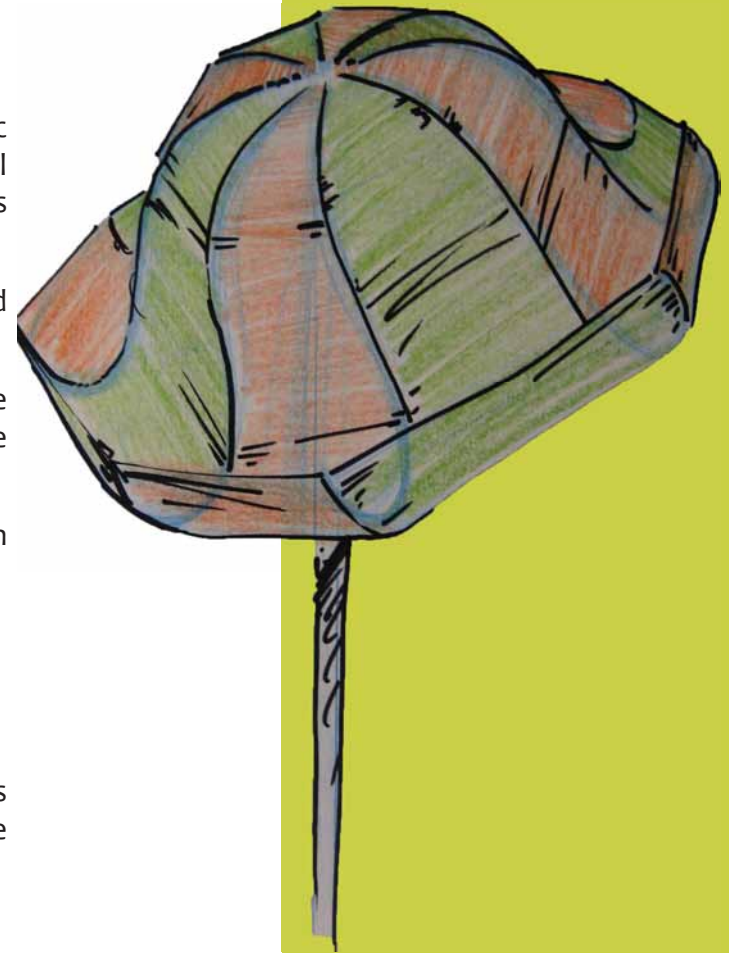
BACKGROUND

On occasion, the Commerce City Cultural Council may be gifted or donated artwork. Guidelines and procedures for reviewing, accepting, and placing this artwork will be consistent with the criteria set forth in this Plan.

PROCESS FOR PUBLIC AREAS

Process for acceptance and ownership of gifts and donations of artwork to be placed in public areas:

- The Commerce City Cultural Council will use the public art selection process, established by the public art master plan, when deciding to accept or decline donations of artwork.
- Any costs incurred by the city as a result of accepting the donation may be charged to the donor, as determined at the time of acceptance of the public artwork.
- The cost of ongoing maintenance and conservation of the gift or donation will be a consideration in the decision to accept or decline the artwork.
- The Cultural Council will review the selections and recommendations of the art selection committee and present them to the Commerce City Council for its final review and approval.



GOAL: *To expand the public art collection in Commerce City by accepting gifts and donations that meet the goals and selection criteria established by this Public Art Master Plan.*



PROCESS FOR MEMORIAL ARTWORK

PROCESS FOR ACCEPTANCE AND PLACEMENT OF MEMORIAL ARTWORK

Requests to install a memorial for a deceased person, persons, or event in a public space in Commerce City must be reviewed by the Commerce City Cultural Council, who will make a recommendation for acceptance to the City Council.

The application can be obtained from the Commerce City Cultural Council. This application for placement of a memorial must include:

- The name of the individual(s) or the event to be memorialized through a piece of public art.
- Abiographical sketch or narrative description of the event.
- The outstanding achievement or circumstance on which the memorial request is based.
- The type of memorial requested.
- Planned location and installation of the memorial project, and the relationship of the individual(s) or event to that location.



Criteria for acceptance of a memorial include:

- Correspondence to the overall criteria for artwork selection (noted previously in this plan);
- Appropriateness of the planned memorial, and its identification and/or signage at the location;
- Appropriateness of the installation plan and compliance with Commerce City codes;
- Confirmation that funding has been secured for the design, fabrication, installation, and maintenance of the memorial artwork.
- The person or group making the request for a memorial will receive, in writing, the city's decision to accept (with conditions, as appropriate) or decline the request.

TEMPORARY EXHIBITIONS

BACKGROUND

The Commerce City Cultural Council may organize, for a specified period of time, temporary exhibitions of public art or display art on loan. Guidelines and procedures for these exhibitions will be consistent with the criteria set forth in this plan.

GOAL: *To maximize the variety and exposure of artwork and artists within the city*

OPPORTUNITIES: Temporary exhibitions may occur at a variety of venues within the city; however, priority will be given to prime civic locations such as the Commerce City Civic Center and the Derby Resource Center.



GUIDELINES FOR TEMPORARY EXHIBITIONS OF ARTWORK FOR PUBLIC SPACES

The Commerce City Cultural Council will consider solo, two-person, or group exhibits of contemporary art in a variety of media and styles. The Cultural Council will evaluate exhibit proposals based on the quality of work, exhibition history, and overall composition of the exhibit schedule.

The selected exhibits will be displayed at one of five city facilities for up to six months and if requested, one-year and permanent exhibits will be considered. The five facilities include the Commerce City Civic Center, Commerce City Recreation Center, Municipal Services Center, Conter Community Center, and the Derby Resource Center. Also, a public or private park within the city may be considered for exhibit displays.

All displayed two-dimensional artwork must be framed, ready to hang, and of a manageable size. Unframed stretched canvas artwork may be considered. Artists must arrange for transportation of the artwork to the facility unless otherwise specified in the contract between the artist, the Cultural Council, and the City of Commerce City. The city will be responsible for insurance, installation, signage, and transportation among venues.

Selected artists will be required to submit an artist statement, in accordance with the published deadline specific to each exhibition. The statement shall include contact information, postcards, and business name and shall be appropriately available for display within the context of the exhibition.



ART- ON-LOAN

GUIDELINES FOR ART-ON-LOAN PROGRAM

ART-ON-LOAN PROGRAM

The Commerce City public art plan shall include provisions for “Art-on-Loan,” which shall be a program:

- To promote artists by providing an opportunity for artists to display and sell their work.
- To provide an opportunity to enhance the community’s knowledge of art.
- Care, Preservation and Exhibition
- To reasonable attention will be given to the care of loaned object(s).
- To evidence of damage, regardless of cause, while in the custody of the City will be reported immediately to the lender of the loaned artwork (“Lender”).
- To no alteration, restoration, or repair will be undertaken without the written authorization of the Lender.
- To selection and display of loaned object(s) are at the discretion of the Cultural Council.



A city representative will install the exhibition in cooperation with the artist(s). When appropriate, installation experts, including the artist(s), will work with the city representative.

LENDER RESPONSIBILITY

- Delivery of object(s) is the responsibility of the lender, unless otherwise specified in the contract between the lender and Cultural Council or the city.
- Retrieval of object(s) is the responsibility of the



lender, unless otherwise specified in the contract.

- Biographical and/or exhibit statement shall be provided two weeks prior to the beginning of exhibit. The city retains sole editorial authority including, but not limited to, content, length, and grammar.
- Two-dimensional object(s) must be installation-ready appropriate to specific media.

- Hanging mechanisms must be safe, secure, and of a style acceptable to the Cultural Council.

INSURANCE

Unless otherwise agreed upon, objects will be insured by the city.

The lender agrees that in the event of loss or damage, recovery, if any, shall be limited to such amount as may be paid by the city’s insurer, thereby releasing the city, its officers, agents, and employees from liability for any and all claims arising out of such loss or damage.

In the event that the lender and the insurer disagree on the amount of loss, the issue must be decided between them and the loan agreement between the Lender. The City will assume no responsibility for loss beyond the amount provided for in paragraph 2 above.

Any agreement by a Cultural Council representative shall not constitute endorsement of lender’s stated value.

If the lender elects to maintain his/her own insurance coverage, the city shall be an additionally insured party or be provided with a written waiver of subrogation.

The city will not be responsible for any error or deficiency of information furnished to the lender's insurer, or any lapse in coverage by Lender's insurer.

RETURN OF LOANED ARTWORK.

Upon expiration of the loan of public artwork, the loaned object(s) will be released to the lender, his/her duly authorized agent, or a legal representative, according to the Lender's instructions.

No claim for damages shall be filed after loaned objects have been removed or shipped from the exhibition site by the lender or by an agent of the lender.

The lender is responsible for immediately notifying the Cultural Council representative about a change in his/her return address.

If there is a change in the lender's legal ownership, including death or dissolution of a corporation (if applicable), the new owner shall immediately notify the Cultural Council and establish his/her legal right by proof satisfactory to the Cultural Council. The loaned object(s) shall remain in the possession of the city until the owner has provided his/her legal right to possession.



MAINTENANCE AND CONSERVATION PROCEDURES

BACKGROUND

The proper maintenance and conservation of artwork is vital to preserving any art collection. Public art in Commerce City will be documented and cared for according to standards set forth in this document.

GOAL: To provide appropriate and timely care for public art assets through regular maintenance, annual inventory and assessment, and conservation, as needed.

DEFINITIONS

Maintenance is considered regular cleaning and minor, non-aesthetic repair as specified in the maintenance instructions provided by the artist.

Conservation refers to a broad concept of care for works of art that encompasses three activities: examination, preservation, and restoration. Preservation entails actions taken to retard or prevent deterioration or damage to works of art, and to maintain them in as much of an unchanged state as possible. Restoration is the treatment of a deteriorated or damaged work of art, so as to retain its original form, design, color, and function with minimal further sacrifice of aesthetic integrity.



A priority should be placed on identifying funding mechanisms to assure the ability to properly maintain and preserve the public art collection.

INVENTORY PROCEDURE

Inventory process for public artwork may correspond to the inventory procedures used by Commerce City and should include the following elements.

Each work of art shall be listed on the master inventory of public art and shall include the appropriate maintenance schedules and instructions specified by the artist.

Inventory shall include the following additional documentation on each piece of artwork:

- 1) Acquisition documents and a unique accession number.
- 2) Curatorial information that includes:
 - Artist's name, address, phone numbers, email address, website.
 - Artist's professional resume or curriculum vitae.
 - Title of artwork and date completed.
 - Edition, if appropriate.
 - Purchase price and insurance value.
 - Narrative description of artwork.
 - Other descriptive or identifying information.
 - Location of artwork.
- 3) Conservation information shall include:
 - Materials and sources used in the artwork.
 - Methods of fabrication, and who did the work.
 - Installation specifications.
 - Method and frequency of maintenance.



- 4) Administrative information shall include:
 - Legal instrument of conveyance.
 - Artist contract.
 - Significant agencies or organizations involved, and their roles and responsibilities.
 - Significant dates.
 - Permits and project costs.
 - Insurance information.
 - Photographic, architectural/engineering, and media documentation.

ASSESSMENT

INVENTORY AND CONDITION ASSESSMENT

On a regular basis, the Cultural Council will conduct an assessment of all works of art in the Commerce City collection to develop a condition report that represents the current state of the artwork. The Cultural Council will provide City Council with an annual report of the current inventory of public artwork and condition assessment.

The Cultural Council will arrange for professional conservation of all works of art in a planned and orderly manner and, based on available funds, provide any services necessary for the preservation and/or restoration of the artwork. All conservation will be coordinated with the city as well.

The Cultural Council shall be responsible for providing the city's Finance Department with an updated inventory of all public artwork in possession of the city, in order to ensure that insurance coverage is maintained by the city.

The Cultural Council shall develop a strategy to create and build a conservation fund to cover expenses for conservation of the public art in Commerce City.

The Cultural Council shall advise City Council about the storage of permanent collections and public artwork for temporary and/or rotating exhibitions, or public artwork that may be appropriate to lend to other entities.

The Cultural Council shall utilize commissioned artists to create schedules or plans, in order to provide for upkeep and maintenance of artwork.

DEACCESSIONING PROCEDURE

Background: On occasion, the Cultural Council or city may decide to relocate or remove artwork from their collection. This will be done according to established processes and procedures.

DEFINITIONS

Deaccessioning is the removal of an artwork from the collection.

Relocation is moving an artwork and resiting it in a more advantageous location, if the original site is no longer suitable.

Disposal refers to actions that result in the cessation of ownership and possession of an artwork. It ultimately may refer to destruction of the artwork, after appropriate deaccessioning procedures are followed.

PROCESS

Deaccessioning is accomplished through the following process:

- The Commerce City Cultural Council shall initiate a review process for deaccessioning or relocating artwork, as part of the regular care and management of Commerce City's public art collection.
- The art selection committee that approves acquisition of the artwork will reconvene, if feasible, to review the request for deaccessioning or relocation.
- If not feasible, the Commerce City Cultural Council, or its designee, will convene a committee, which shall consist of a community representative and professional expertise, to develop recommendations regarding deaccessioning or relocating the artwork under review.
- The committee's recommendations will be referred to City Council for review and action.
- A request to review a work of art may be submitted by the artist, a member of the Commerce City community, or an outside party.



GOAL: To manage the public art collection in Commerce City, so that the artwork is secure and the integrity of the artwork is maintained.



A request to review the relocation of artwork commissioned for a specific site will be considered for one or more of the following reasons:

- The site is being eliminated or changed, and the artwork is no longer suitable.
- Security of the artwork can no longer be ensured.
- The artwork endangers public safety.
- The aesthetic integrity of the artwork cannot be maintained or cannot be maintained for a reasonable cost.

A request to deaccession shall include:

- The reason deaccession is requested.
- The estimated current value of the work.
- The acquisition method and cost.
- Written evaluation from disinterested and qualified professionals, such as an engineer, conservator, architect, safety expert, or art historian.
- Photographs that depict the current condition of the work.
- Artist's contract or any other relevant agreement concerning the artist's rights.
- Written recommendations of other concerned parties, including Commerce City community members, the artist, and an outside party.
- Estimated cost to deaccession an artwork and identification of the funding source for deaccessioning.
- Written correspondence concerning the work.

If deaccessioning or disposal of an artwork is being contemplated, the review committee shall make a recommendation based on these policies, and the following information shall be reviewed and discussed at a public meeting:

- Discussion of the recommendation with the artist, if s/he can be notified by reasonable means.
- Written opinions of several independent professionals (conservators, architects, engineers, safety experts, art historians, etc.) qualified to make such recommendation.
- Review of all public comment and debate evidence.
- If no recommended solutions or other reasonable measures exist to address concerns, Commerce City shall consider the removal or disposal of the work.



If removal or disposal is directed, the Commerce City Cultural Council shall consider, in order of priority, the following:

- Relocation or resiting.
- Removal of the work and placement in storage, with the intent of finding a new site for the work. If a new site is not found within a five-year period, disposal of the work shall be considered.
- Removal and deaccessioning of the work from the collection by sale, trade, or gift.
- Destruction of the work.
- Cost estimates and funding sources for site restoration, if necessary, after artwork is removed.



Excluding works bound by any prior contractual agreement between Commerce City and the artist or donor at the time of acquisition, deaccessioned works may be disposed of in the following manner:

- Current market value payment to the original artist or his/her heirs.
- As a gallery consignment.
- At auction, in accordance with the standard practice with a predetermined opening bid.

After exhausting the above-listed disposal methods, ownership may be transferred without consideration to:

- The artist or the estate of the artist.
- A non-profit agency.
- A government agency.

Funds received from the sale of deaccessioned art shall be utilized by the Commerce City Cultural Council for future purchase of public art selected, per the process articulated in the Public Art Master Plan for Commerce City.



IMPLEMENTATION

IMPLEMENTATION OF PLAN

INTRODUCTION

It is a goal of the Cultural Council to insure the implementation and success of this Public Art Plan for years to come. In order to achieve this goal, it is necessary for the art plan to be a living document that is constantly evaluated and updated to meet the growing needs of the community.



A public art program should engage the residents of Commerce City in a variety of ways and through a variety of artistic genres. As the city's public art collection grows, the artistic expressions of the community should be viewed and leveraged as a cultural amenity for families, businesses and visitors. The benefits of public art to the community are immediate and long-lasting for residents. The following priorities and funding mechanisms have been initially identified to aid in the success of this plan and public art throughout the city.

NEXT STEPS/ACTION ITEMS.

The following lists specific items that need to be achieved in order for this plan and the public art program to be successful. Recommendations for implementing these ideas follow in subsequent sections.

Work with Commerce City's Council to have this plan recognized and adopted.

Survey and prioritize potential public art sites, including a time line that matches the considerations of the site to the availability of funds for public art projects.

Explore partnerships with private entities or developers to expand opportunities for placing artwork in the public areas of private development.

Establish long-term funding programs. Work with city and civic groups to identify and secure funding for public art projects.

Engage those responsible for city infrastructure improvements, such as the Commerce City Public Works Department, to discuss the means by which public art can be incorporated as part of future infrastructure projects, when and where appropriate.

Refine the relationship with city government, in order to secure a strong voice in city planning and economic development. Work towards codifying requirements for public art installations.

Actively seek out grant funding to expand the collection.



PRIORITIES

Opportunity to implement public art exists in a variety of places throughout Commerce City and may include locations identified by other master plans, such as the city's Walk, Bike, Fit master plan. Prioritizing locations and areas within the community may act as a catalyst and gain momentum for future art to be commissioned. Although initial locations may be a priority, public art should not be limited by location or development, but rather should be incorporated into a variety of corridors, buildings, and developments across the city. The following describes initial locations that may initiate public art within the community:

TARGETED STARTING POINTS

- Commerce City Civic Center and the surrounding Victory Crossing Development;
- Mile High Greyhound Park redevelopment project;
- King Soopers Marketplace Development, or future commercial developments in the Northern Range;
- Derby;
- Civic locations in the Northern Range, such as the Commerce City Police Annex in Reunion;
- Future FasTracks stations and other transit centers.

Priority locations for artwork, as determined by the Cultural Council Public Art Subcommittee:

- Parks and open space areas;
- Civic plazas or street corners;
- Public buildings – exterior and interior sites;
- Trails and trailheads;
- Bridges and overpasses;
- Activity centers identified within the City's Comprehensive Plan;
- Historical communities;
- New developments.

Priority types of artwork, as determined by the Cultural Council Public Art Subcommittee:

- Sculpture - in-the-round, bas-relief, mobile, fountain, kinetic, and electronic or digital;
- Painting - all media, including portable- and permanently-affixed works;
- Earthworks and environmental installations;
- Mosaics;
- Decorative or ornamental embellishments.



FUNDING OPPORTUNITIES

Successful implementation of this public art master plan may require sustainable funding sources in order to acquire, place and maintain public art within Commerce City. The following identifies several funding opportunities that are practiced in municipalities throughout the nation. Many of the funding opportunities are followed by one or multiple recommendations for the Cultural Council to pursue, based upon the respective funding strategy.

PUBLIC ART FUND

The City's Comprehensive Plan identifies the creation and funding of a public art master plan as goals for cultural facilities and tourism. Initially, artwork donations or financial gifts may provide

RECOMMENDATION

Cultural Council should pursue a part-time administrator. The administrator may be tasked with overseeing the public art fund and distribution and collection of public art requests for proposals.

momentum for the public art master plan; however, a long-term funding source also should be identified. Establishment of funding mechanisms for public artwork will require the formation of a Public Art Fund. The Public Art Fund should be used for (1) providing a site for artwork; (2) commissioning, acquiring, and installing artwork; (3) maintaining artwork; (4) supporting cultural events that promote local artists or artwork; and (5) funding other administrative costs associated with public art. The Cultural Council and City Council should determine how the funding will be collected and administered.

PUBLIC FUNDING SOURCES

A successful public art program should be implemented by both the public and private sectors within the community. Private developers may be a strong supporter of public art; however, local government may seize the opportunity to assume a leading role in funding a city-wide public art movement.



PERCENT FOR PUBLIC ART - CAPITAL IMPROVEMENT PROJECTS

Across the nation, there are hundreds of public art programs that have been implemented in municipalities, both small and large. Funding for the vast majority of these programs comes from a percentage of the respective municipality's Capital Improvement Project (CIP) budget. By implementing a public art funding source in a similar manner, a small percentage of qualified CIP money is set aside for public art that is directly associated with a project or within the near vicinity.

Artwork that is purchased using CIP funds may be seen by a larger part of the local population, since such artwork may be placed in high-traffic or pedestrian areas where infrastructure is being improved. The establishment of

RECOMMENDATION

The Commerce City Cultural Council should initiate with City Council discussions about a percent for public art program through CIP funding. Based upon these discussions, City Council may wish to consider allocating a small percent of the CIP budget for a public art fund.

a percent for public art program through slated CIP funds generates perpetual money that may be allocated for artwork throughout the community. This type of perpetual funding source strengthens the Public Art Master Plan, while meeting goals set forth in Commerce City's Comprehensive Plan.

PRIVATE DEVELOPMENT FUNDING SOURCES

As Commerce City's growth continues, new and redevelopment projects may be utilized to implement public art within the private sector. In an effort to pursue the establishment of private sector funding for public art, project representatives and the city shall collaborate to promote good design and effective public spaces.

There are a variety of ways in which public art may be integrated into private developments. Private developments may be defined by the size of the proposed site or development, and also may exclude single-family attached and detached dwelling units. Some municipalities mandate the incorporation of public art into the development itself, while others offer options such as placing public art on the site, allocating space for public art, or paying a Public Art Fund fee-in-lieu. The following describes each of the aforementioned options:



REQUIREMENT IN NEW DEVELOPMENT

One option for the implementation of public art is to create a standard for all new development to commission and locate public art on-site. During the development review process, this requirement would be reviewed along with other design standards by both city staff and Cultural Council. Decisions about the type of artwork or a potential theme would be made by the developer and reviewed along with the rest of the development.

RECOMMENDATIONS

Cultural Council should recommend that City Council adopt, by ordinance, a standard for incorporation into the City's Land Development Code.

The Cultural Council should identify a process for establishing new themes for private development that are in accordance with this Plan.

ALLOCATION OF PUBLIC SPACE

Public art has many forms and should be engaged by the community within public spaces. Developers may be required to allocate public space within new developments for public art or cultural events. Allocation of public space allows for the occurrence of a wide variety of artistic functions. Dedicated public spaces could host public art galleries, temporary art pieces, and cultural activities.

RECOMMENDATION

Cultural Council should engage City Council to discuss the allocation of public spaces as a new development requirement.



FEE-IN-LIEU

Additional funding for public art may be acquired through a fee-in-lieu, much like the parks and recreation fee that is imposed upon new development. The fee-in-lieu would be collected when the building permit was issued and placed within the public art fund. A fee-in-lieu may also be collected

on a per capita basis. Per capita fees may be associated with CIP funding or private development. These fees would be used to commission and locate artwork throughout the city, and to implement artwork in the vicinity of each new development. Calculation of a fee-in-lieu may be determined by either project valuation or square-footage of the building(s) on site. When developers opt to contribute

financially through a fee-in-lieu, the Cultural Council will apply funding for artwork in the vicinity of the respective development.

RECOMMENDATION

The Cultural Council, City Council, and staff should discuss the adoption of potential ordinances to acquire public art fee-in-lieu from private development.



PROJECT VALUATION

Calculating a fee-in-lieu based on project valuation will require that the developer pay a small percentage towards the public art fund. This value would be based on the building permit project valuation, as provided by the developer, and may be enforced on projects with a minimum valuation (e.g., \$2 million) or minimum lot area (e.g., 1 acre).

RECOMMENDATION

Cultural Council should pursue the adoption of an ordinance for a funding mechanism such as a fee-in-lieu based upon either project valuation or square-footage.

SQUARE-FOOTAGE

Alternatively, the fee-in-lieu may be calculated based upon square footage of new development. This option would set a value per square foot for allocation into the public art fund. A fixed value per square foot may be set (e.g., \$0.10/s.f.), or the value may be determined by the zoning and/or use of the property (e.g., \$0.10/s.f. - Commercial

zone districts; \$0.15/s.f. - Industrial zone districts, etc.). Such fee-in-lieu may be imposed on projects with a minimum project valuation, minimum lot area, or specific zone district or use.



MAINTENANCE FUNDING

Maintenance is crucial to the effectiveness of public art within any community and should be prioritized as an action item. The significant investment made by both artists and the city in a public art collection calls for the provision of proper and regular maintenance, as described in the maintenance section of this plan.

Adequate long-term care of public art must be appropriately funded and established, before maintenance funds are needed. As the city's public art collection grows, maintenance funding sources should continually be set aside in a separate account within the public art fund.

RECOMMENDATIONS

Funding for maintenance of individual artwork should be considered during the selection process and should involve budgeting and assessment by the commissioned artist.

Cultural Council should set aside 10% of funds received from all funding sources (donations, CIP, and private development fee-in-lieu) for the preservation and routine maintenance of the public art collection.



GRANTS

Grant funding may serve as an important income source while other, more permanent funding solutions such as a 1% for art program, are put in place. Grants also may be used for larger, one-time projects. Because grants generally include matching funding requirements, as well as strict reporting and monitoring obligations, Cultural Council should assure that members who apply for and manage grants have the necessary education and tools to be successful. Cultural Council also may benefit by working closely with the city's grant administrator to seek out public art grant opportunities. Partnering with the city to apply for these grants could make applications appear more favorable to potential funders. Groups that frequently offer grants for public art or public art-related programs include:

- Colorado Council on the Arts
- Boettcher Foundation
- JP Morgan Chase Foundation
- Sprint Community Sponsorship
- El Pomar Foundation
- The National Endowment for the Arts
- Scientific and Cultural Facilities District (SCFD)

Cultural Council should network and build relationships with the organizations, so that when the Council applies for grants, organizations are already familiar with the Council's mission and vision.

RECOMMENDATION

Network with organizations that fund public art as well as hire or train a grant coordinator.



MEASURES OF SUCCESS

Many of the actions discussed in this plan may take years to develop, fund, and implement. A system that involves the regular monitoring and evaluating of ongoing trends will allow the Cultural Council and City to assess progress in achieving the plan's goals, provide justification for periodically amending the plan as-needed, and assess the need for course corrections and changes to implementation measures. This monitoring approach will help ensure that the public art program is moving along the path recommended by the plan, and will provide information necessary to adjust to changing needs and conditions within an informed framework. Cultural Council should consider working with city staff to incorporate information on this public art plan in the annual Comprehensive Plan indicators update.

The **SUCCESS** of the public art master plan will be gauged by the following measures:

The number of public artwork pieces installed within the year installed by Cultural Council and installed by private development.

The amount of diversity added to the collection by the number of each type of artwork installed, (i.e., sculpture, mosaic) and the number of non-traditional pieces installed (i.e., art incorporated into infrastructure).

The number of temporary exhibits held within the year.

The percentage of pieces contributed by previously commissioned artists.

The number of grants applied for within the year.

The number of public artwork pieces that are damaged or require non-routine maintenance.

The total amount of funds spent on public art.

The number of grants received with the year.

The attendance at temporary exhibits.

The percentage of pieces provided by local artists.



PLAN UPDATES/AMENDMENTS

This plan is meant to be a living document. For this plan to function over time, Cultural Council, in conjunction with the city, must be able to periodically review and make amendments that respond to trends or changes in the community. The city will conduct revisions to this plan according to the following procedure:

The purpose of a plan update/amendment is to re-evaluate the goals, policies, and strategies contained within this plan (noting those to change and those to remove), and to develop new policies if necessary—to make sure that this plan is effective. Plan updates should occur at intervals of approximately every three to five years, unless otherwise determined by the Cultural Council or city.

The prime consideration in determining initiation of an update should include assessing changes that have occurred since the plan was last updated. These changes may be in aspects of the city, such as the economy, the environment, local priorities, projected growth, or aspects of the public art community such as best practices. A plan update will include a thorough re-evaluation of the vision, goals, and policies contained within this plan. A plan update also will include a thorough review of the validity of all information contained within the plan, and it should include extensive opportunities for involvement by the public, boards and commissions, elected and appointed officials, city staff, and other affected interests.



Amendments may be necessary as a result of adoption of a specific issue/policy plan, because of monitoring and course correction, or by directive from Cultural Council at any time.

The process for making the substantive amendments is described below.

- All plan amendments shall be considered by Cultural Council's public art subcommittee, Cultural Council and City Council, if applicable.
- Based on its consideration of the recommendations from the public art subcommittee and city staff, and evidence from public hearings, the Cultural Council and/or City Council could then adopt the plan amendment (with or without further revisions), or reject it.



APPENDIX

Appendix A

VISUAL ARTISTS RIGHTS ACT OF 1990 (VARA)

Title VI - Visual Artists Rights Act

[*601]

SEC. 601. <17 USC 101 note> SHORT TITLE.

This title may be cited as the “Visual Artists Rights Act of 1990”.

[*602]

SEC. 602. WORK OF VISUAL ART DEFINED.

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining “widow” the following:

“A ‘work of visual art’ is --

“(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

“(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

“A work of visual art does not include --

“(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

“(ii) any merchandising item or advertising, promotional, descriptive, covering, or

packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

“(B) any work made for hire; or

“(C) any work not subject to copyright protection under this title.”.

[*603]

SEC. 603. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Chapter 1 of title 17, United States Code, is amended by inserting after section 106 the following new section:

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

“(a) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art --

“(1) shall have the right --

“(A) to claim authorship of that work, and

“(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

“(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

[**5129] “(3) subject to the limitations set forth in section 113(d), shall have the right --

“(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

“(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

“(b) SCOPE AND EXERCISE OF RIGHTS. -- Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

“(c) EXCEPTIONS. -- (1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a



distortion, mutilation, or other modification described in subsection (a)(3)(A).

“(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

“(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of ‘work of visual art’ in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

“(d) DURATION OF RIGHTS. -- (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

“(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

“(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

“(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

“(e) TRANSFER AND WAIVER. -- (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

“(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy [**5130] of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a



copyright in that work.”.

(b) CONFORMING AMENDMENT. -- The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 106 the following new item:

“106A. Rights of certain authors to attribution and integrity.”

[*604]

SEC. 604. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code, is amended by adding at the end thereof the following:

“(d)(1) In a case in which --
“(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and
“(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject

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

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

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

visual art, or

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

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

“(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity [**5131] and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.”

[*605]

SEC. 605. PREEMPTION.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

“(f)(1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

“(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to --

“(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990;

“(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

“(C) activities violating legal or equitable rights which extend beyond the life of the author.”

[*606]

SEC. 606. INFRINGEMENT ACTIONS.

(a) IN GENERAL. -- Section 501(a) of title 17, United States Code, is amended --

(1) by inserting after “118” the following: “or of the author as provided in section 106A(a)”;

(2) by striking out “copyright.” and inserting in lieu thereof “copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).”



(b) EXCLUSION OF CRIMINAL PENALTIES. -- Section 506 of title 17, United States Code, is amended by adding at the end thereof the following:

“(f) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Nothing in this section applies to infringement of the rights conferred by section 106A(a).”

(c) REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES. -- (1) Section

411(a) of title 17, United States Code, is amended in the first sentence by inserting after

“United States” the following: “and an action brought for a violation of the rights of the author under section 106A(a)”.

(2) Section 412 of title 17, United States Code, is amended by inserting “an action brought for a violation of the rights of the author under section 106A(a) or” after “other than”.

[**5132] [*607]

SEC. 607. FAIR USE.

Section 107 of title 17, United States Code, is amended by striking out “section 106” and inserting in lieu thereof “sections 106 and 106A”.

[*608]

SEC. 608. <17 USC 106A note> STUDIES BY COPYRIGHT OFFICE.

(a) STUDY ON WAIVER OF RIGHTS PROVISION. --

(1) STUDY. -- The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such



section.

(2) REPORT TO CONGRESS. -- Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) STUDY ON RESALE ROYALTIES. --

(1) NATURE OF STUDY. -- The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing --

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) GROUPS TO BE CONSULTED. -- The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) REPORT TO CONGRESS. -- Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.



[*609]

SEC. 609. <17 USC 101 note> FIRST AMENDMENT APPLICATION.

This title does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the United States Constitution.

[*610]

SEC. 610. <17 USC 106A note> EFFECTIVE DATE.

(a) IN GENERAL. -- Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this title take effect 6 months after the date of the enactment of this Act.

(b) APPLICABILITY. -- The rights created by section 106A of title 17, United States Code, shall apply to --

(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification [****5133**] (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) **SECTION 608.** -- Section 608 takes effect on the date of the enactment of this Act.

