

cityofnovi.org

# CITY of NOVI CITY COUNCIL

Agenda Item **M**  
March 22, 2010

**SUBJECT:** Consideration to approve form of Art Exhibit Agreement and Art Exhibition Policy for the display of art work in the Civic Center.

**SUBMITTING DEPARTMENT:** Parks, Recreation and Cultural Services

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

The City has on occasion allowed the display of art work in the Civic Center building, as a way to promote arts and culture and to beautify the Civic Center itself. The City administration has put together a form of agreement and policy to facilitate the regular display of art work, with uniform and consistent rules and an explanation of the various obligations of the exhibitor and the City with regard to such displays. The agreement and policy have been drafted after reviewing numerous public art policies throughout the country and in the area.

The agreement is essentially an agreement by the exhibitor to loan the art work to the City for a specified time. The exhibitor acknowledges that it is responsible for any loss or damage to the art work and that the City does not insure the art work. The exhibitor also agrees to indemnify and hold harmless the City in connection with the display. If the art work is not removed within the time described in the agreement, it becomes abandoned property subject to disposal by the City (which could also retain it). There is no consideration paid by the exhibitor for the display; however, if the art work is for sale and a sale occurs as a result of the display during the period of display, the City will impose an administrative fee proposed to be 30% of the sale price.

The policy is also intended to be straightforward. It gives the City as much discretion as possible in determining the themes and the nature of the art work to be displayed. There is a complaint procedure by which City Staff or the public can object to the propriety of a particular piece of art work, with an appeal process and a series of remedies in the event the particular display is found to be inappropriate. This provision has also been modeled on procedures found in other public art/City Hall exhibit programs.

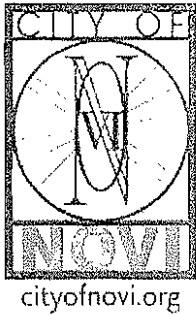
Note that the policy does not include a great deal of language describing which art work will be chosen for display at any given time. Depending on how the program is utilized and the number of artists seeking to display their art work, this may need to be reviewed at some future date.

**RECOMMENDED ACTION:** Consideration to approve form of Art Exhibit Agreement and Art Exhibition Policy for the display of art work in the Civic Center.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

# MEMORANDUM



TO: RANDY AULER, DIRECTOR OF PARKS, RECREATION AND CULTURAL SERVICES

FROM: KATHRYN KNAPP, CREATIVE ARTS COORDINATOR

SUBJECT: ART POLICY MEMO

DATE: MARCH 11, 2010

3/11/10  
To: Mayor of City  
Council Members

*[Handwritten signature]*

The City has on occasion allowed the display of art work in the Novi Civic Center building, as a way to promote arts and culture in the community and to add to the beauty of the Civic Center itself.

Parks, Recreation and Cultural Services (PRCS) recently was approached by the Art Institute of Michigan, a local creative arts college, to display art work from their qualified faculty and staff. PRCS created a program demo to show how art work can be displayed and viewed by the public in the Civic Center space. After a successful, well-attended opening reception, and positive feedback at the Parks counter and to staff, an art display policy and exhibition agreement have been created.

The agreement is essentially an agreement by the exhibitor to loan the art work to the City for a specified time. The exhibitor acknowledges that it is responsible for any loss or damage to the art work and that the City does not insure the art work. The exhibitor also agrees to indemnify and hold harmless the City in connection with the display. If the art work is not removed within the time described in the agreement, it becomes abandoned property subject to disposal by the City (which could also retain it). There is no consideration paid by the exhibitor for the display; however, if the art work is for sale and a sale occurs as a result of the display during the period of display, the City will impose an administrative fee proposed to be 30% of the sale price.

The policy is also intended to be straightforward. It gives the City as much discretion as possible in determining the themes and the nature of the art work to be displayed. There is a complaint procedure by which City Staff or the public can object to the propriety of a particular piece of art work, with an appeal process and a series of remedies in the event the particular display is found

to be inappropriate. This provision has also been modeled on procedures found in other public art/City Hall exhibit programs.

Note that the policy does not include a great deal of language describing which art work will be chosen for display at any given time. Depending on how the program is utilized and the number of artists seeking to display their art work, this may need to be reviewed at some future date.

The policy will be placed on the March 22 City Council Meeting for approval. Attached is the Art ~~X~~ Exhibition Policy and Exhibition Agreement for your review.

## CITY OF NOVI

### CIVIC CENTER ATRIUM ART EXHIBIT POLICY

**Purpose.** This policy establishes the criteria for evaluating and approving the display of public art in the Civic Center Atrium, in connection with signing of an Art Exhibit Agreement between the City and an artist.

**Original Works:** All works of art on temporary display in Civic Center Atrium shall be original works of art, and not a reproductive print or copy of another artist's work.

**Frequency and Limitation on Duration:** The Creative Arts Coordinator and Performing Arts Coordinator, or their designees, shall be responsible for planning art exhibitions at Civic Center. Civic Center displays shall be hosted as often as is desirable and practical, taking into account: available funding, volunteer and staff availability, and coordination with the use of the Civic Center Atrium.

Artwork may be on display for a maximum of two months and a minimum of one month. Exceptions may be made at the discretion of the Creative Arts Coordinator or Performing Arts Coordinator, or their designees, on the basis of availability, appropriateness to current display themes, and any other relevant considerations.

**Types of Display:** Art exhibits hosted or coordinated by the City may include competitions sponsored by the City, art displays featuring individual artists, or themes and art displays featuring groups of artists.

**Location:** Artwork shall be displayed in the Atrium, including the main corridors, of Civic Center, or in any other location the Creative Arts Coordinator or Performing Arts Coordinator or their designees deems appropriate. Artwork shall be displayed in a manner that does not unreasonably impede traffic or interfere with safety. Artwork may be physically separated from the main exhibit when, in the opinion of the Creative Arts Coordinator or Performing Arts Coordinator, or their designees, it is warranted by theme, appropriateness to other exhibits, or other considerations, including community standards.

**Availability:** Displayed artwork shall be available for public viewing during regular Civic Center hours and whenever Civic Center is open to the public; provided, however, that the City may temporarily remove the artwork as required for City events or for other reasons related to the City's use of the Civic Center or other public facilities.

**Identification of Artwork:** The Creative Arts Coordinator, or designee, will prepare identification materials for the artwork. If the Artwork is for sale, the price shall be displayed.

**Pick-up and Deliver/Abandonment:** Artist shall be responsible for delivering all pieces to be displayed to Civic Center at a date and time to be coordinated by the Creative Arts Coordinator or Performing Arts Coordinator or their designees, and the artist. Furthermore,

artists shall be responsible for picking up their artwork once an exhibit is over. The City shall set a deadline for pick-up of Artwork once an exhibit is over and shall provide notification of the deadline to the artist prior to set-up. Any piece that is not picked-up by the deadline shall be treated as abandoned property and shall be subject to disposal or retained by the City, in its discretion, as provided in the Art Exhibit Agreement.

**Set-up/take down:** It shall be the responsibility of the artist to coordinate a time with the Creative Arts Coordinator or Performing Arts Coordinator or their designees to set-up and take down the Artwork. All artwork will be installed by the City.

**Two-Dimensional Works of Art:** City shall provide the means for display of two-dimensional works of art.

**Three-Dimensional Works of Art:** The artist may be required to provide the means for display of three-dimensional works of art.

**Exhibit Details:** Artwork must be at least 11" x 14" and no larger than 4' x 8' unless approved by the Creative Arts Coordinator or Performing Arts Coordinator or their designees. Artwork must be delivered ready to be installed.

**Display Rules and Complaint Resolution:**

Artwork may be displayed at the Civic Center Atrium, depending on availability of space and subject to the provisions set forth above, unless deemed obscene by the City or otherwise found to be in violation of state or federal laws. The City reserves the right to reject or remove any works or items that advocate discrimination on the basis of sex, age, race, religion, and works advocating a political campaign. Works or items will be deemed obscene and not displayed or removed if all three of the following standards are met with regard to such works or items:

1. The "average person, applying contemporary community standards," finds that it appeals to the prurient interest.
2. The work portrays sexual conduct "in a patently offensive way".
3. The work "lacks serious literary, artistic, political, or scientific value.

If an individual has a complaint about any artwork on display, the individual will be asked complete a "Citizens Request for Reconsideration of Material" form. The request shall be processed as follows:

1. Receipt of the form should be dated and then immediately submitted to the Creative Arts Coordinator or Performing Arts Coordinator.
2. The request will be reviewed by designated those individuals, or their designees, within five business days of receipt of form to ensure that

artwork complies with this policy.

3. If the artwork is deemed to be obscene, then the specific piece or performance will be shall be removed, relocated, relabeled, or otherwise modified giving due regard and consideration to the artist's freedom of expression and due process under the First and Fourteenth Amendments in accordance with the forum in which that artwork is display.
4. The citizen filing the request will be notified in writing within ten business days of the outcome of the request.
5. An appeal of this decision may be made to the City Manager.

**ART EXHIBIT AGREEMENT**  
**CITY OF NOVI, MICHIGAN**

**AND**

\_\_\_\_\_  
(Exhibitor)

This Art Display Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the City of Novi, Michigan (“City”), a Michigan Municipal Corporation, and \_\_\_\_\_ (“Exhibitor”) on the terms and conditions set forth below.

City has determined to allow the display and exposition of art works in City’s Civic Center Atrium and has established a procedure for accepting, installing/displaying, and removing loans of works of art that must qualify according to the procedures for loans of works of art as outlined in the City of Novi’s Civic Center Art Display Policy.

In exchange for the promotion of the arts, Exhibitor desires to lend, at no cost to City, his/her Artwork (described below) for display at the Civic Center Atrium as set forth below.

City has investigated and determined that it would be beneficial and in the best interests of the City and its citizens to allow the Exhibitor to place the Artwork at the Civic Center Atrium to promote visual arts in the City on the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises, covenants, and agreements hereinafter set forth, Exhibitor and City agree as follows:

1. **Artwork and Non-Agency Disclaimer.** Exhibitor agrees to lend, at no cost to City, his/her Artwork, as more particularly described and/or depicted on Exhibit A, attached hereto and incorporated herein for all purposes, for display at the Civic Center Atrium (“Artwork”). All modifications or additions to Exhibit A shall be in writing, signed by both parties, and attached to this Agreement. Exhibitor and City agree that City is not, under any circumstance, acting as Exhibitor’s agent, dealer, and/or exclusive seller, and this Agreement is therefore not subject to the application or requirements of PA 121 of 1970 or PA 90 of 1970.

2. **Delivery/Loan Period.** Exhibitor hereby agrees to loan the Artwork to City from \_\_\_\_\_ through \_\_\_\_\_. Exhibitor shall, at his/her sole cost and expense, be responsible for delivery and removal of the Artwork from the Civic Center Atrium, said removal to occur no later than \_\_\_\_\_ (“Removal Date”).

3. **Approval and Installation.** Exhibitor acknowledges and agrees that space is limited in the Civic Center Atrium and that all artwork submitted for display during the Civic Center Atrium is subject to the review and approval of City’s Creative Arts Coordinator or Performing Arts Coordinator or their designees, pursuant to the City’s Art Display Policy

attached as Exhibit B and incorporated herein. Exhibitor shall deliver the Artwork in a form that is ready for immediate display. Exhibitor shall tape the following information on the back of 2D pieces and attach temporarily to 3D pieces: Exhibitor's name, title of piece, and medium.

4. **Exhibitor Assumption of Liability/Waiver and Insurance.** City does not insure the Artwork displayed in Civic Center. Exhibitor acknowledges and agrees that City will not provide any security for the Artwork, including, without limitation, installation and removal of the Artwork, and City shall not, for any reason, be liable for any lost, stolen and/or damaged Artwork and/or the related materials, equipment and/or any other items associated and/or used in conjunction with the Artwork. Exhibitor hereby releases City, its council members, officers, agents, representatives and employees, from, and waives any and all rights to any and all claims for damages, or otherwise, he/she may have with regard to lost, stolen and/or damaged Artwork and/or related materials, equipment and/or any other items associated and/or used in conjunction with the Artwork and/or its exhibition.

5. **Failure to Remove.** If Exhibitor fails to remove the Artwork by the Removal Date, City shall have the right to consider the artwork as abandoned property and to either dispose of or retain the Artwork and any other items related thereto as deemed appropriate solely by City. Exhibitor shall be responsible for any and all costs and expenses associated with City's removal of the Artwork and/or the related materials, equipment and/or any other items associated and/or used in conjunction with the Artwork as provided in this Paragraph. Exhibitor hereby releases City, its council members, officers, agents, representatives and employees, from, and waives any and all rights to any and all claims for damages, or otherwise, he/she may have with regard to, city's removal of the Artwork and/or related materials, equipment and/or any other items associated and/or used in conjunction with the Artwork as provided in this paragraph.

6. **Sale of Artwork While on Display.** If the Artwork is for sale during the period of display under this Agreement, the retail price is to be submitted upon delivery of Artwork and displayed in a visible manner. In consideration of the limited space at the Civic Center Atrium, if the Artwork is purchased, or is agreed to be purchased, during the term of this Agreement, an administrative fee of 50% of the sale price shall be assessed by the City in connection with the sale, to be paid by the Exhibitor within 30 days of the last day of the display.

7. **Photographic Rights.** Exhibitor grants permission to City to photograph and/or videotape and/or to authorize others to photograph and/or videotape the Artwork for any non-commercial use, including but not limited to, installation documentation, publicity of the Artwork, record keeping and additional non-commercial purposes such as, among others, educational, public relations, and promotion of the arts.

8. **Representations and Warranties Regarding Copyright.** Exhibitor hereby warrants and represents that the Artwork is an original creation of Exhibitor and will not infringe the copyright, trademark or other intangible rights of any third party.

9. **Termination/Waiver of Damages.** This Agreement may, at any time, be terminated for any reason or no reason at all. Should City terminate this Agreement, Exhibitor hereby releases City, its council members, officers, agents, servants, representatives and



employees, from, and waives any and all rights to any and all claims for damages, or otherwise, he/she may have with regard to City's termination of this agreement, including without limitation, actual and/or consequential damages.

10. **Indemnification.** Exhibitor shall defend, indemnify, save harmless, and exempt City, its council members, officers, agents, representatives, servants and employees from and against all lawsuits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to the performance of this agreement and/or the set up, operation, viewing by the public and/or removal of the Artwork and arising out of a willful and/or negligent act and/or omission of the city and/or Exhibitor, their respective owners, officers, partners, agents, servants, representatives, contractors, subcontractors, volunteers and/or employees. This Paragraph shall survive the termination of this Agreement.

11. **Modification and Governing Jurisdiction.** No modification will be enforceable except in writing and signed by both parties. This Agreement is governed by the laws of the State of Michigan. In the event that any dispute arising under this Agreement results in litigation, the parties agree that the proper venue will be Oakland County, Michigan.

12. **Default.** In the event Exhibitor fails to comply with any of the provisions of this Agreement, City shall have the following remedies, in addition to City's other rights and remedies:

- a. to immediately terminate this Agreement without any liability to City as previously provided herein; and/or
- b. to require the immediate cessation of the set up, operation and/or removal of the Artwork.

13. **Miscellaneous Provisions.**

- a. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- b. **Assignment.** This Agreement is not assignable without the prior written consent of City.
- c. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the

address of the addressee. For purpose of notice, the addresses of the parties shall be as follows:

If to Exhibitor, to: Exhibitor  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to City, to: City of Novi  
Attn: City of Novi Creative Arts Coordinator  
45175 West Ten Mile Road  
Novi, MI 48375-3024

- d. **Governmental Immunity.** The parties agree that City has not waived its governmental immunity by entering into and performing its obligations under this Agreement.
- e. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual agreement of the parties hereto.
- f. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed herein.
- g. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

**EXHIBITOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF NOVI**

By: \_\_\_\_\_  
Its: Creative Arts Coordinator

1381945\_1

**EXHIBIT "A"**

**ARTWORK**

Title

Description

Medium

[Depiction attached]