

PUBLIC RULE HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Arts Division (NMAD) of the Department of Cultural Affairs (DCA) will convene a public hearing on Thursday, December 6, 2018 at 1:00 pm in the New Mexico Arts Conference Room, Room 241 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501.

The purpose of the hearing is to consider amending rule 4.12.11 NMAC, Art in Public Places Program. NMAD proposes to amend the rule in order to provide clarification and updating to facilitate the effective administration of the Art in Public Places Program.

The statutory authority for the proposed changes to 4.12.11 NMAC is found in Sections 9-4A-6, 13-4A-10, and 18-5-7 NMSA 1978 of the Art in Public Places Act. NMAD is proposing the following amendments to Sections 1, 7, 8, 9, 10, 12, and 15:

4.12.11.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico Arts (NMA) Division, Art in Public Places Program.

[4.12.11.1 NMAC - Rp, 4.12.11.1 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.7 DEFINITIONS: As used in this rule, in addition to those defined at 4.12.1.7 NMAC the following definitions apply.

A. “AIPP funds” means the ~~[1% for art allocations]~~ funds allocated for the acquisition and installation of art from appropriations for new construction or renovations, as described in the arts in public places act, and is comprised of site-specific funds, see Section 13-4A-4(A) NMSA 1978, and auxiliary funds, see section 13-4A-4(B) NMSA 1978.

D. “Art selection committee” means the committee that selects the artwork and the artist for a commission or purchase project. See Subsections ~~[(L), (S), and (W)]~~ [(M), (T), and (X)] of 4.12.11.7 NMAC for the different types of art selection committees.

G. “Auxiliary Funds” means the AIPP funds allocated pursuant to Subsection B of Section 13-4A-4 NMSA 1978 for new construction or renovation of structures which are excluded from the provisions of the Art in Public Places Act under Subsection E of Section 13-4A-3 NMSA 1978. “Auxiliary Funds” may be expended on the acquisition and installation of art for existing public buildings as well as for administrative costs incurred by NMA for the implementation for the Art in Public Places Act.

~~[G.]~~ **H. “Building”** means a relatively permanent structure or facility which includes fixtures and other built-ins and that is used for any of a wide variety of activities, including but not limited to plazas, parks and arenas.

~~[H.]~~ **I. “Commission” or “commission project”** means the process of selecting a work of art to be designed and created for a specific building or site. ~~[Commission projects have budgets of forty thousand dollars (\$40,000) or greater.]~~

~~[I.]~~ **J. “Construct”** means to make or form a building or make major renovations to a building and may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with “build”.

~~[J.]~~ **K. “Deaccession”** means the act of permanently removing an artwork from the state’s public art collection.

~~[K.]~~ **L. “Finalist”** means the individuals or artist teams selected from all artist submissions by the LSC to present maquettes, drawings, and other material for consideration as the selected artist for a commission project.

~~[L.]~~ **M. “Local selection committee or LSC”** means the committee of five to eleven members excluding AIPP staff, that selects a site, develops a prospectus, and select an artist for the site.

~~[M.]~~ **N. “Maquette”** means a finalist’s scale model of the proposed artwork or other appropriate means of expressing the artist’s idea.

~~[N.]~~ **O. “New Mexico artist”** means an artist who resides in New Mexico. If an artist resides in New Mexico for only part of the year, to qualify as a New Mexican artist, the artist must reside in New Mexico for at least ninety days out of the year and have maintained this part-time residency for at least two years consecutively.

~~[O.] P.~~ **“Public art collection”** means the collection of artwork which has been acquired by the NMA for display in public building throughout the state.

~~[P.] Q.~~ **“Project director”** means the delegated individual who is responsible for working with the AIPP staff to oversee the art selection process for a commission project. The project director is usually a representative or designee of the owner or the group using the building under construction or renovation.

~~[Q.] R.~~ **“Prospectus”** means the document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project.

~~[R.] S.~~ **“Purchase project” or “purchase”** means the process of acquiring an artwork that has previously been created by an artist and is selected by the RBC for their site. ~~[Projects with budgets up to forty thousand dollars (\$40,000) are purchase projects.]~~ NMA shall determine the maximum number of artworks a site may purchase.

~~[S.] T.~~ **“Regional buying committee” or “RBC”** means the committee made up of two to three local representatives of a public building or site receiving AIPP funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.

~~[T.] U.~~ **“Selection criteria”** means a varying list of qualifications included in the prospectus, which an artist’s submission must meet to be considered by an art selection committee for a public art project.

~~[U.] V.~~ **“Site”** means the place where the public artwork shall be located.

~~[V.] W.~~ **“Site specific”** means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.

~~[W.] X.~~ **“Submission review panel” or “SRP”** means the committee comprised of a minimum of five members who are artists or arts professionals that review artist submissions for purchase projects and make recommendations to NMA, following a set of criteria, for the selection of a manageable number of artworks to be viewed by RBC and purchased by public agencies.

[4.12.11.7 NMAC - Rp, 4.12.11.7 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.8 ADMINISTRATION OF AIPP PROGRAM AND FUNDS: The AIPP program shall administer and use funds derived from the Art in Public Places Act to acquire works of art, in ~~[consultation]~~ consultation with art selection committees through either the commission process~~;~~ or the purchase process, ~~[or]~~ for installation and display in ~~[public building]~~, upon, or around public buildings throughout New Mexico which reflect the cultural, ethnic and artistic diversity of New Mexico, the region, and the nation. Public artworks may be an integral part of the building, attached to the building, detached within or outside the structures or placed on public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities.

A. The AIPP program may aggregate AIPP funds, when appropriate and with concurrence of the site owner, for a more significant public art project. There is no limit to the amount of funds that may be aggregated and allocated for a specific project.

B. The ~~[NMA]~~ AIPP Program shall determine how auxiliary funds will be utilized.

(1) Auxiliary funds may be used to acquire and install works of art for existing public buildings in accordance with the Art in Public Places Act, or works of art that are available for loan in, upon, or around public buildings.

(2) Auxiliary funds may also be used NMA for administrative costs incurred by NMA for the implementation of the Art in Public Places Act.

C. Applicability of Art in Public Places Act.

~~[C.]~~ (1) ~~If an individual project that is part of A statewide repair appropriation is for an amount over one hundred thousand dollars (\$100,000), then that project’s funds are not~~ subject to the one percent allocation.

~~[D.]~~ (2) Determination of whether the Art in Public Places Act applies to a project is made by the AIPP Program and is based on the original appropriation.

~~[E.]~~ (3) Reauthorized appropriations for which the original appropriation was subject to the Art in Public Places Act shall remain subject to the AIPP allocation. In these instances, the one percent allocation shall be placed in the auxiliary fund. If the original appropriation was ~~[not]~~ not subject to the Art in Public Places Act, then no funds will be allocated to the AIPP, regardless of the purpose of the reauthorized appropriation.

D. If after four (4) years and five (5) documented attempts to contact the site owner to spend site-specific AIPP funds, the funds remain unspent, the AIPP funds may, at the discretion of the AIPP Program, be designated as auxiliary funds. Written notice of the auxiliary designation shall be sent to the site owner with a copy retained in the project file.

[4.12.11.8 NMAC - Rp, 4.12.11.8 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.9 GENERAL COMMISSION PROCEDURES:

D. Membership composition.

(1) The LSC is composed of five to ~~[eleven]~~ 11 members excluding the AIPP staff.

F. LSC responsibilities.

(6) A ~~[two-thirds (2/3)]~~ majority vote is required for an artist to be selected as the final artist and the selection shall be formally approved, duly moved and seconded.

[4.12.11.9 NMAC - Rp, 4.12.11.9 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.10 GENERAL PURCHASE PROCEDURES:

A. NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork for review to be selected by sites. ~~[having budgets up to forty thousand dollars (\$40,000).]~~

[4.12.11.10 NMAC - N, 9-30-2009; A, 01-01-2018]

4.12.11.12 DEVELOPMENT OF THE PROSPECTUS:

A. There are two types of prospectuses.

(1) Purchase prospectus - created by AIPP staff for several sites. ~~[having budgets up to forty thousand dollars (\$40,000).]~~ Each site's RBC selects artwork for its facility.

(2) Commission prospectus - created by AIPP staff in collaboration with the LSC. ~~[for sites having budgets beyond forty thousand dollars (\$40,000).]~~ These are site-specific works created exclusively for a certain location.

B. For a commission prospectus.

(1) The LSC shall consider various criteria in order to identify what type of art it is looking for.

~~[C.]~~ The criteria must be written into a prospectus.

~~[D.]~~ (2) LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.

~~[E.]~~ C. Factors to be considered for the prospectus include the following.

(4) Eligibility - all competitions are open to New Mexico artists, and, depending on the scope of a project, the competition may be open to larger regions.

~~[F.]~~ D. Distribution of the prospectus - the prospectus shall be advertised and distributed in such a way as to reach as many artists as possible and shall include one or more of the following methods:

(1) NMA email blast, newsletter, ~~[artspeak, and]~~ the NMA website ~~[--the NMA staff shall publish the availability of prospectuses in its quarterly newsletter, which is mailed to artists and galleries throughout the United States. The current prospectuses are posted on the NMA website at www.nmarts.org.] --www.nmarts.org, and NMA social media outlets (e.g. Facebook, Instagram) or other comparable methods.~~

[4.12.11.12 NMAC - Rp, 4.12.11.12 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.15 VARIATIONS TO PROCEDURES:

C. Variations may be incorporated into the art selection process with the approval of the AIPP program ~~[manager]~~ director.

[4.12.11.15 NMAC - Rp, 4.12.11.15 NMAC, 9-30-2009; A, 01-01-2018]

The proposed rules are available at the NMAD website, <http://www.nmarts.org/>, and at the NMAD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501. To request a copy of the proposed rule be mailed to you, submit your request in writing to New Mexico Arts Division, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501, by email to nicholas.henderson@state.nm.us, or via fax to (505) 827-6043.

NMAD is currently accepting public comments on the proposed rules. Additionally, any person may appear at the hearing to submit their comments on the proposed rules. Written comments may be submitted by mail to: New Mexico Arts Division, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501, by email to nicholas.henderson@state.nm.us, or via fax to (505) 827-6043. Written comments should be submitted for NMAD's consideration no later than 1:00 pm on December 6, 2018. Written comments will be posted on NMAD's website.

Individuals in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing should contact Cindy Gonzales at 505-827-6490 or cynthiar.gonzales@state.nm.us at least five business days prior to the hearing.