



Capitol Area Architectural and Planning Board

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Date: November 24, 2021 (*for December 1, 2021 Board meeting*)

To: The Capitol Area Architectural and Planning Board (CAAPB)

From: Merritt Clapp-Smith, CAAPB Executive Secretary

Subject: **Proposed Amendments to MN Rules 2400.2705 on Commemorative Works**

Proposed amendments to rules – Revisor Copy

Please find the attached MN Revisor draft of the proposed amendments to MN Rules 2400.2705 on Commemorative Works. The Revisor modified the proposed rules from the version submitted to them, which was the version prepared by the Decision Process Advisory Task force with a few revisions by CAAPB staff.

The changes made by the Revisor in the official rules version did not alter the intent, core content or elements of review. The Revisor made alterations to fit the format and typical rules language.

Topics for Discussion based on Input from the public, staff and Board members

1. Time Specific Review of Policy and Artworks

The proposed rules require a regular 10-year review by the CAAPB of the rules language, for consideration of possible amendments. The proposed rules also require that CAAPB do a comprehensive review of all commemorative works on the Capitol Grounds every 10 years for consistency with rules conditions and criteria.

Some board members and CAAPB staff question if these 10-year reviews are necessary, and what additional resources and staff time would be needed to conduct them. If the 10-year reviews are not required in the rules, the reviews could still occur, but the timing and frequency would be determined by the CAAPB Board and staff based on need and/or public request.

FOR DISCUSSION – Consider this potential change the proposed rules language, which would ensure that each work is reviewed for compliance with the most currently updated rules, instead of every ten years:

- from “Review existing commemorative artwork every ten years to ensure that the artworks meet the standards and intent of these rules.”
- to ... “Review existing commemorative artwork for compliance with every ten years to ensure that the artworks meet the standards and intent of these rules, after any update of the rules.” OR “The board may as resources allow review existing commemorative artwork every ten years to ensure that the artwork meets the standards and intent of these rules.”

FOR DISCUSSION – Consider this potential change the proposed rules language, which would remove the requirement for CAAPB to review the commemorative works rules every 10 years, since review of rules should occur anytime a need to do so is identified, whether that is more or less often than every 10 years.

- Remove “In addition, every 10 years, the CAAPB will review this policy to ensure that it remains accessible, accomplishable, and consistent with these Guiding Principles. These two reviews shall be scheduled so they occur within no less than four years of each other.”

2. Transparency and Public Review

There was overwhelming public desire for input from the public members on the public on the commemorative works process is to review and make decisions in a transparent and open fashion that the public can understand and participate in. The proposed rules increase transparency and participation, as follows:

❖ For Addition

- Condition for ‘documented public support of the work’
- CAAPB public hearing to determine if the application meets all conditions and criteria
- Design competition requires multiple opportunities for public engagement

❖ For Modification or Removal

- Condition for ‘documented public objection to the work’
- Review Committee must include “up to five” members of the public
- Review Committee to host at least 1 public meeting and a 30-day comment period
- CAAPB and Review Committee host a public hearing, and may choose to host a 2nd 30-day comment period and public hearing
- 10-year staff review of all works to determine if they meet the conditions and criteria for potential modification or removal

RECOMMENDATION – Add specificity for achieving transparency and input opportunities, as follows:

- For Addition

- Condition for ‘documented support of the work from the general public—~~support of the work~~’

3. Funding for Commemorative Works -- additions, modifications, removal, interpretation, relocation

Following the interest from board members in addressing the barriers the current and proposed rules present related to raising funds for commemorative works, CAAPB staff have begun researching what other places have done to fund activity related to monuments and memorials. Each situation is different and funding solutions vary accordingly, with possible sources coming from public, private or philanthropic sectors. Funding source examples we found included:

- Nonprofit organizations
- Crowd funding campaigns
- National arts foundation
- Chambers of Commerce
- Major sports teams and sports figures
- Public funds authorized by state or local governments

Based on our preliminary research, there are several ways to address the financial barrier.

RECOMMENDATION – Retain the requirement in the rules that applicants identify available and committed funding to proceed with the proposed work, without the rules specifying anything about the source of funding.

The CAAPB and potentially other interested parties can pursue a combination of these options separately from this rulemaking process.

Schedule of Rulemaking Steps

RULEMAKING STEPS	EARLIEST POSSIBLE TIME PERIODS	STATUS
Register for rulemaking with Revisor	August 2021	Complete
Request docket #, which assigns an Administrative Law Judge (ALJ)	September 2021	Complete
Schedule hearing date with Admin Law Judge	September 2021	Complete
CAAPB Meeting – Overview of Task Force work and status updates	September 28, 2021	Complete
Open 60-day “Request for Comments” period (required at least 90 days before public hearing)	October 18, 2021 to December 17, 2021	Complete
Prepare Statement of Need and Reasonableness (SONAR)	November 2021	In process
CAAPB Meeting – Review and discuss proposed rules	November 18, 2021	Complete
CAAPB staff revises proposed rules, based on: public comment; input from Board members; and recommendations from MN Revisor	November/December 2021	In process
Publish “Notice of Intent to Adopt” and the proposed rules, for the 30-day formal comment proceeding the public hearing	December 18, 2021 to January 18, 2022	
CAAPB Public Hearing; ALJ attending	January 18, 2022	
Continue public comment period for up to 20 days	End in mid Feb. 2022	
5-day ‘rebuttal’ period for CAAPB staff to prepare written response to substantive comments.	Mid-February 2022	
CAAPB Meeting – Review and vote on potential revisions to rules draft (public hearing version)	February/March 2022	
Admin Law Judge (ALJ) reviews all material and prepares recommendation to the CAAPB	February/March 2022	
CAAPB Meeting – Board considers ALJ recommendation and votes on rules for adoption	TBD – pending timeline and outcome of recommendation	
Adoption of amended rules into MN State Statute	TBD – after CAAPB vote	
Applications for Commemorative Works can be accepted if they meet the criteria of the amended rules.	TBD – following completion of CAAPB vote	

**Schedule above is subject to change based on decisions of the Board regarding when to proceed with certain rulemaking steps, or subject to unforeseen administrative delays in the rulemaking steps.*