

Ipswich Board of Selectmen

Policy Directive # \_\_\_\_\_

Date Adopted: July 21, 2014

**Policy Title/Subject: Guidelines for Accepting Public Art**

**A. INTRODUCTION**

This policy directive establishes guidelines for the Town of Ipswich's acceptance of public art. The *Guidelines for Accepting Public Art ("Guidelines")* are necessary to ensure that art installations complement and respect the character of the Town of Ipswich ("Town"), are appropriate to its setting, history, and traditions, and do not impose upon the Town unexpected or unsupportable burdens, such as a frequent need for maintenance and repair, or high, ongoing security costs. The *Guidelines* describe the standards and procedures for reviewing and approving public art proposals for installation on Town-owned land.

The formal review process for proposed donations of public art can take several months. Until the process is complete, neither donors nor the Town should formally commission any work or make any binding commitments, financial or otherwise, that assume acceptance of a work of art by the Town for installation at a particular site.

**B. PURPOSE AND SCOPE**

The purposes of the *Guidelines for Accepting Public Art* are to: (1) establish standards and procedures for the selection, installation and care of public art on Town-owned land, including parks, open spaces and public rights-of-way; and (2) provide a mechanism for public input and participation in the decision process.

Art work subject to the *Guidelines* includes, but is not necessarily limited to, sculptures, bronzes, paintings, and mosaics.

**C. PUBLIC ART STANDARDS**

1. **Standard of Quality:** Public art installations shall be of high quality in: style, appearance, durability, and ease of maintenance.
2. **Standards of Appropriateness and Legality:** Public art elements and/or any associated donation acknowledgements should reflect the character of the Town and be appropriate for a general audience of all ages. Consistent with state law, the following public art shall not be accepted:
  - a. Public art elements that, within the meeting of Mass General Laws, Chapter 55, promote political fundraising or promote or oppose a matter placed, or to be placed, before voters at the polls, or otherwise promote a political campaign purpose;
  - b. Public art elements that endorse religion or any particular religion, or that oppose religion or any particular religion; and
  - c. Public art elements that, by their nature or manner of installation, substantially change the character of intended use of a park or facility.

3. **Installation:** Installation of donated public art elements, including any donor acknowledgement or memorial plaques, will be completed by Town personnel or a contractor approved by the Town, as determined by the Town. The installation will be scheduled at a time and date determined by the Town, so as not to unnecessarily interfere with routine park maintenance activities or events.
4. **Ownership:** Unless a special condition to the contrary is expressly requested by the donor, accepted by the Board, and memorialized in the donor agreement, all art installations become property of the Town.
5. **Repair:** The Town has an interest in ensuring that public art elements remain in good repair. As such, the Town will accept a donation only after it has determined that parts and materials are readily available. Donated public art elements must be of high quality to ensure a long life and resistance to the elements, wear and tear, or acts of vandalism.
6. **Costs of Installation and Maintenance:** Unless the Board votes otherwise, the donor is responsible for the full cost of the public art’s purchase, installation, and maintenance, including repair parts and materials, during the expected life cycle (as described in the donor contract) of the donated public art. Accordingly, the Town expects, and may require, donors to contribute funds into a special account for maintenance, repairs, and upkeep of donated art, in an amount sufficient to cover the costs of the anticipated on-going maintenance during its life cycle.

At the end of the life-cycle term, the Town may give the donor the option to extend the life of the public art by funding its replacement or by providing additional repairs/upgrades that would extend the life-cycle of the original donation. The Town reserves the right to seek a new donor for the public art at the end of the established life cycle if the original donor cannot be located or chooses not to renew the donation. The Town also reserves the right to accept a new donation if it determines that such action is in the public interest, especially those who use and enjoy the public space within which the public art is located.

7. **Removal/Relocation:** The Town landscape is an evolving, active environment, and public art elements may, over time, interfere with site safety, maintenance or construction activities. As such, the Town reserves the right to alter, relocate or remove a donated art piece. If the Town determines that a major alteration or removal is necessary or appropriate, the Town will attempt to contact donors/artists for consultation, and allow the donor ninety (90) days to either remove and reclaim the piece or pay for its removal. In certain circumstances, such as safety or emergency situations, the Town may opt to take action prior to notification. The donor is responsible for providing the Town with current contact information for purposes of such notification.

#### **D. REQUIREMENTS FOR PUBLIC ART**

The Board of Selectmen (“Board”), with the assistance of the Superintendent of the Cemetery and Parks Department and a review committee as set forth below, will review all proposed donations of public art to be located in Town parks and open spaces. All donations of public art are subject to final approval by the Board. Prior to accepting a donation of public art, the Board shall conduct the following process:

1. **Public Art Review Committee:** For proposed permanent art installations, the Board shall appoint a Public Art Review Committee (“PARC”) to review the art proposal through a public meeting process. The PARC shall consist of seven voting members. If achievable, at least one member should be selected from the Cultural Commission, one from the Shade and Beautification Committee, and two from the art community. The Superintendent of the Cemetery and Parks Department and the Planning & Development Director shall also be members of the PARC.

In its review of proposed public art, the PARC shall consider the following:

- a. Artistic excellence/quality of artwork and craftsmanship;
- b. Relationship of artwork to site;
- c. Maintenance provisions;
- d. Adherence to master plans;
- e. Durability, public safety and the degree of public contact; and
- f. Responsibility of ownership/maintenance.

As part of its review, the PARC shall seek input from a variety of sources, including the Chief of Police, Director of Recreation & Culture, the Planning Board, Building Inspector, and project abutters. The PARC may also ask art professionals or other specialists to serve in an advisory capacity to review public proposals. After completing its review, the PARC shall submit a written recommendation to the Board.

- 2. Application:** The prospective donor shall contact the Town Manager's Office to determine whether a site is available for displaying donated public art. If there is potential availability, the donor shall submit a written proposal to the Town Manager describing the proposed public art donation and its desired location. Completed proposals, once reviewed by the Town Manager's Office and the Planning & Development Director, will be forwarded to the PARC for review and recommendation.
- 3. Review Process:** Donors are encouraged to discuss tentative proposals and art ideas with the Town prior to beginning the formal review process, and before spending significant funds on developing a detailed proposal. Proposals need not be completed for this initial review to take place. Donors shall submit their completed, formal applications to the Town Manager's Office, which will determine if a location is available and the application is complete. If yes, the proposal will be referred to the PARC, which will ask the prospective donor to provide the following information:
  - a. Information about the work(s) of art, including materials, concept and purpose, as well as the artist's biography (i.e., portfolio, brochures, or samples of similar work, so that the PARC can understand the style and technique of the artist). If the proposed art element has already been created, the donor shall indicate the date it was created, as well as its history (e.g., why it was created? Has it previously been publicly displayed? Has it won awards or critical notice? Are there previous owners of significance? What place and significance does the art have in the overall portfolio of the artist?);
  - b. A site plan showing the proposed location of the public art element, and how it relates to its surrounding environment.
  - c. Photographs of the art or, if it is not yet fabricated, an illustration. If the piece is a sculpture meant to be viewed in the round, photographs or illustrations from more than one perspective are desirable.
  - d. Information about the donor(s), association with the Town (if any), and why the particular piece of art is being offered;
  - e. Any technical issues related to materials, maintenance and care, repairs, and installation needs such as hanging arrangements, bases, pedestals, or footings;
  - f. Any environmental conditions (excessive shade, sunlight, or moisture) that might affect the art or recommendations on its site location;

After the PARC has completed its review and consultation with the donor, it shall prepare a staff report and present recommendations to the Board.

As part of its review process, the Board shall hold a public hearing, at which time the public can comment on the proposed art work.

Following the donor's presentation of the proposal, the Board will review the application based on the following criteria:

- *Does the proposed public art satisfy the Guidelines, and will it be a valued addition to the art collection of the Town?* High quality art that will have an enduring impact and works of art that highlight the traditions, character, and landscape of the Town is particularly sought and encouraged.
- *Is the proposed art durable, sturdy, and safe?* The Town does not have funds allocated to repair extensive weather damage, deterioration, or vandalism to art pieces. If a proposed art gift seems especially susceptible to any of these conditions, it may be declined. Works of art with moving parts will be carefully evaluated for their potential for breakage and future needs for repair.
- *What costs, if any, will the Town incur to maintain this piece of art, and can the donor pay all the costs of fabrication, delivery, installation, and maintenance?* This is an important consideration since the Town does not have funding set aside to purchase or maintain art, or to subsidize art installations.
- *Is the proposed site appropriate and consistent with Town plans?* Art pieces must be carefully sited to minimize safety concerns and avoid conflicts with underground utility lines, circulation by vehicles and pedestrians, and access by the general public, including those with disabilities. The PARC will discuss these issues with the donor during its review process.
- *Will the gift of art enhance the public space upon which it will be situated?* The Board welcomes art works that will contribute to the Town's landscape, especially portions of the landscape that have been previously overlooked. The PARC can advise on locations where art would be appropriate but may not have been considered by the donors.

Once the Board has taken public testimony and reviewed the application pursuant to the above criteria, it may approve (as is, or with modifications and/or conditions), disapprove, or return it to the donor, Town Manager and/or the PARC with specific questions or requests for modification.

To accept a donation of public art for a specific park, open space, or right-of-way (ROW), the Board must find that the donated art:

- a. Enhances the park, open space, or ROW;
- b. Does not interfere with the current or intended use of the park, open space, or ROW; and
- c. Does not require the relocation of other equipment or infrastructure to accommodate the public art donation.

If a public art element is approved by the Board, Town staff will work with the donor to develop a donor contract (a sample of which is provided as Attachment A) relative to its installation, placement and maintenance. Once both parties have agreed to the language of the contract, it will be signed by the donor and, on behalf of the Town, the Town Manager.

# Attachment A

## Sample Donor Agreement

### DONATION AGREEMENT

between

THE TOWN OF IPSWICH, MASSACHUSETTS

and

(DONOR/ARTIST)

For

(TITLE OF WORK)

This Donation Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the TOWN OF IPSWICH, MASSACHUSETTS (“Town”) and \_\_\_\_\_ (“Donor/Artist”).

**Whereas**, the Ipswich Board of Selectmen (“Board”) has approved the donation of public art by \_\_\_\_\_; and

**Whereas**, \_\_\_\_\_ is willing to furnish such art work on the terms set forth below;

**NOW, THEREFORE**, the parties agree as follows:

1. The Donor/Artist agrees to donate to the Town \_\_\_ (*Title of Work*)\_\_\_ (“art work”) in substantially the same form as presented to, and accepted by, the Board, more particularly described in “Exhibit A,” attached hereto and incorporated herein by this reference.
2. The art work shall be fully completed and installed at \_\_\_\_\_ (“Site”) on or before \_\_\_\_\_ by \_\_\_\_\_.
3. The Donor/Artist accepts responsibility for the full cost of the public art’s purchase, installation, and maintenance, including repair parts and materials, during the art work’s expected life cycle, which is \_\_\_\_\_ years, and further agrees to contribute \$ \_\_\_\_\_ to a special account to accommodate the art work’s life-cycle maintenance.
4. The Donor/Artist agrees to sign a Visual Artists Rights Act Waiver in substantially the form attached hereto as Exhibit A., and upon the completion and installation of the art work, all rights, interests and title to the art work shall automatically transfer to the Town.

**OR**

4. The Artist retains all rights to the art work under the United States Copyright Act of 1976, 17 U.S.C. sec. 101 *et seq.*, as amended, and all other rights in and to art work except ownership and possession, except as limited by the following:

- a. In view of the intention that the project in its final dimensions shall be unique, the Artist shall not make additional exact reproductions of the final art work, nor shall the Artist grant permission to others to do so except with the Town’s written permission.

- b. The Artist grants to the Town and its assigns an irrevocable license to make two-dimensional reproductions of the project for non-commercial purposes, including, but not limited to, reproductions used in advertising, brochures, media publicity and catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner and not to market goods or services. All reproductions by the Town shall contain a credit to artist and a copyright notice.
  - c. The Town is not responsible for any third party infringement of Donor/Artist's copyright or for protecting the intellectual property rights of the artist.
  - d. The Artist shall use its best efforts to give credit reading substantially as "      (title)      , an original work owned and commissioned by the Town, in any public showing under artist's control of reproductions of the art work."
  - e. The Town reserves the right to relocate the art work from the initial installation site if such decision is deemed appropriate and warranted in the future in the Town's sole discretion.
  - f. The Artist hereby acknowledges that the Town may deaccession the art work at any time in accordance with the Selectmen's Policy Directive.
5. The Donor/Artist represents and warrants that (i) the art work is solely the result of Artist and creative efforts of Artist; (ii) except as otherwise disclosed in writing to the Town, the art work is unique and original and does not infringe upon any copyright; (iii) the art work has not been accepted for sale elsewhere; and (iv) the project is free and clear of any liens from any source whatever.
  6. Either party may terminate this Agreement in the event of a material breach of its conditions by the other by providing the breaching party with a notice of termination at least ten days in advance of the termination date. The termination notice shall specify in reasonable detail how the agreement has been breached. As of the date of termination, both Artist's and the Town's obligation under this agreement shall cease and Artist shall vacate the work site and turn over possession of the artwork site to the Town.
  7. The Donor/Artist is not a partner, joint venture, or employee of the Town and the only relationship between Artist and the Town is that of an independent contractor. Donor/Artist is not entitled to workers compensation benefits from the Town and the Donor/Artist is obligated to pay federal and state income tax on all monies earned under this Contract.
  8. This Agreement shall be binding upon, and shall insure to the benefit of, the parties hereto, and their successors and assigns.

\_\_\_\_\_  
Ipswich Town Manager      Date

\_\_\_\_\_  
Donor/Artist      Date

# **Exhibit A**

## **VISUAL ARTISTS RIGHTS ACT WAIVER**

To the extent the uses or removal of the art work under this Agreement affect any rights the Artist may have under the provisions of federal or state law, including the 1990 Visual Artists Rights Act, the Artist hereby knowingly waives any rights of preservation of the art work provided by those laws.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature