



<b>Town of Moraga</b>	<b>Agenda Item</b>
<b>Ordinances, Resolutions and Requests for Action</b>	<b>XII. B.</b>

Meeting Date: November 18, 2015

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Jay Ingram, Parks and Recreation Director**

**Subject: Consider Resolution \_\_\_ - 2015 Rescinding and Replacing the Public Art Policy as Referenced in Resolution 43-2008; Establishing a New Art in Public Spaces Policy and Establishing an Art in Public Spaces Fund, and Consider the Creation of an Art in Public Spaces Committee Charter by Motion**

**Request**

Town Council is being asked to consider a revised Public Art Policy, similar to the City of Orinda, with a desire to increase opportunities to display public art in Moraga, and to create a committee to review public art applications.

**Background**

In 2008, through Town Council Resolution 43-2008, the Council adopted an acceptance policy for memorials, donations, and public art. The Memorial and Donation Policy and the Public Art Policy are separate, stand-alone documents but employ similar concepts. Resolution 43-2008 formalized Town Council's adoption of both policies.

In April of 2015, Town Council requested a future agenda item for a study session on art in public places, specifically reviewing how Lafayette and Orinda address public art. Town Council asked that a study session be agendized after the budget hearings this past May and June.

During this same timeframe, the Park and Recreation Commission discussed Commission goals for 2015. They added the art in public places discussion to their goals. However, the Commission wanted the Town Council to provide direction on the scope of change for the policy so the Commission could be as productive and efficient as possible during their monthly meetings, eventually delivering a draft policy the Council favored.

1 At their September 9, 2015 meeting the Town Council provided input on the current  
2 Public Art Policy for Moraga. They reviewed and considered funding models and a  
3 policy that will encourage the enhancement of public art in Moraga. Ted Urban, a local  
4 artist and member of the City of Orinda Art Committee, informed the Town Council on  
5 how the public art process works in Orinda. Moraga's current Public Art Policy has  
6 rendered zero art installation. After reviewing different options and receiving public  
7 comment, the Council appreciated the simplicity and functionality of the City of Orinda  
8 Art in Public Places Policy. Direction from the September 9 Council meeting to the Park  
9 and Recreation Commission was to review the Orinda policy, make modifications and  
10 present a revised Public Art Policy to the Town Council at a later date.

11  
12 Town Council also requested the Commission consider funding sources to initiate the  
13 program in Moraga. For example, Orinda has an Art in Public Places Fund that is  
14 maintained by donations, grants and limited City funds. The Town Council was not in  
15 favor of exploring a new fee or tax to fund public art. Some local jurisdictions impose a  
16 Public Art Impact Fee on new development, typically 1 to 2%, of construction costs, with  
17 various requirements. Town Council was not in favor of this option, and preferred the  
18 Orinda model.

## 19 20 Discussion

21  
22 The Park and Recreation Commission reviewed the new policy in depth during their  
23 September and October regular meetings. They held one final review on Tuesday,  
24 November 17. Due to the timing of the back-to-back meetings, any Commission  
25 revisions discussed on November 17 will be presented To the Town Council at their  
26 November 18 meeting.

27  
28 Highlights of the new draft Art in Public Spaces Policy include:

- 29  
30 ➤ Draft policy has a strong focus on loaned art, for a designated period of time.  
31 ➤ Cost to the Town is minimal, with most of the financial requirements on the artist.  
32 ➤ Art location isn't as specific as the current policy, allowing more flexibility.  
33 ➤ The Town will not accept loaned art valued at \$50,000 or more.  
34 ➤ A process for donors or lenders to submit applications to the Town for approval,  
35 with recommendations to the Town Council made by a new Art in Public Spaces  
36 Committee  
37 ➤ Standards for selecting/accepting public art for display  
38 ➤ Requirement for artist/donor to enter into an agreement with the Town, with the  
39 final agreement to be in a form approved by the Town Manager and Town  
40 Attorney  
41 ➤ A process for removal or deaccession of public art  
42

43 The draft resolution approving the policy also includes a dedicated initial funding source.  
44 The Commission is recommending designating \$5,000 from Fund 100 – One Time  
45 Developer Fees to start the program.  
46

1 The Park and Recreation Commission recommends the Town Council approve the  
2 resolution approving the Draft Art in Public Spaces Policy, and the Committee Charter  
3 as presented in the attachments, and initiate the Art in Public Spaces Fund with \$5,000.  
4

5 **Fiscal Impact**  
6

7 The recommendation includes a reallocation of \$5,000 from Fund 100 – One Time  
8 Developer Fees (Palos Colorados), to an operating line item in the General Fund 101-  
9 810 “Recreation.” The current, unaudited fund balance in Fund 100 is \$1,971,271.00.  
10

11 **Alternatives**  
12

- 13 1. Adopt Resolution \_\_\_- 2015 rescinding and replacing the Public Art Policy as  
14 referenced in Resolution 43-2008, establishing a new Art in Public Spaces  
15 Policy, and establishing an Art in Public Spaces Fund and approve Art in Public  
16 Spaces Committee Charter by motion.  
17
- 18 2. Adopt Resolution \_\_\_-2015 rescinding and replacing the Public Art Policy as  
19 referenced in Resolution 43-2008, establishing a new Art in Public Spaces  
20 Policy, and establishing an Art in Public Spaces Fund, and approve Art in Public  
21 Space Committee Charter, by motion, with modifications.  
22
- 23 3. Not approve Resolution \_\_\_-2015 rescinding and replacing the Public Art Policy  
24 as referenced in Resolution 43-2008, establishing a new Art in Public Spaces  
25 Policy, and an Art in Public Spaces Committee Charter, and provide further  
26 direction to staff.  
27

28 **Recommendation**  
29

30 Adopt Resolution \_\_\_- 2015 rescinding and replacing the Public Art Policy as  
31 referenced in Resolution 43-2008, establishing a new Art in Public Spaces Policy, and  
32 establishing an Art in Public Spaces Fund; and approve Art in Public Spaces Committee  
33 Charter by motion  
34

35 **Report reviewed by: Jill Keimach, Town Manager**  
36 **Karen Murphy, Assistant Town Attorney**  
37

38 **Attachments:**

- 39 **A.** Resolution \_\_\_-2015 rescinding and replacing the Public Art Policy as  
40 referenced in Resolution 43-2008, establishing a new Art in Public Spaces  
41 Policy, and establishing an Art in Public Spaces Fund
- 42 **B.** Art in Public Spaces Policy - Draft
- 43 **C.** Form of Public Artwork Loan Agreement - Draft
- 44 **D.** Art in Public Spaces Ad Hoc Committee Charter - Draft
- 45 **E.** Resolution 43-2008
- 46 **F.** 2008 Public Art Policy  
47  
48



BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Rescinding and Replacing the Public Art )  
Policy as Referenced in Resolution 43- )  
2008, Establishing a New Art In Public )  
Spaces Policy, and Establishing an Art in )  
Public Spaces Fund )

Resolution No. \_\_ - 2015

**WHEREAS**, on September 9, 2015 the Town Council reviewed options for a new Public Art Policy in Moraga, eventually directing the Park and Recreation Commission and Staff to return with a revised Policy to replace the 2008 Public Art Policy; and

**WHEREAS**, on September 9, 2015 the Town Council directed the Parks and Recreation Commission and Staff to follow the City of Orinda Art in Public Places model; and

**WHEREAS**, the Park and Recreation Commission discussed the revised policy at their September and October 2015 Regularly scheduled Commission meetings, providing feedback and soliciting public comment; and

**WHEREAS**, the Park and Recreation Commission has prepared the draft policy for the Art in Public Spaces for the Town of Moraga; and

**WHEREAS**, the Town Council desires to create a limited public forum for the display of artwork to further the education and appreciation of art in the community; and

**WHEREAS**, the Town Council finds that the adoption of an Art in Public Spaces Policy will benefit the public welfare and quality of life in the Town; and

**WHEREAS**, the Town Council finds that adoption of this new policy will not adversely affect the Town's fiscal status or staffing levels; and

**WHEREAS**, the Town Council desires to authorize the transfer of \$5,000 from Fund 100 – One Time Developer Fees, to a designated line item budget for Art in Public Spaces Fund.

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Council of the Town of Moraga, as follows:

- 1. Rescinding the Prior Public Art Policy and Adopting an Art in Public Spaces Policy**

The 2008 Memorial and Donation and Public Art Policies, adopted by Resolution No. 43-2008, is hereby rescinded as it pertains to public art. The Town of Moraga Art in Public Spaces Policy, attached hereto as Exhibit A, and incorporated herein by reference, is hereby adopted.

**2. Establishing an Art in Public Spaces Fund** The Town of Moraga shall establish a special reserve account designated as the Art in Public Spaces Fund. This reserve account shall be credited annually, with any funds allocated by the Town through the budgetary process and monies received through donations or grants or otherwise obtained. The fund is to be maintained and administered by the Town's Administrative Services Director.

This account shall be used for public art. Expenditures of funds may include, but are not limited to, the following uses: costs associated with the purchase, commissioning, lease, transportation, installation, insurance, maintenance, repair, removal or restoration of artwork, and any costs to administer the Art in Public Spaces program or purchase objects necessary for the proper presentation of the artwork.

**PASSED AND ADOPTED** by the Town Council of the Town of Moraga at a special meeting held on November 18, 2015 by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

\_\_\_\_\_  
Roger N. Wykle, Mayor

Attest:

\_\_\_\_\_  
Marty C. McInturf, Town Clerk

# Town of Moraga - Art in Public Spaces Policy

## **I**     **PURPOSE**

Since public art is a cultural reflection of a community and its people, it is important that procedures be in place for the acquisition and acceptance of art by the Town of Moraga to further the education and appreciation of art. The purpose of this Art in Public Spaces Policy (“Public Art Policy”) is to set forth procedures for the following:

- A.     selection and acceptance of loaned, commissioned or donated artwork;
- B.     placement or site selection;
- C.     funding project installation and maintenance; and
- D.     de-accessioning or removal of artwork.

The Town’s intention is to create a limited public forum for the display of artwork that meets the Town’s standards as set forth herein.

The Town Council may modify this Public Art Policy, with review by the members of the APSC.

## **II**     **DEFINITIONS**

**Art** as described in this policy is art intended to enrich the public environment for both residents and visitors. Art shall include, but not be limited to, sculptures, murals, paintings, graphic arts, mosaics, photography, crafts, mixed media, and environmental works.

**APSC** means the “Art in Public Spaces Committee” appointed by the Town Council.

**Artist** means a person who has an established reputation of artistic excellence in the visual, performance, literary and/or media arts, as judged by peers, through a record of exhibitions, public commissions, sale of artworks, and/or educational attainment.

**Artwork** means all forms of art created by an artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

**Deaccession** means the procedure for the removal of an artwork.

**Donation** means an existing or proposed artwork offered as a donation or gift to the Town in perpetuity.

**Donor** means an individual, group, organization, or business that proposes a public artwork for donation and placement or installation at a public site under city jurisdiction. When applicable, a donor is the artist(s) who created the proposed donation.

**Lender** means an individual, group, organization, or business that proposes a public artwork for loan and placement or installation at a public site under city jurisdiction. When applicable, a lender is the artist(s) who created the proposed donation.

**Loan** means the lease or loan of existing or proposed artwork to the Town for a fixed period of time.

**Maintenance** means actions taken to retard or prevent damage to artwork by control of the environment and/or treatment of the artwork on a routine and long-term basis.

**Public art** means artworks of sculpture, murals, photography, and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics, or any combination of forms of visual media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof displayed at a public place.

**Commissioned** means hiring or payment in advance for the creation of a piece, often on behalf of another. Artwork may be commissioned by private individuals, businesses or the government.

### **III PUBLIC ART DONATION OR LOAN**

Any person wishing to loan or donate artwork, including commissioned artwork, to the Town of Moraga must complete a Public Art Application, available at the Town Parks and Recreation Department. Complete applications will be routed to the APSC.

The Town shall not permit applications for artwork loaned to the Town for less than two months. Further, the Town shall not accept loaned artwork with a value of more than fifty thousand dollars (\$50,000.00).

The application and accompanying materials shall include the following:

- A Photo, plans, model or other representation of proposed artwork
- B Proposed location of the artwork
- C Description of the artwork, including dimensions, weight, finish, and color, and system for mounting or displaying the artwork
- D Any special maintenance, mounting or display requirements
- E Artist biography
- F Statement of the approximate value of the artwork, with supporting documentation
- G Whether donation or loan is proposed, and the length of any proposed loan
- H Signage proposed for the artwork, including size, lettering and material  
(Note: signage shall be limited to the artist's name, title, and date of work, and where appropriate, a dedication. The name of the donor or lender may be part of the installation.)

### **IV PUBLIC SITES ALLOWED FOR DISPLAY**

Artwork loaned or donated to the Town pursuant to this policy may be displayed in the following locations:

- A Town-controlled area of the Hacienda de las Flores and Moraga Library.
- B Town Hall (front landscaped areas, interior lobbies/walls, and parking lot).
- C Town-controlled areas of Town Council Chambers/Community Meeting Room at 335 Rheem Boulevard (front landscaping areas, interior lobby/walls/chambers).
- D Town-controlled street medians
- E Town-controlled areas of the Moraga Commons, Rancho Laguna and Camino Ricardo Park

### **V SELECTION / ACCEPTANCE PROCESS**

When reviewing works of art for possible loan or donation to the Town, the Town shall determine whether:

- A The artwork
  1. is thought-provoking, memorable or enduring and reflects the diverse social, cultural, or historic values of the Town;
  2. is appropriate for the proposed location in terms of scale, form, design or historical character of site and the preservation and integration of natural features;
  3. is publicly accessible, particularly with respect to handicapped areas;
  4. can be properly installed, placed to be seen, and displayed with patron safety in mind;
  5. can be displayed in such a manner to prevent theft and vandalism;
  6. is not government endorsement of religion in violation of the Establishment Clause of the Federal and State Constitutions;
  7. would not, when displayed, create a hostile work environment for public employees; and
  8. does not depict graphic violence or overt sexual activity.
- B The Town already has on loan, commissioned, leases, or owns sufficient examples of this type of object or the objects by a particular artist in a particular style.

- C The Town has the facilities and operational resources necessary to display the artwork, knowing that the Town has limited facilities and resources.
- D The person wishing to loan or donate the artwork to the Town is prepared to execute a contract or other document which, in the estimation of the Town Attorney and Town Manager, protects and serves the fiscal and other interests of the Town.
- E The artist who created the artwork that will be loaned or donated to the Town is prepared to execute a waiver of their rights under California Art Preservation Act (Civil Code 987 and 989), the Visual Artist Rights Act (17 U.S.C. 106A, 113), and other applicable state and federal laws.
- F There are any environmental impacts, such as noise, sound, light, or impacts on adjacent property owner's views.

**VI RECOMMENDATION TO COUNCIL**

The APSC will consider each complete Public Art Application and make a recommendation to the Town Council for action.

The APSC shall prepare a written report, which recommends whether the artwork should be accepted for donation or loan and displayed. The report shall include:

- A Title, artist medium, dimensions, and intended location of the artwork;
- B The origin/source of the artwork;
- C Slide(s) and/or photograph(s) of the artwork;
- D Report on the condition of the artwork;
- E Estimated value of the artwork; and
- F Whether the artwork will be donated or loaned to the Town and the term of the proposed loan.

The offer to donate or loan artwork may be withdrawn at any time up until execution of an agreement between the Town and the donor(s) or lender(s).

The Town Council shall consider the report and recommendation of the APSC, in accordance with the requirements of this policy, and determine whether the artwork will be accepted for loan or donation and displayed. Any approved or accepted donation or loan shall be memorialized in an agreement with the donor or lender, as applicable, in a form approved by the Town Manager and Town Attorney, which shall include any required artist waivers in the event the donor or lender is not the artist of the artwork.

**VII MAINTENANCE OF ART IN PUBLIC PLACES:**

Upon receipt of artwork pursuant to this policy, the Town will insure the artwork under its Municipal Pool Authority for Insurance Coverage. The estimated value of the artwork will be the value provided on the Public Art Application. Loaned artwork shall only be insured for the term of the loan.

Maintenance of donated artwork shall be the responsibility of the Town. Town staff should consider the condition of donated artwork each year in time for budget preparation and make recommendations to the Council regarding the estimated cost of appropriate maintenance activities. The Council shall have sole discretion to decide whether to undertake these activities.

Maintenance of loaned artwork shall be the responsibility of the lender. Prior to undertaking any such maintenance on Town property, the lender shall obtain the approval of the Town.

## **VIII REMOVING (DEACCESSIONING) LOANED ARTWORK**

Loaned artwork shall be removed at the end of the prescribed term, unless the Town determines that early removal is appropriate under the criteria described below.

Any artwork may be considered for removal from public display if:

- A The artwork's physical or structural condition poses a threat to public safety;
- B The artwork requires excessive maintenance, has faulty design or workmanship, and repair or remedy is impractical or infeasible;
- C The artwork has been damaged and repair or remedy is impractical or infeasible;
- D The condition or security of the artwork cannot be reasonably protected;
- E Significant changes in the use, character or design of the site have occurred and affect the integrity of the artwork; or
- F Removal is requested by the artist, donor or lender.

Prior to removal of an artwork, the Town shall prepare a report on the proposed removal. The report shall include the reasons for the removal, as set forth above, the condition of the artwork and the estimated cost of removal. The APSC shall consider the report and make a recommendation to the Town Council on removal. Staff shall make a reasonable effort to locate the artist, lender or donor or his/her heirs to advise them of the Town's consideration to remove the artwork and reasons for the decision.

The Town Council shall consider the report and the APSC's recommendation and shall make a determination in accordance with the criteria set forth in this section.

Disposition of artwork shall be handled in accordance with the requirements of Civil Code sections 987 and 989 and shall follow Town procedures for disposition of surplus property as appropriate.

# Town of Moraga Public Art Application

*(Please complete this application as fully as possible)*

Date: \_\_\_\_\_

**Project Name** \_\_\_\_\_

**Proposed Location/Address** \_\_\_\_\_

**Proposed by** \_\_\_\_\_

**Phone** \_\_\_\_\_ **Email** \_\_\_\_\_

**Address** \_\_\_\_\_ **Town** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Artist Name** \_\_\_\_\_

**Phone** \_\_\_\_\_ **Email** \_\_\_\_\_

**Address** \_\_\_\_\_ **Town** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Description of Artwork (Include finish and color)**

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

**Approximate Weight** \_\_\_\_\_ **Approximate Dimensions** \_\_\_\_\_

**System for Mounting of Displaying Artwork**

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

**Maintenance, Mounting or Display Requirements**

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

**Approximate Value:** \$ \_\_\_\_\_ **Approximate Annual Maintenance Costs:** \$ \_\_\_\_\_

**Application is for (circle one)**                      **donation** **loan** **commissioned**

**Term of Loan** \_\_\_\_\_ **years/months**

Please attach

- Photo, plans, model or other representation of proposed artwork
- Artist biography
- Signage proposed for the artwork, including size, lettering and material



**PUBLIC ARTWORK LOAN AGREEMENT**

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_ between the Town of Moraga (“Town”), a municipal corporation, and \_\_\_\_\_ (“Artist/Donor”).

**RECITALS**

**WHEREAS**, pursuant to Resolution \_\_\_ - 2015, the Town Council established an Art in Public Spaces Policy for the Town;

**WHEREAS**, the policy authorizes the Town to acquire artwork for public display through leases, loans, and donations of artwork;

**WHEREAS**, on November 18, 2015, the Town Council adopted Resolution No. \_\_\_ - 2015, which authorized acquisition by loan of the artwork described in this Agreement;

**NOW, THEREFORE**, Town and Artist/Donor agree as follows:

**1. Purpose of Agreement**

Artist/Donor, as the sole owner and creator of the artwork entitled “\_\_\_\_\_” (“Artwork”), hereby agrees to loan Artwork to the Town for the period of time specified in Section 2 of this Agreement. The Public Art Application prepared by Artist/Donor, which describes the Artwork and includes a photograph of the Artwork, is attached and incorporated into this Agreement as Exhibit A.

In consideration of Artist/Donor’s loan of the Artwork to Town, Town agrees to publicly display the Artwork \_\_\_\_\_ (insert area for display), to credit Artist/Donor for the loan on a sign posted with the Artwork, and to insure the Artwork against loss or damage as specified in Section 6 of this Agreement. This Agreement is intended to implement and shall be interpreted in accordance with the terms of the Town of Moraga Art in Public Spaces Policy, which is attached and incorporated into this Agreement as Exhibit B.

**2. Effective Date and Term of Agreement**

This Agreement shall be effective on the date that it has been signed and executed by both parties. It shall remain in effect until \_\_\_\_\_, with a possible one-year extension, unless it is terminated earlier pursuant to Section 9 of this Agreement. The term of this Agreement shall be extended by one year, to \_\_\_\_\_, if the Town and Artist/Donor so agree in writing prior to \_\_\_\_\_. At the end of the term, the Town shall remove the Artwork and return it to the Donor, as provided in Section 10 of this Agreement.

**3. Payments**

- a. Artist/Donor shall loan the Artwork to Town for the limited term of this Agreement specified in Section 2 without the payment of compensation by the Town.
- b. Artist/Donor agrees to pay any and all costs incurred by the Town in connection with the installation, maintenance, and removal of the Artwork, as provided in this Agreement.

**4. Artist/Donor's Representations and Warranties**

- a. Artist/Donor represents and warrants that Artist/Donor is the original and only creator of the Artwork.
- b. Artist/Donor represents and warrants that Artist/Donor is the sole owner of the Artwork. Artist/Donor further represents and warrants that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the Artwork or parts of the Artwork. Artist/Donor represents and warrants that Artist/Donor is the sole owner of any and all copyrights and other intellectual rights pertaining to the Artwork.
- c. Artist/Donor represents and warrants that the Artwork will not pose a danger to public property, health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.
- d. Artist/Donor represents and warrants that foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor, repairable damage and will not cause the Artwork to fall below an acceptable standard of public display;
- e. Artist/Donor represents and warrants that general routine maintenance and repair of this Artwork will maintain the Artwork within an acceptable standard of public display.
- f. Artist/Donor represents and warrants that the installation and removal of the Artwork will not unacceptably damage or alter the Artwork.
- g. Artist/Donor represents and warrants that the total value of the Artwork is \$ \_\_\_\_\_, which is less than the \$50,000 maximum value established by the Town of Moraga Art in Public Spaces Policy.

**5. Intellectual Property and Publicity Rights**

- a. Town's Intellectual Property License. Artist/Donor grants to Town, and to Town's agents,

authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Artwork:

(1) Use and Display. Town may use and display the Artwork for the term provided in Section 2.

(2) Reproduction and Distribution. Town may make and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions of the Artwork. Town may use such reproductions for any Town-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, documentation of Town's Art in Public Spaces Policy, and catalogues or similar publications. Town shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Town.

b. Third Party Infringement. The Town is not responsible for any third party infringement of any copyright to the Artwork held by Artist/Donor and is not responsible for protecting the intellectual property rights of Artist/Donor.

c. Credit. On each Town reproduction of the Artwork, the Artist/Donor shall be acknowledged, using designations provided by the Artist/Donor, to be the Artist/Donor of the Artwork.

d. Trademark. In the event that Town's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, Town shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

e. Alteration. If Town alters the Artwork without Artist/Donor's consent in a manner that is prejudicial to Artist/Donor's reputation, Artist/Donor retains the right to disclaim authorship of the Artwork.

## **6. Liability for Damage to Artwork and Risk of Loss**

a. Town shall insure the Artwork against damage and loss through the Municipal Pooling Authority ("MPA"). If the Artwork is lost or damaged while on public display, Town's liability (including the liability of MPA) shall in no event exceed the value of the Artwork stated in Section 4 of this Agreement.

b. The risk of loss or damage to the Artwork shall be borne solely by Artist/Donor until the Town takes possession and accepts the Artwork. Once the Artwork has been removed from public display pursuant to this Agreement, the risk of loss or damage to the Artwork shall be borne solely by Artist/Donor.

**7. Repair and Maintenance**

a. Artist/Donor shall be responsible for all reasonably necessary maintenance and repairs of the Artwork during the term of this Agreement. "Maintenance" includes, but is not limited to, routine cleaning of the Artwork as necessary to maintain the Artwork in a condition appropriate for public display and any and all actions taken to preserve, restore, or conserve the Artwork.

b. Prior to conducting any maintenance or repairs on the Artwork, Artist/Donor shall obtain the approval of the Town. Artist/Donor shall request approval of the Town in writing, at the address provided in Section 18 of this Agreement. The Artist/Donor's request shall identify the method(s) of maintenance or repair proposed, the person(s) who will perform the repair or maintenance, and the time period in which the repair or maintenance will be performed. If the Town approves the request, it may impose conditions on that approval as necessary to protect public property, health and safety.

c. Maintenance and repairs must be performed in a manner that does not damage public property. Artist/Donor is liable to the Town for any damage to public property caused by maintenance or repair activities.

d. Town shall not be liable to Artist/Donor for any damage to Artwork caused by maintenance or repairs undertaken by Artist/Donor or by the failure to undertake any such maintenance or repairs.

**8. Indemnification**

Artist/Donor shall indemnify, protect, defend and hold harmless the Town and its subdivisions, officials, employees and agents from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist/Donor and/or Artist/Donor's agents, employees, or assigns; (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right; or (c) any infringement of Artist's rights under 16 U.S.C. § 106A, 16 U.S.C. § 113, Civil Code §§ 987 *et seq.*, or similar state, federal, or international law. Notwithstanding the foregoing, Artist/Donor shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Town and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist/Donor. Artist/Donor acknowledges and agrees that its obligation to defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Artist/Donor.

## **9. Termination of Agreement**

a. **Town's Right to Terminate Agreement Before Expiration of the Term.** Prior to the expiration of the term of this Agreement set forth in Section 2, the Town may decide to remove the Artwork from public display and terminate this Agreement in accordance with the procedures established in Section 8 of the Town's Art in Public Spaces Policy, attached and incorporated hereto as Exhibit B. Prior to the meeting of the Art in Public Spaces Committee where the removal of the Artwork is being considered, the Town shall provide written notice of the intent to remove the Artwork and terminate the Agreement to the Artist/Donor at the address listed in Section 18 of this Agreement.

b. **Artist/Donor's Right to Terminate Agreement Before Expiration of the Term.** Prior to the expiration of the term of this Agreement set forth in Section 2, the Artist/Donor may provide written notice of Artist/Donor's intent to terminate this Agreement to the Town, at the address listed in Section 18 of this Agreement. Upon receipt of Artist/Donor's notice of termination, the Town shall follow the procedures specified in Section 8 of the Town's Art in Public Spaces Policy, attached and incorporated hereto as Exhibit B. Artist/Donor shall be solely responsible for any and all costs incurred by the Town in connection with removal of the Artwork in the event Artist/Donor elects to terminate this Agreement prior to the expiration of the term set forth in Section 2. Artist/Donor shall pay any such costs within thirty (30) days of receiving a written invoice from the Town.

## **10. Installation and Removal of Artwork**

The Town will have authority over the installation and removal of the Artwork. The Town and Artist/Donor have jointly developed a plan for installation and removal of the Artwork in a manner that is cost-effective as well as protective of Town property and the Artwork. That plan is attached to this Agreement as Exhibit C. Artist/Donor shall take all actions reasonably necessary to facilitate and permit implementation of the plan described in Exhibit C, including making the Artwork available on a timely basis. Artist/Donor shall also be solely responsible for any and all activities identified in Exhibit C as being the responsibility of Artist/Donor. The Town will secure funding to cover the cost of those activities described in Exhibit C that are not identified as being the responsibility of Artist/Donor.

In light of the Artist/Donor's commitment to comply with the plan described in Exhibit C and the financial commitment made by the Town Council, the Town is not anticipated to bear any costs associated with the installation and removal of the Artwork. If the Town incurs any unanticipated costs as a result of any failure by Artist/Donor to carry out obligations under this Agreement and/or the plan contained in Exhibit C, Artist/Donor shall reimburse the Town for those costs. Artist/Donor shall pay any such costs within thirty (30) days of receiving a written invoice from the Town.

If the Artwork can be removed from public display without significant damage to the Artwork or the site where the Artwork is installed, the Town shall take reasonable precautions to minimize alteration of the Artwork during removal. If the Artwork cannot be removed from public display without alteration of the Artwork (e.g., it is incorporated into a building), Artist waives any and all such claims, and any rights granted under the Visual Artists Rights Act, the California Art Preservation Act, or similar law, against the Town, its agents, officers and employees, for alteration of the Artwork.

**11. Choice of Law & Venue**

This Agreement shall be governed by the laws of California. The venue for all litigation or other disputes relative to this Agreement shall be the Superior Court for the County of Contra Costa.

**12. Captions**

Section headings are for reference only and shall not be used to interpret this Agreement.

**13. Severability**

If any provision hereof is found to be invalid or unenforceable, such finding shall not affect the validity of any other provision hereof; and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties.

**14. No Waiver**

Any failure to enforce any right or to require performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

**15. Entire Agreement**

This Agreement, including the attached and incorporated exhibits, contains the entire agreement between the parties, and supersedes all other oral or written provisions.

**16. Provisions that Survive Termination of this Agreement**

Sections 4, 5, 6, 8, 10, and 11 shall survive the termination of this Agreement or the expiration of the term of this Agreement.

**17. Modifications and Amendments**

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of each of the parties hereto.

**18. Notices**

a. Unless otherwise indicated in this Agreement, all written communications sent by the parties may be made by U.S. Mail, e-mail, or fax, and shall be addressed as follows:

Town of Moraga  
Director of Parks and Recreation  
2100 Donald Drive  
Moraga, CA 94556  
Fax: (925) 376-2034

Artist Name  
Street Address  
Town, State  
( ) \_\_\_\_\_

b. Artist/Donor shall provide written notice to Town of any change in address, or change in ownership of the Artwork, within thirty (30) days of such change.

**19. Binding Effect**

a. The provisions, covenants, and conditions in this Agreement shall inure to and bind the parties, their legal heirs, representatives, successors, and assigns.

b. If Artist/Donor transfers ownership of the Artwork during the term of this Agreement, all rights and obligations of Artist/Donor under this Agreement shall be transferred to the successor owner of the Artwork, and said successor owner shall be bound by this Agreement.

**20. Enforcement**

In the event of litigation between the parties arising out of this Agreement, the prevailing party shall recover its costs of litigation, including attorney's fees.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by having their signatures affixed below.

**Town of Moraga**

**Artist/Donor**

\_\_\_\_\_  
Jill Keimach  
Town Manager

\_\_\_\_\_  
Artist Name  
Artist/Donor Signature

*Attest:*

---

Marty C. McInturf  
Town Clerk

*Approved as to form:*

---

Karen Murphy  
Assistant Town Attorney

**EXHIBIT A**  
**Public Art Application**

**EXHIBIT B**  
**Town of Moraga Art in Public Spaces Policy**

**EXHIBIT C**  
**Plan for Installation and Removal of Artwork**

**Exhibit C: Plan for Installation and Removal of Artwork**

Installation and deaccession (removal) of the Artwork \_\_\_\_\_ by Artist/Donor \_\_\_\_\_, which will be on loan to the Town of Moraga will require the participation and cooperation of the Artist/Donor and the Town as follows:

	Responsible Party (check appropriate column)	
	Artist/Donor	Town
1. Transport to site from current location	( )	( )
2. Transport back from site to original location	( )	( )
3. Preparation of anchoring or support	( )	( )
4. Placement of anchoring or support	( )	( )
5. Removal of anchoring or support	( )	( )
6. Movement of Artwork from transport vehicle to display site	( )	( )
7. Movement of Artwork from display site to transport vehicle	( )	( )
8. Other related costs for installation (specified below)	( )	( )
9. Other related costs for deaccession (specified below)	( )	( )

Note: Those items identified as being the responsibility of the Town shall be arranged by the Town and the costs covered under the provisions of the Agreement. Those items identified as being the responsibility of the Artist/Donor shall be arranged by the Artist/Donor, in cooperation with the Town and its schedule, at no cost to the Town. In accordance with the Agreement, any costs that result from Artist/Donor's deviations from the responsibilities and schedules identified in this plan shall be borne by the Artist/Donor.

Schedule for Installation and Deaccession:

*Installation* (check all that apply)

- The Artist/Donor will make the Artwork available for pick up at \_\_\_\_\_ (address) by the transporter retained by the Town beginning at \_\_\_\_\_ (date/time).
- The Artist/Donor will be at the display site to assist with installation at \_\_\_\_\_ (date/time).
- The Artist/Donor will arrange in advance with the Town for a date and time to install the Artwork.

- The Artist/Donor will ensure that the Artwork is ready for display no later than \_\_\_\_\_ (date).

*Deaccession* (check all that apply)

- The Artist/Donor will arrange in advance with the Town for a date and time to remove the Artwork at the end of the loan term.
- At the end of the loan term, on the date and time arranged in advance by the Town, the Artist/Donor will be present at the display site to assist with de-installation.
- The Artist/Donor will be available to receive the Artwork from transporter at \_\_\_\_\_ (address) on the date and time arranged in advance by the Town.

The Artist/Donor understands and acknowledges that the Artwork will be part of a public art display involving multiple pieces donated by numerous artists. In order to limit the installation and deaccession costs associated with this display the Town has, to the greatest extent possible, arranged for the participating artists to undertake as much of the installation and deaccession work as possible, at no cost to the Town. In addition, installation and deaccession of all of the artwork in the display will proceed in a coordinated manner designed to limit associated labor and equipment costs. The Artist/Donor understands and acknowledges that they will need to cooperate and comply with the schedule and activities for installation and de-installation of the artwork established by the Town.

**NOTES AND ADDITIONAL SPECIFICATIONS**



TOWN OF MORAGA  
ART IN PUBLIC SPACES  
COMMITTEE

## Charter

**Responsibility and Purpose:** The purpose of this Art in Public Spaces Committee is to implement a Public Art Policy for art in public spaces including:

- Reviewing and recommending the selection and acceptance of loaned or donated artwork to the Town Council; and
- Reviewing and making a recommendation to the Town Council on the deaccessioning or removal of artwork.

**Category:** Standing Committee

**Appointed by:** Town Council

**Number of Members:** Seven (7) voting

**Composition:** All members must live or work in Moraga. The following will be represented on the subcommittee, as reasonably practicable:

- One (1) Town Council Member
- One (1) Park and Recreation Commission Member
- One (1) Design Review Board Member
- One (1) Moraga Park Foundation Member
- Three (3) Moraga Community Members

**Meeting Format:** Subject to the Brown Act, recorded with action minutes, by a Committee Member

**Frequency:** Quarterly, or as needed. Meeting will be held on a weekday, time TBD.

**Term of Committee:** On-going as long as policy is in effect.

**Appointment Process:** All members shall be appointed by the Town Council. The term of service for each member shall generally be three (3) years. If an APSC member terms-out from their primary advisory body, that member will be replaced with a seated member of the same body. The initial terms of some members may be less than three (3) years so that the expiration dates, which shall be scheduled for February

28<sup>th</sup>, are staggered so that a majority of members' terms do not expire in the same year. Each member shall serve until a successor is appointed. Each member of the Committee may be replaced by the Town Council, upon a formal action to replace said member. A member automatically shall be removed from the Committee if that member is absent from three (3) consecutive Committee meetings without cause. A member is not absent without cause if the absence: (1) is due to illness; or (2) is unavoidable and the member notifies the presiding member of the Committee before the day of the meeting that the member will be absent and explains the reason for that absence.

**Budget:**

The Town of Moraga shall establish a special reserve account designated as the *Art in Public Spaces Fund*. This reserve account shall be credited annually, with any funds allocated by the Town through the budgetary process and monies received through donations or grants or otherwise obtained. The fund is to be maintained and administered by the Town's Administrative Services Director.

**Deliverables/Scope:**

Public art in Moraga

**Staff Liaison:**

Parks and Recreation Director, Town of Moraga

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

A Resolution of the Town Council of the )  
Town of Moraga adopting an acceptance )                      Resolution No. 43-2008  
policy for memorials, donations and public )  
art. \_\_\_\_\_

WHEREAS, individuals, community groups, and businesses may wish to make donations to the Town through in-kind contributions that enhance Town-owned land; and

WHEREAS, the Town Council wishes to enhance the passive nature and cultural environment of the Town; and

WHEREAS, the need for donated park equipment and public art exceeds the Town's ability to fund all such needed amenities; and

WHEREAS, it is acceptable and appropriate practice to accept donations in order to enhance Town facilities to provide a higher level of service to the community; and

WHEREAS, The Town Council understands that to achieve this in part, the Town should promote the creation and placement of memorial and public art donations on Town-owned land; and

WHEREAS, opportunities exist for the Town to acquire memorial and public art donations for placement in public parks or other Town-owned properties through purchases and gifts; and

WHEREAS, formal policies are deemed necessary to ensure that memorial and public art donations meet standards for quality, appropriateness and durability; and

WHEREAS, the Moraga Parks and Recreation Commission has in their meetings on January 15, 2008 (Memorial and Donation Policy) and on August 19, 2008 (Public Art Donation Policy) approved and recommended Town Council adoption of both policies on September 10, 2008; and

WHEREAS, on March 12, 2008 the Town Council approved the Memorial and Donation Policy, attached hereto, (attachment C); and

NOW, THEREFORE, the Town Council of the Town of Moraga hereby adopts the Memorial and Donation Policy and the Public Art Donation Policy attached hereto, (attachments B and C).

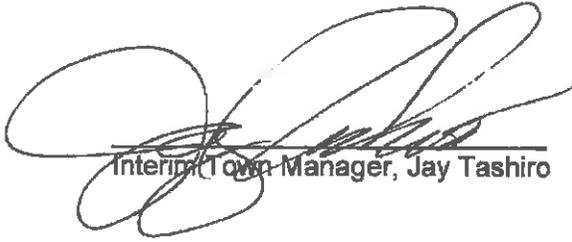
PASSED AND ADOPTED by the Town Council of the Town of Moraga on September 10, 2008, by the following vote:

AYES: Councilmembers Bird, Chew, Metcalf, Vice Mayor Trotter and Mayor Deschambault.

NOS: None

ABSTAIN: None

ABSENT: None



Interim Town Manager, Jay Tashiro



Lynda Deschambault, Mayor

## **TOWN OF MORAGA**

### **Public Art Donation Policy**

*Approved by Parks and Recreation Commission on August 19, 2008*

*Approved and adopted by Resolution at the 9/10/08 Town Council meeting.*

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#### **Overview**

Proposed installations of donated art must be properly reviewed to ensure that they comply with Town policies and are appropriate and placed in suitable locations. This Public Art Donation Policy ("Policy") outlines the Town's guidelines, standards, and procedures for considering public art donation proposals. This Policy is necessary to ensure that art installations complement and respect the character of the Town, are appropriate to its setting, history, and traditions, and do not impose unexpected or insupportable burdens on the Town (such as a frequent need for maintenance and repair, or high, ongoing security costs).

The formal review process typically takes six months but could take longer. Until the review process is complete, donors should not formally commission any work or make any binding commitments, financial or otherwise, that assume acceptance of a work of art by the Town or installation at a particular site.

#### **Purpose**

The purpose of this Policy is to establish guidelines, standards, and procedures for the installation and care of donated public art.

#### **Scope**

The donations subject to this Policy may include, but are not limited to, sculptures, bronzes, paintings, mosaics, and other approved design elements. All future donations will be subject to this Policy. When applicable, current art on display will also be subject to this Policy.

This Policy applies to all particular Town-owned land and facilities located within the Town. More specifically, this Policy applies to the Moraga Commons, Rancho Laguna Park, the Hacienda, Town Offices located at 329 Rheem Boulevard, and the Moraga Public Library. *This Policy does not include trails, and it specifically excludes Open Space Preserves.*

#### **Effective Date**

Guidelines established by this Policy will apply to all donations made after this Policy's effective date. Standards established by this Policy will apply to necessary purchased equipment, installation techniques, donation acknowledgements, and long-term care of all public art donations made after the adoption of this Policy.

### Limitations

Acceptable donations are always dependent upon the specific needs of the Town, and an updated list of acceptable public art donation opportunities is maintained by the Parks and Recreation Department.

### Conditions on Donations

**Acquisition:** The Town and the community have an interest in ensuring that donations of public art are of high quality related to style, appearance, durability, and ease of maintenance. The Town staff will be responsible for the installation of all public art elements.

**Appearance and Aesthetics:** The Town and the community have an interest in ensuring the best appearance and aesthetic quality of their public facilities. Public art elements and/or their associated donation acknowledgements should reflect the character of the Town. All public art elements will be installed in such a manner that will not substantially change the character of a facility or its intended use.

**Maintenance:** Donated public art elements, and/or their associated donation acknowledgements, become Town property. Accordingly, the Town will maintain a public art donation only for the expected life cycle of the donation. If current information is on file, the Town as a courtesy may contact the donor at the end of the donation's lifecycle and give the donor the opportunity to take further action at the expiration of artwork's original life cycle. (See below for additional details.)

**Repair:** The community has an interest in ensuring that all public art elements remain in good repair. In addition, the public has an interest in ensuring that the short and long-term repair costs are reasonable. Repair parts and materials must be readily available. Donated public art elements must be of high quality to ensure a long life, be resistant to the elements, wear and tear, and to acts of vandalism.

**Cost:** The Town has an interest in ensuring that the donor covers the full cost of the purchase, installation, and maintenance during the expected life cycle of donated public art elements. It is difficult to find funds in the Town's annual budget for maintenance of art installations, particularly those that require regular service, such as recoating or reapplying exterior finishes or protective coverings. For this reason, the Town typically expects that donors contribute funds to be added to a permanent Town endowment pool for maintenance and upkeep of donated art. The Town also has an interest in ensuring that on-going maintenance costs do not negatively impact the resources available for maintenance of other Town facilities. Consequently, the Town will assess, at the time of donation, a charge sufficient to cover anticipated on-going maintenance of donated public art elements during their life expectancy.

If at the end of the life-cycle term, the Town will attempt to contact the donor, who may extend the life-cycle term by paying for the current value of a new donation and its

associated maintenance cost. The Town reserves the right to seek a new donor for the donation at the end of the established life cycle should the original donor choose not to renew the donation or if the Town has not been able to contact the original donor.

**Installation:** Installation of donated public art elements, including the donor acknowledgement/memorial plaques, will be completed by Town personnel. The installation will be scheduled at a time and date as determined by the Parks and Recreation Department so as not to unnecessarily interfere with routine park maintenance activities.

**Plaques:** Donation acknowledgements and memorial plaques, as approved by the Town, are to be affixed on or near the donation. These plaques will be purchased through the Town with donated funds. Permanent plaques should be modest in size. Public art donation acknowledgements/memorial plaques will be of a standard size and material established by the Town. The Director will approve all text for public art donation acknowledgements/memorial plaques and the Department will purchase these items from a Town-approved vendor to ensure highest quality, life, and durability.

Text on plaques will typically include the name or title of the art, the name of the artist, the date of its creation, and the date of its installation in the Town. The name of the donor may also be considered by the Town for inclusion on the plaque. The name of an individual donor is considered for inclusion only if that individual was responsible for all or the majority of the donation. The name of a donating group will also be considered where the group meets the same requirements set forth for an individual donor. Some plaques may also include brief memorial inscriptions, a line of poetry or quotation, or other wording appropriate to the art, donor, and setting. Any such inscription is expected to be both descriptive and concise. The Director will have final approval of all text that goes on a plaque. This authority should not be considered to include the power to approve or disapprove inscriptions on the basis of the viewpoint expressed in the inscription.

**CEQA Review:** If an art piece could have a significant effect on the environment (for example, altering a historic landscape or building, being prominently visible from a view corridor, or being located on or near a creek, or in a way that affects vegetation, or could interrupt the flow of traffic), it may be subject to review under the California Environmental Quality Act (CEQA). Town staff can advise whether such review will be necessary. If CEQA review is needed, it is understood that the donor will pay the necessary fees including cost recovery fees for staff time spent.

**Permanence:** The Town cannot provide an absolute guarantee that a work of art will remain in a single location or remain permanently in the Town. The Town landscape is an evolving, active environment and it is not possible to predict every future need for building sites or landscape alterations. Once it accepts a work of art for a specific site, the Town will endeavor to keep the art in an appropriate setting and condition and seek to contact surviving donors/artists for consultation if a major alteration is necessary.

### Ownership

Unless a special condition is expressly requested by the donor and accepted through the review process, all art installations are the property of the Town. Public art donations become Town property at the time of donation acceptance.

### Removal and/or Relocation

This section applies to both existing and new donations. The Town reserves the right to remove and/or relocate donated public art elements and their associated donation acknowledgements/memorial plaques when they interfere with site safety, maintenance, or construction activities. The Town will attempt to send a certified letter to each identifiable public art donor notifying the donor of any action related to the disposition of the donation. In certain circumstances, such as safety or emergency situations, the notification may be made after the action is taken. In the event a public art donation must be permanently removed, the Town will seek an alternative location consistent with this Policy.

### Notification

It shall be the responsibility of the donor to provide the Parks and Recreation Department with a current address for purposes of notification regarding the donation. For the purposes of notification, the Town will attempt to send a certified letter to the donor, notifying the donor of changes related to the status of the donation (i.e. a need to remove, relocate, or comply with conditions set forth in this Policy).

### Making a Public Art Donation

The Department will manage all donations of public art located on Town property, with the assistance of the Parks Maintenance staff.

**Application:** The donor first must contact the Department to determine whether space is available at any of the approved sites for displaying donated art (see Appendix A). If there is availability, the donor must complete an application form (see Appendix B). Applications are available through the mail or in person at the Department. Completed applications will be submitted to the Department for review and processing.

**Review Process:** Donors are strongly encouraged to discuss tentative proposals and art ideas with the Director of Parks and Recreation ("Director") prior to beginning the formal review process. Donors should do this before making any major investment of funds in developing a detailed proposal. Proposals need not be in complete form for this early discussion to take place.

Once the donors are ready, they may submit their application to the Director. The Director then reviews the proposal in preparation for completing a staff report to the commission, including the Director's recommendations. Once the application is

submitted, the donor should be prepared to present the following information to the Director upon request:

- a. information about work(s) of art, including materials, concept and purpose, artist biography, date of creation of the piece, and history. (i.e. Why was it commissioned/ created? Has it been previously located in installations elsewhere? 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? If the artist has a portfolio, brochures, or samples of similar work, it is useful for the Director to see this material in order to evaluate and understand the style and technique of the artist and the proposed work of art?);
- b. information about the donor(s), their background and any association with the Town, and why the particular piece of art is being offered to the Town;
- c. any technical issues related to materials, care, and installation needs such as hanging arrangements, bases, pedestals, or footings needed or environmental conditions (excessive shade, sunlight, or moisture) that might affect the art or recommendations on its site location;
- d. photographs of the art or, if it is a proposed piece 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.

After all appropriate consultation with the Director has been completed by the prospective donor, the Director shall prepare a staff report and present recommendations to the Commission.

Upon receipt of the staff report, the Commission will review the application based on the following criteria (none of these criteria should be considered to empower the Commission to accept or deny an art donation on the basis of the viewpoint expressed by the artwork or its donor(s)):

- a. Does the proposed piece of art have aesthetic value and appeal? Will it be a valued addition to the art collection of the Town? Is the proposal appropriate for 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 are particularly sought and encouraged.
- b. Is the art durable and sturdy? The Town does not have regular funds 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 must be carefully evaluated for their potential for breakage and future needs for repair.
- c. What if any costs will the Town incur to keep up this piece of art? Can the donor pay all the costs of fabrication, delivery, installation, and maintenance of the art? This is an important consideration since the Town does not have funding set aside to purchase art or subsidize art installations.
- d. Is the proposed site appropriate and consistent with the site plan? The Town generally prefers to site new works of art in locations that are accessible to

viewing by the general Town population, visitors, and those with physical disabilities, so they can be fully appreciated and enjoyed. Art pieces must also be carefully sited to minimize safety concerns and avoid conflicts with underground utility lines and vehicle, pedestrian, and wheelchair circulation. The Director can review these issues with the donor during their preliminary meetings.

- e. Will the gift of art enhance the Town? The Town welcomes art works that can make a new and special contribution to previously overlooked portions of the landscape. The Director can advise on locations at approved Site Plans where art would be appropriate but may not have been considered by the donors.

Once their review is complete, the Commission – at one of its regular meetings – may approve, disapprove, modify a recommended approval, or return the matter to the Director with specific questions or requests for modification.

**Site Plan:** To accept donation of a public art element for a specific facility, a site plan must exist showing the available locations for public art elements (see Appendix C). If no plan exists, then a donation may be made to another facility. If a plan exists, but does not identify a particular public art element proposed for donation, the Town may accept the public art donation under certain conditions. Under this circumstance, the donation must (1) meet a true need of the facility, (2) not interfere with the intended current or future use of the facility, and (3) not require the relocation of other equipment or infrastructure to accommodate the public art donation. It is the exclusive right of the Town to determine whether a facility is fully developed. Once a fully developed and the opportunity for donations of public art would not be available.

Public art elements may be sited in locations approved by the Parks and Recreation Department (see Appendix A) in accordance with an available site plan (see Appendix C).

## ATTACHMENTS

**Appendix A: Approved List of Public Art Donation Opportunities**

**Appendix B: Public Art Donation Application**

**Appendix C: Site Plan for Public Art Donation Opportunities**

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**Appendix A**

<b>APPROVED LIST OF DONATION NEEDS/MEMORIAL AND DONATION FEE SCHEDULE</b>					
<b>DONATION TYPE</b>	<b>ELEMENT</b>	<b>INSTALLATION COST</b>	<b>MAINTENANCE COST</b>	<b>LIFE EXPECT.</b>	<b>EXTENDED LIFE CYCLE COST</b>
Park Bench Recycled plastic planks		\$1,450.00	\$50.00	25 Years	\$2,700.00
Picnic Table Recycled plastic planks		\$1,950.00	\$50.00	25 Years	\$3,200.00
Drinking Fountain ADA		**	**	**	**
Tree (Native only)		**	**	**	**
Bike Rack		**	**	**	**
Play Equipment (recycled)		**	**	1-5	**

\* Includes shipping, handling, plaque, installation and extra boards.  
 \*\* Price will be provided upon request, pending size and location.  
 A 50% deposit of the total amount due must be paid at the time of the order, with the remainder due prior to installation.



**TOWN OF MORAGA**  
**Parks and Recreation**  
**Memorial and Donation Application**

**Town of Moraga**  
**Parks and Recreation Department**  
2100 Donald Drive  
Moraga, CA 94556  
Phone: (925) 888-7045  
Fax: (925) 376-2084

**Appendix B**

(TO BE COMPLETED BY APPLICANT, PLEASE PRINT LEGIBLY)

**APPLICANT INFORMATION**

Name of Donor		
Address of Donor		
Home Phone	Work Phone	Fax
Email Address		

**DONATION INFORMATION:**

Description of Donation
Location of Donation
Wording on Memorial Acknowledgement
Type of Donation
Total Cost of Donation, includes purchase, tax, shipping and installation

**I HAVE READ AND AGREED TO THE TERMS OF THE MEMORIAL AND DONATION POLICY**

Requested by	Date
--------------	------

(TO BE COMPLETED BY TOWN STAFF)

Reviewed by	Date
Parks Superintendent	
Recreation Department Approval	Date

Appendix C

*Moraga Library*

- - OUTDOOR PUBLIC ART LOCATION
- - INDOOR PUBLIC ART LOCATION



Appendix C

Commons Park

■ - OUTDOOR  
PUBLIC ART  
LOCATION





