

		<b>Public Art Policy – Private Sector</b>	
		<b>Policy Category:</b>	
		<b>Policy No.:</b> 2012 CFS 03	<b>Implementing Procedure No.:</b>
<b>Approving Authority:</b> Town Council		<b>Effective Date:</b>	
<b>Approved or Last Reviewed Date:</b>		<b>Next Review Year:</b> 2015	
<b>Area(s) this policy applies to:</b> Private sector		<b>Owner Department:</b> Culture	
<b>Related Policy(ies):</b> <ul style="list-style-type: none"> <li>Federal copyright legislation and applicable construction legislation and applicable Markham bylaws per project e.g. Heritage districts; <i>Ontario Planning Act; Public Art Policy – Markham, Varley Art Gallery Collection Policy and Procedures.</i></li> </ul>			

Note: Questions about this policy should be directed to the Owner Department.

### 1. Purpose Statement

This policy is established to direct the integration of public art into privately owned *public places* in Markham. Public art is considered to be a key component to the uniqueness and identity of a municipality.

A strong policy designed specifically for Markham will ensure a public art program that integrates with our environment and is relevant to Markham.

### 2. Applicability and Scope Statement

This policy applies to the procurement and management of Public Art for privately owned spaces and public places, which constitutes the *public realm*. These public owned spaces may be - roads, sidewalks, esplanades, promenades, squares, parks, urban forests, pathways and so on. Private spaces are those that remain in private ownership such as entrances, building facades, private open spaces and other privately own properties.

### 3. Background

The intent of the Public Art Policy – Private Sector is to allow for the integration of art works in visible places and spaces to create a sense of place for the community. The intent is to encourage financial participation by the private sector in public art procurement with balanced and equitable contributions that reflect a percentage of the value of the development according to an estimate of hard construction costs.

**4. Definitions /**

- A. **Accession/ Acquisition:** The procedure of acquiring and recording a public artwork.
- B. **Maintenance Plan:** The assessment of a public artwork and plan that meets the prescribed conservation and maintenance recommendations, including a maintenance assessment report, and maintenance duty schedules.
- C. **Public:** The general population which encounters a public artwork over the course of its lifetime, including both residents and visitors.
- D. **Public Art:** An original artwork which is accessible to the general public and has aesthetic qualities. Typically creation of public art takes into consideration site and context as part of its process; the artwork can be permanent, transitory, functional, integrated or discreet to its site, community based, immaterial (example sound or light art, performance) or virtual.
- E. **Public Places:** Refers to places that are accessible to the public, places where the public meets to exchange ideas, products or services.
- F. **Public Realm:** All privately or publicly owned spaces, indoors and outdoors, which are generally accessible, either visually or physically, to the public free of charge. Also referred to as public places; when referred to as public domain it can act as a social space, a forum for discussion, a place to reach consensus.
- G. **Selection Panel:** Refers to a group of people composed of art professionals and members of the community selected to serve as members of a jury to select an artwork in the context of a public art program for a specific location.

**5. Policy Statements****Vision for Public Art in Markham**

*Public Art brings value to the Town, provides unique perspective to the site and acts as a constant delight to residents and visitors to Markham. Public art participates to our economic vibrancy. Public art impacts many aspects of community living. Public art enriches daily life through experiences and attracts people to share and shape their identity. Public art allows for the making of a culture.*

Markham greatly values the working relationship with the private sector that aims to forge a successful community. Markham has a vision for the establishment of a robust public art program that creates value for its communities. A partnership between the public and private sector will achieve this vision. Working together on creating public art will give Markham a strong identity and sense of place that will translate into economic benefits. Public art has the potential benefit to increase the economic value of a developer's building project through site enhancement that makes the project more attractive and generates interest by the public that has been proven to increase the value of the property in cities across North America



## Public Art Policy – Private Sector

Policy No.: 2012 CFS 03

Implementing Procedure No.:

Markham created a Public Art Policy that defines its own commitment to Public Art in the public realm. The Public Art Policy – Private Sector encourages the acquisition, installation, maintenance, management and programming of public art in Markham on private property.

This policy creates a canvas for the negotiations of public art projects within the private sector.

The policy's goal is to obtain a contribution from the project owners *up to one percent (1%) of construction cost*, excluding land and servicing cost, as determined at the time of Building Permit issuance for public art projects. This policy is not a mandatory requirement, it does, however, establish the importance Markham places on public art in development projects in Markham.

The Public Art Policy - Private sector provides five options for the participation of the Private sector to the voluntary public art program.

### **Five Available Options for the Private Sector for Markham's Public Art Program:**

Notes:

- All contributors will be acknowledged on the site of the public art project.
- Contribution surpluses shall be administered through the Public Art Acquisitions Reserve Fund.

#### **Option A: *On-site contribution - Private Property***

The applicant makes a financial contribution to Markham in trust for the commissioning of public art located on the site of the private property of the development project. The applicant uses the expertise of Markham to produce the work through the public art policy process. On-site public artworks remain in the ownership of the development, thus bringing direct benefits to that development. The maintenance and conservation costs of the art work remain with the owner.

The placement of the public art that is on private property would be controlled in the site plan. The Culture Department would be responsible for managing the production on behalf of the developer following the Markham policy. If the public art is situated within the development area on the public right of way, the ownership, operating and maintenance obligations will be negotiated.

#### **Option B: *On-site contribution - Private Property***

If a developer wants to undertake its own public art project on private property and not follow Markham's Public Art Policy; then the project would require the input and agreement of the Culture Department for it to be considered a public art project for negotiated benefits. Public Art will be encouraged and the Culture Department will work cooperatively with the property owner to achieve mutual benefits.

#### **Option C: *Off-site contribution- Public Property***

The applicant makes a financial contribution to the Markham Public Art Acquisition Reserve Fund. The resulting off-site public art project becomes municipal property and the project would be undertaken by Markham following the Public Art Policy. The acknowledgement of the contributors of the public artwork installed on the location will bring those benefits. The funds could be earmarked for a specific project in a specific location such as the Pan Am site or could be placed in the reserve for the undertaking of a major public art project. Site location is negotiated with Markham having final approval.

**Option D: *Combination On/Off-site contribution- Combination Private and Public Property***

The applicant makes a financial contribution to Markham in trust for the commissioning of public art works to be located both on site and off site. Markham will execute the project.

Agreement with the Developer, Planning Department and the Culture Department would occur on the placement of the public art which would be documented in their site plan application. The nature of the art work may require an operating or maintenance agreement to be negotiated.

**Option E: *Donations of Artwork – Public Property***

Gifts of art to Markham can be accepted in compliance with the Public Art Policy – Municipal Projects as follows:

1. That under exceptional circumstances, donations and gifts of artworks may be accepted into the public art program only if recommended by the Varley Art Gallery's Art Acquisition Committee.
2. That when possible, the donor will make a financial contribution to cover the costs of conservation and maintenance of the work
3. That charitable tax receipts issued under federal law, may be issued, when applicable, in accordance with Markham policy.

**2. Policy Administration:**

All public art on Markham's property, regardless of the funding source, must follow the Public Art Policy. The public art program is managed by the Culture Department. The Culture Department brings years of professional experience in art knowledge and expertise in the acquisition, the installation and the preservation of works of art.

When the Culture Department manages the public art project under one of the five options, the Department will apply its expertise in determining the goals with the Developer and oversee the processes for the call for artists, establishment of an arm's length Selection Committee and the production of the public artwork. Open communication will be maintained throughout the process.

The financial contribution for Public Art from the Private sector will be negotiated through Markham's Planning and Urban Design Department in consultation with the Culture Department. The negotiation process will be fair and equitable in its application and based on best practice. Developer's benefits may include incentives as part of the negotiated process with Markham.

**3. Guiding Principles:****Markham's Guiding Principles for Public Art Projects**

Markham supports the acquisition, installation and management of public art through adherence to the Guiding Principles:

1. **Collaboration** – The program will encourage joint participation by artists and the community in projects that meet specific community needs and aspirations. The public art program will encourage participation from other levels of government and the private sector.
2. **Accessibility** -- The Public Art Policy and supporting management framework strives to provide visual art opportunities and initiatives that are accessible to all in Markham regardless of their geographic location, affiliation and demographic. Public art projects should be publicly accessible; these are high pedestrian and vehicle traffic locations, including but not limited to: above ground buildings including all major municipal

- buildings; parks; industrial parks; new or major upgrades to bridges; and neighbourhood place making.
3. **Sustainability and Responsibility** – A successful and enduring public art presence in Markham relies on sustainable funding, responsible management, strategic planning, and appropriate maintenance and conservation. Council delegates the responsibility and authority to lead all public art matters, including development and implementation of the management framework, to staff.
4. **Open and Transparent Processes** -- The Public Art Policy and supporting management framework will rely on open and transparent processes to ensure equitable and respectful practices for all involved parties.
5. **Fairness/Equity** – Public art projects shall be chosen by the Selection Panel or acquired through the Varley Art Gallery Collection Policy and Procedures for donations in a fair and equitable manner.
6. **Artistic Merit** – The Public Art Program shall strive for high artistic standards and public art projects shall be chosen on the basis of artistic merit.
7. **Professionalism** – Individuals engaged in the management and implementation of the Public Art Program shall exhibit the highest degree of dedication and competence in the execution of their assigned duties.
8. **Community Input and Engagement** -- The Public Art Policy and supporting management framework values community engagement and will create a variety of opportunities for public input and involvement through programming initiatives.
9. **Outreach** – The Public Art Program will endeavour to stimulate individual artist creativity at the local and national level through the provision of educational and public awareness opportunities for learning, participation, and experimentation in arts and culture.
10. **Diversity** – Diversity will be incorporated into the public art program including artist and committee member selection, site selection, media, scale and style of artwork, through experimentation with new art forms as well as traditional forms, and through the work of emerging as well as established artists.
11. **Innovation** – The public art program shall enable participation by professional artists throughout the design process of public art projects.
12. **Acquisition and De-accession of Public Art** -- Markham will establish criteria for the acquisition and the de-accession of public art that will be clearly defined in the management framework and available to the general public.
13. **Copyright** -- In accordance with the Copyright Act, Markham acknowledges the artist as full owner of copyright including moral rights and will negotiate the transfer of certain rights through individual artist contracts.

## 6. Roles and Responsibilities *(Outline roles and responsibilities of those involved in the implementation of the policy)*

**6.1 Council** approves the public art policies and is Markham's primary advocate for public art. For municipal projects, Council approves the three year plan for priorities, sites, project scope and budget. Council approves the final recommendations and budgets for municipal projects. At various stages of approval of private sector developments, Council approves negotiated agreements that may contain sections related to the achievement of public art.

**6.2 Culture Department** is responsible for the development and management of all public art projects in Markham. The Culture Department constitutes a *Selection Panel* for the evaluation of public art proposals on a project by project basis. The Selection Panel membership will be for a period of one to three years. The Culture Department with its expertise and experience oversees the maintenance and conservation of the public art collection for the enjoyment of all. The department is responsible for the inventory of the public art collection based on the Varley



## Public Art Policy – Private Sector

Policy No.: 2012 CFS 03

Implementing Procedure No.:

Art Gallery's collection management professional standards. Culture Department will prepare a 3 year rolling plan and will develop annual capital budgets following consultation with municipal departments.

6.3 The **Selection Panel** is responsible for the selection of the successful proposals for public art projects. The members of the Selection Panel bring an expertise in public art. Culture Department would convene the Selection Committee based on specific expertise required.

6.4 **Planning and Urban Design Department** promote public art and opens negotiations to create public art opportunities in Markham. Works directly with Culture Department.

6.5 Markham's **Art Acquisition Committee** is a committee of the Varley McKay Art Foundation. The Art Acquisition Committee is led by the staff of the Varley Art Gallery of Markham and composed of experts in art. The collection policy provides the framework for the acquisitions of art through purchases and donations.

6.6 The **Markham Public Art Advisory Committee** oversees processes, and provides community input into the plan and stages of approval of public art projects. In the case of private sector projects, the role of Markham Public Art Advisory Committee will be to provide advice and feedback in discussing the recommended artworks that reflect high artistic standards.

6.7 Markham Expertise from **various Markham departments** may provide their technical expertise in the review of public art projects. Culture Department will work with departments involved in projects that have public art application, including: Asset Management, Recreation, Operations, Engineering, Urban Design – Parks & Open Space Planning, and Public Realm Committee.

Prepared April 19, 2012