



WEST PALM BEACH

Art in Public Places — Art Assessment Application

Developer understands that this application, building permit applications, petitions, attachments and fees become part of the official records of the Development Services Department and are not returnable. Developer also understands that completion of the attached affidavit is required to process the Art Assessment Application.

Submit completed application to the AiPP Coordinator prior to the issuance of the first building permit for any portion of the development and within 90 days of this time frame.

PROJECT NAME:	
PROJECT LOCATION:	
CONTACT PERSON:	
E-MAIL:	TELEPHONE:
BUSINESS ADDRESS:	
OWNER NAME:	
OWNER CONTACT:	
PERMIT NUMBER(S):	DATE:
TOTAL CONSTRUCTION COSTS: \$	
1% OF TOTAL VALUE	

Must Check One:

- OPTION 1**
Provide work(s) of art or element of historical or cultural significance on site.
- OPTION 2**
Contribute to the Art in Public Places fund.
- OPTION 3**
Provide work(s) of art or element of historical or cultural significance on project site AND contribute to AiPP fund
- OPTION 4**
Private Art Program [See Section 78-122]



WEST PALM BEACH

Art in Public Places — Affidavit

_____ (the Developer) hereby submits to the City of West Palm Beach, Florida, its election of options with respect to the Art in Public Places Art Assessment application. Developer affirms and certifies that the ordinances, rules, policies and regulations of the City of West Palm Beach will be observed, including but not limited to [Section 78-121] through [Section 78-138] Art in Public Places.

It is further certified that the statements, exhibits or plans, and project cost data and affidavits submitted with respect to the Project and the art assessment are true and accurate to the best of the knowledge and belief of the Developer.

The undersigned hereby swears or affirms that the matters contained herein are true and correct, to the best knowledge of the Developer. The undersigned hereby swears or affirms that he/she is duly authorized by Developer to make this Affidavit and understands that s/he may be subject to penalty for perjury.

Signature

Print Name

Title

STATE OF _____ }
COUNTY OF _____ } SS:

I HEREBY CERTIFY that on this day before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared _____, as _____ of _____ (Developer).

_____, in and who executed the foregoing instrument, S/he acknowledged before me that s/he executed the foregoing Affidavit; and that the foregoing instrument is the act of the Developer organization. S/he did take an oath.

Witness my hand and seal this _____ day of _____ 20__ .

Notary Public

[Seal]

State of _____

Print Name _____



WEST PALM BEACH

Art in Public Places — Supplemental Packet to Art Assessment

If choosing Option 1 or 3, the following must be submitted to the AiPP Coordinator prior to building permit or within 90 days after the issuance of the first permit for any portion of the development. An application for approval of art must be presented to the AiPP Committee within this 90 day window.

- 1. Art assessment completed, signed and dated must include notarized affidavit demonstrating escrowed funds [Section 78-130]
- 2. Updated construction valuation and art allocation including basis for valuation verified by Building Services
- 3. Itemized art budget including enumeration of an art consultant fee, if applicable
- 4. Value of artwork to be placed on site if different from above
- 5. Artist resume and 3-5 examples of past work of comparable quality, style and scale
- 6. Artists' contract(s) and relevant subcontracts including project scope, schedule, materials and methods, etc.
- 7. Visual proposal
Digital file and 11 x 17 inch color rendering of the proposed artwork / design
- 8. Project site plan, site photos and project mock-up
Digital rendering indicating proposed artwork location within the development – to scale and in relation to all surroundings including landscaping, lighting, plaque placement, public right-of-way, street frontage, parking lots, etc.
- 9. Artist's statement and description of proposed artwork
Including conceptual approach and other relevant design information
- 10. Materials and methods plan
A detailed description of proposed materials and methods of installation deemed suitable for the site conditions; include samples or photo documentation of samples
- 11. Maintenance plan
A copy as provided to developer from the artist. For long-term maintenance: identify the responsible parties, anticipated maintenance milestones, etc. Final maintenance plans due upon completion of project.
- 12. Timeline
Project timeline that includes community outreach efforts, project development milestones, city reviews and installation schedule, if applicable
- 13. Post installation: Final maintenance plan
*Revised Construction Costs Affidavit and certified accounting of art assessment expenditures;
Plaque: Copy of text and visual placement;
Photo documentation optional but highly recommended*

Certificate of Occupancy will not be issued until all documents have been submitted and approved by City Commission, final art site inspection for compliance with AiPP Coordinator is completed as is typical of Development Services Inspections, and final Revised Construction Costs Affidavit.

ARTICLE V. - ART IN PUBLIC PLACES^[2]

Footnotes:

--- (2) ---

Editor's note— Ord. No. 4635-16, § 1, adopted May 9, 2016, amended Art. V in its entirety to read as herein set out. Former Art. V, §§ 78-121—78-132, pertained to similar subject matter, and derived from Ord. No. 4504-14, § 1, adopted Mar. 31, 2014.

Sec. 78-121. - Purpose and intent.

The purpose of the art in public places program is to establish a program for the integration of public art into both public and private development projects throughout the city to visually enliven the city, illuminate the city's history, diversity and culture, and foster economic development. The art in public places committee is established as an advisory committee for the program.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-122. - Definitions.

Unless qualified in the text, the following definitions shall apply to this article:

Affordable housing means housing that is affordable for households at or below 140 percent of the area median income as defined by the U.S. Department of Housing and Urban Development (HUD) income limits per household size and that meets maximum housing payments established by HUD, Florida Housing Finance or local ordinance. Housing payments generally do not exceed 35 percent of household's gross monthly income.

Art, artwork or work of art means an original physical work created or produced by a professional artist, including, but not limited to, paintings, sculpture, engravings, carvings, frescos, stained glass and glass work, mosaics, mobiles, murals, collages, mosaics, statues, bas reliefs, photographs, video projections, drawings, fountains, landscape design, artifacts of historical or cultural significance, functional furnishings such as artist-designed seating, or other media. Artwork may be free-standing or integrated with the work of other design professionals into a building or site. Artwork may be new or may be an existing work of art. Artwork may include, but is not limited to:

1. Sculpture: Free-standing, wall supported or suspended; kinetic, electronic; in any material or combination of materials.
2. Murals or portable paintings: in any material or variety of materials.
3. Fiber works, neon, glass, mosaics, photographs, prints, calligraphy, earthworks, any combination of forms of media, including: light, sound, literary elements, film, holographic images, and video systems; hybrids of any media and new genres.
4. Furnishings or fixtures, including, but not limited to: gates, railings, lighting, street lights, signage, seating, if created by artists as unique elements or limited editions.
5. Historically important elements, as determined by the city's historic preservation board.
6. Culturally significant elements.
7. Artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or a design team that includes a professional visual artist. Such design elements may include pools, paths, benches, planters, and fixtures and vegetative materials

where designed by a professional visual artist and/or are an integral part of the artwork by the artist.

8. Temporary artwork or installations, that serve the purpose of providing community and educational outreach.
9. The incremental costs of infrastructure elements, such as sound walls, utility structures, roadway elements, and other items if designed by an artist as a co-designer.

Ineligible Artwork: The following shall not be considered artwork:

1. Art objects which are mass produced or of standard manufacture, such as playground equipment, fountains, statuary elements, signage, maps, corporate logos or other functional elements, unless incorporated into an artwork by an artist commissioned for that purpose.
2. Reproductions, by mechanical or other means, of original artwork, except in the cases of limited editions controlled by the artist, cast sculpture, film, video, photography, printmaking, or other media arts.
3. Decorative, ornamental, architectural, or functional elements which are designed by the building architect, as opposed to elements created by an artist commissioned for that purpose.
4. Services or utilities necessary to operate and maintain an artwork over time.
5. Works of art not visible to the public from a public right-of-way, except for private art programs, as provided in this article.

Artist means a professional in the visual arts, generally recognized by critics and peers as a professional of serious intent and ability. Indications of a person's status as a professional artist include, but are not limited to, income realized through the sole commission of artwork, frequent or consistent art exhibitions, placement of artwork in public institutions or museums, receipt of honors and awards, and training in the arts. The term "artist" includes local artists.

Exterior place means any place, public or private, outdoor and exterior to buildings or structures and exposed to public view, including, but not limited to, buildings, parks, right-of-way medians and open spaces.

Local artist is an artist, as defined in this section, who resides in Palm Beach County.

Maintenance, with respect to artwork, means the required repairs or cleaning to keep a work of art in its intended condition, including preventative maintenance at scheduled intervals to curtail future deterioration, ordinary repairs or maintenance of a structure, including but not limited to, painting, repair or replacement, installation of mechanical equipment.

Maintenance, with respect to ordinary property maintenance, means ordinary repairs or maintenance of a structure, including but not limited to, painting, roof repair or replacement, installation of mechanical equipment.

Master plan mean the art in public places master plan, as approved by the city commission from time to time.

Mural means any drawing, artwork, inscription, or marking that is marked, etched, drawn or painted on any building or structure.

Private art program means an art program established by a corporation, foundation, or other organization which:

1. Is located in an enclosed campus or development with a fence, wall, or other form of screening which borders the perimeter of the development;
2. Consists of a collection of artwork, as defined in this article, with an appraised value of at least \$750,000.00;
3. Artwork was created by artists, as defined in this article;

4. Is located within the development and outdoors;
5. Has a professional art curator on retainer;
6. Has at least one work of art visible from a public street;
7. Opens the art collection to view by the public, by open house or scheduled visits, at least once each calendar quarter.

Project means new construction, renovation work, or façade improvements requiring a building permit where 50 percent or more of a building is being modified, renovated, expanded, rebuilt or improved by construction. For purposes of this article, project shall not include the following:

1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other casualty;
2. Historic preservation or restoration;
3. Interior renovation;
4. Flood protection work items;
5. Fire sprinkler installation work items as defined by the city code.

Each phase of a residential planned development shall be a separate project. If a developer is constructing four or more residential units in a residential planned development, or phase of such development, that did not previously comply with this article, such new construction shall be considered a project for purposes of this article. A residential unit shall be considered part of a project if the certificate of occupancy for the residential unit is not issued prior to the submittal of a building permit application for the remaining residential units in a group of four or more.

Public art assessment means one percent of the total dollar amount of the total construction costs of private development that equals or exceeds \$750,000.00, which may be discounted as provided in this article.

Public place means any place, public or private, exposed to public view, including, but not limited to, buildings, parks, right-of-way medians and open spaces.

Renovation means a project requiring a building permit where 50 percent or more of the exterior building area is being modified, rebuilt or improved by construction. For purposes of this article, renovation shall not include the following:

1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other casualty;
2. Historic preservation or restoration;

Temporary artwork is artwork created for a specific timeframe or event, and which is situated at a particular site on a temporary basis, not to exceed a period of two years.

Total construction costs means the total project construction costs, excluding demolition costs, real property acquisition costs and soil remediation costs. Calculations shall be based on construction and site improvement costs as declared on all building permit applications for the project. For purposes of calculating the public art assessment, construction costs shall include, but not be limited to, all building, plumbing, mechanical, and electrical permit applications for the project. The costs of grading and site preparation shall not be included in the costs.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 1, 2-12-2018)

Sec. 78-123. - Art in public places committee; membership and organization.

- (a) There is hereby created the art in public places committee as an advisory committee to the city. The committee shall be composed of seven members and two alternate members appointed by the

mayor. Committee members shall either live or work in the city. The first three appointees shall serve a term of one year, the second two appointees shall serve a term of two years, and the last two appointees shall serve a term of three years. Thereafter, all terms shall be for three years expiring on a staggered basis. The mayor may appoint and remove members at the mayor's discretion.

- (b) The art in public places committee shall designate one of its members to act as chair for a term of one year, or until a successor is elected and qualified. The art in public places committee shall maintain minutes of all of its meetings.
- (c) Each member of the art in public places committee shall serve without compensation.
- (d) Four members or alternate members shall constitute a quorum necessary to make approvals and recommendations to the city commission.
- (e) Alternate members shall attend all meetings of the art in public places committee and the presence of alternate members shall count toward a quorum. The first alternate member shall have the privilege of voting only upon the absence of a regular member. The second alternate member shall have the privilege of voting only upon the absence of two of the regular members or the absence of one regular member and the first alternate.
- (f) The committee shall meet at least once each calendar quarter, and may meet more often on a regular basis which date shall be established by its members. The committee may hold special meetings at the direction of its chair upon not less than 24-hour notice.
- (g) Members shall be required to attend all regular and special meetings of the committee. The chair shall notify the mayor when a member accumulates three consecutive absences or when a member fails to attend 60 percent of the committee meetings. Such member may be removed, and, upon such removal, the mayor shall appoint a new member to complete the unexpired term of office.
- (h) Each committee meeting shall be noticed as a public meeting of the city and minutes shall be taken.
- (i) No committee member may be the artist, provide the artwork, provide consulting services, or have any interest in any artwork to be reviewed by the committee, whether proposed by a private developer or the city.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-124. - Powers, duties and functions.

- (a) The art in public places committee shall:
 - (1) Advise the city commission on the adoption of policies and procedures to acquire, commission and maintain works of art in public places.
 - (2) Advise the city commission regarding applications for the installation of art as part of a private projects pursuant to this article.
 - (3) Advise the city commission regarding installation of art as part of a public projects pursuant to this article.
 - (4) Advise the city commission regarding proposed donations of art pursuant to this article.
 - (5) Recommend sites for location of public art in accordance with the art in public places master plan.
 - (6) Conduct, with the assistance of city staff, calls to artists regarding installation of art as part of public projects pursuant to this article.
 - (7) Provide recommendations and guidance in implementation of art in public places master plan.
 - (8) From time to time, recommend to the city commission updates or revisions to the art in public places master plan that identify proposed locations and criteria for public artwork, art selection

and placement criteria, and other program recommendations, to reflect the changing environment of the city. It is the intent that such master plan be updated every five years.

- (9) Provide recommendations to the city commission on the maintenance of city-owned artwork to preserve and protect the public art in the city's collection.
 - (10) Provide recommendations to the city commission on the deaccessioning, removal or replacement of public art owned by the city.
 - (11) Advise the city commission and/or the city building official regarding murals to be installed on city or city agency owned property, or murals to be installed on private property with the use of city or agency funds.
 - (12) Propose recommendations to the city commission regarding the art in public places ordinance and program.
 - (13) Report to the city commission, on a semi-annual basis: i) the status of the art in public places program, ii) the application of the master plan, iii) the use of art in public places funds and iv) the AiPP fund balance.
- (b) The recommendations of the art in public places committee to the city commission shall be advisory only, and may or may not be consistent with similar recommendations made to the city commission by the city planning board, zoning board, downtown action committee, historic preservation board and/or the city parks and recreation committee relating to art in public places.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 2, 2-12-2018)

Sec. 78-125. - Criteria for art and elements.

The art in public places committee shall consider the following criteria in recommending approval or disapproval of a work or art, artwork, or historic or cultural element. In specific cases, the committee may recommend approval of a work of art that the committee considers exceptional, but does not meet all of the criteria.

- a) *Complies* . The proposed art conforms to the definition of art contained in this article and will be created by an artist or local artist, as defined in this article;
- b) *Master plan*. The proposed art meets the typologies and qualities described in the art in public places master plan.
- c) *Historic significance*. The proposed historic element is historically important, reflects the history of the city or the character of the surrounding neighborhood.
- d) *Cultural significance*. The proposed element is culturally significant and reflects the aesthetic and cultural traditions and diversity of the city or the surrounding neighborhood.
- e) *Visual accessibility*. The proposed art/element will be readily visible to the public and meet the location requirements of this article.
- f) *Quality*. The proposed artist is professionally recognized in the medium and the proposed art/element is of quality and enduring value.
- g) *Appropriateness to site*. The proposed art/element is of design, scale and material appropriate scale to the site.
- h) *Compatibility*. The proposed art/element is compatible with the surrounding neighborhood.
- i) *Public welfare*. The proposed art/element is not detrimental to the public welfare and will not constitute a safety hazard. Complies with public accessibility requirements, if applicable.
- j) *Maintenance*. The proposed art/element will not require extraordinary maintenance and the maintenance plan addresses vandalism, weathering, and the life of the artwork.

- k) *Valuation*. The proposed art and/or element(s) meet or exceed the valuation requirements of this article.
- l) *Location* . The proposed location of the art and/ or element(s) is in an exterior place and is appropriate to accommodate the size and scale of the proposed art and/or elements(s), has or can reasonably accommodate any necessary supporting infrastructure, is in compliance with applicable City Code requirements such as visibility triangle, and complies with the locations identified in the art in public places master plan.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 3, 2-12-2018)

Sec. 78-126. - Art in public places fund.

- (a) *Fund established*. A separate art in public places fund shall be established by the city. All art assessment deposits from private and public development shall be deposited into this fund and the funds shall be kept separate from any other city funds.
- (b) *Use of funds* . The art in public places fund shall be used by the city for the selection, commission, acquisition and maintenance of works of art on city property or exterior places in the city. Such funds may be spent on artworks which comply with the master plan and the criteria established in this article or art-related costs including, but not limited to,
 - (1) *Selection*. Selection processes for public art including advertising, selection panelist fees, completion stipends, outside consultant fees, and/or travel expenses for artists or experts.
 - (2) *Commissioning, acquisition and installation*. Artist and engineering design fees, permit fees, purchase price, fabrication, transportation, installation, site preparation and improvement, lighting and other costs directly related to the installation of the public art.
 - (3) *Maintenance*. Maintenance of public art owned by the city, including evaluation fees for professional conservators, costs of repair, cleaning and conservation.
 - (4) *Relocation or removal*. Costs directly related to the transportation and relocation or removal of public art.
 - (5) *Insurance and security*. The costs for damage and theft insurance for public art owned by the city, and, as appropriate, costs for security for installations or exhibitions.
 - (6) *Consulting*. The fees and costs for consultants, appraisers and curators as may be necessary.
 - (7) *Promotion*. Costs to promote the public art in the art in public places program including public art tours, lectures, descriptive on-site plaques, social media, brochures and other methods.
 - (8) *Program administration*. All personnel costs for the management and staffing, as needed, to support the AiPP Program.

Funds shall not be utilized for artist receptions, dedication art events, promotional materials for the artist, or expenses for the operation or maintenance of public art on private property.

- (c) *Committee funds* . The art in public places committee is authorized to spend not more than \$15,000.00 per fiscal year from the fund, which may be used by the committee for small projects distributed among the art districts identified in the art in public places master plan, and in compliance with the master plan, or for other authorized committee duties.
- (d) *Commission approval* . Except for the use of committee funds, as provided above, use of the art in public places funds shall be approved by the city commission.
- (e) *Procurement*. The procurement of goods, services or construction for the art in public places program or using art in public places funds shall comply with the procurement code, as applicable.
- (f) *Carryover*. Any monies not expended in the fund in any fiscal year shall be carried over in the fund into the following year. Any interest earned on the funds shall be retained in the fund.

- (g) *Contract required.* Prior to the use of any funds for artwork on private property, a written agreement detailing the use of funds, the ownership and maintenance responsibilities and other terms as determined by the city attorney shall be entered into with the property owner and approved by the city commission.
- (h) *No general grants or sponsorships .* The art in public places funds are not intended to provide general grant funding or sponsorships to artists, but shall be utilized in accordance with the master plan and the requirements of this article.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 4, 2-12-2018)

Sec. 78-127. - Enforcement.

- (a) Certificate of occupancy. Unless an alternative deadline is established in a development order, or a time extension is granted by the director of development services, no certificate of occupancy for the project shall be issued until the artwork is installed, the final revised construction cost affidavit and accounting of the escrowed art funds has been provided; and/or the full art assessment has been paid to the city.
- (b) The provisions of this article may also be enforced through any remedy available to the city in law or in equity. Violations may also be enforced through the code enforcement provisions of chapter 26 of this Code; or through the provisions of section 1-13 of this Code; or the city may institute a civil action in a court of competent jurisdiction to seek injunctive or other relief to enforce compliance with the terms of this article or any rule or regulation promulgated under this section, to enjoin and prohibit said violation or to compel the performance of actions which will result in compliance with the terms of this article. The city shall recover its court costs and reasonable attorneys' fees in any legal proceedings commenced to enforce this article. These remedies are cumulative and the use of any appropriate remedy shall not constitute an election of other remedies by the city. The use of one remedy shall not preclude the use of any others.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-128. - Applicability.

- (a) The art in public places program requirements defined in this section shall apply to the following activities:
 - (1) Private development projects as set forth in section 78-129
 - (2) Public construction projects as set forth in section 78-133.
- (b) Exceptions. The requirements of this article shall not apply to the following development or activities:
 - (1) Single-family residences not developed as a planned development;
 - (2) Ordinary property maintenance;
 - (3) Repairs and restoration resulting from fire, flood, windstorm or other casualty or natural disaster, as determined by the building official;
 - (4) Affordable residential housing units where at least 51 percent of the units are reserved for affordable housing;
 - (5) Institutional uses, such as churches, hospitals, and public or not-for-profit private schools;
 - (6) Premises which are owned or leased solely by a non-profit entity and used in furtherance of the non-profit purpose;

- (7) Industrial and commercial development that is not open or accessible to the general public due to the storage or use of hazardous, radiological, or infectious materials, national security reasons, or other reasons related to the health, safety or security of the public.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 5, 2-12-2018)

Sec. 78-129. - Public art assessment for private development.

- (a) *Applicability.* The provisions of this article and the public art assessment section shall apply to all private development projects, including new construction, or the renovation or improvement of an existing building, where total construction costs are equal to or greater than \$750,000.00. All buildings within new planned developments shall be assessed cumulatively towards this art in public places requirement, even if the buildings are permitted separately or developed in phases. The provisions of this section apply to new development or new construction within existing planned developments.
- (b) *Requirements.* All private development meeting the applicability requirements of this section shall be assessed a sum in accordance with this section, which funds shall be utilized for public art in accordance with this article. Notwithstanding the foregoing, the public art assessment for any single project shall not exceed \$2 million. All applicable private development shall be required to elect one of the following within 90 days of the issuance of the first building permit for any portion of the project:
 - (1) *Option 1:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount not less than one percent of the total construction costs, and submit an application for approval of the work of art or historic or cultural elements, in compliance with this article. If a local artist will be commissioned to provide a work of art, the work of art shall be valued at not less than 90 percent of one percent of the total construction costs; or
 - (2) *Option 2:* Contribute an amount equal to 80 percent of one percent of the total construction costs for deposit to the art in public places fund. The public art assessment shall be paid in full prior to the issuance of a certificate of occupancy; or
 - (3) *Option 3:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount less than one percent of the total construction costs and contribute 80 percent of the balance of the public art assessment (one percent of the total construction costs) for deposit in the art in public places fund.
 - (4) *Option 4:* Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount not less than one percent of the total construction costs, which art will be part of a private art program that meets all requirements of a private art program.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-130. - Inclusion of art or elements in the project.

- (a) *Historical or cultural elements.* The developer may choose to retain or incorporate historically important or culturally significant elements in the project in lieu of or in addition to artwork. Historical or cultural elements may include distinctive exterior features, finishes, and construction techniques or examples of craftsmanship that characterize a historic period or culture. The total value of all historical or cultural elements and/or artwork must equal one percent of the total construction costs.
- (b) *Location.* Artwork and/or historical or cultural elements must be located to be readily visible to the public based on normal traffic of vehicles and pedestrians in the area.

- (c) *Process.* If the developer chooses to provide artwork or historical or cultural elements, the developer shall follow the following process:
- (1) *Escrow and accounting of funds for artwork.* The developer shall submit documentation to the city showing that a deposit for public art was made with the developer's attorney into an escrow account not more than 90 after the issuance of the first building permit, in an amount equal to one percent of the total construction costs. If the amount to be escrowed exceeds \$500,000.00, than in lieu of a deposit of the full amount of the art assessment, a payment bond in an amount not less than the full required deposit amount, which references this city code section, from a surety acceptable to the city, may be provided. Such bond shall provide for payment of the bond amount to the city in the event that public art, or historical or cultural elements, which complies with the requirements of this article is not installed within 36 months of issuance of the building permit, unless such time is extended in writing by the building official.
 - (2) *Art consultant.* If the developer chooses to provide artwork, the developer may utilize up to 12 percent of the escrowed art deposit to retain an art consultant to assist in the selection and procurement of the required work of art. The art consultant shall have no financial or other relationship with the artist or developer, nor any ownership in the artwork purchased by the developer. The artist shall not be entitled to the art consultant fee.
 - (3) *Artist selection.* Selection of the artist will be the responsibility of the developer. The selected artist shall be an artist as defined in this article. The commission of the artist shall be by written contract between the developer and artist.
 - (4) *Application for approval of proposed art or elements.* An application for approval of the work of art or historic or cultural elements shall be made to the arts in public places committee within 90 days of the issuance of the first building permit. The application shall include:
 - i) Artist's qualifications, including resume and portfolio establishing the artist's credentials;
 - ii) Detailed description and depiction of the work of art and its location on the site;
 - iii) Drawings and renderings of the proposed work of art, in terms of size, scale, color, shape, and materials in sufficient detail to provide a clear understanding of the art or elements proposed;
 - iv) Appraisal of the value of the art or element;
 - v) Documentation showing that a deposit for public art was made into an escrow account;
 - vi) Maintenance program required for the artwork or elements;
 - vii) Compliance with public accessibility (ADA) requirements.
 - (5) *Committee review of contribution of art and elements.* The art in public places advisory committee shall review the proposed artwork or historical or cultural elements based on the standards established in this article and shall recommend to the city commission whether to approve, deny, or approve with conditions the selection and location of the artwork or elements with sensitivity to the aesthetic and cultural traditions and the history of the city and to the character of the surrounding neighborhood.
 - (6) *Appraisal.* To establish the value of the artwork to be installed or historical or cultural elements to be installed or retained by developer to comply with this article, the city may employ an independent art appraiser to provide a written appraisal of the art work(s) submitted or cultural or historic elements. Such appraisal will be paid for by the developer from the escrowed art deposit.
 - (7) *Construction cost overruns.* If the final cost of the total construction for the project is higher than the initial project cost estimate used to calculate the art assessment or escrowed art deposit, the developer shall either: i) provide additional art for the project valued at one percent of the increase in the total construction cost or ii) provide an additional deposit to the art in public places fund valued at one percent of the increase in the total construction cost. The

additional art shall be installed or the deposit shall be made prior to issuance of the final certificate of occupancy.

- (8) *Accounting of escrow* . Prior to the issuance of the final certificate of occupancy for a project, the developer shall submit a revised construction cost affidavit, which shall be submitted whether developer elected to pay the art assessment or install artwork. The developer's attorney or escrow agent will provide the city a final written affidavit and accounting of the payment for art and any art consulting fees from the escrowed art deposit at the conclusion of the placement of artwork. This affidavit shall be in a form acceptable to the city. Any surplus balance in the escrow account after the developer has completed the installation of the required art work shall be disbursed to the city and deposited into the art in public places fund. In the event that public art, or historical or cultural elements, which complies with the requirements of this article is not installed within 36 months of issuance of the building permit for the project, all escrow funds shall be disbursed to the city, unless such time is extended in writing by the art in public places coordinator.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 6, 2-12-2018)

Sec. 78-131. - Ownership and maintenance of private art.

Artwork installed on private property pursuant to the requirements of this article shall be the property of the property owner. Title and ownership of the artwork shall transfer in whole or in part to any successor in interest of the property. The property owner shall be responsible for maintenance of the art work in good condition at all times, as determined by the city's code enforcement official. The property owner shall be responsible for ensuring that the public's view of the artwork is maintained and no vegetation or additional construction shall obstruct the public's view. Maintenance shall include any associated landscaping or related improvements. In the event of destruction or casualty to the artwork, the property owner shall repair or replace the artwork with art equal in value to the value of the artwork originally installed. If the artwork is to be replaced, the art in public places advisory board shall review the proposed artwork and shall recommend to the city commission whether to approve, deny, or approve with conditions the selection of the artwork in accordance with the art in public places implementation guidelines.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-132. - Removal or replacement of art.

- (a) Artwork or elements installed in accordance with this section shall remain on site in the approved location and cannot be altered, replaced or removed except as provided in this article, or when deemed to be unsafe by the city building official, or necessary replacement due to damage from natural disasters. The seller of any property containing artwork installed in compliance with this article shall include restrictions by deed or other instrument that requires retention and maintenance of the artwork or elements in compliance with this article.
- (b) All replacement art and elements shall equal or exceed the value of the original artwork and shall not be less than the original public art assessment requirement. The replacement art shall meet the all of the requirements of this article. All replacement art and elements must be approved by the art in public places committee and the city commission. The replacement art shall be installed and be available for public view not more than six months after the existing artwork is removed, unless this period is extended by the city's director of development services.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-133. - Public projects.

- (a) *Applicability.* All appropriations and authorizations for the new construction, renovation or remodeling of eligible public improvements by the city shall include an amount of not less than one percent of the total construction costs to be deposited in the art in public places fund.
- (1) Eligible public projects subject to the public art assessment shall be:
- (i) Any public building, facility or structure which permits public occupancy of all or a portion thereof, including but not limited to fire stations, police stations, and public community centers.
 - (ii) Any vertical construction within a public park or recreation facility.
 - (iii) A sidewalk, pedestrian or bicycle path project where sufficient location, space, utilities and other elements to accommodate public art exist, as determined by engineering and planning staff and the art in public places coordinator.
- (2) Ineligible public improvements that are not subject to the art assessment are:
- (i) Any minor road project, including but not limited to construction, resurfacing, curbing, drainage, striping, lighting and signalization.
 - (ii) Any public utility project, including water, waste water and stormwater projects.
 - (iii) A streetscape, sidewalk, pedestrian or bicycle path project where there is not sufficient space, utilities and other elements to accommodate public art, as determined by engineering and planning staff and the art in public places coordinator.
 - (iv) Any public building, facility or structure which is not accessible to the public.
 - (v) Any project funded by a revenue source which by law cannot be utilized for the acquisition of works of art.
 - (vi) Any acquisition of land.
 - (vii) Any eligible public construction project where the city commission determines that the project appropriation cannot accommodate the art assessment, or the assessment will result in a cost overrun.
 - (viii) Any affordable housing project or project constructed using federal funds which cannot be utilized for public art.
- (b) *Budget.* For eligible projects, an estimate of the public art assessment shall be calculated, included and detailed in the project budget. At the start of the fiscal year, or after the adoption of a project budget amendment, the art assessment will be transferred to the art in public places fund.
- (c) *Process.* For eligible projects, the art in public places committee shall recommend, for approval by the city commission, whether the public project should include a work of art or historic or cultural element. If approved by the city commission, the art in public places committee shall, with the assistance of city staff, conduct a call to artists, request for proposals or direct invitation for proposals for works of art to be incorporated into the project within the budget and in compliance with the art in public places master plan. The committee shall not recommend works or art for installation on public property which cannot be reasonably maintained within the resources allocated by the city. The city commission shall have the final decision of the selection of the artist and/or the selection of the artwork. If the assessment from a project is not sufficient to acquire a work of art which would comply with the master plan or be appropriate for the city, or if the city commission so determines, the public art assessment from a public project shall be deposited into the art in public places fund and may be pooled with other such funds for the acquisition of a work of art for display at another city facility, in compliance with the public art master plan and at the time and place determined by the city commission.
- (d) *Ownership and maintenance.* All artwork acquired pursuant to this article shall be titled in the name of the city. Artwork installed on city property shall be owned by the city. The city shall be responsible for maintaining its artwork.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 7, 2-12-2018)

Sec. 78-134. - Artist grant of license.

The artist of artwork approved and installed on city property under the art in public places program shall grant to the city an unlimited, perpetual, non-exclusive, royalty-free license to reproduce and distribute two-dimensional reproductions of the artwork, in photos, videos and related media, for city-related purposes; shall grant to the city irrevocable ownership rights in any copyright or other intellectual property right regarding the artwork; and shall waive and release in favor of the city all rights, including the right of attribution or integrity, which artist may have in the artwork as provided by 17 U.S.C. §§ 106A and 113(d)(Visual Artist Rights Act). The city shall make all reasonable efforts to attribute the artwork to the artist in all uses. Artist shall retain a perpetual, royalty-free license to reproduce two-dimensional reproductions of the artwork, in photos, videos and related media, for demonstration of artist's artwork. Any such documentation shall be approved by the city attorney. The city shall have the option of acknowledging the artist and the artwork title in reproductions. By participating in the art in public places process, the artist authorizes review by the art in public places committee and compliance with public records laws.

(Ord. No. 4635-16, § 1, 5-9-2016; Ord. No. 4754-17, § 8, 2-12-2018)

Sec. 78-135. - Mural art.

- (a) Applicability. The provisions of this section apply to murals to be installed on city or city agency owned property, or murals to be installed on private property with the use of city or agency funds. Murals to be installed on private property without government funding are governed by section 94-410 of this code and require a mural permit from the city.
- (b) Application. An application for approval of a mural by the art in public places committee shall include the following information:
 - (1) Professional resume;
 - (2) Examples of past work (five to ten images);
 - (3) Image of building location;
 - (4) Description of materials to be utilized;
 - (5) A statement describing the mural project, its location, and application process;
 - (6) A final rendering of the proposed work to scale on the location site;
 - (7) A letter of other document from the property owner agreeing to the installation of the mural;
 - (8) Maintenance plan from the artist;
- (c) The art in public places committee shall meet and review the application. The art in public places committee shall recommend to the city building official that a mural permit be issued upon findings that:
 - (1) The mural will not serve as a sign or advertisement in violation of the city sign ordinances;
 - (2) The mural will enhance the aesthetic beauty of the area of its proposed location;
 - (3) The size of the mural is appropriate for its location;
 - (4) The artist is capable of completing the work in accordance with the plans and specification;
 - (5) The proposed materials are durable and graffiti and weather resistant;
 - (6) Any structural support or attachments have been approved by a professional structural engineer;

(7) It is not expected that excessive or costly maintenance will be required.

(Ord. No. 4635-16, § 1, 5-9-2016)

Sec. 78-136. - Permits and building code.

- (a) Building permit. A building permit and inspections shall be required for artwork and foundation work when necessitated by the work, as determined by the building official.
- (b) Electrical components. An electrical permit and inspections are required for artwork that uses electrical components. Either the entire electrical system or each electrical component used shall be listed by Underwriter's Laboratory (UL), or similar nationally recognized testing laboratory, and shall only be used in accordance with such listing. Alternatively, the electrical drawings and installation shall demonstrate that the electrical system complies with the version of the National Electrical Code referenced in the current Florida Building Code. The electrical power supply must be installed by a licensed electrical contractor in accordance with the current Florida Building Code. The electrical system configuration shall provide access for maintenance of the electrical system in accordance with the current Florida Building Code.
- (c) When the artwork media is lighting or text-based art, and is not a sign, the art is not required to meet code requirements for signs, but must be determined by city inspectors to be safe.

(Ord. No. 4754-17, § 9, 2-12-2018)

Sec. 78-137. - Unsolicited public art proposals.

- (a) *Applicability* . The provisions of this section apply to unsolicited proposals for public art on city or city agency owned property,
- (b) *Application review periods* . Unsolicited applications for public art will be considered by the art in public places committee as received, on a monthly basis.
- (c) *Application* . An application for consideration of an unsolicited proposal for public art by the art in public places committee shall include sufficient information to allow the art in public places to consider the proposal in light of each of the criteria set forth in section 78-125. It shall be the responsibility of the proposer to ensure that sufficient information is provided.
- (c) *Review* . The art in public places committee shall not be obligated to recommend approval of any unsolicited proposals, but may recommend an unsolicited proposal, if such proposal meets each of the following criteria:
 - (1) The proposed artwork complies with each criteria listed in section 78-125 of this article, excepting valuation; and
 - (2) There is sufficient funding for the design, creation, fabrication, and installation of the proposed artwork and all structural and supporting elements.

(Ord. No. 4754-17, § 10, 2-12-2018)

Secs. 78-138—78-150. - Reserved.