

DIVISION 6. - PUBLIC PLACES⁴¹

Footnotes:

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Editor's note—Formerly, div. 5. See the editor's note ch. 78, art. V, div. 3.

Subdivision I. - Art in Public Places

Sec. 78-261. - Art in public places requirements.

- (a) *Application requirements.* The applicant shall provide the information described below and any additional information requested by the growth management department necessary to review the application pursuant to the standards of the Code.
- (1) *Application forms.* The application shall be made on forms provided by the growth management department.
 - (2) *Artist information.* Portfolio containing photographs of the artist's existing work, exhibition and sales history, and biography.
 - (3) *Miscellaneous plans, renderings, and details.* Artist's color renderings and/or photographs of proposed artwork; materials sample board; site plan depicting the proposed location of the artwork; landscape plan, if necessary, depicting additional landscaping or modifications to existing landscaping; architectural elevations, if necessary, depicting structures associated with the artwork; lighting location plan and light fixture details; or other information requested by staff, the art in public places advisory board, or the city council. All submittals shall be required to provide an accurate representation of the proposed artwork.
- (b) *Violations.* Violation of this chapter shall be subject to enforcement as provided in article VII.
- (c) *Requirements for art or fee in lieu of art.* All new development, except city projects, where total vertical construction costs of all buildings on a project site are equal to or greater than \$1,000,000.00 shall provide art valued in an amount of one percent of the total vertical construction costs, as provided in this section and section 78-262. All buildings within planned unit developments and planned community districts shall be assessed cumulatively towards the art in public places requirement, even if they are permitted separately. If the aggregate cost of the entire project exceeds the \$1,000,000.00 threshold, each phase of development shall contribute the required one percent of construction cost towards art in public places for the building project. The art fee for redevelopment of an existing building shall be calculated based on the construction costs of the new development, excluding the assessed value of the existing buildings that are replaced or redeveloped.
- (1) *Private development.* A private developer may choose either to provide artwork on the project site or to contribute one percent of the total vertical construction costs to the city's art impact fund. The city's art impact fund shall be interest bearing with all interest to be retained by the city.
 - a. *Contribution of art.* If the developer chooses to provide artwork, the art in public places advisory board shall review the proposed artwork and shall recommend to the city council whether to approve, deny, or approve with conditions the selection and location of the artwork according to the standards of this division. The artwork shall be provided as follows:
 1. *Deposit of funds.* The developer shall submit documentation to the city showing that a deposit was made with the developer's attorney into an escrow account in an amount

of money equal to the art fee prior to the issuance of the first building permit. The developer's attorney will furnish the city documentation of the withdrawals for payment of art fees in accordance with the terms of the contract between the developer and the artist or artists, or the developer's arts consultants. The developer and/or the developer's attorney will provide the city a final written certification and accounting of the payment of art and consulting fees at the conclusion of the placement of artwork. This certification shall be provided in a manner acceptable to the city.

2. Surplus balance. Any surplus balance existing in the escrow accounts after the developer has installed the required artwork shall be collected by the city. The surplus balance shall be held in a segregated, interest-bearing fund (the "art impact fund"), and shall be used for the provision of additional art work at the construction site or another site within the city. Use of such funds shall be determined by the city council, following a recommendation by the art in public places advisory board, and shall be in accordance with further provisions of this division.
3. Artist selection. The selection and commissions of the artists shall be by written contract between the developer and artists.
4. Art consultant. The developer may utilize up to 12 percent of the required fee to retain an art consultant to assist in the selection and procurement of required artwork; an additional three percent of the required fee shall be used to pay the city for administering the art in public places program. The art consultant shall have no financial relationship with the artist, nor any ownership in artwork purchased by the developer. The artist shall be allowed to act as the art consultant for the art petition, but shall be precluded from receiving the art consultant fee.
5. Vertical construction cost overruns. Prior to the issuance of the final certificate of occupancy for a project, the developer shall submit a revised construction cost certification. If the final cost of the vertical construction for the entire project is higher than the cost figure used to calculate the preliminary art budget, the art budget shall be increased as necessary to equal one percent of the actual defined total vertical construction cost for the project. The art budget shall be revised within 30 calendar days of any such changes. The increase in the art budget due to the final increase of the vertical construction cost for the entire project shall be placed in the city art impact fund, or shall be used for the provision of art on site, at the option of the developer.
6. Appraisal. To establish the value of art submitted to comply with this division, the city may employ an independent art appraiser to provide a written appraisal of the art submitted. Such appraisal will be paid for by the developer as part of the overall art contribution.
7. Artwork purchased pursuant to the requirements of this section belongs to the property owner, and shall be insured and maintained in good condition at all times as determined by the city's code enforcement official. Maintenance shall include any associated landscaping or related improvements. The city has the right to maintain any art it deems improperly maintained and charge the owner the cost of such maintenance, including cost of collection, interest, and attorney's fees.
8. Unless an alternative deadline is established in a development order, or a time extension is granted by the growth management administrator, no certificate of occupancy for the project shall be issued until the artwork is installed and the final certification and accounting of the payment of the escrow fees has been provided. Artwork installed in accordance with this division cannot be altered or removed from the site without approval of the city council.
9. The artist of approved artwork shall grant to the City of Palm Beach Gardens an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for city-related purposes, and

grant to the city the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the city attorney. City approval of the artwork shall be deemed to be a grant of the artist for authorization by third parties to review and reproduce documents provided by the artist to the city which are deemed to be public records pursuant to public record laws of the state. The city shall also have the option of referring to the name and title of the artist and artwork in reproductions.

10. Review by the art in public places advisory board.
 - A. *Workshop.* The applicant shall appear before the art in public places advisory board in order to receive guidance in the initial stages of the review. In this case, the applicant shall choose between two types of review described below:
 - i. The applicant may appear before the board in order to receive more detailed direction, if the applicant does not have a set direction, prior to receiving a final recommendation by the board. The applicant is strongly encouraged to submit the portfolios of up to three artists. The portfolios shall contain photographs of the artists' existing works, as well as the artists' biographies; or
 - ii. The applicant may have a set direction regarding the artwork and may appear before the board for preliminary comments prior to receiving the board's final recommendation. The applicant shall submit the portfolio of the proposed artist which shall contain photographs of the artist's existing works, as well as the artist's biography.
 - B. *Criteria for review of artwork by the board.* In making its recommendation to the city council, the board shall consider the quality of the artwork; the exhibition and sales history of the artist; the artist's works in public collections and previous public art purchases or commissions; the ability of the artist to complete the project within a specified schedule; and the compliance with the standards of this division.
 - C. *Guidelines.* The art in public places advisory board may adopt art in public places implementation guidelines to assist both the public and private sector planning activities.
 11. Review by staff. In making recommendations to the art in public places advisory board and to the city council, staff shall consider the standards of this division in association with sound planning principles.
 12. In the case of redevelopment of a property which has contributed artwork on the site pursuant to this article, the artwork may be replaced, at the option of the developer, with new artwork pursuant to this article, or the existing artwork may remain on the site. In the latter case, the value of the existing artwork and its placement must comply with this article as if it were new artwork.
 - b. *Fee in lieu of artwork.* Instead of providing artwork on the project site, a developer may choose to contribute one percent of the total vertical construction costs as the required art fee. If the contribution is made, the contribution shall be placed in the city's art impact fund and used as provided in subsection 78-261(d)(2). The contributor shall have no input in the use of such funds.
- (2) *Art impact fund.* When the developer provides a fee in lieu of artwork pursuant to subsection 78-261(d)(1)b., the following shall apply to the use of the funds:
- a. The fee shall be placed in the city's art impact fund. Funds from the art impact fund may be spent anywhere in the city, and such funds may be spent on any art or art-related costs such as, but not limited to, lighting, consulting, landscaping, aesthetic features or enhancements, maintenance of art work, and to promote public art and the public art process in the city.

- b. Artist selection. The city council may choose either to select an artist through a call-to-artist process or to procure works of art through commission via written contract with a specific artist for a specific work of art.
 - i. *Call to artists.* If a preferred artist has not been determined, the city may issue a call to artists to procure a work or works of art. A selection committee will review the submitted proposals and shall select at least two finalists for consideration by the art in public places advisory board. The art in public places advisory board shall review the finalists' proposals and make a recommendation to the city council on the selection and commission of the artist and the artwork. The selection and commission of the artist and artwork shall be by written contract between the city and the artist. Final decision-making authority regarding the artwork and artist shall be at the sole discretion of the city council.
 - ii. *Artist/artwork selection.* The city may utilize funds allocated from the art impact fund to retain a specific artist for a specific artwork on city-owned land, a city-owned building, a facility that is leased or rented by the city or on any property where the city has granted permission by the property owner. The selection and commission of the artist and artwork shall be by written contract between the city and artist. Final decision-making authority regarding the artwork and artist shall be at the sole discretion of the city council.
 - iii. *Contracts for artwork.* Artists, as a part of any commission or contract with the city for the provision of artwork, shall be required to submit to the city a "maintenance and inventory sheet," which shall include an annual cost estimate for the annual maintenance necessary in order to properly preserve and maintain the artwork in substantially the same condition that it was in when accepted by the city.
- c. Use of purchased art. All artwork purchased by the city-required art fee contribution shall be displayed on city-owned land, a city-owned building, or a city-leased or rented facility unless otherwise approved by the city. The artwork shall be displayed in a visually accessible location, which shall be suitable to the design of the site, in order for the public to receive the most enjoyment and benefit from the art.
- d. Art consultant. The city may utilize funds allocated from the art account to retain an art consultant. The artist shall be allowed to act as the art consultant, but shall be precluded from receiving the art consultant fee.
- e. Proper insurance coverage shall be maintained by the city on artwork purchased with funds generated by this article or on artwork whose ownership has been transferred to the city. The artwork owned by the city shall be maintained by the city.
- f. Maintenance of artwork. The art impact fund shall be utilized to cover the costs of acquiring and maintaining public works of art purchased for display on city-owned, -leased, or -rented property/buildings, or on any property where the city has been granted permission by the property owner.
 - i. *Art impact maintenance fund.* The city council shall designate portions of the art impact fund in order to provide for the maintenance and upkeep of all publicly-owned works of art in order to ensure that proper preservation and maintenance is provided.
 - ii. *Art maintenance requirement.* When the city council approves the acquisition of a public work of art, the city council shall designate funds from the art impact fund dedicated to the continual maintenance and preservation of the subject work of art for a period of no less than 25 years.
 - iii. *Maintenance funds.* Maintenance funds may be expended to cover any and all expenses reasonably associated with the maintenance and preservation of public works of art.

(Ord. No. 1, 2007, §§ 2, 3, 2-1-07; Ord. No. 37, 2009, § 1, 12-17-09)

Sec. 78-262. - Standards for artwork.

- (a) Artwork shall be displayed in a visually accessible location, which shall be suitable to the design of the site, in order for the public to receive the most enjoyment and benefit from the art.
- (b) Artwork shall be integrated into the overall planning and design for a structure or project, and shall be compatible with the intent and purpose of the structure at which the work or works are located.
- (c) Artwork shall be integrated into the overall landscaping plan, and landscaping shall be utilized to enhance the visibility of such works.
- (d) Artwork shall be lighted at a minimum from dusk until midnight. The lighting shall be designed and located in order to prevent excessive lighting, energy waste, glare, light trespass, and sky glow.
- (e) Artwork installed pursuant to the division cannot be altered or removed from the site without approval of the city council.
- (f) Maintenance. Artwork shall be maintained in good condition at all times, including any associated landscaping or related improvements.
- (g) All artwork purchased from the art impact fund shall be displayed on city-owned land, a city-owned building, or a city-leased or -rented facility.
- (h) Zoning and building consideration. Consideration shall be given to project zoning. Permits and building approval shall be obtained, when necessary, and shall be in compliance with the Florida Building Code, the National Electric Code, and the previously-approved plans by city council.

(Ord. No. 1, 2007, §§ 2, 4, 5, 2-1-07)

Sec. 78-263. - Waiver of requirements.

- (a) *Waiver.* The city council may waive the requirements contained in this division, utilizing the standards contained herein. Promotion of the general welfare of the city shall be a major factor in the waiver or reduction of fees.
- (b) *Other upgrades.* Upgrading of landscaping, project entrances, and vehicle parking, if any, which provide substantial improvement in excess of existing requirements shall be factors to be considered in the waiver process.
- (c) *Criteria for waiver of fees.* The city council shall consider the following when considering a request to waive or reduce required fees:
 - (1) The impact of proposed improvements on the appearance and utility of an existing structure;
 - (2) The impact of proposed improvements on existing and potential tenants or businesses; and
 - (3) The probability of the owner acquiring substantial or anchor tenants to assist in relieving financial problems, excess vacancy rates, dilapidated appearance, and similar problems.
- (d) *Credit for expenditures.*
 - (1) Monies expended for the purpose of meeting minimum code or site plan requirements shall receive no credit for payment of required fees.
 - (2) Landscaping shall be considered a temporary improvement as compared to a permanent structural improvement in determining a monetary credit. The city council may not authorize more than 50 percent credit for the cost of installing new or replacement landscaping. Unusual cost of individual plantings or groups of plantings, such as rare exotics, shall not be considered as the sole factor for credit.

(Ord. No. 1, 2007, § 6, 2-1-07)

Secs. 78-264—78-270. - Reserved.