

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE VII, ENTITLED "ART IN PUBLIC PLACES" ("AIPP"), BY AMENDING SECTION 82-537 THEREOF, ENTITLED "DEFINITIONS," TO AMEND THE DEFINITION OF "CITY CONSTRUCTION PROJECT" AND THE DOLLAR THRESHOLD THEREIN FROM \$500,000, TO \$250,000 FOR THE PROJECTS SUBJECT TO THE PROVISIONS OF ARTICLE VII; AMENDING THE TYPES OF PROJECTS EXCLUDED FROM THE APPLICABILITY OF ARTICLE VII, AND AMENDING THE DEFINITION OF "CONSTRUCTION COST"; BY AMENDING SECTION 82-562, ENTITLED "POWERS AND DUTIES," TO PROVIDE NON-SUBSTANTIVE TEXT AMENDMENTS; BY AMENDING SECTION 82-587, ENTITLED "APPROPRIATION BY THE CITY TO THE FUND," TO AMEND THE AMOUNT TO BE APPROPRIATED TO THE ART IN PUBLIC PLACES FUND ("FUND") FROM NOT LESS THAN 1½ PERCENT, TO NOT LESS THAN 2 PERCENT OF THE CONSTRUCTION COST OF CITY CONSTRUCTION PROJECTS, CONFORMING LANGUAGE RELATIVE TO PROJECTS DEVELOPED BY PERSONS OR ENTITIES OTHER THAN THE CITY TO THE AMENDED DEFINITIONS OF "CITY CONSTRUCTION PROJECT" AND "CONSTRUCTION COST," AND REQUIRING A 5/7TH CITY COMMISSION VOTE FOR WAIVER OR REDUCTION OF AN OTHERWISE REQUIRED AIPP APPROPRIATION OR PLACEMENT OF AN APPROPRIATION INTO THE FUND; BY AMENDING SECTION 82-588, ENTITLED "PERMITTED USE OF FUND MONIES," TO PROVIDE NON-SUBSTANTIVE TEXT CHANGES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, cultural and artistic resources, including art works and the performing arts, enhance the quality of life for individuals living in, working in, and visiting the City of Miami Beach ("City"), and

WHEREAS, the balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values, and

WHEREAS, Article VII of Chapter 82 of the City Code provides for an Art in Public Places program in the City whereby certain City construction projects for new construction, additions, and renovations having a dollar value of \$500,000 or more, requires that no less than 1½ percent of construction costs be allocated to the City's Art in Public Places fund, and

WHEREAS, amending Article VII of Chapter 82 of the City Code to reduce the dollar threshold from \$500,000 to \$250,000 for City construction projects covered by Article VII, and increasing the minimum percentage of construction costs allocated to public art from no less than 1½ percent, to no less than 2 percent, will enhance the City's existing Art in Public Places

program and promote the general welfare through expanded cultural and artistic resources in the City; and

WHEREAS, the Mayor and the City Commission hereby find and declare that the adoption of this Ordinance will advance the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Division 1 of Article VII of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows, with additional provisions provided for references purposes:

**CHAPTER 82
PUBLIC PROPERTY**

* * *

ARTICLE VII. ART IN PUBLIC PLACES

DIVISION 1. GENERALLY

Sec. 82-536. Intent of article.

It is the intent of this article to enhance the aesthetic environment of the city by including works of art on public property within the city and in city construction projects. The Bass Museum of Art shall be exempt from the provisions of this article.

Sec. 82-537. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Art in public places means works of art of exceptional quality executed on an appropriate scale and for public access in public places other than museums, which enrich and give diversion to the public environment.

Art in public places committee means the advisory committee appointed by the city commission to carry out the duties and functions set forth in this article.

City construction project means any construction contract for any city-owned building, facility, or other city-owned property including, but not limited to, parks, pools, recreation trails, baywalks, beachwalks, streetscape beautification projects, and golf courses, to which the city is a party, for the (i) new construction of; (ii) additions; or (iii) renovations ~~requiring compliance with Chapter 34 Section 3401.8 of the Florida Building Code 50 percent rule or, renovation having a value equal to or greater than \$500,000.00, or addition to any city-owned building, facility, or other city-owned property, including but not limited to, parks, pools, recreation trails and golf courses.~~ The definition of city construction project shall also be deemed to include construction projects that are developed by persons or entities other than the city, but which require the

participation of the city as a party to a (i) development agreement or, (ii) ground lease, or (iii) management agreement for a City-owned building or facility having a term of ten (10) years or more (including renewal terms) where such management agreement contemplates that the manager/operator will design and construct a City building or facility as part of the terms of such agreement

Construction cost means "hard costs" associated with construction of a city construction project. Land acquisition costs, architect and engineering fees, environmental remediation costs, and costs associated with subsequent changes in construction contracts, except as provided in the proceeding sentence, are not included. An adjustment will be made to an original art in public places appropriation only for construction costs associated with city requested changes in scope requiring additional appropriations more than \$200250,000 00 in the aggregate

Professional advisory committee means a group of arts professionals selected by the arts in public places committee and confirmed by the city commission to recommend works of art or artists for one or more acquisitions. The committees may also contain up to two members of the design review board or historic preservation board, to be determined and selected by such boards, depending upon the location of the project for which the art is intended, and which board would have jurisdiction over the project.

Works of art means the application of skill and taste to production of tangible objects according to aesthetic principles, including but not limited to paintings, sculptures, engravings, carvings, frescos, mobiles, murals, collages, mosaics, statues, bas-reliefs, tapestries, photographs and drawings, or combinations thereof, and artist-designed public facilities, buildings, and/or spaces and functional elements, either as integral parts of a larger project or as a separate entity.

The provisions of this article shall not apply to the new construction of, renovations, or additions to the following city construction projects:

- a Water and sewer related facilities, such as pump stations, water mains, water lines, sewer lines, treatment facilities, etc
- b Storm drainage infrastructure
- c Road construction or bridges, provided, however, that streetscape beautification projects, which may include, but are not limited to resurfacing, new curbs, gutters, pavers, sidewalks, landscaping, lighting, bus shelters, bus benches, street furniture and signage, and similar above-ground improvements, shall not be exempted and shall be subject to the provisions of this article
- ~~d- Streetscape beautification projects, which include but are not limited to, one or all of the following elements: resurfacing, new curbs, gutters, pavers, sidewalks, landscaping, lighting, bus shelters, bus benches, street furniture and signage.~~
- e-d. City construction projects undertaken to replace, reconstruct, or repair an existing public building or facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstance.

~~f. e.~~ The construction, remodeling, repair or improvement to a public electric or gas utility system.

~~g. f.~~ Where the city construction project is undertaken as a routine repair or maintenance of an existing public facility.

DIVISION 2. ART IN PUBLIC PLACES COMMITTEE

Sec. 82-561. Established.

- (a) An art in public places committee is hereby established to carry out the powers and duties set forth in section 82-562. The committee shall be composed of seven members appointed by a majority vote of the entire city commission. The members shall possess a high degree of competence in the evaluation of art history, architectural history, art, architecture, sculpture, painting, artistic structural design and other appropriate media for display or integration of art in public places.
- (b) The term of office for committee members shall be two years. Vacancies occurring before the expiration of a term shall be filled by the mayor for the remainder of that term.

Sec. 82-562. Powers and duties.

The art in public places committee shall have the following powers and duties:

- (1) To recommend to the city commission whether a particular proposed city construction project is an appropriate site for works of art and whether all or a part of the appropriation required by section 82-587 should be utilized at the site; or, reduced or waived in its entirety; or, placed, whether in its entirety or a portion thereof, in the art in public places fund for other acceptable uses.
- (2) To recommend to the city commission the selection of existing works of art or to determine whether to recommend the selection of new works of art, and screen submissions therefore, for the fulfillment of the requirements of this article.
- (3) To conduct contests and competitions to select works of art to be recommended for a site.
- (4) To recommend a professional advisory committee to advise the committee and city commission regarding selection of works of art for a city construction project.
- (5) To recommend to the city commission the maintenance and insurance necessary to preserve and protect works of art.
- (6) To make a recommendation to the city commission regarding proposed projects that include works of art and to participate in the planning of such projects.

- (7) To recommend legislation concerning public works of art in the city.
- (8) To make recommendations to the city commission regarding the placement of proposed donations of works of art for placement on public property in the city.
- ~~(9) To perform all other duties and functions as requested by the city commission.~~
- (10) (9) To provide an advisory recommendation to private nonprofit applicants seeking to install works of art in public places and/or noncommercial artistic murals, graphics and images on private or city-owned buildings, which mural, graphic or image art is not funded by the city.
- (10) To perform all other duties and functions as requested by the city commission.

Sec. 82-563. Legal counsel

The city attorney's office shall provide legal services to the art in public places committee as may be necessary or as requested by the art in public places committee.

Sec. 82-564. Committee solely liable for obligations.

Unless and until the city commission approves by passage of an appropriate resolution or ordinance the acquisition of a work of art for this program, the cost of such acquisition and all costs associated with such acquisition shall not be an obligation, liability or debt of any kind or nature of the city. Exclusive of the costs approved by the city commission as set forth in this article for the acquisition of a work of art, no obligation, liability or debt of any kind or nature whatsoever incurred or asserted against the art in public places committee shall in any manner whatsoever be an obligation or liability of the city.

Secs. 82-565—82-585. Reserved.

DIVISION 3. FUND

Sec. 82-586. Art in public places fund established.

The city art in public places fund shall be established, to consist of the following:

- (1) Monies appropriated to the fund by the city commission in accordance with section 82-587.
- (2) Monies donated to the fund by private individuals and organizations.
- (3) Monies received by the city from award of federal or state grants for the acquisition or maintenance of works of art on public property or at public facilities in the city. Grant monies received by or on behalf of the Bass Museum of Art shall be exempt from placement in the art in public places fund.

Sec. 82-587. Appropriations by the city to the fund.

(a) All appropriations of city funding for city construction projects shall include an appropriation of funds to the art in public places fund. The amount appropriated to the art in public places fund shall not be less than ~~4½~~ 2 percent of the construction cost of the city construction project. The appropriation to the fund shall be made at the time of the award of the construction contract for said city construction project. For city requested changes in scope requiring additional appropriations more than \$200 ~~\$250,000.00~~ in the aggregate, at the time of appropriation of monies for the subject changes in scope, the applicable art in public places funding allocation shall be transferred to the art in public places fund.

(b) For city construction projects that are developed by persons and entities other than the city, but that are developed pursuant to a development agreement entered into with the city; ~~or which involve the participation of the city as a ground lessor; or which are developed pursuant to a management agreement having a term (including renewal terms) of ten (10) years or more and which agreement requires the design and construction of a City building or facility,~~ the required appropriation shall be made at the same time as the appropriation of funding for the construction project and be based upon the construction cost, regardless of whether the construction cost is funded by the city or the person or entity other than the city. ~~This subsection shall not apply to projects by not-for-profit persons or entities recognized under Section 501(C)(3) of the Internal Revenue Code of 1986, as amended, whose total construction budgets are less than \$8,000,000.00.~~

(c) In considering the required appropriation for a particular city construction project, the city commission may, by resolution approved by 5/7th vote:

1. Waive the required appropriation, finding such waiver to be in the best interest of the city;
2. Reduce the required appropriation amount; or
3. Find that the particular city construction project is not an appropriate site for works of art, and place all or a portion of the required appropriation in the art in public places fund for use at another site.

(d) The city commission shall also consider whether the funding source for a particular city construction project is restricted by public bond covenants; federal, state or local laws; and/or legal parameters which would require that the appropriation be utilized on the particular city construction project site.

(e) Prior to making a final determination as to the required appropriation for a city construction project, the city commission shall consider the recommendation of the art in public places committee.

Sec. 82-588. Permitted use of fund monies.

Monies placed in the art in public places fund shall only be used for the following purposes:

- (1) Acquisition of works of art to be located on city construction projects or on public property in the city or located in public buildings or in public facilities within the city in accordance with the procedures in sections 82-611 and 82-612.
- (2) Insurance and/or maintenance of existing works of art acquired by the city under this article in accordance with a yearly budget for such insurance and/or maintenance to be approved by the city commission. The city manager and art in public places committee shall provide the city commission with a yearly recommendation regarding this budget.
- (3) Expenses relating to the following:
 - a. Research and evaluation by the committee pertaining to proposed works of art, including opinions (when necessary) from outside experts and/or professional advisory committees;
 - b. Expenses related to art contests sponsored by the committee in connection with acquisitions of works of art, including related printing and distribution expenses,
 - c. Administrative expenses relating to the operations of the committee, including, but not limited to, salaries, supplies and equipment for the keeping of minutes and printing and distribution of board agendas and correspondence;
 - d. Selected artist travel expenses, at the rates used citywide and approved in advance by the city manager.

All such expenses shall be approved as part of the yearly budget for the fund by the city commission after considering the recommended budget submitted by the city manager and the committee. The amount budgeted for administration, maintenance, insurance, and preservation of works of art acquired by the city pursuant to this article as part of the total appropriations for art in public places shall not be more than 25 percent of monies placed in the art in public places fund

Secs. 82-589—82-610. Reserved.

DIVISION 4. PROCEDURES

Sec. 82-611. Procedures for selection.

- (a) The art in public places committee shall evaluate each proposed city construction project to determine its suitability as a site for works of art. In making its determination, the following factors will be considered:

- (1) Appropriateness of the city construction project as a site for works of art.
 - (2) Physical layout of the city construction project.
 - (3) Visibility and accessibility to the public
- (b) Additionally, the committee shall establish a list of existing city-owned sites it considers appropriate sites for works of art. The criteria in subsection (a) of this section shall be used in evaluating potential sites.
 - (c) The acquisition, removal, and/or relocation of works of art, shall be in accordance with the criteria set forth in this section and the art in public places master plan, as approved by resolution of the city commission.

Sec. 82-612. Selection of artists and works of art.

- (a) When the art in public places committee recommends a particular city construction project or existing site as being appropriate for art in public places, the committee shall also recommend to the city commission one of the following means of obtaining the works of art:
 - (1) *Open entry competition.* Through appropriate advertisement all artists are invited to enter into competition for a commission to create a work of art for the site. The amount to be paid for the works of art shall be determined by the city commission after considering the committee's recommendation. Artists may be asked to submit slides of their past work, resumes, letters of intent related to the specific project or specific proposals for the project under review.
 - (2) *Limited entry competition.* A limited number of artists are invited to compete as set forth in subsection (a)(1) of this section.
 - (3) *Direct selection of the artist.* An artist or several artists may be selected to develop a proposal for the project or produce the desired works of art.
 - (4) *Direct purchase of existing works of art.* A completed work of art is purchased. No more than ten percent of the costs of the work of art may go to a dealer or agent.
- (b) In the case of a limited competition or a direct selection, an artist may be asked to develop a proposal for a specific project. If asked to develop a proposal, an artist may be paid a proposal fee on the basis of an approved fee schedule. This schedule shall be determined by the committee after consultation and approval by the city manager and shall consist of a sliding schedule based upon the total project commission. However, in general no more than five percent of the total art in public places allocation for a project should be paid in proposal fees to artists.
- (c) The committee may recommend the appointment of a professional advisory committee to assist with selection of works of art or artists for a particular project. Selection of a professional advisory committee shall be by the art in public places committee and confirmed by the city commission. Reasonable expenses incurred by the professional

advisory committee may be reimbursed from the fund in accordance with rates approved in advance by the art in public places committee and the city manager.

- (d) The art in public places committee shall consider the recommendations of the professional advisory committee in selecting works of art for particular city construction projects or existing sites.
- (e) Construction of selected works of art Where the selected work of art requires construction management, construction shall be managed by the city manager's designee.
- (f) Selection of artists, sculptors, craftsmen, and professional advisory committee's review of designs and choice and acceptance of works of art shall be by the art in public places committee and must have approval of the city commission. All agreements made pursuant to this article shall be authorized by the city commission.
- (g) In selecting/approving works of art, the art in public places committee and/or professional advisory committee and city commission shall consider the following criteria:
 - (1) Appropriateness to the city construction project or existing site.
 - (2) Maintenance requirements.
 - (3) Quality of the work.
 - (4) Likelihood that the artist can complete the work within available funding.
 - (5) Reflection of enduring artistic concepts, rather than transitory ones.
 - (6) History of the artist in terms of completion of works on time.
- (h) In obtaining the advice of the design review board, or historic preservation board, whichever has jurisdiction over the matter based on the location of the proposed project, according to such board's normal application and review procedures, the staff of the art in public places committee shall present the proposal to such boards, prior to submittal of a final recommendation by the art in public places committee to the city commission.
- (i) When providing an advisory recommendation to private nonprofit applicants seeking to install works of art in public places and/or noncommercial artistic murals, graphics and images on private or city-owned buildings, which mural, graphic or image art is not funded by the city, the committee shall utilize the following criteria:
 - (1) Appropriateness to the project or existing site.
 - (2) Maintenance requirements.
 - (3) Quality of the work.

- (4) Likelihood that the artist can complete the work within available funding of the private nonprofit applicant.
- (5) Reflection of enduring artistic concepts, rather than transitory ones.
- (6) History of the artist in terms of completion of works on time.

The recommendation shall be issued prior to any required review of the design review board or historic preservation board.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2019.

PASSED AND ADOPTED this ____ day of _____, 2019.

ATTEST:

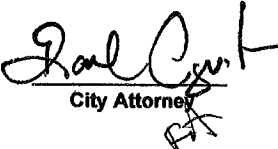
Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

Underlines denote additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

7/8/19

Date