



City of Miami
Legislation
Ordinance 13656

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 1222

Final Action Date: 1/12/2017

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING ORDINANCE NO. 13114, THE ZONING ORDINANCE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, BY AMENDING ARTICLE 1, ENTITLED "DEFINITIONS", MORE SPECIFICALLY TO ADD SECTION 1.5, ENTITLED "DEFINITIONS OF ART IN PUBLIC PLACES PROGRAM"; AND ARTICLE 3, ENTITLED "GENERAL TO ALL ZONES", MORE SPECIFICALLY TO ADD SECTION 3.16, ENTITLED "PUBLIC ART REQUIREMENTS"; AND ADDING A NEW ARTICLE 11, ENTITLED "ART IN PUBLIC PLACES PROGRAM"; CONTAINING A SEVERABILITY CLAUSE, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Miami Planning, Zoning and Appeals Board ("PZAB"), at its meeting on March 16, 2016, following an advertised public hearing, adopted Resolution No. PZAB-R-16-018 by a vote of eight to zero (8-0), item no. 6, recommending approval of the amendments to the Miami 21 Code, the Zoning Ordinance of the City of Miami, Florida, as amended ("Miami 21 Code") regarding a public art program; and

WHEREAS, various local governments throughout the State of Florida and the country have implemented public art programs committed to the placement of public art in urban environments; and

WHEREAS, the City of Miami ("City") had the vision and foresight to adopt the first public art program in Miami-Dade County in 1967, but due to changes in Administration, the program went dormant; and

WHEREAS, the City seeks to reestablish a public art program that would contribute to the aesthetic diversity and character of the built environment and the cultural enrichment of the community; and

WHEREAS, a public art program would create a stimulating and diverse cultural environment that reflects, defines, and enhances the City's heritage, values, and visions for the future through art integrated in the architecture, infrastructure, and landscape; and

WHEREAS, the City recognizes that the aesthetic diversity provided by art within the City's built environment is vital to the quality of the life of its residents and to the economic success of its businesses as it attracts visitors and potential residents, fuels the local economy by creating job opportunities, and assists the City in fulfilling its mission to make the City a premier world class place in which to live, work, and raise a family; and

WHEREAS, in *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1980), the United States Supreme Court held that land development regulations which require development to meet aesthetic conditions have been generally found to be supported by a legitimate public purpose; and

WHEREAS, the City Commission desires to establish Article 11 of the Miami 21 Code, entitled "Art in Public Places Program" ("Public Art Program"), to create a cultural legacy for

future generations through the curation and exhibition of high quality art that reflects a variety of artistic styles and a diversity of culture, beliefs, and thinking to chronicle and pay tribute to the City's history through the collection of artifacts, documents, and memorabilia, and to enhance the quality of life for its citizens through the placement of art, creation of artistic opportunities, and implementation of art programming; and

WHEREAS, public development projects shall contribute to a public art program to enhance and maintain the City's aesthetic diversity and character; and

WHEREAS, the Public Art Program, as set forth in this Ordinance, does not conflict with the laws and policies governing any development agreements authorized by Sections 163.3220 - 163.3243, Fla. Stat., as amended, and does not prevent development of the land uses, intensities, or densities for projects subject to development agreements; and

WHEREAS, the Public Art Program, as set forth in this Ordinance, is essential to the public health, safety, and welfare of the residents of the City; and

WHEREAS, the City Commission hereby finds and declares that the adoption of this Ordinance is consistent with the Miami Comprehensive Neighborhood Plan and that it is necessary, appropriate, and advances the public interest;

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

Section 1. The recitals and findings contained in the Preamble to this Ordinance are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. The Miami 21 Code is hereby amended by making modifications in the following particulars:¹

"ARTICLE 1. DEFINITIONS

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1.5 DEFINITIONS OF ART IN PUBLIC PLACES PROGRAM.

For the purposes of this Code, the following words and phrases shall have the following meanings:

Art: Tangible creations by Artists which include all forms of the visual Arts conceived in any medium, material, or combination thereof, including, but not limited to, paintings; sculptures; engravings; carvings; frescos; stained glass; mosaics; mobiles; tapestries; murals; photographs; video projections; digital images; bas-relief; high relief; fountains; kinetics; collages; drawings; monuments erected to commemorate a person or an event; functional furnishings, such as Artist designed seating and pavers; Artist designed architectural elements; and Artist designed landforms or landscape elements. The following shall not be considered as Art for the intents and purposes of this Code:

¹ Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

- Reproductions or unlimited copies of original pieces of Art;
- Directional elements such as Signage;
- Objects which are mass-produced; or
- Works that are decorative, ornamental, or functional elements of the architecture or landscape design, except when commissioned from an Artist as an integral design aspect of a Structure or site.

Art in Public Places Board ("AIPPB"): The entity appointed by the City Commission to aid in the administration of the Public Art Program. The AIPPB shall have the power to make decisions regarding dedications, donations, and acquisitions of Art to fulfill the requirements as prescribed in Article 11 of this Code and Chapter 62 of the City Code. Reference to approval by the AIPPB of this Code shall mean approval at a duly noticed public meeting.

Artist: A practitioner exhibiting the highest quality of skill and aesthetic principles 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 an Artist include, but are not limited to, income realized through the sole commission of Art, frequent or consistent Art exhibitions, placement of Art in public institutions or museums, receipt of honors, and awards or training in the Arts.

Construction Cost: The total value of the construction of, or reconstruction work on, Structures as determined by the City's Building Official in issuance of a Building permit for construction, reconstruction, or remodeling. Costs such as that of land acquisition, architectural design, consultants, and engineering fees are not Construction Costs.

Developer: The property owner, including the property owner's successors and assigns, of the subject development project.

Durable: Lasting, enduring and highly resistant to deterioration due to weather or the passage of time.

Government Development Project: Any Development initiated by a government agency, as defined in Article 1 of this Code and Section 2-11.15 of the Miami-Dade County Code, as amended, including remodeling, construction, or redevelopment, which requires a Building permit or permits as described on the precise plan submitted for approval to the City. For purposes of this Article, Government Development Projects shall also include:

- Private Sector Capital Development on land own by the government or on private land with the Structure owned by the government.
- Development projects done through agreements with a private entity, including but not limited to leases or development agreements (i.e. the government contracts with another party to develop a Structure that the government will own now or in the future).
- All development projects funded or partially funded by General Obligation Bond ("GOB") dollars.

Historic Resource: A property or resource that has been designated historic pursuant to Chapter 23 of the City Code or is listed in the National Register of Historic Places.

Life Cycle: The natural deterioration time period for a piece of Art. Art created under this Section is meant to be Durable and shall have a Life Cycle of at least twenty-five (25)

years when properly designed or created by the Artist and maintained, conserved, and repaired. Art reaches the end of its Life Cycle when the Artist, Artist's estate, or a qualified Art conservator verifies that the Art has deteriorated such that the Art cannot reasonably be maintained, conserved, or repaired.

Project Cost: The total of specialty consulting fees; Construction Cost, including all systems and features that make the facility functional; site work; and contingency allowances and allowance accounts (e.g. permitting, surveying, inspections) for the Government Development Project. Project Cost shall not include the cost of land acquisition or subsequent cost changes to the construction or architectural contract(s) for the Government Development Project, including phased projects and all elements of an approved Government Development Agreement. The total Project Cost shall be calculated as of the date the contract for the construction is executed. The Developer shall provide Project Cost information and in the absence of such information or if a dispute arises regarding the submission of such information, the Project Cost shall be based upon the value of the Structure as computed using the latest Structure valuation data as set forth by the International Conference of Building Officials ("ICBO") together with estimated design services fees.

Public Art Fee: See Sections 11.4(b) and 11.6(a).

Public Art Fund ("Fund"): A separate, interest bearing account set up by the City with the sole purpose of receiving monies designated for the Public Art Program or to fulfill the requirements set forth in Article 11 of this Code and Chapter 62 of the City Code.

Public Art Master Plan: A plan adopted by the City Commission, pursuant to a recommendation by the AIPPB, which shall identify Public Place locations for Art and establish a priority order to the City Commission, and which shall be amended, as needed, to ensure that the Public Art Master Plan and the Public Art Program as a whole remain coherent and consistent with the intents and purposes for which Article 11 of the Code was adopted.

Public Art Program Guidelines: A set of standards, criteria, policies, and procedures related to the submission, donation, dedication, consideration, and acceptance of Art, which shall be adopted by the City Commission, and amended as necessary, to ensure that the Public Art Program Guidelines and the Public Art Program as a whole remain coherent and consistent with the intent and purposes for which Article 11 of this Code was adopted.

Public Place: Any exterior area on Public property, and shall also mean any private property within the City limits, which is easily accessible or clearly visible to the general public from adjacent Public property including, but not limited to, a street, Public Thoroughfare, Sidewalk, cross Block vehicular or pedestrian Passage, or Pedestrian Paseo.

Remodeling: Any change to the facade of a Structure, any change to the interior of a Structure, any increase or decrease in the Floor Area of a Structure, or any change to exterior improvements.

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ARTICLE 3. GENERAL TO ALL ZONES

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3.16 Public Art Requirements.

Government Development Projects shall comply with all applicable provisions of the Public Art Program pursuant to Article 11 of this Code and Chapter 62, Article XVI, of the City Code, as applicable.

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ARTICLE 11. ART IN PUBLIC PLACES PROGRAM11.1 Administration of the Program.

The Public Art Program shall be administered by the Public Art Division, a division within the City's Planning Department.

11.2 References.

See Chapter 62, Article XVI, of the City Code regarding the AIPBB, procedures, and other applicable requirements.

11.3 Public Art Master Plan and Public Art Program Guidelines.

The Public Art Division shall prepare both a Public Art Master Plan and Public Art Program Guidelines as defined in Article 1, Section 1.5. The Public Art Master Plan and the Public Art Program Guidelines shall be prepared and subject to approval of the City Commission, pursuant to a recommendation by the AIPPB. The Commission, pursuant to a recommendation by the AIPPB, shall also review and approve amendments to the Public Art Master Plan and the Public Art Program Guidelines, as may be proposed by the Public Art Division.

11.4 Applicability.

- (a) Government Development Projects including but not limited to those by the City, a Community Redevelopment Agency, the County, the State, or any other governmental agency shall comply with the provisions of Section 11.7 of this Article.
- (b) The Building Department will calculate the pertinent Public Art Fee in accordance with this Article. When disputes arise in determining the Public Art Fee, the Developer(s) shall provide the Building Department and the Public Art Division a copy of the executed notarized construction services contract(s) for the Government Development Project so that the City can accurately determine the Construction Cost and properly calculate the Public Art Fee based upon the anticipated Construction Cost.
- (c) The AIPPB, at a public hearing, may waive the following from the Public Art Program upon recommendation from the Public Art Division:
 - (1) The reconstruction of Structures which have been damaged by fire, flood, wind,

or other act of God.

(2) The restoration or rehabilitation of a portion(s) of a Historic Resource as defined in Article 1, Section 1.5. that does not alter the size or occupancy load of the Structure.

(3) The repair or rehabilitation of a Structure for the installation of fire sprinklers or improvements pursuant to the American with Disabilities Act.

(4) Government Development Projects funded by grant(s) that prohibit the use of grant funds for purposes not specified under the grant(s).

(5) Affordable Housing Developments not otherwise required to provide Public Art pursuant to Section 2-11.15 of the Miami-Dade County Code, as amended.

11.5 Reserved:

11.6 Reserved

11.7 Government Development Projects - public Art requirement.

(a) All Developers for Government Development Projects shall provide for the acquisition of Art equivalent in value to not less than one and one-half percent (1.5%) of the Project Cost of all Government Development Projects. Acquisition, commissioning, and selection of Art for Government Development Projects shall be in accordance with the criteria and standards set forth in the adopted Public Art Master Plan and Public Art Program Guidelines and subject to approval by the AIPPB. To the extent the total amount is not used for the acquisition, selection, or commissioning of Art, the remainder may be used for:

1. Public Art Program or administrative costs, repair and maintenance of any Art acquired under this Section, or insurance for any Art; or
2. To supplement other acquisition, commissioning, or selection of Art under this Section or the costs to transport, relocate, or remove Art in, on, or near government facilities which have already been constructed.

(b) Private funds used for Government Development Projects on land owned by the City, County, State, federal or any other governmental agency and on private property are subject to a one and one-half percent (1.5%) Public Art Fee to be paid into the Fund prior to issuance of a master building permit.

(c) The AIPPB, upon a public hearing, may exempt the following from the Public Art Program upon recommendation from the Public Art Division:

- (i) The requirements of Section 11.7(a) may be waived by resolution of the AIPPB when a Government Development Project is funded by grant(s) that prohibit the use of grant funds for purposes not specified under the grant(s); or
- (ii) Government Development Projects or portions thereof that do not include Structures.

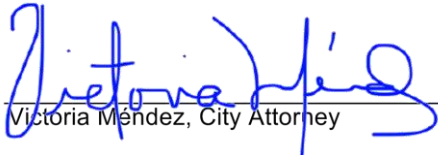
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Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Miami 21 Code, which provisions may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or other appropriate word to accomplish such intention.

Section 5. This Ordinance shall become effective immediately upon adoption and signature by the Mayor.²

APPROVED AS TO FORM AND CORRECTNESS:



Victoria Mendez, City Attorney

5/8/2017

² This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.