



City of Miami
Legislation
Ordinance 13657

City Hall
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Miami, FL 33133
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File Number: 1208

Final Action Date: 1/12/2017

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "ZONING AND PLANNING", MORE SPECIFICALLY CREATING A NEW ARTICLE XVI ENTITLED "ART IN PUBLIC PLACES PROGRAM"; CONTAINING A SEVERABILITY CLAUSE, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

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 the City's Administration, the program went dormant; and

WHEREAS, the City seeks to re-establish 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 into 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 citizens 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, on February 10, 2016 and March 9, 2016, two (2) public workshops were held to discuss the proposed Art in Public Places legislation with the general public and interested parties; and

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-16-019 by a vote of eight to zero (8-0), item no. 7, recommending approval of the amendment to Chapter 62 of the Code of the City of Miami, Florida, as amended ("City Code"), regarding a public art program; and

WHEREAS, the City Commission, after careful consideration of this matter, desires to amend Chapter 62 of the City Code by creating a new Article XVI of the City 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 and do not prevent development of the land uses, intensities, or densities in the development agreements; and

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

WHEREAS, the provisions of this Ordinance shall apply to all Public Development Projects; and

WHEREAS, the City Commission has reviewed this Ordinance at a duly noticed public hearing and determined that it is consistent with the Miami Comprehensive Neighborhood Plan; and

WHEREAS, the City Commission hereby finds and declares that the adoption of this Ordinance is necessary, appropriate, and advances the public interest;

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

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

Section 2. Chapter 62 of the City Code, entitled "Planning and Zoning", is further amended in the following particulars:¹

"CHAPTER 62

PLANNING AND ZONING

* * * * *

ARTICLE XVI. ART IN PUBLIC PLACES

Sec. 62-654.Purpose and intent.

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.

- (a) This Article shall be known, cited, and referred to as the "Public Art Program."
- (b) It is the intent and purpose of the Public Art Program to promote the general welfare of the community by uniting citizens through shared cultural and artistic experiences; to enhance the aesthetic diversity of the City through Art integrated in architecture, infrastructure, and landscape; to chronicle the City's heritage through the collection and preservation of monuments, artifacts, objects, and documents; to create a cultural legacy for future generations through the curation and exhibition of high quality Art; and to develop educational and cultural programs that will further the intent and purpose of the Public Art Program.
- (c) The requirements found in this Article are design standards based upon the aesthetic needs of the City and its communities and are not intended to be either an impact fee or a tax.
- (d) This Article shall constitute a land development regulation of the City and any amendment shall be subject to a review and recommendation of the Planning, Zoning Appeals Board ("PZAB") and the Art in Public Places Board established below.
- (e) All terms specified herein shall be as defined in the Miami 21 Code.

Sec. 62-655. Art in Public Places Board.

(a) Establishment.

There is hereby established a board to be known as the City's Art in Public Places Board ("AIPPB"). The AIPPB shall consist of nine (9) voting members and two (2) alternate members whose membership, meetings, duties, and other responsibilities are described below.

(b) Appointments; Qualifications.

1. No appointment shall be made by the City Commission to membership or alternate membership on the AIPPB until the City Clerk has given at least thirty (30) days' notice of the vacancies on the City's website and/or in a newspaper of general circulation in the City. The City Commission shall solicit and encourage the members of the public and professional and citizen organizations within the area having interest in and knowledge of the purpose and functions of the AIPPB to apply for appointment. At least five (5) days prior to the making of any appointment, the City Clerk shall publicly notice the list of names submitted and the names of candidates submitted by the City Commission, together with a short statement of the qualifications of each person, prepared and available for public inspection and consideration. No person shall be appointed to the AIPPB whose name and qualifications have not been made publicly available in the manner set out herein. In reaching a decision on an appointment, the City Commission shall give due consideration to the qualifications of the candidates.
2. Nomination and Appointment. Each City Commissioner shall appoint one (1) board member, the Mayor shall appoint one (1) member, and the City Commission at-large shall appoint three (3) at large members and two (2) alternate members subject to the criteria established herein. Appointees shall be persons in a position to represent the public interest, and no person shall be appointed having personal or private

- interests likely to conflict with the public interest. No person shall be appointed who has any interest in the profits or emoluments of any contract, job, work, or service for the City or is otherwise not qualified pursuant to the provisions of Chapter 2 of the City Code. Before making any appointment, the City Commission shall confirm that the person to be appointed has filed the statement required by Section 2-615 of the City Code.
3. Terms of appointment. The terms of appointment shall be the latter of those terms provided in Section 2-885 of the City Code.
4. Qualifications. It is intended that members and alternate members of the AIPPB be persons of knowledge, experience, mature judgment, and background; having ability and desire to act in the public interest; and representing, insofar as may be possible, the various special professional training, experience, and interests required to make informed and equitable decisions concerning development of an artistic, culturally enriching, and visually diverse physical environment. To that end, qualifications of members and alternate members shall be as follows:
- a. All members shall have an interest and knowledge of the visual and performing arts and the artistic development of the City.
- b. Eight (8) board members must be knowledgeable and have a Bachelor's, Master's, or Doctorate Degree from an accredited university or college in fine arts, art education, museum curation, architecture, art history, architectural history, urban planning, urban design, landscape architecture, interior design, graphic or product design, music, real estate development, construction management, or finance. Additionally, the following shall apply to the same eight (8) members:
- i. Five (5) members shall be chosen from the following fields: fine arts, art education, museum curation, architecture, art history, architectural history, urban planning, urban design, landscape architecture, interior design, and/or graphic or product design;
- ii. One (1) member shall be a professional artist; and
- iii. Two (2) members shall be from the following fields: finance, real estate development, and/or construction management.
- c. One (1) member and two (2) alternate members must have an interest in the visual and performing arts. Neither of these members is required to have a Bachelor's, Master's, or Doctorate Degree. One (1) alternate member shall be a representative of Miami-Dade County Public Schools. The Superintendent of Schools shall make a recommendation to the City Commission on the appointment of the alternate member.
5. Vacancies.
- a. Vacancies in the membership or alternate membership of the AIPPB shall be filled by the City Commission and Mayor by appointment, in the manner set forth herein and for the unexpired term of the member or alternate member affected. The City Commission may appoint an alternate member of the

board to a vacancy as a full member of the board without resorting to the procedural requirements of Section 62-655(b)(1) so long as the alternate member meets the qualifications of Section 62-655(b)(4)(c).

- b. The Executive Secretary of the AIPPB shall notify the City Clerk within ten (10) days after a vacancy occurs and the City Clerk shall promptly transmit such information to the City Commission for nomination and appointment in accordance with Section 62-655(b)(1).

6. Removal.

- a. Members and the alternate members of the AIPPB may be removed for cause by not less than three (3) affirmative votes of the City Commission.
- b. There is hereby established a point system. Each member, including alternate members, of the AIPPB who arrive after the beginning of the first agenda item or leaves before the termination of the last agenda item, at a regularly scheduled meeting of the AIPPB, shall receive one (1) point. Any member of the AIPPB who accumulates more than seven (7) points in one (1) calendar year shall be brought to the attention of the City Commission for its consideration of removal of the member.
- c. Notwithstanding Section 62-655(b)(6)(b) above, any member or alternate member of the AIPPB who is absent, for whatever reason, from more than three (3) or more meetings in one (1) calendar year shall be brought to the attention of the City Commission for consideration of removal of the member.

(c) Functions, Powers and Duties. The AIPPB, with the assistance and recommendations of the Planning Department, Public Art Division, and all other City departments, as necessary, shall have the functions, duties, and powers as follows:

- 1. To recommend the Public Art Program Guidelines and amendments to the Public Art Program Guidelines thereto to the City Commission;
- 2. To recommend the Public Art Master Plan and amendments to the Public Art Master Plan thereto to the City Commission;
- 3. To approve expenditures of the Public Art Fund as proposed by the City Manager or his/her designee;
- 4. To approve, approve with conditions, or deny proposed installations, dedications, or donations of Art, based on the Public Art Program Guidelines and the Public Art Master Plan; and
- 5. To act on any other Art in Public Places related matter as assigned by the City Commission.
- 6. Notwithstanding City Code Section 18-115, the AIPPB shall have the authority to accept donations of art in excess of \$25,000.00 in accordance with this Article.

(d) Proceedings of the Art in Public Places Board ("AIPPB").

1. Officers and voting. The AIPPB shall select a chairperson and a vice-chairperson for one (1) year terms from among its members and may create and fill such other officers as it may determine. The Planning Director or his/her designee shall attend all meetings of the AIPPB. The Office of Hearing Boards, or its successor, shall be the Executive Secretary of the AIPPB.
2. Rules of procedure. The AIPPB shall establish rules of procedure necessary for its governing and the conduct of its affairs, in keeping with the applicable provisions of Florida law, the City Charter, the City Code, and all applicable resolutions. Such rules of procedure shall be available in written form to persons appearing before the AIPPB and to the public upon request and should be on file with the City Clerk. For any quasi-judicial procedures, the provisions established in the Miami 21 Code, the Zoning Ordinance of the City of Miami, Florida, as amended ("Miami 21 Code"), shall control.
3. Meetings. The AIPPB shall hold at least one (1) regularly scheduled meeting each month, except the month of August. Other meetings may be set by the AIPPB, and additional meetings may be held at the call of the chairperson and at such other times as the AIPPB may determine. Meetings that are not regularly scheduled shall not be held without at least ten (10) days' written notice. If the agenda for a regularly scheduled meeting does not contain any items which require action by the AIPPB, the Executive Secretary for the AIPPB may cancel the meeting.
4. Quorum; public records. A majority of the members who have been appointed shall constitute a quorum. The Office of Hearing Boards shall keep minutes of board proceedings, showing the vote of each member or alternate member, if sitting for a member, or if absent or failing to vote under Section 62-655(d)(5) below, indicating such fact. It shall be the responsibility of the Office of Hearing Boards to handle all procedural activities for all public hearings held by the AIPPB, including the preparation of detailed minutes and official records of such hearings. The official records of such public hearings shall be filed with the City Clerk.
5. Disqualification of members or alternate members. The AIPPB members shall comply with Florida Statutes Chapter 112, the Miami-Dade County Code of Ethics, and the City Code.
6. All City departments and employees shall, under the direction of the City Manager, and upon request and within a reasonable time, furnish to the Public Art Division such available records or information as may be required of the AIPPB. The City Manager shall assign a member of the Public Works Department, Planning and Zoning Department, Capital Improvement Projects Office, Parks and Recreation Department, and Fire-Rescue Department, or their successors, to attend public hearings of the AIPPB and to advise the AIPPB when necessary, and to furnish information, reports, and recommendations upon request of the AIPPB.
7. The City Attorney, or his/her designee, shall act as counsel and provide legal services to the AIPPB.

8. The alternate members shall only vote in the event of a vacancy or absence of a regular member.

Sec. 62-656. City Commission.

The City Commission, in addition to its duties and obligations under the City Charter, the City Code, and other applicable laws, shall have the following duties specifically in regard to the Public Art Program:

- (a) To appoint members to the AIPPB, as set forth in this Article;
- (b) To approve the Public Art Program Guidelines and amendments to the Public Art Program Guidelines upon recommendation of the AIPPB;
- (c) To approve the Public Art Master Plan and amendments to the Public Art Master Plan upon recommendation of the AIPPB; and
- (d) To hear appeals of decisions of the AIPPB related to installation, dedication, and donation of Art.

Sec. 62-657. Conflicts of Interest.

No member of the AIPPB shall have his/her work of Art considered or approved by the AIPPB during his/her term of service on the AIPPB or for one (1) year thereafter.

Sec. 62-658. Selections of works of Art.

The AIPPB shall establish procedures and criteria for the commissioning, selection, and acquisition of Art to be acquired using the resources available within the Public Art Fund, and in accordance with the criteria and standards set forth in the adopted Public Art Master Plan and the Public Art Program Guidelines. The City Manager, or his/her designee, may only acquire each piece of Art upon affirmative vote of the majority of the AIPPB. The City Manager, or his/her designee, will negotiate appropriate contracts to acquire, insure, and maintain the Art using available resources within the Public Art Fund and the contract will be executed by the City Manager subject to review and approval of the City Attorney.

- (a) Selection Process. The AIPPB shall establish procedures for selecting Art Works to be purchased from the resources of the City's Public Arts Fund. Those procedures can include the following:
 - (1) Open competition;
 - (2) Limited competition;
 - (3) Invitation;
 - (4) Direct purchase;
 - (5) Donation; or
 - (6) Any combination of the above.
- (b) Selection criteria. In the selection process, the AIPPB shall consider the following:
 - (1) Permanent and temporary works of Art shall be located in areas where residents and visitors live and congregate and shall be Publicly Accessible and/or visible

from public property or right-of-way (maximum visual accessibility to pedestrian or vehicular traffic);

- (2) Location in areas used by tourists, including the waterfront, parks, thoroughfares, and at public or governmental facilities shall be preferred;
- (3) The inherently intrusive nature of public Art on the lives of those frequenting a public place. Artworks reflecting enduring artistic concepts, not transitory ones, should be sought;
- (4) The cultural and ethnic diversity of the City and South Florida without deviation from a standard of excellence;
- (5) The appropriateness to the site, permanence of the work in light of environmental conditions at the site, maintenance requirements, quality of the work, likelihood that the artist can successfully complete the work within the available funding, diversity of works already acquired by the City, and diversity of the artists whose work has been acquired by the City;
- (6) If the artwork too closely resembles a business logo or sign, has any commercial message or purpose, contains adult content as defined in the Miami 21 Code, and should, therefore, be rejected;
- (7) Any other criteria set forth in the Public Art Program Guidelines as amended from time to time;
- (8) Exhibition and sales history of the artist, as well as works of Art in public collections and previous public Art purchases or commissions;
- (9) The maintenance and insurance expense of the Art;
- (10) The public health, safety, and welfare;
- (11) The ability to safely secure the Art against high wind, inclement weather, or other Acts of God; and
- (12) Whether the Art may be reasonably maintained to last for a minimum Life Cycle of twenty-five (25) years.

Sec. 62-659. Reserve

Sec. 62-660. Reserve

Sec. 62-661. Creation of Public Art Fund.

There is hereby created within the City a trust fund to be known as the City of Miami Public Art Fund. This Public Art Fund shall be maintained by the City and shall be used for the acquisition, installation, improvement, maintenance, and insurance of Art, arts

education programming, grants, and administrative costs of the Public Art Program as follows:

- (a) All monies received by the City pursuant to the requirements of the Public Art Program or from endowments, gifts, or donations to the City designated for public Art shall be placed in the Public Art Fund. All monies within the Public Art Fund shall be deposited, invested, expended, and accounted for as follows:
- (1) All monies received shall be deposited into the Public Art Fund and shall not be commingled with non-public Art related revenues of the City. All monies within the Public Art Fund shall be expended solely for the purpose and intent of the Public Art Program. Any interest income earned by the Public Art Fund shall be expended or invested only for the purpose for which the money was originally accepted, collected, or received.
 - (2) The Public Art Fund shall be used for expenses associated with the selection, commissioning, acquisition, transportation, maintenance, repair, restoration, rehabilitation, appraisal, removal, insurance of Art, development of education programming, community outreach, or advocacy with an emphasis in the visual and performing arts, grants, and administrative costs for the Public Art Program. Once monies intended for the purpose of satisfying this Article are deposited into the Public Art Fund, the monies from separate, different Development Projects may be comingled. Monies within the Public Art Fund can be dispersed, expended, invested, or granted in accordance with this Article.
 - (3) Ten percent (10%) of the fees collected annually shall be allocated towards the restoration or rehabilitation of either publicly or privately owned Historic Resources that are individually designated or contributing structures within a locally designated historic district or towards public improvements within a historic district as identified in the Public Art Master Plan. Fees allocated but not expended within a fiscal year shall be rolled over to the next fiscal year and allocated for the same purposes. Privately owned Historic Resources shall be allocated monies from the Public Art Fund through a grant application process as described in the Public Art Master Plan. The Public Art Division will review all grant applications in consultation with the Historic Preservation Office and the Historic and Environmental Preservation Board. The Public Art Division and the Historic Preservation Office in consultation with the Historic and Environmental Preservation Board shall have the discretion to recommend to the AIPPB for final decision and expenditure of funds. Restoration or rehabilitation shall be in accordance with Chapter 23 and subject to the approval of a Certificate of Appropriateness by the Historic and Environmental Preservation Board.
 - (4) Five percent (5%) of the fees collected annually shall be allocated towards cultural, education, community outreach, or advocacy purposes and may include social practice art, all designed to promote the visual and performing arts such as but not limited to youth based programming involving the City's Arts and Entertainment Council, public academic institutions, or non-profit organizations. Fees allocated but not expended within a fiscal year shall be rolled over to the next fiscal year and allocated for the same purposes. The City's Arts and Entertainment Council, public academic institutions, or non-

profit organizations shall be allocated monies from the Public Art Fund through a grant application process as described in the Public Art Master Plan. The Public Art Division will review all grant applications and shall have the discretion to recommend approval or denial of grant applications to the AIPPB for expenditure of funds in accordance with the Program Guidelines.

- (5) Fifteen percent (15%) of the fees collected annually shall be allocated towards operating and administrative costs associated with the Public Art Program, including but not limited to, staffing, marketing, programming, training, and outside consulting. Training shall be directly related to the implementation of this Article and Article 11 of the Miami 21 Code. Fees allocated but not expended within a fiscal year shall be rolled over to the next fiscal year and allocated for the same purposes. The City Manager or his/her designee shall have the authority to allocate and expend funds in accordance with this subsection (5).
- (6) Seventy percent (70%) of the fees collected annually shall be allocated towards the commissioning, selection, acquisition, display, maintenance, repair, restoration, rehabilitation, insurance of City-owned Art, transportation, installation, removal, appraisal, collection, and exhibition of high-quality Art in accordance with the Public Art Master Plan and the Public Art Program Guidelines. Fees allocated but not expended within a fiscal year shall be rolled over to the next fiscal year and allocated for the same purposes. For all expenditures in excess of \$25,000.00 pursuant to this subsection (6), the City Manager or his/her designee shall be the applicant to the AIPPB in accordance with this Article.
- (7) If tangible property purchased with monies from the Public Art Fund is subsequently sold, the proceeds from the sale shall be returned to the Public Art Fund.

All funds shall be expended for public and municipal purposes in accordance with the terms of this Article and Article 11 of the Miami 21 Code.

Sec. 62-662. Ownership and maintenance of artwork placed on site.

- (a) Ownership of all Art acquired by the City pursuant to the requirements of this Article shall be vested in the City, which shall retain title to each work of Art.
- (b) Ownership of all Art donated to the City pursuant to the requirements of this Article shall be donated and titled to the City upon approval of the AIPPB.
- (c) Stolen or illegally removed Art, or Art that is deemed destroyed by the Public Art Division in consultation with an independent Art appraiser, must be either:
- (1) Replaced by the property owner within one hundred twenty (120) days. Replaced Art shall be reviewed and approved by the AIPPB subject to the criteria set forth in this Article; or
- (2) The Public Art Fee required under this Article and the Miami 21 Code, based upon the current fee schedule and the current fair market value of the building, structure or

improvement for which the Art was required, as determined by an appraiser, must be paid within thirty (30) days.

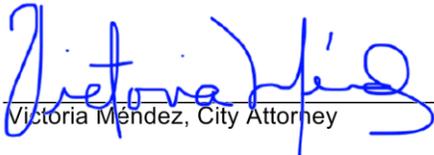
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Section 3. All rights, actions, proceedings of the City, including the City Commissioners, the City Manager, or any of its departments, boards, or officers undertaken pursuant to the existing Code provisions, shall be enforced, continued, or completed, in all respects, as though begun or executed hereunder.

Section 4. 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 5. This Ordinance shall become effective immediately after final reading and adoption thereof.²

APPROVED AS TO FORM AND CORRECTNESS:



Victoria Méndez, 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.