

**ARTICLE 8.5**      **PUBLIC ARTS PROGRAM**    [Enacted by Ord. 77-04  
2/1/05]

**Section 8.5.1**    **Establishment of Public Arts Program:**

(A) **Purpose:** The City Commission desires to establish a Public Arts Program. The City desires to use part of the Capital Improvement Project dollars to incorporate art in certain public projects.

(B) **Appropriation of Capital Improvement Project (CIP) Funds:**

(1) The City will appropriate 1.5% of the total eligible construction costs to be used for artist design services and for the selection, acquisition and display of artworks, and for the administration of the public art program or as otherwise appropriated in the City budget. Eligible appropriations include appropriations for capital improvement projects, including eligible bond projects, eligible grant-funded projects, other eligible capital projects funded from other sources, but excluding appropriations for underground infrastructure improvements, which include, but are not limited to water mains, sewer main, storm drainage, wastewater or any other underground utility. The involvement of public art in a capital improvement project is optional for capital projects of less than two hundred thousand dollars (\$200,000.00); however, 1.5% of the cost of the projects will be retained for public art and these funds will be pooled for other art projects or as otherwise appropriated in the City budget. If the funding source specifically restricts the use of the monies, then that portion of the funding shall not be included for the basis for the art fee. **[Amd. Ord. 12-12 3/20/12]**

(2) Notwithstanding the foregoing, funds appropriated for one capital improvement project, but not deemed necessary or appropriate by the City Commission in whole or in part for that project, may be expended on other public art projects approved by the City Commission, subject to bond restrictions, legal or grant restrictions. The monies appropriated under this ordinance may be used for artist design services, for the development of design concepts and models, for the selection, acquisition, purchase, commissioning, placement, installation, exhibition, maintenance, and display of artworks. Artworks may be temporary or permanent, may be integral to the architecture or may be incorporated into the capital improvement project.

(C) **Ownership and Maintenance:**

(1) The City will own all the rights to the art produced under the Public Arts Program, except as set forth in paragraphs 4 and 5 below, and subject to the provisions of the Visual Artists Rights Act of 1990. All contracts with artists and all art purchases will require the artist to waive the following restrictions: **[Amd. Ord. 03-09 1/20/09]**

## SECTION 8.5.1 (C) (1) (i)

- (i) Photographic reproduction rights;
- (ii) Right to remove/relocate art;
- (iii) Right to repair art in case of emergency.

Artist will retain the copyright and the right to be notified if the work is to be destroyed, or modified or radically repaired on a nonemergency basis.

(2) City will retain ownership of proposal models or drawings of commissioned art.

(3) Maintenance may be the responsibility of the City. **[Amd. Ord. 13-07 3/20/07]**

(4) If the City contributes funds for art that is placed on private property and does not hire the artist to perform the work, paragraph (1) above shall not apply. If the City hires the artist to perform the work on private property then paragraph (1) shall apply. However, if the City contributes funds for an art project that is located on private property, an agreement must be executed between the City and the property owner that sets forth the following: **[Amd. Ord. 13-07 3/20/07]**

- Who will maintain the artwork;
- The standard in which it will be maintained;
- What rights, if any, that the City or some other third party will have regarding access to the artwork;
- What remedies the City may have if the property owner fails to maintain the artwork in the manner set forth in the agreement;
- The location of the artwork and requirements that nothing may be placed in front of the artwork to shield its view from the public;
- The rights the public has to view or access to the artwork;
- The time period in which the artwork will remain at the location set forth in the agreement and provisions for reimbursement of city funds, if required, if the artwork is removed prior to that time period;
- Once the required time period for the artwork to remain on the property, as set forth in the agreement, has expired and if the artwork is owned by the City, the City shall remove the artwork; if the artwork is not owned by the City, the City will not be responsible for its removal;
- Ownership of the artwork.

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(5) The City may contribute funds, for art located on public or private property, to an entity that is not the owner of the property but is developing artwork for the property. If the City so chooses to contribute funds there shall be an agreement between the City and the entity receiving the funds, approved by the City Attorney, that shall include, but not be limited to, that the art shall be visible by the public. **[Amd. Ord. 03-09 1/20/09]**

### **Section 8.5.2      Public Art Advisory Board:**

(A) The Public Art Advisory Board is hereby established as an advisory body to the City Commission pursuant to the provisions set forth herein and shall render an advisory opinion to City Commission regarding, but not limited to, the following:

- (1) The suitability of the construction project as a location for works of art;
- (2) The nature of the works of art which are most appropriate for the construction project; and
- (3) The best method for securing the recommended works of art.

(B) The Public Art Advisory Board is hereby created for the purpose of advising and making recommendations to the City Commission with respect to public art policy and related issues including, but not limited to, the selection, construction, placement and/or funding of public art in/on City right-of-way, City owned property and private property where an agreement, acceptable to the City, has been executed regarding the art and the art is clearly visible by the public. The Advisory Board, when making its recommendation, shall consider the following guidelines: **[Amd. Ord. 13-07 3/20/07]**

- (1) Whether the proposed public art conforms to the definition of public art;
- (2) Whether the proposed public art is compatible with the neighborhood and not injurious to the neighborhood or otherwise detrimental to the public welfare;
- (3) Whether the proposed public art presents a safety hazard to the public;
- (4) Whether the proposed public art is of exceptional quality and enduring value;
- (5) Whether the proposed public art serves to further the City's goal of promoting cultural diversity;
- (6) Whether the proposed public art is appropriate to the site;

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(7) Whether the proposed public art should be installed at the proposed location on a site or at a different location;

(8) Whether the proposed public art requires extraordinary maintenance, such as any special servicing due to periodic adjustment, repairing, or repair or replacement of moving parts.

(C) The Public Art Advisory Board shall consist of seven (7) members. Three seats on the board must be filled with either an artist, architect, landscape architect or engineer. The appointing body shall endeavor to appoint as many disciplines as possible to the board. Lay persons of knowledge, experience and judgment who have an interest in public art shall make up the balance of the board. The City Commission shall appoint all members of the Public Art Advisory Board.

(D) The members of the Public Art Advisory Board shall serve for terms of two (2) years, except that the members of the first board to serve shall be appointed so that three (3) members shall serve one (1) year terms and four (4) members shall serve two (2) year terms. It is further provided that no member may serve more than two successive terms on the Public Art Advisory Board.

(E) The Public Art Advisory Board shall make recommendations to the City Commission regarding constructing, placing or installing public art into CIP projects as well as making recommendations to the City Commission for the funding or placing of public art on private property, where such art is clearly visible by the public and the City has obtained an agreement for the funding or placement of such art with the property owner. **[Amd. Ord. 13-07 3/20/07]**

(F) The Public Art Advisory Board shall be organized and shall operate as follows:

(1) The Public Art Advisory Board shall elect a Chairperson and Vice-Chairperson to preside at its meetings and any other officers the board may deem necessary.

(2) The Public Art Advisory Board shall hold meetings on a regular basis at least once monthly, if necessary, which meetings shall be open to the public. Minutes shall be kept of all such meetings, and any special meetings, with copies of said minutes and any other reports to be transmitted to the City Commission and the City Manager.

(3) The Public Art Advisory Board shall have technical and logistical support provided as designated by the City Manager.

(4) The Public Art Advisory Board shall review and make recommendations on all CIP projects, above \$200,000.00, (it may review, in its discretion, CIP projects under \$200,000.00), to the City Commission.

## **SECTION 8.5.2 (F) (5)**

(5) The Public Art Advisory Board shall be subject to the provisions of Chapter 32, "Departments, Boards and Commissions", of the Code of Ordinances and Article 2.2, "Establishment of Boards Having Responsibilities for Land Development Regulations", of the Land Development Regulations of the of the Code of Ordinances of the City of Delray Beach, except as provided is Section 8.5.