

Chapter 59 - PUBLIC ART REGULATIONS

Sec. 59-1. - Title.

This chapter shall be known and may be cited as the "Public Art Regulations" of the City of North Port, Florida.

Sec. 59-2. - Relationship to Comprehensive Plan.

The Public Art regulations in this chapter implement the Goal 2, Objective 2 and Policy 2.5.6 and Objective 4 of the Future Land Use Element of the City of North Port Comprehensive Plan which states respectively: "To promote an intensive mixture of employment, goods and services, and residential uses in Activity Centers; to promote a wide variety of residential and employment alternatives; to achieve the highest standards of quality in the urban environment; and to provide a balanced and healthy tax base," and "The City shall continue to amend its Land Development Code to provide up-to-date standards, including intensity and density standards, urban design standards, public art, internal/external connectivity, architectural styles, site design standards, mixture of uses, civic/public facilities, pedestrian friendly design standards, amenities and uses, and gateway criteria for Activity Centers to achieve the desired and economically feasible mixture of land uses. The City may support changes in State legislation that create new funding sources which may be appropriate to fund projects within any activity center."

Policy 2.5.6: AC #5, "Complete a pattern book which will provide design guidelines within AC #5. This book shall illustrate pedestrian features such as sidewalks, street trees, lighting, and benches. A particular theme would be in place that would be used in choices of colors and public art."

Objective 4: "Support the City's diversity of neighborhoods by implementing targeted development and planning strategies for neighborhoods. This can be accomplished through methods including the establishment of City-wide and neighborhood specific policies addressing development and redevelopment efforts, safety, stability, property values, mobility and aesthetic controls including street trees, public art, and entry features."

Sec. 59-3. - Intent.

The intent of this chapter is to ensure the commitment of the City to the aesthetic enrichment of the community through the private and public acquisition of works of art so that citizens and visitors to the City will be afforded an opportunity to enjoy and appreciate works of art. The requirements of this chapter shall be construed to promote the aesthetic values of the entire community, to encourage the preservation and protection of works of art. These provisions are consistent with and implement Florida Statute 187.201(18)b1, 2, and 4. The legislative finding is that works of art, architectural enhancement and special landscape treatments must be an integral part of the City of North Port, if the City is to exemplify the quality of life embodied in the Comprehensive Plan, Planning Framework, Policy 3 that states "The City should develop design guidelines which will guide development and define the individual character of each activity center."

Sec. 59-4. - Applicability.

These regulations shall apply to all new developments in all Activity Centers within the City of North Port and all petitions filed as Development Master Plan (DMP), Subdivision Construction Plan (SCP) or Major Site Plan (MAS) that are located within Activity Centers, and apply to the City for development to construct or make improvements.

Sec. 59-5. - General requirements.

- A. Existing developments shall be required to adhere to these public art regulations pursuant to subsection (B) below if the existing development is substantially improved or enlarged.
- B. All new developments that exceed two hundred fifty thousand dollars (\$250,000.00) in construction value to a multi-family, mixed-use or commercial building shall be required to do one (1) of the following:
 - (1) Contribute an amount equal to one-half (½) of one percent (1%) of the first fifty million dollars (\$50,000,000.00) in construction cost for the project for a maximum contribution of two hundred fifty thousand dollars (\$250,000.00) to the City Public Art Account.
 - (a) When a project is to be constructed in phases, the maximum contribution pursuant to this section shall be two hundred fifty thousand dollars (\$250,000.00) for the entire phased project.
 - (2) Provide public art or public works of art on the development site provided that:
 - (a) The value of such public art or public works of art shall be equal to or greater than one-half (½) of one percent (1%) of the construction costs for the project if the construction costs are less than fifty million dollars (\$50,000,000.00). The value of such public art or works of art shall be at least two hundred fifty thousand dollars (\$250,000.00) if construction costs are fifty million dollars (\$50,000,000.00) or more; and
 - (b) Such public art or public work of art shall be approved by the City Staff prior to placement on the site. The City Staff shall be authorized to approve proposed public art or public work of art prior to its fabrication or acquisition. Nothing herein shall be construed to require that public art or a public works of art be in existence and subject to examination at the time of its approval by the City Staff.
 - (c) Provided, however, that buildings or portions of buildings that include attainable housing units as defined by the City Commission, shall not be required to conform to the requirements of this section.
 - (d) Provided, however, that building permits for individual housing condominium units shall not be required to conform to the requirements of this section.
 - (e) Provided, however, that the County shall not be required to conform to the requirements of this section so long as the County provides public art, upon the construction of its public buildings, in conformity with the County public art program and so long as the public art proposed by the County is approved by the Board of County Commissioners after receiving and considering the comments and recommendations of the City Public Art Committee.
 - (f) All works of public art located on private parcels shall be installed outside of any and all buildings and completely visible from the adjacent public right-of-way.
 - (3) To provide public art or public works of art in a public place on a lot or parcel other than the lot or parcel proposed for development provided that:
 - (a) The value of such public art or works of art shall be equal to or greater than one-half (½) of one percent (1%) of the construction costs if the construction costs are less than fifty million dollars

(\$50,000,000.00). The value of such public art or works of art shall be at least two hundred fifty thousand dollars (\$250,000.00) if construction costs are fifty million dollars (\$50,000,000.00) or more; and

- (b) Such public art or public work of art is approved by City Staff or City Commission, prior to placement on the site. The site for the placement of public art shall be approved by the City Commission pursuant to paragraph (c) below. The City Staff shall be authorized to approve proposed public art or public works of art prior to its fabrication or acquisition. Nothing herein shall be construed to require that public art or a public work of art be in existence and subject to examination at the time of its approval by the City.
- (c) Such public art or public works of art is located in a public place off the development site which is approved by the City Commission after receiving the recommendation of the Public Art Committee.
- (4) All works of art provided in accordance with subsections (2) and (3) above and located on private property shall be and remain the sole property of the private land owner. The private property owner shall also have the sole responsibility for maintenance and insurance of such works of art. All works of art provided in accordance with subsection (3) above and located on city owned property shall be and remain the sole property of the city.
- (5) Any property owner may choose to dedicate the public art or public works of art to the City, the land upon which the art is place shall also be dedicated to the City. The dedication shall be approved by the City Commission prior to the City taking over maintenance and insurance.
 - (a) If a property owner chooses to dedicate the public art or public works of art to the City, an access easement shall be granted to the City.
 - (b) The City has the right to accept or reject the dedication of public art and the land upon which the art is placed.
 - (c) If the City agrees to accept the dedication of public art and the land upon which the art is placed, the property owner shall transfer the property and title to the land and the public art to the City by legal apparatus.
- (6) The above requirements shall not be applied to public buildings in the event the source of funding or other statute or regulation applicable to the development project prohibits art as an object of expenditure of funds.

Sec. 59-6. - Removal or replacement.

Removal or replacement of any approved work of art is prohibited. After a work of art has been approved by the City Staff and/or City Commission in accordance with Sec. 59-5, such work of art shall be retained on site in its approved location and condition and shall not be removed without prior approval of the City Staff and/or City Commission of a reasonably equivalent replacement work of art.

Sec. 59-7. - Additional work of public art.

Additional works of art on the same lot or parcel may be permitted after review and approval by City Staff and/or City Commission. After public art which meets the requirements of this division has been installed on a development site, nothing herein shall be construed to prohibit the installation and placement of additional works of art on site, if all

other regulations of this Unified Land Development Code are met.

Sec. 59-8. - Public art account.

There is hereby created a public art account which shall consist of all contributions received pursuant to Sec. 59-5(B) (1), cash grants to the city for public art projects from governmental or private sources, and all other funds donated to the City for the provision of public art by private parties. The public art account shall be used solely for the selection, acquisition, transportation, installation, maintenance and promotion of works of art to be displayed in the City and all expenditures from the account shall be approved by the City Commission after the recommendation of City Staff. Any works of art purchased with such funds shall be and remain the sole property of the City. The public art account shall be kept in an interest bearing account, separate from general revenues and all accrued interest shall be deposited in the public art account. The cost of insurance for public art located on property owned by the city shall be paid from the city's general fund.

Sec. 59-9. - Application for certificate of occupancy.

Developments required to provide public art in accordance with this article shall:

- (1) If the developer chooses the option of a contribution to the art account, the property owner or developer shall make the contribution as provided for in Sec. 59-5(B)(1), prior to the issuance of a certificate of occupancy.
- (2) If the public art has not been created, produced or rendered, then at the same time as the application for a certificate of occupancy is submitted to the City, the property owner or developer shall submit to City Staff:
 - (a) A written description, of the process by which the artist(s) were or will be selected;
 - (b) A proposed schedule for the creation, completion and installation of the approved art at the development site;
 - (c) The location where the public art is to be installed;
 - (d) Deposit with the City Finance Department in the form of cash or cashier's check the amount of one hundred fifteen percent (115%) of the value of the public art, as required in Sec. 59-5(B)(2) or (3).
- (3) The application for a certificate of occupancy shall certify that such submittal to the City and the required deposit has been made. Either prior to or subsequent to the issuance of the certificate of occupancy, the City Staff shall review all documentation submitted by the property owner or developer, including photographic examples of existing work of the proposed artist and such other documentary material as may be requested by the City Staff. The City Staff shall approve, approve with conditions or deny the installation of the public art according to the standards set forth in Sec. 59-10 and shall submit a report to the applicant and City Commission if applicable.
- (4) Upon installation, the City shall certify that the art work is properly installed according to the plans and specifications previously submitted and approved.
- (5) The City shall not issue a certificate of occupancy until the public art is properly installed, or an extension of time for the installation has been granted by the department responsible for land development services, or the funds deposited with the Finance Department have been forfeited to the City, as provided

for in this section.

- (6) If the public art has been created, produced or rendered, concurrently with an application for a building permit, the property owner or developer shall:
 - (a) Submit graphic, photographic or architectural renderings;
 - (b) A description of the proposed public art which is to be installed at the development site or other public place;
 - (c) The location where the public art is to be installed; and
 - (d) An independent appraisal of the value of the art work, to the City Staff or other evidence of value.
- (7) The application for a certificate of occupancy shall certify that such submittal to the City Staff has been made. The cost of the appraisal shall be the sole responsibility of the property owner or the developer.
- (8) Prior to the issuance of a certificate of occupancy, the City Staff shall approve, approve with conditions or deny the installation of the public art according to the standards set forth in Sec. 59-10.
 - (a) No building permit shall be issued prior to the approval of the public art by the City Staff and/or City Commission.
- (9) Upon installation, the City shall certify that the art work is properly installed according to the plans and specifications previously submitted and approved. The City shall not issue a certification of occupancy until the public art is properly installed or an extension of the time up to one (1) year for the installation has been granted by the department responsible for land development services. Any such extension shall be conditioned upon the property owner or developer depositing with the City Finance Department, in the form of cash or cashier's check, the amount of one hundred fifteen percent (115%) of the value of the public art, as required in Sec. 59-5(B)(2) or (3).
- (10) Funds of the property owner or developer deposited with the finance department, as provided for in Sec. 59-5(B)(2) or (3), shall be released when the City certifies to the finance director that the public art has been installed as required.
- (11) If the public art has not been installed as required herein and any extensions for such installation, if any, have elapsed, the City shall petition the City Commission for authorization to forfeit all monies deposited with the finance department. The City Commission shall order such deposit forfeited by the property owner or developer, if it determines, after notice to the property owner or developer, that the public art was not installed as required by this section.

Sec. 59-10. - Standards for approval.

A. The City Staff and/or City Commission shall be governed by the following mandatory and non-mandatory criteria in the exercise of their discretion to approve, approve with conditions or deny the proposed installation of public art as required by this division. The City Staff and/or City Commission shall find that each element of the mandatory criteria has been satisfied. In addition, the City Staff shall determine whether or not the proposed installation of the public art, on balance, comports generally with the elements of the non-mandatory criteria.

(1) Mandatory criteria.

- (a) The proposed public art conforms to the definition of public art as set forth in Chapter 61 of this

Unified Land Development Code;

- (b) The proposed public art meets or exceeds the value requirements of Sec. 59-5;
 - (c) The proposed public art is compatible with the neighborhood and not injurious to the neighborhood or otherwise detrimental to the public welfare;
 - (d) The proposed public art does not present a safety hazard to the public;
 - (e) The proposed public art serves to further the City's goal of promoting cultural diversity;
 - (f) The proposed public art enhances the intent of the zoning district where it is to be located;
 - (g) The proposed public art is supportive of the City's vision and goals;
 - (h) The propose public art is appropriate to the site;
 - (i) Signs or other encroachments are or should be set back a certain distance from the proposed public art and adhere to the appropriate sections of this Unified Land Development Code.
- (2) Non-mandatory criteria.
- (a) The proposed public art is of exceptional quality and enduring value;
 - (b) The proposed public art serves to further the City's goal of promoting a broad range of artistic styles and media from traditional to contemporary works of art in order to maintain an overall balance within the city;
 - (c) The proposed public art should be installed at the proposed location on a site or at a different location;
 - (d) Staff shall consider if the proposed public art requires extraordinary maintenance, such as any special servicing due to periodic adjustment, repainting, or repair or replacement of moving parts;

Sec. 59-11. - Procedures.

Public art shall be provided as part of pedestrian amenities and it shall be the responsibility of the developer to submit plans for public art for final approval by the City Staff and/or City Commission.

- A. The developer shall include plans in accordance with the regulations which apply to the specific type of development and shall include the integration of type and location of public art to be reviewed by the City Staff and/or City Commission.
- B. The developer shall submit three (3) pieces of art for consideration by the City Staff and/or City Commission.

Sec. 59-12. - Local preference.

Preference shall be given to a "local artists." Proposers desiring to receive preference as a local artist will be required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a local artist. Any proposer who fails to submit sufficient documentation with their proposal shall not be granted local preference consideration.

- A. "Local artist" means an artist that maintains a physical business or personal address located within the limits of Sarasota County, Charlotte County or Desoto County for a period of six (6) months or more before the proposal submission date, from which the artist operates or performs business.

(1) Post office boxes may not be used to establish a physical business address.

B. "North Port local artist" means a local artist that has maintained a primary physical business or personal address located within the limits of the City for a period of six (6) months or more before the proposal submission date, from which the proposer operates or performs business.

(1) Post office boxes may not be used to establish a physical business address.

C. If the art work submitted is between a local artist and a non-local artist, the local artist shall receive the preference. If the art work submitted is between two (2) North Port local artists and both are acceptable in accordance with the mandatory and non-mandatory criteria, the property owner may choose the art work to be installed.

Sec. 59-13. - Interpretation.

Interpretations of this chapter shall be made by the City Manager or designee.

Sec. 59-14. - Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal or State regulations, law or statute, the most restrictive or imposing the higher standards shall apply.

Sec. 59-15. - Appeals.

A. All decisions of the City Staff concerning public art and placement made pursuant to this section shall be appealed to the City Commission within thirty (30) days of the oral rendering of such decision.

B. Any person aggrieved by the City Manager or designee's interpretation of this chapter may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the property unbuildable. The granting of any appeal shall not be in conflict with State Statutes. The Zoning Board of Appeals' decision, may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

(1) Applications for an appeal shall be filed pursuant to Sec. 1-10.

Sec. 59-16. - Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.