

ORDINANCE NO. 7489-05

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, AMENDING THE COMMUNITY DEVELOPMENT CODE; CREATING ARTICLE 3, DIVISION 24, COMMUNITY DEVELOPMENT CODE, CONSISTING OF SECTIONS 3-2401 THROUGH 3-2407; ESTABLISHING A PUBLIC ART AND DESIGN PROGRAM; PROVIDING DEFINITIONS; ESTABLISHING THAT PUBLIC ART AND DESIGN FUNDS ARE TO BE USED FOR PUBLIC ART PURPOSES; AUTHORIZING THE ALLOCATION OF CERTAIN FUNDS IN THE CONSTRUCTION AND RENOVATION OF ELIGIBLE CITY BUILDING PROJECTS AND ELIGIBLE PRIVATE DEVELOPMENTS; PROVIDING FOR OWNERSHIP AND MAINTENANCE; CREATING ARTICLE 5, DIVISION 11, CONSISTING OF SECTIONS 5-1101 THROUGH 5-1105; ESTABLISHING A PUBLIC ART AND DESIGN BOARD TO ADMINISTER THE PROGRAM; PROVIDING AN EFFECTIVE DATE.

WHEREAS, over three hundred communities throughout the United States have implemented public art programs committing to the placement of public art in urban environments; and

WHEREAS, the City of Clearwater ("City") recognizes that a superior and diverse aesthetic character of the City's built environment is vital to the quality of the life of its citizens, the economic success of its businesses, an attraction for visitors and a benefit to tourism; and that a public art and design program would contribute to the aesthetic enhancement of the community; and

WHEREAS, the City shall create a public art and design program that reflects and enhances the City's diversity, character and heritage through the artworks and designs by artists integrated in the architecture, infrastructure and landscape throughout Clearwater on public and private property; and

WHEREAS, the City's public art & design program shall promote and unite the community through art; bring public art and art education to the entire community; create public arts community partnerships linking across lines of race, ethnicity, age, gender, profession, and economic levels; and

WHEREAS, the Community Development Board of the City of Clearwater has reviewed, and made a recommendation regarding adoption of this Ordinance, and the City Council of the City of Clearwater has held public hearings and deems it to be in the public's interest to promote the welfare and advancement of the community through the creation of the Public Art and Design Program; and

WHEREAS, it is the purpose of the City of Clearwater to promote the health, safety, general welfare and quality of life in the City; to guide the orderly growth and development of the City; to establish rules of procedure for land development approvals; to enhance the character of the City and the preservation of neighborhoods; to make the beautification of the City a matter of the highest priority; to require that existing and future uses and structures in the City are attractive and well-maintained to the maximum extent permitted by law; and to enhance the quality of life of all residents and property owners of the City through the City's Development Code and Comprehensive Plan; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF CLEARWATER, FLORIDA:

Section 1. Division 24, Community Development Code, consisting of Sections 3-2401 through 3-2407, is hereby created to read as follows:

Section 3-2401. Public Art and Design Program.

The City of Clearwater recognizes that providing for public art and enhancing the appearance of buildings and spaces provides benefits to the community by expanding the historical, cultural, and creative knowledge of citizens. In keeping with its concern for the arts and quality of its environment, not less of 1% of the Total Construction Budget of each eligible City capital project shall be allocated as the City Public Art Contribution for the incorporation of public works of art. Further, eligible private development projects shall also allocate not less than 1% of the Aggregate Job Value for on-site public art to enhance the visual appeal of the project and City. An in-lieu-of contribution to the City's Public Art and Design Program, as provided for herein, will also satisfy this requirement.

Section 3-2402. Definitions. The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Division, except where the context clearly indicates a different meaning:

AFFORDABLE HOUSING means housing development, which is supported in whole or part with funds from the Housing Division of the City's Economic Development and Housing Department.

AGGREGATE JOB VALUE means the total of all construction costs associated with a particular site plan project regardless of the number of permits associated with the project, or whether it is a phased project. Construction costs include all labor, structural materials, plumbing, electrical, mechanical, infrastructure, and site work.

ANNUAL PUBLIC ART AND DESIGN PLAN means an itemized and prioritized list of anticipated art projects including the objectives, design approach, budgets and scheduling for the upcoming year. The annual public art and design program shall be developed by the public art and design board in consultation with City staff and shall be presented to the City Council for approval during its annual budget review process.

ARTIST OR PROFESSIONAL ARTIST means a practicing fine artist, generally recognized by critics and peers as a professional of serious intent and ability. Indications of a person's status as a professional artist include, but are not limited to, income realized through the sole commission of artwork, frequent or consistent art exhibitions, placement of artwork in public institutions or museums, receipt of honors and awards, and training in the arts.

ARTWORK OR WORKS OF ART means tangible creations by artists exhibiting the highest quality of skill and aesthetic principles and includes all forms of visual art conceived in any medium, material, or combination thereof, including paintings, sculptures, statues, engravings, carvings, frescos, stained glass, mosaics, mobiles, tapestries, murals, photographs, video projections, digital images, bas-relief, high relief, fountains, kinetic, functional furnishings such as artist designed seating and pavers,

architectural elements designed by an artist, and artist designed landforms or landscape elements.

ELIGIBLE CITY CAPITAL IMPROVEMENT PROJECTS means projects included in the approved Clearwater Capital Improvement Program, commencing with the City's Fiscal Year 2006/07 budget, for any new facility construction or renovation projects equal to or greater than \$500,000 including but not limited to buildings, greenways, roads, parking facilities, bridges or other above-ground projects. Specifically excluded from this definition are street resurfacing, major drainage, wastewater, below-grade utilities, annual repair and replacement projects and any other project where the funding source is restricted from being used for the purchase of public art.

PUBLICLY ACCESSIBLE means locations that are open to the general public during normal business hours and visible by the general public at all times.

PUBLIC ART AND DESIGN BOARD means the entity appointed by the City Council to establish policy and administer the Public Art and Design Program.

PUBLIC ART AND DESIGN MASTER PLAN means a master plan established by the Public Art and Design Board in cooperation with City staff. This plan will establish criteria, policies, and priorities for the Public Art and Design Program. The Public Art and Design Master Plan will be subject to City Council approval.

RENOVATION PROJECTS means those projects requiring a City building permit where 50% or more of the building footprint is being modified, rebuilt or improved by construction.

TOTAL CONSTRUCTION BUDGET means the final approved budget amount for all Eligible City Capital Improvement Projects as submitted and approved by the City Council in the City's annual Capital Improvement Program Budget.

Section 3-2403. Public Art and Design Funds.

1. The City shall maintain a separate accounting of monies received for the Public Art and Design Program which shall consist of the following:
 - a. Allocations received from Eligible City Capital Improvement Projects
 - b. Allocations received from private development;
 - c. All funds donated to the City for public art;
 - d. Other funds allocated by the City through the budgetary process
2. Public art and design monies shall be used solely for expenses associated with the selection, commissioning, acquisition, installation, maintenance, administration, removal and insurance of the works of art or public education in relation thereto. Such funds shall be administered by the City. Custody of the public art and design funds shall at all times remain with the City and all City policies and procedures shall be strictly adhered to regarding the oversight of such funds.
3. Programming of public art and design expenditures shall be included in the annual capital budget of the City as recommended by the Public Art and Design Board or as may otherwise be approved by the City Council.
4. Interest earned on funds for the Public Art and Design Program that was allocated from private development or donated from outside donors shall be deposited into the Public Art and Design Program accounts. Unless otherwise required by law, interest earned on funds received from or allocated by the City from Capital Improvement

Projects or other funds shall be returned to the original funding source (Penny for Pinellas, general fund, etc.). All funds shall be used only as permitted by law.

5. Ten Percent (10%) of all non-restricted Public Art and Design Program funds which are applied to City-owned public art projects shall be deposited into a Public Art and Design Program maintenance account. The maintenance account shall be administered as a Public Art and Design Program fund as set forth herein.

Section 3-2404. Appropriation of City Capital Improvement Project (CIP) Funds.

1. Commencing with City of Clearwater Fiscal Year 2006/07, all appropriations for Eligible City Capital Improvement Projects shall include a City Public Art Contribution of not less than one percent (1%) of the Total Construction Budget before the addition of the public art cost but not to exceed the sum of two hundred thousand dollars (\$200,000.00) per project, subject to the City budgeting and appropriating such funds. If the funding source for the project is not legally permitted to be used for artwork or specifically prohibits the use of the monies for designed elements exposed to public view, then for the purpose of calculating the amount of the City Public Art Contribution for the project only, the Total Construction Budget shall be reduced by that portion of the funding so restricted.

2. All appropriations for public art will be used solely for Public Art and Design.

3. Funds appropriated from the budget for one capital improvement project, but not deemed necessary or appropriate for that project, may be used for other areas in the City as prioritized by the Public Art and Design Master Plan and as permitted by law and in accordance with restrictions on the original funding source.

4. The City Council shall review and approve a Public Art and Design Master Plan, and amendments thereto, to be prepared by City staff and the Public Art and Design Board, for the expenditure of funds appropriated and fees collected for Public Art. The annual Public Art and Design Program shall be developed by the Public Art and Design Board in consultation with City staff and shall be presented to the City Council for approval during its annual budget review process.

Section 3-2405. Public Art and Design Allocations for Private Construction Projects and Developments.

1. All projects and developments, as listed below, which are submitted for building permits must allocate not less than one percent (1%) of the Aggregate Job Value up to the sum of two hundred thousand dollars (\$200,000.00) per project for the provision of public art.

a. New construction of, or Renovation Projects related to commercial, industrial, mixed-use projects and developments, and residential projects and developments, any of which equal or exceed an Aggregate Job Value of \$5 million dollars (\$5,000,000). If renovations affect multiple structures on a project site, which may be permitted separately, the Aggregate Job Value is based on the construction valuation of all permits for the site.

2. When a project is subject to the requirement of a public art allocation, the developer shall have two options:

- a. The developer may contract with a professional artist to create a permanent public artwork as part of the development project. Artworks must be located in publicly accessible locations. If desired, support will be available from both City staff and the Public Art and Design Board to assist in the selection of an artist. Before contracting with the artist, the property owner will submit for approval by the Public Art and Design Board the artist qualifications, the artist's proposal, a statement of how the project satisfies the parameters of the Public Art and Design Program, and a budget reflecting that the allocation of funds required by the Program has been met. Such artwork may include amenities such as streetscapes, paving treatments, architecturally integrated water features as well as mosaics, murals, or sculpture, etc. The artwork must be completed or commissioned before a certificate of occupancy will be issued.
- b. In lieu of an on-site project, a developer may contribute .75% of the Aggregate Job Value to the City's Public Art and Design Program. This in lieu fee must be paid prior to the issuance of building permit.
3. Excluded from this requirement shall be:
 - a. Projects with an Aggregate Job Value under \$5,000,000.
 - b. Residential developments of new construction for affordable housing.
 - c. Eligible Projects pending approval for a building permit that have submitted a complete application prior to October 1, 2006 provided that:
 1. The application is approved within six (6) months of the date of application.
 2. Construction begins within six (6) months of the issuance of such approval and is diligently pursued to completion.

Section 3-2406. Ownership and Maintenance.

1. Ownership of all works of art acquired on behalf of the City shall be vested in the City, which shall retain title to each work of art.
2. All contracts for artwork that will be acquired or accepted for ownership by the City must be reviewed and approved by the City's legal department.
3. Ownership of all works of art incorporated into private construction projects shall be vested in the property owner who shall retain title to each work of art. If the property is sold, the seller may either include restrictions in the deed that require maintenance of the artwork and prevent its removal from the property, transfer ownership of the artwork to the City of Clearwater to be maintained as a public artwork, or remove the artwork and make a contribution to the Public Art and Design Fund in an amount equal to .75% of the initial Aggregate Job Value. If the title is passed to a subsequent owner and, as a result, a deed restriction exists as to the artwork, the subsequent owner shall maintain the artwork in accordance with applicable law or other established guidelines. The artwork cannot be altered, modified, relocated or removed other than as provided herein without the prior approval of the Public Art and Design Board.
4. Property owners will be required to maintain the work of art in good condition in the approved location, as required by law or other applicable guidelines including but not limited to normal code enforcement rules, to ensure that proper maintenance is provided.

5. The owner may request that the artwork be removed from the site due to hardship with the approval of the Public Art and Design Board. In addition, in the event there is a condition that occurs outside the reasonable control of the owner such as an Act of God, then this provision may be implemented with the approval of the Board.

Section 2. Division 11, Community Development Code, consisting of Sections 5-1101 through 5-1105, is hereby created to read as follows:

DIVISION 11. Public Art and Design Board.

Section 5-1101. Creation. There is hereby created the Public Art and Design Board of the City of Clearwater.

Section 5-1102. Composition. The Public Art and Design Board shall consist of seven members; one member of the Clearwater Arts Foundation, one Pinellas County Arts Council member, or designee, one landscape architect, architect, urban planner, or related design professional, one active professional artist, and three private citizens who are knowledgeable in the field of public art, education, or community affairs. Representatives of the Clearwater Arts Foundation and the Pinellas County Arts Council shall be nominated by their respective organizations. Section 2.063, Code of Ordinances notwithstanding, the Clearwater Arts Foundation and the Pinellas County Arts Council representative shall not be required to reside within the City of Clearwater.

Section 5-1103. Powers and Duties. The Public Art and Design Board shall administer the Public Art and Design Program. The purpose, functions and responsibilities shall be as follows:

- a. Develops guidelines, selection procedures and organizational policies to facilitate this chapter.
- b. Prepares Public Art and Design Master Plan in concert with City staff to establish criteria, policies, and priorities for the Public Art and Design Program.
- c. Prepares an annual Public Art and Design Plan for the expenditure of the public and private monies in the Public Art Program for approval by the City Council during the annual budget review process.
- d. Related to City construction projects, in concert with City staff, is responsible for working with appropriate department in program planning; designating sites; determining project scope and budget; managing the artist selection process; commission artworks; approve design, execution and placement of artworks; and overseeing maintenance of the artworks and the process for removal of artworks from the City's public art collection. The Public Art and Design Board selects the artwork. Approvals for purchase are then guided by City purchasing requirements.
- e. Related to Private Development projects, assists the private developer, in concert with City staff, with the artist selection process if requested. The Board will approve the project to ensure that it meets the Public Art and Design Program guidelines.
- f. Recruits professionals in the visual arts and design fields to serve in the artist selection process in order to ensure works of highest quality.
- g. Ensures appropriate community participation in this process and public education activities as part of the public art projects.

- h. Coordinates, investigates, reviews and recommends to the City Council other means by which artworks may be obtained, including donations to the Public Art and Design Program, and grant applications for public art projects.
- i. Administers the City's donation policy for artwork.
- j. Encourages public art throughout the City and shall educate and stimulate the participation of all citizens in a joint public and private effort to promote art in public places.

Section 5-1104. Terms of Office of Members; Officers; Rules:

- a. Members of the Public Art and Design Committee shall be appointed by the City Council to serve for a term of four years, staggered such that not more than three terms shall expire in any calendar year. A member shall serve not more than two consecutive complete terms. Once a person has served two full and consecutive terms on the Board, that person shall not be eligible for reappointment to the Board for a length of time equal to one full term on the Board.
- b. The Board shall annually select a chair and such other officers as the Board may find necessary, from its membership.
- c. The Board may adopt such rules of procedure as the Board finds necessary, which shall not be in conflict with state law or ordinances of the City.
- d. The Board shall meet at such times as the Board may find necessary but not less often than quarterly.
- e. Board members shall not be compensated.

Section 5-1105. Removal of members. The City Council shall have the power to remove any members of the Board for misconduct or neglect of duty. In addition, the City Manager shall have the power to remove any member because of the excessive absence of the member from the meetings of the Board as defined in Section 2.066.

Section 3. This ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING

**PASSED ON SECOND AND FINAL
READING AND ADOPTED
AS AMENDED**

Frank V. Hibbard
Mayor

Approved as to form:

Attest:

Laura Lipowski
Assistant City Attorney

Cynthia E. Goudeau
City Clerk