

ec. 2.2.5. - Public Art Advisory Board.

- (A) **Creation.** The Public Art Advisory Board is established via Ordinance No. 77-04 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 or private property where an agreement, acceptable to the City, has been executed regarding the art and the art is clearly visible by the public. (Ord. No. 22-20, § 2, 8-26-20)
- (B) **Composition and special qualifications.** (Ord. No. 22-20, § 2, 8-26-20)
 - (1) The Public Art Advisory Board shall consist of seven members. (Ord. No. 22-20, § 2, 8-26-20)
 - (2) 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. (Ord. No. 22-20, § 2, 8-26-20)
- (C) **Meetings and quorum.** (Ord. No. 22-20, § 2, 8-26-20)
 - (1) The Board shall hold meetings on a regular basis 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. (Ord. No. 22-20, § 2, 8-26-20)
 - (2) Four members of the Board shall constitute a quorum. (Ord. No. 22-20, § 2, 8-26-20)
- (D) **Duties, powers, and responsibilities.** The following duties, powers, and responsibilities shall be carried out by the Public Art Advisory Board: (Ord. No. 22-20, § 2, 8-26-20)
 - (1) Review and make recommendations to the City Commission on constructing, placing or installing public art, as follows: (Ord. No. 22-20, § 2, 8-26-20)
 - (a) on all CIP projects above \$200,000.00; and (Ord. No. 22-20, § 2, 8-26-20)
 - (b) on CIP projects under \$200,000.00 at the discretion of the Board. (Ord. No. 22-20, § 2, 8-26-20)
 - (2) Render an advisory opinion to City Commission regarding the following: (Ord. No. 22-20, § 2, 8-26-20)
 - (a) The suitability of the construction project as a location for works of art; (Ord. No. 22-20, § 2, 8-26-20)
 - (b) The nature of the works of art which are most appropriate for the construction project; (Ord. No. 22-20, § 2, 8-26-20)
 - (c) The best method for securing the recommended works of art. (Ord. No. 22-20, § 2, 8-26-20)
 - (3) Review and make recommendations to the City Commission regarding 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. (Ord. No. 22-20, § 2, 8-26-20)
 - (4) Make recommendations to the Historic Preservation Board regarding the installation of murals on property located within a historic district or on any individually designated site listed on the Local Register of Historic Places. (Ord. No. 22-20, § 2, 8-26-20)
 - (5) Act as a regulatory body on all requests for the installation of murals on property not located within a historic district or on any individually designated site listed on the Local Register of Historic Places. (Ord. No. 22-20, § 2, 8-26-20)
 - (6) Review and make recommendations to the City Commission regarding public art, as defined in Appendix A to the City's Land Development Regulations, located in the public right-of-way, on City owned property, or on structures that are located in the public right-of-way. (Ord. No. 22-20, § 2, 8-26-20; Ord. No. 11-21, § 2, 4-20-21)
 - (7) Make recommendations to the City Commission regarding all public art installations throughout the City. (Ord. No. 11-21, § 2, 4-20-21)
 - (8) Apply the guidelines and criteria in Section 8.5 for making recommendations or decisions on the installation of public art, whether as part of a public or private project. (Ord. No. 11-21, § 2, 4-20-21)

- (4) **Mural text size.** The mural shall be predominantly pictorial, with text limited to no more than 5 percent of the project except for text used to create the graphic. (Ord. No. 22-20, § 6, 8-26-20)
- (5) **Signage and commercial messaging.** Signage and commercial messaging in murals are regulated in accordance with Section 4.6.7. (Ord. No. 22-20, § 6, 8-26-20)
- (6) **Illumination.** Murals may be illuminated only by indirect lighting. Any proposed illumination shall be accompanied by a photometric plan as set forth in Section 2.4.3(B)(17) that demonstrates compliance with Section 4.6.8. Illumination shall not continue after 11:00 pm. Internal illumination, blinking lights, and flashing lights are prohibited. (Ord. No. 22-20, § 6, 8-26-20)
- (7) **Public safety.** Mural faces may not have any moving or animated parts, or any other electronic movements. Murals may not be illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists and interfere with their ability to safely operate their vehicles. (Ord. No. 22-20, § 6, 8-26-20)
- (8) **Compliance with laws.** Murals must comply with all applicable laws, rules and regulations of the federal, state and county governments. Any proposed amendments to this section must be consistent with applicable federal, state and county laws and ordinances in effect at the time of such amendment. (Ord. No. 22-20, § 6, 8-26-20)

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]

Sec. 8.5.2. - Public art criteria.^[4]

- (A) The following guidelines are to be utilized when making a recommendation or acting on a request for the installation of public art, whether located on private or public property: (Ord. No. 22-20, § 5, 8-26-20)
- (1) Whether the proposed public art conforms to the definition of public art; (Ord. No. 22-20, § 5, 8-26-20)
 - (2) Whether the proposed public art is compatible with the neighborhood and not injurious to the neighborhood or otherwise detrimental to the public welfare; (Ord. No. 22-20, § 5, 8-26-20)
 - (3) Whether the proposed public art presents a safety hazard to the public; (Ord. No. 22-20, § 5, 8-26-20)
 - (4) Whether the proposed public art is of exceptional quality and enduring value; (Ord. No. 22-20, § 5, 8-26-20)
 - (5) Whether the proposed public art serves to further the City's goal of promoting cultural diversity; (Ord. No. 22-20, § 5, 8-26-20)
 - (6) Whether the proposed public art is appropriate to the site; (Ord. No. 22-20, § 5, 8-26-20)
 - (7) Whether the proposed public art should be installed at the proposed location on a site or at a different location; (Ord. No. 22-20, § 5, 8-26-20)
 - (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. (Ord. No. 22-20, § 5, 8-26-20)
 - (9) Whether the proposed public art conforms with all other applicable aspects of the LDRs. (Ord. No. 22-20, § 5, 8-26-20)

Footnotes:

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Editor's note— Ord. No. 22-20, § 5, adopted August 26, 2020, repealed § 8.5.2 and enacted a new § 8.5.2. Former § 8.5.2 pertained to the Public Art Advisory Board and derived from Ord. 13-07, adopted March 20, 2007.

Sec. 8.5.3. - Murals.

- (A) **Location.** (Ord. No. 22-20, § 6, 8-26-20)
- (1) Murals may be proposed on a façade of any building or structure on a property that is not located in a historic district or individually designated on the Local Register of Historic Places but that: (Ord. No. 22-20, § 6, 8-26-20)
 - (a) Faces a railroad right-of-way; (Ord. No. 22-20, § 6, 8-26-20)
 - (b) Faces Interstate 95; (Ord. No. 22-20, § 6, 8-26-20)
 - (c) Is located within the Central Business District (CBD), Community Facilities (CF), Industrial (I), Light Industrial (LI), or Mixed Industrial and Commercial (MIC) zoning districts; (Ord. No. 22-20, § 6, 8-26-20)
 - (d) Is located within the Osceola Park Redevelopment Plan Update area; or, (Ord. No. 22-20, § 6, 8-26-20)
 - (e) Is located on or under a bridge. (Ord. No. 22-20, § 6, 8-26-20)
 - (2) Murals may be proposed on properties located in a historic district or that are individually designated on the Local Register of Historic Places that: (Ord. No. 22-20, § 6, 8-26-20)
 - (a) Have commercial use but only on accessory structures such as perimeter site walls and dumpster enclosures; or, (Ord. No. 22-20, § 6, 8-26-20)
 - (b) Is located on or under a bridge. (Ord. No. 22-20, § 6, 8-26-20)
- (B) **Design and installation.** Each mural shall be designed and installed with techniques and/or materials that do not permanently damage the facade of the building. Murals are also subject to compliance with the applicable requirements of the Florida Building Code any other applicable local, state, or federal regulations. (Ord. No. 22-20, § 6, 8-26-20)
- (1) Properties located in a historic district or that are individually designated on the Local Register of Historic Places must also comply with the Delray Historic Preservation Design Guidelines and Secretary of the Interior's Standards for Rehabilitation. (Ord. No. 22-20, § 6, 8-26-20)
 - (2) For properties that are designated on the National Register of Historic Places, the property owner shall also confer with the State of Florida, Division of Historical Resources to obtain guidance regarding a proposed mural.
- (C) **Placement and Design requirements.** A mural may only be placed on the facade of a building, site perimeter walls or fences, or on accessory structures for properties not located in a historic district or that are not individually designated on the Local Register of Historic Places. All murals must also meet the following requirements: (Ord. No. 22-20, § 6, 8-26-20)
- (1) **Coverage, size, and scale.** Murals shall be proportionate in size and scale to the building facade. A mural may cover 100 percent of the wall, provided it does not paint over windows. (Ord. No. 22-20, § 6, 8-26-20)
 - (2) **Façade features.** Murals shall be positioned on the façade in a manner that respects architectural features. Murals shall not cover windows or mask architectural details in a manner that detracts from the architecture of the building. (Ord. No. 22-20, § 6, 8-26-20)
 - (3) **Mural limitations.** Each facade or surface of a building or accessory structure shall have only one mural. A consistent image or theme may continue across contiguous walls; however, each facade or surface included in the mural shall require a separate mural permit. (Ord. No. 22-20, § 6, 8-26-20)

ARTICLE 8.5. - PUBLIC ARTS PROGRAM^[3]

Footnotes:

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Note— Enacted by Ord. 77-04, 2/1/05.

Sec. 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 one and one-half percent 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 \$200,000.00; however, one and one-half percent 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]
 - (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.
 - (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