

ORDINANCE NO. 14-03

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 ENTITLED "ADMINISTRATION," ARTICLE V ENTITLED "COMMITTEES, BOARDS AND COMMISSIONS," DIVISION 8 ENTITLED "ART IN PUBLIC PLACES BOARD" OF THE CODE OF ORDINANCES BY AMENDING SECTION 2-487 ENTITLED "FUNDING OF ART IN NEW CONSTRUCTION AND MAJOR RENOVATION PROJECTS" BY ADDING A PURPOSE AND INTENT STATEMENT, ADDING DEFINITIONS, CHANGING THE METHOD IN WHICH THE AMOUNT REPRESENTING 1% OF CONSTRUCTION COSTS IS PAID, CLARIFYING AND ELABORATING CERTAIN PROVISIONS OF THE PROGRAM AND ESTABLISHING PROCEDURES FOR EFFICIENT IMPLEMENTATION OF THE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission adopted Ordinance No. 11-01 on January 18, 2011 establishing a public art fund, which provided that one percent (1%) of the construction costs of qualifying new construction and major renovation projects be set aside for the commission and installation of works of art to be placed on the site of the development project; and

WHEREAS, in order to better and more efficiently implement the program, the City Commission desires to amend the Code of Ordinances by adding a purpose and intent statement, adding definitions, changing the method in which the amount representing one percent (1%) of construction costs is paid, clarifying and elaborating certain provisions of the program

and establishing more detailed procedures; and

WHEREAS, the City Commission finds the amendment would promote the health, safety and welfare of the citizens of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 2-487 of the Code of Ordinances is hereby amended as follows*:

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Sec. 2-487. Funding of art in new construction and major renovation projects.

~~(a) One percent of the construction costs as specified herein shall be set aside for the acquisition, administration, commission, installation and maintenance of works of art to be placed on the site of said construction or renovation. This requirement shall only apply to new construction that qualifies as a major development plan as defined in chapter 108 of the City of Key West Code of Ordinances that exceeds \$500,000.00, or renovation projects that qualify as a major development plan as defined in chapter 108 of the City of Key West Code of Ordinances exceeding \$100,000.00 in cost as well as any~~

~~qualifying governmental agency owned project within the City of Key West that requires a building permit would be subject to the one percent for art fund. Thirty percent of the appropriation shall be collected at the time of issuance of building permit(s) and 70 percent shall be collected at the time of issuance of the certificate of occupancy. Either the donation of art or the payment of the fee referenced herein shall comply with the Art in Public Places guidelines promulgated pursuant to section 2-486~~

~~(b) Costs, as described in paragraph (a), shall not include architectural fees, engineering fees, asbestos abatement, other environmental preparation, site work or contingency costs.~~

~~(c) All construction costs to be used in determining the Art in Public Places appropriation shall be calculated as of the date that the construction or renovation contract is executed, including any subsequent change orders.~~

~~(d) Funds collected under this provision, as well as any gifts, grants and donations made to the City of Key West for the purpose of acquiring and installing art in public places, shall be separately accounted for and may be used only for the following purposes: acquisition, administration, commission, installation, and maintenance of art in public places.~~

~~(c) In lieu of an on-site art program, the developer/builder may opt out of the requirement listed in paragraph (a) by contributing one percent of the building or renovation costs described in paragraph (a) that will be donated to the city's Art in Public Places Program to be used for projects under paragraph (d).~~

(a) **Purpose and intent.** It is the intent of the city's Art in Public Places Program (the "Program") to encourage the inclusion of works of art in public and private construction projects in order to expand citizens' and visitors' experience with visual art and enable them to better understand our community and their individual lives. By encouraging artists capable of creating works of art in public places, the Program shall strive to stimulate the vitality and economy of the city by enhancing the visual beauty of the city and contributing to making the city the "island of the arts." It is the goal of the Program to expend private and public funds on works of art and art projects of redeeming quality that advance public understanding of art and enhance the aesthetic quality of public places.

(b) **Definitions.** For the purposes of this section, the following words and phrases shall have the following meanings:

Art in Public Places (AIPP) Board or the "Board" means

the advisory board appointed by the city commission as set forth in this division.

Artist or professional artist means a practitioner in the arts generally recognized by critics and peers as a professional possessing 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 all forms of original creations of art, which may be portable as well as permanent and shall include but not be limited to:

Paintings of all media, including both portable and permanently affixed works such as frescoes and murals;

Sculpture of any form and in any material or combination of materials including statues, monuments, fountains, arches or other structures intended for ornamentation or commemoration, reliefs, mobiles, kinetic, electronic and neon sculptures;

Other works of art, such as inscriptions, stained

glass, fiber works, carvings, mosaics, photographs, film and video works, performance art, drawings, collages, textile works, prints and other decorative and utilitarian works in clay, fiber, wood, metal, glass, stone, plastic and other materials; and

Artist-designed landscape and earthworks, including the artistic placement of natural materials or other functional art objects.

Construction costs means the total of all construction and renovation costs, as determined by the building official in issuing a building permit, associated with a particular major development plan as defined in chapter 108 of the city land development regulations of a particular public or private construction or renovation project within the city, excluding architectural fees, engineering fees, asbestos abatement, other environmental preparation, site work and contingency costs.

Developer means any person, property owner, corporation, public or private entity or governmental agency responsible for undertaking a qualifying construction or renovation project for which the city's Art in Public Places Program applies.

Publicly accessible means locations that are open to

the general public during normal business hours and visible by the general public at all times.

(c) **Public art set-aside.** One percent (1%) of the construction costs of all new public or private construction and renovation projects, including any governmental agency owned project within the City, as specified herein shall be set aside for the acquisition, commission and installation of works of art to be placed on the site of said construction or renovation.

(1) **Applicability.** The one-percent for public art fund set-aside requirement shall only apply to:

a. **New public or private construction projects** that qualify as a major development plan as defined in chapter 108 of the City of Key West Code of Ordinances and exceed \$500,000.00 in construction costs; and

b. **Public or private renovation projects** that qualify as a major development plan as defined in chapter 108 of the City of Key West Code of Ordinances and exceed \$100,000.00 in construction costs.

(2) **Compliance options.** When a new construction or renovation project is subject to the one-percent for public art set-aside requirement, the developer shall have the following options:

a. **On-site artwork.** The developer may allocate

one percent (1%) of the construction costs as defined in subsection 2-487(b) to the commissioning and installation of permanent, on-site public artwork as part of the development project. All artwork shall be permanently located in publicly accessible locations. Prior to the issuance of a building permit, the developer shall provide a performance bond to the city equal to the one percent (1%) public art set-aside. The artwork shall be commissioned, installed and approved by the city before a certificate of occupancy may be issued for the new construction or renovation project. If the artwork is not produced and installed, then said performance bond shall be transferred to the city public art fund described in subsection 2-487(e), and a certificate of occupancy may be issued.

1. Private and non-city public projects.

The developer may contract with a professional artist to create the on-site artwork. If desired by the developer, support shall be available from city staff and the AIPP board to assist in the selection of an artist. Before contracting with the artist and prior to issuance of a building permit for the project, the developer shall

submit for review and approval by the AIPP board a public art plan as set forth in subsection 2-487(c)(3). Following approval of the public art plan, the developer may contract with the artists. A non-city public agency may substitute its own art in public places program as long as the minimum one percent (1%) public art set-aside of the city program is provided.

2. **City projects.** The commissioning and placement of on-site artwork for qualifying city projects shall comply with applicable purchasing and procurement requirements of the city code and AIPP guidelines promulgated pursuant to section 2-486.

b. **In-lieu fee.** In lieu of on-site artwork, the developer may opt out by contributing one percent (1%) of the construction costs as defined in subsection 2-487(b) to the city AIPP fund to be used for purposes under subsection 2-487(e). The in-lieu fee shall be paid to the city prior to the issuance of a building permit associated with said major development plan.

(3) **On-site public art plan requirements and artwork**

budget

a. The public art plan shall include the following:

1. Names and qualifications of the proposed professional artists as defined in subsection 2-487(b);

2. Draft contract with the proposed artists;

3. Description of proposed artwork, including overall length, width and height, materials, and method of construction;

4. Detailed drawings or photographs of the proposed artwork;

5. Detailed drawings of the specific public art sites showing:

a. Location of artwork(s)

b. Location of any electricity, landscaping, parking, plumbing or other amenities for artwork(s)

c. Location of plaque for artwork(s);

6. Statement on conservation and maintenance requirements;

7. Itemized construction costs of the qualifying construction or renovation project;

8. Itemized public art budget; and

9. Any other information as requested by staff or the board.

b. The AIPP board shall review the public art plan budget to be certain that the proposed budget meets the one percent set-aside requirement. The budget shall be adequate to cover all eligible costs for the design, fabrication, insurance, transportation, storage and installation of the proposed artwork, plus reasonable unforeseen circumstances. An itemized budget shall be prepared for the public art plan including the following eligible costs:

1. Artist costs for design and fabrication including materials, insurance, permits, taxes and site preparation;

2. Transportation fees;

3. Delivery and installation fees, including lighting, electricity and plumbing as necessary;

4. Pedestals, foundations or other structures to support the artwork;

5. Acknowledgement / identification

plaque; and

6. Additional amenities as expressly related to public art installation.

c. Maintenance shall not be an eligible cost of the artwork budget. However, in-lieu fees collected pursuant to this section may be used for maintenance of artwork on public property as set forth in subsection 2-487(e) and AIPP guidelines.

d. The following criteria, at a minimum, shall be considered by the AIPP board in the review and approval of the public art plan:

1. Exceptional quality, enduring value and maintenance;

2. Appropriateness to the site and environmental conditions;

3. Character, environment and history of the city and the Florida Keys;

4. Accessibility to the public;

5. Whether the artwork too closely resembles a business logo or sign; and

6. Any other criteria set forth in the AIPP guidelines, as amended from time to time.

(d) **Timing of cost calculation.** To determine program

applicability, all applications for major development plan shall include an estimate of construction costs. All construction costs to be used in determining the AIPP appropriation shall be calculated as of the date of building permit issuance, including any subsequent modifications of the major development plan.

(e) **Accounting; use of funds.** In-lieu funds collected under this provision, as well as any gifts, grants and donations made to the City of Key West for the purpose of acquiring and installing art in public places, shall be separately accounted for and may be used only for the following purposes: acquisition, administration, commission, installation, and maintenance of art in public places.

(f) **Ownership and maintenance of on-site artwork.**

(1) Ownership of all works of art incorporated into city construction or renovation projects shall be vested in the city, which shall retain title to each work of art.

(2) All contracts for artwork to be acquired or accepted for ownership by the city shall be reviewed and approved by the city's legal department.

(3) Ownership of all works of art incorporated into private or non-city public construction or renovation projects shall be vested in the property owner who shall

retain title to each work of art. Art in private or non-city public construction or renovation projects shall be installed and maintained permanently on the property, and shall be the responsibility of the property owner and any and all successors in title. The artwork shall not be altered, modified, relocated or removed other than as provided herein without the prior approval of the AIPP board.

(4) Property owners shall 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 the city 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 board. In addition, in the event there is a condition or accident that occurs outside the reasonable control of the owner, such as an Act of God, resulting in damage or destruction of the artwork, then the artwork may be removed or replaced with the approval of the board.

(g) **Compliance with historic district guidelines.** All public artwork, including murals, shall adhere to all applicable portions of the city land development regulations, including but

not limited to chapter 102 historic preservation. If necessary, a certificate of appropriateness for the proposed artwork shall be obtained prior to installation.

(h) **Compliance with building codes.** If required pursuant to chapter 14 of the city code, a building permit for the proposed artwork shall be obtained prior to installation.

Section 2: Public Notice. The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

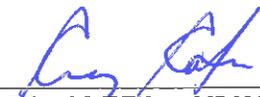
Read and passed on first reading at a regular meeting held this 19 day of February, 2014.

Read and passed on final reading at a regular meeting held this 4 day of March, 2014.

Authenticated by the presiding officer and Clerk of the Commission on 5 day of March, 2014.

Filed with the Clerk March 5, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>No</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



EXECUTIVE SUMMARY

To: Bogdan Vitas, Jr., City Manager

Through: Donald Leland Craig, AICP,
Director of Community Development Services / Planning Director

From: Kevin Bond, AICP, LEED Green Associate, Planner II

Meeting Date: February 19, 2014

RE: Amendment to 1% Public Art Set-Aside in Development Program

Action Statement: **ADOPTION OF AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 ENTITLED "ADMINISTRATION," ARTICLE V ENTITLED "COMMITTEES, BOARDS AND COMMISSIONS," DIVISION 8 ENTITLED "ART IN PUBLIC PLACES BOARD" OF THE CODE OF ORDINANCES BY AMENDING SECTION 2-487 ENTITLED "FUNDING OF ART IN NEW CONSTRUCTION AND MAJOR RENOVATION PROJECTS" BY ADDING A PURPOSE AND INTENT STATEMENT, ADDING DEFINITIONS, CHANGING THE METHOD IN WHICH THE AMOUNT REPRESENTING 1% OF CONSTRUCTION COSTS IS PAID, CLARIFYING AND ELABORATING CERTAIN PROVISIONS OF THE PROGRAM AND ESTABLISHING PROCEDURES FOR EFFICIENT IMPLEMENTATION OF THE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

Request: Approval of an Ordinance to amend Chapter 2, Article V, Division 8, Section 2-487 of the City's Code of Ordinances to revise the one percent (1%) public art set-aside in development program.

Location: City wide

Strategic Plan: The proposed Ordinance is consistent with the 2011 Strategic Plan's Environment Goal #2: the City's built environment reflects and supports Key West values, architectural history and mixed uses; Culture Goal #1: the identification and promotion of the "unique" character and culture of Key West; Culture Goal #2: Key West seen as a viable destination for "Cultural Tourism;" and Culture Goal #3: The arts are an integral part of the living environment in Key West.

Background:

The City Commission created the City's 1% Public Art Set-Aside in Development Program (the "Program") through adoption of Ordinance No. 11-01 on January 18, 2011. The Program provides that 1% of the construction costs of new construction projects exceeding \$500,000 that qualify as a Major Development Plan and renovation projects exceeding \$100,000 that qualify as a Major Development Plan be set aside for the commission and installation of works of art to be placed on the site of construction or renovation project. The Program also gives the developer the option of paying a fee in-lieu of installing on-site artwork. The ordinance stated that the 1% appropriation be collected by the City at the times of issuance of building permits and certificates of occupancy.

After adoption of Ordinance No. 11-01, there were no qualifying development projects until 2013. As City staff began to implement the Program on the first qualifying projects, it became apparent that the ordinance gave little direction about how to handle implementation of the Program. Most problematic is the collection of the 1% appropriation by the City for private development projects. Once the 1% amount is collected by the City, those funds become public money. Staff became concerned over the use of what then becomes public funds to solicit and commission artwork that would be placed on private property. This begged questions about the use of public money for the repair and maintenance of art on private property, the ownership of art paid for with public funds and placed on private property, as well as liability. Furthermore, because the City collects the 1% amount, the expenditure of that money must follow City purchasing requirements, which is an onerous process for artists and private developers to go through and for staff to administer.

Planning Staff Analysis:

In preparing the proposed amendment, staff conducted research of other Florida cities with similar set-aside programs for public art in development. Staff found that a majority of Florida cities with similar programs do not collect the set-aside funds. Rather, the developer contracts with and pays the artist directly. Some cities require a guarantee that the artwork will be installed in the form of a performance bond or an equity payment. Many cities require developers to submit a Public Art Plan for approval by their arts board or similar body. Staff presented these findings and a draft ordinance to Key West's Art in Public Places (AIPP) Board, who provided feedback and approved moving forward with the proposed amendment.

Therefore, the main reasons for the proposed amendment are to change the way the fee is collected for private development projects and to elaborate on how the program is supposed to be implemented. The proposed ordinance:

- Allows private and non-City public developers to pay artists directly and the City would get a guarantee in the form of a performance bond that the on-site art will be completed; otherwise the bond funds would transfer to the City as an in-lieu fee;
- Allows private and non-City public developers to select artists and submit a Public Art Plan for approval by the AIPP Board;
- Outlines the Public Art Plan and budget requirements;
- Clarifies that City projects must adhere to City purchasing code and AIPP Guidelines;

- Clarifies who owns the artwork, who is responsible for maintenance, and artwork siting requirements;
- Deletes artwork donation language;
- Clarifies that maintenance is not an eligible cost of the artwork budget because maintenance would be the owner's responsibility on an ongoing basis; however, in-lieu fees collected from construction costs for the Public Art Fund may be used for maintenance of public art on public property citywide; and
- Adds a purpose and intent statement and definitions.

Because the ordinance is essentially being rewritten, it is important to note the key elements of the Program as adopted through Ordinance No. 11-01 that are not being revised:

- The 1% public art set-aside based on construction costs is unchanged;
- The types of applicable construction and renovation projects are unchanged; and
- The option to pay a fee in-lieu of on-site artwork is unchanged.

The attached flowchart illustrates the Program's key steps in identifying, reviewing and successful completion of public art in new development and renovation projects.

Previous City Actions:

Art in Public Places Board	January 13, 2014	Review of draft ordinance
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Options / Advantages / Disadvantages:

Option 1: Adoption of the proposed Ordinance.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The proposed Ordinance is consistent with the Strategic Plan's environment and culture goals of integrating art into the built environment and promoting Key West's unique character.
2. **Financial Impact:** None. Adoption of the proposed Ordinance would help avoid the costs of having to administer the Program, which requires the City to collect funds for public art that in many cases will be placed on private property and that must be expended in compliance with the City purchasing code, which means additional staff review and administration costs.

Option 2: Do not adopt the proposed Ordinance.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** Staff and the AIPP Board would be unable to facilitate better implementation of the Program.
2. **Financial Impact:** None. However, the costs mentioned above would continue.

Recommendation:

The Planning Department recommends the City Commission **APPROVE** the proposed Ordinance on first reading.

**Key West Art in Public Places Program
1% Public Art Set-Aside in Development**

