

City of Palm Coast, Florida Agenda Item

Agenda Date: October 15, 2024

Department CITY ADMINISTRATION Division	Amount Account #
Subject: ORDINANCE 2024-XX CREATING AN ART IN PUBLIC PLACES PROGRAM FOR CITY BEAUTIFICATION	
Presenter: James Hirst, Director of Parks & Recreation	
Attachments: 1. Presentation 2. Ordinance	
Background: Council Priority: Pillar Area: Expansion of Arts/Culture/Historical Assets & Programs Objective #11: Identify a dedicated funding source for arts/cultural/historical activities and facilities. On August 27, 2024, City Staff is presented a range of alternative funding measures to preserve the arts, culture, and history of the City of Palm Coast. The presentation explored various topics, including a Percentage-of-Arts Ordinance, Non-percentage-based art funding sources, a bond referendum, and a proposal to reclassify Arts/Culture/History from the Parks & Recreation department, as requested by City Council at the July 16 Business Meeting. At the request from City Council City staff is presenting a 1 st read ordinance for percentage-of-arts. This ordinance is in line with our council priority Objective 11 and serves as the city commitment to the arts, culture, and history of Palm Coast.	
Recommended Action: ADOPT ORDINANCE 2024-XX CREATING AN ART IN PUBLIC PLACES PROGRAM FOR CITY BEAUTIFICATION	

1st Read Percentage-for-Arts Ordinance



Agenda:

- Council Priority
- Percentage for Art Ordinance
- Establishment of Art in Lieu of Fee
- Application Requirements
- Acceptable vs Non-acceptable
- Art in Public Places Committee review Process



Council Priority

Objective 11:

Identify dedicated funding source for arts/culture/historical activities

Strategy:

- The City of Palm Coast currently works with local organizations and promotes citywide activities involving arts and history.
- To properly expand the City's art/cultural/history initiatives, funding options will need to be identified.



Percentage-For-Art Ordinance

City of Palm Coast

Establishment of Public Art Fund

- Development, redevelopment, reconstruction or remodeling projects
- The Public Art fee shall be equal to one half of one percent (0.5%) of construction value of project
- Construction value of \$1,000,000 before fee is required
- Public Art Maintenance Fund
- All expenditures from the fund shall be approved by City Council after the recommendation of the Art in Public Places Committee
- Exemptions
 - Remodeling or repair damaged by fire, flood, wind, earthquakes, or other calamity
 - Single-family and two-family in-fill housing
 - Normal routine maintenance
 - Remodeling, repair, reconstruction, or additions existing amenity prior to the effective date of this ordinance



Percentage for Art Ordinance City of Palm Coast

Establishment of Art in Lieu of Fee

- May obtain a reimbursement or waiver of the required Fee if owner establishes public art on the development site or approved public space.
- Public Art Committee shall be authorized to approved proposed public art to placed on private property
- Public art to be placed in a public place away from the development site, proposed location must be approved by City council after recommendation of the committee



Percentage of the Arts Palm Coast

Art in Public Places Application Requirements

- Application Form
 - Application forms to be submitted at the same time as the development permit
- Schedule
 - Proposed schedule for creation, completion and installation of public art
- Plans, renderings and details
 - Color rendering's, site plan, and proposed location
- Payments of Fee
 - Payment of full amount of the required fee



Acceptable vs Non-acceptable Artwork

Standards of acceptable public artwork	Non-acceptable artwork
Displayed in a visually accessible location	Mass produced or a standard manufacture
Integrated into the overall planning and design of the structure	Reproductions by mechanical of original artwork
Integrated into the overall landscaping plan	Artwork designed by an architect. As opposed to elements created by an artist.
Can be lighted at the discretion of the city	Commercial expression
Tangible creations by artists exhibiting the highest quality of skill and aesthetic principle	Services or utilities to operate and maintain an artwork overtime



Art in Public Places Committee Review Process

- Pre-application Meeting
 - Applicant shall appear before committee for a pre-application meeting
- Review Criteria of artwork by the committees
 - Review art standards for City Council approval
- May establish guidelines
- City selection and procurement of Public Artwork
 - If a preferred artist is not determined the city may issue a call to artist



Council Action

Approving 1st read for percentage-of the arts ordinance



ORDINANCE NO. 2024-__

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, TO CREATE AN ART IN PUBLIC PLACES PROGRAM FOR CITY BEAUTIFICATION; PROVIDING FOR 0.5% PUBLIC ART FEE; PROVIDING FOR PROVISION OF PUBLIC ART IN LIEU OF 0.5% PUBLIC ART FEE; PROVIDING FOR A SEPARATE ART FUND TO ACCOUNT FOR MONIES INTENDED TO SUPPORT THE PUBLIC ART PROGRAM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Palm Coast (hereinafter the “City”) acknowledges the important part the arts play in the lives of its residents and visitors; and

WHEREAS, the City prides itself on its projects and programs in the visual and performing arts; and

WHEREAS, the City expressly recognized the importance of visual and performing arts with the establishment of an Art District pursuant to Resolution 2020-134, directing City staff work with Council to identify possible funding sources for the Arts District in conjunction with the Arts District’s mission and vision; and

WHEREAS, private developments in the City of Palm Coast affect the physical and cultural environment of the City, its residents and visitors; and

WHEREAS, the quality of life in the City of Palm Coast should be further enhanced by including a 0.5 % allocation of funds for Art in Public Places projects for private development as part of the construction budget for certain private developments that have the greatest impact on the physical environment of the City; and

WHEREAS, the objective of this ordinance is to enable the City to preserve its artistic heritage, to promote a community environment which provides equal and abundant opportunity for exposure to culture and fine arts in all forms, and to bring works of art into the urban landscape with the hope that directly or indirectly these works of art shall humanize, beautify, and refine the lives of its people.

WHEREAS, the City Council deems approval of this Ordinance to be in the best interest of the residents and citizens of the City of Palm Coast.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. AMENDMENT TO CHAPTER 2 OF THE CITY OF PALM COAST ORDINANCES, Chapter 2, Administration is hereby amended by amending Chapter 2 of the City of Palm Coast Ordinances and the creation of new Article IX, *Public Art* to be read as follows:

SECTION 2-901. PURPOSE.

To ensure that City of Palm Coast recognizes the enormous cultural, aesthetic, and economic value and community vitality that the arts will bring to the City, this article establishes an Arts in Public Places Program for the integration of public art into both public and private spaces throughout the Art District for the benefit of the entire city by requiring certain new private development, to provide such public art valued at one half of one percent (0.5%) of construction value of the project or provide equivalent funds to support the installation of such public art in the manner outline herein.

SECTION 2-902. ESTABLISHMENT OF PUBLIC FUND

(a) **Public Art Fund.** There is hereby created a Public Art Fund (the “Fund”) which shall consist of all contributions received pursuant to Public Arts Fee program hereinafter established, as well as 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 Fund shall be used solely for the selection, acquisition, transportation, installation, maintenance and promotion of works of art to be displayed in the city. All expenditures from the Fund shall be approved by the City Council after the recommendation of the Art in Public Places Committee (the “Committee”) hereinafter established. Any works of art purchased with such funds shall be and remain the sole property of the city. The Fund shall be kept in an interest-bearing account, separate from general revenues, and all accrued interest shall be deposited in the Fund. The cost of insurance for public art located on public property shall be paid from the City's general fund.

(b) **Public Art Maintenance Fund.** The City Council shall designate a specific portion of the Fund to provide maintenance and upkeep of all publicly owned artworks in order to ensure that proper preservation and maintenance is provided, hereinafter Maintenance Funds. When the City Council approves the acquisition of a public work of art, the City Council shall designate funds dedicated to the continual maintenance and preservation of the subject work

of art for a period of no less than 25 years. These Maintenance Funds may be expended to cover all expenses reasonably associated with the maintenance and preservation of public works of art.

(c) All artwork purchased by the City from the Fund shall be displayed on city-owned land, a city owned-building, or a city-leased facility.

SECTION 2-903. ESTABLISHMENT OF PUBLIC ARTS FEE.

(a) The Fee. All development, redevelopment, reconstruction or remodeling projects commenced after the adoption of this article which has a construction value of \$1,000,000.00 or greater, shall participate in the Art in Public Places Program by paying a Public Art Fee (the "Fee"). For the purpose of this section, a project will be considered "commenced" when an application for review is first submitted to the City's _____ Department. The public art fee shall be equal to one half of one percent (0.5%) of construction value of the project.

(b) Collection. The Building Division and Finance Department shall administer the billing and collection of the Fee, collecting thirty percent (30%) or (.03) of the Fee at the time of Building Permit issuance and the seventy percent (70%) or (.07) Fee prior to and as a condition of issuance of the certificate of occupancy.

(c) Distribution. One hundred percent (100%) of the Fees collected shall be allocated to the Fund established herein. All distributions for the monies from the Fund require a recommendation from the Committee and final approval by the City Council approval.

(d) Exemptions. The following types of projects are exempt from the payment of the public art fee:

- (1) Remodeling, repair or reconstruction of structures damaged by fire, flood, wind, earthquake or other calamity as determined by the City Building Official.
- (2) Single-family and two-family in-fill housing.
- (3) Normal, routine maintenance including replacement of existing damaged or failing structural or non-structural elements, HVAC, plumbing, electric, or fire detection and suppression equipment of a project not associated with an addition, renovation or new construction.

(4) Remodeling, repair, reconstruction, or additions made after to any existing amenity, clubhouse, building, pool, park, playground and/or common area element located within private residential development existing prior to the Effective Date of this Ordinance.

(e) Establishment of Art In Lieu of Fee. Project owners required to participate in the Art in Public Places Program may obtain a reimbursement or waiver of the required Fee if the property owner directly establishes public art on the development site or in an approved public space, provided that:

(1) The value of such public art shall be equal to or greater than the Fee of one-half of one percent of the construction costs for the project. The word "project," as used herein, shall mean the improvements that are authorized by the issuance of a single building permit. The City Council, in its discretion, may accept artwork valued at something less than the required Fee, provided the artwork meets all other requirements for establishing art in lieu of a fee and the balance of the Fee over and above the value of the artwork is paid to the City.

(2) Such public art is approved by the City upon application by the property owner pursuant to Section 2-904 of this article prior to the placement on the proposed site, to ensure that the artwork will be accessible and readily visible to the public based on location of artwork and normal traffic of vehicles/pedestrians in the proposed location.

(3) The Committee shall be authorized to approve proposed public art to be placed on private property prior to its fabrication or acquisition. Nothing herein shall be construed to require that public art be in existence and subject to examination at the time of its approval by the Committee.

(4) If such public art is to be placed in a public place away from the development site, such public art and the proposed location must be approved by the City Council after receiving the recommendation of the Committee and prior to placement of the art at the proposed location. The City Council shall be authorized to approve proposed public art prior to its fabrication or acquisition.

(5) The artwork is in place prior to the issuance of a certificate of occupancy for the project. Unless an alternative deadline is established in a development order, or a time extension is granted by the building official, no certificate of occupancy for the project shall be issued until the artwork is installed and the final certification and accounting for the payment of the escrowed Fees has been provided.

SECTION 2-904. ART IN PUBLIC PLACES APPLICATION REQUIREMENTS. Developments that choose to provide art in lieu of paying the Fee shall provide the information described below and any additional information requested by the City to review the application pursuant to the standards of this article.

(a) Application Form. An application shall be submitted on forms provided by the City at the same time as the application for a development permit for the project, which shall include the following submittals: Artist information. Portfolio containing photographs of the artist's existing work, exhibition and sales history, and biography.

(b) Schedule. A proposed schedule for the creation, completion and installation of the public art, once approved.

(c) Plans, renderings, and details. Artist's color renderings and/or photographs of proposed artwork; materials sample board; site plan depicting the proposed location of the artwork; landscape plan, if necessary, depicting additional landscaping or modifications to existing landscaping; architectural elevations, if necessary, depicting structures associated with the artwork; lighting location plan and light fixture details; or other reasonable and relevant information requested by staff, the Committee, or the City Council. All submittals shall be required to provide an accurate representation of the proposed artwork.

(d) Payment of Fee. Payment of the full amount of the required Fee or a deposit with the City finance department in the form of cash or certified funds the amount of 115 percent of the value of the approved public art, whichever is greater. These funds will be returned or refunded upon satisfactory completion of the approved artwork.

SECTION 2-905. STANDARDS FOR PUBLIC ARTWORK.

(a) Artwork shall be displayed in a visually accessible location, which shall be suitable for the design of the site, in order for the public to receive the most enjoyment and benefit from the art.

(b) Artwork shall be integrated into the overall planning and design for a structure or project and shall be compatible with the intent and purpose of the structure at which the work or works are located.

(c) Artwork shall be integrated into the overall landscaping plan, and landscaping shall be utilized to enhance the visibility of such works.

(d) The City may, in its discretion, require the artwork to be lighted at a minimum from dusk until midnight. The lighting shall be designed and located to prevent excessive lighting, energy waste, glare, light trespass, and sky glow.

(e) Eligible Artwork. Art, artwork, or works of art as used herein means all tangible creations by artists exhibiting the highest quality of skill and aesthetic principles. and includes all forms of the visual arts conceived in any medium. material, or combination thereof; including, but not limited to, painting, sculpture, fountains. engraving, carving, frescos, mobiles, murals, collages, fiber works, glass mosaics, bas-reliefs, tapestries, photographs, drawings, artist-designed seating, or other functional art pieces and collaborative design projects between architects and/or landscape architects and artists, together with all hard costs and soft costs such as, but not limited to, lighting, landscaping, or other aesthetic effects or enhancements integrated with the art.

(f) The following shall not be considered artwork:

(1) Art objects which are mass produced or of standard manufacture, such as playground equipment, fountains, statuary elements, signage, maps, corporate logos or other functional elements, unless incorporated into an artwork by an artist commissioned for that purpose.

(2) Reproductions, by mechanical or other means, of original artwork, except in the cases of limited editions controlled by the artist, cast sculpture, film, video, photography, printmaking, or other media arts.

(3) Decorative, ornamental, architectural, or functional elements of the architecture or landscape design which is designed by the architect. as opposed to elements created by an artist commissioned for that purpose. Such elements may be considered artwork when commissioned from an artist as an integral aspect of the structure or site.

(4) Commercial expression, including design elements related to the visual identity of a developer or occupant of a building such as a logo, trademark iconography, color scheme or theme, even if created by an artist.

(5) Services or utilities necessary to operate and maintain an artwork over time.

SECTION 2-906. ART IN PUBLIC PLACES COMMITTEE REVIEW PROCESS
ORDINANCE 2024-

(a) Pre-Application Meeting. The applicant shall appear before the Committee for a pre-application meeting to receive guidance in the initial stages of the review. The applicant is strongly encouraged to submit portfolios of up to three artists prior to the pre-application meeting. The portfolios should contain photographs of the artists' existing works, as well as the artists' biographies. Nothing herein shall prevent the applicant from presenting the Committee with a set direction regarding the artwork for the Committee's consideration, provided the applicant submits the proposed artist's portfolio containing photographs of the artist's existing works, as well as the artist's biography.

(b) Criteria for review of artwork by the Committee. In addition to considering the standards for artwork outlined in Section 2-905 hereof, in making any decisions or recommendations to the City Council concerning the selection of artwork pursuant to this article, the committee shall consider the quality of the artwork; the exhibition and sales history of the artist; the artist's works in public collections and previous public art purchases or commissions; the ability of the artist to complete the project within a specified schedule; the artwork's promotion of the community's artistic heritage; and the compliance with the standards of this division.

(c) Guidelines. The Committee may adopt Art in Public Places Program implementation guidelines to assist both the public and private sector planning activities.

(d) City Selection and Procurement of Public Artworks. If a preferred artist has not already been determined, the City may issue a call to artists to procure a work or works of art. The Committee will review the submitted proposals and shall select at least two finalists for consideration by the City Council. The City Council shall review the finalists' proposals and make a final determination on the selection and commission of the artist and the artwork. The selection and commission of the artist and artwork shall be by written contract between the City and the artist. Final decision-making authority regarding the artwork and artist shall be at the sole discretion of the City Council.

(1) Funding. The City may utilize funds allocated from the Fund to retain a specific artist for a specific artwork on city-owned land, a city-owned building, or a city-leased facility.

(2) **Written Contract Required.** The selection and commission of the artist and artwork shall be by written contract between the City and artist.

(3) **Additional Requirements.** Artists, as a part of any commission or contract with the City for the provision of artwork, shall be required to submit to the City a "maintenance and inventory sheet," which shall include an annual cost estimate for the annual maintenance necessary in order to properly preserve and maintain the artwork in substantially the same condition that it was in when accepted by the City.

(4) **Use of City Purchased Art.** All artwork purchased under this program shall be displayed on city-owned land, a city-owned building, or a city-facility. The artwork shall be displayed in a visually accessible location, which shall be suitable for the design of the site, for the public to receive the most enjoyment and benefit from the art.

(5) **Art Consultant.** The City may utilize Fund to retain an art consultant to assist with a specific artwork selection. The artist shall be allowed to act as the art consultant but shall be precluded from receiving the art consultant fee.

SECTION 2-907. GENERAL REQUIRMENTS – PROPERTY OWNER INSTALLED ART.

(a) **Valuation of Development.** Valuation of new development shall be calculated based on the construction costs of the new development as certified by the developer. The art fee for redevelopment of an existing building shall be calculated based on the construction costs of the new development, excluding the assessed value of the existing buildings that are replaced or redeveloped.

(b) **Surplus balance.** In the event there is any surplus balance existing in the escrow accounts after the developer has installed the required artwork, it shall be collected by the City and held in the segregated, interest-bearing Fund to be maintained and used in accordance with Section 2-902 of this article.

(c) **Artist Selection – Contract Required.** The selected artist and the artist's commission of the artist shall require a written contract between the developer and artist, or if the City is procuring and placing the artwork, between the City and the artist.

(d) Art consultant. The developer may utilize up to 10 percent of the required fee to retain an art consultant to assist in the selection and procurement of required artwork; an additional three percent of the required fee shall be used to pay the City for administering the art in public places program. The art consultant shall have no financial relationship with the artist, nor any ownership in artwork purchased by the developer. The artist shall be allowed to act as the art consultant for the art petition but shall be precluded from receiving the art consultant fee.

(e) Construction Cost Overruns. Prior to the issuance of the final certificate of occupancy for a project, the developer shall submit a revised construction cost certification. If the final cost of the vertical construction for the entire project is higher than the cost figure used to calculate the preliminary art budget, the art budget shall be increased as necessary to equal one half of one percent of the actual defined total vertical construction cost for the project. The art budget shall be revised within 30 calendar days of any such changes. The increase in the art budget due to the final increase of the vertical construction cost for the entire project shall be placed in the City Public art fee or shall be used for the provision of art on site, at the option of the developer pursuant to the application procedures outlined herein.

(f) Appraisal. To establish the value of art submitted to comply with this division, the City may employ an independent art appraiser to provide a written appraisal of the art submitted. Such appraisal will be paid for by the developer as part of the overall art contribution.

(g) Ownership. Artwork purchased pursuant to the requirements of this section belongs to the property owner and shall be insured at all times and maintained in good condition as determined by the City's code enforcement official. Maintenance shall include any associated landscaping or related improvements. The City has the right to maintain any art it deems improperly maintained and charge the owner the cost of such maintenance, including cost of collection, interest, and attorney's fees. All artwork placed in a public place shall be and remain the sole property of the City and shall be maintained and insured by the City as provided for herein.

(h) Removal, Relocation or Replacement. Artwork installed in accordance with this division cannot be altered, removed, relocated or replaced from the site without the approval of the City Council. Any proposed removal shall include an enforceable obligation to replace or relocate the artwork at a City approved location within the Art District or the payment of a Fee in lieu of replacement or relocation that equals or exceeds that value of the artwork to

be removed using the value of the removed artwork’s current value or its value at the time it was first placed on the property, whichever is greater.

- (i) License Granted; Public Records. The artist of approved artwork shall grant to the City an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for City-related purposes, and grant to the City the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the city attorney. City approval of the artwork shall be deemed to be a grant of the artist for authorization by third parties to review and reproduce documents provided by the artist to the City which are deemed to be public records pursuant to public record laws of the state. The City shall also have the option of referring to the name and title of the artist and artwork in reproductions.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate words.

SECTION 5. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE OF ORDINANCE. This Ordinance shall become effective immediately upon its passage and adoption.

APPROVED upon first reading on the 15th day of October, 2024.

ADOPTED upon second reading the 12th day of November, 2024.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY

MARCUS DUFFY, CITY ATTORNEY