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## Public Art in private development within the City of Key West

Developer's information packet

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## Introduction

On January 8 2011 the City Commission passed Ordinance No. 11-01 for the 1% Public Art Set-Aside Development Program. This 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 work 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.

This Developer's Information Packet has been prepared for private developers engaged in building construction and redevelopment. This packet includes all the necessary requirements, forms and outline of the process to satisfy the public art requirements in Key West.

The City of Key West strongly recommends the developer meets with the Public Art Administrator very early in the project planning process to discuss the Public Art and Design Program.

## Options available to developers

Since 2011 all 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  
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.

The developer may allocate 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 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.

### Option 1:

For Private and non-city public projects the developer may contract with a professional artist to create the on-site artwork. Support shall be available from city staff and the AIPP administrator. 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 artist. 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 is provided.

### Benefits of Option 1:

- Maximized investment in property, increased property identity recognition with signature artwork, and enhanced public image.
- The developer's choice of selecting artists and artwork that best fits within their overall scope and design of the project.

- The ability to leverage the impact of artwork to supplement and enhance the project by commissioning an artist to design previously budgeted items such as an entranceway or water feature.

Option 2: The developer may opt out by contributing one percent 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.

Benefits of option 2:

- Bypass the commissioning of an artist and subsequent installation of site specific public art on the property.
- A chance to contribute to the enhancement of Key West's public spaces.
- Recognition as a civic benefactor.
- Not responsible for future maintenance of artwork on your property.

Checks should be made payable to the City of Key West and will be deposited into the City's Public Art Discretionary Fund.

## FAQ

What is public art?

City codes specify that the public art project is an original, site-specific work of art, constructed of durable materials such as, but not limited to, metal, glass, stone, light or mosaic.

The most important aspect of a work of public art is that it is created by a professional working artist of recognized achievement in the field of public art. The artist may work with architects, landscape architects, engineers, lighting designers and/or other professionals. But he or she must be the primary designer of the project, and must hold the contract with the developer for the work of art.

How can a public art requirement become an asset for a developer?

Many developers and owners who were initially skeptical about the requirements of public art projects have become unequivocal in their support for such projects, and the benefits to their developments, after participating in the process.

A public art project that is generated by thorough discussions first between the developer and the City staff, and then with the artist; and that follows a clear and transparent process, can often enhance the vision of the developer, and make the development both a destination and a local landmark.

“Don’t just pay for art because it is required. Work hard to get the best possible solution for the site and project. The end result of this should be something you will enjoy seeing every time you visit the project. If you are not proud of the art, it is just an expense.” – David Jury, VP Palo Alto Medical Foundation.

Why does the City of Key West want public art?

Public art is an enhancement to the urban environment and improves the quality of life for both residents and visitors alike by creating areas that offer a sense of community and a space for contemplation. Over 350 cities, counties, and states require public art in public and or private construction.

What does NOT qualify as public art?

Reproductions of original art, mass-produced art objects, business signs or logos, works that are part of the architectural or landscape design except when specifically commissioned from an artist for the site.

Who manages the AIPP Program?

A Public Art administrator manages the Public Art Program under supervision of the Planning Department. A City Commission appointed board, the Art in Public Places board approves artwork proposals and final artworks on private property.

What construction projects qualify?

What projects are exempt?

How does the developer satisfy this requirement?

Regardless of the selection process, the Public Art and Design Board must approve the Public Art Proposal. The Board will review the plan for compliance in that a qualified artist has been selected, the budget of the artwork reflects the proper expenditure, and the artwork is accessible to public view.

Where would the public art be located on the property?

The developer must install a public artwork in an area clearly visible from the public sidewalk or public space. The public should be able to access the artwork during normal business hours (9-5 pm) and must be able to view the artwork from afar 24 hours a day.

When must the developer propose and install the artwork?

The developer must submit for review and approval an artwork proposal before the issuance of a building permit.

- The artwork must be completed or commissioned before a certificate of occupancy will be issued.
- Unless extended by the Public Art Board, the developer has six (6) months following the issuance of certificate to install the artwork. If this deadline is missed, the developer is responsible to remit 1% of the construction or renovation costs to the Public Art Fund.

Who owns the artwork?

The property owner owns and is responsible for the maintenance of the artwork.

What happens if the developer sells the property?

Either include restrictions in the deed that require maintenance of the artwork and prevent its removal from the property.

Or

....donate it to the city?

Who should be contacted for assistance regarding AIPP Procedures?

AIPP Administrator

Planning Department

Building Department

Design process Public Art for Private Development

Public Art flowchart

See attached

Public Art Plan

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.

## Budget

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.

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.

## Artwork qualities

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.

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*.

### **Artist qualification**

Selecting the appropriate artists, whether to create a discreet artwork or to participate in a design collaboration, is the single most important decision in the public art process. Special care must be taken in all aspects of artist selection in order to ensure the best possible public art project, taking into account the goals of the project, the community served, the nature of the site, and the other members of the design team.

In their examination of the artist recommended in the developer's Public Art Plan, the Public Art Board will closely examine the proposed artist's resume and past performance. A professional art consultant may be hired to assist the developer in the selection of qualified artists that will meet the requirements of the PADB. The qualification excerpts listed below are taken from the definition of "artist" as listed in the AIPP Guidelines:

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*.

### **Maintenance, Ownership and Removal of Artwork**

Routine maintenance of public art located on City of Key West property will be the responsibility of the property owner. Suggested maintenance will be outlined in the artist's contractual agreement with the site developer. **The property owner must notify the Public Art Administrator immediately if an artwork is damaged or stolen, or if the property owner plans to move the artwork, or in any way alter its site.**

On an annual basis, the Public Art Administrator will survey the condition of the public art located on the owner's property. A condition report with prioritized

recommendations for the restoration or repair of the artwork will be completed and submitted to the property owner. In performing the report, the Administrator will examine the artwork for general condition and comparison with original photographs. Any failure to maintain the artwork may result in a citation for code compliance violation. A sample copy of the "Artwork Condition Report Form" is listed in the appendix of this packet.

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. In this one case, the owner is not responsible for creating new artwork. The owner should be aware of the Visual Artists Rights Act (VARA) of 1990, which prohibits the willful destruction of a work of visual art. For more information on VARA, see the "Visual Artists Rights Act" section of this packet.

### **Deaccession/Removal of Artwork**

Deaccessioning is the procedure followed to remove an artwork from the public art collection. In some circumstances, deaccessioning an artwork is necessary, however in general practice, deaccessioning should be a seldom-employed action that operates with a strong presumption against removing artworks from the Public Art Collection. The Public Art Board as provided in Ordinance NO. \_\_\_\_\_ shall oversee the process for removal of artwork from the City's Public Art Collection. The PADB will follow the process outlined in the City's Deaccession Policies and Procedures.

The property 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.

### **Transfer of Property Ownership**

Upon installation, the property owner maintains ownership and retains the title to each work of art and is responsible for maintenance and conservation. Should the property be sold, the seller may either:

- . Include restrictions in the deed that require maintenance of the artwork and prevent its removal from the property; -or-
- . Remove the artwork and make a contribution to the Art In Public Places Fund in an amount equal to 1% of the initial Aggregate Job Value.

## **Redevelopment of the Property**

Should the property be redeveloped in the future, the artwork installed on-site may be in jeopardy. If the artwork can be removed without injury to the work of art, the City recommends the re-use of the artwork on site. The artwork cannot be altered, modified, relocated or removed without the prior approval of the Public Art Board. If the artwork is integrated with the building or site elements to be demolished and the Public Art Board agrees that the artwork cannot be safely removed, then the artwork may be de-accessioned from the public art collection.

**What if redevelopment or renovation cost meet the requirement for the 1% again?**

## **Visual Artists Right Act (VARA)**

With the creation of the Visual Artists Rights Act (VARA) of 1990, Congress for the first time legislated limited moral rights for the attribution and integrity to authors of works of visual arts. These rights, following the model suggested in the International Berne Convention for the Protection of Literary and Artistic Works, mirror rights granted to authors by most industrialized nations of the world. They guarantee to authors of fine arts and exhibitions the right to claim or disclaim authorship in a work; limited rights to prevent distortion, mutilation, or modification of a work; and the right, under some circumstances, to prevent destruction of a work that is incorporated into a building.

As it pertains to public art, property owners and developers should be aware of VARA, a section of the Federal Copyright Legislation. Among other things, this law forbids the willful destruction of a work of visual art. For further information regarding VARA, see United States Code Annotated, Title 17. Copyrights, Chapter 1 – Subject Matter and Scope of Copyright, Current through P.L. 105-153, approved 12-17-97.

## **Appendix**

## Assessment of Public Art Required Expenditure

**TO BE COMPLETED BY APPLICANT** (PLEASE PROVIDE ALL INFORMATION APPLICABLE TO PROJECT):

Date:

Project Name:

Project Address:

Developer/Contact:

Phone:

Email:

Address:

Aggregate Job Value (same as used for building construction permit): \$

Is this project going to be constructed in phases: Yes          No

If yes, total projected aggregate job value for all phases: \$

I choose to meet Ordinance No. .... by (check one):

- . Providing 1% of the job value to install public art on the project site.
- . Providing 1% of the job value in cash to the City to construct public art.

I ATTEST THAT THE INFORMATION PRESENTED ABOVE IS CORRECT,  
COMPLETE AND TRUE.

Property Owner/Authorized Representative Signature          Date

**NOTE:** Installation fees will be deposited into a City escrow account. All fees payable to the "City of Key West" and submitted to the Building Department in City Hall, White Street.

Timing of payment: prior to issuance of building construction permit.

Is there a maximum the developer has to spend on art?

