



## 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:** March 4, 2014

**RE:** Second Reading – 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
City Commission	February 19, 2014	Passed on first reading

**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 **ADOPT** the proposed Ordinance on second and final reading.