

Guidelines AIPP KW

Key West Art In Public Places

'Public Art is a mirror that reflects the local environment, cultural values and artistic vitality of the community in which it exists. At its best, public art is more than just art installed in public places. It is a community-based process of dialogue involvement and participation. Public Art enhance the quality of life for citizens by encouraging a heightened sense of place, enhancing a community's prestige and enlivening the visual quality of the built environment.'

-UNKNOWN

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The AIPP Program, to be housed within the Planning Department of the City of Key West, shall be staffed by an Administrator and governed by a Board of Directors.

The Art in Public Places Program is established under City of Key West Ordinance Sec. 2-481 through 2-487 ([Appendix A](#)) and as such shall be governed by the language therein.

Additionally, the following programmatic operating guidelines shall also apply.

➤ PROGRAM PURPOSE AND INTENT:

“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.”

Sec. 2-487, (a)

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.”

Sec. 2-487, (a)

The achievement of this goal shall be supported through the following activities:

- The commission of artists and works of art of the highest quality, which represent an expression of our time, contribute to a sense of the city's identity, and entail some measure of public significance;
- The nurturing of the artistic vitality of the City of Key West through the encouragement of local artistic endeavors;
- The encouragement of public dialogue which increases public understanding and enjoyment of art, through appropriate public education forums and programs;
- The encouragement of public interaction with public places, via the placement of works of art;
- The commission of a broad range of works of art, reflective of the overall diversity of current works in the field of art;
- The commission of works of art carrying in style, scale, medium, form and intent representative of the local, regional, national, and international arts communities;
- The encouragement of artists to reach creative solutions to the aesthetic problems they may be commissioned to solve;
- The broad distribution of commissions among artists;
- The broad geographic distribution of works of art in the City of Key West;
- The encouragement of true collaborative efforts between artists; and architects, engineers, landscape architects, and planners.
- The Board shall make recommendations to the City Commission as the budgeting

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of expenditures for the selection, acquisition, installation and maintenance of art and art projects commissioned and/or purchased through the Art in Public Places Program.

➤ DEFINITIONS

“ARTIST”: 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*.

“ARTS PROFESSIONAL”: An artist, arts educator, art critic, arts administrator, arts dealer, designer, art historian, curator, fine art collector, architect, urban planner or landscape architect who is well respected in her/his field and knowledgeable with regards to contemporary art.

“ARTWORK or WORKS OF ART”: “Artwork” means works in a variety of media produced by professional artists; works may be permanent, temporary or functional, may be stand-alone or integrated into the architecture or landscaping, if such are designed by an artist as defined above, and should encompass the broadest range of expression, media and materials. The term “Artwork” does not include inappropriate expenditures as described in Section ...

“CONSTRUCTION COST” As defined in the Ordinance to mean 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” 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.

“DONATION” A gift of a work of art, or funding to acquire or commission a work of art.

“IN-LIEU FUNDS” 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, personnel, grants, matching funds, proposals, activities, programs, projects, commissions, installation, and maintenance of *art* in *public* places.

“PUBLIC AGENCY” Any agency of the United States, a State, or a political subdivision of a State; or any interstate governmental agency.

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“PUBLIC ART ADMINISTRATOR”: An advocate for public art who with the right support and assistance is able to educate, interpret and translate the needs of artists, developers, the public art board, city commissioners, city staff and the public to make the public art program run efficiently.

“PUBLIC ART BOARD”: The Key West Art in Public Places (AIPP) Board, an advisory board appointed by the City Commission.

“PUBLIC ART FUND” is a separate account into which all monies generated under this program shall be deposited. The account shall be used solely for expenses associated with the Public Art Program including the acquisition, installation, maintenance of works of art within the City of Key West, the administration and promotion of the Public Art Program.

“PUBLICLY ACCESSIBLE” Locations that are open to the general public during normal business hours and visible by the general public at all times.

BOARD OF DIRECTORS

Per Ordinance Sec. 2-481 through Sec. 2-484, the Program shall have an appointed Board consisting of delegates from each City Commissioner and the Mayor of the City, who shall serve for the length of their appointers term. Four members of the Public Art Board shall constitute a quorum for the transaction of business during both regular and special meetings. If any board member fails to attend two (2) regular monthly meetings unexcused over twelve (12) months, the Public Art Board shall declare the member’s office vacant. The chairperson will be elected for a term of two (2) years by its fellow board members. The board member's term shall end at the conclusion of the commissioner's term; a reelected commissioner may reappoint a board member. Board members shall serve without compensation. Compensation for any travel, food and lodging expenses shall be in accord with City policy. As an advisory board to the City of Key West, the Public Art Board members and staff shall comply with the Sunshine Laws of the State of Florida. If any board member fails to attend two (2) regular monthly meetings unexcused over twelve (12) months, the Public Art Board shall declare the member’s office vacant.

➤ MISSION

"To advise the City Commission in the selection and location of public art in the City of Key West; to enhance and maintain the character and identity of our island community through the aesthetic of public art; to create a physical and human environment which nurtures artists, arts organizations, and arts producers; to nurture and preserve cultural diversity consistent with and reflecting Key West's population; and to promote the inclusion of aesthetic considerations in local decision-making through advocacy, services, financial and technical assistance, and leadership in the community."

<http://www.cityofkeywest-fl.gov/department/board.php?structureid=34>

- Per the Ordinance Sec. 2-487, (c), 3., c., “In-lieu funds ... may be used only for the following purposes: acquisition, administration, personnel, grants, matching funds, proposals, activities, programs, projects, commissions, installation, and maintenance of art in public places”.
- Per Sec. 2-486, (4), the Board shall limit the amount of dollars spent on art/cultural activities, programs and events to no more than fifteen (15) percent of the one (1) percent set aside funds in

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a fiscal year and shall demonstrate high standards of financial stewardship in allocating public funds for community needs and interests relevant to their established mission.

- The expenditure of such funds shall require a Board vote by quorum; four members of the art in public places board shall constitute a quorum per Sec. 2-484, (a).

➤ ANNUAL REPORT

In accordance with Sec. 2-484, the Board shall submit a year-end report to the City Commission at the conclusion of each fiscal year.

This report will include an annual inventory of existing public art by City District, to be conducted by each Board member with respect to their appointment and shall be supported by the Program Administrator.

➤ PUBLIC ART INVENTORY

In order to meet the following objectives:

- To provide for the regular inspection of public Artworks;
- To establish a regular procedure for effecting necessary repairs to public Artworks;
- To ensure regular maintenance of public Artworks; and
- To ensure that all maintenance of public Artworks is completed with the highest standards of professional conservation
- To identify opportunities for new installations within each Commissioner's District

The Program Administrator will conduct the annual inventory with each Commissioner's appointed Board Director through the following process:

- Schedule a planning meeting to determine a walking, bike, or vehicular route through the delegate's District
- Conduct and document research required prior to the scheduled planning meeting and follow up with additional research after to the planning meeting
- Compile all relevant pre-visit research in to a one-pager
- Conduct inventory via pre-determined route
- Document each piece with a minimum of three photographs which depict its size, color scheme, dimensions, location, and any special features
- Record the specific address for GIS mapping project
- For each location and art piece: record the year, the artist, and the title (this information may be identified and collected in the pre-visit research)
- Document any identified maintenance or repair needs and conduct follow up with project contact

➤ ARTIST and ARTWORK SELECTION

The Art in Public Places Boards shall maintain the following general guidelines regarding the methods of artist/artwork selection, which may be employed for a particular project:

- Open Entry competition- any artist is eligible to enter, with recognition of the possible residency requirements. The site and prospectus are appropriately advertised. Artists may be asked to

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submit slides or past work, resumes, and letters of intent related to the specific project or specific proposals for the project under review.

- Limited Entry Competition – The jury invites a limited number of artists to participate in the selection process. The artists selected may be asked to submit slides of past work or proposals based on the project prospectus. The names of the artists invited to participate shall be publicly announced upon receipt of written acceptance of the invitation.
- Direct selection of the Artist – An artist is invited to participate in the project and may be asked to develop a proposal for the project. If desired a team of several artists may be put together.
- Direct Purchase of an Existing Artwork – A completed work of art is purchased. No more than ten percent of the cost of the work may go toward a dealer or agent.

➤ **CONFLICT OF INTERESTS**

The purpose of the conflict of interest policy is to protect the interests of the AIPP when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of AIPP. This policy is intended to supplement, but not replace, any applicable state or federal laws governing conflicts of interest applicable to nonprofit corporations.

Board members shall at no time accept payments from, or enter into contracts with, any of the projects participating in the AIPP Program and process, and shall be ineligible to submit proposals, qualifications, or responses to calls for artists for any projects under the AIPP Programmatic Operating Guidelines.

Any such collaboration is considered a direct conflict of interest. Upon relinquishment of a Board seat a member remains ineligible to accept payments from or enter into contracts with any of the projects participating in the AIPP Program and process, and to submit proposals, qualifications, or responses to calls for artists for any projects participating in the AIPP Program for a period of 18 months.

Board members shall make known in writing to the AIPP Administrator any real or perceived conflicts of interest they may have with either discussion or action items presented on their Board Meeting Agendas. In the event that a Conflict of Interest is found to exist

- Violations of the conflict of interest:
 - If the committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
 - If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.
- Annual Statements:
 - Each director, principal officer and member of a committee with board-delegated powers shall annually sign a statement, which affirms that such person:
 - Has received a copy of this conflict of interest policy
 - Has read and understands the policy

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- Has agreed to comply with the policy and accept disciplinary and corrective action if violations of the conflict interest are identified

➤ PROGRAM ADMINISTRATOR

In fulfillment of the requirements of Sec. 2-485, the Planning Department Director, representing the City Manager's Office, shall hire an Administrator and shall be the direct supervisor of the Administrator. The Administrator will be considered an employee of the City of Key West and serve as the liaison between artists, architects, contractors, developers, city departments and community groups in the process of public art projects.

The job duties and responsibilities of the Administrator include, but are not limited to the following:

- Document the process for participation in the AIPP Program ([see Appendix B](#))
- Ensure adherence to the standards set forth in the approved ordinance, Sec. 2-481 through 2-487, and the related programmatic operational guidelines and compliance with the requirements thereof
- Serve as an administrative coordinator for Arts in Public Places (AIPP)
- Keep and monitor the AIPP calendar to ensure that meetings and appointments are coordinated
- Accurately type reports, routine correspondence, and other departmental documents
- Set up, and maintain, all computer, electronic and paper files, so as to ensure the smooth handling of all AIPP business.
- Attend assigned board meetings to ensure an accurate account of minutes is kept
- Recommend, develop, and disseminate Requests for Proposals and Calls for Artists for public art project opportunities.
- Conduct the selection process for art and artwork by recruiting qualified jurors, scheduling meetings, preparing materials for review, providing orientation for participants and facilitating interviews, discussions and selection
- Identify and oversee maintenance needs of the public art collection to include annual assessment of the collection and manage contracts for the repair of artworks (for items under City Ownership); collaborate with Community Services to execute regular ([quarterly, semi-annual, annual, or bi-annual- consult Board to develop plan](#)) maintenance schedule
- Manage the artwork donation and/or loan process (from proposal to installation) and coordinate with user departments and stakeholder groups
 - Donations:
 - Require separate accounting for
 - Shall be accepted only when intended for the purpose of acquiring and installing art in public places
 - May be utilized for acquisition, administration, personnel, grants, matching funds, proposals, activities, programs, projects, commissions, installation, and maintenance of art in public places
 - Shall be governed under the Programmatic Operating Guidelines of the AIPP Program and be subject to the regulations of City-owned Public Art
 - All donation acceptance recommendations of the AIPP Board shall be subject to legal review and City Commission approval
- Recruit program participants and provide education and information through different outlets
- Manage contracts and monitor compliance of insurance and engineering requirements
- Be responsible for all phases of contracts with artists to include draft, negotiation, execution and administration

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- Manage project artwork budget and provide updates
- Develop and maintain paper and electronic files, databases, visual archives, publicity materials and web resources
- Determine appraisal and insurance needs for all Public Art pieces owned by the City of Key West (criteria shall include: the item's worth based on the value of the art at the time of installment, improvements to the installation, normal weathering and time degradation of the work, the recognized value of other works by the same artist, items with an estimated value of \$50,000 or more shall be valued by a professionally certified art appraiser and appropriately insured as an administrative responsibility of the Program)
- Develop and execute appraisal and insurance contracts utilizing the approved procurement processes of the City of Key West
- Collect and process fees associated with AIPP participation and administration
- Provide grant writing and fundraising
- Provide information, as needed, to the Art in Public Places Board and in turn implement program recommendations
- Provide correspondence with applicants and other program participants
- Attend annual FAPAP conference as a representative of the Program, the City, the Board, and the Arts Community
- Provide a presentation summarizing the annual FAPAP experience

➤ ADDING ITEMS TO THE MONTHLY AIPP BOARD MEETING AGENDA

The AIPP Administrator and City Clerk's Office require 5 days advanced notice for submission of items for inclusion on AIPP Board meeting agendas. For meetings held the second Monday of each month, agenda items should be submitted to the Administrator for inclusion on AIPP Board meeting agendas no later than 12 noon on the Wednesday preceding the meeting, except when other arrangements have been made. Items submitted after 12 noon on the Wednesday preceding the Board meeting will require special arrangements with the Clerk's Office for inclusion and should be emailed to both the Administrator and the Clerk, with all relevant attachments, as soon as is feasibly possible.

➤ PROCESS FOR INITIATING AIPP PARTICIPATION

Being present at the Development Review Commission Meetings, the AIPP Administrator will alert applicants for Major Development Plans to the AIPP participation requirement verbally at their initial DRC presentation. A contact person for the project will be established and the AIPP Administrator will be responsible for providing the contact person with an introductory email outlining the process for participation and the guidelines for the required Art Plan.

Per Ordinance 2-487(c)(2), prior to issuance of a building permit for a Major Development Plan's 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 Board approval of the Public Art Plan, the developer may formally contract with the artist(s). The budget for the Art Plan will be based on the estimated values of the project's construction costs as described and documented in the approved major development plan. Upon completion of the project and prior to CO issuance the actual construction costs, based on the building permits, shall be calculated by the AIPP Administrator. The final budget for the completed approved Public Art Installation should total, at a minimum, 1% of the total qualifying construction costs.

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How much leeway will be given between the estimate and the actual cost if the work on the art is already underway. A variance of 5% between the estimated costs and actual costs will be allowed when calculating the anticipated 1% fee for budgeting purposes in the Art Plan and the actual value required for AIPP compliance, based on the total of the applicable Building Permits, at the project's completion.

For City-owned Development Projects

- Costs determined based on the estimated construction costs as established by the requested building permit(s).
- 1% fee established
 - If the lead department or entity within the City has a Plan for Public Art, the AIPP Admin will work with the City entity to develop it to meet with Board Approval
 - If the lead department or entity within the City does not have an Art Plan, the AIPP Admin and will coordinate one of the following options with the City entity and the Board:
 - develop and disseminate an RFQ for a qualified artist who can develop and implement an Art Plan,
 - develop an overall property plan for the placement of Public Art and, develop and disseminate multiple RFP's for artists to implement the elements of such plan
 - set aside the funds in the dedicated AIPP fund for future Public Art installations or programming in accordance with Sec. 2-487 (e)

For non-City-owned or Private Development Projects

- Costs determined based on the estimated construction costs as established by the requested building permit(s)
- 1% fee established
 - If the Developer has a Plan for Public Art, the AIPP Admin will work with the entity to develop it to meet with Board Approval through the following activities:
 - Support the Developer in determining the specifics of the required Art Plan based on the Ordinance 2-487(c), (3)
 - Assist in the development and dissemination of 'Requests for Qualifications' or 'Request for Proposals'
 - Provide templates and forms for successful participation in the AIPP requirement as needed
 - Provide project consultation throughout the process of AIPP participation as requested by the Developer
 - If the Developer opts to participate through the installation of Public Art and does not have a plan, at the developer's request, the AIPP Administrator will:
 - Support the Developer in determining the specifics of the required Art Plan based on the Ordinance 2-487(c), (3)
 - Assist in the development and dissemination of 'Requests for Qualifications' or 'Request for Proposals' for an artist who can develop and implement an approved Art Plan
 - Provide templates and forms for successful participation in the AIPP requirement as needed
 - Provide project consultation throughout the process of AIPP participation
 - If the Developer does not choose to have a Public Art plan and elects to opt out of the Public Art installation process, the 1% fees will be calculated and collected by the AIPP

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Administrator, who will then deposit of such funds, through the Finance Department, into the Art in Public Places Fund (designated Community Fund (CF) 110).

➤ PROCESS FOR DEMONSTRATING SUCCESSFUL AIPP PARTICIPATION

Per Ordinance 2-487 (c)(2) in accordance with the AIPP Board approved Art Plan, 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. Upon completion of the installation of the approved Art Plan, the Developer shall notify the AIPP Administrator. The AIPP Administrator will

- Calculate the total construction costs for the project based on the eligible permits issued by the Building Official
- Determine the final amount of the 1% requirement
- Assess the status of the Art Plan and determine that the installed Public Art is in alignment with the AIPP Board approved Art Plan
- Verify the installation of the AIPP Identification Plaque
- Document the completed installation
- Provide a letter declaring the project's status as "Complete and Compliant" to all of the following:
 - The Building Department Staff
 - The Building Official
 - The AIPP Project File
 - The Developer
 - The Owner/Project contact
 - The Artist (where applicable)
 - The Director of the Planning Department

All completed projects will be made known to the AIPP Board through the monthly Administrator's Report and through regular updates to the Project Inventory maintained by the Administrator and presented monthly to the AIPP Board.

➤ MAINTENANCE OF COMMUNITY FUND 110 (PUBLIC ART FUND)

The transfer of monies related to AIPP participation shall take place within thirty days of appropriation by the City Commission. The Fund shall be authorized to accept gifts, grants and donations made to the City for Art, as well as any in-lieu contributions from private developers. The Fund shall be self-perpetuating from year to year. The AIPP Administrator shall be responsible for managing the Fund in cooperation with the City's Finance Department, all relevant City regulations, the advisement of the AIPP Board, and in accordance to Sec. 2-487.

- Grant Funds and Donations
 - The Public Art Program may apply to other sources for funding of specific projects and may utilize Public Art Fund monies as matching dollars. Funds received from other non-City sources shall be deposited in the Public Art Fund.
- Sales and Fundraisers
 - If income is generated from the sale of decommissioned artworks, licensing, software, tickets, printed materials or other objects related to the public art, the proceeds are deposited in the Public Art Fund.

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➤ CONTRACTING FOR EXPENDITURES

Once the appropriated budgets are established, the expenditures shall follow the normal contracting approvals and actions that are required by the City Ordinance to authorize the expense from the Public Art Fund.

All proposed budget expenses of City funds which exceed \$20,000 are required to go through the formal competitive procurement process of competitive, sealed bidding or competitive request for proposals. After which the City Commission will review and approve the winning proposal.

Expenses below \$20,000 can be approved by the City Manager

The following are exempt from the requirements of formal competitive *procurement*:

- *Sole source procurement*. Sole source *procurement* in accordance with the following:
 - All specifications shall be drafted so as to promote overall economy for the purposes intended, to encourage competition in satisfying the city's need, and shall not be unduly restrictive. Brand name specifications are restrictive of competition and shall be used only as specifically provided in [section 2-844](#).
 - A contract may be awarded without competition when the department head makes a written determination and the purchasing agent verifies that, after conducting a good faith review of available sources, there is only one source for the required commodity or contractual service. The city manager shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source *procurement* shall be maintained as a public record and shall list each contractor's name, amount and type of each contract; a list of the commodity or contractual service *procured* under each contract; and the identification number of each contract file.
 - All sole source *procurement* where the cost of the commodities or contractual services exceeds \$20,000.00 shall be authorized by the city commission.
- *Emergency procurement*. The city manager may make emergency *procurement* of commodities or contractual services where the cost exceeds \$20,000.00 when there exists a clear and present threat to public health, property, welfare, safety or other substantial loss to the city, including cases where a natural disaster has occurred, is occurring, or is imminently threatening. However, such emergency *procurement* shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of the emergency *procurement* shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the commodity or contractual service *procured* under the contract, and the number of the purchase order, if any. The city commission at the next scheduled city commission meeting shall ratify all emergency procurement in excess of \$20,000.00.
- Purchases and acquisitions under contracts of federal government and the state or its political subdivisions. All purchases of commodities or contractual services under the provisions of local, state and federal purchasing contracts shall be exempt from the competitive *procurement* requirements, provided that the following criteria are all satisfied:
 - The terms and conditions of the original contract by the federal, state or local government, other than the city, are satisfactory to the city and such terms and conditions are expressly

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extended to other municipalities pursuant to the bid documents or by the original successful bidder.

- The purchasing agent has performed an informal solicitation to determine if the prices of the original contract are fair and reasonable and to ensure local vendors have an opportunity to compete.
 - The city commission authorizes such *procurement* when the cost of the commodities or contractual services exceeds \$20,000.00.
- Exempt contractual services. Exempt contractual services not subject to the competitive *procurement* requirement are as follows:
 - Legal services including paralegal, expert witnesses, appraisal services and court reporters. Prior to engaging legal services estimated to have a cost in excess of \$20,000.00, the city attorney shall notify the city manager and the city commission.
 - If in the opinion of the city manager exceptional circumstances exist to exempt a purchase from the competitive bid requirements of this subdivision for the best interests of the city, he shall place a resolution before the city commission for approval of such exemption.

➤ INELIGIBLE PUBLIC ART EXPENDITURES

The public art projects are not intended to substitute for functional elements that would normally be a part of the architecture or the landscape of Capital Improvement Projects. Unless they are specifically designed by professional artists, the following will not be considered as part of the Public Art Program:

- Reproductions of original Artworks by mechanical or other means (however, limited editions controlled by the artist, or original prints, cast sculpture, photographs, etc., may be included);
- Decorative, ornamental or functional elements that are designed by the architect or other design consultants engaged by the architect;
- Those elements generally considered to be components of the landscape architectural design, vegetative materials, pool(s), paths, benches, receptacles, fixtures, planters, etc., which are designed by the architect, landscape architect or other design professional engaged by the primary designer;
- Art objects that are mass-produced, ordered from a catalog, or of a standard design, such as playground sculpture or fountains; directional or other functional elements, such as signage, color-coding, maps, etc.;
- Directional or other functional elements, such as signing, color coding, maps, etc., not designed by an artist selected through the Commission-approved process;
- Walls, bases, footings, pools, lighting or other architectural elements on or in which the Artworks are placed or affixed, or mechanical elements and utilities needed to activate the Artwork;
- On-going operating expenses or maintenance architectural elements on or in which the Artworks are placed, or sites where Artworks are located;
- Statues, representations of historical figures or historical plaques, unless part of a larger Artwork designed by a professional artist where the work illuminates historical facts and deeds significant to the community; or
- Purchase of existing Artworks without the selection process, as provided for in the adopted Public Art Program guidelines and policies.

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➤ DONATION & LOAN POLICY

• STATEMENT OF PURPOSE

The City of Key West is committed to building a collection of high quality public art that reflects the artistic and cultural diversity of Key West for the enjoyment and enrichment of citizens and visitors. In 2000, the Art in Public Places (AIPP) program was established to commission and purchase public art for new or remodeled city buildings and parks. In addition to artworks acquired through the Art in Public Places program, the City of Key West encourages donations or loans of art for public places.

The objectives of this policy are:

- To Provide uniform procedures for their review and acceptance of gifts and loans of works of art for the City of Key West;
- To maintain high artistic standards in works of art displayed by the City of Key West;
- To vest in a single City Board the responsibility for insuring the management and maintenance of the City's public artworks;
- To facilitate planning for the placement of works of art in City facilities; and,
- To facilitate appropriate recognition of the artists and donors of works of art to the City of Key West.

When unsolicited gifts or loans of major artworks are proposed for placement with any City of Key West agency or department, a written proposal or letter of intent must be submitted to the City's AIPP Administrator. The proposal must include specifications of the proposed gift, including: artist, title, dimensions, materials, date, and proposed location (if appropriate). The Administrator will refer the proposal to the Art in Public Places (AIPP) Board for review. The AIPP Board will recommend disposition of the offer to the City Commissioners whose decision is final.

Such proposals shall be reviewed by the Art in Public Places Board and the City Commission, using the same criteria applied to the public art commissions undertaken through the Art in Public Places program. Representatives of the receiving city agency or department and the community are encouraged to participate in the review process through the appropriate staff channels or the public comment process at the monthly AIPP Board meetings.

• DONOR/LOAN AGREEMENT

The City of Key West shall enter into a Donor Agreement with any and all parties wishing to donate Art to the City of Key West's Art in Public Places Program. The Donor Agreement document shall be accompanied by the following materials:

- a detailed Art Plan which meets the general requirements as outlined in sec 2-487, (c), (3) of the City of Key West Municipal Code of Ordinances
- Certificate(s) of appraisal declaring the value of the work for insurance purposes

• ARTWORK DONATION & LOAN REVIEW CRITERIA

The Art in Public Places Board shall review and consider proposed gifts (or loans) of works of art according to the following criteria:

• AESTHETIC

- Artistic merit of the work of art, including consideration of its artistic, social, and/or historical significance, as evidenced by the Artwork Donation Proposal (which includes a written description and drawing and/or model for the proposed artwork.)

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- Artist's qualifications, as evidenced by the Artwork Donation Proposal (which includes slides/photographs of past work, resume, references, and published reviews.)
- Compatibility of the work of art within the context of the City of Key West Art in Public Places Collection.
- Warranty of originality of an existing artwork (only original works or limited editions shall be considered.)
- Provenance for an existing artwork.

- **SITE**
 - Appropriateness to the proposed site with respect to its immediate and general social (audience) and physical (neighborhood)
 - Scale, form, content, color, and design of the artwork in relation to the site. (NOTE: Some city districts, such as the historic district, may have specific design criteria or special conditions.)
 - Ecological impact (i.e. percentage of impervious cover, etc.)
 - Accessibility to the public, including persons with disabilities
 - Text components (i.e., signage and/or plaques)

- **INSTALLATION**
 - Site requirements for installation (i.e. electricity, lighting, water, or other services)
 - Method of installation
 - Storage requirements, if any
 - Maintenance requirements

- **FINANCIAL** (Responsibilities of Donor/Lender)
 - All costs associated with fabrication and installation (including site preparation, plaque and unveiling/dedication event, if any)
 - Source of funding and date funds are available
 - Estimated annual maintenance costs
 - Amount and source of funding for annual maintenance costs (NOTE: The City of Key West may assume responsibility if maintenance requirements are anticipated to be under \$100 annually.)
 - Statement of value of artwork for insurance purposes (i.e. artist's commission contract amount or professional written appraisal of existing artwork.)
 - Recipient(s) of revenues generated by any collateral material other than that used for educational purposes (i.e., will revenues be allocated to the City of Key West to defray annual maintenance costs?)

- **LIABILITY**
 - Susceptibility of the artwork(s) to normal wear to vandalism
 - Potential risk to the public
 - Public access, in general, as well as compliance with ADA requirements
 - Special insurance requirements

- **TIMELINESS**
 - Allowance of sufficient time for normal review process by the Art in Public Places Board, the City Commission, and any other agencies or departments involved
 - Timely and appropriate response to Art in Public Places Board and staff requests for additional materials or information

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- **SPECIAL CONDITIONS**

- Any conditions of the gift (or loan) imposed by the donor
- Donations/ Loans that contain advertising will not be considered.

- **ADDITIONAL APPLICABLE REVIEW CRITERIA FOR DONATIONS**

- All Art in Public Places donation based projects shall be reviewed and considered by The Art in Public Places Board.
- Donations shall be approved for receipt on the basis of the appropriateness of the donor's proposal to the particular project and/ or proposed location, the probability of successful installation and maintenance, the aesthetic value added to the AIPP program
- or to the community-at-large by the acceptance of the donation, and the long term resiliency of the piece as Public Art.
- In making its selection, the Board shall bear in mind the purposes of the Art in Public Places Program, always aiming to achieve the highest aesthetic quality.
- The Board shall, in making its selection, give due consideration to the appropriateness of the proposed design in terms of its scale, form, content and design with respect to its immediate and general, social and physical environment.
- The Board shall also give due consideration to the proposed design's materials and construction for questions of durability, maintenance, public access, appropriateness, safety, and security.
- The aforementioned criteria are the minimum aesthetic and practical criteria on which the Board shall base its deliberation over the acceptance of a donation to the AIPP Program. Other criteria may be established by the Art in Public Places Board, the Administrator, or relevant City Departments, as dictated by the particular requirements of the donation or donor.

- **EXCEPTIONS TO THIS POLICY**

- Gifts of State may be accepted by the City Commission and/or City Manager without the benefit of this review, according to the City of Key West Purchasing Policies; however, the Art in Public Places Board shall be notified of acceptance of such donation or loan (in order to accession and insure the work) and may be consulted to recommend appropriate siting, an annual maintenance program, etc.
- Portable artworks on short-term (30 days or less) loan to the city of Key West shall not be subject to review under this policy.

- **REVISIONS TO THIS POLICY**

The Art in Public Places Board may review this policy annually and make recommendations for revisions to the Key West City Commission as needed

- **ART DONATION/LOAN PROPOSAL FORM** (available upon request).

- **CONTACT:** Art in Public Places Program, City of Key West Planning Department
AIPP Administrator, Vicki Boguszewski, vboguszewski@cityofkeywest-fl.gov, (305) 809-3779

REFUNDS FROM THE AIPP FUND:

In the event that a project elects to contribute 1% of the total construction costs to the AIPP Fund in lieu of installing Public Art and subsequently changes its intention to include Public Art within the development project on the developed site, the following procedure shall be executed for the purpose of refunding the collected fees from the AIPP fund to the Project for the expressed purpose of the implementation of a Board approved Art Plan:

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- AIPP Administrator shall be notified in writing by the developer's AIPP project contact of the intent to revise their decision; this notice of intent must be filed within 60 days of the date of issuance of the project's Building Permit in order for the AIPP Board to render a determination. In the event that a notice of intent is filed outside of the period 60 days from the date of issuance of the project's Building Permit, City Commission approval based on AIPP Board recommendation shall be required.
- AIPP Administrator will verify the collection of the payment of the 1% of the total construction costs through the values assessed at the issuance of the project's building permits and document the receipt of the 1% fees into the AIPP fund, as collected by the City
- AIPP Administrator will notify the developer's AIPP project contact of the amount of funding available to be refunded from the AIPP fund
- The developer's AIPP project contact will submit an Art Plan for approval by the AIPP Board; the AIPP Administrator will be available to support the development of the Art Plan to comply with Sec2-487, (c), (3)
- The developer's AIPP project contact will indicate to the AIPP Administrator the requested amount or percent of the available funds to be refunded for Public Art based on the budget developed with in the proposed Art Plan
- The Art Plan must be submitted and approved by the AIPP Board, and the approval must be documented by the AIPP Administrator
- AIPP Administrator will generate a refund request via email and submit it to the Finance Director for processing.

Per the Finance Director, the request shall include the following:

- Proof of the receipt of payments to the City's AIPP Fund, verified by AIPP Administrator
 - AIPP Board minutes demonstrating Board approval of the project's proposed Art Plan
 - AIPP Board approved Art Plan, as per Sec2-487, (c), (3)
 - Name of the Company to be refunded
 - Payment address and designee
 - Amount to be refunded
 - Narrative of the circumstances prompting the requested refund
 - Signature of the Planning Director
- The Finance Director will then issue the refund to the developer for the sole purposes described in the approved plan to participate in the AIPP program.

DEACCESSION/DE-COMMISSIONING/DE-INSTALLING EXISTING PUBLIC ART

In accordance with the City of Key West's Municipal Code of Ordinances, Sec. 2-487, (f), (5) the City of Key West, in its sole discretion, may remove, relocate, or deaccession a work of art owned by the City, installed on City property, or incorporated into City owned facilities. Also in accordance with the above section of code, a private property owner may request that a work of art be removed from the site due to hardship with the approval of the AIPP Board through the following procedural policy.

Deaccessioning should be cautiously applied only after careful and impartial evaluation of the artwork to avoid the influence of fluctuations of taste and the premature removal of artwork from the collection. Prior to the deaccession of any work, the Art in Public Places (AIPP) Board shall weigh carefully the interests of the public, the intent, in the broadest way, of the donor/artist, and 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.

Causes for review

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While the intent of acquisition of a work of art is for permanent (minimum of five (5) years) or lifelong installation, circumstances and/or conditions may arise that make it necessary for the AIPP Board to remove an artwork from public display.

One or more of the following conditions shall apply in order for an artwork to be considered for permanent removal or deaccession:

- The work presents a threat to public safety;
- The condition or security of the work cannot be guaranteed, or the City cannot properly care for or store the work;
- The work requires excessive or unreasonable maintenance;
- The work has serious or dangerous faults in design or workmanship;
- The condition of the work requires restoration in excess of its monetary value, or is in such deteriorated state that restoration would prove either unfeasible, impractical or would render the work essentially false;
- The work is of poor aesthetic quality and or historic/cultural value;
- A similar but superior example exists in the collection;
- The work is a forgery;
- No suitable site for the work is available;
- Significant adverse public reaction is documented over an extended period of time (5 years or more);
- The work can be sold to finance, or be traded for, a work of greater importance by the same artist;
- A written request from the artist has been received to remove the work from public display;
- The work is rarely or not displayed.

Review process

The AIPP Board, acting through its Administrator, shall require a Deaccession Plan which includes the following:

1. A report, which indicates:
 - Acquisition method and purchase price
 - Any restrictions that may apply to the specific work based on contract review
 - An analysis of the reasons for deaccessioning
 - Alternative solutions
 - Suggested methods of deaccession
 - The Appraised value of the work as documented in the records of the City of Key West's Risk Management Division within the Finance Department or by two independent consultants, if obtainable
 - Documentation of correspondence, press or other evidence of public debate documenting extended adverse public reaction
- 2 Document discussion with the artist or donor regarding the circumstances prompting the review.
- 3 Document discussion of the circumstances with the Community Services Department, the Engineering Department, and other relevant City Departments as needed
- 4 Document assessment of the City's Legal rights and responsibilities for the deaccession of the work in question in regard to the Visual Artist Right Act [note](#) or other City, State, or Federal Laws.
- 5 Seek additional information regarding the work from the artist, curators or appraisers if necessary

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- 6 Document a plan for the future life of the work which meets with the approval of the AIPP board, the Artist (when applicable), and the City Commission. Options for the future life of a work include:
 - a. Relocation of the work of art
 - b. Placement of the work of art in a storage facility
 - c. Sell or exchange the work of art through the following means:
 - i. Offer the artist first opportunity to buy back the work of art at the current value or at a negotiated price.
 - ii. Obtain professional appraisal and advertise the sale
 - iii. Seek competitive bids

The Deaccession Plan will become an action item during the next AIPP Board Meeting. A recommendation shall be made by the AIPP Board and shall require the majority vote of the full membership of the Board.

For deaccession of artwork on City-owned public property, the final approval of the City Commission will be required.

In the event that a work of art sells, all proceeds shall be deposited in the AIPP Fund.

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APPENDIX

➤ IDENTIFICATION PLAQUE

An identification plaque is required with any permanent work of public art and needs to be included in the project budget.

The location of the plaque should consider font size and style to achieve readability, be in the artwork vicinity and consider audience members in wheel chairs and be agreed upon by the partner agency. Bronze is the recommended material for the plaque.

The plaque must be installed at the same time as the artwork.

Plaque format:

Artwork Title

Artist name

Primary mediums

(Optional)

Artist statement (1-3 sentences to provoke artwork related inquiry)

Year

This artwork was commissioned by (_____ through) the City of Key West Art In Public Places Program.

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APPENDIX

For AIPP Projects not related to a Major Development Plan a proposal must be submitted to the AIPP Board for approval; the following template is suggested:

Key West Art in Public Places

Project proposal

Suggested name AIPP project:		
Brief description:		
Tentative budget:	Overall cost \$	Estimated Income: Fundraising \$ Donations \$ 1% \$ City's general fund \$
	Total: \$	Total \$
Estimated time line:		
Suggested location(s)		
Project needs approval from:	<input type="checkbox"/> City Commission <input type="checkbox"/> HARC <input type="checkbox"/> Tree Commission <input type="checkbox"/>	

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APPENDIX

Donation Agreement

This AGREEMENT is made and entered into this ___ day of _____, 201_, by and between **donor or donor representative name and address**, hereafter referred to as the "DONOR", the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is 1300 White St., Key West, Florida 33040, hereafter referred to as the "CITY". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT.

WHEREAS, DONOR desires to donate to the CITY **describe the items to be donated, the location for the installation of such items**, and

WHEREAS, CITY desires to accept the donation of **items to be accepted as donation and recognition of any associated donated funds**

WHEREAS, the parties wish to reduce to writing the rights and responsibilities of the parties.

IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agree as follows:

Article 1. Obligations of the Donor

1. DONOR, at his sole cost and expense, will **detailed description of offer being proposed** Prior to installation, the design and scope of the **donation** and commemorative plaque/monument will be approved by the CITY and the Art in Public Places Committee. DONOR shall be responsible for obtaining all necessary permits and other approvals for the installation of the **donation**.
2. In addition to the construction and installation of the **donation** and commemorative plaque/monument, DONOR shall donate the sum of \$ _____ to the CITY, which sum shall represent the anticipated operating expenses, including, but not limited to, **list the anticipated items for which costs would be accrued and funds allocated** for the **length of time funds are expected to support the work** period commencing on the effective date of this Agreement. Included in this sum shall be **amount required for de-installation of work** reserve for the removal of the fountain in the event CITY elects to remove the **donation** and commemorative plaque/monument as provided for herein below.
3. With the assistance of **support entities or donor partners**, DONOR shall use his best efforts attempt to secure additional funding for the maintenance and operating expenses of the **donation** through an annual sponsorship program. However, nothing herein shall be interpreted to imply that DONOR guarantees any result and DONOR assumes no additional liability for the success of the sponsorship program.
4. In connection with the **donation**, DONOR shall put in place an education/information component through the website <http://www.cityofkeywest-fl.gov/AIPP> which will include text, photos, and audio and/or video clips with information regarding the donation to the City. This website shall be maintained by the AIPP Administrator.

Article 2. Obligations of the City

5. Upon the CITY's acceptance of the **donation** referred to in paragraph 2 above, the **donation** and commemorative plaque/monument shall become the sole property of the CITY. Thereafter, CITY shall be solely responsible for all expenses associated with operating and maintaining the **donation**, and DONOR shall

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have no further responsibility or liability for those expenses. Further, upon the CITY's acceptance of the **donation** referred to in paragraph 2 above, the CITY shall have the unfettered right, in CITY's sole discretion, to alter or remove the **donation** and commemorative plaque/monument. In the event CITY removes the **donation** and commemorative plaque/monument at a time when all or a portion of the funds referred to in paragraph 2 above remain unspent, CITY shall return the balance of those funds to DONOR.

Article 3. General Legal Provisions

- 6. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 7. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

Article 4. Signatures

This AGREEMENT constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

CITY OF KEY WEST, FLORIDA

By: _____
James Scholl, City Manager

ATTEST:

Cheryl Smith, City Clerk

Dated this _____ day of _____, 201_

Donor, donor representative,
Name
Title

Donor or donor representative

Dated this _____ day of _____, 201_

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APPENDIX



Art in Public Places | City of Key West | Planning Department
1300 White St. | Key West, Florida 33040 | (305) 809-3779
vboguszewski@cityofkeywest-fl.gov

Refunds from the AIPP refund request for:

The AIPP eligible project located at [redacted] elected to contribute 1% of the total construction costs to the AIPP Fund in lieu of installing Public Art.

The Applicant has changed its intention and plans to include Public Art within the development project. The Applicant is requesting a refund of the collected fees from the AIPP fund to the Project for the expressed purpose of the implementation of a Board approved Art Plan.

This document serves as written notice to the AIPP Administrator of the developer's intent to revise their decision. Based on the following circumstances:

AIPP Administrator has verified the collection of the payment of the 1% of the total construction costs through the values assessed at the issuance of the project's building permits and documented the receipt of the 1% fees into the AIPP fund, as collected by the City in the amount of \$ [redacted]

The AIPP Administrator has notified the developer's AIPP project contact of the amount of funding available to be refunded from the AIPP fund.

The requested amount or percent of the available funds to be refunded for Public Art based on the budget developed with in the proposed Art Plan is \$ [redacted]

The developer's AIPP Board approved Art Plan is attached and meets the Art Plan requirements as specified in Sec2-487, (c), (3) of the City of Key West's Municipal Code of Ordinances. The attached Art Plan was approved at the AIPP Board meeting, as per the meeting minutes, and is intended to be installed at [redacted].

The projected date for the completion of the Public Art installation is [redacted] and the AIPP identifying Plaque is to be in place at the installation no later than [redacted].

In the event of project delays, the developer will notify the AIPP Administrator in writing of the new projected installation date a minimum of 21 days prior to the originally intended completion date.

In order to secure compliance with the approved Art Plan's scheduled installation, the developer shall provide a performance bond to the City equal to the amount of the requested refund.

APPENDIX

DIVISION 8. - ART IN PUBLIC PLACES BOARD^[11]

Sec. 2-481. - Established; general duties.

There is established an art in public places board. It shall advise the city commission in the selection and location of public art in the city.

(Code 1986, § 22.01)

Sec. 2-482. - Composition; terms of office.

The art in public places board shall consist of seven members. The mayor and each city commissioner shall appoint one member of the board. The term of the board member shall be equal and shall run parallel to that of the appointing commissioner. The board member's term shall end at the conclusion of the commissioner's term; a reelected commissioner may reappoint a board member.

(Code 1986, § 22.02(a))

Sec. 2-483. - Applicability of general provisions.

All sections of division 2 of this article are applicable to art in public places board members except that members shall have a business, employment, or profession related to the creation or sale of art within the City of Key West and reside in the Lower Keys from Key West, to, and including Big Coppitt Key.

(Code 1986, § 22.02(b); Ord. No. 16-01, § 1, 1-5-2016)

Sec. 2-484. - Organization.

- (a) Four members of the art in public places board shall constitute a quorum for the transaction of business during both regular and special meetings.
- (b) The board shall adopt rules of procedure for the conduct of its meetings, which shall include Robert's Rules of Order, Newly Revised. At its inaugural meeting, the board shall establish a mission statement and goals and objectives, and transmit them to the city manager. At the end of each fiscal year, the board shall submit a year-end report to the city commission.
- (c) The board shall convene scheduled meetings during the evening hours for the convenience of the public.

(Code 1986, § 22.03(a), (c), (d))

Sec. 2-485. - Clerk.

The city manager shall appoint a clerk of the art in public places board. The clerk shall be responsible for preparing all board agendas and minutes, ensuring that all board meetings are properly noticed, and maintaining all records of the board.

(Code 1986, § 22.03(f))

Sec. 2-486. - Duties.

The art in public places board shall:

- (1) Develop written guidelines for the location and display of public art.
- (2) Develop written guidelines for the competitive selection of and purchase of public art consistent with the goals of the city's purchasing procedures.
- (3) Investigate and recommend to the city commission funding sources for public art. With respect to city funds, the board shall recommend an annual budget.
- (4) Subject to the procurement process outlined in chapter 2, article VII, division 3, be responsible for the expenditure of and accounting for the one (1) percent set aside funds and limit the amount of dollars spent on art/cultural activities, programs and events to no more than fifteen (15) percent of the one (1) percent set aside funds in a fiscal year.
- (5) Coordinate the installation of public art with the city's building department and historic architectural review commission in order to comply with building codes and historic district guidelines.
- (6) Coordinate the organizing of art on public property sponsored art, cultural events, and programs.
- (7) Coordinate with the city manager's office for the maintenance of public art, once installed.
- (8) Forward to the city manager the board's written recommendation for the purchase of each piece of public art.
- (9) From time to time, commission public art, after approval of the city commission, and in both commissioning and selecting public art seek to reflect diversity in the artistic community.

(Code 1986, § 22.04; Ord. No. 16-01, § 2, 1-5-2016)

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

- (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, as well as a consultant, or coordinator/employee, as requested by the AIPP Board and approved by the city manager and/or the city commission, as prescribed by city ordinance.

(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.
- c. Non-profits whose projects qualify under provisions a or b of the above section may have their public art fund set aside requirement waived, all or in part by action of the city commission on a case by case basis upon a showing of a valid public purpose.

(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, personnel, grants, matching funds, proposals, activities, programs, projects, commissions, 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 108 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.

(Ord. No. 11-01, § 1, 1-18-2011; Ord. No. 14-03, § 1, 3-4-2014; Ord. No. 16-01, § 3, 1-5-2016)

Secs. 2-488—2-515. - Reserved.

Operational Guidelines AIPP

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