BEFORE THE CITY COMMISSION OF

THE CITY OF STUART, FLORIDA

ORDINANCE NO. 2375-2018

AN ORDINANCE OF THE CITY OF STUART, FLORIDA AMENDING CHAPTER 3, SECTION 3.01.08 -- "PUBLIC ART" OF THE CITY'S LAND DEVELOPMENT CODE THEREBY PROVIDING OPTIONS TO DEVELOPERS OF PROJECTS IN THE URBAN CODE DISTRICT TO CONTRIBUTE 100% OF THE PUBLIC ART FEE TO THE CITY'S PUBLIC ART TRUST FUND OR PROVIDE ON-SITE PUBLIC ARTWORK OR PAY A PORTION OF THE PUBLIC ART FEE AMOUNT TO PROVIDE ON-SITE PUBLIC ARTWORK AND THE REMAINDER TO THE CITY'S PUBLIC ART TRUST FUND; PROVIDING FOR AN EFFECTIVE DATE; CODIFICATION; AND FOR OTHER PURPOSES.

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WHEREAS, the Stuart City Commission deems it in the Public's best interest to amend the Public Art section of the City's Land Development Code to provide options to developers of projects in the Urban Code District to contribute 100% of the public art fee to the City's Public Art Trust Fund or provide on-site public artwork or pay a portion of the public art fee amount to provide on-site public artwork and the remainder to the City's Public Art Trust Fund.

WHEREAS, the artwork which shall be installed as part of the development project within the Urban Code District is available to the public and will enrich the open space where it is located.

WHEREAS, the Public Art Trust will continue to enhance and enliven the Urban Code District to become a cultural destination.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: Chapter 3, Section 3.01.08 – Public Art, of the City of Stuart Land Development Code, is amended as follows:

A. *Intent.* The intent of this section is to further the commitment of the city to the aesthetic enrichment of the Urban Code District through the private acquisition of works of art so that citizens and visitors to the Urban Code District of the city will be afforded an opportunity to enjoy and appreciate works of art.

B. *Applicability.* The provisions of this section shall apply to all new development and substantial renovations (as defined in chapter XII of this Code) in the Urban Code District with the exception of a duplex, single-family home and single-family home subdivisions.

C. *[Requirements for receiving building permit.]* All new development and renovation development pursuant to chapter XII shall elect one of the options listed below ~~be required to do one of the following~~ prior to the issuance of a building permit:

1. Provide work of art on the development site provided the work is an original and must be created individually by a professional artist or team of artists. Bronze sculptures in limited editions of not more than 50 in all sizes and materials by a single artist are allowed. The value of the work of art shall not be less than one percent of the vertical construction cost of the development. The nature of the work of art shall be proposed by the developer and shall be submitted to the city's community redevelopment board which shall review the proposal for conformity with the public art standards set forth below. An approved work of art shall be incorporated into the site plan, public lobby floor plan or the landscape plan for the development as part thereof.

2. Contribute an amount equal to or greater than 1~~½~~ percent of the vertical construction cost in lieu of providing a work of art, a developer may pay the sum of 1~~½~~ percent of the vertical construction cost into the public art trust fund described below. Such payment shall be made prior to issuance of a building permit for any portion of the development.

3. If the value of on-site work of art proposed on the development site is less than one percent of the vertical construction cost of the development, a developer may have an option to contribute the remaining balance of the public art fee to the public art trust fund as described below.

D. *Performance security required.*

1. If a work of art has not been approved by the community redevelopment board at the time of application for a building permit, the permit applicant shall provide a performance security bond or other surety acceptable to the city, in the amount of 1~~½~~ percent of the value of the vertical construction which shall be posted until the work of art is approved by the community redevelopment board. The cost estimate or bid for work of art shall be provided by the artist or representative and accepted by the city. The surety may be extended no more than 12 months from the original surety expiration date. This surety shall be cancelled, or returned when the work of art has been approved by the community redevelopment board.

2. In the event an approved work of art has not been properly constructed and installed prior to the issuance of the first certificate of occupancy for any portion of the development, the permit applicant shall provide a performance security bond or other surety acceptable to the city, in the amount of 1~~½~~ percent of the value of the vertical construction which shall be posted until the work of art is completed. The surety may be extended no more than 12 months from the original surety expiration date. This surety shall be cancelled, or returned when the work of art has been properly constructed and installed. The surety may be forfeited to the public art trust fund, and the developer and property owner cited with a code violation for failing to provide the required work of art.

E. *Application for work of art* *for development projects*. An application for a minor Urban Code conditional use shall be made to construct and install a work of art. The application shall include the artist's resume and portfolio establishing the artist's credentials and abilities, a detailed description of the work of art, its proposed location on the development site and the cost evaluation as set forth below. Drawings and renderings depicting the artist(s) portfolio, the proposed work of art in terms of size/scale, color, shape, materials, and maintenance program shall be included in sufficient detail to provide the board with a clear understanding of the work of art proposed.

F. *Standards for work of art.* The community redevelopment board shall be governed by the following criteria in the exercise of their discretion to approve, approve with conditions, or disapprove the proposed installation of public art. In specific cases, the board shall have the authority to exercise discretion and approve a proposal that proves to be an exceptional work of art yet does not meet all of the following criteria.

1. The proposed art conforms to the definition of public art contained in this section;
2. The proposed art meets or exceeds the valuation requirement as provided herein;
3. The proposed art meets the location requirements;

4. The proposed art is visible from a public right-of-way and will enrich the open space;

4. The proposed art is of exceptional quality and enduring value;

5. The proposed art is an appropriate scale to the development site;

6. The proposed art is compatible with the neighborhood and not injurious to the neighborhood or otherwise detrimental to the public welfare;

7. The proposed art work reflects cultural diversity;

8. The proposed art does not constitute a safety hazard:

9. The proposed art does not require extraordinary maintenance.

G. *Maintenance of work of art.* A work of art provided and located on public or private property pursuant to this section shall be and remain the sole property of the property owner. The property owner shall be responsible for maintenance and care of the public work of art. A constructed and installed work of art approved pursuant to this section shall be retained on site in its approved condition and location and shall not be removed, replaced or altered without prior approval of the community redevelopment board.

H. *Removal or replacement.* After a work of art has been approved by the community redevelopment board, such works of art shall be retained on site in its approved location and shall not be removed without prior approval of the community redevelopment board unless replaced with a reasonably equivalent replacement work of art, except when deemed to be unsafe by the building official, in which case it must be replaced within 12 months. This includes displacement damages by natural disasters, in which case the replacement timeframe shall be at the discretion of the development director.

I. *Additional public works of art.* Following the construction and installation of a required work of art approved pursuant to this section, additional works of art are encouraged and may be constructed and installed without the approval of the community redevelopment board.

J. *Public art trust fund created.*

1. There is hereby created a public art trust fund for the deposit of payments made in lieu of the construction and installation of a work of art as required in this section.

2. Funds in the public art trust fund shall be used solely for the selection, acquisition, transportation, installation, maintenance and promotion of works of art to be displayed in the city and all expenditures from the fund for such purposes shall be approved by the community redevelopment agency. The cost of insurance for public art located on property owned by the city may be paid with funds in the public art fund.

3. All works of art purchased with funds in the public art trust fund shall be and remain the sole property of the city.

4. The public art fund shall be kept in an interest bearing account, separate from general revenues and all accrued interest shall be deposited in the public art fund.

K. *Process for Commissioning Artworks for Public Right-of-Way or Public Places.*

1. *Artist Identification:* The community redevelopment board will make a recommendation to the community redevelopment agency on the selection process that will be used for each particular project. The options for selecting Artwork are:

    a. Direct Purchase – an existing Artwork is selected for a particular project.
    b. Commission Purchase (or Invitation) – Artist is chosen to create a site-specific work of art.
    c. Limited or Open Competition –
        1) Limited – One or more Artists are invited to submit proposals for selection.
        2) Open – Any artist may apply subject to criteria established by the community redevelopment board in the "Call for Artists."
            1. Request for Qualification (RFQ) may be used when the commissioning body is interested in a larger pool or applicants for a project. Applicants are asked to submit qualifying material only (resume, images of past work, letter of interest, etc.) that a panel will use to determine suitability for the project. Based on the qualifying materials submitted, the pool of applicants is narrowed by a panelist to 3-5 artists to move forward in the competition. Finalist may be asked to submit a more detailed proposal, visit the site or make a presentation.
            2. Request for Proposal (RFP) may be used to look for proposals for a specific project/site/theme. Artists are asked to submit qualification materials and a proposal for the project.

2. *Review of Submittals:* The community redevelopment board shall review the submittals and make a recommendation to the community redevelopment agency. The final selection may be made by the community redevelopment agency or the community redevelopment agency with one or more additional participants (referred to as "panelist") as each project dictates. These may

include a representative of the site/building/community where the artwork to be located, a local artist (not eligible for commission) or outside art/public art expert, other experts in the area of architecture, landscape architecture, engineering, urban planner, etc.

3. *Review Process/Criteria:* The community redevelopment board and community redevelopment agency or panelist may review the submitted visual material simultaneously with the written material. Artists are selected to move forward in the process based on set criteria, which may include but not limited to:
    a. Quality, creativity & strength of past work as indicated by visual materials submitted
    b. Technical competence demonstrated by past work
    c. Understanding of the project goals as indicated in the RFQ or RFP
    d. Relevance of submitted materials to the project
    e. Aptitude of planning and budgeting
    f. Experience working on public art projects and demonstrated ability to adapt to meet the project goals as indicated in the RFQ or RFP
    g. Commitment to participate with agency/community as part of the concept development
    h. Local artist or previous experience working on public art within the city limits.

4. *Interview:* In the event the community redevelopment agency or panelist cannot make a unanimous decision, finalists may be invited to make a presentation to help finalize the decision. The criteria to select the artist for the project may include but not limited to:
    a. Artistic excellence
    b. Ability to relate the proposed artwork to the site
    c. Experience with projects in similar scope and/or type
    d. Knowledge of fabrication and installation of public art proposed
    e. Ability to be an effective communicator, team player and work with diverse groups
    f. Ability to be detail oriented, a problem solves, an efficient project manager with an understanding of schedules and budgets
    g. Flexibility/openness of ideas
    h. Presented budget in realistic and flexible

5. *Contracts:* The contract shall outline the responsibilities, obligations with respect to products and services being provided by the artist, and the conditions desired by the community redevelopment agency or panelist to successfully realize the artwork.

~~K~~L. *Cost estimates required.* Cost estimates for determining valuation of art, posting of security or payment in lieu shall be required from the artist and/or contractor and be presented to city development staff prior to the community redevelopment board hearing.

~~L~~M. *Final compliance.* The property owner will be in compliance with this section after the installation of the public art in accordance with the approved plans, inspection by city development staff and the submittal of five photographs of the artwork on the site and a notarized statement of costs expended that meets or exceeds the requirements.

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provisions of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption.

PASSED on First Reading this _____ day of _____, 2018.

Commissioner _____ offered the foregoing ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT
KELLI GLASS LEIGHTON, MAYOR			
BECKY BRUNNER, VICE MAYOR			
EULA CLARK, COMMISSIONER			
MERRITT MATHESON, COMMISSIONER			
MIKE MEIER, COMMISSIONER			

ADOPTED on Second Reading this _____ day of _____, 2018.

ATTEST:

_____	_____
MARY KINDEL	KELLI GLASS LEIGHTON,
CITY CLERK	MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

_____
MICHAEL MORTELL
CITY ATTORNEY