

ORDINANCE NO. 2008-977

AN ORDINANCE OF THE CITY OF MOUNT DORA, LAKE COUNTY, FLORIDA, ESTABLISHING A PUBLIC ART PROGRAM; PROVIDING LEGISLATIVE FINDINGS AND DEFINITIONS; REQUIRING ELIGIBLE PUBLIC AND PRIVATE CONSTRUCTION TO INCLUDE ART ON PUBLICLY ACCESSIBLE PLACES IN ALL LAND DEVELOPMENT PROJECTS; PROVIDING GENERAL PROVISIONS FOR ORGANIZATION AND OPERATION OF THE PUBLIC ART PROGRAM; ESTABLISHING A PUBLIC ARTS FUND IN LIEU OF CONSTRUCTING ART ON PUBLICLY ACCESSIBLE PLACES; CREATING A PUBLIC ARTS COMMISSION WITH CERTAIN POWERS AND DUTIES; PROVIDING FOR OWNERSHIP AND MAINTENANCE; PERMITTING ADDITIONAL ARTWORK; PROVIDING FOR APPEALS OF DECISIONS OF THE PUBLIC ARTS COMMISSION; PROVIDING FOR ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY; AMENDING SECTION 6.1 OF THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTS AND SEVERABILITY; PROVIDING FOR CODIFICATION IN THE LAND DEVELOPMENT CODE AND CREATION OF SUBSECTION 6.14; AND SETTING AN EFFECTIVE DATE.

NOTE: Underlined words constitute additions to the existing text of the Land Development Code.

BE IT ORDAINED by the City Council of the City of Mount Dora, Florida as follows.

Section 1. Legislative Findings.

A. The City Council of the City of Mount Dora, Florida recognizes the benefits of artwork on both public and private property to enhance and enliven publicly accessible places and define a community's unique identity and civic pride.

B. The City of Mount Dora desires to join with approximately 35 other communities in Florida and with other communities in the United States which have placed quality artwork in public spaces.

C. Research has shown that the arts foster economic development and improve the local business climate, enhance the image of the community, and promote cultural tourism.

D. Artwork viewable by the public enhances aesthetics and complements scenic, natural, and landscape features in a built environment, providing psychological and physiological advantages to citizens and visitors.

E. Art in places accessible to the public expresses the confidence, vitality and optimism of the community and its goal of enhancing livability for all its citizens.

F. For 32 years, the City has been home to the Annual Mount Dora Art Festival, held in the City's quaint downtown area overlooking Lake Dora; the Art Festival, ranked in Sunshine Artist's Top 100 Festivals, draws 300,000 visitors per year.

G. For 23 years, as an outgrowth of the Mount Dora Arts Festival, the Mount Dora Center for the Arts has provided quality art experiences in the Central Florida area and offers ongoing art education programs for all ages.

H. The City's downtown area hosts more than a dozen festivals each year, such as Craft Fair, Antique Festival, and the "Lighting of Mount Dora," an outdoor display created by a million twinkling lights during the Winter holiday season.

I. A public art program would create a stimulating cultural environment that reflects the City's heritage, diversity and character through artworks integrated in the community's architecture, infrastructure and landscape.

J. In order to insure that art is present and accessible to the public throughout the community, it is necessary to require eligible development and construction projects to include or fund public art.

K. The City Council of the City of Mount Dora, Florida finds it to be in the best interests and general welfare of the citizens and businesses of the community to create a public art program.

Section 2. Short Title. This Ordinance shall be known and may be cited as the "Mount Dora Public Art Ordinance."

Section 3. Purpose. The purpose of this Ordinance is to establish the requirements, guidelines, procedures and process of integrating art on public property and private development; and to further the commitment of the City of Mount Dora to the aesthetic enrichment and cultural prosperity of our community.

Section 4. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Ordinance, except where the context clearly indicates a different meaning:

Aggregate Job Value means the total of all construction costs, both structures and site, associated with a particular site plan regardless of the number of permits associated with the project, or whether it is a phased project. Construction costs include all labor, materials, supplies, infrastructure and site work, but shall not include planned acquisition costs, office equipment nor furnishings. The construction cost of the building(s) is in addition to the site work development costs. In determining aggregate job value for residential structures in PUD or major residential subdivisions where such costs vary or are phased over time, a residential unit value of \$150,000 shall be calculated for purposes of determining aggregate job value.

Annual Public Arts Plan means an itemized list of art projects on City property, including the objectives, design approach, budget and scheduling for the upcoming fiscal year. This plan shall be developed by the Public Arts Commission in consultation with City Staff and presented to the City Council for approval during its annual budget review process.

Artist means a practicing fine artist, generally recognized by critics and peers as a professional of 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, receipt of honors and awards, and training in the arts.

Artwork, works of art, public art means tangible creations by artists exhibiting the highest quality of skill and aesthetic principles, and include all forms of visual art conceived in any medium, material, or combination thereof including paintings, sculptures, statues, engravings, carvings, frescos, stained glass, mosaics, mobiles, tapestries, murals, photographs, video presentations, digital images, bas-relief, high relief, fountains, kinetic, functional furnishings such as a mist designed seating and pavers, architectural elements designed by an artist, and artist-designed landforms or landscape elements. The following shall NOT be considered artwork: (1) Reproductions or unlimited copies of original artwork; (2) Works that are decorative, ornamental or functional elements of the architecture or landscape design, except when commissioned from an artist as an integral aspect of the structure or site; (4) Directional signage or logos of corporate identity; and (5) Historical Preservation Elements.

Eligible Public Construction Projects means projects included in the Mount Dora Capital Improvement Program, commencing with the City's fiscal year 2007/08 Budget, for any newly permitted facility construction or renovation project equal to or greater than \$500,000, including, but not limited to buildings, greenways, roads, parking facilities, bridges, parks or other above-ground projects. Specifically excluded from this definition are street resurfacing, storm drainage, wastewater and water piping projects, below grade utilities, electrical transmission facilities, annual repair and replacement projects, affordable housing projects and any other project where the funding source is restricted from being used for the purchase of public art.

Eligible Private Construction and Development Projects means projects commenced after the effective date of this Ordinance involving construction or renovation of commercial, industrial, planned unit development, single family or duplex subdivisions, multi-family residential, residential professional, office professional, and heavy industrial structures and sites. A project will be considered "commenced" when an application is first submitted to the City's Planning and Development Department. Said projects must have an aggregate job value equal to or greater than \$1 million. Specifically excluded from this definition are affordable housing projects or their inclusion in other multi-use development and projects commenced prior to adoption of this Ordinance. Multi-phased projects which have been approved by the City prior to the effective date of this Ordinance shall be excluded from the requirements of this Ordinance.

Publicly Accessible means locations that are open to the general public during normal business hours and visible by the general public at all times.

Public Arts Commission means the entity appointed by the City Council to recommend policy and establish procedures to administer the public art plan and program, subject to approval by the City Council.

Public Property means all spaces owned by the City of Mount Dora, indoor or outdoor, that are accessible and visible to the general public. However, upon recommendation by the Public Arts Commission, the City Council may approve by specific action, temporary or permanent location of public art on property owned by another governmental agency or on private property if deemed a public purpose and with the express written approval of the governmental agency or private owner.

Renovation Project means those projects requiring a City building permit where fifty percent (50%) or more of the building footprint is being modified, rebuilt or improved by construction.

Section 5. Art Accessible to the Public. In keeping with the City's concern for the arts and quality of its environment, public artwork is required as follows:

- A. Artwork shall be required as part of any eligible public or private construction project as defined in this Ordinance.
- B. The artwork shall be publicly accessible and shall constitute a value of no less than 1% of the aggregate job value of eligible construction projects over \$5M (five million); and a value of no less than 0.5% of the aggregate job value of eligible construction projects under \$5M (five million). Nothing herein prevents the owner/developer from contributing in excess of this requirement.
- C. The maximum value required as a result of this 1% of aggregate job value shall not exceed \$150,000 per eligible construction project; however, the owner/developer may voluntarily exceed this amount.
- D. If the owner/developer demonstrates to the satisfaction of the City that the site cannot accommodate artwork consistent with this Ordinance, or that the intent and purpose of this Ordinance can be met even if artwork is not constructed on the site, the owner/developer shall provide monetary contribution to the City's Public Art Fund in an amount consistent with this Section. As an alternative to providing a monetary contribution to the City's Public Art Fund, an owner/developer may, under the conditions set forth below, provide artwork in certain off-site locations. In such cases, the owner/developer shall install the artwork at another location which is not a residential lot and which meets all of the following criteria:
 - (1) The alternative site must be located within the same zoning district as the owner/developer's property, within the same neighborhood, or within an adjoining neighborhood. Owner/developers are encouraged to coordinate with, and seek input from, the Planning and Development Department in selecting

alternative sites for placement of artwork. A location in the proximity of the owner/developer's property is preferred;

- (2) The alternative site must be owned or leased by the owner/developer, by a governmental entity which has authorized the installation of the artwork, or by an owner who has consented to the use of his/her property as an alternative site; and
- (3) The construction of the artwork at the alternative site will provide aesthetic benefits to many of the same citizens, business owners, or visitors which would have benefited from the installation of the artwork on the owner/developer's property.

E. The owner/developer shall provide documentation to the City that the required artwork has been commissioned or committed to as part of the project prior to issuance of a site development or building permit, whichever occurs first. In the case of the in-lieu-of contribution, this fee amount must be paid to the City's Public Art Fund prior to issuance of a permit.

- (1) Documentation of compliance shall be demonstrated by the owner/developer via a written agreement to purchase or install the artwork on the subject development site, and a written acknowledgement by the project artist that the proposed artwork complies with the following criteria:
 - a) The artwork shall be designed and constructed by a professional artist;
 - b) The artwork shall be scaled appropriately to the site and the proposed maintenance provisions are adequate and not onerous for the long-term integrity and enjoyment of the work;
 - c) The artwork shall be displayed in a visually accessible location, which shall be suitable to the design of the site, in order for the public to receive the most enjoyment and benefit from the art;
 - d) The artwork shall be integrated into the overall planning and design for a structure or project and shall be compatible with the intent and purpose of the structure at which the artwork is located.
 - e) The artwork shall be integrated into the overall landscaping plan, and landscaping shall be utilized to enhance the visibility of such artwork.
 - f) The artwork shall be a fixed asset to the property and shall be maintained by the property owner;
 - g) The artwork shall meet all applicable City code requirements.

- (2) The owner shall provide documentation to the City that the artwork value required by this Ordinance has been deposited into an escrow account or bonded for said purpose prior to issuance of a permit. The owner/developer shall provide the City with a final accounting of the payment of art and consulting fees at the conclusion of the placement of artwork.
- F. Prior to placement of the artwork on the development site, the artwork must be approved by the Public Arts Commission and conform to the criteria set forth herein and any guidelines and requirements developed to facilitate enforcement of this Ordinance. At a minimum, the guidelines shall require the owner/developer to comply with the following requirements.
- (1) Submit qualifications of artist
 - (2) Submit proposal of artist with preliminary design concept of artwork and schedule for completion and installation
 - (3) Statement of how the artwork complies with guidelines
 - (4) Budget reflecting the allocation of funds as sufficient to meet the required fee. If requested by the Commission, an independent appraisal of the value of the artwork will be an additional responsibility of the owner/developer.
 - (5) Appropriateness of the artwork to the site, including relation to signs, buildings, right-of-way or other improvements.
 - (6) Compliance with public accessibility.
 - (7) Proposed maintenance provisions to protect the artwork's long-term integrity.
- G. No certificate of occupancy for a project shall be issued until the artwork is installed and the final accounting of the escrow fees or bond has been provided. However, the owner/developer may request in writing, prior to the anticipated date of the issuance of the Certificate of Occupancy, an extension of up to six months after the issuance of the Certificate of Occupancy, to install the artwork. The request may be granted by the Public Arts Commission for good cause. "Good cause" shall include one or more of the following: acts of God or other natural disasters; material shortages; interruptions due to strikes and other employee job actions; fire, explosion, or some similar catastrophe; financial reversals of a temporary nature; other situations beyond the control of the owner/developer. If the request for an extension is denied, or if the installation is substantially incomplete, as determined by the Public Arts Commission, at the end of a granted six month extension, the owner/developer shall be deemed to be in violation of Section 1.050 General penalty; continuing violations of said referenced code; and must pay an in-lieu-of construction fee to the Public Art Fund.

Section 6. Ownership and Maintenance. Title to all artwork required or installed pursuant to this Ordinance shall pass to the successive owners of the private development and to the City if acquired on behalf of the public and installed in a public place. Said ownership responsibilities include:

- A. Each successive owner, including the City as a public owner of artwork, shall be responsible for the custody, protection and maintenance of the artwork.

- B. If for any reason the owner shall choose to replace any public artwork installed pursuant to this Ordinance, the following requirements shall be met before the artwork is replaced:
- (1) The cost of replacement shall equal or exceed the current value of the original artwork and shall not be less than the original public art program fee requirement.
 - (2) The location of the replacement shall meet the requirements for public accessibility and conform to the general guidelines developed by the Public Arts Commission.
 - (3) The replacement artwork shall be available for public view not more than six months after the existing artwork is removed, unless this period is expressly extended by the Public Arts Commission.
 - (4) In the event that the owner chooses to remove the artwork and not replace the artwork, the owner must make a replacement contribution to the Public Art Fund in the amount of the original in-lieu-of construction amount adjusted for inflation as determined by the CPI-U National Average.
- C. If the property containing the artwork is sold, the seller may either:
- (1) Include restrictions on the deed that require maintenance of the artwork and prevent its removal from the property; or
 - (2) Remove the artwork and make a contribution to the Public Art Fund in the amount of the original in-lieu-of construction amount adjusted for inflation as determined by the CPI-U, National Average.
- D. Property owners will be required to maintain the artwork in good condition in accordance with the approved maintenance plan, in the approved location as required by this Ordinance and any other applicable guidelines developed by the Public Arts Commission.
- E. In the event of a natural or man-made disaster which damages or destroys the artwork, the owner shall submit a plan for maintenance or replacement to the Public Arts Commission for approval.

Section 7. Public Arts Fund. There is hereby created a Public Art Fund, and the City shall maintain a separate accounting of monies received for the Public Art Program and assure the funds will be used solely for such program as follows:

- A. The Public Art Fund shall receive monies from eligible public and private construction projects required to contribute to the Public Art Program; all money donated to the City for public art, cash grants for public art projects from governmental or private parties; and any other funds allocated by the City through the budgetary process.
- B. The Public Art Fund shall be used solely for the revenues and expenses associated with the selection, commissioning, acquisition, installation, maintenance, administration, transportation, site preparation, base and anchoring system for approved works of art, removal and insurance of artwork, and public education or promotion of public art in the

City. Such funds shall be administered by the City in accordance with fiscal policies approved by the City Council.

- C. Programming of public art expenditures shall be included in the annual Budget as recommended by the Public Arts Commission and approved by the City Council.
- D. Interest earned on such funds shall remain an asset of the Public Art Fund.
- E. Ten percent of all public art program funds which are applied to the City-owned public artwork shall be deposited into a Public Art Program Maintenance Account within the Public Art Fund.

Section 8. Public Arts Commission. There is hereby created a commission to be known as the Public Arts Commission. The composition, powers, duties and other administration functions of the commission are as follows:

- A. The Public Arts Commission shall consist of seven (7) members appointed by the City Council. The Commission shall be composed of the following:
 - (1) When possible, two individuals will be chosen from the following discipline of landscape architect, architect, urban planning, engineering, or a related design discipline.
 - (2) One professional artist
 - (3) One citizen knowledgeable in the field of public art, education or community affairs.
 - (4) One representative from the Board of the Mount Dora Center for the Arts.
 - (5) One citizen knowledgeable of the real estate and development community.
 - (6) One at-large citizen.
- B. All members shall reside, own property or work in the City; however, five of the seven members must be residents of the City.
- C. Term shall be two years in length, staggered such that not more than three of the two-year terms expire in any calendar year. Once a person has served three full and consecutive terms on the Commission, that person shall not be eligible for reappointment to the Board for a length of time equal to one full term on the Commission.
- D. At the first meeting of the calendar year, the Commission shall elect one of the members as Chairman and such officers as it finds necessary. A quorum for any meeting is required of the Commission and shall be a majority of the members.

- E. The Commission shall adopt such rules of procedure as it finds necessary, which shall not be in conflict with State Statute or Ordinances of the City.
- F. The Commission shall meet at such times as it finds necessary, but not less often than once every quarter.
- G. Members of the Commission serve without commission or honorarium, but shall be entitled to receive reimbursement for per diem and travel expenses for meetings and conferences outside of the City in accordance with City Council authorized travel policy guidelines, provided that prior approval in writing is given by the City Manager.
- H. Members of the Commission shall serve at the pleasure of the City Council, and may be removed by the City Council per their adopted policy. An unexcused absence from three of the regular Commission meetings during a calendar year shall constitute resignation from the Commission.

Section 9. Powers and Duties of the Commission. The Public Arts Commission shall administer the Public Art Program. The purpose, functions and responsibilities of the Commission shall be as follows:

- A. Develop guidelines, selection procedures and organizational policies to facilitate this Ordinance, and be approved by the City Council by resolution.
- B. Prepare an Annual Public Art Plan in concert with City staff to establish design criteria, policies, objectives, priorities and projects for the Public Art program; as well as the annual budget recommendations for the Public Art Fund.
- C. Prepare a five-year strategic Public Arts Master Plan identifying locations for future public artworks, establishing a maintenance plan for all public art on City property; establishing priorities defining program direction and goals, encouraging coordination of community arts efforts, and other tasks to assure a successful public art program.
- D. Related to eligible public construction projects, in concert with City staff, work with the appropriate City departments to perform project planning for public artwork; designate sites; determine project scopes and budget; manage the artist selection process; commission artworks; approve design and placement of artworks; oversee maintenance of artworks and any replacement thereof; and select the artwork for public projects.
- E. Related to eligible private construction projects, assist the owner/developer, in concert with City staff, with the artist selection process if requested; and approve the design and placement of the artwork to ensure that it meets the criteria and requirements herein and as developed by the Commission and approved by resolution of Council.
- F. Coordinate, investigate, review and recommend to the City Council other means by which artworks may be obtained, including donations, permanent and temporary exhibitions, sponsorships and grants for public art projects.

- G. Advise the City Council of all artwork acquisitions, installations, displays and exhibits of public artwork, and other public art activities deemed appropriate by the Commission.
- H. Encourage public artwork throughout the City and educate and stimulate the participation of all citizens in joint public and private efforts to promote art in public places.
- I. Conduct other duties as assigned by the City Council for the furtherance of public artworks and art education and awareness in the City of Mount Dora.

Section 10. Additional artwork permitted. After artwork which meets the requirements of this Ordinance has been installed on a development site, nothing herein shall be construed to prohibit the installation and placement of additional artwork on site. Such additional artwork will not be required to be approved by the City.

Section 11. Appeals of decisions of the Public Arts Commission. All decisions of the Public Arts Commission made pursuant to this Ordinance may be appealed to the City Council within thirty days of the verbal rendering of such decision. Only owner/developers, residents of the City and/or owners of businesses located in the City shall have standing to bring an appeal under this section.

Section 12. Encroachment into the Public Right-of-Way. Public artwork is allowed to be located, as part of a safe and allowable design and location, within the public right-of-way provided it has been approved by the Public Arts Commission per their program guidelines, and a written agreement authorizing the placement location has been executed with the City Manager. However, artwork on private property shall not be allowed to encroach on public right-of-way.

Section 13. Section 6.1 of the Land Development Code shall be amended as follows:

6.1. Applicability.

These standards shall apply to regulate development allowed by this code. The intent of this chapter is to promote development that is aesthetically pleasing, compatible with the community character of Mount Dora, properly served with necessary public facilities and services and compatible with neighboring uses. Design requirements are included for the following categories:

1. Drainage.
2. Roads and sidewalks.
3. Water and sewer.
4. Parking.
5. Landscaping and buffers.
6. Signs.
7. Performance standards.
8. Floodprone areas.

- 9. Wetlands.
- 10. Architectural standards.
- 11. Art in public places.**

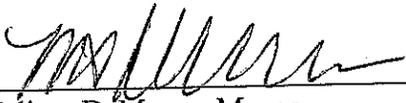
Section 14. Codification. It is the intent of the City Council of the City of Mount Dora that the provisions of this Ordinance shall be codified in the Land Development Code, **creating Section 6.14** The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

Section 1. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 16. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this City, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

Section 17. Effective Date. This Ordinance shall become effective upon its passage by the City Council. Enforcement of Sections 5 & 6 shall be delayed for a period of six months while the Arts Commission develops guidelines, selection procedures and organizational policies to facilitate this Ordinance. Any period of time exceeding six months must be approved by City Council.

PASSED AND ORDAINED this 15 day of April, 2008, by the City Council of the City of Mount Dora, Florida.



Melissa DeMarco, Mayor
City of Mount Dora

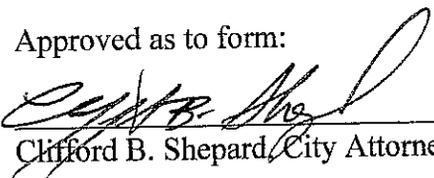
Attest:



Michael Quinn, City Clerk
City of Mount Dora

First Reading: April 1, 2008
Second Reading and Adoption: April 15, 2008

Approved as to form:



Clifford B. Shepard, City Attorney