

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

First Reading Date: September 4, 2019

Second Reading Date: September 18, 2019

Presenter's Name and Title: Eric Silva, Director, on behalf of the Community & Economic Development Department

Temp. Ord. Number: 1728

Item Description: **FIRST READING** of Temp. Ord. No. 1728, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF MIRAMAR, PURSUANT TO SECTION 302 OF SAID LAND DEVELOPMENT CODE AND SECTION 166.041(3)(A), F.S.; MORE SPECIFICALLY BY AMENDING CHAPTER 3, ENTITLED "PROCESSES," TO ADD A NEW SECTION 324 TO BE ENTITLED, "PUBLIC ART," PRESCRIBING A CITYWIDE PROGRAM FOR THE INCLUSION OF PUBLIC ART INTO PUBLIC AND PRIVATE DEVELOPMENT, CREATING A PUBLIC ART FUND CONSISTING OF ALL PUBLIC ART ASSESSMENT COLLECTED PURSUANT TO THE PROGRAM, AND PROVIDING FOR THE FUTURE ADOPTION OF A PUBLIC ART MASTER PLAN TO BETTER LEVERAGE THE POWER OF ART TO VISUALLY ENLIVEN THE CITY AND STIMULATE ECONOMIC PROSPERITY; AND CHAPTER 7, ENTITLED "USE REGULATIONS," AT SECTION 715, ENTITLED "TRANSIT ORIENTED CORRIDOR DISTRICT CODE," TO DELETE AND REPEAL SUB-SECTION 715.3.4, ENTITLED, "PUBLIC ART AND AMENITIES;" MAKING FINDINGS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. (Community & Economic Development Director Eric Silva)

Consent ☐ Resolution ☐ Ordinance ☒ Quasi-Judicial ☐ Public Hearing ☐

Instructions for the Office of the City Clerk:

Public Notice – As required by the Sec. 301.11.1 of the City Code and/or Sec. 166.041(3)(a), Florida Statutes, public notice for this item was provided as follows: on 8/3/2019 in a newspaper ad in the ____Sun Sentinel_____; by the posting the property on ____N/A____ and/or by sending mailed notice to property owners within 1,000 feet of the property on N/A (fill in all that apply)

Special Voting Requirement – As required by Sec. ____, of the City Code and/or Sec. ____, Florida Statutes, approval of this item requires a ____N/A____ (unanimous, 4/5ths etc.) vote by the City Commission.

Fiscal Impact: Yes ☐ No ☒

REMARKS: None

Content:

- Agenda Item Memo from the City Manager to City Commission
- Ordinance TO 1728



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners

FROM: Vernon E. Hargray, City Manager *for [Signature]*

BY: Eric Silva, Director of Community & Economic Development

DATE: August 29, 2019

RE: FIRST READING of Temp. Ord. #O1728 amending the City of Miramar Land Development Code at Chapter 3 to add a citywide Public Art program and at Chapter 7 to delete and repeal the current Public Arts and Amenities Program, which only applies in the Transit Oriented Corridor District

RECOMMENDATION: That, pursuant to Section 302 of the City of Miramar (the "City") Land Development Code ("LDC"), the City Commission holds two (2) public hearings (a first reading and a second reading), following the notification procedures of Section 166.041(3)(a), Florida Statutes ("F.S."), to consider an ordinance adopting proposed amendment to the text of the City's LDC to add a new Section 324 to prescribe a citywide program for the integration of public art into both public and private development projects, and at Section 715, "Transit Oriented Corridor District Code" to repeal Sub-section 715.3.4, "Public Art and Amenities," which sets forth a public art program for the Transit Oriented Corridor District ("TOCD").

ISSUE: Pursuant to Section 302 of the City's LDC, all text amendments to the LDC require review by the City Commission, which shall hold two duly noticed public hearings. Upon a finding of compliance with the general intent and standards of the LDC, the City Commission shall vote to adopt such amendments with or without modification; reject them; or refer them back to the Planning and Zoning Board or City administration for further consideration.

BACKGROUND: On March 15, 2012, the City Commission adopted Ordinance No. 12-10, which amended the City's LDC and Official Zoning Map to create the Transit Orient Corridor zoning district ("TOCD"), the regulations of which are now codified under Section 715 of the LDC. The TOCD establishes, among other development standards, a public art requirement that is intended to "promote the aesthetic values, and the enjoyment and livability of the TOCD," as well as to "encourage and promote local culture and talent, to define the TOCD community identity and the unique character of the TOCD, and to facilitate use and enjoyment of the TOCD by citizens and residents." Per that requirement, any building permit

for the construction or remodeling of a residential or nonresidential property with a total improvement or construction value over \$250,000, shall: (1) pay a one-time fee of one quarter (¼) of one percent of said construction value into the Public Art and Amenity Fund established by the City; or (2) provide one or more of the items listed in the in the related sub-subsection, which may be considered to be public art and amenities on the project site.

Since the inception of the program, only a couple of construction projects have been approved by the City, which have otherwise met the construction value or applicability threshold of \$250,000 set forth for the program. All such construction projects, which are either undergoing construction or awaiting the issuance of a certificate of occupancy, have elected to pay the one-time fee to the Fund.

Notwithstanding the limited development in the TOCD, which makes it difficult to fully evaluate the TOCD's Public Art and Amenities program, Staff believes that, over time, the program will prove to be a success, especially in light of the renewed focus of the City on revitalizing Historic Miramar, of which the TOCD is a subset. In fact, public art programs have been implemented by more than 300 cities nationwide, some as far back as the 1970s, and the benefits of these programs are not only well documented, but can be seen in many of these cities.

Arguably, public art has significant positive impacts on the entire urban environment, from an aesthetic, economic and social standpoint. Art has the power to reach across age, race, language, and class differences, and has always been instrumental in the discussion of place, neighborhood and city identity, creating inspiring personal experiences and fostering economic development. Miramar is at an exciting and pivotal time in its history, and with the City embarking on various smart cities initiative, it is poised to set the standard for sustainable living in South Florida. It is in recognition of the ability of art and culture to become the fulcrum of the creative transformation that the City is undergoing, and to affirm and celebrate the City's cultural mosaic, that this amendment is being proposed. A citywide program will allow public art to be woven into the City's framework, not simply as an amenity, but instead as a vital platform for innovative experimentation and curious exploration that becomes part of the entire ecosystem of the City and its many districts and neighborhoods.

As stated above, this LDC amendment expands the current TOCD's Public Art and Amenities Program and make it applicable citywide. Chief among the proposed changes are: (1) a new and more realistic applicability threshold, which is based on a minimum number of units for residential projects and a minimum gross floor area ("GFA") for nonresidential projects; (2) an expanded list of definitions of art-related words terms and phrases; (3) requirements for public projects to provide public art; (4) better enforcement mechanisms; (5) provision for waivers and exceptions; and (6) the future adoption of Public Art Master Plan. In drafting the proposed language, Staff reviewed many other public art ordinances for best practices, particularly those listed in the matrix below and also attempted to correct some of the deficiencies identified in the implementation of the TOCD's program.

While the percentage for art or public art assessment still remains at one quarter ($\frac{1}{4}$) of one percent, the new citywide Public Art Program proposes, a maximum public art assessment amount capped at \$100,000; the same cap used in the State of Florida Art in State Buildings Program. The following matrix provides a comparison between the proposed citywide Public Art Program and that of some similarly sized Florida municipalities.

COMPARISON OF SOME FLORIDA MUNICIPAL PUBLIC ART PROGRAMS						
Municipality	Percent for Art	Private Project	Public Project	Minimum Threshold	Exclusions	Cap/Max per Project
Boynton Beach	1 percent	Yes	Yes	\$250,000	Single-and two-family infill housing; affordable housing; and remodeling	None
Clearwater	1 percent	Yes	Yes	\$500,000 for CIP; \$5 million for private projects	Public utility projects; affordable housing	\$200,000
Coconut Creek	\$.50 per sq. ft. for new construction; \$.25 per sq. ft. for remodeling	Yes	Yes	12,500 sq. ft. in GFA	Public utility projects; private residential projects; and renovations due fire and natural disasters	None
Coral Gables	1 percent	Yes	Yes	\$1 million for non-municipal projects	Single-family homes; Colleges with on-campus public art collection of 30 or more works	None
Coral Springs	\$.50 per sq. ft. for new construction; \$.25 per sq. ft. for remodeling	Yes	Yes	12,500 sq. ft. in GFA	Residential development; Multifamily and mixed-use development on lots greater than 1 acre	None
Miramar	.25 percent	Yes	Yes	5 units or more for residential projects; 12,500 sq. ft. in GFA for nonresidential projects	Affordable housing; Public utility projects; public buildings not accessible to the public; institutional uses; public or private projects with funding restrictions; renovations due to fire and natural disasters	\$100,000
Tamarac	1 percent	Yes	Yes	None	None	None

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MIRAMAR, FLORIDA**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF MIRAMAR, PURSUANT TO SECTION 302 OF SAID LAND DEVELOPMENT CODE AND SECTION 166.041(3)(A), F.S.; MORE SPECIFICALLY BY AMENDING CHAPTER 3, ENTITLED "PROCESSES," TO ADD A NEW SECTION 324 TO BE ENTITLED, "PUBLIC ART," PRESCRIBING A CITYWIDE PROGRAM FOR THE INCLUSION OF PUBLIC ART INTO PUBLIC AND PRIVATE DEVELOPMENT, CREATING A PUBLIC ART FUND CONSISTING OF ALL PUBLIC ART ASSESSMENT COLLECTED PURSUANT TO THE PROGRAM, AND PROVIDING FOR THE FUTURE ADOPTION OF A PUBLIC ART MASTER PLAN TO BETTER LEVERAGE THE POWER OF ART TO VISUALLY ENLIVEN THE CITY AND STIMULATE ECONOMIC PROSPERITY; AND CHAPTER 7, ENTITLED "USE REGULATIONS," AT SECTION 715, ENTITLED "TRANSIT ORIENTED CORRIDOR DISTRICT CODE," TO DELETE AND REPEAL SUB-SECTION 715.3.4, ENTITLED, "PUBLIC ART AND AMENITIES;" MAKING FINDINGS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in compliance with state law, the City Commission of the City of Miramar ("City Commission") adopted in 1989 its Comprehensive Plan, as amended, in order to guide and manage future development within the City of Miramar ("City"); and

WHEREAS, in order to implement the Comprehensive Plan and as required by state law, the City Commission adopted in 1996 a set of land development regulations, which are codified in the City's Land Development Code ("LDC"); and

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WHEREAS, on July 1, 2009, the City Commission adopted Ordinance No. 09-15, which amended the Future Land Use Element (“FLUE”) along with the Future Land Use Map (“FLUM”) of the City’s Comprehensive Plan to establish the Transit Oriented Corridor (“TOC”) land use designation, in order to revitalize the segment of State Road 7 within the boundaries of the City, as well as the surrounding neighborhoods; and

WHEREAS, on March 15, 2012, the City Commission adopted Ordinance No. 12-10, which amended the City’s LDC and Official Zoning Map to create the Transit Oriented Corridor District (“TOCD”), which, codified under Section 715 of the LDC, establishes development standards to implement the TOC land use designation; and

WHEREAS, Sub-section 715.3.4, “Public Art and Amenities,” of the LDC seeks to promote a heightened sense of place in the TOCD, better define its community identity and celebrate its cultural diversity by requiring residential and nonresidential projects, excluding single-family residences, with a construction value over \$250,000 to either provide and install one or more of the Public Art and Amenities items listed in that Sub-section on the project sites or pay a one-time fee of one quarter ($\frac{1}{4}$) of one percent of said construction value into the Public Art and Amenities Fund for the acquisition of artworks to be placed within the public realm of the TOCD; and

WHEREAS, the City Commission recognizes that the powerful voice art has been instrumental in the discussion of place, neighborhood and city identity, creating inspiring personal experiences, and fostering economic development; and

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WHEREAS, the City Commission recognizes that art and culture need to rightfully become the fulcrum of the City's creative transformation for the future; and

WHEREAS, the City Commission further recognizes that public art should not be confined to one specific area or neighborhood, but be woven into the City's framework to provide, not simply an amenity, but instead a vital platform for innovative experimentation and curious exploration that becomes part of the entire ecosystem of the City and its many districts and neighborhoods; and

WHEREAS, the City Commission is seeking to amend the City LDC to add a new Section 324 to be designated "Public Art," which, following the examples of over 300 cities throughout the United States, will prescribe a citywide program for the integration of public art into both public and private development projects, and to repeal Sub-section 715.3.4, "Public Art and Amenities," which sets forth the TOCD's public art program; and

WHEREAS, a Public Art Program would visually enliven the City, affirm and celebrate the City's rich and diverse cultural heritage, and foster the economic development of the City as a whole, while promoting a stimulating cultural environment where people can construct meaning, foster attachments and mediate change; and

WHEREAS, a Public Art Program would create a stimulating cultural environment that affirms and celebrates Miramar's diverse cultural heritage through public art; and

WHEREAS, a Public Art Program will ensure that eligible development projects incorporate artworks into their design, architecture and landscaping or, in lieu thereof,

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contribute a public art assessment to the City's Public Art Fund; said assessment to be equal to an amount of one quarter ($\frac{1}{4}$) of one percent of the total construction cost of said projects, not to exceed \$100,000; and

WHEREAS, eligible development projects would include public or private projects with five (5) or more residential units and/or with a nonresidential gross floor area of 12,500 or more square feet, and would exclude affordable housing construction projects with a funding source subject to restrictions by public bond covenants; federal, state, or local laws; and/or legal parameters; and

WHEREAS, in Metromedia, Inc. v. San Diego, 453 U.S. 490 (1980), the United States Supreme Court held that land development regulations which require development to meet aesthetic conditions have been generally found to be supported by a legitimate public purpose. See also Rotenberg v. City of Fort Pierce, 202 So.2d 782 (Fla. 4th DCA 1967); Berman v. Parker, 348 U.S. 26, 33 (1954); Metromedia, Inc. v. San Diego, 453 U.S. 490 (1980); City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 805 (1984); and

WHEREAS, in Ehrlich v. City of Culver City, 911 P.2d 429 (Cal. 1996), *cert. denied*, 519 U.S. 929, 117 S.Ct. 299 (1996), the California Supreme Court held that an art fee on private development is a legitimate aesthetic regulation which does not require the same level of legal scrutiny as an impact fee and in fact is not an impact fee; and

WHEREAS, The California Supreme Court found that,

the requirement to provide either art or a cash equivalent thereof
is more akin to traditional land use regulations imposing minimal

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building setbacks, parking and lighting conditions, landscaping requirements, and other *design* conditions such as color schemes, building materials and architectural amenities. Such aesthetic conditions have long been held to be valid exercises of the city's traditional police power, and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property.

Ehrlich, 911 P.2d at 450. Citing various U.S. Supreme Court cases, the California Court compared the art requirement to be similar to a prohibition against outdoor advertising, Metromedia Inc. v. San Diego, 453 U.S. 490, 508, fn. 13, 101 S.Ct. 2882, 2892, fn. 13 (1980), a municipal requirement for a developer to preserve a landmark structures, Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646 (1978), or a condition of approval requiring preservation of a scenic views. Agins v. City of Tiburon, 447 U.S. 255, 100 S.Ct. 2138 (1981); and

WHEREAS, the requirement of providing art in an area of the project reasonably accessible to the public is, like other design and landscaping requirements, a kind of aesthetic control well within the authority of the city to impose; and

WHEREAS, Section 302 of the LDC establishes a uniform procedure for the review and adoption of text amendments to the City's LDC; and

WHEREAS, notification of the proposed text amendment was published in the Sun Sentinel, pursuant to Section 301.11.1 of the LDC; and

WHEREAS, the City Manager found the proposed text amendment to satisfy the applicable review criteria of the LDC, and recommended adoption of same; and

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WHEREAS, Section 107 of the LDC establishes the Planning and Zoning Board as the Local Planning Agency (“LPA”) to make recommendations to the City Commission regarding amendments to the texts of the LDC; and

WHEREAS, the Planning and Zoning Board, sitting as the LPA, held a duly noticed public hearing on September 3, 2019 to review and discuss the proposed text amendment along with staff’s finding of facts as laid out in the City Manager’s recommendation; and

WHEREAS, after due consideration of all matters, the Planning and Zoning Board found the proposed text amendment to meet the applicable review criteria of the LDC, found the Ordinance to be consistent with the City’s Comprehensive Plan, and therefore recommended adoption of same by the City Commission; and

WHEREAS, pursuant to Section 302.7(1), the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found that to enforce a citywide public art program as envisioned herein, this text amendment is legally required; and

WHEREAS, pursuant to Section 302.7(3), the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found it to be consistent with the authority and purpose of the LDC, as it will assist in implementing the Comprehensive Plan by establishing regulations for the development of the City; and

WHEREAS, this Ordinance will improve the aesthetic quality of the City by fostering and preserving the public health, safety, comfort and welfare of the City, and will aid in the harmonious, orderly, and progressive development of the City; and

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WHEREAS, pursuant to Section 302.7(4), the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found that the Ordinance will further the orderly development of the City by requiring art in public places; and

WHEREAS, pursuant to Section 302.7(5), the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found that it promotes sustainability and efficiency of the City promotes the public health, safety, welfare, and aesthetics of the City by providing for art in public locations, or visible from public locations, in the City; and

WHEREAS, pursuant to Section 302.7(6), the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found that the Ordinance will improve the administration or execution of the development process by providing a transparent by which construction is not delayed by a public art program; and

WHEREAS, Objective 2 of the Future Land Use Element of the Comprehensive Plan provides:

By 2020, complete the full revision of the Land Development Code, which will ensure the protection of natural resources, discourage urban sprawl, promote “Smart Growth” and energy efficient development and land use patterns which account for existing and future electrical power generation and transmission systems in an effort to reduce greenhouse gases, encourage the use of innovative land development techniques, promote community aesthetics, ensure the availability of the infrastructure needed to support development, and comply with the Broward County Land Use Plan.

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WHEREAS, this Ordinance is consistent with Objective 2 of the Future Land Use Element, because this Ordinance will promote community aesthetics citywide; and

WHEREAS, Policy 10.2 of the Future Land Use Element, and Policies 1.7 and 1.8 of the Housing Element of the Comprehensive Plan provide:

Future Land Use Policy 10.2 The City shall take appropriate actions to support affordable housing, including incentives within the land development permitting and fee systems, such as expedited review or fee waivers, for developments which are primarily aimed at providing affordable housing.

Housing Policy 1.7 Provide flexibility in the Land Development Code to allow the development of affordable housing while preserving neighborhood and housing quality.

Housing Policy 1.8 Provide incentives for the development of affordable housing, such as expedited review of applications for permits and development orders; or modified impact fee requirements, including reduction or waiver of fees and alternative methods of payment.

WHEREAS, this Ordinance is consistent with Future Land Use Element Policy 10.2 and Housing Element Policies 1.7 and 1.8, because residential affordable housing projects have been exempted, together with any charges, from the effect of this Ordinance; and

WHEREAS, pursuant to Section 302.7(2) of the LDC and based in part on the foregoing, the Planning and Zoning Board and the City Commission have reviewed this Ordinance and have found that to enforce a citywide public art program as envisioned herein, this text amendment is consistent with the goals, objectives, and policies of the City's Comprehensive Plan; and

WHEREAS, the City Commission finds that the charges or requirement for the
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provision of art provided for in this Ordinance are proportional and reasonably connected to, or have a rational nexus with, the need for additional aesthetics within the City and the increased impact generated by residential or commercial construction subject to this Ordinance, because the need for additional art is direct result of the development project provided by the owner or developer; and

WHEREAS, the City Commission finds that the charges or requirement for the provision of art provided for in this Ordinance are proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the residential or nonresidential construction subject to this Ordinance, because the art may be placed on the site of development project thereby benefitting the project; and

WHEREAS, funds collected pursuant to this Ordinance are specifically earmarked for the selection, commission, acquisition and maintenance of public art to benefit City residents, including those subject to the charges; and

WHEREAS, the City Commission finds that the charges provided for in this Ordinance will not be used, in whole or in part, to pay existing debt or for previously approved projects, unless the expenditure is reasonably connected to, or has a rational nexus with, the increased need for additional public art by the residential or nonresidential construction subject to this Ordinance; and

WHEREAS, pursuant to Section 302.6.1 of the City's LDC, the City Commission held two (2) public hearings to adopt the proposed text amendment; and

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WHEREAS, pursuant to Section 302.6.1 of the City's LDC, the City Commission held two (2) public hearings to adopt the proposed text amendment; and

WHEREAS, upon receipt of both the City Manager's and Planning and Zoning Board's recommendations, the City Commission held two duly noticed public hearings on September 4, 2019 and on September 18, 2019 to consider the proposed text amendment and accompanying staff report, at which hearings public testimony was taken; and

WHEREAS, the City Commission, after due consideration of all matters, found the proposed text amendment to comply with the review standards for text amendments to the City's LDC, as established in Section 302.7 of the LDC; and

WHEREAS, the City Commission has further determined that the implementation, administration and management of the Public Art Program by the City Administration, pursuant to the newly created Section 324 of the LDC, would best serve the interests of the City and the residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, THAT:

Section 1: Recitals. That each and all of the foregoing recitals (WHEREAS clauses) are hereby incorporated into this Ordinance.

Section 2: That the Land Development Code of The City of Miramar, Florida, is hereby amended by adding a section to be numbered 324, which said section (or article or chapter) reads as follows:

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Sec. 324.- Public Art.

324.1. Purpose: It is the intent and purpose of this section to promote the aesthetic and cultural enrichment development of the city by creating a citywide Public Art Program ("Program") for the integration of public art into both public and private development projects. It is the further intent of this section to use the power of art to reach across age, race, language and class differences to promote the city's identity as a special location, to celebrate its cultural mosaic, and to provide a vital platform for people to engage the world, construct meaning, foster attachment, mediate change, and activate their imagination.

324.2. Definitions: The following words, terms and phrases, when used in this section 324, shall have the meanings ascribed to them herein, unless the context affirmatively designates to the contrary:

Art, artwork or work of art is defined as an original physical work created or produced by a professional artist, including, but not limited to, paintings, sculptures, mosaics, carvings, engravings, frescos, stained glass and glass work, mobiles, mural arts, collages, statues, bas-reliefs, tapestries, photographs, video projections, drawings, fountains (if of unique design), landscape design, artifacts of historical or cultural significance, monuments erected to commemorate a person or event, functional furnishings such as artist-designed seating, dedicated public spaces (such as plaza surfaces), site-specific installations, or other media. Artwork may be free-standing or integrated with the work of other design professionals into a building or site.

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For the purpose of this section, artwork shall not be construed to include: directional elements, such as signage except where these elements are integral parts of the original artwork or are executed by artists in unique or limited editions; “art objects,” which are mass produced or of standard design, such as playground equipment or fountains; reproductions or unlimited copies of original artwork; decorative, ornamental, architectural or functional elements, which are designed by the building architect as opposed to elements created by an artist commissioned for that purpose; landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist; and architectural rehabilitation.

Artist is defined as a professional in the visual arts, having reached a certain level of expertise in his or her medium, and meeting at least two of the following criteria:

- (1) The artist’s works are included in private, public, corporate or museum collections;
- (2) The artist has received art-related awards, grants, or fellowships;
- (3) The artist has completed other public commissions on a similar scale;
- (4) The artist has participated in exhibitions at major museums or galleries.

Development project or project is defined to include new construction, renovation work, or façade improvements requiring a building permit, where fifty percent (50%) or more of the building exterior is being modified, renovated, expanded, rebuilt or improved by construction. For the purpose of this section, a “project” shall not include the following:

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- (1) Repair or reconstruction of structures damaged by fire, or natural disasters;
- (2) Interior renovation;
- (3) Flood protection work items; or
- (4) Fire sprinkler installation work items as defined by the city code.

Eligible project is defined as a project meeting the applicability thresholds of this section, *to wit*: any project development with five (5) or more residential units and/or with a non-residential gross floor area ("GFA") of 12,500 or more square feet.

Local artist is defined as an artist, as defined in this section, who resides in the City.

Maintenance, with respect to artwork, is defined to include the required repairs or cleaning to keep the artwork in its intended condition, including preventative maintenance at scheduled intervals to curtail future deterioration, as well as ordinary repairs, including painting, repair or replacement, installation of mechanical equipment.

Mural art or mural is defined as a hand-produced work of visual art that is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building. For the purpose of this section, a "mural" shall not include:

- (1) mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl;
- (2) trademarks, service marks, or other markings, colors, or patterns identifying or associated with a business, profession, trade, occupation, or entity; or
- (3) murals with electrical or mechanical components, or changing images.

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Percentage for art is defined as one-quarter ($\frac{1}{4}$) of one percent of the total construction cost of a public or private project having five (5) or more residential units and/or a non-residential GFA of 12,500 or more square feet, not to exceed \$100,000.

Public art is defined to include original works of art that are accessible to the public and which may possess functional as well as aesthetic qualities that typically reflect an awareness of its site, both physically and socially. Relationship of art work and site shall be considered in terms of the physical dimensions, social dynamics, local character and surrounding urban context of the site, existing or planned. Acquisitions for art in public places shall be of exceptional quality and enduring value.

Public art assessment or fee shall have the same meaning as percent for art.

Public art fund or fund is defined as the collection of public art fee received for the provision of public art from public and private development projects through the program. The fund shall be kept in an interest bearing account, separate from general revenues and all accrued interest shall be deposited into the fund.

Public place is defined as a place, public or private, exposed to public view, including, but not limited to, buildings, parks, right-of-way medians, and open spaces.

Renovation is defined as a project requiring a building permit where fifty percent (50%) or more of the exterior building area is being modified, rebuilt or improved by construction. For the purpose of this section, a "renovation" shall not include repair or reconstruction of structures damaged by fire, flood, wind, earthquake or other casualty.

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Total construction value is defined to include construction and site improvement costs as declared on all building permit applications for the project. All construction costs shall be calculated as of the date the contract is executed. For the purpose of this section, “construction and site improvement cost” shall exclude engineering and architectural fees, demolition costs, land acquisition costs, and soil remediation costs.

324.2. Public Art Fund.

(1) Fund established. There is hereby created a Public Art Fund or Fund, which shall consist of the public art assessment collected pursuant to this section, cash grants to the City for public art projects from governmental or private sources, and all accrued interest from the interest bearing account in which the Fund is to be kept.

(2) Use of funds. The Fund shall be used by the city for the selection, commission, acquisition and maintenance of artworks in public places anywhere in the city, including private properties exposed to public view. It shall be kept separate from any other city funds and shall, in no instance, be used for artist receptions, dedication art events, promotional materials for the artist, or expenses for the operation or maintenance of public art on private property. The monies in the Fund may only be spent on artworks or art-related costs including, but not limited to:

(a) Selection. Selection processes for public art including advertising, selection panelist fees, completion stipends, outside consultant fees, and/or travel expenses for artists or experts.

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(b) Acquisition and installation. Artist and engineering design fees, permit fees, purchase price, fabrication, transportation, installation, site preparation and improvement, lighting and other costs directly related to the installation of the public art.

(c) Relocation or removal. Costs directly associated with the transportation and relocation or removal of public art.

(d) Maintenance. Fees and costs directly related to the maintenance of City-owned public art, including evaluation fees for professional conservators, costs of repair, cleaning and conservation.

(e) Insurance and security. The costs for damage and theft insurance for public art owned by the city, and, as appropriate, costs for security for installations or exhibitions.

(f) Program administration. The city manager shall provide adequate and competent clerical and administrative personnel as may be reasonably required by for the proper performance of the duties under this section, and subject to the availability and prioritization of funding in the fund.

324.3. Public art assessment.

324.3.1. Applicability. The provisions of this section and the public art assessment fee shall apply to the following development activities:

(1) Private development projects as set forth in Sec. 324.4.

(2) Public construction projects as set forth in Sec. 324.6.

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324.3.2. Exceptions. The requirements of this section shall not apply to the following development or activities:

- (1) Affordable residential housing units as defined by the land development code;
- (2) Projects with funding source that cannot fund public art due to restrictions by public bond covenants; federal, state, or local laws; and/or legal parameters.
- (3) Single-family residences not developed as a planned development, as well as duplex, triplex and quadruplex units;
- (4) Ordinary property maintenance;
- (5) Repairs and restoration due to damage from fire, flood, windstorm or other casualty or natural disaster, as determined by the building official;
- (6) Institutional uses, i.e., religious facilities, and public and non-profit private schools;
- (7) Premises which are owned or leased solely by a non-profit entity certified by the U.S. Internal Revenue Service as meeting the requirements of 26 USC s. 501(c)(3) and used in furtherance of the non-profit 26 USC s. 501(c)(3) purpose;

324.4. Public art assessment for private development.

- (1) Applicability. The public art fee provision of this section shall apply to all private development projects not except pursuant to sub-section 324.3.2, including new construction, or the renovation of an existing building, five (5) or more residential units and/or a non-residential gross floor area of 12,500 or more square feet. All buildings within planned

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a non-residential gross floor area of 12,500 or more square feet. All buildings within planned developments shall be assessed cumulatively towards this public art requirement, even if the buildings are permitted separately or developed in phases. The provisions of this section shall apply to new development/construction, or renovation within existing developments.

(2) *Requirements.* All private development projects meeting the applicability thresholds of this section shall be required to elect one of the following within 90 days of the issuance of the first building permit for any portion of the project:

(a) Option 1: Submit documentation evidencing the escrow of funds for a work of art or historic or cultural elements valued in an amount not less than one quarter ($\frac{1}{4}$) of one percent of the total construction cost, and submit an application for approval of the work of art or historic or cultural elements, pursuant to this section. If a local artist will be commissioned to provide a work of art, the work of art shall be valued at not less than ninety percent of one quarter ($\frac{1}{4}$) of one percent of the total construction costs; or

(b) Option 2: Contribute an amount not less than one quarter ($\frac{1}{4}$) of one percent of the total construction cost to be deposited into the Fund; or

(3) *Inclusion of art or elements in the project.*

(a) *Historical or cultural elements.* The owner or developer of a project may choose to retain or incorporate historically important or culturally significant elements in the project *in lieu* of or in addition to artwork. Historical or cultural elements may include, but are not limited to, distinctive features, finishes, and construction techniques or examples of

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craftsmanship that characterize a historic period or culture. The total value of all historical or cultural elements and/or artwork must equal one quarter ($\frac{1}{4}$) of one percent of the total construction cost.

(b) *Location.* Artwork and/or historical or cultural elements must be located to be readily visible to the public based on normal traffic of vehicles and pedestrians in the area. Nonresidential development that is not open or accessible to the general public due to the storage or use of hazardous, radiological, or infectious materials, national security reasons, or other reasons related to the health, safety or security of the public shall, pursuant to option 2 of sub-section 324.4(2)(b) above, pay a public art assessment into the fund, which shall be used for the acquisition of public artwork to be placed on public or private property exposed to public view.

(c) *Process.* If the owner or developer of a project chooses to provide artwork or historical or cultural elements, the owner or developer shall proceed as follows:

1. *Escrow and accounting of funds for artwork.* The owner or developer shall submit documentation to the city not more than ninety (90) days after the issuance of the first building permit showing that a deposit for public art was made with the developer's attorney into an escrow account to be expended or released pursuant to this land development code. Said deposit shall be in an amount equal to one quarter ($\frac{1}{4}$) of one percent of the total construction cost.

2. *Art consultant.* If an artwork is to be provided, the owner or

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developer may use up to 10 percent of the escrowed art deposit to retain an art consultant to assist in the selection and procurement of the artwork. The art consultant shall have no financial or other relationship with the artist, owner, or developer, nor any ownership in the artwork being provided. The artist shall not be entitled to the art consultant fee.

3. *Artist selection.* Selection of the artist will be the responsibility of the owner or the developer. The selected artist shall be an artist as defined in this section. The commission of the artist shall be by written contract between the developer or owner and the artist.

4. *Submittal of proposed art or elements.* Proposed artwork or elements shall be submitted to the department for approval within 90 days of the issuance of the first building permit. If the department director does not approve the artwork, an appeal may be initiated by the project owner or developer pursuant to section 315.10 through 315.13 of this code. The submittal shall include:

(i) *Artist's qualifications, including resume and portfolio establishing the artist's credentials;*

(ii) *Detailed description and depiction of the work of art and its location on the site;*

(iii) *Drawings and renderings of the proposed artwork, in terms of size, scale, color, shape, and materials in sufficient detail to offer a clear understanding of the art or elements proposed;*

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- (iv) Appraisal of the value of the art or element;
- (v) Documentation showing that a deposit for public art was made into an escrow account;
- (vi) Maintenance program required for the artwork or elements; and
- (vii) Compliance with *Americans with Disabilities Act* public accessibility requirements.

5. Review of contribution of art and elements. The department shall review the proposed artwork or historical or cultural elements based on the standards established in this section and shall approve, deny, or approve with conditions the selection and location of the artwork or elements with sensitivity to the aesthetic and cultural traditions and the history of the city and to the character of the surrounding neighborhood.

6. Appraisal. To establish the value of the artwork to be installed or historical or cultural elements to be installed or retained by owner or developer to comply with this section, the department may employ an independent art appraiser to provide a written appraisal of the artwork(s) submitted or cultural or historic elements. Such appraisal will be paid for by the owner or the developer from the escrowed art deposit.

7. Construction cost overrun. If the final cost of the total construction for the project is higher than the initial project cost estimate used to calculate the public art assessment or escrowed art deposit, the developer shall either: i) provide

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additional art for the project valued at one quarter ($\frac{1}{4}$) of one percent of the increase in the total construction cost; or ii) provide an additional deposit to the fund valued at one quarter ($\frac{1}{4}$) of one percent of the increase in the total construction cost. The additional art shall be installed, or the deposit shall be made, prior to issuance of the final certificate of occupancy.

8. *Accounting of escrow.* Prior to the issuance of the final certificate of occupancy for a project but no less than thirty (30) days prior to the issuance of the certificate of occupancy, the owner or developer shall submit a revised construction cost affidavit, which shall be submitted whether the owner or developer elected to pay the public art assessment or install artwork.

The owner or developer's attorney, acting as the escrow agent, will provide the city a final written affidavit and accounting of the payment for art and any art consulting fees from the escrowed art deposit at the conclusion of the placement of artwork. This affidavit shall be in a form acceptable to the City. Any surplus balance in the escrow account after the owner or developer has completed the installation of the required art work shall be disbursed to the developer or owner, upon written approval by the city.

Sec. 324.3.4. *Ownership and maintenance of private art.* Artwork installed on private property pursuant to the requirements of this section shall be the property of the property owner. Title and ownership of the artwork shall transfer in whole or in part to any successor in interest of the property. The owner or developer is also strongly encouraged to obtain any artist rights under the Visual Artists Rights Act, 17 U.S.C. §106A, if possible.

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The property owner shall be responsible for the continuous maintenance of the artwork in good condition at all times, as determined by the city's code compliance official. The property owner shall be responsible for ensuring that the public's view of the artwork is maintained and free of graffiti, and that no vegetation or additional construction shall obstruct the public's view. Maintenance shall include any associated landscaping or related improvements. In the event of destruction or casualty to the artwork, the property owner shall repair or replace the artwork with art equal in value to the value of the artwork originally installed. If the artwork is to be replaced, the department shall review the proposed artwork and shall approve, deny, or approve with conditions the selection of the artwork in accordance with the provisions of this section.

324.5. Removal or replacement of art.

324.5.1. Artwork or elements installed in accordance with this section shall remain on site in the approved location and cannot be altered, replaced or removed except as provided in this section, or when deemed to be unsafe by the city building official, or necessary replacement due to damage from natural disasters. The seller of any property containing artwork installed in compliance with this section shall include restrictions by deed or other instrument that requires retention and maintenance of the artwork or elements in compliance with this section.

324.5.2. All replacement art and elements shall equal or exceed the value of the original artwork and shall not be less than the original public art assessment requirement. The

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replacement art shall meet all of the requirements of this section. Removal of existing art and all replacement art and elements must be approved by the department. The replacement art shall be installed and be available for public view not more than 180 consecutive days after the existing artwork is removed, unless this period is extended by the department director.

324.6. Public art assessment for public projects.

324.6.1. Applicability. All appropriations and authorizations for the new construction, renovation or remodeling of eligible public improvements by the city shall include an amount of not less than one quarter ($\frac{1}{4}$) of one percent of the total construction costs to be deposited in the fund.

(1) Eligible public projects subject to the public art assessment shall be:

(a) Any public building, facility or structure which permits public occupancy of all or a portion thereof, such as fire stations, police stations, and community centers.

(b) Any vertical construction within a public park or recreation facility.

(2) Ineligible public improvements that are not subject to the art assessment are:

(a) Any public building, facility or structure which is not accessible to the public.

(b) Any project funded by a revenue source which by law cannot be utilized for the acquisition of works of art.

(c) Any eligible public project where the city commission determines that

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the project appropriation cannot accommodate the public art assessment, or the assessment will result in a cost overrun.

(d) Any affordable housing project or project constructed using governmental funds which cannot be utilized for public art.

(e) Any public utility project, such as water, wastewater and stormwater projects.

324.6.2. Budget. For eligible public projects, an estimate of the public art assessment shall be calculated, included and detailed in the project budget. The art assessment shall be transferred to the fund at the start of the fiscal year, or after the adoption of a project budget amendment.

324.6.3. Process. For eligible projects, the department shall recommend, for approval by the city commission, whether the project should incorporate public artworks or historic or cultural elements. If approved by the city commission, the department shall, with the assistance of city staff:

(1) Conduct a call to artists for proposals for artworks to be included in the project within the budget and in compliance with the requirements of this section; or

(2) Acquire artworks and/or elements of quality and enduring value through a transparent, competitive, quality-based procurement process. In no instance, shall artworks or elements be recommended which cannot be reasonably maintained within the resources allocated by the city.

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The final decision of the selection of the artist and/or the selection of the artwork shall rest with the city commission. If the assessment from a project is not sufficient to acquire a work of art which either complies with this section or is appropriate for the city, or if the city commission so decides, the art assessment may be pooled with other such funds for the acquisition of artwork for display at another city facility, pursuant to this section and at the time and place determined by the city commission.

324.6.4. Ownership and Maintenance. Ownership of all artworks acquired by the city under this section is vested in the city. The city manager is charged with the custody, supervision, maintenance and preservation of such artworks. In each instance, the city shall acquire title to each work of art acquired.

324.7. Enforcement.

324.7.1. Certificate of occupancy. Unless an alternative deadline is established in a development order, or a time extension is granted by the director, no certificate of occupancy for the project shall be issued until the artwork is installed, the final revised construction cost affidavit and accounting of the escrowed art funds has been provided; and/or the full art assessment has been paid to the city.

324.7. 2. The provisions of this section may also be enforced through any remedy available to the city in law or in equity. Violations may also be enforced through the code compliance provisions of the city code of ordinances; or the city may institute a civil action in a court of competent jurisdiction to seek injunctive or other relief to enforce compliance with the terms

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of this section, to enjoin and prohibit said violation or to compel the performance of actions which will result in compliance with the terms of this section. The city shall recover its court costs and reasonable attorneys' fees in any legal proceedings commenced to enforce this section. These remedies are cumulative and the use of any appropriate remedy shall not constitute an election of other remedies by the City. The use of one remedy shall not preclude the use of any others.

324.8. Waiver of requirements. The requirements of this section may be waived by resolution of the city commission when and if it appears to city commission that a project covered hereunder is not appropriate for the application of the above requirements.

324.9. Public art master plan. The city commission shall adopt a public art master plan that identifies locations for public artworks, establishes a priority order of location and art type, and any potential themes, concepts or goals relating to the public art program.

Section 3: That section 715.3.4.1 of the Code of the City of Miramar, Florida, is hereby amended to read as follows:

715.3.4. Public art and amenities.

715.3.4.1. Description.

(1) Section 715.3.4 shall apply only to projects within the TOCD, the owner or developer of which has submitted an application for a building permit prior to September 18, 2019, and which owner or developer actively and diligently pursues the issuance of the building permit. Section 715.3.4 shall stand repealed on January 1, 2021.

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(2) Public Art and Amenities are classified as aesthetic and functional features within the public realm of the TOCD that enhance the experience of pedestrians, patrons and residents. The requirements of this subsection shall be construed to promote the aesthetic values of the TOCD, and the enjoyment and livability of the TOCD. The requirements of this subsection are development standards based upon the aesthetic and public amenities needs of the community and are not intended to be either an impact fee or a tax.

Section 4: **Repeal.** All Ordinances and part of Ordinances determined by a court of law to be inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

Section 5: **Severability/Interpretation.**

(a) Severability. If any word, clause, phrase, sentence, paragraph or section of this Ordinance is held to be unconstitutional or invalid by any court of competent jurisdiction, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

(b) Interpretation. That in interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * *) indicate a deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks

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and do not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

Section 6: Scrivener's Error. The City Attorney is hereby authorized to correct scrivener's errors found in this Ordinance by filing a corrected copy with the City Clerk.

Section 7: Codification. The provisions of this Ordinance may become and be made a part of the Land Development Code of the City of Miramar, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such.

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Section 8: **Effective Date.** This Ordinance shall become effective upon adoption.

PASSED FIRST READING: _____

PASSED AND ADOPTED ON SECOND READING: _____

Mayor, Wayne M. Messam

Vice Mayor, Alexandra P. Davis

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved
this ORDINANCE as to form:

City Attorney
Weiss Serota Helfman
Cole & Bierman, P. L.

Requested by Vice Mayor Davis

Commissioner Winston F. Barnes
Commissioner Maxwell B. Chambers
Commissioner Yvette Colbourne
Vice Mayor Alexandra P. Davis
Mayor Wayne M. Messam

Voted

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