

CHAPTER XXIV – ZONING AND LAND DEVELOPMENT

ARTICLE XX. – PUBLIC ART

Sec. 24-215. – Purpose and intent.

- (A) This article shall be known and cited as “Public Arts.”
- (B) This article is intended to promote and encourage the commitment of the City of North Miami Beach to aesthetically enrich the community through the creation and display of works of art and artifacts so that residents, business owners, and visitors of the City are given an opportunity to enjoy and appreciate public art. This article shall also encourage pride in the community, increase property value, enhance the quality of life through artistic opportunities, uniting the community through shared cultural experiences, creating a cultural and historical legacy for future generations with the collection and exhibition of high-quality art that reflects diverse styles, chronicling history through the collection of artifacts, documents and souvenirs that will acknowledge the past and create programs and activities that will further these goals.
- (C) The requirements of this article shall be used to promote the aesthetic values of public art, variations of artwork, and serve as standards for Public Arts.

Sec. 24-216. – Definitions.

Art: Tangible creations by Artists which include forms of Art conceived in any medium, material, or combination thereof, including, but not limited to, paintings; sculptures; lighting sculptures; engravings; carvings; frescos; stained glass; mosaics; mobiles; tapestries; murals; video projections; digital images; bas-relief; high relief; fountains; kinetics; living walls; collages; drawings; monuments erected to commemorate a person or an event.

Artist: An artist is an individual engaged in the creation, production, or performance of works of art, including but not limited to visual arts, crafts, literature, music, dance, theater, and/ or film.

Auditory components: The item or structure from which sound emanates, including the following and shall be limited to a speaker, a radio, phonograph, musical instrument, machine or other devices for the producing or reproducing of sound.

Audio Art: A form of art or artwork that utilizes sound as a primary source for creative expression.

Amplified sound: means a sound augmented by any electronic means which increases the sound level or volume.

Developer: An individual or entity that engages in the process of developing real estate or land for commercial, industrial, or mixed use purposes.

Development project: Any development, including remodeling, construction, or redevelopment, which requires a building permit or permits as described on the precise plan submitted for approval to the City. For purposes of this article, development projects shall include all new development and redevelopment in the business, community facility, recreation and opens space, industrial, and mixed-use land use areas of a minimum threshold project value.

Mural: Any large-scale artwork, painting, mosaic, fresco, or other permanent artwork attached to or applied directly to the exterior of a structure located in a commercial zoned district. A mural is a pictorial representation or design intended to reflect a thematic or artistic expression.

Open space area: Any exterior area on public or private property within the City limits that is designated for public or environmental benefit. These areas may serve recreational, ecological, or aesthetic purposes and are often maintained in a natural state to support public enjoyment, and conservation of natural resources.

Public Art: refers to artwork produced by a professional artist, local arts agency, or public/private entity. Public art may be permanent or functional and is located in open space areas visible to and/or accessible to the public on a regular basis.

Public Art Consultant: is an independent consultant responsible for the curation of public art and provides independent testimony to City Staff and elected officials for the review of public art installations as needed from time to time. The review fee of the curator shall be reimbursed to the City by the applicant through Cost Recovery pursuant to ZLDC Section 24-170.

Public Art Fees: Any application review, or advertisement fees associated with this ordinance included in the Land Development Fee Schedule.

Public Art Fund ("the fund") means a separate, interest-bearing set of accounts set up by the City to receive monies for public art.

Public Art Plan: A plan adopted by the City Commission, pursuant to a recommendation by the City's Beautification Committee, which shall identify locations for public art and establish a priority order to the City Commission, and which shall be amended from time to time, to ensure a coherent program for acquisition of public art, and program implementation guidelines.

Visual arts: means artwork created using a variety of media and processes, which may include, but not limited to, drawing, painting, canvas, ceramic arts, sculpture, photography, graphic arts, media arts, electronic or digital design. Visual arts may also refer to art forms that express their message, meaning, and emotion through visual means.

Sec. 24-217. - Applicability.

- (A) The provisions of this Article shall apply to the following land use types with a minimum project value (development cost) of \$5,000,000:
- (1) Business
 - (2) Community Facility
 - (3) Recreation and Open Space
 - (4) Industrial
 - (5) Mixed-Use
- (B) This Article shall not apply to development projects, which received site plan approval from City Commission prior to the adoption of this ordinance.

Sec. 24-218. - Public Art Plan.

- (A) The City Commission shall adopt a public art plan produced by a Public Art Consultant. The public art plan shall be reviewed by the City's Beautification Committee and shall be adopted by resolution of the City Commission. Amendments to the public art plan shall be reviewed and adopted as needed.
- (B) The City Commission shall make final decisions for all public art acquisitions in accordance with this article and the public art plan and implementation guidelines.
- (C) The City Commission may desire to install murals, or other pieces of public art, not utilizing public art funds. Any such project shall also be required to go to the Beautification Committee for review and recommendation, consistent with the city's public art plan.

Sec. 24-219. - Public Art Review Standards.

In reviewing and formulating recommendations regarding public art, the City's Beautification Committee, and Community Development Department will adhere to the following review procedures:

- (A) Public Art Review Standards.
- (1) Determination of compatibility of the proposed Work of Art with the existing natural and man-made environment and serve to further enhance the area.
 - (2) Determination of the Work of Art in the context of furthering the City's identity, future needs, history, and/or promote its rich cultural diversity.
 - (3) Determination of the appropriateness of the Work of Art to the site and complies with the City's ZLDC.

(4) Determination of any special maintenance, such as any special servicing due to periodic adjustment, repair, or replacement of the Work of Art and what entity is responsible for such costs.

(5) Determination of the accessibility and visibility to the public of the Work of Art.

Sec. 24-220. - Procedures for reviewing Public Art for Development Projects.

(A) Pre-Application Conference Meeting with the Community Development Department and all other applicable City departments involved in the review and evaluation of proposed Public Art required plans.

(B) Community Development Department will conduct a review for any proposed public art, as part of the site plan submittal and review process. The artist or developer must include in their submittal package the following documents:

- (1) Site layout plan
- (2) Letter of intent
- (3) Design narrative describing the proposed artwork design features including the architectural elements
- (4) Noise mitigation plan (if applicable)
- (5) Maintenance plan of artwork

(C) Complete submittal including staff report will be submitted to the City Beautification Committee for review and recommendation

(D) City Commission shall review and approve, approve with conditions or deny the proposed Public Art based on the technical recommendations of City staff and the recommendation of the City Beautification Committee.

Sec. 24-221 - Public Art with audio and noise mitigation measures.

Artists or developers proposing public art installations with auditory components must submit noise mitigation plans as part of their site plan review.

(A) Noise Mitigation Measures:

- (1) Artists or developers proposing public art installations with auditory components must submit noise mitigation plans as part of their permit applications.
- (2) Noise mitigation measures may include, but not limited to directional speakers, sound-absorbing materials, or limiting the hours of operation for auditory elements.

(B) Noise Limits for Public Art Installations:

- (1) Auditory components of Public Art proposal shall comply with the following minimum standards:

- i. Noise emanating from the Public Art shall not exceed (65) decibels when measured at the property line.
- ii. Noise shall adhere to Noise Control Chapter 9-4.2, subsection b of the City's Land Development Code.
- iii. Noise shall also adhere to the guidance contained in the US Department of Housing and Urban Development (HUD) noise abatement and control standards. HUD Regulatory Reference: "24 CFR Part 51, Subpart B".
- iv. No noise shall emanate from the Public Art between the hours of 11:00 PM and 7:00 AM

(C) Enforcement and Compliance

- (1) Enforcement. The City's Code Compliance Department shall be responsible for enforcing noise procedures related to public art, if applicable.
- (2) Monitoring: Periodic monitoring of noise levels may be conducted by authorized personnel to ensure compliance with noise regulations.
- (3) Penalties: Failure to comply with noise regulations as set forth in this Article; may result in penalties, fines, or removal of the public art at the discretion of the City Commission or designee.
- (4) Removal: At the owner's expense, the City of North Miami Beach reserves the right to require the removal of any auditory component of any public art installed that is found to habitually violate the noise mitigation measures as outlined in this Ordinance.

(D) Exemptions. The following activities shall be exempt from the requirements from the enforcement provisions in this Section:

- (1) Art exhibits, art festivals, concerts, performing arts, special events, and other activities for which a valid permit has been obtained, within such hours and in accordance with such restrictions as may be imposed as conditions for the issuance of a permit.

Sec. 24-222. – Murals

(A) Location of Murals. Murals may be proposed on exterior building façades, structures, perimeter walls or any other large permanent surface deemed appropriate by City staff, City Beautification Committee, and City Commission.

- (1) Murals may be proposed on new developments or redevelopments that are applicable to the following land use types that are listed in Section 24-217 (A) of this Article.
- (2) Murals shall be prohibited on billboards, electronic billboards, residential homes, gas stations, public-right-of way, streets, light poles, and conservation land.

(B) Mural Design Requirements. All murals must meet the following requirements:

- (1) Coverage, size, and scale. Murals shall be proportionate in size and scaled to the building facade.
- (2) Facade features. Murals shall be positioned on the facade in a manner that respects architectural features and shall not cover windows in a manner that detracts from the architectural design of the building. A mural may only be placed on the facade of a building, site perimeter walls, fences or on accessories.
- (3) Mural text size. The mural shall be predominantly pictorial, with text limited to no more than 5 percent of the proposed mural size, except for text used to create the graphic. Advertising messages shall be reviewed under the sign provisions of this chapter not these public art provisions.
- (4) Public safety. Murals may not be illuminated in such a manner so as to cause glare or to impair the vision of people operating a vehicle or walking within a public right-of-way or otherwise distract or interfere with the ability of people within the area to safely navigate the environment.

(C) Mural standards. Every applicant must demonstrate that they will:

- (1) Professional grade mural paint/materials shall be required.
- (2) Mural must be sealed to prevent/limit graffiti and/or ultraviolet (UV) fading.
- (3) Have a plan for painting the mural that ensures the safety of painters and the public, and that does not impede public access. If the safety plan submitted is not being adhered to, and the City has identified a safety risk to either the artist and/or the public, the City has the right to stop work until such time that safety issues or concerns are addressed by the artist.
- (4) Provide a copy of a signed agreement in which the building owner commits to keep the mural unchanged and in good condition for the life of the development project. Murals shall be maintained by the property owner. The property owner shall be responsible for periodically monitoring the condition of the mural, facilitating its care and maintenance, and assuming any costs associated with maintenance, repair, and/or removal. Murals not maintained properly may be subject to code compliance action.

Sec. 24-223. – Ownership and maintenance of artwork placed on site.

- (A) Ownership of all public art approved under the conditions of this Article shall be vested in the owner of the property upon which the Public Art is installed.
- (B) Property owners shall be required to maintain the art in good condition in the approved location, as required by law or other applicable guidelines including but not limited to normal code enforcement rules, to ensure that proper maintenance is provided on site.

Sec. 24-224. - Creation of Public Art Assessment and Fund.

- (A) A Public Art Assessment Fund shall be established by the City as a trust fund with an accounting of monies received for the public art. The account shall consist of the following:
- (1) Monies donated to the Fund by private businesses, individuals, and organizations.
 - (2) Monies appropriated to the Fund by the City Commission from eligible City Capital Improvement Projects or through the budgetary process.
 - (3) Monies received by the City from award of federal or state grants for the acquisition or maintenance of works of art on public property or at public facilities in the City.
- (B) Public art monies shall be used solely for expenses associated with the support of local artists, art acquisition, installation, maintenance, grants, community programs and workshops. Such funds shall be administered by the City's Finance Department and all City policies and procedures shall be strictly adhered to regarding the oversight of such funds.
- (C) Programming of Public Art and other art-related expenditures shall be included in the annual capital budget for the City of North Miami Beach.

Sec. 24-225. - Selection of Works of Art.

All City acquisitions will be in accordance with the criteria identified in this Section. The City Commission shall approve each acquisition from those selected and recommended by the Beatification Committee. The city manager and city attorney will negotiate and execute appropriate contracts to acquire each approved work of art. Funds shall be aggregated to acquire works of art.

(A) Selection process. The City Commission shall establish procedures for selecting art works to be purchased from the resources of the city's "public arts fund." Those procedures can include the following means:

- (1) Open competition;
- (2) Limited competition;
- (3) Invitation;
- (4) Direct purchase;
- (5) Donation; and
- (6) Any combination of the above.

(B) Selection criteria. In the selection process, the following principles shall be observed:

- (1) Permanent and temporary works of art shall be located in areas where residents and visitors live and congregate and shall be public accessible and visible (maximum visual accessibility to pedestrian or vehicular traffic).

- (2) Areas used by residents, business owners, and tourists, including parks and thoroughfares, at public or governmental facilities shall be prioritized for placement of public art.
- (3) The board should consider the inherently intrusive nature of public art on the lives of those frequenting public places. Artworks reflecting enduring artistic concepts, not transitory ones, should be sought.
- (4) Public art selections shall reflect the cultural and ethnic diversity of the City's vision and must comply with review standards outlined in this Ordinance.
- (5) Final selection shall also take into account the following factors:
 - i. Appropriateness to the site
 - ii. Permanence of the work in light of environmental conditions at the site
 - iii. Maintenance requirements
 - iv. Quality of the work
 - v. Completion of the work within the available funding
 - vi. Diversity of works already acquired by the city
 - vii. Diversity of the artists whose work has been acquired by the city
- (6) Any other criteria set forth in the public art program guidelines, as amended from time to time.

Sec. 24-226. - Building permits.

Prior to issuance of a master building permit, the applicant or developer for projects subject to this article shall be required to comply with one of the following:

- (A) In-Lieu Public Art Fee. Pay one-half of one percent (0.5%) of the total development cost of the proposed development project, as an "in lieu" public art fee, with a minimum payment of \$25,000
- (B) Placement of Art on Site. Placement of art on the site of the development project, which shall have a minimum value of one-half of one percent (0.5%) of the cost of the proposed total cost of the development project.

Sec. 24-227. – Certificate of Occupancy.

No final certificate of occupancy, for any development project incorporating public art shall be issued unless one (1) or more of the following has been achieved:

- (A) The approved art has been installed in a manner satisfactory to the Community Development Director or designee in compliance with this article.
- (B) In-lieu public art fee has been paid in full.

