

	<b>LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION</b>
---	---

**Subject/Agenda Item:**

**Ordinance 2022-16: ZTA-21-07 Art in Public Places**

**First Reading:** A City-initiated text amendment to the Zoning Code in order to provide changes to the Public Places division to create an Art in Public Places Program for the City of Greenacres.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

<p><b>Originating Department:</b></p> <p><b>Planning &amp; Engineering</b></p> <p>Project Manager</p> <p>_____</p> <p>Kara L. Irwin-Ferris, AICP</p>	<p><b>Reviewed By:</b></p> <p>Director of Planning &amp; Engineering</p> <p>_____</p> <p>Kara L. Irwin-Ferris, AICP</p>
<p><b>Approved By:</b></p> <p><b>City Manager</b></p> <p>_____</p> <p>Andrea McCue</p>	<p>Public Notice:</p> <p><input checked="" type="checkbox"/> Required</p> <p><input type="checkbox"/> Not Required</p> <p>Dates: PC Hearing – 12/2/21          CC Hearing – 5/26/22</p> <p>Papers: Lake Worth Herald</p> <p>Mailing</p> <p><input type="checkbox"/> Required</p> <p><input checked="" type="checkbox"/> Not Required</p> <p>Notice Distance: _____</p>

<p><b>Attachments:</b></p> <ul style="list-style-type: none"> <li>• Ordinance 2022-16</li> </ul>	<p><b>City Council Action:</b></p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Approve with conditions</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> Continued to: _____</p>
--	--

## **I. Executive Summary**

A City-initiated request to amend the City's Zoning Code to provide for an art in public places program within the City. The proposed code changes provide the framework for funding the program, the process for approving the artwork, as well as the verification of the artist and artwork. Overall, private development projects will be required to provide art on site or contribute to the city's public art fund for art on public sites within the city.

## **II. Background**

The Visioning process provided for a strategic action to provide a citywide program for art in public places. The proposed amendment provides an avenue for providing a basic art in public places program with regulations and funding.

## **III. Proposed Zoning Code Amendments:**

The following Zoning Code regulations are impacted by the proposed Zoning Text Amendments. Text shown in ~~strike through~~ is to be deleted. Text shown in underline is to be added.

### **Proposed Change #1**

## **ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS**

### **DIVISION 3. - PUBLIC PLACES**

#### **Subdivision I. -Placement of Memorials and Monuments on City Property**

*[Section 16-651 through 16-655 to remain unchanged and are omitted for brevity]*

Secs. 16-656- ~~16-676~~ 16-659. – Reserved.

#### **Subdivision II. –Art in Public Places**

Section 16-660. – Purpose.

The city recognizes the importance of public art to enhance our public spaces, promote creativity, enhance community vibrancy, and provide the public with more opportunities to experience public art. The purpose of the public art program is to establish a program for the integration of public art into both public and private spaces throughout the city. Public art will add enormous value to the cultural, aesthetic, and economic vitality of our community. It is a well-accepted principle of urban design that public art contributes to a community's identity, fosters community pride and a sense of belonging, and enhances the quality of life for its residents and visitors. The public art fund is accounted separately from other city monies to support the public art program.

Section 16-661. – Establishment of Public Art Fee.

(a) All development, redevelopment, reconstruction or remodeling projects commenced after the adoption of this article which have a construction value of \$250,000.00 or greater, shall participate in the Art in Public Places Program by paying a public art fee. For the purpose of this section, a project will be considered "commenced" when an application for review is first submitted to the city's Development & Neighborhood Services Department. The public art fee shall be equal to one percent (1%) of construction value of the project. The Building Division/Finance Department shall administer the billing and collection of the thirty percent (30%) or (.03) of the one percent (1%) of the public art fee at the time of Building Permit issuance and the seventy percent (70%) or (.07) of the one percent (1%) prior to and as a condition of issuance of the certificate of occupancy that includes the public art. One hundred percent (100%) of the public art fees collected are to be allocated to the Public Art Fund. All distributions for the Public Art Fund require the recommendation of the development review committee prior to City Council approval.

(b) The following types of projects are exempt from the payment of the public art fee:

(1) Remodeling, repair or reconstruction of structures damaged by fire, flood, wind, earthquake or other calamity determined by the City of Greenacres Building Official.

(2) Single-family and two-family in-fill housing.

(3) Normal, routine maintenance including replacement of existing damaged or failing structural or non-structural elements, HVAC, plumbing, electric, or fire detection/suppression equipment of a project not associated with an addition, renovation or new construction.

(4) Remodeling, repair, reconstruction, or additions made after June 6, 2022 to any existing amenity, clubhouse, building, pool, park, playground and/or common area element located within an existing private residential development. This specific exemption applies retroactively to June 6, 2022.

(c) Project owners required to participate in the Art in Public Places Program may obtain reimbursement up to seventy percent (70%) of collected art fee if the following conditions are met:

(1) The owner of a development agrees to follow the City Council's recommendations to develop the art in the project; and

(2) Prior to placement on the development site, has the artwork approved by the City Council to insure that the artwork will be accessible and readily visible to the public based on location of artwork and normal traffic of vehicles/pedestrians in the proposed location; and

(3) Select an artist directly to execute a project that meets specific criteria outlined by the recommendations and guidelines document provided by the City or hire a professional consultant to select artists to commission site- specific, architecturally integrated artworks that meet specific art guidelines; or purchase artworks for permanent installation recommended by the City Council; or elect to purchase an existing artwork or commission an original artwork for donation as a gift to the City of Greenacres' public art collection.

Section 16-662. - Art in public places requirements.

(a) *Application requirements.* The applicant shall provide the information described below and any additional information requested by the development and neighborhood services department necessary to review the application pursuant to the standards of the Code.

- (1) Application forms. The application shall be made on forms provided by the development and neighborhood services department.
  - (2) Artist information. Portfolio containing photographs of the artist's existing work, exhibition and sales history, and biography.
  - (3) Miscellaneous plans, renderings, and details. Artist's color renderings and/or photographs of proposed artwork; materials sample board; site plan depicting the proposed location of the artwork; landscape plan, if necessary, depicting additional landscaping or modifications to existing landscaping; architectural elevations, if necessary, depicting structures associated with the artwork; lighting location plan and light fixture details; or other information requested by staff, the art in public places advisory board, or the city council. All submittals shall be required to provide an accurate representation of the proposed artwork.
- (b) Violations. Violation of this chapter shall be subject to enforcement as provided in Chapter 2, Article III, Division 2.
- (c) Requirements for art or fee in lieu of art. All new development, except city projects, where total construction costs of all buildings on a project site are equal to or greater than \$250,000.00 shall provide art valued in an amount of 70% of the one percent of the total construction costs, as provided in this section and section 16-663, 30% of the one percent shall be deposited in the city's Public Art Fund. All buildings within planned developments shall be assessed cumulatively towards the art in public places requirement, even if they are permitted or owned separately. If the aggregate cost of the entire project exceeds the \$250,000.00 threshold, each phase of development shall contribute the required one percent of construction cost towards art in public places for the building project. The art fee for redevelopment of an existing building shall be calculated based on the construction costs of the new development, excluding the assessed value of the existing buildings that are replaced or redeveloped.
- (1) Private development. A private developer may choose either to provide artwork on the project site with a budget of 70% of the one percent fee for art or to contribute one percent of the total construction costs to the city's public art fund. The city's public art fund shall be interest bearing with all interest to be retained by the city.
    - a. Contribution of art. If the developer chooses to provide artwork, the development review committee shall review the proposed artwork and shall recommend to the city council whether to approve, deny, or approve with conditions the selection and location of the artwork according to the standards of this division. The artwork shall be provided as follows:
      1. Deposit of funds. The Building Division/Finance Department shall administer the billing and collection of the thirty percent (30%) of the one percent (1%) of the public art fee at the time of Building Permit issuance to the Public Art Fund. The developer shall submit documentation to the city showing that a deposit was made in the amount of the 70% of the one percent fee with the developer's attorney into an escrow account in an amount of money equal to 70% of the one percent art fee prior to the issuance of the first building permit. The developer's attorney will furnish the city documentation of the withdrawals for payment of

art fees in accordance with the terms of the contract between the developer and the artist or artists, or the developer's arts consultants. The developer and/or the developer's attorney will provide the city a final written certification and accounting of the payment of art and consulting fees at the conclusion of the placement of artwork. This certification shall be provided in a manner acceptable to the city.

2. Surplus balance. Any surplus balance existing in the escrow accounts after the developer has installed the required artwork shall be collected by the city. The surplus balance shall be held in a segregated, interest-bearing fund (the "public art fund"), and shall be used for the provision of additional art work at the construction site or another site within the city. Use of such funds shall be determined by the city council, following a recommendation by the city staff, and shall be in accordance with further provisions of this division.
3. Artist selection. The selection and commissions of the artists shall be by written contract between the developer and artists.
4. Art consultant. The developer may utilize up to 12 percent of the required fee to retain an art consultant to assist in the selection and procurement of required artwork; an additional three percent of the required fee shall be used to pay the city for administering the art in public places program. The art consultant shall have no financial relationship with the artist, nor any ownership in artwork purchased by the developer. The artist shall be allowed to act as the art consultant for the art petition but shall be precluded from receiving the art consultant fee.
5. Construction cost overruns. Prior to the issuance of the final certificate of occupancy for a project, the developer shall submit a revised construction cost certification. If the final cost of the vertical construction for the entire project is higher than the cost figure used to calculate the preliminary art budget, the art budget shall be increased as necessary to equal one percent of the actual defined total vertical construction cost for the project. The art budget shall be revised within 30 calendar days of any such changes. The increase in the art budget due to the final increase of the vertical construction cost for the entire project shall be placed in the city public art fund or shall be used for the provision of art on site, at the option of the developer.
6. Appraisal. To establish the value of art submitted to comply with this division, the city may employ an independent art appraiser to provide a written appraisal of the art submitted. Such appraisal will be paid for by the developer as part of the overall art contribution.
7. Artwork purchased pursuant to the requirements of this section belongs to the property owner and shall be insured and maintained in good condition at all times as determined by the city's code enforcement official. Maintenance shall include any associated landscaping or related improvements. The city has the right to maintain any art it deems improperly maintained and charge the owner the cost of such maintenance, including cost of collection, interest, and attorney's fees.
8. Unless an alternative deadline is established in a development order, or a time extension is granted by the director of development and neighborhood services, no certificate of occupancy for the project shall be issued until the artwork is installed and the final certification and accounting of the payment of the escrow

fees has been provided. Artwork installed in accordance with this division cannot be altered or removed from the site without approval of the city council.

9. The artist of approved artwork shall grant to the City of Greenacres an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for city-related purposes, and grant to the city the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the city attorney. City approval of the artwork shall be deemed to be a grant of the artist for authorization by third parties to review and reproduce documents provided by the artist to the city which are deemed to be public records pursuant to public record laws of the state. The city shall also have the option of referring to the name and title of the artist and artwork in reproductions.

10. Review by the development review committee.

A. *Workshop.* The applicant shall appear before the development review committee in order to receive guidance in the initial stages of the review. In this case, the applicant shall choose between two types of review described below:

i. The applicant may appear before the committee in order to receive more detailed direction, if the applicant does not have a set direction, prior to receiving a final recommendation by the committee. The applicant is strongly encouraged to submit the portfolios of up to three artists. The portfolios shall contain photographs of the artists' existing works, as well as the artists' biographies; or

ii. The applicant may have a set direction regarding the artwork and may appear before the committee for preliminary comments prior to receiving the committee's final recommendation. The applicant shall submit the portfolio of the proposed artist which shall contain photographs of the artist's existing works, as well as the artist's biography.

B. *Criteria for review of artwork by the committee.* In making its recommendation to the city council, the committee shall consider the quality of the artwork; the exhibition and sales history of the artist; the artist's works in public collections and previous public art purchases or commissions; the ability of the artist to complete the project within a specified schedule; and the compliance with the standards of this division.

C. *Guidelines.* The development review committee may adopt art in public places implementation guidelines to assist both the public and private sector planning activities.

11. Review by staff. In making recommendations to the development review committee and to the city council, staff shall consider the standards of this division in association with sound planning principles.

12. In the case of redevelopment of a property which has contributed artwork on the site pursuant to this article, the artwork may be replaced, at the option of the

developer, with new artwork pursuant to this article, or the existing artwork may remain on the site. In the latter case, the value of the existing artwork and its placement must comply with this article as if it were new artwork.

b. *Fee in lieu of artwork.* Instead of providing artwork on the project site, a developer may choose to contribute one (1) percent of the total construction costs as the required art fee. If the contribution is made, the contribution shall be placed in the city's public art fund and used as provided in subsection 16-662(c)(2). The contributor shall have no input in the use of such funds.

(2) *Public art fund.* When the developer provides a fee in lieu of artwork pursuant to subsection 16-662(c)(1)b. and pays the 30% of the one percent when providing art on site, the following shall apply to the use of the funds:

a. The fee shall be placed in the city's public art fund. Funds from the public art fund may be spent anywhere in the city, and such funds may be spent on any art or art-related costs such as, but not limited to, lighting, consulting, landscaping, aesthetic features or enhancements, maintenance of art work, and to promote public art and the public art process in the city.

b. Artist selection. The city council may choose either to select an artist through a call-to-artist process or to procure works of art through commission via written contract with a specific artist for a specific work of art.

i. *Call to artists.* If a preferred artist has not been determined, the city may issue a call to artists to procure a work or works of art. A selection committee will review the submitted proposals and shall select at least two finalists for consideration by the city council. The city council shall review the finalists' proposals and make a final determination on the selection and commission of the artist and the artwork. The selection and commission of the artist and artwork shall be by written contract between the city and the artist. Final decision-making authority regarding the artwork and artist shall be at the sole discretion of the city council.

ii. *Artist/artwork selection.* The city may utilize funds allocated from the public art fund to retain a specific artist for a specific artwork on city-owned land, a city-owned building, a facility that is leased or rented by the city or on any property where the city has granted permission by the property owner. The selection and commission of the artist and artwork shall be by written contract between the city and artist. Final decision-making authority regarding the artwork and artist shall be at the sole discretion of the city council.

iii. *Contracts for artwork.* Artists, as a part of any commission or contract with the city for the provision of artwork, shall be required to submit to the city a "maintenance and inventory sheet," which shall include an annual cost estimate for the annual maintenance necessary in order to properly preserve and maintain the artwork in substantially the same condition that it was in when accepted by the city.

c. Use of purchased art. All artwork purchased by the city-required art fee contribution shall be displayed on city-owned land, a city-owned building, or a city-leased or rented facility unless otherwise approved by the city. 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. Art consultant. The city may utilize funds allocated from the art account to retain an art consultant. The artist shall be allowed to act as the art consultant but shall be precluded from receiving the art consultant fee.
- e. Proper insurance coverage shall be maintained by the city on artwork purchased with funds generated by this article or on artwork whose ownership has been transferred to the city. The artwork owned by the city shall be maintained by the city.
- f. Maintenance of artwork. The public art fund shall be utilized to cover the costs of acquiring and maintaining public works of art purchased for display on city-owned, -leased, or -rented property/buildings, or on any property where the city has been granted permission by the property owner.
- i. Public art maintenance fund. The city council shall designate portions of the public art fund in order to provide for the maintenance and upkeep of all publicly-owned works of art in order to ensure that proper preservation and maintenance is provided.
- ii. Art maintenance requirement. When the city council approves the acquisition of a public work of art, the city council shall designate funds from the public art fund dedicated to the continual maintenance and preservation of the subject work of art for a period of no less than 25 years.
- iii. Maintenance funds. Maintenance funds may be expended to cover any and all expenses reasonably associated with the maintenance and preservation of public works of art.

Sec. 16-663. - Standards for artwork.

- (a) 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.
- (b) 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 work or works are located.
- (c) Artwork shall be integrated into the overall landscaping plan, and landscaping shall be utilized to enhance the visibility of such works.
- (d) Artwork shall be lighted at a minimum from dusk until midnight. The lighting shall be designed and located in order to prevent excessive lighting, energy waste, glare, light trespass, and sky glow.
- (e) Artwork installed pursuant to the division cannot be altered or removed from the site without approval of the city council.
- (f) Maintenance. Artwork shall be maintained in good condition at all times, including any associated landscaping or related improvements.
- (g) All artwork purchased from the public art fund shall be displayed on city-owned land, a city-owned building, or a city-leased or -rented facility.
- (h) Zoning and building consideration. Consideration shall be given to project zoning. Permits and building approval shall be obtained, when necessary, and shall be in compliance with the



Florida Building Code, the National Electric Code, and the previously-approved plans by city council.

Sec. 16-664. - Definitions of art.

The following words, terms, and phrases, when used in this subsection, shall have the meanings ascribed herein except where the context clearly indicates a different meaning:

Art, artwork, or works of art means all tangible creations by artists exhibiting the highest quality of skill and aesthetic principles, and includes all forms of the visual arts conceived in any medium, material, or combination thereof, including, but not limited to, painting, sculpture, fountains, engraving, carving, frescos, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, artist-designed seating, or other functional art pieces and collaborative design projects between architects and/or landscape architects and artists, together with all hard costs and soft costs such as, but not limited to, lighting, landscaping, or other aesthetic effects or enhancements integrated with the art and approved by the growth management administrator. The city council shall not consider for approval art objects which are mass-produced in unlimited quantities. Artwork may include, but is not limited to:

- (1) Sculpture: Free-standing, wall supported or suspended; kinetic, electronic; in any material or combination of materials.
- (2) Murals or portable paintings: In any material or variety of materials.
- (3) Fiber works, neon, glass, mosaics, photographs, prints, calligraphy, earthworks, any combination of forms of media, including: Light, sound, literary elements, film, holographic images, and video systems; hybrids of any media and new genres.
- (4) Furnishings or fixtures, including, but not limited to: gates, railings, lighting, street lights, signage, seating, if created by artists as unique elements or limited editions.
- (5) Culturally significant elements.
- (6) Temporary artwork or installations, that serve the purpose of providing community and educational outreach.

Ineligible artwork. The following shall not be considered artwork:

- (1) Art objects which are mass produced or of standard manufacture, such as playground equipment, fountains, statuary elements, signage, maps, corporate logos or other functional elements, unless incorporated into an artwork by an artist commissioned for that purpose.
- (2) Reproductions, by mechanical or other means, of original artwork, except in the cases of limited editions controlled by the artist, cast sculpture, film, video, photography, printmaking, or other media arts.
- (3) Decorative, ornamental, architectural, or functional elements of the architecture or landscape design which are designed by the building architect, as opposed to elements created by an artist commissioned for that purpose. Such elements may be considered artwork when commissioned from an artist as an integral aspect of the structure or site.

(4) Commercial expression, including design elements related to the visual identity of a developer or occupant of a building such as a logo, trademark iconography, color scheme or theme, even if created by an artist.

(5) Services or utilities necessary to operate and maintain an artwork over time.

Development, as it pertains to art means any project to construct or remodel any private or public development, except residential and/or residential components of mixed-use development, or any portion thereof within the limits of the city, where total construction costs equal or exceed two hundred and fifty thousand dollars (\$250,000.00).

Remodeling or conversion, as it pertains to art means alterations made to a building within any twelve month period, including, but not limited to, changes to the facade of a building, changes to the interior of a building, increases or decreases in the floor area of a building and changes to exterior improvements.

Secs. 16-665—16-676. - Reserved.

*[Sections 16-578 through 16-589 to remain unchanged and are omitted for brevity]*

\* \* \* \* \*

**III. Staff Analysis:**

On June 17, 2019, the City Council adopted Ordinance 2019-18 in order to institute regulations for public spaces that provided criteria for monuments and memorials within the City. The intent was to also provide a location for the creating of an art in public places program for the City.

The current amendments to Article IV, Division 3, provides for Subdivision II, Art in Public Places. The proposed code section will provide regulations for allowing public art projects within the City, creating a public art fund, setting a requirement for development project to provide art on site or contribute to the city funds, as well as set up the process for reviewing and approving public and private art in the city.

*Land Development Staff Comments:*

The petition was reviewed by the Land Development Staff on November 12, 2021 and recommended for approval.

Planning and Engineering Department:	No objections.
Building Department:	No objections.
PBSO District 16	No objections.
Fire Rescue Department:	No objections.
Public Works Department:	No objections.

**IV. Zoning Text Amendment Criteria:**

A. *The need and justification for these changes:*

The principal intent of these proposed text amendments to the Zoning Code is to create an Art in Public Places program for the City. The proposed amendment will provide for a funding source and regulations for the placement of art on public and private properties in the city.

B. *The relationship of the proposed amendments to the purpose and objectives of the City's Comprehensive Plan, and whether the proposed change will further the purposes of the City's Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.*

The proposed amendments are consistent with the City's Comprehensive Plan and will further the purposes of the City's Zoning Code regulations and other City codes. The change promotes and improves the public health, safety, comfort, good order, appearance and general welfare of the citizens of the city.

**V. Staff Recommendation:**

*Approval* of ZTA-21-07 through the adoption of Ordinance 2022-16.

---

**PLANNING COMMISSION RECOMMENDATION – December 15, 2021**

---

The Planning Commission on a motion made by Commissioner Edmundson and seconded by Commissioner Robarts, by a vote of four (4) to zero (0) recommended approval of Zoning Text Amendment **ZTA-21-07** (*Art in Public Places*) as presented by staff.

---

**CITY COUNCIL ACTION First Reading – May 16, 2022**

---

The City Council on a motion made by Councilmember Noble and seconded by Councilmember Tharp, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment **ZTA-21-07** through Ordinance 2022-16 on first reading as presented by staff.

---

**CITY COUNCIL ACTION Second Reading – June 6, 2022**

---