

**ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING CHAPTER 24 OF THE CITY'S CODE OF ORDINANCES ENTITLED "ART IN PUBLIC PLACES"; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXEMPTION FOR RESIDENTIAL DEVELOPMENT AND TEMPORARY STRUCTURES; PROVIDING FOR THE APPOINTMENT BY CITY COUNCIL TO THE PUBLIC PLACES ADVISORY BOARD; PROVIDING FOR THE REPAIR OR REPLACEMENT FOR DAMAGED OR DESTROYED ARTWORK; PROVIDING FOR CODIFICATION, PROVIDING FOR A CONFLICTS CLAUSE, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, the City Council of the City of Westlake deems it in the best interest of the residents of Westlake to provide for the funding, acquisition, placement and maintenance of artwork to be located within the City of Westlake; and

**WHEREAS**, the City of Westlake Art in Public Places Program is hereby established to provide for specificity and to identify specific exemptions; and

**WHEREAS**, the appointments to the Art in Public Places Advisory Board shall require at least four (4) years of experience related to the arts and shall serve at the pleasure of the City Council.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF WESTLAKE, FLORIDA**, as follows:

**SECTION 1.** Recitals. The foregoing recitals are confirmed, adopted and incorporated herein and made a part hereof by this reference.

**SECTION 2.** The City Council hereby establishes Chapter 24 entitled "Art in Public Places" as follows:

**CHAPTER 24: ART IN PUBLIC PLACES**

**Article 24.1 Definitions.** The following words, terms, and phrases, when used in this Chapter, shall have the meanings described herein except where the context clearly indicates a different meaning

**Art or Artwork** 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, iconic or placemaking architecture, 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, design, engineering, permitting, artistic fees, lighting, landscaping, or other aesthetic effects or enhancements integrated with the art and approved by the City Planner. The city council shall not consider for approval art objects which are mass-produced in unlimited quantities.

*Ineligible artwork.* The following shall not be considered artwork:

- a. 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.
- b. 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.
- c. 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.
- d. Services or utilities necessary to operate and maintain an artwork over time.

**Development** means any project to construct, redevelop or remodel any private or public real property, except for residential property and/or the residential components of a mixed use project, or any portion thereof within the limits of the city.

**Artist** means an individual recognized by art critics and peers as a professional practitioner in the visual arts as judged by the practitioner's body of work, educational background, experience, public commissions, exhibition record, publications, receipt of honors and awards, and training in the arts. The term "artist" includes local artists.

**Mixed Use Projects** means projects that contain a mix of residential and non-residential uses.

**Non-residential Development Projects** means all non-residential development, redevelopment, or renovation projects.

**Public Construction Project** means new construction or any remodel project with building construction costs that exceed one million dollars (\$1,000,000) to the extent paid for wholly or in part by the City of Westlake, regardless of the source of the monies, for any public buildings, public decorative structures, freestanding parking facilities and parks, or that portion of a Public-Private Joint Venture Project determined by the City to be a public portion of the project. Notwithstanding the foregoing, Public Construction projects do not include utility, drainage, potable water, wastewater, reuse water, or roadway work, or work performed by or on behalf of the Seminole improvement District.

**Private Construction Project** means any construction or renovation project to the extent not paid wholly or in part by the City or any other governmental agency, of one million dollars (\$1,000,000) or more, excluding residential development. Private Construction Project includes the private portion of any Public-Private Joint Venture Project.

**Public-Private Joint-Venture Project** means a project where construction or renovation project undertaken by a private entity that occurs on City-owned land, or where the City is a party to a

public-private joint venture agreement on City-owned land. To the extent that a Public-Private Joint Venture can be divided in private and public portions, the public portions shall be considered a Public Construction Project and the private portions shall be considered a Private Construction Project, the percentage of each to be determined by the City.

**Building Construction Cost** means the total cost associated with the construction or renovation of a building, as determined by the Building Official issuing a building permit for construction or renovation of the building. This includes all buildings on the project site, except for site infrastructure, temporary buildings or structures, and parking garages. The building construction costs include labor, structural materials, plumbing, electrical, mechanical, infrastructure, design, permitting, architecture, engineering, lighting, signage, and site work associated with the building's construction or renovation.

#### **Article 24.2 Art in Public Places Program**

**Section 1) Purpose.** It is the purpose of the City of Westlake to establish a formal requirement for the funding, acquisition, placement, and maintenance of artwork within the City of Westlake. This requirement and the policies and procedures that implement it are referred to as the City of Westlake Art in Public Places Program. It is the intention of this program to promote public art to enhance the economic development of this new community, establish the City's identity as a place where public art thrives, and promote the beauty and interest of spaces visible to the public in both private and public development projects.

**Section 2) Applicability.** This ordinance shall apply to Public Construction Projects and Private Construction Projects.

**(A) Non-Residential Development.** All non-residential development projects with building construction costs of one million dollars (\$1,000,000.00) as determined by the City's Building Official or more shall be subject to the requirements of the Art in Public Places program, in accordance with the provisions of this Ordinance.

**(B) Residential Development Exempt.** Residential projects are exempt from the City of Westlake Art in Public Places Program and shall not be required to pay a fee or provide artwork in lieu of the fee.

**(C) Mixed Use Projects.** For mixed use projects, the portion of the mixed use project that is non-residential development shall be subject to the requirements of the Art in Public Places Program in the same manner as other non-residential development if the building construction costs of the non-residential development portion are one million dollars (\$1,000,000.00) or more. The portion of the mixed use project that is residential shall be exempt from the requirements of the Art in Public Places Program.

**(D) Temporary Structures Exempt.** The Art in Public Places Program shall not apply to temporary structures used for temporary uses as that term is defined in Chapter 1.

**Section 3) Art Acquisition Fund.** The City of Westlake Art Acquisition Fund is hereby established. It will be funded through Art in Public Places Fees for Public and Private construction projects, cash grants, voluntary donations to the City for public art projects from governmental or private resources, and all other funds allocated by the City through the budgetary process for the provision of public art. These funds will be interest bearing and revolving and may only be used for the purposes of this program.

**Section 4) Art in Public Places Program Requirements.** Non-residential development projects with building construction costs of one million dollars (\$1,000,000.00) or more must either contribute one percent (1%) of the building construction costs of the project as a fee to the Art Acquisition Fund, or provide artwork that has an appraised value equal to three quarters of a percent (0.75%) of the building construction costs of the project and incorporate such artwork into the non-residential development project.

- (A) If the project is built in phases, then the fee shall be calculated for each phase.
- (B) Applicants are encouraged to provide artwork rather than contribute to the Art Acquisition Fund.
- (C) If the applicant intends to provide the artwork, the location of the artwork shall be shown on the site plan.
- (D) The fee shall be due prior to issuance of the first building permit for the project.

**Section 5) Enforcement.**

- (A) The requirements of the Art in Public Places Program shall be listed as a Condition of Approval in the Development Order approving applicable development projects.
- (B) The Code Enforcement Division shall be responsible for enforcing Development Orders and Conditions of Approval.

**Section 6) Art in Public Places Advisory Board.** The Art in Public Places Advisory Board is hereby established to promote greater public participation in, and access to, arts and culture in the City.

**(A) Composition.** The Art in Public Places Advisory Board shall be appointed by the City Council and be composed of five (5) board members and two (2) alternate board members, and one (1) non-voting high school student, who shall be appointed by the City Council.

- (1) No less than four board members shall have a demonstrated knowledge of the arts, such as at least four years of experience related to the arts or an educational degree related to the arts, and possess competence in the evaluation of art, art history, art education, architecture, sculpture, painting and other appropriate media, urban design, or a related field.
- (2) Board members shall either live or work in the City.
- (3) Each board member shall serve without compensation and at the pleasure of the City Council.
- (4) No board member may be the artist, provide the artwork, consulting services or have any interest in any artwork to be reviewed by the Art in Public Places Advisory Board, whether proposed by a private developer or the by the City.

**(B) Artwork Review and Recommendation.** If the applicant proposes provide artwork rather than contribute to the Art Acquisition Fund, the Art in Public Places Advisory Board shall review the artwork, and recommend to the City Council the approval, denial, or approval with conditions of the selection and location of the artwork according to the standards of this Ordinance.. The City Council will render a decision on the artwork after receiving a recommendation from the Art in Public Places Advisory Board. .

**(C) Criteria for the Review of Artwork.** In making its recommendation to the City Council, the Art in Public Places Advisory Board shall consider the quality of the artwork; the exhibition and experience 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 Chapter.

- (D) **Guidelines.** The Art in Public Places Advisory Board may adopt art in public places guidelines to assist both the public and private sector to implement art planning activities.
- (E) **Review by Staff.** City staff shall review the applications and make recommendations to the Art in Public Places Advisory Board and to the City Council.

**Section 7) Standards for the Artwork.**

- (A) **Display.** 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.
  - (1) All artwork funded from the art acquisition fund shall be displayed on or in government-owned or leased land, a government-owned or leased building, or on privately-owned property with an easement in favor of the City permitting such display.
- (B) **Integration.** Artwork attached to a building structure 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. Artwork displayed outdoors shall be integrated into the overall landscaping plan, and landscaping shall be utilized to enhance the visibility of such works.
- (C) **Lighting.** 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, and shall conform to all lighting requirements in Chapter 5 of these LDRS.
- (D) **Removal.** Artwork installed pursuant to this Article cannot be altered or removed from the site without prior approval of the City Council.
- (E) **Maintenance.** Artwork shall be maintained in good condition at all times, including any associated landscaping or related improvements. The City shall be responsible for maintaining artwork acquired through the Art in Public Places Fund or in or on government owned, leased, or easement property. The developer or landowner shall be required to maintain any artwork provided by the applicant and physically integrated into the non-residential development project. Artwork damaged or destroyed shall be repaired or replaced by the entity responsible for maintenance of the artwork.
- (F) **Compliance with building, zoning, and fire codes.** The City's and State Building Codes and Property Development Regulations shall apply to art installations. Building Permits shall be obtained, when necessary, and shall be in compliance with the Florida Building Code, the National Electric Code, Palm Beach County Fire Safety regulations, and plans previously approved by City Council.

**SECTION 4. Codification.** It is the intention of the City Council of the City of Westlake that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Westlake, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

**SECTION 5. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions which are in conflict herewith, are hereby repealed to the extent of such conflict.

**SECTION 6. Severability.** Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

**SECTION 7. Effective Date.** This ordinance shall be effective upon adoption on second reading.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2021, on first reading.

**PUBLISHED** on this \_\_\_\_ day of \_\_\_\_\_, 2021 in the Palm Beach Post.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021, on second reading.

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City of Westlake  
Roger Manning, Mayor

ATTEST:

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Zoie Burgess, City Clerk

APPROVED AS TO LEGAL FORM:

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OFFICE OF THE CITY ATTORNEY