

PROPOSED ORDINANCE: ARE RESIDENT--OF THE CITY OF MIAM--LOOKING FOR MILLION DOLLAR ART PROJECTS OR ARE THEY LOOKING FOR REASONABLE RENTS?

As you may know, 24/7 Wall Street recently named the City of Miami as the worst City to Live in America. The ranking took into account various socioeconomic factors such as home affordability, median income, number of people that live in poverty, cost of living, etc. ([See link here](#)). According to Zumper, the median rent for a one-bedroom condo in Miami is \$1,900 making Miami the eight highest rental market in the nation. Recently, the Planning and Zoning Appeals Board of the City of Miami unanimously voted to adopt an arts in public places ordinance which ultimately increases the cost of construction and development in order to fund the public display of art. The AiPP ordinance, levies an additional 1-1.5% fee on the Construction Costs (aka hard costs) component of—generally—all Public and Private Development (defined in the ordinance below) in order to promote art in public places. Based on our internal estimates, AiPP fee will add an additional million dollars (\$1,000,000) of expense to a 300 unit building. Ultimately, this increase in cost will be absorbed by the consumer and will translate into less development and higher rents for market rate housing and less affordable housing projects being constructed through the city.

An administrative body, within the City of Miami, will be responsible for the administration and assessment of the fees. That same ordinance also creates an independent board responsible for the acquisition, curation, and exhibition of art. The City has wide discretion as to what is deemed art, what is procured and where the art is displayed. This program's unspoken goal is to continue to attract foreign buyers, via the arts, in order to prop up prices for condominium developers which ultimately increases development costs and makes it more difficult to get rental projects built translating into less market rate and affordable housing inventory and higher rents.

The AiPP ordinance is scheduled to go before the Commission, for second reading, on July 14, 2016. If the ordinance is passed and is then ultimately made law, it will have broad implications on public housing and market rate development and negatively impact the Citizens of Miami and job growth all for the benefit of luxury condo developers.

Please see the ordinance below:



City of Miami

Legislation

Ordinance

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.miamigov.com

File Number: 16-00315zt

Final Action Date:

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING THE MIAMI 21 CODE, THE ZONING ORDINANCE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED ("MIAMI 21 CODE"), BY AMENDING ARTICLE 1, ENTITLED "DEFINITIONS", MORE SPECIFICALLY TO ADD SECTION 1.5 ENTITLED, "DEFINITIONS OF ART IN PUBLIC PLACES PROGRAM"; AND ARTICLE 3, ENTITLED "GENERAL TO ALL ZONES", MORE SPECIFICALLY TO ADD SECTION 3.16 ENTITLED "PUBLIC ART REQUIREMENTS"; AND ADDING A NEW ARTICLE 11, ENTITLED "ART IN PUBLIC PLACES PROGRAM"; CONTAINING A SEVERABILITY CLAUSE, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Miami Planning, Zoning and Appeals Board ("PZAB"), at its meeting on March 16, 2016, following an advertised public hearing, adopted Resolution No. PZAB-R-16-018 by a vote of eight to zero (8-0), item no. 6, recommending approval of the amendments to the Miami 21 Code, the Zoning Ordinance of the City of Miami, Florida, as amended ("Miami 21 Code"), as set forth herein; and

WHEREAS, various local governments throughout the State of Florida and the country have implemented public art programs committing to the placement of public art in urban environments; and

WHEREAS, the City of Miami ("City") had the vision and foresight to adopt the first public art program in Miami-Dade County in 1967, but due to changes in Administration, the program went dormant; and

WHEREAS, the City seeks to reestablish a public art program that would contribute to the aesthetic diversity and character of the built environment and the cultural enrichment of the community; and

WHEREAS, a public art program would create a stimulating and diverse cultural environment that reflects, defines, and enhances the City's heritage, values, and visions for the future through art integrated in the architecture, infrastructure, and landscape; and

WHEREAS, the City recognizes that the aesthetic diversity provided by art within the City's built environment is vital to the quality of the life of its residents and to the economic success of its businesses as it attracts visitors and potential residents, fuels the local economy by creating job opportunities, and assists the City in fulfilling its mission to make the City a premier world class place in which to live, work, and raise a family; 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; and

WHEREAS, in *Ehrlich v. City of Culver City*, 911 P. 2d 429 (Cal. 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

WHEREAS, the City Commission desires to establish Article 11 of the Miami 21 Code, entitled, "Art in Public Places Program" ("Public Art Program"), to create a cultural legacy for future generations through the curation and exhibition of high quality art that reflects a variety of artistic styles and a diversity of culture, beliefs, and thinking, to chronicle and pay tribute to the City's history through the collection of artifacts, documents, and memorabilia, and to enhance the quality of life for its citizens through the placement of art, creation of artistic opportunities and implementation of art programming; and

WHEREAS, the requirements found in this Ordinance are design standards based on the aesthetic need of the City and its communities and are not intended to be construed as either an impact fee or a tax; and

WHEREAS, public and private development projects shall contribute to a public art program to enhance and maintain the City's aesthetic diversity and character; and

WHEREAS, the Art in Public Places Program as set forth in this Ordinance does not conflict with the laws and policies governing any development agreements and do not prevent development of the land uses, intensities, or densities in the development agreements; and

WHEREAS, the Art in Public Places Program as set forth in this Ordinance is essential to the public health, safety, or welfare; and

WHEREAS, the provisions of this Ordinance shall apply to all Development Projects that are subject to a development agreement; and

WHEREAS, the City Commission hereby finds and declares that the adoption of this Ordinance is consistent with the City's Comprehensive Plan, and that it is necessary, appropriate, and advances the public interest;

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

Section 1. The recitals and findings contained in the Preamble to this Ordinance are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. The Miami 21 Code is hereby amended by making modifications in the following particulars:{1}

"ARTICLE 1. DEFINITIONS

* * *

1.5 DEFINITIONS OF ART IN PUBLIC PLACES PROGRAM.

For the purposes of this Code, the following words and phrases shall have the following meanings:

Art: Tangible creations by Artists which include all forms of the visual arts conceived in any

medium, material, or combination thereof, including, but not limited to, paintings; sculptures; engravings; carvings; frescos; stained glass; mosaics; mobiles; tapestries; murals; photographs; video projections; digital images; bas-relief; high relief; fountains; kinetics; collages; drawings; monuments erected to commemorate a person or an event; functional furnishings, such as Artist designed seating and pavers; Artist designed architectural elements; and Artist designed landforms or landscape elements. The following shall not be considered as Art for the intents and purposes of this Code:

- Reproductions or unlimited copies of original pieces Art;
- Directional elements, such as Signage or graphics;
- Objects which are mass produced; or
- Works that are decorative, ornamental, or functional elements of the architecture or landscape design, except when commissioned from an Artist as an integral design aspect of a Structure or site.

Art in Public Places Board ("AIPPB"): The entity appointed by the City Commission to aid in the administration of the Public Art Program. The AIPPB shall have the power to make decisions regarding dedications, donations, and acquisitions of Art to fulfill the requirements as prescribed in Article 11 of this Miami 21 Code and Chapter 62 of the City Code. Reference to approval by the AIPPB of this Code shall mean approval at a duly noted Public meeting.

Artist: A practitioner exhibiting the highest quality of skill and aesthetic principles in the visual arts, generally recognized by critics and peers as a professional of serious intent and ability. Indications of a person's status as an artist include, but are not limited to, income realized through the sole commission of art, frequent or consistent art exhibitions, placement of art in public institutions or museums, receipt of honors and awards, or training in the arts.

Construction Cost: Expenses incurred by a contractor for labor, material, equipment, financing, services, utilities, etc., plus overhead and contractor's profit for placing construction materials in a permanent position and fastened in a permanent manner; except that, where demolition, excavation, or removal of an existing Structure has been substantially begun preparatory to new construction, such excavation, demolition, or removal shall be deemed to be actual construction, provided that work shall be continuously carried on without interruption, except for just cause, until the completion of the new construction involved. Costs such as that of land acquisition, architectural design, consultants, and engineering fees are not Construction Costs.

Developer: The property owner, including the property owner's successors and assigns, of the subject Development Project.

Development Project: Any Development, as defined in Article 1 of the Miami 21 Code, 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 also include:

- Individual tenant improvements in any commercial development; and
- All planned or commercially marketed or sold residential developments consisting of seven (7) or more dwelling units.

Durable: Lasting, enduring and highly resistant to deterioration due to weather or the passage of time.

Historic Resource: A property or resource that has been designated historic pursuant to Chapter 23 of the City Code or is listed in the National Register of Historic Places.

Life Cycle: The natural deterioration time period for a piece of Art. Art created under this Section is meant to be Durable and shall have a Life Cycle of at least twenty-five (25) years when properly designed or created by the Artist, and maintained, conserved and repaired. Art reaches the end of its Life Cycle when the Artist, Artist's estate, or a qualified Art conservator verifies that the Art has deteriorated such that the Art cannot reasonably be maintained, conserved, or repaired.

Project Cost: The total of specialty consulting fees, Construction Cost, including all systems and features that make the facility functional, site work, and contingency allowances and allowance accounts (e.g. permitting, surveying, inspections) for the Development Project. Project Cost shall not include the cost of land acquisition or subsequent cost changes to the construction or architectural contract(s) for the Development Project, including phased projects and all elements of an approved development agreement. The total Project Cost shall be calculated as of the date the contract for the construction is executed. The Developer shall provide Project Cost information and in the absence of such information or if a dispute arises regarding the submission of such information, the Project Cost shall be based upon the Building valuation as computed using the latest building valuation data as set forth by the International Conference of Building Officials ("ICBO") together with estimated design services fees.

Public Art Fee: See Sections 11.4(b) and 11.6(a).

Public Art Fund ("Fund"): A separate, interest bearing set of accounts set up by the City with the sole purpose of receiving monies designated for the Public Art Program or to fulfill the requirements set out by Article 11 of this Code and Chapter 62 of the City Code.

Public Art Master Plan: A plan adopted by the City Commission, pursuant to a recommendation by the AIPPB, which shall identify Public Place locations for Art and establish a priority order to the City Commission, and which shall be amended, as needed, to ensure that the Public Art Master Plan and the Public Art Program as a whole remain coherent and consistent with the intents and purposes for which Article 11 of the Code was adopted.

Public Art Program Guidelines: A set of standards, criteria, policies and procedures related to the submission, donation, dedication, consideration, and acceptance of Art, which shall be adopted by the City Commission, and amended as necessary, to ensure that the Public Art Program Guidelines and the Public Art Program as a whole remain coherent and consistent with the intents and purposes for which Article 11 of this Code was adopted.

Public Place: Any exterior area on Public property, and shall also mean any private property within the City limits, which is easily accessible or clearly visible to the general Public from adjacent Public property including, but not limited to, a street or other Public Thoroughfare or Sidewalk.

Remodeling: Any change to the facade of a Building, any change to the interior of a Building,

any increase or decrease in the Floor Area of a Building, and any change to exterior improvements.

Residential Development Projects: Development Projects of Single Family Residence or Multifamily Housing.

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ARTICLE 3. GENERAL TO ALL ZONES

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3.16 Public Art Requirements.

Development Projects shall comply with all applicable provisions of the Art in Public Places Program pursuant to Article 11 of the Miami 21 Code and Chapter 62, Article XVI, of the City Code, as applicable.

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ARTICLE 11. ART IN PUBLIC PLACES PROGRAM

11.1 Administration of the Program.

The Public Art Program shall be administered by the Public Art Division, a division within the City's Planning Department.

11.2 References.

See Chapter 62, Article XVI, of the City Code regarding the Art in Public Places Board, procedures, and other applicable requirements.

11.3 Public Art Master Plan and Public Art Program Guidelines.

The Public Art Division shall prepare both a Public Art Master Plan and Public Art Program Guidelines as defined in Article 1, Section 1.5. The Public Art Master Plan and the Public Art Program Guidelines shall be prepared and subject to approval of the Art in Public Places Board ("AIPPB"). The AIPPB shall also review and approve amendments to the Public Art Master Plan and the Public Art Program Guidelines, as may be proposed by Public Art Division.

11.4 Applicability.

(a) Development projects by the City, a Community Redevelopment Agency, the County, the State, or any other government agency shall comply with the provisions of Section 11.6 of this Article.

(b) Non-governmental and private sector Development Projects. All non-governmental and private sector Development Projects (including interior or exterior modifications, additions, or new construction) including but not limited to: parking structures, residential development

projects of seven (7) or more units, mixed use projects, or commercial sites shall provide for the acquisition of works of Art in value of a minimum of one and a quarter percent (1.25%) of Construction Cost for artwork provided on site, or one percent (1%) of Construction Cost if the fee is paid into the Fund or a combination thereof per Section 11.5., subject to the project valuation schedule below:

- (1) Development Projects with Construction Cost of one million dollars (\$1,000,000.00) or more shall be subject to the provisions of this Article.
- (2) Residential Development Projects of seven (7) or more units (including interior or exterior modifications, additions, or new construction) with Construction Cost of one million dollars (\$1,000,000.00) or more shall also be subject to the provisions of this Article.
- (3) This Article shall not be applicable to Residential Development Projects of less than seven (7) units or Construction Cost of less than one million dollars (\$1,000,000.00). This exclusion shall not apply to mixed use Development Projects.

The applicant(s) shall provide the Public Art Division a copy of the executed notarized architectural, engineering and construction services contract(s) for the Development Project so that the City can accurately determine the Project Cost and properly calculate the Public Art Fee based upon the anticipated Construction Cost.

(c) The AIPPB at a public hearing may waive the following from the Public Art Program upon recommendation from the Public Art Division:

- (1) The reconstruction of Structures which have been damaged by fire, flood, wind, or other act of God.
- (2) Religious Facilities or Development Projects by qualified 501(c)(3) organizations except as otherwise provided in Section 2-11.15 and Procedures No. 358 entitled "Art in Public Places (AIPP) Procedures" of the Miami-Dade County Code.
- (3) The restoration or rehabilitation of a portion(s) of a Historic Resource as defined in Article 1, Section 1.5. that does not alter the size or occupancy load of the Building.
- (4) The repair or rehabilitation of a Building for the installation of fire sprinklers or handicap improvements.

11.5 Compliance with the Public Art Program and this Article shall be by one of the following:

- (a) Except as provided in Chapter 62, Article XVI of the City Code, payment of the Public Art Fee prior to issuance of a master building permit for a Development Project.
- (b) Except as provided in Chapter 62, Article XVI, of the City Code, prior to issuance of a Temporary Certificate of Occupancy ("TCO") or Certificate of Occupancy ("CO"), whichever comes first, the Applicant may:
 - (1) Donation of public art. Donate Art which has been approved by the AIPPB as having

a documented minimum value of one and a quarter percent (1.25%) of the total Project Cost of the Development Project, excluding land acquisition and off-site improvement costs;

(2) Placement of art on site. Place Art on the Development Project site, which shall have a minimum value of one and a quarter percent (1.25%) of the total Project Cost of the Development Project, excluding land acquisition and off-site improvement costs; or

(3) Prior to Donation of Art or placement of the Art on the Development Project site:
(i) The Art must be approved by the AIPPB and conform to the adopted Public Art Master Plan and Public Art Program Guidelines;
(ii) The Applicant must record a covenant for maintenance, insurance, and other requirements set forth in Chapter 62 of the City Code, in a form acceptable to the City Attorney; and
(iii) The Applicant must deposit all financial security into an escrow account, as applicable.

(c) Combination. Any combination from the above, subject to AIPPB approval.

11.6 Government Development Projects - public art requirement.

(a) All Applicants for Governmental Development Projects shall provide for the acquisition of Art equivalent in value to not less than one and one-half percent (1.5%) of the Project Cost of all Development Projects. Acquisition, commissioning, and selection of Art for governmental projects shall be in accordance with the criteria and standards set forth in the adopted Public Art Master Plan and Public Art Program Guidelines and subject to approval by the AIPPB. To the extent the total amount is not used for the acquisition, selection, or commissioning of Art, the remainder may be used for:

1. Public Art Program or administrative costs, repair and maintenance of any Art acquired under this Section, insurance for any Art; or
2. To supplement other acquisition, commissioning, or selection of Art under this Section or the costs to transport, relocate, or remove Art in, on, or near government facilities which have already been constructed.

(b) Private funds used for Development Projects on land owned by the City, County, State, federal or any other governmental agency and on private property are subject to a one and a one-half percent (1.5%) Public Art Fee to be paid into the Fund prior to issuance of a master building permit.

(c) The AIPPB, upon a public hearing, may exempt the following from the Public Art Program upon recommendation from the Public Art Division:

- (i) The requirements of Section 11.6(a) may be waived by resolution of the AIPPB when a Government Development Project is funded by grant(s) that prohibit the use of grant funds for purposes not specified under the grant(s); or
- (ii) Government Development Projects or portions thereof that do not include buildings.

* * *

Section 3. This Ordinance shall not apply to any Development Projects that have a valid and effective Waiver, Warrant, Class II, Variance, Exception, Certificate of Appropriateness, Major Use Special Permit, Development Agreement, or Special Area Plan permit on the effective date of this Ordinance and that obtain a master building permit within six (6) months of the Effective Date of this Ordinance. If a decision on a Waiver, Warrant, Class II, Variance, Exception, Certificate of Appropriateness, Major Use Special Permit, Development Agreement, or Special Area Plan permit has been timely appealed to the PZAB, the City Commission, or a court of competent jurisdiction on the effective date of this ordinance, the six (6) month period to obtain a master building permit shall begin to run on the date of a final order on the appeal or the issuance of the permit, whichever is later.

Section 4. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Miami 21 Code, which provisions may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or other appropriate word to accomplish such intention.

Section 6. This Ordinance shall become effective immediately upon adoption and signature by the Mayor. {2}

APPROVED AS TO FORM AND CORRECTNESS:



VICTORIA MÉNDEZ
CITY ATTORNEY
12/24/16 5/27/16

Footnotes:

{1} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

{2} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.