



MEMORANDUM

Office of the City Attorney

Legistar No. 000829

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: ~~February 26, 2001~~ March 12, 2001

FROM: City Attorney

~~FIRST READING~~
SECOND READING

SUBJECT: Ordinance No. 0-01-04


An ordinance of the City of Gainesville, Florida, amending chapter 5.5 of the Code of Ordinances relating to Art in Public Places to implement a consolidated City of Gainesville/Alachua County art in public places trust; providing for two appointees to the trust to be chosen by the Board of County Commissioners; providing a transition schedule; providing that the art in public places trust shall make recommendations to the Board of County Commissioners for art for county projects; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.


The City Commission at its meeting of January 8, 2001, authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance implementing a consolidated City/County Art in Public Places Trust.

The ordinance calls for a temporary increase in the number of trust members from five to seven. The two additional members will be appointed by the Alachua County Board of County Commissioners. These members will serve from April 1, 2001 until September 30, 2002. At that time, the terms of two of the City-appointed members will expire. The replacements for these members will be appointed by the Board of County Commissioners. The number of members will then return to five.

Prepared by:


Patricia M. Carter,
Sr. Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson,
City Attorney

MJR:PMC:sw

PASSED ON FIRST READING BY A VOTE OF 5-0.

Ordinance No. _____
0-01-04

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An ordinance of the City of Gainesville, Florida, amending chapter 5.5 of the Code of Ordinances relating to Art in Public Places to implement a consolidated City of Gainesville/Alachua County art in public places trust; providing for two appointees to the trust to be chosen by the Board of County Commissioners; providing a transition schedule; providing that the art in public places trust shall make recommendations to the Board of County Commissioners for art for county projects; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

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

Section 1. Chapter 5.5 of the Code of Ordinances of the City of Gainesville is amended to read as follows:

Sec. 5.5-1. Goals and definitions.

(a) The city commission has determined that art, which may include architectural enhancement and special landscape treatment, must be planned as an integral part of the City of Gainesville. The mission of this chapter, art in public places, is to enhance the quality of the visual environment in the Gainesville community, both natural and built; and in so doing add to the quality of life and raise the level of citizen awareness of the

1 importance of aesthetic experiences in their everyday lives. This is consistent with the
2 goal of the state comprehensive plan: "Florida shall increase access to its historical and
3 cultural resources and programs and encourage the development of cultural programs of
4 national excellence."

5 The principal goals of this chapter are:

- 6 (1) To increase public access to art and the aesthetically designed
7 environment, and to promote understanding and awareness of the visual arts in the
8 public environment;
- 9 (2) To contribute to the civic pride and economic development of our
10 community;
- 11 (3) To enhance the climate for artistic creativity in our community;
- 12 (4) To enrich the public environment for both residents and visitors to the area
13 through incorporation of the visual arts; and
- 14 (5) To enable our community to attain recognition as cultural center.

15 (b) For the purposes of this chapter, the following words and phrases shall have the
16 meanings shown:

- 17 (1) *Art* means the unique product of a skilled artist (or group of artists) who
18 works according to aesthetic principles and includes, but is not limited to,
19 architectural enhancements, special landscape treatments, paintings, sculpture,
20 engravings, murals, mobiles, photographs, drawings and works in fabric. The
21 following shall not be considered works of art: mechanical or other reproductions,
22 commercially produced items, architectural rehabilitation or historic preservation.

1 (2) *Architectural enhancement* means the highest application of skill and
2 aesthetic principles to the physical embellishment of the public areas of a
3 building, which may include the placement of works of art, or specially designed
4 plazas, atriums, or other public spaces.

5 (3) *Special landscape treatment* means the highest application of skill and
6 aesthetic principles to creating unique planted or designed areas, which may
7 include earthworks, gardens, paving and water features, not normally associated
8 with public facility landscaping.

9 (4) *Construction budget* means monies budgeted for pre-construction costs,
10 such as planning and design, engineering, architectural and legal services and
11 permits, as well as construction costs, including but not limited to site preparation,
12 construction supervision, HVAC, roofing and other structural or systems costs.
13 Basic repairs or a new roof or HVAC system alone would not be considered
14 renovations and would not qualify under this chapter unless one or more are a part
15 of a larger project. *Construction budget* shall not include land acquisition costs,
16 equipment or furniture costs.

17 (5) *Buildings* means permanent structures owned by the City where City
18 employees work on a regular basis or that the general public uses. Utility and
19 public works operations centers, process plants, staging centers, warehouses, etc.
20 that meet the above test are considered *buildings*. Additions, improvements or
21 renewal of process equipment and associated infrastructure at an existing utility or
22 public works site, such as tanks, piping, controls, boilers, etc. that do not add or

1 expand routinely occupied structures, shall not be considered *buildings* or
2 renovations for the purposes of this chapter.

3 (6) *Public Art Master Plan* means a plan, developed by the art in public places
4 trust in concert with the Community Development, Public Works and other
5 appropriate city departments, that identifies way to enhance the built environment.

6 (7) *Major renovation* means a renovation with a construction budget of over
7 \$100,000.

8 **Sec. 5.5-2. Establishment of the art in public places trust ~~committees~~.**

9 (a) *Creation.* There is hereby created and established ~~in the city~~ an art in public
10 places trust.

11 (b) *Membership.* Except as provided in subsection (1)a. below, the~~The city~~ art in
12 public places trust shall consist of five regular members, plus up to three temporary
13 members, as described below. No member of the art in public places trust may be the
14 owner or operator of, or consultant for a for-profit enterprise engaged in the appraisal,
15 sale, leasing or showing of art to the public on a retail or wholesale basis. All trust
16 members shall serve without compensation.

17 (1) *Regular members.*

18 a. *Transition.* In order to implement a consolidated City of
19 Gainesville/Alachua County art in public places trust, the number of
20 regular members shall be temporarily increased to seven as of April 1,
21 2001. The board of county commissioners shall appoint two regular
22 members to serve along with the five regular members already appointed
23 by the city commission. The two new members shall have terms ending

1 September 30, 2002. The city-appointed members of the art in public
2 places trust whose terms are scheduled to end on September 30, 2002 shall
3 be replaced as of October 1, 2002 by two members appointed by the board
4 of county commissioners, and the number of regular members shall then
5 be reduced back to five.

6 b. General. Each commission shall fill vacancies for the expired or
7 unexpired terms of the members it appointed. The five regular members
8 shall be appointed by the city commission. Except as provided in
9 subsection (1)a. above, the terms of office of the regular members shall be
10 three years, except that the initial members shall be designated for the
11 terms of one, two or three years. Each term shall end on September 30 of
12 its respective year. No regular member shall serve more than two
13 consecutive three-year terms. Vacancies shall be filled by the city
14 commission for the unexpired term of the member whose vacancy is being
15 filled. Whenever possible, two of the five appointed members shall be
16 citizens with appreciation for the visual arts and three of the five appointed
17 members shall represent one or more of the following classifications:
18 architect, landscape architect or interior designer, professional in the field
19 of art, and art or architectural historian.

20 (2) Temporary members shall change for each project and shall include the
21 director of the division having jurisdiction over the public building being
22 constructed and the authorized architect for the project, if the project is in or
23 around the structure generating the funds. If there is no architect for the project,

1 the commission with jurisdiction over the project shall appoint an additional
2 member representing one or more of the classifications set out in subsection
3 (b)(1). The ~~city~~ commission with jurisdiction over the project may appoint up to
4 three citizen experts for each project that is not associated with a particular
5 building. All temporary members will have voting privileges only for the
6 particular project for which they were designated or appointed and will serve on
7 the trust only for the project for which they were designated or appointed.

8 (c) *Duties.*

9 (1) The trust will be responsible for development and implementation of the
10 City of Gainesville Public Art Master Plan, through the art in public places trust
11 program and for the management of the art in public places trust fund. The Public
12 Art Master Plan must be reviewed by the city plan board and approved by the city
13 commission.

14 (2) The trust shall recommend works of art to the city commission or board of
15 county commissioners as described in section 5.5-4 below. Early in the design of
16 a project, the architect and department representative for the project shall work
17 with the other trust members to develop a plan for adding art to the project. When
18 selecting works of art for a city project, the ~~The~~ trust shall recommend to the city
19 commission ~~these~~ works of art that are in accordance with the Public Art Master
20 Plan.

21 (3) The trust shall also review any art project suggested, or offered to be
22 donated, by another board or committee of the city or county, or by any citizen or
23 group of citizens, or by the city commission or board of county commissioners,

1 and make a recommendation to the city commission or board of county
2 commissioners, as appropriate, on the suitability of the proposed project and any
3 conditions to place on its execution.

4 **Sec. 5.5-3. Art in public places trust fund.**

5 (a) *Fund.* There is hereby created an art in public places trust fund consisting of all
6 funds appropriated and deposited to the trust fund in connection with the construction or
7 major renovation of public places. The trust fund is also authorized to accept gifts, grants
8 and donations made to the city for art in public places. All appropriations, gifts, grants
9 and awards of moneys for art in public places shall be deposited in an interest bearing
10 account entitled the City of Gainesville Art in Public Places Trust Fund Account, which
11 shall be a separate account established and maintained apart from the general revenue
12 funds and accounts of the city. All interest earned in said account shall accrue to the use
13 and benefit of the trust fund account. Funds deposited or credited to the city art in public
14 places trust fund account and not expended by the close of any fiscal year shall be carried
15 forward into the next succeeding fiscal year.

16 (b) *Terms of existence.* The city art in public places trust fund account shall be self-
17 perpetuating from year to year unless specifically terminated by the city commission.

18 (c) *Trust fund income.* Each appropriation for the original construction or major
19 renovation of a City of Gainesville building where public employees work on a regular
20 basis or that the general public uses shall include an amount of at least one percent of the
21 total construction budget for the art in public places trust. The total appropriation for the
22 trust fund from any single project shall not exceed \$100,000. All city departments and
23 agencies shall include, in all budgets or applications for funding for capital improvement

1 projects to granting organizations or governmental agencies, an amount equal to at least
2 one percent of eligible construction costs for the art in public places trust. All
3 appropriations shall be deposited in the Art in Public Places Trust Fund when the
4 construction or renovation begins.

5 (d) *Trust fund expenditures.* Monies may be used in accordance with the requirements
6 of this section for all costs associated with acquiring and commissioning art for public
7 places, including costs for administration, travel, training, postage, printing, grants match,
8 and education workshops. These costs may not exceed 20 percent of the total budget.

9 Bond funds shall be appropriated and accounted for in the bond capital project accounts.

10 Any gifts, grants and awards received subject to a condition shall be expended strictly in
11 accordance with that condition. If an appropriation is not used for the acquisition of art
12 for the public place for which it was appropriated, it shall be retrained in the trust fund to
13 supplement other appropriations for the acquisition of art under this section or to place art
14 in, at, or near public buildings which are already in existence. Upon request of a charter
15 officer, the city commission may authorize the trust to suggest projects to be paid for
16 from retained funds. The charter officer or designee appointed by the city commission
17 and representing one or more of the classifications set out in subsection 5.5-2(b)(1) will
18 be substituted for the division manager and architect usually on the committee. It is not
19 the intent of this section to prohibit the expenditure of an amount greater than the amount
20 allocated pursuant to section 5.5-3(a).

21 **Sec. 5.5-4. Selection procedures.**

22 All acquisitions shall be in accordance with the terms of this chapter. Additionally,
23 acquisitions for county projects shall be in accordance with the terms of the county's art

1 in public places program. Whenever possible, the trust shall recommend three possible
2 selections for each acquisition to the ~~city~~ commission having jurisdiction over the project.

3 The ~~city~~ commission shall then make the final selection for each acquisition from the
4 recommended selections, or the ~~city~~ commission may reject all recommended selections.

5 The charter officer shall negotiate and execute all appropriate contracts for art selected by
6 the city commission. Funds may be aggregated to acquire the art.

7 (1) *Selection criteria.* The intent of the art in public places program is to select and
8 provide works of art through a creative collaboration among the public, artist and
9 architect. Therefore, the trust discusses physical and aesthetic considerations including
10 the following:

- 11 a. Art shall be located in areas where residents and visitors live and
12 congregate and shall be in accordance with the goals of the Public Art Master
13 Plan.
- 14 b. The trustees should consider the impact of public art on the lives of those
15 frequenting public places. Art reflecting enduring artistic concepts, not transitory
16 ones, should be sought.
- 17 c. The trust's selections must reflect the cultural and ethnic diversity of this
18 city without deviation from a standard of excellence.
- 19 d. Final selection shall also take into account appropriateness to the site,
20 permanence of the art in light of environmental conditions at the site, maintenance
21 requirements, quality of art, likelihood that the artist can successfully complete the
22 art within the available funding, diversity of art already acquired by the trust, and
23 diversity of the artists whose art has been acquired by the trust.

1 (2) *Supervision of contracts.* The charter officer is responsible for contracting with
2 the artist for the commission or purchase of art by the City of Gainesville. The contract is
3 negotiated between the City of Gainesville, the originating agency, and the artist and
4 includes the following:

- 5 a. A description of the art to be commissioned or purchased.
- 6 b. Site and base or footing preparation.
- 7 c. A price and payment schedule.
- 8 d. An installation and time schedule.
- 9 e. The transfer of ownership to the city.
- 10 f. The artist's right to claim authorship and all rights secured under federal
11 copyright laws.
- 12 g. The artist's rights regarding changes, repairs or relocation of the art.
- 13 h. The charter officer is responsible for contract supervision and for the
14 performance of the work specified in the contract. The charter officer facilitates
15 installation of the art with the artist advising concerning the installation. The
16 charter officer shall supply personnel and technical support. After the art is in
17 place and has been formally accepted by the agency, the charter officer is
18 responsible for security and maintenance of the art. The artist will provide a
19 technical description of materials used in the art and instructions for general
20 maintenance.

21 **Sec. 5.5-5. Ownership and maintenance.**

22 Unless otherwise provided, ownership of all art and architectural enhancements acquired
23 by the city under this chapter is vested in the city, including copyrights, patents and other

1 reproduction rights. The city shall be responsible for managing the reproduction rights of
2 each acquisition with advice and counsel from the art in public places trust. The
3 responsibility for maintenance, insurance and restoration of each artwork shall rest with
4 the city and the art shall be maintained by the charter officer with advice from the art in
5 public places trust.

6 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
7 this Ordinance shall become and be made a part of the Code of Ordinances of the City of
8 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be
9 renumbered or relettered in order to accomplish such intentions.

10 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
11 or unconstitutional by any court of competent jurisdiction, then said holding shall in no
12 way affect the validity of the remaining portions of this ordinance.

13 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
14 such conflict hereby repealed.

15 **Section 5.** This ordinance shall take effect immediately upon its adoption.

16
17 **PASSED AND ADOPTED** this _____ day of _____, 2001.
18

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20 _____
21 PAULA M. DeLANEY
22 MAYOR

23
24
25 ATTEST: Approved as to form and legality

26
27
28 _____
29 KURT M. LANNON
30 CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

D R A F T

2-13-01

1 This Ordinance passed on first reading this _____ day of _____, 2001.

2 This Ordinance passed on second reading this _____ day of _____,
3 2001.

4

5 carter:ordinances:0-01-04 APPT

