

**ORDINANCE NO. 3796**

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, SUB-PART B, LAND DEVELOPMENT CODE, CHAPTER 118 LAND USE REGULATIONS, ARTICLE 7. COMMUNITY APPEARANCE, SECTION 118.7.7 PUBLIC ART; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS:** The City of Fort Myers is desirous of furthering its commitment to providing public art to beautify the appearance of the City, commemorate the history of the City, and to enhance the cultural opportunities throughout the City; and

**WHEREAS:** It is believed that the Public Art Program will contribute to and enhance community identity and pride, reflect the community's values and culture, provide the highest quality art available, promote excellence and diversity through a variety of artists and media, encourage public participation and interaction with public spaces, and increase awareness of how surroundings impact experience, in addition to providing other benefits to the residents and City; and

**WHEREAS:** By mandating a percent for art fee for vertical capital improvement projects, the City Council desires to provide vast cultural resources to beautify the community and for the enjoyment by the citizens of the City of Fort Myers; and

**WHEREAS:** In the spirit of promoting public art in addition to the City's contributions; private developments, planned unit developments, and government entity projects, not including city vertical capital improvement projects or city-owned buildings, within the City will be encouraged to invest time, effort, and money into incorporating works of art into the development of its sites, recognizing that the art will not only become an integral, lasting component of the cityscape, but will be of intrinsic value to their developments.

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**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA,** that:

**SECTION 1.** The City Code of the City of Fort Myers, Florida, Sub-Part B, Land Development Code, Chapter 118 Land Use Regulations, Article 7. Community Appearance, Section 118.7.7 Public Art is hereby amended to read as follows:

**118.7.7 Public Art.**

- A. **Purpose and intent.** The purpose and intent of this section is to establish the framework for a comprehensive policy to promote the educational, cultural, economic and general welfare of the city in keeping with the vitality for which the city is recognized and to provide the means to enhance its aesthetic environment, to encourage incorporation of public art into private and public development recognizing that the art will become integral, lasting components of the cityscape and will be of intrinsic value to developments or, in lieu thereof, to contribute monies to the public art fund to provide for incorporation of visual art throughout the city. Public art provides artistic and cultural resources that enhance the quality of life for individuals living and working in the city. By mandating a percent for art fee for vertical capital improvement projects and encouraging contributions for private development projects, planned unit developments, and government entity projects, not including city vertical capital improvement projects or city-owned

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buildings, within the city, the public art program serves to:

1. promote and strengthen civic pride;
2. enhance and define the identity of the city;
3. reflect the unique character and history of the city;
5. create an important impression for visitors;
6. encourage and increase tourism;
7. spur economic development within the community;
8. increase property values;
9. reinforce the community as a regional and national leader in visual and performing arts;
10. elevate the image of proximately located corporate enterprises;
11. create visual and aesthetic landmarks;
12. impart a cohesive visual and physical appearance;
13. enhance the public environment visually;
14. enrich the cultural climate of the city;
15. enhance the quality of life;
16. engage the community;
17. raise the level of awareness to the importance of aesthetic and intellectual experiences in everyday life; and
18. promote awareness of visual arts in the public realm.

B. **Definitions.** The following words, terms and phrases, when used in this section, shall have the

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meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessible* means public art that is viewable by the public.

*Vertical capital improvement projects* means public buildings and other structures constructed, renovated or otherwise improved by the city on city-owned land, excluding underground utilities.

*Commercial building* means any building or structure, all or part of which contains a commercial or industrial use permitted by this Code.

*Construction* means a new building, renovation of an existing building, or addition to a building.

*Construction costs* means the total value of all construction, reconstruction or addition as determined by the chief building official in issuing a building permit for such construction, reconstruction or addition.

*Government entity* means an agency, instrumentality or other entity of Federal, State, or local government including multijurisdictional agencies, instrumentalities and entities.

*Percent for art fee* means a fee established for the collection of monies to support the public art program.

*Private development* means any project to be paid for wholly or in part by the developer or owner for the

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construction, reconstruction or addition, excluding site work, to any privately owned building or structure.

*Public art* means original works of art accessible by the public and which possess aesthetic qualities reflecting an awareness of site through its physical dimensions, social dynamics, local character, historic connection, and surrounding urban context. Public art includes, but is not limited to, paintings, photographs, prints, etchings, engravings, sculpture, statues, carvings, murals, mosaics, stained glass, monuments, wall hangings, tapestries, mobiles and sculptural unique elements that lie or exist within fountains; and works of art that are freestanding or free hanging in that they are not a structural part of a building or other structure. Public art does not include architectural elements such as dedicated public spaces or plazas in which works of art are placed, installed or affixed. Public art does not include mass-produced items of standard design such as park benches, playground equipment, fountains, or reproductions or unlimited copies of original works of art.

*Public art collection* means all works of public art owned by the city, located on city property, or acquired, commissioned, designed, or placed by the public art committee.

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*Public art committee* means the committee created in section 98.2.6 of the land development code to oversee public art.

*Public art district* means a land area designated by the city for display of public art that provides artistic and cultural resources to enhance the quality of life for individuals living, working and visiting the city.

*Public development* means any project to be paid for wholly or in part by the city, county, state or federal governmental entity.

*Reconstruction* means alterations or repairs made to a public or private building or structure, whether commercial, industrial or residential, which total alterations or repairs within any 12 month period exceed 50 percent of the value of the existing structure, so that such structure must conform to the requirements of new buildings pursuant to section 98.4.5.

*Renovations* mean alterations or repairs made to a public or private building or structure, whether commercial, industrial or residential, which total alterations or repairs within any 12 month period exceed 50 percent of the value of the existing structure, so that such structure must conform to the requirements of new buildings pursuant to section 98.4.5.

*Single-family residence* means the description as provided in the Florida Building Code.

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**C. Percent for art fee.**

1. The city when constructing vertical capital improvement projects, with a construction value of \$250,000.00 or more shall pay an amount of not less than 1 percent of such cost to the public art fund for acquisition and installation of public art, but not to exceed the sum of \$250,000.00 which amount shall be paid prior to the issuance of a building or site work permit. Once public art is installed for a vertical capital improvement project it may not be removed unless an equivalent piece of art or a more valuable replacement work of art is substituted with the review and prior approval of the public art committee and city council. The replacement art work or works must have a value equal to or exceeding the greater of the current fair market value of the art work or the value on the date it was originally installed.
2. The city for an existing city-owned building that is remodeled with a construction value equal to or more than 50 percent of the replacement cost, and with replacement cost of \$250,000.00 or more of the building, shall pay an amount of not less than 1 percent of such costs to the public art fund, not to exceed \$250,000.00, for the acquisition and installation of public art. The public art fee

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shall be paid prior to issuance of a building permit. Once public art is installed under this sub-section, it may not be removed unless an equivalent piece of art or a more valuable replacement work or art is substituted with the review and prior approval of the public art committee and city council. The replacement work or works of art must have a value equal to or exceeding the greater of the current fair market value of the art work or the value on the date it was originally installed.

3. Private developers, with a development that has a construction value of \$250,000.00 or more, will be encouraged to pay an amount of not less than 1 percent of such costs to the public art fund not to exceed \$250,000.00, for acquisition and installation of public art.
4. Private developers, with developments that are remodeled with a construction value equal to or more than 50 percent of the replacement cost and with replacement cost of \$250,000.00 or more of the building, will be encouraged to pay an amount of not less than 1 percent of such costs to the public art fund not to exceed the sum of \$250,000.00 for acquisition and installation of public art.
5. An applicant for a planned unit development, with a construction value of \$250,000.00 or more, will be encouraged to pay an amount of



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not less than 1 percent of such costs to the public art fund not to exceed \$250,000.00, for acquisition and installation of public art.

6. Government entity projects, not including city vertical capital improvement projects, with a construction value of \$250,000.00 or more, will be encouraged to pay an amount of not less than 1 percent of such costs to the public art fund not to exceed \$250,000.00, for acquisition and installation of public art.
7. Government entity projects with an existing government entity-owned building, not including a city-owned building, that is remodeled with a construction value equal to or more than 50 percent of the replacement cost and with replacement cost of \$250,000.00 or more of the building, will be encouraged to pay an amount of not less than 1 percent of such costs to the public art fund not to exceed the sum of \$250,000.00 for acquisition and installation of public art.
8. After review and recommendation of the public art committee and subject to the approval of city council, a private development may incorporate its own public art in lieu of a contribution to the public art fund. The public art incorporated by a private development in lieu of a contribution to the public art fund shall be installed outside of

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any and all buildings and be accessible by the public from the adjacent or adjoining public rights-of-way.

9. Funds paid into the public art fund may be pooled by the city to create or maintain an area designated as a public art district.

D. **Exemptions.** The following are exempted from the provisions of this article:

1. Churches.

E. **Public Art Fund.** The funds contributed for public art shall be deposited in the public art fund along with any and all other revenues appropriated in accordance with this section. The public art fund shall also be used as a deposit for endowments, gifts, bequests, grants or donations given to the city for public art purposes. The revenues in such fund shall be used solely for the following:

1. The design, acquisition, commission, and installation, including base and anchoring systems, of new public art;

2. The improvement and preparation of city-owned real property solely for foundational support of the public art, whether such public art is part of or added to the city public art collection;

3. At the option of the public art committee, to conserve, repair, maintain, replace, transport, relocate, remove, administer or insure works of public art;

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4. Appraisals of public art; or
5. Obtaining loan or temporary lease of artworks, and the associated shipping and installation costs.

F. **Reserve for conservation, repairs and maintenance.** At least ten percent and up to twenty-five percent of all amounts received pursuant to this section shall be designated for conservation, repair and maintenance of works in the city public art collection. The specific reserve between ten percent and twenty-five percent shall be reviewed annually by the Public Art Committee and presented to city council for approval. The funds shall be solely for conservation, repair, and maintenance. The city council ~~also~~ has the right to allocate additional city funds for conservation, repairs and maintenance at its own discretion.

G. **Owner/Developer installed public art.** The following shall govern public art or works of public art that an owner or developer installs on its development site:

1. Public art that is placed or located on private development sites must be installed outside of any and all buildings and be accessible by the public from the adjacent or adjoining public rights-of-way. The public art committee has the right to reject the proposed location of the public art on the site.

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2. Public art must be reviewed and approved by the public art committee pursuant to section 98.2.6 of the city code.
3. After public art is installed on a development site, it must be retained in its approved location and may not be moved without the review and prior approval of the public art committee.
4. Title to public art placed by an owner or developer on site runs with the land, as does the correlative duty, obligation and responsibility for maintaining and insuring the art.
5. While a property owner may install additional works of art on the development site without regard to this section, no such art shall detract from or change the nature of the work or works approved by the public art committee pursuant to this section.
6. The public art committee shall provide application forms for use by owners and developers to provide on-site public art. If requested, the public art committee will assist the owner or developer, at the owner or developer's sole expense, in issuing and administering a call for artists and reviewing the submissions received in response thereto. Prior to the selection and commissioning of artists, the review of design and the

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recommendation of the acceptance of works of art, the public art committee shall submit the action proposed to be approved by city council.

H. **Finality of decisions; appeals.** An owner or developer may appeal a decision made by the public art committee as follows:

1. Any owner or developer affected by this section may appeal any decision of the public art committee by filing a written notice of appeal within 30 days of the issuance of the decision. The notice of appeal shall be filed with the city attorney, and copies provided to the city clerk and the public works director, and shall state with specificity the decision being appealed, the grounds for the appeal and a summary of the relief sought.
2. Upon receipt of a notice of appeal, the city council shall be notified of the hearing for appeal.
3. The public works department shall send written notice of hearing to all property owners within 300 feet of the subject property at least 15 days prior to the hearing for the appeal. Mailing labels are to be provided by the owner or developer.
4. Ex parte communication is not permitted during the appeals process.

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5. The city council may request employees of the city with personal knowledge of relevant facts to attend the hearing and produce relevant documents.
6. The city council, in reaching a decision, must consider criteria, as well as any other issues that are pertinent and reasonable, as follows:
  - a. Whether appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process.
  - b. The intent of this chapter applied or interpreted.
  - c. The effect the ruling will have when applied generally to this chapter.
  - d. Staff recommendations, the testimony of the applicant appellant, and testimony of the general public must be considered.
7. Cases under this section will be handled as a de novo proceeding and all parties will be entitled to present evidence and testimony as to any law or fact supporting their position in the case.
8. Before granting any appeal, the city council must find that an error was made in the order, requirement, decision, interpretation,

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determination or action of the public art committee.

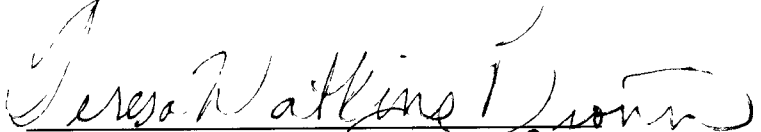
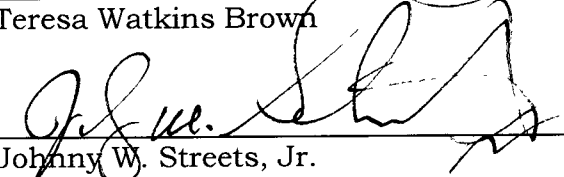
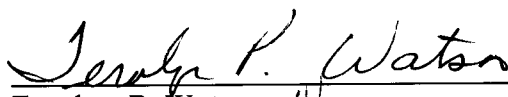
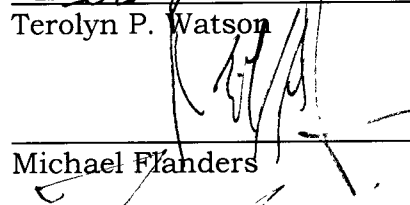
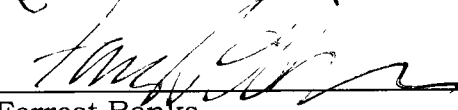
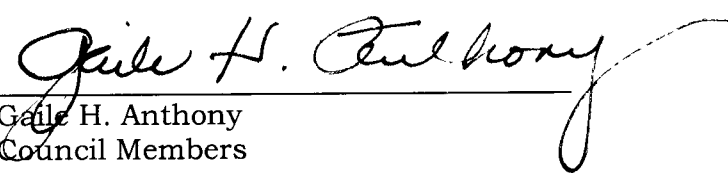
9. The decision of the city council will be final. Judicial review of a final decision of the city council will be in circuit court. The review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the issuance of a final decision by city council.

**SECTION 2.** Severability. Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than that part declared to be invalid.

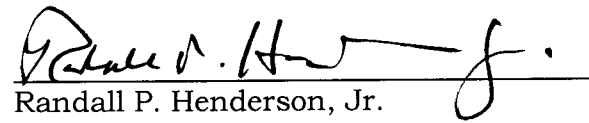
**SECTION 3.** Effective Date. This ordinance shall become effective immediately upon adoption.

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**PASSED IN PUBLIC SESSION** of the City Council of the City of Fort Myers, Florida, this 17th day of April, A.D., 2017.

<u>Aye</u>	 Teresa Watkins Brown
<u>Aye</u>	 Johnny W. Streets, Jr.
<u>Aye</u>	 Terolyn P. Watson
<u>Aye</u>	 Michael Flanders
<u>Aye</u>	 Forrest Banks
<u>No</u>	 Gail H. Anthony Council Members

**APPROVED** this 17th day of April, A.D., 2017, at 5:47 o'clock p.m.

<u>Aye</u>	 Randall P. Henderson, Jr. Mayor
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**FILED** in the Office of the City Clerk this 17th day of April, A.D., 2017.

 Marie Adams, MMC City Clerk
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