

## CITY OF BONITA SPRINGS

### ORDINANCE NO. 05-18

**AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, CREATING ITS ART IN PUBLIC PLACES PROGRAM; PROVIDING FOR SHORT TITLE; ESTABLISHING AND CREATING ART IN PUBLIC PLACES PROGRAM; PROVIDING FOR AN ART IN PUBLIC PLACES ADVISORY BOARD; ESTABLISHING THE ART IN PUBLIC PLACES ACCOUNT; PROVIDING FOR APPROPRIATIONS FOR THE FUNDS; PROVIDING FOR WAIVER; PROVIDING FOR ADMINISTRATIVE PROCEDURE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.**

WHEREAS, the City Council for the City of Bonita Springs is the governing body for the City of Bonita Springs, Florida; and

WHEREAS, Bonita Springs City Council desires to provide vast cultural resources to beautify the community and for the enjoyment by the citizens of Bonita Springs; and

WHEREAS, it is the intent of the City Council to foster through the Art in Public Places Program the development for a receptive climate for the fine arts, to enrich culturally and benefit the citizens of the City of Bonita Springs in their daily lives and to serve a public purpose.

#### **THE CITY OF BONITA HEREBY ORDAINS:**

##### **SECTION ONE: SHORT TITLE**

This Ordinance may be known and cited as the City of Bonita Springs Art in Public Places Ordinance.

##### **SECTION TWO: ART IN PUBLIC PLACES BOARD**

It is hereby established and created an Art in Public Places Board ("APPB"), consisting of seven (7) members appointed by the Mayor with the advice and consent of City Council, all of whom shall serve without compensation. The composition of the APPB will include one voting member who represents the Bonita Springs Art League, one voting member who has a Bachelor's Degree or higher in the area of fine arts, and five (5) general voting members. City Council will adopt a Resolution setting forth the terms and appointments of the Art in Public Places Board. The Mayor shall annually select

one of the APPB members as Chair Person for the APPB, with the APPB selecting its Vice-Chair.

The APPB shall advise City Council on acquiring, commissioning, and maintaining works of art for public places. For purposes of implementing this Ordinance, the following terms are defined as follows:

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

"Architecture enhancement" means the highest application of skill and aesthetic principles to the physical embellishment of the public areas of a building, which may include the placement of works of art or specially designed plazas, atriums or other public places.

"Construction budgets" means monies budgeted for preconstruction costs, such as planning and design, engineering, architectural and legal services and permits, as well as construction costs, including but not limited to site preparation, construction, supervision, HVAC, roofing and other structural or system cost. Basic repairs or a new roof or HVAC system alone would not be considered renovations to qualify for arts in public places unless it is part of a larger project. The construction budget shall not include planned acquisition costs, equipment or furniture costs.

"Major renovation" means a renovation with a construction budget of over \$100,000.00.

"Public Art Master Plan" means a plan developed by the APPB in concert with the City Manager or designee that identifies ways to enhance the cultural environment.

"Public Place" means property either owned or leased by the City of Bonita Springs where the general public generally has the right to enjoy.

"Special landscape treatment" means the highest application of skilled and aesthetic principles to create unique planted or designed areas, which may include earthworks, gardens, pavings and water features, not normally associated with public facility landscaping.

### SECTION THREE: DUTIES OF THE APPB

1. The APPB will be responsible for development and implementation of the City Public Art Master Plan, through the APPB Program and for the management of the Art in Public Places Trust Fund. The Public Arts Master Plan must be reviewed by the Local Planning Agency and approved by City Council.
2. The APPB shall recommend works of art to the City Council through the selection procedures contained within this Ordinance. Early in the design of the project, the architect and City Manager or designee for the project shall work with the APPB to develop a plan for adding art to the project. When selecting works of art for a City project, the Board shall recommend to City Council Works of Art that are in accordance with the Public Art Master Plan.
3. The APPB shall also review any art projects suggested, or offered to be donated, by another Board or Committee of the City, or by any citizen or group of citizens, or by the City Council, and make a recommendation to the City Council on the suitability of the proposed project and any conditions to place on its execution.

#### SECTION FOUR: ART IN PUBLIC PLACES TRUST FUND

1. There is hereby created a special account called the Art in Public Places Account. The account is to be used for acquiring, commissioning, maintaining, and ensuing works of art for public places, and for administrative expenses incidental to implementation of this section. The account shall consist of monies appropriated to the account, other than bond funds. The expenditure of funds under this account shall constitute a public purpose. The account is also authorized to accept gifts, grants and donations made to the City for Art in Public Places. All interest earned in said accounts shall accrue to the use and benefit of the account. Funds deposited or credited to the Art in Public Places Fund Account that are not expended by the close of any fiscal year shall be carried forward to the next succeeding fiscal year.
2. Terms of Existence. The account shall be self-perpetuating from year-to-year unless specially terminated by City Council.
3. Trust Fund Income. Each appropriation for the original construction or major renovation of a City building where public employees work on a regular basis, or that the general public uses shall include an amount not to exceed 1% of the total construction budget for the Art In Public Places Trust. City Council can increase or decrease that amount by Resolution. The total appropriation for Works of Art for any single project shall not

exceed \$100,000.00, unless there is a single project which City Council approves by an affirmative vote of five or more Council members. The capital improvement projects shall contain within their budget an amount equal to at least 1% of eligible construction costs for Art in Public Places Trust. All appropriations shall be deposited in Art in Public Places Trust Fund when the construction or renovation begins, except for bond funds, which shall be appropriated in and accounted for in the bond capital project accounts.

## SECTION FIVE: SELECTION PROCEDURES

All acquisitions shall be in accordance with the terms of this chapter. Additionally, acquisitions for county projects shall be in accordance with the terms of the county's art in public places program. Whenever possible, the APPB shall recommend three possible selections for each acquisition to City Council. City Council shall then make the final selection for each acquisition from the recommended selections, or City Council may reject all recommended selections. The City Manager or designee shall negotiate and execute all appropriate contracts for art selected by the City Council. Notwithstanding the above, funds from more than one project, including projects that are under the jurisdiction of more than one government, may be aggregated to acquire the art.

1. Selection criteria. The intent of the art in public places program is to select and provide works of art through a creative collaboration among the public, artist and architect. Therefore, the APPB should discuss physical and aesthetic considerations including the following:
  - (a) Art shall be located in areas where residents and visitors live and congregate and shall be in accordance with the goals of the public art master plan.
  - (b) The APPB should consider the impact of public art on the lives of those frequenting public places. Art reflecting enduring artistic concepts, not transitory ones, should be sought.
  - (c) The APPB's recommendations and selections must reflect the cultural and ethnic diversity of this City without deviation from a standard of excellence.
  - (d) Final selection shall also take into account appropriateness to the site, permanence of the art in light of environmental conditions at the site, maintenance requirements, quality of art, likelihood that the artist can successfully complete the art within the available funding, diversity of art already acquired by the APPB, and diversity of the art required by the APPB.

2. Supervision of contracts. The City Manager or designee is responsible for contracting with the artist for the commission or purchase of art by the City. The contract is negotiated between the City of Bonita Springs, the originating agency, and the artist and includes the following:
  - a. A description of the art to be commissioned or purchased.
  - b. Site and base or footing preparation.
  - c. A price and payment schedule.
  - d. An installation and time schedule.
  - e. The transfer of ownership to the City.
  - f. The artist's right to claim authorship and all rights secured under federal copyright laws.
  - g. The artist's rights regarding changes, repairs or relocation of the art.
  
3. The City Manager is responsible for contract supervision and for the performance of the work specified in the contract. The City Manager facilitates installation of the art with the artist advising concerning the installation. The City Manager shall supply personnel and technical support. After the art is in place and has been formally accepted by the agency, the City Manager is responsible for security and maintenance of the art, as described in Section Six below. The artist will provide a technical description of materials used in the art and instructions for general maintenance.

#### SECTION SIX: OWNERSHIP AND MAINTENANCE

Unless otherwise provided, ownership of all art and architectural enhancements acquired by the City under this chapter is vested in the City, including copyrights, patents and other reproduction rights. The City shall be responsible for managing the reproduction rights of each acquisition with advice and counsel from the APPB. The responsibility for inventory, maintenance, insurance, appraisals and restoration of each artwork shall rest with the City and the art shall be maintained by the City Manager with advice from the APPB.

#### SECTION SEVEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements shall apply.

#### SECTION EIGHT: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any provision of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

**SECTION NINE: CODIFICATION AND SCRIVENER'S ERRORS**

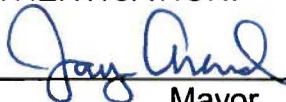
The Bonita Springs City Council intends that this Ordinance will be made part of the Bonita Springs Municipal Code; and that sections of this Ordinance can be renumbered or relettered and the word "Ordinance" can be changed to "Section", "Article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified. The Ordinance can be renumbered or relettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the City Manager or his designee, without the need for public hearing.

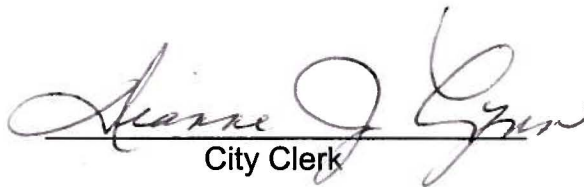
**SECTION TEN: EFFECTIVE DATE**

The effective date of this ordinance shall be thirty (30) days from its adoption date.

**DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs, Florida this 5<sup>th</sup> day of October, 2005.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Vote:

Arend	Aye	Nelson	Aye
Edsall	Aye	Piper	Aye
Grantt	Aye	Wagner	Aye
Joyce	Aye		

Date filed with City Clerk: 10-6-05