

To: Members  
Dunwoody City Council

From: Michael Starling  
Director of Economic Development

Re: Update to the Public Art Ordinance

Date: 4-28-2022

### **Action**

Authorize the mayor, city manager, or designee to execute all documents necessary and proper to update the Public Art Ordinance as presented.

### **Summary**

Dunwoody City Council approved the Public Art Ordinance on 12-14-2020 that included two requirements that staff proposes to remove. The first is a series of Themes that each submission should satisfy and the second is a requirement for a Public Art Easement between the Property Owner and the City. Each of these requirements have produced unintended consequences in the implementation of the City's Public Art Plan and staff requests removing these two requirements from the Ordinance.

### **Details**

Dunwoody City Council approved the Public Art Ordinance on 12-14-2020 that set out a series of Themes that each submission should satisfy and included a requirement for a Public Art Easement between the Property Owner and the City. Each of these requirements have produced unintended consequences in the implementation of the City's Public Art Plan and staff requests removing these two requirements from the Ordinance.

The Themes were supposed to provide artists with inspiration to create art that reflected the unique spirit of Dunwoody; however, staff believes the strict adherence to six specific themes will produce art that is too promotional in nature and will constrain artists from proposing diverse and original art that engages the entire community.

The Public Art Easement is too strict for Private Property owners and staff believes that the continued requirement of the Easement will significantly reduce the number of Public Art Projects in Dunwoody. We have worked with the City Attorney on language to replace the Easement with a Maintenance Agreement that would be enforced through the City's normal Code Enforcement process.

### **Recommendation**

Staff requests Council to Authorize the mayor, city manager, or designee to execute all documents necessary and proper to update the Public Art Ordinance as presented.

**AN ORDINANCE OF THE CITY OF DUNWOODY CREATING PROCEDURES FOR ESTABLISHMENT OF PUBLIC ART INSTALLATIONS AND IMPLEMENTATION OF PUBLIC ART PROGRAM**

**WHEREAS,** Public Art can contribute to a City's visual identity, contributing to the City's municipal image, support individual neighborhood identity and promote economic development; and

**WHEREAS,** Proactive planning is essential to the implementation of a strong and enduring public art program that will help shape the city's appearance and character; and

**WHEREAS,** the Mayor and City Council desire to create a City of Dunwoody Art Commission (the "Art Commission") and establish a process by which city art and public art is created fostered in the City in a methodology that is efficient and conducive to the City's vision.

**NOW, THEREFORE,** the Mayor and City Council of the City of Dunwoody, Georgia, hereby Ordains as follows:

**Section 1:** The City of Dunwoody, Georgia, Code of Ordinances is hereby amended by creating new Chapter 29 (Public Art) to read as follows:

**Chapter 29. Public Art.**

**Sec. 29-1. Definitions.** For the purposes of submissions under this Section only:

- (a) "City Owned Art" shall be defined as a work of art commissioned or acquired by the City for the purposes of display on city property.
- (b) "Public Art" shall be defined as a work created by an artist as defined herein, as approved by the Art Commission created herein, for display in public space or visible from a public space ~~as demonstrated by a public art easement.~~
- (c) Public Art shall include the following:
  - (1) All forms of limited edition or one-of-a-kind original creations of visual art, both decorative and utilitarian, including but not limited to paintings, drawings, photographs, collages, ceramics, artistic glass, stained glass, and fiber art;
  - (2) Functional features or enhancements, such as benches and fountains, that are unique to the location;
  - (3) Murals, frescos or mosaics covering walls;

- (4) Sculptures, including statues, reliefs, and mobiles, which can be free-standing, wall-supported and/or suspended and made of durable materials suitable to the site and the climate; and
  - (5) Technological media that may develop through artistic pursuit or adaptation of digital, audio, video or graphic media; use of lighting, the internet, and the like;
  - (6) Other suitable artworks as presented to, and approved by, the sole decision of the Public Art ~~Committee~~Commission.
- (d) Public Art shall not include:
- (1) Elements incorporated for the primary purpose of advertising a business, product or service, including but not limited to logos, trademarked symbols, colors, images of commercial products, texts or numbers;
  - (2) Directional elements such as super-graphics, signage or color coding except where these elements are integral parts of the original works of art;
  - (3) Mass-produced objects, such as fountains, statutory objects or playground equipment;
  - (4) Reproduction by mechanical or other means of original works of art;
  - (5) Decorative ornamental or functional elements created by the project architect or landscape architect instead of an artist commissioned for this purpose;
  - (6) Electrical, water or mechanical service for activation of the works of art;
  - (7) Art exhibitions, performances, and educational activities;
  - (8) Security and publicity concerning the works of art; and
  - (9) Art used as signage.
- (e) "Artist" shall be defined as an individual, or a group of people, who meets one or more of the following criteria:
- (1) realizes income through the sale, performance, publication or commission of original works of art;
  - (2) has previously exhibited, presented, performed or published original works of art in museums, galleries or other recognized art venues and publications;
  - (3) has formal training or education in a field of art; and
  - (4) has received awards or other forms of recognition from arts juries, arts grant panels, and similar entities for his/her/their artistic abilities or accomplishments.

**Sec. 29-2. City of Dunwoody Art Commission.**

- (a) There is hereby created for the City of Dunwoody Art Commission composed of seven (7) members with a variety of perspectives and experience in art, design, planning, and public place management as follows:
  - (1) At least two members shall be working artists, preferably in one in two-dimensional media and one in three-dimensional media.
  - (2) At least two members shall be from the following fields: arts management, design, planning or public place management.
  - (3) All members shall be residents of the City or owners of a business with a physical location in the City of Dunwoody.
  - (4) At its discretion, the Art Commission may include an additional non-voting youth representative attending school and or college in the City of Dunwoody.
- (b) Voting members of the Art Commission shall be appointed by the Mayor upon recommendations submitted by members of the City Council (including the Mayor) and approved by majority of the City Council.
- (c) Terms of the Art Commission shall be for three (3) years and shall be staggered as follows: one initial Commission member shall be for a period of one (1) year, two Commission members shall be for a period of two (2) years and two Commission members shall be for a period of three (3) years. Thereafter, Commission members shall serve for a term of three (3) years each.
- (d) Art Commission members may not serve more than two (2) consecutive three-year terms.
- (e) Art Commission members who are no longer qualified to serve as same pursuant to this section may finish their current term but may not be reappointed for a future term unless they fit the proper qualifications established herein.
- (f) The Art Commission shall meet at least one (1) time per year and shall establish such Regular and Special Called meetings as necessary to execute its authority and responsibility under this Chapter.
- (g) The Art Commission shall appoint a Chairman and establish such by-laws and rules and regulations as it deems necessary for the discharge of its authority and responsibility.
- (h) The City's Economic Development Department shall support the Art Commission in the conduct of its business, or its successor as designated by the City.

**Sec. 29-3. Role of the Art Commission.**

The Art Commission shall have the following authority and responsibility:

- (1) Develop policies, procedures and guidelines for to implement the City Art Implementation Plan;
- (2) Appoint Task Forces/Selection Committees for City Art projects;
- (3) Review and approve "Project Plans" for City Art that are acquired or commissioned with City funds and/or proposed for City-owned property;
- (4) Review and approve the selection of artists and artist concepts for artworks commissioned with City funds and/or proposed for City-owned property;
- (5) Prepare an annual report to Council on art activities;
- (6) Advise city staff on the creation of an annual work plan that would be the roadmap for the City's investment in City Art;
- (7) Review and recommend Public Art Project Submissions consistent with definitions and criteria for Public Art ~~and themes~~ adopted by Mayor and City Council pursuant to the terms of this Section;
- (8) Make recommendations as to the acceptance of donations of art for public property;
- (9) Review and recommend recommendations in comprehensive plans, area plans, overlay districts and development conditions; and
- (10) Any other art-oriented tasks as assigned by the City Council.

**Sec. 29-4. Role of Mayor and City Council.**

The role of Mayor and City Council shall be as follows:

- (1) Review and Approve the Art Implementation Plan;
- (2) Confirm appointments to the Public Art Commission;
- (3) Review and approve Public Art projects after approval by Art Commission; and
- (4) Review and approve acquisitions, loans, donations and de-accessions of City Art upon referral by the Public Art Commission. ~~and~~
- ~~(5) Approve themes for Public Art Project Submissions, as recommended in the Art Implementation Plan.~~

**Sec. 29-5. Public Art Project Submissions.**

- (a) Any Dunwoody property owner, leaseholder of a property in Dunwoody, non-profit organization located in Dunwoody, or artist living or employed in Dunwoody may submit an application for a Public Art installation in the City of Dunwoody. Such Application shall be made to the Economic Development Department or City agency designated as its successor ("Department"), in the format established by the Department. Such Application shall, at minimum, provide the following information:
- (1) Name and resume of the proposed artist, including photographic or video representations of artist's existing work, preferably works of Public Art;
  - (2) Artist rendering of the proposed Public Art installation, including specific design elements, medium, materials, and description of any work that will require local, state or federal permits;
  - (3) Proposed location of the Public Art installation and description of why said location is appropriate and consistent with the locations for Public Art indicated in the Public Art Implementation Plan;
  - ~~(4) Explanation of how the Public Art installation meets the theme(s) outlined in the Public Art Implementation Plan approved by the Mayor and City Council;~~
  - (5) An affidavit from the property indicating the owner of the Public Art installation and providing consent for locating said Public Art installation on the property;
  - (6) The desired length of time said Public Art installation will remain on the property;
  - ~~(7) Demonstration of property rights to install proposed Public Art, the proposed cost of installing same, and demonstration of the existence of the funds for said installation;~~
  - (8) Documentation of artist's waiver of rights under the Visual Artists Rights Act;
  - (9) Proposed maintenance agreement ~~between property owner and the City of Dunwoody~~ requiring property owner to erect and maintain

the Public Art installation at the property owner's expense for the life of the installation; and

~~\_(10) Public Art Easement, in a form provided by the Department, that:~~

~~(i) requires the property owner to erect and maintain the Public Art installation at no cost to the City for the life of the installation;~~

~~(ii) grants the City an easement in the location of the Public Art and grant the City all authority to, in the City's discretion, maintain said installation and claim ownership in said installation (private property only); and~~

(11) Any other information as determined by the Economic Development Department (or its successor) and the Public Art Commission necessary for determination to accept or reject the installation.

(b) Upon receiving the application, the Department shall forward the application to the Public Art Commission which shall consider same in an upcoming regular or special meeting.

(c) The Public Art Commission shall consider the proposed installation on the basis of whether: (1) it meets the definitions and criteria outlined above, ~~(2) it demonstrates the theme(s) approved by the Mayor and City Council,~~ (3) the suggested location is appropriate for this, or any, Public Art installation, (4) the medium and materials utilized for the installations are desirable for the proposed location and installation; (5) and any other element of determination which may be relevant based upon the Public Art Project Submission. The Art Commission shall approve or deny the Public Art installation proposal in its sole discretion, for any reasons or no reason at all. The decision of the Public Art Commission shall be final and not appealable.

~~(d) If the Art Commission approves the proposed Public Art Project Submission, it shall forward the application to the Mayor and City Council, which shall review the proposed maintenance agreement and Public Art Easement and approve or disapprove the maintenance agreement and Public Art Easement on the basis of whether they serve the purpose for maintenance and existence of the installation as approved Public Art.~~

**Sec. 29-6. Erection, maintenance and removal of Public Art installations.**

- (a) Upon approval ~~of the maintenance agreement and Public Art Easement, and recording of same, by the Art Commission,~~ the property owner shall have the Public Art installed within the period stated in the application or within a reasonable time thereafter. If the Public Art is not substantially installed by that time, the ~~City of Dunwoody~~ Art Commission may terminate the ~~easement Approval~~ and the property owner would be required to file a subsequent application in order to erect said installation upon approval of same by the Art Commission.
- (b) If the Public Art installation comes into disrepair or is otherwise not properly maintained pursuant to the maintenance agreement, Code Enforcement may enforce the maintenance responsibility against the property owner. If the property owner fails to, or refuses, to maintain the installation, the City of Dunwoody ~~may terminate the easement and require the installation to be removed by the property owner or, if the property owner fails to remove the installation within a reasonable amount of time, the Mayor and City Council may remove said installation at the property owner's expense pursuant to the City's established nuisance abatement process. Alternatively, the Mayor and City Council~~ may undertake maintenance of same installation at the expense of the property owner pursuant to the City's established nuisance abatement process.
- (c) If the installation is on right of way or City-owned land, and the responsible party fails to or refuses to maintain the installation, the City of Dunwoody may either maintain the Public Art installation at the City's expense, remove the installation, or contract with a non-profit agency to maintain the installation at the non-profit agency's expense.
- (d) Any Public Art installation on private property may be removed by the property owner at any time ~~by unilaterally terminating the easement. Upon termination of the easement, the property owner shall be required to remove the installation within a reasonable time period. If the property owner fails to remove the entire installation within the said reasonable time period, the City may remove same at the property owner's expense pursuant to the City's established nuisance abatement process.~~

**SO ORDAINED** and effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



Approved By:

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Lynn Deutsch, Mayor

Attest:

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Sharon Lowery, City Clerk

Approved as to Form and Content:

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City Attorney