

ORDINANCE 23-__

AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, AMENDING CHAPTER 32 ARTICLE VII PLANNING AND ZONING BOARD; CHAPTER 150 BUILDING REGULATIONS; AND CHAPTER 162 ART IN PUBLIC PLACES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Port St. Lucie ("City Council") desires to create rules of procedure for its Board/Committee members to participate and vote in public meetings from a remote location; and

WHEREAS, the qualified electors of the City of Port St. Lucie, by majority vote, approved Charter Amendments 3 and 5, which granted the City Council the power to establish by resolution the by-laws, rules, procedures and reporting requirements of each board and committee within the City on the November 8, 2022, General Election; and

WHEREAS, Resolution Number 23-R __ shall govern all citizen appointed boards and committees and provide General operating procedures; and

WHEREAS, the City Council desires to remove via this Ordinance the Board Procedures conflicting with the Resolution.

NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. Ratification of Recitals. The foregoing recitals are hereby ratified and confirmed as true and correct and are hereby made a part of this Ordinance.

Section 2. Chapter 32 Article VII is amended as follows:

ARTICLE VII. PLANNING AND ZONING BOARD

~~Sec. 32.50. Establishment of board.~~

~~Pursuant to Charter section 12.01, there is hereby established by city council, a planning and zoning board consisting of seven at large members and two at large alternates.~~

Sec. 32.51. Local planning agency designation; preparation of comprehensive plan.

In accordance with F.S. § Section 163.3174(1), Florida Statutes, the planning and zoning board of the city is designated as the local planning agency for the city, and its duties shall be to prepare a comprehensive plan for the city as required by Section F.S. § 163.3174, Florida Statutes.

~~Sec. 32.52. Residency.~~

~~The members of the planning and zoning board shall have been residents of the city for at least one year prior to their appointment.~~

Sec. ~~32.53~~. Terms of members.

~~The terms of the members of the planning and zoning board shall be four years. A member may be reappointed for one successive term upon approval by the city council. After serving two successive terms, persons may be eligible for reappointment after having not served on the Board for a period of one year.~~

Sec. ~~32.54~~. Filling of vacancies.

~~Upon any vacancy on the planning and zoning board created either by action of the council or for any other reason, the City Council will appoint new members to the Planning and Zoning Board.~~

Sec. ~~32.55~~. Reserved.

Sec. ~~32.56~~. Meetings; records.

~~The planning and zoning board shall meet at least once each calendar month and more often at the call of the chairperson or upon call by the mayor councilmember. All regular meetings shall be held in the evening. Special meetings may be held as necessary. Any proposal submitted to the board by the city council shall be acted upon within 30 days after the proposal as submitted in writing to the secretary and if a regular meeting is not scheduled within 15 days then a special meeting may be called to act upon that proposal. All meetings of the board shall be public and complete records of its deliberations shall be kept. These records shall be available to the public at city hall. The city clerk shall be custodian of the records. Absence from three consecutive regular meetings of the board shall operate to vacate the seat of a member unless the absence is excused by the board by resolution setting forth the fact of the excuse duly entered upon the minutes.~~

Sec. ~~32.52~~32.57. Powers and duties.

- (a) It shall be the duty of the planning and zoning board to produce and suggest plans for the zoning and arrangement of the city with a view to its general improvement and probable growth and demands, those plans to take into consideration the extension of the city works into adjacent territory, improvements and changes in public utilities and lines of transportation, by surface and water, and the location and road widths necessary for the best development of the city, and improvement of the water fronts; the location and design of public buildings, and further extension of and additions to the park and boulevard system as may be deemed advisable.
- ~~(b) The planning and zoning board shall have the following powers and duties:~~
 - ~~(1) *Personnel.* The board may recommend to employ additional personnel necessary to make surveys and compile data essential to the preparation of a plan for municipal improvements and otherwise to aid and assist the board in the execution of its powers and duties under this subchapter. The board shall not in any manner obligate the city council.~~
 - ~~(2) *Officers.* Elect its own chairperson, vice chairperson, and secretary.~~

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- ~~(3) *Rules and regulations.* Adopt rules and regulations for its guidance, provided the same are consistent with the ordinances of the city and applicable state laws, and subject to City Council approval.~~
- ~~(4) *Financing.* Make recommendations for the financing of improvements; but those recommendations for financing shall in no way be binding on the city council.~~
- (b)(5) *Comprehensive plan.* The comprehensive plan shall be adopted and may be amended from time to time. The plan, together with accompanying maps, charts, and explanatory matters shall show the recommendations of the Board for the development of the city and, among other things, may include recommendations as to the general location, character and extent of streets, bridges, parks, water ways, or other public ways, the general location of public buildings and other public property, and general location and extent of public utilities, the removal, relocation, widening, extension, narrowing, abandonment or change of use of existing or future public ways, grounds, spaces, buildings, or utilities.
- (c)(6) *Procedure for adoption of comprehensive plan.* The adoption of any future comprehensive plan or any part thereof, or any amendment, extension, or addition to the current comprehensive plan as set forth in F.S. Chapter 163, Florida Statutes.
- ~~(7) *Disposal of city property.* If requested by the city council, the board may make recommendations on the leasing or disposition of real property. However, the city council shall have authority to overrule the recommendation of the board on any proposal.~~
- ~~(8) *Neighborhoods.* Make recommendations for the improvement and development of neighborhoods.~~
- ~~(9) *Public relations.* Promote public interest in, and understanding of, the comprehensive plan and other proposals submitted by the board.~~
- ~~(10) *Budget.* The board shall make recommendations on the annual update to the capital improvements element of the comprehensive plan.~~
- ~~(11) *Voting.* The planning and zoning board shall make recommendations to the city council pertaining to all items relating to planning and zoning before any council action may be taken. There is required a vote of four-fifths of the established city council to override a decision of the planning and zoning board as to all recommendations pertaining to rezoning. All other matters require a simple majority.~~
- (d)(e) All recommendations from the planning and zoning board, for either approval or disapproval of any measure, petition, plan, program, or proposal of any nature, shall be by a majority of the members serving on the board. Those recommendations from the board shall be in writing and shall indicate thereon the names of the members of the board present at the meeting where the recommendations were made and the disposition of the votes of the members of the board, which writing can consist of a copy of the minutes of the board's meeting. If the board is unable to arrive at or make any recommendations hereunder, then that inaction shall also be reported in writing in the same manner above prescribed.

~~Secs. 32.58 — 32.69. Reserved.~~

Section 3. Chapter 150 is hereby Amended as follows:

CHAPTER 150. BUILDING REGULATIONS

Sec. 150.503. Definitions.

As used in this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) *Board*. The Construction Board of Appeals.
- (b) *Certificate*. A certificate of competency issued by the board as provided in this subchapter.
- (c) *Chairman*. The Chairman of the construction board of appeals or, in his absence, the Vice-Chairman thereof.
- (d) *Class C air conditioning contractor*. A contractor whose business is limited to the servicing of air conditioning, heating, or refrigeration systems, including duct alterations in connection with those he is servicing.
- (e) *Complainant*. Any person who has complained of the conduct of any contractor holding a certificate of competency issued by the City of Port St. Lucie.
- (f) *Contracting*. Except as exempted in this subchapter, engaging in business as a contractor.
- (g) *Department*. The Building Department.

The terms "general contractor," "building contractor," "residential contractor," "sheet metal contractor," "roofing contractor," "class A air conditioning contractor," "class B air conditioning contractor," "mechanical contractor," "commercial pool/spa contractor," "residential pool/spa contractor," "swimming pool/spa servicing contractor," "electrical contractor," "plumbing contractor," "underground utility contractor," and "alarm system contractor" shall be defined as set forth in ~~F.S. ch.~~ Chapter 489, Florida Statutes.

- (h) *Primary Qualifying Agent*. A persons who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he is connected; who has the responsibility to supervise, direct, manage, and control construction on a job for which he has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this subchapter, as attested by the board.
- (i) *Probable Cause*. A finding by the board that there is cause to believe that a contractor holding a certificate of competency issued by the City of Port St. Lucie is guilty of misconduct justifying disciplinary actions.
- (j) *Respondent*. A contractor holding a certificate of competency issued by the City of Port St. Lucie who is accused of misconduct and whose conduct is under investigation.
- (k) *Secondary Qualifying Agent*. A person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control construction activities on a job for which he has obtained a permit, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the board.

- (1) *Specialty Contractor*. A contractor whose scope of work and responsibility is limited to a particular scope of work and responsibility is limited to a particular phase of construction.

~~Sec. 150.504. Reserved.~~

~~Sec. 150.504.1. Reserved.~~

~~Sec. 150.504.2. Reserved.~~

~~Sec. 150.504.3. Reserved.~~

~~Sec. 150.504.4. Reserved.~~

~~Sec. 150.504.5. Reserved.~~

Sec. 150.505. Certificate of competency.

~~Sec. 150.505.1. Certificate of competency required; prerequisite for business tax receipt.~~

- (a) Engaging in business without a certificate is prohibited. It shall be unlawful for any person or entity to engage in or work at the business or occupation of contractor within the incorporated area of the municipality, until each person or entity has first obtained a certificate of competency as provided in this subchapter.
- (b) No city business tax receipt shall be issued to any person to engage in the business or occupation of contractor in the incorporated area of the city until the applicant therefor shall exhibit a certificate of competency for the period for which the business tax receipt is sought. Revocation of any certificate of competency as provided in this subchapter shall automatically revoke the municipal business tax receipt that may have been issued to the holder of any revoked certificate of competency.

~~Sec. 150.505.2. Reserved.~~

Sec. 150.506. Application for certificate.

A contractor's certificate of competency shall be obtained in the manner set forth herein. Any person requiring or desiring to be qualified as a contractor shall make application upon a form prescribed by the board at the City of Port St. Lucie Contractor Licensing Office. The application shall be retained by the board, together with all supporting papers. No application shall be considered unless the applicant gives all information required on the form, which shall include that information set forth below:

- (a) A statement of applicant's proposed contracting business.
- (b) The type of certificate.
- (c) Name, residence, and business address of applicant.

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- (d) A sworn financial statement of the applicant, a credit report, and an agreement authorizing the examining board to obtain from any source dealing with the applicant, even though confidential, any additional information concerning the applicant's financial condition.
- (e) A sworn list of businesses owned and operated or managed by applicant or in which the applicant has had an interest of any kind during the past five (5) years and the addresses of these businesses.
- (f) Affidavit of experience signed and notarized by a licensed contractor, architect or engineer verifying work history of applicant for the last five (5) years.
- (g) Receipt from the Contractor Licensing Office showing the fee for the certificate of competency has been paid.
- (h) Two (2) letters of recommendation from reputable business or professional persons, not related by blood or marriage to the applicant, vouching for the applicant's reputation as to honesty, integrity, and good character.
- (i) A sworn statement, stating under oath that the applicant has not been convicted of a misdemeanor or a felony during the past five (5) years, and that the applicant is not presently charged with committing a felony or misdemeanor; and if this is not the case, the applicant shall specify the details of the conviction or charge.

~~Sec. 150.506.1. Reserved.~~

~~Sec. 150.506.2. Reserved.~~

~~Sec. 150.506.2(A). Reserved.~~

~~Sec. 150.506.2(B). Reserved.~~

~~Sec. 150.506.2(C). Reserved.~~

~~Sec. 150.506.2(D). Reserved.~~

~~Sec. 150.506.2(E). Reserved.~~

~~Sec. 150.506.2(F). Reserved.~~

~~Sec. 150.506.2(G). Reserved.~~

~~Sec. 150.506.2(H). Reserved.~~

Sec. 150.507. Duties of Board relative to certifying investigation and examination.

Sec. 150.507.1. Board to prescribe procedure.

~~The board shall, by rule, prescribe the procedure for determining the qualifications of an applicant to show his degree of experience, his knowledge or building, safety, health, and lien laws of the county, state and federal governments as may be applicable, and his knowledge of rudimentary administrative principles of the contracting business for which application is being made.~~

Sec. 150.507.2. Notification of board and applicant.

~~*Notification of board and applicant.* The City of Port St. Lucie Contractor Licensing Office shall notify the applicant of the next regular meeting of the board at which time the applicant will be considered. No application will be considered by the board until it has been found to be complete by the department. The Contractor Licensing Office shall notify the board, prior to its next regular meeting, of the applications that will be presented for consideration at the meeting.~~

Sec. 150.507.3. Findings of board.

The board shall not issue a certificate of competency unless, by a majority vote of the board members present, the board finds:

- (a) That the applicant has demonstrated to the board that he possesses the requisite skill, knowledge or experience necessary to engage in the type of contracting business for which the certificate of competency is sought;
- (b) That the credit report and financial statement of the applicant shows that the applicant is financially able to engage in the contracting business for which the license is required so that the public will be protected;
- (c) That the applicant possesses a reputation of honesty, integrity, and good character. This shall be determined by the board from the information contained in the letters of recommendation submitted by the applicant and other statements submitted to or obtained by the board or its investigators. The lack of honesty, integrity, or good character may be established by competent evidence that:
 - (1) Applicant has, in the past five (5) years, refused to pay just bills relating to construction.
 - ~~(2) Reserved.~~
 - ~~(3)~~ (2) Applicant has, in the past five (5) years, refused to pay just bills.

Sec. 150.508. Additional requirements prior to issuance of certificate.

~~After~~ Subsequent to the board's determination that the applicant possesses the requisite skill, knowledge, or experience and prior to the issuance of the certificate of competency, every applicant shall be required to furnish proof to the board that the following requirements have been complied with:

- (1) That the requirements of the "Worker's Compensation Law" of the State of Florida have been met; and

- (2) That a party maintains in an insurance company authorized to do business in the state, public liability insurance with minimum limits of not less than three hundred thousand dollars (\$300,000.00) and property damage insurance with a minimum limit of not less than fifty thousand dollars (\$50,000.00) for any one (1) accident; as to general and building contractors, and one hundred thousand dollars (\$100,000.00) public liability and twenty-five thousand dollars (\$25,000.00) property damage for all other contractors; and
- (3) In the event of the cancellation of a policy as required hereunder, the certificate of competency of that party shall be automatically revoked. The certificate of competency may be reinstated when the certificate holder has furnished proof to the board of compliance with the above insurance provisions.

Sec. 150.509. Certificates issued by reciprocal agreement.

The board may by reciprocity grant a certificate of competency to any applicant who has obtained a certificate of competency in any other county or city in the state having codes and conducting examinations which are, in the opinion of the board, substantially equal to those of the city, upon the applicant furnishing proof of the insurance coverage required hereunder and payment of the applicant fee herein provided and furnishing to the board in writing all information as required by section 150.506, but without the taking of an examination. Certificates issued through reciprocity shall be subject to all of the other provisions of this subchapter.

Sec. 150.510. Decision of board; right of appeal upon denial.

If from the investigation and examination the board shall determine that the applicant is qualified to engage in the business of contractor as herein defined, the board shall cause its certificate of competency to be issued to the applicant; otherwise, the applicant shall be denied. The certificate of competency shall specifically show the type of contracting work which the applicant is qualified to perform and shall upon the fact thereof state that it is subject to revocation and suspension. Should any applicant be denied a certificate of competency, he may within fifteen (15) days from the notice of denial, appeal the denial to the city council who shall consider the appeal and either affirm the actions of the board or order the issuance of a certificate.

Sec. 150.511. Business organizations; qualifying agents.

- (1) If a contractor proposes to engage in contracting as a partnership, corporation, business trust, or other legal entity or in any name other than his legal name, the contractor shall apply as a qualifying agent for said entity; the application shall state the name of the partnership and of its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members; and the contractor shall furnish evidence of statutory compliance if a fictitious name is used. Such application shall also show that the contractor is legally qualified to act for the business organization in all matters connected with its contracting business and that he has authority to supervise construction undertaken by such business organization. A joint venture, including a joint venture composed of qualified business organizations, is itself a separate and distinct organization that must be qualified in accordance with board rules. The certificate of competency, when issued upon application for a business organization, shall be in the name

of the qualifying agent, and the name of the business organization shall be noted thereon. If there is a change in any information that is required to be stated on the application, the business organization shall, within forty-five (45) days after such change occurs, mail the correct information to the department.

- (2) The qualifying agent shall hold the appropriate certificate of competency appropriate for the category of the business conducted for which the business organization is licensed. If any qualifying agent ceases to be affiliated with such business organization, he shall so inform the department. In addition, if such qualifying agent is the only qualified individual affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and shall have sixty (60) days from the termination of the qualifying agent's affiliation with the business organization in which to employ another qualifying agent. The business organization may not engage in the contracting until a qualifying agent is employed.
- (3) The qualifying agent shall inform the department in writing when he proposes to engage in contracting in his own name or affiliation with another business organization, and he or such new business organization shall supply the same information to the department as required for qualifying any business organization.
- (4) Upon a favorable determination by the board, after investigation of the financial responsibility, credit and business reputation of the qualifying agent and new business organization, the department shall issue, without an examination, a new certificate of competency in the qualifying agent's name and the name of the new business organization shall be noted thereon.
- (5) If a qualifying agent for a business organization desires to qualify additional business organizations, the board shall require him to present evidence of ability and financial responsibility of each such organization. The issuance of additional certificates of competency is discretionary with the board.
- (6) If a business organization or any of its partners, officers, directors, trustees, or members is fined for violation ~~F.S. ch.~~ Chapter 489, Florida Statutes, as may be amended, or is disciplined for violation of this chapter, or has committed an act within the last three (3) years which, if committed or done by a licensed contractor, would be grounds for suspension or revocation of the contractor's certificate of competency the board may, on that basis alone, deny issuance of a certificate of competency to a qualifying agent on behalf of that business organization.

Sec. 150.512. Qualifying agents; responsibilities.

- (1) A qualifying agent is a primary qualifying agent unless he is a secondary qualifying agent under this section. All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations or the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job.
- (2) One (1) of the qualifying agents for a business organization that has more than one (1) qualifying agent may be designated as the sole primary qualifying agent for the business organization by a joint agreement that is executed by all qualifying agents for the business organization. The joint agreement must be submitted to the board for approval. If the board

determines that the joint agreement is in good order, it shall approve the designation and immediately notify the qualifying agents of such approval. The designation made by the joint agreement is effective upon receipt of the notice by the qualifying agents. The qualifying agent designated for a business organization by joint agreement is the sole primary qualifying agent for the business organization, and all other qualifying agents for the business organization are secondary qualifying agents.

- (a) A designated sole primary qualifying agent has all the responsibilities and duties of a primary qualifying agent, notwithstanding that there are secondary qualifying agents per specified jobs. The designated sole primary agent is jointly and equally responsible with the secondary qualifying for field supervision.
- (b) A secondary qualifying agent is only responsible for: the supervision of field work at sites where his license was used to obtain the building permits; and any other work for which he accepts responsibility. A secondary qualifying agent is not responsible for supervision of financial matters.
- (c) A qualifying agent who has been designated by a joint agreement as the sole primary qualifying agent for a business organization may terminate his status as such as giving actual notice to the business organization, to the board, and to all secondary qualifying agents of his intention to terminate his status. His notice to the board must include proof satisfactory to the board that he has given the notice required in this subsection (c). The status of the qualifying agent shall cease upon the designation of a new primary qualifying agent or sixty (60) days after satisfactory notice of termination has been provided to the board, whichever first occurs. If no new primary qualifying agent has been designated within sixty (60) days, all secondary qualifying agents for the business organization shall become primary qualifying agent unless the joint agreement specifies that one (1) or more of them shall become sole qualifying agents under such circumstances, in which case they shall become sole qualifying agents.
- (d) Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for his predecessor's actions but is responsible, even after a change in status, for matters of which he was responsible while in a particular status.

Sec. 150.513. Emergency licensing procedures.

- (a) The purpose of this section is to define procedures for the licensing of contractors entering the city to perform construction as defined in chapter F.S. ch. 489, Florida Statutes, as may be amended, during and immediately following a declared state of emergency because of ~~as a result of~~ severe damage to the structures in the community resulting from a hurricane or catastrophic storm.
- (b) Upon the declaration of a state of emergency by the governor of the state or the mayor, the building official shall conduct a damage assessment to determine the need for the initiation for emergency licensing procedures which would allow contractors to temporarily work within the city to rebuild, repair or assist in the rebuilding and repairing of the damage caused by the event.
- (c) If deemed necessary due to the extent of damage caused by the event, the building official may consult with the chairman of the board, and with his concurrence, may temporarily

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suspend existing requirements for obtaining a local contractor's license and institute the following procedures:

- (1) The building official shall honor, upon display, all current state certified contractor licenses.
 - (2) The building official shall be authorized to issue temporary city competency cards to all existing St. Lucie County and City of Fort Pierce licensed contractors.
 - (3) The building official, or his designee, shall be authorized to issue temporary city competency cards to contractors or subcontractors from other jurisdictions, inside the state, whose licensing requirements are substantially comparable to the licensing requirements of the city. The burden of proving the similarity of the licensing requirements shall be on the contractor applying for a temporary competency card.
 - (4) Temporary competency cards issued by the building official pursuant to this procedure shall be valid for a period of one hundred twenty (120) days unless earlier revoked by the building official.
 - (5) *Reserved.*
 - (6) The issue of any temporary competency card and any subsequent regular competency card shall be contingent upon the payment of the appropriate application fees in effect at the date of application.
 - (7) The building official is authorized, at his discretion, to extend a temporary competency card for one (1) additional 120-day period.
- (d) The building official may refuse to issue a temporary competency card or may revoke a temporary competency card for any of the following actions on the part of a contractor:
- (1) Working without benefit of a competency card.
 - (2) Contracting without building permits.
 - (3) Failing to call for proper inspections in a timely manner.
 - (4) Violation of the City Code.
 - (5) Failure to obtain and retain insurance as required by Chapter F.S. ch. 489, Florida Statutes.

Sec. 150.514. Address of record; service.

- (1) Each contractor holding a certificate of competency issued by the City of Port St. Lucie shall be solely responsible for notifying the building department, in writing, of the contractor's current mailing address and phone number. If the mailing address is not the contractor's physical address, the contractor shall also supply the physical address. Such notification to the building department shall be by certified mail or in person, for which a receipt will be tendered.
- (2) A contractor's failure to notify the building department of a change of address or phone number shall constitute a violation of this section.

- (3) The contractor shall be responsible for retaining proof that the contractor has notified the building department of the contractor's current address of record.
- (4) Unless otherwise provided by law, service by regular mail to a contractor's address of record shall constitute adequate and sufficient notice to the contractor by the board or the building department for all purposes under this Code.
- (5) Except as otherwise provided by law, service by regular mail to a contractor, who is registered or certified with the Florida Construction Industry Licensing Board and subject to the provisions of Section F.S. § 489.124, Florida Statutes, at the contractor's address of record maintained with the Florida Department of Professional Regulation, shall constitute adequate and sufficient notice to the contractor by the board or the building department for all purposes under this Code.

Secs. 150.515—150.519. Reserved.

Sec. 150.520. Disciplinary proceedings; certificate of competency.

[See below sections 150.520.1—150.520.3.]

Sec. 150.520.1. Types of discipline.

An order of the board finding a respondent guilty of misconduct shall include one (1) or more of the following disciplinary measures:

- (a) *Reprimand.* The board may order a reprimand for minor misconduct by a respondent. A reprimand shall state findings of the board that the conduct of the respondent, falls below the acceptable standards of conduct in the business of contracting but does not justify suspension or revocation of the competency card. A memorandum of such reprimand shall thereafter be made a part of the record of the proceedings and a part of the respondent's record maintained by the building department of the city.
- (b) *Suspension.* The board may suspend the certificate of competency of the respondent for a definite period of time. During such suspension, the respondent shall not requalify to obtain a certificate of competency within the city. Upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to apply for reinstatement of his certificate of competency. If any disciplinary actions(s) have resulted in a suspension of one hundred eighty (180) days, or longer, the application shall be subject to the same requirements as though the applicant were applying for an original certificate of competency, including the payment of fees.
- (c) *Revocation.* The board may revoke the respondent's certificate of competency. No application for reinstatement or the issuance of a new certificate of competency may be accepted or considered by the board within five (5) years after the date of revocation.
- (d) *Other certificates.* If the board suspends any certificate of competency held by any contractor it may, simultaneously, suspend or revoke any other certificate of competency issued by the city to that contractor.

- (e) *Work in progress.* The board shall permit any disciplined contractor to complete projects for which a building permit has been issued, even though the competency card upon which said permit(s) was issued has been suspended or revoked.

Sec. 150.520.2. Procedures.

- (a) Any person including, but not limited to, the building official of the city, may refer charges against the holder of a contractor's certificate of competency issued pursuant to the provisions of this subchapter. Such charges shall be made in writing and sworn to by the complainant or complaining witness and submitted to the building official of the city who shall immediately notify the chairman of the receipt thereof. The building official shall mail a copy of such charges to the respondent within fifteen (15) days from the receipt thereof.
- (b) The building official, building official designee and the chairman of the board shall review the complaint for probable cause. If no probable cause is found, the complaint shall be denied and not referred to the board. A copy of the complaint and the findings of the building official and the chairman shall be placed in the respondent's file. The complainant or complaining witness shall have no right of appeal. Where probable cause is found, the complaint shall be referred to the board for a hearing on the complaint.
- (c) The proceedings of the board may be informal in nature and the board shall not be bound by the rules of evidence. The board shall be entitled to rely on such evidence as is regularly relied upon in the ordinary course of the conduct of business.
- (d) The proceedings shall not be delayed, deferred or suspended without the approval of the board.
- (e) At the hearing the respondent shall be allowed to testify and to produce evidence and other witnesses on his behalf. The respondent may be accompanied by counsel. The respondent shall be given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged charges. The respondent shall be granted the right to be present at any hearing when evidence is to be presented to the board and to call witnesses or present evidence and to cross-examine, subject to reasonable limitation.
- (f) If the respondent admits to the alleged charges, the board shall immediately make a finding of guilt without further testimony. If the respondent fails to appear, the board may make its determination of guilt based upon the sworn complaint.
- (g) The complainant or complaining witness is not a party to the disciplinary proceeding. Unless found to be impractical by the chairman of the board due to unreasonable delay or other good cause, the complainant or complaining witness shall be granted the right to be present at any board hearing when evidence is to be presented, subject to reasonable limitations. The complainant or complaining witness shall have no right of appeal from the decision of the board.
- (h) Upon conclusion of the formal hearing, the board shall make a determination of guilt. If the respondent is found to be guilty of misconduct by the board, the board shall thereupon enter its findings, an order of guilt and determine the proper disciplinary action to be imposed upon the respondent.

- (i) If a complaint is brought against a respondent whose competency card is in a state of expiration, or expires prior to the hearing, the proceedings on the complaint shall be stayed. Provided, however, that the competency card may not be renewed, re-issued or activated until the board has disposed of the complaint.
- (j) Quorum/vote. No fewer than four (4) members, one (1) of whom must be the chairman or vice-chairman, shall constitute a quorum. All findings of guilt and recommendations of discipline shall be by affirmative vote of a majority of the committee members present, which majority must number at least three (3) members.
- (k) *Appeal*. Any decision of the Board imposing disciplinary action on a respondent may be appealed by the respondent to the city council within fifteen (15) days of the date of the board's decision; provided, however, a written notice of such appeal shall be filed with the city clerk within such a period of time. The city clerk shall notify all interested parties of the date fixed for hearing the appeal, which date shall be not less than thirty (30) days after the date of the filing of the notice of appeal. The hearing on appeal shall be, to the extent possible, upon the record and shall not be a hearing de novo. The council shall review the transcript of the hearing before the contractors examining board together with any tangible evidence considered by the board that determined its decision. The council may also entertain any additional testimony or evidence offered by the respondent or other interest party that was not brought out at the board hearing.
- (l) *Stay on appeal*. Any decision of the board imposing disciplinary action upon a respondent, other than revocation, which has been appealed by the respondent shall be automatically stayed upon receipt of the written notice of appeal by the city clerk.

Sec. 150.520.3. Grounds for revocation or suspension.

The board shall have the power, in addition to all other powers provided for in this subchapter, to revoke or suspend the certificate of competency of any contractor approved hereunder, who shall be guilty of any one (1) or more of the following acts or omissions:

- (a) Obtaining a certificate by fraud or misrepresentation;
- (b) Committing fraud or deceit in the practice of contracting;
- (c) Committing incompetency or misconduct in the practice of contracting; and
- (d) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.
- (e) Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project may be presumed abandoned after ninety (90) days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for ninety (90) consecutive days.
- (f) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:
 - (1) Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has

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- received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within seventy-five (75) days after the date of such liens;
- (2) The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within thirty (30) days after the date the job is abandoned; or
 - (3) The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.
- (g) Substantial departure from, or disregard, of, plans or specifications without consent the owner or his duly authorized representative;
 - (h) Knowingly or deliberately disregarding or violating any applicable building codes or laws of the state, county or the city;
 - (i) Willfully and deliberately engaging in a type or class of contracting for which the contractor is not licensed or registered;
 - (j) Being disciplined by any other municipality or county;
 - (k) Failing to actively supervise construction projects for which the contractor has applied for and obtained a building permit; or for projects for which the contractor is, by contract, responsible;
 - (l) Contracting with persons or firms not having a certificate of competency issued by the city for work or services to be performed within the city when said persons or firms are required by this chapter to possess such a certificate of competency in order to perform the contracted work or services; and
 - (m) Proceeding on any job without obtaining the applicable building department permits and inspections.
 - (n) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.
 - (o) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his certificate or registration to be used by the uncertified or unregistered person with intent to evade the provisions of this code. When a certificate holder or registrant allows his certificate or registration to be used by one (1) or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act constitutes prima facie evidence of an intent to evade the provisions of this Code.

Sec. 150.530. Unlicensed contractors; prohibitions; penalties and enforcement.

- (a) It shall be unlawful for any person to:

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- (1) Falsely hold himself or a business organization out as a licensee, certificate holder, registrant or holder of a certificate of competency issued by the board;
 - (2) Falsely impersonate a certificate holder or registrant or the holder of a certificate of competency issued by the board;
 - (3) Present as his own the certificate, registration, or certificate of competency of another;
 - (4) Give false or forged evidence to the board or member thereof for the purpose of obtaining a certificate of competency;
 - (5) Use or attempt to use a certificate, registration or certificate of competency which has been suspended or revoked;
 - (6) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered, certified or the holder of a certificate of competency;
 - (7) Operate a business organization engaged in contracting after sixty (60) days following the termination of its only qualifying agent without designating another primary qualifying agent;
 - (8) Commence or perform work for which a building permit is required pursuant to this chapter without such building permits being in effect;
 - (9) Willfully or deliberately disregard or violate any city or county ordinance relating to uncertified or unregistered contractor;
 - (10) Act in the capacity of a contractor different from the scope of work for which the contractor is certified to perform; or
 - (11) Fail to secure required inspections.
 - (12) Willfully and deliberately obtaining or attempting to obtain a permit for an entity unregistered or unlicensed.
- (b) The building official, assistant building official, building inspectors and licensing investigators of the city building department are hereby designated, authorized and charged with enforcement responsibilities to enforce the provisions of ~~F.S. §§ Sections~~ Sections 489.127(1) and 489.132(1), Florida Statutes, and Chapter 150 of this Code against persons who engage in activities for which a city certificate of competency is required.
- (1) The enforcement authorities designated herein may issue a citation, as provided herein, for any violation of ~~F.S. §§ Sections~~ Sections 489.127(1) and 489.132(1), Florida Statutes and Chapter 150 of this Code, whenever, based upon personal investigation, the enforcement officer has reasonable and probable grounds to believe that such a violation has occurred.
 - (2) The citation issued by an enforcement officer pursuant to this section shall be in the form prescribed by the city council, which form shall state:
 - a. The time and date of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The time and date of the violation.
 - d. A brief description of the violation and the facts constituting reasonable cause.

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- e. The name of the enforcement officer.
 - f. The procedure for the person to follow in order to pay a civil penalty or to contest the citation.
 - g. The applicable civil penalty if the person elects not to contest the citation.
- (c) The maximum civil penalty which may be levied pursuant to any citation shall not exceed Two thousand dollars (\$2,000.00). The monies collected pursuant to this section shall be retained by the city and shall be set aside in a specific fund to support future enforcement activities against unlicensed contractors.
- (d) (1) The act for which a citation is issued shall cease upon the receipt of the citation.
- (2) The person charged with the violation shall pay the civil penalty in the manner indicated on the citation or, within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, request, in writing to the city's contractor licensing office, an administrative hearing before the city construction board of appeals to appeal the issuance of the citation by the enforcement officer.
 - (3) Failure of the violator to appeal the decision of the enforcement officer within the time period set forth herein shall constitute a waiver of the violator's right of an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation and penalties may be imposed accordingly.
 - (4) Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this section.
 - (5) If the violator has not contested the citation or paid the civil penalty within the time frame allowed on the citation, the construction board of appeals shall enter an order that the violator pay the civil penalty set forth on the citation. A hearing shall not be necessary for the issuance of such order.
 - (6) a. If the person charged with the violation has, within the time frame allowed, requested an administrative hearing before the construction board of appeals to appeal the issuance of the citation by the enforcement officer, the construction board of appeals shall conduct a hearing to determine the validity of the citation and, if it finds the violation exists, determine the appropriate civil penalty.
 - b. If the person charged with the violation fails to pay the civil penalty as set forth on the citation, the enforcement officer may request a hearing before the construction board of appeals and, after notice to the violator, the construction board of appeals shall conduct a hearing to determine the validity of the citation and, if it finds that violation exists, determine the appropriate civil penalty.
 - (7) If the construction board of appeals finds that a violation exists the board may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than two thousand dollars (\$2,000) per day for each violation. In determining the amount of the penalty, the construction board of appeals shall consider the following factors.
 - a. The gravity of the violation.
 - b. Any action taken by the violator to correct the violation.
 - c. Any previous violations created by the violator.

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- (8) If the person or its designated representative shows that the citation is invalid or that the violation has been corrected prior to appearing before the construction board of appeals, the board may dismiss the citation unless the violation is irreparable or irreversible.
- (9) A certified copy of an order imposing a civil penalty against an unlicensed contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state including a levy against personal property; however, such order shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the construction board of appeals may authorize the foreclosure on the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property, which is a homestead under Section 4, Article X of the State Constitution.
- (10) An aggrieved party, including the city, may appeal a final administrative order of the construction board of appeals to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the construction board of appeals. An appeal shall be filed within thirty (30) days of the execution of the order appealed.
- (11) All notices required by this section shall be provided to the alleged violator by regular mail as described in section 150.514(4); by hand-delivery by the sheriff or other law enforcement officer or enforcement officer; by leaving the notice at the violator's usual place of residence with some person of his family above fifteen (15) years of age and informing such person of the contents of the notice; by posting the notice at the violator's usual place of residence, no fewer than ten (10) days before any hearing; or by including a hearing date within the citation.
- (12) Any person who willfully refuses to sign and accept a citation issued by an enforcement officer commits a misdemeanor of the second degree punishable as provided by Sections F.S. §§ 775.082 or 775.083, Florida Statutes.
- (13) If the Violator elects to actively pursue the process of obtaining his or her own certificate of competency within two months of receiving a citation, the violator will be entitled to a one hundred fifty-dollar (\$150.00) refund of the paid citation fee upon issuance of the certificate of competency.
- (e) Nothing contained herein shall prohibit the city from enforcing its codes or ordinances by any other means.
- (f) (1) The schedule of penalties to be assessed by the enforcement officer when issuing a citation shall be as follows:

Penalties Non-Structural Non-Mechanical		or	Penalties Structural Mechanical	
First Offense	\$500.00		First Offense	\$1,000.00
Second Offense	\$1,000.00		Second Offense	\$2,000.00

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Third Offense	\$1,500.00	Third Offense	Pursuant to Florida Statute 489.127(2)(b)
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Secs. 150.531—150.600. Reserved.

Section 4. Chapter 162 is hereby Amended as follows:

CHAPTER 162. ART IN PUBLIC PLACES

Sec. 162.01. Purpose.

The purpose of the art in public places program is to establish a program for the integration of public art in both public and private development projects throughout the city to visually enliven the city, illuminate the city's history, diversity and culture, and foster economic development.

Sec. 162.02. Definitions.

For the purposes of this chapter, the words and phrases listed below have the following definitions:

Art, artwork or work of art means an original physical work created or produced by an Artist (as defined hereinafter), including, but not limited to, paintings, sculptures, engravings, carvings, frescos, stained glass and glass works, mosaics, mobiles, murals, collages, statues, bas reliefs, tapestries, photographs, video projections, drawings, fountains, landscape designs, artifacts of historical or cultural significance, monuments erected to commemorate a person or event, functional furnishings such as artist-designed seating, or other media. Artwork may be free-standing or integrated with the work of other design professionals into a building or site. Artwork may be new or may be an existing work of art. Artwork may include, but is not limited to:

1. Sculpture: Free-standing, wall supported or suspended; kinetic, electronic; in any material or combination of materials.
2. Murals or portable paintings: in any material or variety of materials.
3. Fiber works, neon, glass, mosaics, photographs, prints, calligraphy, earthworks, any combination of forms of media, including: light, sound, literary elements, film, holographic images, and video systems; hybrids of any media and new genres.
4. Furnishings or fixtures, including, but not limited to: gates, railings, lighting, street lights, signage, seating, if created by artists as unique elements or limited editions.
5. Artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or a design team that includes a professional visual artist. Such design elements may include pools, paths, benches, planters, and fixtures and vegetative materials where designed by a professional visual artist and/or are an integral part of the artwork by the artist.
6. Temporary artwork or installation that serve the purpose of providing community and educational outreach.
7. The incremental costs of infrastructure elements, such as sound walls, utility structures, roadway elements, and other items if designed by an artist as a co-designer.

Ineligible Artwork: The following are not considered artwork:

1. Art objects which are mass produced or are of standard manufacture, such as playground equipment, fountains, statuary elements, signage, maps, corporate logos or other

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functional elements, unless incorporated into an artwork by an artist commissioned for that purpose.

2. Reproductions, by mechanical or other means, of original artwork, except in the case of limited editions controlled by the artist, cast sculpture, film, video, photography, printmaking, or other media arts.
3. Decorative, ornamental, architectural, or functional elements which are designed by the building architect as opposed to elements created by an artist commissioned for that purpose.
4. Services or utilities necessary to operate and maintain an artwork over time.

Artist means a person generally recognized by critics and peers as a professional of serious intent and ability. Indications of a person's status as a professional artist include, but are not limited to, income realized through the sole commission of artwork, frequent or consistent art exhibitions, placement of artwork in public institutions or museums, receipt of honors and awards, and training in the arts.

Exterior place means any place, public or private, outdoor and exterior to buildings or structures and exposed to public view, including, but not limited to, buildings, parks, right-of-way medians and open spaces.

Local artist means an artist, as defined in this chapter, who resides in Martin County, St. Lucie County, Indian River County, or Okeechobee County.

Maintenance, with respect to artwork, means the required repairs or cleaning to keep a work of art in its intended condition, including preventative maintenance at scheduled intervals to curtail future deterioration, ordinary repairs or maintenance, including but not limited to, painting, repair, replacement, or installation of mechanical equipment.

Maintenance, with respect to ordinary property maintenance, means ordinary repairs or maintenance of a structure, including but not limited to, painting, roof repair, replacement, or installation of mechanical equipment.

Mural means any drawing, artwork, inscription, or marking that is marked, etched, drawn or painted on any building or structure.

Project means new construction, renovation work, or façade improvements requiring a building permit where fifty percent (50%) or more of a building is being modified, renovated, expanded, rebuilt or improved by construction. For purposes of this chapter, "project" does not include the following:

1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other casualty.
2. Historic preservation or restoration.
3. Interior renovation.
4. Flood protection work items.
5. Fire sprinkler installation work items.

Public art assessment means one percent of the total dollar amount of the total construction costs of private development.

Public art master plan means the plan generated by the public art advisory board and approved by the city council, which presents selected sites and criteria for the selection of works of art.

Renovation means a project requiring a building permit where fifty percent (50%) or more of the exterior building area is being modified, rebuilt or improved by construction. For purposes of this chapter, "renovation" does not include the following:

1. Repair or reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other casualty.
2. Historic preservation or restoration.
3. Development activity on existing, previously approved developments for the sole purpose of complying with Chapter 553, Part II, Accessibility by Handicapped Persons of the Florida Statutes.

Temporary artwork means artwork created for a specific timeframe or event, and which is situated at a particular site on a temporary basis, not to exceed a period of two (2) years.

Total construction costs means the total cost of the improvements, excluding land costs, approved for a development project, as indicated on the construction contract(s) for the subject improvements.

~~Sec. 162.03. Public art advisory board, creation, and composition.~~

1. A public art advisory board is hereby created as a body of individuals appointed by the mayor and consented to by city council that shall have the duty and responsibility to make recommendations to the city council on public art projects.
- ~~2. The public art advisory board must be comprised of seven (7) members and two (2) alternates as follow:
 - ~~a. A representative of the St. Lucie County Chamber of Commerce.~~
 - ~~b. A representative of the Treasure Coast Builders' Association.~~
 - ~~c. Whenever possible, the remaining members should be representative of one (1) or more of the following classifications:
 - ~~i. Architect, or interior designer;~~
 - ~~ii. Landscape architect or land use planner;~~
 - ~~iii. Professional in the field of art;~~
 - ~~iv. Art or architectural historian;~~
 - ~~v. Art educator;~~
 - ~~vi. Artist.~~~~~~
- ~~3. All members and alternates of the public art advisory board must reside within the city limits for a minimum of one (1) year preceding appointment.~~
- ~~4. Each member of the public art advisory board serves without compensation.~~
- ~~5. No member of the public art advisory board may be the artist, provide the artwork, provide art consulting services, or have any interest in any artwork to be reviewed by the board, whether proposed by a private developer or the city.~~

6. The public art advisory board may be suspended by the city council if the appointed membership is less than three (3) members or at least two (2) consecutive meetings have been canceled due to the lack of a quorum for the transaction of business. In the event the public art advisory board is suspended, the city manager or their designee shall assume the duties and responsibilities of the public art advisory board as provided under this chapter.
- ~~7. All meetings of the public art advisory board must comply with Florida law.~~

Sec. 162.04. Public art advisory powers, duties, and functions.

1. The public art advisory board shall:
 - a. Advise the city council on the adoption of policies and procedures to acquire, commission, and maintain works of art in public places.
 - b. Advise the city council regarding applications for the installation of art as part of private projects pursuant to this chapter.
 - c. Advise the city council regarding installation of art as part of public projects pursuant to this chapter.
 - d. Advise the city council regarding proposed donations of art pursuant to this chapter.
 - e. Recommend sites for location of public art in accordance with the public art master plan.
 - f. Provide recommendations and guidance in implementation of the public art master plan.
 - g. From time to time, recommend to the city council updates or revisions to the public art master plan that identify proposed locations and criteria for public artwork, art selection, and placement criteria, and other program recommendations, to reflect the changing environment of the city. It is the intent that such master plan be updated every five (5) years.
 - h. Conduct, with the assistance of city staff, calls to artists regarding installation of art as part of public projects and regarding installation of art using the Art Fund pursuant to this chapter.
 - i. Provide recommendations to the city council on the maintenance of city-owned artwork to preserve and protect the public art in the city's collection.
 - j. Provide recommendations to the city council on the deaccessioning, removal, or replacement of public art owned by the city.
 - k. Advise the city council regarding murals to be installed on city property.
 - l. Propose recommendations to the city council regarding the art in public places ordinance and program.
 - m. Report to the city council, on an annual basis, the status of the art in public places program, the application of the master plan, the use of art in public places funds and the fund balance.
2. The recommendations of the public art advisory board to the city council are advisory only and may or may not be consistent with similar recommendations made to the city council by other city boards.

Sec. 162.05. Criteria for art.

The public art advisory board shall consider the following criteria in recommending approval or disapproval of a work of art:

1. *Complies.* The proposed art conforms to the definition of art contained in this chapter and will be created by an artist or local artist as defined in this chapter.
2. *Master plan.* The proposed art meets the qualities described in the art in public places master plan, if applicable to the project.
3. *Visual accessibility.* The proposed art will be readily visible to the public and meet the location requirements of this chapter.
4. *Quality.* The proposed artist is professionally recognized in the medium, and the proposed art is of quality and enduring value.
5. *Appropriateness to site.* The proposed art is of design, scale, and material appropriate to the site.
6. *Compatibility.* The proposed art is compatible with surrounding neighborhoods.
7. *Public Welfare.* The proposed art is not detrimental to the public welfare and will not constitute a safety hazard.
8. *Maintenance.* The proposed art will not require extraordinary maintenance.
9. *Valuation.* The proposed art meets or exceeds the public art assessment requirements of this chapter.
10. *Location.* The proposed location of the art and/or element(s) is in an exterior place and is appropriate to accommodate the size and scale of the proposed art and/or element(s), has or can reasonably accommodate any necessary supporting infrastructure and is in compliance with applicable city code requirements such as visibility triangle. Notwithstanding the foregoing, art purchased with the art in public places fund or for public construction projects may be located inside publicly owned buildings.

Sec. 162.06. Art in public places fund.

1. *Fund established.* A separate art in public places fund must be established by the city. All art assessment deposits from private and public development must be deposited into this fund and the funds must be kept separate from any other city funds. Fifteen percent (15%) of all funds deposited into the art in public places fund must be allocated and restricted to use for maintenance, relocation and removal costs of city owned art. This does not prohibit the remaining funds from also being used for these purposes.
2. *Use of funds.* The art in public places fund shall be used by the city for the selection, commission, acquisition, and maintenance of art in public places anywhere in the city. Such funds may be spent on artworks or art-related costs including, but not limited to:

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- a. *Selection.* Selection processes for public art to be owned by the city, including but not limited to advertising, selection panelist fees, completion stipends, outside consultant fees, and/or travel expenses for artists or experts.
 - b. *Commissioning, acquisition, and installation.* Artist and engineering design fees, permit fees, purchase price, fabrication, transportation, installation, site preparation and improvement, lighting and other costs directly related to the installation of public art owned by the city or on loan to the city.
 - c. *Maintenance.* Maintenance of public art owned by the city or on loan to the city, including but not limited to evaluation fees for professional conservators, costs of repair, cleaning and conservation.
 - d. *Relocation, removal & storage.* Costs directly related to the transportation and relocation or removal of public art owned by the city or on loan to the city or storage of public art owned or on loan to the city.
 - e. *Insurance and security.* The costs for damage and theft insurance for public art owned by the city or on loan to the city, and, as appropriate, costs for security for installations or exhibitions for art owned by the city or on loan to the city.
 - f. *Consulting.* The fees and costs for consultants, appraisers, and curators as may be necessary.
 - g. *Promotion.* Costs to promote the public art in the art in public places program, including but not limited to implementation of programs educating the public on the art in public places program, public art tours, public lectures, descriptive on-site plaques, social media, brochures and other methods.
 - h. *Program administration.* All personnel costs for the management and staffing, as needed, to support the art in public places program.
3. *Use of art purchased with public art funds.* All artwork purchased with public art funds must be displayed on city-owned land, a city-owned building, a city-leased facility, a city rented facility or on another governmental entity's property that is located within the city. Artwork may be placed on another governmental entity's property so long as the property is located within City limits and an interlocal agreement between the City and the governmental entity that owns the property is executed and approved by the city council. All artwork purchased with public art funds must be displayed in a visually accessible location for the public to receive the most enjoyment and benefit from the art.
 4. *Prohibited uses.* Funds cannot be utilized for artist receptions, dedication art events, promotional materials for the artist, or expenses for the operation or maintenance of public art on private property. In the event city owned artwork is placed on property owned by another governmental entity, the fund may be utilized to maintain the City's work of art provided an interlocal agreement between the city and the governmental entity that owns the property is executed and approved by the city council.
 5. *Procurement.* The procurement of goods, services or construction for the art in public places program or using art in public places funds must comply with the city's procurement regulations and Florida law, as applicable.

6. *Carryover.* Any monies not expended in the fund in any fiscal year must be carried over in the fund into the following year. Any interest earned on the funds must be retained in the fund.
7. *Contracts for artwork.* Artists, as part of any commission or contract with the city for the provision of artwork, are required to submit to the city a "maintenance and inventory sheet," which must include an annual cost estimate for the annual maintenance necessary in order to properly preserve and maintain the artwork in substantially the same condition that it was in when accepted by the city.
8. *Insurance.* Proper insurance coverage must be maintained by the city on artwork purchased with Public Art Fund monies, on artwork whose ownership has been transferred to the city or on artwork that has been loaned to the city.

Sec. 162.07. Applicability.

1. The art in public places program assessments set forth in this chapter apply to the following activities:
 - a. Private non-residential development projects as set forth in section 162.08.
 - b. Residential development projects with more than ten (10) units as set forth in section 162.08.
 - c. Public construction projects as set forth in section 162.12.
2. Exceptions. The art in public places program assessments set forth in this chapter do not apply to the following development or activities:
 - a. Residential development projects with ten (10) units or less.
 - b. Ordinary property maintenance.
 - c. Repairs and restoration resulting from fire, flood, windstorm or other casualty or natural disaster, as determined by the building official.
 - d. Industrial and commercial development that is not open or accessible to the general public due to the storage or use of hazardous, radiological, or infectious materials, national security reasons, or other reasons related to the health, safety, or security of the public.

Sec. 162.08. Public art assessment for private development.

1. *Applicability.*
 - a. The provisions of this chapter and the public art assessment apply to all private non-residential development projects and all residential development projects with more than ten (10) units, including new construction, or the renovation or improvement of an existing building where fifty percent (50%) or more of a building is being modified, renovated, expanded, rebuilt or improved by construction.
 - b. The provisions of this section apply to new development or new construction within existing planned developments.

2. *Requirements.* All private development meeting the applicability requirements of this section must elect one of the following assessment methods within ninety (90) days of the issuance of the first building permit or site work permit for a subdivision plat for any portion of the project:
- a. *Option 1. On-site Artwork.* Submit documentation evidencing the escrow of funds for a work of art valued in an amount not less than one percent (1%) of the total construction costs and submit an application for approval of the work of art in compliance with this chapter. If a local artist will be commissioned to provide a work of art, the value of the work of art cannot be less than ninety percent (90%) of one percent (1%) of the total construction costs; or
 - b. *Option 2. Contribute to Fund.* Contribute an amount equal to eighty percent (80%) of one percent (1%) of the total construction costs for deposit to the art in public places funds. The public art assessment must be paid in full prior to the issuance of a certificate of occupancy except for subdivision plats which are required to submit the public art assessment in full at the time of recording of the final plat; or
 - c. *Option 3. On-site Artwork and Contribute to Fund.* Submit documentation evidencing the escrow of funds for a work of art valued in an amount less than one percent (1%) of the total construction costs and contribute eighty percent (80%) of the balance of the public art assessment (one percent (1%) of the total construction costs) for deposit in the art in public places fund.
 - d. *Option 4. Alternative Equivalent Proposal.* Submit an alternative equivalent proposal to the planning and zoning director
 - i. The proposal shall be for installation freely accessible work of art on City public right-of-way, on property owned by other public agencies, or on another property under the control or ownership of the developer. The proposal may seek combination of the public art assessment associated with multiple projects into one larger work of art in lieu of several small works of art.
 - ii. The proposal shall contain all information and establish all criteria set forth in section 162.09 of this Chapter, excluding the document required by 162.09(3)(g).
 - iii. The developer must demonstrate that the cost of the proposal will equal the cost of the public art assessment otherwise required under ~~s~~Subsection 162.08 and not create unbudgeted costs for the City.
 - iv. The City may approve the proposal if it finds that:
 - a) The alternative equivalent proposal will further the purposes of this ~~c~~Chapter as set forth under ~~s~~Section 162.01; and
 - b) The proposed location of the alternative equivalent proposal is in reasonable proximity to the location of the site(s) generating the work of art requirement, in order to avoid clustering of all public art in one location-; and
 - c) ~~T~~he cost of the proposal will be equal to or greater than the cost of the public art assessment that would otherwise be required under Subsection 162.08(2)(a)—(c); and
 - d) ~~T~~he developer has established to the satisfaction of the City that the alternative equivalent proposal will create freely accessible public art in the City to an equal

or greater extent than installation of the public art on the individual project site or a contribution to the Fund.

- v. In approving a proposal, the City may impose reasonable conditions of approval requiring the developer to enter into agreements with the City or other public agencies or private parties in order to memorialize the legal obligations of all parties involved with the alternative equivalent proposal.
3. The public art assessment for residential development projects will be calculated on a plat by plat basis. Total construction costs for purposes of calculating the public art assessment will be based on the total construction costs for all property depicted on each plat included within the residential development project.
4. Notwithstanding the foregoing, the public art assessment for any single project, cannot exceed one hundred thousand dollars (\$100,000.00).

Sec. 162.09. Inclusion of art at private development site.

1. *Location.* Artwork must be located in an exterior place.
2. *Process.* If the developer chooses to provide artwork at the site of the private development, the developer must comply with the following process:
 - a. *Escrow and accounting of funds for artwork.* The developer must submit documentation to the city showing a deposit for public art was made with the developer's attorney or escrow agent into an escrow account not more than ninety (90) days after the issuance of the first building permit or site work permit for subdivision plats, in an amount equal to one percent (1%) of the total construction costs.
 - b. *Art consultant.* If the developer chooses to provide artwork on site, the developer may utilize up to twelve percent (12%) of the escrowed art deposit to retain an art consultant to assist in the selection and procurement of the required work of art. The art consultant cannot have a financial or other relationship with the artist or developer, or any ownership in the artwork purchased by the developer. The artist is not entitled to the art consultant fee.
 - c. *Artist selection.* Selection of the artist will be the responsibility of the developer. The selected artist must be an artist as defined in this chapter. The commission of the artist must be by written contract between the developer and artist.
3. *Application for approval of proposed art.* An application for approval of the work of art must be made to the public art advisory board within ninety (90) days of the issuance of the first building permit or site work permit for subdivision plats. The application must include:
 - a. Artist's qualifications, including resume and portfolio establishing the artist's credentials.
 - b. Detailed description and depiction of the work of art and its location on the site.
 - c. Drawings and renderings of the proposed work of art, in terms of size, scale, color, shape, and materials in sufficient detail to provide a clear understanding of the art.
 - d. Appraisal of the value of the art.
 - e. Documentation showing that a deposit for public art was made into an escrow account.

- f. Maintenance program required for the artwork.
 - g. Proposed restrictive covenant running with the land that binds the property owner's successors and assigns to retain and maintain the artwork in compliance with this chapter, as more specifically described in section 162.10.
 - h. Compliance with public accessibility (ADA) requirements.
4. *Board review of contribution of art.* The public art advisory board shall review the proposed artwork based on the criteria established in section 162.05 and shall recommend to the city council whether to approve, deny, or approve with conditions the selection and location of the artwork with sensitivity to the aesthetic and cultural traditions and the history of the city and to the character of the surrounding neighborhoods.
5. *Appraisal.* To establish the value of the artwork to be installed or retained by the developer to comply with this section, the city may employ an independent art appraiser to provide a written appraisal of the art work(s) submitted. Such appraisal will be paid for by the developer from the escrowed art deposit.

Sec. 162.10. Ownership and maintenance of artwork installed on private property.

- 1. Artwork installed on private property pursuant to the requirements of this chapter is the property of the property owner. Title and ownership of the artwork transfers in whole or in part to any successor in interest of the property. The property owner shall be responsible for maintenance of the artwork in good condition at all times, as determined by the city. The property owner shall be responsible for ensuring that the public's view of the artwork is maintained, and that no vegetation or additional construction obstructs the public's view. Maintenance includes any associated landscaping or related improvements.
- 2. The owner of any property containing artwork installed in compliance with this chapter must include restrictions by recorded covenant that require retention and maintenance of the artwork in compliance with this chapter to run with the land and be binding on the owner's successors and assigns. The restrictive covenant must be recorded within ten (10) days of the issuance of the certificate of occupancy for the project. Any such restrictive covenant must be approved by the city attorney prior to recordation.

Sec. 162.11. Removal or replacement of artwork installed on private property.

- 1. Artwork installed in accordance with this chapter must remain on site in the approved location and cannot be altered, replaced, or removed except as provided in this chapter, or when deemed to be unsafe by the city building official, or require replacement due to destruction or casualty to the artwork.
- 2. All replacement art must equal or exceed the value of the original artwork and must not be less than the original public art assessment requirement. If the artwork is to be replaced, the public art advisory board shall review the proposed artwork and shall recommend to the city council whether to approve, deny, or approve with conditions the selection of the artwork in accordance with the art in public places implementation guidelines.

Sec. 162.12. Public art assessment for public construction projects and inclusion of art on public construction projects.

1. *Eligibility.* All appropriations and authorizations for the new construction, renovation, or remodeling of eligible public improvements by the city must include an amount of not less than one percent (1%) of total construction costs to be deposited in the art in public places fund.
 - a. Eligible public projects subject to the public art assessment are any public building, facility, or structure which permits public occupancy of all or a portion thereof, including but not limited to police stations, office buildings, recreation and community centers.
 - b. A sidewalk, pedestrian or bicycle path project where sufficient location, spaces, utilities and other elements to accommodate public art exist, as determined by engineering and planning staff.
 - c. Ineligible public improvements that are not subject to the public art assessment are:
 - i. Any road project, including but not limited to construction, resurfacing, curbing, drainage, striping, lighting and signalization.
 - ii. Any public utility project, including water, wastewater and storm water projects.
 - iii. Any electrical and communication substations and switching houses.
 - iv. A streetscape, sidewalk, pedestrian or bicycle path project where there is not sufficient space, utilities and other elements to accommodate public art, as determined by engineering and planning staff.
 - v. Any public building, facility, or structure which is not accessible to the public.
 - vi. Any project funded by a revenue source which by law cannot be utilized for the acquisition of works of art.
 - vii. Any acquisition of land.
 - viii. Any eligible public construction project where the city council determines the project appropriation cannot accommodate the art assessment, or the assessment will result in a cost overrun.
 - ix. Any project constructed using federal funds which cannot be utilized for public art.
 - x. Public construction projects outside of the geographical boundaries of the city.
2. *Budget.* For eligible projects, an estimate of the public art assessment must be calculated, included and detailed in the project budget. At the start of the fiscal year, or after adoption of a project budget amendment, the public art assessment will be transferred to the art in public places fund.
3. *Process.* For eligible projects, the public art advisory board shall recommend, for approval by the city council, whether the public project should include a work of art. If approved by the city council, the public art advisory board, with the assistance of city staff, shall conduct a call to artists, requests for proposals or direct invitation for proposals for works of art to be incorporated into the project within the budget and in compliance with the art in public places master plan. The board shall not recommend works of art for installation on public property which cannot be reasonably maintained within the resources allocated by the city. The board shall review the proposed artwork based on the criteria established in section 162.05 and shall recommend to the city council whether to approve, deny, or approve with conditions the selection and location

of the artwork with sensitivity to the aesthetic and cultural traditions and the history of the city and to the character of the surrounding neighborhoods. The city council shall have the final decision of the selection of the artists and/or selection of the artwork. If the assessment for a particular public project is not sufficient to acquire a work of art which would comply with the master plan or be appropriate for the city, or if the city council determines, the public art assessment from a public project must be deposited into the art in public places fund and may be pooled with other such funds for the acquisition of a work of art for display at another city facility, in compliance with the public art master plan and at the time and place determined by the city council.

4. *Ownership and maintenance.* All artwork acquired pursuant to this section must be titled in the name of the city. The city is responsible for maintaining its artwork.

Sec. 162.13. Artist grant of license to city.

1. The artist of artwork to be owned by the city and approved and installed under the art in public places program must:
 - a. Grant to the city an unlimited, perpetual, non-exclusive, royalty-free license to reproduce and distribute two-dimensional reproductions of the artwork, in photos, videos and related media, for city-related purposes;
 - b. Grant to the city irrevocable ownership rights in any copyright or other intellectual property right regarding the artwork; and
 - c. Waive and release in favor of the city all rights, including the right of attribution or integrity, which artist may have in the artwork.
 - d. The City shall make all reasonable efforts to attribute the artwork to the artist in all uses.
2. The Artist retains a perpetual, royalty-free license to reproduce two-dimensional reproductions of the artwork, in photos, videos and related media, for demonstration of artist's artwork.

Any documentation regarding the above shall be approved by the city attorney.

3. The city shall have the option of acknowledging the artist and the artwork title in reproductions.
4. By participating in the art in public places process, the artist authorizes review by the public art advisory board and compliance with public records laws.

Sec. 162.14. Enforcement.

1. *Certificate of Occupancy.* Unless an alternative deadline is established in a development order, or a time extension is granted by the planning and zoning director, no certificate of occupancy for a project subject to the public art assessment pursuant to section 162.08 will be issued until the artwork is installed and/or the full art assessment has been paid to the city.
2. *Other remedies.* The provisions of this chapter may also be enforced through any remedy available to the city in law or in equity. Violations may also be enforced through the code enforcement provisions of this code; or the city may institute a civil action in a court of competent jurisdiction to seek injunctive or other relief to enforce compliance with the terms of this chapter or any rule or regulation promulgated under this chapter, to enjoin and prohibit

said violation or to compel the performance of actions which will result in compliance with this chapter. These remedies are cumulative, and the use of any appropriate remedy does not constitute an election of remedies by the city. The use of one remedy does not preclude the use of any others.

Sec. 162.15. Private gifts of art to the city.

The donation of works of art to the city is encouraged. The acceptance of donations of art by the city and the placement of art on city property carry certain responsibilities. Some of the issues to be considered include the creativity, style, durability, diversity historical relevance and maintenance of the work of art. This section provides guidelines for the acceptance of private donations of art to the city.

1. *Application process.* An application for donation of a work of art must include the following documentation:
 - a. A written description of the work of art.
 - b. Not less than five (5) visual representations of the work of art.
 - c. A list of proposed installation sites.
 - d. Biographical information about the artist including, if available, a list of the artist's works of art placed in public places.
 - e. Information about the private donor including the full name, current and complete contact information.
 - f. Any terms or conditions imposed by the donor which the donation of the work of art may be subject to.
2. *Gifts Panel.*
 - a. The public art advisory board shall act as the gift panel responsible for review and for making a recommendation concerning acceptance of proposed donations of art to the city and the placement of donated art on city property.
 - b. *Guidelines for review.* Works of art proposed for donation to the city must be evaluated based on the following criteria:
 - i. The proposed artist is professionally recognized in the medium and the proposed art is of quality and enduring value.
 - ii. Value and condition of the work of art.
 - iii. Historical relevance/relationship to the city.
 - iv. Relationship to the city's existing public art collection.
 - v. It conforms to the definition of art contained in this chapter and will be created by an artist as defined in this chapter.
 - vi. The proposed art meets the qualities described in the art in public places master plan, if applicable to the project.
 - vii. Conditions imposed by the donor.
 - viii. The proposed art will not require extraordinary maintenance.
 - c. When considering placement of art donated to the city, the public art advisory board shall consider the following:
 - i. Appropriateness of the location for works of art and that the proposed art is of design, scale, and material appropriate to the site.
 - ii. Physical layout of the site and/or building.
 - iii. Recommendation by architect of the project.

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- iv. The proposed art will be readily visible to the public and meet the location requirements of this chapter.
- v. The proposed art is compatible with surrounding neighborhoods.
- vi. The proposed art is not detrimental to the public welfare and will not constitute a safety hazard.
- d. *Assignment of rights.* All donations of works of art to the city must include an artist grant of license in conformity with section 162.13.
- e. All works of art acquired pursuant to this section must be acquired in the name of the city, and title must vest to the city.

Section 5. Conflict. If any ordinances or parts of ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflicting provisions.

Section 6. Severability. The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 7. Codification. The provisions of this Ordinance shall be made a part of the Code of Ordinances of the City of Port St. Lucie, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; the word “ordinance” may be changed to “section” or other appropriate word as may be necessary.

Section 8. Effective Date. This Ordinance shall become effective immediately after final adoption on second reading.

PASSED AND ADOPTED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2023.

CITY COUNCIL
CITY OF PORT ST. LUCIE

By: _____
Shannon M. Martin, Mayor

ATTEST:

Sally Walsh, City Clerk

APPROVED AS TO FORM:

By: _____
James D. Stokes, City Attorney