

**ADDENDUM
DANIA BEACH CITY COMMISSION
REGULAR MEETING
TUESDAY, JUNE 22, 2021 - 7:00 PM**

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE WITH REGARD TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

LOBBYIST REGISTRATION IS REQUIRED. PRIOR TO ENGAGING IN ANY LOBBYING ACTIVITIES, WHETHER OR NOT COMPENSATION IS PAID OR RECEIVED IN CONNECTION WITH THOSE ACTIVITIES, EACH LOBBYIST SHALL FILE WITH THE CITY CLERK AN ANNUAL REGISTRATION STATEMENT AND PAY AN ANNUAL TWO HUNDRED FIFTY DOLLARS (\$250.00) REGISTRATION FEE FOR EACH PRINCIPAL OR EMPLOYER. REGISTRATION FORMS ARE AVAILABLE ON THE CITY WEBSITE: WWW.DANIABEACHFL.GOV. (ORDINANCE #2012-019; AMENDED BY ORDINANCE #2019-019)

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK'S OFFICE, 100 W. DANIA BEACH BOULEVARD, DANIA BEACH, FL 33004, (954) 924-6800 EXTENSION 3624, AT LEAST 48 HOURS PRIOR TO THE MEETING.

IN CONSIDERATION OF OTHERS, WE ASK THAT YOU:

- A. PLEASE TURN CELL PHONES OFF, OR PLACE ON VIBRATE. IF YOU MUST MAKE A CALL, PLEASE STEP OUT INTO THE ATRIUM, IN ORDER NOT TO INTERRUPT THE MEETING.
- B. IF YOU MUST SPEAK TO SOMEONE IN THE AUDIENCE, PLEASE SPEAK SOFTLY OR GO OUT INTO THE ATRIUM, IN ORDER NOT TO INTERRUPT THE MEETING.

**DECORUM POLICY FOR MEETINGS OF THE CITY COMMISSION
OF THE CITY OF DANIA BEACH, FLORIDA:**

INDIVIDUALS WHO WISH TO MAKE ANY "CITIZEN'S COMMENTS" UNDER THAT PORTION OF THE CITY COMMISSION AGENDA, OR WHO OTHERWISE WANT TO ADDRESS THE CITY COMMISSION, MUST FIRST BE REGISTERED WITH THE CITY CLERK (FORMS ARE AVAILABLE OUTSIDE OF THE CITY COMMISSION CHAMBERS AND MUST BE GIVEN TO THE CLERK BEFORE THE MEETING). OTHERS WHO WANT TO ADDRESS THE COMMISSION ON ANY MATTERS MUST FIRST BE RECOGNIZED BY THE MAYOR. ALL SUCH PERSONS MUST USE THE PODIUM IN THE COMMISSION CHAMBER. NO MORE THAN ONE PERSON AT A TIME MAY ADDRESS THE COMMISSION FROM THE PODIUM. COMMENTS ARE ONLY TO BE MADE TO THE CITY COMMISSION AND ARE NOT TO BE DIRECTED TO THE AUDIENCE OR CITY STAFF.

NO INDIVIDUAL SHALL MAKE ANY SLANDEROUS OR UNDULY REPETITIVE REMARKS, OR ENGAGE IN ANY OTHER FORM OF BEHAVIOR THAT DISRUPTS OR IMPEDES THE ORDERLY CONDUCT OF THE MEETING, AS DETERMINED BY THE MAYOR. NO INDIVIDUAL MAY SPEAK DIRECTLY TO OR ADDRESS THE MAYOR, CITY COMMISSIONER OR CITY STAFF: COMMENTS ARE TO BE ONLY DIRECTED TO THE COMMISSION AS A WHOLE. NO CLAPPING, APPLAUDING, HECKLING OR VERBAL OUTBURSTS IN SUPPORT OF OR OPPOSITION TO A SPEAKER OR HIS OR HER REMARKS SHALL BE PERMITTED. NO SIGNS OR PLACARDS SHALL BE PERMITTED IN THE COMMISSION CHAMBER.

IF ANY PERSON'S CONDUCT AS DETERMINED BY THE MAYOR IS FOUND TO BE DISRUPTIVE OR INTERFERES WITH THE ORDERLY CONDUCT OF THE MEETING, THE PERSON MAY BE ASKED BY THE MAYOR TO LEAVE THE COMMISSION CHAMBERS; IF THE PERSON DOES NOT LEAVE AND THE CONDUCT PERSISTS, THE CITY POLICE DEPARTMENT WILL BE REQUESTED TO ESCORT THE INDIVIDUAL FROM THE CITY COMMISSION CHAMBERS.

ALL CELLULAR TELEPHONES ARE TO BE SILENCED DURING THE MEETING. ALL PERSONS EXITING THE COMMISSION CHAMBER SHALL DO SO QUIETLY. (RESOLUTION #2020-032)

3. PRESENTATIONS AND SPECIAL EVENT APPROVALS

Presentation by Congresswoman Debbie Wasserman Schultz

9. PUBLIC HEARINGS

3. ORDINANCE NO. 2021-019

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, AMENDING CHAPTER 28, ENTITLED "LAND DEVELOPMENT CODE," PART 8, ENTITLED "TECHNICAL APPENDIX", AT

ARTICLE 8, ENTITLED “PUBLIC ART PROGRAM, TO AMEND SECTION 811-60, ENTITLED “APPLICABILITY,” BY AMENDING THE LIST OF ENTITIES THAT CAN REQUEST AN EXEMPTION FROM PAYMENT OF THE PUBLIC ART FEE OR EXEMPTION FROM COMPLIANCE WITH THE ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; FURTHER, PROVIDING FOR AN EFFECTIVE DATE. **(FIRST READING)** *(City Attorney)*



CITY OF DANIA BEACH CITY ATTORNEY'S OFFICE

MEMORANDUM

DATE: June 22, 2021

TO: The Honorable Mayor and City Commission

FROM: Thomas J. Ansbro, City Attorney

SUBJECT: Amendment of Program Exemptions for the Public Art Ordinance and Program

The Request

Approval, at first reading, of the amendment to the Ordinance, which would modify the list of entities that could be granted exemptions from the Public Art Program's program requirements.

Background

The City Code of Ordinances, Code Sec. 811-60, entitled "Applicability," provides for possible exemptions to be granted by the City Commission from the Public Art Program for the following categories of entities:

1. Projects consisting of the reconstruction of structures which have been damaged by fire, flood, wind, or other natural disaster.
2. Schools.
3. Churches or places of worship.
4. Affordable housing and projects receiving economic development grants or incentives.

The City is seeking to remove the ability of applicants to request to be exempt from the program for schools, churches or places of worship and affordable housing projects that receive economic development grants or incentives. During discussion of the possible change to the program at the last Commission meeting, I stated that we would review current law to determine if removal of the exemption for these entities would ~~not~~ be in violation of state or federal law.

Below is a synopsis of our research.

Issue: Whether there are any laws that would hinder the City's ability to enforce its public art fee program with respect to a religious institution, a school, or an affordable housing or similar project.

Summary Answer: There does not appear to be a violation of state or federal law in removing the exemption for private schools, religious institutions and affordable housing projects. Public schools are exempt from paying the public art fee or installing public art, under state law. There is no need to create an exemption for public schools in the Code since state law preempts the City's code. The same is true for federal buildings. Federal law preempts the City's zoning code and local ordinances. However, affordable housing projects are not afforded such federal protection.

Analysis:

(1) Public Schools

Pursuant to Florida Statutes, Section 1013.37, traditional public schools are exempt from the Florida Building Code and the Fire Code. This statute provides for a state uniform building code for the construction of public educational facilities and exempts schools from local laws relating to the state building code. Section 1013.371(1)(a), Florida Statutes, requires that all educational facilities constructed by a school board are required to incorporate the state building and fire codes and shall be "exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees." Public schools are not exempt from the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, sections 163.3161-163.3217, Florida Statutes. Rather, the Legislature has made it clear that school districts and school boards are subject to local land development regulations enacted to implement local comprehensive land use planning and development.

Each city has adopted a Public School Element into its Comprehensive Plan and entered into Interlocal Agreements with its School Board. Under such agreements, cities can review a limited criteria of items but those criteria do not include art in public places. As can be seen from Section 1013.371 public schools are also exempt from other city ordinances and impact fees. The School Board would maintain that application of the public art ordinance to it has been preempted by the State.

Alternatively, a charter school, being built on private land would have to adhere to the City's Zoning Code, subject to certain restrictions. (Florida Statutes Section 1002.33(a)). Imposition of Public Art requirements on a charter school could result in a challenge by the Charter School that the City is disparately treating the charter school, i.e., not treating it equitably or comparably as compared to a public school, since public schools do not need to comply with Public Art requirements. It is notable that the Legislature did not mirror the language applied to traditional public schools for charter schools, but it did provide language that charter schools must be treated "equitably". We would maintain that a charter school is subject to the City art requirements.

(2) Religious facilities.

Religious facilities, and uses associated with them, are protected under federal law pursuant to the Religious Exercise in Land Use Protection Act, (“RLUIPA”) 2 USC 2000cc-1. Under the provisions of the City ordinance, the City would maintain that its Public Art Program does not impose a substantial burden on the religious exercise of a person and that the City is treating all facilities equally. The City would also maintain that there is a compelling governmental interest to provide public art. Religious institutions are not usually the recipient of federal financial assistance and the art program would not affect commerce or create a substantial burden. The “substantial burden” and “compelling government interest” tests are examined by courts when applying RLUIPA.

There have been no cases challenging a public art program under the federal law. The City is not imposing or implementing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. Further, the City is not imposing or implementing a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination. The City’s uniform application of its Public Art Program is designed to be neutral in its enforcement and application.

(3) Private Schools.

The City’s uniform application of its Public Art Program is designed to be neutral in enforcement and application. There is no federally recognized or state recognized law precluding the City from applying its Public Art Program with respect to private schools, which was recently done by the City Commission by denial of a requested exemption.

(4) Affordable housing projects.

There is no federal or state exemption or preemption when local governments seek to implement a public art program when applied to a public housing project. In fact, many affordable housing projects receive CBDG, HOME and SHIP funding, which also provide a public art requirement, tied to the government funding. Again, no preemption was raised in the other recent City Commission decision as to the Saratoga III housing development.

(5) Federal facilities.

Federal laws exempt and preempt most federal buildings from local zoning laws as well as building and fire codes. The Public Buildings Amendments of 1988, 40 U.S.C. 3312 (formerly section 21 of the Public Buildings Act of 1959, 40 U.S.C. 619), “require that each building constructed or altered by GSA (General Services Administration) or any other federal agency shall, to the maximum extent feasible, be in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes. Legally, buildings built on federal property are exempt from state and local building codes.” Pursuant to a federal case from 1947, it was stated that the federal government is exempt from local zoning whenever it chooses to be. The same is true for post office facilities and numerous other federal buildings.

Budgetary Impact

There is no budgetary impact from this item.

Recommendation

It is recommended that the City Commission adopt the ordinance amendment at first reading and schedule second reading, public hearing.

TJA/EAB/la

c: Eleanor Norena, Director, Community Development Department
Corinne Lajoie, Assistant Director, Community Development Department

ORDINANCE NO. 2021-019

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, AMENDING CHAPTER 28, ENTITLED "LAND DEVELOPMENT CODE," PART 8, ENTITLED "TECHNICAL APPENDIX", AT ARTICLE 8, ENTITLED "PUBLIC ART PROGRAM, TO AMEND SECTION 811-60, ENTITLED "APPLICABILITY," BY AMENDING THE LIST OF ENTITIES THAT CAN REQUEST AN EXEMPTION FROM PAYMENT OF THE PUBLIC ART FEE OR EXEMPTION FROM COMPLIANCE WITH THE ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; FURTHER, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 10, 2019, the City adopted its Public Art Program; and

WHEREAS, recently the City has received several requests for exemption from the public art program; and

WHEREAS, the City desires to amend the list of exemptions applicable to waivers of requests from application of the ordinance;

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

Section 1. That the preceding "WHEREAS" clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

Section 2. That Chapter 28 of the City Code of Ordinances, which Chapter is entitled "Land Development Code," Part 8, Entitled "Technical Appendix", Article 8, entitled "Public Art Program, Section 811-60, entitled "Applicability," related to the list of entities that can seek exemption from the requirements of the Program is amended to read as follows:

Sec. 811-60. - Applicability.

(A) This Article applies to all development projects, as defined in section 811-20 of this article.

(B) The City Commission may exempt from the public art program: a

(1) ~~The project that~~ consists of the reconstruction or replacement of buildings or structures which have been damaged by fire, flood, wind, or other natural disaster.

(2) ~~Schools.~~

(3) ~~Churches or places of worship.~~

(4) ~~Affordable housing and projects receiving economic development grants or incentives.~~

Section 3. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

Section 5. That this Ordinance shall be effective immediately upon its passage and adoption on second reading.

PASSED on first reading on June 22, 2021.

PASSED AND ADOPTED on second reading on _____, 2021.

ATTEST:

THOMAS SCHNEIDER, CMC
CITY CLERK

TAMARA JAMES
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY