

AN ORDINANCE BY COUNCILMEMBERS JOYCE SHEPERD, KEISHA LANCE BOTTOMS, YOLANDA ADREAN, FELICIA A. MOORE, CARLA SMITH, CLETA WINSLOW, NATALYN ARCHIBONG, IVORY L. YOUNG, JR., MICHAEL J. BOND, C. T. MARTIN, HOWARD SHOOK, AND MARY NORWOOD TO AMEND THE CODE OF ORDINANCES OF THE CITY OF ATLANTA BY CREATING A NEW ARTICLE IN CHAPTER 46 "CIVIC AND CULTURAL AFFAIRS" WHICH IS TO BE KNOWN AS "WORKS OF ART ON PRIVATE PROPERTY;" AMENDING SECTION 16-28.025 OF THE 1982 ZONING ORDINANCE TO RESERVE SAID SECTION FOR FUTURE USE; AND FOR OTHER PURPOSES.

**Review List:**

Atlanta City Council	Completed	01/09/2014 5:29 PM
Community Development & Human Resources Committee		Pending
Mayor's Office	Pending	

**HISTORY:**

01/06/14 Atlanta City Council

Certified by Presiding Officer	Certified by Clerk
Mayor's Action <i>See Authentication Page Attachment</i>	

CITY COUNCIL  
ATLANTA, GEORGIA

14-O-1022

SPONSOR SIGNATURES

  
Joyce Sheperd, Councilmember, District 12

**AN ORDINANCE BY COUNCILMEMBERS JOYCE SHEPERD, KEISHA LANCE BOTTOMS, YOLANDA ADREAN, FELICIA A. MOORE, CARLA SMITH, CLETA WINSLOW, NATALYN ARCHIBONG, IVORY L. YOUNG, JR., MICHAEL J. BOND, C. T. MARTIN, HOWARD SHOOK, AND MARY NORWOOD TO AMEND THE CODE OF ORDINANCES OF THE CITY OF ATLANTA BY CREATING A NEW ARTICLE IN CHAPTER 46 “CIVIC AND CULTURAL AFFAIRS” WHICH IS TO BE KNOWN AS “WORKS OF ART ON PRIVATE PROPERTY;” AMENDING SECTION 16-28.025 OF THE 1982 ZONING ORDINANCE TO RESERVE SAID SECTION FOR FUTURE USE; AND FOR OTHER PURPOSES.**

WHEREAS, the installation of non-commercial displays on private property in the City serves to promote the public welfare by encouraging artistic and cultural expression, fosters a sense of pride in the City and its neighborhoods, and allows for depictions of the City’s history and culture; and

WHEREAS, the City has a significant governmental interest in promoting artistic expression and has a history of encouraging such artistic expression through a variety of City-managed programs; and

WHEREAS, the City’s promotion of artistic expression must consider other significant governmental interests such as protecting traffic safety, creating an aesthetically pleasing environment, respecting the shared values of specific neighborhoods, enhancing the appearance of the City, controlling nuisance graffiti, maintain safe ingress and egress to structures; avoiding interference with the operations of neighboring businesses; or preserving the quiet enjoyment of adjacent property or property from which such expression is visible; maintaining the tranquility of residential areas; and

WHEREAS, the Atlanta City Council wishes to encourage the installation of public art on private property, while preserving public safety and welfare through reasonable regulations that will provide a method to distinguish artistic expression from commercial speech and provide for procedures for the permitting of art on private property which functions as public space; and

WHEREAS, the City Council desires to amend the procedure for authorizing Public Art which had previously been regulated by Chapter 16 of the City Code, the 1982 Zoning Ordinance of the City of Atlanta at Sec.16-28.025; and

WHEREAS, a permitting process providing for clear guidelines in distinguishing commercial speech from public art, describing required public input, and reviewing the effect on traffic safety will further the City’s significant governmental interests.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: Section 16-28.025 of The 1982 Zoning Ordinance entitled “Public Art” which reads as follows:

Sec. 16-28.025 Public Art

Public art is a visual, wholly noncommercial artistic expression intended and able to be viewed from a public way that meets the criteria specified herein. Public art meeting the following criteria may be conditionally located in any district. Consistent with the purpose and intent of this section, the Atlanta city council may, by ordinance, approve a work of public art. Said approval shall not be granted unless said ordinance contains the following three preliminary certifications:

- (1) A certification from the director of the bureau of traffic and transportation or designee that the work will not constitute a traffic hazard or undue and dangerous distraction to motorists or pedestrians;
- (2) A certification from the executive director of the urban design commission or designee that the work does not contain and is not intended to convey a commercial message primarily, provided that the name of a sponsor for said work may be displayed on an adjacent plaque or similar display that is no more than two square feet in area; and
- (3) A certification from the director of the bureau of cultural affairs or designee that the work is not inconsistent with the City of Atlanta's public art program. The council, if provided with these certifications, shall approve, conditionally or otherwise, a work of public art upon finding that it does not negatively affect the public interest related to aesthetics, additional sign clutter, and public safety. In making this finding, the council shall consider the required certifications; the spatial relationship of the proposed art to the building or premises upon which it is located as well as the surrounding area; vehicular and pedestrian traffic safety; the existence of nearby signs; and the size, dimensions and other physical characteristics of the proposed work. In applying these criteria, the council shall in no way restrict the content or message of the proposed work.

(Ord. No. 2003-97, § 6, 10-14-03)

is amended to read as follows:

Sec. 16-28.025 - Reserved

SECTION 2: The Code of Ordinance of the City of Atlanta is amended at Chapter 46 entitled Civic and Cultural Affairs by adding a new article entitled “Works of Art on Private Property” which is to read as follows:

ARTICLE V - WORKS OF ART ON PRIVATE PROPERTY

Sec. 46-200 -- Findings, Purposes and Intent

The City of Atlanta finds that the regulation of non-commercial messages intended to function as artistic expression directly affects the public health, safety, and welfare. The City finds that unless the displays of works of art on private property are subject to reasonable regulations, that such displays can become excessive, can be distracting and dangerous to motorists and pedestrians, can be used to display commercial messages which would exceed the limits set forth in the Sign Ordinance and substantially detract from the beauty and appearance of the city. The city further finds that there is a substantial need directly related to the public health, safety and welfare to comprehensively address these concerns through the adoption of the regulations set forth in this article. The purpose and intent of the governing authority of the City of Atlanta in enacting this article are as follows:

- (1) To protect the health, safety and general welfare of the citizens of the City of Atlanta, and to implement the policies and objectives of the comprehensive development plan of the City of Atlanta through the enactment of a comprehensive set of regulations governing the regulation of non-commercial messages intended to function as artistic expression in the City of Atlanta.
- (2) To regulate the erection and placement of non-commercial messages intended to function as artistic expression on private property within the City of Atlanta in order to provide safe operating conditions for pedestrian and vehicular traffic without unnecessary and unsafe distractions to drivers or pedestrians.
- (3) To preserve the value of property on which non-commercial messages intended to function as artistic expression are located as well adjacent properties and the properties from which artistic expressions may be viewed.
- (4) To maintain an aesthetically attractive city in which signage displaying commercial messages is compatible with the use patterns of established zoning districts.
- (5) To maintain for the city's residents, workers and visitors a safe and aesthetically attractive environment and to advance the aesthetic and cultural interests of the city.
- (6) To maintain and maximize tree coverage within the city.
- (7) To establish comprehensive regulations which effectively balance legitimate efforts of property owners to display works of art with the need for the safe flow of vehicular and pedestrian in an aesthetically attractive environment for residents, workers, and visitors to the city.
- (8) To provide for the protection of free speech rights provided by the Constitution of the State Georgia and the United States Constitution.
- (9) To establish a permit system to allow non-commercial messages intended to function as artistic expression on private property to be displayed in zoning districts consistent with the uses, intent and aesthetic characteristics of those districts

(10) To continue to encourage the display of public art as a vital part of the urban landscape, while imposing reasonable restrictions on such art in order to protect public safety and to avoid the abuse of a public art exemption as a means for evading the purpose and effect of these sign regulations through works with a commercial theme or message.

Sec. 46-201 -- Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Commercial message* or *commercial speech* means any, wording, logo, or other visual representation that directly or indirectly names, advertises, or directs attention to a business operated for profit, or to a product, commodity or service for sale or lease, or to any other commercial interest or activity. For the purpose of this article, the presence of an economic motivation based on the use of the private property shall be evidence that the expression is intended to be a commercial message or commercial speech.

(b) *Private property* is for the purposes of this article, real property located within the City of Atlanta that is subject to the Zoning Code.

(c) *Public art* is for the purposes of this article defined as an expression of creative skill or imagination in a visual form, such as painting or sculpture which is intended to beautify or provide aesthetic influences to public areas on private property or areas on private property which are visible from the public right of way or other public spaces. Public art may be physically expressed as the creation of a structure or the depiction of visual expression located on the outside of a building on private property and which is visible from a City park, sidewalk, street or other right-of-way. Certain definitional criteria are included in the definition for the purpose of differentiating the expression from commercial speech that is regulated by the Sign Ordinance and for the purpose of preventing distraction to vehicular and pedestrian traffic and providing certain reasonable safeguards that will protect the quiet enjoyment of adjacent property or property from which such expression is visible. Those criteria are as follows:

(1) The expression is not commercial speech;

(2) The size and manner of the expression does not negatively affect the safe and efficient flow of pedestrian and/or vehicular traffic; restrict ingress and egress to any structure; interfere with the operations of neighboring businesses; or prevent the quiet enjoyment of adjacent property or property from which such expression is visible;

(3) The expression does not include a component that violates the Noise Ordinance;

(4) The expression will be installed in a manner that will remain fixed in the location and will be displayed in the manner that is approved by the application procedure that is provided in this article.

(d) *Sign Ordinance* refers to Chapter 16-28A of the Zoning Code as well as any other parts of the Zoning Code which regulate the display of commercial messages as well as any amendments thereto.

Sec. 46-202 -- Permits Required for the Installation of Public Art.

- (a) Public art may be placed on private property only after the approval of a permit which is issued in accord with this article.
- (b) Street furniture or incidental decorative structures which are required or permitted by the Zoning Code do not require a permit for the installation of public art.
- (c) All commercial messages shall be regulated by the Sign Ordinance and permits for the display of non-commercial messages when substituted for the display of commercial messages permitted by the Sign Ordinance
- (d) The name of the artist creating permitted public art and a sponsor may be displayed on an adjacent plaque or similar display that is no more than two square feet in area and less than 60 inches in height provided that such plaque or adjacent display is made a part of the application.

Sec. 46-203 -- Permitting Procedures.

- (a) *Form of the Permit Application.* Before public art can be displayed on private property, an Application for Public Art Approval (the "Application") shall be submitted to the City of Atlanta Office of Cultural Affairs with a sufficient number of copies to allow simultaneous routing for the certifications required by this article. The Application form shall be created by the Office of Cultural Affairs and the form of the Application may be amended as necessary to carry out the intent of this article, and shall require that the following information, without limitation, be provided:
  - (1) The property address and Fulton or DeKalb County parcel identification number where the proposed public art will be located;
  - (2) A site plan setting where forth in detail where the public art is to be located on the property, its overall dimensions, the materials to be used and the location of any plaque identifying the artist and/or the sponsor;
  - (3) The artist's statement describing the proposed public art;
  - (4) A photograph or detailed graphic of the proposed public art project;
  - (5) A notarized statement signed by all property owners of record that the Application is authorized to be submitted and which specifically states that each owner has reviewed the Application including the photograph or reasonably accurate graphic of the proposed public art installation to be displayed and that each owner has approved its submission based on the material reviewed;

- (6) The resume of the artist and if attribution is to be made on the permitted plaque, the text of such attribution;
- (7) The name of any sponsor if the sponsor is to be identified on the permitted plaque;
- (8) The Neighborhood Planning Unit (NPU) where the installation will occur.

(b) *Routing of the Permit Application.* The Office of Cultural Affairs shall forward a copy of a completed Application to each of the offices which provides the certifications necessary for the processing of the Application within ten (10) days after such Application is deemed complete. Each official who is empowered to make a determination under this article may delegate the making of such determination.

(1) After receipt of an Application, the Office of Cultural Affairs shall inform the applicant in writing or by electronic mail within ten (10) days whether the application is complete. It shall be the duty of the applicant to respond to the Office of Cultural Affairs and complete the Application in a timely manner.

#### Sec. 46-204 -- Certifications.

The Application for Public Art Approval shall receive three certifications which are intended to assist the Council with its determination that the public art installation as set forth in the Application furthers the significant governmental interest in the regulation of such installations:

(a) *Compliance with the municipal art plan.* Within thirty (30) days after the Application is deemed complete, the executive director of the Office of Cultural Affairs determine whether the proposed public art installation meets the written criteria of the City's public art program as set forth in Article III of this Chapter;

(b) *Non-commercial message.* Within thirty days of the receipt of the Application from the director of the Office of Cultural Affairs, the executive director of the Urban Design Commission shall determine whether the proposed public art is commercial speech or contains a commercial message as defined in this article.

(1) A finding that the proposed public art is not commercial speech or does not contain a commercial message shall be certified by the executive director of the Urban Design Commission and the certification transmitted to the Office of Cultural Affairs within the time required.

(2) A final decision by the executive director of the Urban Design Commission that the proposed public art is commercial speech or contains a commercial message shall likewise be transmitted to the

Office of Cultural Affairs by the executive director of the Urban Design Commission within the time required.

(3) The display of the name of the artist or the sponsor on the plaque permitted by this article shall not cause the public art to be deemed commercial speech.

(4) The determination that a display contains commercial speech shall not prevent a determination by the City Council on the public art installation but a commercial message shall require that a sign permit be obtained in addition to any approval required by this article.

(5) Where an applicant disagrees with the final decision of the executive director of the Urban Design Commission that the proposed public art is commercial speech or contains a commercial message and does not wish to amend the Application or obtain a sign permit, the applicant may appeal the administrative determination of the executive director of the Urban Design Commission to the Superior Court of Fulton County by filing an appeal of the administrative decision within thirty (30) days of date that the final decision is transmitted to the applicant in writing.

(c) *Traffic hazard determination.* Within thirty days of the receipt of the Application from the Office of Cultural Affairs, the director of the Office of Traffic and Transportation shall make a determination whether the proposed public art as presented in the application is a traffic hazard or will create an undue and dangerous distraction to motorists or pedestrians.

(1) A finding by the director of the Office of Traffic and Transportation that the proposed public art does not create a traffic hazard or will not create an undue and dangerous distraction to motorists or pedestrians shall be certified by the director of the Office of Traffic and Transportation and the certification transmitted to the Office of Cultural Affairs within the time required.

(2) A final decision the director of the Office of Traffic and Transportation that the proposed public art creates a traffic hazard or an undue and dangerous distraction to motorists or pedestrians shall likewise be transmitted to the Office of Cultural Affairs within the time required.

(3) Where an applicant disagrees with the final decision of the director of the Office of Traffic and Transportation that the proposed public art creates a traffic hazard or an undue and dangerous distraction to motorists or pedestrians and does not wish to amend the Application, the applicant may appeal the administrative determination to the Superior Court of Fulton County by filing an appeal of the administrative decision within thirty (30) days of date that the final decision is transmitted to the applicant in writing

Sec. 46-205 - Effect of the Certifications.

- (a) *Compliance with the municipal art plan.* Compliance with the municipal art plan shall not be required but the Office of Cultural Affairs may specify how the Application can be amended to comply when issuing its certification.
- (b) *Non-commercial message.* If the executive director of the Urban Design Commission certifies that the proposed public art does not contain commercial speech or a commercial message or that a sign permit has been obtained, the Application can proceed.
- (c) *Traffic hazard determination.* No public art installation can be the subject of legislation until the director of the Office of Traffic and Transportation has certified that the proposed public art as presented in the Application is not a traffic hazard and will not create an undue and dangerous distraction to motorists or pedestrians.

Sec. 46-206 - Presentation of Application to Neighborhood Planning Unit.

(a) After receipt of notice from the Office of Cultural Affairs that the required certifications have been obtained in a manner which allow the Application to proceed, the Office of Planning shall place the Application on the meeting agenda for the Neighborhood Planning Unit (“NPU”) where the installation is to be located.

(1) The Application shall be placed on the agenda for the earliest occurring NPU meeting that provides the NPU with at least thirty (30) days to review and offer a recommendation regarding the Application.

(2) The applicant shall be required to attend the NPU meeting at which the Application is to be presented. NPU consideration of the Application shall not be deferred to a later meeting unless the Applicant is present and consents.

(b) After the NPU meeting at which the Application is presented, the NPU shall have fifteen (15) days to forward its recommendation to the Office of Cultural Affairs. If no recommendation is received by the deadline, a finding of no recommendation shall be recorded on the Application.

Sec. 46-207 - Legislative Approval of Applications.

(a) *Personal paper by a councilmember:* Where a councilmember introduces a personal paper in support of the installation of public art prior to the submission of the Application being received by the Office of Cultural Affairs, the personal paper shall be held in the committee of purview until such time as a complete Application is submitted, the required certifications have been obtained and the NPU recommendation is received, at which time the personal paper shall be amended to include such materials and the legislative process shall continue in the same manner as a paper submitted by the Office of Cultural Affairs.

(b) *Legislation instituted by the Office of Cultural Affairs:* Upon the return to the Office of Cultural Affairs of all certifications required by this article and the recommendation of the NPU or the expiration of the time allowed for such recommendation, a determination shall be made as to whether the Application can be made the subject of an ordinance. In the event that the Office of Cultural Affairs finds that the required certifications have not been obtained, the applicant shall be notified and given the opportunity to amend the Application in a manner that may allow the certification to be issued under a new Application. If all required certifications have been obtained, the Office of Cultural Affairs shall create the legislation required by this article. After the NPU recommendation is received, or the time for the receipt of such recommendation has elapsed, whichever first occurs, the Official of Cultural Affairs shall initiate and manage the legislative process.

(c) *Final Action:* The City Council may approve the ordinance presenting the Application, with or without conditions or may vote to adverse the ordinance.

#### Sec. 46-208 - Public Art Not Subject to Sign Ordinance Size Limits

A public art installation that has been approved as set forth in this article shall be not be considered a sign that is subject to the limitations set forth in the Sign Ordinance provided however that where such display has mixed commercial and noncommercial messages, the limitations of the Sign Ordinance shall apply to the entire display and not just to the portion that contains commercial message.

#### Sec, 46-209 - 46-299 - Reserved

Section 3: This ordinance shall become effective when signed by the Mayor or as otherwise provided by operation of law.