



## City of Portland, Oregon - Bureau of Development Services

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TO: Design Commission

FROM: Mieke Keenan

DATE: March 21, 2019

REGARDING: AMENDMENTS TO TITLE 4, ORIGINAL ART MURALS

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### BACKGROUND

The history of mural regulation within the City of Portland stretches back more than 20 years and is tied to the City's sign regulations, the Oregon Constitution and limitations on a government's ability to regulate the content of speech. In summary, the courts have determined that the city cannot regulate commercial speech differently from non-commercial speech, nor can the city regulate murals or artwork distinct from signs if the distinction requires viewing the content of the piece to make a regulatory determination. As a result, starting in 1998, the city regulated all signs and murals under the same set of regulations.

In response to the legal limitations, the city developed two procedures for reviewing murals. The first project, the *Public Art Murals Program* was effective in January 2005. The City had long recognized that murals accessible to the public can provide significant benefits to the community. On behalf of the City, the Regional Arts & Culture Council (RACC) incorporated a public art murals program into their existing Public Art Program, with the city providing \$50,000 annually for the program, an amount that has not changed since the program began. RACC approves and partially funds murals that are either applied on publicly-owned facilities or on private walls dedicated to the public through an Art Easement and are added to the City's public art inventory.

While this process provided an outlet for certain types of murals that met selection criteria established by RACC, it was not a completely satisfying solution to the mural issue in the city. Fortunately, a summary judgement made by a Multnomah County Judge in 2006 provided an opportunity to consider regulating murals using other mechanisms other than the review of content. This, along with the urging of artists, led to the development of the second project, *Original Art Murals*.

### TITLE 4, ORIGINAL ART MURALS

Adopted in 2009, Title 4 Original Art Murals project created a new mural regulatory code and permitting process. Title 4 created a set of minimum criteria for reviewing and approving murals based upon application and not based on content. Criteria included limits on where the mural could go, a minimum duration that the mural had to stay up and restrictions on receiving compensation for displaying the mural. In addition to Title 4, a set of Administrative Rules was developed to implement the title. These rules included some additional standards and set up the process for applicants to apply for a permit and engage the neighbors. Implementation and enforcement of these provisions is done by the Bureau of Development Services.

## SUCCESS

The *Original Art Murals* program has been largely successful. BDS staff and customer from the muralist community have been able to successfully navigate the rules and permitting procedures. However, the number of mural permits over the last three years is relatively low with a total of 49 permits in the past three years (2015-2018). The overall objective of this code amendment project is to build on the program's success by relaxing some of the existing restrictions and create more opportunities for muralists while maintaining the original intent of the Mural Code. A summary of issues identified by RACC and BDS and proposed solutions are provided below.

## SUMMARY OF ISSUES AND PROPOSED CHANGES

**Issue #1:** Murals are defined with a limitation that they are applied to the exterior walls of buildings. There have been requests to paint murals on other structures visible from the ROW, such as retaining walls, stairwells, pedestrian bridges, bridge support structures/columns, etc.

Proposal: Expand the allowable surfaces where murals can be applied from exterior walls of buildings only, to any structures on private property (exemptions apply). Murals continue to be prohibited in the right-of-way.

**Issue #2:** There is a confusing distinction between the maximum mural height (30-ft) in Title 4 and the maximum height allowed in Design Overlay Zone through administrative rules (up to the floor level of the 3<sup>rd</sup> floor).

Proposal: Remove the height restriction in the Design Overlay Zone in the administrative rule. This will create a consistent height metric throughout the city.

**Issue #3:** The administrative rules do not allow any murals on street facing walls in the Central City that are closer than 20-feet from a street lot line.

Proposal: Remove this restriction from the Design Standards to allow murals on street facing walls in the Central City regardless of distance from the street lot line.

**Issue #4:** The code requires that a mural remain in place for 5-years. This length of time can discourage prospective property owners from committing to a mural. It also limits opportunities for muralists to paint new art.

Proposal: Reduce the time requirement from five-years to two-years.

**Issue #5:** Process – Mural permits fees were originally set at \$250.00 dollars. This amount was reduced to \$50 so that cost would not be an obstacle. However, \$50.00 does not cover the cost of an inspection, which is approximately \$100.00.

Proposal: Maintain the \$50.00 permit application fee and update the administrative rule to reflect the current process that directs applicants to mail in a picture of the mural once installed. This picture is kept on file with the mural permit.