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Original Art Murals Project

Regulatory & Permit Process Improvement



"Share the Road," 2006. Lead Artist, Sara Stout. Located at 4307 SE Hawthorne

Recommended Draft

June 1, 2009



City of Portland Bureau of
Planning and Sustainability
Sam Adams, Mayor | Susan Anderson, Director

Original Art Murals Project
City Council Hearing

Wednesday June 24, 2009

2:00 p.m.
Council Chambers,
City Hall
1221 SW 4th Ave.
Portland, OR 97204

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A digital copy of this report can be found at:
<http://www.portlandonline.com/planning/index.cfm?c=49623&a=229011>

Acknowledgements

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Original Art Murals

Summary and Recommendation

Summary

The Original Art Murals Project creates a new process to allow murals to be permitted separately from sign regulations. The process will complement the existing city public art mural program administered by the Regional Arts and Culture Council's (RACC), by providing an option for privately funded murals not intended for the city's art collection. Original Art Murals will be defined specifically as a hand produced work of visual art that is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building. Murals reviewed under this process will need to stay intact and in place for a period of at least five years, with the building owner receiving no compensation for the display of the mural.

This new process will establish a mural permit, with administrative rules, a fee structure and inspections. To be considered an original art mural, the mural will have to be permitted under this new process. Murals that are not approved under this process (or are not part of the RACC Public Art program) will still be classified as signs.

This report consists of three parts. The first part, Part A contains four sections which include an overview and background of murals in the city, provides a legal history of murals, explains the mural permitting process and reviews the project coordination and outreach.

The second part of the report, Part B, contains the amendments to various Titles of the City Code that work in concert with the new Title created to permit murals. In summary the changes to the City Code include:

- Title 3 Administration: Amends the Title to give responsibility for administration and enforcement of the new Title to the Bureau of Development Services.
- Title 32, Signs and Related Regulations: Amends the code to exempt permitted original art murals as defined in the new Title.
- Title 33, Planning and Zoning: The first amendment exempts permitted original art murals from Design Review. A second amendment recommended by the Planning Commission exempts permitted original art murals from Historic Design Review if the murals are proposed on non-contributing buildings within historic or conservation districts.
- A New Title 4, Original Art Murals; Creates a new Title, Title 4, to regulate "Original Art Murals".

The third part of the report, contained in the appendix includes the draft of the Administrative Rules that document the process for securing a mural permit as well as the additional design standards that will apply in certain situations, and the inspection and enforcement procedures.

Planning Commission Recommendation

Officially the Planning Commission's role in this project is to make a recommendation on the land use codes, Title 32 Signs & Related Regulations and Title 33, Planning & Zoning. Related to these titles, the Planning Commission recommends that the City Council:

- Adopt this report and ordinance; and
- Amend the Zoning (Title 33) and Sign (Title 32) Codes as shown in this report.

Although the Planning Commission does not have an official advisory role in the review of non-land use actions, the Commission did review the components of the new mural program in order to reach their recommendation. In order for this program to be a success, the Planning Commission also strongly suggests that the City Council:

- Amend the Administration Title (Title 3) and adopt Title 4, Original Art Murals, as shown in this report;
- Provide recommendations to the Bureau of Development Services to facilitate adoption of the Draft Administrative Rules for the permitting of Original Art Murals; and
- Direct staff from the Bureaus of Planning & Sustainability and Development Services to work with the City Landmarks Commission and the Regional Arts and Culture Council (RACC) to establish the procedure for reviewing Public Art Murals in historic and conservation districts and on landmarks as anticipated by Council under Ordinance 178946 establishing the Public Art Mural Program.

Part A. Original Art Murals Project

I. Overview

A. A Brief History of Murals in Portland

Prior to 1998, the City exempted all murals from its sign regulations. In 1998, the largest owner of billboards in Portland, AK Media, filed a lawsuit against the City claiming that by exempting murals from its sign regulations, the City was discriminating against advertising in favor of murals. This was alleged to violate the free speech provisions of both the Oregon and United States Constitutions. The Multnomah County Circuit Court ruled in AK Media's favor, finding that the City had made an unconstitutional distinction between two types of speech, and was therefore regulating speech based on content. The City was faced with the choice of not regulating signs at all, or regulating murals as signs. To comply with the legal ruling, the City changed its Sign Code to remove the exemption for murals and regulated both murals and signs in the same way. As a result, murals were limited to 200 square feet in size (at most) in all areas of the City. This limitation on murals resulted in a substantial reduction in new murals within the City.

B. The Public Art Murals Program administered through RACC

Since this change, artists, community groups and building owners, as well as many citizens, expressed dissatisfaction with the status quo, which seriously impeded the creation of new mural art in our City. In 2004, Mayor Katz and her staff worked with interested stakeholders to find a solution to this issue. This resulted in the development of the city's Public Art Mural process in 2005.

Through this project, the city expanded its public art program to include murals. The city exempts all public art, including public art murals, from the Sign Code and from certain zoning requirements. The Regional Arts and Culture Council (RACC) administers the public art program. Public art murals can be placed on public wall space and paid for with public funds administered by RACC. Through the RACC program, the City acts to select and fund art (including murals) to add to its public art collection, and does not act as a regulator. This distinguishes the RACC public art murals program from the old, broader exemption for all murals that was found unconstitutional.

As part of this proposal, RACC adapted its existing public art approval criteria for use in evaluating public art murals. These criteria include artistic quality, originality, context, permanence, diversity, feasibility, scale and community support. Like other public art administered by RACC, public art murals are owned by the public. Public art murals are placed on wall space that is either already owned by the public (such as on the walls of publicly owned buildings) or on wall space that is dedicated to the public through a public art easement. Artists retain copyright protection for their artwork. Although an easement is granted to the city, responsibility for maintaining the mural lies with the building owner.

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The RACC process has resulted in the creation of at least 25 murals since its implementation in early 2005, and has allowed the city to include murals in its public art collection. However, the program is not designed to address many situations, where there is no desire for the installers to partner with the city or receive funding; for example murals that are privately owned or not intended to be part of the city's collection. The intent of the RACC review process is to establish artistic standards; standards that may be higher than can be achieved with amateur or community oriented projects. The Public Art Advisory Committee, in charge of the review of RACC proposed murals, takes community desires into consideration, but must still apply its standards of artistic quality. Because the RACC program is only designed to address murals that will be placed on a public art easement or other public property, and which will become a part of the City's public art program, it does not provide a vehicle for the creation of murals on private property which are not intended to become part of the City's public art collection. For this reason, the RACC program is not a complete solution to the murals issue in the city.

Some examples of murals approved through RACC Program



Community Cycling Center at NE Alberta & NE 17th. Ave.



Tri-Met Light Rail Facility SW 11th & SW Morrison

C. A New Approach

The legal case with AK Media, originally filed in 1998 is ongoing and has yet to be finally resolved. However, as the result of a recent opinion from the Multnomah County Circuit Court (clarifying the basis for the original holding invalidating the prior murals exemption), as well as other intervening court decisions, there may now be the opportunity to consider regulatory alternatives that can constitutionally permit the City to allow murals while continuing to regulate most signs. This distinction would not be based on content, but upon the medium or method of application that is used to create that expression, as well as other criteria that are not dependent on the content.

With this backdrop, the Original Art Murals Project intends to create a new mural regulatory code and permitting process. Murals, defined specifically as "Original Art Murals", will be hand produced works of art that are either painted or tiled directly upon, or affixed directly to an exterior wall of a building. The new Title will apply to murals defined as Original Art Murals. Under this Title, murals will need to meet a minimum set of criteria such as maximum height limits, a 5 year minimum duration, a prohibition on receiving compensation for displaying the mural and so on. In conjunction with the new Title, the Bureau of Development Services is creating a set of Administrative Rules to provide additional standards that the murals will follow, including special standards that apply in areas within Design Overlay Zones and in certain situations in Historic Resource Overlay Zones. These rules will provide application requirements and procedures for approval of the permit, including a requirement to engage the neighborhood by requiring a posting of the proposal and the holding of a meeting. Once completed, approved murals will be inspected once and a photograph will be taken for record-keeping. Enforcement of this new Title will be provided by the Bureau of Development Services. More information on this approach is provided in Section III.

Although this new approach provides the city with a simple process for allowing murals, it does not provide opportunities for the city to regulate the content of the mural. As long as the mural proposal meets the definition of "original art mural" and satisfies the conditions of the code and Administrative Rule, the installation will be allowed. The city expects this process will be used both for non-commercial community murals and for displays of commercial speech by businesses. Although the neighborhood will be allowed to comment on the mural, their comment will be non-binding on the free speech rights of the applicant.

II. Legal History of Murals

A. The Legal Starting Point

Starting at least as early as the mid 1980s, the City attempted to exempt murals from its sign regulations. Prior to 1991, the Zoning Code defined a sign as "Materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way, private roadway or another property." The code exempted murals, known as "painted wall decorations" from the sign regulations. Prior to 1991, "painted wall decorations" were defined as

“displays painted directly on a wall and are designed and intended as a decorative or ornamental feature.” In 1991, these definitions were amended to provide greater clarity as to what constituted a (regulated) painted wall sign and what constituted an (unregulated) mural or “painted wall decoration.” The new definitions were as follows:

Sign -- “Materials placed or constructed primarily to convey a message and which can be viewed from a right-of-way or another property. Signs contain text, numbers, registered trademarks or registered logos.”

Painted Wall Decorations -- “Displays painted directly on a wall which are designed and intended as a decorative or ornamental feature. Painted wall decorations do not contain text, numbers, registered trademarks, or registered logos.”

In 1998, AK Media filed suit against the City claiming that the distinction based on the presence or absence of “text, numbers, registered trademarks or registered logos” was an unconstitutional, content-based regulation of speech under the Oregon and United States Constitutions. In November of 1998, the Multnomah County Circuit Court issued a summary judgment holding that the murals exemption, based on this definition, was unconstitutional under the Oregon Constitution. The City immediately amended the definition of sign, and removed the exemption for painted wall decorations, to comply with the Court’s ruling. The Multnomah County Circuit Court ruled that the City’s sign code, as amended to remove the exemption for murals (or “painted wall decorations”), was now constitutional.

Since the murals exemption was removed, murals have been regulated as signs in the City. As a result, the largest allowable mural anywhere in the City (absent an adjustment and except for Public Art Murals approved by RACC) is 200 square feet.

B. The Public Art Murals Program

In 2004, Mayor Vera Katz spent many months exploring an alternative approach with staff and a variety of stakeholders, namely to exempt all “public art”, including public art murals from the sign code. The concept was that public art (that is publicly funded art in public spaces approved by RACC) would not fall under the Sign Code but would instead go through a RACC approval process.

Although there were no Oregon cases applying the Oregon Constitution to public art, there had been federal cases that indicated that a government, when acting as a purchaser or funder of public art, had greater leeway to make content distinctions when reviewing art for public display. This is the approach used under the Public Art Mural Program that became effective in 2005. Under this program, the City acts as a patron or funder of art, and in its proprietary capacity, displays art in spaces it either already owns or which are donated to it for that purpose. The City is not acting as a regulator. The regulations of the Sign Code remained unchanged, and all expression previously available under the Sign Code remained available. The amendments exempted only public art (that is, art funded by, or donated to the City/Public Art Trust Fund and owned by the City) in public

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locations (in/on publicly owned buildings/spaces or in/on easements donated to the City). This distinguished the amendment from the blanket exemption for murals (“painted wall decorations”) previously held to be unconstitutional. *(For more detail on this proposal, please see the Public Art Mural Program: Adopted Report).*

C. Recent Legal Opinions

The original case between the city and AK Media has been subject to several appeals by the City and AK Media, both over the decision and over the monetary awards. Since that time, Clear Channel Outdoor has become the successor in interest to AK Media.

A second trial, on remand, was held in 2006. As part of this trial, Judge Marcus allowed mural activist Joe Cotter to intervene in the trial to represent the interests of the mural arts community. This decision allowed the judge to listen to testimony on the effect that the city’s sign regulations had on the mural community. Clear Channel again urged the Court to issue an injunction requiring the City to allow the company to erect numerous billboards and affirm the prior damages and attorney’s fees. However, the city, in opposition, urged the Court to continue to deny injunctive relief and revisit the damage and fee awards. Significantly for this proposal, the Court accepted the City’s invitation to revisit the language in its decision regarding whether a purpose of favoring art over advertising would, in itself, render an otherwise content-neutral regulation content-based. Summarizing the courts opinion, it was suggested that the city could use other mechanisms outside of the review of the content in order to create a system that creates alternatives to prefer one means of expression, provided that other alternatives exist for the other means of expression. The court also vacated the previous award of damages and attorney’s fees.

III. Details of the Mural Permitting Proposal

A. Overview

There are several components to the new Mural Permitting Process. They include:

- Establishment of a new Title (Title 4) for Original Art Murals, and the inclusion of a reference to this Title within Titles 3 (Administration), 32 (Signs and Related Regulations), and 33 (Planning & Zoning).
- In conjunction with this Title, creation of an Administrative Rule overseen by the Bureau of Development Services (BDS) to provide additional standards, including limitations in design and historic resource overlay zones. This rule lays out the procedure for submission, review, approval, inspection and enforcement of a mural permit.
- A new neighborhood notification and posting process to give neighbors an opportunity to review and discuss the proposed mural with the applicant.
- A new permit type created specifically for the mural permit process. This permit and its review procedures will be added into existing BDS processes.

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- A new fee incorporated into BDS's revised fee schedule, to cover the cost of administering the program.

The above components are described in greater detail below.

B. New Title for Original Art Murals

A new Title (proposed as Title 4) is being created that will be applicable to Original Art Murals. The intent of this Title is to provide a process by which an applicant can propose a mural. This process will be separate from the city's land use regulations and the public art program. The process will not affect current land use regulations or land use reviews, with the exception that a mural permitted under this new process will be exempt from these land use regulations. The new Title defines an Original Art Mural as "a hand-produced work of visual art which is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building". Original Art Murals will not include any image that is digitally or mechanically produced or reproduced, any changing image, or one that contains mechanical or electronic components.

Basic Mural Requirements

The new Title also includes the basic criteria that Original Art Murals must meet in order to receive a permit. The criteria include the following::

- The mural does not exceed a height of 30' from the adjoining grade;
- The mural remains in place without alterations for a period of at least five years;
- The mural does not extend more than 6" from the plane of the wall that it is affixed; and
- The mural must meet additional standards if it is located in a Design Overlay Zone, or in limited cases, if it is in a Historic or Conservation District. These standards are established within the Administrative Rule.

The purpose of these basic standards is to set guidelines so that the mural becomes a permanent fixture, with a scale accessible to the immediate community, and with the intent that the mural becomes a community asset. At this point, the intent in keeping the mural close or flush with the adjoining building wall, is to avoid larger scale installations or sculptural three-dimensional installations until the Bureau has a chance to measure the success of this initial program.

Prohibited Murals

The Title contains specific instances where an original art mural is prohibited. These instances include:

- Murals on residential buildings containing fewer than 5 dwelling units;
- Murals for which compensation is given or received in exchange for the display of the mural. (This excludes one-time compensation given to the person who creates the mural);
- Murals, whose installation causes a property to go out of compliance with any requirements of the Zoning Code or with any land use approval conditions;
- Murals placed within a public right-of-way;

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- Murals located on historically significant (i.e. contributing) structures within historic or conservation districts; and
- Murals located on historic or conservation landmarks.

Since the intent of the mural project is to allow works of art that are a community asset, murals placed on single-dwellings or small multi-dwelling structures would not serve this purpose. However, a mural on a community facility in a residential zone, such as a school or church can achieve public benefits and become a community asset. Regarding compensation, an image that is displayed in exchange for compensation, places emphasis on a private transaction for private gain (most commonly signage) and not on the benefits of original artwork for the community. Likewise, a mural that may cause a property to go out of compliance with the city's Zoning Code diminishes the overall public benefit that the regulation is intended to implement and is not consistent with the Comprehensive Plan goals. Because work in a public right-of-way is generally not subject to review by the Bureau of Development Services, the new Title cannot be used to place murals in the right-of-way. Lastly, historic resources have specific characteristics which need protection. Because the mural program as written is content neutral (with no ability to regulate the content of the proposed mural), it could not ensure the continued protection of these resources. However, the Planning Commission agreed with the public testimony that non-contributing structures in historic or conservation districts do not need the same element of protection as contributing structures or landmarks. As a result, the new Title prohibits murals on landmarks or on contributing structures within a district, but allows them on non-contributing structures located within a historic or conservation district, provided they meet the additional design standards within the Administrative Rule.

Other Sections

Finally the new Title provides references to other parts of the mural process, such as neighborhood involvement, violations and enforcement that are part of the Administrative Rule. Detail of these processes is given below. Murals that don't meet the standards and requirements of the New Title, and accompanying Administrative Rules, will continue to be considered signs, and will remain subject to the Sign Code (Title 32) regulations.

C. Administrative Rule for Murals

In order to keep the mural Title relatively simple, and to provide greater flexibility for the Bureau of Development Services to administer the process, many details of the mural program are placed in an Administrative Rule that describes the procedure for getting a mural permit, provides the additional standards that apply in Design and Historic Overlay zones, and provides the process for oversight of the mural once it is created, including alterations or removal of the mural, and enforcement of violations to the Title or the Administrative Rule. The key elements of the proposed Administrative Rule are as follows:

Definitions

This section provides the definitions for terms used throughout the Administrative Rule. Generally, terms not included here are intended to have their standard dictionary definition.

Permit Application

This section provides an applicant with the information necessary to submit an application. The rule states the required submittal materials needed to review a mural application. This will include size and placement information for the mural, elevation drawings of the building, and a completed application form that is signed by the building owner. The application will include a certification that the mural meets all the requirements of the Title to be signed by the applicant.

Design and Historic Overlay Standards

These standards balance the need to have a simple mural permit process with the desire to have greater oversight in areas of design significance. The standards will also apply to murals on structures within Historic or Conservation Districts where those structures do not, by themselves, provide a benefit to the historic fabric of the district. These buildings are identified as “non-contributing” structures. Murals on buildings that are Landmarks or that are identified as contributing to a Historic or Conservation District are not permitted under this process.

The Design and Historic Overlay Standards include provisions to ensure that the mural is integrated into, and does not obscure the architectural features of the building. Murals also cannot be placed on wall materials such as stone or unpainted brick, and cannot affect materials on a building that were specifically approved through a Design, or Historic Design Review. This is to ensure that the placement of the mural doesn't cover up a material or feature that was approved as part of a land use review process.

Approval, Inspections, and Enforcement

The Administrative Rule sets out the process for the approval of a mural permit and the inspection and violation procedures once the mural has been approved, to verify its installation and ensure that it does not change over the first five years of its existence. However, there may be certain situations, such as if a building undergoes extensive remodeling, or if the building is acquired by a new owner, where continuance of the mural is problematic. In these cases, a request may be made to remove or alter the mural prior to the end of the five year period, if the request is made to the City in accordance with the Administrative Rule.

Lastly, these sections provide the framework for how violations will be handled. Similar to violations of the Zoning Code, the Code Compliance group will be charged with enforcing the new Mural Code and the associated Administrative Rules.

D. Neighborhood Notification

This is a new requirement specific to the Original Art Mural Permitting process. The intent of this process is to provide a mechanism to notify neighbors in the surrounding area about the mural proposal as well as notifying the corresponding neighborhood association and district coalition offices. In order to receive approval of the permit, the applicant will need to demonstrate that the neighborhood contact and meeting requirements have been met.

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There will be three steps to the notification process. The first step will be to post the site of the proposed mural with a sign that the applicant will obtain from the Development Services Center (DSC) in BDS. This posting will include information about where the mural will be located and invite viewers to come to a neighborhood meeting. The posting will occur at least three weeks before the meeting. The second step will require the applicant to send a letter to the Neighborhood Association and District Coalition offices notifying them of the proposed mural and of the upcoming neighborhood meeting. A certificate of mailing will need to be provided to BDS to ensure that the letter was sent at least 21 days before the meeting. The third step will be to hold the meeting within the neighborhood. This meeting gives the applicant a chance to present the proposed mural to citizens in the neighborhood and to receive feedback from them. Although the meeting offers the chance for the mural artist to work with neighbors or groups, the meeting is not binding on the city's approval of the mural (inasmuch as the city cannot approve or deny the mural based on content). However, it is expected that the meeting will promote open communication between the neighborhood and the applicant or building owner. This meeting will need to be held prior to the approval of the mural permit.

E. New Mural Permit

BDS will establish a new separate mural permit that will be administered through the existing city's TRACS permitting system. The permit will include a new application form and a new set of fees that are paid at the time of submission. While the details of this system are still being developed, it is likely that the permit transaction will be handled by BDS staff in the Development Services Center. Permit approval will not be made over the counter, since the reviewer will need to wait for completion of the neighborhood notification/meeting requirements before signing off the permit. Fees for this permit still need to be approved, but they will be kept to the minimum to cover administrative costs. The basic permit fee is anticipated to be \$250. The bulk of the permits will be charged that fee. Permits within design overlay or historic overlay zones requiring review against additional standards may be charged an additional \$150. Lastly, murals requiring structural review will be applied an additional fee in those situations.

IV. Project Coordination and Outreach

A. Creation of Mural Working Group

In early 2008, the mural artists worked with the offices of Commissioner Adams and Mayor Potter to establish a working group to explore ways to use the court's recent decision to regulate murals in a new way. This working group included members of the council offices, representatives from both the Bureaus of Planning and Development Services, the City Attorney's office, RACC, as well as mural artists and community activists. During the spring of 2008, this group met several times to work out initial ideas for a proposal. The initial proposal was refined during the summer and fall of 2008 into a program to establish the new permitting process.

B. Outreach

Staff created a mailing list composed of members of the mural community as well as citizens involved in the past Public Art Mural Legislative project. Staff also set up information on the Planning Bureau's web page to provide information on the mural project and dates of upcoming events.

On December 16, 2008, the City held a Mural's Town Hall using the mailing list created above and outreach from Commissioner Adams' office. The Town Hall included a presentation of the history of mural issues within Portland, an overview of the RACC program, a review of some mural programs in other cities and a presentation of the initial mural proposal that the mural working group had created. Staff invited attendees to discuss this preliminary mural program and to provide ideas for improvement. These ideas were summarized and reviewed with the murals working group. Suggestions included support for neighborhood involvement, concern about some initial standards in design overlay zones, and concern over the prohibition of murals in historic areas.

On January 8, 2009, Planning and Development Services staff briefed the Design Commission on the project. Staff encouraged the Commission to discuss the proposal and ask questions. The Design Commission was generally supportive of the proposal, but asked staff to work with the Landmarks Commission to find a way to add flexibility in areas of historic resources.

Following the Town Hall meeting, Planning and BDS staff worked with the smaller mural stakeholder group to make some changes to the proposal. This resulted in the simplification of some of the standards within the Design Overlay zones. On March 24, 2009, Planning Staff presented an overview of the project to the Planning Commission, who also gave the project general support.

To address the concerns on the limitation of the program within areas of historic significance, Planning and BDS staff went before the Historic Landmarks Commission to brief them on the project on April 6, 2009. The discussion focused on the program's prohibition in historic areas and landmarks. The fact that the existing RACC public art program can be applied to landmarks and in historic districts (once criteria are adopted by RACC in conjunction with the Landmarks Commission) was also discussed. The Landmarks Commission did not support having a murals permit program that would bypass a land use review. However, they were open to negotiate with RACC and BDS to develop a process where the existing RACC program could be used in areas of historic significance (as Council previously directed in adopting the Public Art Murals Program). As a result of this briefing, staff formally proposed that the Original Art Mural permit program not be allowed in historic or conservation districts, or on landmarks. Staff continued to suggest that RACC, BDS and the Landmarks Commission develop standards for Public Art Murals in historic areas and on landmarks as authorized in the original Public Art Mural proposal.

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C. Hearings

On April 10, 2009, a notice was sent to citizens who had expressed interest in the mural project as well as those on the standard city notification list, which includes representatives from neighborhood and business associations. This notice informed people of the Planning Commission hearing held on May 12, 2009.

At the Planning Commission hearing, staff gave an overview of the mural history and the staff proposal, which included the prohibition on using the program in areas of historic significance. The bulk of the testimony at the hearing came from the mural artists who requested that this program be expanded so that murals could be allowed on "non-contributing" structures within Historic and Conservation Districts through the mural permitting program. The basis of their argument was that these buildings were not considered to have historic significance individually and did not contribute to the significance of the district. In conjunction with this request, the mural artists proposed to require that the additional standards applicable in design overlay zones also apply to these non-contributing structures. The Planning Commission agreed with the testimony and required the staff proposal to be altered to allow mural permits on non-contributing buildings in order to receive the Planning Commission's recommendation.

In addition, the Planning Commission asked staff to continue to work with RACC, BDS and the Landmarks Commission to develop the standards for RACC review and approval of Public Art Murals, destined for the city's public art collection, in areas with historic significance.

This recommendation will be presented to the City Council on June 24, 2009 at 2:00p.m. Notice of the hearing is being sent to the same list that received the Planning Commission notice, and people will have the opportunity to testify in front of the Council.

D. Monitoring for Effectiveness

This will be a new program, and it will be necessary to review the program to ensure that it is meeting the target goals of encouraging the creative expression of mural artists throughout the city, without exceeding available city resources for implementation of the program. Staff from Planning and Sustainability and BDS will need to work together on a monitoring program. This program should monitor the volume and variety of mural permits that are received, analyze the effectiveness of the neighborhood involvement requirement, and review the inspected results. It is expected that staff may have enough submittals within two to three years of the establishment of the program to determine whether the program is successful or needs modification. Therefore, staff recommends preparation of a written report to Council during the third year after the effective date of the program to evaluate its success and any issues that may have arisen.

Part B. Amendments / Additions to City Codes

I. Amendments to City Codes

How changes are shown in this section

Language added to the City Code is underlined; language deleted is shown in ~~strikethrough~~.

The left-hand page provides staff commentary for the code language shown on the right-hand page.

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code.

Part B**Amendments / Additions to City Codes - Commentary****TITLE 3
ADMINISTRATION****CHAPTER 3.30
BUREAU OF DEVELOPMENT SERVICES****3.30.010 Duties of the Bureau of Development Services**

This amendment gives authority to the Bureau of Development Services to administer and enforce the new Title, proposed to be Title 4, Original Art Murals.

Amendments / Additions to City Codes - Code Language

TITLE 3
ADMINISTRATIONCHAPTER 3.30
BUREAU OF DEVELOPMENT SERVICES**3.30.010 Duties of the Bureau of Development Services**

The Bureau of Development Services shall be responsible for:

A. The administration and enforcement of:

1-8. [No change.]

9. Original Art Murals, Title 4

(Renumber existing 9 and 10 to 10 and 11.)

B-G. [No change.]

Part B**Amendments / Additions to City Codes - Commentary****TITLE 32
SIGNS AND RELATED REGULATIONS****CHAPTER 32.12
AUTHORITY AND SCOPE****32.12.020 Exemptions**

This section is amended to provide an exemption from the Sign Code for Original Art Murals that have received approval for placement through the new Title, Title 4. With this provision, Original Art Murals as defined in Title 4 are not subject to the requirements of Title 32.

Part B
Amendments / Additions to City Codes - Code Language

TITLE 32
SIGNS AND RELATED REGULATIONS

CHAPTER 32.12
AUTHORITY AND SCOPE

32.12.020 Exemptions

The following are exempt from the regulations of this Title, but may be subject to other portions of the City Code:

- A-F.** [No change.]
- G.** Painted wall highlights;
- H.** Illuminated wall highlights; ~~and~~
- I.** Public Art as defined in Chapter 5.74.; and
- J.** Permitted Original Art Murals as defined in Title 4.

Part B**Amendments / Additions to City Codes - Commentary****CHAPTER 33.420
DESIGN OVERLAY ZONE****33.420.045 Exempt from Design Review**

This section is amended to provide an exemption from Design Review for Original Art Murals that have received approval through the new Title, Title 4. With this provision, Original Art Murals as defined in Title 4 are not subject to the requirements of Design Overlay Zones. Administrative Rules are being created in conjunction with the new Murals Title to provide additional guidance to murals that may be proposed in design overlay zones.

This amendment also updates some grammatical errors that have resulted from recent additions to the exemption list.

Amendments / Additions to City Codes - Code Language**CHAPTER 33.420
DESIGN OVERLAY ZONE****33.420.045 Exempt From Design Review**

The following items are exempt from design review:

- A-R.** [No change.];
- S.** Within the St. Johns plan district, alterations to single-dwelling detached structures; ~~and~~
- T.** Public Art as defined in Chapter 5.74.;
- U.** New Permit-Ready houses as described in Chapter 33.278, Permit-Ready Houses.;
- V.** Within the North Interstate plan district, alterations to detached houses and accessory structures on sites not fronting on Interstate Avenue.; and
- W.** Permitted Original Art Murals as defined in Title 4.

Part B**Amendments / Additions to City Codes - Commentary****CHAPTER 33.445****HISTORIC RESOURCE PROTECTION OVERLAY ZONE****33.445.320 Development and Alterations in a Historic District**

This section is amended to provide an exemption from a Historic Design Review for Original Art Murals that are proposed on a non-contributing structure within a Historic District and have received approval through the new Title, Title 4. This exemption was not initially proposed by Planning Staff due to discussions with the Landmarks Commission. However, it was added at the Planning Commission hearing based upon the received testimony. Planning Commission agreed with the testimony that placement of murals on non-contributing structures would not adversely affect the overall district. With this provision, Original Art Murals as defined in Title 4 are not subject to the requirements of this chapter. Administrative Rules are being created in conjunction with the new Murals Title to provide additional guidance to murals that may be proposed on non-contributing structures within Historic Districts.

33.445.420 Development and Alterations in a Conservation District

This section is amended to provide an exemption from Historic Design Review for Original Art Murals that are proposed on a non-contributing structure within a Conservation District. See the above commentary for additional explanation.

Amendments / Additions to City Codes - Code Language

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE*Historic Districts***33.445.320 Development and Alterations in a Historic District**

Building a new structure or altering an existing structure in a Historic District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. When historic design review is required in a Historic District. [No change.]

B. Exempt from historic design review.

1-5. [No changes.]

6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74; and-

8. Permitted Original Art Murals as defined in Title 4 if the mural is proposed on a building that is not identified as contributing to the historic significance of a Historic District.

*Conservation Districts***33.445.420 Development and Alterations in a Conservation District**

Building a new structure or altering an existing structure in a Conservation District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. When historic design review is required in a Conservation District. [No change.]

B. Exempt from historic design review.

1-5. [No changes.]

6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74; and-

8. Permitted Original Art Murals as defined in Title 4 if the mural is proposed on a building that is not identified as contributing to the historic significance of a Conservation District.

II. New Title in City Code (Proposed as Title 4)

New Title and Code Sections

The following pages provide code and commentary for the new Original Art Murals Title. Since all language is new, we do not indicate strikethrough and underline as we do under the other sections.

The left-hand page provides staff commentary for the code language shown on the right-hand page. Commentary related to these changes is also provided within Part A of the report.

Part B**Amendments / Additions to City Codes - Commentary****New Title 4
Original Art Murals****CHAPTER 4.10
PURPOSE**

4.10.010 Purpose of This Title. This section states the purpose of the Original Art Mural Title as a tool to provide an alternative mechanism to permit the expression of murals. This purpose will aid those in reviewing and interpreting the remainder of the Title, and provides a background for some of the code requirements.

**CHAPTER 4.12
DEFINITIONS**

4.12.010 General. This states how the Definitions Chapter should be used with this Title. Words that are not specifically listed in the chapter should use standard dictionary definitions.

4.12.020 Definitions. This section provides the definitions of key terms used within this Title. Some of these definitions may match similar terms used in other City Titles, while others may be specific to this Title.

Amendments / Additions to City Codes - Code Language**New Title 4
Original Art Murals****CHAPTER 4.10
PURPOSE****4.10.010 Purpose of This Title**

The purpose of this Title and the policy of the City of Portland is to permit and encourage original art murals on a content-neutral basis on certain terms and conditions. Original art murals comprise a unique medium of expression which serves the public interest. Original art murals have purposes distinct from signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime. Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.

**CHAPTER 4.12
DEFINITIONS****4.12.010 General**

Words used in this Title have their normal dictionary meaning unless they are listed in Section 35.12.020 or unless this Title specifically refers to another Title. Words listed in Section 35.12.020 have the specific meaning stated or referenced unless the context clearly indicates another meaning.

4.12.020 Definitions

- A. Alteration.** Any change to the Permitted Original Art Mural, including but not limited to any change to the image(s), materials, colors or size of the Permitted Original Art Mural. "Alteration" does not include naturally occurring changes to the Permitted Original Art Mural caused by exposure to the elements or the passage of time. Minor changes to the Permitted Original Art Mural which result from the maintenance or repair of the Permitted Original Art Mural shall not constitute "alteration" of the Permitted Original Art Mural within the meaning of this Title. This can include slight and unintended deviations from the original image, colors or materials that occur when the Permitted Original Art Mural is repaired due to the passage of time, or as a result of vandalism such as graffiti.
- B. Changing Image Mural.** A mural that, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or change of mural image or message. Changing image murals do not include otherwise static murals where illumination is turned off and back on not more than once every 24 hours.

Part B

Amendments / Additions to City Codes - Commentary

4.12.020 Definitions. Continued

Amendments / Additions to City Codes - Code Language

- C. Compensation.** The exchange of something of value. It includes, without limitation, money, securities, real property interest, barter of goods or services, promise of future payment, or forbearance of debt. "Compensation" does not include: 1) goodwill; or 2) an exchange of value that a building owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the building owner or leaseholder, and the building owner or leaseholder fully controls the content of the mural.
- D. Conservation District.** A collection of individual resources that is of historic or cultural significance at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- E. Conservation Landmark.** A structure, site, tree, landscape, or other object that is of historic or cultural interest at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in Title 33, Planning and Zoning.
- F. Design Overlay Zones.** These are areas where design and neighborhood character are of special concern. They are identified by having a "d" (Design Overlay) designation on the City's official Zoning Maps, as regulated by *Title 33, Planning and Zoning*.
- G. Grade.** The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building (the Uniform Building Code as amended by the State).
- H. Historic District.** A collection of individual resources that is of historic or cultural significance at the local, state, or national level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- I. Historic Landmark.** A structure, site, tree, landscape, or other object that is of historic or cultural significance, as identified through a historic landmark designation process and mapped as such on the City's inventory of Historic Landmarks. Historic Landmarks are regulated by *Title 33, Planning and Zoning*.
- J. Original Art Mural.** A hand-produced work of visual art which is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building. Original Art Mural does not include:
- mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl;
 - murals containing electrical or mechanical components; or
 - changing image murals.
- K. Permitted Original Art Mural.** An Original Art Mural for which a permit has been issued by the City of Portland pursuant to this Title.
- L. Public Right-of-Way.** An area that allows for the passage of people or goods, that has been dedicated or deeded to the public for public use. Public Rights-of-Way include passageways such as freeways, pedestrian connections, alleys, and all streets.

Part B**Amendments / Additions to City Codes - Commentary****CHAPTER 4.20
ALLOWED AND PROHIBITED ORIGINAL ART MURALS****Section 4.20.010 Allowed Original Art Murals**

This section provides the general parameters and allowances for Original Art Murals. These parameters include a maximum height allowance, a minimum time duration for its display, a limit on projecting or three-dimensional elements to the mural, and a reference to the additional standards that apply in the design overlay zones, or in certain cases in the historic resource overlay zones. Additional information about these standards can be found in the report.

Section 4.20.020 Prohibited Murals

This section lists the specific types of murals that are prohibited, or specific instances where murals are prohibited. These include murals on smaller residential buildings, murals that are displayed in exchange for compensation, murals in a public right-of-way such as a street, murals that cause a property to be in violation of our zoning code or land use approvals, and murals on contributing historic buildings within Historic or Conservation Districts or on Historic or Conservation landmarks. The last restriction is intended to keep the mural project relatively simple and objective. This can be difficult when analyzing the characteristics of a historic or conservation landmark or district. Although the original staff proposal was to prohibit murals in any area of historic significance, the Planning Commission directed staff to allow the mural program to apply to structures that do not add directly to the value of a Historic or Conservation District. These structures are identified within the districts as "non-contributing" structures, and so are identified as such in the Murals Title.

Part B

Amendments / Additions to City Codes - Code Language

CHAPTER 4.20
ALLOWED AND PROHIBITED ORIGINAL ART MURALS

Section 4.20.010 Allowed Original Art Murals

Original Art Murals that meet all of the following criteria and which are not prohibited will be allowed upon satisfaction of the applicable permit requirements:

- A. No part of the mural shall exceed 30' in height measured from grade.
- B. The mural shall remain in place, without alterations, for a period of five years, except in limited circumstances to be specified in the Bureau of Development Services Administrative Rules. The applicant shall certify in the permit application that the applicant agrees to maintain the mural in place for a period of five years without alteration.
- C. The mural shall not extend more than 6" from the plane of the wall upon which it is tiled or painted or to which it is affixed.
- D. In Design Overlay Zones, the mural shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.
- E. In the Historic Resource Protection Overlay Zones, murals may be allowed on buildings that have been identified as non-contributing structures within Historic and Conservation Districts. These murals shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.

4.20.020 Prohibited Murals

The following are prohibited:

- A. Murals on residential buildings with fewer than 5 dwelling units.
- B. Murals on historic or conservation landmarks.
- C. Murals on buildings that have been identified as contributing structures to a historic or conservation district.
- D. Murals in a public right-of-way.
- E. Murals for which compensation is given or received for the display of the mural or for the right to place the mural on another's property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property.
- F. Murals which would result in a property becoming out of compliance with the provisions of Title 33, Planning and Zoning, or land use conditions of approval for the development on which the mural is to be located.

Part B**Amendments / Additions to City Codes - Commentary****Section 4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

This section clarifies that exemptions in some Titles for original art do not result in the mural being exempt from all Titles.

4.20.040 Exceptions to this Title

This section clarifies that no exceptions can be granted to the provisions of this Title. In order for a mural to be approved it must meet all required provisions and definitions of the Title. A mural that cannot meet all the provisions of this Title must seek the other traditional avenues and codes for approval.

Amendments / Additions to City Codes - Code Language**4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

The exemption of PCC section 32.12.020.J. applies only to Original Art Murals for which a permit has been obtained under this Title and any adopted Administrative Rules. Issuance of an Original Art Mural Permit does not exempt the permittee from complying with any other applicable requirements of the Portland City Code, including but not limited to Titles 24 and 33.

4.20.040 Exceptions to this Title

Exceptions to the regulations of this Title are prohibited.

Part B**Amendments / Additions to City Codes - Commentary****CHAPTER 4.30
NEIGHBORHOOD INVOLVEMENT PROCESS****Section 4.30.010 Establishment of Neighborhood Involvement Process for Permits**

This section gives the Bureau of Development Services (BDS) the authority to establish a neighborhood involvement process through the Administrative Rules mentioned below. The components of this involvement process include posting the site and holding the meeting. Details of this process are provided in the Administrative Rule. A mural will not be approved until this process is completed. As stated in the rule, this process is not binding on the applicant and is set up only to provide the neighborhood information and the opportunity to open up a dialog. It does not give the neighborhood or any citizen the right to reject or require any proposed content, and issuance of the permit is not contingent upon neighborhood or citizen approval of the proposal but only upon the applicant engaging in the process.

**CHAPTER 4.40
ADMINISTRATIVE RULES****4.40.010 Administrative Rules to Be Adopted**

This code provision gives BDS the authority to adopt Administrative Rules to implement the provisions of this Title.

**CHAPTER 4.50
VIOLATIONS AND ENFORCEMENT**

The sections comprising this Chapter provide the general framework for reviewing violations and their enforcement. This language is similar to the language found in Title 33, Planning & Zoning. The similarity is warranted since the responsibility for reviewing violations is the same: the Code Compliance division of BDS will review violations in accordance with Title 3, Administration. Information on violations is also reiterated within the Administrative Rule.

Amendments / Additions to City Codes - Code Language**CHAPTER 4.30
NEIGHBORHOOD INVOLVEMENT PROCESS****4.30.010 Establishment of Neighborhood Involvement Process for Permits**

The Bureau of Development Services shall adopt through Administrative Rule a community involvement process requiring an applicant for an Original Art Mural permit to provide notice of and to hold a community meeting on the mural proposal at which interested members of the public may review and comment upon the proposed mural. No Original Art Mural permit shall be issued until the applicant certifies that he or she has completed the required Neighborhood Involvement Process. This is a process requirement only and in no event will an Original Art Mural permit be granted or denied based upon the content of the mural.

**CHAPTER 4.40
ADMINISTRATIVE RULES****4.40.010 Administrative Rules to Be Adopted**

The Bureau of Development Services is authorized and directed to adopt and administer Administrative Rules implementing this Title, and setting forth the substantive and procedural requirements and fees for an Original Art Mural Permit. Such fees shall in no event exceed the actual costs of administration.

**CHAPTER 4.50
VIOLATIONS AND ENFORCEMENT****4.50.010 Violations.**

It is unlawful to violate any provision of this Title, any Administrative Rules adopted by the Bureau of Development Services pursuant to this Title, or any representations made or conditions or criteria agreed to in an Original Art Mural permit application. This applies to any applicant for an Original Art Mural permit, to the proprietor of a use or development on which a permitted Original Art Mural is located, or to the owner of the land on which the permitted Original Art Mural is located. For the ease of reference in this Title, all of these persons are referred to by the term "operator."

4.50.020 Notice Of Violations.

The Bureau of Development Services must give written notice of any violation to the operator. Failure of the operator to receive the notice of the violation does not invalidate any enforcement actions taken by the City.

4.50.030 Responsibility for enforcement.

The regulations of this Title, and the conditions of Original Art Mural permit approvals, shall be enforced by the Director of the Bureau of Development Services pursuant to Chapter 3.30 and Title 22 of the City Code.

Appendix

I. Draft Administrative Rule for Murals

The following pages provide the draft Administrative Rule created by the Bureau of Development Services to implement the new Mural Title. This rule will address the permitting process and steps to approval as well as the inspection process and the handling of violations. The rule also provides the requirements for involving the neighborhood. This rule will be implemented separately by BDS. For more explanation about the creation of this Administrative Rule, please see the Report in Part A.

The rule is broken down into the following parts:

1. Intent and Purpose. This is the statement of purpose of the rule.
2. Definitions. This section lists the words and their meaning as they apply to the Administrative Rule.
3. Permit Application. This section provides the steps to be taken to apply for a mural permit, and the submission requirements. This section includes the steps for involving the neighborhood.
4. Design Standards. This section lists the additional standards that will apply to murals in Design Overlay zones and on non-contributing structures within Historic or Conservation Districts. In order to receive a permit approval, these standards will need to be met, in addition to the general standards listed in the new Title.
5. Approval of Mural Application. This section lists the process and responsibility for the approval of the mural. It also includes the special standards in the case where a structural review may be required.
6. Inspection and Expiration of a Permit. This section lists the inspection process and timeline for inspections, as well as details on requests to extend a permit or consequences of a permit expiration.
7. Minimum Duration of a Permitted Mural. This lists the required minimum time of five years that the mural must be kept in its original state.
8. Maintenance of a Permitted Mural. This states the requirements / considerations to maintain the mural.
9. Alterations to a Permitted Mural. This section lists the exceptions allowed to alter a mural within its first five years, as well as the procedure to alter a mural.
10. Removal of a Permitted Mural. . This section lists the exceptions allowed to remove a mural within its first five years, as well as the procedure to remove a mural.
11. Enforcement. This section lists the general violation provision and assigns responsibility for enforcement to existing BDS processes that are administered through their code enforcement division.

Appendix
Draft Administrative Rules for Original Art Murals



City of Portland

Bureau of Development Services

1900 SW Fourth Avenue, Suite 5000
 Portland, OR 97201
 Telephone: (503) 823-7300 Fax: (503) 823-3018

AMENDED 5/26/09

Draft: PROPOSED RULE

RELATING TO

Title 4 Permitting Original Art Murals

FOR INFORMATION CONTACT

Douglas Hardy (503) 823-7816
dhardy@ci.portland.or.us

TOPIC: Permitting Original Art Murals

AUTHORITY:

Section 4.40.010 of Title 4 (Original Art Murals) authorizes and directs the Bureau of Development Services to adopt and administer Administrative Rules that implement Title 4, and that set forth the substantive and procedural requirements for an Original Art Mural Permit. The purpose of this Administrative Rule is to establish requirements that allow implementation of Title 4.

CITATION:

3.30.010 Duties of the Bureau of Development Services.
 The Bureau of Development Services shall be responsible for:

- * The permitting of Original Art Murals, as defined by Title 4.

EFFECTIVE: _____ (Date)

Paul L. Scarlett, Director

Appendix
Draft Administrative Rules for Original Art Murals

Administrative Rule

Permitting Original Art Murals

I. Intent and Purpose.

The purpose and intent of this rule is to describe the permitting process for original art murals within the City of Portland.

II. Definitions

- **Alteration:** Any change to the Permitted Original Art Mural, including but not limited to any change to the image(s), materials, colors or size of the Permitted Original Art Mural. "Alteration" does not include naturally occurring changes to the Permitted Original Art Mural caused by exposure to the elements or the passage of time. Minimal changes to the Permitted Original Art Mural which result from the maintenance or repair of the Permitted Original Art Mural (i.e. very minor and unintended deviations from the original image, colors or materials occurring when the Permitted Original Art Mural is repaired due to the passage of time or as a result of vandalism such as graffiti) shall not constitute "alteration" of the Permitted Original Art Mural within the meaning of this section.
- **Central City:** Properties located within the Central City Plan District, as identified on Map 510-1 in *Title 33, Planning and Zoning*.
- **Conservation District:** A collection of individual resources that is of historic or cultural significance at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- **Design Overlay Zones:** Properties that have a "d" (Design Overlay) designation on the City's official Zoning Maps, as regulated by *Title 33, Planning and Zoning*.
- **Director:** The Director of Bureau of Development Services.
- **Grade:** The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building. This is the definition used in the Oregon Structural Specialty Code (the Uniform Building Code as amended by the State.)
- **Historic District:** A collection of individual resources that is of historic or cultural significance at the local, state, or national level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- **Non Street-Facing Wall:** Walls of a structure that are at an angle of more than 45 degrees from a street.
- **Original Art Mural:** A hand-produced, two-dimensional work of visual art as defined in Title 4. All references to "murals" in this rule mean Original Art Mural.
- **Permitted Original Art Mural.** An Original Art Mural for which a permit has been issued by the City of Portland pursuant to Title 4.
- **Street:** A right-of-way that is intended for motor vehicle, pedestrian, or bicycle travel or for motor vehicle, bicycle or pedestrian access to abutting property. For the purposes of this rule, street does not include alleys, or rail rights-of-way that do not allow for motor vehicle access.

Appendix
Draft Administrative Rules for Original Art Murals

- **Street-Facing Wall:** All the wall planes of the structure as seen from one side or view that are at an angle of 45 degrees or less from a street lot line.

III. Permit Application

No person, firm or corporation may commence a mural installation on a site without first obtaining an Original Art Mural Permit as provided in this section. Murals without an approved Original Art Mural Permit are considered signs and are regulated by *Title 32, Signs and Related Regulations*.

The applicant must submit an application for a mural permit to the Director for review. The applicant may not commence any mural installation before the Director has approved the requested permit. A separate application is required for each mural on a site.

General application requirements. Application for a mural permit must be made in writing on forms furnished by the Director. Three copies of the application form and required submittal items shall be provided. The application must contain the general information specified in Section A, below.

A. Required Materials

1. Completed "Original Art Mural" application form, including all appropriate signatures.
2. Building elevation drawn to scale, and one 8.5" x 11" reduction suitable for photocopying, that identifies:
 - the façade on which the mural is proposed;
 - the location of existing and proposed murals;
 - the mural dimensions;
 - the height of the mural above grade; and
 - the building eave/cornice and roof line.
3. Site plan drawn to scale and one 8.5" x 11" reduction suitable for photocopying, that identifies:
 - Property lines;
 - building location and façade on which the mural will be located;
 - names of streets that abut site; and
 - north arrow.
4. If in a Design Overlay Zone or on a building that is identified as noncontributing to the historic significance of a Historic District or Conservation District, provide sufficient architectural detail (including plan views, elevations, details, photographs, and/or any other material necessary) to demonstrate that the mural can meet the standards of Section IV of these rules.
5. Written description of the type of mural (painted, mosaic, etc) and details showing how the mural is affixed to the wall surface.
6. Application Fee.

Appendix
Draft Administrative Rules for Original Art Murals

The application is a binding contract between the applicant and the city.

An application will not be accepted until it is complete, meaning that all elements of the application have been completed in full with appropriate signatures in all locations and all applicable fees have been paid.

Application will be approved after the public meeting required by Paragraph B, below, has been held and all applicable requirements have been met.

B. Neighborhood Contact

1. Purpose of the Neighborhood Contact process. The purposes of Permitted Original Art Murals include public access to original works of art; community participation in the creation of original works of art; and community building through the presence of and identification with original works of art. In furtherance of these purposes, the Neighborhood Contact process provides a setting for a mural permit applicant and neighborhood residents to review a proposed mural in an informal manner, to enable community input into the process of the creation of the mural, and to allow neighborhood residents to share any concerns concerning the proposed mural with the permit applicant prior to the creation of the mural. The discussion at the meeting is advisory only and is not binding on the applicant.
2. When the Neighborhood Contact is required. The Neighborhood Contact is required after an applicant submits a mural permit to the City.
3. Requirements. The requirements for Neighborhood Contact are:
 - a) **Open meeting.** The applicant must schedule a meeting to discuss the mural proposal with interested persons at a location within the boundaries of the neighborhood association in which the mural is proposed; if in an unclaimed area, the meeting must be held within the boundaries of the closest neighborhood association.

The meeting shall not be held in locations where any person attending the meetings would face discrimination on the basis of race, religion, color, sexual orientation, gender identity, age, disability, legal citizenship, national origin, income, or political affiliation. The meeting shall be held in a location accessible to people with disabilities, and the meeting shall be held during evening or weekend hours, but in no case between the hours of 10:00 pm and 7:00 am.

- b) **Mailed notice of the meeting.** The applicant must send a letter to the neighborhood association and district coalition announcing the meeting not less than 21 calendar days prior to the meeting date. If the mural proposal is in an unclaimed area, the applicant must notify the closest neighborhood association. The letter must describe the mural proposal and list the meeting location, date, and time. The letter must also include a site plan and building elevation or photograph showing the location and size of the proposed mural.

The mural permit will not be issued until the applicant provides a copy of the letter with a Certificate of Mailing provided by the Post Office for the

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meeting announcement to the neighborhood association and district coalition.

- c) **Posted notice of the meeting.** The applicant must post a notice of the meeting no less than 21 calendar days prior to the meeting date at the site of the proposed mural in a visible location. Posting boards can be obtained at the time of permit application submittal at the Development Services Center. The posted notice shall contain:
- Applicant's name;
 - Applicant's telephone number;
 - Mural permit number;
 - Date, time and place of the meeting; and
 - Building elevation showing the mural.

A notice shall be posted at the street frontage of the proposed mural site, but not located in the public right-of-way.

- d) **Additional correspondence.** The above notification process is mandatory. The applicant may elect to communicate further with the neighborhood and interested parties through a communication medium that is most convenient for all parties. However, communication through these channels is not required.

IV. Design Standards

Murals in all locations are encouraged to meet these standards. However, where the mural is located in a Design Overlay Zone, or on a building that is identified as noncontributing to the historic significance of a Historic District or Conservation District, the following standards must be met:

A. Location of Mural on the Building

Murals are permitted on the following building walls:

1. Central City. Within the Central City Plan District, murals are permitted only on non street-facing walls and street-facing walls that are more than 20 feet from a street lot line.
2. All other areas. Murals are permitted on any wall.

B. Qualifying Wall Surfaces for Murals.

1. Murals are permitted only on the flat planes of walls. Murals are not allowed on walls made of stone, or unpainted brick.
2. Murals are permitted only on walls that have not had a specific material, color or texture reviewed and approved through Design Review or Historic Design Review unless a new Design Review or Historic Design Review has allowed the Mural to change the originally approved color, texture, or material.

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3. Mural areas will not be painted on or obscure architectural features such as: windows, doors (other than egress-only), pilasters, cornices, window, door or other building trim, feature bands, and other recessed or projecting features.

C. Number of Mural Permits per building wall.

Only one mural permit may be obtained per wall.

D. Mural Size and Materials.

1. The top of the mural may be no higher than the floor level of the third floor for projects on buildings greater than two stories.
2. Minimum size for a Mural Area is 32 square feet.

E. Hierarchy of Regulations.

1. Any ground floor window area requirements triggered at any time for the portion of a building displaying a mural will require the removal of the mural.
2. If a mural installation includes any changes to a building that would otherwise require Design Review or Historic Design Review as described in Title 33, those changes must be approved through Design Review or Historic Design Review prior to approval of the Mural Permit. Examples include a new wall material, lighting, extensions of the mural above the existing height of the building, electrical changes, etc.

V. Approval of Mural Application

An application for a mural permit will be reviewed for compliance with the requirements of Title 4 and these administrative rules. The mural application will be approved once the reviewer has ensured that all provisions of Title 4 and these administrative rules has been met. The review is a non-discretionary administrative review. Decisions on the application are made by the Director and are final. Exceptions to the requirements of Title 4 or these rules are prohibited. The review will be done according to general operating procedures of the Bureau of Development Services and the City.

A. Structural Review

Murals with any element that weighs more than 7 pounds per square foot, or in total weigh more than 400 pounds require structural review.

With the exception of murals that are painted or tiled directly on a building wall, murals that are not attached to the building wall in one of the following methods also require structural review:

1. Continuously along two sides of the mural for the full dimension of the mural; or
2. At each corner of the mural, and at intervals no greater than 18 inches along the perimeter of the mural.

For murals that are affixed to the building wall in separate panels, the requirements in paragraphs 1 and 2, above, apply to each panel.

Draft Administrative Rules for Original Art Murals**B. Actions of the Director**

Where the Director finds that a proposed mural does not comply with Title 4 and these administrative rules, the Director must either require revisions to the proposal, require additional reviews or deny the application.

C. Suspension or Revocation

The Director may suspend or revoke a permit issued under the provisions of Title 4 and these administrative rules. The Director will inform the permit holder of the suspension or revocation in writing. Permits may be suspended or revoked when:

1. The permit is issued in error;
2. The permit is issued on the basis of incorrect information supplied by the applicant; or
3. The permit is issued in violation of any of the provisions of Title 4 or these administrative rules.

VI. Inspections and Expiration of Permit**A. Inspections**

The Director will conduct inspection of murals for which a permit has been issued. The permit holder must notify the Director when the work is ready for inspection.

The inspection shall verify that the mural is in conformance with the application and in conformance with the provisions of the mural code and these rules.

Structural inspections shall be completed in conjunction with any separate permits and shall verify the applicable requirements from the applicable codes.

The inspector shall take at least one photo to be kept on file to document the site, mural size, mural location and mural image consistency.

The Director may conduct inspections whenever it is necessary to enforce any provision of these administrative rules or Title 4, to determine compliance with these administrative rules or Title 4, or whenever the Director has reasonable cause to believe there exists any violation of these administrative rules or Title 4.

B. Expiration of Permit.

If no inspection approval has taken place within twelve months of issuance of a mural permit, the permit is void, and no further work on the mural may be done at the premises until a new permit has been secured and a new fee paid.

C. Extensions of Permit.

The Director may extend a permit for one period of twelve months upon finding that the applicant was unable to commence or continue work for reasons beyond his or her control. A request for permit extension must be in writing and must be received by the Director before the permit expiration date. If an inspection approval has not been granted within this extended time period, the permit is void. A permit may be extended only once under the standards of this subparagraph.

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D. Renewal of Expired Permits.

A permit that has been expired for six months or less may be renewed provided no changes have been made in the original plans and specifications for such work. A permit may be renewed only once. No permit that has been expired for more than six months may be renewed.

VII. Minimum Duration of a Permitted Mural

The mural, as approved by permit, shall be maintained without alteration for a minimum of five years. The approved mural permit does not expire so long as there is not a modification to the approved mural size, location, and image.

VIII. Maintenance of a Permitted Mural

Building owners are responsible for ensuring that a permitted mural is maintained in good condition and is repaired in the case of vandalism or accidental destruction.

Muralists and building owners are encouraged to consider protective clear top coatings, cleanable surfaces, and/or other measures that will discourage vandalism or facilitate easier and cheaper repair of the mural if needed.

IX. Alterations to a Permitted Mural

A. Alterations to the mural within the first five years of the date of completion.

Permitted murals may be altered within the first five years of the date of completion under the following circumstances:

1. The building on which mural is located is sold; or
2. The building or property is substantially remodeled or altered in way that precludes continuance of mural.

Alterations must be approved by obtaining a new permit through the process described in Section III of these Administrative Rules. Alterations for reasons other than the circumstances described above are not permitted and are considered a violation of the Mural Permit approval.

B. Alterations to the mural following the first five years of the date of completion.

Alterations of the mural following the first five years of the date of completion are allowed, but must be approved by obtaining a new permit through the process described in Section III of these Administrative Rules.

X. Removal of a Permitted Mural

A. Removal of the mural within the first five years of the date of completion.

Permitted murals may be removed within the first five years of date of completion under the following circumstances:

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1. The building on which mural is located is sold; or
2. The building or property is substantially remodeled or altered in way that precludes continuance of mural.

Removal of the permitted mural for reasons other than the circumstances described above precludes approval of a new mural permit at the site for a five-year period after the date of the original mural permit completion.

Prior to mural removal the applicant must notify the Bureau of Development Services with a letter stating intent to remove the mural and an explanation of the circumstances necessitating the removal.

B. Removal of the mural after the first five years of the date of completion.

Permitted murals may be removed after the first five years of the date of completion. No letter of intent is necessary before removal of the mural.

C. Removal of materials associated with the mural.

Any associated materials that were used to affix or secure the mural to the wall must be removed at the time of the removal of the mural. This includes, but is not limited to mounting hardware or brackets, caulk or grout, and adhesives or glues.

XI. Enforcement

A. Violations.

It is unlawful to violate any provisions of this Rule. This applies to any person undertaking an application for an Original Art Mural Permit, to the building tenant or owner of the Mural site. For the ease of reference in this section, all of these persons are referred to by the term "operator."

B. Notice of violations.

The Director must give written notice of any violation of this Rule to the operator. Failure of the operator to receive the notice of the violation does not invalidate any enforcement actions taken by the City.

C. Responsibility for enforcement.

The regulations of this Rule may be enforced by the Director pursuant to Chapter 3.30 and Title 22 of the City Code.

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City of Portland Bureau of
Planning and Sustainability
Sam Adams, Mayor | Susan Anderson, Director

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EX A-1

182962

Original Art Murals Project

Regulatory & Permit Process Improvement

Administrative Amendments to Recommended Draft
June 18, 2009



City of Portland Bureau of
Planning and Sustainability
Sam Adams, Mayor | Susan Anderson, Director

Summary of Amendments

The amendments on the pages following are intended to correct typographical and format errors to the submission of City Code that was part of the *Original Art Murals Project – Regulatory & Permit Process Improvement: Recommended Draft*. It does not alter any significant content or policy of the Original Art Murals Program, nor does it result in any changes to the commentary associated with the code amendments.

These changes are made on behalf of suggestions from the City Auditor's Office. The amended language is shown in a shaded, highlighted form.

**TITLE 32
SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.12
AUTHORITY AND SCOPE**

32.12.020 Exemptions

The following are exempt from the regulations of this Title, but may be subject to other portions of the City Code:

A-F. [No change.]

G. Painted wall highlights;

H. Illuminated wall highlights; ~~and~~ *(semi-colon not to be removed)*

I. Public Art as defined in Chapter 5.74; and

J. Permitted Original Art Murals as defined in Title 4.

New Title 4 Original Art Murals

CHAPTER 4.10 PURPOSE

4.10.010 Purpose of This Title

The purpose of this Title and the policy of the City of Portland is to permit and encourage original art murals on a content-neutral basis on certain terms and conditions. Original art murals comprise a unique medium of expression which serves the public interest. Original art murals have purposes distinct from signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime. Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.

CHAPTER 4.12 DEFINITIONS

4.12.010 General

Words used in this Title have their normal dictionary meaning unless they are listed in Section 4.12.020 or unless this Title specifically refers to another Title. Words listed in Section 4.12.020 have the specific meaning stated or referenced unless the context clearly indicates another meaning.

4.12.020 Definitions

- A. Alteration.** Any change to the Permitted Original Art Mural, including but not limited to any change to the image(s), materials, colors or size of the Permitted Original Art Mural. "Alteration" does not include naturally occurring changes to the Permitted Original Art Mural caused by exposure to the elements or the passage of time. Minor changes to the Permitted Original Art Mural which result from the maintenance or repair of the Permitted Original Art Mural shall not constitute "alteration" of the Permitted Original Art Mural within the meaning of this Title. This can include slight and unintended deviations from the original image, colors or materials that occur when the Permitted Original Art Mural is repaired due to the passage of time, or as a result of vandalism such as graffiti.
- B. Changing Image Mural.** A mural that, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or change of mural image or message. Changing image murals do not include otherwise static murals where illumination is turned off and back on not more than once every 24 hours.

- C. Compensation.** The exchange of something of value. It includes, without limitation, money, securities, real property interest, barter of goods or services, promise of future payment, or forbearance of debt. "Compensation" does not include:
- 1) Goodwill; or
 - 2) An exchange of value that a building owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the building owner or leaseholder, and the building owner or leaseholder fully controls the content of the mural.
- D. Conservation District.** A collection of individual resources that is of historic or cultural significance at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- E. Conservation Landmark.** A structure, site, tree, landscape, or other object that is of historic or cultural interest at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in Title 33, Planning and Zoning.
- F. Design Overlay Zones.** These are areas where design and neighborhood character are of special concern. They are identified by having a "d" (Design Overlay) designation on the City's official Zoning Maps, as regulated by *Title 33, Planning and Zoning*.
- G. Grade.** The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building (the Uniform Building Code as amended by the State).
- H. Historic District.** A collection of individual resources that is of historic or cultural significance at the local, state, or national level, as identified through an inventory and designation process and mapped as such in *Title 33, Planning and Zoning*.
- I. Historic Landmark.** A structure, site, tree, landscape, or other object that is of historic or cultural significance, as identified through a historic landmark designation process and mapped as such on the City's inventory of Historic Landmarks. Historic Landmarks are regulated by *Title 33, Planning and Zoning*.
- J. Original Art Mural.** A hand-produced work of visual art which is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building. Original Art Mural does not include:
1. Mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl;
 2. Murals containing electrical or mechanical components; or
 3. Changing image murals.
- K. Permitted Original Art Mural.** An Original Art Mural for which a permit has been issued by the City of Portland pursuant to this Title.
- L. Public Right-of-Way.** An area that allows for the passage of people or goods, that has been dedicated or deeded to the public for public use. Public Rights-of-Way include passageways such as freeways, pedestrian connections, alleys, and all streets.

CHAPTER 4.20
ALLOWED AND PROHIBITED ORIGINAL ART MURALS

Section 4.20.010 Allowed Original Art Murals

Original Art Murals that meet all of the following criteria and which are not prohibited will be allowed upon satisfaction of the applicable permit requirements:

- A. No part of the mural shall exceed 30 feet in height measured from grade.
- B. The mural shall remain in place, without alterations, for a period of five years, except in limited circumstances to be specified in the Bureau of Development Services Administrative Rules. The applicant shall certify in the permit application that the applicant agrees to maintain the mural in place for a period of five years without alteration.
- C. The mural shall not extend more than 6 inches from the plane of the wall upon which it is tiled or painted or to which it is affixed.
- D. In Design Overlay Zones, the mural shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.
- E. In the Historic Resource Protection Overlay Zones, murals may be allowed on buildings that have been identified as non-contributing structures within Historic and Conservation Districts. These murals shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.

4.20.020 Prohibited Murals

The following are prohibited:

- A. Murals on residential buildings with fewer than five dwelling units.
- B. Murals on historic or conservation landmarks.
- C. Murals on buildings that have been identified as contributing structures to a historic or conservation district.
- D. Murals in a public right-of-way.
- E. Murals for which compensation is given or received for the display of the mural or for the right to place the mural on another's property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property.
- F. Murals which would result in a property becoming out of compliance with the provisions of Title 33, Planning and Zoning, or land use conditions of approval for the development on which the mural is to be located.

4.20.030 Relationship of Permitted Original Art Mural to other Regulations

The exemption of PCC section 32.12.020 J. applies only to Original Art Murals for which a permit has been obtained under this Title and any adopted Administrative Rules. Issuance of an Original Art Mural Permit does not exempt the permittee from complying with any other applicable requirements of the Portland City Code, including but not limited to Titles 24 and 33.

4.20.040 Exceptions to this Title

Exceptions to the regulations of this Title are prohibited.