

ORDINANCE No. 182962

Establish a new Original Art Mural regulatory and permitting program (Ordinance; create new Title 4, amend Titles 3, 32 and 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. The City has long recognized that murals accessible to the public can provide significant benefits to the community, including enhancing the aesthetic environment, providing an avenue to involve community members in the creation of art, increasing the opportunities for artistic expression by persons of different ages and diverse ethnic, social and cultural backgrounds, discouraging the placement of graffiti on buildings and structures and reducing crime.
2. In order to encourage these benefits, the City in 1986 exempted “painted wall decorations” (murals) from its sign regulations.
3. In 1991, in order to provide a bright-line distinction between what was an exempt mural and what was a regulated sign, the City amended its sign regulations and defined a sign (in part) as something containing “text, numbers, registered trademarks and registered logos” and a painted wall decoration (in part) as something not containing “text, numbers, registered trademarks and registered logos.” The purpose of this language was to avoid the need for the City to make potentially subjective, case-by-case determinations of whether something was a decoration or a sign and to provide a clear objective and test as to what was an exempt decoration or mural.
4. In 1998, a lawsuit was brought in Multnomah County Circuit Court, which alleged that the distinction between a mural (painted wall decoration) and a sign based upon the presence of absence of text, numbers, registered logos or registered trademarks was an unconstitutional, content-based regulation of speech. On November 17, 1998, the court issued a ruling invalidating the definitions of sign and painted wall decoration to the extent they were based on this distinction, on the ground that the distinction was impermissibly content-based.
5. In order to bring its sign code into conformance with the court’s ruling, the City had to either remove the exemption for murals, or forgo all regulation of wall signs. Faced with this choice, on November 18, 1998, the City amended its Sign Code to remove the exemption for painted wall decorations (murals). Between 1998 and 2005, all exterior murals in the City were regulated as signs.
6. Under the City’s sign regulations, the largest allowable sign (absent an adjustment) is 200 square feet. These regulations apply to murals.
7. Murals are frequently well over 200 square feet in size. The larger size of many murals is an integral part of the medium. Artists, community groups and building owners, as well as many citizens at large, expressed dissatisfaction with the 200 square foot limitation, which has brought the creation of new mural art in Portland to a virtual standstill.

8. The City recognized the devastating consequences of the lack of any avenue for the creation of new mural art within the City. The City also continued to believe that murals have extensive benefits for the communities in which they are located. The City therefore decided in 2003 to explore avenues to fund and sponsor murals within the City to be located on public property and added to the City's existing public art collection, which is administered by The Regional Arts and Culture Council (RACC).
9. During the period from the fall 2003 to the fall 2004, Mayor Vera Katz convened a group of stakeholders that included mural artists, community activists, representatives from RACC, members of the City Club and city staff. This group also met with neighborhood groups, business representatives, land use organizations and several local sign companies. Input from these meetings helped staff to create the Public Art Mural program.
10. The Public Art Mural program provided a vehicle for the City to sponsor public art murals and add murals to its public art collection, as a component of the City's existing public art program. A review process was created, whereby artists could submit proposals to RACC for a public art mural to be owned by the City on behalf of the public and placed on property dedicated to the City through an easement for display of the public art.
11. The Public Art Mural program was adopted into City Code and became effective in January, 2005.
12. Since its adoption, 25 murals have been approved by RACC and have been added to the City's public art collection.
13. Murals created through the Public Art Mural program have further demonstrated the benefits of murals to the citizens of Portland. These murals have added to the aesthetic quality of the City, have enjoyed wide citizen support, have allowed some opportunity for mural artists to again work in the City and have provided opportunities for community building and collaboration in the creation of works of art. However, the Public Art Mural program is limited in scope to publicly supported murals located on public property and selected by RACC for the City's public art collection based on artistic merit. The Public Art Mural program does not address the desire of private individuals to create privately funded murals on private property. The program's scope is limited to publicly owned and publicly funded murals. The Public Art Mural program is intended to help fund and select mural art to be added to the City's public art collection and is not designed to permit murals generally. Public Art Murals are necessarily held to a higher artistic standard than may be achieved with private, community based murals.
14. The lawsuit between the City and AK Media (now Clear Channel) which resulted in the elimination of the murals exemption in 1998 remains ongoing. In 2007, a second trial was held in that case. The court permitted Joe Cotter, a Portland mural artist, to intervene in that trial to represent the interest of mural artists in the legal issues surrounding murals in the City. Mr. Cotter presented evidence demonstrating the devastating impact the elimination of the murals exemption from the sign code has had on mural art in the City.

15. In addition to the evidence presented by Mr. Cotter at trial, the City also developed extensive evidence in the course of developing the Public Art Mural program and in preparing for the 2007 trial regarding the benefits of murals and the impact of the legally required elimination of the murals exemption. The City conducted extensive research and hired expert consultants with knowledge of and experience with various mural programs across the country, including those in San Francisco and Philadelphia (among others). An examination of these programs nationally provided further evidence to the City of the many and varied benefits the presence of community murals provide to the cities in which they are located. Such benefits include not only aesthetic values, but community building, crime and graffiti reduction, arts education and a basis for increased tourism.
16. Based upon the evidence presented at the 2007 trial, and gathered by the City in preparing for the trial and in adopting the Public Art Mural program, as well as its prior experience with the benefits of murals in the City and its continuing interest in allowing and fostering such mural art within the City, the City requested that the court reconsider some restrictive language in its original decision, to afford the City the opportunity to explore regulating murals differently than signs based on criteria other than content.
17. Accepting the invitation of Mr. Cotter and the City, the court noted in its May 8, 2007 written decision that the court was aware of no prohibition against preferring one activity or expression over another outside the context of content-based regulation of speech, and that nothing prevents the City from attempting “to free wall murals from sign regulations in ways that do not depend on the content of the message displayed.” The court also noted that Mr. Cotter’s evidence “demonstrated a number of ways in which the channel of communication that is characterized by mural art is vastly distinct from the channel of communication that is characterized by standardized billboard posters and bulletins. There are substantial differences in the manner of production and distribution, the expected duration and permanency, and, at least potentially, in the relationship between the owner of the surface and the person and entity who apply media to that surface.” While the court noted that “[t]here may be challenges in avoiding content-based regulations with respect to wall murals whose proponents wish to employ them for commercial purposes” the Court also found that “nothing in this court’s Opinions say that the City cannot attempt to free wall murals from sign regulations in ways that do not depend on the content of the message displayed.”
18. The court also noted that “the intervener has made a strong case that murals have been effectively banned already” with the at least implicit suggestion that the City’s application of sign regulations to mural art may be an overly restrictive regulation of speech of a particular type – namely mural art. The court also observed, however, that the Public Art Mural Program was not at issue in the lawsuit, so evidence of its ameliorating effect in providing an avenue for the creation of some murals was not before the court.
19. In early 2008, in accordance with its long-standing desire to allow and encourage murals and in accordance with the court’s suggestion that the regulation of murals as signs acted as an effective ban on murals (at least other than Public Art Murals) City Council directed creation of a Murals Working Group to address the recent court opinion and explore a new mechanism to allow murals.

20. The Murals Working Group consisted of members of the murals community as well as representatives from the city's Bureaus of Development Services and Planning, the City Attorney's office, the Mayor's and Commissioner's offices and RACC. The focus of the Murals Working Group was to develop a method to allow murals within the City under a permitting process distinct from that applicable to signs. It was recognized that to be legally permissible, such a permitting process could not be based on content.
21. During 2008, city staff, in conjunction with the Murals Working Group, drafted a proposal for the City to allow murals through a permitting procedure. The permitting process was designed to employ criteria for murals that did not depend upon the content of the message displayed. Mindful of the challenges noted by the court in "avoiding content-based regulations with respect to wall murals whose proponents wish to employ them for commercial purposes" the proposal did not distinguish between murals based upon whether their purpose or content was commercial or non-commercial (or based upon their content in any other respect).
22. On December 18, 2008, the Bureau of Planning, in conjunction with the Mayor's office held a Town Hall meeting to present the initial ideas for the mural permit program. After the presentation, staff engaged in a discussion session with the people in attendance.
23. During early 2009, staff with the Bureau of Planning & Sustainability briefed the Design Commission, Historic Landmarks Commission and the Planning Commission on the draft program at various stages of development.
24. The Original Art Mural Project, as the process came to be known has developed into a simple permitting program where a mural meeting the definition of an "Original Art Mural" can obtain a mural permit if it meets a set of standards and procedures.
25. An Original Art Mural is specifically defined 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".
26. To qualify as an Original Art Mural, and in recognition of the different functions and purposes served by signs and murals, as noted by the court based upon evidence presented to it, the installation will need to meet a certain set of standards that include the mural remaining in place for a period of at least five years, and that no compensation be given or received for the ongoing display of the mural.
27. Review of an application for an Original Art Mural will be a non-discretionary review to determine compliance with the standards. Permitted Original Art Murals will not be subject to the city's land use regulations.
28. On March 26, 2009, notice of the proposed action was received by the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-018-020.
29. On May 12, 2009, the Planning Commission held a hearing on the staff proposal of the Original Art Mural Project, including amendments to the city's land use codes (Titles 32 and 33) to exempt permitted Original Art Murals. Staff presented the proposal, and public testimony was received.

30. On June 24, 2009, the City Council held a public hearing on the proposed Original Art Mural Project, including Planning Commission's recommendation on the amendments to the land use codes. Staff presented the proposal and public testimony was received.
31. On July 1, 2009, City Council voted to adopt the amendments for the Original Art Mural Project and made recommendations to the Bureau of Development Services to complete their Administrative Rule.

Statewide Planning Goals Findings

32. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply to the Original Art Murals Project.
33. Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of the Original Art Murals Project has provided numerous opportunities for public involvement:
 - In January, 2008, the City Council established a Murals Working Group to explore opportunities to regulate murals distinct from signs, based upon a previous court opinion. This group was coordinated by staff members from Commissioner Adam's office. The Working Group included city staff and members of the mural community.
 - On December 16, 2008, city staff held a Town Hall meeting to discuss the background and initial proposal for the Original Art Mural Project. Invitations were provided through the mail and electronic communication to muralists, members of the public who had expressed interest in murals, and neighborhood associations, district coalitions and business associations in the City of Portland.
 - On January 8, 2009, city staff provided a briefing to the Design Commission to discuss the Original Art Mural project. Notice of this briefing was provided at the Town Hall, and on the Bureau of Planning & Sustainability's web site. The Commission allowed time for comments from interested citizens.
 - On March 24, 2009, city staff provided a briefing to the Planning Commission to discuss the Original Art Mural project. Notice of this briefing was provided on the Bureau of Planning & Sustainability's web site. The briefing included a discussion of the concepts of the project.
 - On April 6, 2009, city staff provided a briefing to the Landmarks Commission to discuss the Original Art Mural project, specific to historic resources. Notice of this briefing was provided on the Bureau of Planning & Sustainability's web site.
 - On April 10, 2009, the Bureau of Planning & Sustainability sent notice to all neighborhood associations and coalitions and business associations, in the City of Portland, mural artists, as well as other interested persons, to inform them of a Planning Commission public hearing on the staff proposal of the Original Art Murals Project. Notice was also posted on the Bureaus web site.

- On April 16, 2009, the Bureau of Planning & Sustainability published the staff proposal for the *Original Art Murals Project: Regulatory & Permit Process Improvement*. The report was made available to the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau of Planning & Sustainability's web site and links provided from the Mayor's and RACC's web site.
 - On May 7, 2009, staff returned to the Design Commission to brief them on the staff proposal for the Original Art Murals Project. Notice of this briefing was provided on the Bureau of Planning & Sustainability's web site.
 - On May 12, 2009, the Planning Commission held a public hearing on the staff proposal of the Original Art Murals Project. The hearing provided opportunities for oral and written testimony.
 - On June 24, 2009, the City Council held a public hearing on this proposal, during which members of the public provided oral and written testimony.
34. Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions and ensures that decisions and actions are based on an understanding of the facts relevant to the decision. The Original Art Murals Project is supportive of this goal because development of the recommendations followed established city procedures for legislative actions.
35. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources, requires the conservation of open space and the protection of natural resources, scenic and historic areas. The Original Art Murals Project is supportive of the objective to protect historic landmarks and districts because it does not allow Original Art Murals to be applied to landmarks and contributing structures in historic areas, while providing a limited option for them to be placed on non-contributing structures.
36. Goal 9, Economic Development, requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The Original Art Murals Project is supportive of this goal by providing a new opportunity to install murals within the City of Portland with limited permitting expense.

Metro Urban Growth Management Functional Plan

37. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to the Original Art Murals Project.
38. Title 6, Central City, Regional Centers, Town Centers and Station Communities is intended to enhance centers by encouraging development that will improve the critical roles they play. The Original Art Murals Project supports this title by providing a new opportunity to install murals within the City of Portland. Murals often locate in areas of civic importance.
39. Title 12, Protection of Residential Neighborhoods is intended to protect the region's existing residential neighborhoods from air and water pollutions, noise and crime, and to provide adequate levels of public services. The Original Art Murals Project supports the purpose and intent of this title by providing an option for Original Art Murals to be placed on community facilities within residential neighborhoods which can help deter graffiti. The program also provides an avenue for the public to review proposed murals in their neighborhood.

Portland Comprehensive Plan Goals Findings

40. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program and reaffirmed the plan's compliance with statewide planning goals.
41. The following goals, policies and objectives off the Portland Comprehensive Plan are relevant and applicable to the Original Art Murals Project.
42. Goal 1, Metropolitan Coordination, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. In general, the Original Art Murals Project is consistent with this goal because it does not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.
43. Policy 1.4, Intergovernmental Coordination, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The Original Art Murals Project supports this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. These agencies include Metro, Multnomah County Planning, and the Oregon Department of Land Conservation and Development. In addition, staff has worked with representatives of the Regional Arts and Culture Council (RACC) in drafting up this program.
44. Goal 2, Urban Development, calls for the maintenance of Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The Original Art Murals project supports this by providing an avenue for the installation of murals with community impact thus strengthening Portland's role as the regional cultural center.
45. Goal 3, Neighborhoods, calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses and ensure the City's residential quality and economic vitality. The Original Art Murals Project supports this goal by providing an avenue for approving Original Art Murals which could strengthen neighborhood identity. The program creates an opportunity to improve social conditions of neighborhoods by creating community murals that help reduce property crimes such as graffiti (3.2), and promote neighborhood involvement by requiring notice and a public meeting (3.5).
46. Goal 5, Economic Development calls for the promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the city. The Original Art Murals Project supports this goal by providing a legal alternative for mural artists (5.2), provides opportunities for engaging community input and creating community identity (5.3 & 5.6) and an opportunity to revitalize the blank walls of buildings (5.1).

47. Goal 9 Citizen Involvement calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The Original Art Murals Project is consistent with this goal because the amendment process provided opportunities for public input and followed adopted procedures for notification and involvement of citizens in the planning process. These procedures are explained in detail for State Planning Goal 1. The resultant neighborhood involvement requirement as part of the mural permit process, while not a land use decision, will provide a mechanism for public overview of the program.
48. Goal 10, Plan Review and Administration, includes several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The Original Art Murals Project supports this goal by creating a clear set of land use exemptions for murals that fall under the program.
49. Goal 12, Urban Design, calls for the enhancement of Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The Original Art Murals Project supports this goal by providing an alternative avenue for murals to be placed in more areas of the city, while providing measures to limit negative effects in areas of design or historical significance (12.2 and 12.3) The program limits overall height of the murals to enhance pedestrian enjoyment (12.4) and provides opportunities for the free expression of the arts (12.5).

NOW, THEREFORE, the Council directs:

- a. Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009 is hereby adopted;
- b. Title 3, Administration is hereby amended as shown in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009;
- c. Title 32, Signs and Related Regulations, is hereby amended as shown in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009;
- d. Title 33, Planning and Zoning, is hereby amended as shown in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009;
- e. A new Title, Title 4, Original Art Murals, is hereby adopted and added to City Code as shown in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009;
- f. The commentary and discussion in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009 are hereby adopted as legislative intent and further findings;

- g. The Bureau of Development Services shall adopt Administrative Rules to implement the Original Art Murals Project, as shown in Exhibit A, Original Art Murals Project, Regulatory & Permit Process Improvement: Recommended Draft, dated June 1, 2009;
- h. The Bureaus of Planning & Sustainability and Development Services shall work with the Regional Arts and Culture Council (RACC) and the City Landmarks Commission to reach consensus on the RACC selection process for public art on Historic and Conservation Landmarks and on contributing structures within Historic and Conservation Districts as required through Ordinance 178946;
- i. If any section, subsection, sentence, clause or phrase of this Ordinance, or the code amendments it adopts, including but not limited to the exemption of Original Art Murals from the City's sign and zoning regulations, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of the remaining portions of the Portland City Code, including but not limited to the City's sign and zoning regulations. Council declares that it would have passed the Portland City Code, and each section, subsection, sentence, clause, and phrase thereof, including but not limited to the City's sign or zoning regulations, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases of this Ordinance, including but not limited to the exemption of Original Art Murals art from the City's sign and zoning regulations, may be found to be invalid or unconstitutional.

Passed by the Council: JUL 01 2009

Mayor Sam Adams
Prepared by: Phil Nameny
Date Prepared: June 10, 2009

LaVonne Griffin-Valade
Auditor of the City of Portland

By

Susan Parsons
Deputy

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Agenda No.
ORDINANCE NO.

Title
182962

Establish a new Original Art Mural regulatory and permitting program (Ordinance; create new Title 4, amend Titles 3, 32 and 33)

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| INTRODUCED BY | CLERK USE: DATE FILED <u>JUN 19 2009</u> |
| MAYOR SAM ADAMS  | LaVonne Griffin-Valade Auditor of the City of Portland By: <u>Susan Parsons</u> Deputy ACTION TAKEN: JUN 24 2009 PASSED TO SECOND READING JUL 01 2009 9:30 A.M. |
| NOTED BY COMMISSIONER | |
| Mayor—Finance and Administration | |
| Position 1—Utilities | |
| Position 2—Works | |
| Position 3—Affairs | |
| Position 4—Safety | |
| BUREAU APPROVAL | |
| Bureau: PLANNING AND SUSTAINABILITY | |
| Prepared by: Phil Nameny, City Planner Date Prepared: June 10, 2009 | |
| Financial Impact Statement <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required | |
| Portland Policy Document If "Yes," requires City Policy paragraph stated in document. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Council Meeting Date June 24, 2009 (2:00 pm Time Certain) | |
| Bureau Head: Susan Anderson, Director  | |

| AGENDA | | FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: | |
|----------------------------------|-----------|--------------------|---------------------------------|------|
| Consent | Regular X | | YEAS | NAYS |
| | | 1. Fritz | ✓ | |
| | | 2. Fish | — | |
| NOTED BY | | 3. Saltzman | ✓ | |
| City Attorney <u>KS Beaumont</u> | | 4. Leonard | ✓ | |
| | | Adams | — | |