

PUBLIC ART MURALS PROGRAM



Panel from "Human Diversity" mural by Judy Bryant, located at 3044 NE M L King Boulevard.

As Adopted Report
Adopted December 8, 2004
Ordinance #178946
Effective January 7, 2005



City of Portland

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Public Art Murals Project

Summary

The Public Art Murals Project report consists of three parts. The first part, detailed in Part A, explains the expansion of the Regional Arts and Culture Council's (RACC) public art program to include a Public Art Murals program. RACC will review submissions for public art murals, which will be placed on public wall space, and paid for with public funds administered by the RACC. The RACC review process includes guidelines for placement, artistic quality, architectural and historical context, scale, community support, and other factors.

The second part of the project, detailed in Part B, provides changes to three Titles of the City Code that work in concert with the changes to RACC's program:

- Title 5, Revenue and Finance: Amends the definition of "public art" to clarify that only artwork approved and funded through the RACC can be considered "public art."
- Title 32, Signs and Related Regulations: Amends the code to exempt public art, including public art murals, from the Sign Code.
- Title 33, Planning and Zoning: Adds language to exempt public art, including public art murals, from Design Review and Historic Design Review.

The original letter of support from Mayor Katz and approved ordinance is placed in the Appendix, identified as Part C at the back of the document.

Part A. Murals as Public Art Program

I. Overview

A New Approach to Public Art Murals in Portland

A. A Brief Legal 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 commercial signs the same. As a result, murals were limited to 200 square feet in size (at most) in all areas of the City. This limitation on murals to 200 square feet resulted in a substantial reduction in new murals within the City. Artists, community groups and building owners, as well as many citizens at large expressed dissatisfaction with the status quo, which seriously impeded the creation of new mural art in our City. During the past year, the Mayor and her staff worked with interested stakeholders to find a solution to this issue. This project is a result of their work.

B. The Public Art Murals Project

The Public Art Murals project does not significantly alter the City's Sign Code. Instead, the city exempts all public art, including public art murals, from the Sign Code (and from other land use reviews). The Regional Arts and Culture Council (RACC) already administers an existing public art program that has been expanded to include public art murals. Public art murals are to be placed on public wall space and paid for with public funds administered by the RACC. With regard to its public art collection, including public art murals, the City acts as a patron of arts, not as a regulator. This distinguishes this amendment from the old, broader exemption for all murals that was found unconstitutional.

C. Criteria for Selecting Public Art Murals

As part of this proposal, the RACC is adapting its existing public art approval criteria to be used in evaluating public art murals. These criteria include artistic quality, originality, context, permanence, diversity, feasibility, scale and community support. The public art selection process evaluates the artistic quality and originality of proposed murals. It also promotes murals that are aesthetically pleasing, creative and unique additions to Portland's neighborhoods. Like other

Part A

Murals as Public Art Program

public art administered by the RACC, public art murals are to be owned by the public. Public art murals would be 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.

D. RACC Review Process

Acting on behalf of the City through an Intergovernmental Agreement (IGA), the RACC reviews proposals for public art murals pursuant to the criteria mentioned above. Such reviews are conducted by the Public Art Advisory Committee, which includes representatives from the Design Commission, as well as artists and arts patrons. Public notice of proposed public art murals is given to representatives of the community who are interested in or may be affected by the public art. These representatives can include neighborhood and business associations, adjoining neighbors, as well as the Landmarks Commission if the public art is proposed in areas of historical significance. Members of the public have an opportunity to review and comment on proposed murals.

The RACC works to ensure that its review process also achieves the objectives of the design review and landmarks review processes, which no longer apply to public art. Public art murals are not to be approved on historic landmarks or in historic districts until the RACC and the Landmarks Commission agree upon a review process that best serves the public's interest in these unique structures and areas.

Funding Options

The funding options for public art murals are similar to those already available through the existing Public Art Program. Depending on the individual project, public art murals may be funded completely with public dollars or partially funded with public funds and "matching" private funds. Alternatively, individuals may offer to commission a public art mural to be donated to the City's public art collection, or may donate funds to the Public Art Trust Fund to support the public art program.

E. Public Art Easements

Building owners who wish to donate wall space to the public for a RACC-approved public art mural may do so by granting an easement for placement of a public art mural on their building to the City. Easements will be for five or more years. The City can accept or decline any easements for public art murals which are offered to it. Public art easements are managed by the City's property manager, as with other publicly owned property. The Bureau of General Services is responsible for maintaining a written and photographic record of each RACC-approved public art mural and accepted public art easement.

Real estate attorneys, lenders and real estate developers have provided assurances that the public art easement, which allows for termination in select circumstances, should not pose a barrier to securing loans or to sale or transfer of affected properties. Examples of circumstances under which an easement could be terminated early include sale of a building to an owner not willing to assume the

easement, refinancing where the lender requires termination of the easement as a condition of granting a loan, or the reconstruction of the building in a manner that results in the destruction of, or significant damage, to the mural.

F. Lessons from Other Cities

Other cities, such as Los Angeles and Philadelphia, do not regulate murals through their sign codes. They have special public art programs to encourage community murals. Philadelphia in particular has an incredibly vibrant collection of public art murals that add vitality to the community, serve as a tourist draw, beautify the city and provide an avenue for involving youth and others in artistic expression. The City of Portland, by acting as a patron of public art murals, hopes to foster many of these same benefits here.

II. Background and Legal History

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. Eventually after trial, the exemption was also held to be unconstitutional under the

Part A

Murals as Public Art Program

First Amendment to the United States Constitution. The Multnomah County Circuit Court ruled, however, that the City's sign code, as amended to remove the exemption for murals (or "painted wall decorations") was constitutional.

Since the murals exemption was removed, murals had been regulated as signs in the City. As a result the largest allowable mural anywhere in the City (absent an adjustment) was 200 square feet.

B. The Public Art Mural Amendment

Mayor 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 the RACC) would not fall under the Sign Code but would instead go through a RACC approval process.

C. The Legal Basis for the Proposal

There are no Oregon cases applying Article I, Section 8 of the Oregon Constitution in the public art context that we have been able to locate. There is authority under the First Amendment to the United States Constitution, however, suggesting that when the government is acting as a patron of art, or is displaying art in publicly owned places, there is greater (but not unfettered) leeway to distinguish based on content than when the government is acting in a regulatory capacity.

For example, in *National Endowment for the Arts v. Finley*, 118 S Ct 2168, 141 L Ed 2d 500 (1998), the United States Supreme Court upheld a criterion in NEA grants taking into consideration general standards of "decency and respect" for diverse beliefs and values of the American public. The Court held that the decency and respect factors were merely to be taken into account and did not constitute per se a tool "for invidious viewpoint discrimination." 118 S Ct at 2176. The Court noted that direct viewpoint discrimination would not be allowable even under a public funding program, but held that these criteria "do not silence speakers by expressly 'threatening censorship of ideas.'" *Id.*

The Court also upheld the criterion against a content-based challenge, noting that "[a]ny content-based considerations that may be taken into account in the grant making process are a consequence of the nature of arts funding. The agency may decide to fund particular projects for a wide variety of reasons, 'such as the technical proficiency of the work, the anticipated public interest in or appreciation of the work, the work's contemporary relevance, its educational value, its suitability for or appeal to special audiences, such as children or the disabled, its service to a rural or isolated community, or even simply that the work could increase public knowledge of an art form.'" *Id.* at 2178.

D. Application to the Approved Amendments

Under the approved amendments, the City acts as a patron 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 remain unchanged, and all expression previously available under the Sign Code remains available. The amendment exempts only public art (that is, art funded by the City/Public Art Trust Fund and owned by the City) in public locations (in/on publicly owned buildings or spaces or in/on easements donated to the City). This distinguishes this amendment from the blanket exemption for murals (“painted wall decorations”) previously held to be unconstitutional.

III. RACC Process and Evaluation Criteria

A. Overview

The Regional Arts and Culture Council (RACC) administers an existing public art program for the City of Portland through an Intergovernmental Agreement (IGA). This program is being expanded to include public art murals. The established RACC public art review and selection process is a flexible and interactive process that allows the mural artist/proponent and the Public Art Advisory Committee (PAAC) to have a dialogue about all aspects of a proposed public art mural project. Discussions about the proposed mural can cover issues such as its size/scale, artistic quality, materials, lighting (if any), location/context, and community support.

The PAAC is a standing RACC committee, which meets monthly and is responsible for all aspects of the City’s public art program. Members’ terms last for three years, and the committee includes artists, arts professionals, curators, RACC’s designee to the Design Commission, one or two RACC board members, and citizens with interest and experience in the visual arts. The PAAC is currently made up of artists (one of whom has experience with community mural arts) a curator, arts writer, architect, visual arts patrons, and a RACC board member. The PAAC approves the selection panels’ recommendations for all public art commissions or purchases; considers potential gifts to the public art collection; and now reviews mural proposals.

In response to public input, RACC has agreed to add at least one person with specific expertise in community murals to the Public Art Advisory Committee, and encourages mural artists, community mural advocates and other underrepresented ethnic, cultural and linguistic groups interested in murals to submit mural proposals and to attend PAAC meetings and comment on proposed murals.

Another issue raised through public input was whether the “commercial” or “noncommercial” nature of a mural should be an approval criterion. Because the RACC approval criteria adequately address the City’s interest in ensuring the artistic quality, originality and site-specific appropriateness of any given mural, such a criterion is not necessary. It is often difficult to objectively distinguish between what is “commercial” and what is “noncommercial,” and the mere fact that a given mural may bear some relationship to a commercial establishment or enterprise is simply not determinative of whether it meets the criteria for public art.

Part A

Murals as Public Art Program

RACC staff meet with representatives of any mural project and forward the proposal to the PAAC if selection criteria appear to be met. Criteria include the requirement that the building owner sign an easement granting the City the right to place a mural on the building. The RACC then notify neighborhood coalitions, business associations and other interested parties of the PAAC meeting where the mural is to be considered and input may be provided by these groups. The PAAC weigh the proposal against the approval criteria and vote to approve or reject the proposal.

If the Public Art Advisory Committee decides not to approve a public art mural proposal, the applicant may ask for specific feedback on ways to improve his or her proposal, resubmit the proposal, and ask for reconsideration by the Committee at its next meeting.

B. Proposed Selection Criteria

The RACC staff and committees use the following criteria in considering murals:

- Artistic quality: strength of the artist's concept and demonstrated craftsmanship;
- Context: architectural, geographical, socio-cultural and historical;
- Media: paint, collage, relief, etc.;
- Scale: appropriateness of scale to the surrounding neighborhood;
- Diversity: race, age, style, media, experimentation, range of professional experience;
- Feasibility: budget, timeline, etc.;
- Originality: uniqueness;
- Structural and surface soundness: resistance to vandalism and weather;
- Building owner's signed easement form: Minimum 5 years unchanged, on site;
- Building owner's signed agreement for maintenance: over life of mural;
- Community Support: Key neighborhood representatives notified of RACC review meetings and opportunity to provide comment;
- Lighting provisions (if any): as allowed by City code;

Part A
Murals as Public Art Program

- Public Safety: meets City codes for safety; and
- Accessibility: meets City codes for accessibility.

Part A
Murals as Public Art Program

Part B. Approved Code Amendments

I. Impact Assessment

A. Background

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 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 commercial signs the same. As a result, murals were limited to 200 square feet in size (at most) in all areas of the City. Muralists and many other community members expressed concern about the negative impact this limitation had on the City's aesthetic quality and artistic environment.

As a result of the City regulating murals as signs, the creation of murals in Portland has virtually come to a standstill. The few individuals and groups who still attempt to create large-scale murals have faced costly adjustment fees or citations and fines for violating the City's Sign Code. Portland has an international reputation as an "incubator" for emerging artists and innovative arts events, such as the Modern Zoo, Time Based Art, Design Festival and Fashion Incubator, as well as a strong supporter of traditional performing arts. Regulating murals as signs effectively curtailed this unique, community-based art form in Portland; at the same time murals enjoyed a renaissance in Los Angeles, Philadelphia and other major U.S. cities.

B. The Approved Proposal

Mural artists and the larger artistic community have a desire to create murals that will beautify Portland's neighborhoods, provide an outlet for the expression of diverse community artistic and cultural values, and bolster the area's creative economy. This project helps satisfy that desire by exempting public art, including public art murals from the Sign Code, and from other land use reviews. These amendments allow public art murals to be approved through a streamlined review process conducted by the Regional Arts & Culture Council (RACC), acting on behalf of the City of Portland.

The goal of this project is to provide a new, constitutionally sound avenue for the creation of public art, including public art murals, by expanding the City's existing public art program to include murals. Public art murals are to be placed on public wall space. They are funded through the same funding mechanisms currently used by RACC for the rest of the City's public art collection. In sponsoring and

Part B

Approved Code Amendments

maintaining its public art collection, including future public art murals, the City acts as a patron of art, or in a proprietary capacity, not as a regulator.

RACC administers the City's public art program. The existing RACC public art review and selection process is adapted for public art murals. It is a flexible and interactive process that allows the mural artist and the Public Art Advisory Committee to have a dialogue about all aspects of a proposed public art mural project, including size/scale, artistic quality, materials, lighting (if any), location/context, community support, etc.

The streamlined review process involves an initial meeting with RACC, followed by a meeting with the Public Art Advisory Committee. The goal is to have a decision within those two meetings. Applicants whose proposal is not approved have the option to resubmit the proposal or ask for feedback for resubmission.

The proposal has the benefit of providing an alternative avenue to approve public art, including murals, outside the regulatory environment, while limiting costs by incorporating the process into the existing RACC framework.

C. Advancing Portland's Comprehensive Plan Goals

Encouraging the creation of additional avenues for public art helps secure Portland's role as the regional cultural center, which advances the City's Urban Development Goal, Goal 2. Public art murals strengthen neighborhood identity, which help foster the Neighborhood Goal 3 to reinforce the stability and diversity of the City's neighborhoods. The RACC review process allows the public to comment and influence the selection decision, which maintains the current citizen involvement required by Goal 9. The exclusion of public art from the Sign Code promotes good planning by avoiding overlapping reviews and balancing the benefits and costs of regulations, in conformance with Policy & Objective 10.10, Amendments to the Zoning and Subdivision Regulations. Lastly, and perhaps most importantly, the proposal furthers Goal 12, Urban Design by building on Portland's Character (12.1), Enhancing Variety (12.2), Promoting the Arts (12.5), Preserving Neighborhoods (12.6), and Community Planning (12.7). The RACC review process involves analysis of all of these items in consideration of public art funding, and creates public investments that enhance the Portland experience. Meanwhile, limiting the land use regulations for publicly owned art removes a regulatory barrier that is preventing the growth of this medium.

D. Stakeholder Outreach and Feedback

Between October 2003 and January 2004, the Mayor held six meetings with a working group of stakeholders, including mural artists, representatives of Metro Murals and representatives from the City Club research committee on billboard policy. The Mayor reconvened the murals workgroup in August 2004 and again in October 2004, to discuss and resolve remaining issues.

Between January 2004 and March 2004, meetings were held with the Citywide Land Use Group, the Alliance for Portland Neighborhood Business Associations (APNBA) and several local sign companies, including representatives of Clear

Channel. In March and June 2004, the project team met with a representative of Metro Murals, to share proposed changes and discuss best practices in other U.S. cities. In July, the Mayor's staff met with representatives from the newly formed Portland Mural Defense.

In June 2004, a meeting was convened with the chairs of the Portland Historic Landmarks Commission, Design Commission and Planning Commission. Meetings were also held between May 2004 and August 2004 with internal stakeholders, including the City Commissioners' Executives, and staff with code or policy expertise from the Bureau of Development Services, Bureau of Planning, Bureau of General Services, Office of Transportation, and the Office of Neighborhood Involvement.

Generally, stakeholder responses to the proposal were positive and supportive. Some stakeholders were confused by, or disagreed with existing interpretations of the Oregon constitution and prior rulings by Oregon courts on the protection of free speech. Some were concerned that the RACC review process would be overly cumbersome, subjective or time-consuming. Others wanted the proposal to include a statement making a clear distinction between advertising and art as it pertains to murals. Some mural artists and sign company representatives were concerned that the public art easement was overly restrictive, dampening property owner's willingness to donate an easement. Neighborhood activists were concerned about the possible proliferation of commercial mural images; a potential mural monopoly; and approval of undesirable or inappropriate murals, especially in residential areas.

Other alternative approaches that were considered during the development of the proposal included: increasing the maximum allowable size of all wall signs, and not requiring a RACC review for smaller murals.

Portions of the proposal changed in response to stakeholder input, such as streamlining the RACC's public art selection process, adding a mural artist to the Public Art Advisory Committee, adding provisions for the early termination of easements under certain circumstances, and ensuring that there is a mechanism for an artist to seek reconsideration of a RACC decision to deny a given mural proposal.

Throughout the summer, staff held several briefings with the RACC Board of Directors, the PAAC, the Design Commission and Historic Landmarks Commission. In general these groups were supportive of the project, with the one condition: that the Landmarks Commission have suitable input for any proposals on a Historic Landmark or within a Historic/Conservation District.

The Planning Commission held a public hearing of this proposal on September 28th. At the public hearing, testimony was provided on all aspects of the proposal. This testimony represented a number of divergent viewpoints and contained several suggestions, many similar to those brought up at the stakeholder groups. Additional suggestions included removing the easement requirement for property owners, allowing alternative financing proposals, and providing assurance that a diversity of cultural and minority interests are considered in the selection process.

Part B

Approved Code Amendments

At the Planning Commission work session on October 26th, staff provided additional information regarding the easement; flexible funding options for public art and public art murals; encouraging diversity in the RACC review process; allowing for reconsideration of proposals if not approved; and providing an annual evaluation of the proposed program. These changes have provided additional flexibility to the proposal to ensure it addresses a variety of situations.

The City Council held a hearing on December 1, 2004. The testimony received during this hearing indicated that the Public Art Mural proposal was the best existing compromise available to the various groups. The City Council voted to adopt the proposal on December 8, 2004.

E. Implementation and Enforcement

On behalf of the City, the Regional Arts & Culture Council (RACC) has incorporated public art murals into their existing Public Art program, to be administered by existing staff. In its FY 2004-2005 budget, the City provided \$50,000 to support the creation of RACC-approved public art murals. It is hoped that a future increase in the Percent for Art program as well as increased private donations to the Public Art Trust Fund will provide ongoing funding for public art murals in the future.

The Bureau of General Services is responsible for maintaining a written and photographic record of each RACC-approved public art mural and accepted public art easement. Many options exist for the termination of an easement and/or removal of an approved mural. If a RACC-approved public art mural is altered by a building owner without permission, the City has the authority to bring an action for specific performance to require the building owner to restore the City-owned mural to its approved condition and to collect liquidated damages for the City's enforcement costs. In addition, existing enforcement options regarding graffiti and the defacing of public property are available. Outside of RACC, General Services and Graffiti Abatement, implementation of this measure has a negligible effect on City Bureaus.

In order to publicize the new public art murals review process and easement requirement, the project team will work with mural artists and business community to develop public information materials and an outreach strategy to property owners and mural artists.

F. Measuring Effectiveness

The public art murals program will be successful if it results in the creation of original, artistic public art murals that beautify the City's neighborhoods, and enhance opportunities for community artistic expression. Another measure of success might be increased donations to the Public Art Trust Fund, or support for expanding the Percent for Art program.

Since the Regional Arts & Culture Council already provides an annual report to the City Council, an update on the public art murals program can easily be added to the Annual Report. The Public Art Advisory Committee will also include an evaluation component to its semi-annual planning retreat.

II. Title 5, Revenue and Finance, Code Amendments

How changes are shown in this section

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

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
Approved Code Amendments - Commentary

TITLE 5
REVENUE AND FINANCE

CHAPTER 5.74
ACQUISITION OF ART

5.74.020 Definitions

Subsection C, which provides the definition for Public Art, is amended to clarify that only artwork approved and funded through the Regional Arts and Culture Council (RACC) can be considered as "Public Art". The RACC operates on behalf of the City of Portland to approve and fund the public art installations, which can include wall murals.

TITLE 5
REVENUE AND FINANCE

CHAPTER 5.74
ACQUISITION OF ART

5.74.020 Definitions

A-B. [No change.]

C. Public Art means original visual creations which are sited in a manner accessible to the public and/or public employees, and which have been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.

D-G. [No change.]

Part B
Approved Code Amendments - Commentary

III. Title 32, Sign and Related Regulations, Code Amendments

How changes are shown in this section

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Part B
Approved Code Amendments - Commentary

TITLE 32
SIGNS AND RELATED REGULATIONS

CHAPTER 32.12
AUTHORITY AND SCOPE

32.12.020 Exemptions

This section is altered to provide an exemption from the Sign Code for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC). With this provision, RACC-approved public art projects are not subject to the requirements of Title 32.

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; ~~and~~

H. Illuminated wall highlights; ~~and~~ and

I. Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

IV. Title 33, Planning and Zoning, Code Amendments

How changes are shown in this section

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Part B
Approved Code Amendments - Commentary

CHAPTER 33.420
DESIGN OVERLAY ZONE

33.420.045 Exempt from Design Review

This section is altered to provide an exemption from Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC). With this provision, RACC-approved public art projects are not subject to the requirements of the Design Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural context of the building and site. Also, the RACC selection board includes a member from the Design Commission.

CHAPTER 33.420
DESIGN OVERLAY ZONE

33.420.045 Exempt From Design Review

The following items are exempt from design review:

- A-Q.** [No change.];
- R.** Awnings for each ground floor tenant, which meet the following requirements; ~~and~~
 - 1-2. [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.

Part B
Approved Code Amendments - Commentary

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Landmarks

33.445.140 Alterations to a Historic Landmark

33.445.140.B Exempt from Historic Design Review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on a Historic Landmark. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

Conservation Landmarks

33.445.230 Alterations to a Conservation Landmark

33.445.230.B Exempt from Historic Design Review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on a Conservation Landmark. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Landmarks

33.445.140 Alterations to a Historic Landmark

Alterations to a Historic Landmark require historic design review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No change.]

B. Exempt from historic design review.

1-4. [No change.]

5. Parking lot landscaping that meets the standards of this Title and does not include a wall or a fence; ~~and~~
6. Rooftop mechanical equipment 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.

Conservation Landmarks

33.445.230 Alterations to a Conservation Landmark

Alterations to Conservation Landmarks require historic design review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No change.]

B. Exempt from historic design review.

1-3. [No change.];

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Rooftop mechanical equipment 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
6. Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Districts

33.445.320 Development and Alterations in a Historic District

33.445.320.B Exempt from historic design review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on buildings within Historic Districts. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site and surrounding district. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

Conservation Districts

33.445.420 Development and Alterations in a Conservation District

33.445.420.B Exempt from historic design review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on buildings within Conservation Districts. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site and surrounding district. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

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.

1-4. [No change.]

5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment 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.

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.

1-3. [No change.]

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment 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.

Part B
Approved Code Amendments - Commentary

Part C: Appendices

- I. Appendix A:** Mayor Katz Letter of Support..... Pg. 33
- II. Appendix B:** Approved Ordinance..... Pg. 35



Office of Mayor Vera Katz
City of Portland

August 30, 2004

Dear Colleagues and Interested Citizens:

The City of Portland is blessed with a vibrant arts scene. We've earned an international reputation as an "incubator" for emerging artists and innovative arts events, such as the Modern Zoo, Time Based Art, Design Festival and Fashion Incubator, as well as a strong supporter of our vibrant established visual and performing arts. Community murals have been an integral part of Portland's growing creative economy, adding beauty to Portland's neighborhoods, providing an outlet for the expression of diverse community cultural values and aspirations, and creating a unique visual landscape that attracts visitors from across the country and the world.

The City had a long history of encouraging murals by exempting them from regulation, until a court decision forced the City to regulate murals as signs. Regulating murals as signs has effectively curtailed this unique, community-based art form in Portland. At the same time, murals have enjoyed a renaissance in Los Angeles, Chicago and other major U.S. and European cities.

This proposal sets forth a constitutional avenue for the City to again encourage mural arts by acting as a patron of public art murals in public places.

I encourage you to read the proposal, and look forward to hearing your comments.

With warm regards,

Vera Katz
Mayor

ORDINANCE No. 178946

Authorize expansion of the City public art program to include the Public Art Murals program (Ordinance; amend Titles 5, 32 and 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. In 1980, the City passed its first “percent for art” ordinance and for the last 25 years has sponsored the creation and placement of public art in the City of Portland.
2. The City’s public art program provides significant benefits to the community. It contributes to the beauty of the city’s aesthetic environment, exposes citizens to art in public places and encourages and supports the arts community by providing funding for artists’ work and venues for the display of that work through their inclusion in the City’s public art collection.
3. The City has long recognized that murals accessible to the public can also 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, and discouraging the placement of graffiti on buildings and structures.
4. In order to encourage these benefits, the City in 1986 exempted “painted wall decorations” (murals) from its sign regulations.
5. 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.
6. 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 that this allegation was correct and invalidated the definitions of sign and painted wall decoration to the extent they were based on this distinction.
7. 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 reluctantly amended its Sign Code to remove the exemption for painted wall decorations (murals). Since that time, all exterior murals in the City have been regulated as signs.

8. Under the City's sign regulations, the largest allowable sign (absent an adjustment) is 200 square feet. These regulations apply to murals.
9. 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, have expressed dissatisfaction with the 200 square foot limitation, which has brought the creation of new mural art in Portland to a virtual standstill.
10. Other cities, such as Los Angeles and Philadelphia, do not regulate all murals through their sign codes. They have public art programs that support and encourage community murals. These programs and the public art murals they foster serve as a tourist draw, beautify the cities and provide an avenue for involving youth and others in positive artistic endeavors. These are among the objectives of this Public Art Murals program.
11. Through its public art program, the City sponsors art by providing funding for art and by maintaining and displaying the public art collection in public spaces and buildings. Through the Public Art Murals program, the City will expand its sponsorship of public art and its public art collection to include murals, which will be owned by the City and placed on public property (either owned by the City or dedicated to the City for that purpose through the conveyance of a public art easement to the City). Absent circumstances requiring or permitting early termination of the easement in favor of the City by the property owner, public art easements will generally be for five years or more, as this is the minimum expectation of artists for the lifespan of this medium of artistic expression.
12. The City's Sign Code, which provides clear and objective standards for the regulation of signs, without regard to their content, is not the appropriate vehicle for the City (through RACC) to evaluate, select or commission public art for its public art collection.
13. The selection of what art to fund, purchase or otherwise include in the City's public art collection requires an evaluation of numerous factors, such as artistic quality, originality, context and scale, among others.
14. The Regional Arts and Culture Council (RACC) has extensive experience and expertise in making evaluations such as this on behalf of the City.
15. The needs met by design review and historic landmarks review can in the case of public art be even better served through the RACC selection process, which is specifically tailored to ensure that public art is of high quality, is sited in appropriate locations and in the proper context and is in scale with its surroundings. The RACC selection process is conducted by the Public Art Advisory Committee, which includes a representative of the Design Commission. When historic properties are involved, RACC can draw as needed on the expertise of the Historic Landmarks Commission. It would be needlessly burdensome to require public art to go through both the RACC review process and design review or historic landmarks review.
16. This program will not limit in any way speech (whether murals or signs) currently allowable. In particular, any mural/sign allowable prior to the adoption of this program will not be limited by this program. This program will instead provide a vehicle for the City to sponsor public art murals and add murals to its public art collection. Those wishing to participate in the public arts program will be self-selecting, by submitting a proposal to RACC for a public art mural to be owned by the City on behalf of the public.

17. The Public Art Murals program is the result of a process that began in October 2003 when the Mayor convened a group that included mural artists, a representative of Metro Murals (a non-profit group dedicated to mural art), the Executive Director of RACC and representatives of the City Club. The group met six times between October 2003 and January 2004, and then again in August and October 2004 to discuss and resolve remaining issues.
18. Between January and March 2004, meetings were held with the Citywide Land Use Group, the Alliance for Portland Neighborhood Business Associations and several local sign companies.
19. During the summer of 2004, the proposal was presented to both the Design Commission and the Historic Landmarks Commission at public hearings, and both commissions supported the proposal. RACC agreed to work with the Historic Landmarks Commission to develop an approval procedure for murals on historic buildings or in historic districts that RACC and the Landmarks Commission agree protects and respects the special values of these structures/districts.
20. On August 11, 2004, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
21. On September 28, 2004, the Planning Commission held a hearing on the proposal. Staff from the Mayor's Office, City Attorney's office and the Regional Arts and Culture Council (RACC) presented the proposal, and public testimony was received by 16 people.
22. On October 26, 2004, the Planning Commission held a work session to discuss the remaining items under the proposal and consider public testimony. The Commission voted unanimously to forward the Public Art Mural package to City Council.
23. On December 1, 2004, the City Council held a public hearing on the Planning Commission recommendation. Staff from the Mayor's Office, City Attorney's office and the Regional Arts and Culture Council (RACC) presented the proposal, and public testimony was received.
24. On December 8, 2004, City Council voted to adopt the changes for Public Art Murals, with an effective date of December 18, 2004.

Statewide Planning Goals Findings

25. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals. The following state goals and policies are relevant and applicable to the Public Art Mural Project.

26. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement:
- In October of 2003, the Office of the Mayor established a task force of interested mural artists to investigate possible options to allow the city to encourage new public art murals to be commissioned through the city. This task force met eight times.
 - Initial citizen involvement was afforded through the hearings and meetings referenced in findings 17, 18 and 19, above.
 - On August 27, 2004, the Bureau of Planning, on behalf of the Office of the Mayor, sent notice to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as other interested persons to inform them of a Community Open House on September 15, 2004. The purpose of the open house was to allow the public the opportunity to review the proposed recommendations and ask questions of staff.
 - Also on August 27, 2004, the Bureau of Planning on behalf of the Office of the Mayor sent notices to all neighborhood associations and coalitions and business associations in the City of Portland, as well as other interested persons, to inform them of a Planning Commission public hearing on the Public Art Mural project. The hearing was also published in the newspaper.
 - On September 1, 2004, the Bureau of Planning published a document titled *Public Art Murals: Proposed Draft*. The report was made available to the public and mailed to all those requesting a copy. An electronic copy was posted to both the Bureau of Planning and the Mayor's Web site.
 - On September 8, 2004, a special open house was held by the Mayor's office for representatives of the mural community. This open house allowed the community to ask questions directly of the mayor's staff, the city attorney, and a representative of the Regional Arts and Culture Committee. Twenty-four people from the mural arts community attended.
 - On September 15, 2004, a Community Open House was held at which staff from the mayor's office, city attorney's office, Planning, and the Regional Arts and Culture Commission were available to answer questions; copies of the Proposed Draft were available. Twenty-one members of the community, mostly representatives from the mural community, attended.
 - On September 28, 2004, the Planning Commission held a public hearing during which citizens and business representatives commented on the Public Art Mural project.
 - On December 1, 2004, the City Council held a public hearing on this proposal, during which citizens and business representatives provided oral and written testimony.
27. **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 amendments are supportive of this goal because development of the recommendations followed established city procedures for legislative actions.

28. **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 amendment is supportive of this goal regarding historic landmarks, because the public art selection process will include criteria insuring the preservation of sites with historical significance and will require involvement of the Historic Design Commission.

Metro Urban Growth Management Functional Plan Findings

29. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to the Public Art Mural project.
30. **Title 12—** Protection of Residential Neighborhoods is intended to protect the region's existing residential neighborhoods from air and water pollution, noise and crime, and to provide adequate levels of public services. The Public Art Mural project supports the purpose and intent of this title by providing an avenue for neighborhoods to review and approve public art murals, which help in deterring graffiti on building walls and fostering increased community interaction.

Portland Comprehensive Plan Goals Findings

31. 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.
32. The following goals, policies and objectives of the Portland Comprehensive Plan are relevant and applicable to the Public Art Mural project.
33. **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. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.
34. **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 amendment supports this goal by expanding the public art program to apply to public art murals, thus strengthening Portland's role as the regional cultural center. Criteria for approving art installations will be partially based on neighborhood context, helping to retain the character of established residential neighborhoods.

35. **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 amendments support this goal by providing an avenue for approving public art murals, which help strengthen neighborhood identity. The Public Art program will improve physical conditions of existing structures by providing a public easement (3.1), create an avenue to improve social conditions of neighborhoods by creating community murals that help reduce property crimes such as graffiti (3.2), and promote neighborhood diversity by allowing opportunities to commission art representing a diversity of interests (3.3). The public approval process created by the Regional Arts and Culture Council (RACC) will provide an avenue for active neighborhood and business involvement (3.5).
36. **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 amendment supports this goal by providing a legal avenue for mural artists to commission work through the City program (5.2). Resulting murals may encourage investment in existing buildings for employment and housing opportunities (5.1).
37. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The amendments are 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 procedures for approving public art, including murals, while not a land use decision, will provide a mechanism for public participation in the decision process.
38. **Goal 10, Plan Review and Administration**, is broken down into 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 amendments are supportive of Policy 10.10, because the exclusion of Public Art installations from Land Use and Sign Code reviews prevents an overlapping of reviews with the RACC review of public art. The changes balance the benefits of regulation against the costs of implementation and compliance.
39. **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 amendments are consistent with this goal because they provide a new avenue for the creation of public art. The scale, theme, originality and diversity of the art will be review criteria used by RACC and community interests to judge for approval. As a result, these public art installations will enhance and extend Portland's attractive identity (12.1), promote areas of special identity within the city (12.2), humanize the city through promotion of the arts and excellence in design (12.5), preserve and support the qualities of individual neighborhoods (12.6), enhance Portland's appearance and character through development of public and private projects that are models of innovation and leadership in the design of the built environment (12.7) and support community planning (12.8).

NOW, THEREFORE, the Council directs:

- a. Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004, is hereby adopted;
- b. Title 33, Planning and Zoning, is hereby amended as shown in Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004;
- c. Title 32, Signs and Related Regulations, is hereby amended as shown in Exhibit A, *Public Art Mural Program: Recommended Draft*, dated November 8, 2004;
- d. Title 5, Finance and Administration, is hereby amended as shown in Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004;
- e. The commentary and discussion in Exhibit A, Public Art Murals Program: Recommended Draft, dated November 8, 2004, are hereby adopted as legislative intent and further findings;
- f. 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 public art from the City's sign 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 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 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 public art from the City's sign regulations, may be found to be invalid or unconstitutional;
- g. The Regional Arts and Culture Council shall implement the Public Art Murals program on behalf of the City of Portland under the terms of its existing intergovernmental agreement with the City, shall reach consensus with the Historic Landmarks Commission on the RACC selection process for art on historic landmarks and in historic districts and shall refrain from approving art in such locations until consensus is reached;
- h. The Regional Arts and Culture Council shall include progress information on the Public Arts Murals program in its annual report to Council; and City *staff* shall take all necessary steps to implement the Public Art Murals Program, including but not limited to evaluating and where appropriate accepting dedications of easements for the placement of public art; monitoring and protecting the City's property interests in the public art collection and working with mural artists and the business community to develop public information materials and an outreach strategy to property owners and mural artists.

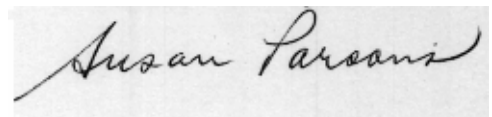
Portland
Passed by the Council, DEC 08 2004

Mayor Vera Katz

Tracy Reeve, Office of City Attorney
Phil Nameny, Bureau of Planning
November 18, 2004

GARY BLACKMER
Auditor of the City of

By

A handwritten signature in cursive script, reading "Susan Parsons", written in dark ink on a light-colored background.

Deputy

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