

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.

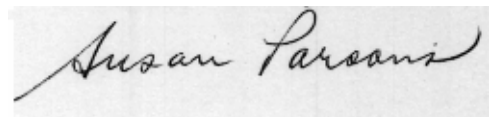
GARY BLACKMER
Auditor of the City of Portland

Passed by the Council, DEC **0** 8 2004

Mayor Vera Katz

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

By

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

Deputy