



Multnomah County Oregon

## Board of Commissioners & Agenda

connecting citizens with information and services

### BOARD OF COMMISSIONERS

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### AUGUST 4 & 6, 2009

### BOARD MEETINGS

### FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:00 a.m. Tuesday Executive Session
Pg 2	9:30 a.m. Thursday Opportunity for Public Comment on non-agenda matters
Pg 2	9:30 a.m. Thursday First Reading and Possible Adoption of an Ordinance Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions to Establish a New Original Art Mural Regulatory and Permitting Program in Compliance with Metro's Functional Plan, and Declaring an Emergency
Pg 3	9:30 a.m. Thursday Multnomah County Green Team Annual Presentation
<b>The August 25 and August 27, 2009 Board Meetings are Cancelled</b>	

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

#### (Portland & East County)

Thursday, 9:30 AM, (LIVE) Channel 30

Sunday, 11:00 AM Channel 30

#### (East County Only)

Saturday, 10:00 AM, Channel 29

Tuesday, 8:15 PM, Channel 29

Produced through MetroEast Community Media  
(503) 667-8848, ext. 332 for further info  
or: <http://www.metroeast.org>

Tuesday, August 4, 2009 - 9:00 AM  
Multnomah Building, Sixth Floor Commissioners Conference Room 635  
501 SE Hawthorne Boulevard, Portland

## **EXECUTIVE SESSION**

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(d),(e) and/or (h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by County Attorney Agnes Sowle. 15-55 MINUTES REQUESTED.
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Thursday, August 6, 2009 - 9:30 AM  
Multnomah Building, First Floor Commissioners Boardroom 100  
501 SE Hawthorne Boulevard, Portland

## **REGULAR MEETING**

### **CONSENT CALENDAR - 9:30 AM** **DEPARTMENT OF COMMUNITY SERVICES**

- C-1 Intergovernmental Non-Financial Agreement 4710000319 with the Oregon Department of Transportation for Ongoing Maintenance of the Retaining Walls on NE Sandy Boulevard at NE 223rd Avenue

### **REGULAR AGENDA** **PUBLIC COMMENT - 9:30 AM**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

### **DEPARTMENT OF COMMUNITY SERVICES – 9:30 AM**

- R-1 First Reading and Possible Adoption of an ORDINANCE Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions to Establish a New Original Art Mural Regulatory and Permitting Program in Compliance with Metro's Functional Plan, and Declaring an Emergency

**DEPARTMENT OF COUNTY MANAGEMENT – 9:35 AM**

R-2 Multnomah County Green Team Annual Presentation. Presented by Kat West, Jeremy O’Leary, Grant Swanson, Alan Proffitt, Terry Baxter, Steve Wright and Stuart Farmer. 20 MINUTES REQUESTED.

**BOARD COMMENT**

Opportunity (as time allows) for Commissioners to provide informational comments to Board and public on non-agenda items of interest or to discuss legislative issues.



## MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS  
501 SE HAWTHORNE BOULEVARD, SUITE 600  
PORTLAND, OREGON 97214-3587  
(503) 988-5213

Diane McKeel • DISTRICT 4 COMMISSIONER

# MEMORANDUM

TO: Chair Ted Wheeler  
Commissioner Deborah Kafoury  
Commissioner Jeff Cogen  
Commissioner Judy Shiprack  
Board Clerk Deb Bogstad

FROM: Andrew Olsen  
Staff Assistant to Commissioner Diane McKeel

DATE: July 23, 2009

RE: Excuse memo for August 5 through August 10, 2009.

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Due to a scheduled trip to Washington DC, Commissioner McKeel will excuse herself from all Board meeting responsibilities between the dates of August 5 and August 10, 2009.

Thank you,

Andrew Olsen

# MULTNOMAH COUNTY

## AGENDA PLACEMENT REQUEST (revised 09/22/08)

### Board Clerk Use Only

Meeting Date: 08/06/09  
Agenda Item #: E-1  
Est. Start Time: 9:00 AM  
Date Submitted: 07/30/09

**Agenda Title:** Executive Session Pursuant to ORS 192.660(2)(d),(e)and/or(h)

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Requested Meeting Date: August 6, 2009 Amount of Time Needed: 5-55 mins  
Department: Non-Departmental Division: County Attorney  
Contact(s): Agnes Sowle  
Phone: 503 988-3138 Ext. 83138 I/O Address: 503/500  
Presenter(s): Agnes Sowle and Invited Others

### General Information

**1. What action are you requesting from the Board?**

No final decision will be made in the Executive Session.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

Only representatives of the news media and designated staff are allowed to attend. Representatives of the news media and all other attendees are specifically directed not to disclose information that is the subject of the Executive Session.

**3. Explain the fiscal impact (current year and ongoing).**

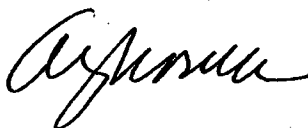
**4. Explain any legal and/or policy issues involved.**

ORS 192.660(2)(d),(e)and/or(h)

**5. Explain any citizen and/or other government participation that has or will take place.**

### Required Signature

Elected Official or  
Department/  
Agency Director:



Date: 07/30/09

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# MULTNOMAH COUNTY

## AGENDA PLACEMENT REQUEST (revised 09/22/08)

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### Board Clerk Use Only

Meeting Date: 08/06/09  
Agenda Item #: C-1  
Est. Start Time: 9:30 AM  
Date Submitted: 07/20/09

**Agenda Title:** Intergovernmental Non-Financial Agreement 4710000319 with the Oregon Department of Transportation for Ongoing Maintenance of the Retaining Walls on NE Sandy Boulevard at NE 223rd Avenue

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.*

<b>Requested Meeting Date:</b>	August 6, 2009	<b>Amount of Time Needed:</b>	Consent Calendar
<b>Department:</b>	Community Services	<b>Division:</b>	Road Services
<b>Contact(s):</b>	Brian Vincent, PE, County Engineer		
<b>Phone:</b>	(503) 988-5050	<b>Ext.</b>	29642
<b>Presenter(s):</b>	Brian Vincent, PE, County Engineer		
	<b>I/O Address:</b>	#425/2 <sup>nd</sup> Floor	

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### General Information

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**1. What action are you requesting from the Board?**

The Department of Community Services' Road Services Division requests approval of an Intergovernmental Agreement with Oregon Dept. of Transportation (ODOT) for the ongoing maintenance of the retaining walls on NE Sandy Blvd. at NE 223<sup>rd</sup> Avenue.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The Road Services constructed improvements to NE Sandy Blvd. at NE 223<sup>rd</sup> Ave. that involved widening NE Sandy Blvd. resulting in the need to construct retaining walls in the right-of-way of I-84 which is an ODOT right-of-way.

**3. Explain the fiscal impact (current year and ongoing).**

The estimated ongoing maintenance cost to maintain the retaining wall is not to exceed \$500.00/year. Maintenance funds will be expended from the annual Road Services operations budget.

**4. Explain any legal and/or policy issues involved.**

This IGA is a requirement of the ODOT Permit to construct the retaining walls.

**5. Explain any citizen and/or other government participation that has or will take place.**

ODOT will conduct periodic inspections for proper maintenance of the retaining walls.

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**Required Signature**

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**Elected Official or  
Department/  
Agency Director:**



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**Date:** 07/20/09

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# Non-Financial Agreement

**Vendor Address**

OREG ST OF DEPT OF TRANSPORT  
123 NW FLANDERS ST  
PORTLAND OR 97209-4037

**Information**

**Contract Number** 4710000319  
**Date** 07/17/2009  
**Vendor No.** 12052  
**Contact/Phone** Land Use & Trans /  
X26798  
**Validity Period:** 08/17/2009 - 08/13/2029  
**Minority Indicator:** Not Identified

Item	Material/Description	Target Qty	UM	Unit Price
0001	<p>*** Validity period changed ***</p> <p>IGA w-ODOT re: Ret Walls @ Sandy &amp; 223rd</p> <p>Plant: F030 Community Service</p> <p><i>Intergovernmental Agreement between Multnomah County and Oregon Dept. of Transportation (ODOT) for the Ongoing Maintenance of the Retaining Walls on NE Sandy Blvd. at NE 223rd Avenue, in connection with a County construction project at that location.</i></p> <p><i>Costs will be borne by internal LUT operating funds.</i></p> <p><i>Dept Contacts: Gregory Kirby PE - 988-5050 x29623, or</i></p> <p><i>Brian Vincent, PE, County Engineer - 988-5050 x29642</i></p> <p><i>Effective dates: Upon execution by all parties, or</i></p> <p><i>August 17, 2009 - August 16, 2029, unless terminated sooner with approval of all parties</i></p> <p>*** Text changed ***</p>			\$ 0.0000



-----Original Message-----

**From:** RYAN Matthew O  
**Sent:** Friday, July 17, 2009 4:16 PM  
**To:** VINCENT Brian S  
**Cc:** KIRBY Greg H; KRAMER Cathey M  
**Subject:** RE: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Brian,  
Contrary to what I just said, I think I do need to note that you and I discussed the language change in the above referenced IGA from my email sent at 1:51 today. That is the final draft IGA altered significantly the County's inspection and maintenance obligations under COUNTY OBLIGATIONS, Section 2; to now be mandatory quarterly inspection and County responsibility for maintenance and repair. The earlier version did not mandate quarterly inspections and just expressly required maintenance; not repair. And my understanding is you were ok with the changes.

That being said my initial review and authorization to the BCC still stands. Thanks.

Matthew O. Ryan  
Assistant County Attorney  
Office of Multnomah County Attorney  
501 SE Hawthorne, Suite 500  
Portland, Oregon 97214  
Tel: 503-988-3138; Fax: 503-988-3377  
[matthew.o.ryan@co.multnomah.or.us](mailto:matthew.o.ryan@co.multnomah.or.us)

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**From:** VINCENT Brian S  
**Sent:** Friday, July 17, 2009 3:41 PM  
**To:** RYAN Matthew O; KRAMER Cathey M  
**Cc:** KIRBY Greg H  
**Subject:** RE: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Matt:

I reviewed the draft and the final side by side. While ODOT incorporated all the revisions that were denoted in the draft, they also wordsmith a couple items. They seem like better language and as such appear acceptable. Please review the highlighted changes against the draft and advise if you have any concern.

Thanks. Brian

-----Original Message-----

**From:** RYAN Matthew O  
**Sent:** Friday, July 17, 2009 1:51 PM  
**To:** KRAMER Cathey M  
**Cc:** VINCENT Brian S; KIRBY Greg H  
**Subject:** FW: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Cathey,

The attached draft IGA with revised sections highlighted has been reviewed and is approved for submission to the BCC for its consideration; **provided** all the changes are included in the final and no other changes are made. Thanks.

Matthew O. Ryan  
Assistant County Attorney  
Office of Multnomah County Attorney  
501 SE Hawthorne, Suite 500  
Portland, Oregon 97214  
Tel: 503-988-3138; Fax: 503-988-3377  
[matthew.o.ryan@co.multnomah.or.us](mailto:matthew.o.ryan@co.multnomah.or.us)

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**From:** KRAMER Cathey M  
**Sent:** Friday, July 17, 2009 11:20 AM  
**To:** RYAN Matthew O  
**Cc:** KIRBY Greg H  
**Subject:** FW: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Good morning, Matt. May I have an e-mail approving this to be routed for signatures, please. Thanks, Cathey

-----Original Message-----

**From:** VINCENT Brian S  
**Sent:** Friday, July 17, 2009 8:10 AM  
**To:** RYAN Matthew O  
**Cc:** KRAMER Cathey M; KIRBY Greg H  
**Subject:** FW: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Matt:

Nothing to do here. Just a heads up. We will be sending you the final IGA under a consent request to BOC. As we discussed earlier. ODOT did pretty well in accommodating our revisions. As I recall, we didn't comment on this "final" version because of ODOT's statement that it is "final". Brian

-----Original Message-----

**From:** VINCENT Brian S  
**Sent:** Thursday, June 11, 2009 10:56 AM  
**To:** RYAN Matthew O  
**Subject:** FW: 25037 Soundwallmaint-I-84-223rd-FINAL DRAFT TO SALEM

Matt: Here is another iteration of the Maintenance IGA with ODOT for the retaining wall out on Sandy/223<sup>rd</sup>.

Looks like the "final draft" language suggests they may not entertain too many more discussions. In any event can you please take another look at this for fatal flaws or concerns?

-----Original Message-----

**From:** KIRBY Greg H

**COOPERATIVE IMPROVEMENT AGREEMENT**  
**I-84: NE 223<sup>RD</sup> and NE Sandy Boulevard Retaining Wall**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and Multnomah County, acting by and through its elected officials, hereinafter referred to as "COUNTY," individually referred to as the "Party" and collectively referred to as the "Parties."

**RECITALS**

1. I-84, Columbia River Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). NE 223<sup>rd</sup> and NE Sandy Boulevard, also known as Northeast Portland Hwy (Hwy 30B) relinquished by ODOT to the COUNTY by Jurisdictional Transfer No. 694 on February 3<sup>rd</sup>, 2000, are part of the county road system under the jurisdiction and control of COUNTY.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The COUNTY constructed a project on Sandy Boulevard which included widening, curb and sidewalk, illumination and traffic signal modifications. In order to successfully widen Sandy Boulevard for that project, ODOT required that the COUNTY construct two retaining walls to help retain the earthen embankments of I-84. The COUNTY constructed the walls as a COUNTY project with COUNTY funds on ODOT's I-84 right of way.
4. Due to critical time constraints and financial considerations, the Region 1 Manager agreed to the COUNTY's request that the construction of the retaining walls begin under permit through the District 2B permitting office by a Memorandum of Understanding (MOU) followed by a permit, Permit Number 2BM37506, to be followed by an intergovernmental agreement for ownership and ongoing maintenance for the walls. The MOU and the District Permit is attached hereto, marked Exhibit B, and by this reference made a part hereof.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

### **TERMS OF AGREEMENT**

1. Under such authority, ODOT and COUNTY agree that the purpose of this Agreement is to establish ownership of the constructed retaining walls and establish the maintenance responsibilities for the two retaining walls constructed on the north side of I-84 in the southeast and southwest quadrants of the intersection of NE 223<sup>rd</sup> and NE Sandy Boulevard, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The MOU in Exhibit B, dated April 23, 2008, shall be considered null and void with the execution of this Agreement.
2. The total cost for the construction of the retaining walls was \$182,680 funded by COUNTY with funds available to it, and has been completed. The estimated cost for the maintenance for the Project is \$500.00 per year or \$10,000 in COUNTY funds over the estimated life of the Project. The estimated maintenance costs for the Project is subject to change.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities being maintained. The useful life is defined as twenty (20) calendar years.

### **COUNTY OBLIGATIONS**

1. COUNTY shall, at its own expense, maintain the Project throughout the useful life of the Project at a minimum level that is consistent with ODOT standards listed in ODOT maintenance manuals for such structures. The ODOT Maintenance Guide is available at the following Internet address: <http://www.oregon.gov/ODOT/HWY/OOM/MGuide.shtml>. Except for betterments that have or may be constructed by or for ODOT, COUNTY is responsible for maintenance of the Project features constructed and installed by COUNTY. The maintenance includes any surface and structural integrity maintenance needed for the Project.
2. COUNTY is responsible for all impacts to ODOT property caused by the construction, installation and maintenance of Project. COUNTY agrees that it shall be responsible for quarterly inspections, and as needed shall make necessary repairs and perform maintenance for the life of the Project. All maintenance or repair costs for Project shall be COUNTY'S responsibility. COUNTY shall be responsible for the performance of maintenance even when maintenance is performed by designees. COUNTY or its designees are required to notify the Region 1 District 2B office twenty-four (24) hours prior to performing routine maintenance for the Project.

**ODOT/COUNTY**  
**Agreement No. 25037**

3. COUNTY maintenance responsibilities of Project shall include graffiti removal, accident or vandalism repair, and any repair due to wear or age.
4. COUNTY shall perform the work under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings. Nothing herein is intended, nor shall it be construed, to create between the PARTIES any relationship of principal and agent, partnership, joint venture or any similar relationship, and each PARTY hereby specifically disclaims any such relationship.
5. COUNTY shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities resulting from the COUNTY's negligence or other misconduct under this Agreement. COUNTY shall remain responsible for compliance with the terms of this Agreement, and responsible for the performance of work even if maintenance is performed by COUNTY contractors.
6. Notwithstanding the foregoing defense obligations under the paragraph above, neither COUNTY nor any attorney engaged by COUNTY shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that COUNTY is prohibited from defending the State of Oregon, or that COUNTY is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against COUNTY if the State of Oregon elects to assume its own defense.
7. All employers, including COUNTY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. COUNTY shall ensure that each of its subcontractors complies with these requirements.
8. COUNTY acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY which are directly

**ODOT/COUNTY**  
**Agreement No. 25037**

pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

9. COUNTY shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, COUNTY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
10. COUNTY certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of COUNTY, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind COUNTY.
11. COUNTY's Project Manager for this Project is Greg Kirby, Multnomah County, 1620 SE 190<sup>th</sup> Avenue, Portland, OR 97233, phone: 503-988-5050 x29623 or assigned designee upon individuals absence.

**ODOT OBLIGATIONS**

1. ODOT may conduct periodic inspections during the life of the Project to verify that Project is being properly maintained.
2. Upon the execution of this Agreement, ODOT shall accept ownership of the Project improvements with complete jurisdiction and control for said improvements. Project is located on ODOT operating right of way.
3. ODOT's Project Manager for this Project is Melinda Griffith, 9200 SE Lawnfield Rd, Clackamas, OR 97015, phone: 971-673-6226, or assigned designee upon individuals absence.

**GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.

**ODOT/COUNTY**  
**Agreement No. 25037**

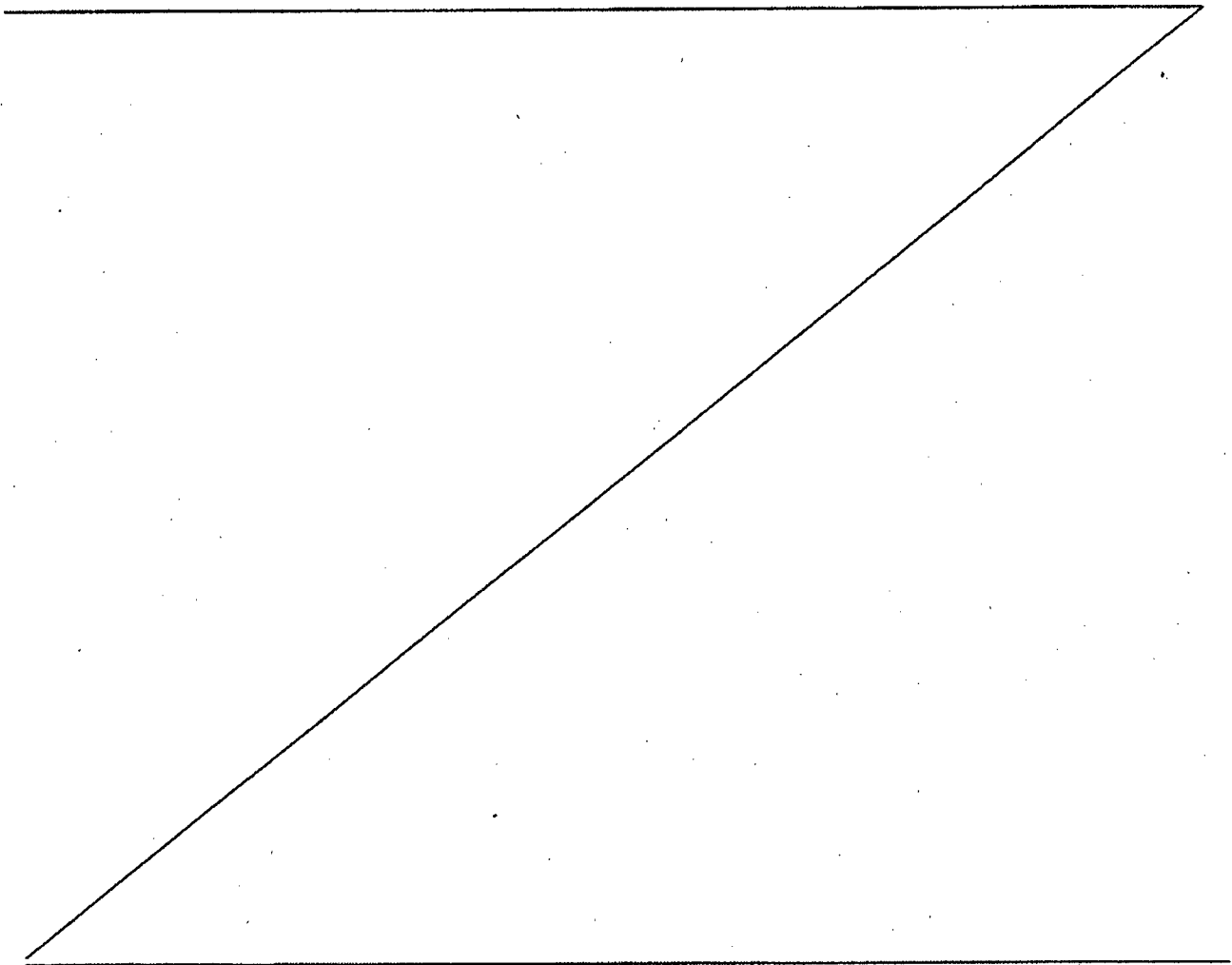
2. ODOT may terminate this Agreement effective upon delivery of written notice to COUNTY, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If COUNTY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If COUNTY fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within thirty (30) days or such longer period as ODOT may authorize.
  - c. If COUNTY fails to provide payment of its share of the cost of the Project.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If COUNTY fails to maintain facilities in accordance with the terms of this Agreement, after an appropriate time to correct failures to perform maintenance, as provided under General Provisions Section 2.b. , and without correction of the failure to perform, ODOT, at its option may maintain the facility and bill COUNTY, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
5. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
6. This Agreement and attached exhibits constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

ODOT/COUNTY  
Agreement No. 25037

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature Page to Follow





ODOT/COUNTY  
Agreement No. 25037

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

**MULTNOMAH COUNTY**, by and through its  
elected officials

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
COUNTY Counsel

Date \_\_\_\_\_

**COUNTY Contact:**

Greg Kirby, Multnomah county  
1620 SE 190<sup>th</sup> Avenue  
Portland, OR 97233  
phone: 503-988-5050 x29623  
email: greg.h.kirby@co.multnomah.or.us

**ODOT Contact:**

Melinda Griffith, District 2B  
9200 SE Lawnfield Rd  
Clackamas, OR 97015  
phone: 971-673-6226  
email: melinda.j.griffith@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By *[Signature]*  
Region1 Manager

Date 6/25/09

By *[Signature]*  
District 2B Manager

Date 6-19-09

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**EXHIBIT A –Project Location Map  
to Agreement No. 25037**



**EXHIBIT B – MOU AND PERMIT  
to Agreement No. 25037**



**Oregon**

Theodore R. Kuligowski, Governor

**Department of Transportation**

District 2B  
9200 SE Lawnfield Road  
Clackamas, OR 97015  
(971) 673-6200  
Fax: (503) 653-5655

April 23, 2008

2/15.16

File Code:

To: Jason Tell  
Region 1 Manager

From: Gary K. Hunt  
District 2B Permits

Subject: Memo of Understanding (MOU)  
NE Sandy Blvd, at NE 223<sup>rd</sup> Avenue Improvements  
Multnomah County Community

Dear Jason,

The enclosed Memo of Understanding is designed, or created to memorialize an understanding between ODOT District 2B and Multnomah County Community Services their commitment to enter into a Maintenance Agreement in the near future. The project at NE 223<sup>rd</sup> Avenue includes widening, curb and sidewalk, Illumination and traffic signal modifications. The widening of this particular portion of the project will require construction and installation of two retaining walls located in the Southeast and southwest quadrants of the intersection with NE Sandy Blvd. As you probably know NE Sandy Blvd was abandoned and transferred to Multnomah County in 2000, so the majority of the project is within the county jurisdiction, with respect to these two retaining walls. The walls will actually be located within the I-84 Freeway right of way to facilitate the widening of NE 223<sup>rd</sup>. Multnomah County has agreed by letter and through an existing ODOT permit to assume all maintenance responsibilities of said retaining walls. This MOU will help tie this all together. Once this is processed, I will initiate the Maintenance Agreement. This method was necessary so the county could enter into their bid process, which was at the ready prior to completion of a Maintenance Agreement.

Per policy and agreement protocol your signature is required of the original enclosed MOU document. I must apologize for obtaining the county signature first, as this is my first MOU, and the permit process requires the applicant signatures first. Would you please sign the document and return the original back to me in the envelope provided? If for some reason you elect not to sign this document, please let me know ASAP.  
Thank you, gh

# EXHIBIT B - MOU AND PERMIT to Agreement No. 25037

Oregon Department of Transportation



## APPLICATION AND PERMIT TO OCCUPY OR PERFORM OPERATIONS UPON A STATE HIGHWAY

See Oregon Administrative Rule, Chapter 734, Division 55

PERMIT NUMBER

2BM37506

CLASS:

KEY:

GENERAL LOCATION				PURPOSE OF APPLICATION (TO CONSTRUCT/OPERATE/MAINTAIN)			
HIGHWAY NAME AND ROUTE NUMBER Columbia River Highway I-84				<input type="checkbox"/> POLE LINE	TYPE	MIN. VERT. CLEARANCE	
HIGHWAY NUMBER 2	COUNTY 26 = MULTNOMAH			<input type="checkbox"/> BURIED CABLE	TYPE		
BETWEEN OR NEAR LANDMARKS NE Sandy Blvd and I-84 O-Xing				<input type="checkbox"/> PIPE LINE	TYPE		
HWY. REFERENCE MAP Straight Line		DESIGNATED FREEWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IN U.S. FOREST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> NON-COMMERCIAL SIGN		FEE AMOUNT	
APPLICANT NAME AND ADDRESS Multnomah County Community Services 1600 SE 190th Avenue Portland, OR 97233-5910 503-988-5050				<input checked="" type="checkbox"/> MISCELLANEOUS OPERATIONS AND/OR FACILITIES AS DESCRIBED BELOW			
				FOR ODOT USE ONLY			
				BOND REQUIRED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		REFERENCE: OAR 734-55-035(2)	
				INSURANCE REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		REFERENCE: OAR 734-55-035(1)	
						AMOUNT OF BOND SPECIFIED COMP. DATE 01/01/2009	

### DETAIL LOCATION OF FACILITY(For more space attach additional sheets)

MILE POINT TO	MILE POINT	ENGINEER S	ENGINEERS TO STATION	SIDE OF HWY OR ANGLE OF CROSSING	DISTANCE FROM CENTER OF PYMT	R/W LINE	BURIED CABLE OR PIPE DEPTH/VERT.	SIZE AND KIND	SPAN LENGTH
15.18	15.25	678+40	681+15	North	120'-200'	Var	Var	N/A	N/A

DESCRIPTION AND LOCATION OF NON-COMMERCIAL SIGNS OR MISCELLANEOUS OPERATIONS FACILITIES KEY No. 14548

Install and Maintain Retaining Walls in the SE and SW quadrants of NE Sandy @ NE 223rd Avenue

### SPECIAL PROVISIONS (FOR MORE SPACE ATTACH ADDITIONAL SHEETS)

- TRAFFIC CONTROL REQUIRED ☒ YES [OAR 734-55-025(6)] ☐ NO
- OPEN CUTTING OF PAVED OR SURFACED AREAS ALLOWED? ☒ YES [OAR 734-55-100(2)] ☐ NO [OAR 734-55-100(1)]
- AT LEAST 48 HOURS BEFORE BEGINNING WORK, THE APPLICANT OR HIS CONTRACTOR SHALL NOTIFY THE DISTRICT REPRESENTATIVE AT TELEPHONE NUMBER: 971-673-6225
- OR FAX A COPY OF THIS PAGE TO THE DISTRICT OFFICE AT: 503-663-5655 SPECIFY TIME AND DATE IN THE SPACE BELOW.
- A COPY OF THIS PERMIT AND ALL ATTACHMENTS SHALL BE AVAILABLE AT THE WORK AREA DURING CONSTRUCTION.
- ATTENTION: Oregon Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987.
- CALL BEFORE YOU DIG 1-800-332-2344

COMMENTS - ODOT USE ONLY This permit authorizes Multnomah County and their contractors to enter onto ODOT/FHWA right of way for the purpose of constructing Retaining Walls in the SE and SW quadrants of NE Sandy Blvd and NE 223rd Avenue for the purpose of roadway improvements. The applicant agrees to accept full maintenance responsibilities for said retaining walls and surrounding areas. Applicant shall enter in with and abide by a Maintenance Agreement with ODOT. A letter written to ODOT dated March 27, 2008, addressing this condition shall become a part of this permit. RE: NE Sandy at NE 223rd project.

IF THE PROPOSED APPLICATION WILL AFFECT THE LOCAL GOVERNMENT, THE APPLICANT SHALL ACQUIRE THE LOCAL GOVERNMENT OFFICIAL'S SIGNATURE BEFORE ACQUIRING THE DISTRICT MANAGER'S SIGNATURE.

LOCAL GOVERNMENT OFFICIAL SIGNATURE <input checked="" type="checkbox"/> APPLICANT SIGNATURE		TITLE County Engineer	DATE 4/3/08
APPROVAL DATE 4/14/08		TELEPHONE NO. 503 988 5050	
DISTRICT MANAGER OR REPRESENTATIVE <input checked="" type="checkbox"/>		APPROVAL DATE 4/14/08	

When this application is approved by the Department, the applicant is subject to, accepts and agrees to the terms and provisions contained and attached and the terms of Oregon Administrative Rules, Chapter 734, Division 55, which by this reference made a part of this permit.

734-3457(7-06)

**EXHIBIT B - MOU AND PERMIT**  
to Agreement No. 25037

2BM37506

Memorandum of Understanding R1-00676  
NE Sandy Blvd / 223<sup>rd</sup> Avenue IOF Grant Project  
Columbia River Highway (I-84)

This Memorandum of Understanding (MOU) is entered into and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and Multnomah County acting by and through its Community Services, hereinafter referred to as "Agency".

**Purpose**

The purpose of this Memorandum of Understanding (MOU) is to memorialize both ODOT and Agency understandings and intentions to enter into a future Maintenance Agreement for the purpose of outlining retaining wall maintenance responsibilities with respect to certain retaining walls located in the I-84 right of way. An ODOT Permit (#2BM37506), approved April 4, 2008 has been issued that conditions maintenance responsibilities as that being with Agency, and agreed upon by Agency, by signature. It was agreed upon that the ODOT Permit would be granted prior to the Maintenance Agreement to allow Agency the flexibility of entering into the project bid process.

**Intentions**

As agreed upon and described in the aforementioned ODOT Permit, ODOT intends to draft a Maintenance Agreement between ODOT and AGENCY detailing the long term maintenance responsibilities for the aforementioned retaining walls. As committed by permit, Agency intends to authorize the long term maintenance of said retaining walls in the proposed Maintenance Agreement after consideration and review, during a regularly convened session of its County Commissioners prior to July 1, 2008.

It is recognized by the parties that this MOU is a non-binding representation of the intention to perform the activities, responsibilities and obligations of said Maintenance Agreement. Therefore, by signing this MOU, both parties acknowledge their intent to comply as expressed herein and to take the necessary actions to execute a Maintenance Agreement upon signature of this MOU and as expeditiously as possible, obligating the parties as described and intended by this MOU.

Multnomah County Community Services

By: 

Brian S. Vincent, P.E.  
County Engineer

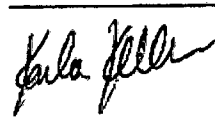
Date: 4/14/08

Oregon Department of  
Transportation

By: 

Jason Tell  
Region 1 Manager

Date: 4/25/08

 4/25/08

**EXHIBIT B - MOU AND PERMIT  
to Agreement No. 25037**



**Department of Community Services  
MULTNOMAH COUNTY OREGON**

Land Use and Transportation Program  
1600 SE 190<sup>th</sup> Avenue  
Portland, Oregon 97233-5910  
(503) 988-5050

DN ADM CM CB CS PS  
Received by District 28

March 27, 2008

MAR 31 2008

Oregon Department of Transportation - Region I  
Attn: Mr. Gary Hunt  
123 NW Flanders St  
Portland, OR 97209-4012

Re: County Project at NE Sandy Blvd / 223<sup>rd</sup> Ave. IOF grant. MC&A #23,079, Key #14548

Gary:

As we discussed on the telephone this morning, the County agrees and commits to accomplish the following items with ODOT, with respect to this project:

- Enter into a Memorandum of Understanding to terms of permit and maintenance agreement.
- Enter into a permanent lease and payment of associated fee.
- Enter into a maintenance agreement for the retaining wall to be placed within ODOT Right of Way
- Agree to maintain the retaining walls and surrounding grass/weeds within ODOT right of way.

Given the time constraints in having these items completed, we appreciate your willingness to consider issuance of a permit while these items are in process. Issuance of the permit will enable us to proceed with our bid and contract award for this important project.

If you have any questions, please contact me at 503-988-5050 x29642, or email at [brian.s.vincent@co.multnomah.or.us](mailto:brian.s.vincent@co.multnomah.or.us).

Sincerely,

*Brian S. Vincent* *AKR*  
Brian S. Vincent, P.E.  
County Engineer

C: Pat Hinds, County ROW Manager  
Kim Peoples, Road Services Manager  
Files

BVGM0151.LTR (ROADCES0260D)

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 4710000319

Pre-approved Contract Boilerplate (with County Attorney signature) ☒ Attached ☐ Not Attached

Amendment #: \_\_\_\_\_

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
<input type="checkbox"/> Personal Services Contract PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract <input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Personal Services Contract PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract <input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Expenditure Contract <input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input checked="" type="checkbox"/> Non-Financial Agreement <input type="checkbox"/> INTER-DEPARTMENTAL AGREEMENT (IDA)

Department: Community Services

Division/

Program: Land Use & Transportation Program

Date: 7/17/09

Originator: Gregory Kirby

Phone: (503) 988-5050 x29623

Bldg/Room: #425/Yeon

Contact: Cathey Kramer

Phone: (503) 988-5050 x22589

Bldg/Room: #425/Yeon

**Description of Contract:** Intergovernmental Agreement between Multnomah County and Oregon Dept. of Transportation for maintenance of two retaining walls constructed in connection with the Land Use & Transportation Program's NE Sandy Blvd. at NE 223<sup>rd</sup> Avenue Intersection and Traffic Signal Improvement Project. Annual maintenance costs will be paid with funds in LUT's operations budget.

RENEWAL: ☐ PREVIOUS CONTRACT #(S) \_\_\_\_\_

EEO CERTIFICATION EXPIRES \_\_\_\_\_

PROCUREMENT \_\_\_\_\_  
EXEMPTION OR \_\_\_\_\_  
CITATION # \_\_\_\_\_

ISSUE \_\_\_\_\_  
DATE: \_\_\_\_\_

EFFECTIVE \_\_\_\_\_  
DATE: \_\_\_\_\_

END \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR IS: ☐ MBE ☐ WBE ☐ ESB ☐ QRF State Cert# \_\_\_\_\_ or ☐ Self Cert ☐ Non-Profit ☒ N/A (Check all boxes that apply)

Contractor	Oregon Dept. of Transportation			Remittance address	
Address	123 NW Flanders St.			(If different)	
City/State	Portland OR			Payment Schedule / Terms:	
ZIP Code	97209-4037			<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt
Phone	(503) 731-8277/Fax: (503) 731-8259 (Devorah Hannah)			<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30
Employer ID# or SS#	N/A			<input checked="" type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other
Contract Effective Date	8/17/2009 *	Term Date	8/16/2029	<input type="checkbox"/> Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date		New Term Date			
Original Contract Amount	\$	Original PA/Requirements Amount	\$		
Total Amt of Previous Amendments	\$	Total Amt of Previous Amendments	\$		
Amount of Amendment	\$	Amount of Amendment	\$		
Total Amount of Agreement \$	\$ Approx \$500/yr (LUT Funds)			Total PA/Requirements Amount	\$

## REQUIRED SIGNATURES:

Department Manager

County Attorney

CPCA Manager

County Chair

Sheriff

Contract Administration

DATE \_\_\_\_\_

DATE 7-17-09

DATE \_\_\_\_\_

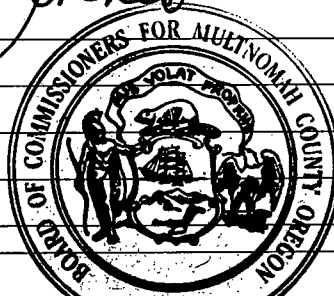
DATE 8/6/09

DATE \_\_\_\_\_

DATE \_\_\_\_\_

COMMENTS: (ROADCES0260C)

\* The effective date is 8/17/09 or the date that all parties have executed the Agreement.



**COOPERATIVE IMPROVEMENT AGREEMENT**  
**I-84: NE 223<sup>RD</sup> and NE Sandy Boulevard Retaining Wall**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and Multnomah County, acting by and through its elected officials, hereinafter referred to as "COUNTY," individually referred to as the "Party" and collectively referred to as the "Parties."

**RECITALS**

1. I-84, Columbia River Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). NE 223<sup>rd</sup> and NE Sandy Boulevard, also known as Northeast Portland Hwy (Hwy 30B) relinquished by ODOT to the COUNTY by Jurisdictional Transfer No. 694 on February 3<sup>rd</sup>, 2000, are part of the county road system under the jurisdiction and control of COUNTY.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The COUNTY constructed a project on Sandy Boulevard which included widening, curb and sidewalk, illumination and traffic signal modifications. In order to successfully widen Sandy Boulevard for that project, ODOT required that the COUNTY construct two retaining walls to help retain the earthen embankments of I-84. The COUNTY constructed the walls as a COUNTY project with COUNTY funds on ODOT's I-84 right of way.
4. Due to critical time constraints and financial considerations, the Region 1 Manager agreed to the COUNTY's request that the construction of the retaining walls begin under permit through the District 2B permitting office by a Memorandum of Understanding (MOU) followed by a permit, Permit Number 2BM37506, to be followed by an intergovernmental agreement for ownership and ongoing maintenance for the walls. The MOU and the District Permit is attached hereto, marked Exhibit B, and by this reference made a part hereof.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:



## **TERMS OF AGREEMENT**

1. Under such authority, ODOT and COUNTY agree that the purpose of this Agreement is to establish ownership of the constructed retaining walls and establish the maintenance responsibilities for the two retaining walls constructed on the north side of I-84 in the southeast and southwest quadrants of the intersection of NE 223<sup>rd</sup> and NE Sandy Boulevard, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The MOU in Exhibit B, dated April 23, 2008, shall be considered null and void with the execution of this Agreement.
2. The total cost for the construction of the retaining walls was \$182,680 funded by COUNTY with funds available to it, and has been completed. The estimated cost for the maintenance for the Project is \$500.00 per year or \$10,000 in COUNTY funds over the estimated life of the Project. The estimated maintenance costs for the Project is subject to change.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities being maintained. The useful life is defined as twenty (20) calendar years.

## **COUNTY OBLIGATIONS**

1. COUNTY shall, at its own expense, maintain the Project throughout the useful life of the Project at a minimum level that is consistent with ODOT standards listed in ODOT maintenance manuals for such structures. The ODOT Maintenance Guide is available at the following Internet address: <http://www.oregon.gov/ODOT/HWY/OOM/MGuide.shtml>. Except for betterments that have or may be constructed by or for ODOT, COUNTY is responsible for maintenance of the Project features constructed and installed by COUNTY. The maintenance includes any surface and structural integrity maintenance needed for the Project.
2. COUNTY is responsible for all impacts to ODOT property caused by the construction, installation and maintenance of Project. COUNTY agrees that it shall be responsible for quarterly inspections, and as needed shall make necessary repairs and perform maintenance for the life of the Project. All maintenance or repair costs for Project shall be COUNTY'S responsibility. COUNTY shall be responsible for the performance of maintenance even when maintenance is performed by designees. COUNTY or its designees are required to notify the Region 1 District 2B office twenty-four (24) hours prior to performing routine maintenance for the Project.

ODOT/COUNTY  
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3. COUNTY maintenance responsibilities of Project shall include graffiti removal, accident or vandalism repair, and any repair due to wear or age.
4. COUNTY shall perform the work under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings. Nothing herein is intended, nor shall it be construed, to create between the PARTIES any relationship of principal and agent, partnership, joint venture or any similar relationship, and each PARTY hereby specifically disclaims any such relationship.
5. COUNTY shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities resulting from the COUNTY's negligence or other misconduct under this Agreement. COUNTY shall remain responsible for compliance with the terms of this Agreement, and responsible for the performance of work even if maintenance is performed by COUNTY contractors.
6. Notwithstanding the foregoing defense obligations under the paragraph above, neither COUNTY nor any attorney engaged by COUNTY shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that COUNTY is prohibited from defending the State of Oregon, or that COUNTY is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against COUNTY if the State of Oregon elects to assume its own defense.
7. All employers, including COUNTY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. COUNTY shall ensure that each of its subcontractors complies with these requirements.
8. COUNTY acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY which are directly

**ODOT/COUNTY**  
**Agreement No. 25037**

pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

9. COUNTY shall comply with all federal, state, and local laws, regulations; executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, COUNTY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
10. COUNTY certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of COUNTY, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind COUNTY.
11. COUNTY's Project Manager for this Project is Greg Kirby, Multnomah County, 1620 SE 190<sup>th</sup> Avenue, Portland, OR 97233, phone: 503-988-5050 x29623 or assigned designee upon individuals absence.

**ODOT OBLIGATIONS**

1. ODOT may conduct periodic inspections during the life of the Project to verify that Project is being properly maintained.
2. Upon the execution of this Agreement, ODOT shall accept ownership of the Project improvements with complete jurisdiction and control for said improvements. Project is located on ODOT operating right of way.
3. ODOT's Project Manager for this Project is Melinda Griffith, 9200 SE Lawnfield Rd, Clackamas, OR 97015, phone: 971-673-6226, or assigned designee upon individuals absence.

**GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.

ODOT/COUNTY  
Agreement No. 25037

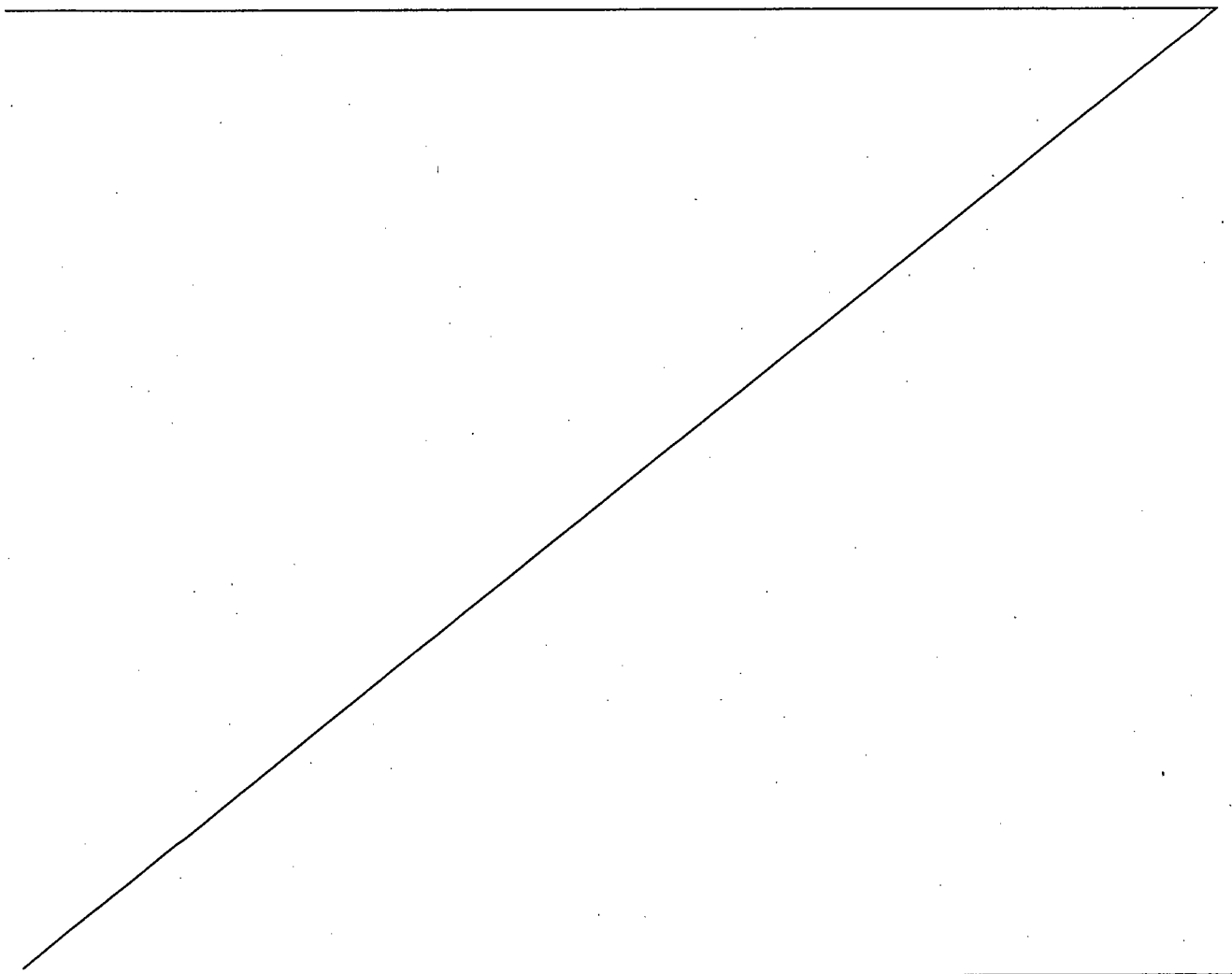
2. ODOT may terminate this Agreement effective upon delivery of written notice to COUNTY, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If COUNTY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If COUNTY fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within thirty (30) days or such longer period as ODOT may authorize.
  - c. If COUNTY fails to provide payment of its share of the cost of the Project.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If COUNTY fails to maintain facilities in accordance with the terms of this Agreement, after an appropriate time to correct failures to perform maintenance, as provided under General Provisions Section 2.b. , and without correction of the failure to perform, ODOT, at its option may maintain the facility and bill COUNTY, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
5. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
6. This Agreement and attached exhibits constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

ODOT/COUNTY  
Agreement No. 25037

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature Page to Follow



ODOT/COUNTY  
Agreement No. 25037

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

**MULTNOMAH COUNTY**, by and through its  
elected officials

By \_\_\_\_\_  
Chair

Date 8/06/09

**APPROVED AS TO LEGAL SUFFICIENCY**

By 151 Matthew D. Ryan (Electronic)  
COUNTY Counsel *CR*

Date 7/17/09

**COUNTY Contact:**

Greg Kirby, Multnomah county  
1620 SE 190<sup>th</sup> Avenue  
Portland, OR 97233  
phone: 503-988-5050 x29623  
email: greg.h.kirby@co.multnomah.or.us

**ODOT Contact:**

Melinda Griffith, District 2B  
9200 SE Lawnfield Rd  
Clackamas, OR 97015  
phone: 971-673-6226  
email: melinda.j.griffith@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By *[Signature]*  
Region1 Manager

Date 6/25/09

By *[Signature]*  
District 2B Manager

Date 6-19-09

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**EXHIBIT A –Project Location Map**  
to Agreement No. 25037



**EXHIBIT B – MOU AND PERMIT**  
to Agreement No. 25037



**Oregon**

Theodore R. Kulongoski, Governor

**Department of Transportation**


District 2B  
9200 SE Lawnfield Road  
Clackamas, OR 97015  
(971) 673-6200  
Fax: (503) 653-5655

April 23, 2008

2/15.16

File Code:

To: Jason Tell  
Region 1 Manager

From: Gary K. Hunt   
District 2B Permits

Subject: Memo of Understanding (MOU)  
NE Sandy Blvd, at NE 223<sup>rd</sup> Avenue Improvements  
Multnomah County Community

Dear Jason,

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Thank you, gh



# **EXHIBIT B – MOU AND PERMIT** to Agreement No. 25037

Oregon Department of Transportation



## **APPLICATION AND PERMIT TO OCCUPY OR PERFORM OPERATIONS UPON A STATE HIGHWAY**

See Oregon Administrative Rule, Chapter 734, Division 55

PERMIT NUMBER

**2BM37506**

CLASS: KEY#

<b>GENERAL LOCATION</b>				<b>PURPOSE OF APPLICATION (TO CONSTRUCT/OPERATE/MAINTAIN)</b>			
HIGHWAY NAME AND ROUTE NUMBER Columbia River Highway I-84				<input type="checkbox"/> POLE LINE	TYPE	MIN. VERT. CLEARANCE	
HIGHWAY NUMBER 2		COUNTY 26 = MULTNOMAH		<input type="checkbox"/> BURIED CABLE	TYPE		
BETWEEN OR NEAR LANDMARKS NE Sandy Blvd and I-84 O-Xing				<input type="checkbox"/> PIPE LINE	TYPE		
HWY. REFERENCE MAP Straight Line		DESIGNATED FREEWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IN U.S. FOREST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		FEE AMOUNT	
APPLICANT NAME AND ADDRESS  Multnomah County Community Services 1600 SE 190th Avenue Portland, OR 97233-5910  503-988-5050				<input checked="" type="checkbox"/> MISCELLANEOUS OPERATIONS AND/OR FACILITIES AS DESCRIBED BELOW <div style="display: flex; justify-content: space-between;"> <div> <b>BOND REQUIRED</b>  <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO         </div> <div> <b>REFERENCE:</b>            OAR 734-55 (03/2)         </div> <div> <b>AMOUNT OF BOND</b> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <b>INSURANCE REQUIRED</b>  <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO         </div> <div> <b>REFERENCE:</b>            OAR 734-55 (03/1)         </div> <div> <b>SPECIFIED COMP. DATE</b>            01/01/2009         </div> </div>			

### **DETAIL LOCATION OF FACILITY (For more space attach additional sheets)**

MILE POINT	TO MILE POINT	ENGINEER S	ENGINEERS TO STATION	SIDE OF HWY OR ANGLE OF CROSSING	DISTANCE FROM		BURIED CABLE OR PIPE		SPAN LENGTH
					CENTER OF PAVT	R/W LINE	DEPTH/VERT.	SIZE AND KIND	
15.18	15.25	678+40	681+15	North	120'-200'	Var	Var	N/A	N/A

DESCRIPTION AND LOCATION OF NON-COMMERCIAL SIGNS OR MISCELLANEOUS OPERATIONS FACILITIES KEY No. 14548

Install and Maintain Retaining Walls in the SE and SW quadrants of NE Sandy @ NE 223rd Avenue

#### **SPECIAL PROVISIONS (FOR MORE SPACE ATTACH ADDITIONAL SHEETS)**

- TRAFFIC CONTROL REQUIRED** ☒ YES [OAR 734-55-025(6)] ☐ NO **OPEN CUTTING OF PAVED OR SURFACED AREAS ALLOWED?** ☒ YES [OAR 734-55-100(2)] ☐ NO [OAR 734-55-100(1)]
- ♦ **AT LEAST 48 HOURS BEFORE BEGINNING WORK, THE APPLICANT OR HIS CONTRACTOR SHALL NOTIFY THE DISTRICT REPRESENTATIVE AT TELEPHONE NUMBER:** 971-673-6225
- OR FAX A COPY OF THIS PAGE TO THE DISTRICT OFFICE AT:** 503-653-5655 **SPECIFY TIME AND DATE IN THE SPACE BELOW.**
- ♦ **A COPY OF THIS PERMIT AND ALL ATTACHMENTS SHALL BE AVAILABLE AT THE WORK AREA DURING CONSTRUCTION.**
- ♦ **ATTENTION: Oregon Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 852-001-0010 through OAR 852-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987. CALL BEFORE YOU DIG 1-800-332-2344**

**COMMENTS - ODOT USE ONLY** This permit authorizes Multnomah County and their contractors to enter onto ODOT/FHWA right of way for the purpose of constructing Retaining Walls in the SE and SW quadrants of NE Sandy Blvd and NE 223rd Avenue for the purpose of roadway improvements. The applicant agrees to accept full maintenance responsibilities for said retaining walls and surrounding areas. Applicant shall enter in with and abide by a Maintenance Agreement with ODOT. A letter written to ODOT dated March 27, 2008, addressing this condition shall become a part of this permit. RE: NE Sandy at NE 223rd project.

**IF THE PROPOSED APPLICATION WILL AFFECT THE LOCAL GOVERNMENT, THE APPLICANT SHALL ACQUIRE THE LOCAL GOVERNMENT OFFICIAL'S SIGNATURE BEFORE ACQUIRING THE DISTRICT MANAGER'S SIGNATURE.**

<b>LOCAL GOVERNMENT OFFICIAL SIGNATURE</b>		<b>TITLE</b>	<b>DATE</b>
<input checked="" type="checkbox"/> APPLICANT SIGNATURE		<b>TITLE</b>	<b>TELEPHONE NO.</b>
<input checked="" type="checkbox"/> <i>[Signature]</i>		<i>County Engineer</i>	503 988 5051
<b>APPLICATION DATE</b>		<b>DISTRICT MANAGER OR REPRESENTATIVE</b>	<b>APPROVAL DATE</b>
14/3/08		<input checked="" type="checkbox"/> <i>[Signature]</i>	4/4/08

Where this application is approved by the Department, the applicant is subject to, accepts and approves the terms and provisions contained and attached and the terms of Oregon Administrative Rules, Chapter 734, Division 55, which is by this reference made a part of this permit.

734-3457(7-06)

**EXHIBIT B – MOU AND PERMIT**  
to Agreement No. 25037

**2BM37506**

Memorandum of Understanding  
NE Sandy Blvd / 223<sup>rd</sup> Avenue IOF Grant Project  
Columbia River Highway (I-84)

R1-00676

This Memorandum of Understanding (MOU) is entered into and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and Multnomah County acting by and through its Community Services, hereinafter referred to as "Agency".

**Purpose**

The purpose of this Memorandum of Understanding (MOU) is to memorialize both ODOT and Agency understandings and intentions to enter into a future Maintenance Agreement for the purpose of outlining retaining wall maintenance responsibilities with respect to certain retaining walls located in the I-84 right of way. An ODOT Permit (#2BM37506), approved April 4, 2008 has been issued that conditions maintenance responsibilities as that being with Agency, and agreed upon by Agency, by signature. It was agreed upon that the ODOT Permit would be granted prior to the Maintenance Agreement to allow Agency the flexibility of entering into the project bid process.

**Intentions**

As agreed upon and described in the aforementioned ODOT Permit, ODOT intends to draft a Maintenance Agreement between ODOT and AGENCY detailing the long term maintenance responsibilities for the aforementioned retaining walls. As committed by permit, Agency intends to authorize the long term maintenance of said retaining walls in the proposed Maintenance Agreement after consideration and review, during a regularly convened session of its County Commissioners prior to July 1, 2008.

It is recognized by the parties that this MOU is a non-binding representation of the intention to perform the activities, responsibilities and obligations of said Maintenance Agreement. Therefore, by signing this MOU, both parties acknowledge their intent to comply as expressed herein and to take the necessary actions to execute a Maintenance Agreement upon signature of this MOU and as expeditiously as possible, obligating the parties as described and intended by this MOU.

**Multnomah County Community Services**

By: 

Brian S. Vincent, P.E.  
County Engineer

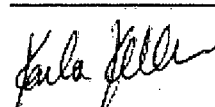
Date: 4/14/08

**Oregon Department of  
Transportation**

By: 

Jason Tall  
Regional Manager

Date: 4/25/08

 4/25/08

**EXHIBIT B – MOU AND PERMIT  
to Agreement No. 25037**



**Department of Community Services  
MULTNOMAH COUNTY OREGON**

Land Use and Transportation Program  
1600 SE 190<sup>th</sup> Avenue  
Portland, Oregon 97233-5910  
(503) 988-5050

ON ADM ON OS OS PS  
Received by District 28

March 27, 2008

MAR 31 2008

Oregon Department of Transportation - Region 1  
Attn: Mr. Gary Hunt  
123 NW Flanders St  
Portland, OR 97209-4012

Re: County Project at NE Sandy Blvd / 223<sup>rd</sup> Ave. IOF grant. MC&A #23,079, Key #14548

Gary:

As we discussed on the telephone this morning, the County agrees and commits to accomplish the following items with ODOT, with respect to this project:

- Enter into a Memorandum of Understanding to terms of permit and maintenance agreement.
- Enter into a permanent lease and payment of associated fee.
- Enter into a maintenance agreement for the retaining wall to be placed within ODOT Right of Way
- Agree to maintain the retaining walls and surrounding grass/woods within ODOT right of way.

Given the time constraints in having these items completed, we appreciate your willingness to consider issuance of a permit while these items are in process. Issuance of the permit will enable us to proceed with our bid and contract award for this important project.

If you have any questions, please contact me at 503-988-5050 x29642, or email at [brian.s.vincent@co.multnomah.or.us](mailto:brian.s.vincent@co.multnomah.or.us).

Sincerely,

*Brian S. Vincent* AHR

Brian S. Vincent, P.E.  
County Engineer

C: Pat Hinds, County ROW Manager  
Kim Peoples, Road Services Manager  
Files

BVGM0151.LTR (ROADCES0260D)

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**MULTNOMAH COUNTY**  
**AGENDA PLACEMENT REQUEST** (revised 09/22/08)

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**Board Clerk Use Only**

**Meeting Date:** 08/06/09  
**Agenda Item #:** R-1  
**Est. Start Time:** 9:30 AM  
**Date Submitted:** 07/21/09

**Agenda Title:** **First Reading and Possible Adoption of an ORDINANCE Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions to Establish a New Original Art Mural Regulatory and Permitting Program in Compliance with Metro's Functional Plan, and Declaring an Emergency**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.*

**Requested Meeting Date:** August 6, 2009 **Amount of Time Needed:** 5 minutes  
**Department:** Community Services **Division:** Land Use & Transportation  
**Contact(s):** Adam Barber  
**Phone:** 503 988-3043 **Ext.** 22599 **I/O Address:** 455/116  
**Presenter(s):** Joanna Valencia

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**General Information**

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**1. What action are you requesting from the Board?**

Approve first reading and adopt the ordinance as recommended by the Portland Planning Commission and Portland City Council.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

On October 11, 2001 the Board adopted Ordinance 967 (effective date January 1, 2002) adopting, in summary, the Portland Comprehensive Plan and zoning ordinance. The County and the City of Portland have been engaged in agreements enabling the City of Portland to provide planning services to achieve compliance with the Metro Functional Plan for those areas outside the City limits, but within the urban growth boundary and urban service boundary of Portland. Since the adoption of Ordinance 967 and subsequently Ordinance 997, the attached ordinances have been passed by the Portland City Council and therefore the County must adopt them pursuant to our intergovernmental agreement to keep the code up to date. Multnomah County and the City of

Portland entered into an Intergovernmental Agreement (IGA) to transfer land use planning responsibilities on January 1, 2002. The IGA lays out a process requiring the County to ensure that any amendments to the City's comprehensive plan, zoning code and other regulations adopted by the City Council will be considered by the County Board of Commissioners at the earliest possible meeting. It also states "The County Board of Commissioners shall enact all comprehensive plan and code amendments so that they take effect on the same date specified by the City's enacting ordinance" (unless adopted by emergency). The City will have taken action on all of the above items by the hearing date of this ordinance. If the County does not adopt these amendments, the IGA will be void and the County will be required to resume responsibility for planning and zoning administration within the affected areas.

**3. Explain the fiscal impact (current year and ongoing).**

NA

**4. Explain any legal and/or policy issues involved.**

State law requires a notice be placed in a newspaper of general circulation 10 days prior (6/27/09) to the BCC hearing. We request adoption of this ordinance by emergency to closely align with the City of Portland effective date (7/31/09) as stated in the IGA. The County Attorney's office was involved in the drafting of the original IGA and has been involved in coordinating our compliance effort through adoption of these code amendments.

**5. Explain any citizen and/or other government participation that has or will take place.**

The City included the County affected property owners in their noticing for these code revisions when required pursuant to the IGA and directed them to the City legislative process.

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**Required Signature**

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**Elected Official or  
Department/  
Agency Director:**



**Date: 07/23/09**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDINANCE NO. \_\_\_\_\_**

Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions to Establish a New Original Art Mural Regulation and Permitting Program in Compliance with Metro's Functional Plan and Declaring an Emergency

**The Multnomah County Board of Commissioners Finds:**

- a. The Board of County Commissioners (Board) adopted Resolution A in 1983 which directed the County services towards rural services rather than urban.
- b. In 1996, Metro adopted the Functional Plan for the region, mandating that jurisdictions comply with the goals and policies adopted by the Metro Council.
- c. In 1998, the County and the City of Portland (City) amended the Urban Planning Area Agreement to include an agreement that the City would provide planning services to achieve compliance with the Functional Plan for those areas outside the City limits, but within the Urban Growth Boundary and Portland's Urban Services Boundary.
- d. It is impracticable to have the County Planning Commission conduct hearings and make recommendations on land use legislative actions pursuant to MCC 37.0710, within unincorporated areas inside the Urban Growth Boundary for which the City provides urban planning and permitting services. The Board intends to exempt these areas from the requirements of MCC 37.0710, and will instead consider the recommendations of the Portland Planning Commission and City Council when legislative matters for these areas are brought before the Board for action as required by intergovernmental agreement (County Contract #4600002792) (IGA).
- e. On June 11, 2009, the Board amended County land use codes, plans and maps to adopt the City's land use codes, plans and map amendments in compliance with Metro's Functional Plan by Ordinance 1137.
- f. Since the adoption of Ordinance 1137, the City's Planning Commission recommended land use code, plan and map amendments to the City Council through duly noticed public hearings.
- g. The City notified affected County property owners as required by the IGA.
- h. The City Council adopted the land use code, plan and map amendments set out in Section 1 below and attached as Exhibits 1 through 3. The IGA requires that the County adopt these amendments for the City planning and zoning administration within the affected areas.

**The Multnomah County Board of Commissioners Ordains:**

**Section 1.** The County Comprehensive Framework Plan, community plans, rural area plans, sectional zoning maps and land use code chapters are amended to include the City land use code, plan and map amendments, attached as Exhibits 1 through 3, effective on the same date as the respective Portland ordinance:

<b>Exhibit No.</b>	<b>Description</b>	<b>Date</b>
1	Ordinance to Establish a new Original Art Mural regulatory and permitting program; new Title 4, amend Titles 3, 32 and 33 ( <b>PDX Ord. #182962</b> )	7/1/09
2	Original Art Murals Project Regulatory and Permit Process Improvement Recommended Draft	6/1/09
3	Original Art Murals Project Regulatory and Permit Process Improvement Administrative Amendments	6/18/09

**Section 2.** In accordance with ORS 215.427(3), the changes resulting from Section 1 of this ordinance shall not apply to any decision on an application that is submitted before the applicable effective date of this ordinance and that is made complete prior to the applicable effective date of this ordinance or within 180 days of the initial submission of the application.

**Section 3.** In accordance with ORS 92.040(2), for any subdivisions for which the initial application is submitted before the applicable effective date of this ordinance, the subdivision application and any subsequent application for construction shall be governed by the County's land use regulations in effect as of the date the subdivision application is first submitted.

**Section 4.** Any future amendments to the legislative matters listed in Section 1 above, are exempt from the requirements of MCC 37.0710. The Board acknowledges, authorizes and agrees that the Portland Planning Commission will act instead of the Multnomah Planning Commission in the subject unincorporated areas using the City's own procedures, to include notice to and participation by County citizens. The Board will consider the recommendations of the Portland Planning Commission when legislative matters for County unincorporated areas are before the Board for action.

**Section 5.** An emergency is declared in that it is necessary for the health, safety and general welfare of the people of Multnomah County for this ordinance to take effect concurrent with the City code, plan and map amendments. Under section 5.50 of the Charter of Multnomah County, this ordinance will take effect in accordance with Section 1.

FIRST READING AND ADOPTION:

August 6, 2009

BOARD OF COUNTY COMMISSIONERS,  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:  
M. Cecilia Johnson, Director, Department of Community Services

## **EXHIBIT LIST FOR ORDINANCE**

1. Ordinance to Establish a new Original Art Mural regulatory and permitting program; new Title 4, amend Titles 3, 32 and 33 (**PDX Ord. #182962**).
2. Original Art Murals Project Regulatory and Permit Process Improvement Recommended Draft.
3. Original Art Murals Project Regulatory and Permit Process Improvement Administrative Amendments.

Prior to adoption, this information is available electronically or for viewing at the Multnomah County Board of Commissioners and Agenda website ([www.co.multnomah.or.us/cc/WeeklyAgendaPacket/](http://www.co.multnomah.or.us/cc/WeeklyAgendaPacket/)). To obtain the adopted ordinance and exhibits electronically, please contact the Board Clerk at 503-988-3277. These documents may also be purchased on CD-Rom from the Land Use and Transportation Program. Contact the Planning Program at 503-988-3043 for further information.



## 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 intervenor 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

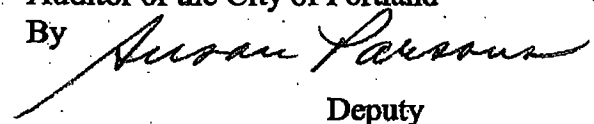
Mayor Sam Adams

Prepared by: Phil Nameny

Date Prepared: June 10, 2009

LaVonne Griffin-Valade  
Auditor of the City of Portland

By



Deputy

# Original Art Murals Project

## Regulatory & Permit Process Improvement



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

07.30.09

### Recommended Draft

June 1, 2009

Commissioners...  
this is available  
in your weekly  
agenda packet  
folder online or  
on your G: Drive  
(56 pages)



City of Portland Bureau of  
**Planning and Sustainability**

Sam Adams, Mayor | Susan Anderson, Director

# **Original Art Murals Project**

## **Regulatory & Permit Process Improvement**

*Administrative Amendments to Recommended Draft  
June 18, 2009*



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

## Summary of Amendments

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

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

**TITLE 32**  
**SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.12**  
**AUTHORITY AND SCOPE**

**32.12.020 Exemptions**

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

**A-F.** [No change.]

**G.** Painted wall highlights;

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

**I.** Public Art as defined in Chapter 5.74.; and

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

## **New Title 4 Original Art Murals**

### **CHAPTER 4.10 PURPOSE**

#### **4.10.010 Purpose of This Title**

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

### **CHAPTER 4.12 DEFINITIONS**

#### **4.12.010 General**

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

#### **4.12.020 Definitions**

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

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

**CHAPTER 4.20**  
**ALLOWED AND PROHIBITED ORIGINAL ART MURALS**

**Section 4.20.010 Allowed Original Art Murals**

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

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

**4.20.020 Prohibited Murals**

The following are prohibited:

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



**4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

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

**4.20.040 Exceptions to this Title**

Exceptions to the regulations of this Title are prohibited.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDINANCE NO. 1143**

Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions to Establish a New Original Art Mural Regulation and Permitting Program in Compliance with Metro's Functional Plan and Declaring an Emergency

**The Multnomah County Board of Commissioners Finds:**

- a. The Board of County Commissioners (Board) adopted Resolution A in 1983 which directed the County services towards rural services rather than urban.
- b. In 1996, Metro adopted the Functional Plan for the region, mandating that jurisdictions comply with the goals and policies adopted by the Metro Council.
- c. In 1998, the County and the City of Portland (City) amended the Urban Planning Area Agreement to include an agreement that the City would provide planning services to achieve compliance with the Functional Plan for those areas outside the City limits, but within the Urban Growth Boundary and Portland's Urban Services Boundary.
- d. It is impracticable to have the County Planning Commission conduct hearings and make recommendations on land use legislative actions pursuant to MCC 37.0710, within unincorporated areas inside the Urban Growth Boundary for which the City provides urban planning and permitting services. The Board intends to exempt these areas from the requirements of MCC 37.0710, and will instead consider the recommendations of the Portland Planning Commission and City Council when legislative matters for these areas are brought before the Board for action as required by intergovernmental agreement (County Contract #4600002792) (IGA).
- e. On June 11, 2009, the Board amended County land use codes, plans and maps to adopt the City's land use codes, plans and map amendments in compliance with Metro's Functional Plan by Ordinance 1137.
- f. Since the adoption of Ordinance 1137, the City's Planning Commission recommended land use code, plan and map amendments to the City Council through duly noticed public hearings.
- g. The City notified affected County property owners as required by the IGA.
- h. The City Council adopted the land use code, plan and map amendments set out in Section 1 below and attached as Exhibits 1 through 3. The IGA requires that the County adopt these amendments for the City planning and zoning administration within the affected areas.

**The Multnomah County Board of Commissioners Ordains:**

**Section 1.** The County Comprehensive Framework Plan, community plans, rural area plans, sectional zoning maps and land use code chapters are amended to include the City land use code, plan and map amendments, attached as Exhibits 1 through 3, effective on the same date as the respective Portland ordinance:

Exhibit No.	Description	Date
1	Ordinance to Establish a new Original Art Mural regulatory and permitting program; new Title 4, amend Titles 3, 32 and 33 ( <b>PDX Ord. #182962</b> )	7/1/09
2	Original Art Murals Project Regulatory and Permit Process Improvement Recommended Draft	6/1/09
3	Original Art Murals Project Regulatory and Permit Process Improvement Administrative Amendments	6/18/09

**Section 2.** In accordance with ORS 215.427(3), the changes resulting from Section 1 of this ordinance shall not apply to any decision on an application that is submitted before the applicable effective date of this ordinance and that is made complete prior to the applicable effective date of this ordinance or within 180 days of the initial submission of the application.

**Section 3.** In accordance with ORS 92.040(2), for any subdivisions for which the initial application is submitted before the applicable effective date of this ordinance, the subdivision application and any subsequent application for construction shall be governed by the County's land use regulations in effect as of the date the subdivision application is first submitted.

**Section 4.** Any future amendments to the legislative matters listed in Section 1 above, are exempt from the requirements of MCC 37.0710. The Board acknowledges, authorizes and agrees that the Portland Planning Commission will act instead of the Multnomah Planning Commission in the subject unincorporated areas using the City's own procedures, to include notice to and participation by County citizens. The Board will consider the recommendations of the Portland Planning Commission when legislative matters for County unincorporated areas are before the Board for action.

**Section 5.** An emergency is declared in that it is necessary for the health, safety and general welfare of the people of Multnomah County for this ordinance to take effect concurrent with the City code, plan and map amendments. Under section 5.50 of the Charter of Multnomah County, this ordinance will take effect in accordance with Section 1.

FIRST READING AND ADOPTION:



REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By

*Sandra N. Duffy*  
Sandra N. Duffy, Assistant County Attorney

August 6, 2009

BOARD OF COUNTY COMMISSIONERS,  
FOR MULTNOMAH COUNTY, OREGON

*Ted Wheeler*  
Ted Wheeler, Chair

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services

## **EXHIBIT LIST FOR ORDINANCE**

1. Ordinance to Establish a new Original Art Mural regulatory and permitting program; new Title 4, amend Titles 3, 32 and 33 (**PDX Ord. #182962**).
2. Original Art Murals Project Regulatory and Permit Process Improvement Recommended Draft.
3. Original Art Murals Project Regulatory and Permit Process Improvement Administrative Amendments.

Prior to adoption, this information is available electronically or for viewing at the Multnomah County Board of Commissioners and Agenda website

(**[www.co.multnomah.or.us/cc/WeeklyAgendaPacket/](http://www.co.multnomah.or.us/cc/WeeklyAgendaPacket/)**). To obtain the adopted ordinance and exhibits electronically, please contact the Board Clerk at 503-988-3277. These documents may also be purchased on CD-Rom from the Land Use and Transportation Program. Contact the Planning Program at 503-988-3043 for further information.

## 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 Bureau's 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

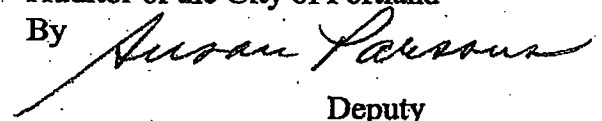
Mayor Sam Adams

Prepared by: Phil Nameny

Date Prepared: June 10, 2009

LaVonne Griffin-Valade  
Auditor of the City of Portland

By



Deputy

# Original Art Murals Project

## Regulatory & Permit Process Improvement

*Administrative Amendments to Recommended Draft*  
*June 18, 2009*



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

## Summary of Amendments

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

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

**TITLE 32**  
**SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.12**  
**AUTHORITY AND SCOPE**

**32.12.020 Exemptions**

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

**A-F.** [No change.]

**G.** Painted wall highlights;

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

**I.** Public Art as defined in Chapter 5.74.; and

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



## **New Title 4 Original Art Murals**

### **CHAPTER 4.10 PURPOSE**

#### **4.10.010 Purpose of This Title**

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

### **CHAPTER 4.12 DEFINITIONS**

#### **4.12.010 General**

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

#### **4.12.020 Definitions**

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

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

**CHAPTER 4.20**  
**ALLOWED AND PROHIBITED ORIGINAL ART MURALS**

**Section 4.20.010 Allowed Original Art Murals**

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

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

**4.20.020 Prohibited Murals**

The following are prohibited:

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

#### **4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

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

#### **4.20.040 Exceptions to this Title**

Exceptions to the regulations of this Title are prohibited.

# Original Art Murals Project

## Regulatory & Permit Process Improvement



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

## Recommended Draft

June 1, 2009



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



# Original Art Murals Project

## Regulatory & Permit Process Improvement



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

## Recommended Draft

June 1, 2009



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



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## **Original Art Murals Project**

### **City Council Hearing**

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**Wednesday June 24, 2009**

2:00 p.m.

Council Chambers,

City Hall

1221 SW 4<sup>th</sup> Ave.

Portland, OR 97204

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The Bureau of Planning is committed to providing equal access to information and hearings. If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

For more information about **Original Art Murals Project** please contact:

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Portland Bureau of Planning  
1900 SW 4<sup>th</sup> Avenue, Suite 7100  
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**Phone:** 503-823-7709

**Email:** [pnameney@ci.portland.or.us](mailto:pnameney@ci.portland.or.us)

A digital copy of this report can be found at:

<http://www.portlandonline.com/planning/index.cfm?c=49623&a=229011>

# Acknowledgements

## **Portland City Council**

Sam Adams, *Mayor*  
Nick Fish, *Commissioner*  
Amanda Fritz, *Commissioner*  
Randy Leonard, *Commissioner*  
Dan Saltzman, *Commissioner*

## **Portland Planning Commission**

Don Hanson, *President*  
Amy Cortese, *Vice President*  
Michelle Rudd, *Vice President*  
André Baugh  
Catherine Ciarlo  
Lai-Lani Ovalles  
Howard Shapiro  
Jill Sherman  
Irma Valdez

## **Bureau of Planning & Sustainability**

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Susan Anderson, *Director*

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Mike Liefeld, *Bureau of Development Services*  
Tracy Reeve, *City Attorney's Office*



## **Murals Stakeholder Interest Groups**

### 2008 Murals Working Group

Joe Cotter: Muralist  
Joanne Oleksiak: Community Activist  
Peggy Kendellen: RACC Representative  
Jesse Beason / Pollyanne Birge: Commissioner Adam's office  
Veronica Valenzuela / Jeremy VanKeuren: Mayor Potter's office  
Douglas Hardy: Bureau of Development Services Coordination Group  
Jeff Joslin: Bureau of Development Services Design Group  
David Roshak: Bureau of Development Services Inspection Supervisor  
Tracy Reeve: City Attorney's Office  
Eric Engstrom: Bureau of Planning  
Phil Nameny: Bureau of Planning

### Murals Stakeholder Advisory Committee

Joe Cotter: Muralist  
Linda Hunter: Community Representative (Our United Villages)  
David Wark: Architect, member of Design Commission  
Peggy Kendellen: RACC Representative  
Marcia Dennis: ONI Graffiti Abatement  
Paul Leistner: ONI Neighborhood liaison  
Pollyanne Birge: Mayor Adam's office  
Douglas Hardy: Bureau of Development Services Coordination Group  
Tim Heron: Bureau of Development Services Design Group  
Tracy Reeve: City Attorney's Office  
Phil Nameny: Bureau of Planning & Sustainability

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# **Original Art Murals**

## **Summary and Recommendation**

### **Summary**

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

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

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

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

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

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

## **Planning Commission Recommendation**

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

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

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

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

# **Part A. Original Art Murals Project**

## **I. Overview**

### **A. A Brief History of Murals in Portland**

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

### **B. The Public Art Murals Program administered through RACC**

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

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

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

## **Part A**

### **Original Art Murals Report**

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

#### Some examples of murals approved through RACC Program



Community Cycling Center at NE Alberta & NE 17<sup>th</sup>. Ave.



Tri-Met Light Rail Facility SW 11<sup>th</sup> & SW Morrison

### **C. A New Approach**

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

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

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

## **II. Legal History of Murals**

### **A. The Legal Starting Point**

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

## **Part A**

### **Original Art Murals Report**

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

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

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

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

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

## **B. The Public Art Murals Program**

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

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



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

### **C. Recent Legal Opinions**

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

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

## **III. Details of the Mural Permitting Proposal**

### **A. Overview**

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

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

## **Part A**

### **Original Art Murals Report**

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

The above components are described in greater detail below.

### **B. New Title for Original Art Murals**

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

#### Basic Mural Requirements

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

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

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

#### Prohibited Murals

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

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

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

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

#### Other Sections

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

### **C. Administrative Rule for Murals**

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

#### Definitions

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

## **Part A**

### **Original Art Murals Report**

#### Permit Application

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

#### Design and Historic Overlay Standards

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

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

#### Approval, Inspections, and Enforcement

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

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

### **D. Neighborhood Notification**

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

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

#### **E. New Mural Permit**

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

### **IV. Project Coordination and Outreach**

#### **A. Creation of Mural Working Group**

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

## **Part A**

### **Original Art Murals Report**

#### **B. Outreach**

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

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

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

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

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

### **C. Hearings**

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

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

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

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

### **D. Monitoring for Effectiveness**

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

## **Part B. Amendments / Additions to City Codes**

### **I. Amendments to City Codes**

#### **How changes are shown in this section**

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

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

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



**Part B**

**Amendments / Additions to City Codes - Commentary**

**TITLE 3  
ADMINISTRATION**

**CHAPTER 3.30  
BUREAU OF DEVELOPMENT SERVICES**

**3.30.010 Duties of the Bureau of Development Services**

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

**TITLE 3**  
**ADMINISTRATION**

**CHAPTER 3.30**  
**BUREAU OF DEVELOPMENT SERVICES**

**3.30.010 Duties of the Bureau of Development Services**

The Bureau of Development Services shall be responsible for:

**A.** The administration and enforcement of:

1-8. [No change.]

9. Original Art Murals, Title 4

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

**B-G.** [No change.]

**Part B**

**Amendments / Additions to City Codes - Commentary**

**TITLE 32  
SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.12  
AUTHORITY AND SCOPE**

**32.12.020 Exemptions**

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

**Part B**

**Amendments / Additions to City Codes - Code Language**

**TITLE 32**  
**SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.12**  
**AUTHORITY AND SCOPE**

**32.12.020 Exemptions**

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

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

**Part B**

**Amendments / Additions to City Codes - Commentary**

**CHAPTER 33.420  
DESIGN OVERLAY ZONE**

**33.420.045 Exempt from Design Review**

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

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

**CHAPTER 33.420**  
**DESIGN OVERLAY ZONE**

**33.420.045 Exempt From Design Review**

The following items are exempt from design review:

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

**Part B**

**Amendments / Additions to City Codes - Commentary**

**CHAPTER 33.445**

**HISTORIC RESOURCE PROTECTION OVERLAY ZONE**

**33.445.320 Development and Alterations in a Historic District**

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

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

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

**CHAPTER 33.445**  
**HISTORIC RESOURCE PROTECTION OVERLAY ZONE**

***Historic Districts***

**33.445.320 Development and Alterations in a Historic District**

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

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

**B. Exempt from historic design review.**

1-5. [No changes.]

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

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

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

***Conservation Districts***

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

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

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

**B. Exempt from historic design review.**

1-5. [No changes.]

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

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

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



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

### **New Title and Code Sections**

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

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

**New Title 4  
Original Art Murals**

**CHAPTER 4.10  
PURPOSE**

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

**CHAPTER 4.12  
DEFINITIONS**

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

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

**New Title 4**  
**Original Art Murals**

**CHAPTER 4.10**  
**PURPOSE**

**4.10.010 Purpose of This Title**

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

**CHAPTER 4.12**  
**DEFINITIONS**

**4.12.010 General**

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

**4.12.020 Definitions**

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

**Part B**  
**Amendments / Additions to City Codes - Commentary**

**4.12.020 Definitions. Continued**

**Part B**

**Amendments / Additions to City Codes - Code Language**

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

**CHAPTER 4.20  
ALLOWED AND PROHIBITED ORIGINAL ART MURALS**

**Section 4.20.010 Allowed Original Art Murals**

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

**Section 4.20.020 Prohibited Murals**

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

**CHAPTER 4.20**  
**ALLOWED AND PROHIBITED ORIGINAL ART MURALS**

**Section 4.20.010 Allowed Original Art Murals**

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

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

**4.20.020 Prohibited Murals**

The following are prohibited:

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

## **Part B**

### **Amendments / Additions to City Codes - Commentary**

#### **Section 4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

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

#### **4.20.040 Exceptions to this Title**

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



**4.20.030 Relationship of Permitted Original Art Mural to other Regulations**

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

**4.20.040 Exceptions to this Title**

Exceptions to the regulations of this Title are prohibited.

**Part B**

**Amendments / Additions to City Codes - Commentary**

**CHAPTER 4.30  
NEIGHBORHOOD INVOLVEMENT PROCESS**

**Section 4.30.010 Establishment of Neighborhood Involvement Process for Permits**

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

**CHAPTER 4.40  
ADMINISTRATIVE RULES**

**4.40.010 Administrative Rules to Be Adopted**

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

**CHAPTER 4.50  
VIOLATIONS AND ENFORCEMENT**

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

**CHAPTER 4.30**  
**NEIGHBORHOOD INVOLVEMENT PROCESS**

**4.30.010 Establishment of Neighborhood Involvement Process for Permits**

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

**CHAPTER 4.40**  
**ADMINISTRATIVE RULES**

**4.40.010 Administrative Rules to Be Adopted**

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

**CHAPTER 4.50**  
**VIOLATIONS AND ENFORCEMENT**

**4.50.010 Violations.**

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

**4.50.020 Notice Of Violations.**

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

**4.50.030 Responsibility for enforcement.**

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

# Appendix

## I. Draft Administrative Rule for Murals

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

The rule is broken down into the following parts:

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

**Appendix**  
**Draft Administrative Rules for Original Art Murals**



## City of Portland Bureau of Development Services

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Telephone: (503) 823-7300 Fax: (503) 823-3018

AMENDED 5/26/09

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# Draft: PROPOSED RULE

**RELATING TO**

***Title 4 Permitting Original Art Murals***

**FOR INFORMATION CONTACT**

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

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**TOPIC:** Permitting Original Art Murals

**AUTHORITY:**

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

**CITATION:**

3.30.010 Duties of the Bureau of Development Services.

The Bureau of Development Services shall be responsible for:

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

**EFFECTIVE:** \_\_\_\_\_ **(Date)**

**Paul L. Scarlett, Director**

## **Administrative Rule**

### **Permitting Original Art Murals**

#### **I. Intent and Purpose.**

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

#### **II. Definitions**

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

**Appendix**

**Draft Administrative Rules for Original Art Murals**

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

**III. Permit Application**

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

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

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

**A. Required Materials**

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



## **Appendix**

### **Draft Administrative Rules for Original Art Murals**

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

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

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

#### **B. Neighborhood Contact**

1. Purpose of the Neighborhood Contact process. The purposes of Permitted Original Art Murals include public access to original works of art; community participation in the creation of original works of art; and community building through the presence of and identification with original works of art. In furtherance of these purposes, the Neighborhood Contact process provides a setting for a mural permit applicant and neighborhood residents to review a proposed mural in an informal manner, to enable community input into the process of the creation of the mural, and to allow neighborhood residents to share any concerns concerning the proposed mural with the permit applicant prior to the creation of the mural. The discussion at the meeting is advisory only and is not binding on the applicant.

2. When the Neighborhood Contact is required. The Neighborhood Contact is required after an applicant submits a mural permit to the City.

3. Requirements. The requirements for Neighborhood Contact are:

- a) **Open meeting.** The applicant must schedule a meeting to discuss the mural proposal with interested persons at a location within the boundaries of the neighborhood association in which the mural is proposed; if in an unclaimed area, the meeting must be held within the boundaries of the closest neighborhood association.

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

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

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

**Appendix**

**Draft Administrative Rules for Original Art Murals**

meeting announcement to the neighborhood association and district coalition.

- c) **Posted notice of the meeting.** The applicant must post a notice of the meeting no less than 21 calendar days prior to the meeting date at the site of the proposed mural in a visible location. Posting boards can be obtained at the time of permit application submittal at the Development Services Center. The posted notice shall contain:

- Applicant's name;
- Applicant's telephone number;
- Mural permit number;
- Date, time and place of the meeting; and
- Building elevation showing the mural.

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

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

#### **IV. Design Standards**

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

##### **A. Location of Mural on the Building**

Murals are permitted on the following building walls:

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

##### **B. Qualifying Wall Surfaces for Murals.**

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

## **Appendix**

### **Draft Administrative Rules for Original Art Murals**

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

#### **C. Number of Mural Permits per building wall.**

Only one mural permit may be obtained per wall.

#### **D. Mural Size and Materials.**

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

#### **E. Hierarchy of Regulations.**

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

## **V. Approval of Mural Application**

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

#### **A. Structural Review**

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

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

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

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

**B. Actions of the Director**

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

**C. Suspension or Revocation**

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

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

**VI. Inspections and Expiration of Permit**

**A. Inspections**

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

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

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

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

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

**B. Expiration of Permit.**

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

**C. Extensions of Permit.**

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

**Appendix**  
**Draft Administrative Rules for Original Art Murals**

**D. Renewal of Expired Permits.**

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

**VII. Minimum Duration of a Permitted Mural**

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

**VIII. Maintenance of a Permitted Mural**

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

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

**IX. Alterations to a Permitted Mural**

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

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

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

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

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

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

**X. Removal of a Permitted Mural**

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

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

**Appendix**

**Draft Administrative Rules for Original Art Murals**

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

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

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

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

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

**C. Removal of materials associated with the mural.**

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

**XI. Enforcement**

**A. Violations.**

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

**B. Notice of violations.**

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

**C. Responsibility for enforcement.**

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

**Appendix**  
**Draft Administrative Rules for Original Art Murals**



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



# MULTNOMAH COUNTY

## AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/06/09  
Agenda Item #: R-2  
Est. Start Time: 9:35 AM  
Date Submitted: 07/22/09

**Agenda Title:** Multnomah County Green Team Annual Presentation

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

**Requested Meeting Date:** August 6, 2009  
**Department:** DCM  
**Contact(s):** Tim Lynch  
**Phone:** 503-988-4094 Ext. 84094  
**Presenter(s):** Kat West, Jeremy O'Leary, Grant Swanson, Alan Proffitt, Terry Baxter, Steve Wright and Stuart Farmer

**Amount of Time Needed:** 20 minutes  
**Division:** Sustainability  
**I/O Address:** 503/4

### General Information

**1. What action are you requesting from the Board?**

No action.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

The Multnomah County Green Team is a county employee team that acts as the volunteer arm of the county's Sustainability Program. The Green Team focuses on bringing sustainability education and projects to county employees and the public. This presentation presents the efforts of the Green Team in the past year.

**3. Explain the fiscal impact (current year and ongoing).**

No impact.

**4. Explain any legal and/or policy issues involved.**

No impact.

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

### Required Signature

Elected Official or  
Department/  
Agency Director:

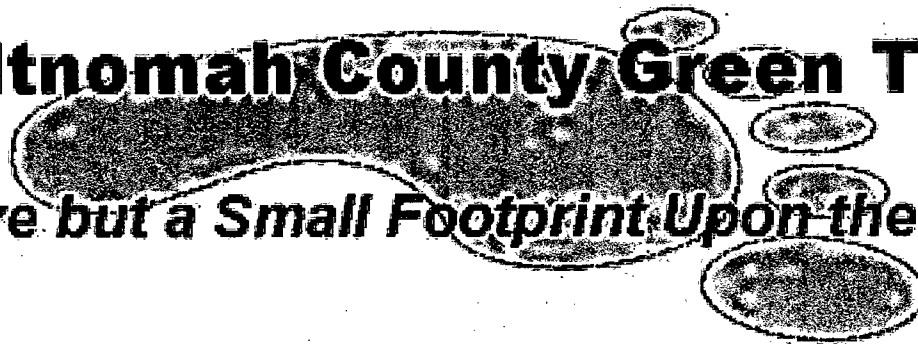


Date: 07/22/09



# **Multnomah County Green Team**

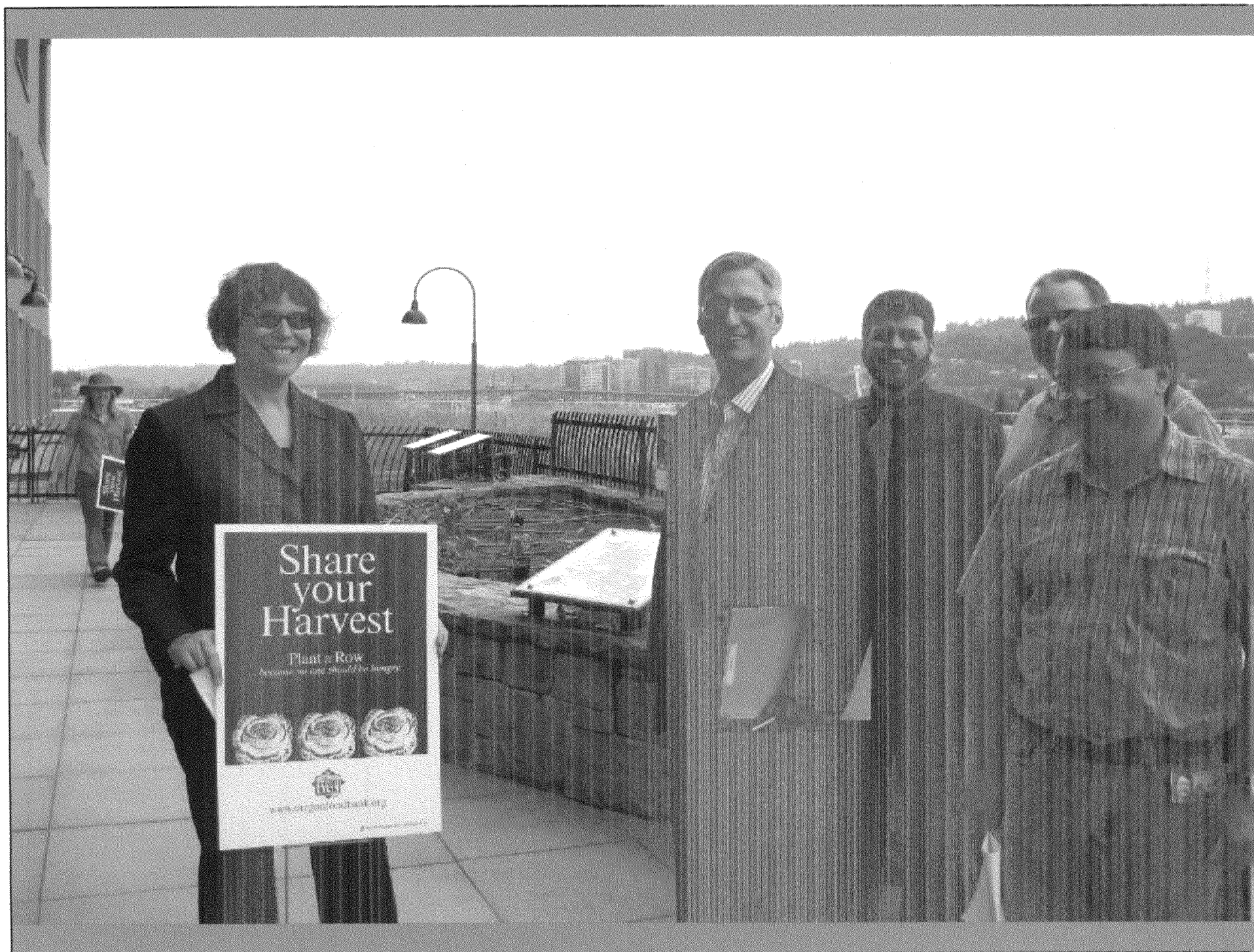
*Leave but a Small Footprint Upon the Earth*





# Hope Garden



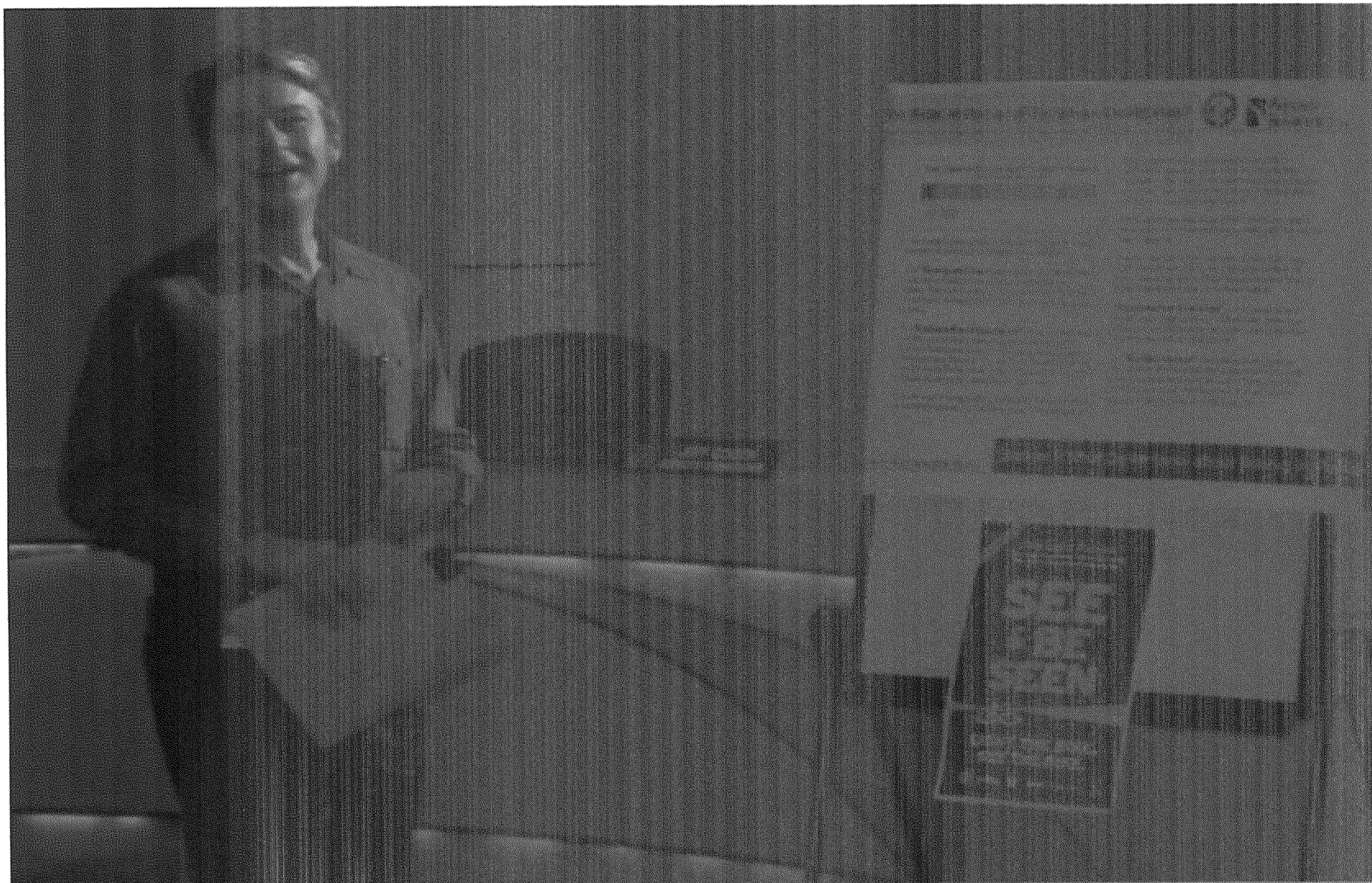






# Reuse-A-Shoe Project





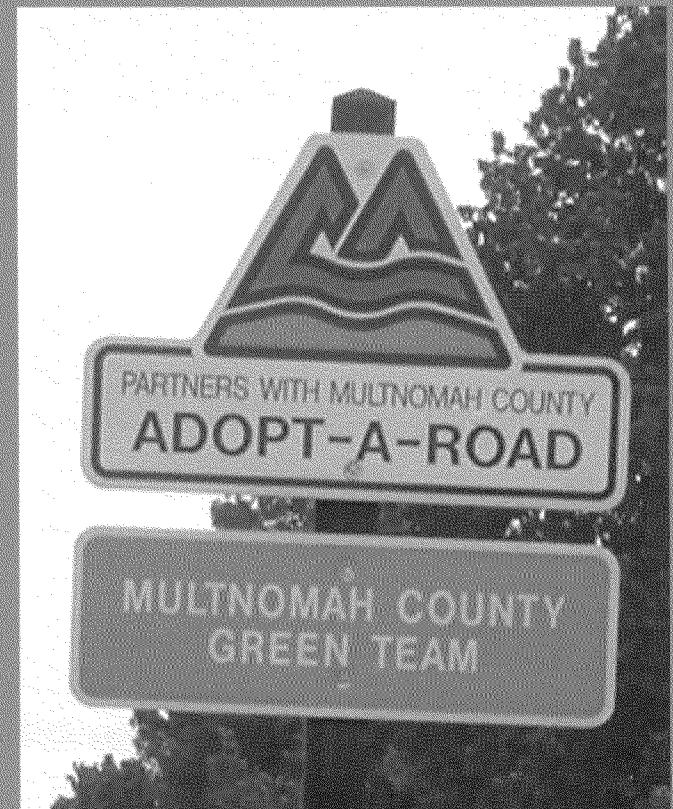
# Green Bags





Earth Day





Adopt-a-Road





# Sustainability Film Series

MULTNOMAH COUNTY  
**Sustainability Film Series**

**Sunday, April 19th @ 5:00 pm**  
McMenamins Bagdad Theater  
SE Hawthorne & 37th

**Film: "Everything's Cool"**  
An irreverent look at federal climate policy

**Panel Discussion:**  
2009 Portland/Multnomah Climate Action Plan  
with Multnomah County Commissioner Jeff Cogen  
and Michael Armstrong, City of Portland

**FREE**

MULTNOMAH COUNTY  
**Sustainability Film Series**

**"WHO KILLED THE ELECTRIC CAR?"**

**Sunday, Oct 26th @ 5:00 pm**  
McMenamins Bagdad Theater  
SE Hawthorne & 37th, Portland

Sponsored by:

**FREE**

MULTNOMAH COUNTY PRESENTS  
**Sustainability Film Series**

**"Kilowatt Ours"**  
A PLAN TO RE-ENERGIZE AMERICA

**Sunday, July 27th @ 5:00 pm**  
McMenamins Bagdad Theater  
SE Hawthorne & 37th, Portland

Followed by a SMARTER ENERGY panel discussion

Sponsored by:

**FREE**

MULTNOMAH COUNTY PRESENTS  
**SUSTAINABILITY FILM SERIES**

**"THE END OF SUBURBIA"**

**Sunday, April 21st @ 5:00 pm**  
McMenamins Bagdad Theater  
SE Hawthorne & 37th, Portland

Followed by a Portland Peak Oil panel discussion

Sponsored by:

**FREE**

**MULTNOMAH COUNTY**

# **Sustainability Film Series**

*Portland Premier!*



## **"INGREDIENTS"**

**A Visually Stunning Exploration of Local Food**

**Friday, September 25th @ 7:00 pm**

**McMenamins Bagdad Theater - SE Hawthorne & 37th**

**Followed by a Panel Discussion on Local Food**

**\$5 Donation - Fundraiser for The  
Multnomah County Food Initiative**

**Sponsored by:**



**Engineering +  
Environmental**



## Green Team



The 2008 Green Team on the Central Library Eco-Rooftop

# Web Site

**The Multnomah County Green Team is the volunteer arm of the county's Sustainability Program and promotes sustainable practices through education and outreach projects.**

**All County employees are invited to JOIN the Multnomah County Green Team.**

**Meetings are the 4th Thursday of the month at the Multnomah Building, 4th Floor, Oak Room.**

[Green Team Charter](#)

[Green Team Minutes](#)

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## Current Projects

- [Sustainability Film Series](#)

Next film: "[Ingredients](#)"

September 25th - 7:00 PM

McMenamins Bagdad Theater

- Adopt-a-Road Cleanup
- Green Bag Presentations
- Sustainability Discussion Classes
- Reuse-A-Shoe