

**EXHIBIT A**

# PUBLIC ART MURALS



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

**Recommended Draft**  
November 8, 2004

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City of Portland

**The Portland City Council will hold a hearing for this project  
on:**

Wednesday, December 1, 2004

9:30 AM

City Hall Council Chambers  
1221 SW Fourth Avenue  
Portland, OR 97204

For more information on the Public Art Murals Project, please contact:

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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 Phil Nameny at 503-823-7709.

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# CITY OF PORTLAND, OREGON PLANNING COMMISSION

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November 8, 2004

Mayor Katz and City Commissioners  
Portland City Council  
1221 SW Fourth Avenue  
Portland, Oregon 97204

**RE: Public Art Mural Project**

Dear Mayor Katz and City Commissioners:

On behalf of the Portland Planning Commission, I am forwarding our recommendation on the Public Art Murals proposal. This proposal would expand the City's existing Public Art Program to include murals. As the mayor has stated in her opening letter, "this proposal sets forth a constitutional avenue for the City to again encourage mural arts by acting as a patron of public art murals in public places."

City Code only requires that the Planning Commission make recommendations on the code amendments to Titles 32 and 33. However, at the public hearing, testimony was provided on all aspects of the proposal. This testimony represented a number of divergent viewpoints and contained several suggestions. They included removing the easement requirement for property owners, allowing alternative financing proposals, providing assurances that a diversity of cultural and minority interests are considered in the selection process, and increasing the maximum size allowances in the Sign Code. The testimony made it evident that we could not make recommendations solely on the code provisions without considering the project in its entirety.

Staff addressed several of these concerns. For example, termination provisions in the easement will ensure that it is not overly onerous for property owners who may wish to donate a wall to the City for a public art mural. Similarly, the Regional Arts and Culture Council (RACC) will continue to supply a variety of funding options for public art, including murals. These mechanisms include public funding, funds donated to the Public Art Trust Fund, grant funding, and private donations of works of art to the public art collection (either finished pieces or pieces to be commissioned for donation). RACC has provided explicit assurances that ethnic, cultural and linguistic diversity will be considered positively and encouraged in the selection process.

We found that none of the testimony provided better alternatives to the fundamental proposal in the Proposed Draft, nor were we confident that any of the

alternatives would better pass constitutional muster. Although we recognize that the proposal may not satisfy all the issues related to the controversy between murals and signs, this proposal provides a relatively clear and objective method for distinguishing between signs on the one hand, and all City-sponsored public art, including murals, on the other. The additional steps taken by the RACC to include the mural arts and neighborhood community in the selection process and to continue to utilize multiple funding sources for public art should help to alleviate concerns of elitism. The proposal also minimizes the changes to our Sign Code, which has been upheld as constitutional in court. Furthermore, the existing avenues for expression under the Sign Code remain unchanged. While this proposal expands the opportunities for City-sponsored public art, it does not reduce any existing opportunities for private murals/signs currently permitted under the Sign Code.

**Recommendation**

The Planning Commission unanimously recommends that the City Council adopt the ordinance and Recommended Draft and amend the City Codes and related documents as indicated in the Recommended Draft. We also recommend that City Council continue to support and expand the Public Art program to ensure the success of the Public Art Mural program.

Thank you for consideration of the recommendations of the Portland Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ethan Seltzer', with a large, stylized flourish at the end.

Ethan Seltzer, President  
Portland Planning Commission



**Office of Mayor Vera Katz**  
City of Portland

August 30, 2004

Dear Colleagues and Interested Citizens:

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

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

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

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

With warm regards,

Vera Katz  
Mayor

# Acknowledgements

## **Portland City Council**

Vera Katz, Mayor  
Jim Francesconi, Commissioner  
Randy Leonard, Commissioner  
Dan Saltzman, Commissioner  
Erik Sten, Commissioner

## **Portland Planning Commission**

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Richard Michaelson, Vice President  
Ingrid Stevens, Vice President  
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# Public Art Murals Project

## Summary

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

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

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



# **Part A. Murals as Public Art Program**

## **I. Overview**

### **A New Approach to Public Art Murals in Portland**

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

Prior to 1998, the City exempted all murals from its sign regulations. In 1998, the largest owner of billboards in Portland, AK Media, filed a lawsuit against the City claiming that by exempting murals from its sign regulations, the City was discriminating against advertising in favor of murals. This was alleged to violate the free speech provisions of both the Oregon and United States Constitutions. The Multnomah County Circuit Court ruled in AK Media's favor, finding that the City had made an unconstitutional distinction between two types of speech, and was therefore regulating speech based on content. The City was faced with the choice of not regulating signs at all, or regulating murals as signs. To comply with the legal ruling, the City changed its Sign Code to remove the exemption for murals and now regulates both murals and commercial signs the same. As a result, murals are currently limited to 200 square feet in size (at most) in all areas of the City. This limitation on murals to 200 square feet has resulted in a substantial reduction in new murals within the City. Artists, community groups and building owners, as well as many citizens at large have expressed dissatisfaction with the status quo, which seriously impedes the creation of new mural art in our City. During the past year, the Mayor and her staff have worked with interested stakeholders to find a solution to this issue. This proposal is a result of their work.

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

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

#### **C. Criteria for Selecting Public Art Murals**

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

## **Part A**

### **Murals as Public Art Program**

Like other public art administered by the RACC, public art murals would be owned by the public. Public art murals would be placed on wall space that is either already owned by the public (such as on the walls of publicly owned buildings) or on wall space that is dedicated to the public through a public art easement. Artists would retain copyright protection for their artwork.

#### **D. RACC Review Process**

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

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

#### Funding Options

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

#### **E. Public Art Easements**

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

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

terminated early include sale of a building to an owner not willing to assume the easement, refinancing where the lender requires termination of the easement as a condition of granting a loan, or the reconstruction of the building in a manner that results in the destruction of or significant damage to the mural.

#### **F. Lessons from Other Cities**

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

## **II. Background and Legal History**

### **A. The Legal starting point**

Starting at least as early as the mid 1980s, the City attempted to exempt murals from its sign regulations. Prior to 1991, the Zoning Code defined a sign as “Materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way, private roadway or another property.” The code exempted murals, known as “painted wall decorations” from the sign regulations. Prior to 1991, “painted wall decorations” were defined as “displays painted directly on a wall and are designed and intended as a decorative or ornamental feature.” In 1991, these definitions were amended to provide greater clarity as to what constituted a (regulated) painted wall sign and what constituted an (unregulated) mural or “painted wall decoration.” The new definitions were as follows:

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

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

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

## **Part A**

### **Murals as Public Art Program**

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

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

### **B. The Current Proposal**

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

### **C. The Legal Basis for the Proposal**

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

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

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

### **D. Application to the Current Proposal**

Under the current proposal, the City would act as a patron of arts, and in its proprietary capacity, display art in spaces it either already owns or which will be

donated to it for that purpose. The City would not be acting as a regulator. The regulations of the sign code would remain unchanged, and all expression previously available under the sign code would remain available. The proposal would exempt only public art (that is, art funded by the City/Public Arts Trust Fund and owned by the City) in public locations (in/on publicly owned buildings or spaces or in/on easements donated to the City). This distinguishes the proposal from the blanket exemption for murals (“painted wall decorations”) previously held to be unconstitutional.

### **III. RACC Process and Evaluation Criteria**

#### **A. Overview**

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

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

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

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

## **Part A**

### **Murals as Public Art Program**

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

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

### **B. Proposed Selection Criteria**

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

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



**Part A**  
**Murals as Public Art Program**

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

**Part A**  
**Murals as Public Art Program**

# **Part B. Recommended Code Amendments**

## **I. Impact Assessment**

### **A. Background**

Prior to 1998, the City exempted all murals from its sign regulations. In 1998, the largest owner of billboards in Portland, AK Media, filed a lawsuit against the City, claiming that by exempting murals from its sign regulations, the City was discriminating against advertising in favor of murals. This was alleged to violate the free speech provisions of both the Oregon and United States Constitutions. The court ruled in AK Media's favor, finding that the City had made an unconstitutional distinction between two types of speech, and was therefore regulating speech based on content. The City was faced with the choice of not regulating signs at all, or regulating murals as signs. To comply with the legal ruling, the City changed its Sign Code to remove the exemption for murals, and now regulates both murals and commercial signs the same. As a result, murals are currently limited to 200 square feet in size (at most) in all areas of the City. Muralists and many other community members have expressed concern about the negative impact this limitation has had on the City's aesthetic quality and artistic environment.

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

### **B. The Proposal**

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

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

## **Part B**

### **Recommended Code Amendments**

murals, the City acts as a patron of arts, or in a proprietary capacity, not as a regulator.

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

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

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

### **C. Advancing Portland's Comprehensive Plan Goals**

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

### **D. Early Stakeholder Outreach and Preliminary Feedback**

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

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

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

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

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

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

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

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

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

## **Part B**

### **Recommended Code Amendments**

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

#### **E. Implementation and Enforcement**

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

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

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

#### **F. Measuring Effectiveness**

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

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

## **II. Title 5, Revenue and Finance, Code Amendments**

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

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

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

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code. In order to understand the proposed changes, this document should be used with a current copy of the Code. You can access the Code sections at the City's website at [www.portlandonline.com](http://www.portlandonline.com).

**Part B**  
**Recommended Code Amendments - Commentary**

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.74**  
**ACQUISITION OF ART**

**5.74.020 Definitions**

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



**Part B**

**Recommended Code Amendments – Code Language**

**TITLE 5  
REVENUE AND FINANCE**

**CHAPTER 5.74  
ACQUISITION OF ART**

**5.74.020 Definitions**

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

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

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

**Part B**  
**Recommended Code Amendments - Commentary**

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

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

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

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**Part B**  
**Recommended Code Amendments - Commentary**

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

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

**32.12.020 Exemptions**

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

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

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

**32.12.020 Exemptions**

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

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

**Part B**  
**Recommended Code Amendments - Commentary**

## **IV. Title 33, Planning and Zoning, Code Amendments**

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

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

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

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code. In order to understand the proposed changes, this document should be used with a current copy of the Code. You can access the Code sections at the City's website at [www.portlandonline.com](http://www.portlandonline.com).

**Part B**  
**Recommended Code Amendments - Commentary**

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

**33.420.045 Exempt from Design Review**

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



**Part B**

**Recommended Code Amendments – Code Language**

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

**33.420.045 Exempt From Design Review**

The following items are exempt from design review:

- A-Q.** [No change.];
- R.** Awnings for each ground floor tenant, which meet the following requirements; ~~and~~
  - 1-2. [No change.]
- S.** Within the St. Johns plan district, alterations to single-dwelling detached structures-; and
- T.** Public Art as defined in Chapter 5.74.

**Part B**  
**Recommended Code Amendments - Commentary**

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

**Historic Landmarks**

**33.445.140 Alterations to a Historic Landmark**

**33.445.140.B Exempt from Historic Design Review**

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

**Conservation Landmarks**

**33.445.230 Alterations to a Conservation Landmark**

**33.445.230.B Exempt from Historic Design Review**

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

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

**Historic Landmarks**

**33.445.140 Alterations to a Historic Landmark**

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

**A. [No change.]**

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

- 1-4. [No change.]
5. Parking lot landscaping that meets the standards of this Title and does not include a wall or a fence; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and
7. Public Art as defined in Chapter 5.74.

**Conservation Landmarks**

**33.445.230 Alterations to a Conservation Landmark**

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

**A. [No change.]**

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

- 1-3. [No change.];
4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and
6. Public Art as defined in Chapter 5.74.

**Part B**  
**Recommended Code Amendments - Commentary**

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

**Historic Districts**

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

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

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

**Conservation Districts**

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

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

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

**Historic Districts**

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

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

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

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

1-4. [No change.]

5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74.

**Conservation Districts**

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

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

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

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

1-3. [No change.]

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74.

**Part B**  
**Recommended Code Amendments:**  
**Planning Commission Recommendation**

**V. Planning Commission Recommendation to City Council**

The Planning Commission recommends approval of these amendments. This recommendation includes the following actions:

- Adopt this report;
- Amend the Zoning Code as shown in this report;
- Adopt the ordinance; and
- Direct staff to continue any monitoring efforts on the program as necessary.



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