



City of Portland

Bureau of Development Services

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INTERIM ADMINISTRATIVE RULE

RELATING TO
Title 4 Permitting Original Art Murals

FOR INFORMATION CONTACT
BDS Planning and Zoning
(503-823-7526)

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:

- A. The administration and enforcement of:
 - 8. Original Art Murals, as defined by Title 4.

FINDINGS FOR ORIGINAL ADOPTION

1. The Bureau of Development Services (BDS) worked with the Mural Working Group, as well as the Bureau of Planning and Sustainability (BPS), and the City Attorney's Office to determine the content necessary to draft an administrative rule in support of the implementation of City Code Title 4 (Original Art Murals). The draft administrative rule was included as an appendix in BPS' *Original Art Murals Project: Proposed Draft* document submitted for consideration to the Portland Planning Commission, and in the Portland Planning Commission's *Original Art Murals Project: Recommended Draft* submitted to the Portland City Council.
 2. BDS published a notice of public hearing in *The Oregonian* (from June 14 through June 16, 2009) and in *The Daily Journal of Commerce* (from June 14 through June 16, 2009). BDS
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also posted notice of the hearing on the BDS website, and made the draft administrative rule available to the public in the BDS Development Services Center. BDS then held a public hearing to receive comments on the draft administrative rule on July 13, 2009, more than 30 days after the first published notice.

3. Four substantive issues were raised at the public hearing for the administrative rule:
 - a. Location of murals on street-facing walls in the Central City plan district. The administrative rule includes a design standard that applies to murals proposed on buildings in the Central City plan district. The standard allows murals only on non-street facing building walls, and on street-facing building walls that are more than 20 feet from a street lot line. Several participants raised concern about the restrictions this standard presents.

This standard, which was developed in consultation with the Mural Working Group, is intended to preserve the architectural integrity of street-facing facades when located in a design sensitive area, and to ensure that murals do not overwhelm such facades. The limitations this standard present are, in part, a trade-off for allowing murals of an unlimited size, extending up to the second-story of the building, within the plan district. Given the important intent, the standard should be retained in the administrative rule. It will still be possible to monitor this and other standards in the administrative rule over time and reconsider them if necessary at a future date. (See the third bullet below regarding monitoring and reevaluation of standards.)

- b. Mural Permit Fees. The issue of the mural fees was raised, and the possibility of BDS reducing or waiving fees on a case by case basis, particularly for non-profit entities.

The mural permit fees are not being established through the administrative rule, but instead, were previously adopted by City Council as part of the Land Use Services Fee Schedule. However, the BDS director does entertain requests for fee waivers from non-profit organizations. Generally, that request consists of the applicant writing a letter to the director describing the proposal, providing documentation of the entity's non-profit status, and an explanation of how the proposal is serving the larger public. The participants at the hearing were supportive of reviewing fee reductions or waivers on a case by case basis.

- c. Monitoring and Re-evaluation of Standards. A question was raised at the hearing about the possibility of the City monitoring the effectiveness of the standards in the mural code (Title 4) and the accompanying administrative rule over the next year or two and evaluating the effectiveness of these regulations.

City Council, in adopting the *Original Art Murals Project: Recommended Draft* document, which contained the proposed Title 4 Code changes and, by reference, the administrative rule, recognized that this is a new program. As such, in the adopted *Original Art Murals Project* document, language is included that directs BDS and BPS staff to work together and monitor the program and ensure that it is meeting the target goals of encouraging creative expression. Council expected that within a two to three-year timeframe enough mural permits will have been issued to allow a determination whether the program is successful or needs modification. The adopted *Original Art Murals Project* report states that staff will prepare 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.

- d. Encouraging More Three-dimensional Artwork. One of the mural standards requires that murals extend no more than six inches from the face of the building wall on which they are located. One of the participants at the public hearing expressed concern that this limits the type of art that is allowed and prevents more three-dimensional mural installations.

This standard was previously adopted by City Council as part of Title 4 and is not a part of the administrative rule. As such, the standard cannot be modified through the administrative rule. As indicated above, it will be possible to monitor and reevaluate the appropriateness and effectiveness of this standard at a future date

CONCLUSION

As provided in Title 4.40.010, the Director of BDS hereby adopts the Administrative Rule.

FINDINGS FOR AMENDMENTS

1. Portland City Code Section 3.30.045 delegates the authority to adopt and administer administrative rules appropriate to perform the duties of the Bureau of Development Services (BDS) set forth in Section 3.30.010 and prescribes procedures for administrative rulemaking.
2. The Portland City Council adopted amendments to Title 4 Original Art Murals and directed BDS to make corresponding changes to this administrative rule. The amendments to the administrative rule expands the location where murals can be installed, removes restrictions in the Design overlay zone and reduces the amount of time a mural must be maintained from five years to two years.
3. The Portland City Council held a public hearing on August 7, 2019 to consider proposed amendments to Title 4 and corresponding updates to this administrative rule. On August 21, 2019 the City Council voted to adopt the proposed amendments to Title 4 and directed BDS to make related updates to this rule. Section 3.30.045 C. allows the Director to adopt an interim rule without prior notice upon a finding that a failure to act promptly will result in prejudice to the public. This interim rule will be effective the same day as the Title 4 amendments. This will ensure consistency within the mural program and mural permit procedures.

CONCLUSION

As provided in Portland City Code Section 4.40.010, and following the procedures in Section 3.30.045, the Director of BDS hereby adopts the amendments to the Administrative Rule.

AMENDED: Rebecca Esau

September 9, 2019

Rebecca Esau, Director

Updates August 1, 2017 version for amendments to Title 4
Updates October 19, 2015 version for gender neutral language
Updates July 31, 2009 version

Interim 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

- 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. 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.
- B. Central City:** Properties located within the Central City Plan District, as identified on Map 510-1 in Title 33, Planning and Zoning.
- C. 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*.
- D. 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*.
- E. Director:** The Director of Bureau of Development Services.
- F. 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.)
- G. 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*.
- H. Original Art Mural:** A hand-produced, two-dimensional work of visual art as defined in Title 4.
- I. Permitted Original Art Mural:** An Original Art Mural for which a permit has been issued by the City of Portland pursuant to Title 4.
- J. 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.
- K. Structure:** Any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs, and other similar objects. Structure does not include paved areas or vegetative landscaping materials.

III. Permit Application

No person, firm or corporation may commence a mural installation on a site without first obtaining a mural permit as provided in this section. Murals without an approved 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. 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 or structure elevation drawn to scale, and one 8.5" x 11" reduction suitable for photocopying, that identifies:
 - a. the façade on which the mural is proposed;
 - b. the location of existing and proposed murals;
 - c. the mural dimensions;
 - d. the height of the mural above grade; and
 - e. the building eave/cornice and roof line, if applicable.
3. Site plan drawn to scale and one 8.5" x 11" reduction suitable for photocopying, that identifies:
 - a. Property lines;
 - b. building or structure location and façade on which the mural will be located;
 - c. names of streets that abut site; and
 - d. north arrow.
4. If in a Design Overlay Zone or on a building or structure 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 or structure.
6. Application Fee.

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 intent of Original Art Mural regulations includes 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 goals, 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 before a mural permit is issued by the City. The posting materials and mural permit number required for the Neighborhood Contact are obtained from the Development Services Center. Therefore, the Neighborhood Contact must be completed after an applicant submits a mural permit application to the Bureau of Development Services.
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.

The mural permit will not be issued until the open meeting has been held.

- b. **Mailed notice of the open 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 or

structure elevation or photograph showing the location and size of the proposed mural. A sample letter can be obtained at the Development Services Center and online on the Original Art Mural website.

The mural permit will not be issued until the applicant provides a copy of the letter with proof of mailing provided by the Post Office.

- c. **Posted notice of the open 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 are obtained at the time of permit application submittal at the Development Services Center. The posted notice shall contain:
- (1) Applicant's name;
 - (2) Applicant's telephone number;
 - (3) Mural permit number;
 - (4) Date, time and place of the meeting; and
 - (5) Building or structure 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

Where the mural is in a Design Overlay Zone, or on a building wall or structure that is identified as noncontributing to the historic significance of a Historic District or Conservation District, the following standards must be met:

A. Qualifying Surfaces for Murals

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

B. 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 Resource Review as described in Title 33, those

changes must be approved through Design Review or Historic Resource 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

Structural Review is required for all murals except for murals described in either paragraph 1 or 2, below:

1. Murals that are painted or tiled directly on a building wall or structure do not require structural review.
2. Murals with any element that weighs less than 7 pounds per square foot, or in total weigh less than 400 pounds, and are attached to the building wall or structure in one of the following methods do not require structural review.
 - a. Continuously along two opposing sides of the mural for the full dimension of the mural; or
 - b. At each corner of the mural, and at intervals no greater than 18 inches along the entire perimeter of the mural.

For murals that are affixed to the building wall or structure in separate panels, the requirements in sub-paragraph a or b, 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 permit holder must notify the Director when the mural is complete. At least one photo must be submitted to verify that the mural is in conformance with the provisions of the mural code and these rules. The photo or photos will be kept on file and shall include enough detail to identify the site, mural size, mural location and mural image consistency with the permit application. The photo or photos shall be provided to the BDS Director by the applicant.

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

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 any violation of these administrative rules or Title 4 may exist.

B. Expiration of Permit

If the applicant fails to submit a photo of the mural 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 the applicant's 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.

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 two 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

Property 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 property 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 two years of the date of completion.

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

1. The building, structure or property on which mural is located is sold; or
2. The building, structure or property is substantially remodeled or altered in way that precludes continuance of a 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 two years of the date of completion.

Alterations of the mural following the first two 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 two years of the date of completion.

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

1. The building, structure or property on which mural is located is sold; or
2. The building, structure 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 two-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 two years of the date of completion.

Permitted murals may be removed after the first two 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 or structure 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 a 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.