

**ORDINANCE NO. 2019-09**

AN ORDINANCE AMENDING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE VI, ARCHITECTURAL DESIGN STANDARDS, OF THE ORMOND BEACH LAND DEVELOPMENT CODE, BY ADDING A NEW SECTION 3-72, ORIGINAL ARTWORK MURALS ON PRIVATE PROPERTY, REGARDING MURALS ON PRIVATE PROPERTY; AMENDING CHAPTER 2, ARTICLE IV, CONDITIONAL AND SPECIAL EXCEPTION REGULATIONS, SECTION 2-57(78), "TATTOO PARLORS"; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**WHEREAS**, the City of Ormond Beach desires to amend the City Land Development Code to establish requirements for original murals to promote the general welfare of the community and to protect the aesthetic character of the City without regulating content; and

**WHEREAS**, the amendment is consistent with the intent of the Comprehensive Plan because the Comprehensive Plan goals generally include:

1. Convey a positive image through the use of attractive and well-designed artwork.
2. Create attractive gathering spaces.
3. Encourage a varied collection of original artwork that add to the character of the City; and

**WHEREAS**, the City Commission finds and determines that since an original artwork mural is not considered a "sign" under the definition of sign found in Chapter 1, Article III, Section 1-22 of the City's Land Development Code, the City's Sign Regulations do not apply to murals; and

**WHEREAS**, a similar provision excepting murals from the sign code was upheld in *Architecture Art, LLC v. City of San Diego*, 231 F.Supp.3d 828 (S.D. Ca. 2017); and

**WHEREAS**, the recent decision of *Reed v. Gilbert*, 576 U.S. \_\_\_, 135 S. Ct. 2218, 192 L.Ed. 2d 236 (2015), is not applicable to this ordinance because this ordinance does not involve distinguishing among different speakers, but is distinguishing art work from signs containing words; and

**WHEREAS**, the purpose of this mural program is to create cultural identity, preserve history, promote economic development, focus revitalization efforts, address blight, promote

diversity, encourage and foster community engagement, develop an appreciation of art, and contribute to long-term community planning; and

**WHEREAS**, because murals can be larger than signs and often are permanent, the City is concerned about both traffic safety and community aesthetics, as well as economic development, encouraging free speech, and the protection of property values in adopting this ordinance, which is why the City is establishing a permit process; and

**WHEREAS**, the City is mindful of the First Amendment to the Constitution, and does not want to judge the content of the mural, including whether a mural is commercial or non-commercial, so the City has decided to prohibit all words on the mural, and to classify murals as art; and

**WHEREAS**, the City finds that it possesses the unique aesthetic of a diverse creative class and wishes to increase its potential by increasing the quantity and quality of art works on display, catalyze high quality arts programming, provide support for arts initiatives and artists, and to increase “arts and culture” tourism; and

**WHEREAS**, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (\*\*\*) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:**

**SECTION ONE. Incorporation of Recitals.** The foregoing recitals are deemed true and correct and are hereby fully incorporated by this reference.

**SECTION TWO.** Section 3-72 of the Land Development Code of the City of Ormond Beach is added as follows:

Section 3-72 - Original Artwork Murals on Private Property

(a) Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Maintenance” with respect to artwork, means the required repairs or cleaning to keep a work of art in its intended condition, including preventative maintenance at scheduled intervals to curtail future deterioration, and ordinary repairs or maintenance, including but not limited to, painting, repair or replacement.

“Original Artwork Mural” means a painting or artwork temporarily or permanently affixed to a privately owned building, distinguished from signage in that it does not include any words, numbers, symbols or letters. An “Original Artwork Mural” is not a “sign” under the City’s sign code. An “Original Artwork Mural” which is not visible from a public right of way is not regulated by this section or by the sign code.

(b) Location of original artwork murals.

Installation of original artwork murals shall be limited to the Downtown Overlay District.

(c) Purpose.

(1) This chapter is intended to permit and encourage Original Artwork Murals on a content neutral basis that: (i) are sufficiently durable and will be properly maintained; (ii) are located on appropriate places on buildings and constitute a particular scale of the building façade; (iii) do not include any unsafe features or would not pose any unsafe conditions to vehicular or pedestrian traffic; (iv) provide avenues for artistic expression, and (v) are assets to the community.

(2) The regulations and permit requirements set forth in this chapter are also intended to promote public safety and welfare by establishing the following:

a. That the design, construction, installation, repair, and maintenance of the displays will not interfere with traffic safety or otherwise endanger public safety.

b. That this regulation will provide reasonable protection by controlling the size and locations of such displays.

c. That the public will enjoy the aesthetic benefits of viewing such displays in numbers and sizes that are reasonably and objectively regulated.

d. There will be no cost to the City.

e. That the City will not consider the content of the mural in the permitting process.

(d) Ormond Beach Arts District Board

(1) Purpose. The Ormond Beach Arts District Board is derived from Ormond Beach Arts District, Inc., is a not for profit 501(c)3 corporation, and was formed to promote public and private art throughout the city. The Board is delegated authority by the city to review and recommend approval or denial of mural permits. This Board will serve in an

advisory and administrative capacity in cooperation with the city in all activities and functions outlined in this section connected with the mural program. The Board shall comply with the requirements of Chapter 119 and 286 of the Florida Statutes.

(2) Board Members. In furtherance of the Board's cooperation with the city, the planning director or designee will be an ex officio member of the Board for all meetings relating to the city mural program.

(e) Mural permit application.

(1) No person, firm, corporation or other entity may authorize, erect, construct, maintain, move, alter, change, place, suspend, or attach any Original Artwork Mural within the City prior to obtaining a permit as set forth herein. Such permit shall be known as a mural permit.

(2) An application for a mural permit shall be filed jointly by a building owner and an artist with the planning department by way of a form prepared by the planning department and shall include the following:

a. Name of the artist and the owner. Street address and location of the proposed mural.

b. Examples of previous work done by the artist, with references.

c. Description of the materials to comprise the proposed mural and manner of application.

d. Statement regarding durability of the materials considering the location and positioning of the proposed mural.

e. Plans and specifications for the proposed mural including an exact picture graphic and other description. The application should include clear and legible drawings with description showing the location of the mural. Drawings should show the dimensions and materials. Color photos of the building must accompany the mural sketch, showing the wall to be painted in relation to adjacent streets and buildings.

f. Statement that the proposed mural will remain in place for at least two years.

g. Statement that no compensation will be given or received for the right to display the mural or the right to place the mural on the property. The artist may be compensated for the completion of the mural, however.

h. Artist and building owner shall pay all costs associated with public hearing notifications.

i. Artist must waive and release, in favor of the City and the building owner, the right of attribution or integrity which Artist has in the mural under 17 U.S.C. §§ 106A and 113(d)(Visual Artist Rights Act).

j. Artist's agreement to allow the City or the building owner to remove the mural with 90 days' notice to the Artist at the address provided in the application and building owner if the mural is not maintained, or if it becomes a safety hazard.

k. Signed acknowledgement by artist and business owner to abide by all mural requirements and execute all necessary documents.

(f) Mural permit application review.

(1) The mural permit application shall be submitted to the planning department for review, and then to the Ormond Beach Arts District Board, and then to the City Commission for final decision. The planning department review shall be completed within 10 days; provided, however, that the planning department is authorized to utilize additional time for good cause, with notice to the applicant stating the basis for the delay. The Ormond Beach Arts District Board must complete its review in 30 days, and the City Commission must complete its review in 45 days.

(2) Review Criteria. The Ormond Beach Arts District Board shall review the mural application using the following criteria:

a. The mural must be durable, permanent and easily protected from vandalism and weathering; consideration shall be given to the structural and surface integrity and stability of the building façade, the permanence and durability of the mural, and the mural's resistance to weathering, theft, and vandalism.

b. The mural must not have any unsafe features or conditions that may affect public safety.

c. The mural must not disrupt traffic nor create any unsafe conditions or distractions to motorists or pedestrians.

d. The mural surface must be prepared with an outdoor primer to ensure good adhesion for the artwork.

e. Clear, anti-graffiti coating must be applied over the completed artwork.

f. The mural must not extend more than six inches from the plane of the wall to which it is attached.

g. The mural should enhance the aesthetic beauty of the area of its proposed location.

h. The mural must be located on only one façade of a building. The mural may not be placed on the primary façade of the structure. Exceptions from this Paragraph h can be applied for, reviewed by the Ormond Beach Arts District Board, and approved by City Commission, when the nature of the business is creative, artistic or some other special circumstance is presented.

i. The mural must be compatible with the character of the surrounding area (particularly when near residential areas) in terms of its size, style, colors, materials, general appearance, and location.

j. Any licensed, copyrighted, or trademarked characters or likenesses used on murals must have permission from the holder or owner of the license, copyright or trademark.

k. No approval shall be issued for mural installation if there are outstanding code enforcement violations charged by the City on the property where the mural is to be located. Outstanding debts to the City must be paid in full prior to issuance of the mural permit.

(3) The City Commission will review the recommendation of the Ormond Beach Arts District Board and make the final decision based on the criteria in Paragraph (2) of this Section.

(4) Persons aggrieved by the decision of the City Commission may appeal that decision to a court of competent jurisdiction.

(g) Prohibited murals.

The following are prohibited in the city:

(1) A mural that covers more than one single façade of a building.

(2) A mural that violates federal, state or local law.

(h) Permit expiration and extension.

(1) Except as provided in subsection (2). below, if installation of the permitted original artwork mural has not taken place within twelve (12) months of the date of issuance of the mural permit, the permit is void and no further work on the mural may be done at the site until a new permit has be approved and new fee paid.

(2) An approved mural permit may be extended by the planning department for an additional period of no more than twelve (12) months upon the planning department finding that the applicant was unable to begin or continue the installation of the approved mural for reasons beyond his or her control. A request for permit extension must be in writing and must be received by the Planning Department before the original permit expiration date.

(i) Maintenance.

(1) The property owner is responsible for ensuring that a permitted original artwork mural is maintained in good condition and fully repaired in the case of vandalism or accidental destruction.

(2) Failure to maintain the Original Artwork Mural is declared to be a public nuisance and may be summarily abated or repaired by the City. The City may pursue additional remedies to obtain compliance with this section as appropriate, including removal of the mural.

(3) In addition to other remedies provided by law, in the event the property owner fails to maintain the mural, the City may perform all necessary repairs or removal of the mural, and all costs incurred by the City shall become a lien against the property.

(j) Mural alterations.

In order to make alterations to an original artwork mural, the artist and building owner must obtain a new mural permit.

(k) Removal or replacement of murals; violations; enforcement

(1) Murals installed in accordance with this section shall remain on site in the approved location and cannot be altered, replaced or removed except as provided in this section, or when deemed to be unsafe by the city building official, or when the City determines replacement is necessary due to damage from natural disasters. The seller of

property containing a mural installed in compliance with this article shall include restrictions by deed or other instrument that requires the buyer to agree to retain and maintain the mural in compliance with this article.

(2) Removal of murals; violations, enforcement. This Section 3-72 may be enforced in accordance with the special magistrate code enforcement system in Article VII, Chapter 2 of the Code of Ordinances. Should an approved mural become deteriorated, or otherwise no longer satisfy the terms of the permit, enforcement shall include the City's right to enter upon the property and abate by such reasonable action as necessary to remove or restore the mural, in the City's discretion.

a. Costs of abatement by the City. Upon the City's abatement of the mural, the costs, including the administrative costs incurred by the City, shall be assessed by the Special Magistrate against the real property from which the mural was removed, together with any fine imposed by the Special Magistrate, all of which shall become a lien against the real property in accordance with section 2-258 of the Code of Ordinances.

b. Alternative remedies. Nothing in this section shall in any way limit the City to the remedy listed above. This remedy shall be in addition to any other remedy which the City can legally pursue, including, but not limited to, code enforcement measures under Article VII, Chapter 2 of the Code of Ordinances.

(3) Recording requirements. The mural permit and the determination of removal shall be recorded in the records of the City, and may be recorded in the official records of Volusia County, and shall be binding upon the heirs, personal representatives, grantees, heirs and successors of the parties.

(4) The replacement mural shall meet all of the requirements of this section. A replacement mural must be approved by the City Commission.

**SECTION THREE.** Section 2-57(78), "Tattoo Parlors" of Chapter 2 of Article IV, Conditional and Special Exception Regulations of the Land Development Code of the City of Ormond Beach is hereby amended as follows:

Sec. 2-57. – Criteria for review of specific conditional and special exception.

(1) - (77) ...(No change in existing text)...

(78) Tattoo parlors.



a. - d. ...(No change in existing text)...

~~e. Murals and other graphic illustrations shall not be permitted on the exterior walls of the buildings.~~

~~f. e. ...(No change in existing text)...~~

~~g. f. ...(No change in existing text)...~~

~~h. g. ...(No change in existing text)...~~

~~i. h. ...(No change in existing text)...~~

~~j. i. ...(No change in existing text)...~~

...(No change in balance of existing text)...


**SECTION FOUR.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed, to the extent of such conflict.

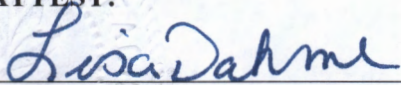
**SECTION FIVE.** SEVERABILITY. The sections paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION SIX.** This Ordinance shall take effective immediately upon its adoption.

**PASSED UPON** at the first reading of the City Commission, this 21st day of March, 2019.

**PASSED UPON** at the second and final reading of the City Commission, this 2nd day of April, 2019.

  
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**BILL PARTINGTON**  
Mayor

**ATTEST:**  
  
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**LISA DAHME**  
City Clerk