

- (2) Chainlink fences and straight plain stockade-style fences shall be permitted on properties which do not front on an arterial or major collector roadway. An exemption may be made from the arterial/collector road frontage requirement where existing vegetation or proposed landscaping will effectively screen the fence from view. Where chainlink fencing is required or approved, such fencing shall be vinyl-coated, colored black. Posts and rails shall also be black.

(Ord. No. 2012-25, § 5, 9-4-2012)

Sec. 3-72. Original artwork murals on private property.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, 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 section is intended to permit and encourage original artwork murals on a content neutral basis that:
 - a. Are sufficiently durable and will be properly maintained;
 - b. Are located on appropriate places on buildings and constitute a particular scale of the building facade;
 - c. Do not include any unsafe features or would not pose any unsafe conditions to vehicular or pedestrian traffic;
 - d. Provide avenues for artistic expression; and
 - e. Are assets to the community.
- (2) The regulations and permit requirements set forth in this section 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 F.S. chs. 119 and 286.
- (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 in this section. 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. Application fee as established by the city.
 - i. Artist must waive and release, in favor of the city and the building owner, the right of attribution or integrity which the artist has in the mural under 17 USC 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 ten (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 thirty (30) days, and the city commission must complete its review in forty-five (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 facade, 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 (6) 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 facade of a building. The mural may not be placed on the primary facade of the structure. Exceptions from this subsection (f)(2)h can be applied for, reviewed by the Ormond Beach Arts District Board, and approved by the 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 subsection (f)(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 facade of a building.
 - (2) A mural that violates federal, state or local law.
- (h) *Permit expiration and extension.*
- (1) Except as provided in subsection (h)(2) of this section, 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 been 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.*
- (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 section shall include restrictions by deed or other instrument that requires the buyer to agree to retain and maintain the mural in compliance with this section.
 - (2) Removal of murals; violations, enforcement. This section may be enforced in accordance with the special magistrate code enforcement system in chapter 2, article VII, 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 chapter 2, article VII, 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.
 - (1) *Violations; enforcement.* This section may be enforced in accordance with the special magistrate code enforcement system in chapter 2, article VII, 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.
- (Ord. No. 2019-09, § 2, 4-2-2019)