



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 19, 2019
PREPARATION DATE: October 25, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Consider approval of the first consideration of Ordinance 1326 related to murals

STATEMENT/PURPOSE: Consider approval of the first consideration of Ordinance 1326 related to murals.

BACKGROUND/ALTERNATIVES: The DRAFT mural ordinance as seen in Exhibit 1 is the product agreed upon by City Commission and legal counsel that fulfills the interest of the City in preserving public safety, traffic and pedestrian safety, property values and will withstand constitutional muster.

Residential Districts Not Regulated

The mural ordinance doesn't regulate in residential districts, rather leaving neighborhood home-owners associations to address this issue internally.

Permitting

A permitting process is required to ensure that any mural not painted directly onto a building is affixed safely and meeting building code. Murals painted directly onto buildings require a permit to ensure that the materials used to paint onto the structure are adequate to withstand North Dakota weather well into the future and to document the original condition of the mural. If a mural painted directly to a building fades, chips, or peels, and adequate upkeep is not conducted, the aesthetics of the building degrade and the building risks becoming an eyesore. A lack of maintenance blights an area and negatively affects property values.

Summary of Standards

The standards for murals ensure that they are not applied directly to significant architectural elements.

The limitation on the total number of murals and size restriction on the street-fronting side has been removed from the previous first consideration. If specific problems arise then the ordinance may be adjusted to address them at that time. Also, future court cases traversed by other jurisdictions may provide more insight into the matter. Making these adjustments will further ensure the ordinance is not challenged moving forward and allow the City to focus its efforts on other, more pressing, areas.

Existing Murals

Existing murals, including Lonesome Dove's painted sign, will be grandfathered in if this ordinance is ultimately adopted by City Commission. This ordinance will only apply to new murals following its adoption and release of the temporary restraining order that is currently in-place.

Planning and Zoning Commission – August 26

Planning and Zoning Commission recommended approval, with 7 in favor and 1 in opposition, at the August 26 meeting. It has been reviewed and approved by City legal counsel.

ATTACHMENTS:

Exhibit 1 – Ordinance 1326 – DRAFT Mural Ordinance

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1326 has been reviewed and approved by legal counsel.

RECOMMENDATION: Engineering and Planning recommend approval of the mural ordinance as presented in Exhibit 1.

SUGGESTED MOTION: I move to approve the first consideration of Ordinance 1326 as presented in Exhibit 1.

EXHIBIT 1

ORDINANCE NO. 1326

An Ordinance to Amend a portion of Section 105-1-15 (b) and Enact Sec. 105-1- 17 of the Mandan Code of Ordinances related to the definition and placement of murals

WHEREAS: Clarification is needed surrounding how murals may be regulated and to what degree;

WHEREAS: There is a need to remove the possibility or appearance of content-oriented permitting review processes while at the same time preserving and promoting aesthetics, traffic and public safety, and property values;

WHEREAS: The City of Mandan is actively and directly contributing to aesthetic improvements and economic development and revitalization through financial incentive programs such as the Downtown Storefront Improvement Program and the establishment of design standards in the Downtown Core, Downtown Fringe, and Gateway and Memorial Highway Overlay Districts;

WHEREAS: Alleyway beautification including, but not limited to, the use of murals is a recommendation stemming from the Mandan Downtown Subarea Study;

WHEREAS: Public art is an important tool used in the creation of place and a component of economic development;

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

Section 1. Amended. A portion of Section 105-1-15 (b) related to the definition of Figurative wall mural is amended as follows:

~~Figurative wall mural means an illustration, diagram or design, not intended to sell a product or to advertise an establishment, that is used for aesthetic purposes or to enhance architectural features of a building.~~

Section 2. Amended. A portion of Section 105-1-15 (j) related to the prohibition of painted signs and wall murals as follows:

~~(9) No sign or wall mural shall be painted on any building without prior approval from the MARC.~~

Section 3. Repealed. Building Mural Guidelines adopted by the Mandan City Commission on August 21, 2018 are repealed.

Section 4. Enacted. Section 105-1-17 related to display of public art:

Sec. 105-1-17 – Public Art

(a) Murals

(1) Purpose. It is the purpose of this Section to promote art within the City of Mandan while preserving significant architectural elements and an orderly appearance, preserving public safety, traffic and pedestrian safety, as well as preserving property values. This Section applies to all commercial, industrial, and downtown districts. Murals are not regulated in residential districts.

(2) Definitions. The established definitions are for purposes of this Section only.

Mural means a hand-painted or hand-tiled, ~~or digitally printed~~ work of visual and original art that is either affixed to or painted directly on the exterior of a structure with the permission of the property owner. A mural does not include any display containing an electrical or mechanical component and does not include any changing image art display.

Mural area means the portion of a structure that is generally free of windows, doors, or major architectural elements or details.

Mural size means the smallest rectangle containing the art which encompasses all of the letters, designs, and symbols therein.

~~*Street fronting side* means the side of a structure that orients toward the street by plus or minus forty five degrees from parallel to the subject street.~~

Structure means fence or window, door, or wall of a building, where a mural will be applied directly or affixed.

(3) Permit required. A permit is required for any new mural application proposing a mural viewable from any public street, trail, park, or other right-of-way. A mural applicant may submit a complete application and any necessary non-refundable application fee to the planner or the planner's designee and shall await receipt of the permit prior to

beginning work applying the proposed mural to the structure. A permit shall be tied to the mural for which it is being applied.

- (4) Revocation. A permit may be revoked by the planner or the planner's designee because of non-compliance with the permitting process, because of non-compliance with this Section, or because of substantial degradation of the original artwork as measured against the submitted color rendering or photographs, whether the cause of such substantial degradation is due to a lack of maintenance or exposure to time or weather. A mural shall be removed and the structure brought back into substantial conformity of the original aesthetic of the structure within sixty (60) days of revocation. If conformity with the original aesthetic of the structure cannot be achieved within sixty (60) days due to weather, artist unavailability, or other extenuating circumstance, an extension may be granted by the planner or the planner's designee.
- (5) Revocation Due to Vandalism. If the artwork is vandalized resulting in substantial degradation of or damage to the artwork, it shall be brought into conformity with the submitted color rendering or photographs within six (6) months from the date of the issuance of written notice by the City. If it cannot be brought back into such substantial conformity within six (6) months due to weather, artist unavailability, or other extenuating circumstance, an extension may be granted by the planner or the planner's designee.
- (6) Appeal. An applicant may appeal a denial or a conditional approval of a permit, or a permittee may appeal a revocation of a permit, by timely request for a hearing before the Board of City Commissioners. The request for hearing must be received by the City planner or the planner's designee within ten (10) business days following the date of the notice of revocation, conditional approval, or denial. The Board of City Commissioners shall hold a hearing on the applicant's or permittee's request for appeal hearing and shall render a final decision on the matter at or within a reasonable time after said hearing. A separate, non-refundable appeal fee may be required as established by the Board of City Commissioners.
- (7) Non-Affixed Mural Application. In order to obtain necessary permission for a non-affixed mural, which is typically applied by painting, an applicant may submit a complete application to the planner or the planner's designee. Upon receipt of the complete application for a mural that satisfies the Standards, the planner or planner's designee shall seasonably issue the permit and shall provide the applicant with a copy of the mural standards set forth in this Section. A complete application for a non-affixed mural permit shall include:

- a. General form established by staff to document applicant, property owner, artist, and property information, including necessary signatures demonstrating owner permission.
- b. Proposed materials to be used for the non-affixed mural.
- c. Proposed maintenance plan to address degradation due to time, weather, and other exposures.
- d. Written acknowledgement of understanding of the requirements as set forth in this Section.

(8) Affixed Mural Application. In order to obtain necessary permission for a mural affixed to a structure, whether mechanically or by some other construction method, an applicant may submit a complete application to the planner or the planner's designee. Upon receipt of the complete application for a mural that satisfies the Standards, the planner or planner's designee shall seasonably issue the permit and shall provide the applicant with a copy of the mural standards set forth in this Section. A complete application for an affixed mural permit shall include:

- a. General form established by staff to document applicant, property owner, artist, contractor, and property information, including necessary signatures demonstrating owner permission.
- b. Proposed maintenance plan to address degradation and structural integrity concerns of the mural fixture due to time, weather, and other exposures.
- c. Proposed means, methods and materials to be used to securely and safely affix the mural to the structure.
- d. Proof of any necessary completed building permit application, fee, and other information required by the building inspection department in relation to the mural fixture.
- e. Written acknowledgement of understanding of the requirements as set forth in this Section.

(9) Timing of Decision & Period of Review. ~~Necessary—Affixed Murals.~~ The planner or planner's designee shall seasonably inform the ~~affixed~~ mural applicant of any additional information required to complete the application, to complete the planner's or planner's designee's review of the application, or to complete any necessary further review and decision by the MARC or building inspection department. If a complete

~~affixed~~ mural application is not approved, such decision shall be accompanied by reasons within any correspondence to the applicant. Reasons for conditional approval or denial may only include non-conformity with the standards set forth in this section.

~~To the extent a complete affixed mural application is received and no additional review or action by the MARC or building inspection department is necessary, the planner or planner's designee shall provide approval, conditional approval, or denial of the application within ten (10) days of such receipt, subject to appeal pursuant to Paragraph 6 of this Section.~~

To the extent MARC or building inspection department review should be necessary to decide whether the application does or does not meet the standards set forth under Sub-Paragraphs 11(c) or (d) of this Section or other sections of the Mandan Code of Ordinances, the planner or planner's designee must forward the application in a timely manner to the MARC or building inspection department such that a decision can be timely rendered. Any decision by the MARC or the building inspection department is subject to appeal pursuant to Paragraph 6 of this Section.

To the extent a complete mural application is received and no additional review or action by the MARC or building inspection department is necessary, the planner or planner's designee shall provide approval, conditional approval, or denial of the application within ten (10) days of receipt of any review decision by the MARC or the building inspection department.

(10) Submitted Color Rendering or Photographs. Within seven (7) days of the date of completion of the mural for which a permit has been granted, the permittee shall provide the planner or planner's designee a color rendering or a sufficient number of photographs of the completed mural that faithfully represent the following:

- i. The color rendering of the mural;
- ii. Dimensions of the mural;
- iii. Dimensions of the mural area; and
- iv. Location on the structure.

(11) Standards. The following standards shall apply to both affixed and non-affixed murals.

- a. A mural shall not contain illustrations or text that are obscene or incite violence.
- b. A mural shall not be installed on any original facade of a building listed as a contributing structure of an historic district or independently listed on the National Historic Register, unless the mural may be attached to a removable panel without damage to the underlying historic facade and the manner of affixture does not constitute a safety hazard.
- c. A mural may not be applied to, cover over, or obscure significant architectural elements or significant building materials, including, but not limited to, any balustrade, colonnade, column, cornice, cresting, entablature, frieze, grille, latticework, lintel, lunette, molding, parapet, relief, or spandrel, or any structure or part thereof constructed of stone, cut stone, marble, granite, or glass block.
- d. Mural materials and application processes shall be appropriate to the environment, the structure and surface upon which the mural will be applied to ensure durability and longevity of the mural, and so as not to impede building use, occupant safety, public and pedestrian safety, or traffic safety.
- ~~e. Pursuant to the sign code, Section 105-1-15, businesses have ample opportunity to advertise and to express ideas, including on street-fronting sides of buildings. The City has lawful aesthetic, public safety, pedestrian and traffic safety interests in minimizing excessive distractions—the number and total area of signs and murals that are directly observable to pedestrian and automotive traffic. To the extent such excessive distractions occur, a mural permit is subject to revocation and the property owner is subject to enforcement, as set forth in this Section. Only one mural, not larger than twenty-five~~
- ~~e. (25) percent of the total square footage of the street-fronting side, may be applied to the street-fronting side of a structure's mural area.~~
- f. No mural shall extend beyond the building or structure to which it is painted or affixed or otherwise interfere with the functionality of other components supporting the use of the building or structure. These other components include, but are not limited to, existing signs, external lighting, utilities, sidewalks, parking, building or street address, and ingress/egress.
- g. A mural shall be a two-dimensional medium, except for minor three-dimensional surface variations of the structure on which the mural is directly applied.
- ~~h. No structure shall contain more than two murals.~~

(12) Non-Compliance. The failure to comply with any part of this Section may subject the property owner to the penalties and processes set forth in Chapter 26 – Municipal Code Enforcement.

~~(12)~~(13) Severability. If any part, sentence, phrase, clause, term, or word in this Section of Mandan Code of Ordinances relating to Public Art is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the constitutionality of or lawfulness of the remainder of this Section, the Mandan Code of Ordinances, or any other Mandan regulation regulating signage, billboards, murals, or Public Art.

Section 3. Sec. 105-1-15 (b) is amended and re-enacted and 105-1-17 is enacted.

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

Planning and Zoning Commission:	<u>August 26, 2019</u>
First Consideration:	<u>September 17, 2019</u>
Rehearing of First Consideration (Substantive Changes from First Consideration):	<u>November 19, 2019</u>
Second Consideration and Final Passage:	<u>December 3, 2019</u>