



Olga Garay
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Council of the City of Los Angeles
Planning and Land Use Management Committee
200 North Spring Street
Los Angeles, CA 90012

Council of the City of Los Angeles
Arts, Parks, Health and Aging Committee
200 North Spring Street
Los Angeles, CA 90012

Re: Report on the Time, Place, Manner Mural Permit Process in Portland, Oregon

Honorable Members of the Planning and Land Use Management Committee
Honorable Members of the Arts, Parks, Health and Aging Committee

Introduction

At the June 1, 2010 joint meeting of the APHA and PLUM Committees, Councilmember Ed Reyes read into the record the following instructions:

"Direct Planning, Cultural Affairs, and Building and Safety Departments and City Attorney to report back in 30 days on how both proposed models (Portland, Oregon and Time, Place, Manner) would address the following:"

- a) Ensure access for local artists
- b) Ensure expeditious processing/permitting
- c) Ensure a cost-neutral program in terms of implementation
- d) Allow for the permitting and maintenance, as appropriate, of some existing murals with orders to comply
- e) Legal defensibility
- f) Ensure the maintenance of newly permitted murals

In response to this request, the Department of Cultural Affairs (DCA) has developed an adaptation of Portland's two-part mural permitting process (Time, Place, Manner and Public Art Easement) specifically modified for implementation in Los Angeles. You will find a chart outlining this adaptation at the end of this document. The Department recommends that the City consider adopting this bifurcated model in order for Los Angeles to provide a cohesive permitting process for all fine art murals to be located on private property.

Background

The City of Portland currently has a Time, Place, Manner ordinance for smaller murals called "Original Art Murals" and a Public Art Easement ordinance for larger murals called "Public Art Murals". Both models are used to issue permits for murals on private property.

The chart at the end of this document shows how a similar, bifurcated permit process would function in Los Angeles. The chart puts forth mural definitions, permit requirements and exemptions, assessment criteria, and designations for mural oversight and maintenance. Please note that we have modified sections of the Portland model to address the specific needs and requirements of Los Angeles' murals and mural artists.

Discussion Responses

Ensure access to local artists

Historically, the murals created in Los Angeles have been produced by local artists. The Department of Cultural Affairs' database shows that out of 400 City-sponsored murals produced between 1971 and 1999, over 90% of the artists were locally-based. We believe this predilection for local artists will continue under both of our proposed processes, particularly given the fact that small-budget projects tend to be cost-prohibitive for artists who live outside of the Los Angeles region.

Ensure expeditious processing/permitting

Under the Time, Place, Manner process, the City's role as regulator would not be compromised, and mural permits would be issued through an over-the counter permit process. We acknowledge that a new mural permit needs to be developed to accommodate this new process.

Under the Public Art Easement process, the City's role as owner or art patron would facilitate the creation of large, monumental public art murals that will involve local communities in innovative ways. The Public Art Easement process would be administered by DCA and mural permits issued through the Cultural Affairs Commission review process.

Ensure a cost-neutral program in terms of implementation

If the City were to employ the Time, Place, Manner and Public Art Easement processes, we believe that both programs would be cost-neutral for the City to implement, in that no additional City funding would be required to pay for the creation of new murals. Furthermore, the Public Art Easement would be launched within budgetary allocations provided through existing City-wide programs such as Council Civic Funds, Neighborhood Matching Funds, CDBG, and Mayor's Day of Service Funds, that are already used to support the creation of new murals. However, that said, it is also important for the City to recognize that, as part of the Public Art Easement process, there might be an attendant increase in graffiti

abatement costs to the City for City-sponsored murals, as well as an increase in DCA's staffing or contractual service costs to administer this new processes.

Allow for the maintenance and permitting, as appropriate, of some existing murals with orders to comply

Of the 1500 murals in the Department's database, 1100 murals (or 73%) were funded through private sources and are located on private property. The remaining 400 murals in our database either received City funding or are located on City property.

Between 2002 and 2007, the Cultural Affairs Commission approved 52 murals located on private property. However, these murals are currently considered non-conforming because they were created while the billboard ban was in effect. In terms of funding, 40 of these 52 murals were funded through City sources such as Council Civic Funds, Neighborhood Matching Funds, or Neighborhood Council funds, to name a few. In terms of physical size, 42 of the 52 murals created are larger than 300 square feet, and the remaining 10 murals are 300 square feet or smaller.

In order to address and correct these non-conforming murals, the City could issue retroactive permits for the smaller murals under the Time, Place, Manner process, and Public Art Easement permits for the larger murals, provided property owners are willing to enter into easement agreements with the City. It should also be noted that both recommended permit processes include criteria that each mural remain in place for a minimum of five years, and that 48 of the 52 non-conforming murals already meet or exceed this time requirement.

In addition to those 52 murals, there is another set of 11 murals that have received citations and orders to comply. All of these cited murals are located on private property and only one was City-funded--the other ten were privately funded. Furthermore, these 11 cited murals located on private property:

- Are all ground-level murals that do not exceed 35 feet in height.
- Have no exterior lighting.
- Are comprised of original artwork mural images painted directly on the walls.
- Appear to be well-maintained and are graffiti-free, as evidenced by the images we have seen, although it is unknown if the murals have anti-graffiti coatings.
- Have been in place from 1-17 years.

Again, based on the above facts, these 11 murals would qualify for a Time, Place, Manner permit or Public Art Easement permit--the final determinant would be mural size.

Legally Defensible

The City cannot regulate signage on the basis of content, as ensured by the First Amendment to the Constitution. Therefore, the Time, Place, Manner process is legally viable as it is a content-neutral permitting process. Further, we believe the requirements listed on the following chart would constitute quantitative, measurable

criteria that would attract fine art murals, and make this manner of advertising less attractive for advertisers. Based on the City of Los Angeles' 40-year history of mural production, we consider this approach well-tested and one that generates a positive enhancement of the City's visual landscape.

Ensure the maintenance of newly-permitted murals

The Time, Place, Manner permit would require a property owner to apply an anti-graffiti coating to the mural and be responsible for maintenance over the mural's lifespan. The Public Art Easement permit would also require the application of an anti-graffiti coating to the mural and, in this permit scenario, either the property owner or the City, depending on the funding source, would be responsible for mural maintenance. Murals protected with anti-graffiti coatings are easier and less costly to maintain than murals that have been left unprotected.

Conclusion

The current issues pertaining to mural permits in the City are complex. For one, there are publicly-funded murals located on both City property and private property, as well as privately-funded murals located on both City property and private property. Second, there is the group of 52 recently created murals that were issued permits that are now deemed to be non-conforming. Furthermore, the City actively oversees many culturally significant murals that were painted over 30 years ago, and many of these are technically un-permitted because property owners were not required to have mural permits at the time they were created. It is because of these intricate and conflicting issues that the City needs to adopt a bifurcated permit process that allows for flexibility given the variety of conditions.

Recommendation

The Department of Cultural Affairs therefore recommends that the Planning Department, in conjunction with the City Attorney and our Department, be instructed to prepare a City-wide ordinance that amends the Zoning and Administrative Code to adopt both a Time, Place, Manner process and Public Art Easement process for the purpose of issuing permits for fine art and public art mural to be located on private property.

If you have further questions, please contact Felicia Filer at (213) 202-5547 or Pat Gomez at (213) 202-5523.

Respectfully submitted,


Olga Garay,
General Manager

OG:ff:pg

<p align="center">“Fine Art Murals” <small>Time, Place, Manner</small> (over-the-counter) permit for small murals on private property</p>	<p align="center">“Public Art Murals” <small>Public Art Easement</small> permit for large murals on private property</p>
<p>Fine Art Mural definition:</p> <p>A one-of-a-kind original artwork that is painted directly upon an exterior wall of a building.</p>	<p>Public Art Mural definition and exemptions:</p> <p>A one-of-a-kind original artwork that is sited in a manner accessible to the public and/or public employees, utilizing appropriate media to ensure longevity, and which has been approved as public art by the Cultural Affairs Commission.</p> <p>Public Art, including Public Art murals, are exempt from the sign code.</p>
<p>Requirements and exemptions:</p> <ul style="list-style-type: none"> • Cannot exceed height of 35’ from grade • Must remain in place without alterations for minimum of 5 years • Must have no exterior lighting • Maximum size is 300 sq.ft. • Minimum size is 35 sq.ft. • Only one mural allowed per lot • May not cover doors or windows or other architectural elements such as cornices and pilasters • Must be placed on flat planes of walls • Must apply an anti-graffiti coating to the mural <p>Original Art Murals are exempt from sign code ratio lot calculations.</p>	<p>Requirements:</p> <ul style="list-style-type: none"> • Must be larger than 300 sq. ft. • May be fully privately funded, and/or fully or partially funded by the City of Los Angeles • Structural and Surface Stability • Signed Easement from building owner (Grantor) with a commitment to keep mural unchanged for 5 year minimum • Commitment from building owner to apply an anti-graffiti coating to the mural and keep the mural in good condition
<p>Prohibited Murals:</p> <ul style="list-style-type: none"> • Murals on contributing historic buildings • Mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl • Murals containing electrical or mechanical elements • Changing image murals 	<p>Review Criteria:</p> <ul style="list-style-type: none"> • Artistic Merit <ul style="list-style-type: none"> ○ Demonstrated strength of concept, execution and originality ○ Scale appropriate to surroundings ○ Context, including physical, historical, and/or socio-cultural relevance to site • Community Support from owner, neighborhood, adjacent businesses and arts community • Feasibility, including the ability to complete mural on time and within budget • Structural and Surface Stability • Commitment from building owner to apply an anti-graffiti coating to the mural

<p style="text-align: center;">“Fine Art Murals” <small>Time, Price, Manner</small> (over-the-counter) permit for small murals on private property</p>	<p style="text-align: center;">“Public Art Murals” <small>Public Art Easement</small> permit for large murals on private property</p>
<p>Process:</p> <ul style="list-style-type: none"> • Requires neighborhood Notification-public posting, mailing to specific community groups, and public meeting <ul style="list-style-type: none"> ○ Allows for input and dialog ○ Recommendations from community are not binding • No City content review or regulation • Application submitted to Building and Safety Department for review and approval. 	<p>Process:</p> <ul style="list-style-type: none"> • Submit Application to Department of Cultural Affairs (DCA) • Present mural proposal to DCA Public Art Committee for review and recommendation • Cultural Affairs Commission Review and Approve project • Building Owner provides notarized Public Art Easement agreement to DCA • Artist signs form agreeing to terms of the Public Art Easement agreement • Applicant notifies DCA when mural is complete • Applicant provides City with digital images of completed mural • DCA provides copy of Public Art Easement to General Services Department
<p>Permit Conditions:</p> <ul style="list-style-type: none"> • Mural to be maintained for a 5 year minimum without alteration • Building owner responsible for maintenance • Alteration within 5 year period allowed (through City approval process) if: <ul style="list-style-type: none"> ○ Building is sold ○ The property will be substantially remodeled or altered in a way that precludes the continuance of the mural • Alteration of mural after 5 years allowed by reapplication for a new permit through full process • Removal after 5 years does not require City review or approval • Building owner responsible for any artists notification under the Visual Artist Rights Act (VARA) and California Art Preservation Act (CAPA) 	<p>Easement Conditions:</p> <ul style="list-style-type: none"> • In effect for a period of 5 years with automatic renewal for an additional 5 years, unless and until terminated • Termination allowed after 5 years by either party • Termination allowed within 5 years upon request of the building owner for the following: <ul style="list-style-type: none"> ○ Required as condition of sale or refinance of property ○ The property will be substantially remodeled or altered in a way that precludes the continuance of the mural ○ Circumstances change materially so mural impedes reasonable use and enjoyment of property ○ Required to notify artist under VARA/CAPA laws • City may terminate Easement at any time <ul style="list-style-type: none"> ○ Required to notify artist under VARA/CAPA laws • Grantor and or city is responsible for maintenance

"Fine Art Murals" <small>Time, Place, Manner (over-the-counter)</small> permit for small murals on private property	"Public Art Murals" <small>Public Art Easement</small> permit for large murals on private property
<p>Oversight</p> <ul style="list-style-type: none"> The Department of Building and Safety is responsible for the review, issuance, and enforcement of mural permits 	<p>Oversight</p> <ul style="list-style-type: none"> The Cultural Affairs Commission is responsible for the application review and approval of Public Art Easement permits administered through the Department of Cultural Affairs Public Art Easement agreements are held by the General Services Department