

**CITY OF MAN HATTAN BEACH
PLANNING COMMISSION
MINUTES OF REGULAR MEETING
JULY 10, 2019
(DRAFT)**

A. CALL MEETING TO ORDER

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 10th day of July, 2019, at the hour of 6:00 p.m., in the City Council Chambers, at 1400 Highland Avenue, in said City.

Chair Burkhalter called the meeting to order.

B. PLEDGE TO FLAG

C. ROLL CALL

Present: Fournier, Morton, Thompson, Ungoco, Chairperson Burkhalter
Absent: None
Others Present: Anne McIntosh, Community Development Director
Michael Estrada, Assistant City Attorney
Laurie Jester, Planning Manager
Austin Chavira, Planning Intern
Drew Teora, Recording Secretary (substitute)
Rosemary Lackow, Recording Secretary (remotely)

D. APPROVAL OF AGENDA

It was moved and seconded (Thompson/Morton) to approve the agenda with no changes; hearing no objections, it was so ordered.

E. AUDIENCE PARTICIPATION (3-minute limit) - None

F. APPROVAL OF THE MINUTES

07/10/19-1. Regular Meeting – June 12, 2019

It was moved and seconded (Thompson/Morton) to approve the minutes of June 12, 2019 as submitted; the motion was unanimously approved by voice vote.

G. PUBLIC HEARING

07/10/19-2 Consideration to Approve Amendments to the Municipal Code and Local Coastal Program (LCP) to Refine the Sign Code related to Art Murals

Chair Burkhalter announced the item and invited a staff report.

Community Development Director McIntosh introduced **Planning Intern Austin Chavira** who gave a brief staff report as an overview, with the aid of slides. **Mr. Chavira** showed examples of murals, both existing on private commercial buildings, as well as murals proposed at various City structures as part of a public mural program. He briefly commented on mural standards and procedures, current/proposed and went over the wording of a proposed definition of “mural”. **Mr. Chavira** concluded that Staff recommends to: conduct a public hearing, accept testimony and adopt the draft Resolution, recommending the subject amendment to the City’s Sign Ordinance. A recommendation, once adopted, will be scheduled for hearing and final approval in the future by the City Council.

The Commission discussed the subject amendment, commenting on a number of topics including the examples of murals provided, the purpose of the amendment, mural review procedures and the respective roles of the Planning Commission and Cultural Arts Commission, and whether the City might be able to address potentially offensive displays. **Community Development Director McIntosh** responded to questions and comments from the Commission as follows:

- 1) **Mural examples:** With the exception of the Skecher's mosaic which was reviewed by the Cultural Arts Commission due to a use permit condition, many of the murals shown as examples have not had City review, but all would meet the proposed definition of a "mural". Two murals (Hurley in Hermosa Beach and Manhattan House) are both a mural and a sign in that the business name is included along with a graphic. In such cases, staff applies the sign regulations but only to the portion that is the "sign" (the name of the business is boxed out and counted towards signage). No action will be taken retroactively for those existing murals that did not have prior City review.
- 2) **Amendment purpose:** The main purpose of the proposed code change is to give staff clear guidance as to what constitutes a "sign" vs. a "mural". The broader policy goal is to encourage murals with minimal regulations.
- 3) **Review procedures/Commission roles:** Currently, Community Development Staff looks at proposed murals on private buildings to determine if it is a sign; if so, staff applies sign regulations, but if not a sign, no further review is required. Murals that are publicly funded, or regulated by a zoning permit condition, go to the Cultural Arts Commission for review and conformance with standards established by the City Council, and on to City Council for final approval. In the future, per a recent Parks and Recreation report to the City Council, a process would be established that gives authority to the Cultural Arts Commission for their review of all murals, both private and public.
- 4) **Sign Code Amendment:** The Planning Commission role in the current mural consideration process is limited to making the subject recommendation for amending the Sign Code (to define murals).
- 5) **Potentially offensive material:** As proposed, as long as a graphic is found to be a "mural" and not a "sign" it would not be regulated by the Sign Code. Staff does not regulate "content" in recognition of protections afforded by the First Amendment. Assistant City Attorney Estrada cautioned that the First Amendment right is a difficult issue; however, he believes that the City may have very little control over regulating a private graphic that is not funded by the City or connected to a City permit. In the case of City funded murals, however, the City Council has full discretion on content.
- 6) **Options:** The Commission could recommend that murals be prohibited if there is concern that good judgment will not be used by the community for content. Otherwise graphics/murals can only be regulated in a content-neutral way (i.e., by "time, place or manner"); for example, the code could limit the size of a mural but not the symbols or artwork.

Commissioner Morton stated that his preferred solution would be to allow murals, but to have some form of review, however **Director McIntosh** reiterated that, even with signs the City has no authority to regulate content. **Director McIntosh** affirmed **Commissioner Morton's** observation that, the City retains more flexibility by having a broader definition of "sign" (current status quo) as opposed to more narrowly defining it and carving out a specific definition for "mural" as proposed. She noted that there is a tradeoff in encouraging murals in that, although more murals may be installed with City review, there would be a risk that a mural could be viewed as offensive.

PUBLIC INPUT

Chair Burkhalter opened the public hearing and invited public input.

Susan Wieland, 225 39th Street, displayed a photo depicting a neighboring property where the owner has painted the upper/lower front building walls bright pink with a large "emoticon" of smiley faces at each level, facing the street. She finds this offensive, believing that the owner has done this to in retaliation, after she and neighbors reported the use of the building as an illegal short-term rental. She believes that this painting and graphic is a sign in that it is intended to send a particular message to the neighbors and the City. Since the graphic has been painted, the property has attracted much unwanted attention, activity

and traffic. She urges that this type of graphic not be allowed in the mural regulations if at all possible.

Dina Doll, 204 39th Street, stated that after she reported the neighbor's property as an illegal rental, a City staff member visited the site and informed her that the City did not have the ability to regulate the house painting. She questioned whether, since the business required City review, why the graphic, which she feels is a sign, cannot also be reviewed and controlled by the City. While she likes the idea of encouraging more vibrant murals, she feels this type of display should be able to be controlled by the City and she feels strongly that murals on residences should have strict overview by the City.

Carol Madonna, 208 39th Street, (two doors down from the short-term rental site), was very vocal in reporting illegal rentals to the City. She thinks this is a good example of the "broken window" concept – in that if this doesn't get addressed properly, such activity could be repeated, becoming a serious problem. She urges that the City stand behind her and her neighbors against such displays.

Gregory Doll, lives three houses away from the painted house; urges that the City take action by adopting language that give the City regulatory authority to not allow graphics that are devoid of any artistic merit, or where art is being misused as a form of intimidation, or is offensive to the sensibilities of a community.

Commissioner Morton questioned whether, if by using the emoticon in the conduct of offering short term rental services (via online or email e.g.) and, in attempting to stifle dissent, this calls attention to the rental service - could this graphic possibly be a "sign" which could be regulated? **Assistant City Attorney Estrada** noted that this issue which relates to First Amendment rights, is difficult; he suggested that the Commission not take action tonight and allow Staff to research this further and provide more information.

Director McIntosh noted her concern also that the case on 39th Street was not advertised on the meeting agenda as being the subject of a public hearing tonight, and cautioned against continued discussion and speculation on the site. However, using the example of the Sand Spa business, she explained that the wording on the side of its building was determined to not be a sign because this image or wording was not used for advertising the spa.

Commissioner Thompson noted he is uncomfortable in taking action tonight. He would like more information, as suggested by the City Attorney, and especially if there are ways murals can be restricted in residential neighborhoods.

Commission Morton stated his agreement and also that he does not want to give up any ability to regulate signs or murals until the Commission has a better understanding or clarification of the issues discussed.

Chair Burkhalter asked if there were any others wishing to provide input.

Barbara B, 114 39th Street, stated that she doesn't think that residential areas should be compared to commercial areas, and if emojis are international signs – sometimes they are used instead of words, and words have meaning. If they proliferate this could create big problem.

Chair Burkhalter closed the public hearing and invited Commission discussion.

COMMISSION DISCUSSION

Commissioner Thompson stated he has a lot of sympathy for the concerns expressed by the residents and would welcome input from the City Attorney on whether there is a mechanism to regulate murals including the one on 39th Street in both residential and commercial areas. He would like to continue this item tonight until more info can be provided.

Commissioner Fournier stated that he is not sure that the Planning Commission has the ability to help the residents who spoke tonight but is in support of them and if possible, having some type of review process for them to appeal their case. He would like information on how historically, murals in residential areas have been regulated in Manhattan Beach.

Director McIntosh informed that the City has never regulated murals in residential zones and clarified that the process for reviewing murals is still being developed with the Cultural Arts Commission.

Commissioner Ungoco suggested that two issues that were discussed at the Council meeting be brought into the Commission discussion, including: 1) whether a mural is “public” (i.e. is the mural oriented inward or outward?) and 2) whether the mural is designed to be permanent or temporary in the way it is attached or applied to a surface (e.g. wrap or scrim may be considered temporary).

Commissioner Morton iterated his concern that the city should not pull away or ease up on regulating murals until the city is aware of how the regulation process would occur and especially how residential areas might be affected. He is looking forward to receiving more information relevant to applying the code to both residential and commercial areas.

Chair Burkhalter stated he feels most importantly the amended code should address the mechanics of applying the code, and provide clear guidelines and/or methodology for staff to use in making determinations (i.e. sign vs mural?); and questioned why murals on private property should have to be brought before the Cultural Arts Commission (or any other City body); he strongly opposes regulating content by any City Commission.

COMMISSION ACTION

It was moved and seconded (Thompson/Morton) that the public hearing on the proposed **Amendments to the Municipal Code and Local Coastal Program (LCP) to Refine the Sign Code related to Art Murals** be reopened and continued to the Planning Commission meeting on August 28, 2019 with direction that Staff research and report on relevant First Amendment rights for graphic displays and regulation options.

Roll Call:

Ayes: Fournier, Morton, Thompson, Ungoco, Chairperson Burkhalter
Noes: None
Absent: None
Abstain: None

- H. DIRECTOR’S ITEMS –**
3920 Highland Avenue/El Porto Mixed use building: plans not yet submitted
- I. PLANNING COMMISSION ITEMS - None**
- J. TENTATIVE AGENDA – July 24, 2019 -**
1843 11th Street: 3-Unit Apartment Building Use Permit

- K. ADJOURNMENT TO** – The meeting was adjourned at 6:52 p.m. to Wednesday, July 24, 2019 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

ROSEMARY LACKOW
Recording Secretary

BENJAMIN BURKHALTER
Chairperson

ATTEST:

ANNE MCINTOSH
Community Development Director