

**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Planning Commission

**FROM:** Jeff Gibson, Interim Director of Community Development

**THROUGH:** Laurie B. Jester, Planning Manager

**BY:** Eric Haaland, Associate Planner  
Austin Chavira, Planning Intern

**DATE:** August 28, 2019

**SUBJECT:** Consideration of Recommendations Concerning Murals

**RECOMMENDATION:**

Staff recommends that the Planning Commission **CONDUCT** the Continued Public Hearing and **CONSIDER** recommending to the City Council content neutral and reasonable time, place, and manner restrictions for murals for residential uses in residential zones. Additionally, the City Council has requested that the Commission consider whether murals should be not be allowed for residential uses in residential zones.

**BACKGROUND:**

On June 18, 2019, the City Council reviewed a Public Art program regarding murals. A result of that consideration was Council direction that the Community Development Department consider Zoning Code and Local Coastal Program Amendments to clarify that noncommercial murals are not regulated under the Zoning Code Sign Ordinance.

On July 10, 2019, the Planning Commission conducted a public hearing to consider this matter. At the time, a number of residents spoke in opposition to the Emojis painted on a property located on 39th Street. The Commission continued the hearing and directed staff to analyze the First Amendment implications associated with regulating murals.

**PLEASE NOTE: The Emojis on the house on 39th Street are not on the agenda, and will not be discussed by the Planning Commission. That is just one of several examples of murals/graphic displays in residential zones that the Commission may consider in its recommendation as to murals located on properties with residential uses in residential zones. For the information of the Commission and the public, the Council has offered mediation to the interested parties in that case.**

## **DISCUSSION:**

In its program review, the City Council approved acceptable uses for the Public Art Trust Fund to develop and execute murals in public facilities and private businesses throughout the City. It was discussed that murals typically differ from signs regulated by the Sign Code (currently, Chapter 10.72 of the Zoning Code). Below is a discussion of the First Amendment implications.

### *Murals as Protected Speech*

Murals are a form of speech protected by the First Amendment. In general, public agencies may regulate speech provided that the regulations are not content based. A regulation of speech is content-based if the regulation differentiates speech based on its content or the idea or message expressed. Under long-standing legal precedent, content-based speech regulations are subject to strict judicial scrutiny and will only be upheld if they are narrowly tailored to serve a compelling (more than substantial) government interest by the least restrictive means necessary.

The City has significantly more discretion to impose content-neutral regulations of murals. Such regulations of the “time, place, and manner” of speech are subject to a less stringent standard and will be upheld if they are narrowly tailored to serve a substantial government interest unrelated to the suppression of free expression (e.g., aesthetics or traffic safety) and leave ample alternative channels for communication.

The City also enjoys considerable latitude when it regulates commercial speech – that is, speech proposing a commercial transaction. The United States Supreme Court has expressly declared that the First Amendment “accords a lesser protection” to commercial speech compared to noncommercial speech. In addition, commercial speech may not be favored over noncommercial speech, which means that noncommercial speech should be expressly allowed anywhere commercial speech is permitted.

Finally, certain narrowly defined categories of content-based speech – such as obscenity, defamation, and “fighting words” – are completely outside the First Amendment’s protection.

Attached are a number of photos of murals and graphic displays in residential neighborhoods. The Council requested that the Commission consider whether murals should be allowed in residential zones. The Commission may want to consider reasonable “time, place and manner” restrictions (e.g., number of murals, size limitations, lighting, location, etc.) for murals and graphic displays on residential uses in residential zones. Conversely such murals could be prohibited in residential areas, provided the prohibition is content neutral.

## **ENVIRONMENTAL REVIEW:**

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to

Section 15061(b)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

**PUBLIC INPUT:**

The overall City mural program was discussed at City Council and Cultural Arts Commission meetings on September 19, 2017, and June 18, 2019, and September 24, 2018, respectively. An article on the mural program was published in the Beach Reporter September 27, 2017. The Commission received public input at a noticed public hearing on July 10, 2019, which was then continued to tonight's meeting.

A ¼ page advertisement for a Sign Code Amendment was published in the Beach Reporter June 27, 2019. The staff report and attachments, have been made available at the Manhattan Beach County Library, the Police Department and at the Community Development Department. The staff report and attachments are also posted on the City's website.

No public comments in response to the project notice have been received at the time of writing of this report.

**CONCLUSION:**

Staff recommends that the Planning Commission conduct the continued public hearing, accept testimony, and consider recommending to the City Council content neutral and reasonable time, place, and manner restrictions for murals for residential uses in residential zones. Additionally, the City Council has requested that the Commission consider whether murals should be not be allowed for residential uses in residential zones.

Attachments:

- A. Mural Examples

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ATTACHMENT A















