

**CITY OF MANHATTAN BEACH  
PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
AUGUST 28, 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 28<sup>th</sup> day of August, 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: Jeff Gibson, Interim Director of Community Development  
Laurie Jester, Planning Manager  
Michael Estrada, Assistant City Attorney  
Eric Haaland, Associate Planner  
Rafael Garcia, Assistant Planner  
Daryn Drum, Fire Chief  
Rosemary Lackow, Recording Secretary

**D. APPROVAL OF AGENDA**

It was moved and seconded (Thompson/Fournier) to approve the agenda with a change to move the Use Permit hearing for 1419 Highland Avenue to 10/09/19 meeting, with re-noticing. No objection, it was so ordered.

**E. AUDIENCE PARTICIPATION (3-minute limit)**

**Chair Burkhalter** invited input from the audience on any subject not on the agenda, clarifying that input on the emoji house can be raised at this time, but more broad comments regarding a possible Mural Ordinance should be made under Item Number 2 on the agenda.

The following spoke regarding “The Emoji House” on 39<sup>th</sup> Street:

**Greg Doll**, 39<sup>th</sup> Street: objected to a notice he received advising that the Commission will not be discussing the “emoji house” at this meeting tonight because he believes it is an example as to how important is it to consider the “down side” to allowing murals in residential areas; suggested four options he feels would qualify as acceptable content neutral “time, manner, and place” restrictions: 1) prohibit in residential areas; 2) if in residential areas, prohibit on sites that are non-owner occupied; 3) if in residential areas, prohibit on two or more unit sites. He believes that multi-unit properties are investment properties, have a commercial aspect to them and so, similar to signs in commercial areas, murals should be strictly controlled in those types of residential properties; and 4) if allowed in residential areas, should limit the size of murals to a small area, such as 4 square feet.

**Kevin Wieland**, 36<sup>th</sup> Street: believes the emoji house is a public nuisance, resulting in trespassing, noise, pedestrian and vehicle traffic that greatly impacts their private enjoyment of their own homes. If the City can’t properly regulate murals in residential areas, then they shouldn’t be allowed and it is also frustrating that while on one hand, owners are investing large amounts to implement an underground utility district to beautify their area, they can be very quickly affected by an offensive mural. Although the emoji house is for sale, he feels the problem will not go away.

**Jay Ankeny**, 39<sup>th</sup> Street: works out of his home next door to the emoji house. He has seen impacts and believes not only is the house a public nuisance, it is a public disgrace, known as far away as Paris and in Germany. It is also an insult that someone who was doing something illegal can retaliate; he believes that the neighborhood should have rights.

**Dina Doll**, 39<sup>th</sup> Street: feels that there has not been sufficient or clear response by the City; feels that if the City does not have strong enough codes to protect the neighborhood from such retaliatory action, then the City should strengthen its laws. She urged that the Commission provide code tools for enforcement.

**Chris Strickfaden**, 39<sup>th</sup> Street: believes the emoji house situation has become a regional and national embarrassment and has created many problems; urged that the Commissioners put themselves in the 39<sup>th</sup> Street neighbors' place, and although the emoji house is for sale, that this should not affect the need to find a solution.

**Natasha Myers**, resident and former El Porto resident: believes as a homeowner that the murals as in the emoji house situation can have a significant impact on property values and believes, as a new emergent type of problem, the City should find the way to address it.

## **F. APPROVAL OF THE MINUTES**

08/28/19-1. Regular Meeting – July 24, 2019

It was moved and seconded (Thompson/Fournier) to approve the minutes of July 24, 2019 as written.

Roll Call:

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

## **G. PUBLIC HEARINGS**

08/28/19-2. Consideration of Recommendations Concerning Murals (Continued from 07/10/19) (City of Manhattan Beach)

**Chair Burkhalter** opened the public hearing and invited a staff presentation.

**Planning Manager Laurie Jester** gave a report, highlighting: 1) **Background** (June 18<sup>th</sup> direction from City Council and July 10<sup>th</sup> Planning Commission hearing); 2) **First Amendment Information** regarding murals as a form of speech; 3) **Current sign standards** for residential projects; 4) **Council direction**: that the Commission consider whether to allow or prohibit murals in residential areas; and if allowed, under what time, place and manner restrictions and how it might differ from murals on residential uses in commercial zones; 5) **Examples of existing murals** on residential properties; and, 6) **Staff recommendation**: Conduct the public hearing and recommend either: adopting reasonable content neutral time, place and manner restrictions for murals on residentially used properties in residential zones, **or** prohibit in all residential areas.

**Planning Manager Jester** clarified that the draft Resolution that was presented to the Commission in July is no longer under consideration; rather the Council direction is now as presented in the current staff report.

**City Attorney Estrada** provided clarification regarding a changed staff recommendation since the July Commission meeting - that in researching first amendment issues related to murals, he became aware of a July 8<sup>th</sup> Federal court decision in Louisiana that has relevance: he believes that the case is indicative as to how other courts will act, and he could not find any other cases that would counter the decision. He opined that the new case essentially invalidates the prior approach reflected in the proposed draft Resolution by holding that it is not permissible to have two different regulatory schemes for commercial signs and murals. He emphasized the current recommendation is to focus on two basic options: whether the Commission thinks there are some reasonable restrictions (content neutral, limited to time, place or manner) that can be placed on murals permitted in residential areas, or whether the Commission thinks

murals should be categorically prohibited on residentially used properties and zones.

**Planning Manager Jester** clarified that the public arts program that is being administered by Parks and Recreation on commercial and public properties will continue and is not affected by this hearing.

**In response to Commissioner Thompson, City Attorney Estrada** suggested that, before the Commission proceeds with a full discussion, that public input should be accepted.

**Chair Burkhalter** invited public comment, including from those who commented earlier on the emoji house; he noted however, comments must be restricted to the broad policy issue of murals in residential zones, not specific cases such as on 39<sup>th</sup> Street because that specific case was not advertised as being on the agenda and the owner has not been notified.

#### PUBLIC INPUT

**Chris Strickfaden**, 39<sup>th</sup> Street: likes the idea of limiting murals only to homes that are occupied by an owner as it is the owner that will live day by day with the mural.

**Greg Doll**, 39<sup>th</sup> Street: thanked the Chair for clarifying why input is limited to only the mural ordinance policy. He believes that the “Sound of the Sea” example is a sign in that it identifies the building to attract visitors; urged the Commission to recommend an ordinance that prohibits murals on nonowner occupied and multi-family residences; believes to be more permissive has too much risk in resulting in unwanted murals that are not appropriate for the community.

**Dina Doll**, 39<sup>th</sup> Street, urged that the Commission come up with a solution that balances property rights. She has concern that, in cases of multi-family residential uses, because the owner is not also an occupant, there may be a lack of a neighborly self-interest in the property. She feels that the way to go is to have a content-neutral set of regulations that can safeguard the character and safety of the community; proposed that any ordinance if allowing murals, not “grandfather in” existing nonconforming murals.

There being no further speakers, Chair Burkhalter closed the public hearing and invited discussion from the Commission.

#### COMMISSION DISCUSSION

**Commissioner Fournier** asked for clarification as to the role of the Cultural Arts Commission (CAC) would be now. **Planning Manager Jester** explained that under the July 10<sup>th</sup> proposal, staff understood the City Council had wanted to see some review by the CAC for any “mural” (as was proposed then to be defined) on private property. However, now, because of the new case law, that approach is no longer being recommended. It remains to be seen what the CAC role will be, depending on the Commission’s recommendation and subsequent Council action. **Commissioner Morton** questioned the purpose of CAC review if, in the case of private murals, no public money is involved, and if, under the First Amendment it cannot regulate content. **Assistant City Attorney Estrada** advised that that the issue of the CAC is not a relevant discussion tonight. **Manager Jester** emphasized, going forward, the task now before the Commission is to consider, and recommend whether to permit murals in residential areas, and if so, under what reasonable and legally viable standards?

**Manager Jester** affirmed at **Commissioner Fournier’s** request, that the existing sign ordinance could be amended to accommodate a new mural regulation such as a restriction on nonowner-occupied sites, emphasizing as long as the regulations are reasonable, content-neutral and are restricted to time, place and manner categories.

**Asst. City Attorney Estrada** clarified three issues at **Commissioner Fournier’s** request:

1. **Could a new law restricting murals be retroactive?** If the Council were to adopt an ordinance prohibiting murals or non-commercial speech in residential areas, typically it would not apply retroactively, however this conceivably could be done, at the Council’s discretion. Although art murals would have a much lower value, he cited the example of retroactive abatement of freeway billboards where a long-term amortization period is used that allows owners to recoup investment.

2. **Should the 1990 Visual Artists Rights Act (VARA) be considered for the City's protection?** The business of the Commission is to make a recommendation as to whether a mural should be permitted or not on residential property. VARA applies once art is installed and for private property this is between the property owner and the artist, not the City. In the case of City funded murals in a public art program, the City typically negotiates a waiver of rights with the artist and this is addressed in the contract between the City and artist.
3. **What are some examples of "time, place, or manner" restrictions?** "Time, place and manner" is a broad constitutional concept, and very likely with murals, "time" is not applicable and there may be some overlapping with "place" and "manner" criteria. A "place" regulation might be one that limits locations on a site where a mural could not be placed, and examples of "manner" regulations include limits on size, materials, or illumination. The general idea is that the regulations should not address the content itself and be more or less procedural in nature.

**Commissioner Morton** stated that he has a much better understanding of issues and believes that prohibiting murals on all residentially used properties makes the most sense. Murals are acceptable and appropriate in commercial areas (there are several beautiful ones existing) and the sign code can make the distinction between a "sign" and a "mural" and appropriately regulate. He is afraid that allowing murals on residential properties, if a mural is taken too far, could result in destroying that special neighborhood atmosphere that is based on people coming together to create a lifestyle and friendly environment.

**Commissioner Fournier** stated that he is interested in the option of banning murals in multi-family zones and asked staff if there was an opinion on whether this was viable and if there were any known murals on multi-family structures (other than as noted in the staff presentation)? **Assistant City Attorney Estrada** responded that he has not investigated the legality of a multi-family only ban, but this can be researched. **Planning Manager Jester** responded that, while staff did not do an exhaustive search, staff is not aware of any other murals on multi-family structures.

**Commissioner Fournier** stated that he was not ready to prohibit murals in all residential zones and believes that he could support allowing the types of murals that have been shown to exist in residential areas, if they can differentiate between residential zones/uses and others, and would like more information.

**Commissioner Ungoco** stated he is not ready to ban in all residential districts and is interested in learning how the code might be amended to allow them only in single-family, not multi-family districts. He feels residents are very divided on the issue. He wondered, because multi-family uses are a form of a commercial enterprise as investment income, whether they can be more restrictively regulated. He noted he was recently surprised to observe a new mural on a commercial shared work site that was approved by the Commission with no mention of a mural. In that he has had difficulty in differentiating commercial from residential he feels he would like new information/discussion to be divided as to how it pertains to commercial versus residential, more info as to what constitutes a "mural" (e.g. can be created by ceramic, paint, temporary vs. permanent, etc.) and more definition e.g. what constitutes "public facing"?

**Chair Burkhalter** cautioned about creating policy based on a worst-case scenario, and adopting an outright ban. He feels that the City should take a well-measured approach, looking at both the potential benefit of such an approach versus a no-regulation approach. There are two basic approaches – to either ban or provide for design review and there are pros and cons. He is not sure the community would want a design review process, but the code that is to be written should ultimately be workable and enforceable.

**Commissioner Fournier** stated, although the unregulated "status quo" approach has worked for a hundred-plus years, he could support a solution that would be a relatively minor change which would not necessitate an art jury/design review.

**Commissioner Thompson** polled the Commission as to whether they would support – e.g. adopting a more fine-tuned regulation or whether to maintain the status quo?

**Vice-Chair Morton** stated that he remains concerned in that, while the current situation is difficult, he can imagine much more mean-spirited expressions could occur that have the potential of ripping a community apart. He feels that a residence is a place of sanctuary, different from a commercial place, because you go home to it every day. As beauty is in the eye of the beholder, whether beautiful or ugly, it's a matter of one neighbor projecting their choice on others.

**Commissioner Fournier** stated he hopes the residents understand that the Commission is working towards a resolution that is satisfactory, legally defensible and long-term. He asked whether there is Commission consensus on an approach to prohibit murals on nonowner occupied multi-unit residential uses, and asked staff to clarify if such could be inserted into the "Sign Program" provisions of the code (MBMC 10.72.060).

**Chair Burkhalter** expressed concern that to adopt a regulation based on whether a home is occupied by the owner could be complicated (e.g. a site can be partially owner occupied) and difficult to enforce and monitor.

**Vice Chair Morton** stated that the key distinction seems to be whether the site is commercial/ residential, not owner/nonowner occupied. To him murals have a place in commercial, not residential districts and he would like to encourage murals in commercial areas while being more restrictive in residential districts similar to the way signs are regulated.

**Chair Burkhalter** noted that the Commission's action tonight is advisory in that there is no resolution before them.

**Assistant City Attorney Estrada** advised that the Commission could provide its comments to the City Council via the meeting minutes noting that such comments could include that two approaches are suggested: to explore further whether, in regulating murals, the City could distinguish between single family and multifamily zones; or, to prohibit murals in all residential zones.

#### COMMISSION ACTION

**Vice Chair Morton** stated he would like to move to prohibit murals in residentially used properties in residential zones. The motion died for lack of a second.

**Commissioner Thompson** moved to explore the possibility of prohibiting murals in multi-family zones; the motion was seconded by Commissioner Fournier. Discussion followed regarding the intent as to prohibit in zones versus uses.

**Commissioner Thompson** restated his motion, seconded by Commissioner Ungoco, to explore the possibility of prohibiting murals for all properties developed with multi-family uses, meaning any property that is developed with two or more units.

Roll Call:

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

**Assistant City Attorney Estrada** asked if there were any additional comments that the Commission, would like to pass on the City Council with the above recommendation.

**Commissioner Fournier** suggested, with no objection, that staff look into whether provisions in the Sign code (e.g. Sign Program/Sign Exceptions) could be a vehicle for regulating murals.

**Commissioner Morton** moved that the Commission recommend, should the Commission's recommendation to allow murals only in single family used properties be upheld by Council, that the City Council consider applying the adopted regulation to any existing properties on a complaint-driven basis.

Discussion followed on the motion. **Assistant City Attorney Estrada** responded to **Commissioner Thompson's** inquiry on procedure, that with the Commission's action tonight, a draft Ordinance may not be required to be sent back to the Commission for recommendation as the Commission would have already given its opinions and recommendation tonight.

**Vice Chair Morton** clarified his motion: if the Commission recommendation tonight is upheld, that, further, on a complaint-driven basis, any existing murals on residential, multi-family properties would be subject to code-enforcement; in other words, existing murals if no longer permitted on the property, would not be automatically "grandfathered" and allowed to continue. Commissioner Morton further clarified his intent is to allow citizens to independently make a complaint against any existing property that has a mural that would be prohibited under the new ordinance, if adopted, and such would be subject to enforcement by the City.

**Assistant City Attorney Estrada** noted that he is not certain that the City has the ability to codify such a proposal as it eliminates nonconforming rights, but that recommendation can be conveyed to the City Council.

**Commissioner Thompson** seconded the motion as clarified.

Roll Call:

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

08/28/19-3. Use Permit to Allow the Redevelopment of Fire Station No. 2, including Demolition of the Existing Site and Construction of a New Firehouse, Parking Lot, Landscaping, and Ancillary Improvements at 1400 Manhattan Beach Boulevard (City of Manhattan Beach)

**Chair Burkhalter** opened the public hearing and invited staff to provide an oral report.

**Assistant Planner Rafael Garcia** gave a report, highlighting the following for the project: Background (location, PS zoning, neighborhood setting, site and project size, and Use Permit requirement). He noted that the main purpose of the Use Permit in the PS (Public and Semi-Public) zone is to establish development standards for the project.

**Kelley Needham**, WLC Architects, project architect, provided an overview; explained a major constraint is the small lot size (14,000 square feet) and the main goal was to use the existing lot, basic site plan and building orientation, thereby avoid costly utility relocation and grading. The project has grown a little on the east and west side, and an existing retaining wall that straddles the south property line will be untouched. Stylistically the building is contemporary and has a combination of sloped and flat roof types that serve to screen mechanical equipment but will also mitigate the building's bulk. He pointed out a new feature - "tiger tower" which has a rack that goes up and down as it drags hoses into position to dry.

**Mr. Garcia** resumed his presentation, noting that the lower roof ridge is at 30-feet. The elevator overrun will be 34-feet in height, and the hose "tower", which resembles a flag pole and drags hoses upwards to dry, will be 32 feet tall. Sufficient parking (6 spaces) will be provided to meet operational demand. **Mr. Garcia** also summarized firehouse operations and staffing, discussed the proposed findings for Use Permit approval and summarized temporary fire house operations that will be established during construction, on nearby School District property adjacent to the Manhattan Beach Preschool. Mr. Garcia addressed the public notification process, noting that a few nearby residents expressed interest in the size and scale of the project and one letter was received from the owners to the south. He stated that the recommendation is to conduct the hearing, and adopt the draft resolution approving the Use Permit for the project. He noted that he and other staff members are available including from the Fire Department to answer any questions.

In response to questions from **Commissioner Fournier**, **Mr. Garcia** noted that parking for construction workers has not been worked out yet, but will be reviewed when construction drawings are submitted in plan-check. Mr. Garcia likewise cannot address construction traffic diversion at this time.

**Commissioner Thompson** queried about the hose tower, whether there were any alternatives and how it compares to the existing facility. **Assistant Planner Garcia** indicated his understanding that a tower is required to maintain the hoses. While staff had aesthetic concerns, as the tower is to be adjacent to a residential property, it was determined that there were no other locations available without eliminating parking, impacting the driveway or causing significant redesign.

**Kelley Needham**, architect, clarified that the existing structure in the submitted photo is the existing hose tower, an enclosed structure also containing a stairwell. Currently firemen drag the hoses up the stairs to hang on a pipe to drain. The new “tiger tower” is an unenclosed 14-inch diameter pole about 34 feet tall, with a varying number of platforms where you can hang the hose, pull up and then lower. The benefits are that you don’t need to climb stairs and its footprint is relatively small. The proposed elevator “penthouse” is required by code and will be similar to and therefore mimic the existing hose tower.

**Commissioner Thompson** requested that the Fire Chief comment on the project and how it will work.

**Daryn Drumm**, MB Fire Chief, gave an overview about the project, acknowledging the building size is much larger. He provided insight into the need for more space, based on many changes that have affected the industry in many years since the current firehouse was constructed. Examples of new features include a dedicated work out room, administrative areas, gender separated bathrooms and living areas, special handling of fire protective clothing to avoid contamination and larger fire engines and other apparatus.

**Chair Burkhalter** asked the Chief whether there would be sufficient on-site parking should, in the future additional personnel be hired or conditions evolve. Chief Drumm stated that the plan will accommodate six parking spaces, if needed. During a shift change there is some overlap between 3 staff coming off and the 3 staff coming on duty, both occupying the firehouse for a period. If for example a new rescue ambulance were to be purchased, a parking configuration would need to be devised but there are some viable options such as parking on the apparatus floor, without blocking required access. In any case, public street parking will not be impacted.

In response to **Commissioner Fournier**, **Chief Drumm** clarified that currently the firehouse has two fire engine staff and one paramedic ambulance; the proposed firehouse would be able to accommodate (house, sleep and store apparatus) an additional paramedic ambulance and staff.

#### PUBLIC INPUT

**Benjamin Guerra**, 1407 11<sup>th</sup> Street, a forty-eight-year resident adjoining the rear of the fire house will be significantly visually impacted, estimating he will be losing 94% of his city view and the remaining 6% his view will be impacted by a 34-foot tall hose rack and two-story wall. He was contacted a year and a half ago by the architect and shown plans and he doesn’t recall being made aware of the overall building size, the elevator and hose tower. These impacts will devalue his property. He also has concerns about the length of construction, construction parking, and suggested that the workers be required to lease parking on-site at the nearby Lutheran Church.

#### COMMISSION DISCUSSION AND ACTION

**Chair Burkhalter closed** the public hearing and invited Commission discussion.

**Commissioner Morton** acknowledged that it is always difficult as he has personally experienced, when a view is impacted; however, he believes the new fire house is a beautiful project which he fully supports.

**Commissioners Thompson, Fournier, Ungoco and Chair Burkhalter** joined in support of the project, with the following additional comments: the information and involvement of the City Fire Chief is greatly appreciated; the project architect has made great effort to mitigate its size and is actually under the height limit overall; pride is taken in the fact the City has the financial resources to afford this project; the new fire house is welcome culmination of years of planning; the processing of a construction management plan hopefully will address possible nuisances regarding worker parking and finally, as a mitigation measure to help the neighbor to the south, if the building cannot be moved at all even an inch, to the north, then it is suggested that privacy or obscured glass be installed for all windows facing south.

It was moved and seconded (Thompson/Morton) to **ADOPT** the draft Resolution as submitted, approving the Use Permit to allow the redevelopment of Fire Station No. 2.

**ROLL CALL:**

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

**H. DIRECTOR'S ITEMS –**

Interim Community Development Director Jeff Gibson commented that he is very appreciative of the opportunity to serve the City and enjoyed a warm welcome. The staff is very good and he looks forward to learning and planning in Manhattan Beach.

**I. PLANNING COMMISSION ITEMS - None**

**J. TENTATIVE AGENDA – September 11, 2019**

Planning Manager Laurie Jester reported that although tonight's meeting is to be adjourned to September 11<sup>th</sup>, it is anticipated that both meetings in September will be cancelled, as well as meetings on November 27 (day before Thanksgiving), and December 25.

**K. ADJOURNMENT TO –** The meeting was adjourned at 7:55 p.m. to Wednesday, September 11, 2019 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

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ROSEMARY LACKOW  
Recording Secretary

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BENJAMIN BURKHALTER  
Chairperson

ATTEST:

\_\_\_\_\_  
JEFF GIBSON  
Interim Community Development Director