

THE CITY OF NEW SMYRNA BEACH - PLANNING & ZONING

ORDINANCE NO. 13-22: CONDUCT THE FIRST READING OF AN ORDINANCE, WHICH IF ADOPTED UPON THE SECOND READING AND PUBLIC HEARING, WOULD CREATE A NEW REGULATION UNDER LAND DEVELOPMENT REGULATION SECTION 1200.00, ARCHITECTURAL DESIGN STANDARDS, AS IT PERTAINS TO MURALS.

April 26, 2022

Background:

Applicant: City of New Smyrna Beach, Planning Department

Request: Creation of an ordinance establishing a regulation on current and future murals.

Findings:

Exhibits used in this report:

Exhibit A: Proposed Regulation

Exhibit B: Proposed Regulation Clean

Murals have been placed throughout the City within the last few years and the creation of murals seems to be gaining popularity throughout the City. Staff reviewed both the City Code of Ordinances and Land Development Regulations and found no current regulations or process to review and approve proposed murals and other wall art within the City limits.

Staff reviewed regulations from other local governments within Florida. These other local governments had a wide range of regulation as it pertains to murals and other art work. Some have no regulation while others had regulations that ranged from one paragraph to seven pages.

Staff requested a review by the Planning and Zoning Board to help give guidance to the language of a proposed new ordinance regulating murals within the City of New Smyrna Beach.

Since P&Z's review, the City Attorney has reworked the proposed language.

Recommendations

At its regular scheduled meeting on March 7, 2022 the Planning and Zoning Board voted,

Staff is recommending the City Commission review the City Attorney's revisions, along with staff's proposal, and either approve the proposed regulation as drafted in the staff report or attach a ordinance, or give direction to bring back further revisions at second reading.

6-0, to give a positive recommendation to the City Commission to approve the proposed regulation for Murals.

Fiscal Analysis:

N/A

Strategic Plan Item:

Yes

Attachments:

Staff Report Created By: Robert Matheen - Planner II

Exhibit A Proposed Mural Regulation 1200.02. V1.pdf
Exhibit B Proposed Mural Regulation 1200.02. V1.Clean.pdf
Ord 13-22 LDR Amendment Sec 1200.00 Wall Art.pdf

EXHIBIT B

ARTICLE XII. – ARCHITECTURAL DESIGN STANDARDS

1200.00. Architectural Design Standards

1200.02. *Murals*

Intent:

It is the intent of the City of New Smyrna Beach that the display of art or graphics on commercial and multi-family buildings and walls be permitted within certain non-residential zoning districts of the City to aesthetically enhance otherwise blank walls and building side and rear walls. The City shall comply with applicable state and federal regulations if specified in the agreements executed with the Federal Highway Administration (FHWA) and the State of Florida Department of Transportation (FDOT).

(1) *Definition:*

- a. Murals: A painting, mosaic, fresco, or other permanent artwork attached or applied directly to a wall of a structure, but shall not include letters, trademarks, and lights, moving parts or moving lights and does not include a commercial message.
- b. Non-Residential Primary Structures: Multi-Family, commercial, or industrial primary structures that are not Residential Primary Structures.
- c. Residential Primary Structures: The following structures are considered a residential primary structure; single family house, mobile home, modular home, manufactured home, townhome, or duplex.

(2) *Permit Application Requirements*

- a. An application for a Mural permit shall be filed jointly by a building owner and an artist with the Department of Development Services by way of a form prepared by Department staff and shall require the following:

- i. Application fee of \$50.00 for the administrative review of the proposed Mural artwork by Development Services staff.
- ii. Name of the artist and the building owner; street address and proposed physical location of the proposed Mural.
- iii. Examples of previous work done by the artist and addresses of existing Mural artwork.
- iv. Statement regarding durability of the materials to be used considering the proposed Mural location, positioning of the proposed Mural on the building, drawings must show the dimensions and location of the Mural. Drawings must show the dimensions and clear and legible drawings with description(s) showing the mural sketch, showing the wall to be painted in relation to adjacent streets and buildings.
- v. Plans and specifications for the proposed Mural shall include statement that no compensation will be given or received for the right to display the Mural or the right to place the Mural on the property. The artist may be compensated for the completion of the Mural, however.
- vi. Artists must waive and release, in favor of the city and the building owner, the right of attribution or integrity which the artist has in the Mural under 17 USC 106A and 113(d) (Visual Artist Rights Act).
- vii. A ninety (90) day notice to the artist and building owner will be provided at the address located on the application if the Mural is not maintained, or if it becomes a safety hazard. If the artist provided above, the property owner shall reimburse the City for all reasonable costs of such removal within thirty (30) days of written demand for payment included in the cost, fines, collection fees, and attorney fees. The application shall contain an artist agreement to allow the city or building owner to remove the mural if it is not maintained, or if it becomes a

safety hazard. It will be the responsibility of the Artist and/or Building owner to maintain a current address on file with the Department Services.

(3) *Mural Requirements*

- a. Murals shall be for the aesthetic enhancement of the building. Scale, design, intensity, and character shall be consistent with the design of the building, and compatible with the building and surrounding structures.
- b. Murals are only permitted on Non-Residential Primary Structures.
- c. Murals must be a unique, hand-rendered work of art. Copyrighted images and advertisements are not allowed.
- d. Size Limits: 100 percent of a blank wall can be painted if the Mural is up to 15 feet high, or less. 50 percent if the mural is up to 30 feet high or less, and 25 percent if up to 60 feet high or less. Murals are not allowed above 60 feet in height from the ground.
- e. Murals are only allowed on blank sides or rear walls of non-residential buildings. Building fronts may be allowed within Arts Overlay District. Properties located in the CRA will be required to have an additional approval by the CRA/Economic Development Director, as well as the standard approval as outlined by this section of the LDR.
- f. The Mural must not have any unsafe features or conditions that may disrupt traffic nor create any unsafe conditions or distractions to motorists or pedestrians, or staff may request the Mural be redesigned.
- g. No written messages, logos, arrows, lights, or bare bulbs shall be part of the wall graphic or embellishment or the Mural shall be denied. Proposed Murals that do contain messages, logos, arrows, lights, or bare bulbs will be considered a sign and must meet Land Development Section 604.12.

b. Development services will review the completed application and notify the applicants within thirty (30) days of submission if the Mural is approved or denied. If denied by Staff, the applicant will be provided with reason for such denial. If Development services do not approve the design of the Mural, the applicant may resubmit a new design within thirty (30) days of denial with changes made to

will not be accepted.

a. The mural permit application shall be submitted to the City of New Smyrna Beach, either online or hardcopy. Development Services staff shall review the application for sufficiency prior to conducting a staff review of the application proposal. Incomplete applications

(5) Mural permit application review requirements

a. Murals that are currently established within the City prior to the adoption of this section will have five (5) years to come into compliance. Failure to come into compliance or be granted an appeal according to the provision outlined in section 604.12.K.6 shall result in a violation of the city code.

(4) Preexisting Mural

h. The Mural shall be applied to a prepared wall surface free of cracks, peeling paint, or stucco. The Mural surface must be prepared with an outdoor primer to ensure good adhesion for the artwork. The Mural must be durable, permanent and easily protected from vandalism and weathering and shall be covered with a protective coat, such as a clear anti-graffiti coating applied over the completed artwork, to minimize deterioration for a minimum of five (5) years from the date of Mural completion.

i. Maintenance, as needed, or a minimum of every five (5) years of the Mural installation date.

j. If the Mural is not maintained by the property owner, and the Mural is found to be

the original design. If the applicant fails to submit a new application within this time frame the applicant must start the application process over.

- c. Any denial of a Mural application by Development Services may be appealed to the Planning and Zoning Board within thirty (30) days of denial
- d. No approval shall be issued for Mural installation if there are outstanding code enforcement violations charged by the city on the property where the Mural is to be located. Outstanding debts to the City must be paid in full prior to issuance of the Mural permit.
- e. Wall graphics or embellishments shall be applied and constructed strictly in accordance with the approved application. Any deviation from the approved plan or rendering, in materials or style, shall require removal of the wall graphic or embellishment within five (5) days of notice from the City of New Smyrna Beach.
- f. Any appeal from a determination made by the Director of Development Services, or designee, shall be reviewed by the Planning and Zoning Board, whose decision shall be a final administrative action.
- g. Signed acknowledgement within the Mural application form by artist and business owner to abide by all Mural requirements and execute all necessary documents.

(6) Appeal

- a. All appeal applications shall be heard by the Planning and Zoning Board during a public hearing. No appeals can be granted for any Murals that contains words.
- b. An application fee of \$300.00 shall be paid as part of an appeal application.
- c. Applicant must submit documentation and evidence explaining reason of appeal.
- d. For appeals that are approved by the Planning and Zoning Board, the proposed Mural must be completed within twelve (12) months.

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3 **ORDINANCE NO. 13-22**
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5 **AN ORDINANCE OF THE CITY OF NEW SMYRNA
6 BEACH AMENDING THE LAND DEVELOPMENT
7 REGULATIONS; AMENDING ARTICLE XII,
8 ARCHITECTURAL DESIGN STANDARDS, SECTION
9 1200.00, ARCHITECTURAL DESIGN STANDARDS, TO
10 ESTABLISH WALL ART REGULATIONS; PROVIDING
11 FOR CODIFICATION; PROVIDING FOR PUBLIC
12 HEARINGS; PROVIDING FOR CONFLICTING
13 ORDINANCES; PROVIDING FOR SEVERABILITY; AND
14 PROVIDING AN EFFECTIVE DATE.**

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16 **WHEREAS**, the City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach,
17 has requested a text amendment to the Land Development Regulations, Article XII, Architectural
18 Design Standards, Section 1200.00, to establish wall art regulations within the City limits; and
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20 **WHEREAS**, the Planning and Zoning Board at a regular meeting held on March 7,
21 2022, voted 6-0, recommended that the City Commission approve the text amendment; and
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23 **WHEREAS**, the City Commission deems it is in the best interests of the citizens of the City of New Smyrna Beach to amend the Land Development Regulations as more particularly set forth hereinafter.
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26 **NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE
27 CITY OF NEW SMYRNA BEACH, FLORIDA:**

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29 **SECTION 1: Amendment.** That New Smyrna Beach Land Development Regulations, Article XII, Architectural Design Standards, Section 1200.00, Architectural Design Standards, is hereby amended to read as follows: (Note: Deletions from text are indicated by ~~strikeout~~, additions to text are indicated by underline, and omissions in text are indicated by [. . .].)
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32 **ARTICLE XII. – ARCHITECTURAL DESIGN STANDARDS**
33 **1200.00. Architectural Design Standards.**

34 ...

35 **1200.02. Wall Art**

36 **Intent:**

37 It is the intent of the City of New Smyrna Beach that the display of art or graphics on non-
38 residential primary structures be permitted within the City to aesthetically enhance otherwise
39 blank walls and building side and rear walls to cultivate the arts community within the city.
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- (1) Definitions. As used in this section, the terms listed below shall have the following meanings:
- a. Architectural embellishments: Three-dimensional architectural decorations added to buildings for aesthetic purposes.
 - b. Murals: A painting, mosaic, fresco, or other permanent artwork attached or applied directly to a wall of a structure.
 - c. Non-residential primary structures: Multi-family, commercial, or industrial primary structures that are not residential primary structures.
 - d. Residential primary structures: The following structures are considered a home, manufactured home, mobile home, modular residential primary structure: single family house, mobile home, modular home, manufactured home, or duplex.
 - e. Wall art: Wall art may be in the form of architectural embellishments or murals.
- (2) Application procedure. An application for a wall art permit shall be filed by the business owner, and include the following:
- a. An affidavit from the property owner authorizing the business owner to apply for the wall art permit; and
 - b. Name of the artist, with examples of previous work done by the artist and addresses of any existing wall art; and
 - c. Statement regarding durability of the materials to be used considering the proposed wall art location, positioning of the proposed wall art on the building/structure, and manner of application.
 - d. Plans and specifications for the proposed wall art, accompanied by clear and legible drawings with descriptions(s) showing the location of the wall art dimensions, and materials to be used. Color photos of the building must accompany the sketch of the wall art, showing the wall to be used in relation to adjacent streets and buildings.
 - e. A waiver and release from the artist, in favor of the city and the building owner, for the right of attribution or integrity which the artist has in the wall art under 17 USC 106A and 113(d) (Visual Artist Rights Act).
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92 (3) Wall art requirements. Applications for wall art permits located throughout the City
93 shall be reviewed and approved by the Development Services Director within 30 days of
94 receipt of a completed application if all of the following requirements are met:

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96 a. The wall art is located on a non-residential primary structure.
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98 b. The wall art is on a blank side or rear wall of the building. The wall art may
99 not be located on a building front unless the building is located in the Arts
100 Overlay District.
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102 c. The wall art is no larger than 15 feet in height or 30 feet in length.
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104 d. The wall art does not have any unsafe features or conditions that may disrupt
105 traffic, or create any unsafe conditions or distractions to motorists or
106 pedestrians.
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108 e. The wall art is a unique, hand-rendered work of art. No written messages,
109 letters, words, copyrighted images, advertisements, logos, trademarks,
110 commercial messages, arrows, lights, bare bulbs, or moving parts shall be part
111 of the wall graphic. Proposed wall art that contains any of the above-listed
112 items will be considered a sign and must comply with Section 604.12.
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114 f. The wall art aesthetically enhances the building and the scale, design, intensity,
115 and character is compatible with the building and surrounding structures.
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117 g. The wall art complies with any applicable state and federal regulations.
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119 h. No approval shall be issued for wall art installation if there are outstanding
120 debts to the city or city code enforcement violations on the property where the
121 wall art is to be located.
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123 (4) Installation and maintenance.

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125 a. All murals must be complete within one year from the date of approval, unless
126 extended by the Development Services Director.
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128 b. The wall art shall be applied strictly in accordance with the approved
129 application. Any deviation from the approved plan or rendering, in materials or
130 style, shall require removal of the wall graphic or embellishment within five
131 days of notice from the City of New Smyrna Beach.
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133 c. The wall art shall be located on a prepared wall surface free of cracks, peeling
134 paint, or stucco, and the surface must be prepared with an outdoor primer to
135 ensure good adhesion for the artwork.

SECTION 3. Severability. That if any section, sentence, clause or phrase of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4: CONCERNING ORDINANCES. That all ordinances or parts thereof that are in conflict with this ordinance shall be and the same are hereby rescinded and repealed.

SECTION 3: Public Hearing. That the public hearing concerning the adoption of this ordinance shall be held at 6:30 p.m. on May 10, 2022 in the City Commission Chambers, 214 Sam Avenue, New Smyrna Beach, Florida, after notice published pursuant to § 166.041(3)(a), F.S.

SECTION 2: Codification. Following adoption of this ordinance, the City Clerk shall transmit a copy of this ordinance to Municipal Code Corporation of Tallahassee, Florida, to be codified into the City's Land Development Regulations. Municipal Code Corporation's usual and customary fee for said codification service is hereby approved. The provisions of this ordinance are intended to be incorporated into the Code of Ordinances of the City of New Smyrna Beach, Florida, and the sections of this ordinance may be renumbered, relettered, and the word "ordinance" may be changed to "section," "article," or such other word or phrase in order to accomplish such intention.

(b) Appeal. If the Development Services Director denies a wall art permit, the applicant may appeal the decision to the Planning and Zoning Board at a public hearing, or may re-submit a new design within 30 days of denial. If the applicant fails to appeal or submit a new application within this time frame, the application will be closed and any further submissions will constitute a new application. Any decision made by the Planning and Zoning Board shall constitute final administrative action.

(3) The existing wall will be built in such a manner as to come into compliance with the requirements of this section.

I. In the event the wall art is not maintained or becomes a safety hazard, a 90-day notice will be provided to the business owner and property owner. If the property owner fails to correct any stated deficiencies or hazards within 90 days, the City may remove the wall art and lien the property for all costs incurred to bring the property into compliance.

e. Wall art shall be maintained as needed, but in no event shall the wall art be maintained any less than every five years.

d. The wall at this point be durable, permanent and easily protected from vandalism and weathering and shall be covered with a protective coat, such as a clear anti-graffiti coating applied over the completed artwork, to minimize deterioration.

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182 **SECTION 6: Effective Date.** That this ordinance shall take effect immediately upon its final
183 adoption.

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185 **APPROVED AS TO FORM AND CORRECTNESS:**

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187 *Carrie Avallone*
188 CARRIE AVALLONE
189 City Attorney
190
191 DATE: 4/20/2022

