

## GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: City Code Amendment and supporting policy to adopt procedures and performance standards for installing murals on structures and buildings.

## HISTORY

City Council Action: 08/19/1996 – Approved a City Code Amendment to update the sign ordinance, including establishing mural regulations (Case #10000B-96).

01/26/2015 – Approved a City Code Amendment establishing that murals may not be applied directly to the surface of a building (Case #10000C-14).

11/09/2020 – Approved a privately-initiated City Code Amendment that allowed signage to be incorporated into murals at class I motor vehicle sales facilities (Case #PL2020-154).

## CHRONOLOGY

Creative Placemaking Commission	06/07/2023	Informational update provided
Planning Commission	06/22/2023	Study item held (Case #PL2023-75)
Creative Placemaking Commission	07/12/2023	Recommended approval
Planning Commission	08/03/2023	Public hearing held, recommended approval (Vote: 7-0)
City Council	08/28/2023	Public hearing scheduled

## DEADLINE FOR AGENCY ACTION

Application Date:	06/23/2023
<b>Applicable Deadline:</b>	<b>Waived by the applicant</b>
Newspaper Notification:	Confirmed (07/20/2023 Sun Current – 10-day notice)

## STAFF CONTACT

Nick Johnson, Senior Planner  
Phone: (952) 563-8925  
E-mail: nmjohnson@BloomingtonMN.gov

## PROPOSAL

Staff has prepared an ordinance and supplemental policy intended to clarify and establish rules and procedures for installing murals in Bloomington. The proposed regulations would expand the opportunity to install murals on private property and buildings. A new murals administrative permit process would be created and administered by the Creative Placemaking Director and Planning Manager. The ordinance and policy would also establish minimum maintenance and durability expectations to ensure murals do not detract from the community aesthetics if not properly maintained.

## BACKGROUND

Direction to proceed with amendments to the City Code to create greater pathways for the installation of murals was received from the Planning Commission and City Council as part of study items held for the sign ordinance in January of 2023. Both bodies expressed unanimous support for pursuing amendments that would remove obstacles and increase the feasibility of mural installation. Staff initially planned to incorporate changes to the City's mural standards as part of the broader Sign Ordinance Update Project, which is on the 2023 Planning Commission Work Plan. However, after further evaluating the existing standards and determining the best approach to allow for greater opportunity, staff concluded a separate and distinct ordinance and supplemental process was a better approach as opposed to grouping these provisions in with the Sign Ordinance work. The primary reason for this approach is based on the fact murals are and would be separate and distinct from signs, both in standards and processes. There certainly are instances of overlap between murals and signs, but the proposed ordinance and policy approach would consider these improvements as separate having unique and distinctive considerations from a policy perspective.

The City's Creative Placemaking Commission reviewed the proposed mural ordinance and policy on two occasions, first as part of an informational update on June 7, 2023, and later to provide a formal recommendation on July 12, 2023. At the second meeting, the Creative Placemaking

Commission approved a formal letter of support for the proposed ordinance and supplemental policy. The formal letter of support is attached to the staff report for consideration by the City Council.

The Planning Commission reviewed a draft mural ordinance and supplemental policy as a study item on June 22, 2023 (Case File #PL2023-75). The staff report and supporting materials from the June 22, 2023 Planning Commission study item can be accessed at the following links: [PC Study Item Documents](#) and [Meeting Video](#). Staff can also provide these materials electronically via email by request. The Planning Commission generally supported the draft mural ordinance and supporting policy. Following questions for staff, there was discussion about the maximum mural area proposed within the draft ordinance. Additional analysis regarding this standard is provided in the Analysis section below. The meeting minutes from the June 22, 2023 Planning Commission study item is attached to the staff report.

Following the Planning Commission Study Item meeting, staff received a full evaluation of the proposed mural ordinance and supporting policy from the City's consulting attorney John Baker with Greene Espel, PLLP. Additional information about this review can be found in the Legal Analysis section of the staff report. The evaluation necessitated some minor modifications to the mural ordinance and supporting policy since it was reviewed by Planning Commission on June 22, 2023. These modifications were the only changes to the ordinance and policy that occurred in between the Planning Commission study item and public hearing. Staff will provide a full overview of the policy proposal that has resulted from the iterative process completed to date in the Analysis section that follows.

## ANALYSIS

The policy approach proposed by staff is to utilize two primary mechanisms for the regulation, review, and processing of murals: 1) City Code provisions ("Murals Ordinance"), and 2) a supplemental Murals Policies and Procedures document.

### **Mural Ordinance**

The key components of the mural ordinance include the following:

- **Definition** – The ordinance proposes to revise the existing definition of a mural to the following:

***MURAL.** A hand produced or machined visual graphic applied or affixed to the exterior surface of a building or structure through the application of paint, canvas, tile, metal panels, applied sheet graphic, or other medium. Any representation which identifies a business or building by logo, product, service, trademark, message, or slogan is considered a sign. Uniform painting or coating of an exterior building surface does not*

*constitute a mural. A mural is separate and distinct from graffiti, which is defined elsewhere in § 12.72 of this code.*

A modest change to the proposed definition presented at the June 22, 2023 Planning Commission Study Item was completed to address a concern pertaining to content neutrality and undue discretion posed by the City's legal counsel. Staff is confident the updated definition addresses the concerns posed. Two features of the definition worth noting is 1) it explicitly states that uniform coating does not constitute a mural, and 2) it expressly delineates murals from graffiti, which is defined in § 12.72 of the City Code.

- **Exterior Materials and Finish Standards** – The ordinance would create an exception to the City's coatings prohibition on primary building materials for approved murals. The prohibition of coating primary building materials is located in the Exterior Materials and Finish Standards (Section 19.63.08). The exception would only apply to the portion of the building approved for mural installation. Otherwise, the prohibition on coating primary exterior materials would still be applicable for all other portions of a building. In addition, the prohibition on applying murals directly to the exterior surface of a building would be removed.
- **Removal of Murals from the Sign Ordinance** – Changes to the sign ordinance are proposed to formally separate murals from signs within the structure of the Zoning Code. The definition of a mural within the sign ordinance would be eliminated, and references to murals within the sign district or special use signage provisions would be removed. Once staff updates the sign ordinance later this year, it is possible that some references to murals might be reincorporated to ensure that the two new policies would be in sync. As noted in the Mural Section provisions below, signs can be incorporated into murals but must comply with the sign ordinance and would be limited to ten percent of the overall mural area.
- **Mural Section** – The ordinance would create a dedicated section (21.301.25) for murals within the General Development Standards section of the Zoning Code (Article III, Division A) that would include:
  - **Findings, Intent, and Purpose Statements** – This section identifies the broader goals and intent of the ordinance. For murals, a balance must be struck between supporting expression and placemaking while protecting against any potential negative consequences to buildings or public peace and safety.
  - **Establishment of Permit Requirement** – The ordinance establishes that a mural permit must be reviewed and approved by the City's Planning Manager and Creative Placemaking Director prior to the installation of a mural. Any appeal to a decision by these authorities regarding a permit would be presented to the City Council for final decision. The permit section also includes an expiration provision, as well as a mural completion provision. If work has not commenced within a year of permit issuance, the permit will expire. In addition, the mural installation should be completed within a two-year period following permit issuance.
  - **Prohibited Mural Types** – The ordinance would establish a list of prohibited mural types that are focused on public peace and safety. The list of prohibited murals has

been reviewed by the Legal Department and City's consulting attorney for compliance with the First Amendment. Staff is confident the proposed list will effectively mitigate risks to public safety while allowing for robust expression. It is possible and likely that some content within a mural may not be appreciated or supported by a single or even many individuals. One of the risks taken with allowing for greater avenues of expression is that it is possible some content or art may be created that is not aligned with an individual's tastes or values. That being said, the prohibited murals list does touch on content that is violent or sexual in nature, as there is legal precedent for this type of speech not being protected.

○ **General Standards** – The proposed list of general standards includes the following:

- **Maximum Area** – The ordinance proposes a maximum area or proportion of a building available for mural installation (50 percent) to ensure a mural is not utilized as a means to circumvent the City's coating prohibition within the Exterior Materials and Finish Standards. In addition, staff is confident the vast majority of desired murals could be accommodated within the proposed maximum area standard. It is uncommon for a mural to encompass the full area of all building elevations given the expense of mural installation. Finally, the more expansive the allowance for mural installation, the greater the maintenance responsibilities of the property owner for larger murals and the oversight responsibility of the City.

All these factors noted, there was discussion at the Planning Commission Study Item on June 22, 2023 and Public Hearing on August 3, 2023 of removing this requirement, thereby allowing 100 percent of a building elevation area to be eligible for mural installation. Ultimately the Planning Commission decided to follow the staff recommendation, but did request that this standard be monitored in the future to see if multiple desired murals were not able to comply with the standard.

- **Height** – Staff does not propose to limit the maximum height of a mural. However, similar to standards currently established for signs, staff does propose to restrict murals from extending above the roof line of a building. Extension of a mural above the roofline of a building is possible through various installation methods, such as panelized murals. The Planning Commission followed this recommendation in their action. Should the City Council desire to allow the extension of murals or signs above the roofline of a building, staff would urge consistency between the two, given they are both forms of expression, albeit typically with somewhat different intents.
- **Projection** – Staff recommends establishing a maximum projection of two feet from the mural surface for murals that contain three-dimensional elements. Staff also recommends murals may not encroach into public easements of record without the approval of the Director of Public Works (through an easement encroachment agreement), which may be feasible in

more compact, mixed-use environments with smaller structures or building setbacks.

- **Sign Incorporation** – The existing sign ordinance allows for signage to be incorporated into murals only at class I motor vehicle sales facilities, the allowance for which stemmed from a privately-initiated City Code Amendment. As opposed to allowing signage incorporation into murals only for certain uses through use-specific signage standards, staff would propose that signs may be incorporated into murals generally, but subject to the limits for wall/building signs in the sign ordinance and limited to ten percent of the total mural area. Staff would not recommend an approach allowing signage incorporation into murals inconsistently across uses or locations.
- **Lighting** – It is possible for architectural lighting to be incorporated into murals. Staff recommends that a standard be added noting lighting is permitted within a mural, but subject to the maximum power or brightness standards established in the City’s lighting ordinance.
- **Motion or Flashing** – Similar to the provisions applicable to the existing (and likely future) sign ordinance, staff recommends a prohibition on electrical, mechanical, or structure components that produce motion, flashing, scrolling, sequential lights, or other effects of movement.
- **Maintenance Requirements** – Establishing minimum expectations for durability and maintenance of installed murals is important to meeting minimum community aesthetic expectations and promoting preservation of property values. The proposed ordinance requires the applicant to submit a maintenance plan as part of the mural permit application. The maintenance plan must be reviewed and approved by the Planning Manager and Creative Placemaking Director. Murals must be kept in a state of good repair. The Planning Manager or Creative Placemaking Director can order murals to be repaired or removed if not maintained according to the approved maintenance plan or if they fall into disrepair.
- **Establishing the Authority of Creative Placemaking Director and Planning Manager** – Staff recommends modest components within the Murals Policies and Procedures Document but outside the scope of the Mural Ordinance be eligible for amendment by the Planning Manager and Creative Placemaking Director. This approach is recommended because it is likely the Document will need to be revised as staff learns new lessons about how to best administer the procedural elements of the process. Things that might be revised could include design guidelines, best practices for artists/installers to consider, or new content that should be included in a mural permit application. Suppose these elements are embedded in City Code, staff must process formal amendments to the City Code for elements that do not modify the underlying policy. If decision makers are comfortable granting this authority to the Planning Manager and Creative Placemaking Director, then this authority must be established in the City Code.

- **Administrative Components** – The proposed ordinance establishes that staff (Creative Placemaking Director and Planning Manager) is the decision maker for the review and action on mural permits, and that City Council would consider any appeal to a staff decision on a mural permit. The ordinance would also establish a \$150 application fee in Appendix A of the City Code for a mural permit and a \$100 fee to process an appeal of a mural permit decision.

Staff is confident that all the minimum elements needed to launch and administer the mural permit process with effective standards and maintenance procedures are reflected in the proposed ordinance.

One component that is not reflected in the proposed ordinance but was the subject of question and discussion about murals is locational restrictions for murals. Cities have the ability to restrict where murals can be installed according to their underlying zoning district, location, or use. For example, some cities choose to limit murals to their downtown business or other commercial districts. Under the draft ordinance and supporting policy, Planning Commission and staff are not recommending that murals be subject to locational restrictions. The reason that locational restrictions are not recommended is that many nonresidential uses are allowed within residential zoning districts in Bloomington. For example, government facilities, parks, fire stations, and places of assembly are all uses that are allowed within the R-1 zoning district. As such, staff did not think that locational restrictions best served Bloomington based on the structure of the Zoning Code. The Planning Commission supported this approach.

### **Mural Policies and Procedures Document**

The supporting policy document is a procedural and advisory document that helps support the administration of the mural permit review process. As noted in the staff report, the idea to create an associated policy document stems from staff's positive experience in administering the City's landscaping standards. As a result of this success, staff is confident that a similar approach for murals will effectively deliver positive outcomes through a paired ordinance and policy document. The document is also attached for review and action. Some modest changes have been made to the content of the document to more clearly differentiate minimum requirements vs. best practice recommendations. Staff is seeking a recommendation of approval of the supporting policy document from the Planning Commission in addition to the ordinance. The policy document has been reformatted with the help of the City's Communications Division to make the document more visually appealing.

### **Legal Analysis**

As noted in the background section of the staff report, staff has been working with consulting attorney John Baker with Greene Espel, PLLP, a nationally recognized expert in matters of land use regulation and expression (First Amendment). Mr. Baker completed a review of the draft mural ordinance in July of 2023 and provided substantive feedback that has been incorporated into the

murals ordinance and supporting policy. Staff is confident the policy approach put forth in the draft documents is on sound legal footing and could withstand challenges based on current case law.

### **Racial Equity Impact Analysis (REIA)**

To evaluate the mural ordinance and supporting policy through a racial equity lens, staff completed a Rapid Racial Equity Impact Analysis. The analysis is attached to the staff report for consideration.

### **PUBLIC ENGAGEMENT**

Public engagement strategies specifically focused on the mural ordinance and supporting policy have primarily been targeted communications to the arts community from the City's Creative Placemaking Director. A general email update was sent to the 1,804 accounts subscribed to the general Creative Placemaking email list. In addition to these communications, Planning staff has maintained a Let's Talk Bloomington page for the Sign and Mural Ordinance project(s). Persons following that page have had access to updated mural documents as the drafting and review process has unfolded. Staff has also engaged with the Creative Placemaking Commission, comprised of representatives and interested parties of the arts community, throughout the process.

The publication of the Planning Commission packet, in this case, will be sent to the following subscriber list serves with the number of subscribers listed in parentheses: Planning Commission (2,086), Planning and Development (general news) (2,203), and Zoning Ordinance Updated (1,636). Utilizing these subscriber lists will increase awareness of the proposed mural ordinance and supporting policy among the subscribed public.

Beyond the formal recommendation letter provided by the Creative Placemaking Commission, staff has not received any public correspondence on the mural ordinance and supporting policy as of the publication date of the agenda packet. Any correspondence received following the publication of the packet will be shared with the City Council at the August 28, 2023 meeting.

### **PLANNING COMMISSION REVIEW**

The Planning Commission held a public hearing on the proposed ordinance and supporting policy relevant to murals on August 3, 2023. No one provided testimony at the public hearing. The main areas of discussion that the Planning Commission engaged dealt with the maximum allowed area for murals (proposed at 50% of building elevation area) and murals in residential areas. Following questions and discussion, the Planning Commission unanimously recommended approval of the murals ordinance and supporting policy as presented by staff. The full discussion can be found in the meeting minutes attached to the staff report.

**RECOMMENDATION**

Planning Commission and staff recommend approval through the following motion:

Motion made by \_\_\_\_\_, seconded by \_\_\_\_\_, in Case #PL2023-89, I move to adopt Ordinance #2023-\_\_\_ and a supporting policy amending the definition of a mural and establishing new standards and procedures for installing murals in Bloomington.

Staff recommends the adoption of a resolution authorizing summary publication through the following motion:

Motion Made by \_\_\_\_\_, seconded by \_\_\_\_\_, in Case #PL2023-89, I move to adopt Resolution #2023-\_\_\_, a resolution authorizing summary publication of the Murals Ordinance.