



MEMORANDUM

To: Mayor and City Council

From: Mindi Hurley, Director of Community Development

Date: February 26, 2019 (continued from January 8, 2019)

Reference: Draft Ordinance Amending the Historic District Signage Requirements allowing for Murals

2030: Sense of Community

Executive Summary:

Sarah Carrick, owner of Jacaranda Gift Shop, asked to install a fence on the north side of her property with a mural painted on it. Staff researched and found that murals are not addressed in the Code; therefore, we could not permit it. We discussed the topic at the August 2018 Council Worksession. The direction given by City Council was to draft regulations to allow murals on commercial sites in the Old Town Historic District. We discussed the draft ordinance at the January 8, 2019 Worksession. **Updates from that meeting are bolded and located in under the Analysis heading below.**

Staff researched surrounding cities' ordinances and policies as they relate to murals. We consulted with the City Attorney regarding how to responsibly allow for murals and the legal implications involved. Attached is a summary of case law used as a basis in drafting the proposed regulations. The cases relate to content neutral regulations, commercial speech and review procedures.

Draft Ordinance Summary:

1. Only one mural will be allowed per commercial site within the Historic District.
2. Maximum 50% of the façade may be covered.
3. No advertising of products or services is allowed.
4. They shall be maintained in good condition (i.e. no peeling or faded paint).
5. Approval from Director of Community Development is required.
6. If not approved, then an appeal to Planning and Zoning Commission is available.

Analysis:

At the January 8, 2019 Worksession, Council had concern related to what could be painted in the murals if permitted by right in the Historic District. They asked that we study three different scenarios. These are listed below along with the research.

1. **What is the worst case that could happen if this ordinance is passed?**
 - **Someone could apply for a mural that is distasteful, vulgar, or contains a message that does not coincide with the ideals of the community (could be a political or religious based**

sign). We would not have any legal basis for denying it if it met the content neutral parameters set up in the ordinance, as it relates to size and quantity.

2. What is the worst case that could happen if we do nothing?
 - We would treat it as a “sign” and most likely murals would not be allowed (in violation of the sign ordinance)
 - There is not a method for anyone that wants to paint a mural to be granted approval by right.
 - On a case by case basis, we could write PD regulations for allowing for a specific painted sign (mural) at a specific location.
 - If they paint a mural without a sign permit, it would be deemed as graffiti, and they would have to remove it or paint over it.
3. What is the outcome if we prohibit murals?
 - This would take away one of the potential opportunities for promoting the area -through the use of “Instagram Murals”.
4. What can we regulate in terms of religious messages?
 - Anything that has a religious implication can be difficult to regulate as it could violate the establishment or free exercise clause of the first amendment.
5. What are the specific requirements for the Old Town (Main Street) Development?
 - The restrictive covenants for the Old Town (Main Street) development give the authority to the Property Owners Association (POA) to approve signage that is in accordance with the PD zoning and Design Guidelines for the area. These are the same as the regulations in place for the rest of Old Town, except they allow for signs to be painted on the building and allows for neon on the restaurants. After the POA gives their blessing, staff reviews it to ensure it complies before issuing the permit.

Subsequent to the Council work-session, Sarah Carrick asked that I research Addison's regulations. Charles Goff, the Assistant Director of Development Services and Planning, said that they have three murals. Each of these were approved via a special exception to the sign ordinance. They haven't ever been challenged on their ordinance which was adopted in the 80's.

Another question that came up after the City Council Meeting was: How does Ft. Worth deal with murals and to see how do they deal with obscene or vulgar murals?

- I contacted Sevanne Steiner, Senior Planner. She doesn't know of any obscene or vulgar murals.
- Fort Worth doesn't require permits unless the mural is proposed within many of their Design Districts that have certain design standards. If it is in a design district, then they get to review the conceptual design prior to approving it.
- Also, in the event it is not within a design district, the city still requests a conceptual design just to make sure that it would not be considered a sign with commercial messaging. Then, if no commercial messaging is present, then they are allowed to proceed with painting the mural.
- If it does have commercial messaging (a logo or an image of the product or service), then it is considered a sign and they review it as such.

In conclusion, the draft ordinance would make it easier for the business owner to be approved for a mural within the H District, but there is a small chance that it would open the door for art that is not of good quality (subjectively speaking), or art that is not compatible with the values and ideals of the community. If we do not pass the ordinance, we could bring forward each mural on a case by case basis as a Planned Development District – a specific zoning granting a specific “sign” for a specific location. This process would take approximately 60 days and would require both P&Z and City Council action, just as any other PD.

Legal Review: We have consulted with the attorney throughout the research and drafting of the ordinance and answering the questions of City Council in this memo.

Recommendation: Recommend redrafting of the ordinance incorporating necessary changes as a result of the workshop session and bringing back the final ordinance in March for adoption.

Attachments:

1. Summary of Surrounding Cities' Regulations
2. Summary of Case Law
3. Draft Ordinance