



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: August 21, 2018

Agenda Item 7-B  
**Approvals:**  
City Manager MM  
Dept. Head CGD  
Attorney \_\_\_\_\_  
Finance SV

**Department:** Community Development  
**Prepared By:** Amy Stonich, AICP, Contract Planner  
Sheri Vander Dussen, Interim City Planner

**Subject:** **ZONING AMENDMENT (ZA) 17-203 – REGULATION OF MURALS ON PRIVATE PROPERTY**

**Fiscal Impact:** None.

**Summary:** Staff recommends that the City Council approve, Zoning Amendment (ZA) 17-203 for regulation of murals on private property. The amendment would revise the definition of murals and incorporate the requirement to obtain a mural permit with an objective checklist to guide the review of applications for murals.

**Background:** On May 16, 2017, the City Council initiated a Zoning Amendment for regulation of murals on private property. The amendment was directed in response to new murals that were instituted on commercial buildings without the appropriate permits and the need to update the City's regulations to reflect current case law.

The Planning Commission held several study sessions regarding murals and painted signs and how they may be established and regulated. These sessions were held on October 4, 2017, March 21, 2018, May 2, 2018, June 20, 2018 and one study session was held prior to City Council direction on November 5, 2014. The purpose of the study sessions was to explain current case law regarding murals and painted signs and to explore options available for addressing these displays within the City.

**Discussion:**

**Overview of Murals and Painted Signs**

Outdoor murals and painted signs come in different forms, shapes, and sizes. They can be situated on private property or public property, and attached or detached to a building. Outdoor murals and painted signs are unique in that they can be classified as artwork, signage, or both.

The City's current practice is in need of an update to reflect current case law as it relates to murals and painted signs on private property. The City's current code and review process are summarized below:

**Definitions.** The San Clemente Municipal Code (SCMC) currently includes the following definitions relating to murals:

*"Mural" means a display or illustration painted on a building or wall within a public view not intended to advertise a product, service or business, and, therefore, is not considered a sign.*

*"Mural sign" means a display or illustration painted on a building or wall intended to advertise a product, service or business.*

The intended difference between these two definitions is that "mural" is not for advertisement (non-commercial) while "mural sign" is a sign for advertising (commercial).

**Current Review Process.** The City currently regulates mural signs (commercial advertising signs) in the City's Sign Code in the Zoning Ordinance (Section 17.84.030A), which limits signs to 64 square feet and requires an Administrative Sign Permit and Discretionary Sign Permit for mural signs 25 to 64 square feet in size within the Architectural Overlay District. It is also City policy that a Minor Architectural Permit (MAP) or Minor Cultural Heritage Permit (MCHP) is required for other murals (i.e. noncommercial signs). However, this discretionary review is not consistent with recent case law.

#### **Recent Case Law, Content-neutral vs. Content-based**

First Amendment law for sign codes is still developing based on recent case law decisions, particularly in the context of commercial versus non-commercial distinctions, like the City's mural (non-commercial) and mural sign (commercial) definitions. In light of the recent decisions and developing case law, the City should review and modify how the City exempts non-commercial murals from the City's sign code. This can be done, first, through an update of the definitions of murals in the City's Code. Secondly, the review process cannot be discretionary but instead must be ministerial. Case law indicates that a City's murals also cannot be reviewed based on subjective criteria. Specifically, murals and painted signs cannot be denied based on their appearance or simply when subjected to the City's General Plan findings such as "Preserve and strengthen San Clemente's unique atmosphere and historic identity as 'The Spanish Village by the Sea'", since this finding cannot be quantified. This means that the current process utilized by the City is not consistent with case law.

In summary, a municipality may place general time, place, and manner restrictions on outdoor signage and murals (i.e., size, height, shape, number and location). However, the speech contained in signs or murals is protected from unwarranted government regulation by the First (freedom of speech) and Fourteenth (equal protection of the laws) Amendments to the United States Constitution.

### Analysis of Options Considered

The Planning Commission considered revisions to the existing definitions and options to regulate murals and painted signs. First, staff presented the following definition, which meets the content-neutral requirements for murals based on recent case law. It also includes the different media and medium that a mural may incorporate. The proposed definition is as follows:

*"Mural" or "mural sign" means any non-commercial display or illustration applied directly on a wall, ceiling or other permanent surface. The media used may be, but is not limited to, paint, dye, or ink. It may be applied using different medium, including but not limited to tile, stone, ceramic, porcelain, glass and/or metal tiles.*

The Commission also reviewed the following options to regulate murals:

- Option 1. Prohibit all painted wall signs and murals.
- Option 2. Regulate murals on private property with objective standards through an administrative mural permit (ministerial objective checklist).
- Option 3. Fund programs for installation of murals on private property. This option could include consideration of a public art development fee program.

In the study sessions, the Planning Commission considered these options and indicated support of the options which would allow murals (Option 2 or Option 3). The Commission directed staff not to pursue Option 1. Therefore, Option 1, to prohibit all painted wall signs and murals, was removed from consideration.

**Option 2: Objective Checklist.** Case law indicates that murals must be reviewed at a ministerial level (an administrative and not discretionary review). Approval of murals cannot be withheld based on subjective criteria.

The Planning Commission expressed support for development of an objective checklist that could be used to grant mural permits. Staff prepared such a checklist and a draft Zoning Amendment that requires a mural applicant to obtain a mural permit (Attachment 1). Based on input from the Planning Commission, the objective checklist format would apply the following criteria to all murals on private property:

Criteria	Standards	Meets criteria?
Size	Mural area is not to exceed a single wall plane.	<input type="checkbox"/>
Height	Shall not exceed the maximum height of the zone or exceed the height of the structure on which it is applied, whichever is more restrictive (i.e., the mural cannot exceed the building height on architectural features).	<input type="checkbox"/>
Material	Materials or paint shall be weatherproof or resistant to wear.	<input type="checkbox"/>
Number	Maximum of one mural per legal parcel, or one mural per building, whichever is more restrictive.	<input type="checkbox"/>
Location	May only be permitted in non-residential zones.	<input type="checkbox"/>
Other Requirements	Shall not include integrated illumination, electrical, or moving components but may be illuminated by non-integrated light.	<input type="checkbox"/>

The mural application is ministerial, meaning it would be reviewed and issued by staff if the application met all criteria. The permit would expire two years from the date of issuance. At that time, the applicant could renew the permit or remove the mural. The renewal permit would follow the checklist and staff could ensure that the mural has been properly maintained prior to issuing a new two year permit. Since murals can deteriorate over time, the time limit of two years will help to ensure that the mural is maintained in good condition.

**Funded Art Program.** The City could allow private property owners to volunteer their non-residential property for a publicly commissioned mural. For the volunteered properties, the City would have more flexibility to regulate and direct the production of murals. This option would require funds and oversight for tracking and reviewing applications. A detailed description of a funded art program and examples of programs in other cities can be referenced in Attachment 1 of the October 4, 2017, Study Session Agenda Report included in Attachment 2 of this report.

In the study sessions, the Planning Commission supported establishment of a public program and oversight committee. However, the Commission did not discuss specific details.

In conclusion, the Commission recommended adoption of the zoning amendment which would revise the definition of murals and incorporate the requirement to obtain a mural permit with an objective checklist. The Commission also expressed an interest in implementation of a public art program and creation of sign districts wherein different standards may be applied to different areas of the City in the future at the City Council's direction.



**Planning Commission**

On July 18, 2018, the Planning Commission adopted a resolution (Resolution No. PC 18-019) recommending that the City Council make CEQA findings and adopt an ordinance for a City-initiated amendment (ZA 17-203) of the Zoning Ordinance Chapter 17.84, sign regulations, to include a mural permit and Chapter 17.88.030, Definitions, to amend the definitions of murals.

***Recommended***

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Determine that the project is Categorical Exempt from further review of the California Environmental Quality Act (CEQA) because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3).

Further, the project is also exempt pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

2. Introduce for first reading an Ordinance titled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING CEQA FINDINGS AND FOR A CITY-INITIATED AMENDMENT (ZA 17-203) TO THE MUNICIPAL CODE CHAPTER 17.84 SIGN REGULATIONS TO INCLUDE A MURAL PERMIT AND CHAPTER 17.88.030 DEFINITIONS TO AMEND THE DEFINITIONS OF MURALS

- Attachments:**
1. Draft Ordinance ZA 17-203
  2. Prior Staff and Study Session Agenda Reports (electronic CD file)

**Notification:** Notification was published in the local newspaper, the Sun Post, for a 1/8 page advertisement.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING CEQA FINDINGS AND FOR A CITY-INITIATED AMENDMENT (ZA 17-203) TO THE MUNICIPAL CODE CHAPTER 17.84 SIGN REGULATIONS TO INCLUDE A MURAL PERMIT AND CHAPTER 17.88.030 DEFINITIONS TO AMEND THE DEFINITIONS OF MURALS**

WHEREAS, on May 16, 2017, the City Council initiated a Zoning Amendment for regulation of murals on private property in response to new murals that were instituted on commercial buildings without the appropriate permits;

WHEREAS, the amendment is exempt from further review of the California Environmental Quality Act (CEQA) because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3). The project is also exempt pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination;

WHEREAS, on October 4, 2017, March 21, 2018, May 2, 2018 and June 20, 2018 the Planning Commission of the City of San Clemente held study sessions on the use of private property and how murals may be applied and regulated and set a public hearing for July 18, 2018;

WHEREAS, on July 18, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on an amendment to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment 17-203, and considered evidence presented by City staff and other interested parties and adopted Resolution No. PC 18-019 recommending that the City Council adopt Zoning Amendment 17-203;

WHEREAS, on August 21, 2018, the City Council held a duly noticed public hearing on the subject recommendation, and considered evidence presented by City staff, and other interested parties and the recommendation of the Planning Commission; and

NOW, THEREFORE, the City Council of the City of San Clemente hereby ordains as follows:

Section 1: CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby recommends that the City Council find and determine that the amendment on use of private property and how murals may be applied and regulated is exempt from further review of the California Environmental Quality Act (CEQA) because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3);

The zoning amendment is also exempt pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This exemption covers, but is not limited to, interior or exterior alterations, additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structure before the addition, or 2,500 square feet, whichever is less. Here, the proposal is an ordinance that would allow for a mural to be applied to an existing structure (building wall) that will not result in an increase of the structure's floor area. Therefore, the project would not increase or otherwise change the existing use of a site. Thus, the project qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15301 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. There are no especially sensitive resources on the project site or in the vicinity. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 2: The following findings are made regarding the amendments to the Zoning Ordinance, as set forth in Section 3, Section 4 and Section 5 herein:

- A. The proposed amendments are consistent with the General Plan pursuant to Government Code Section 65860(c), since they implement the Centennial General Plan (as adopted on February 14, 2014 and subsequent amendments thereto adopted on November 3, 2015). Specifically, this amendment

implements General Plan Policy Land Use Element Residential Land Uses Goal: Land Use Policy LU-13.07. Art in Public and Private Places. "We encourage the incorporation of art in public and private spaces that reflects the City's heritage and small town beach character."

- B. The subject zoning amendment will not adversely impact the public health, safety, and welfare since it furthers the Centennial General Plan objectives of (1) meeting community values, needs and conditions; (2) guiding long-term public and private land use, economic development, urban design and other public policy actions; and (3) reflects the City Council's review, direction and independent judgement regarding land use, economic development, coastal issues, historic preservation, urban design, and governance.

Section 3: The San Clemente Municipal Code, Title 17, Chapter 17.84 and 17.88.030 are hereby amended to read in its entirety as set forth and incorporated herein, such amendments being generally described as follows:

**Section Table 17.84.030A is amended as follows:**

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Mural Signs	<u>Maximum of one mural per legal parcel, or one mural per building, whichever is more restrictive.</u>	64 sq. ft.  <u>Mural area is not to exceed a single wall plane.</u>	<u>Shall not exceed the maximum height of the zone or exceed the height of the structure on which it is applied, whichever is more restrictive</u>	Adm. Sign Permit and Discretionary Sign Permit for mural signs 25 to 64 sq. ft. within an Architectural Overlay District  <u>Mural Permit</u>	<u>Mural Signs Materials or paint shall be weatherproof or resistant to wear.</u>  <u>May only be permitted in non-residential zones.</u>  <u>Shall not include integrated illumination, electrical, or moving components but may be illuminated by non-integrated light.</u>  <u>Permit expires two years from issuance, at which time, a new permit may be</u>



					<p><u>obtained or the mural removed.</u></p> <p><u>The mural shall be properly maintained through repair, paint, or any necessary treatment, so as to prevent decay. Defective or insufficient weather protection for exterior treatments and facades, including faded paint or materials and graffiti, shall be promptly addressed, and repaired or stabilized to prevent further deterioration.</u></p>
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**Section 17.88.030 is amended, in part, as follows:**

67. ~~"Mural" means a display or illustration painted on a building or wall within a public view not intended to advertise a product, service or business, and therefore is not considered a sign.~~ "Mural" or "mural sign" means any non-commercial display or illustration applied directly on a wall, ceiling or other permanent surface. The media used may be, but is not limited to, paint, dye, or ink. It may be applied using different medium, including but not limited to tile, stone, ceramic, porcelain, glass and/or metal tiles.

68. ~~"Mural sign" means a display or illustration painted on a building or wall intended to advertise a product, service or business.~~ Reserved

**Section 4:** If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable, such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases would be declared invalid or unenforceable.

Section 5: The City Clerk shall certify to the passage of this Ordinance and publish the same in the manner required by law, and this Ordinance shall take effect as provided by law.

APPROVED, ADOPTED AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor of the City of  
San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            ) ss  
CITY OF SAN CLEMENTE         )

I, \_\_\_\_\_, City Clerk of the City of San Clemente, California, do hereby certify that Ordinance No. \_\_\_\_\_ was introduced at the meeting of \_\_\_\_\_, 2018, the reading in full thereof unanimously waived, and was adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
CITY CLERK of the City of San Clemente, California