

## PUBLIC ART-MURAL POLICY

A policy to allow for the creation of new Original Art Murals and Public Art Installation and the preservation of Vintage Original Art Murals on non-residentially zoned private property.

### **Definitions:**

**Original Art Mural:** a hand-painted, hand-tiled, or digitally printed image on the exterior wall of a building that does not contain any commercial message. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or good produced or sold.

**Public Art Installation:** a facility, amenity or project that does not contain any commercial message and which is either an “approved public arts project” or approved pursuant to this policy for definition purposes.

**Vintage Original Art Mural:** An original art mural that existed prior to the date of this definition and policy.

### **Public Art and Original Art Murals on Private Property**

#### **Policy and Purposes.**

Public Art and Art Murals should be designed to complement the visual experience of those who live, work or visit the City of McHenry. In addition, the placement of Public Art and Art Murals throughout McHenry will contribute to the City’s economic draw and be an on-going educational tool and tourism draw for the community. By virtue of the effort, the community should become a richer place for residents and visitors.

1. These regulations relating to Public Art and Original Art Murals in the City of McHenry further the following purposes:
  - a. encouraging artistic expression;
  - b. fostering a sense of pride;
  - c. preventing vandalism at sites through the installation of Public Art and Art Murals that vandals are reluctant to disturb;
  - d. enhance the City’s sense of place in the region by providing unique artwork throughout the community;
  - e. enhance the appearance and livability of public spaces, through the placement of site-specific art projects that respond to the natural and built landscape;
  - f. strengthen community identity, spirit and collective cultural experience through the placement of Public Art and Art Murals throughout the City;
  - g. stimulate the economic success of businesses;
  - h. attract visitors and leave them with a positive impression and a desire to return to the City; and
  - i. preserving existing Public Art and Vintage Art Murals that are a valued part of the history of the City of McHenry.
2. The City wishes to encourage the installation of Public Art and Art Murals and, at the same time, prevent the proliferation of off-site commercial signs. Therefore, the City’s regulations exclude commercial advertising on Public Art and Art Murals to prevent the installation of the equivalent

of an off-site commercial sign on a mural. This restriction on commercial advertising is intended to work in tandem with and help preserve the citywide ban on off-site commercial signs set forth in the City's Municipal Code.

3. These Public Art and Art Mural regulations also promote public safety and welfare by regulating such displays in keeping with the following objectives:
  - a. That the design, construction, installation, repair and maintenance of such displays will not interfere with traffic safety or otherwise endanger public safety.
  - b. That the regulations will provide reasonable protection to the visual environment by controlling the size, height, spacing and location of such displays.
  - c. That the public will enjoy the aesthetic benefits of being able to view such displays in numbers and sizes that are reasonably and appropriately regulated without having to endure visual blight and traffic safety impacts that would be caused by such displays that are not reasonably and appropriately regulated.
  - d. That consideration will be given to equalizing the opportunity for messages to be displayed.
  - e. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.
  - f. That the regulations will conform to judicial decisions, thereby limiting further costly litigation and facilitating enforcement of these regulations.
  - g. To provide registration requirements and regulations for Original Art Murals and Public Art Installations.

#### **Public Art and Original Art Mural Registration.**

1. **Authority.** A Public Art Committee (consisting of four (4-5) mural/art and/or sign experts, the City's Community Development Director (or his appointee), and the City's Economic Development team) will be established and will have the authority to determine that an application for an Original Art Mural or Vintage Original Art Mural or Public Art Installation meets all of the applicable registration requirements as established in the Public Art and Art Mural Administrative Rules, Application and Policy.
2. **Administrative Rules.** The Public Art Committee is authorized and directed to adopt Public Art and Art Mural Administrative Rules implementing this policy.
3. **Agreement.** In connection with the installation of a new Public Art or Original Art Mural, the applicant shall be required to record an agreement which secures and authorizes the display subject to the conditions included in the agreement (to which the City may or may not be a party, based on property ownership). All Public Art and Art Mural installations must be reviewed and approved by the Public Art Committee and the City Administrator. The agreement will require that the display comply at all times with all provisions of the Public Art and Original Art Mural Regulations specified in this document. In addition, the agreement will remain in force for as long as the mural exists.
4. **Change of Ownership.** Upon a change of ownership of the property to which a Public Art or Original Art Mural is affixed, a new owner may request permission from the City Administrator and Public Art Committee, in writing, to de-register the installation and terminate the agreement.

- 5. Eligibility Criteria.** Public Art and Original Art Murals must be freely accessed by the general public during the normal hours of operation of the premises upon which the art is located. The following factors are to be considered in approving Public Art and Art Murals:
- a. Achievement of the goals of Public Art - Mural Policy;
  - b. The appropriateness of the location for the installation;
  - c. The originality and/or aesthetic quality of the work;
  - d. The appropriateness of the art media selected for the location;
  - e. Appropriateness of the work, including theme and size, to a chosen location, including scale of artwork to the site and obstacles of the site;
  - f. The subject matter is consistent with the goals of Public Art - Mural Policy and appropriate for the proposed location;
  - g. The artist has demonstrated in the design, aesthetic and functional coordination with the architecture of the building/buildings, streetscape and /or landscape;
  - h. The proposed maintenance plan and funding level is consistent with “best practices” relative to the type of art media proposed; and
  - i. The applicant of the program has secured the right to locate the installation on private property as evidenced by a written agreement that may be subject to successful completion of the approval process.

#### **Grandfathering of Vintage Original Art Murals.**

Any Vintage Original Art Mural installed prior to the effective date of this policy shall have legal status and, notwithstanding any provision of this policy to the contrary, not require registration under this policy. But a Vintage Original Art Mural which has not gained legal status through law other than this policy cannot qualify for legal status under this policy if it consists or contains any of the following: electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours) or does not comply with the sign regulations in the City’s Municipal Code.

#### **Original Art Mural Regulations.**

An Original Art Mural or Public Art installation that meets all of the following requirements will be allowed upon satisfaction of the applicable registration procedures:

1. The original art mural will remain in place, without alteration, for a minimum period of two-years, unless a prior agreement is approved by committee. “Alterations” include any change to a permitted mural, including, but not limited to, any change to the image(s), materials, colors or size of the permitted mural. “Alteration” does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time. Minor changes to the permitted mural that result from the maintenance or repair of the mural will not constitute an “alteration”. Such minor changes may include slight and unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or as a result of vandalism. A mural may be removed within the first two years of the date of registration under the following circumstances:

- a. The property on which the mural is located is sold and de-registration is permitted; or
  - b. The structure or property is substantially remodeled or altered in a way that precludes continuance of the mural; or
  - c. The owner of a mural requests permission from the City Administrator and Public Art Committee to remove a mural prior to the expiration of the two year period, which the City might grant upon making a finding that a prior agreement was approved by committee, or that the continued maintenance of the mural is not feasible and that the early removal of the mural is not in furtherance of off-site commercial advertising.
2. No part of a mural shall exceed the height of the structure to which it is tiled, painted or affixed and approved for.
  3. No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted or affixed.
  4. No part of a mural shall exceed a height of 100 feet above grade.
  5. No mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours) or otherwise does not comply with the sign regulations in the City's Municipal Code.
  6. No mural shall be placed over the exterior surface of any building opening, including, but not limited to, windows, doors, and vents, unless approved by committee.
  7. No mural shall be arranged and illuminated in a manner that does not comply with the City's sign regulations in regard to lighting.
  8. No public art or art mural shall provide for any compensation from the artist or the City to the property owner. Compensation is herein defined as the exchange of something of value, including, but not limited to money, securities, a real property interest, the barter of goods or services, the promise of future payment, or the forbearance of debt, and is given to or received by said property owner, or a leaseholder with the right to possession of the wall upon which the public art is to be placed, for the display of the public art, or for the right to place the public art on the property. The applicant shall certify in the registration application that no compensation for the display of the Public Art or the right to place the Public Art on the property will be given to or received by the property owner or leaseholder. However, nothing herein contained is intended to limit or prohibit the compensation of the artist.

#### **Public Art and Art Mural Maintenance Criteria.**

Except as otherwise provided for in a written agreement, the applicant of the project shall retain responsibility for maintenance and regular upkeep of the approved Public Art or Art Mural per the maintenance plan reviewed and approved in conjunction with the approval of the Public Art or Art Mural installation. Where appropriate the maintenance plan for the Public Art or Art Mural shall provide for a wall prep plan as needed per the mural application process, and/or the treatment of the art with an anti-graffiti coating, as needed. If, for any reason, a Public Art or Art Mural piece is removed,

destroyed, or has deteriorated, the owner on the property on which the installation is located is responsible for removal except as otherwise provided in a written agreement.

#### **Permit Application Process.**

1. A Public Art or Art Mural permit must be secured for all installations. No fee shall be charged for this permit. If the installation is not completed per the approved plan, re-inspection fees may apply.
2. Application for a permit for Public Art or Art Mural must be completed by the applicant and submitted to the Public Art Committee through the City's Economic Development Department and shall include the following information:
  - a. Completed City application form for a Public Art-Mural permit;
  - b. Project information on the program including each location (including alternate locations if any). A dimensional to scale, full color rendering for each location identifying the boundaries within which the installation is to be located. Pictures depicting the relationship of the installation to adjacent buildings and spaces. Location on a plat of survey, if available.
  - c. The overall theme of the installation and, if applicable, a listing of the specific topics (including alternates if any) that will be addressed in the individual art elements of the installation;
  - d. Information on the materials to be utilized for the installation and the durability of these materials;
  - e. Maintenance plan which shall include evidence of available funds or a funding source to cover the cost of the maintenance plan as proposed;
  - f. The Artist's portfolio showing previous finished work or work in progress;
  - g. Acknowledgement that agreements must be secured between the property owner and the artist for each location at which an art installation is to be located which agreements shall, at minimum, provide rights to the applicant to access the property for maintenance purposes and require the owner of the property to commit to maintaining the installation on the property for a minimum of two (2) years except as otherwise provided for in this Policy. The City of McHenry will be provided copies of the signed agreements.
3. Termination or Revocation of an Approved Clause: Public Art created or installed under a Public Art or Art Mural permit that has been terminated or revoked must be removed within 60 days of the date of the notice to removal or sooner based upon a finding by the Public Art Committee and City Administrator that is a detriment to the public health, safety, or welfare. If said installation is not removed within the time period provided in the notice, the City shall have the right, but not the obligation, to either remove or contract for the removal of the non-permitted Public Art or Art Mural media and shall bill the property owner, or other responsible party as provided for in the agreement, for all costs incurred in taking this action.

#### **Severability.**

If any part, sentence, phrase, clause, term, or word of this Policy is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such invalidity or unconstitutionality shall not affect the constitutionality or lawfulness of the remainder of this Administrative Code, the City of McHenry Municipal Code, or any other City regulation regulating signage, billboards, or Original Art Murals.