

ORDINANCE NO. 22-20

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER 2, "ADMINISTRATIVE PROCEDURES, ARTICLE 2.2, "ESTABLISHMENT OF BOARDS HAVING RESPONSIBILITIES FOR LAND DEVELOPMENT REGULATIONS," SECTION 2.2.5, "RESERVED," TO ADD THE PUBLIC ART ADVISORY BOARD INCLUDING THE BOARD'S COMPOSITION, MEETING REQUIREMENTS, AND DUTIES; AND, ARTICLE 2.4, "GENERAL PROCEDURES," SECTION 2.4.3, "SUBMISSION REQUIREMENTS" TO SPECIFY THAT MURALS ARE REVIEWED SEPARATE FROM ARCHITECTURAL ELEVATIONS; BY AMENDING CHAPTER 8, "SPECIAL IMPLEMENTATION PROGRAMS," SECTION 8.5.2, "PUBLIC ART ADVISORY BOARD," TO AMEND THE PUBLIC ART ADVISORY BOARD'S DUTIES TO INCLUDE RENDERING OPINIONS ON MURALS, ADDING SECTION 8.5.3, "MURALS", TO ESTABLISH REQUIREMENTS AND CRITERIA FOR MURALS," PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 20, 2019, the City Commission of Delray Beach adopted Resolution No. 152-19, invoking the zoning in progress doctrine with regard to murals from August 20, 2019 through February 20, 2020, and on February 11, 2020, Resolution No. 56-20 was adopted to extend the zoning in progress to provide additional time for Staff to prepare amendments to the Land Development Regulations; and

WHEREAS, the City of Delray Beach, Florida ("City") has been actively engaged in the process of undertaking a review and update of the existing Land Development Regulations (LDRs) with respect to regulations regarding large paintings or drawings affixed to the wall of a building located in commercially zoned districts ("murals"); and

WHEREAS, Ordinance No. 77-04 was approved by the City Commission on February 1, 2005 and established a Public Arts Program and the City's Public Art Advisory Board, including provisions for the Board's Organization and operation; and

WHEREAS, as a result of the legal precedents concerning a municipality's ability to regulate murals, the City has conducted a review of the subject matter and the LDRs with respect to creating the appropriate review process and regulations; and

WHEREAS, the Legislature of the State of Florida has, in Chapter 166 -- Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Downtown Development Authority reviewed the proposed amendments on May 13, 2020; the Pineapple Grove Main Street Committee reviewed the proposed amendments on June 1, 2020; the Historic Preservation Board reviewed the proposed amendments on June 17, 2020; and, the Site Plan Review and Appearance Board reviewed the proposed amendments on June 24, 200; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendment to the Land Development Regulations at a public hearing on July 20, 2020 and voted ___ to ___ to recommend that the proposed text amendments be _____, finding that the request and approval thereof is/is not consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Article 2.2, "Establishment of Boards Having Responsibilities For Land Development Regulations," Section 2.2.5, "Reserved," of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

2.2.5 ~~Reserved~~ Public Art Advisory Board

(A) **Creation.** The Public Art Advisory Board is established via Ordinance No. 77-04 for the purpose of advising and making recommendations to the City Commission with respect to public art policy and related issues the selection, construction, placement and/or funding of public art in/on City right-of-way, City owned property or private property where an agreement, acceptable to the City, has been executed regarding the art and the art is clearly visible by the public.

(B) **Composition and special qualifications.**

(1) The Public Art Advisory Board shall consist of seven members.

(2) Three seats on the board must be filled with either an artist, architect, landscape architect or engineer. The appointing body shall endeavor to appoint as many disciplines as possible to the board. Lay persons of knowledge, experience and judgment who have an interest in public art shall make up the balance of the board.

(C) **Meetings and quorum.**

- (1) The Board shall hold meetings on a regular basis once monthly, if necessary, which meetings shall be open to the public. Minutes shall be kept of all such meetings, and any special meetings, with copies of said minutes and any other reports to be transmitted to the City Commission and the City Manager.
- (2) Four members of the Board shall constitute a quorum.

(D) **Duties, powers, and responsibilities.** The following duties, powers, and responsibilities shall be carried out by the Public Art Advisory Board:

- (1) Review and make recommendations to the City Commission on constructing, placing or installing public art, as follows:
 - (a) on all CIP projects above \$200,000.00; and
 - (b) on CIP projects under \$200,000.00 at the discretion of the Board.
- (2) Render an advisory opinion to City Commission regarding the following:
 - (a) The suitability of the construction project as a location for works of art;
 - (b) The nature of the works of art which are most appropriate for the construction project;
 - (c) The best method for securing the recommended works of art.
- (3) Review and make recommendations to the City Commission regarding the funding or placing of public art on private property, where such art is clearly visible by the public and the City has obtained an agreement for the funding or placement of such art with the property owner.
- (4) Make recommendations to the Historic Preservation Board regarding the installation of murals on property located within a historic district or on any individually designated site listed on the Local Register of Historic Places.
- (5) Act as a regulatory body on all requests for the installation of murals on property not located within a historic district or on any individually designated site listed on the Local Register of Historic Places.
- (6) Apply the guidelines and criteria in Section 8.5 for making recommendations or decisions on the installation of public art, whether as part of a public or private project.

Section 3. That Article 2.4, “General Procedures”, Section 2.4.3, “Submission Requirements”, of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(A) – (F) remain the same

(G) **Architectural elevations.** The submission for architectural review by the Site Plan Review and Appearance Board or Historic Preservation Board, as appropriate, shall consist of the following:

- (1) A sketch plan showing existing conditions if the architectural review is not associated with an application ~~which~~ that requires site plan or preliminary plat review, otherwise, the site plan or plat shall accompany the submission.
- (2) All drawings shall be drawn to scale (architectural scale is permitted) and dimensioned.
- (3) A drawing showing ~~four~~ all elevations (east, west, north, south) of proposed structures or of the elevation(s) ~~which~~ that is being modified when an existing structure is involved.
 - a. ~~The~~ Each elevation drawing shall show all ~~the~~ architectural features of the structure and include the manner in which air conditioning, ventilation systems, and similar items are to be treated and screened.
 - b. Exterior colors and the type of exterior surfaces, including roofs, shall be ~~described~~ identified.
 - c. Murals shall not be included as part of any proposed changes to elevations. A separate mural application and review process is required.
- (3) A roof plan ~~which~~ showing the location of equipment and features located thereon.
- (4) Color and material samples.
- (6) Additional detailed drawings and/or supportive documents may be necessary to meet the requirements or demonstrate compliance with applicable sections of this Code.

(H) – (M) remain the same

Section 4. That Article 2.4, “General Procedures”, Section 2.4.4, “General Procedures pertaining to approval of land use and development applications”, (E), “Expiration of Approvals,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(E) Expiration of Approvals

(1)– (6) remain the same

(7) **Murals.** Mural permits shall be valid for a period of 12 months from the approval date. The installation of an approved mural shall be completed and inspected no later than 12 months from the approval date.

Section 5. That Article 2.4, “General Procedures”, Section 2.4.5, “Procedures for obtaining development approvals”, of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(A)– (O) shall remain in full force and effect as previously adopted

(P) Murals

- (1) **Rule.** Murals may not be erected, hung, placed, posted, painted, displayed, or maintained in the city except as authorized by the city through the issuance of a "mural permit." A mural permit is a Board Order issued by the Public Art Advisory Board or Historic Preservation Board. If a mural is appealed and acted on by the City Commission, then the mural permit is in the form of a Resolution. The Board Order or the Resolution shall contain the date of approval and vote, and include the mural as an attached exhibit.
- (2) **Required information.** A property owner or applicant shall complete and submit a Mural application and supportive documentation including a dimensioned elevation of the wall where the mural is to be located showing:
 - (a) the height and width of the wall;
 - (b) the location of any doors, windows, or architectural elements;
 - (c) depiction of the proposed artwork, including color; and
 - (d) compliance with signage and commercial message restrictions imposed by this section.
- (3) **Procedure.** Upon submission of a complete Mural application, the Public Art Advisory Board and/ or Historic Preservation Board shall review and evaluate the mural application to determine conformity with Section 8.5.3, Murals, and any applicable sections of the Florida Building Code. The Board shall act on the mural application at the next available meeting.
- (4) **Enforcement.** Enforcement of this section shall be by Title 3, Chapter 37, of the City's Code, or any other remedies as provided by law and as further stated herein.
 - (a) A mural permitted by the City prior to the adoption of this section shall remain valid, and the owner or artist is not required to re-apply for approval following of the adoption of Ordinance No. 22-20 on [date].
 - (b) In the event that a mural is erected without permit, the applicant will be charged three times the application fee.
 - (c) In the event of a violation of the terms of this section, the City may employ all penalties and remedies set forth in Title 3, Chapter 37, "Delray Beach Code Enforcement," and in addition, may rescind any mural permits at the property found to be in violation. This provision is supplemental to all other remedies and penalties provided by law. If a permittee fails to timely remove any mural on a property found to be in violation within 30 days of the decision being made final, the city may enter onto the property and remove any mural on the property, and may assess costs of such removal on the permittee.

Section 5. That Article 8.5, “Public Arts Program”, Section 8.5.2, “Public Art Advisory Board”, of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Sec. 8.5.2 – Public Art ~~Advisory Board~~ Criteria

~~(A) The Public Art Advisory Board is hereby established as an advisory body to the City Commission pursuant to the provisions set forth herein and shall render an advisory opinion to City Commission regarding, but not limited to, the following:~~

- ~~(1) The suitability of the construction project as a location for works of art;~~
- ~~(2) The nature of the works of art which are most appropriate for the construction project; and~~
- ~~(3) The best method for securing the recommended works of art.~~

~~(B)~~ (A) The Advisory Board, when making its recommendation, shall consider the following guidelines are to be utilized when making a recommendation or acting on a request for the installation of public art, whether located on private or public property:

- (1) Whether the proposed public art conforms to the definition of public art;
- (2) Whether the proposed public art is compatible with the neighborhood and not injurious to the neighborhood or otherwise detrimental to the public welfare;
- (3) Whether the proposed public art presents a safety hazard to the public;
- (4) Whether the proposed public art is of exceptional quality and enduring value;
- (5) Whether the proposed public art serves to further the City's goal of promoting cultural diversity;
- (6) Whether the proposed public art is appropriate to the site;
- (7) Whether the proposed public art should be installed at the proposed location on a site or at a different location;
- (8) Whether the proposed public art requires extraordinary maintenance, such as any special servicing due to periodic adjustment, repairing, or repair or replacement of moving parts.
- (9) Whether the proposed public art conforms with all other applicable aspects of the LDRs.

~~(C) The Public Art Advisory Board shall consist of seven members. Three seats on the board must be filled with either an artist, architect, landscape architect or engineer. The appointing body shall endeavor to appoint as many disciplines as possible to the board. Lay persons of knowledge, experience and judgment who have an interest in public art shall make up the balance of the board. The City Commission shall appoint all members of the Public Art Advisory Board.~~

~~(D) The members of the Public Art Advisory Board shall serve for terms of two years, except that the members of the first board to serve shall be appointed so that three members shall serve one-year terms and four members shall serve two-year terms. It is further provided that no member may serve more than two successive terms on the Public Art Advisory Board.~~

- ~~(E) The Public Art Advisory Board shall make recommendations to the City Commission regarding constructing, placing or installing public art into CIP projects as well as making recommendations to the City Commission for the funding or placing of public art on private property, where such art is clearly visible by the public and the City has obtained an agreement for the funding or placement of such art with the property owner.~~
- ~~(F) The Public Art Advisory Board shall be organized and shall operate as follows:~~
- ~~(1) The Public Art Advisory Board shall elect a Chairperson and Vice Chairperson to preside at its meetings and any other officers the board may deem necessary.~~
 - ~~(2) The Public Art Advisory Board shall hold meetings on a regular basis at least once monthly, if necessary, which meetings shall be open to the public. Minutes shall be kept of all such meetings, and any special meetings, with copies of said minutes and any other reports to be transmitted to the City Commission and the City Manager.~~
 - ~~(3) The Public Art Advisory Board shall have technical and logistical support provided as designated by the City Manager.~~
 - ~~(4) The Public Art Advisory Board shall review and make recommendations on all CIP projects, above \$200,000.00, (it may review, in its discretion, CIP projects under \$200,000.00), to the City Commission.~~
 - ~~(5) The Public Art Advisory Board shall be subject to the provisions of Chapter 32, "Departments, Boards and Commissions", of the Code of Ordinances and Article 2.2, "Establishment of Boards Having Responsibilities for Land Development Regulations", of the Land Development Regulations of the of the Code of Ordinances of the City of Delray Beach, except as provided in Section 8.5.~~

Section 6. That Article 8.5, "Public Arts Program", Section 8.5.3, "Murals", of the Land Development Regulations of the City of Delray Beach, Florida, be and the same, is hereby added as follows:

Sec. 8.5.3. – Murals.

(A) Location.

- (1) Murals may be proposed on a façade of any building or structure on a property that is not located in a historic district or individually designated on the Local Register of Historic Places but that:
 - (a) faces a railroad right-of-way;
 - (b) faces Interstate 95;
 - (c) is located within the Central Business District (CBD);
 - (d) is on property zoned Community Facilities (CF); or
 - (e) is located within the Osceola Park Redevelopment Plan Update area.
- (2) Murals may be proposed on properties located in a historic district or that are individually designated on the Local Register of Historic Places that have commercial use but only on accessory structures such as perimeter site walls and dumpster enclosures, but shall not be located on facades facing rights-of-way.

- (B) **Design and installation.** Each mural shall be designed and installed with techniques and/or materials that do not permanently damage the facade of the building. Murals are also subject to compliance with the applicable requirements of the Florida Building Code any other applicable local, state, or federal regulations.
- (1) Properties located in a historic district or that are individually designated on the Local Register of Historic Places must also comply with the Delray Historic Preservation Design Guidelines and Secretary of the Interior's Standards for Rehabilitation.
 - (2) For properties that are designated on the National Register of Historic Places, the property owner shall also confer with the State of Florida, Division of Historical Resources to obtain guidance regarding a proposed mural.
- (C) **Placement and Design requirements.** A mural may only be placed on the facade of a building, site perimeter walls or fences, or on accessory structures for properties not located in a historic district or that are not individually designated on the Local Register of Historic Places. All murals must also meet the following requirements:
- (1) **Coverage, Size, and Scale.** Murals shall be proportionate in size and scale to the building façade. A mural may cover 100 percent of the wall, provided it does not paint over windows.
 - (2) **Façade Features.** Murals shall be positioned on the façade in a manner that respects architectural features. Murals shall not cover windows or mask architectural details in a manner that detracts from the architecture of the building.
 - (3) **One mural per facade.** Each facade of a building shall have only one mural. A consistent image or theme may continue across contiguous walls; however, each facade included in the mural shall require a separate mural permit.
 - (4) **Mural text size.** The mural shall be predominantly pictorial, with text limited to no more than 5 percent of the proposed mural size.
 - (5) **Signage and Commercial Messaging.** Signage and commercial messaging in murals are regulated in accordance with Section 4.6.7.
 - (6) **Illumination.** Murals may be illuminated only by indirect lighting. Any proposed illumination shall be accompanied by a photometric plan as set forth in Section 2.4.3(B)(17) that demonstrates compliance with Section 4.6.8. Illumination shall not continue after 11:00 pm. Internal illumination, blinking lights, and flashing lights are prohibited.
 - (7) **Public safety.** Mural faces may not have any moving or animated parts, or any other electronic movements. Murals may not be illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists and interfere with their ability to safely operate their vehicles.

(8) **Compliance with Laws.** Murals must comply with all applicable laws, rules and regulations of the federal, state and county governments. Any proposed amendments to this section must be consistent with applicable federal, state and county laws and ordinances in effect at the time of such amendment.

Section 6. That Appendix A, “Definitions”, of the Land Development Regulations of the City of Delray Beach, Florida, be and the same, is hereby amended as follows:

PUBLIC ART. Means artwork or works of art including, but not limited to sculptures, integrated architectural or landscape architectural work, community art, digital media installations, or murals, that are; located in the public right-of-way; ~~or~~ on City owned property; ~~or~~ located on structures that are located in the public right-of-way or on City owned property; or located on private property and funded by the City.

Section 7. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

Section 8. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this ordinance.

Section 9. That this ordinance shall become effective upon approval at second reading. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

PASSED AND ADOPTED in regular session on second and final reading on this ____ day of _____, 2020.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____