



WS <u>X</u> RM <u>X</u>
Item No. <u>WS-3.D +</u> <u>Rm-7.E</u>

CITY COMMISSION MEMORANDUM 16-156
MARCH 14, 2016 AGENDA

TO: Honorable Mayor and Members of the City Commission
PREPARED BY: Christine Dalton, Community Planner/Historic Preservation Officer
SUBMITTED BY: Norton N. Bonaparte, Jr., City Manager
SUBJECT: Mural Moratorium

STRATEGIC PRIORITIES:

- ☐ Unify Downtown & the Waterfront
- ☒ Promote the City's Distinct Culture
- ☒ Update Regulatory Framework
- ☐ Redevelop and Revitalize Disadvantaged Communities

SYNOPSIS:

Staff is requesting that the City Commission discuss and consider a moratorium on murals, while the Public Art Commission works to create a comprehensive Public Art ordinance.

FISCAL/STAFFING STATEMENT:

There is no financial impact to the City in the passage of a mural moratorium ordinance. The ordinance provides an administrative process to assert and determine any vested rights claims (none of which are anticipated) in a non-judicial forum which would, of course, minimize costs in the event of a challenge.

BACKGROUND:

Since the start of 2016, City staff has been working with the Public Art Commission to create a Public Art Ordinance for the City. One element of the Public Art Ordinance will focus on creation of a mural program which will specify criteria for murals on publicly and/or privately own buildings Citywide. Since last year, several large scale mural installations have been created in the absence of a formal mural program. These murals have solicited mixed feedback from the public – some citizens are in favor of the installations, and some citizens have expressed concern. Staff would like the City Commission to consider a moratorium on murals, to allow time for the Public Art Commission to create a mural program.

The foundation of a mural program is often established in a Public Art Ordinance which establishes a board of qualified individuals to evaluate public art proposals, certain procedural matters and criteria for selection and placement, etc. An example of a strategy that resulted from experience is the fact that the City of DeLand now obtains an art easement over a wall on which murals are placed in order that the City will own the easement and can determine content, design and maintenance. The City's Public Art Program could incorporate other matters such as issues

that have been discussed in the past relative to the enhancement of the cultural arts within the City.

City staff stands ready to move forward on these important issues for the City which are aimed at enhancing the quality of life for citizens of the City, the experience enjoyed by visitors and the development of a stable and vibrant economy – including the component derived from tourism and special events.

LEGAL REVIEW:

The City Attorney's office has prepared the proposed ordinance and has no legal objection provided that immediate and bona fide efforts are directed toward the enactment of the associated land development or police power regulations. The ordinance must be presented to the Planning and Zoning Commission for a determination of consistency with the City's *Comprehensive Plan* prior to enactment. Members of the Historic Preservation Board have also expressed an interest in the regulation of murals.

RECOMMENDATION:

It is staff's recommendation that the City Commission approve the proposed mural moratorium ordinance on first reading.

SUGGESTED MOTION:

"I move to approve the first reading of Ordinance No. 4374."

Attachment: Ordinance No. 4374
Photos of Existing Murals

Ordinance No. 4374

An ordinance of the City of Sanford, Florida establishing and imposing a temporary moratorium relating to certain applications for development orders and development permits relating to real property located in the City Limits of the City of Sanford in order to allow an opportunity for the City to develop goals, objectives and policies of the City's *Comprehensive Plan* and amendments to the City's *Land Development Regulations*, as appropriate, relating to the development of design standards and related matters pertaining to murals; providing for legislative and administrative findings; providing for geographic area encompassed by the moratorium; providing for development which is subject to moratorium; providing for possible extension of moratorium; providing for an administrative remedy to assert vested rights claims; providing for a savings provision; providing for non-codification as well as the correction of scrivener's errors; providing for conflicts; providing for severability and providing for an effective date.

Be it enacted by the People of the City of Sanford:

Section 1. Legislative And Administrative Findings.

(a). The City of Sanford has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

(b). Murals can be an integral part of the cultural expression in the City of Sanford. The placement of murals within the City, however, without an adequate regulatory context being in place will result in aesthetic harm to the City. Murals created by artists of diverse cultural traditions and backgrounds may, however, be of aesthetic value to the City if placed within the City in accordance with a sound regulatory scheme. The regulation of murals is a complex subject matter including issues relating to First Amendment protections such as time, place and manner regulations as well as the appropriate and most beneficial locations and contexts for the placement of murals within the City. The

City desires to aid artists, property owners and others in understanding issues surrounding the creation of a mural and to apprise parties involved in mural projects. And, the City desires to take adequate time to develop, enact and implement well-conceived and carefully drafted set of land development regulations relating to murals in a timely manner. The City has, however, only recently established a Public Art Commission which Commission has just commenced its activities. Thus, the City is without any regulations that are necessary to appropriately regulate murals within the City in such manner as would be beneficial to the public health, safety, morals and welfare. The regulation of outdoor art murals as signage is a recent phenomenon and is still in its infancy. The state of the law relative to murals has been said to be in a "convoluted status." It has been said that disputes between zoning administrators and mural owners over whether a particular mural is "art" or "signage" have become increasingly common and that these disputes are complicated, in part, because a legitimate work of art may also serve signage functions, oftentimes unintentionally. Accordingly, the issue of the regulation of "commercial speech" and the regulation constitutional protected speech must be considered.

(c). For the purposes of this Ordinance a mural is defined as any inscription, artwork, figure, wall mural, graffiti, marking or design that is marked, etched, scratched, drawn or painted on any public property or private property which is observable from the public right of way or from a public space.

Section 2: Imposition of Temporary Moratorium.

(a). All activity relating to the acceptance, review and action upon development applications of any nature relating to placement of a mural is temporarily suspended in order for the City to have the time and opportunity necessary to complete design and development standards, land use compatibility requirements, approval processes and procedures, and other planning and land use matters related to development or placement a mural within the City to include, as may be necessary and appropriate, but not to limited to, amendment of the City's *Comprehensive Plan* and *Land Development Regulations*.

(b). Based upon the legislative findings, purpose, and intent set forth herein, there is hereby imposed a temporary moratorium on all murals within the City Limits of the City.

(c). During the time that this moratorium is in effect, no applications for development approval will be accepted with regard to the placement of a mural within the City Limits of the City.

Section 3: Geographic Area Covered.

This Ordinance applies to all areas within the City Limits of the City of Sanford.

Section 4: Development Subject to Moratorium.

(a). The moratorium imposed by the provisions of the Ordinance includes, but is not limited to, the following land use applications for development approval relating to the placement or installation of a mural.

(b). If a property owner or owners asserts that a development application proposed by the property owner or owners is not subject to the moratorium imposed by the provisions of the Ordinance, the provisions of the City's *Land Development Regulations* relating to administrative interpretations shall apply.

Section 5: Duration of Moratorium.

(a). The temporary moratorium established by this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall terminate one hundred and eighty (180) days after the said effective date.

(b). No applications for development approvals subject to the moratorium will be accepted by the City until the moratorium has expired.

(c). The temporary moratorium set forth in this Ordinance shall expire prior to the termination date set forth herein if the City Commission adopts amendments to the City's *Land Development Regulations* that protect the health, safety, morals and welfare of the residents of Sanford relating to the regulation of murals.

Section 6: Time Extension of Moratorium.

The City Commission may extend the moratorium set forth in this Ordinance by enactment of an ordinance one (1) time for a period not to exceed one hundred eighty (180) days upon a legislative finding being made by the City Commission and set forth in the ordinance that the problems and planning issues giving rise to the need for the moratorium imposed by this Ordinance still exist and that reasonable progress is being made in carrying out a specific and prompt

plan of corrective action, but that additional time is needed to adequately address the land use issues facing the City.

Section 7: Administrative/Quasi-Judicial Review Procedures.

(a). The owner or owners of real property or his, her, its or their expressly authorized agent may request a determination of vested rights by paying the application fee therefor and filing a technically complete application with the City Manager or designee.

(b). The application form shall, at a minimum, contain the following information:

(1). The name and address of the applicant who shall be the owner or all owners of the subject parcel of real property or a person expressly authorized to apply on behalf of the property owner or owners.

(2). A legal description, current tax parcel identification number and survey or a sketch of the real property which is the subject of the application.

(3). The name and address of each owner of the real property.

(4). A site or development plan or plat for the real property.

(5). Identification by specific reference to any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.

(6). A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development by the placement of a mural notwithstanding the moratorium.

(7). Such other relevant information that the City Manager, or designee, may request or the applicant may desire to have initially considered.

(c). The application shall provide a sworn statement to be executed by all owners of the real property or an authorized agent that all information set forth on the application is true and correct.

(d). The City Manager, or designee, shall screen each application for a vested rights determination to determine whether the application is technically complete. The sufficiency determination shall be made within fourteen (14) calendar days after receipt of an application. If not technically complete, the application shall be promptly returned to the applicant. A technically incomplete application shall be returned to the applicant with written notification of the deficient items not provided as required by this Ordinance and the applicant shall be granted fourteen (14) additional calendar days to complete this application. If a response is not submitted to the City Manager, or designee, within the time specified the application shall be deemed abandoned.

(e). Upon the City Manager, or designee, accepting a technically complete application, for which the application fee has been submitted, the City Commission shall review the application and hold a public hearing and make a final determination within twenty-one (21) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested status. Within seven (7) calendar days after making a final determination of vested rights status, the City Commission shall provide the applicant with written notification of the determination of vested rights status. If

the City Commission determines that vested rights exist and that development may proceed, the applicant shall have the right to rely upon such written notification that the real property is vested and the determination that the real property is vested shall be final and not subject to appeal, revocation or modification. Thereupon, permits for the placement of a mural may be granted notwithstanding the moratorium established in this Ordinance.

(f). At the hearing, the applicant shall present all of its, their, his or her evidence in support of the application. The technical rules of evidence in judicial proceedings shall not be applicable, but all testimony given shall be under oath.

(g). The City Commission's decision to grant or determine vested rights status shall be final subject, however, to appeal in accordance with State law.

(h). Decisions made by the City Commission pursuant to this Ordinance may be appealed by the real property owner or owners to the Circuit Court in and for Seminole County, Florida.

Section 8. Savings.

The prior actions of the City of Sanford in terms of the matters relating to the regulation of signs or murals, as well as any and all related matters, are hereby ratified and affirmed.

Section 9. Conflicts.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

Section 10. Severability.

If any section, sentence, phrase, word, or portion of this Ordinance is

determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

Section 11. Non-Codification.

(a). The provisions of this Ordinance shall not be included and incorporated within the *Land Development Regulations* of the City of Sanford, Florida, and neither the *Land Development Code* nor the *Code of Ordinances of the City of Sanford* shall be revised to accommodate such inclusion.

(b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

Section 12. Effective Date.

This Ordinance shall take effect immediately upon passage and adoption.

Passed and adopted this ____ day of _____, 2016.

Attest:

**City Commission of the City of
Sanford, Florida, Seminole
County, Florida.**

Cynthia Porter, City Clerk

Jeff Triplett, Mayor

Approved as to form and
Legality:

William L. Colbert, Esquire
City Attorney









