



## MEMORANDUM

TO: Matthew H. Greeson, City Manager

FROM: R. Lee Brown, Lynda Bitar & Tom Lindsey

DATE: September 4, 2018

SUBJECT: Mural Task Force

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At the request of City Council, a task force was convened to provide recommendations on policy options, which may include a process to consider murals or a decision to prohibit murals in the City of Worthington. City Council may then direct staff and the Code Review Committee to draft regulations based on recommendations framed by the task force. The mural task force was created in February 2018, and starting meeting in March 2018 to discuss murals in the City of Worthington. The Mural Task Force is made up of the following: Christy Caine, Karen Wilson, Gail Caldwell, Beth Dekker, Kate LaLonde, Jon Cook, Mikel Coulter and Scott Myers.

Again, this Mural Task Force was created to help develop policy options, not recommend for or against murals in the City. The group had a lengthy discussion on the following items:

- Legal
  - First Amendment Rights
  - VARA
  - Sign & Mural Definition
  - Easement Program
- Location
  - Citywide, Historic District & Architectural Review District
  - Commercial, Industrial & Residential Areas
  - Visibility from the public right-of-way
  - Visibility from residential areas
- Size of murals
- Number of murals
- Maintenance
- Types of buildings
- Mural materials
- Timeframe

**Legal:**

The group had lengthy discussions around all the legal issues regarding First Amendment Rights. The end result is that we are not legally able to regulate the design and content of a mural if we permit murals in the City. We also discussed VARA (Visual Artists Rights Act), which deals with the artist's rights to the mural, regardless of any subsequent physical ownership of the work itself. City staff reached out to other jurisdictions throughout Ohio, Kentucky, Georgia, Indiana, Oregon, and Tennessee to name a few to see how exactly how other jurisdictions handle murals in their jurisdiction.

The majority of these jurisdictions provide a definition of a mural and a definition of a sign; this helps alleviate any confusion as it pertains to what is a sign, and what is a mural. Many jurisdictions provide a definition of a mural, and still do not permit them in their code. Several jurisdictions that have a strong mural program have exempted murals from their Code, and thus does not require approval from a City Board or Commission. There are also examples where the jurisdiction requires approval from an Architectural Review Board or Planning Commission, however these jurisdictions are not able to review the content and design, they have looked to see if the placement of a mural would harm the building it is to be placed on once installed. We looked at examples where a jurisdiction has created an Arts Commission that reviews proposals instead of going before an Architectural Review Board or Planning Commission for approval, however there is still little ability to control the content and design of a mural.

Chapter 1170 (Signs) of the Worthington Planning & Zoning Section of the Codified Ordinances defines murals as a type of sign. Chapter 1177 (Architectural District) identifies the purpose and standards for review for a Certificate of Appropriateness to determine that an application under consideration promotes, preserves and enhances the distinctive historical village character of the community. Currently, any proposed mural would need ARB approval, and approval from the Board of Zoning Appeals (BZA) for a variance to deviate from the requirement of no more than 4 colors for a sign. A variance for size would also typically be needed.

Several of the jurisdictions were able to regulate the content and design of murals as they were placed on either City, State and/or Federally owned property. I.e. Portsmouth, Ohio murals are located on the floodway that protects the City from the Ohio River.

Portland, Oregon permits murals in a very unique way compared to other jurisdictions. They have an easement program that involves the City working with the property owners to get an easement for the placement of art that is funded by the City. The City then works with their Arts Commission to facilitate artwork being placed on predetermined locations throughout the City. The City and the Arts Commission then have the ability to have more control over the design, content, location and placement on a building.

**Location:**

The group discussed murals in the following locations: permitted citywide, prohibited citywide, only in the Historic District, outside of the Historic District and outside or inside of the Architectural Review District. We also discussed the location of murals in commercial, industrial and residential areas of the City. The group felt that if murals are to be permitted that they should not be permitted in residential districts. There was also a lengthy discussion on the

visibility of a mural from a residential area as a discussion item that would need to be further explored. The industrial area seemed to be the area of the City that the group had little concerns over the placement of a mural, however they did feel that rules and regulations would need to be crafted to move things forward.

The Historic District consumed the majority of our discussion as it pertains to the placement of a mural on any existing structure in the District. The group had a lengthy discussion related to a mural that would be visible from the public right-of-way of High Street, New England Avenue, Dublin-Granville Road (SR-161) and the Village Green Drives. Some members felt that murals at New England Avenue and High Street would possibly change the character of the community by drawing attention away from the architecture of Old Worthington and to the murals. Several of the jurisdictions that we looked at did not permit murals to be visible from key roadways in their community, while permitting them to be visible from side streets and other roadways. The group had a lengthy discussion related to possible mural locations in Old Worthington, more specifically in the Central Business District (CBD) and what factors might need to be addressed if murals were permitted on these buildings. The group also discussed the pros and cons of murals on some of the blank walls in Worthington. However, our inability to regulate the content and design of these murals remained a significant concern. The placement of murals on certain building materials was also a major concern of many, due to the possible damage depending on how it was attached.

Several jurisdictions prohibited murals on the fronts of buildings, while permitting them on the sides and rear of buildings throughout their community. The group seemed to have a similar feel that murals should only be permitted on the sides and rear of a building. We did have a discussion on the placement of murals throughout the community that could act as a hidden treasure map in the City. The group discussed obscure locations similar to the walkway between Old Bag of Nails and the Speckled Inn Market.

#### **Size of Murals:**

The group looked at a variety of murals, from a variety of other jurisdictions. Some murals were very small in scale, while others were the entire side of a 1-3-story building. The group felt that the murals need to be appropriate in size, and in scale with the building. We also looked at murals that were hidden on the sides of buildings, only visible from a pedestrian. We had an interesting discussion related to this concept of hidden sides of buildings as it pertains to the area behind the old Worthington Hardware building, and the little walkway next to the Old Bag of Nails. The group was supportive of something in this location to enhance the pedestrians' experience as they would walk from the parking lot to High Street. We also discussed the backside of these buildings as a blank canvas for potential murals. Again, the group felt that the size of murals in relation to the scale of the building would need to be appropriate. The architectural features on the buildings would need to be protected, and everyone felt that the architectural features of a building may actually limit the overall size of a mural. The type of installation and placement of a mural would also be another limiting factor to the size and location. The Architectural Review Board typically approves smaller size signs in Old Worthington than what is permitted by Code.

**Number of Murals:**

The group had a discussion on the number of murals that would be possible throughout the City. The main focus was on Old Worthington, however we did discuss the main corridors (Dublin-Granville Road (SR-161), High Street and Wilson Bridge Road). The discussion comments seem to be valid citywide. We discussed the possibility of limiting the number of murals in Old Worthington, or in other corridors of the City to avoid an over abundance of murals distracting from the architectural beauty of the community. The thought was to possibly place a limit on the number of murals by location and/or district. We discussed the ability to legally regulate the number of murals, and the ramifications of permitting them in one location, but not another. There would need to be a further discussion around the legal ways to limit the number of murals in the City.

We discussed the Portland easement program as an option in limiting the number of murals in an area. Possibly limiting the number by corridor, and looked at limiting the size of murals as a way of not having too many murals in the City. There was also a discussion around creating a treasure map type event that could get you to all the different murals throughout Old Worthington, or citywide. We also discussed limiting the number of murals per building. The architectural features and building materials of a structure may limit the number of potential locations of murals throughout the City.

**Maintenance:**

Maintenance of a mural was extremely important to all those involved in the discussion. The discussion focused around the continued care of a mural, whether that be 1-year, or indefinitely. The group discussed scenarios related to general maintenance on how to handle graffiti on a mural. Staff discussed with the group how we handle Property Maintenance issues today, and how we handle properties that are not in compliance with approved ARB and MPC approved plans. Overall, staff felt that we would be able to address any issues with the maintenance of murals through our existing structure for enforcement. Short term and long term maintenance of these murals should be a factor that would need to be discussed as a way to maintain and preserve these murals if that is the desire of the community. We discussed that the property owner of the building on which the mural would be located would ultimately be the one responsible for the maintenance of the mural. There are scenarios from other jurisdictions where there is an Arts Commission that is publically funded that monitors and maintains the murals throughout their jurisdiction. Many of these jurisdictions have City money allocated to their program.

**Types of Buildings:**

The group had a lengthy discussion related to the placement of a mural on a variety of styles and materials of buildings. The group felt that the installation of murals on certain buildings, whether they be historical or new, should be reviewed on a case-by-case basis. There were too many variables to consider in reviewing what type of building material would be appropriate for what building. Many felt that murals should not be placed on wood buildings, however that could be depended on the type and style of the mural, and how it would be attached to the building. We discussed the vinyl shrink-wrap type of mural, painted directly on the building mural and those that are similar to a banner type mural attached to a building. The group overwhelming felt that a mural should not be affixed to any building where it could possibly

damage the building, and where it could possibly impact the architecture of the building. The focus of this discussion was really geared towards the buildings in Old Worthington, however the group did discuss the impacts on any building citywide. The group felt that brick buildings should not have murals directly painted on brick or stone, although other options might be appropriate.

**Mural Materials:**

The majority of murals that we discussed were murals that were painted directly on the buildings and walls, however there were several examples where the murals were made out of vinyl. The vinyl wall murals were similar to what COhatch used for their sign on the Kilbourne Building on High Street and Dublin-Granville Road (SR-161), and also used by Zaftig Brewing Co. on Huntley Road for their sign. Several jurisdictions had murals that were on banners, and then the banners were attached to the building. We have something similar with the banners that are installed at the McConnell Arts Center on the corner of Evening Street and Dublin-Granville Road (SR-161). The group did not really discuss a preference, however the use of the vinyl shrink-wrap that would be directly attached to a building was a concern as it pertains to the adhesive that might be used to attach it to the building. The main thought was to not damage the underlying material of the building if the mural was removed in the future.

**Timeframe:**

There was a lengthy discussion related to the length of time a mural should be permitted. We discussed everything from 1-year, 5-years to permanently in place. Several members of the group felt that there should be a rotation of murals, and that maybe a permanent mural would not be the way to go. Maintenance of these murals were a big focus related around the timeframe. We discussed the ability to permanently maintain these murals over the years. An ongoing evaluation on the value of the murals to the community over the years would be interesting to monitor. There was a discussion on requiring the building owner to fund the maintenance, and the possibility of having a bond/deposit placed on the project for future maintenance. Timeframes varied from jurisdiction to jurisdiction. Many had separate funds set aside for maintenance, and/or required the property owner to maintain the mural as part of a Property Maintenance, ARB or MPC approval associated with that jurisdiction. One scenario that was discussed focused on the limited number of mural locations identified throughout the City, and then the murals could rotate after a given time period. This would permit new artist to display their artwork for a time period.

**Next Steps:**

Again, the City is not legally permitted to regulate the content of murals and how they are to be designed. There are instances where cities have been sued on First Amendment grounds over trying to regulate the content and design of a mural. We cannot approve a mural in one location, and then deny another mural in another similar location just because it may have questionable content, or that they are not visually appealing to all. However, reasonable time, place, and manner restrictions applicable to all murals are permitted.

A change to the Planning & Zoning Code and the Worthington Design Guidelines might be the appropriate way to handle murals, rather than considering on an individual basis. Community and resident input is an extremely important part of this process.

After a public discussion, if City Council is so inclined to permit murals, they can direct staff to draft language to move things forward with certain guidelines and standards that are non-content and design related. Again, we are not legally permitted to regulate the content and design of the murals.

If City Council decides to prohibit murals, they can direct staff to draft additional language to the Planning & Zoning Code and the Worthington Design Guidelines clarifying the City's desire to not have murals.

The Mural Task Force felt that there were really only 5-options that seemed reasonable to propose to City Council as a way to move things forward. They are the following:

- Status Quo
- No Murals Permitted
- Murals Permitted
- Murals on Private Property – Easement
- Murals only on Public Property

\*See options below

**Options:**

<b>#1</b>	<b>#2</b>	<b>#3</b>	<b>#4</b>	<b>#5</b>
<b>Status Quo</b>	<b>No Murals Permitted</b>	<b>Murals Permitted</b>	<b>Murals on Private Property - Easement</b>	<b>Murals Only on Public Property</b>
Change nothing in the Code	Draft Code language to strictly prohibit murals	Draft Code language to permit murals	Create an Easement Program	
		Determine Preferred Location: <ul style="list-style-type: none"> <li>• Citywide</li> <li>• Old Worthington</li> <li>• Outside of Old Worthington</li> <li>• Outside of the Architectural Review District</li> </ul>	Determine Preferred Location: <ul style="list-style-type: none"> <li>• Citywide</li> <li>• Old Worthington</li> <li>• Outside of Old Worthington</li> <li>• Outside of the Architectural Review District</li> </ul>	Determine Preferred Location: <ul style="list-style-type: none"> <li>• Citywide</li> <li>• Old Worthington</li> <li>• Outside of Old Worthington</li> <li>• Outside of the Architectural Review District</li> </ul>
		Permitted in Commercial & Industrial Areas	Permitted in Commercial & Industrial Areas	
		Prohibited in Residential Areas	Prohibited in Residential Areas	
		Determine visibility from the public ROW: <ul style="list-style-type: none"> <li>• High Street</li> <li>• Granville Road (SR-161)</li> <li>• Village Green Drives</li> <li>• Other Roadways</li> </ul>	Determine visibility from the public ROW: <ul style="list-style-type: none"> <li>• High Street</li> <li>• Granville Road (SR-161)</li> <li>• Village Green Drives</li> <li>• Other Roadways</li> </ul>	Determine visibility from the public ROW: <ul style="list-style-type: none"> <li>• High Street</li> <li>• Granville Road (SR-161)</li> <li>• Village Green Drives</li> <li>• Other Roadways</li> </ul>
		Number of Murals	Number of Murals	Number of Murals
		Mural Material	Mural Material	Mural Material
		Type of Building	Type of Building	Type of Building
		Maintenance	Maintenance	Maintenance
		Size of Murals	Size of Murals	Size of Murals