

ORDINANCE MCO-09-2021

An Ordinance Amending Chapter 5 Entitled “Streets, Alleys, and Sidewalks” of the Municipal Code of the City of Elmhurst in Order to Establish and Regulate the Public Art Mural Program

WHEREAS, the City of Elmhurst (the “City”) is a home-rule unit of local government under Article VII, Section 6 of the 1970 Illinois Constitution and, except as limited by such Section, it may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is further authorized to adopt the amendments contained herein pursuant to its authority to regulate the use of the streets and other municipal property pursuant to Section 11-80-2 of the Illinois Municipal Code (65 ILCS 5/11-80-2) and its authority to establish local standards for the review of the exterior design of buildings and structures pursuant to Section 11-13-1 of the Illinois Municipal Code (65 ILCS 5/11-13-1); and

WHEREAS, the City’s Public Affairs and Safety Committee has recommended that the City Council establish a Public Art Mural Program, in order to regulate the placement and maintenance of murals upon property located within the City; and

WHEREAS, the corporate authorities of the City have further determined that it is desirable, necessary, beneficial for the health, safety and welfare of the community and in the public interest to amend Chapter 5 entitled “Streets, Alleys & Sidewalks” of the Elmhurst Municipal Code, in order to set forth, procedures and regulations for the establishment of the City’s Public Art Mural Program.

NOW, THEREFORE, be it ordained by the Mayor and City Council of the City of Elmhurst as follows:

Section 1: The foregoing recitals are incorporated herein as the findings of City Council of the City of Elmhurst.

Section 2: Chapter 5, entitled “Streets, Alleys, and Sidewalks,” of the Elmhurst Municipal Code, as amended, is hereby amended by addition of a new Article IV, entitled “Public Art Mural Program,” as follows:

ARTICLE IV: PUBLIC ART MURAL PROGRAM

5.89 PURPOSE.

The purpose of this Article shall be to establish a Public Art Mural Program for the City of Elmhurst, which shall be administered by the City of Elmhurst Public Arts Commission. The purpose of the Public Art Mural Program shall be to enhance the City’s aesthetic appeal, increase vitality and stimulate interest in the City by placing public artwork, in the form of murals, upon public and private property throughout the City of Elmhurst. This Article shall establish regulations, standards of review, and application procedures for the proposed placement of such murals within the City of Elmhurst.

5.90 DEFINITIONS.

For the purposes of this Article, the following terms shall have the following meanings:

Applicant– An individual artist or group of artists, a property owner or lessee, or a not-for-profit organization that submits an application for the placement of a mural on public or private property located in the City of Elmhurst.

City Property – Buildings, roadways and public right-of-ways owned by the City of Elmhurst.

Mural – A painting or work of graphic art or combination thereof, affixed to or created directly on an exterior structure or building façade, which is visible from the public right-of-way, and which does not contain any advertising symbols, slogans, or trademarks and does not directly or indirectly advertise or call attention to any business, product or service. Murals are not considered signs as defined in the City of Elmhurst Zoning Ordinance.

Permit – A written authorization required by the City to perform an action or initiate, continue, or complete a project.

Property Owner – A person or applicant, including any successors or assigns, who legally owns or leases any property for which an application is submitted for the placement of any mural, pursuant to the Public Art Mural Program.

Public Arts Commission – The City of Elmhurst commission, established by Chapter 4.05 of the Elmhurst Municipal Code, authorized to implement a citywide plan for the promotion and placement of public art and to procure and install new public artwork, such as murals, throughout the City.

Right-of-way – The area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use.

Waiver – A written instrument executed by the artist specifically and expressly setting forth and waiving the artist's rights under the Visual Artists' Rights Act of 1990 with regard to an identified work of art created by the artist.

5.91 PERMIT REQUIRED.

- (A) No person, Applicant or Property Owner shall place, construct or install a mural upon any structure, building or property located within the City without a permit. An Applicant shall submit an application in order to obtain a permit from the City to place, construct or install a mural upon any structure, building or property located within the City. An application shall be received, reviewed and approved or denied by the Public Arts Commission, and the permit issued shall be subject to the following conditions and requirements contained in this Article.
- (B) The duration of a permit shall be for maximum period of five (5) years, and the permit shall be automatically renewed for additional one (1) year periods unless the City makes a finding that the mural does not comply with the applicable City codes or any provision, condition or requirement contained in this Article.

5.92 APPLICATION PROCEDURE.

- (A) Application Submission. An Applicant prior to submitting a Public Art Mural Program application, shall, if requested by the City, meet with City Staff for an initial review of the proposed mural installation. City Staff may recommend a consultation with the City of Elmhurst Public Arts Commission prior to the submission of an application. An Applicant shall provide the following information to the City, together with a completed Public Art Mural Program application, as a condition of any permit application, in order to place or install a mural upon any building, structure or property located within the City:
 - 1. A color rendering of the proposed mural, including dimensions and a site rendering of the wall or façade upon which the mural will be painted or affixed.
 - 2. The location where the proposed mural would be installed and photographs of the site location and its immediate surroundings.
 - 3. A narrative that includes a written description of the proposed mural, the project timeline, budget and funding sources.

4. A maintenance plan that includes the proposed timeline or lifespan of the mural, information on the wall preparation, the materials and processes that will be used to install the mural, a description of the protective coating that will be applied to ensure the longevity and durability of the mural, and a statement that the necessary coating will be applied to the building or structure to preserve the integrity of the building, structure and mural.
5. A list of the persons and/or organizations involved in the installment of the mural.
6. A resume or biography for each artist involved in the design of the mural and a list of examples of previous work that includes that location, budget, year completed, past history of execution, and the description of the artist's role in the project (e.g. lead, collaborator, assistant).
7. A signed agreement from the artist and the property owner agreeing to the Maintenance and Removal of Artwork Agreement ("Maintenance Agreement") provided by the City of Elmhurst and a signed waiver of rights under the Federal Visual Artists' Rights Act ("VARA").

(B) Application Review. Upon the receipt of a completed Public Art Mural Program application, and all documentation and information required by this section, the Public Arts Commission shall hold a public meeting at which the Applicant shall make an official presentation for the placement or installation of a mural, pursuant to the Public Art Mural Program. The criteria that shall be considered by the Public Arts Commission in determining whether to recommend an application for approval shall include, but not limited to, the following:

1. Artist Quality: strength of the artist's concept and demonstrated craftsmanship.
2. Context: contemporary relevance, including but not limited to community connection, architectural, geographical, socio-cultural and historical.
3. Feasibility: budget, timeline, experience, etc.
4. Originality: the mural must be unique, and not a replication or reproduction of others' work.
5. Permanence: will be installed in a manner to meet the proposed lifespan of mural, resistance to vandalism and weather, maintenance plan.
6. Public Input: Evidence of public support is encouraged.

7. Scale: appropriateness of scale to the surrounding neighborhood and structure.
8. Signage: The proposed mural shall not include commercial content and is not a sign as defined in the Elmhurst Zoning Ordinance.
9. Suitability: appropriateness to surrounding neighborhood, especially how it serves to activate or enhance public space.
10. Technical proficiency: technical skills and artistic experience.

(C) Application Recommendation. For each application submitted and considered pursuant to the Public Art Mural Program, the Public Arts Commission shall, within sixty (60) days of the close of the public meeting at which the application was presented, report its findings and recommendation to the Elmhurst City Staff. The Public Arts Commission shall have the authority to approve the mural and based upon such approval, the City shall issue a permit for the installation of the mural.

5.93 MURAL REQUIREMENTS AND CONDITIONS.

(A) Guidelines for the Public Art Mural Program. The Guidelines for the Public Mural Art Program adopted by the Public Arts Commission shall be adhered to by all applicants and artists participating in the Public Art Mural Program. These guidelines may be amended as required by the Public Arts Commission.

(B) Mural Requirements. Every Applicant must comply with the following requirements:

1. Use media that ensures mural longevity and durability.
2. Paint on a surface and structure that is stable and ready (or will be stable and ready) for painting.
3. Use acceptable graffiti/UV coating on the finished mural that provides resistance to vandalism and weather.
4. Create a mural that is accessible to the public.
5. Provide a Maintenance Agreement signed by the property owner and VARA waiver signed by the artist. The property owner is required to maintain, repair or otherwise keep the mural installed in a condition acceptable to the City and in compliance with all codes and ordinances.
6. Mural must be viewable by the public and meet any applicable accessibility codes.

(C) Installation and Maintenance. The Property Owner shall maintain, repair, or otherwise keep the mural in a condition that is acceptable to the City and in compliance with all city codes and ordinances. If the Property Owner fails to maintain, repair or otherwise keep the mural in such

condition, then the City shall be permitted to enter upon the property in order to maintain, repair or remove the mural, as necessary, after the Property Owner receives seven (7) days' written notice. The Property Owner shall be liable for any and all costs of the repairs, maintenance or removal of the mural incurred by the City from the failure of the Property Owner to maintain, repair or otherwise keep such mural in good condition.

- (D) Removal. If the City determines that the mural represents a hazard to public health and safety or a nuisance, then in its sole discretion, the City may require the Property Owner to remove the mural at any time. If the Property Owner fails to remove the mural, then the City may remove the mural, in order to abate the public health and safety hazard or nuisance.
- (E) Advertising Prohibited. Advertising symbols, slogans, or trademarks that directly or indirectly advertise or call attention to any business, product or service shall be prohibited from inclusion on any mural within the City. Inclusion of any such advertising shall be grounds for removal of the mural by the City. This prohibition shall not include information identifying the artist, the title of the mural or the year that the mural was created. Such information may be included in the mural, but shall be limited to an area no larger than two feet by two feet in size.

5.94 INDEMNIFICATION.

An Applicant or Property Owner shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the installation or placement of any mural on any property pursuant to the Public Art Mural Program, or its employees, agents, or contractors arising out of the rights and privileges granted under this Article. An Applicant or Property Owner has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. An Applicant or Property Owner shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict.

Section 4. If any provisions or portion of this ordinance or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions or portions of this ordinance; and, to that end, all provisions and portions of this ordinance are declared to be severable.

Section 5. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 6. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

ADOPTED this ____ day of _____, 2021.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTENTION: _____

APPROVED by me this ____ day of _____, 2021.

Scott M. Levin, Mayor of the City of Elmhurst,
DuPage and Cook Counties, Illinois

ATTESTED and filed in my office,
this ____ day of _____, 2021.

Jackie Haddad-Tamer, Clerk of the City of Elmhurst,
DuPage and Cook Counties, Illinois

MAINTENANCE AND REMOVAL OF MURAL AGREEMENT

As a condition of approval of the application submitted through the Public Art Mural Program, I, _____ hereby grant, as owner of the property located at _____, Elmhurst, Illinois, ("Property") a license to the City of Elmhurst, its employees, agents and contractors to enter upon the Property in order to maintain, repair, replace or remove any mural that is damaged or in disrepair, or is not in compliance with the codes and ordinances of the City of Elmhurst.

The property owner shall be required to maintain, repair or otherwise keep the mural installed, pursuant to this Application, (the "Mural"), in a condition acceptable to the City and in compliance with all City of Elmhurst codes and ordinances. If the property owner fails to maintain, repair or otherwise keep the Mural in such condition, then the City shall be permitted to enter upon the Property in order to maintain, repair or remove the Mural, as necessary, after the property owner receives seven (7) days' written notice. The property owner shall be liable for any and all costs of the repairs, maintenance or removal of the Mural incurred by the City from the failure of the property owner to maintain, repair or otherwise keep the Mural in good condition.

The term of this Maintenance and Removal of Artwork Agreement shall remain effective as long as the Mural remains in place.

(SIGNATURE) _____
Owner

(DATE)

The artist of the Mural hereby waives all rights that may be waived under the Visual Artists' Rights Act of 1990, 17 U.S.C. Sec. 106, 106A and 113, as provided for in the waiver attached hereto as Exhibit "A" and incorporated herein.

(SIGNATURE) _____
Artist

(DATE)

Exhibit "A"

VARA Waiver of Works of Visual Art

Name of Artist: _____

Artist has read the Maintenance and Removal of Mural Agreement with which this Exhibit is associated and hereby acknowledges the accuracy of the description of the Mural described in the Public Art Mural Program application submitted to the City of Elmhurst by the applicant.

With respect to the City of Elmhurst, its officials, employees, agents, and volunteers, Artist hereby waives any right that Artist may have under the Visual Artists' Rights Act, 17 U.S.C. §§ 106, 106A, and 113, as amended ("VARA"), and any successor statutes, related to the Mural described in said Public Art Mural Program application.

Artist has read and understood the above waiver. By signing Artist's name below, Artist understands that Artist is signing this waiver and agrees to be bound by its terms.

Signature: _____

Printed Name: _____

Date: _____

COUNCIL ACTION SUMMARY

SUBJECT: **An Ordinance Amending Chapter 5 Entitled “Streets, Alleys, and Sidewalks” of the Municipal Code of the City of Elmhurst to Establish and Regulate the Public Art Mural Program**

ORIGINATOR: City Attorney

DESCRIPTION OF SUBJECT MATTER:

The Public Affairs and Safety Committee has recommended that the City Council adopt an ordinance establishing and regulating the creation, standards and procedures of the Public Art Mural Program in the City.