

Tammy Hodgman

From: Robert J. Burns
Sent: Monday, April 1, 2024 4:27 PM
To: Tammy Hodgman
Subject: FW: Wall Murals
Attachments: Bangor policy.pdf

FYI

Robert Burns, PE
Assistant Town Manager | rjburns@windhammaine.us
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From: Mark A. Bower <mbower@jensenbaird.com>
Sent: Monday, April 1, 2024 4:09 PM
To: Robert J. Burns <rjburns@windhammaine.us>
Subject: RE: Wall Murals

Hi Bob,

After looking into the Bangor approach a bit more carefully, I realized that the City's Public Arts and Monuments Policy applies to murals and artistic signs on public property, not private property. For your reference, a copy of the Bangor policy is attached. This makes sense since the City can engage in "government speech" to decide what type of artwork to put on its own property without worrying about First Amendment implications of regulating art on private property. So I don't think the Bangor policy will really help address your situation.

Therefore, a "modified Bangor approach" would be as follows:

1. Create a new definition of "murals" to go in Article 3.

MURALS

Hand-painted, hand-tiled, digitally printed, or other created images (which may contain lettering), on or affixed to the exterior wall of a building, but which do not contain any advertising copy, symbols, lettering/font, logos or other such recognized branding related to products or services provided on or in the premises or on or in an adjacent or nearby premises.

2. Create a new section in Article 7, perhaps Sec. 120-712, to exempt murals from the sign requirements:

Murals and are exempt from the restrictions of this article, provided that:

- (1) The mural will not create an unsafe condition or hazard for drivers and pedestrians; and*
- (2) The appropriate building permit has been issued, if required.*

Other content-neutral restrictions could be added to that section, if desired. Keep in mind that any regulations of signage needs to be content-neutral, so this leaves open the possibility that an individual could create a mural to be

exempt from the sign requirements even if the message contained on the mural were perceived to be offensive. Again, the Bangor approach only appears to exempt “murals and artistic signs” on public property from the sign requirements.

Let me know if you’d like to discuss further. Thanks.

-- Mark

Mark A. Bower

Attorney



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From: Robert J. Burns <rjburns@windhammaine.us>
Sent: Monday, April 1, 2024 2:05 PM
To: Mark A. Bower <mbower@jensenbaird.com>
Subject: RE: Wall Murals

Mark,

Can you call me at 756-1108 regarding this topic please?

Thanks,

Robert Burns, PE
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From: Mark A. Bower <mbower@jensenbaird.com>
Sent: Wednesday, March 20, 2024 10:12 AM
To: Robert J. Burns <rjburns@windhammaine.us>
Cc: Jon G. Rioux <jgrioux@windhammaine.us>
Subject: RE: Wall Murals

Hi Bob,

I just got your voicemail, and am resending my email from Monday in case it didn’t come through. Let me know if you’d like to chat further about what kind of approach you would prefer.

Thanks.

-- Mark

Mark A. Bower

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From: Mark A. Bower
Sent: Monday, March 18, 2024 3:10 PM
To: Robert J. Burns (rjburns@windhammaine.us) <rjburns@windhammaine.us>
Cc: Jon G. Rioux <jgrioux@windhammaine.us>
Subject: Wall Murals

Hi Bob,

To follow up our recent conversation, I looked into what Westbrook has for regulations on wall murals, which I had referred to on the phone. Here is an excerpt from one of the City of Westbrook's contract zones, which is in [§ 335.6-12\(F\)\(2\)\(o\)](#):

"Murals/painted signs.

- [1] A large picture/image (including but not limited to painted art) which is painted or affixed directly onto a vertical building wall, which contains text, logos, and/or symbols, shall be considered building-mounted signage and be limited as per the building-mounted signage section of this chapter.
- [2] A wall, facade, or surface that is used for a mural pertaining to the business on which it is located shall be counted as one sign.
- [3] However, a large picture/image (including but not limited to painted art) which is painted or affixed directly onto a vertical building wall which is devoid of advertising and does not contain text, logos and/or symbols intended to advertise or indicate the name of the premises, products or services available shall not constitute a sign."

Bangor has a similar approach, exempting "murals and artistic signs" from the code's [sign permitting requirement](#), and defining that term as: "Hand-painted, hand-tiled, digitally printed, or other created images (which may contain lettering), on or affixed to the exterior wall of a building, but which do not contain any advertising copy, symbols, lettering/font, logos or other such recognized branding related to products or services provided on or in the premises or on or in an adjacent or nearby premises." The code also includes some [performance standards for murals](#).

I think either of these approaches could work for what you are wanting to do, with the understanding that this would be a content-neutral regulation on commercial speech (i.e., advertising). That is, keep in mind that it would allow for not only a mural that says "Welcome to Windham" or similar such message, but would also allow someone to paint a political, religious, or other message on the side of a wall if they wanted to, including one that might not be as desirable as "Welcome to Windham".

Let me know if you would like some other examples or would like to discuss further. Thanks.

-- Mark

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