

RESOLUTION NO. 2022-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING CITY COUNCIL POLICY NO. 618- MURALS ON PUBLIC PROPERTY

WHEREAS, the City supports artistic and cultural activities within the City and recognizes the importance of aesthetic qualities in the daily life of residents of placing murals in public areas; and

WHEREAS, murals can become a recognized asset to the City's growth and image; and

WHEREAS, the City has several artworks and murals throughout the City in public spaces created in partnership with other public organizations and local non-profit organizations; and

WHEREAS, in recent years, murals in the community have created a great deal of interest and excitement; and

WHEREAS, any mural on public property is a controlled message of the City and thus requests should be reviewed and considered by the majority of the City Council during a regular meeting; and


WHEREAS, murals should be accessible to the public, durable to the outdoor elements, safe to the public and compatible with the City's mission statement: *"To maintain and enhance Imperial Beach as "Classic Southern California": a beach-oriented community with a safe, small town, family atmosphere, rich in natural and cultural resources."*

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The City's public spaces, buildings, and property where murals currently are installed or will be installed in the future are not intended to be forums for free expression by the public. All murals are carefully selected and controlled by the City as government speech.
2. Approve City Council Policy 618 – Murals on Public Property (attached hereto as Exhibit "A").
3. Approve the application form in substantially the form attached hereto as Exhibit "B" and authorize the City Manager, or designee, to make changes as needed to the application form to the extent that they are done to implement Policy 618.
4. City Council Policy 618 supersedes any prior informal or formal understandings related to murals in City-owned public areas.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 2nd day of November 2022, by the following vote:

AYES:	COUNCILMEMBERS:	SPRIGGS, LEYBA-GONZALEZ, FISHER, DEDINA
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	AGUIRRE



SERGE DEDINA, MAYOR

ATTEST:



JACQUELINE M. KELLY, MMIS
CITY CLERK

CITY OF IMPERIAL BEACH COUNCIL POLICY		
SUBJECT: Murals on Public Property	POLICY NUMBER: 618	PAGE 1 OF 6
ADOPTED BY: Resolution No. 2022-84	DATED: November 2, 2022	

BACKGROUND

The City of Imperial Beach supports artistic and cultural activities within the City and recognizes the aesthetic quality of daily life by placing murals in public areas, on buildings, and in parks owned by the City. Art is a fundamental element and defining characteristic of the City of Imperial Beach. The City promotes, facilitates, and encourages public art. The City also recognizes that murals can become a recognized asset to the City's growth and image. In recent years, murals in the community have created a great deal of interest and excitement.

The City prioritizes mural designs that embody important City values and messages, or reflect a City goal, value, or mission statement. There are a wide range of possible design ideas. Those interested in collaborating with the City on a mural design should explain how the design speaks to a value, goal or objective that is consistent with and reflects the values of the City's mission statement. Occasionally, the City may solicit designs with specific messages or values. As the final product will represent the City's principles on public property, through the process outlined in this policy, the City Council will make the determination on all aspects of the final design and production. The locations of any current and future murals are not intended to be a forum for free expression by the public. Murals will be displayed as an expression of the City's sentiment and authorized by a City Council resolution.

PURPOSE

Murals are an integral part of the City of Imperial Beach community and they have been more prominent recent years. The City of Imperial Beach is fortunate to have murals and other works of art throughout the City thanks to the Port of San Diego - Arts, Culture & Design Committee, and local non-profit Cultural and Arts organizations. All murals on public property are considered as messages of the City and therefore government speech.

Proposed murals on public property should stimulate the vitality and economy of the City while enhancing public spaces, buildings, and parks. The mural should be accessible to the public, durable to the outdoor elements, safe to the public and compatible with the City's mission statement: *"To maintain and enhance Imperial Beach as "Classic Southern California": a beach-oriented community with a safe, small town, family atmosphere, rich in natural and cultural resources."*

Any group or individual that wishes to paint or create a mural on public property must submit an application and obtain final approval from the City Council. Painting murals on public property without permission is illegal and punishable by law. The City of Imperial Beach does not condone any type of illegal graffiti, unapproved murals, or art, irrespective of artistic content.

POLICIES

It is the intent of this Policy to ensure all murals proposed on City buildings and facilities have been reviewed by City staff for completeness and approved by the majority of the City Council during a regularly scheduled meeting prior to any murals execution. All murals on public areas must be reviewed by a City staff committee comprised of one (1) staff member from each of the following departments: Community Development Department, Parks, Recreation and Community Services, Public Works, and the City Manager's Office. The City Manager and/or designee will compile the final application proposal for completeness and ensure it meets all the mural policies and guidelines. The artist and/or their designee/sponsor is encouraged to collaborate with City staff. Once the application is complete, the City Manager and/or designee will present to the City Council the proposal of the mural at a regularly scheduled meeting, at the earliest reasonable date. Staff members will not make a recommendation regarding the design or content of the mural and are not included in the voting process. The artist and/or their sponsor/designee will be added to the City Council agenda as interested parties and encouraged to be available during the meeting for any questions or comments. A majority of the City Council has the final decision-making authority for the proposed mural project.

Murals must meet the following criteria, which are also outlined on the application:

Mural Criteria

The City Council has the final approval of murals and any of the mural criteria and regulations listed below should be included in the application. The City Council has the sole authority to approve or waive any of the criteria and requirements listed below, however if an applicant is requesting a waiver on any of the categories below, a statement indicating the reasons for the waiver must be provided as part of a complete application.

1. Murals must be completed by an artist with prior experience, or the artist must work with another artist with prior experience. Murals should be signed and dated. Painting of the mural shall be completed by the artist, and the artist shall be the sole project lead for the volunteer artists unless otherwise approved by the City Council.
2. . As government speech on City property, the City has the sole and absolute discretion to determine if the mural proposal should be accepted. No mural can – considerably deviate from the City Council approved design.

3. The materials to paint the mural must be durable, graffiti resistant and weather resistant. All materials will be subject to prior review and approval by the City Council.
4. The mural should be an original design, and the artist shall not copy work from another artist. The theme for the mural should reflect the City's Mission Statement. No branded or copyrighted products, services, etc. should be depicted.
5. Murals shall not serve as an advertisement sign in violation of Imperial Beach Municipal Code Chapter 19.52 - Signs. Logos (with the exception of City owned logos and seals), advertising, signage, and other branding are prohibited.
6. Mural approval does not warrant or guarantee that, after installation, the mural will be preserved or remain intact for the expected life span of the mural. The mural should have a weatherproof and vandalism-resistant coating. The artist is required to enter into an agreement regarding maintenance, preservation, and removal with the City prior to painting the mural. Approval by the City Council does not constitute an indication or promise of any conservation or restoration funds from the City.
7. If vandalism/graffiti to the mural occurs, it is the responsibility of the artist to remove graffiti within 48 hours after notification to the artist or representative of the artist. If the graffiti is not removed and the mural is not repaired by the artist or his/her representative, the City can either remove the mural entirely and/or remove the graffiti vandalism using the City's standard removal techniques/materials, however there is no guarantee that the mural would appear as originally designed depending on the damage.
8. The standard display timeline for murals could be up to five (5) years. Because the lifespan of the mural is not indefinite, the mural is considered "temporary." However, the City will work with the artist to increase the lifespan of the art when feasible and desired by the City. The City will evaluate each mural's eligibility for replacement, removal, or repairs after five (5) years or sooner, depending on the condition of the mural. The City Council will make the final determination on each mural's status, and the City can remove the mural at any time as discussed further below.
9. It is the responsibility of the artist to create and maintain the mural. The City assumes that the mural will be kept in good repair with periodic maintenance to be performed by the artist and/or designee as needed. By submitting the application, the artist and/or designee agree that should the mural be defaced and/or not repaired, maintained,

preserved and/or conserved to the satisfaction of the City, the City in its sole discretion, has the authority to repair, maintain, preserve, and/or conserve the mural, or alternatively, the authority to remove or alter the mural.

10. The application for a mural will be considered by the City Council at a regularly scheduled meeting with notice of the meeting provided at least 72-hours in advance of the meeting. Presentation of the project provides an opportunity for the City Council to ask questions and discuss the proposed mural. The artist is highly encouraged to attend the meeting.
11. The artist is responsible for the cost and material for installing and maintaining the mural. The artist shall carry any required insurance coverage
12. If an artist would like to submit a proposal for multiple murals, then a separate application is required for each location.
13. General Liability insurance must be procured and maintained while the project is active. Insurance of the types and to the limits and confirming to requirements are as follows:
 - General Liability Coverage. The artist, organization, or sponsor shall maintain commercial general liability insurance of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed or the general aggregate limit shall be at least twice the required occurrence limit.
14. Workers' Compensation and Automobile Liability Coverage may also be required.
15. Incomplete applications will not be reviewed or considered.

Artists approved by the City Council may be required to obtain an encroachment permit prior to installation of the mural which will require indemnification, stormwater requirements, construction plan, proposed materials, and traffic control.

City Requests for Murals

1. The City may request and propose a mural at a public building, space, or park while partnering with local non-profit art and cultural organizations or local artist.
2. The City reserves the right to have priority in adding a mural in such public areas that are owned by the City.
3. City staff is required to follow the mural criteria, goals, and objectives, stated above, and present the proposal to the City Council at a regular meeting.
4. The City proposal must include the following information:

- a) Department proposing the mural (name and title of coordinated staff member of the project)
- b) Description of the mural
- c) A description of how the proposed mural aligns with the City's mission statement and criteria
- d) A description of interest/reason for installing a mural
- e) Location of the mural, with supporting renderings/drawings
- f) Date of anticipated fabrication date and project timeline
- g) Name of the artist or local non-profit organization
- h) Include at least 3 sample works from the artist
- i) Budget and Funding
- j) Include any additional information that support this policy and are included in the mural criteria, goals, and objectives

Removal Guidelines

Any mural shall be eligible for removal or may be considered for review toward removal, if one or more of the following conditions apply:

1. The condition or security of the mural cannot be reasonably guaranteed.
2. The mural requires excessive maintenance or has faults of design, material or workmanship, and repair or remedy is impractical or unfeasible.
3. The mural has been damaged or has deteriorated, and repair or remedy is impractical or unfeasible.
4. The mural condition poses a threat to public safety.
5. The mural is proved to be inauthentic or in violation of existing copyright laws. Murals should not contain material that is protected under copyright law unless written permission is obtained. This includes permission to use photos of people, all copyrighted material and text, and images of artwork. Allow ample time to acquire these permissions.
6. The mural has exceeded its expected lifespan.
7. No suitable site is available for relocation or exhibition, or significant changes in the use, character, or design of the site have occurred which affect the integrity of the mural.
8. Changes to the site have significantly limited or prevented the public's access to the mural.
9. The site where the mural is located is undergoing privatization or reconstruction.
10. A majority of the City Council votes to approve its removal at any time for any reason.

Murals may be reviewed for removal at any time at the initiative of City staff members or a member of the City Council. Review also may be initiated by the artist. The artist may also request removal.

**City of Imperial Beach
Murals and Policy Guidelines
Application Process**

Thank you for your interest in adding a mural on City's public spaces, buildings, and areas. In an effort to properly review your request and proposed project, please respond to the questions below as detailed as possible:

- Attach any supplemental or support materials to this form.
- If you do not have enough space in the form below to answer questions, please attach a separate page with application question number and your additional text.
- A separate application is needed for each mural per location proposed.
- Incomplete applications will not be reviewed.
- Please be sure to provide answers to all questions below. No fields may be left blank or application will be considered incomplete.
- Artists are required to submit at least 3 photos or videos of their past work.
- After submission of the application, the City will notify you within 30 working days that your submission is complete and is under review or that it is incomplete and must be modified before it will be reviewed. The review process may exceed 60 working days, depending on City Council meeting availability. City staff will conduct a preliminary review for application completeness before the proposal is presented to the City Council for a final decision.
- No funds will be made available for travel, lodging, storage, or materials. An artist may request in-kind City contribution of City staff time (e.g., visit an area, install signage, move minor equipment), and use of equipment that the City already owns (e.g., a lift). The City will not rent or purchase equipment in support of the mural. Depending on the site, artist may need to rent a lift or scaffolding.
- The project must commence within 6 months of the City Council approving the proposal and completed within 1 year after the City Council approves the project.

City of Imperial Beach Mural Application

Before completing the application, please review City Council Policy number 618 entirely.

Name of Applicant/Sponsor:

Telephone Number: _____ **Email:** _____

Mailing Address:

1. Full Name of Artist (or Artist team/sponsor):

2. Title of Mural Artwork:

3. A description of how the proposed mural aligns with the City's mission statement and criteria:

4. Provide a description of interest/reason in installing a mural in the City of Imperial Beach:

5. Date of anticipated fabrication date and project timeline:

6. Project Manager – person who will manage all aspects of project installation and will be main contact for the City of Imperial Beach through the installation process (name, address, email, phone). This could be the artist sponsor:

7. Proposed Location(s) of Work (be as specific as possible, including address if available):

8. Type of Mural (Check all that apply) or provide additional information:

- Mural painted on exterior building or wall
- Mural consisting of tile or other material affixed to exterior building or wall
- Mural painted on interior building or wall
- Mural consisting of tile or other material affixed to interior building or wall

9. Proposed mural dimensions:

Width	Height	Total Area	Dept of mural from plane of wall	Overall mural heigh above grade
Ft.	Ft.	Sq. Ft.	In.	Ft.

10. Color rendering of proposed mural:

11. Provide a site plan of the location (may attach photos, maps or renderings):

12. Budget and Funding (please attach your own form for budget information. Budget must be attached for application to be considered complete):

13. Information on wall preparation, material, and process, protective coating, and maintenance plan:

14. Include and describe at least 3 images/video in a USB file of Artist past work.

15. Provide 3 references (name, phone, address, email):

***Please include a copy of valid certificate of insurance with the property limit amounts as stated in the Policy.**

RESPONSIBILITY STATEMENT & WAIVER

I, _____ (Name) (hereinafter "Artist") have prepared designs of the artwork entitled _____ (Title of the mural) and more particularly described as (description of mural):

hereinafter referred to as "Artwork" and located at (location/address) _____ in the City of Imperial Beach, State of California, and agree that I've read and understand all the mural criteria, goals and objectives. I understand that submitting an application for consideration does not guarantee a final approval, and that the City has the right to accept or reject this application in its sole and absolute discretion.

The above-described Artwork may be considered to be a "work of visual art" and subject to the provisions of the artist's rights of attribution and integrity as set out in the Visual

Artists Rights Act, 17 U.S.C §§106A and 113(d) (“VARA”), and a “work of fine art” subject to the provisions of the California Art Preservation Act, Cal. Civil Code §§987 and 989 (“CAPA”). I am an author of the Artwork described herein, and am authorized to waive the rights conferred by VARA and CAPA, and any rights arising under United States federal or state law, or under laws of another country, that convey rights of the same nature as those conveyed under VARA and CAPA that are herein waived, as against the City of Imperial Beach (City) and its agents, and grant the City a license to reproduce the Artwork as specified below.

1.0 Alterations, Modification or Removal of Artwork. *The Artist acknowledges and understands that the City has the right to remove or otherwise alter or modify the Artwork in its sole discretion. The Artist acknowledges and understands that the installation of the Artwork may subject the Artwork to destruction, distortion, mutilation, or other modification due to the acts of third parties.*

1.0.1 Limited VARA Waiver. *In consideration of the covenants and conditions in this waiver, and except as otherwise provided for in this waiver, the Artist agrees to waive any right that the Artist may have under VARA to prevent the removal of the Artwork, or the destruction, distortion, mutilation, or other modification of the Artwork which arises from, is connected with, or is caused or claimed to be caused by the removal, repair, conservation, maintenance of the Artwork by the City or its elected officials, officers, employees, agents, or representatives, or by the presence of the Artwork at the site. The Artist’s VARA rights under this waiver shall cease with the Artist’s death and do not extend to the Artist’s heirs, successors or assigns.*

1.0.2 California Civil Code Section 987 Waiver. *In consideration of the covenants and conditions in this waiver, the Artist waives any rights which the Artist or the Artist’s heirs, beneficiaries, devisees, or personal representatives may have under CAPA to prevent the removal, defacement, mutilation, alteration, or destruction of the Artwork.*

1.1 Conflict. *This clause is intended to replace and substitute for the rights of the Artist under VARA and CAPA to the extent that any portion of this waiver is in direct conflict with those rights. The parties acknowledge that this waiver supersedes those laws to the extent that this waiver is in direct conflict therewith.*

1.2 City’s License to Reproduce. *In consideration of the placement of the Artwork on City property, the Artist does hereby grant a non-exclusive, irrevocable, royalty-free copyright license to the City, and to other parties duly authorized by the City, to reproduce the Artwork in any dimension for all standard City educational, public relations, tourism and arts promotional purposes or digital reproductions of the Artwork, and displaying, images to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities.*

1.3 Artist's Representations and Warranties. *The Artist warrants and represents to the City as follows: that the Artist has good and complete rights, title and interest in and to the copyright in the Artwork or is otherwise entitled to license the copyright or holds a copyright license which would allow for the grant of a sub-license for the copyright pursuant to the terms of this waiver and that the ownership of this copyright is not subject to any undisclosed liens, charges, licenses or other encumbrances; and that the mural and/or the granting of this waiver does not and will not infringe any third party's copyrights or other intellectual property rights.*

HEREBY CERTIFY I am the record Artist of the Artwork and that I have read all the license and waiver, this

(Day) _____ day of _____ (month), _____ (year).

By: _____ (Print full name)

Signature: _____

Notwithstanding anything in this policy or guidelines, the City may act at any time to protect the health and safety of the public in the event of an emergency and such action may result in the damage, destruction, or removal of a mural.

Other Considerations

This policy applies to any existing and future murals on public property and supersedes any written or verbal agreements or understandings.