

ORDINANCE NO. _____, 2019 SERIES

AN ORDINANCE REPEALING CITY OF FRANKFORT CODE OF ORDINANCES SECTION 101.01 REGARDING A TEMPORARY MORATORIUM ON MURALS AND CREATING A NEW CHAPTER 101 OF THE CITY OF FRANKFORT CODE OF ORDINANCES RELATING TO HISTORIC DISTRICT MURAL GUIDELINES.

WHEREAS, the Board of Commissioners of the City of Frankfort (“City”) wishes to adopt and create Chapter 101 of the City of Frankfort Code of Ordinances to add language relating to mural guidelines; and

WHEREAS, the City has recently approved a Downtown Master Plan which supports “integrating public art elements that infuse the character of Frankfort into its streetscape”; and

WHEREAS, the City contains locally and nationally significant resources eligible for and listed on the National Register of Historic Places (NRHP), both individually and within historic districts, which are a key to our sense of place; and

WHEREAS, there is also substantial interest from property owners and local arts groups to promote the City as the “Public Art Capital of Kentucky”; and

WHEREAS, it is in the best interests of the City to adopt and create Chapter 101 of the City of Frankfort Code of Ordinances to incorporate guidelines for the placement of murals upon buildings listed on the NRHP and buildings within listed National Register Historic Districts and local Historic Districts; and

WHEREAS, adoption of these guidelines necessitates the repeal of Ordinance 101.01, Temporary Moratorium on Murals.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FRANKFORT, KENTUCKY:

Section 101.01, Temporary Moratorium on Murals, adopted on _____, is hereby REPEALED in its entirety.

Chapter 101 is hereby created to read as follows:

I. PURPOSE OF CHAPTER

The Downtown Frankfort Master Plan includes ten guiding principles. One principle is “Strengthen a Sense of Identity”. This guiding principle includes language supporting “Integrating public art elements that infuse the character of Frankfort into its streetscape...” and to provide opportunities to celebrate the City’s unique identity. Murals are an avenue to reinforce the uniqueness of Downtown Frankfort as a place that is proud of its identity and authenticity.

These guidelines are also meant to recognize that there should be deliberate consideration to placing murals on historic structures, and in particular that it may be desirable to focus the

placement of murals onto non-residential or mixed-use buildings in our Central Business District. An important tenant in supporting our Central Business District is to encourage visual interest and to encourage people to visit the district to see the architecture, public art & amenities and to patronize our local businesses. However, portions of other historic neighborhoods are largely residential, and it may be reasonable to more cautiously place public art on residential structures in those areas.

Proposed murals in the National Historic Districts shall be reviewed by the Planning & Community Development Department (“Department”) using these guidelines. Murals that do not meet the criteria shall be taken to the Architectural Review Board (“ARB”) for review/approval. Murals applied to buildings in these designated areas prior to the adoption of these guidelines shall be considered legally non-conforming to the degree to which they may not comply with these guidelines.

Property Owners within the National Historic Districts should be aware that painting a mural on their building may negatively affect their ability to apply for and receive Historic Tax Credits. In order to qualify for Historic Tax Credits, the project and the building must meet the Secretary of the Interior’s Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings.

The following guidelines for murals shall apply only to those properties located within the Central Frankfort National Historic District and the South Frankfort National Historic District (and the other directly adjacent national historic districts in the downtown area). *Please see enlarged map of the respective districts at the end of this document.*

II. DEFINITIONS FOR CHAPTER

1. Commercial Speech- an expression related solely to the economic interests of the speaker and its audience. Commercial speech does no more than propose a commercial transaction. Commercial brands, logos, names, or trademarks are considered commercial speech.
2. Mural-A painting, mosaic, fresco, or other artwork attached or applied directly to the exterior of a structure. Murals are considered public art, not billboards or signs. Murals containing logos, slogans, or advertising messages of any kind are considered signs and will be subject to regulation as such.
3. Non-Commercial Speech-an expression that relates to more than a proposition of a commercial transaction.
4. Obscenity- Content that if viewed by the average person applying contemporary community standards would find that the work taken as a whole appeals to prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law, and whether the work taken as a whole lacks serious literary, artistic, political, or scientific value. (Legal definition, *Miller v. California*)
5. Principal façade(s)- The architectural front(s) of a building, often distinguished from the other faces by the use of higher quality materials and greater elaboration of architectural or ornamental details; usually faces a street.

III. SUBMITTAL REQUIREMENTS

Prior to installing a mural, an applicant shall comply with the following requirements:

1. A completed Mural Application shall be submitted to the Department.
2. A written Consent letter from the building owner shall be submitted with the application if the applicant is not the owner.
3. A sketch or rendering that illustrates the building elevation, showing placement of existing architectural features (such as windows and doors), scale of mural, type of substrate, proposed artwork and design for the mural shall be submitted with the application. This shall include a written description of the type of mural (painted, mosaic, etc.) and details showing how the mural is affixed to the wall surface if it is not a surface applied painted mural and the application technique and paint type for surface applied murals.
4. Structural Review- The method of attachment of non-surface applied murals shall be reviewed to ensure safety of hanging murals by the City Building Inspector per the discretion of the City Building Inspector.

IV. REVIEW CRITERIA FOR ALL MURALS

1. Relationship to Historic Design Guidelines:
 - a. Murals located within Frankfort's historic zoning Districts (CB, SH, SC) shall comply with the language contained within Article 4, Article 17 and the approved Design Guidelines for those zoning districts as appropriate. ***For example, painting masonry that has not historically been painted shall not be permitted.***
 - b. Proposed Murals that do not conform to those standards shall be reviewed by the ARB in conformance with the requirements of the City of Frankfort's Zoning Ordinance and Design Guidelines.
2. Murals as Signs
 - a. If Murals include commercial speech, they shall comply with the City of Frankfort's sign regulations contained within the Zoning Ordinance. Applicants may appeal Department staff's interpretation of commercial speech to the ARB for review.
 - b. Non-commercial speech shall not be regulated as signage.
 - c. The name or signature of the mural artist may be placed on the mural but shall be limited in scale.
3. To the extent no constitutional protection is provided under federal or state law, murals shall not contain obscenity, fighting words, defamation, child pornography, perjury, blackmail, incitement to imminent lawless action, true threats of bodily injury or death, or solicitation to commit crimes.

4. Mural Location:
 - a. Murals shall not be located on the principal façade(s) of a building. Murals may be located on other facades of the building including the side, rear, or alley facing facades. Murals proposed on the principal façade of buildings shall be reviewed by the ARB.
 - b. In accordance with the CB District Design Guidelines ghost signs shall not be painted over.
 - c. Murals may be located on a building's flat roof but otherwise shall not be placed above the building's roof line or extend/project beyond eaves, parapets or the sides of a building.
5. Mural Relationship to Architectural Features:
 - a. Murals shall not cover or detract from architectural features. Eaves, cornices and other architectural features shall keep their character and remain painted to match the rest of similar architectural features on the building.
6. Non-Surface applied Murals:
 - a. A mural that has been applied to another surface to be hung on a building shall be installed in a manner which does not damage the building it is attached to. Murals hung on historic masonry structures shall attach via the mortar and not by drilling into the historic brick or attached by other method which has been demonstrated not to damage the masonry.
 - b. Murals may be applied to a separate material designed for exterior applications upon Department staff approval and secure application to the wall. It shall be demonstrated to Department staff that such materials are removable without damage to the walls at the end of their term.
7. Mural Maintenance/Removal:
 - a. Paint utilized shall be intended for exterior use and of sufficient quality which will not corrode or compromise the integrity of the material to which it is applied. *Reference materials for paint, preparation of surface and application information are available at the Planning & Community Development Department.*
 - b. The property owner shall be responsible for maintenance of the mural, including the repair of material failure (peeling paint) and promptly removing vandalism. Damaged, chipped, cracked or peeling paint shall be enforced in accordance with Section 304.2 Exterior Painting contained within the City of Frankfort Nuisance Code.
 - c. Property owners may apply for a permit to remove an approved mural or apply for consideration of a different mural to replace one approved under the authority of this regulation at any time. The removal permit is required so that planning staff may review the removal method to ensure it will not

damage the building in accordance with the City of Frankfort's Historic Design Guidelines.

8. Additional guidelines for Murals in the SC, SH and RH Zoning Districts within the National Historic Districts:

a. All Murals proposed on residential structures or on non-residential structures which directly face adjacent residential structures within the SC, SH and RH Districts shall be reviewed by the ARB.

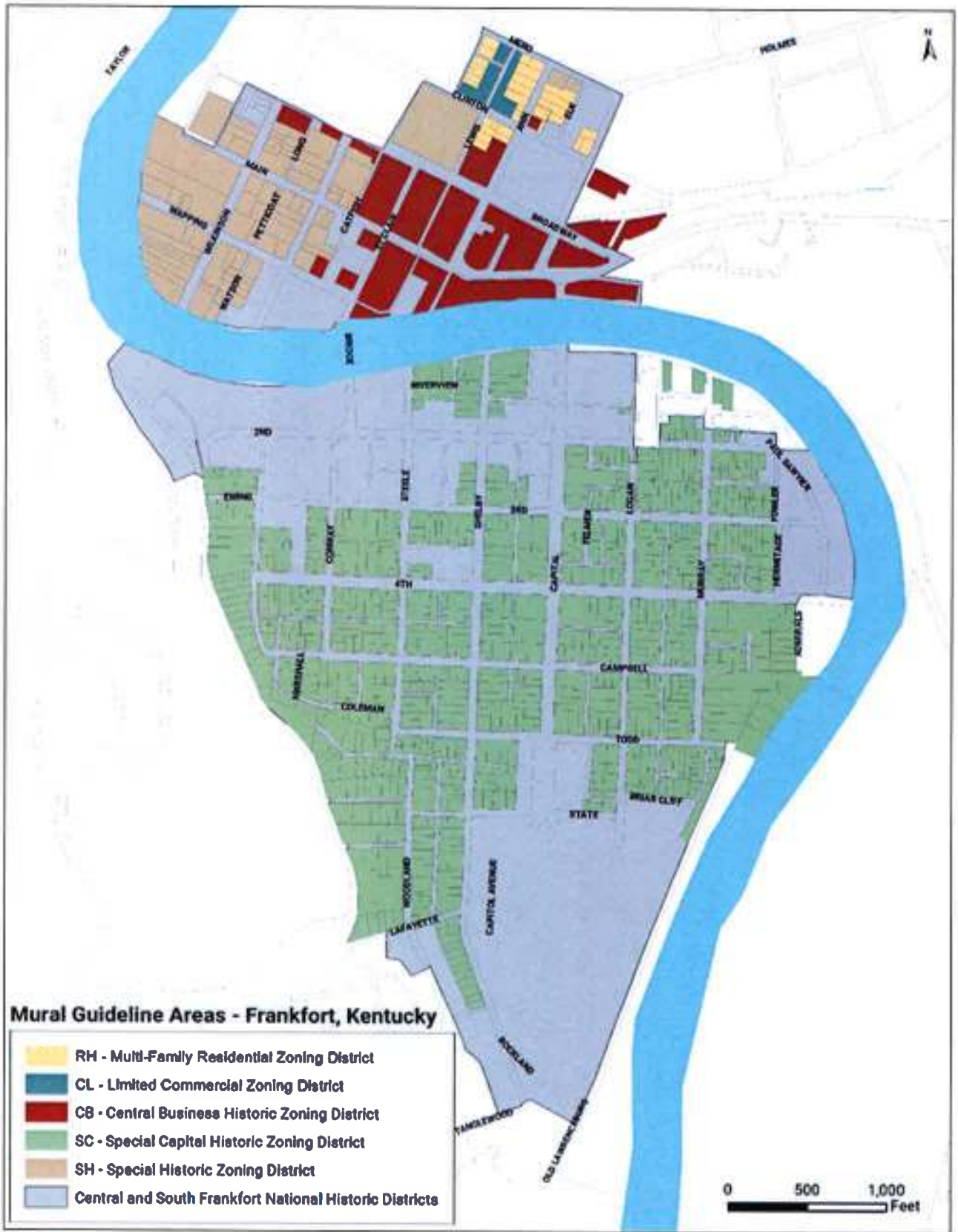
V. SCOPE OF ARB REVIEW OF PROPOSED MURALS

When the ARB reviews a proposed mural the board's review shall be limited to judgements about the scale, location, and degree to which the proposed mural damages or detracts from the architectural features of the façade of the building it is to be placed upon. The ARB shall make no judgements in regard to the content of the mural with the exception of determinations regarding commercial and non-commercial speech as referenced above and defined in these regulations.

VI. ENFORCEMENT

Violations to these guidelines or murals placed in contradiction to these guidelines shall be enforced in accordance with Article 21 of the City of Frankfort Zoning Ordinance.

Note: Other public agencies/entities that may be generally exempt from local planning regulations may still be subject to restrictions based on their own respective governing regulations.



First Reading on the _____ day of _____, 2019.

Final Adoption on the _____ day of _____, 2019.

Mayor

Attest:

City Clerk

Summary: This ordinance creates and adopts Chapter 101 of the City of Frankfort Code of Ordinances relating to historic district mural guidelines. The ordinance creates a set of guidelines and a process for the review and regulation of murals to be applied to buildings within Frankfort's National Register Historic Districts and repeals the temporary mural moratorium.

City Solicitor