

# memorandum

**DATE:** January 26, 2022  
**TO:** Rochester Hills Planning Commission  
**FROM:** Jill Bahm & Joe Tangari, Giffels Webster  
**SUBJECT:** Zoning Issue Discussion – Murals

---

## Introduction

The City of Rochester Hills has been encouraging public art over the past several years. Murals can be a great form of public art, and they can be applied on public or private property. There is an interest in providing standards by which murals, particularly in certain areas, such as the Brooklands, could be encouraged.

## Background

Murals, typically defined as visual art affixed to the outside of buildings, can be a great way to create a sense of place and generate interest in a community. Many communities across the country recognize the value of art and have created public art and/or mural programs that include a process by which art is selected, installed, and maintained. However, communities may put these programs at risk if their ordinances and policies distinguish between commercial and non-commercial speech, only permitting the latter.

Typically, the regulation of speech is addressed in a community's sign ordinance. This is true for the City of Rochester Hills. Over the years, through many legal challenges, the "best practices" approach to the regulation of speech is through standards for time, place, and manner. "Content-based" regulations that describe what is or is not allowed to be included on a sign, or impact how the sign is regulated, tend to be viewed more critically by the courts. In the most recent sign case, *Reed v the Town of Gilbert*, the US Supreme Court reinforced the importance of providing regulations that treat all speech the same way.

In challenges to mural regulations, findings and decisions seem to suggest that it is better to either allow murals or not allow them, without distinguishing between commercial and non-commercial speech. Where non-commercial message murals are permitted, it is difficult to establish how the impact of the mural is inherently better than if the mural contained a commercial message.

Developing standards for murals pertaining only to time, place, and manner results in all murals being treated equally. For example, a "time" regulation would establish that a mural is proposed to be installed for at least two years, providing a commitment on behalf of the property owner that a mural will be a positive addition to the property. A "place" restriction might ensure that a mural does not extend beyond a roofline of a building. "Manner" restrictions would require that a mural be original art, hand-painted, and be routinely maintained.

Given these regulatory challenges, many communities opt to install murals as part of a public agency program rather than code standards, typically run by DDA's or art agencies. Since the City of Rochester Hills does not have an appropriate city-specific agency to oversee such a program, the administration of the City of Rochester Hills could function in that capacity, possibly with the assistance of the Paint Creek Center for the Arts or other similar art non-profit group.

## Potential impacts and considerations

The city may wish to consider a pilot program to test out murals and refine a process by which they could be installed. Some important considerations include:

- How many murals should be part of a pilot program? Should they be placed by geographic area or across the community?
- How does the city identify artists and businesses interested in murals?
- What does a program typically cost?
- Who maintains the murals? For how long are they maintained?
- How is a design approved? Who approves and how is the public involved?

We suggest the following approaches as a starting point, which may be refined as needed:

1. City sets theme for the mural program – either a theme to be represented through artwork or a geographic location in the city.
2. City determines funding sources. Funds could be provided by the city or property owners or a combination of both. Fees for murals may be between \$7-10,000 typically – this would include materials, one or two revisions of design (with an hourly fee for additional revisions) and specific maintenance for the duration of the program (this should be a minimum of two years). A plan to address vandalism should be provided separately by the city. The program should be defined in terms of the minimum and maximum duration, as well as what happens to the mural after the minimum time period (how is it maintained and removed).
3. City creates an art mural application to include contact information, mural information (size, materials, etc.) and rules associated with the program. Rules should address the time, place and manner related to murals and include the following:
  - a. Duration of the art mural
  - b. Maximum projection from walls and height if allowed taller than a wall
  - c. Whether mural may be lit or otherwise electrified
  - d. Whether non-handmade components are permitted
  - e. Where murals are permitted (non-residential structures?)
  - f. Whether murals may be applied to a historic structure
4. City identifies artists/properties by one of the following:
  - a. Match-making:
    - i. Artists would receive an information packet as to the framework for the art program and the specifications for compensation.
    - ii. Property owners would receive an information packet that outlines what their commitment would entail.
    - iii. City would match or provide a means for a match between artists and property owners – this could be at a meeting or through an online forum.
  - b. Property-owner sourced: A property owner finds their own artists and pay them as agreed to by both parties. The parameters for maintenance and preferred materials should be the same in either case.
5. Designs submitted to the City, where they will be shared publicly for up to 14 days – this could be done online or at the subject property (or both). The city may wish to allow the public to have an

opportunity to submit comments on the proposed designs, allowing the artist and property owner the opportunity to revise the design or not.

6. It is not anticipated that permits would be required but they could be if there is anything electrical or structural in nature.
7. The mural is painted/installed and anti-graffiti coating is applied.
8. The property owner files covenant agreeing to keep the mural for a designated time period (two years may be reasonable). This protects the mural and guarantees the city and artist that the mural will be available for the minimum time period.
9. The city shares the mural locations with the community – this could be done online and/or through a combination of media alerts.