

ORDINANCE NO. 4151

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, ADOPTING CODE AMENDMENT (CA 10-002) TO AMEND THE ZONING CODE TO ADD SECTION .5809-24 TO ESTABLISH A PUBLIC ART REQUIREMENT FOR PRIVATE DEVELOPMENT AND TO ADD SECTION .5809-25 TO ESTABLISH REGULATIONS FOR ORIGINAL ARTWORK MURALS

WHEREAS, the City of Pomona has duly initiated Code Amendment (CA 10-002) to amend the Zoning Code Section .5809-24 to establish a public art requirement for private development and Section .5809-25 to establish regulations for original artwork murals;

WHEREAS, on July 26, 2010, the Cultural Arts Commission discussed the proposed Code Amendment (CA 10-002) to establish regulations for a public art requirement for private development, and regulations and a permit requirement for original artwork murals and voted to approve the Code Amendment (CA 10-002);

WHEREAS, the Downtown Pomona Specific Plan recommends that the City adopt a new public art ordinance that requires a percentage of new construction costs be spent on public art;

WHEREAS, the City desires to facilitate the development of Public Art as part of private development throughout the City;

WHEREAS, the establishment of a requirement that private development provide public art will promote the general welfare by ensuring that public art is generated in conjunction with private development that contributes to the urbanization of the community;

WHEREAS, the City desires to amend the Zoning Code to establish requirements for Original Artwork Murals citywide to promote the general welfare of the community and to protect the public health, safety, and welfare;

WHEREAS, the Planning Commission of the City of Pomona, after giving notice thereof as required by law, held a public hearing on May 25, 2011 concerning Code Amendment (CA 10-002);

WHEREAS, on May 25, 2011, the Planning Commission of the City of Pomona adopted Resolution No. 11-005 recommending City Council approval of Code Amendment (CA 10-002);

WHEREAS, the City Council of the City of Pomona, after giving notice thereof as required by law, held a public hearing on September 19, 2011 that was continued to the October 3, 2011 meeting and continued again to the November 7, 2011 meeting, concerning Code Amendment (CA 10-002); and

WHEREAS, the City Council of the City of Pomona has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF POMONA AS FOLLOWS:

SECTION 1. The City Council finds that the project is exempt per Section 15061(b)(3) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3) exempts projects where it can be seen with certainty that the activity does not have the potential to cause a significant direct effect on the environment. The adoption of Code Amendment (CA 10-002) to add section .5809-24 to establish a public art requirement for private development and to add section .5809-25 to establish regulations and permit requirements for original artwork murals does not, in itself, have the potential to cause a significant direct effect on the environment.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this ordinance adopting Code Amendment (CA 10-002), or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 3. The City Council hereby adopts Code Amendment (CA 10-002) amending the Zoning Code to add the sections listed below:

Sec. .5809-24. Public art requirement for private development

A. PURPOSE AND INTENT

The City Council finds and declares as follows:

1. New development and redevelopment within the City of Pomona increases urbanization and decreases the amount of land available for development of cultural and artistic resources for the community.
2. Development of cultural and artistic asset should be financed by those whose development and redevelopment project decreases the availability of the community's resources for those opportunities and contributes to urbanization of the City.
3. The establishment of the Art in Public Places Program will promote the general welfare by balancing the community's physical growth and revitalization and its cultural and artistic resources.
4. This section establishes a public art requirement for private development that involves the provision of new public art on private development project sites within the City.

5. The public art requirement for private development provides exemplary art pieces installed in publicly accessible and visible areas such that the art pieces will enrich and enliven the community.
6. The requirement for the provision of well conceived and executed public art as part of private development will enhance the economic vitality of the City, develop community pride and identity, and improve the general welfare and quality of life in the City.
7. Maintenance of existing public art provides a benefit to the community by preserving existing public artworks that are freely available and viewable by the general public.

B. DEFINITIONS

1. **Applicant:** A person who is overseeing or responsible for a Project that is subject to the requirements of this Section. An “Applicant” may include, but is not limited to, a developer or a property owner, or an art consultant retained by a developer or property owner.
2. **Annual Reporting:** The use of all in-lieu fees collected and deposited in the Fund, including identification of all income, expenditures, and resulting Fund Balance shall be reported annually to the City Council by the Finance Director of the City.
3. **Art in Public Places Policy and Guidelines Manual (or the Manual):** A manual approved by resolution of the City Council that contains submittal requirements; guidelines for the selection of artists, artwork and locations for public artworks; and application procedures for the provision of Public Art.
4. **Building Valuation:** The total dollar amount of all construction permits for the same development project using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO) building valuation.
5. **Budget:** The Art in Public Places Program shall have an annual budget that shall be included as a part of the City’s budget.
6. **City:** The City of Pomona.
7. **Commission:** The City of Pomona Cultural Arts Commission.
8. **Conceptual Design Plan:** The initial phase of the approval of Public Art on private development sites that includes review of the artist’s or artist design team’s qualifications, conceptual artwork design, and artwork location.
9. **Final Design Plan:** The final phase of the approval of Public Art on private development sites that involves a highly defined proposal that conforms to the concept previously considered and approved by the Cultural Arts Commission.
10. **In-lieu Contribution:** An amount equal to one percent (1%) of the Building Valuation for a Project.

11. **Institutional Project (as it pertains to this section):** A project involving a nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, museum or college or university.
12. **Project:** A project that is listed in Sub-section C, below, and that is subject to the requirements of this Section.
13. **Public Art:** Any permanent display of a work of visual art that was specifically designed to be located on a site where it would be accessible to public view on private or public property within the City of Pomona. Public Art may include, but need not be limited to, sculpture, murals, mosaics, fountains, stained glass, and earthworks.
14. **Public Art Allocation:** An amount equal to one percent (1%) of the Building Valuation for a Project.
15. **Public Art Fund:** An interest-bearing Fund of the City that is managed by the Finance Director, or designee, into which public art funds, including donated funds and in-lieu funds, are deposited.

C. PROJECTS SUBJECT TO THE PUBLIC ART REQUIREMENT

Effective January 4, 2012 the following Projects, except as provided in subdivision D below, shall be subject to the requirements of this Section:

1. New commercial, institutional, and industrial development where the total building valuation for the project is \$750,000 or more;
2. New residential development of 10 units or more, whether detached single-family residences, condominiums, apartments, townhouses, or other dwelling units;
3. Interior and exterior remodeling, repair, modifications, reconstruction, and additions to existing commercial, institutional and industrial property where the total building valuation for the project is \$750,000 or more;
4. Interior and exterior remodeling, repair, modifications, reconstruction, and additions to existing residential property of 10 units or more where the total building valuation is \$750,000 or more; and
5. Infrastructure improvements including telecommunications, natural resource development, and delivery systems valued at \$3 million or more.

Two years from the effective date (January 4, 2014), the City Council shall review the ordinance.

D. EXEMPTIONS

Notwithstanding Sub-section C, above, the following projects shall be exempt from the requirements of this Section:

1. All mechanical, plumbing and electrical system upgrades, structural or seismic upgrades, and modifications for disabled access, unless occurring in conjunction with interior and exterior remodeling, repair, modifications, reconstruction, and additions to existing commercial and industrial property as provided in Sub-section C.3 above.

2. Remodeling, repair or reconstruction of structures solely for the purpose of repairing damage to such structures caused by fire, flood, wind, earthquake, or other natural cause.
3. City capital improvement projects that include the following:
 - a. Basic road projects including, but not limited to, construction, curbing, drainage, striping and signalization;
 - b. Public utility projects;
 - c. Sewer and water main improvements;
 - d. Projects funded by a revenue source that by law cannot be used for the acquisition of works of art;
 - e. Acquisition of land; or
 - f. Public improvements that are in progress upon the adoption of this section, and where the construction budget cannot be modified to allow for the funding allocation.
4. Projects approved through Redevelopment Agency with current, valid development agreements in place (RDA to provide list of projects with addresses) prior to the effective date of the ordinance.
5. Projects that have been approved prior to the effective date of the ordinance through entitlement applications through the Planning Commission and/or City Council and all of the entitlements granted are still valid and have not expired based on allowed timing of project commencement.
6. Projects that have complete building plan check applications submitted and are in review by the building and safety division prior to the effective date of the ordinance.
7. Projects that have approved plan checks prior to the effective date of the ordinance and such plan checks are still valid and have not expired, which would allow for issuance of a building permit.
8. Projects that have been issued building permits prior to the effective date of the ordinance and such permits have not been allowed to expire.
9. Any planning division project applications deemed to meet the minimum submittal materials for planning commission entitlements, prior to the effective date of the ordinance.

E. **[RESERVED]**

F. **REQUIREMENT TO PROVIDE PUBLIC ART**

For all Projects that are subject to the requirements of this Section, the Applicant shall comply with one of the following two options:

1. **Placement of an approved Public Art on the Project site.**
 - a. The Applicant may decide to place an approved Public Art on a private development site. The Public Art, and all eligible expenditures associated with installation of the Public Art (as described in the Manual), shall be in an amount equal to or in excess of the Public Art Allocation.

- b. A Final Design Plan of the Public Art to be installed on Project site shall be approved by the Commission before issuance of a building permit for the Project.
 - c. The Public Art shall be installed on the Project site before issuance of a Certificate of Occupancy, including any temporary Certificate of Occupancy, for the Project. In cases where the Public Art cannot be installed on the Project site before issuance of a Certificate of Occupancy, the Applicant may post a cash bond to assure installation of the Public Art. The cash bond shall be in an amount equal to the Public Art Allocation or an amount based on any remaining, unexpended artwork budget as determined by the Community Development Director. The bond shall not be released until the Public Art has been completed and installed on the Project site in accordance with the approved Final Design Plan.
2. **Payment of an In-lieu Contribution.**
- a. Rather than place an approved Public Art on the Project site, the Applicant may choose to pay an In-lieu Contribution. The In-lieu Contribution shall be submitted to the City and deposited into the Public Art Fund before issuance of any building permit for the Project.
 - b. Use of In-lieu Contributions shall comply with the following:
 - i. In-lieu Contributions shall be used for the acquisition and installation of Public Art on public or private property in the City, except that up to 1/3 of the In-lieu Contribution may be used for maintenance of the proposed Public Art or an existing Public Art that is listed on the City's registry of Public Art.
 - ii. In-lieu Contributions may be aggregated with other funds contained in the Public Art Fund for the purpose of providing a single qualifying Public Art project.

Refunds of in-lieu fees are subject to the provisions of California Government Code §§ 66000-66025 (Mitigation Fee Act).

Procedures for use of In-lieu Contributions to provide Public Art shall be established in the Manual.

G. APPLICATION AND APPROVAL PROCEDURES FOR PLACEMENT OF PUBLIC ART ON PRIVATE PROPERTY

- 1. **Staff review.** If a Project is subject to the requirements of this Section, the Applicant shall submit a Conceptual Design Plan to the City's Planning Division for preliminary review by Planning staff. Planning staff shall make a determination on completeness of the Conceptual Design Plan within 30 days of submittal to the Planning Division. At a minimum, the Conceptual Design Plan shall include the following:
 - a. Artist, or artist team, biographical materials demonstrating how they meet the artist selection guidelines contained in the Manual
 - b. Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed Public Art

- c. An appraisal or other evidence of the value of the proposed Public Art, including acquisition and installation costs
 - d. Preliminary plans containing such detailed information as may be required by the Planning Division staff to adequately evaluate the location of the Public Art in relation to the proposed Project, and its compatibility with the proposed Project, including compatibility with the character of adjacent conforming developed parcels and existing neighborhood if necessary to evaluate the proposal
 - e. A narrative proposal with elevations, site plans, lines of sight studies, renderings, and other descriptive materials as deemed necessary by Planning staff to demonstrate that the Public Art will be displayed in an area open and freely available to the general public or otherwise provide public accessibility in an equivalent manner based on the characteristics of the Public Art or its placement on the Project site
 - f. Preliminary budget showing how the total value of the Public Art, and all eligible expenditures associated with installation of the Public Art (as described in the Manual), meets or exceeds the amount of the Public Art Allocation for the Project
2. **Commission / Committee Review.** Once the Conceptual Design Plan has been determined to be complete, the Conceptual Design Plan shall be considered by (i) an Advisory Committee of the Commission, or, (ii) in the event an Advisory Committee has not been formed, the Commission. The Committee or the Commission shall meet with the Applicant and/or Applicant's art consultant and artist team to review the Conceptual Design Plan and the proposed Public Art. Once the Committee or Commission has completed its review of the proposed project, it shall provide recommendations to the Applicant for the development of the Final Design Plan, pursuant to the procedures described in the Manual.
 3. **Commission's Review of Final Design Plan.** Once the Conceptual Design Plan has been reviewed by either the Advisory Committee or the Commission, the Applicant must then submit a Final Design Plan of the Public Art that incorporates recommended changes by the Committee or the Commission. The Commission shall consider the Final Design Plan, and may either approve, approve with changes or deny the Final Design Plan for the Public Art. Consideration of the Final Design Plan shall take place at a public hearing before the Commission. Notification of the public hearing shall be sent to all property owners and occupants within 400 feet of the property where the artwork will be located at least 10 days before the meeting of the Commission on the Final Design Plan for the Public Art. Detailed procedures for the approval of Public Art provided by the Applicant shall be established in the Manual.
 4. **Appeal of the Commission's Decision on the Final Design Plan.** The applicant, one or more City Council Members, or any person owning property within 400 feet of the exterior boundaries of the proposed Project site may file a written request for an appeal to the City Council within 20 days of the decision of the Commission. Written appeals shall be filed with the City Clerk. The City Clerk shall set the public hearing date and notify the applicant. The City Council will receive the original application, the Final Design Plan, any written reports and the appeal request. The City Council may affirm, reverse or modify in whole or in part any Commission decision or requirement. The decision by the City Council shall be final.

Submittal requirements and additional application procedures shall be further described in the Manual.

H. CRITERIA FOR ARTIST SELECTION, ARTWORK SELECTION AND GUIDELINES FOR PLACEMENT OF PUBLIC ART

Criteria for the selection of an artist or artist design team, selection of the location for the public artwork and criteria for approval of artwork shall be established in the Manual approved by resolution of the City Council.

I. OWNERSHIP AND MAINTENANCE OF ARTWORK

1. All Public Art placed on the site of the Applicant's Project pursuant to this Section shall be the property of either the property owner or his/her successors in interest, or when applicable, the artist.
2. The property owner shall maintain the Public Art in good condition, including protecting the artwork against physical defacement, mutilation, or alteration, and securing and maintaining fire and extended coverage insurance in an amount to be determined by the City's Risk Manager.
3. Prior to the placement of an approved Public Art on the Project site, the Applicant shall execute and record a covenant in a form approved by the City Attorney for maintenance of the Public Art.
4. Failure to maintain the Public Art as provided herein is declared to be a public nuisance and may be summarily abated, demolished or repaired by the City with the owner's consent. The City may pursue additional remedies to obtain compliance with the provisions of this Section as appropriate.
5. In addition to other remedies provided by law, in the event the property owner fails to maintain the Public Art, upon reasonable notice, the City may perform all necessary repairs or maintenance to the Public Art or secure insurance, and all costs incurred by the City shall become a lien against the property.

Sec. .5809-25. Original Artwork Murals

- A. PURPOSE AND INTENT.** The purpose of this section is to permit and encourage Original Artwork Murals (as defined below), on a content-neutral basis, that (i) are sufficiently durable and will be properly maintained; (ii) are located on appropriate places on buildings, and constitute a particular scale of the building façade; (iii) do not include any unsafe features, or would not pose any unsafe conditions to vehicular or pedestrian traffic; (iv) provide avenues for artistic expression, and (v) are assets to the community.

It is the intent of this section to establish regulations for the installation and application of Original Artwork Murals on private property.

- B. ORIGINAL ARTWORK MURAL PERMIT REQUIREMENT.** An Original Artwork Mural may be located on any privately owned building in the City provided it is first approved by permit issued by the City's Planning Division in accordance with the procedures and criteria listed in this section.

C. EXEMPTIONS. The following murals are exempt from this section:

1. Murals that are proposed as Public Art for private development as regulated by Section .5809-24 of the Pomona Zoning Code
2. Murals that are funded by In-Lieu Contributions and donations to the City's Public Art Fund and that are subject to the procedures established in the Art in Public Places Policy and Guidelines Manual

D. DEFINITIONS

Alteration: Any change to a permitted Original Artwork Mural including, but not limited to, any change in the image or images, materials, colors, or size of the mural. "Alteration" does not include: (i) naturally occurring changes to the mural caused by exposure to the elements or the passage of time; (ii) minor changes to the mural that result from the maintenance or repair of the mural, including, but not limited to, slight and unintended deviations from the original image, colors or materials.

Building Façade: That portion of any exterior elevation on the building extending from grade to top of the parapet, wall or eaves and the entire width of the building elevation.

Changing Image Mural: A mural that, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or a change of mural image or message. "Changing Image Murals" do not include otherwise static murals where illumination is turned off and back on not more than once every 24 hours.

Character-defining feature: A prominent or distinctive physical feature of a structure that contributes significantly to its historic character

Commission: The Cultural Arts Commission

Historical Structure: A locally designated historic landmark structure or structure located within the boundaries of a locally designated historic district; or single landmark building or building located within a district listed on the National Register of Historic Places

Nonconforming Mural: A mural in existence as of the effective date of this Section

Original Artwork Mural: A painting that is applied to and made an integral part of an exterior wall, or a tiled artwork applied on an exterior building wall, with the property owner's permission or consent. An "Original Artwork Mural" does not include:

1. Mechanically produced or computer-generated prints or images, including but not limited to digitally printed vinyl;
2. Murals containing electrical or mechanical components; or
3. Changing Image Murals, as defined above.

For all future references to Original Artwork Mural(s) in this section, the term "mural(s)" is used.

E. DEVELOPMENT STANDARDS. Original Artwork Murals shall comply with all of the following:

1. The mural shall remain in place without alterations for a minimum of five years from the date the mural is completed. The applicant shall certify in the permit application that the applicant agrees to maintain the mural in place for a minimum period of five years without Alterations.
2. The mural shall not extend more than six inches from the plane of the wall to which it is attached.
3. The mural shall not be applied to the principal building façade facing a public street. The principal building façade, in most cases, is distinguished from secondary building façades by its enhanced architectural treatment.

F. PROHIBITED MURALS. The following are prohibited in the City:

1. A mural that is placed on single-family residences or multiple-family residential buildings with fewer than five dwelling units.
2. A mural that is placed on historical structures, unless approved by a Major Certificate of Appropriateness (MCOA). The MCOA shall be approved by the City's Historic Preservation Commission before approval of the Original Artwork Mural Permit by the Cultural Arts Commission. The Historic Preservation Commission shall review the mural for consistency with the following:
 - a. The mural shall not obscure or cover character-defining features of the historical structure.
 - b. The mural shall not be painted over an existing historical mural.
 - c. The application or installation of a mural shall be done so that it does not result in any permanent physical damage to any historic material on the structure.
 - d. The application or installation of a mural shall be done so that it does not result in any permanent physical damage to any historic material on the structure.
3. A mural for which compensation is given or received for the display of the mural or for the right to place the mural on another's property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property.
4. A mural that contains obscene matters, as defined in Section 311 of the California Penal Code, or images that would incite immediate violence, so as to constitute "fighting words."

G. GUIDELINES FOR ORIGINAL ARTWORK MURALS

Original Artwork Murals shall comply with all of the following:

1. The Original Artwork Mural must demonstrate the highest aesthetic qualities, originality and artistic excellence.
2. The Original Artwork Mural is appropriate in scale, material, form, content and value with the immediate social and physical environment.
3. The mural shall be durable, permanent, and easily protected from vandalism and weathering. Substantial consideration shall be given to the structural and surface integrity and stability of the building facade, the permanence and durability of the mural, and the mural's resistance against weathering, theft, and vandalism.

4. The mural shall not have any unsafe features or conditions that may affect public safety; and
5. The mural shall not disrupt traffic, nor create any unsafe conditions or distractions to motorists and pedestrians.

H. APPLICATION REQUIREMENTS. An application for a mural permit shall be filed with the Planning Division and shall include the following:

1. Name of the artist(s);
2. Examples of previous work done by the artist(s) with references;
3. Description of the materials to comprise the proposed mural and manner of application;
4. Statement regarding durability of the materials considering the location and positioning of the proposed mural;
5. Plans and specifications for the proposed mural including an exact picture, graphic or other description;
6. Application fee as established by resolution of the City Council.

I. APPLICATION PROCEDURE

1. **Staff review.** The application for an Original Artwork Mural permit shall be submitted to the City's Planning Division for preliminary review by Planning staff. Planning staff shall make a determination on completeness of the application within 30 days of its submittal to the Planning Division.
2. **Advisory Committee Review.** Within 30 days of the determination that the application is complete by the Planning Division, the application shall be considered by the Advisory Committee of the Commission, as described in Section .5809-24. The Advisory Committee shall review the application and make a recommendation to the Commission on whether to approve the application. The Committee shall recommend approval of the application if all of the following findings are made:
 - a. The mural meets all of the Development Standards listed in sub-section E and is consistent with all of the Guidelines listed in Sub-section G
 - b. The artist, or artist team, is capable of completing the work in accordance with the plans and specifications
 - c. The information contained in the application regarding the durability and maintenance requirements of the mural is accurate
 - d. The proposed materials to be used and the manner of application will not require excessive maintenance and repair costs by the owner.
3. **Commission Review.** Within 45 days of the submittal of the Advisory Committee's recommendation, the Commission shall review the application at a public hearing. The scheduling of the public hearing for consideration of the application may be more than 45 days after the submittal of the Advisory Committee's recommendation with the applicant's approval. Notice of the public hearing shall be mailed to all property owners and occupants of property immediately adjacent to and directly across the street from the property where the mural is to be placed. The notice of public hearing shall be mailed not less than ten days before the date of the public hearing. The Commission shall consider the application, and may either approve,

approve with changes or deny the application, based on the findings set forth in Sub-section I.2. The Commission shall approve the application if all of the findings listed in Sub-section I.2 are made. The decision to approve or deny the permit shall be made and announced at the public hearing. In making its decision, the Commission may consider evidence of property values and the opinions of the owners and occupants of adjacent properties. Within 15 days of the approval of the Commission, the Planning Manager shall issue the mural permit.

4. **Appeal.** The applicant may file a written request for an appeal to the City Council within 20 days of the decision of the Commission. The City Council shall only review applications that have been denied by the Commission. The City Clerk shall set the public hearing date and notify the applicant. The City Council shall receive the original application, written reports and the appeal request. The City Council may affirm, reverse or modify in whole or in part any Commission decision or requirement. The City Council shall reverse the Commission's decision, and approve the original application, if all of the findings listed in Sub-section I.2 are made. The decision by the City Council shall be final.

J. PERMIT EXPIRATION AND EXTENSIONS

1. Except as provided in Subsection J.2. below, if installation of the permitted Original Artwork Mural has not taken place within 12 months of the date of issuance of the mural permit, the permit is void and no further work on the mural may be done at the site until a new permit has been approved and new fee paid.
2. An approved mural permit may be extended by the Planning Manager for an additional period of no more than 12 months upon the Planning Manager's finding that the applicant was unable to begin or continue the installation of the approved mural for reasons beyond his or her control. A request for permit extension must be in writing and must be received by the Planning Manager before the original permit's expiration date. If the approved mural has not been completed within this extended time period, the permit is void. A permit may be extended only once.

K. MAINTENANCE

1. The property owner is responsible for ensuring that a permitted Original Artwork Mural is maintained in good condition and fully repaired in the case of vandalism or accidental destruction.
2. Failure to maintain the Original Artwork Mural as provided herein is declared to be a public nuisance, and may be summarily abated or repaired by the City. The City may pursue additional remedies to obtain compliance with the provisions of this Section as appropriate.
3. In addition to other remedies provided by law, in the event the property owner fails to maintain the mural, upon reasonable notice, the City may perform all necessary repairs or maintenance to the mural or secure insurance, and all costs incurred by the City shall become a lien against the property.

L. MURAL ALTERATIONS. Alterations to an Original Artwork Mural within five years from the date of completion shall only occur pursuant to a new mural permit, approved and issued by the procedures described in Sub-section I. A new mural permit for Alterations shall only be issued under the following circumstances:

1. The building on which the mural is located is sold, or
2. The building or property is substantially remodeled or altered in a way that precludes continuance of the mural.

M. REMOVAL OF A PERMITTED MURAL

1. Removal of an Original Artwork Mural within the first five years of the date of completion shall only be approved under the following circumstances:
 - a. The building on which the mural is located is sold, or
 - b. The building or property is substantially remodeled or altered in a way that precludes continuance of the mural.
2. The removal of the mural shall be in accordance with all federal and state laws and regulations pertaining to artists' rights.
3. Removal of the permitted mural for reasons other than the circumstances described above preclude approval of a new mural permit at the site for a five-year period after the date of the original mural permit completion.
4. Before removal of the mural, the applicant or property owner must notify the Planning Division Manager with a letter stating intent to remove the mural and an explanation of the circumstances necessitating the removal. At that same time, the applicant shall also provide proof to the Planning Manager that the applicant has notified the artist or artists who created the mural of the applicant's intent to remove the mural.
5. Within 45 days of the applicant's or property owner's notification, the Planning Manager shall approve the request provided it meets at least one of the circumstances described under M.1 and that the applicant has shown sufficient proof of notification of the artist or artists who created the mural of the applicant's intent to remove the mural.
6. After the term of five years from the date of completion, an Original Artwork Mural may be removed without notification. Any associated materials that were used to secure the mural to the wall, including, but not limited to, mounting hardware, brackets, caulk, grout, adhesives and/or glues, must be removed at the time of removal of the mural, and the building wall surface must be fully restored to its original, pre-mural condition.

N. NONCONFORMING MURALS

1. Upon the effective date of this Section, the City's Planning Division shall notify those property owners with properties that feature existing murals, that the mural is deemed a "Nonconforming Mural." A mural permit may be issued for a Nonconforming

Mural, provided the Nonconforming Mural is otherwise in compliance with this section.

2. Unless a mural permit has been issued to a Nonconforming Mural, the Nonconforming Mural existing at the time of approval of this section shall be removed within six months of the date of notification by the City pursuant to subsection N that the mural is not in conformance with this section. Additional time may be granted by the Commission.
3. The expansion of a Nonconforming Mural is prohibited.

SECTION 4. The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

APPROVED AND PASSED THIS 5th DAY OF DECEMBER, 2011.

ATTEST:

CITY OF POMONA:

Marie Michel Macias, City Clerk

Elliott Rothman, Mayor

APPROVED AS TO FORM:

Arnold Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, MARIE MICHEL MACIAS, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on November 7, 2011, and was approved at second reading at a regular meeting of the City Council of the City of Pomona held on December 5, 2011, by the following vote:

AYES: COUNCILMEMBERS: Soto, Rodriguez, Carrizosa, Escobar, Atchley, Rothman
NOES: COUNCILMEMBERS: Lantz
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None

Marie Michel Macias, City Clerk