

ORDINANCE NO. 1061 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
TO ADD CHAPTER 21.51 TO THE MUNICIPAL CODE TO ALLOW ORIGINAL ART MURALS  
AND VINTAGE ART MURALS ON PRIVATE BUILDINGS

City of Paso Robles  
"Mural Ordinance"  
RZN 18-06 (P18-0050)

WHEREAS, the City of El Paso de Robles ("the City") has a reputation as a community of native beauty with distinctive architecture and historical tradition making it a tourist destination with a diverse array of industries many of which support tourism such as wineries and tasting rooms and agricultural production of almonds and olive oil;

WHEREAS, the City has an array of publicly accessible artwork throughout the City including sculpture, art galleries, and tile mosaics, which contribute to its general appeal and to its tourism industry; and

WHEREAS, General Plan Policy LU-2J: Public Art. Art in public places is an essential element of the Community's quality of life, contributing to what makes Paso Robles a special place to live, work and shop; and

WHEREAS, generally speaking, art murals are large scale paintings executed directly on a substantial permanent surface, usually a wall, and ideally incorporate the architectural setting and moreover, many murals, particularly those associated with famous muralists such as Diego Rivera, become well known cultural artifacts and tourist attraction points; and

WHEREAS, the Planning Commission and City Council held study sessions in 2018 to review the City's mural policy and determined an update was necessary to encourage original art murals on private buildings as an investment in cultural capital so as to serve the public interest by eradicating blight created by large uninteresting, blank walls that are sometimes the target of vandals, to create tourist interest points and to develop community identity; and

WHEREAS, the City's permit process for allowing a mural is intended to allow original art murals on private buildings on a content neutral basis while ensuring compliance with time, manner, and place requirements such as structural integrity and safety rules, obtaining advisory community input so as to enhance relevance of a proposed mural to the proposed location, maintenance obligations so that no financial burdens are placed on the City and the community, and placing murals in the historic core of the City where such murals will be most impactful in creating identity and sense of place; and

WHEREAS, existing murals created prior to the effective date of this Ordinance and authorized by a prior City allowed process, may apply to register a mural through the process detailed herein; and

WHEREAS; because of government speech protections, the City may allow murals on its property subject to other provisions within this Code and in fact, the City's Municipal Code allows City authorized murals as artistic non-commercial works on City property pursuant to Chapter 3.2, Visual Art in Public Places; and

WHEREAS, the U.S. Supreme Court case of *Reed v. Town of Gilbert* notwithstanding, the law still recognizes that differing levels of protection may be afforded to noncommercial and commercial speech, and accordingly, the City adds a new Chapter 21.51 to regulate original and vintage art murals on private buildings, separate and apart from commercial murals which continue to be regulated as signs in Chapter 21.19; and

WHEREAS, on August 28, 2018, the Planning Commission held a public hearing to consider at recommendation to the City Council for the Mural Ordinance. After limited public comments, the Planning Commission voted 5-1-1 to recommend the City Council adopt the ordinance and procedure policy.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does ordain as follows::

Section 1. Recitals. The above recitals are incorporated as though set forth in this section.

Section 2. Amendment. Chapter 21.51, Original Art Murals on Private Buildings, of the Paso Robles Municipal Code is hereby added to read in full as follows:

**Chapter 21.51. – ORIGINAL AND VINTAGE ART MURALS ON PRIVATE BUILDINGS**

**21.51.010 - Purpose.** The purpose of this chapter is to allow and encourage through a City registration process original art murals on private buildings on a content-neutral basis on certain terms and conditions that assure placement and maintenance of such art work serves the community's long term industry and aesthetic interests without placing financial burden on the City and/or community.

### **21.51.020 – Definitions.**

“Applicant” means the owner(s) of the building on which a mural is proposed to be rendered pursuant to this Chapter or a tenant or tenants of the building on which a mural is proposed to be rendered pursuant to this Chapter with the written consent of the owner(s) of the building.

“Alteration” means any change to the permitted Original Art Mural, including but not limited to any change in the image(s), material, colors or size of the permitted Original Art Mural but does not include: (1) naturally occurring changes caused by exposure to the elements or passage of time; or (2) minor changes which result from maintenance or repair.

“Changing Image Mural” means 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 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.

“City Art Mural Policy for Private Buildings” means an administrative policy adopted by the City Council by resolution and administered by the Community Development Director establishing requirements to implement this Chapter and adopting fees for registering Original and Vintage Art Murals on private buildings.

“Commercial Message” means any message that advertises a business conducted, services rendered, or goods produced or sold.

“Original Art Mural” means a hand-produced work of visual art which is painted or tiled by hand directly upon, or affixed directly to an exterior wall of a building that does not contain any Commercial Message. An Original Art Mural does not include: (1) non-original works of art; (2) murals containing electrical or mechanical components; or (3) Changing Image Murals.

“Vintage Art Mural” means a mural created prior to the effective date of this ordinance and which received approval through a City process.

### **21.51.030 – City Art Mural Policy for Private Buildings**

The Community Development Director is authorized to implement and administer a City Art Mural Policy for Private Buildings, as adopted by the City Council by resolution, which establishes requirements for murals on private buildings including but not limited to the following: a Neighborhood Involvement Process, design standards, height and size limitations, and safety requirements. The Policy shall also require the Applicant to advise the mural artist(s) in writing of the artist’s rights pursuant to California law and federal law, including but not limited to Cal. Civ. Code §987, the California Art Preservation Act (“CAPA”), and the Visual Artist’s Rights Act of 1990 (“VARA”) as codified within the Copyright Act of 1976, 17 U.S.C. §101, et. seq., as these acts may be amended from time to time.

### **21.51.040 – Original Art Mural on Private Building.**

A. Allowed Original Art Murals. An application that meets all of the following criteria, and which is not otherwise prohibited by this Chapter 21.51, will be allowed:

1. Submission of a complete Original Art Mural application;
2. Compliance with all of the requirements of the Original Art Mural Policy on Private Buildings Policy and all requirements of this Code; and
3. Certification that the mural will remain in place, without Alteration, for a minimum period of five years, except in limited circumstances as may be specified in an Original Mural Art on Private Buildings Policy, and further that the applicant agrees to maintain the mural in place in good condition during the life of the Original Mural Art; and
4. Location of the mural within the Uptown/Town Centre Specific Plan Area adopted by the City Council, as it may be amended from time to time; and
5. Payment of any Registration Fee required by this Chapter or the Art Mural Policy for Private Buildings.

B. Prohibited Original Art Murals. The following Original Art Murals are prohibited:

1. Murals on residential buildings with fewer than five dwelling units.

2. Murals in a public right-of-way.
3. Murals on buildings regulated by Chapter 21.50, Historic Resources, unless a Certificate of Appropriateness (section 21.50.130.E.) has been approved by the City Council.
4. Murals 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.
5. Murals which would result in a property becoming out of compliance with the provisions of Title 21, Zoning, or land use conditions of approval for the development on which the mural is to be located.

#### **21.51.050 – Establishment of Neighborhood Involvement Process for Registration**

The City Art Mural Policy for Private Buildings shall establish requirements for an applicant seeking to register an Original Art Mural with the City which shall include conducting a noticed community meeting on the mural proposal at which interested members of the public may review and comment upon it. No Original Art Mural registration shall be issued until the applicant certifies that he or she has completed the required neighborhood involvement process. This is a process requirement only and an Original Art Mural registration certificate will not be granted or denied based upon the content of the mural.

#### **21.51.060 -- Vintage Art Mural Registration**

Murals created prior to the effective date of this ordinance and which received approval through a City-approved process that offered an opportunity for public input may be registered as a Vintage Original Art Mural, subject to completing a Vintage Original Art Mural application and paying a registration fee if applicable.

#### **21.51.070 -- Art Mural Registration Fee**

The City Council may adopt a resolution authorizing a fee to register with the City an Original or Vintage Art Mural. Such fees shall not exceed the actual costs of administration of the Original and Vintage Art Mural registration process.

#### **21.51.080 -- Violations**

An unregistered mural is considered an illegal sign and will be enforced in accordance with this Code. Further, City registration of an Original Art Mural or Vintage Art Mural does not exempt the applicant and/or building owner from complying with any other applicable requirements of the City's Code.

Section 3. California Environmental Quality Act (CEQA). This ordinance is statutorily exempt under Section 15268 because City registration of art murals on private buildings is a ministerial action if the applicant meets all the requirements set forth in the ordinance. Further, this ordinance constitutes a Class 1 Categorical Exemption, because the adoption and implementation of a registration process for pre-existing art murals previously approved by the City and registration of new original art murals on private buildings constitute only the "operation, repair, maintenance ... or minor alteration of existing private ... structures...." CEQA Guidelines, Section 15301, Existing Facilities.

Section 5. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Section 6. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

INTRODUCED at a regular meeting of the City Council held on the 18th day of September 2018 and adopted by the City Council of the City of El Paso de Robles on this 2nd day of October 2018, by the following vote:

AYES: Gregory, Hamon, Reed, Strong, Martin  
NOES:  
ABSTAIN:  
ABSENT:

  
Steven W. Martin, Mayor

Attest:

  
Kristen L. Buxkemper, Deputy City Clerk