



MURAL PERMIT APPLICATION AND REVIEW PROCESS

Private Property

APPLICATION AND REVIEW PROCESS

This application is for private property murals (public art on city-owned facilities are subject to Parks and Community Services Department separate procedure and application). This application encourages the display of art murals on publicly visible or accessible areas on private property on a content-neutral basis under certain terms and conditions.

APPLICATION PROCEDURE

1. Any person, firm, corporation, or other entity desiring to place a mural on private property will need to submit an application to the Parks and Community Services Department. A mural permit application can be found on the next page.
2. The Parks and Community Services Department shall submit each completed application to the Arts Commission for review.
 - a. Applicants must attend and present at an Arts Commission meeting at the City Council chambers at least 14 days prior to the start of the mural fabrication. This meeting is to allow for the public and the Arts Commissioners to see the design, ask questions, and provide comments.
 - b. All Arts Commission agendas are posted 72 hours before the meeting and are open and available to the public. To be placed on the agenda, all mural permit applicants must contact the Arts Specialist at least 14 days before a scheduled Arts Commission meeting, which occur every first Thursday of the month at 6pm, unless otherwise posted.

MURAL REQUIREMENTS

1. No part of a mural shall exceed the height or width of the structure to which it is tiled, painted or affixed.
2. No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted or affixed.
3. No mural shall be placed over the exterior surface of any building opening, including, but not limited to, windows, doors, and vents.
4. Murals shall be placed on non-residential commercial or industrial property only.
5. Materials or paint shall be weatherproof or resistant to wear.
6. A specialized anti-graffiti coating must be applied to the mural and maintained for the life of the mural. Varnish, other coatings or finishes that are not specifically designed as graffiti abatement products as part of a graffiti removal system do not comply with this requirement.
7. No mural shall be arranged and illuminated in a manner that will produce light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.
8. The property owner is required to maintain the mural in good condition and free of vandalism. If the property owner is negligent in this regard after sufficient warning, they can be issued a 120-day order to remove the artwork at their own cost. If removal is ordered, the property owner is responsible for the proper 90-days written advance notification to the artist as applicable by the federal Visual Artists Rights Act (VARA) and the California Art Preservation Act (CAPA) laws (see attached documents for reference).
9. Mural permits are valid for one image at a time. Property owners wishing to change the mural design or replace it with another artwork or have more than one mural on a property must apply for a new permit.



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APPLICANT(S) CREATOR(S) INFORMATION			
APPLICANT #1 NAME		PHONE NUMBER	
MAILING ADDRESS		CITY	ZIP CODE
EMAIL			
APPLICANT #2		PHONE NUMBER	
MAILING ADDRESS		CITY	ZIP CODE
EMAIL			
PROPOSED MURAL INFORMATION			
PROJECT SITE ADDRESS		ORIENTATION OF MURAL	
DESCRIPTION AND NARRATIVE OF PROPOSED MURAL: <i>Attach a detailed drawing or mockup at scale of the proposed mural in color. Provide dimensions, mediums and any other descriptive information.</i>			
PROPERTY OWNER'S INFORMATION: <i>Authorization Signature Required</i>			
NAME		PHONE NUMBER	
MAILING ADDRESS		CITY	ZIP CODE
EMAIL			
PROPERTY OWNER(S) AUTHORIZATION			
PROPERTY OWNER(S) SIGNATURE(S)		DATE	
ACKNOWLEDGEMENT #1: <i>I understand that the granting of this permit is contingent upon compliance with all regulation of the City of Costa Mesa zoning ordinances and other applicable City, State and federal regulations. I hereby certify that I have read the statements contained in this application and that they are true and correct.</i>			
APPLICANT #1 SIGNATURE		DATE	
APPLICANT #2 SIGNATURE		DATE	
ACKNOWLEDGEMENT #2: <i>I understand and am aware of the federal Visual Artists Rights Act (VARA) and the California Art Preservation Act (CAPA) artist rights laws, and acknowledge that I, not the City, am responsible for compliance with these laws. Should the property be sold, I am aware that I must provide subsequent owners with maintenance information, anti-graffiti requirement and artist rights information.</i>			
APPLICANT #1 SIGNATURE		DATE	
APPLICANT #1 SIGNATURE		DATE	



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FOR OFFICE USE ONLY

ISSUE DATE: _____ PERMIT NUMBER: _____

ISSUED BY: _____

TITLE: _____

SIGNATURE: _____

DRAFT

Visual Artists Rights Act

Federal Law TITLE 17 — COPYRIGHTS

Title 17 United States Code, Section 106A: Rights of certain authors to attribution and integrity

a. Rights of Attribution and Integrity.

Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art —

1. shall have the right —
 - A. to claim authorship of that work, and
 - B. to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
2. shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
3. subject to the limitations set forth in section 113(d), shall have the right
 - A. to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
 - B. to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

b. Scope and Exercise of Rights.

Only the author of a work of visual art has the rights conferred by subsection (a.) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a.) in that work.

c. Exceptions.

1. The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a.3.A.).
2. The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.
3. The rights described in paragraphs (1.) and (2.) of subsection (a.) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A.) or (B.) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a.).

d. Duration of Rights.

1. With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a.) shall endure for a term consisting of the life of the author.
2. With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a.) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.
3. (3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a.) shall endure for a term consisting of the life of the last surviving author.
4. All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

e. Transfer and Waiver.

1. The rights conferred by subsection (a.) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.
2. Ownership of the rights conferred by subsection (a.) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a.) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

-SOURCE-

(Added Pub. L. 101-650, title VI, Sec. 603(a), Dec. 1, 1990, 104 Stat. 5128.)

Title 17 United States Code, Section 113d.

- I. In a case in which —
 - A. a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a.3.), and

- B. the author consented to the installation of the work in the building either before the effective date set forth in section 610(a.) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal, then the rights conferred by paragraphs (2.) and (3.) of section 106A(a.) shall not apply.
2. If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2.) and (3.) of section 106A(a.) shall apply unless —
 - A. the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or
 - B. the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal. For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.
3. The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

-SOURCE-

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2560;
Pub. L. 101-650, title VI, Sec. 604, Dec. 1, 1990, 104 Stat. 5130.)

California Art Preservation Act

State Law

California Civil Code §987

- a. The Legislature hereby finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against any alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.
- b. As used in this section:
 1. "Artist" means the individual or individuals who create a work of fine art.
 2. "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, but shall not include work prepared under contract for commercial use by its purchaser.
 3. "Person" means an individual, partnership, corporation, limited liability company, association or other group, however organized.
 4. "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium.
 5. "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition, in accordance with prevailing standards.
 6. "Conserve" means to preserve, or cause to be preserved, a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state.
 7. "Commercial use" means fine art created under a work-for-hire arrangement for use in advertising, magazines, newspapers, or other print and electronic media.
- c.
 1. No person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art.
 2. In addition to the prohibitions contained in paragraph (1), no person who frames, conserves, or restores a work of fine art shall commit, or authorize the commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art by any act constituting gross negligence. For purposes of this section, the term "gross negligence" shall mean the exercise of so slight a degree of care as to justify the belief that there was an indifference to the particular work of fine art.

- d. The artist shall retain at all times the right to claim authorship, or, for a just and valid reason, to disclaim authorship of his or her work of fine art. To effectuate the rights created by this section, the artist may commence an action to recover or obtain any of the following:
 1. Injunctive relief.
 2. Actual damages.
 3. Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in California to receive any punitive damages.
 4. Reasonable attorneys' and expert witness fees.
 5. Any other relief which the court deems proper.
- e. In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, and other persons involved with the creation or marketing of fine art. The rights and duties created under this section:
 1. Shall, with respect to the artist, or if any artist is deceased, his or her heir, beneficiary, devisee, or personal representative, exist until the 50th anniversary of the death of the artist.
 2. Shall exist in addition to any other rights and duties which may now or in the future be applicable.
 3. Except as provided in paragraph (1) of subdivision (h), may not be waived except by an instrument in writing expressly so providing which is signed by the artist.
- f.
 1. If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of the work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of the building, containing a legal description of the property and properly recorded, shall be deemed waived. The instrument, if properly recorded, shall be binding on subsequent owners of the building.
 2. If the owner of a building wishes to remove a work of fine art which is a part of the building but which can be removed from the building without substantial harm to the fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist, or, if the artist is deceased, his or her heir, beneficiary, devisee, or personal representative, in writing of his or her intended action affecting the work of fine art, or unless he or she did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If the work is removed at the expense of the artist, his or her heir, beneficiary, devisee, or personal representative, title to the fine art shall pass to that person.

3. If a work of fine art can be removed from a building scheduled for demolition without substantial physical defacement, mutilation, alteration, or destruction of the work, and the owner of the building has notified the owner of the work of fine art of the scheduled demolition or the owner of the building is the owner of the work of fine art, and the owner of the work of fine art elects not to remove the work of fine art, the rights and duties created under this section shall apply, unless the owner of the building has diligently attempted without success to notify the artist, or, if the artist is deceased, his or her heir, beneficiary, devisee, or personal representative, in writing of the intended action affecting the work of fine art, or unless he or she did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If the work is removed at the expense of the artist, his or her heir, beneficiary, devisee, or personal representative, title to the fine art shall pass to that person.
4. Nothing in this subdivision shall affect the rights of authorship created in subdivision (d) of this section.
- g. No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of the act, whichever is longer.
- h. This section shall become operative on January 1, 1980, and shall apply to claims based on proscribed acts occurring on or after that date to works of fine art whenever created.
- i. If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

California Civil Code, Section 989

- a. The Legislature hereby finds and declares that there is a public interest in preserving the integrity of cultural and artistic creations. As used in this section:
 1. "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, and of substantial public interest.
 2. "Organization" means a public or private not-for-profit entity or association, in existence at least three years at the time an action is filed pursuant to this section, a major purpose of which is to stage, display, or otherwise present works of art to the public or to promote the interests of the arts or artists.
 3. "Cost of removal" includes reasonable costs, if any, for the repair of damage to the real property caused by the removal of the work of fine art.

- b. An organization acting in the public interest may commence an action for injunctive relief to preserve or restore the integrity of a work of fine art from acts prohibited by subdivision (c) of Section 987.
- c. In determining whether a work of fine art is of recognized quality and of substantial public interest the trier of fact shall rely on the opinions of those described in subdivision (f) of Section 987.
- d.
 - 1. If a work of fine art cannot be removed from real property without substantial physical defacement, mutilation, alteration, or destruction of such work, no action to preserve the integrity of the work of fine art may be brought under this section. However, if an organization offers some evidence giving rise to a reasonable likelihood that a work of art can be removed from the real property without substantial physical defacement, mutilation, alteration, or destruction of the work, and is prepared to pay the cost of removal of the work, it may bring a legal action for a determination of this issue. In that action the organization shall be entitled to injunctive relief to preserve the integrity of the work of fine art, but shall also have the burden of proof. The action shall commence within 30 days after filing. No action may be brought under this paragraph if the organization's interest in preserving the work of art is in conflict with an instrument described in paragraph (1) of subdivision (h) of Section 987.
 - 2. If the owner of the real property wishes to remove a work of fine art which is part of the real property, but which can be removed from the real property without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction the owner shall do the following:
 - A. If the artist or artist's heir, legatee, or personal representative fails to take action to remove the work of fine art after the notice provided by paragraph (2) of subdivision (h) of Section 987, the owner shall provide 30 days' notice of his or her intended action affecting the work of art. The written notice shall be a display advertisement in a newspaper of general circulation in the area where the fine art is located. The notice required by this paragraph may run concurrently with the notice required by subdivision (h) of Section 987.
 - i. If within the 30-day period an organization agrees to remove the work of fine art and pay the cost of removal of the work, the payment and removal shall occur within 90 days of the first day of the 30-day notice.
 - ii. If the work is removed at the expense of an organization, title to the fine art shall pass to that organization.
 - B. If an organization does not agree to remove the work of fine art within the 30-day period or fails to remove and pay the cost of

removal of the work of fine art within the 90-day period the owner may take the intended action affecting the work of fine art.

- e. To effectuate the rights created by this section, the court may do the following:
 - 1. Award reasonable attorney's and expert witness fees to the prevailing party, in an amount as determined by the court.
 - 2. Require the organization to post a bond in a reasonable amount as determined by the court.
- f. No action may be maintained under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.
- g. This section shall become operative on January 1, 1983, and shall apply to claims based on acts occurring on or after that date to works of fine art, whenever created.
- h. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.