

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

<p>NEAL MORRIS,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>The CITY OF NEW ORLEANS,</p> <p style="text-align: right;">Defendant</p>	<p>CIVIL ACTION NO.:</p> <p>JUDGE:</p> <p>MAGISTRATE JUDGE:</p>
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COMPLAINT

INTRODUCTION

1. The City of New Orleans' murals-permit scheme (Comprehensive Zoning Ordinance §216.V et seq. and Municipal Code § 134-78A et seq.) is a multipronged assault on the First and Fourteenth Amendments that requires Plaintiff, artists and their patrons to obtain government approval before engaging in their constitutionally protected freedom of expression. In order to obtain this approval, applicants must pay exorbitant fees and submit extensive documentation that is subjected to undefined review, using unspecified standards, by undesignated officials, for an indefinite period of time. Failure to comply with these unknown standards subjects Plaintiff to criminal

sanctions. Under the aegis of aesthetic regulation, the City has unconstitutionally deemed itself an arbiter of permissible artistic expression.

2. Under New Orleans' (the "City") scheme, Plaintiff must obtain prior approval for any murals on his property from no less than three City departments and the City Council itself. At each juncture, Plaintiff must attempt to meet vague, overbroad, uncabined or nonexistent standards in order to obtain the required approval. Moreover, Plaintiff is subject to criminal sanctions for noncompliance.
3. Accordingly, Plaintiff Neal Morris brings this Complaint seeking a declaratory judgment that the City's murals-permit scheme is unconstitutional. Plaintiff further seeks an injunction barring enforcement of the scheme to the extent that it punishes expressive art that has been commissioned by the property owner but has not been approved by the government after vetting of its content and artistic merit. Plaintiff alleges violations of his rights to free speech, due process, and equal protection.

JURISDICTION AND VENUE

4. Plaintiff brings this action under the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §§ 1983 and 1988.
5. The Court has jurisdiction over Plaintiff's federal claims pursuant to 42 U.S.C. § 1331 (federal question).
6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because the defendant residents in this district and 28 U.S.C. § 1391(b)(2) because a substantial

part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

7. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. A declaration of law is necessary to determine the respective rights and duties of the parties.

PARTIES

8. Plaintiff Neal Morris is a resident of Orleans Parish, a homeowner and owner of several commercial properties at locations throughout the City. He has commissioned, and/or placed a number of artistic murals on locations he owns.
9. Defendant, the City of New Orleans, is a political subdivision of the State of Louisiana and a municipal corporation organized under the laws of the State of Louisiana and the Home Rule Charter of the City of New Orleans, subject to the jurisdiction and venue of this Court. At all times relevant hereto the City acted within the scope of its authority as a municipality chartered under the laws of the State of Louisiana.

FACTUAL ALLEGATIONS

10. The City of New Orleans has a murals-permit scheme that is an amalgam of overlapping regulations set forth in its Comprehensive Zoning Ordinance ("CZO") and Municipal Code (the "Code"), both of which regulate the installation of artwork on all private property throughout the City.

11. On October 23, 2017, Plaintiff visited City Hall and attempted to ascertain the process for obtaining a mural permit and the criteria used to determine approval. City officials were unable to provide the requested information.
12. On November 4, 2017, Plaintiff Mr. Morris had a mural painted on a property at 3521 South Liberty Street. The property's registered owner is a limited liability company, New Orleans Apartment Management and Marketing, which is owned by Plaintiff Morris.
13. The mural presents an excerpt from an infamous quotation by President Donald Trump, using images instead of certain offensive words. Trump's comments were recorded during a 2005 "Access Hollywood" segment. The mural is pictured below.



14. A few days after the mural was painted, a news outlet, the Uptown Messenger, printed a story about the mural, noting that murals “are typically regulated by the Historic District Landmarks Commission and the City Council.”¹
15. On the same day that the news article was published, the City of New Orleans Department of Safety and Permits issued a letter informing Mr. Morris of a zoning violation. The letter from Jennifer Cecil, director of the City’s “One Stop for Permits and Licenses,” stated that an inspection of the property on Nov. 8, 2017 revealed a violation, and it cited Section 12.2.4(8) of the CZO, which the letter referenced as “Prohibited Signs—Historic District.” *See Exhibit A.*
16. The letter carried the following description: “The mural on the building on this property is not allowed in that the property is zoned residentially and murals shall not be permitted in any residentially zoned historic district.” *Id.*
17. The letter advised Plaintiff Morris to remove the mural by Nov. 22, 2017. *Id.*
18. The letter also stated that “failure to correct the violations by the date specified ... will cause the Department of Safety and Permits to initiate appropriate legal action to secure compliance.” *Id.* It warned that failure to comply would yield “a maximum fine or jail time for each and every day the violation continues plus court costs.” *Id.*

¹ Robert Morris, *Liberty Street mural depicts Trump’s controversial advice on where to grab women*, UPTOWN MESSENGER, Nov. 8, 2017, available at: <http://uptownmessenger.com/2017/11/liberty-street-mural-depicts-trumps-controversial-advice-on-where-to-grab-women/#more-65273>

19. The letter charges Mr. Morris with violation of Section 12.2.4(8) of the CZO.
20. This section does not exist. Moreover, the CZO does not include a section titled, "Prohibited Signs—Historic District." Finally, the CZO does not contain a blanket prohibition on murals in residentially zoned historic districts.
21. In an attempt to address the alleged violation, Mr. Morris responded with a letter, dated Nov. 17, 2017, in which he requested clarification of the alleged violation. *See Exhibit B.*
22. Mr. Morris received no response to his Nov. 17, 2017, letter.
23. Mr. Morris reasonably fears prosecution under the City's murals-permit scheme, and he asserts that it infringes his constitutionally protected freedom of expression by requiring him to gain the prior permission of the City in order to engage in protected expression.

Unconstitutional prior restraint on speech

24. The City's requirements for obtaining a mural permit subject Plaintiff and other property owners to a prior restraint on speech.
25. The City Code requires that all proposed murals be subject to "advance review and approval by the board of murals review prior to issuance of a permit." § 134-78.
26. Violation of the Code's mural provisions is a misdemeanor, conviction of which carries a minimum fine of \$500 for each violation. § 134-39.

27. The CZO forbids any person to “commence a mural installation on a site without development plan and design review approval by the Executive Director of the City Planning Commission and the Design Advisory Committee[.]” CZO § 21.6.V.1(a). A separate application is required for every mural. *Id.*
28. These rules apply throughout the City, regardless of the district in which a property is located.
29. In addition, a mural in a historic district or on a historically designated structure requires approval of the Historic District Landmarks Commission or Vieux Carré Commission before its review by the Design Advisory Committee. CZO § 21.6.V.1(b). If the Historic District Landmarks Commission or Vieux Carré Commission disapproves of the mural, it is prohibited. *Id.*
30. Violation of the CZO is a misdemeanor punishable by the maximum fine established in the Louisiana Revised Statutes, or a maximum of 150 days imprisonment, or both. CZO § 1.6.B.
31. Approval or denial of a murals permit, under the City’s scheme, is left entirely to the unfettered discretion of City officials.
32. Consequently, as the above provisions demonstrate, any person who exercises her right to free expression by painting a mural on her property—without first obtaining government permission—faces criminal punishment. This is, by definition, a prior restraint on speech.

Unconstitutional content-based restriction on speech

33. The City's murals-permit process is an unconstitutional, content-based restriction on speech.

34. A mural is defined as "a work of art painted or otherwise applied to or affixed to an exterior wall surface that does not include any on- or off-premise commercial advertising." CZO § 26.6.

35. By contrast, a sign is defined as "[an]y structure, display, device, or inscription which is located upon, attached to, or painted or represented on any land, structure, on the outside or inside of a window, or on an awning, canopy, marquee, or similar structure, and which displays or includes any numeral, letter work, model, banner, emblem, insignia, symbol, device, light, trademark, or other representation used as, or in the nature of, an announcement, advertisement, attention-arrester, direction, warning, or designation of any person, firm, group, organization, place, community, product, service, business, profession, enterprise, or industry." CZO §26.6.

36. In accordance with the above-cited definitions, a "mural" may also be a "sign," and a "sign" may be a "mural," but the two things are subject to a different regulatory framework based on their content.

37. For example, "political and non-commercial message signs" are exempt from sign-permit requirements. CZO §24.9.G.

38. Some permanent signs are also exempt from permit requirements, including flags, memorial plaques, municipal signs, parking lot information signs, and warning signs. CZO § 24.10.
39. Unlike some signs, no murals are exempt from the permit requirement.
40. Signs and murals are also treated differently with respect to fees. An application for a mural permit has a “one-time fee per applicant per mural location” of \$500. § 134-85(7). By contrast, review of an application for a sign permit is \$40 for an accessory sign, with a \$125 zoning review fee and a \$100 inspection fee. §§ 134-85(1), (2), (6).
41. Moreover, the City not only regulates murals differently from signs based on their content, it impermissibly subjects them to “acceptability” review based on their content.
42. Under the City Code, a permit application for a mural requires an architectural drawing or a computer-generated color rendering. § 134-78A(1). Under the CZO, a permit application for a mural requires a “general drawing and written description of the type of mural.” CZO § 21.6.V.2(b).
43. The permit application for a mural also requires, *inter alia*, “detailed project information and specifications which enable a design review by the staffs of the city planning commission, historic district landmarks commission and any other agency or organization deemed appropriate and necessary by the board of murals review.” § 134-78A.

44. For example, a mural by the artist Yoko Ono was recently painted on the side of the Ogden Museum at 925 Camp Street. Upon information and belief, no permit for the mural had been issued when it was painted on Nov. 15, 2017, and the building owner was never cited for a zoning violation for the mural.
45. In addition, City-owned buildings such as the firehouse at 801 Girod Street bear murals for which no permit has been issued, and for which no zoning violation has ever been issued.
46. The above-cited provisions demonstrate the City's unconstitutional, content-based review of artistic works to determine beforehand whether murals will be permitted.

Unconstitutional violations of due process

47. The City's murals-permit process violates the due-process rights of Plaintiff and other property owners by subjecting their artistic expression to prior review by unspecified officials using vague, overbroad, uncabined or nonexistent standards over an indefinite period of time, with no deadline for City review.
48. Under the plain terms of the Code and CZO, all mural applications are subjected to review by at least three City departments: the City Planning Commission, the Design Advisory Committee, and the Board of Murals Review, with ultimate approval authority left to the City Council.

49. Other than its designation in the Code and CZO, the Board of Murals Review is a mystery. Its authority, guidelines, procedures, membership and governance are undefined.

50. Plaintiff has attempted to ascertain this information from the City to no avail.

51. The CZO states that the Design Advisory Committee has the power “to make recommendations on development plan and design review applications to the City Planning Commission and/or its staff[.]” CZO § 2.7. Neither the Code nor the CZO defines the membership of the “Design Advisory Committee.”

52. The “design review process” is purportedly “intended to promote orderly development and redevelopment in the City,” according to the CZO, and to assure that such development “occurs in a manner that is harmonious with surrounding properties and neighborhoods, is consistent with the Master Plan, and promotes the general welfare of the City.” CZO § 4.5A.

53. To that end, the CZO provides various standards to “ensure compatibility of land uses and structures”; “protect and enhance community property values”; “ensure the efficient use of land”; “minimize traffic and safety hazards”; “ensure efficient parking layout”; “minimize environmental impacts”; and “incorporate proper stormwater management and sustainable design techniques.” CZO § 4.5A.

54. However, the CZO's "design review process" contains no standards relevant to the composition of an artistic mural nor any standards sufficiently specific to provide adequate notice to Plaintiff or other applicants.
55. In addition, neither the Code nor the CZO provides a timeline for the mural-permit application's approval.
56. Although the CZO specifies that the City Planning Commission "shall conduct a hearing on a proposed zoning amendment" within 50 days from the date the application is docketed, the CZO does not specify a timeline for the City Planning Commission's review of a mural-permit application.
57. The City's scheme does not contain or specify standards for murals for the City Planning Commission's review process.
58. The City's scheme does not specify a timeline or standards for review by the Design Advisory Committee.
59. The Code requires the unspecified "designated agency or organization" chosen by the board of murals review to complete its design review within 45 days and forward its recommendations to the board of murals review, which "may extend the design review beyond 45 days where further examination or architectural design specification is determined necessary[.]" § 134.78-A(6).
60. The City Council is required to hold a public hearing and take action "by motion of approval, modified approval, or denial" on a motion within 60 days of a City Planning Commission recommendation. CZO § 4.2.D.4.

61. However, beyond the specified 90 days for review by the Board of Murals Review and “designated agency,” and the 60 days for a City Council vote, no time limit is proscribed for the permit’s approval by other departments.
62. Other than the specified action by City Council, the City’s scheme does not contain or specify standards for murals for the City Council’s approval process.
63. Although the City’s murals-permit scheme contains some deadlines for internal review of an application, no ultimate timing restrictions exist for the City’s final approval or denial. Applications can be held in limbo for an indefinite period of time without action from the City.
64. As the above provisions demonstrate, review of a murals-permit application is a completely opaque process involving undefined standards, unspecified government officials, over an unknown period of time, for an undisclosed purpose.
65. Plaintiff is therefore without any notice of the substantive violations and procedural regulations that he allegedly breached and for which he now faces criminal sanctions.

Unconstitutional violations of equal protection

66. In addition to the above-described permit process, the City also engages in selective enforcement of its mural regulations, turning a blind eye to certain artworks that it deems acceptable while charging others with zoning violations.

67. For example, a mural by the artist Yoko Ono was recently painted on the side of the Ogden Museum at 925 Camp Street. Upon information and belief, no permit for the mural had been issued when it was painted on Nov. 15, 2017, and the building owner was never cited for a zoning violation for the mural.

68. In addition, City-owned buildings such as the firehouse at 801 Girod Street bear murals for which no permit has been issued, and for which no zoning violation has ever been issued.

69. Upon information and belief, longstanding, existing murals have been painted on buildings throughout the City for which no permit has ever been issued, and no notice of violation has ever been issued.

70. As the above paragraphs demonstrate, the City is engaged in selective enforcement of its murals-permit scheme, citing property owners for violations only after other residents complain about a mural or a City official makes a subjective determination, unilaterally, that the mural is offensive or objectionable.

CAUSES OF ACTION

FIRST CLAIM

(First Amendment: The scheme is a prior restraint)

71. Plaintiff realleges and reincorporates the above allegations.

72. The City's murals-permit scheme is a prior restraint on Plaintiff's speech that is presumptively unconstitutional.

SECOND CLAIM

(The First Amendment: The scheme is a content-based restriction on speech)

73. Plaintiff realleges and reincorporates the above allegations.

74. The City's murals-permit scheme is a content-based restriction on free speech that infringes on Plaintiff's and other property owners' right to artistic expression.

75. The City's murals-permit scheme gives unfettered discretion to various City officials, including the City Council, to approve or disapprove a permit.

76. Because the regulatory scheme is content-based, it is subject to strict scrutiny.

77. The City has no compelling interest in preventing Plaintiff and other property owners from commissioning, painting, or installing murals on their own properties.

78. Even if the City had a compelling interest in regulating murals on private property, its regulatory scheme is not so narrowly tailored that no less-restrictive measure would satisfy that purported interest.

79. As such, the City's murals-permit scheme is unconstitutional under the First Amendment.

THIRD CLAIM

(Fourteenth Amendment: The scheme violates due process)

80. Plaintiff realleges and reincorporates the above allegations.

81. The City's murals-permit scheme infringes Plaintiff's freedom of speech and artistic expression and therefore constitutes a deprivation of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. It is vague, standardless, and gives Plaintiff no notice of what is

allowed and what is prohibited under the law, thereby subjecting Plaintiff to fines and criminal prosecution without due process of law.

FOURTH CLAIM

(Fourteenth Amendment: The scheme violates equal protection)

82. Plaintiff realleges and reincorporates the above allegations.

83. The City's murals-permit scheme allows constitutionally protected artwork to be displayed by permit holders but denies expression of this protected form of speech for those who do not hold a permit. Moreover, the City has not applied its scheme to Plaintiff as it has applied it to other similarly situated property owners through its selective enforcement. Freedom of speech is a fundamental right; therefore, strict scrutiny must be applied to survive Equal Protection review. Because Defendant's "interest" in controlling the display of murals is not necessary to further a compelling state interest, the City's murals-permit scheme as applied to Plaintiff violates the Equal Protection Clause of the Fourteenth Amendment.

WHEREFORE, on the basis of the foregoing, Plaintiff requests the following:

- (1) A preliminary injunction barring Defendant, its officers, agents, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with it, from enforcing the murals-permit scheme, Comprehensive Zoning Ordinance §216.V et seq. and Municipal Code § 134-78A et seq.;

- (2) After due proceedings, a permanent injunction barring Defendant from enforcing Comprehensive Zoning Ordinance §216.V et seq. and Municipal Code § 134-78A et seq.;
- (3) A declaratory judgment that Defendant's actions, policies, and procedures, embodied in the murals-permit scheme, Comprehensive Zoning Ordinance §216.V et seq. and Municipal Code § 134-78A et seq., is an unconstitutional violation of Plaintiff's rights as secured under the free speech clause of the First Amendment of the United States Constitution, as well as the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution;
- (4) Reasonable attorney's fees, expenses and costs under 42 U.S.C. § 1988 and any other applicable law; and
- (5) Any equitable and further relief as the Court deems necessary or proper.

Respectfully submitted by:

/s/ Bruce Hamilton

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