



Creating Sites of Public Memory Since 1976
Social and Public Art Resource Center (SPARC)
685 Venice Boulevard ♦ Venice, CA 90291 310/822-9560 ♦ 310/827-8717

www.sparcmurals.org and www.savelamurals.org

Professor Judith F. Baca, Founder/Artistic Director and Debra J.T. Padilla, Executive Director

SPARC’s Response to Current Draft of Mural Ordinance

Quick Key Points:

1. Include CAPA & VARA for enforcement of Artist Rights* (*Please read reasoning on Page 2.*)
2. Define “Community Involvement”
3. Do not exclude other types of mural production - i.e., digitally hand painted murals
4. If permit fee cannot be waived, property owner or commissioning agent should pay, not the artist

The Social and Public Art Resource Center (SPARC) acknowledge the city's effort to permit Murals once again. We encourage muralists to advocate for the inclusion of the California Art Preservation Act (CAPA) and the Visual Artist Rights Act (VARA) in the ordinance. CAPA and VARA provides artist rights protection, has a case body of precedence that addresses many questions between artwork and private property & distinguishes work for commercial advertising from non-commercial artwork. We advocate for the same artist rights protection shared by screenwriters, composers and filmmakers.

We have seen the diminishment of the evolution of artistic expression in public space since the ban in Los Angeles, whereas once we were the Mural Capital of the World. The mural ban has affected an entire generation of Muralists; the city's ban on private property murals have compromised the creative incentives for pursuing community-engaged artworks. We understand that the ban was a reaction to commercial advertising's proliferation in the city space. As a result, artists have suffered, many having to move away to continue their art form elsewhere. Graffiti Tagging and Bombing in part is a reaction to the defunding of art courses in schools, the closure of sanctioned public art walls and the loss of citywide art programming. The people of Los Angeles deserve a thriving public art program that re-establishes it as the mural capital of the world; we are a city of nations and our representatives have an excellent opportunity to harness our city's artists as cultural and economic assets. We advocate acknowledging and adding CAPA and VARA in the proposed Mural Ordinance.

We also advocate and encourage for the INCLUSION of mechanically produced or computer-generated prints or images so long as they are affixed directly to an exterior wall of a structure and utilize durable materials to meet the 5-year period. Nationally, we see more artists utilizing technology and super large format printing as a medium for muralism. Digitally rendered murals solve many conservation issues pertaining to painted artworks. They can be easily reproduced or relocated with minimal environmental impact and serves as an economic option for artists. Restricting substrate and mediums may have the unintended consequence of limiting the evolution of the art form. Recognized fine artworks have utilized digital processes for muralism over the last 10 years in innovative fine artworks.



***SPARC's reasoning why VARA and CAPA should be included**

1. Murals differ from signs because VARA and CAPA does not protect advertisements. This is achieved by legally defining artworks from commercial works. We recommend the Department of City Planning include the following revision to SEC. 14.1.1. PURPOSE:

a. **SEC. 14.1.1.Purpose**

The purpose of this Article is to permit and encourage Original Art Murals on a content-neutral basis with certain terms and conditions.

ADDITION: *Original Art Murals as defined by VARA and CAPA comprise a unique medium of expression that serves the public interest. VARA and CAPA exclude signs from being protected because Original Art Murals have purposes distinct from signs and confer different benefits.*

Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community-building through the presence of and identification with original works of art; education about the history of communities depicted in original works of art; and a reduction in the incidence of vandalism. Murals can increase community identity and foster a sense of place if they are located in a manner visible to pedestrians, are retained for substantial periods of time, and include a neighborhood process for discussion.

b. **SUPPORTING CASES**

i. Congress chose to exclude from scope of Visual Artists Rights Act of 1990, 17 USCS §§ 101 et seq., all advertising and promotional materials, regardless of whether thing being promoted or advertised was commercial product or whether work being used to promote or advertise might otherwise be called painting, drawing, or sculpture. *Berrios Nogueras v Home Depot (2004, DC Puerto Rico) 330 F Supp 2d 48.*

ii. Murals are works of visual art covered by the federal Visual Artists Rights Act. Carter v. Helmsley-Spear, 71 F.3d 77, 84 (2d Cir. 1995) (*citing* HR Rep. No. 514, 101st Congress, 2d Sess. At 11 (1990)) (hereafter Carter II) (*cert. denied Carter v. Helmsley-Spear, Inc.*, 517 U.S. 1208 (1996)). A “work of visual art” is defined as a painting, drawing, print or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author. 17 U.S.C. 101 A still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author is also a “work of visual art.” Macquettes, or a porcelain or clay statue, sculpted in preparation for creating a bronze statue, are a “work of visual art” protected by VARA. Flack v. Friends of Queen Catherine, 139 F. Supp. 2d 526, 533-534 (S.D.N.Y. 2001).

2. We recommend the Department of City Planning include the following revision to SEC. 14.1.2. DEFINITIONS:

a. **Original Art Mural.** An original work of visual art produced by hand

ADDITION: *protected by the Visual Artist Rights Act and the California Art Preservation Act* that is tiled, painted directly upon, or affixed directly to an exterior wall of a structure. Original Art Mural does not include:

~~mechanically produced or computer-generated prints or images, including but not limited to digitally printed vinyl;~~

murals containing electrical or mechanical components; or
changing image murals.

- 3. Artists are frequently asked to waive their VARA and CAPA rights when being commissioned to create commercial artworks as a condition of employment.**
- 4. VARA and CAPA protects artist's works of art from non-permission conservation and restoration of their fine art mural. It also protects these fine art murals from non-permission alteration or destruction.**
- 5. Creating an ordinance that does not utilize VARA and CAPA as a distinguishing definition between fine artwork and signs will discourage Philanthropic Giving by Corporations to worthy community groups in favor of advertising monies to facilitate coverage particularly in ethnic communities.**
- 6. The definition of an Original Art Mural as it currently stands in the Mural Ordinance DRAFT is not legally defensible and allows for advertising companies to utilize low permit fees as an economic way of proliferating large scale painted supergraphics.**