

**CITY OF FLORENCE
RESOLUTION 29, SERIES 2021**

A Resolution for permit to paint a 40' x 24' mural on the south wall of Lovejoy's Restaurant located at 195 Nopal St., SW of the intersection of Nopal and 1st Streets.

RECITALS:

1. The Applicant, Lovejoy's business owner, Heather Burnem, has made application for a mural permit as required by FCC 10-1-1-4, FCC 10-1-1-6-3, and FCC 10-26-5.
2. The City Council met in a duly-advertised public hearing on August 23, 2021, as outlined in Florence City Code 10-1-1-6-3, to consider the application, evidence in the record, and testimony received; and
3. The Florence City Council, per FCC 10-1-1-6-3 and FCC 10-26, finds, based on the Findings of Fact, application, evidence and testimony presented to them, that the application meets the applicable criteria through compliance with certain Conditions of Approval.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

Based on the findings of fact and the evidence in record the request for a Mural Permit to paint a 40' x 24' mural on the south wall of Lovejoy's Restaurant located at 195 Nopal St., meets the applicable criteria in Florence City Code and the Florence Realization 2020 Comprehensive Plan with the conditions of approval as listed below.

Approval shall be shown on:

- "A" Findings of Fact
- "B" Application & Owner Authorization
- "C" Mural Art
- "D" Property Map
- "E" Description and Maintenance Statement

1. Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or City Council.
2. Regardless of the content of material presented for this City Council hearing, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal City Council

action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.

3. The written part of the mural reading "Lovejoy's...Since 1994" that intends to communicate a message does not meet the definition of a mural but rather a "sign" and is subject to FCC 4-7 Sign Regulations, specifically for wall signage. The applicant shall apply to the City Building Division for a sign permit and receive approval prior to applying the informational message to the wall. Any sign installed on this wall shall be separated and be distinct visually from the mural image. Advertising/Signage on the mural image is not permitted. This will result in a mural being less than 40' by 24' if a sign is applied.
4. The applicant shall provide the contract or other obligation to complete the mural to the Community Development Department.
5. The applicant shall provide the Community Development Department a statement that the mural and all of its individual elements are original works of art by the muralist.
6. The applicant shall contact the Community Development Department when the work is ready for inspection. The mural shall be in conformance with the application and the provisions of the FCC 10-26.
7. The mural permit shall obtain inspection approval within 12 months of the date of this approval or the mural permit is considered expired. No further work may be performed on the mural prior to obtaining a new permit.

Informational:

1. A one-time extension of 12 months may be requested and granted subject to the criteria of FCC 10-26-9-C.
2. Thirty days prior to removal of the mural the property owner must submit notice to the Community Development Department.

ADOPTION:

This Resolution is passed and adopted on the 23rd day of August, 2021.



Joe Henry, Mayor

Attest:



Lindsey White, City Recorder

**FINDINGS OF FACT
FLORENCE CITY COUNCIL
Exhibit "A"**

Public Hearing Date: August 23, 2021
Application: Resolution No 29, Series 2021/ CC 21 24 MUR 01

I. PROPOSAL DESCRIPTION

Proposal: Request for a permit to paint a 40' x 24' mural on the south wall of Lovejoy's Restaurant and Tearoom located at 185/195 Nopal St.

Applicant: Heather Burnem, owner of Lovejoy's Restaurant and Tearoom

Property Owner: Forest and Deborah Grigsby, dba Bayview Investments LLC

Location: 185/195 Nopal St., being located at the SW corner of the intersection of Nopal and 1st. Streets

Site: Map # 18-12-34-11; Taxlot 07200

Comprehensive Plan Map Designation: Downtown

Zone Map Classification: Old Town Area "A"

Surrounding Land Use / Zoning:

Site: Restaurant / Old Town Area A (OTA)
North: Parking Lot & Vacant / OTA
South: Retail / OTA
East: Parking Lot / OTA
West: Gallery and health/art studio space / OTA

Streets / Classification:

North - 1st St./ Local; South – none; West - None; East – Nopal St. / Local

II. NARRATIVE:

The applicant proposes an approximately 960 square foot mural painted directly on the south wall of the building containing Lovejoy's Restaurant and Tearoom.

The subject property is located near the SW intersection of Nopal and 1st Streets. The south wall of the restaurant immediately faces a retail building.

The mural is to consist of a scene of London, England, specifically Big Ben, The Houses of Parliament, Portcullis House, Westminster Bridge, the river Thames, and the iconic double decker red buses.

III. NOTICES:

Notice: On July 27, 2021 notice was mailed to surrounding property owners within 100 feet of the property. The property was posted on July 27, 2020. The notice was remailed and reposted on August 3rd with a new hearing date of August 23rd. Notice was published in the Siuslaw News on August 14, 2021.

At the time of this report, the city had received one written testimonial in favor of the application from Gene Olson.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code

Title 10:

Chapter 1: Zoning Administration, Section 1-6-3

Chapter 6: Design Review, Section 6-6

Chapter 26: Mural Regulations, Sections 1 through 7, and 9 through 12 and 14

Title 4:

Chapter 7: Sign Regulations, Section 25

Florence Realization 2020 Comprehensive Plan

Chapter 1: Citizen Involvement: Policies 4 through 6

V. FINDINGS

Code criteria are listed in **bold**, with response beneath. Only applicable criteria are listed.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:

- A. Hearings are required for Type III (quasi-judicial) land use matters requiring Planning Commission review. Type III applications include, but are not limited to:**

The applicant has proposed a mural, requiring a land use hearing as stated under 10-26-5-A. The applicant has applied for a Type III approval, meeting this criterion.

- B. Notification of Hearing:**

- 1. At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits,**

Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.

[...]

- 2. Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.**

Notice of the public hearing was posted on the subject property on July 27, 2021 and August 3rd. On these same dates, notices were mailed to all property owners within 100 feet of the property. Notice was also published within the Siuslaw News one time on August 14, 2021. These criteria are met.

C. Notice Mailed to Surrounding Property Owners - Information provided:

1. The notice shall:

- a. Explain the nature of the application and the proposed use or uses which could be authorized;**
- b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
- c. Set forth the street address or other easily understood geographical reference to the subject property;**
- d. State the date, time and location of the hearing;**
- e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**
- f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**
- g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;**
- h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.**
- i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.**

The provided notice contained all of the information listed in FCC 10-1-1-6-3-C. These criteria are met.

D. **Hearing Procedure: All Type III hearings shall conform to the procedures of Florence City Code Title 2, Chapters 3 and 10.**

E. **Action by the Planning Commission:**

1. **At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.**
2. **Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.**
3. **In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.**
4. **There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.**

Florence City Code Title 10 Chapter 26 states the City Council shall consider mural permit applications under the proceedings of the land use hearing procedure. The City Council held a public hearing on August 23, 2021, which met the standards of FCC 2-10 and the intent of FCC 2-3. These criteria are met.

TITLE 10: CHAPTER 26: MURAL REGULATIONS

10-26-1: PURPOSE, GENERAL PROVISIONS: The purpose of this chapter is to allow for murals on a content-neutral basis while maintaining specific standards with regard to the location, size, quantity and installation. Murals provide benefits distinct from signs, such as improved aesthetics and community identity if they are located at heights and scales visible to pedestrians.

The application includes a mural. The findings of fact are content neutral except where criterion specifically include content related terminology such as history, nature, community character, etc. The mural is proposed to be located on a building situated near a property corner. The abutting streets have sidewalks. The 960 square foot mural is proposed to be located on the south side of the building viewable from northbound Nopal St. pedestrians. The mural would be large enough to be visible to pedestrians within the adjacent area.

The mural would cover more than the maximum 6% wall coverage permitted by a wall sign. Wall signage is regulated by Florence City Code (FCC) Title 4 Chapter 7. Most of the proposed imagery meets the below definition of a mural and requires a mural permit. However, the written part of the mural reading "Lovejoy's...Since 1994" that intends to communicate a message does not meet the definition of a mural but rather a "sign" and is subject to FCC 4-7, specifically for wall signage. The applicant shall apply to the City Building Division for a sign permit and receive approval prior to applying the informational message to the wall. **(Condition 3)**

10-26-2: DEFINITIONS:

MURAL: A work of visual art which is tiled or painted directly upon, or affixed directly to a fence, wall or an exterior wall of a building and exceeds the maximum size of wall sign allowed in a sign district. Visual art that is intended to communicate an informational message is not considered a mural and is regulated under the sign code.

10-26-3: PROHIBITED MURALS:

A. Murals that include any of the following are prohibited and are nuisances. A mural shall not include:

- 1. Electrical or mechanical components; or**
- 2. Changing images.**

The proposed mural does not include any electrical or mechanical components or changing images. This criterion is met.

10-26-4: PROHIBITED MURALS:

A mural that is not visible from the public right-of-way and not visible from public property is allowed without a mural permit.

The proposed mural would be visible to the public from Nopal and Bay St. rights-of-ways and thus requires a mural permit.

10-26-5: MURAL PERMIT APPLICATION:

A. A mural permit application shall be considered by the City Council and shall proceed under the procedures of FCC 10-1-1-5, "Land Use Hearings."

This criterion is included under Chapter 1 reviewed earlier in the report and is met.

B. The general application requirements of FCC 10-4-1-4 shall apply, except for the submittal information required under FCC 10-1-1-4-B-2 and B-3. An application for a mural permit must contain the following information:

- 1. Authorization from the property owner of the location where the mural is to be installed and agreement to maintain the mural for the life of the mural, unless the mural is removed under the circumstances specified in Section 10-26-11 of this Title.**
- 2. A site plan drawn to scale that shows the location of existing structures and where the mural is to be installed, location of property lines, abutting right-of-way, names of streets, information of other murals on abutting properties and north arrow.**
- 3. A map (e.g. tax map or aerial map) that shows the existing land use on-site and the surrounding land uses within three-hundred feet (300') of the site.**

4. **A color image of the proposed mural with dimensions drawn to scale.**
5. **A building elevation depicted to scale showing the proposed building area where the mural is to be installed. Information detailing the existing building materials and architectural features, as well as proposed mural materials, construction size, and depth.**
6. **Information regarding the expected life span of the mural and maintenance plan for the life of the mural. The maintenance plan shall specify the frequency of maintenance and provisions to address fading and vandalism (i.e. durable exterior paints, cleanable surfaces, and/or other measures that will discourage vandalism or facilitate easier and cheaper repair of the mural if needed).**

Section FCC 10-4-1-, referenced in subsection B (above), is a typo and should read “FCC 10-1-1-4” as set out in Ordinance 5, Series 2011.

A tax map, has been provided that shows the site relative to nearby streets, land uses and lots. The business owner provided written consents from the building owners. A color image drawn to scale was also provided as well as the building wall dimensions, and a maintenance plan.

10-26-6: MURAL PERMIT CRITERIA: No person may commence mural installation on a site without first obtaining a mural permit. Murals without a mural permit are signs regulated by Title 4, Chapter 7. Use of murals does not affect the amount or type of signage otherwise allowed by the sign regulations of Title 4 Chapter 7. For approval, a mural permit application must meet the following criteria.

- A. **The Mural is compatible with the aesthetic appearance of adjacent buildings and the surrounding community character.**

In evaluating this criterion, the following are examples of factors that can be used to measure compatibility and community character.

1. **The mural is harmonious with or integrates aspects of special architectural and design features of surrounding buildings or the larger neighborhood.**
2. **The mural may reflect the diversity of the world.**
3. **The mural may reflect historic, cultural, or natural heritage.**
4. **The mural respects the original character of the building and surrounding buildings**

The proposed mural being a scene from London reflects the diversity of the world. The imagery also includes historic buildings and structures—Big Ben, Portcullis House, and The House of Parliament. The imagery of the iconic double decker buses reflect transportation synonymous with London. The mural meets items 3 and 4 above.

In context, the mural is proposed to be placed on a large wall (and south side of the Nopal St. facing awning) visible to streets and sidewalks that if built today would include architectural relief.

The mural will integrate the expansive blank wall on the south side providing visual relief on this building and the area in general.

B. The mural will enhance the building appearance and overall visual attractiveness of the City. The overall objective is for viewers of all ages to experience a sensation of engagement, humor, wonder or delight, or all of these emotions.

In evaluating this criterion, the following are examples of factors that can be used to measure appearance and attractiveness.

- 1. The mural will not adversely dominate the building or surrounding area.**
- 2. The mural will not create traffic or safety hazards.**
- 3. The mural is harmonious with the scale, color, details, materials, and proportion of the building.**

The three examples of evaluation criteria are considered below.

1. The mural is to cover only the southern side of the building. As a whole, the building height does not overly tower over buildings in the area and a mural would have no adverse domination of the building itself. The northern and eastern street facing sides of the building have balanced quantities of first floor single pane windows and a continuous wrap around awning. The second floor includes nearly equally spaced two pane windows. The intersection includes only two structures whereby the other two properties have parking lots. The surrounding buildings both along Nopal and opposite are all single story. This building serves as the focal point for the intersection and immediate area. As proposed the mural would be the main event on Nopal Street but would not dominate the surrounding area due to the other visual elements around the area such as the Port parking lot and several three-story buildings to the east along 1st St.
2. The mural would not be visible from the intersection but would attract the attention of those traveling north on Nopal St. From the point at which the mural becomes visible on Nopal St. after making the curve from Bay St. a driver has approximately 200 feet at 25 mph to view the mural before passing it and then another 50 feet before arriving at the intersection of Nopal and 1st St. The proposed mural will not have external nor internal lighting. (Informational 1)
3. The scale, details and proportion related to the building and neighborhood were addressed elsewhere in the report. The proposed colors and materials compliment the beige restaurant building.

This criterion is met.

C. Internal illumination of a mural is not permitted. External illumination is allowed and shall be consistent with the illumination standards of Section 4-7-25 of this Code.

The mural proposal does not include any source of internal or external illumination. This criterion is met.

D. Murals are permitted only on the flat planes of walls and may extend no more than six inches (6”) from the plane of the wall, unless approved by the City Council.

The mural is proposed to be painted directly on the existing southern wall surface of the restaurant and onto the southern wall of the awning that projects east towards Nopal St. The surfaces of the building and awning walls are either lap or ship lap siding. No projecting surfaces are proposed from the flat plan of the wall. This criterion is met.

E. Murals shall be installed for durability and maintained for the life of the mural or until the mural is removed. Murals shall consist of materials that have proven performance for withstanding the coastal climate.

The mural’s paint type or brand were not provided to determine suitability for the climate and sun exposure. However, the application includes information on maintenance protection. Clear coat acrylic is proposed to cover the mural for durability and archival protection. The proposal meets this criterion.

F. The Mural shall use materials, coatings, or other protective techniques that will be resistive to vandalism and graffiti.

The application packet for this mural included a maintenance statement whereby the mural will be coated with clear coat and then touched up as needed after any damage is identified due to weather or other issues. This criterion is met.

G. The creator/artist is under contract or other obligation to complete the Mural.

The muralist will be Michael Wood. The applicant shall provide the contract or other obligation to complete the mural to the Community Development Department. **[Condition 4]**.

H. The Mural is an original work of art.

The application packet did not provide information on the originality of the proposed mural. The applicant shall provide the Community Development Department a statement that the mural and all of its individual elements are original works of art by the muralist, **[Condition 5]**.

I. If a mural installation includes any changes to a building that would otherwise require Design Review as described in Title 10 Chapter 6, those changes must be approved through the Design Review process simultaneous with approval of the Mural Permit. Murals may not otherwise result in the site property or structure becoming out of compliance with other land use code provisions, prior land use approvals, or prior conditions of approval governing the building or property on which the mural is to be located.

The mural application does not include any changes to the building that require Design Review under Chapter 6 of Title 10. Installing a mural directly on an existing structure does not require a Design Review as described in Title 10, Chapter 6.

In applying the above criteria, the City shall make its decision in accordance with applicable constitutional requirements.

10-26-7: STRUCTURAL REVIEW: Murals with any element that weighs more than 7 pounds per square foot or in total weigh more than 400 pounds require structural review.

The proposed mural painting will be applied directly to the walls of the building. This criterion is not applicable.

10-26-9: INSPECTIONS AND EXPIRATION OF PERMIT:

A. Inspections: The Director will conduct inspection of murals for which a permit has been issued. The permit holder must notify the Director when the work is ready for inspection.

The inspection shall verify that the mural is in conformance with the application and in conformance with the provisions of this Chapter. Structural inspections shall be completed in conjunction with any required building or structural permits and shall verify the applicable requirements from the applicable codes. The inspector shall take at least one photo to be kept on file to document the site, mural size, mural location and mural image consistency.

The Director may conduct inspections whenever it is necessary to enforce any provision of the City Code, to determine compliance with the City Code, or whenever the Director has reasonable cause to believe there exists any violation of the City Code.

The applicant shall contact the Community Development Director when the work is ready for inspection. The mural shall be in conformance with the application and the provisions of the FCC 10-26, [Condition 6].

B. Expiration of Permit: If inspection approval has not been obtained by the applicant within twelve months of issuance of a mural permit, the permit is void, and no further work on the mural may be done at the premises until a new permit has been secured and a new fee paid.

The mural permit shall obtain inspection approval within 12 months of the date of this approval or the mural permit is considered expired. No further work may be performed on the mural prior to obtaining a new permit, [Condition 76].

C. Extensions of Permit: The Director may extend a permit for one period of twelve months upon finding the following criteria have been met.

- 1. The request for an extension is made in writing prior to expiration of the original approval.**
- 2. There are special or unusual circumstances that exist which warrant an extension.**
- 3. No material changes of surrounding land uses or zoning has occurred.**

The Director may deny the request for an extension of the mural permit if new land use regulations have been adopted that affect the applicant's proposal.

A one-time extension of 12 months may be requested and granted subject to the criteria of FCC 10-26-9-C. **(Informational 1)**

10-26-10: MAINTENANCE OF A PERMITTED MURAL: For any mural approved after March 21, 2011, the building owner is responsible for ensuring that a permitted mural is maintained in good condition, fading is addressed and the mural is repaired in the case of vandalism or accidental destruction in accordance with the approved maintenance plan.

The application includes a maintenance plan for the mural. The City's nuisance code in FCC 6-1 requires graffiti removal within 5 days of written notice to remove. This criterion is met.

10-26-11: ALTERATIONS TO A PERMITTED MURAL: Alterations of the mural must be approved by obtaining a new permit through the process described in Section 10-26-3 of this Chapter.

10-26-12: REMOVAL OF A PERMITTED MURAL:

Prior to removal of a mural the property owner must notify the Community Development Department at least 30 days prior to its removal with a letter stating the intent to remove the mural. Any associated materials that were used to affix or secure the mural to the wall must be removed at the time of the removal of the mural or incorporated into a new mural application. This includes, but is not limited to mounting hardware or brackets, caulk or grout, and adhesives or glues.

Thirty days prior to removal of the mural the property owner must submit notice to the Community Development Department. **(Informational 2)** No mounting hardware or adhesives are proposed for this mural project.

TITLE 10: CHAPTER 6: DESIGN REVIEW

10-6-6: ARCHITECTURAL DESIGN: The Architectural Design criteria are designed to address and implement the Florence Downtown Architectural Guidelines. Where applicable, the following criteria consider the historical character of Florence through proper building massing, siting, and materials which reflect important aspects of Oregon's traditional Northwest architecture. The type of building to which this code may apply may differ by district. The following requirements are intended to create and maintain a built environment that is conducive to walking; reduces dependency on the automobile for short trips; provides natural surveillance of public spaces; creates a human-scale design, e.g., with buildings placed close to streets or other public ways and large building walls divided into smaller planes with detailing; and maintains the historic integrity of the community.

In applicable zoning districts such as Old Town and Mainstreet, the City Planning Official, the City Planning Official's designee, or the Planning Commission may require any of the following conditions in order to establish a minimum level of design quality and compatibility between buildings. The Planning Commission may approve adjustments or variances to the standards as part of a site Design Review approval, pursuant with FCC 10-5 and 10-6, respectively.

These criteria are included to address the Design Review reference in code section FCC10-26-6-l. No modifications to the restaurant building are proposed that require review under the architectural review criteria of Chapter 6 of Title 10. The building is located in Area A of the Old Town District and subject to implementing the Florence Downtown Architectural Standards. These include strong emphases on creating, and where it exists, preserving the historical character of Florence and incorporating aspects of Oregon’s traditional Northwest Architecture into new construction.

This proposal does not constitute new construction. The proposed site is accessible to pedestrians, bicycles and motor vehicles alike. This criterion is not applicable.

In context, the mural is proposed to be placed on a large wall facing south near an abutting street that if built today would could require architectural relief. The mural illustrates a historic theme. The focal point for most viewers is probably Big Ben. There is a light pole and blooming cherry tree in the foreground. The Westminster bridge extends east across the image.

FLORENCE REALIZATION 2020 COMPREHENSIVE PLAN

CHAPTER 1: CITIZEN INVOLVEMENT

- POLICY 4. Official City meetings shall be well publicized and held at regular times. Agendas will provide the opportunity for citizen comment.**
- POLICY 5. Records of all meetings where official action is taken shall be kept at City Hall and made available on request to the public.**
- POLICY 6. Planning documents and background data shall be available to interested citizens.**

The City Council public hearing was well publicized and held at a regular time. The agenda provided the opportunity for comment both on this item and for general comment. Records of the meeting where an official action will take place will be kept at City Hall and made available on request. Documents are available to the public upon request. Policies 4 through 6 have been satisfied.

VI. CONCLUSION

The proposed application meets the requirements of City Code and the Florence Comprehensive Plan with conditions.

VII. EXHIBITS

- “A” Findings of Fact
- “B” Application and Owner Consents
- “C” Mural Art
- “D” Property Map
- “E” Description and Maintenance Statement

