

BOARD OF ALDERMEN

ITEM NO. E(3)

AGENDA ITEM ABSTRACT

MEETING DATE: March 11, 2003

**TITLE: Review of Possible Land Use Ordinance Text Amendment
Permitting Murals on the Sides of Buildings in the B-1(c) and B-1(g) Districts**

DEPARTMENT: Planning	PUBLIC HEARING: NO
ATTACHMENTS: <ul style="list-style-type: none">A. ResolutionB. Relevant land Use Ordinance ProvisionsC. Memo from Marty Roupe re: the Wall Mural at 103 E. Main StreetD. Photos of wall mural at 103 E. Main StreetE. Excerpt of minutes – Board of Aldermen meeting on 12/3/02F. Letter of violation related to mural at 103 E. Main StreetG. Draft OrdinanceH. Appearance Commission Comments	FOR INFORMATION CONTACT: Patricia McGuire, Planning Administrator -- 918-7327

PURPOSE

A wall mural was created on the west-facing wall of 103 E. Main Street in late September 2002 as a community fundraiser for several local non-profit organizations. Portions of the mural are in conflict with the Land use Ordinance because they contain commercial messages and a letter of violation has been issued. Staff and the Appearance Commission have been exploring this issue to identify whether alternative courses of action are appropriate. A draft ordinance that would allow wall murals to contain limited commercial messages has been prepared. A resolution that sets a public hearing and refers the draft ordinance to the Planning Board and Orange County is provided for the Board's consideration.

INFORMATION

Sign requirements are specified in Article XVII of the Land Use Ordinance. Wall murals are typically interpreted to fall within the category of signs excluded from regulations. Section 15-272 lists the exclusions with subsection (5) stating "Integral decorative or architectural features of buildings or works of art, so long as such features or works of art do not contain letters, trademarks, moving parts, or lights." The commercial messages included on the sign necessitate the interpretation that the mural is a regulated sign. Since the commercial entities specified on the mural are not located at 103 E. Main Street, these messages are off-premises signs. Off-premises signs are defined in Section 15-270 and included within the Table of Permissible Uses (Section 15-146) as use

31.000. This use classification is permitted only within the M-2 zoning district. Land Use Ordinance sections referenced here are attached (*Attachment B*).

A December 2002 memo from Development Review Administrator, Marty Rouse, summarizing the staff and Appearance Commission review of this matter is attached (*Attachment C*). Photos showing the mural are included in *Attachment D*. The Board of Aldermen reviewed this information on December 3, 2002 and Aldermen Gist requested that the Appearance Commission consider adjustments to the sign provisions to avoid future conflicts (*Attachment E*). On December 30, 2002, a letter of violation was issued to Kimberli Matin regarding the mural (*Attachment F*). A deadline of June 1, 2003 for compliance with the Land Use Ordinance was set. The action required in order to bring the mural into compliance, i.e. make it exempt from regulation, is the removal of all lettering and trademarks referencing specific business names, websites, phone numbers. The thirty day period in which the violation may have been appealed expired on January 30, 2003.

In follow-up to the request by members of the Board of Aldermen, the Town Attorney has drafted an ordinance that would make the mural at 103 E. Main Street, and other murals similarly situated, permissible (*Attachment G*). The Appearance Commission has reviewed the draft and provided comments (*Attachment H*). The draft ordinance includes the following:

Adds a new section to Article XVII that creates a category of sign, "Wall Murals," that are other than those excluded from regulation in Section 15-272. These regulated wall murals are controlled in the following ways

- a. Permitted on side walls of buildings only.
- b. The commercial message(s) may make not exceed 30 percent of the mural.
- c. The commercial message for a single business may not exceed 10 percent (of the 30 percent noted above). Murals shall not count towards the maximum sign areas permitted.
- d. The prohibition of off-premises signs shall not apply to murals that satisfy the requirements of the new section.

Allowing murals or other works of art to incorporate commercial messages can be problematic. The distinction between art and commercial messages is currently straightforward to interpret and administer. Blending the two raises issues associated with both the content and the process in which signage is reviewed and regulation. The creation of an exemption for certain types of off-premises signs must be carefully considered. Should the Board of Aldermen wish to proceed with amending the ordinance, it will be necessary to hold a public hearing and to refer a draft ordinance to the Planning Board and Orange County for review and recommendations. The Board may also wish to obtain recommendations from the Appearance Commission and, since the draft ordinance applies to the B-1(c) and B-1(g) zoning districts, to the Downtown Development Commission. In light of the previous comments from Board members, a resolution that sets a public hearing has been prepared (*Attachment A*).

FISCAL IMPACT

Should the Board direct staff to revise the draft ordinance, additional staff time will be required for this action and to provide staff support for advisory board review. Should the Board of Aldermen set a public hearing at this time, administrative and advertising costs associated with preparing for and holding the public hearing would be incurred.

RECOMMENDATION

The Administration recommends that the Board of Aldermen discuss the draft ordinance and the Appearance Commission recommendations.