

How Much Control do Cities Want Over Their Public Spaces?

A Look into Mural Policies

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Abstract

While promoting mural policies, city administrations are faced with the difficult task of determining the level of control they wish to maintain over urban public spaces. The premise of this paper is that, for local governments, the control and influence over murals in the urban sphere is a mixed blessing. As this control increases, officials acquire stronger tools to shape the city's murals, but they also become liable for their content and maintenance, inevitably undermining the freedoms, alternately, of property owners and artists. As control decreases, artistic and proprietorial rights are more easily asserted, but at the same time the city forfeits its ability to determine how its public spaces will look. Moreover, conflicts between stakeholders are more likely to occur, possibly requiring government intervention. This paper brings these issues into focus by exploring the role of city administrations as regulators and managers of murals located in the public realm. Using, in particular, the case study of Portland, Oregon, the paper highlights the dilemmas cities face when addressing these issues.

Keywords: murals, policy, governance, public space, control, Portland.

Introduction: The pros and cons of regulating murals

Murals have become an integral part of our urban landscape, varying in size, style, and legality. The term 'murals' refers to painted or written artworks created directly on exterior facades, with or without permission. This may include murals that are promoted by the establishment as well as those spontaneously created by individuals or groups. This paper explores whether and how cities regulate these elements in the public domain and, more precisely, to what degree they seek to control them.

Murals incorporate tensions that can escalate into real-life disputes. In turn, these disputes may require governmental interventions (Mendelson-Shwartz and Mualam, 2020b). As a result, cities around the world have established mural policies that promote and manage murals located in the public realm. Although mural policies primarily regulate sanctioned murals, they can also have an indirect impact on unsanctioned artworks through urban strategies such as buffing (removing) or policing (Guazon, 2013; Halsey and Young, 2002; Taylor and Marais, 2009; Young, 2012).

Murals are an inseparable part of urban environments, created in and for specific locations. They help shape the city's public space as dynamic stages for communities and individuals who may have multiple and sometimes contradictory identities and interests (Mitchell, 2003; Sandercock, 2003).

In many developed countries, there are normative assumptions about how public urban spaces are created, designed, and altered (Douglas, 2016). While these spaces are formed and shaped by a range of stakeholders, it is presumed that city administrations are responsible for regulating and maintaining them, mediating between stakeholders in the name of 'public interest' (Davidoff, 1965; Healey, 2015; Madanipour, 2006; Pierre, 2005).

The growing interest in the promotion of public places (Harvey, 1989; McGuigan, 2012; Molotch, 1976), has led city administrations to adopt policies that give them greater authority and influence over the design, aesthetics, and use of urban environments. For example, cities have approved

planning and building regulations, form-based codes, and design review criteria. But when it comes to regulating public space, it is not always clear whether stringent regulation is appropriate, or whose views should be taken into account, or whether a shared 'public interest' can be defined in the first place (Sandercock, 1998).

Control over public spaces has its advantages. It can encourage the creation of coherent and legible spaces, enhance their vitality, protect against external negative effects, mediate intersecting desires, and influence urban behaviors (Alexander, 1964; Dovey, 2016; Lynch, 1960; Madanipour, 2007; Jacobs, 1961; Kamel, 2014). These advantages help explain the importance of regulating mural art in the public sphere. However, intense control may result in sanitized, policed, and commodified urban spaces that do not leave room for evolution, flexibility, organic development, spontaneity, or enchantment (e.g. Ferrell, 2001; Imrie and Street, 2009; Young, 2014). This reduces the opportunity for free expression, and the formalization of subjective, alternative imaginings; instead, only messages and images deemed acceptable by the city are allowed to remain (Mitman, 2018). In addition, urban regulations are generally not given to ambiguities, leading municipal administrations to perceive the city in black-and-white terms (Dovey, 2016). Furthermore, scholars like Randal O'Toole would argue that extensive governance and planning is not always required or even possible: "*cities are complex systems that are inherently unpredictable, even chaotic...Since even the near-term future of chaotic systems cannot be accurately foreseen, any attempt to plan the distance future will fail*" (Otoole, 2007. P. 45).

To Control or not to Control Mural Art, that is the Question

As city administrations draft mural policies, they face dilemmas as to the level of control they seek to impose on their public realm. On one hand, when public officials institute a high level of control over murals, they acquire powerful tools to shape the mural's design, content, and location. But these capabilities can become a mixed blessing, for they make the city administration liable and accountable for the mural's content and maintenance (Hoffman, 1991; Merriam, 2011). In particular, murals that are pre-approved by the city administration or publicly funded can be seen as incorporating 'government speech'. If such a mural becomes contentious, the city officials would be held accountable.

As a result, administrations may establish design review processes that may in turn curtail spontaneity and artistic and proprietary freedoms, undermining the ability of communities or individuals to shape their environments. Furthermore, public officials may decide to promote mostly uncontroversial murals that are more appealing to the mainstream or general public, thereby reducing artistic expressions to mediocrity, pastiche, or kitsch (Abarca, 2016; Bengtsen, 2017; Frey 1999; Miles 1997). Lastly, city administrations may reduce the number of murals they approve due to potential maintenance costs.

On the other hand, some city administrations may wish to loosen their grip over mural art and refrain from requiring approval when murals are created. This enables artists and communities to shape urban spaces in a manner that ensures dynamism, transformation, and vibrancy, for better or worse. This independence allows for murals to evolve in a more organic and spontaneous way (Abarca, 2016; Bengtsen, 2017; Gunnell, 2010) which respects constitutional rights. But it might also leave city administrations with no capacity to control mural content or location. Lax regulation requires that public administrators 'let go' and to accommodate the unforeseen and unanticipated (Recio, 2015). This makes them vulnerable to contentious or controversial murals, along with various misunderstandings and mistakes, including the removal of well-loved murals.

What Affects the Level of Control?

Not all mural policies allow the same level of control over murals in their jurisdiction (Mendelson-Shwartz and Mualam, 2020a). First, the scope of the policy may differ. Some policies only affect specific areas of the city or types of murals (for example some policies do not affect murals located on private property) Second, because cities define signage, murals, and unsanctioned works differently, the manner governing bodies classify these terms can influence the way in which an artwork is regulated. In other words, a specific work can be seen as a mural in one city, as a sign in another, or as an unsanctioned marking in the third. Moreover, the form of consent that must be given (and by whom) for murals to be considered 'sanctioned' affects the ability of city officials to influence mural. City administrations may tolerate (or prohibit) murals in the entire city or establish tolerance zones in which they have no (or limited) control over murals and other unsanctioned

works (e.g. 'legal walls', 'halls of fame', or in 'exception zones'). Municipalities may require owner approval, de facto designating them as responsible for the murals, and develop a registry process through which they can impose non-content regulations such as size, placement, or location. And lastly, an administration might require a design review process in which murals are pre-approved, giving them significant government control.

The Level of Control Public Officials want to have

The literature exposes a wide variability in the control that cities exercise over murals through policy. Some cities take a zero-tolerance approach (e.g. Kimwall, 2013; Young, 2010). While other cities have relaxed vis-à-vis certain elements and processes regarding murals in the public domain, even to the point of encouraging unsanctioned street art or grassroots placemaking in their jurisdictions (Droney, 2010; Evans, 2015; Halsey and Young 2002; Young 2012, 2014). Although many of the latter cities tend to embrace more inclusive and pluralistic planning processes that involve public engagement and decentralization, I must point out that inclusive policies do not always indicate that the city is permissive towards its murals. While participatory planning might allow communities and individuals to play an active role in shaping their public spaces, they do not necessarily indicate that city administrations are becoming more permissive towards their public spaces. For example, planning or designing with communities does not necessarily obligate governing bodies to permit all informal acts or the exclusive self-regulation of local communities. Cities may follow creative and inclusive planning approaches and yet still promote zero-tolerance policies towards unsanctioned artworks (Young, 2010). Likewise, murals may be created by communities and still be part of municipal programs that impact the content, location, or other details. In addition, some scholars argue that tolerance policies may confine insurgent activities to areas of no political or commercial importance, de facto reinforcing government control in the guise of supporting free expression (Austin, 2010; Lombard, 2013; McAuliffe 2013; Mitman, 2018).

A city's permissiveness can be expressed via deliberate mural policies or more unofficial approaches, such as a lack of policy or non-enforcement of existing restrictive policies. A relaxed approach to mural art in public spaces may be encouraged – either publicly or behind-the-scenes—by

public authorities who want to nurture the local street art and graffiti scene. Such an approach may also simply be the result of legislative, managerial, or mundane challenges, such as a lack of political stamina or the personnel to enforce existing policies.

Thus, the literature paints a complex picture of cities' willingness of cities to institute and enforce rules that concern murals. This raises the question of why certain cities choose to strictly control their public spaces while others refrain from enforcement or drafting rules in the first place. This paper explores said questions; in particular examining how much power city administrations assume over murals in their jurisdictions, the underlying motivations behind their attitudes, and whether their mural policy is a result of municipal agendas or of legal or implementation constraints. To answer this question, I focus on Portland, Oregon, where the local government rewrote its mural policy, thereby re-examining its approach towards murals and the governance of public space. By using Portland as a case study, the paper will highlight dilemmas city officials face when promoting mural policies.

The dataset of this analysis is based on the study of policy documents, guidelines, legislation, transcripts of city council meetings, and other secondary sources such as articles and academic papers. We also conducted a series of 10 face-to-face semi-structured interviews with leading stakeholders from the Portland municipality, the Regional Arts and Culture Council, and leading NGOs.

Portland, Oregon

Portland was selected for several reasons. First, due to a 1998 court ruling that prohibited the city from regulating mural content, Portland had to reinvent its mural policy. The city re-examined its approach towards murals and the governance of public spaces. As will first be seen, the city's current policy is the product of a long-standing dialogue between local government and various stakeholders. Second, Portland's mural policy applies to the entire city and impacts murals located on both public and private property. Consequently, Portland's mural policy potentially affords the city a high level of control. Third, Portland's planning decisions are well documented, aiding the isolation of decision-making processes from implementation issues. In the next section I will focus on how the mural policy of

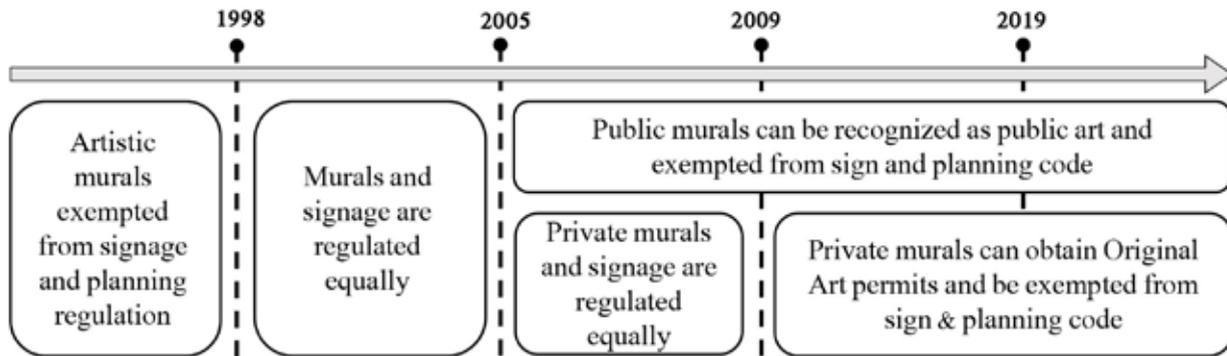


Fig. 1 – Evolution of Portland's mural policy

Portland evolved (a summary of this evolution can be seen in Fig. 1).

AK Media Court Ruling

In the past, Portland used to exempt its artistic murals from the city's signage and planning regulation. Thus, if a mural was perceived as having artistic merit and did not incorporate commercial expressions, it did not need municipal approval. In 1998, a billboard company called AK Media (later absorbed by Clear Channel) sued the city, claiming that by exempting artistic murals from city legislation, the city was in fact discriminating against advertising and violating the free speech clause of Oregon's constitution. The Multnomah County Circuit Court ruled in favor of AK Media, concluding that treating murals and signs differently, according to their content, was unconstitutional¹ (City of Portland Bureau of Planning and Sustainability 2004).

As a result, Portland's city administration had to decide whether to avoid controlling all public illustrations (artistic or commercial) or to begin regulating them all equally. Unwilling to de-regulate signage, Portland chose the latter. Consequently, murals began to be regulated as signs. Reflecting on this decision, one interviewee explained: *"The sign industry would have loved it if our regulations had been just thrown out and not regulate any kind of illustration of speech. And then you could legalize unsanctioned signs"* (Expert from Portland, personal communication, 2018). The change in regulation granted the city full control over its murals. However, it also imposed harsh limitations, such as restricting the size of the murals to 200 square feet (18.6

m²) and forcing property owners to pay commercial fees for artistic expression in the public domain.

Control over public artworks: Public Art Murals program (2005)

In response to the concerns of artists and community members, in 2004 the city convened meetings for stakeholders to collaborate on the city's new mural policy. The outcome of this process was the Public Art Murals Program² (see for example Fig. 2 and Fig. 3). Under the aegis of this program murals could be recognized as public art and exempted from the city's sign and planning code³. Murals approved through this track would be administered, sponsored, funded, and owned by the Regional Arts and Culture Council (RACC). As owner of all public artworks, RACC was able to review and approve the design of Public Art murals (City of Portland Bureau of Planning and Sustainability, 2004).

In light of this policy change, all outdoor wall-markings had to undergo a design review process, whether as a mural or as signage. Any marking that did not go through this process was immediately seen as illegal and could potentially be removed. To accommodate the mural policy, Portland developed a strict zero-tolerance approach towards graffiti, establishing a graffiti abatement program and task force dedicated to buffering illicit works from public and private property (Shobe and Tiffany Conklin, 2018). During this time, Portland's local government was able to achieve a high level of control over publicly located murals, shaping their content, appearance, and location to suit the city's agendas.

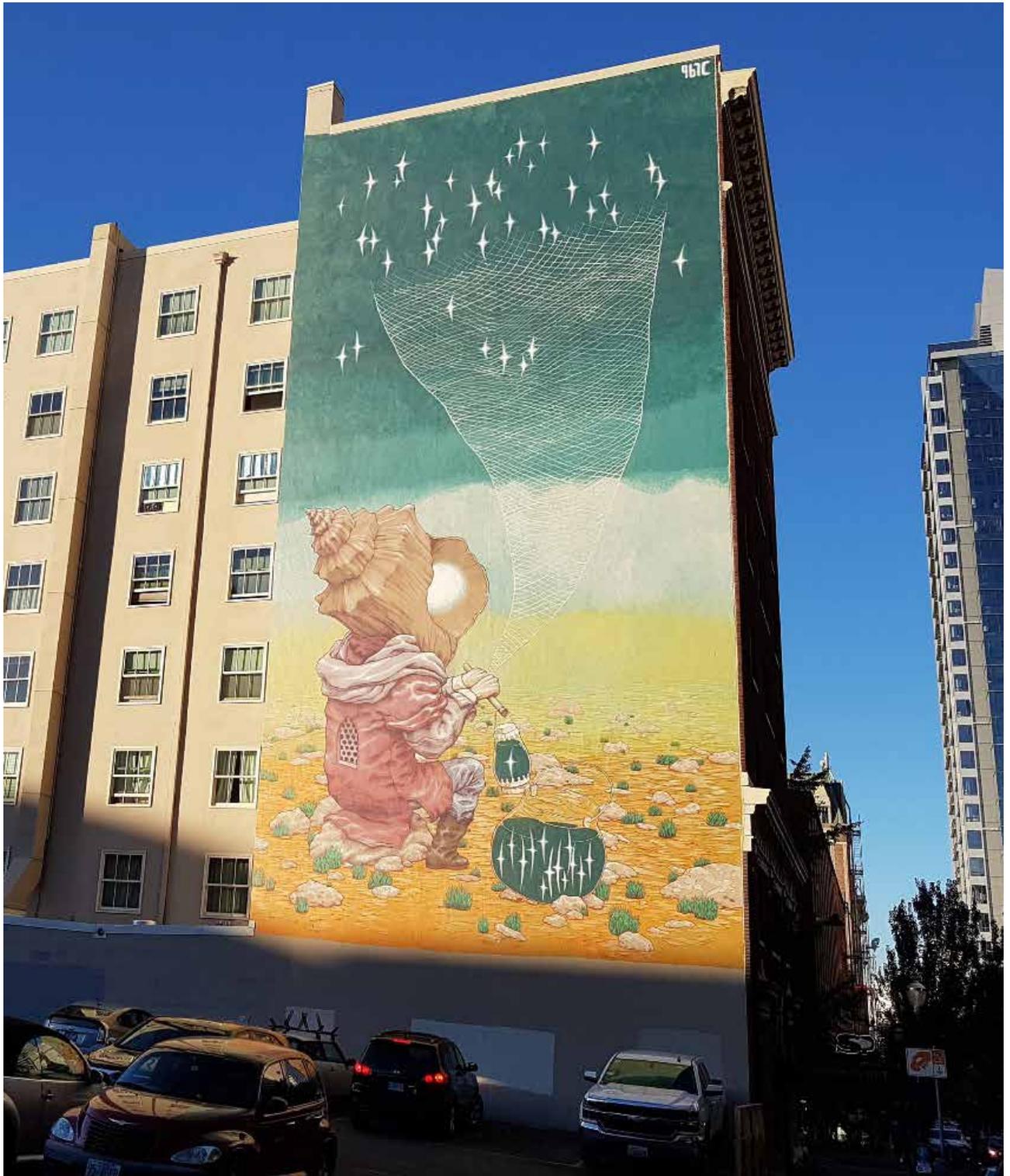


Fig. 2 - Star Catcher by Rustam Qbic, 1005 SW Park Ave, Portland, source: Author



Fig. 3 - To Oregon With Love, Blaine Fontana, 2137 Northeast Alberta Street, Portland, source: Author

Original Art Murals (2009)

The Public Art Mural Program allowed the city to distinguish between art and signage, making it possible to approve large-scale public murals. It also provided stakeholders with the opportunity to access public funds. Yet the Public Art Mural program has its limitations. First, the scope of the program is restricted to publicly owned and funded murals. As a result, it does not serve individuals who wish to create privately funded murals. Second, since murals must undergo a design review process, any mural that does not meet the artistic aims or tastes of the committee is not approved. One interviewee related to the constant tensions that the design review process caused: *"There was pressure on the public art committee to approve things that were desirable but perhaps not high quality art just so that people could get them approved"* (Expert from Portland, personal communication, 2018). Third, since Public Art murals become part of the city's public art collection, they are judged as such. This has made it difficult for community/grassroots murals to be

approved, as they may be located in less visual locations and are in competition with high-quality murals created by well-known artists. In one such case, an interviewee remarked, *"we didn't want [the mural] to be part of the city's public art collection, they were more of a community mural"* (Expert from Portland, personal communication, 2018). This issue was later partially reconciled when in 2018, RACC incorporated a community mural track and an extensive community engagement process.

As Portland increasingly aimed to encourage neighbourhood-based murals as well as to address the demands of artists, owners, and community members to promote privately funded murals, the city formed another mural working group. In 2009, the city passed a new city code— Title 4 - Original Art Murals - allowing individuals and organizations to apply for a mural permit that exempts the artwork from the city's sign and planning legislation (see for example Fig. 4).

In order not to violate Oregon's constitution, the content of Original Art murals is not regulated, loosening the city's control over some of its murals. After much debate, the municipality was willing to take this leap of faith. As an interviewee explained, "[t]here were artists and property owners who said, you know, I want a mural on my building that I want to paint ... We were a few years down the road with the RACC mural process and we hadn't had any real disasters... And so finally we got to the point where we said, okay, we'll take the risk" (Expert from Portland, personal communication, 2018).

However, approving murals without regulating their content elicited some concerns among city administrations, leading them to impose certain restrictions on Original Art murals. The first addressed the city's concern over opening Portland to rotating advertisement disguised as art. As an interviewee commented: "The big legal challenge became how to distinguish between signage and mural art and could those be treated differently from one another without violating those constitutional free speech provisions" (Expert from municipality, Portland, personal communication, 2018). Consequently the city required that Original Art Murals be hand painted or hand tiled directly onto walls or panels attached to the walls. Additionally, they must remain for a period of at least of 5 years. As an interviewee explained: "When you want to make money, you put a billboard up for a couple of months, towards the end people get used to seeing it and it doesn't have an impact anymore. And so they swap it out and the new work is put over and it gets people's attention. And so, keeping it up there for a while may lose its impact from an advertising standpoint". (Expert from Portland, personal communication, 2018). The issue of murals as advertisements was raised again in 2019, when city officials debated the possibility of establishing city-endorsed 'legal walls': "We are inundated with advertising at every turn, we don't need to provide corporations with more opportunities to bombard the public with advertisement. This is about art" (Transcript of city council meeting, August 7 2019).

The second concern was over contentious and controversial murals. Specifically, over the city's lack of ability to resolve disputes after a mural is created. As an expert from Portland's municipality explained: "...people think that what comes out of a mural won't be something that shocks them, and if it does shock them, they would call the city and complain

about it... but all we can do is look if the mural got a permit and only if it didn't get a permit as a sign or as a mural, then we can ask the owner to remove it" (Expert from Portland, personal communication, 2018).

To counter this concern, the municipality added a mandatory public participation process, hoping that community members would share their concerns and settle conflicts before a mural is painted. Procedural requirements of this sort were made in hope of regaining some sort of self-control over the process, through the alleged wisdom of the masses. As noted by one interviewee, "we assume that public pressure will affect [the decision], particularly if it is a business that is putting up a permanent mural on the side of its building. If it's really offensive to the community, they're going to have an interest in not doing that because they [want] people to patronize their business. But if everybody says they hate it and the owner puts it up anyway, they can" (Expert from Portland, personal communication, 2018).

The municipality also restricted the location and size of Original Art murals. For example, they cannot exceed 30 feet (9.14 meters) in height and cannot be located on historic landmarks, on a public right-of-way, or on street-facing walls in Design Overlay Zones such as the downtown area (City of Portland Bureau of Planning and Sustainability, 2009). Additionally, Original Art Murals are not permitted on residential buildings with fewer than five dwelling units, a policy crafted in order to increase the number of people required to approve murals in residential areas.

As result of these limitations, Original Art Murals cannot be found on highly visual walls and their location in Design Overlay Zones is limited. This affects the geographical distribution of mural art in the city. As according to one interviewee, explained, "the downtown core has the most design review and design guidelines and there's a focus on what the built environment looks like and on the aesthetics of the city. Because we know we can't regulate content at all, people haven't been willing to say, okay, we're willing to have anything goes in that area" (Expert from Portland, personal communication, 2018).

In 2019, Portland revised its Original Art Murals code - Title 4, relieving some of its limitations: this included shortening a mural's required lifetime from five to two years, and



Fig. 4 – Rhinoceros, Josh Keyes, 1208 SE Morrison, Portland, source: Author

raising the height limits. Additionally, the city authorized the placement of Original Art murals on structures and retaining walls. This change enabled the registration of some of Portland's iconic murals, granting them legal protection. But it also allowed local government to begin regulating murals that used to be beyond its reach, thus de facto expanding its control. This policy shift suggests that the city became more confident in its decision to reflex its control over mural creation. Procedural and design requirements were sufficient to balance private and public concerns, without impinging too much on creativity, freedom of speech and proprietary interests.

Unsanctioned murals

In recent years, Portland has become more accepting of street art and other unsanctioned artworks. While every mural created without government consent is still

considered unsanctioned, the city's graffiti abatement program has modified its strategy and typically does not buff unregulated murals that are not reported by as a nuisance. Thus, the city has the power to control, but it opts not to exercise it automatically. As an interviewee explained, "[u]npermitted murals are something that the property owner asked to have on their property...the graffiti abatement program deals with graffiti vandalism, done without permission, making the owner victim of vandalism" (Expert from Portland, personal communication, 2018). Put differently, graffiti abatement crews proactively focus their work on areas in which graffiti has been reported, faction effect creating informal tolerant areas where, in the absence of complaint or due to the tacit or overt acceptance of the local community, unsanctioned murals remain for a long period of time. The choice to *not* exercise its powers is in itself a testament to the city's authority, discretion, and control over its public spaces. Its ability to choose where and when to intervene suggests



Fig. 5 – Ice cream mural, unknown artist, SE 3rd Avenue & Oak Street Portland, source: Author

that the municipality is confident enough to let people make their own choices, and to police public spaces themselves, without asserting or imposing top-down controls.

Conclusions

The case of Portland demonstrates the considerable thought Portland has invested in developing its mural policy, as well as the dilemmas (and solutions) that face city administrations attempting to balance between being more permissive and retaining a hands-on approach to public spaces.

It is evident that Portland's administration is not interested in pursuing intense control over all of the city's murals. Portland has made significant efforts in developing a variety of tools that afford governing bodies a range of control, at their discretion (see fig. 6). This enables the city to focus its efforts on governing murals that are located

in highly visual locations or are promoted by the city. The relative elasticity of the city's policy makes it possible for some murals to be created in an organic way, enhancing artistic and proprietary freedoms. Consequently, other murals can be harnessed by public bodies to promote urban development and to improve the quality of urban spaces. The degree of permissiveness of the city is related to its geography. Generally speaking, in dominant areas, such as the city center, the city's administrative maintains a high level of control. In neighborhood centers, the city relaxes its control over mural content. And in industrialized area, ally ways, and neglected spaces, the city is willing to take a more tolerance approach.

While Portland's administration acknowledges the value of regulating its public spaces, it also understands that regulation is not a quick fix. To create a pluralistic and livable public space, there are activities that should not be

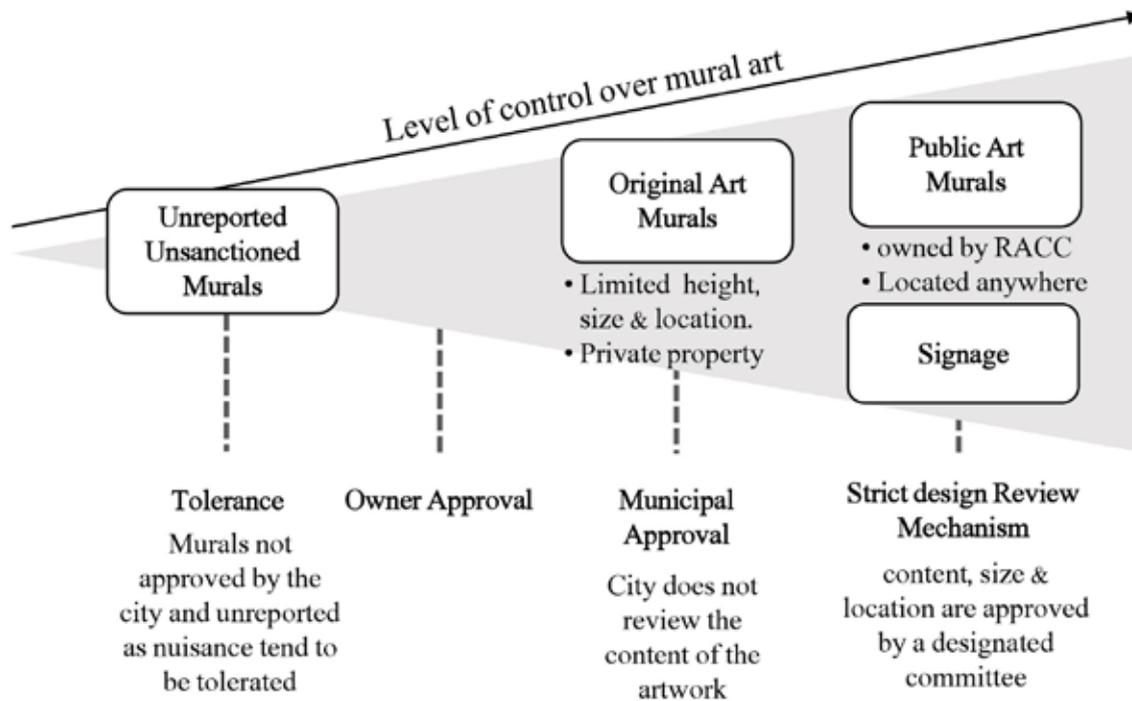


Fig. 6 – Levels of Control in Portland’s mural policy

fully regulated but instead left to develop from the ground up. Therefore, the city applies partial deregulation, and makes conscious decisions not to enforce the law under certain circumstances.

Overall, the case of Portland’s mural policy demonstrates the importance of making gradual and incremental steps towards liberating urban spaces from overbearing government regulation of art. These steps eventually contribute to the democratization of public spaces, allowing communities and individuals stronger influence over their public spaces. Control that is shared among public authorities and private stakeholders can produce a balance between individual and community interests as well as mutual supervision of public spaces in the urban environs. Indeed, looking back, one interviewee observed, “[w]e are always worried that someone is going to paint a giant swastika or that it is going to be obscene, what are we going to do if we get

that offensive mural?..... In the beginning we thought that if we cannot have any say over the content, it is going to be terrible. We finally let go of that and it has been fine. We have not had the parade of horrors” (Expert from Portland, personal communication, 2018).

Footnotes

1. Oregon's state Constitution has a broader free speech protection than the United States Constitution. Unlike federal law that distinguishes among differing kinds of expression based on their content (allowing the distinction between commercial and noncommercial speech), Oregon's Constitution addresses all expression as equal (that is, one cannot make distinctions based on content).
2. Title 5 of Portland's city code defines all public artworks (and with them Public Art murals) as "original creative work, which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland" (Portland city code - Title 5 - Revenue and Finance, 5.74).
3. Because the distinction between Public Art murals and other illustrations created on outdoor facades is based on procedure and not content (whether or not they were approved and owned by RACC), it is possible to exempt them from the city's sign code as well as the planning and zoning code.

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