

This past July I read an article in the Oregonian that described how the Bureau of Development Services (BDS), a bureau I have responsibility for, had ordered two businesses along SE Division to either remove their exterior artistic murals or face daily fines.

I reacted then as I do now to the idea of losing two prime examples of community-based art reflecting the creativity, diversity and dynamic expression of Portlanders. I could not stand by and do nothing thereby allowing the murals to be removed. As the Commissioner in charge, I ordered BDS not to take any further enforcement actions against the two community-based murals until I could sort out how the ordinance that was causing the city to take such drastic enforcement action came into being and why.

As a result of my research, I discovered that the origin of the sign code governing murals is based on a long-running battle between the City of Portland and the commercial bill board and wall sign industry.

I discovered that the Oregon Supreme Court has ruled that artistic murals painted on the exterior of buildings, commercial wall advertisements, and commercial billboards can not be regulated differently based on the content within their borders. According to the Oregon Justices, allowing artistic murals while placing greater restrictions on similarly sized commercial advertisements violates the free speech provision of the Oregon Constitution.

In 1998 the Portland City Council, with the Oregon Supreme Court ruling in mind, adopted a sign code that limited the size of all new artistic murals and commercial signs. Oversized murals and commercial signs in existence at the time were “grandfathered” in as existing murals and signs. As a result, average Portlanders, not knowing the background of the rancorous fight between the City of Portland and commercial sign companies, were left trying to understand why a community-based, artistic mural painted on a former garage door on SE 20th and Division is illegal while the commercial wall sign that exists at the west end of the Morrison Bridge measuring 100 feet wide by 6 stories high is legal.

It is important to note that with the exception of Commissioner Erik Sten, the entire city council in 1998 (Commissioner Saltzman was not on the council in 1998) voted to create the restrictive new sign code with the full understanding that they were limiting community-based murals. They saw this as a price worth paying to limit and hopefully eliminate commercial advertising on walls and free standing billboards. Commissioner Sten said at the conclusion of the 1998 vote that the council had made a mistake in its attempt to get at the commercial sign industry by intentionally limiting community-based artistic murals. He said the ordinance was out of balance and predicted that once it was enforced as written against community-based murals, there would be a huge public backlash.

Had I been on the council in 1998, I would have wholeheartedly seconded his remarks. Commissioner Sten predicted exactly what would end up coming to pass in 2003 after it became public that the city was taking action to have the murals in SE Portland painted over ...just as the council envisioned in 1998.

Since the adoption of the sign code in 1998, the City of Portland and Clear Channel Communications have been in court battling over the city's sign ordinance. To date, Clear Channel has a judgment against the city that now amounts to \$1.3 million. At this stage of the court fight, Clear Channel is asking that judgment to be increased to \$8 million. I told Mayor Katz that I believed that a sign code making public art illegal, as exemplified by the two murals on SE Division, was out of balance and inherently wrong. Mayor Katz, from that moment to now, has been steadfast in her disagreement with me.

In an attempt to rewrite the code so as to loosen the restrictions on public murals while honoring the Oregon Supreme Court prohibition against creating different regulations for public art and commercial signs, I began negotiating with Clear Channel Communications in an attempt to settle the lawsuit between Clear Channel and the city. The principles I brought to the settlement negotiations were as follows:

Mayor Katz would be kept briefed by me throughout the negotiations. Mayor Katz would be asked to view the various proposals by Clear Channel for her input, suggestions and requests.

Community based artists would be consulted to determine what they thought would be a reasonable sign code that allowed and even encouraged existing and new community based murals.

The number of free standing bill boards in the city must be reduced from their current number. Additionally, free standing billboards must be removed from residential areas.

The judgment against the city must be eliminated in addition to the city receiving a one time payment from Clear Channel to settle the case.

Billboards and murals must be registered with the city with annual registration fees so that the city can monitor commercial signs, their locations and legality. (Interestingly, even now the city does none of this.)

The city would allow billboards within the limits described within these principles, in order to allow community based murals to exist and even flourish.

My staff or I met numerous times with Clear Channel in an attempt to negotiate a settlement consistent with the principles listed above. I or my staff met, exchanged e-mail and talked on the phone with Metro Murals (a group of artists dedicated to community based art) to get their response and input to the various proposals that would come from our negotiations with Clear Channel. We successfully incorporated many of their requests and suggestions into our counter proposals back to Channel Channel.

As of our last settlement negotiations, Clear Channel agreed to

Drop the lawsuit

Forgive the \$1.3 million dollar judgment against the city

Pay the city \$500,000

Reduce the current number of billboards within Portland by 53 structures. Additionally, all billboard structures within neighborhoods would be removed within 30 days of the signing of the agreement.

Donate 7 of their current commercial wall sign locations to Metro Murals. The exact location of each of the 7 donated signs would be determined by Metro Mural

Agree, for the first time in the city's history, to register each bill board and wall sign within the city and pay an annual registration fee

Clear Channel agreed to these provisions because it allowed them to discontinue expensive and uncertain litigation in addition to the sign code being amended to a more balanced set of regulations allowing their business to operate with certainty within the city.

At each of these stages, I or my staff forwarded information on the status of the negotiations directly to Mayor Katz and her staff. Every request made by Mayor Katz or her staff for specific information from my office was complied with and forwarded to the Mayor's office. I unsuccessfully encouraged Mayor Katz to have one of her staff attend the negotiations with Clear Channel. A meeting scheduled for last week with Mayor Katz, Clear Channel and me was cancelled by Mayor Katz without my knowledge.

In the past two weeks, I became increasingly aware that the documents and information I was forwarding to Mayor Katz were not being analyzed for the purpose of making a counter proposal, but rather were being analyzed to make the Mayor's case that the current sign code should not be changed. The Mayor recently communicated to me that, following her meetings with council members, support does not exist on the council to amend the sign code along the provisions and principles I have been negotiating with Clear Channel.

I entered the negotiations with Clear Channel with the belief that a majority of the city council agreed that the attempted enforcement action against the two artistic murals in SE Portland made it crystal clear that the current code needed to be changed.

It is clear to me now that the support I believed existed simply isn't there at this time.

Therefore, I have contacted the representatives of Clear Channel and informed them that our current negotiations will have to cease given the current political climate on the city council.

Mayor Katz has told me that she has developed a strategy that would allow, in her opinion, the legitimizing of community murals such as the two in SE Portland while still prohibiting commercial advertising beyond the limits set in the current sign code. I have indicated to her that I will support any legal solution that complies with the Oregon Supreme Court's

rulings relative to commercial advertising and community murals.

I am deeply disappointed that I could not get the Mayor's support in reaching a settlement with Clear Channel that would not only remove the dark cloud over community-based murals in Portland, but eliminate a huge financial judgment against the city and add reason and balance to the city's sign code. It is my opinion that reaching a settlement with Clear Channel would have opened the door to modifying the existing sign code and was our best strategy to avoid the removal of the two artistic murals that exist on SE Division.