

WALL MURALS – CITY OF MIAMI EXPERIENCE

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BACKGROUND – MIAMI CULTURE

- Leader in culture, media entertainment, visual and performing arts and international trade
- South Beach – Leader in fashion and arts
- Nickname: Capital of Latin America second largest US city with a Spanish speaking majority
- Largest US city with a Cuban American plurality
- Port of Miami is the cruise capital of the world
- International tourist destination



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LEGAL CONSIDERATIONS

- Highway Beautification Act of 1965 (HBA) 131 United States Code
- 1968 Amendment to the HBA – clarifying “customary use”, 23 United States Code 131(d)
- Code of Federal regulations further clarifying state procedure for certifying local control, 23 Code of Federal Regulations, § 750.706
- Florida State statute “Wall Murals” Section 479.156 Florida Statutes



HIGHWAY BEAUTIFICATION ACT 1965

- ▶ **STATE MUST MAINTAIN “EFFECTIVE CONTROL” OF OUTDOOR ADVERTISING:**
- ▶ 23 United States Code, § 131 “Control of Advertising.”



1968 AMENDMENT TO THE HBA

- 23 USC 131(d) “Whenever a bona fide state county or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.”
- The amendment was passed after extensive discussion and public hearings to make it clear that local determination of size, lighting, and spacing would be given great deference by State and Federal agencies.



CODE OF FEDERAL REGULATIONS

- ▶ 23 C.F.R. §750.706 provides that where the agreement and state law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, stating:
 - ▶ (4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.



FLORIDA STATE LAW

- Section 479.02, Florida Statutes, delegated to the Department the responsibility of administering and enforcing the 1972 agreement, as well as Chapter 479, Florida Statutes .
- Section 479.156, Florida Statutes regarding wall murals, was enacted in 2007, to provide:

Wall murals. –

- A municipality or county may permit and regulate wall murals within areas designated by such government;
- A wall mural that displays a commercial message and is within 660 feet of the nearest edge of the right-of-way within an area adjacent to the interstate highway system or the federal-aid primary highway system shall be located in an area that is zoned for industrial or commercial use;



FLORIDA STATE LAW continued

- The municipality or county shall establish and enforce regulations for such areas that, at a minimum, set forth criteria governing the size, lighting, and spacing of wall murals consistent with the intent of the Highway Beautification Act of 1965, and with customary use;
- A wall mural that is subject to municipal or county regulation and the Highway Beautification Act of 1965 must be approved by the Florida Department of Transportation and the Federal Highway Administration and may not violate the agreement between the state and the United States Department of Transportation or violate federal regulations enforced by the Department of Transportation; and
- The existence of a wall mural shall not be considered in determining whether an Outdoor Advertising sign, either existing or new, is in compliance with spacing requirements.



FLORIDA STATE LAW AMENDMENT

State Law concerning wall murals was amended in 2009 to include language from 23 U.S.C. §131(d), directing the Department to accept a municipality or county determination of customary use and notify the Federal Highway Administration of local control pursuant to the agreement.



WHAT EVIDENCE OF CUSTOMARY USE NEEDS TO BE SHOWN?

- The ordinance(s) in effect at the time of passage of the HBA or signing the Federal State Agreement
- The ordinance in effect at present
- Photographs of murals in city in 1920's, 1940's, 1950's & 60's
- Whether the ordinances and city actions constituted effective control
- History and culture of the local area or jurisdiction
- Ability of the bona fide local government to enforce
- Other evidence of customary use such as historical restrictions on size, spacing & lighting
- Congressional Reports and Public Testimony regarding intent and customary use

