



Number: P-24-001  
Date: 07/24/24

## ***POLICY DIRECTIVE***

Jonathan Gulliver (signature on original)

ADMINISTRATOR

### **State Highway Access Permits for Murals and Artwork**

*This Policy Directive supersedes Policy Directive P-14-002, dated September 17, 2014.*

#### **Policy**

MassDOT will consider requests from applicants who wish to install murals or other artwork on buildings, bridges, and other structures owned by MassDOT, solely for the purpose of aesthetic enhancement to the affected communities and/or neighborhoods.

MassDOT intends that its buildings, bridges, and other structures constitute a non-public forum and are not intended to serve as a forum for free expression by the public. By adopting this policy directive, MassDOT does not agree or consent to any implication that any property owned by MassDOT is any type of public forum.

To be considered, interested parties are required to prepare and submit a Non-vehicular Access Permit application to the appropriate District Office.

MassDOT may issue permits for murals or other artwork on buildings, bridges, and other structures that conform to the conditions described herein and are not contrary to MassDOT's official sentiments.

#### **Authority**

The authority for this policy derives from M.G.L. c. 81 and M.G.L. c. 87 and regulations found at 700 CMR 13.00. MassDOT is authorized to issue Non-vehicular Access Permits for projects within the State Highway Layout that do not involve physical modifications.

Applications for murals or artwork that involve advertising content shall be referred to the MassDOT Outdoor Advertising Office and processed in accordance with M.G.L. c. 93D, §1-7 and regulations found at 700 CMR 3.00.

#### **Permit Application Requirements**

Applicants proposing to install murals or other artwork on buildings, bridges, or other structures owned by MassDOT shall be required to apply for access via a Non-vehicular Access Permit. In

addition to a completed Application for Permission to Access State Highway, the applicant must also include the following documentation with its application:

- A plan showing the structure on which the mural/artwork is proposed to be installed. This plan shall be labeled with sufficient geographic information (street labels, scale, north arrow, and coordinates) to determine the location of the structure and the affected highway(s).
- Photographs of the current location taken from the roadway, bike path, or other views, indicating the structure or property to be affected. In addition, mark-ups showing the intended mural or other artwork overlain on the photos of existing site conditions.
- Concept sketches or renderings of the proposed mural or other artwork.
- Evidence of support from municipalities that will be affected by the proposed mural or other artwork, including support from the local police department(s). In some cases, additional support from local abutters, regulatory commissions or agencies, and relevant municipal councils or commissions may also be required.
- Additional documentation, such as engineering or material specifications and plans, digitally modified photographs showing before-and-after conditions, drawings showing existing conditions and/or proposed modifications, other illustrations or information may be required at the request of MassDOT.
- A traffic management plan (TMP) to perform the work as determined necessary by MassDOT in its sole discretion.

The applicant must also demonstrate in writing that the proposed mural or other artwork is consistent with the goals outlined in MassDOT's *Project Development and Design Guide*, Chapter 13 (Landscape and Aesthetics).

The District Highway Director (DHD) may also request that the applicant present its proposal to MassDOT and other affected parties as it deems appropriate in its sole discretion.

### **Criteria for Approval or Denial**

The mural or other artwork must not cause driver distraction or otherwise unnecessarily engage the attention of drivers. The mural or other artwork must not result in conditions that would compromise the flow of traffic or increase roadway information clutter.

Murals and other artwork that involve advertising or promotional content will not be allowed under this policy.

The mural or other artwork should be best applied directly to the structure and should otherwise not obscure or cover elements that would affect MassDOT's ability to properly inspect and maintain the structure in the future. In all cases, MassDOT will consider its ability to inspect and maintain the structure in the future and will not approve any murals or other artwork that would compromise this ability. All design and art shall be the original work of the artist(s). Use of copyrighted or rights-protected images is not allowed.

For the purpose of this policy, the approved application of a mural or other artwork to a structure will not be considered to cause a physical modification of the structure. Physical modification is caused by cutting, breaking, demolishing, reconstructing, adding to or otherwise changing the shape and/or structural adequacy of a structure. MassDOT will not approve applications of murals or other artwork that will cause the physical modification of any structure, as described above.

In addition to the requirements cited above, MassDOT, in its sole discretion, will not approve permits for murals or other artwork if any of the following apply to the content of the proposed mural or other artwork:

1. Demeaning or Disparaging – The mural or other artwork contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether a mural or other artwork contains such material, MassDOT will determine whether a reasonably prudent person would believe that the mural or other artwork contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
2. Tobacco, Nicotine, Cannabis and Alcoholic Beverages – The mural or other artwork promotes the sale or use of tobacco or tobacco-related products, nicotine vaping products, cannabis products, or alcoholic beverages.
3. Violence – The mural or other artwork contains an image or description of graphic violence, including but not limited to: (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, or (2) the depiction of weapons or other implements or devices used in the mural in an act or acts of violence or harm on a person or animal.
4. Unlawful Goods or Services – The mural or other artwork promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
5. Unlawful Conduct – The mural or other artwork promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
6. Obscenity, or Nudity – The mural or other artwork contains obscene material or images of nudity, including profanity. For purposes of these guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws c. 272, § 31.
7. Prurient Sexual Suggestiveness – The mural or other artwork contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws c. 272, §31, which is a person under eighteen years of age.
8. Political Campaign Speech – The mural or other artwork contains political campaign speech. For purposes of these guidelines, the term “political campaign speech” is speech that: (1)

refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of these guidelines, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.

9. Endorsement – The mural or other artwork implies or declares an endorsement by MassDOT or the Commonwealth of any service, product, or point of view without the prior written authorization of MassDOT.

### **Approval or Denial**

All applications will be submitted and processed in accordance with 700 CMR 13.00 using the State Highway Access Permit System (SHAPS). A District Permits Engineer or other DHD designee (Designee) in the Highway District where the mural or other artwork will be located will be responsible for initial review of the application and checklist below. The District Highway Director where the mural or other artwork will be located and the Office of the General Counsel (OGC) are responsible for the final review and approval of murals or other artwork. To complete this, the following steps will be taken:

1. The applicant will complete the State Highway Access Permit for Murals and Artwork Checklist (Application Checklist) in SHAPS, certifying completion of all requirements in the Application Checklist.
2. The assigned Designee will conduct a Completeness Review of the Application Checklists under 700 CMR 13.03(2) and coordinate with the applicant to collect any missing Required Submissions and ensure the proposed mural or other artwork meets all Review Criteria. If the applicant cannot provide all Required Submissions or the proposed mural or other artwork does not meet all Review Criteria in MassDOT’s sole discretion, the permit will be denied.
3. The Designee will ensure the completed Application Checklist, all submitted Required Submissions, and a recommendation for approval are uploaded to SHAPS for OGC review.
4. The OGC will be assigned a review in SHAPS and sign off or provide comment on the Application Checklist.
5. In the event the OGC has comments, the comments will be provided to the applicant through SHAPS as part of their assigned review. The Designee will ensure the applicant addresses any comments provided by OGC and provide written responses to the comments. The Designee shall coordinate with the applicant as necessary. Once all OGC Comments have been resolved, the Applicant will upload the updated Application Checklist to SHAPS with any updated Required Submissions.
6. The process outlined in steps 3 through 5 will continue until signoff is received by the OGC on the Application Checklist.
7. Upon signoff from the OGC, the Designee will submit the completed Application Checklist, all submitted Required Submissions, and the recommendation for approval to the DHD for comment or final approval and permit issuance through SHAPS.
8. In the event the DHD has comments, the comments will be provided to the applicant through SHAPS as part of their assigned review. The Designee will ensure the applicant addresses

any comments provided by DHD and provide written responses to the comments. The Designee shall coordinate with the applicant as necessary. Once all DHD Comments have been resolved, the Applicant will upload the updated Application Checklist to SHAPS with any updated Required Submissions.

9. The process outlined in steps 7 and 8 will continue until the DHD provides final approval and permit issuance through SHAPS.
10. Completed Application Checklists and Required Submissions will be kept on file with the District and the OGC.

If the applicant's proposal is approved by MassDOT, the following provisions, in addition to those set forth in 700 CMR 13.00, shall be incorporated within the Non-vehicular Access Permit for the mural or other artwork:

1. The applicant shall be responsible for installation of the mural or other artwork, including any traffic control required by MassDOT for the safety of workers and the traveling public during the installation process.
2. The applicant shall be responsible for any damage caused to the structure by the mural or other artwork.
3. At the discretion of the District Highway Director where the mural or other artwork will be installed, the applicant shall post a Surety Bond for an amount not to exceed \$5,000 and shall maintain the Surety Bond for the duration of the permit or any amended permit or Annual Emergency Response and Maintenance Permit.
4. The applicant shall hold MassDOT harmless for any damage caused to the mural or other artwork during structural inspection or other maintenance procedures performed by MassDOT. The applicant may also be responsible for temporary removal of the mural or other artwork for purposes of maintenance or inspection.
5. All work shall be subject to regular inspections or ongoing observation by the Highway District Office where the mural or other artwork is installed. Any work determined by MassDOT to be inconsistent with the terms of the permit and policies of MassDOT shall be stopped and the permit revoked as determined in MassDOT's sole discretion.
6. The permit shall authorize the applicant to access the State Highway Layout or other MassDOT property to complete the mural or other artwork and shall include a date by which it must be completed.
7. MassDOT, in its sole discretion, may remove or move the mural or other artwork at any time and for any reason including, without limitation, due to disrepair, discoloration, fading, or for any other reason.
8. MassDOT makes no guarantees with respect to the duration that any mural or other artwork may be displayed in a given location.
9. MassDOT retains the right to perform any maintenance and reconstruction of the infrastructure displaying the mural or other artwork and the right to remove the mural or

other artwork at any time without notice to the artist to the extent required by law.

10. All artwork created under this Program belongs to the MassDOT. MassDOT will attribute proper credit due to the artist(s) and/or organization, however, all parties associated with the mural or other artwork project must execute a written agreement stipulating that the artwork is a “work for hire” and waiving any rights to integrity granted pursuant to the Massachusetts Art Preservation Act (M.G.L. c.231, § 85S) or the Visual Artists Rights Act of 1990 (17 U.S.C., § 106A).
11. MassDOT will grant the artist a royalty-free, perpetual, world-wide license to use depictions or replicas of the mural or other artwork for any use.
12. Any modification, maintenance, or reapplication of a mural or other artwork by the original applicant shall only be done through a Permit Amendment, an Annual Emergency Response and Limited General Maintenance Permit, or a new Non-vehicular Access Permit, in MassDOT’s sole discretion.