

# **Bond Case Briefs**

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## **In Atlanta, Murals as Art, and as Zoning Law Test Cases.**

ATLANTA — Next to Fabian Williams's fresh mural and around a corner from a wasp-infested wall where he had painted another one, the graffitied doors along Flat Shoals Avenue seemed like an ideal canvas.

"So, I did this," Mr. Williams said last week as he stood between a weave shop and a tax preparation office and a few feet from a recently finished aerosols-and-acrylics depiction of James Baldwin, the novelist and social critic.

The owner of the tax business loved the painting, which hardly seemed out of place in a city full of colorful visual tributes to cultural figures, civil rights heroes and local music. But to some here, the Baldwin mural is like many other works of street art on private property: potentially illegal because it is in public view and displayed without a series of government approvals detailed in a seldom-enforced 2003 city ordinance.

This spring, the city abruptly suggested that it might begin to carry out the ordinance, leaving Atlanta in a dispute of art and municipal zoning that turns on constitutional principles and quickly landed in court.

Atlanta is hardly the only American city increasingly marked by wall-size splashes of color and design. But it the latest place to contemplate whether and how it can regulate murals that can be reflections of neighborhood pride, artistic visions, and local debates over commercialization and gentrification.

Artists contend that the First Amendment is their surest shield against rules that municipal officials argue are necessary to prevent works that some find obtrusive.

"It can be an extremely politicized road," said Olga Garay-English, a former executive director of the Department of Cultural Affairs in Los Angeles, where she was involved in a battle over mural rules. "Once you start bringing in elected officials to be arbiters of what is a mural and what isn't, my opinion is that it's very tempting to start looking at content when that's really the first thing you're not supposed to be doing."

In Atlanta, where the streets can sometimes seem like galleries, the controversy ignited after a surprising threat to invoke a longstanding, but mostly ignored, ordinance that effectively requires murals on private property to receive approvals from five sources, including the mayor, the City Council and a representative of the Urban Design Commission.

City officials are also supposed to examine whether a proposed work will "constitute a traffic hazard or undue or dangerous distraction to motorists or pedestrians" and ensure that it is "not inconsistent with the City of Atlanta's public art program."

Violators risked jail time, but compliance and enforcement were sporadic. Then the city stunned muralists in April when it quietly introduced a sweeping amnesty program to allow artists to receive

retroactive, streamlined certifications. Murals that remained unsanctioned and defied a June deadline, an Atlanta official warned, were “subject to removal.”

The dispute renewed a debate about street art that has percolated for more than a decade at neighborhood meetings, acts of protest and City Hall debates.

Mr. Williams, who said he thought the sudden shift was an effort to sanitize Atlanta’s culture and appease developers, joined other artists in going to Federal District Court.

“The city is not empowered to regulate or prohibit or criminalize, in this case, artistic expression on a person’s own property,” said Gerry Weber, a lawyer who represents Mr. Williams and who, in 2006, negotiated a settlement to a separate graffiti ordinance. “We’re not saying the city doesn’t have a significant amount of discretion in saying what art goes on public property.”

Mayor Kasim Reed said that there was “no city policy to remove artwork on private property” and that “any communications from the city suggesting otherwise were a mistake, and do not represent the city’s position.”

Mr. Reed, who was not in city government when the ordinance took effect and who represented performing artists when he was a practicing lawyer, said that Atlanta’s existing standard warranted reconsideration. But he said Atlanta did “need some standards to govern art on private property which can be viewed by the public.”

“Of course we must and will be mindful of the First Amendment and, consistent with the First Amendment, protect against offensive and harmful content,” Mr. Reed said. “At the same time, we can and should create space for artists to express themselves through their work, and bring more vibrancy and beauty to our city.”

The city has not filed its answer to Mr. Williams’s lawsuit, but lawyers are discussing a settlement.

“At the beginning, the champions of zoning did not emphasize that because of their fear that zoning would be struck down as too arbitrary because beauty is in the eye of the beholder,” said Michael Allan Wolf, a law professor at the University of Florida, who has written extensively about zoning and land use. “In reality, it cannot be denied that one of the reasons we have land use regulation is because it looks better, and a community that looks better is a healthier community, a more vibrant community.”

But Atlanta’s requirements, experts said, could trouble the courts if Mr. Williams’s case ever went to trial. The ordinance appeared “to be pushing the envelope,” Professor Wolf said, because it involves art on private property.

The city does not seem to want to test the professor’s prediction. A judge ordered an update on settlement negotiations by June 23, and Mr. Reed suggested that Atlanta could revise the city code “in the next few weeks.”

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