

EMERGENCY

LES

- 2022

AUTHORIZING the City Manager to design, install, and maintain artwork on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood as an art installation that will be included in BLINK Cincinnati, notwithstanding any conflicting Cincinnati Recreation Commission rules and regulations or any provision of the Cincinnati Municipal Code that would prohibit the installation and maintenance of the artwork; **AUTHORIZING** the City Manager to accept monetary and in-kind donations from one or more persons in order to offset the cost and expense associated with the design, installation, and maintenance of artwork on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood; and **AUTHORIZING** the Finance Director to deposit monetary donations into Fund 319, “Contributions for Recreation Purposes,” revenue account no. 319x8571.

WHEREAS, the City wishes to install artwork and paintings (“Artwork”), substantially similar in design, color, and concept to the sample designs in Exhibit A to this ordinance, on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood as an art installation that will be included in BLINK Cincinnati to promote public awareness of the arts; and

WHEREAS, the City may designate one or more agents or contractors, including Xylene Projects and artist Matthew Dayler, to carry out all or a portion of the work required to design, install, and maintain the Artwork; and

WHEREAS, the City may also accept donations from one or more persons, including Xylene Projects, in order to offset the cost and expense associated with the design, installation, and maintenance of the Artwork and to ensure the design, installation, and maintenance of the Artwork shall have little or no impact on the General Fund of the City; and

WHEREAS, the design, installation, and maintenance of the Artwork shall be performed under the management of the City Manager or her designee, and any agents or contractors of the City, including Xylene Projects and Matthew Dayler, shall comply with rules and regulations established by the City Manager and the Cincinnati Recreation Commission (“CRC”) and any agreement with the City or CRC regarding the design, installation, and maintenance of the Artwork, including rules and regulations concerning its location, size, materials, means of installation, and maintenance as necessary to ensure public safety; and

WHEREAS, the City’s design, installation, and maintenance of the Artwork is the City’s own expression, constitutes government speech, and does not signify the City’s intent to create a free speech forum; and

WHEREAS, the City will own the Artwork created under this project, will maintain complete control over the Hanna Playground as necessary for public safety, and will require the artists who design, install, and maintain the Artwork to waive their rights in and to the Artwork, including waiving all applicable rights under the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d), so as to ensure that expression made through the Artwork constitutes government speech; and

WHEREAS, the extent of maintenance and repair of the Artwork shall remain within the City's discretion, and the Artwork shall remain subject to removal by the City, in part or in whole, at any time; and

WHEREAS, the City has an interest in promoting the arts, notwithstanding the provisions of the Cincinnati Municipal Code that would normally prohibit such displays, when the proposed display will not negatively impact the health, safety, or welfare of residents; and

WHEREAS, the City Planning Commission, at its regularly scheduled meeting on October 7, 2022, recommended that the City install the Artwork on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood; and

WHEREAS, Council finds that the design, installation, and maintenance of the Artwork in the Over-the-Rhine neighborhood will beautify the pool and basketball courts at Hanna Playground, enhance civic pride, and advance public health and wellness goals; and

WHEREAS, the design, installation, and maintenance of this Artwork is consistent with the "Live" goal to "[c]reate a more livable community," as described on pages 156-163 of *Plan Cincinnati* (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Council hereby declares the design, installation, and maintenance of the artwork depicted on the attached Exhibit A ("Artwork"), incorporated herein by reference, on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood to be a matter of significant public interest, and it hereby resolves to raise public awareness of the arts through the design, installation, and maintenance of this conspicuous visual art; further that, notwithstanding the provisions of the Cincinnati Municipal Code that would normally restrict such displays, Council has determined that the design, installation, and maintenance of the Artwork is in the interest of the public health, safety, morals, and general welfare and will not negatively impact the health, safety, morals, or welfare of residents.

Section 2. That the City's design, installation, and maintenance of the Artwork is the City's own expression, constitutes government speech, and does not signify the City's intent to create a free speech forum.

Section 3. That the City Manager is hereby authorized to design, install, and maintain the Artwork on the pool and basketball courts at Hanna Playground in the Over-the-Rhine neighborhood, which Artwork shall be substantially consistent with the design depicted on the attached Exhibit A, incorporated herein by reference, and shall be located in the area depicted on the same, notwithstanding any conflicting Cincinnati Recreation Commission ("CRC") rules and regulations and any applicable provisions of the Cincinnati Municipal Code.

Section 4. That the design, installation, and maintenance of the Artwork shall be performed under the management of the City Manager or her designee, and any agents or contractors of the City, including Xylene Projects and artist Matthew Dayler, shall comply with rules and regulations established by the City Manager and CRC and any agreement with the City or CRC regarding the design, installation, and maintenance of the Artwork, including rules and regulations concerning its colors, symbols, styles, location, size, materials, and means of installation and maintenance as necessary to ensure public safety.

Section 5. That the City Manager is authorized to engage one or more agents or contractors to assist with the City's design, installation, and maintenance of the Artwork on such terms and conditions that the City Manager determines are in the best interests of the City, and any work performed by the agents and contractors so engaged by the City Manager shall be performed under the management of the City Manager or her designee, who shall have the sole authority to approve the design, location, size, materials, and means of installation and maintenance of the Artwork and to establish rules and regulations for the same as necessary to ensure public safety.

Section 6. That the extent of maintenance and repair of the Artwork shall remain within the City's discretion, and the Artwork shall remain subject to removal by the City, in whole or in part, at any time.

Section 7. That the City will own the Artwork created under this project, will maintain complete control over the Hanna Playground as necessary for public safety, and will require the artists who design, install, and maintain the Artwork to waive their rights in and to the Artwork, including waiving all applicable rights to the Artwork under the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d), so as to ensure that expression made through the Artwork constitutes government speech.

Section 8. That the City Manager is authorized to accept donations, including materials, labor, money, and in-kind services, on such terms and conditions that the City Manager determines are in the best interests of the City, to offset the cost and expense associated with the design, installation, and maintenance of the Artwork, so that the design, installation, and maintenance of the Artwork shall have minimal impact on the General Fund of the City.

Section 9. That the Finance Director is authorized to deposit monetary donations into Fund 319, "Contributions for Recreation Purposes," revenue account no. 319x8571.

Section 10. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 through 9 hereof.

Section 11. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is

the immediate need to allow the public art project described in this ordinance to proceed so that the corresponding benefits to the City and the Over-the-Rhine neighborhood are realized at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk