



EMERGENCY

City of Cincinnati

JRS

AWB

An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City Manager to design, install, and maintain a mural on the retaining wall located at the intersection of William Howard Taft Road and Woodburn Avenue in the East Walnut Hills neighborhood, notwithstanding any conflicting Department of Transportation and Engineering rules and regulations or any provision of the Cincinnati Municipal Code that would prohibit the installation and maintenance of the mural.

WHEREAS, the City of Cincinnati wishes to install a mural (“Artwork”), as depicted in Exhibit A to this ordinance, on the retaining wall located at the intersection of William Howard Taft Road and Woodburn Avenue in the East Walnut Hills neighborhood to enliven the space and promote public awareness of the arts; and

WHEREAS, the City may designate one or more agents or contractors, including the East Walnut Hills Assembly (“EWHA”), 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 the EWHA, 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 of Cincinnati; 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 the EWHA, shall comply with rules and regulations established by the City Manager and the City’s Department of Transportation and Engineering (“DOT”) regarding the design, installation, and maintenance of the mural, 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 surrounding public rights-of-way 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, prior to installation, DOTE will review the final design and placement of the Artwork to ensure it will not detract from, interfere with, or obscure official traffic control devices, will be safe, and will not unreasonably interfere with the use of William Howard Taft Road and Woodburn Avenue by pedestrians and motorists; and

WHEREAS, the City has an interest in promoting the arts, including within the public right-of-way, 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 users of the right-of-way; and

WHEREAS, the City Council finds that the design, installation, and maintenance of the Artwork in the East Walnut Hills neighborhood will beautify the public rights-of-way, 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 page 156 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Council hereby declares the design, installation, and maintenance of the mural depicted on the attached Exhibit A ("Artwork"), incorporated herein by reference, on the retaining wall located at the intersection of William Howard Taft Road and Woodburn Avenue in the East Walnut Hills 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 within the public right-of-way, 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 and users of the public right-of-way.

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 retaining wall located at the intersection of William Howard Taft Road and Woodburn Avenue in the East Walnut Hills 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 Department of Transportation and Engineering ("DOTE") 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 the East Walnut Hills Assembly, shall comply with rules and regulations established by the City Manager and the City's Department of Transportation and Engineering ("DOTE") 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 mural 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 right of way as necessary for public safety, and will require the artists who design, install, and maintain the Artwork to waive their rights to the design, installation, 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 of Cincinnati.

Section 9. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 through Section 8 hereof.

Section 10. 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 to allow the corresponding benefits to the City and the East Walnut Hills neighborhood to be realized at the earliest possible time.

Passed: \_\_\_\_\_, 2021

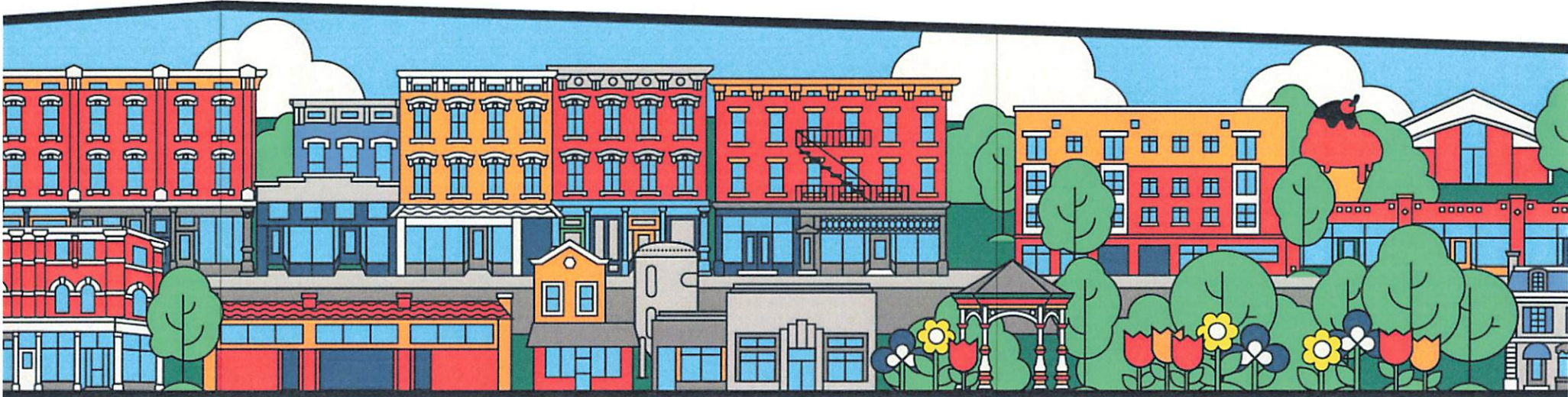
\_\_\_\_\_

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk

**EXHIBIT A**



Woodburn Avenue Historic District

Madison Avenue Business District