

AUTHORIZING the City Manager to design, install, and maintain artwork in Rapid Run Park and the Dunham Recreation Complex in the West Price Hill neighborhood as an art installation, notwithstanding any conflicting rules or regulations of the Board of Park Commissioners or the Cincinnati Recreation Commission or any provision of the Cincinnati Municipal Code that would prohibit the installation and maintenance of the artwork.

WHEREAS, the City wishes to install artwork in the form of mosaic-art game squares (“Artwork”), substantially similar in design, color, and concept to the sample designs in Exhibit A to this ordinance, on the grounds of Rapid Run Park and the Dunham Recreation Complex in the West Price Hill neighborhood, as an art installation entitled “RRAD: Game of the Goose” (“RRAD”), a version of a game originating in 13th century Spain known as “The Game of the Goose”; and

WHEREAS, the goal of RRAD is to connect, promote, and enhance the recreational spaces of Rapid Run Park and the Dunham Recreation Complex in the West Price Hill neighborhood; and

WHEREAS, RRAD will involve the installation of a series of mosaic-art board spaces throughout Rapid Run Park and the Dunham Recreation Complex, designed for teams of players of all ages and mobility levels; and

WHEREAS, the RRAD board spaces will contain exercise prompts, challenges for players to find images within a game square, and directions for scavenger hunts; and

WHEREAS, RRAD will also provide a web page, an Instagram account, and geocaching; and

WHEREAS, the City may designate one or more agents or contractors, including the nonprofit community development corporation Price Hill Will and artist Mary Anne Cowgill, to carry out all or a portion of the work required to design, install, and maintain the Artwork; 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 Price Hill Will and Mary Anne Cowgill, shall comply with rules and regulations established by the City Manager, the Board of Park Commissioners and the Cincinnati Parks Department (“Parks”), and the Cincinnati Recreation Commission (“CRC”) and any agreement with the City, Parks, 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 acceptance of the Artwork will be contingent upon the execution of an acceptable Artwork Donation Agreement by the City and Price Hill Will, as well as the execution of a waiver of rights in and to the Artwork by all artists who design, install, and maintain the Artwork, including but not limited to those arising under the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) (“VARA”); 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 Rapid Run Park and the Dunham Recreation Complex as necessary for public safety, and will require the artists who design, install, and maintain the Artwork to execute the aforementioned VARA waiver of rights in and to the Artwork, 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 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 its citizens; and

WHEREAS, Parks, at its regularly scheduled meeting on January 19, 2023, recommended that the City install the Artwork on the grounds of Rapid Run Park and the Dunham Recreation Complex in the West Price Hill neighborhood; and

WHEREAS, Council finds that the design, installation, and maintenance of the Artwork in the West Price Hill neighborhood will unify the community, enhance civic pride, and advance public health and wellness goals; and

WHEREAS, the design, installation, and maintenance of the 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 grounds of Rapid Run Park and the Dunham Recreation Complex in the West Price Hill 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 grounds of Rapid Run Park and the Dunham Recreation Complex, 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 Board of Park Commissioners or Cincinnati Recreation Commission 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 Price Hill Will and artist Mary Anne Cowgill, shall comply with rules and regulations established by the City Manager, the Board of Park Commissioners, and the Cincinnati Recreation Commission 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 as 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 Rapid Run Park and the Dunham Recreational Complex 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 proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 through 7 hereof.

Section 9. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk