



EMERGENCY

City of Cincinnati

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An Ordinance No. 368

- 2023

AUTHORIZING the City Manager to design, install, and maintain artwork on various traffic control boxes located in the CUF 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 artwork.

WHEREAS, the City of Cincinnati wishes to install artwork and paintings (“Artwork”), substantially similar in design, color, and concept to the sample designs in Attachment A to this ordinance, on various traffic control boxes located in the CUF 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 Clifton Heights Community Urban Redevelopment Corporation (“CHCURC”), 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 CHCURC, 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 CHCURC, 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 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. Sections 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 pedestrians; 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 public right-of-way; and

WHEREAS, the City Planning Commission, at its regularly scheduled meeting on September 15, 2023, recommended that the City install the Artwork on various traffic control boxes located in the CUF neighborhood; and

WHEREAS, the City Council finds that the design, installation, and maintenance of the Artwork in the CUF neighborhood will beautify the public right-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 artwork that is substantially similar in design, color, and concept to the sample designs on the attached Attachment A ("Artwork"), incorporated herein by reference, on various traffic control boxes located in the CUF 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 various traffic control boxes located in the CUF neighborhood, which Artwork shall be similar in design concept with the sample designs depicted on the attached Attachment A, incorporated herein by reference, and shall be located on the various traffic control boxes located in the CUF neighborhood as approved by the City Manager, 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 Clifton Heights Community Urban Redevelopment Corporation, 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 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 right 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 to the Artwork under the federal Visual Artists Rights Act of 1990, 17 U.S.C. Sections 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 CUF neighborhood to be realized at the earliest possible time.

Passed: November 1, 2023

Jan Michele Lemon Kearney
Vice Mayor

Attest: [Signature]
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO 3108-2023
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 11/14/2023
[Signature]
CLERK OF COUNCIL