



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final-revised

### Economic Growth & Zoning Committee

*Vice Mayor Christopher Smitherman, Chairperson  
Councilmember Betsy Sundermann*

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Tuesday, January 5, 2021

11:00 AM

Council Chambers, Room 300

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### PRESENTATIONS

#### Notwithstanding Ordinance - Mural and Sculpture Arches in Lower Price Hill and East Price Hill

#### AGENDA

1. [202002062](#) **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 10/28/2020, **AUTHORIZING** the City Manager to install and maintain a mural and sculpture arches in certain public right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue, 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 and sculpture arches.
2. [202002350](#) PRESENTATION submitted by Paula Boggs Muething, City Manager, dated 1/5/2021, regarding a proposed Notwithstanding Ordinance for Maryland Avenue in East Price Hill and Lower Price Hill.

ADJOURNMENT

October 28, 2020

**To:** Mayor and Members of City Council

**202002062**

**From:** Paula Boggs Muething, City Manager

**Subject:** Ordinance – Mural and Sculpture Arches in Lower Price Hill and East Price Hill

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Transmitted is a Notwithstanding Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to install and maintain a mural and sculpture arches in certain public right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue, 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 and sculpture arches.

The City Planning Commission recommended approval of the amendment at its October 23, 2020 meeting.

Summary

In November 2019, City Council approved an ordinance which accepted a donation from Devou Good Project, Inc. to provide resources for bicycle and pedestrian transportation improvements to a portion of Maryland Avenue in East Price Hill (Ordinance No. 424-2019). In continuing efforts to enhance this pedestrian access of Maryland Avenue, known as “Incline Run,” Price Hill Will, the community development corporation that serves East Price Hill and Lower Price Hill, requests the proposed Notwithstanding Ordinance to permit the installation of two sculpture arches and a mural within the City-owned right-of-way. The proposed pair of sculpture arches, approximately 14’ wide by 12’ tall, will be placed at each entrance to a segment of the City-owned right-of-way of Maryland Avenue, between Lower Price Hill and East Price Hill as outlined in and local businesses. The proposed mural will be painted on a retaining wall within the subject segment of Maryland Avenue and will pay tribute to the Price Hill Incline.

The City Planning Commission recommended the following on October 23, 2020 to City Council:

**APPROVE** the Notwithstanding Ordinance permitting the installation of a mural and artwork in the City-owned right-of-way of Maryland Avenue in East Price Hill and Lower Price Hill with the following conditions:

- 1) That the City-owned right-of-way of Maryland Avenue where the mural and sculpture installations are proposed is not a vehicular use right-of-way and is to be used as a pedestrian right-of-way providing access between Lower Price Hill and East Price Hill; and
- 2) That the mural and sculpture installations be placed in the specific locations as listed by the applicant in Exhibit B and as reviewed and approved by the appropriate City departments; and
- 3) That the mural and sculpture installation designs adhere to the example illustrations as provided by the applicant in Exhibit B; and

- 4) The petitioner shall coordinate with the City regarding the donation of the mural and sculpture aches in the right of way including a contract with the City in a similar form as the City of Cincinnati Artwork Donation Agreement (Exhibit C); and
- 5) All artists involved in the creation and installation of the artwork shall provide the City with a Waiver of Rights pursuant to the Visual Artists Rights Act (Exhibit D).

cc: Katherine Keough-Jurs, AICP, Director, Department of City Planning

## EMERGENCY

**JRS**

**- 2020**

**AUTHORIZING** the City Manager to install and maintain a mural and sculpture arches in certain public right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue, 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 and sculpture arches.

WHEREAS, the City of Cincinnati wishes to install a mural and sculpture arches (“Artwork”), as depicted in Exhibit A to this ordinance, in certain City-owned right-of-way known as Maryland Avenue in the Lower Price Hill and East Price Hill neighborhoods in order to enliven the space and to promote public awareness of the arts; and

WHEREAS, the City may designate one or more agents or contractors, including Price Hill Will (“Price Hill Will”), to carry out all or a portion of the work required to install and maintain the Artwork; and

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

WHEREAS, the installation and maintenance of the Artwork shall be performed under the management of the Department of Transportation and Engineering (“DOT”), and any agents or contractors of the City, including Price Hill Will, shall comply with rules and regulations established by DOT regarding the installation and maintenance of the mural, including rules and regulations concerning its location, size, materials, and means of installation and maintenance as necessary to ensure public safety; and

WHEREAS, the City’s 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 public right-of-way as necessary for public safety, and will require the artists who install and maintain the mural to waive their rights to the 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; 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, DOTE has determined that the Artwork will not detract from, interfere with, or obscure official traffic control devices, will be safe, and will not unreasonably interfere with the use of Maryland 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, Council finds that the installation and maintenance of the Artwork in Lower Price Hill and East Price Hill will beautify the public right-of-way, enhance civic pride, and advance public health and wellness goals; and

WHEREAS, the installation and maintenance of this Artwork is consistent with the "Live" goal to "Create 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 installation and maintenance of the mural and sculpture arches identified on the attached Exhibit A ("Artwork") in certain City-owned right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue to be a matter of significant public interest, and it hereby resolves to raise public awareness of the arts through the installation and maintenance of this conspicuous interactive and 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 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 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 install and maintain the Artwork in that certain City-owned right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue, which Artwork shall be substantially consistent with the design depicted on the attached Exhibit A, attached hereto and incorporated herein by reference, and shall be located in the area depicted on the same exhibit, notwithstanding any conflicting Department of Transportation and Engineering ("DOTE") rules and regulations, and any provisions of the Cincinnati Municipal Code.

Section 4. That the installation and maintenance of the Artwork shall be performed under the management of the Department of Transportation and Engineering ("DOTE"), and any agents or contractors of the City, including Price Hill Will, shall comply with rules and regulations established by DOTE regarding the installation and maintenance of the Artwork, including rules and regulations concerning its 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 installation and maintenance of the street mural 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 part or in whole, 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 install and maintain the Artwork to waive their rights to the 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, in order to offset the cost and expense associated with the installation and maintenance of the Artwork, so that the installation and maintenance of the Artwork shall have little or no 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 as scheduled and to allow the corresponding benefits to the City and the neighborhoods of Lower Price Hill and East Price Hill to begin at the earliest possible time.

Passed: \_\_\_\_\_, 2020

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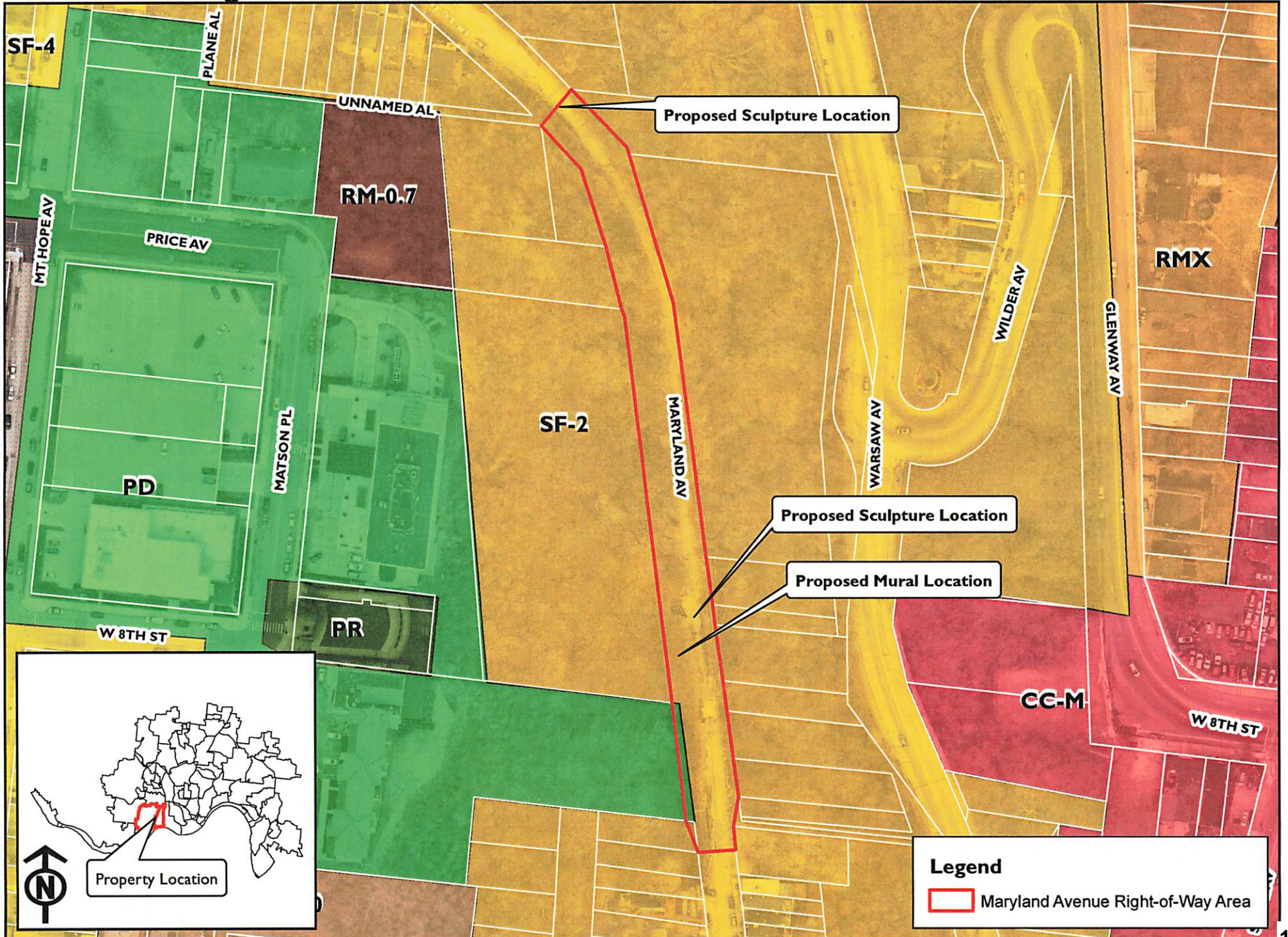
John Cranley, Mayor

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



ATTACHMENT A

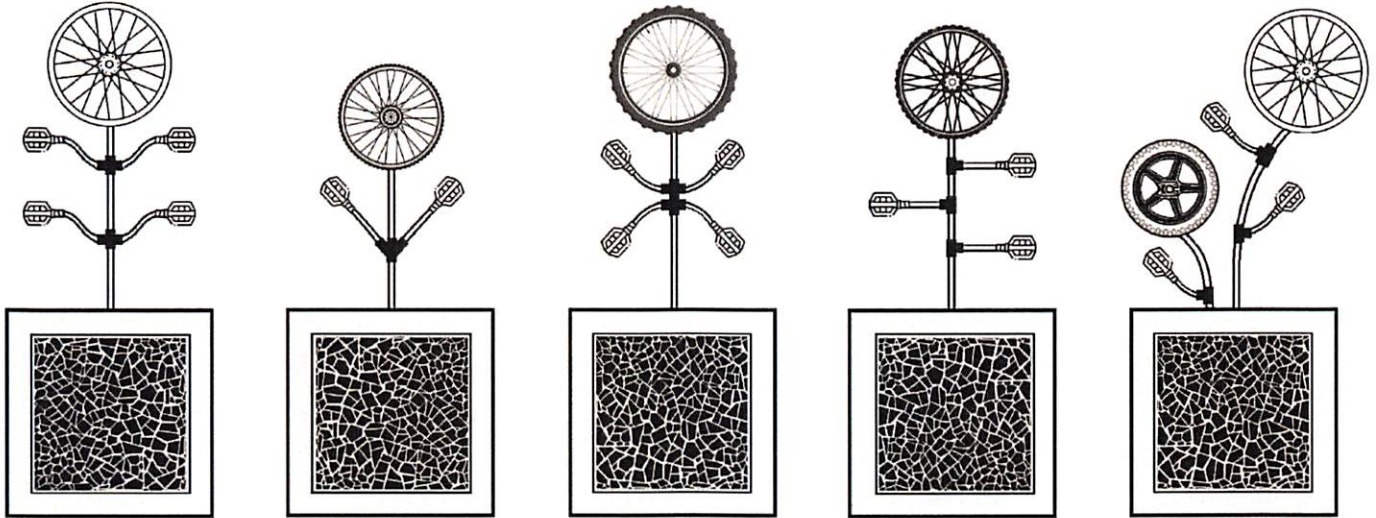
# Notwithstanding Ordinance for Artwork Installation in East Price Hill and Lower Price Hill



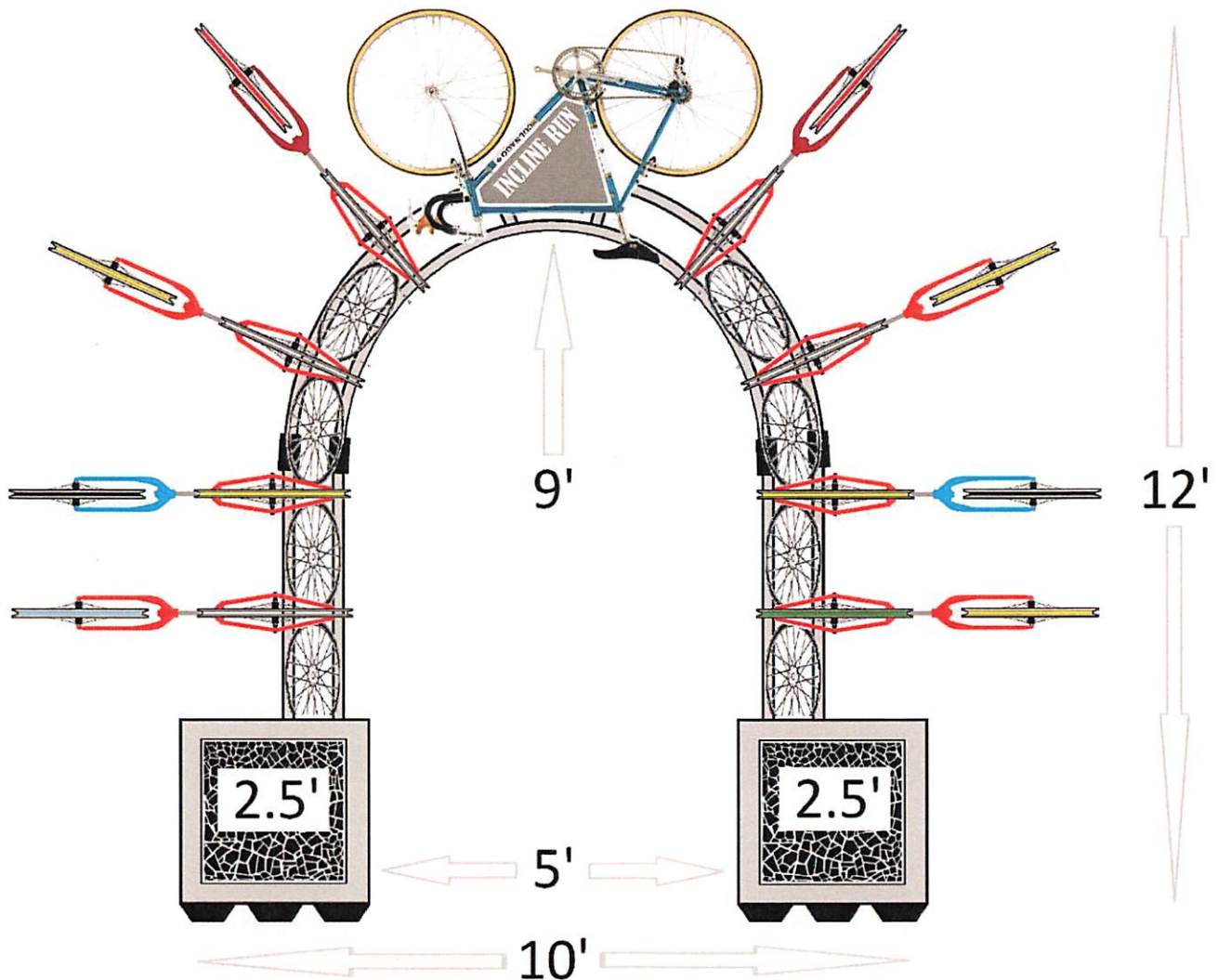


## Concept mockup:

Small planter "flowers" (Wheels will actually be mounted on colorful bike posts as opposed to conduit as depicted):



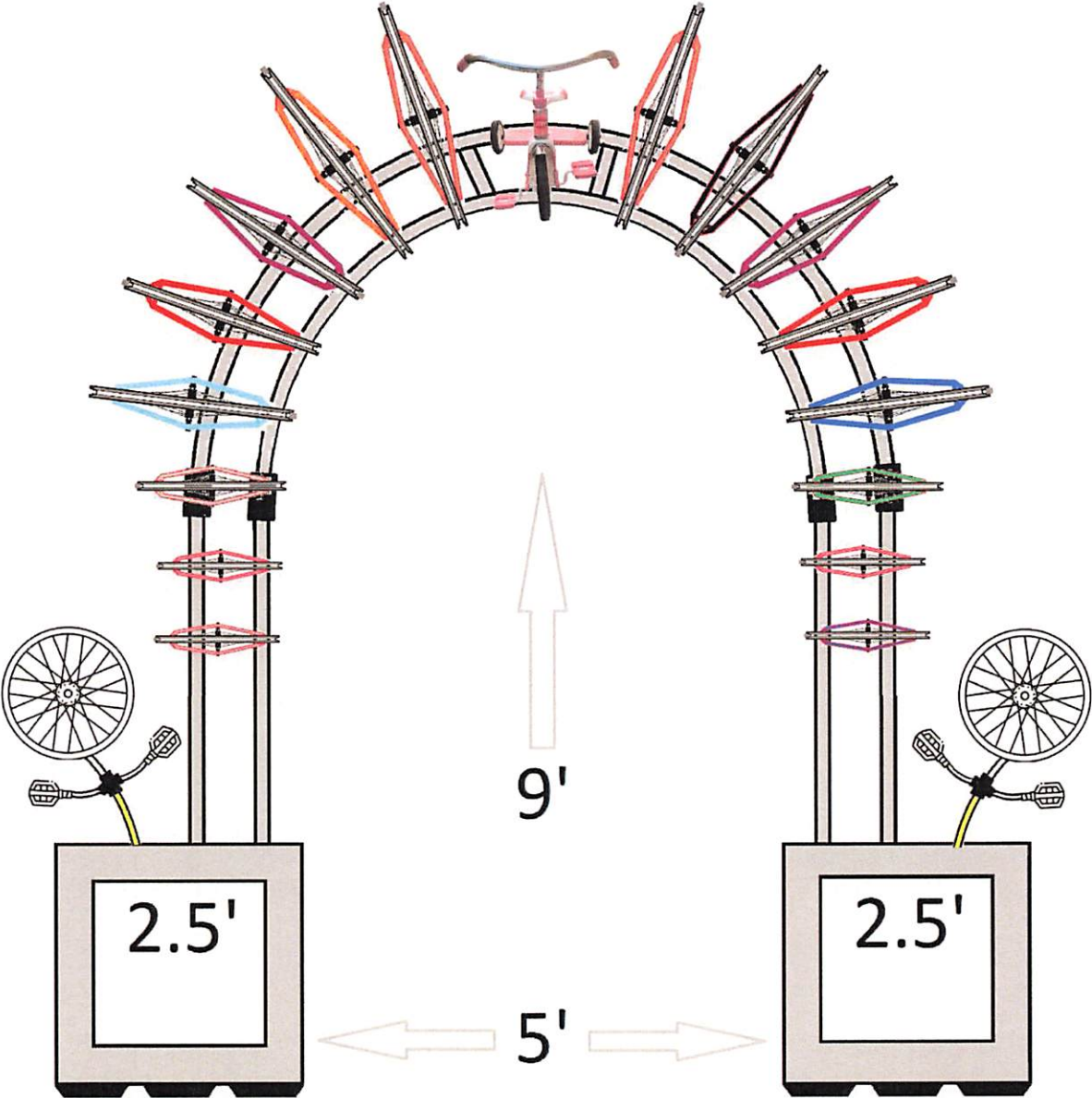
## Bike Arch North Entrance Mockup:



Rough layout of north entrance arch components:



Bike Arch South Entrance Mockup:



October 28, 2020

Cincinnati City Council  
 Council Chambers, City Hall  
 Cincinnati, Ohio 45202

Dear Members of Council:

We are transmitting herewith an Ordinance captioned as follows:

**AUTHORIZING** the City Manager to install and maintain a mural and sculpture arches in certain public right-of-way in the Lower Price Hill and East Price Hill neighborhoods known as Maryland Avenue, 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 and sculpture arches.

**Summary:**

In November 2019, City Council approved an ordinance which accepted a donation from Devou Good Project, Inc. to provide resources for bicycle and pedestrian transportation improvements to a portion of Maryland Avenue in East Price Hill (Ordinance No. 424-2019). In continuing efforts to enhance this pedestrian access of Maryland Avenue, known as "Incline Run," Price Hill Will, the community development corporation that serves East Price Hill and Lower Price Hill, requests the proposed Notwithstanding Ordinance to permit the installation of two sculpture arches and a mural within the City-owned right-of-way. The proposed pair of sculpture arches, approximately 14' wide by 12' tall, will be placed at each entrance to a segment of the City-owned right-of-way of Maryland Avenue, between Lower Price Hill and East Price Hill as outlined in and local businesses. The proposed mural will be painted on a retaining wall within the subject segment of Maryland Avenue and will pay tribute to the Price Hill Incline.

The City Planning Commission recommended the following on October 23, 2020 to City Council:

**APPROVE** the Notwithstanding Ordinance permitting the installation of a mural and artwork in the City-owned right-of-way of Maryland Avenue in East Price Hill and Lower Price Hill with the following conditions:

- 1) That the City-owned right-of-way of Maryland Avenue where the mural and sculpture installations are proposed is not a vehicular use right-of-way and is to be used as a pedestrian right-of-way providing access between Lower Price Hill and East Price Hill; and
- 2) That the mural and sculpture installations be placed in the specific locations as listed by the applicant in Exhibit B and as reviewed and approved by the appropriate City departments; and
- 3) That the mural and sculpture installation designs adhere to the example illustrations as provided by the applicant in Exhibit B; and
- 4) The petitioner shall coordinate with the City regarding the donation of the mural and sculpture arches in the right of way including a contract with the City in a similar form as the City of Cincinnati Artwork Donation Agreement (Exhibit C); and
- 5) All artists involved in the creation and installation of the artwork shall provide the City with a Waiver of Rights pursuant to the Visual Artists Rights Act (Exhibit D).

Motion to Approve: Mr. Juech

Ayes:

Mr. Smitherman  
 Ms. McKinney  
 Mr. Juech  
 Mr. Eby  
 Ms. Stallworth

Seconded: Mr. Eby

THE CITY PLANNING COMMISSION



Katherine Keough-Jurs, AICP, Director  
 Department of City Planning

October 28, 2020

To: Nicole Crawford, Office of the Clerk of Council

From: Katherine Keough-Jurs, AICP, Director, Department of City Planning *KJK*

Copies to: Andy Juengling, AICP, Senior City Planner

Subject: Ordinance – Mural and Sculpture Arches in Lower Price Hill and East Price Hill

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The above referenced ordinance is ready to be scheduled for Committee. We are requesting that this item be scheduled for the next available meeting of the Economic Growth & Zoning Committee. This item requires a public hearing following a required 14-day notification period by mail and in the City Bulletin.

Included in this submission are the following items:

- 1) The transmittal letter to the Economic Growth & Zoning Committee;
- 2) A copy of the City Planning Commission staff report dated October 23, 2020;
- 3) The Ordinance Notwithstanding the mural and artwork installation on City-owned right-of-way of Maryland Avenue in East Price Hill and Lower Price Hill;
- 4) The mailing labels for notification of all property owners within the 400 feet of the zone change; and
- 5) A copy of the mailing labels for your records

**Honorable City Planning Commission  
Cincinnati, Ohio**

**SUBJECT:** A report and recommendation on a proposed Notwithstanding Ordinance permitting the installation of a mural and artwork in City-owned right-of-way along a portion of Maryland Avenue in Lower Price Hill and East Price Hill.

**GENERAL INFORMATION:**

Location: Portion of City-owned right-of-way of Maryland Avenue

Petitioner: Price Hill Will

Petitioner's Address: 3301 Price Avenue, Cincinnati, OH 45205

**ATTACHMENTS:**

Provided in addition to this report are the following attachments:

- Exhibit A Location Map
- Exhibit B Notwithstanding Ordinance (NWO) Application
- Exhibit C City of Cincinnati Artwork Donation Agreement
- Exhibit D Waiver of Rights Pursuant to the Visual Artists Rights Act (VARA)

**BACKGROUND:**

In November 2019, City Council approved an ordinance which accepted a donation from Devou Good Project, Inc. to provide resources for bicycle and pedestrian transportation improvements to a portion of Maryland Avenue in East Price Hill (Ordinance No. 424-2019). Since that time, the portion of Maryland Avenue, approximately 550 feet in length, that connects Lower Price Hill to East Price Hill has been cleared of overgrowth and provides pedestrian access between the two neighborhoods. In continuing efforts to enhance this pedestrian access of Maryland Avenue, known as "Incline Run," Price Hill Will, the community development corporation that serves East Price Hill and Lower Price Hill, requests the proposed Notwithstanding Ordinance to permit the installation of two sculpture arches and a mural within the City-owned right-of-way.

The proposed pair of sculpture arches, approximately 14' wide by 12' tall, will be placed at each entrance to a segment of the City-owned right-of-way of Maryland Avenue, between Lower Price Hill and East Price Hill as outlined in Exhibit A. The exact installation location of the arches at each entrance will be dependent on the location of underground utilities, and review and approval by the appropriate City departments, such as the Department of Transportation and Engineering, MSD, and Greater Cincinnati Water Works. The proposed sculpture arches will allow for pedestrian and emergency vehicles to pass underneath the arch. The materials include bicycles and bicycle parts that have been donated by community members and local businesses. The proposed mural will be painted on a retaining wall within the subject segment of Maryland Avenue and will pay tribute to the Price Hill Incline. The mural is proposed to be approximately 702 square feet in size (270 square feet of the existing retaining wall and 432 square feet of stone wall above the existing retaining wall).

Section 111-5 of the Cincinnati Municipal Code allows for community councils, including an organization participating in the neighborhood support program, to apply for Notwithstanding Ordinances (NWO) through the Director of City Planning as long as the need for the relief from existing legislative and administrative procedures is outlined. In the application, Price Hill Will outlined that the requested NWO would allow for the installation of the mural and the sculptures to be installed within



City right-of-way, that would otherwise not be permitted without a change to existing legislation, or the implementation of a special program through the Department of Transportation and Engineering.

**PUBLIC COMMENT:**

Public notification was sent to the East Price Hill Improvement Association, the Lower Price Hill Community Council, and adjoining property owners of the subject portion of Maryland Avenue on October 8, 2020, in anticipation of the Notwithstanding Ordinance. No comments have been received to date.

**ANALYSIS:**

The Department of City Planning has consistently taken a position to not support any Notwithstanding Ordinances because they do not comply with the Cincinnati Zoning Code that the Department is charged with developing and enforcing. However, Cincinnati Municipal Code Section 111-5 establishes certain factors for evaluation by the City Council committee that considers a Notwithstanding Ordinance application, and the Department will therefore provide input on the following factors. The City Planning Commission shall consider the following when making a recommendation on NWOs to City Council:

- 1) Whether the proposed application will not have an adverse effect on the character of the area or the public health, safety and welfare;

*The mural and sculpture arches are proposed within City-owned right-of-way that has been reactivated exclusively for pedestrian and bicycle use. The sculpture arches have been designed in a manner that will allow for adequate access of emergency vehicles in case of emergency along the subject portion of right-of-way. The mural and sculpture arches are not expected to have any negative impact on the character of the proposed location areas, or the public health, safety, and welfare as the statues are intended for the enjoyment and benefit of the public.*

- 2) Whether the proposed application is consistent with the purposes of this code and the zoning district where the subject property is located including but not limited to:

- (a) Providing a guide for the physical development of the city.

*Not applicable to this application.*

- (b) Preserving the character and quality of residential neighborhoods.

*The mural and sculpture arches are not expected to have any negative impact on the quality of residential neighborhoods and are intended for the enjoyment and benefit of the public. The installation of the proposal is intended to further instill that this portion of Maryland Avenue has been reactivated as a pedestrian connection between Lower Price Hill and East Price Hill.*

- (c) Fostering convenient, harmonious and workable relationships among land uses.

*Not applicable to this application.*

- (d) Achieving the arrangement of land uses described in the comprehensive plan for the development of the city as may have been adopted by council.

*The Notwithstanding Ordinance is consistent with several sections of Plan Cincinnati (see "Consistency with Plan Cincinnati" for further information in this staff report).*

- (e) Promoting the economic stability of existing land uses and protecting them from intrusions by inharmonious or harmful land uses.

*Not applicable to this application.*

- (f) Providing opportunities for economic development and new housing for all segments of the community.

*Not applicable to this application.*

- (g) Creating pedestrian-friendly environments to reduce reliance on the automobile for travel.

*The proposed mural and sculpture arches demonstrate commitment of this portion of Maryland Avenue as a pedestrian-friendly connection between two neighborhoods that are separated by steep topography that otherwise have limited pedestrian connectivity and heavily rely on automobile connections.*

- (h) Preventing excessive population densities and overcrowding of land or buildings.

*Not applicable to this application.*

- (i) Ensuring the provision of adequate open space for light, air and fire safety.

*Not applicable to this application.*

- (j) Ensuring that development is compatible with the environment, particularly on the hillsides and along the riverfront.

*Not applicable to this application.*

- (k) Promoting the conservation, protection, restoration and enhancement of the historic resources of the city.

*The proposed mural is a depiction of the Price Hill Incline that connected the basin and Lower Price Hill neighborhood to East Price Hill and the overall Price Hill area. The mural is proposed in the exact location that the incline historically travelled, paying homage to the city's history.*

- (l) Lessening congestion in the public streets by providing for off-street parking and loading areas for commercial vehicles.

*Not applicable to this application.*

- (m) Providing effective signage that is compatible with the surrounding urban environment.

*The proposed sculpture arches design includes the words "Incline Run" at the top of the arch, informing pedestrians of the connection. This is compatible and appropriate in scale with the pedestrian connection of this segment of Maryland Avenue.*

- (n) Setting standards by which a nonconforming use may continue to function and to provide for the adaptive reuse of nonconforming buildings.

*Not applicable to this application.*

**CONSISTENCY WITH PLANS:**

*Price Hill Plan (2015)*

The Notwithstanding Ordinance is consistent with the *Price Hill Plan (2015)*, particularly within the Arts and Culture Theme Goal that “Price Hill is an arts destination” (page 25), and the Action Step to “support community art...in Lower, East, and West Price Hill” (page 25). The proposed mural and sculpture arches are proposed will increase the local art community and installations in East Price Hill and Lower Price Hill. The Notwithstanding Ordinance is also consistent with the Transportation Theme Goal that “Price Hill develops into a place that is attractive to residents and customers who want to travel without the use of a vehicle” (page 55) and the Action Step to “develop the former site of the incline into a pedestrian connection” (page 55). The proposed mural and sculpture arches further enhance the subject portion of Maryland Avenue as a pedestrian connection and celebrates the history of the incline.

*Plan Cincinnati (2012)*

The Notwithstanding Ordinance is also consistent with *Plan Cincinnati (2012)*, specifically within the Connect Initiative Area and the Goal to “Develop an efficient multi-modal transportation system that supports neighborhood vitality” (page 129), and the Strategy to “Expand options for non-automotive travel” (page 130). The proposed Notwithstanding Ordinance demonstrates a commitment to the City-owned portion of Maryland Avenue serving as an exclusive pedestrian connection between Lower Price Hill and East Price Hill, safely connecting westside neighborhoods to the basin for pedestrians. The NWO is also consistent with the Live Initiative Area and the Goal to “Create a more livable community” (page 156) and the Strategy to “Become more walkable” (page 157). The proposed Notwithstanding Ordinance allows for installations of art that make a pedestrian connection more inviting, which further enhances the walkability and connectivity of an area of the city with topographical challenges.

**CONCLUSIONS:**

The Notwithstanding Ordinance to permit the installation of the mural of the Price Hill Incline and the installation of sculpture arches at specific locations within the portion of City-owned right-of-way of Maryland Avenue provides for a unique and distinctive way to celebrate the incline’s history, and provide for a pedestrian connection between Lower Price Hill and East Price Hill. The Notwithstanding Ordinance is also consistent with Plan Cincinnati, specifically within the Connect and Live Initiative Areas.

The Department of City Planning has consistently taken the position to not support any Notwithstanding Ordinances for land use decisions because they do not comply with the zoning laws that the department is charged with developing and enforcing.

**RECOMMENDATION:**

The staff of the Department of City Planning recommends that the City Planning Commission take the following action:

**DENY** the Notwithstanding Ordinance permitting the installation of a mural and artwork in the City-owned right-of-way of Maryland Avenue for the following reason:

- 1) The Department of City Planning cannot support any Notwithstanding Ordinances for land use decisions because the ordinances do not comply with the zoning laws that the Department of City Planning is charged with developing and enforcing.

If the City Planning Commission decides to recommend approval of the Notwithstanding Ordinance, the City Planning Commission should consider the following conditions:

- 1) That the City-owned right-of-way of Maryland Avenue where the mural and sculpture installations are proposed is not a vehicular use right-of-way and is to be used as a pedestrian right-of-way providing access between Lower Price Hill and East Price Hill; and
- 2) That the mural and sculpture installations be placed on in the specific locations as listed by the applicant in Exhibit B and as reviewed and approved by the appropriate City departments; and
- 3) That the mural and sculpture installation designs adhere to the example illustrations as provided by the applicant in Exhibit B; and
- 4) The petitioner shall coordinate with the City regarding the donation of the mural and sculpture aches in the right of way including a contract with the City in a similar form as the City of Cincinnati Artwork Donation Agreement (Exhibit C); and
- 5) All artists involved in the creation and installation of the artwork shall provide the City with a Waiver of Rights pursuant to the Visual Artists Rights Act (Exhibit D).

Respectfully submitted:



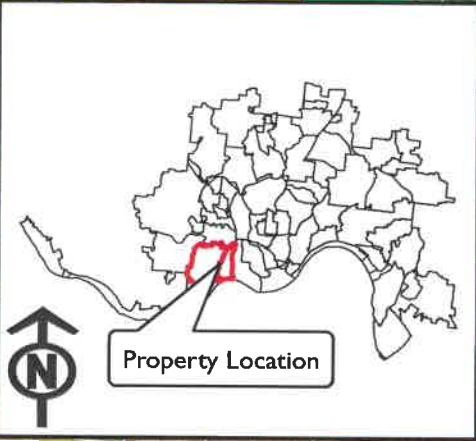
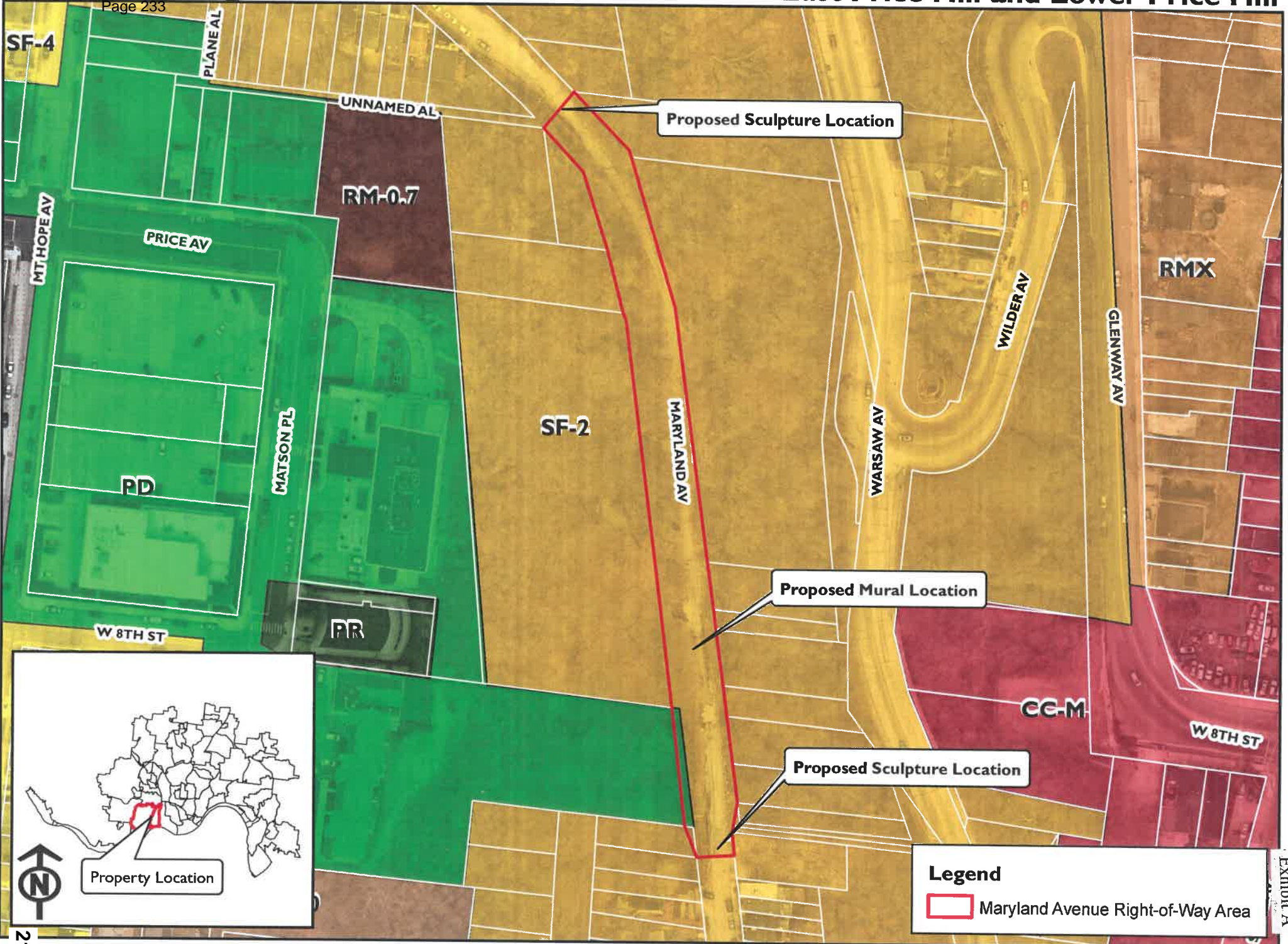
Andy Juengling, AICP, Senior City Planner  
Department of City Planning

Approved:




Katherine Keough-Jurs, AICP, Director  
Department of City Planning

# Notwithstanding Ordinance for Artwork Installation in East Price Hill and Lower Price Hill



**Legend**

 Maryland Avenue Right-of-Way Area



805 CENTRAL AVE, SUITE 720  
 CINCINNATI OHIO 45202  
 P 513 352 3271  
 F 513 352 2579  
 WWW.CINCINNATI-OH.GOV  
 CAGIS.HAMILTON-CO.ORG

<b>Notwithstanding Ordinance Application</b>
INITIALIZED BY

**Part A - Identification**

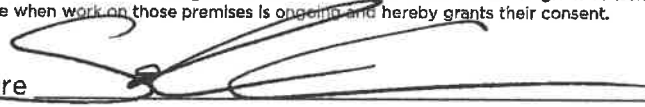
Subject Property Address (Please print in blue or black ink only) Adjacent to 2573 Maryland Ave, Cincinnati OH 45204		
Applicant - Name (Print) Samantha Conover / Price Hill Will	Phone No (419) 345-8996	E-mail Address samantha@pricehillwill.org
Street Number & Name 3301 Price Avenue	City / State / Zip Code Cincinnati, OH 45205	Phone No / Fax No (513) 251-3800 ext 105 / (513) 251-8500
Relationship of Applicant to Owner: <input type="checkbox"/> Owner <input type="checkbox"/> Lessee <input type="checkbox"/> Attorney		
Property Owner - Name (Print) N/A - Location is public property and owned by the City of Cincinnati	Phone No	E-mail Address
Street Number & Name Adjacent to 2573 Maryland Ave.	City / State / Zip Code Cincinnati, OH 25204	Phone No / Fax No

**Part B - Submission Requirements (Please provide the following for a complete application)**

1. A copy of the zoning map showing the subject property. A copy may be obtained through the Zoning Administration by emailing zoninginfo@cincinnati-oh.gov or by calling (513) 352-2430.
2. A written statement outlining all of the practical difficulties created by following existing legislative and administrative procedures.
3. Submit one (1) paper copy and one (1) digital copy of the application to the Director of City Planning at 805 Central Avenue, Suite 720, Cincinnati, Ohio 45202. Payment must be included with the application. (Payable to the City of Cincinnati)

**Part C - Authorization**

The applicant or agent undersigned does hereby certify that the information and statements given on the application, drawings, and inspections are to the best of their knowledge, true and correct. The undersigned further certifies their authorization to grant consent to the inspection by employees of the City of Cincinnati of the described premises at any time when work on those premises is ongoing and hereby grants their consent.

Applicant's Signature  Date 9/23/20

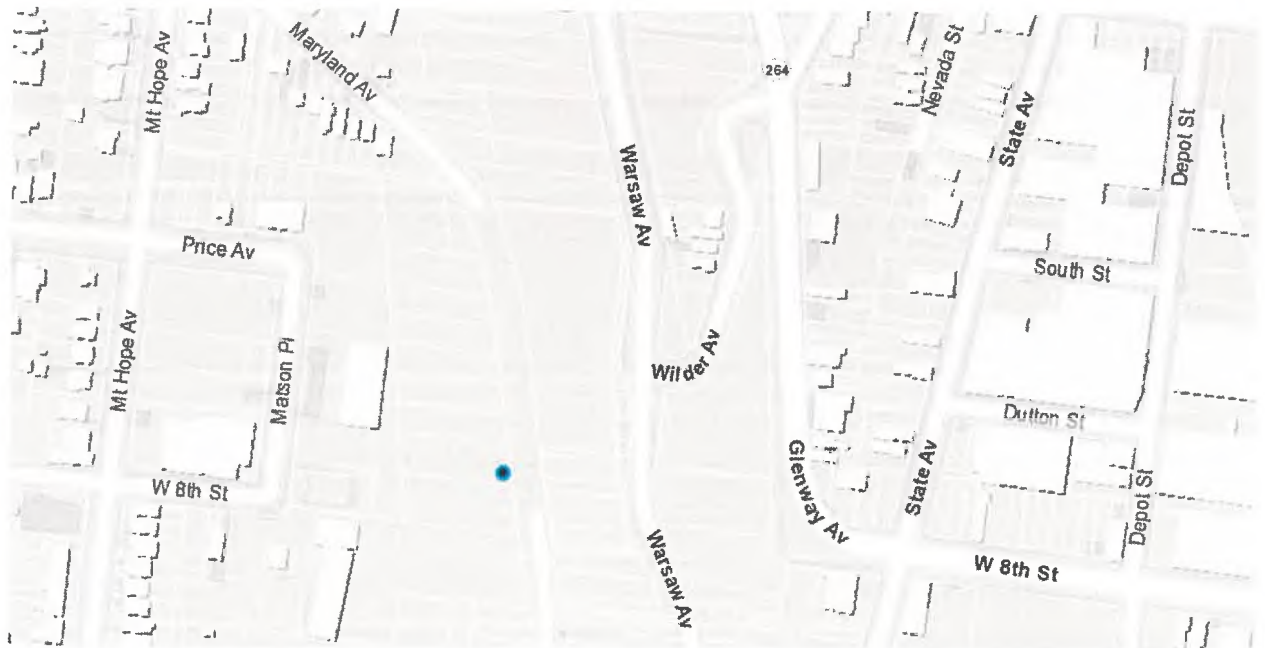
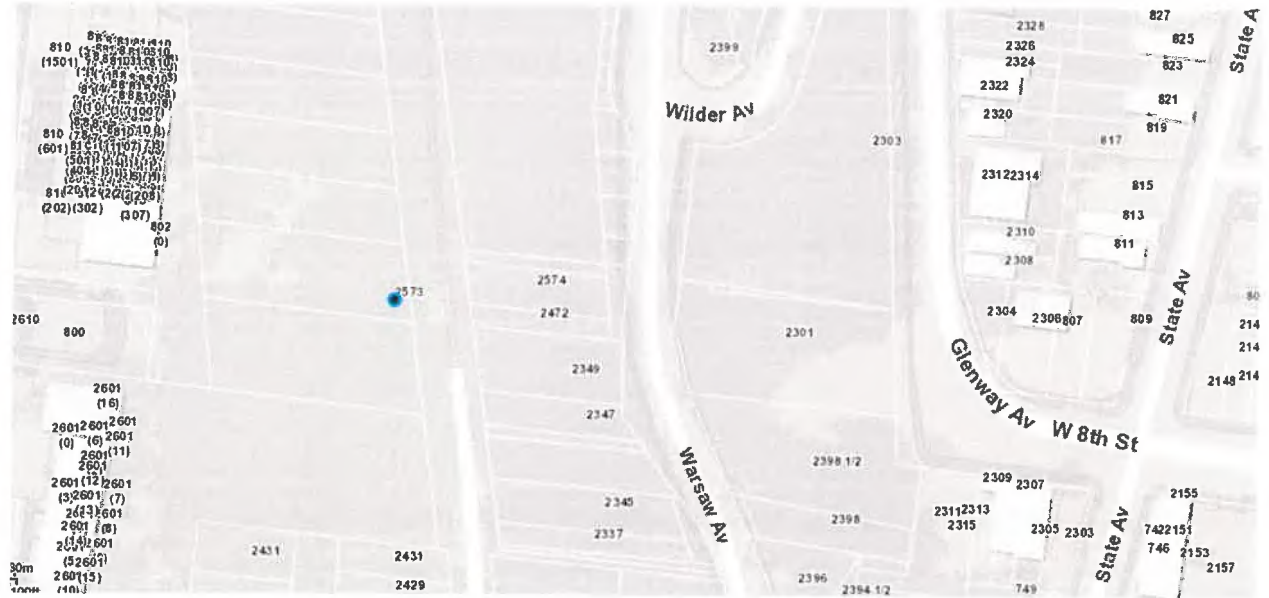
**FOR OFFICE USE ONLY**

Reviewed By: \_\_\_\_\_ Processing Fee \_\_\_\_\_

City Planning Staff \_\_\_\_\_ Date Application Complete \_\_\_\_\_

### Part B – Submission Requirements / Notwithstanding Ordinance Application Price Hill Will, Incline Run mural, Maryland Avenue

1. Zoning maps showing property



2. By following the existing legislation, the installment of the proposal would not be possible without a change in the legislation, or the implementation of a program that allows for this type of installation.

A mural is proposed for a stone wall remnant of the pilings beneath the original Price Hill Incline tracks. The mural celebrates the history of the area and invigorates the stretch of Maryland Avenue that has been recently reopened for pedestrian and bicycle traffic between Lower Price Hill and East Price Hill, dubbed the Incline Run.







**PRICE HILL INCLINE RUN MURAL PROPOSAL / BEN THOMAS  
BID, SUPPLY AND LABOR COST**



Required bid price is based on approximately 702 sq ft at minimal \$12 per sq ft. Includes labor and supplies etc.

- Retainer wall approximately 270 sq ft,  
Big stone wall approximately 432 sq ft,  
702 sq ft in all
- 5 gallons of primer, both walls -2 coats -\$70
- 2 gallons of back ground color + 1 gallon of letter design colors for retainer wall mural -\$100
- Brushes and roller pads = \$50
- 9 spray paint cans = approximately 1 Gallon. We will need an amount that exceeds the sq footage do to layering colors and the need of colors but not the required amount that must be purchased in order to obtain the color. Spray-paint assorted colors plus spray can tips/nozzles \$600
- Scaffolding average monthly \$150
- Hiring 1 maybe 2 young artist as assistants at \$12.50 hourly, 8 hrs daily for 5 days per youth maximum. \$1000 maximum budget for assistance, Paid by lead artist, Benjamin Thomas.

- All the above supply needs or desires = \$1,970
- Labor payment to lead artist Benjamin Thomas, depending on payment made to artist assistants.
- Ranges from \$6,430 - \$7,570, comes to a total of \$8,400

# BIKE-FRAME ARCHES

## Incline Run Art Proposal

**Date submitted:** August 6<sup>th</sup>, 2020 (Rev 2)

**Lead Artist:** Caitlin Arnest

**Support Team:**

- Project Structural/Site Consultant: Jon Zuleger (Engineer), Jess Thayer (Landscape Architect)
- Artistic Consultants (hands off): Rebecca Seeman (metal artist/professor), Ursula Roma (artist), Samantha North (machinist)
- Artistic and Misc. Support (hands on): Ashley Merkle, Rachel Culley (Tri-State Trails at Green Umbrella), Veen Bristow (graphic design), Jules Breslin, D.J. Trischler (graphic design), Ann Andriacco (artist)
- City of Cincinnati Contact: David Miller at Cincinnati City Council Member Betsy Sundermann's office
- Cincinnati Parks Foundation Board of Directors Contact: Mary Jo Bazeley
- EPHIA Park Board and MEPAC Contact: Eric Burher

**Address:** 515 Considine Ave. Cincinnati, OH 45205

**Phone:** (513) 382.2885

**Email:** caitlin.arnest@gmail.com

**Website:** N/A

### Previous public/outdoor works or installations:

**IMAGINATION ALLY // Mosaic installations, planters, and archway**

**OTR - Washington Park and Vine Street between 13<sup>th</sup> and 14<sup>th</sup>**

**Peaslee Neighborhood Center // Suzanne Fischer // 2004**



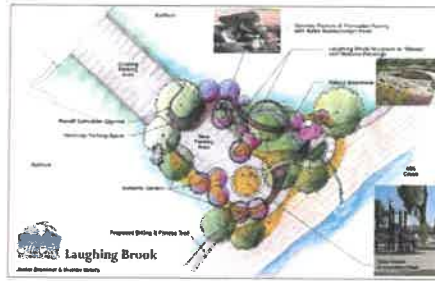
**FREEDOM WORKS PROJECT // Mixed-media mural**

**Underground Railroad Freedom Center; Cincinnati Art Museum, Fall 2004 - Spring 2005**

**ArtWorks // Tim Rollins, K.O.S, and Thom Shaw // 2004**



**LAUGHING BROOK // Biosculptures for stormwater filtration**  
**Salway Park, Mill Creek Watershed**  
**ArtWorks // Jackie Brookner // 2004**



**KATIE'S KINGDOM // Painted mural and accent pieces**  
**Cincinnati Children's Hospital, Cancer & Blood Diseases Institute**  
**ArtWorks // Pam Kravetz // 2003**



**Description:**

**Submission type:** Sculpture

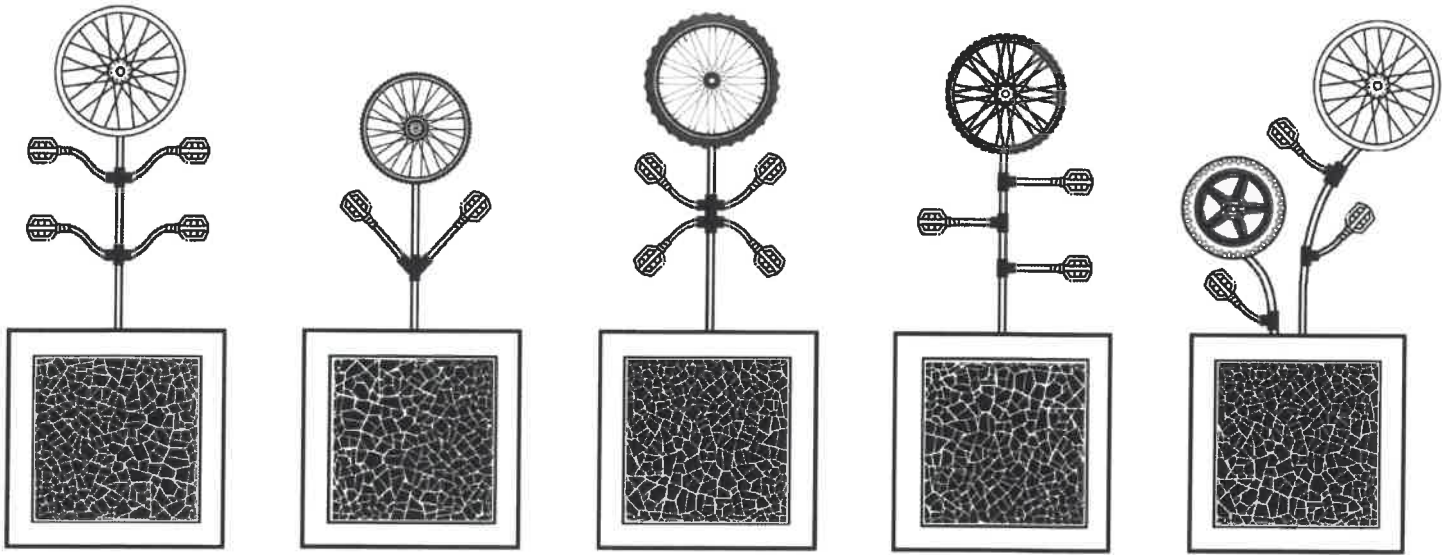
This proposal is for a pair of sculptural arches – approximately 14' wide by 12' tall – to be placed at each entrance of a newly-reopened, ~ 550' long stretch of Maryland Ave. dubbed the Incline Run, which will serve as a bike and pedestrian connector between the neighborhoods of Lower and East Price Hill. Materials include bikes and bike parts donated by community members and local businesses (e.g. Cincinnati Red Bike, Bishop's Bicycles, Montgomery Cyclery Western Hills, and Spun Bicycles – most of which have donated one or more items with their name on it to be included as advertising of their respective shops and services) with a core support constructed out of EMT. The arches will terminate into, and be supported by, a pair of 2.5' cube-shaped concrete planters which will be decorated with mosaic panels (see Mosaic Panel project proposal for additional details). The arches will feature a kinetic component in the form of freely-spinning wheels of various sizes, reminiscent of wind spinners. This movement will be accentuated by the addition of panels attached to the wheel spokes (material TBD, likely glass, metal, or yarn). Not only does this movement add visual interest, and bring to mind moving bikes, but it also invites the passers by to interact with the sculptures and spin the wheels.

Smaller, concrete planters (3-6, 2' cubes or donated shapes TBD) with "flowers" created from children's and toddler bike wheels, misc. parts, and EMT will be spaced along the route to carry the combined nature and bike themes through the space. These wheels, too, will be free spinning.

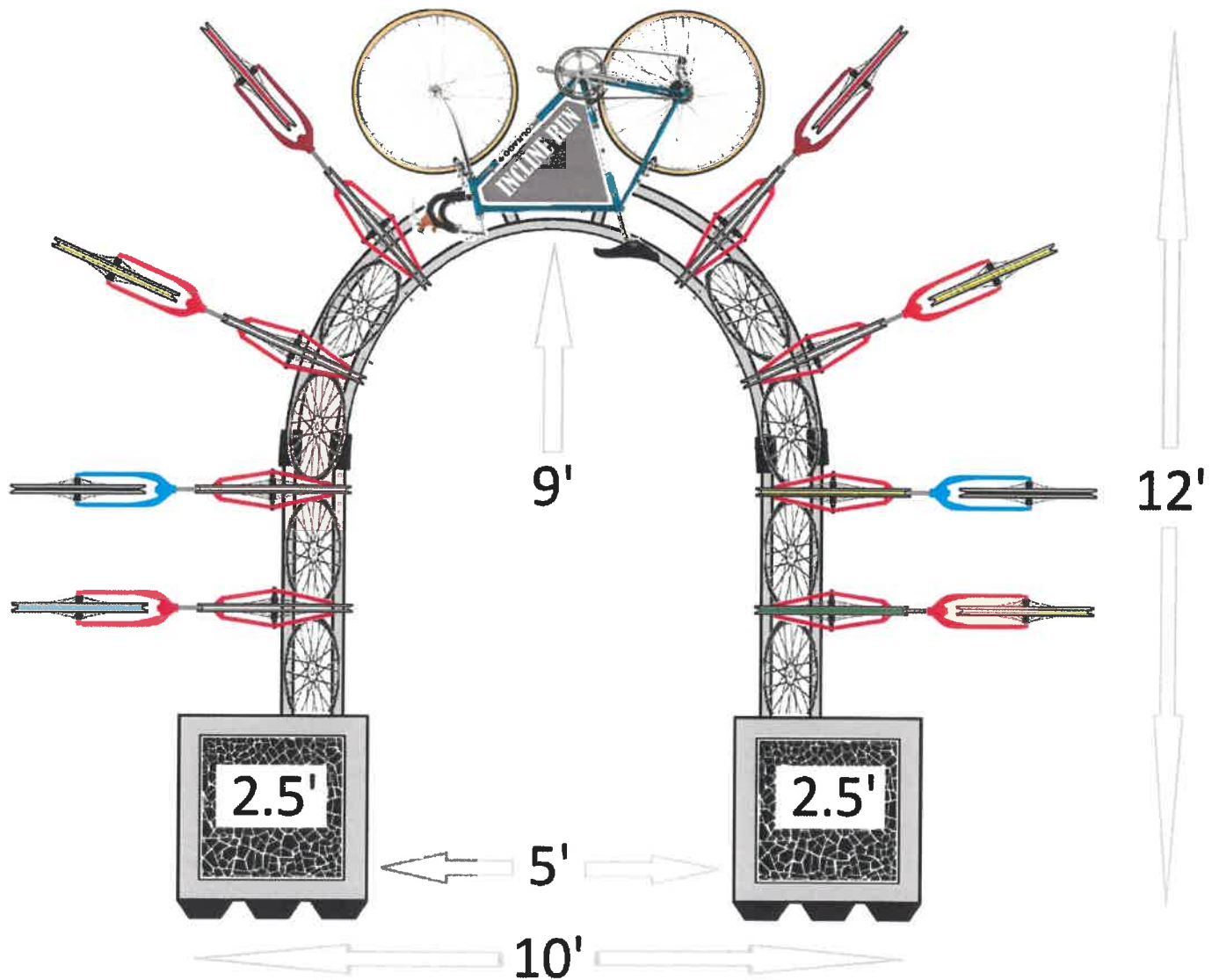
Additional ideas being explored include a sound component in conjunction with the spinning wheels; a plasma cut sign placed inside the frame of the top-most bike with the name "Incline Run"; panels of gears incorporated into the arch frames in place of wheels pictured in the mock-up; and bike racks and street lighting created using extra bike frames.

### Concept mockup:

Small planter "flowers" (Wheels will actually be mounted on colorful bike posts as opposed to conduit as depicted):



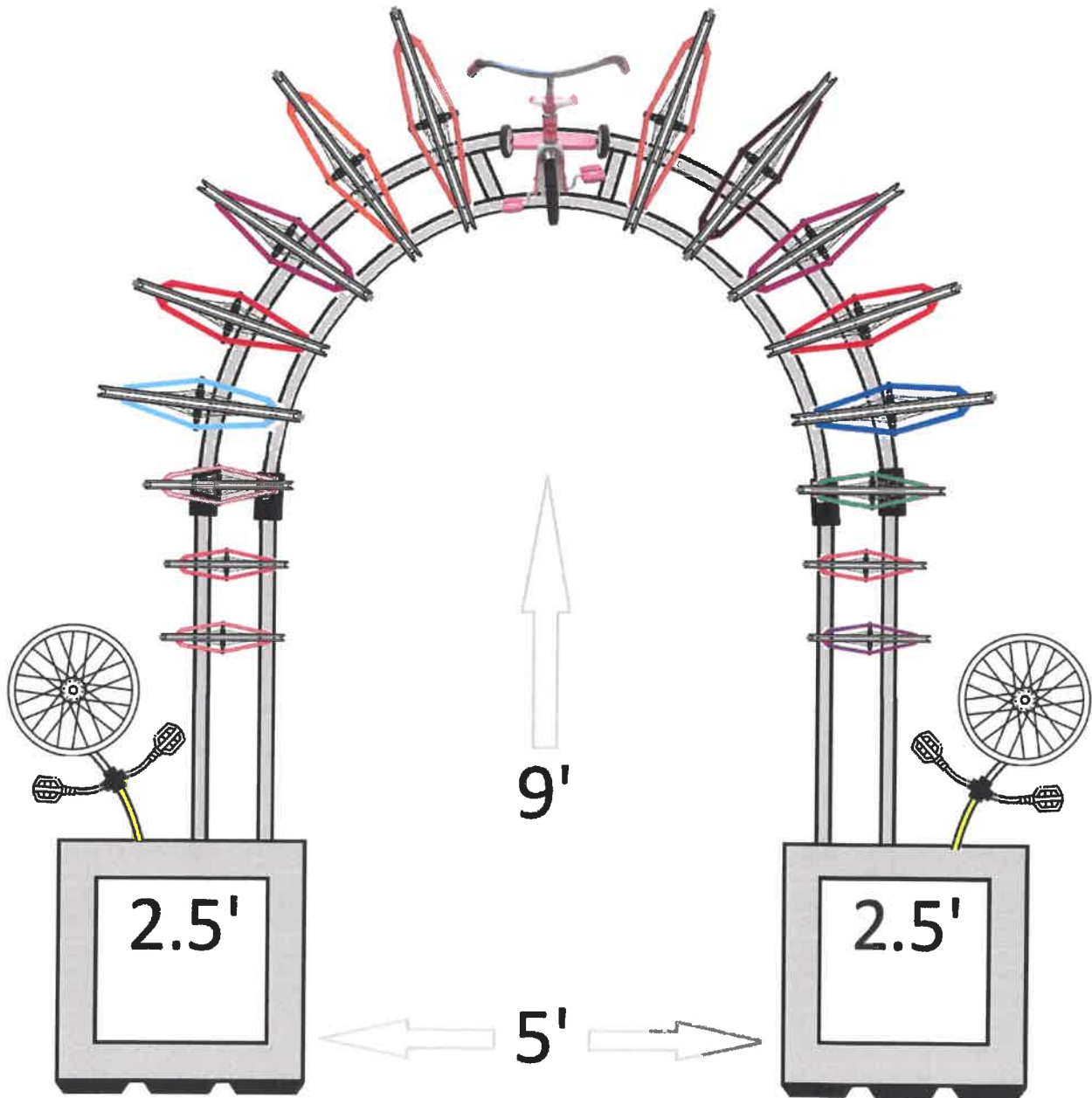
### Bike Arch North Entrance Mockup:



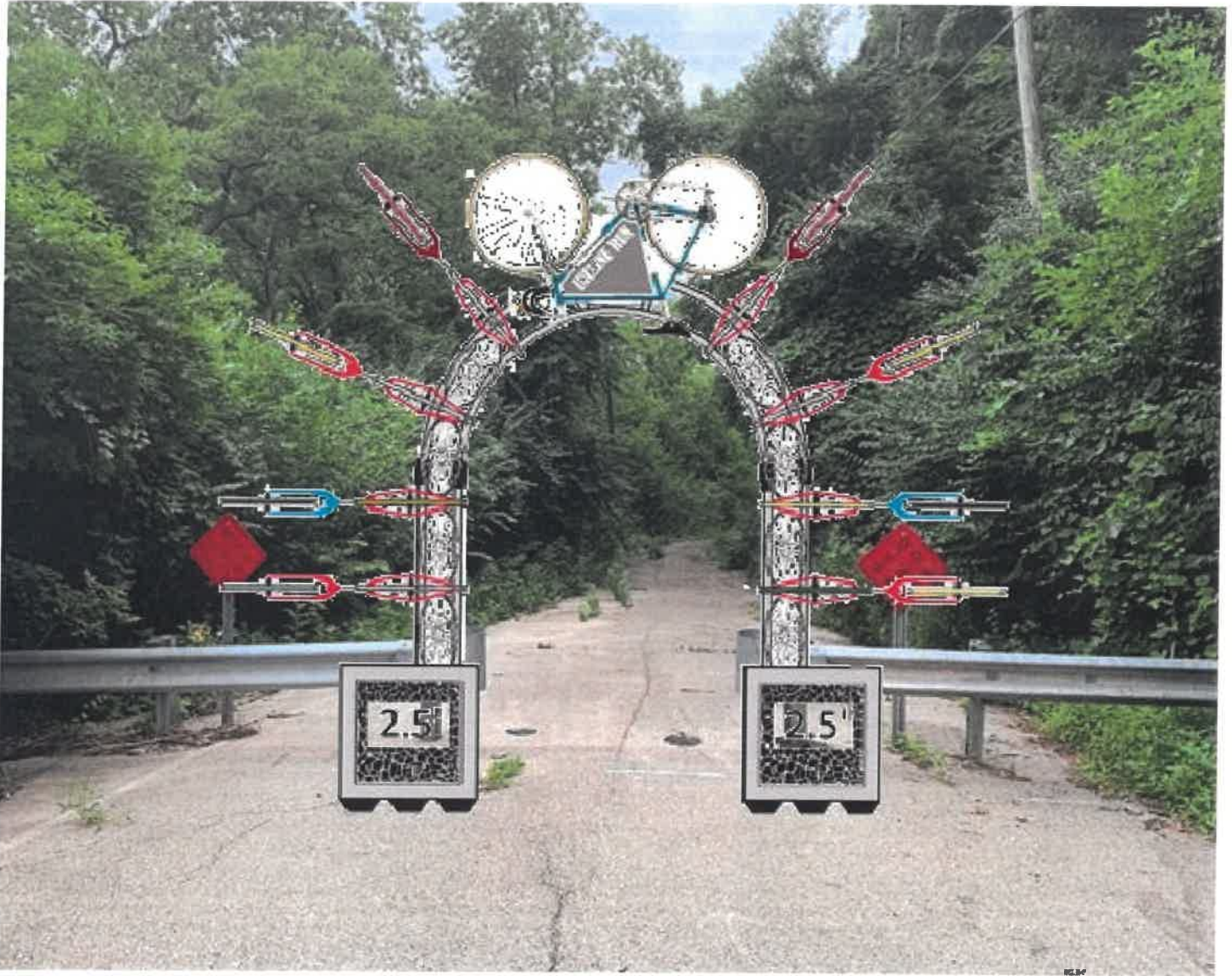
Rough layout of north entrance arch components:



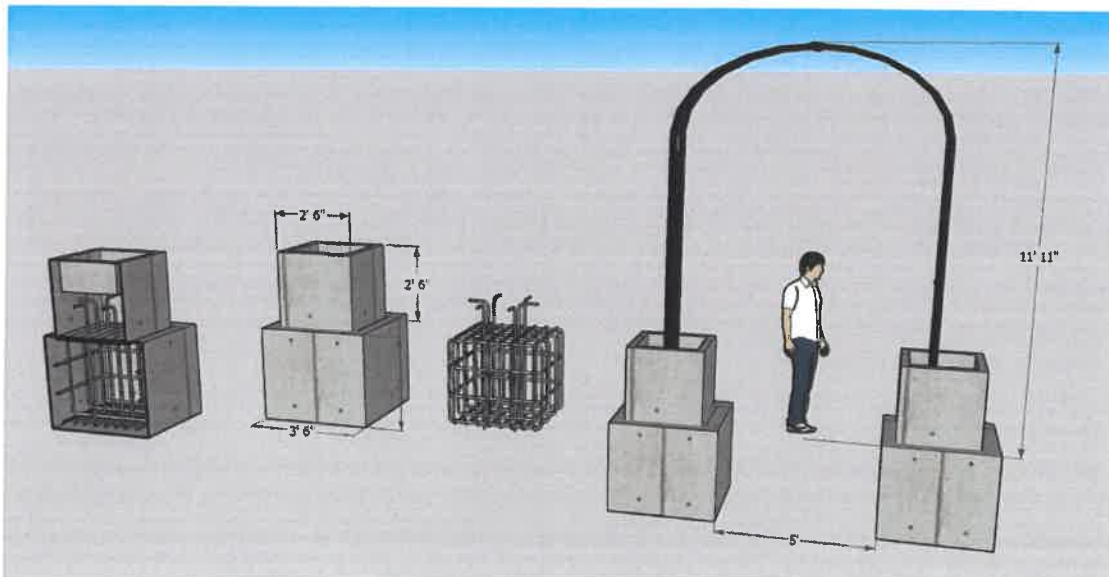
Bike Arch South Entrance Mockup:



This (horribly rendered) image provides an approximate idea of what the scale of the end product will be. The north entrance has enough space for bike racks to be constructed on either side of the arch:



Concrete, Reinforced Footing Mock-Ups (Curtosy of John Zuleger)

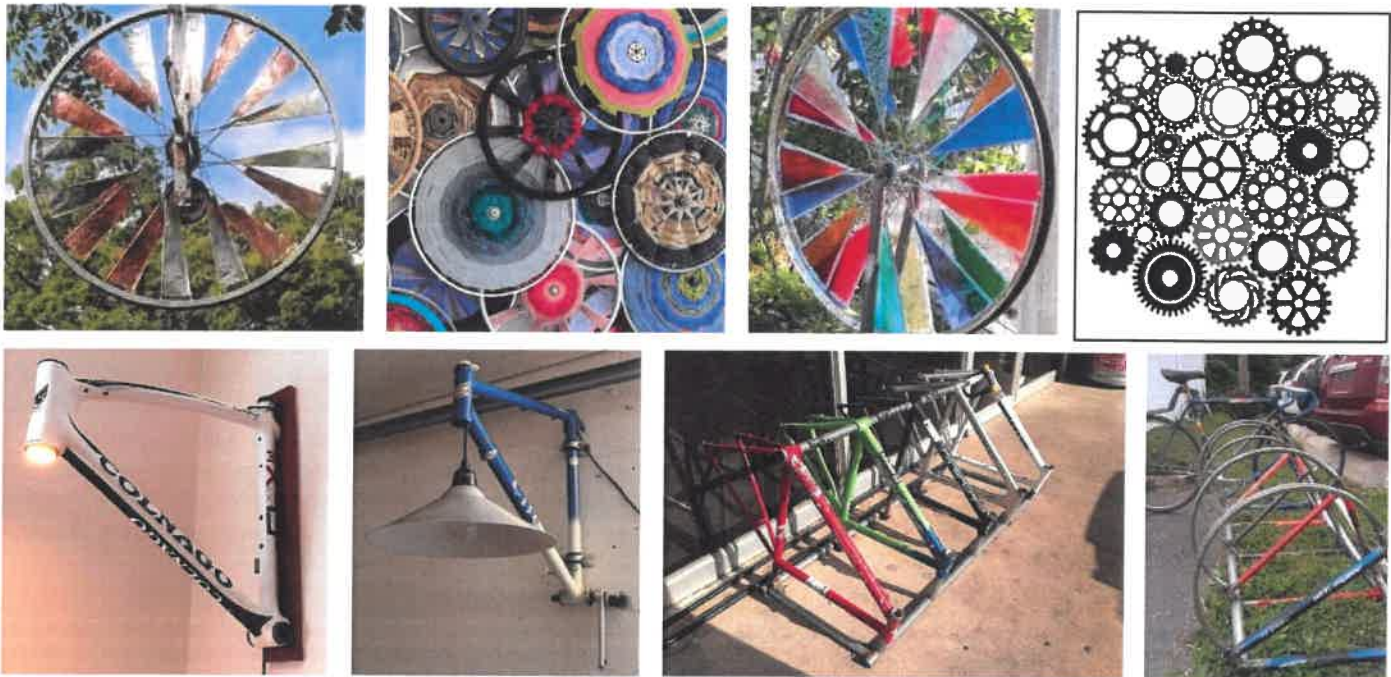




Images of actual frames, wheels, pedals, etc that will be used to give a sense of how colorful the end result will be:



Additional images for inspiration:



## Materials + Expenses:

### Metal Arches\*: \$TBD

Four bent steel arches: Harvey Bros OR Playground Equipment Services, prices TBD

Powder coating for primer: TBD

Painting: TBD @ USA Collision Centers (Price Hill Company)

Welding services: Christopher Daniel @ Blue Hell Studio

~1, 10' section of 1/2" EMT per bike part "flower," @ \$3.50 = \$11 - \$30

### Fittings and Fasteners\*: \$260 - \$743

~30 Pipe assorted fittings per arch @ \$5-\$10 ea., plus 1 - 3 per flower @ \$2-\$6 ea. = \$156 - \$408

10-15, 5 - 7" hose clamps per arch @ \$2.30 = \$46 - \$70

18 - 22, 3 - 5" hose clamps @ \$1.98 = \$36 - \$45

Misc. nuts, bolts, screws, washers, fasteners, and incidentals TBD = ~\$220

Wind spinner panels: Sourced through Playground Equipment Services: \$TBD

### Security:

Chains - 40' @ \$1.67/ft of 3/16 zinc-plated steel chain

Locks – 4-pack keyed padlocks with extra long shackles

Tarps – 3, 10'x12' @ \$16.50

**Bikes and Bike Parts: \$50**

This material, in excess of what will actually be used in this specific project, has already been secured, with a few straggler donations to be picked up in the next week. Additional materials can be sought as needed. Surplus materials can be transferred to Price Hill Will for future projects, with the exception of any unused Red Bike frames which will be returned to them, per their request.

Donated bike components collected to date: \$4,510 (does not include Red Bike's donation)

- 60 Wheels ~ \$2,100 (\$35/wheel estimate, with some less and some substantially more)
- 25 Bike frames and 5 posts donated from Red Bike
- 5 Bike frames ~ \$560
- 19 Complete bikes (incl. 7 kid/toddler bikes, 5 vintage bikes, and even a tricycle) ~ \$1,100
- 50+ gears, 6 posts, numerous bike chains, extra handle bars, baskets, and odds and ends ~ \$750

Purchased Bikes: 15 child bikes plus a tricycle for \$50

**Concrete Planters\*: TBD**

The smaller planters might still be donated by the city, and/or we may have a local concrete company donate surplus material for the large planters that need to be poured (David Miller and Eric Burher are assisting me with looking into this). **These costs cannot be determined at this time, but if not donated will comprise a significant portion of the budget – in excess of \$1,500 – and will likely necessitate a revision of the scope of this portion of the project.** This information will be confirmed by July 31<sup>st</sup>.

**Fill Dirt\*: \$64 – \$190**

Hafner's Terra Mix @ \$39/cu. yd. (27 cu. feet) **OR** Home Depot bagged topsoil \$1.47/cu. ft.

~8 cu. ft. of dirt per large planter (arch supports) = 32 cu. ft.

~3.4 cu. ft. of dirt per small planter = 10 – 20 cu. ft.

Total: 1.6 – 2 cu. yards of dirt from Hafner's is \$100 plus a \$90 delivery fee **OR** 43 – 54 bags from HD for \$64 – \$80.

**Plants: \$0**

This portion of the project has not been decided and will likely depend on what can be donated. Since the site is not one where planters can be easily and regularly watered, the focus will be on shade-tolerant, drought-tolerant perennials, and preferably native plants.

Donated plants will be sought from the following sources:

- Cincinnati Board of Park Commissioners (though they specialize in annuals)
- Keep Cincinnati Beautiful (reaching out would be a great idea to put this project on their radar)
- The Cincinnati Zoo, which has a native plant nursery
- Bean Native Nursery
- Imago (a Price Hill ecological education organization)
- The Cincinnati Permaculture Institute/Growing Value (a Price Hill business, but they specialize in edible plants)
- Enright Ridge Urban Ecovillage (not exactly a nursery, but likely still a good resource)
- Turner Farms (which manages the Price Hill Community Gardens, though they specialize in edible plants)

**Tools: \$273 – \$441**

EMT Bender ½" @ \$40 and ¾" – 1" (\$82) **OR** 1 ¼" (\$250) (larger size TBD, can possibly be borrowed?)

Milescraft DrillBlock Drill Guide @ \$11

2, 4-piece Dewalt trigger clamp sets (large @ \$20 and small @ \$40)

Bosch BlueGranite Carbide Hammer Drill Bit Set @ \$25

Milwaukee Shockwave Impact Drill and Driver Set @ \$55

Milwaukee Left and Right Offset Aviation Snips @ \$35

Misc. Tools @ \$75

**Plasma Cut Sign: \$100 – \$400\***

Baron Engraving (Price Hill Company, Pete Witte), who might make this a donation

~\$100 – \$200 ea, for one or two signs, assuming a sign is desired on each arch – price varies with design

complexity. D.J. Trischler (graphic designer) has agreed to consult on the design and proper file formatting for this portion of the project.

**Artist Compensation: \$1,750**

50 hours @ \$35/hour = \$1,750

15 hours @ \$15/hour for assembly assistant/s = \$225

I am also be requesting that tools purchased for this project be included as part of my compensation.

Materials for additional components (metal, nylon, or stained glass panels for wheel wind spinners; bike rack EMT and fasteners; light fixtures) have not been included with this estimate pending group discussion and artist follow-up.

\* I will be reaching out to various local businesses, both local (Habitat for Humanity Restore, Cincy ReUse Center, Building Value, Doppes, etc.) and national chains (Lowes, Home Depot, Ace Hardware, Menards, etc.), to see about having these components donated or discounted. As such, I anticipate this to decrease the

**Preliminary Project Cost Total: \$2,867 – \$5,625**

## **Maintenance and Prep Work:**

I will be consulting with John Zuleger, an engineer, as well as a concrete expert (TBD) to determine what, if anything, is required to prepare the site for the installation of the large planters. I will also touch base with Greg and a TBD City of Cincinnati representative regarding the barriers at the south entrance. The opening needs to be centered (see below, light yellow rectangle) and potentially widened (it is 52" as opposed to the north entrance's 69", and the arch openings as currently designed are 60"). Greg also expressed concern that the barrier, which had formerly been positioned ~100' down the hill, had been moved to the north side of the retaining wall. According to Jules Breslin, this was done through proper channels by the gentleman (her neighbor, Stan) currently involved in building a house close to the south entrance. Prior to the placement of the concrete planters, I need to confirm that the barrier is in its final position, and that that position has been sanctioned by the city. Also, the reflective sign on the south entrance needs to be replaced and likely a second one added, and the north entrance signs need to be spaced further to ether side of the arch

Aside from those concerns, minimal upfront prep work is anticipated and should consist of only a good clearing of the footprint area (blower or broom) and potentially a small amount of brush clearing. Limited ongoing maintenance will be necessary, but might include the trimming of brush along the edges of the path.

Long term, an annual inspection of the archways, their components and connectors, with minor repairs or alterations as needed, as well as periodic inspections of the concrete, to verify its continued structural integrity, would be warranted.



Barrier opening needs to be centered and widened to 60" min from current 52" width.



Reflective signs on the north entrance need to be spaced more widely apart so they are visible to the sides of the arches

## Opportunities for Community Involvement and Engagement:

Community involvement in this project is integral, not so much with the construction, but in the form of sourcing donations of materials to be incorporated into the piece. And the response has been amazing! Even the smallest components are useful and contribute to the end product, and it is exciting for community members to visit the space after installation to locate their contributions which have been incorporated into the final sculpture.

Unfortunately, an official opening of the space and unveiling of the installation is unlikely to be feasible due to coronavirus concerns, but I would like to broadcast an invite to all of the donors (40+ and counting) and volunteers to visit once everything is in place.

## Project Completion Timeframe:

Three weeks to finalize details re: remaining, potentially-donated materials, clarify with the group which additional components will be pursued, and sort out the concrete planters. One to two weeks to make the planters. One to three days for the assembly of the arches. In total, we would be looking at a completion date 5 - 7 weeks from today.

**Timescales and Budget:** Proposals are due on July 16, 2020 and will be presented and voted on at the Incline Run team meeting the following week. Final approvals and construction budgets will be confirmed by Price Hill Will. Total budget for fabrication and installation of all works is \$10,000.

**Submissions will be judged on:**

- Artist experience and quality of previous work
- Long-term durability of proposed work
- Appropriateness of the work to the site and surrounding environment
- Ability to meet the project budget
- Ability to incorporate group work and include community
- Voting results from team meeting

**To submit, please enter “Incline Run Proposal” in the subject line and email to Samantha Conover ([samantha@pricehillwill.org](mailto:samantha@pricehillwill.org)) and Jessica Roncker ([jessroncker@me.com](mailto:jessroncker@me.com)).**

**Thank you for your submission!**

## ARTWORK DONATION AGREEMENT

The **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **[APPLICANT NAME]**, [an Ohio limited liability company] [a neighborhood community group] [an individual], the address of which is [full address] ("**Applicant**"), hereby enter this agreement for the installation of an artistic depiction, artwork, graphic design, or other artistic idea (the "**Artwork**") to be owned and displayed by the City as its own expression, which Artwork is depicted in Exhibit A (Depiction of Artwork) attached hereto and will be installed in the area shown on Exhibit B (Location) hereto (the "**Location**").

**WHEREAS**, the City of Cincinnati operates various artwork programs through which it reviews and approves proposals to create public art on certain City owned structures and/or within the right-of-way of certain City streets; and

**WHEREAS**, the City takes ownership and displays as its own expression artwork that is successfully selected through its programs; and

**WHEREAS**, the Applicant has been selected by the City through its artwork program to install the artwork, which the Applicant has agreed to donate to the City upon the terms and conditions contained herein; and

**NOW THEREFORE**, the terms and conditions of this Agreement are as follows:

### 1. APPROVAL AND INSTALLATION

**a. Application.** In accordance with The City of Cincinnati, Department of Transportation policies and guidelines, the Applicant has submitted an application and required fees, which include a detailed proposal for how the Artwork will look, what materials will be used, and any other relevant details about the installation of the Artwork and about the Location (the "**Proposal**"). The City has approved the installation of the Artwork, and it has agreed to assume ownership of the Artwork and display it at the Location.

**b. Access.** The Applicant shall be permitted to install the Artwork at the Location. No other installation, painting, or encroachment of any kind shall be permitted in any other location in the City's right-of-way or other City property or structures.

**c. Changes; Approval.** The Applicant shall make whatever additional changes to the Artwork plans as may be required by the City's Department of Transportation and Engineering ("DOTE"), and the Applicant shall not commence installation until DOTE has approved the final plans.

**d. Before Installation.** The Applicant agrees to notify all households and businesses within one city block of the Location at least fourteen (14) days before starting installation of the Artwork. The Applicant will provide notice by posting it on doors and if a door is not present, by regular mail to the owner. This requirement may be waived in writing by DOTE.

**e. No Transfer.** This Agreement is personal to the Applicant and shall not inure to the benefit of the Applicant's successors-in-interest. This Agreement also may not be assigned without the prior written consent of the City. This Agreement shall not be recorded in the public records.

**f. Installation.** The Applicant agrees to complete the installation of the Artwork as detailed in the Proposal within the timeframe provided by DOTE, and it agrees the installation of the Artwork shall otherwise remain under the direction and control of DOTE. The Artwork installation and the art contained therein shall not deviate in any way from the Proposal accepted and agreed to by the City or its departments.

**g. Permits.** The Applicant agrees to obtain all necessary permits and pay all necessary fees for such permits, including a Street Blocking Permit from the Cincinnati Police Department, as are necessary

for the installation of the Artwork.

**h. Prompt Notification.** The Applicant shall notify DOTE upon completion of the Artwork.

**i. Materials.** The Applicant shall provide all paint, materials, equipment, services, and know-how used in connection with the installation of the Artwork for the benefit of the City, and the City accepts the provision of the materials, equipment services, and know-how. The Applicant acknowledges and agrees to comply with all design and material criteria as provided by DOTE. The Applicant shall not bring or permit to be brought onto the right-of-way any hazardous materials or other contaminants or substances that are harmful to the public or to the environment. DOTE may set standards for, and the Applicant will ensure compliance with, any other requirement regarding materials applicable to the Artwork.

**j. Cleanliness of Site.** The Applicant shall not store, use, or dispose of any toxic or hazardous materials without the prior written consent of the City, and shall keep the Location, and surrounding area, free from accumulation of waste materials or rubbish caused by any installation or operation. Upon completion of the Artwork, the Applicant shall remove all waste materials, rubbish, artistic tools, construction equipment, machinery, and surplus materials. If the Applicant fails to clean up as provided herein, the City may do so, and the full costs thereof shall be charged to the Applicant.

**2. MAINTENANCE.** The Applicant acknowledges and understands the City has no responsibility to maintain the Artwork and artwork after the installation. The Applicant acknowledges damage may occur as a result of utility work, road maintenance, road cleaning, reconstruction of road and right-of-way, and any other such work, and the City shall not be responsible for any repairs or maintenance. The Applicant may apply to repair the Artwork eighteen (18) months after the installation is completed; provided, however, the approval to repair the Artwork shall remain within the sole discretion of the City.

**3. EXPENSES.** All expenses associated with the installation, maintenance, repair, and removal of the Artwork, and the Applicant's use of the Location, shall be borne by the Applicant. The Applicant agrees to donate the Artwork and artwork and any time, materials, or talents necessary for the installation of the Artwork to the City. The Applicant shall be solely responsible for compensation of any and all individuals, including any contractors or subcontractors, providing services to install or maintain the Artwork. The City shall not be responsible for any costs associated with the Artwork or the Applicant's use of the Location.

**4. NO CITY WARRANTIES; APPLICANT WAIVER OF CLAIMS FOR DAMAGE.** The Applicant acknowledges and agrees that working within a public right-of-way is inherently dangerous, and it requires that the Applicant take appropriate measures and precautions to protect itself, and its agents, employees, contractors, and subcontractors from harm. The City makes no representations or warranties to the Applicant concerning the condition of the Location or its suitability for the installation of the Artwork. The City shall have no responsibility or liability for loss or damage to the Artwork or any items of personal property that may at any time be on the Location, including, without limitation, damage caused by the general public, trespassers, graffiti, thrown objects, wind, hail, fire, or other casualty, no matter how such damage is caused. The Applicant hereby waives, as against the City and its employees, agents, and contractors, all claims and liability, and on behalf of the Applicant's insurers, rights of subrogation, with respect to property damaged or destroyed by fire or other casualty or any other cause, no matter how caused.

**5. CITY OWNERSHIP, RIGHT TO MODIFY OR REMOVE.** The Applicant hereby transfers all ownership interest in the Artwork and the artwork contained in the Artwork to the City, and the City shall own all rights in the Artwork, the Proposal, and any art therein except as specified below. The Applicant acknowledges the Artwork is temporary and the City may, in its sole discretion, paint over, remove, resurface or allow the installation of different artwork, in part or in whole, at any time the City decides.

**6. COPYRIGHT, VARA WAIVER.**

**a. Applicant Warranty.** The Applicant warrants and represents neither the Proposal, the Artwork, nor any artwork contained therein violates any copyright or infringes on the copyright of any third party

or on any other intellectual property rights of any third party. The Applicant further represents it holds full title to any artwork transferred to the City and it is not licensing or sub-licensing any such artwork and has the right and authority to enter into this Agreement.

**b. Copyright.** The Applicant transfers to the City all ownership interest in all rights including rights under the federal Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §§ 106A and 113(d) in the Proposal, the Artwork, and the artwork contained therein. The artist or artists who have been or will be involved in designing or installing the Artwork or in creating the Proposal have waived their rights under VARA by completing and signing a waiver of rights under VARA, which is attached hereto as Exhibit C (*Signed VARA Waiver*).

**c. Artists Intellectual Property License.** The City hereby grants to the Applicant the limited and revocable license to make, display, and distribute, and authorize the making, displaying, and distribution of photographs and other reproductions of the Artwork. The Applicant may use such reproductions for advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, and electronic and multimedia publicity. The Applicant may not license or sublicense its rights for any private or commercial purpose. This license granted hereunder does not include the right to sell photographs or reproductions of the Artwork.

## **7. CITY AND UTILITY ACCESS.**

**a. City's Right to Enter upon Property.** The Applicant acknowledges that the City and its authorized representatives have the unlimited right to enter upon the Location and the Artwork at any time for any purpose, including without limitation to inspect the Location and the Artwork. The Applicant further acknowledges its ability to enter upon the Location shall always be subject to the City's direction and control. The City shall have no duty to inspect.

**b. Rights of Utility Companies.** The authorization herein granted to the Applicant to install the Artwork and to use the Location are subject and subordinate to the rights of any and all utility companies that may now or hereafter have utility lines and/or other utility installations within the Location. The Applicant shall not alter, relocate, or otherwise interfere with such utility lines and installations and shall not do anything that will impair such utility companies' right to enter upon the Location from time to time for all purposes associated with the operation, maintenance, repair, replacement or removal of such utility lines and installations. Such utility companies have continued access to the Location 24 hours per day, 7 days per week, 52 weeks per year.

**8. COMPLIANCE WITH LAWS, REGULATIONS, AND PROGRAMS.** The Applicant shall comply with all applicable statutes, ordinances, regulations, and rules of the federal government, the State of Ohio, the County of Hamilton, and the City of Cincinnati.

**9. INDEMNIFICATION OF THE CITY.** The Applicant shall indemnify, defend, and save the City, its employees, agents, and contractors harmless from and against any and all losses, damages, settlements, costs, charges professional fees, and other expenses and liabilities of every kind and character (including without limitation attorney fees) arising out of or related to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with the Applicant's installation, maintenance, or removal of the Artwork, use of the Location, or violation of the provisions set forth in this Agreement, including without limitation any of the foregoing that may arise or be claimed with respect to any death, personal injury, or loss of or damage to property on or about the Location, including any such death, injury, or loss related to the materials used in installation, maintenance, or removal of the Artwork. The Applicant shall assume the defense (with counsel acceptable to the City) and settlement of any and all such suits or other legal proceedings brought against the City and shall pay all judgments entered in such suits or other legal proceedings. The assumption of liability and indemnity obligations of the Applicant under this Agreement shall survive the termination of this Agreement with respect to matters arising prior thereto.

**10. NOTICES.** All notices given hereunder by either party shall be in writing and shall be personally



delivered or mailed by U.S. Mail to the parties at the following addresses:

To City:  
City of Cincinnati  
Dept. of Transportation & Engineering  
City Hall, Room 450  
801 Plum Street  
Cincinnati, OH 45202

To the Applicant:

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**11. LAW TO GOVERN.** This Agreement is entered into and is to be performed in the State of Ohio. The City and the Applicant agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

**12. FORUM SELECTION.** The Applicant acknowledges and agrees that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or attachment thereto, including any duty owed by the Applicant to the City in connection therewith.

**13. AMENDMENT.** This Agreement may not be modified or amended.

**14. ENTIRETY.** This Agreement and the exhibits attached hereto contain the entire agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

*[Signature Page Follows]*

This Artwork Agreement is executed by the parties on the dates set forth below.

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs Muething, Interim City Manager

Date: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
John S. Brazina, Director  
Department of Transportation and Engineering

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

**ACCEPTED AND AGREED TO BY:**

**[APPLICANT NAME]**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A – Depiction of Artwork**

**SEE ATTACHED**

**EXHIBIT B – Location**

**SEE ATTACHED**

**EXHIBIT C – Signed VARA Waiver**

**SEE ATTACHED**

**WAIVER OF RIGHTS PURSUANT TO  
THE VISUAL ARTISTS RIGHTS ACT**

Description of Artwork (type, medium, colors, design): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Title (if applicable): \_\_\_\_\_

Date Created: \_\_\_\_\_

Dimensions (estimated): \_\_\_\_\_

Location: \_\_\_\_\_

The above-described artwork may be considered to be a "work of visual art" subject to the provisions of the federal Visual Artists Rights Act of 1990, 17 U.S.C. §106A and 113(d) ("**VARA**"), specifically the rights of certain authors to attribution and integrity codified in §106A(a).

I am an author of the artwork and am authorized to waive the rights conferred under VARA in accordance with the waiver provision 17 U.S.C. §106A(e)(1).

I hereby voluntarily and permanently waive my rights to attribution and integrity with respect to the artwork pursuant to VARA, and any identical or similar rights pursuant to any other applicable federal law, state law, or foreign or international law. I hereby waive my right to prevent any intentional distortion, mutilation, or other modification of the artwork.

I acknowledge that because of this waiver, the City of Cincinnati, and its officers, employees, agents, contractors, licensees, successors, or assigns ("**City**"), have the absolute right to change, modify, move, relocate, transport, remove, replace, repair, or restore the artwork located within the City, in whole or in part, in the City's sole discretion.

I understand the effect of this waiver and hereby acknowledge that I am surrendering the rights described herein with respect to the artwork.

Signature of Artist: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_



**East Price Hill**  
Improvement Association

EPHIA  
PO Box 5420  
Cincinnati, Ohio 45205  
513-341-8430  
info@ephia.org  
eastpricehill.org

October 22, 2020

**Cincinnati Planning Commission**  
805 Central Avenue, Seventh Floor, Cincinnati, Ohio 45202

Dear Members of the Planning Commission,

The East Price Hill Improvement Association (EPHIA) Community Council supports the proposed Notwithstanding Ordinance permitting the installation of a mural and artwork in the City-owned right-of-way along a portion of Maryland Avenue known as the Incline Run in Lower Price Hill and East Price Hill. This corridor has been a significant connector between the Lower Price Hill and East Price Hill communities, and we welcome the opportunity to beautify it and increase its appeal, relevance, and utilization by an even broader community.

The East Price Hill community requests that you approve the proposed ordinance, and thanks you for your consideration of this matter.

Sincerely,

**Sheila Rosenthal**  
President, EPHIA

## Juengling, Andy

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**From:** Jim Grady <jgrady@starone.com>  
**Sent:** Monday, October 19, 2020 7:46 PM  
**To:** Jessica Roncker  
**Cc:** Juengling, Andy; Goubeaux, Brian; Sam Conover  
**Subject:** Re: [External Email] proposed sculptures and murals for Maryland Ave.  
**Attachments:** Sculpture Location (South).png; Incline Run Top 2.jpeg

Jessica

My family's property starts in front of and continues below where the current barricade is located.

I believe my father owned it prior to them barricading the street.

I wasn't really involved in his initial plans for the property so I not sure if he had any conversations with anyone at the city regarding opening back up the street for access. He was actively working on it prior to the real estate crash then put on the back burner. Then his mental capacity started to diminish so we have been just sitting on it. As his mental capacity was diminishing we tried to avoid discussing it with him because it would create high anxiety because he couldn't process things like he could previously.

On Mon, Oct 19, 2020, 5:10 PM Jessica Roncker <[jessroncker@me.com](mailto:jessroncker@me.com)> wrote:

Hi all:

I'm sure that this will be discussed on Friday but I thought I'd address it among this small group now since I can't be at the meeting on Friday (Samatha Conover will be there to represent Price Hill Will).

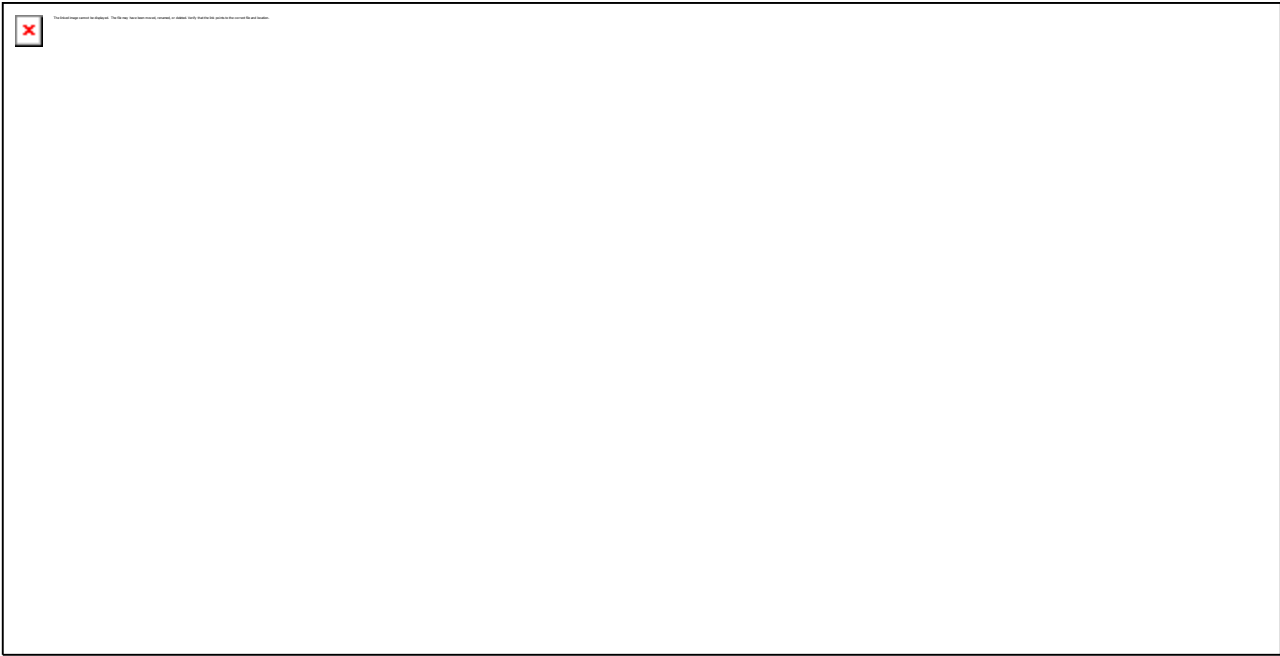
Jim, I absolutely understand your concern if the arch would block access to your client's property.

I wonder if the map used in the paperwork may be misleading regarding the exact location. For instance, the proposed arch for the south end of the path is actually just north of the mural, not below it, so I attached a screenshot with a arrow added to show a more accurate position.

Regarding the north entrance to the path, is your property south of the existing guardrails in the photo below? It was my understanding that the space below the guardrail was city property and not privately owned so the arch proposed for the north is intended to welcome people to public space, not impede passage to someone's future home!

Any clarification you can share would be appreciated so the we can revise our plans, if needed.





Thank you!  
Jessica

Jessica Roncker  
[jessroncker@me.com](mailto:jessroncker@me.com)  
917-837-1202

On Oct 19, 2020, at 9:03 AM, Juengling, Andy <[Andy.Juengling@cincinnati-oh.gov](mailto:Andy.Juengling@cincinnati-oh.gov)> wrote:

Jim,

Thank you for your email. The proposed location for the sculpture is either in front of, or behind, the existing guardrail that blocks vehicles from accessing the designated pedestrian portion of Maryland Avenue. Because this portion of Maryland Avenue is a pedestrian portion, I would recommend reaching out to the Department of Transportation and Engineering regarding the appropriate access to your site. I have copied Brian Goubeaux from DOTE who is very knowledgeable about the subject portion of Maryland Avenue.

The map that was attached to the notice was an approximation based on the aerial map we have. I have attached a copy of the staff report and submittal documents that the Planning Commission will review. You will notice the proposed location on page 17 of the attachment. I have also copied Jessica Roncker with Price Hill Will who may be able to answer some of your questions regarding the proposal.

I will be sure to provide a copy of your letter to the Planning Commission for their consideration on Friday, October 23<sup>rd</sup> at 9 a.m. If you wish to attend this meeting, either in person or via Zoom, please let me know.

Thanks,

**Andy Juengling, AICP** | Senior City Planner  
City of Cincinnati | Department of City Planning  
Two Centennial Plaza | 805 Central Avenue, Suite 720 | Cincinnati, OH 45202  
(p): 513.352.4840 | (f): 513.352.4853 | [Website](#) | [Twitter](#) | [Plan Cincinnati](#)

<image001.jpg>

**The 2020 Census is open! It's EASY, SAFE and IMPORTANT | Complete the Census at [my2020Census.gov](https://my2020census.gov)**

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**From:** Jim Grady <[jgrady@starone.com](mailto:jgrady@starone.com)>  
**Sent:** Friday, October 16, 2020 5:23 PM  
**To:** Juengling, Andy <[Andy.Juengling@cincinnati-oh.gov](mailto:Andy.Juengling@cincinnati-oh.gov)>  
**Subject:** [External Email] proposed sculptures and murals for Maryland Ave.

External Email Communication

Andy

I am writing in regards to a letter of notice I received about the positioning of proposed sculptures and murals on Maryland Ave.

We own the property just south of the most north proposed sculpture on Maryland Avenue as highlighted on the attached map that was part of the letter.

We are opposed to this location as it would block access to our property.

Our intention is to eventually develop this property for single family townhomes. Test borings and plans have been drawn for the site.

Unfortunately circumstances to the owners health has delayed this process until sometime down the road.

I am the legal power of attorney for both owners, which I can provide documentation upon request.

Can you please advise me on what I need to do regarding this matter so that is conveyed to the planning committee.

Thanks for your assistance in advance

Sincerely



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<Item 7 - Maryland Avenue NWO.pdf>

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January 5, 2021

TO: Mayor and Members of City Council 202002350  
FROM: Paula Boggs Muething, City Manager  
SUBJECT: Presentation – Notwithstanding Ordinance – Mural and Sculpture Arches in Lower Price Hill and East Price Hill

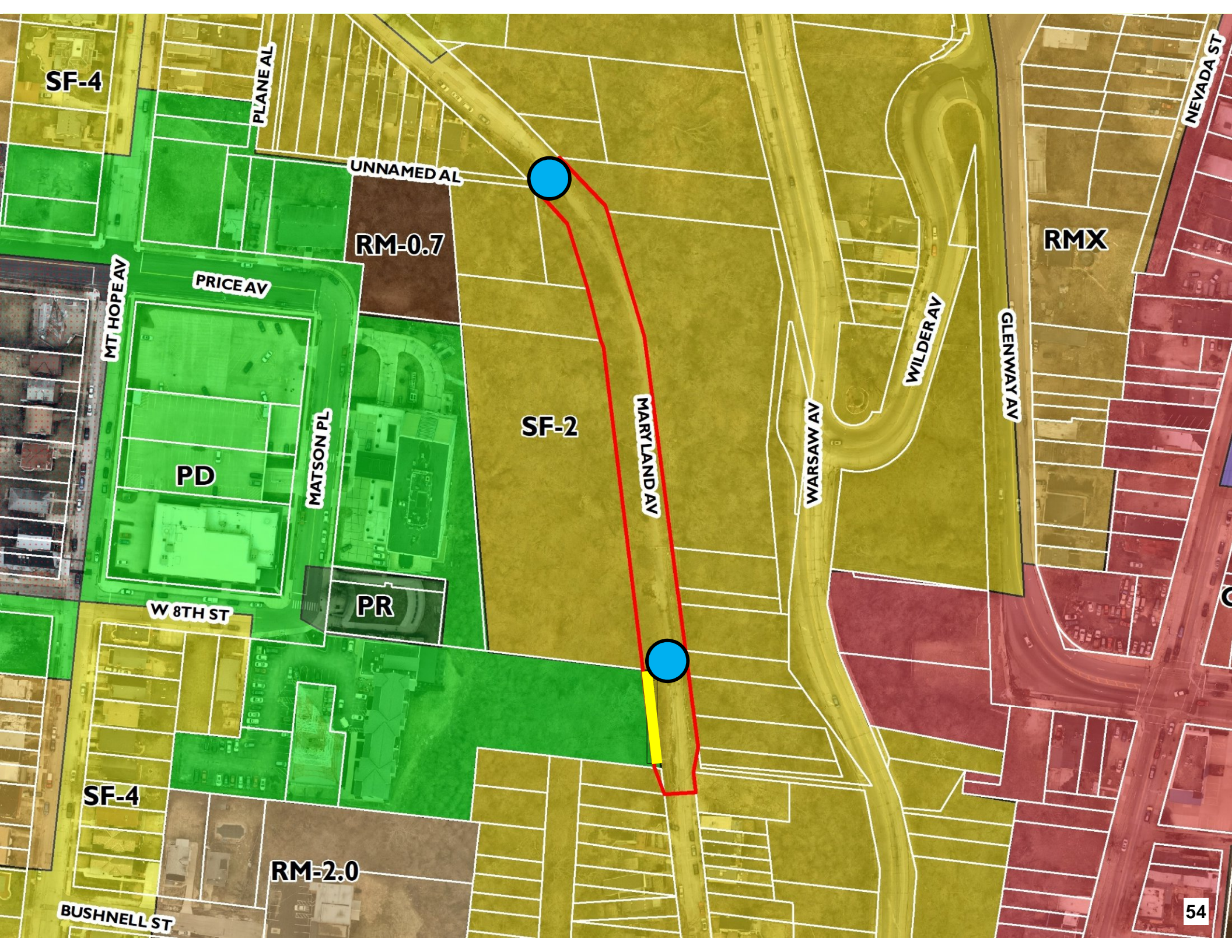
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Attached is the presentation for a proposed Notwithstanding Ordinance for Maryland Avenue in East Price Hill and Lower Price Hill

cc: Katherine Keough-Jurs, AICP, Director  
Department of City Planning

Notwithstanding Ordinance  
for the installation of a mural and  
artwork on Maryland Avenue in  
East Price Hill and  
Lower Price Hill

Economic Growth and Zoning Committee  
January 5, 2021



SF-4

PLANEAL

UNNAMED AL

RM-0.7

PRICE AV

MT HOPE AV

MATSON PL

PD

W 8TH ST

PR

SF-2

MARYLAND AV

WARSAW AV

WILDER AV

GLENWAY AV

RMX

NEVADA ST

SF-4

RM-2.0

BUSHNELL ST

54

- November 2019 – City Council accepted donation from Devou Good Project for improvements to portion of Maryland Avenue – known as “Incline Run”
- Price Hill Will requests a Notwithstanding Ordinance (NWO) to further enhance this area
  - Installation of a 702 sq. ft. mural
  - Installation of a pair of sculpture arches

# Existing Retaining Wall



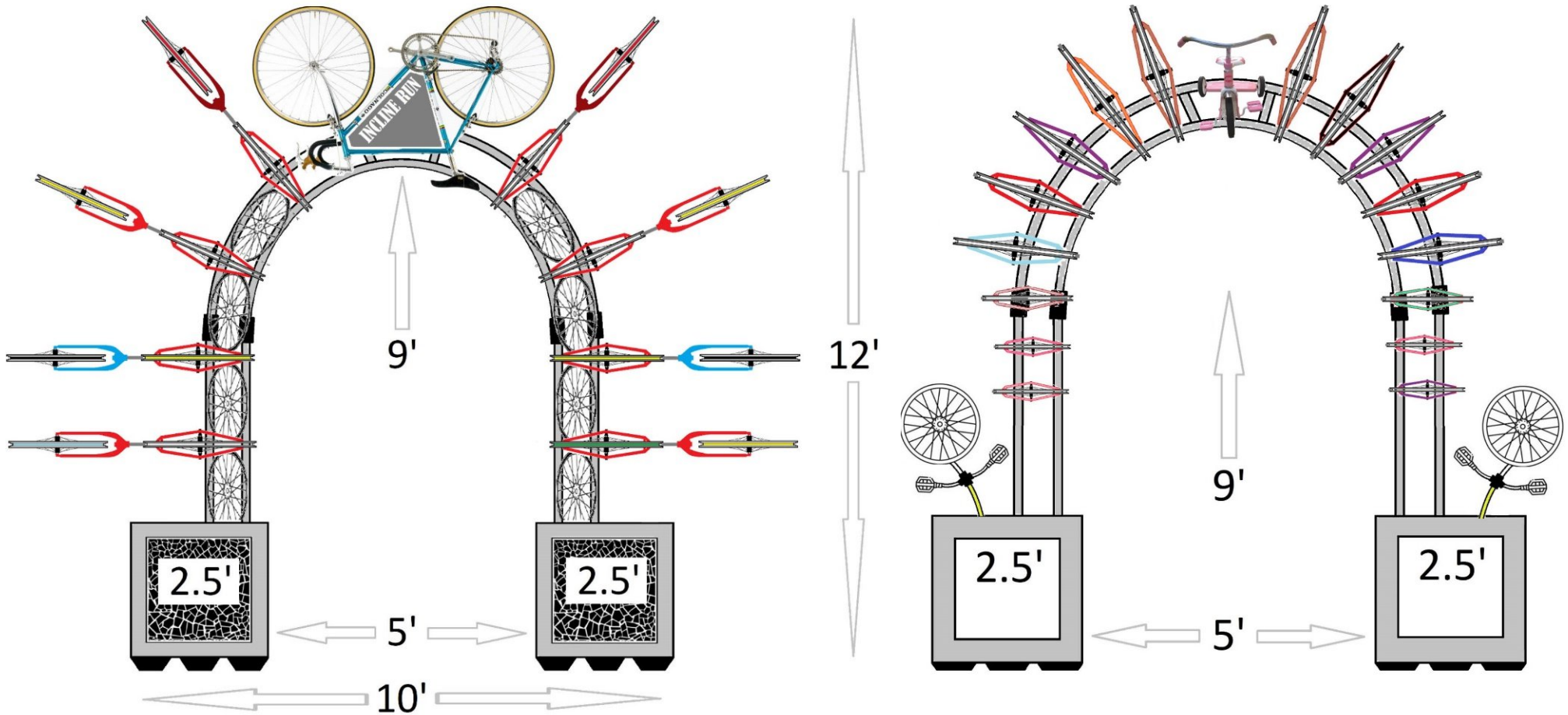


# Examples of Mural



# Proposed Sculpture Arches

Bike Arch North Entrance Mockup:





SF-4

PLANEAL

UNNAMED AL

RM-0.7

PRICE AV

MT HOPE AV

JATSON PL

PD

SF-2

MARYLAND AV

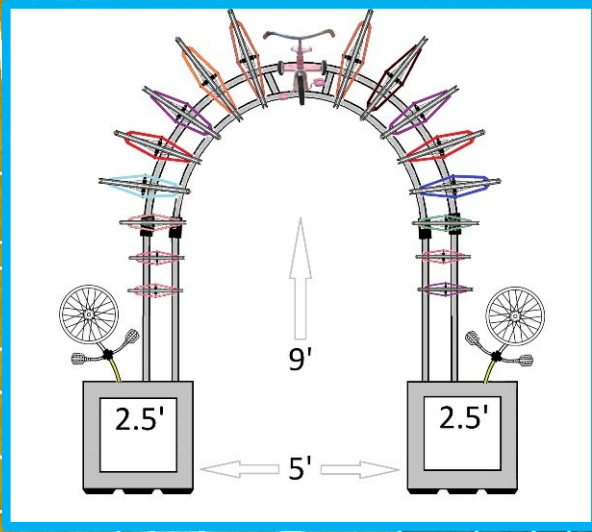
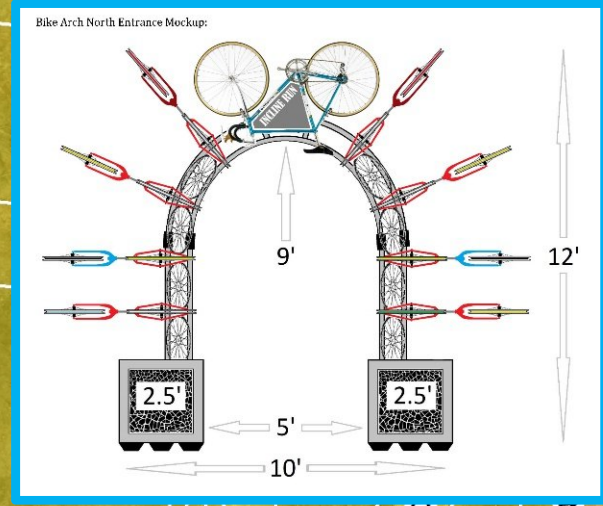
AWAY

WILL

WYWAY AV

NEVADA ST

RMX



RM-2.0

BUSHNELL ST

## Cincinnati Municipal Code – Sec. 111-5

- Whether the proposed application will not have an adverse effect on the character of the area or the public health, safety and welfare;
- Whether the proposed application is consistent with the purposes of this code and the zoning district where the subject property is located including but not limited to:
  - (see staff report for details)

## Price Hill Plan (2015)

### Arts and Culture Theme Area

Goal: Price Hill is an arts destination

Action Step: Support community art...in Lower, East, and West Price Hill.

### Transportation Theme Area

Goal: Price Hill develops into a place that is attractive to residents and customers who want to travel without the use of a vehicle

Action Step: Develop the former site of the incline into a pedestrian connection

## Plan Cincinnatiati (2012)

### Connect Initiative Area

Goal: Develop an efficient multi-modal transportation system that supports neighborhood vitality

Strategy: Expand options for non-automotive travel

### Live Initiative Area

Goal: Create a more livable community

Strategy: Become more walkable

- The mural installation celebrates the history of the Price Hill Incline and the sculpture arches instill the pedestrian environment of Maryland Avenue
- Consistent with Plan Cincinnati (2012) and the Price Hill Plan (2015)
- Notice was sent to all adjacent property owners and the Lower Price Hill and East Price Hill Community Councils on October 10, 2020
- One letter has been received to date – adjacent property owner



The City Planning Commission unanimously recommends that City Council approve the requested Notwithstanding Ordinance permitting the installation of a mural and artwork in City-owned right-of-way along a portion of Maryland Avenue with the following conditions included:

1. That the City-owned right-of-way of Maryland Avenue where the mural and sculpture installations are proposed is not a vehicular use right-of-way and is to be used as a pedestrian right-of-way providing access between Lower Price Hill and East Price Hill; and
2. That the mural and sculpture installations be placed in specific locations as listed by the applicant in Exhibit B and as reviewed and approved by the appropriate City departments; and

3. That the mural and sculpture installation designs adhere to the example illustrations as provided by the applicant in Exhibit B; and
4. The petitioner shall coordinate with the City regarding the donation of the mural and sculpture arches in the right of way including a contract with the City in a similar form as the City of Cincinnati Artwork Donation Agreement (Exhibit C); and
5. All artists involved in the creation and installation of the artwork shall provide the City with a Waiver of Rights pursuant to the Visual Artists Rights Act (Exhibit D).