

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

John Cranley, Mayor

Attest: _____
Clerk