

Honorable City Planning Commission
Cincinnati, Ohio

March 19, 2021

SUBJECT: A report and recommendation on a proposed Notwithstanding Ordinance permitting the installation of a mural in City-owned right-of-way along William Howard Taft Road and Woodburn Avenue in East Walnut Hills.

GENERAL INFORMATION:

Location: Auditor's Parcel No. 062-0001-0114-90
Petitioner: East Walnut Hills Assembly
Petitioner's Address: P.O. Box 68050 Cincinnati, OH 45206

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:

The East Walnut Hills Assembly, the official community council for the East Walnut Hills neighborhood, has received a \$15,000 grant from the Haile Foundation. The East Walnut Hills Assembly intends to use the funds for a wall mural to serve as an entrance into the East Walnut Hills Business District. The East Walnut Hills Assembly requests the proposed Notwithstanding Ordinance (NWO) to permit the installation of a mural within the City-owned right-of-way.

The proposed mural would be installed on a curved stone retaining wall in a portion of City-owned right-of-way at the northwest corner of William Howard Taft Road and Woodburn Avenue. The wall is approximately 1,977 square feet. In order to allow for the installation of the mural, City Council would need to approve the NWO, which would allow the City to designate one or more agents or contractors, including the East Walnut Hills Assembly, to carry out all or a portion of the proposed work required to install and maintain the mural.

Under the requested NWO, the East Walnut Hills Assembly would serve as the City's designee to install the mural on the entire front surface of the wall, budget permitting. The plans for the mural are in the early stages, but the project is intended to reflect the creative vision of the community. A steering committee comprised of community members is proposed to guide the project and gather community feedback. This feedback will be used to then make a call for artists. The committee will then narrow the field of artists. The selected artists will provide a creative brief and the community members will provide input on the preferred mural design. This process is proposed to occur over the course of the spring of 2021, with the goal of installing the mural in the summer of 2021.

The installation and maintenance of the mural would be performed under the management of the Department of Transportation and Engineering (DOT&E), and any agents or contractors of the City, including East Walnut Hills Assembly, would be required to comply with the rules and regulations concerning the mural's location, size, materials, and means of installation and maintenance. After installation, the City would own the mural and would continue to maintain complete control over the public right-of-way as necessary for public safety, and will require the artists who installed and maintain

the mural to waive the rights to the installation, therefore a Waiver of Rights Pursuant to the Visual Artists Rights Act (VARA) will be necessary to be executed between the artists and the City (Exhibit D).

Section 111-5 of the Cincinnati Municipal Code allows for community councils, including an organization participating in the neighborhood support program, to apply for an 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, the East Walnut Hills Assembly outlined that the requested NWO would allow for the installation of the mural 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 AND NOTIFICATION:

The East Walnut Hills Assembly discussed the proposed mural, including the timeline and process for City approvals, at their February 2, 2021 meeting. Community members made several comments in support of the project and there were no comments against the project. No official vote was taken. Notice for the March 19, 2021 City Planning Commission was sent to property owners within 400 feet of the proposed mural site. 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 is not expected to have any negative impact on the character of the proposed location area, or the public health, safety, and welfare as the mural is 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 is not expected to have any negative impact on the quality of residential neighborhoods and is intended for the enjoyment and benefit of the public. The mural will serve as an entrance into the East Walnut Hills Business District and provide a sense of community pride.

- (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 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.

Not applicable to this application.

- (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.

Not applicable to this application.

- (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 design for the mural has not been finalized. The Department of Transportation and Engineering will review the graphics when the permit is applied for by the applicant.

- (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:

Plan Cincinnati (2012)

The Notwithstanding Ordinance is consistent with *Plan Cincinnati (2012)*, specifically the Guiding Geographic Principle to “Focus revitalization on existing centers of activity” (p. 86). East Walnut Hills is characterized as an Evolve neighborhood. Evolve neighborhoods like East Walnut Hills may lack visible Neighborhood Business District boundaries (p. 89). The proposed mural would mark the southern

end of the East Walnut Hills Neighborhood Business District.

The request is also consistent with the Compete Initiative Area's Goals to "Cultivate our position as the most vibrant and economically healthiest part of our region (p. 114) and "Become nationally and internationally recognized as a vibrant and unique city" (p. 121). Specifically, it is consistent with the Strategy to "Promote Cincinnati's lifestyle" (p. 122). The proposed mural would support neighborhood pride and community and promote vibrancy in the business district.

CONCLUSIONS:

The Notwithstanding Ordinance to permit the installation of the mural at the specific location within the portion of City-owned right-of-way of William Howard Taft Road and Woodburn Avenue will permit a landmark indicating the southern end of the East Walnut Hills Business District and will provide community pride.

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:

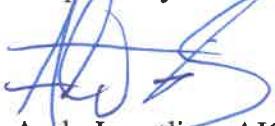
DENY the Notwithstanding Ordinance permitting the installation of a mural in City-owned right-of-way along William Howard Taft Road and Woodburn Avenue in East Walnut Hills for the following reason:

- 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 mural installation size, location, and design be reviewed and approved by the Department of Transportation and Engineering at the time of permit review; and
- 2) The petitioner shall coordinate with the City regarding the donation of the mural 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
- 3) 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:



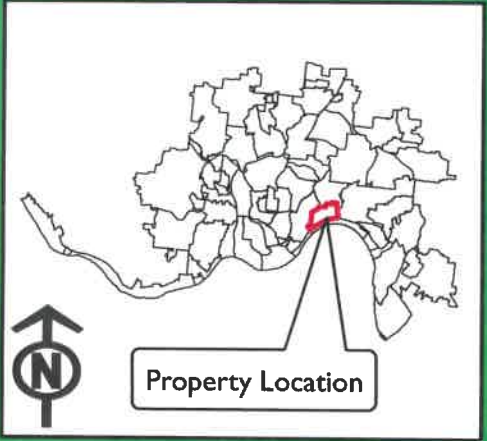
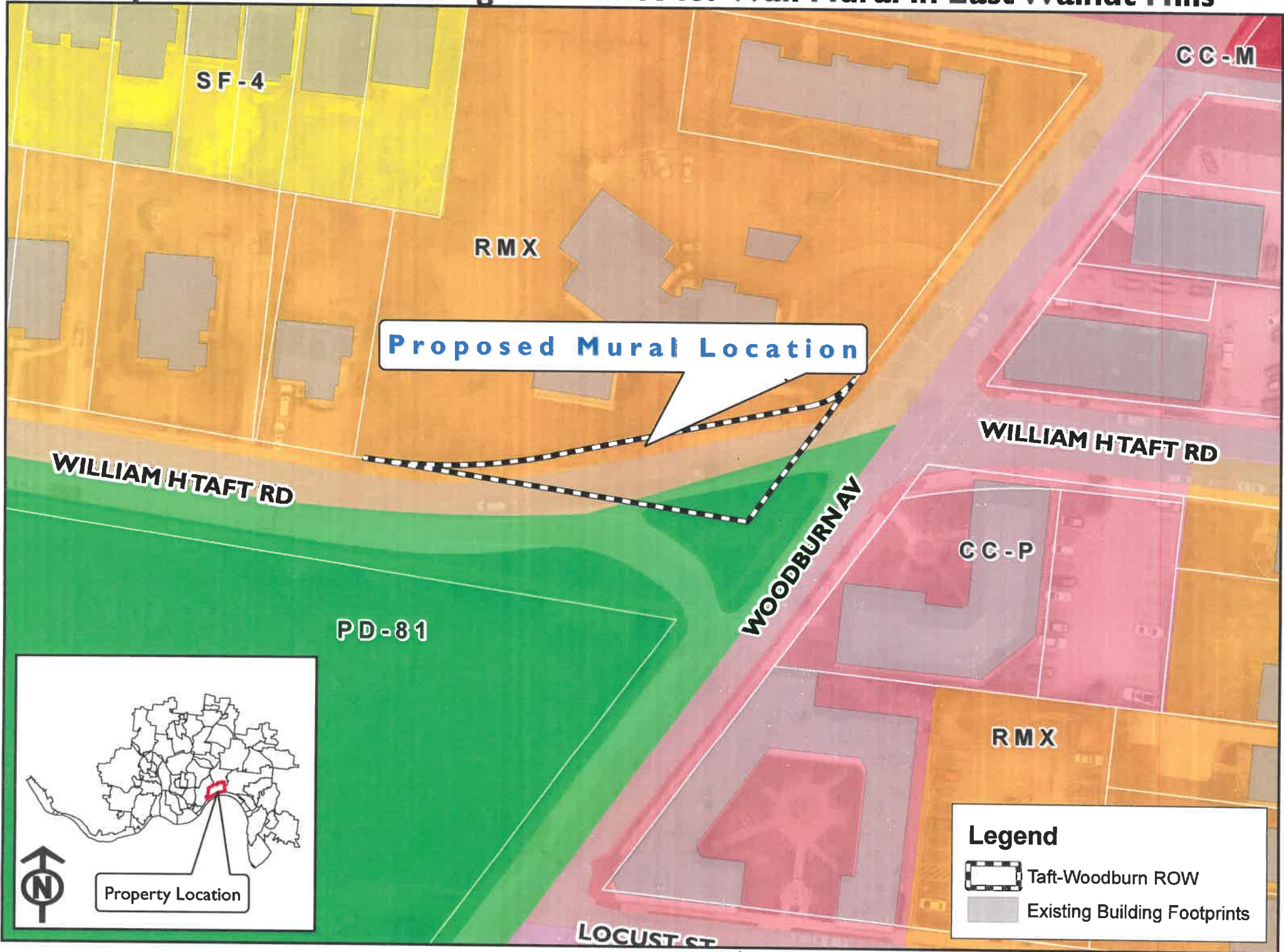
Andy Juengling, AICP, Senior City Planner
Department of City Planning

Approved:





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

Proposed Notwithstanding Ordinance for Wall Mural in East Walnut Hills



Legend

-  Taft-Woodburn ROW
-  Existing Building Footprints



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

Notwithstanding Ordinance Application
INITIALIZED BY

Part A - Identification

Subject Property Address (Please print in blue or black ink only) Taft / Woodburn NW (aka Taft / Woodburn Wall); Parcel 006200020112		
Applicant - Name (Print) East Walnut Hills Assembly (Sam Lieberman)	Phone No 513-382-3229	E-mail Address liebermans@gmail.com
Street Number & Name 1301 Burdett Ave	City / State / Zip Code Cincinnati / OH / 45206	Phone No / Fax No
Relationship of Applicant to Owner: <input type="checkbox"/> Owner <input type="checkbox"/> Lessee <input type="checkbox"/> Attorney		
Property Owner - Name (Print) City of Cincinnati	Phone No	E-mail Address
Street Number & Name	City / State / Zip Code	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 Sam Lieberman Digitally signed by Sam Lieberman Date 02/05/2021
Date: 2021.02.05 08:44:25 -05'00'

FOR OFFICE USE ONLY

Reviewed By: Wiz Palmer Processing Fee
 City Planning Staff Date Application Complete 2/11/2021



805 CENTRAL AVE, SUITE 720
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 P 513 352 3271
 F 513 352 2579
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 CAGIS.HAMILTON-CO.ORG

Notwithstanding Ordinance Application
INITIALIZED BY _____

Part A - Identification

Subject Property Address (Please print in blue or black ink only)		
Taft / Woodburn NW (aka Taft / Woodburn Wall); Parcel 006200020112		
Applicant - Name (Print)	Phone No	E-mail Address
East Walnut Hills Assembly (Sam Lieberman)	513-382-3229	liebermans@gmail.com
Street Number & Name	City / State / Zip Code	Phone No / Fax No
1301 Burdett Ave	Cincinnati / OH / 45206	
Relationship of Applicant to Owner:		
<input type="checkbox"/> Owner	<input type="checkbox"/> Lessee	<input type="checkbox"/> Attorney
Property Owner - Name (Print)	Phone No	E-mail Address
City of Cincinnati		
Street Number & Name	City / State / Zip Code	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.**
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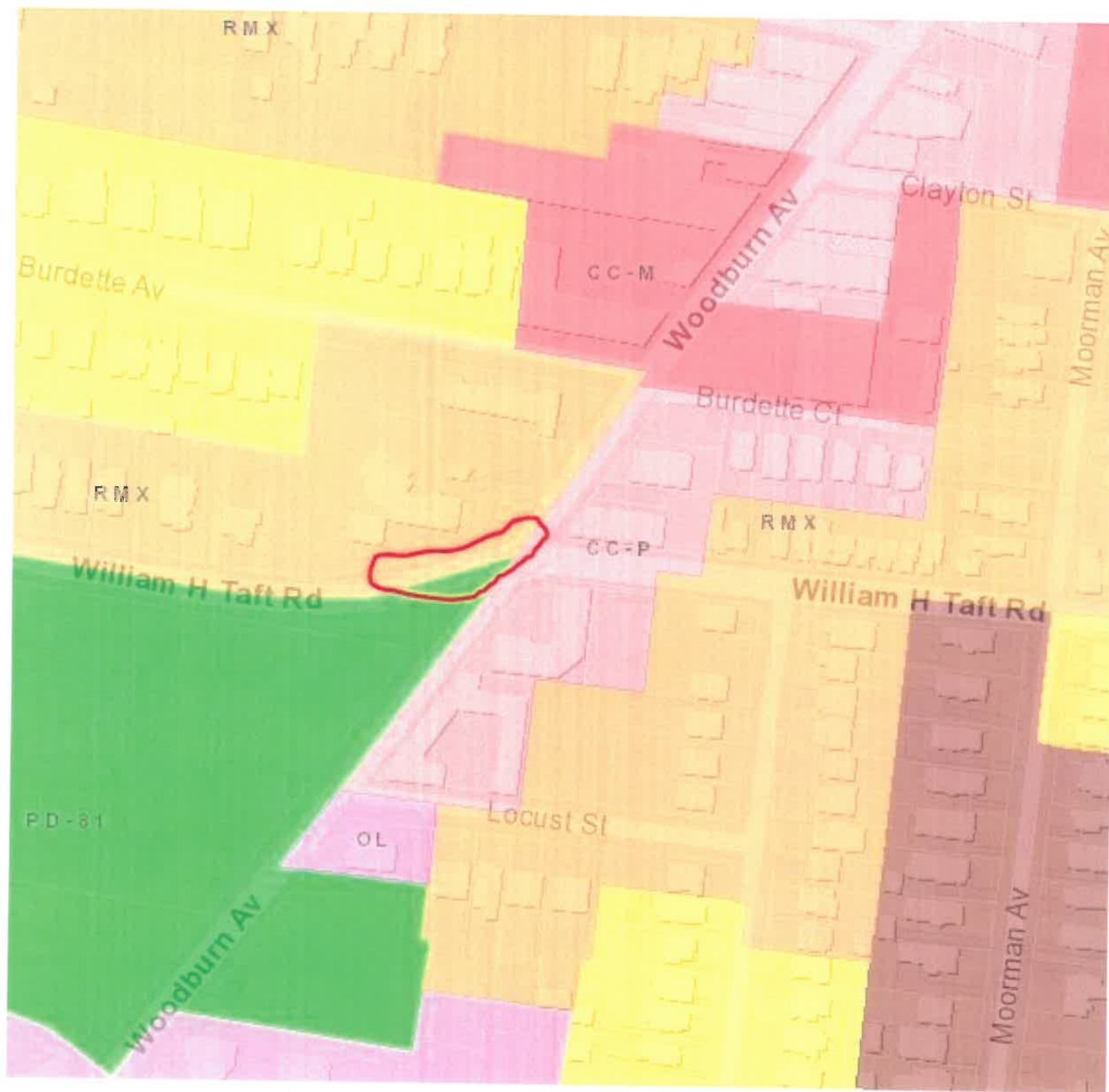
The applicant or agent undersigned does hereby certify that the information and statements given on the application, drawings, and inspections are to the best of their knowledge, true and correct. The undersigned further certifies their authorization to grant consent to the inspection by employees of 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 Sam Lieberman Digitally signed by Sam Lieberman
Date: 2021.02.05 08:44:25 -05'00' Date 02/05/2021

FOR OFFICE USE ONLY

Reviewed By: _____ Processing Fee _____

City Planning Staff _____ Date Application Complete _____





East Walnut Hills Assembly Taft/Woodburn Wall Mural Project

By following the existing legislation, the installment of the proposed mural 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 the stone wall that curves around the northwest corner of the William Howard Taft Rd and Woodburn Ave intersection. The wall sits in the right-of-way and is owned by the City of Cincinnati. This mural will provide a bright and vibrant work of art in a high traffic area that will give the community a sense of pride. It will be an eye catching landmark that marks the southern end of the East Walnut Hills business district, complementing DeSales plaza which marks the northern end.

The mural will be the creative vision of a local artist informed by the desires of the community. The East Walnut Hills Assembly will strive to engage the community throughout this project in a few ways. A steering committee of community members will be created to guide the project. The steering committee will develop and deploy a survey to provide the opportunity for community members to have input on high-level design direction. Following a call for artists the selection will be narrowed by the committee to three artists who will be compensated to respond to a specific creative brief that incorporates the community's vision and the community will be asked to vote on their preferred design. As COVID allows, we plan to incorporate a community mural paint day and a mural unveiling celebration.

The East Walnut Hills Assembly was graciously granted \$15,000 by the Haile Foundation and those funds will be used for this project. A final line-item budget is not yet available, however a majority of the funds will be used to compensate artists.

We hope to unveil the mural in late summer. In order to do so we will be forming the steering committee, gathering high-level community input, and making a call for artists by the end of March 2021. By the end of May 2021 a designer and mural design will have been selected by the community to initiate wall prep. This will allow the designer to work on the mural beginning in July 2021. This timeline necessitates a parallel path of progress toward (and details of) the mural in conjunction with the NWO and RSP application processes.

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 ("**DOT**"), and the Applicant shall not commence installation until DOT 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 DOT.

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 DOT, and it agrees the installation of the Artwork shall otherwise remain under the direction and control of DOT. 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:

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: _____