

## **Consolidated City of Indianapolis and Marion County Policy for Art in the Public Right-of-Way**

### **1. Policy and Purpose.**

In response to a growing interest in public art enhancements within public rights-of-way, easements and spaces (collectively, “public right(s)-of-way”), that are owned or controlled by the Consolidated City of Indianapolis, (“City,”) the City’s Department of Public Works (“DPW”) has developed this policy to implement a systematic process to evaluate potential new instances of public art (“Policy”). For purposes of this Policy, public art includes, but is not limited to, any paintings, sculptures, or other two- or three-dimensional special aesthetic enhancements placed in or along public spaces or on public structures, including but not limited to pavement, retaining walls, slope walls, bridge structures, medians, or traffic signal boxes. Instances of public art in public rights-of-way in the City can play an important role in defining the identity that the City projects to its residents and to the outside world.

DPW’s primary purpose for this Policy is to exercise direct control over the messages conveyed through instances of public art in public rights-of-way in the City. A process to evaluate potential new instances of public art will further that purpose by enabling the City to compare the proposal to its own messages that it seeks to communicate, and to approve new instances of public art before they are placed in public rights-of-way to ensure they convey the City’s messages. The City also seeks to achieve three secondary purposes in establishing this program: (1) to promote public art that enhances the aesthetic appeal of public areas; (2) to further a sense of place in Indianapolis’s neighborhoods; and (3) to showcase the creativity and public-spiritedness of individuals and organizations in our community.

Public art does not directly serve transportation or stormwater management purposes and can potentially disrupt those services. The potential adverse physical effect of the installation of public art in public rights-of-way warrants careful consideration and evaluation through a permitting process.

DPW is responsible for the construction, operation, repair and maintenance of all public streets and ways and stormwater systems and the protection of the City’s investment in its infrastructure systems and facilities. The Department of Business and Neighborhood Services (“BNS”) is responsible for, among other things, controlling all activities and work performed in, on, under and over the public rights-of-way and for enforcing compliance with regulations adopted by the Board of Business and Neighborhood Services (the “Board”).

Chapter 645 of the Revised Code of the Consolidated City of Indianapolis – Marion County (the “Code”) establishes a general policy and regulatory framework for the utilization of the public rights-of-way for the public health, safety and welfare and to promote economic development in the Consolidated City. Code § 645-111. BNS issues permits for activities and work performed in public rights-of-way and for conducting inspections to ensure compliance with the Code and Board regulations. Code § 645-322(a). A permit for work in the public right-of-way is required pursuant to Code § 645-324. Regulations and policies that apply to activities in the public rights-of-way may be proposed by BNS in consultation with DPW.

Code § 645-322(b). This Policy, although developed by DPW, is intended to take effect only with the full approval of BNS and after its presentation to, and approval by, the Board of Public Works. If adopted, the Policy will establish the criteria upon which a permit for activity in the public right-of-way for the installation of public art in the public right-of-way may be granted.

Public art that was installed prior to the adoption of this Policy shall not be considered as precedent which would serve to guide any future decisions as to approval or denial of any proposed public art. Public art in a public right-of-way is expected to convey one or more of the City's own messages (which can change over time), and is considered a temporary occupancy of public rights-of-way, and therefore DPW reserves the right to require removal.

## **2. Eligible Applicants.**

Any person or organization may propose public art in the public right-of-way by making an application for a public art permit. The applicant must be the person or organization who will be the permit holder, the sponsor of the public art project and the party responsible for the installation and maintenance of the proposed public art (the "Sponsor"). The Sponsor will install and maintain the public art project solely at its own expense.

## **3. Application Content.**

Applications for public art permits may be on a form prescribed by BNS and, at minimum, shall contain the following information:

- a. Applicant Identity. Information about the Sponsor, including name, address and contact telephone number and email address. If a permit is issued, the Sponsor has a duty to inform BNS of any changes to this information.
- b. Location. Information about the location of the proposed public art, including:
  - i. A written description using landmarks or GPS coordinates;
  - ii. An aerial image of the location; and
  - iii. Photographs of the location at the time of submission.
- c. Description and Design Plan. A description of the proposed public art, including:
  - i. A written description describing the proposed public art and detailing its social, cultural and/or environmental impact;
  - ii. A visual depiction of the proposed public art in sufficient detail to convey what the proposed public art will look like when installed, including detailed measurements; and

- iii. A detailed design plan, including detailed measurements, which depicts the proposed public art in relation to the public right-of-way and its components, including the roadway, shoulder, curbs, sidewalks, crosswalks, traffic control devices, signage, drainage facilities and utility facilities, as well as reasonably detailed information sufficient to determine the proposed public art's exact placement in relation to the surroundings. Design plans for proposed public art that includes structural components must be signed and sealed by an Indiana-licensed professional engineer.

BNS and DPW retain the right to request revisions to the Design Plan as a condition to issuance of a permit.

- d. Installation Plan. A written plan for installation of the proposed public art, including:
  - i. A schedule with an estimate of the time it will take to install the proposed public art; and
  - ii. A temporary traffic control plan for installation and maintenance of the proposed public art, which shall comply with all applicable federal, state and local standards regarding the maintenance of traffic during work in the public rights-of-way.

BNS and DPW retain the right to request revisions to the Installation Plan as a condition to issuance of a permit.

- e. Maintenance Plan. A written plan detailing the maintenance of the proposed public art during its expected service life, including:
  - i. A description of all foreseeable components of maintaining the proposed public art, including inspection of structural elements, litter removal and vegetation control;
  - ii. The frequency of proposed maintenance activities;
  - iii. A plan for responding to unforeseeable needs for maintenance, such as the removal of graffiti and repairs due to vandalism or weather events; and
  - iv. A description of the Sponsor's financial ability to fund regular and unexpected maintenance expenses.

BNS and DPW retain the right to request revisions to the Maintenance Plan as a condition to issuance of a permit.

- f. Public Input. A written description of the Sponsor's efforts to obtain input from the owners of property that will abut or be affected by the proposed public art and any registered neighborhood organization covering the location of proposed public art.

#### 4. Approval Criteria Requirements and Restrictions.

- a. In General. The determination whether to grant an application for a proposed public art project shall be made based on the criteria requirements and restrictions set forth in this section. BNS shall obtain the concurrence of DPW before issuing a permit for proposed public art. BNS and DPW may delegate the responsibility to review applications for proposed public art to a community-based arts organization for recommendation as to whether a permit should be issued. **Said recommendation and all other provisions of this Policy notwithstanding, DPW will determine which public art proposals convey the City's overall messages and will reject any proposal which DPW, in its discretion, concludes does not appropriately convey one or more of the City's own messages. DPW also retains the right to determine which public art proposals satisfy the remaining criteria required for placement within the public right-of-way and shall make the final determination as to whether an application for a public art permit shall be issued.**
- b. Approval Criteria. All applicants for proposed public art permits shall be reviewed based on the following general criteria:
  - i. Conformance to one or more City messages. Proposed public art for placement in the public right-of-way must convey City messages. Even if the City itself would not create the proposed public art, to obtain DPW's approval the proposed public art must convey one or more of the City's overall messages. DPW possesses discretion to decide whether instances of proposed public art convey one or more City messages.
  - ii. Public Safety and Security. Proposed public art must not negatively impact safety and must not create a distraction to motorists or create an attractive nuisance (such as enticing children to climb upon it). Proposed public art must not obscure motorists' sight distance, traffic control devices, signage, or lighting.
  - iii. Visibility. Proposed public art visible from the road must contribute positively to corridor continuity and the view from the road. Installations visible only to the community or adjacent to the neighborhood side of a structure may be allowed more flexibility in design than those visible from the road.
  - iv. Asset Preservation. Proposed public art must not adversely affect the service life of any infrastructure facilities or systems, or the ability to access all infrastructure components for maintenance.
  - v. Social, Cultural and Environmental Considerations. Proposed public art must not adversely impact social, cultural and environmental resources. The applicant must abide by all federal, state and local historic preservation and environmental laws, regulations and policies.

- vi. Potential Conflicts. Proposed public art must not conflict with existing or planned uses of the public right-of-way at the proposed location, including other uses by the City, public utilities or other parties authorized to use the public right-of-way at the location.
  - vii. Compliance. Proposed public art shall be in compliance with all federal, state and local laws, regulations and policies applicable to the use of or activities in the public right-of-way, including but not limited to the Indiana Manual on Uniform Traffic Control Devices (IMUTCD), specifications and regulations of the Indiana Department of Transportation, including its Standard Specifications and its Indiana Design Manual (“Indiana Design Manual”), specifications and regulations of BNS and DPW, the Public Rights-of-Way Accessibility Guidelines (PROWAG), and any other standards generally applicable in DPW’s discretion.
- c. Approval Criteria Restrictions and Requirements. An application for a proposed public art permit may be denied based on any of the following prohibited characteristics, design parameters and requirements:
- i. In the view of DPW, the proposed public art fails to convey one or more of the City’s messages.
  - ii. Proposed art must not contain characteristics that will distract drivers, pose a safety risk, or impact traffic flow.
  - iii. Proposed art must not reduce or interfere with intersection sight distance, stopping sight distance, and passing sight distance for drivers.
  - iv. Proposed public art must not resemble a traffic control device (a sign, signal, marking, or other device to regulate, warn, or guide traffic).
  - v. Proposed public art should not protrude into pedestrian access routes (e.g., sidewalks, shared use paths), but may be allowed if it does not impede access to persons with disabilities or otherwise pose a safety hazard.
  - vi. Proposed public art must not impede water drainage from the public right-of-way.
  - vii. Proposed public art must not interfere with DPW’s ability to perform routine maintenance or cause additional maintenance for DPW.
  - viii. The size and scale of a proposed public art installation should be relative to its context and location, be designed to enhance the surroundings, and must not have include large structures (generally limited to no more than 10 feet in height).
  - ix. Proposed public art shall not be installed on or in proximity to an historic bridge or structure, within an ecologically sensitive area, and must not conflict with any state or federal environmental or historical commitments, policies and regulations.

- x. Proposed public art that includes painted murals or other art on pavement, retaining walls or slope walls shall use anti-skid or anti-slip paint materials for the safety of pedestrians and maintenance workers. Other paint specifications may be applicable to particular proposed public art installations, at DPW's discretion.
- xi. Proposed public art shall not be installed within crosswalks.
- xii. Proposed public art must not contain an advertisement in any form, actual or perceived, including a message, text, slogan, logo, graphic, distinctive emblem, trademark, web address, or phone number that identifies a commercial business or a product or service offered by businesses, business complexes, schools, attractions, historical or tourist locations, malls, or other organizations (charitable, non-profit, fraternal, religious, political organizations, etc.); provided, however, DPW may allow the public art to include a logo, emblem or trademark to acknowledge the Sponsor of the public art so long as the inclusion thereof does not alter the message that the City intends to convey by allowing the public art and its primary purpose is not to serve as an advertisement for the Sponsor's products or services.
- xiii. Proposed public art must not be designed with the sole intention to provide greater visibility to existing or future businesses or advertisements.
- xiv. Proposed public art must not obscure the view from the main travelled way of any existing lawfully erected and permitted advertising structure.
- xv. Proposed public art must not distract or create a blind spot where illegal activity can take place.
- xvi. Proposed art that includes a breakaway support must adhere to breakaway support requirements contained in Chapter 49 of the Indiana Design Manual.

**5. Permit Conditions.** The terms and conditions set forth in this section shall be incorporated by reference into each permit issued by BNS for public art.

- a. Plans. Details of the Sponsor's Design Plan, Installation Plan and Maintenance Plan, including any revisions thereto required by BNS or DPW, shall be incorporated into the permit.
- b. No Vested Rights. No recipient of any issued public art permit shall be vested property interest in the permit or the public rights-of-way, and any such permit shall be revocable and subject to the continuing control of the City under its police powers.
- c. Revocation and Removal.
  - i. Public art permits shall be at all times subject to revocation, in whole or in part, by BNS whenever BNS, on its own or upon the recommendation of DPW or other

government officials, shall consider it necessary or advisable to have any public art authorized by any such permit, or any other use, to be removed and its site vacated.

- ii. BNS shall give written notice of the revocation of a public art permit to the Sponsor. Within thirty (30) days of the date of such notice, the Sponsor shall (a) remove the public art and all or any appurtenances thereto, and (b) restore the public right-of-way to a condition reasonably like its condition prior to installation of the public art and in accordance with any applicable federal, state or local standards. BNS may allow the Sponsor additional time for the removal and restoration if the Sponsor is making reasonable progress toward that end.
- iii. In the event that the Sponsor fails to remove the public art and restore the location within thirty (30) days of the date of notice of revocation of the permit, BNS or DPW may (a) cause the public art to be removed and the location restored at the Sponsor's expense, and/or (b) enjoin and abate the use by appropriate action at law or in equity. In either event, all damages, costs and expenses, including the cost of removal and restoration and reasonable attorneys' fees, incurred or paid by BNS or DPW on account thereof shall be borne by the Sponsor and shall be paid to the City upon demand, or be recovered by the City by action thereon.
- iv. If the Sponsor removes the public art, then ownership of all materials composing the public art remains with the Sponsor. If, however, the public art must be removed by the City, then the removed materials become the property of the City.

d. Liability and Indemnity.

- i. The Sponsor shall be required to keep the public art in good order at all times, and upon the Sponsor's failure to do so, it shall be responsible to the City and all other persons for any and all damages, judgments and expenses resulting to the City or to other persons or property in consequence of any defect or other negligence in the installation, maintenance, or use of the public art or any portion thereof, to become and remain out of repair or unsafe.
- ii. The Sponsor shall indemnify and hold harmless the Consolidated City of Indianapolis and Marion County, and its officers, agents, officials and employees, for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this Policy, applicable federal, state and local laws, regulations and standards, or the permit for the public art, or arising out of the Sponsor's use of the public right-of-way pursuant to said permit, or the existence of the public art in the public right-of-way. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith.

**6. Appeals of Adverse Actions.** Any decision to (1) deny an application for a public art permit, or (2) revoke a public art permit, may be appealed by the Sponsor as follows:

- a. Appeal to Administrator. The Sponsor may appeal the decision by making a written statement to the Administrator of the BNS Division of Construction and Business Services of the Sponsor's objection to such decision not later than ten (10) days after the date of the notice. The Administrator shall consider the objection in the context of this Policy and shall render a decision, in writing, and give notice of said decision to the Interested Party within thirty (30) days of receipt of the appeal statement.
- b. Appeal to Director. If the Sponsor does not agree with the decision of the Administrator, the Sponsor may appeal the decision to the Director of DPW ("Director") by making a written statement to the Director of the Sponsor's objection to such decision not later than ten (10) days after the date of the notice. The Director shall consider the objections in the context of this Policy and shall render a decision, in writing, and give notice of said decision to the Sponsor within thirty (30) days of receipt of the appeal statement. **The decision of the Director shall be final.**
- c. Effect of Appeal of Permit Revocation. If an appeal is from a decision to revoke a public art permit, then the provisions of Section 5 of this Policy shall be stayed pending the outcome of the appeal. If the result of the appeal is to sustain the decision to revoke the permit, the stay shall be lifted, and the Sponsor shall remove the public art and restore the public right-of-way in accordance with Section 5 of this Policy.