

COUNCIL ACTION FORM

SUBJECT: NEIGHBORHOOD STREET ART ORDINANCE

BACKGROUND:

On August 25 the City Council gave conceptual approval to the painting of local street intersections by groups of neighbors, based on a model established in Portland, Oregon. Since that time staff has consulted with the City of Portland and has met twice with the City's Public Art Commission (PAC) and Mr. Nitin Gadia to develop an ordinance formalizing this program.

The attached ordinance follows the Portland model closely and is recommended by City staff for approval. Key portions of this ordinance are section 22.27, which describes the defensible governmental purposes of this program, and section 22.29(2), which defines content limitations.

During review of the draft ordinance with the PAC and Mr. Gadia, lively discussion occurred around two issues. The first was the role of the Public Art Commission in approving street art proposals. The PAC considered two approaches to this question. Under one, the PAC would make a recommendation on each and every proposal brought to the City for approval. Under the other, the PAC would simply advise Council on the basic content criteria to be included in this initial ordinance. Ultimately the PAC voted in support of the second approach, and recommends that Council follow the Portland model where the Traffic Engineer approves proposals based upon content criteria included in the ordinance.

The second issue related to whether or not "text" should be included among the **impermissible** types of content in Section 22.29(2). Staff feels that excluding text brings an added measure of safety to street art installations, since drivers' eyes might naturally be drawn to wording which could distract them from the roadway ahead. Excluding text also eliminates discretionary decisions as to what types of wording would be "offensive, disruptive or disturbing," with attendant first amendment judgment calls by the Traffic Engineer.

Some present at the PAC meetings felt strongly that text should be allowed in street artwork, since text could allow an increased measure of artistic expression. However, the PAC ultimately voted to recommend that text not be allowed, primarily out of concern for public safety.

Finally, in following the Portland model, staff wrestled with the requirement for applicants to hold the City harmless from claims for damages resulting from activities under these permits. This practice is followed in Portland, where even block party applicants must provide hold harmless releases and liability insurance. In Portland's case, the city itself funds seven large "neighborhood coalitions" that assist

neighborhood associations in fulfilling the liability insurance and hold harmless requirements.

In Ames' experience, localized neighborhood events such as block parties and Neighborhood Improvement Project (NIP) Grant projects do not include requirements for applicants to provide added legal or liability protection to the City. Staff has some concern that imposing such a requirement in the street art program might create a barrier to neighborhood cooperation, which is the Council goal being addressed through these City-supported initiatives. Out of deference to the success of Portland's approach, however, the hold harmless requirement has been included as Section 22.30(1) in the proposed ordinance. If problems develop with applicants' willingness to sign the hold harmless agreement, this issue may need to be revisited in the future.

At the conclusion of the second PAC discussion, support was expressed for the City to evaluate this ordinance and program next year after the first group of citizens follows the ordinance and installs the City's first street artwork. That process will allow staff, the PAC and the public to evaluate how the program worked and to recommend to Council any needed changes before other street art is authorized.

ALTERNATIVES:

1. The City Council can approve the attached Street Painting Program Ordinance.
2. The City Council can approve the Street Painting Program Ordinance, but remove "text" as an impermissible type of content.
3. The City Council can approve the Street Painting Program Ordinance, but remove the section requiring applicants to hold the City harmless from damages related to these activities.
4. The City Council can choose to not approve the Street Painting Program Ordinance.

MANAGER'S RECOMMENDATION:

This innovative program appears to have true potential for strengthening neighborhoods within Ames. Both artistically and socially, this program supports the City Council's goal to *strengthen our neighborhoods*. Such localized efforts could nurture connectivity between neighbors who might not otherwise interact, and could facilitate their creating an aesthetically pleasing neighborhood connection spot.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, approving the attached Street Painting Program Ordinance.

If this ordinance is adopted, the ordinance and program will be evaluated after the first group of citizens installs their street artwork. This evaluation will allow staff, the Public Art Commission and the public to evaluate how the program worked and to recommend any needed changes to Council before other street art is authorized.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING NEW SUBSECTIONS 22.27 THROUGH 22.30 THEREOF, FOR THE PURPOSE OF STRENGTHENING NEIGHBORHOOD UNITY; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby enacting new Subsections 22.27 through 22.30 as follows:

**DIVISION V
NEIGHBORHOOD STREET PAINTING**

“22.27. PURPOSE.

The purpose of the sections in Division V of this chapter is to establish a mechanism by which city residents can come together and paint an aesthetically pleasing mural on a public street. Specifically, this chapter aims at strengthening neighborhood unity; improving, or at least maintaining, traffic safety and the safety of individuals at or in the vicinity of the mural; creating an aesthetically pleasing neighborhood connection spot; and nurturing connectivity between neighbors and with the city government.

22.28. PETITION REQUIREMENT.

- (1) The applicant shall submit a petition to the Traffic Engineer before a permit shall be issued approving the project.
- (2) The petition shall include a graphic portrayal of the proposed street painting, and must contain the following:
 - (a) Signatures from 100 percent of the property owners abutting the proposed project AND
 - (b) Signatures from at least 80 percent of the property owners and/or residents on the project street frontage(s) within two standard city blocks of the proposed project.
- (3) The Traffic Engineer may modify the petition boundaries when considered appropriate.
- (4) The Traffic Engineer will certify the accuracy of the petition.

22.29. PROJECT DESIGN AND APPROVAL.

- (1) The applicant must provide the Traffic Engineer with a written description of the proposed painting, including diagrams depicting how the intersection will look when completed. The applicant must demonstrate how the project will improve, or at least maintain, traffic safety and the safety of individuals at or in the vicinity of the intersection.
- (2) Approval shall not be arbitrarily or unreasonably withheld nor shall the free exercise of speech or artistic point of view be restrained. However, any plan that contains content which is unreasonably offensive, disruptive or disturbing to the community shall be restrained. No advertising or text of any sort shall be allowed as part of the project.
- (3) The Traffic Engineer may make final modifications to the project plan where necessary to protect the public safety.

22.30. PERMIT REQUIREMENTS.

- (1) The applicant will hold the City of Ames, its officers, agents, and employees free and harmless from any claims for damages to persons or property, including legal fees and costs of defending any actions or suits, including any appeals, which may result from permitted activity.

(2) If the project is completed at an intersection, the two streets shall be classified as local streets and carry less than a combined 2,500 vehicles on an average day. If the project is completed on a street segment, the segment shall be classified as a local street and carry less than 1,250 vehicles on an average day.

(3) The applicant must provide to the City Traffic Engineer a signed petition of support as described in section 22.28.

(4) The applicant must provide to the City Traffic Engineer a statement of project design as described in section 22.29.

(5) The City Traffic Engineer may approve a revocable permit for a term of one year authorizing construction and maintenance of the project as described and shown in the submitted diagrams, subject to any changes that may be required by the City Traffic Engineer. Said permit may be extended for additional one year terms at the conclusion of the initial year so long as there remains continued support and interest in the project. The Traffic Engineer may require the applicant to complete the petition process again to demonstrate the continued support for the project.

(6) The permit shall be for use of the public right-of-way, and does not exempt the permittee from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this permit. Nor shall the permit waive the provisions of any City Code, Ordinance, or the City Charter, except as stated herein.

(7) The permit shall not exempt any party from complying with all applicable traffic laws, including laws regarding pedestrians.

(8) The permittee is not authorized to do any excavation. The permittee shall be responsible for protecting all public and private facilities placed in the public right-of-way, including underground utilities.

(9) The permittee shall notify all households and businesses within four standard city blocks of the proposed project and street closure at least 30 days before the project installation date.

(10) The permittee shall obtain a Block Party permit to close all legs of an intersection, for up to one block distance, in order to install the street mural project. No street shall be blocked for more than a 24-hour period unless specifically allowed by the City Traffic Engineer.

(11) Repair, maintenance, or installation of existing or future utility facilities in the right-of-way may require the permittee to repaint the project, or portions of the project, with all costs borne by the permittee.

(12) The permittee shall work with all affected neighbors to resolve any concerns that may arise regarding the project. The inability to resolve such concerns may be grounds for revocation of the permit by the City Traffic Engineer. The Traffic Engineer may also require the permittee to complete the petition process again in order to demonstrate that there is continued support for the mural project. Failure to acquire the necessary signatures on the new petition shall also be grounds for revocation of the permit by the City Traffic Engineer.

(13) The permittee shall maintain, at no cost to the City, all aspects of the project during the term of the permit. If any nuisance condition is allowed to exist in the area of the project, the City may summarily abate such nuisance. The existence of a nuisance in the area of the project may be grounds for the revocation of the permit.

(14) All permits shall be revocable by the City Traffic Engineer and may be revoked for any cause. The City Traffic Engineer shall immediately revoke a permitted project no longer meeting the purposes as outlined in section 22.27.

(15) The paint used for the street mural shall contain antiskid additives as approved by the Traffic Engineer.”

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk
O01031

Ann H. Campbell, Mayor