

Ord. # 5727

An Ordinance to Amend Division 5, Chapter 2, Article III of the City of Memphis Code of Ordinances so as to create Sections 2-95 through 2-99, The Community Initiated Public Art Program

WHEREAS, the Memphis City Council seeks to implement a fair and legal process for citizens and artists to collaborate on the creation of responsible art; and

WHEREAS, the creation of art and presence of positive images in public spaces encourages unity and civic pride for our City; and

WHEREAS, the installation of temporary artwork pieces builds community participation and promotes the beauty of our city in unexpected places; and

WHEREAS, allowing local artists to produce works of art to serve as catalysts for important community issues and increases art appreciation amongst Memphians; and

WHEREAS, responsible and community driven public art maintains the quality of the environment and property values, and enhances the attractiveness of the City; and

Section 1.

NOW THEREFORE BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL AS FOLLOWS that the Code of Ordinances, City of Memphis, Division 5, Chapter 2, Article III, be amended so as to create the following Sections 2-95 through 2-99, **The Community Initiated Public Art Program.**

Sec. 2-95 Purpose

The purpose of the Community Initiated Art Program is to

- a. Promote collaborative projects between the City of Memphis and residents to highlight positive images of our city;
- b. Encourage and nurture with presence and development of local artists and community leaders;
- c. Create an administrative process for the review and approval of artwork initiated by private citizens and organizations to be temporarily installed on City Property.

Sec. 2-96 Definitions.

Adjacent Property owner indicates the individual or company that has owners' rights to the property, such as a block of land or building, separated by a natural barrier, but not separated by another property from the site of proposed art project.

Adjoining Property owner indicates the individual or company that has owners' rights to the property such as a block of land or building that touches or abuts the site of the proposed art project.

Artist means a person that creates art-work.

Artwork means of forms of tangible works of visual art executed in one or more media or materials including but not limited to paintings, sculpture, stained glass, lightworks, fiber works, reliefs, monuments, fountains, frescoes, murals, collages, statues, photographs, drawings, mobiles, craftworks, kinetic, electronic or functional furnishings, lighting, and artist-designed landscaping.

City is the City of Memphis, Tennessee and any department, division, bureau, board, or agency thereof, and any corporation, institute, commission or other entity organized by or acting on behalf of the City or any office, department, division, bureau board or agency thereof.

City Property includes any property owned by the City of Memphis including but not limited to parks, community centers, libraries, buildings, and streets.

Community Initiated Art means any art project placed on public property initiated by a community group or individual without funding from the City of Memphis.

Installation means the physical process of placing artwork on public property.

Pedestrian Right-of-Way is any area or way set aside or open to the general public for purposes of pedestrian or non-motorized vehicle traffic, whether or not it is paved, and including but not limited to such pedestrian and bicycle infrastructure as greenlines, greenways, and river walks.

Permits Office is the office or department responsible for the issuance of any and all approvals as required under this chapter.

Person in this ordinance should be read to include any person or collections of persons, such as firms, partnerships, associations, corporations, companies, or organizations of any kind.

Public Place means Public Place" means areas upon, above, or below municipal buildings, parks, plazas, squares, parkways, rights-of-way, and any space, indoors or outdoors on City Property and any space not on private property which is visible to the public from a sidewalk or street.

Review Committee is a group of appointed persons to review and approve the Public Art Applications in consultation with Permits Office. The Review Committee will contain at least one representative from Legal, Public Works, Engineering, and Parks as well as a designated legislative representative.

Sidewalk is any area or way set aside or open to the general public for purposes of pedestrian traffic or non-motorized vehicle traffic, whether or not it is paved, and including but not limited to such pedestrian and bicycle infrastructure as green lines, greenways, and river walks.

Street is any place or way set aside or open to the general public for purposes of vehicular traffic, including any berm or shoulder parkway, right-of-way, or median strip thereof.

Structure is any means, permanent or temporary, by which normal vehicular or other traffic is diverted or impeded in the context of parades, races or public assemblies as defined in this section, including but not limited to barricades, signs, cones, ropes, and vehicles.

Temporary Artwork means artwork that is temporary in nature and installation of artwork will not be permanent.

Sec. 2-97 Public Art Approval

All community initiated artwork installed on public property shall require approval by the Permits Office.

A. Approval Requirements

- 1) A person seeking approval shall file an application with the Permits Office on forms provided by such officer and the application shall be signed by the applicant under oath.
- 2) The application deadline for public art applications are as follows:
 - a. An application for a community initiated art project shall be filed with the Permits Office at least 90 calendar days and not more than 180 days before the installation is to commence.
 - b. The Permits Office, in consultation with the Review Committee, may waive the minimum filing period and accept an application filed within a shorter period if, after due consideration of the date, time, place and nature of the artwork and installation will not interfere with public safety.
- 3) The application for a Community Initiated Art shall include the following information and incomplete applications will not be considered by the Review Committee:
 - a. Temporary Public Art Application form;
 - b. The name, address, email, and telephone number of the Artists seeking to install temporary artwork;
 - c. Resume and/or biography of artists with slides and examples of artist's past work;
 - d. The names, addresses, emails, and telephone numbers of the agency or organization for which the temporary artwork will be installed, if any, and the names of the authorized and responsible heads of the community agency or organization;

- e. The requested date of the installation;
- f. The proposed site of artwork installation;
- g. Detailed site plan of the artwork including orientation of public art and distance in measurement between public art and public streets;
- h. Photograph of Proposed Site Location, including Site Plan, which must include:
 - i. Placement of the proposed artwork;
 - ii. Orientation of the proposed artwork;
 - iii. Distance between proposed artwork and public street(s);
- i. Sample, Model, Color Photograph, and/or Drawing of Proposed Artwork;
- j. Landscape Plan (if applicable
- k. Installation Plan and Timeline;
- l. Maintenance Plan;
- m. Itemized Project Budget;
- n. Executed Waiver of Rights under the Visual Artists Rights Act and shall include one executed waiver for each artist contributing to the proposed artwork;
- o. Any additional information that either the Permits Office or Review Committee finds reasonably necessary to make a fair determination as to whether an application should be approved.

B. Fees.

A nonrefundable fee of \$50.00 to cover administrative costs of processing the approval shall be paid to the city by the applicant when the application completed and accepted in its entirety.

C. Nondiscrimination.

The Permits Office, after consultation with the Review Committee, shall uniformly consider each application upon its merits and shall not discriminate in granting or denying approvals under this chapter based upon political, religious, ethnic, race, disability, sexual orientation or gender-related grounds.

Sec. 2-98 Approval Review

A. Review Committee

- 1) Completed applications will be submitted to the Review Committee for further consideration.

- a. Applications shall be submitted to Permits Office for preliminary review. Permits Office shall forward completed applications with eligible proposed sites to the Review Committee;
 - b. The Review Committee shall have 5 members. The Review Committee will contain at least one representative from Legal, Public Works, Engineering, and Parks as well as a designated legislative representative. Legislative Representative shall have the ability to request a discussion during the Public Works, Solid Waste, Transportation & General Service Committee. If requested, the item will be placed on the first subsequent committee meeting following the request with the permission of the Chairman of the Public Works, Solid Waste, Transportation & General Service Committee;
 - c. The Review Committee will route application materials to their respective divisions/departments for comments and conditions re: design/installation approval;
 - d. Notification of application will be provided to Council Members for the district where proposed artwork is to be located;
 - e. Once an application is set for a public meeting, applicant must submit proof of public notice regarding the meeting. Must provide all required notices;
 1. Posting notice on proposed location outlining date, time, and location of public meeting;
 2. Written notice to adjacent or adjoining property owners outlining date, time, and location of public meeting;
 3. Written notice to any church and/or school located within 500 feet from the proposed location when measured along a center line of streets from point to point or within a 250-foot radius in any other direction from the proposed location outlining date, time, and location of public meeting.
- 2) The Review Committee shall conduct public meetings.
- a. Public meetings will be held by the Review Committee where applicants will present proposed artwork.
 - b. Community members may attend and comment in support or opposition of the proposed artwork and/or placement.
 - c. Decision made by Review Committee by majority vote to approve application, deny application, or request additional information.

d. The Review Committee will review the Public Art Procedures and Guidelines annually.

B. Modification or Denial

- 1) The Permits Office and Review Committee shall act promptly upon a timely filed application for community initiated public art.
- 2) The Review Committee may modify the request to be different from that requested by the applicant in a manner that protects the lives, safety, health, welfare and property of the general public.
- 3) Upon receipt of written notice, and applicant desiring to accept the modifications must file a written notice of acceptance with the Permits Office within three business days.
- 4) The Review Committee shall issue in writing a denial and reasons thereof to the applicant.

C. Appeals Procedure.

- 1) Any applicant shall have the right to appeal the Permits Office's denial of a public art approval to the City Council. The denied applicant shall make the appeal within five (5) calendar days after receipt of the denial by filing a written notice with the Permits Office and a copy of the notice to the Review Committee.

Sec. 2-99 Approval Issuance

A. Notice to city and other officials.

Immediately upon the receipt or approval, as appropriate, the Permits Office shall send a copy thereof to the following additional persons:

- 1) City Attorney;
- 2) The City Engineer;
- 3) The Director of Public Works;
- 4) The Director of Parks and Neighborhoods;
- 5) The City Council Chair.

B. Contents of Approval

Each approval shall state the following information:

- 1) The location of artwork;
- 2) Description of artwork;
- 3) Name and contact information of approved applicant;

- 4) Name and contact information of all artists participating in installation or project;
- 5) Such other information as either the Permits Office or Review Committee shall find necessary to the enforcement of this chapter.

C. Duties of Applicant after Approval

- 1) Applicant hereunder shall comply with all directions and conditions and with all applicable laws and ordinances of the federal, state and local governments.
- 2) Applicant approved for artwork to be installed in a crosswalk shall be subject to the City of Memphis Artistic Crosswalk Guidelines in addition to the Community-Initiated Public Art Policy and Procedure.
- 3) The Applicant may be required to obtain permits or licenses from various City Departments and Divisions and submit proof of insurance prior to installation.

D. Prohibitions.

The following prohibitions shall apply to all approved art as defined by this chapter:

- 1) It is unlawful for any person to deviated or amend installation in a manner different from approved artwork.
- 2) It is unlawful for any person to install artwork on city property for which the person knows a public art approval has not been granted;
- 3) It is unlawful for any person in charge of the art installation, or responsible for the art installation to knowingly fail to comply with any condition of the public art approval:
- 4) It is unlawful for any person participating in a public art installation to violate municipal ordinances and any applicable laws of the state of Tennessee;

E. Revocation of Approval.

The Permits Office in consultation with the Review Committee shall have the right to revoke approval upon violation of the conditions or standards for issuance as set forth in this chapter.

F. Violations—Fines and penalties.

Any person violating the provisions of any section of this chapter shall, upon conviction, be punished by a fine not to exceed \$50.00 and any other penalties which may be applicable.

Section 2. Severability. The provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 3. Effective Date. This Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Sponsor:

Berlin Boyd

Kemp Conrad

CHAIRMAN

THE FOREGOING ORDINANCE
5127 PASSED
1st Reading 5-07-2019
2nd Reading 7-16-2019
3rd Reading 11-05-2019
Approved: [Signature]
Chairman of Council
Date Signed: 11-15-19

APPROVED:

Mayor, City of Memphis

Date Signed: _____

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Comptroller