



## **A POLICY ON THE USE OF VILLAGE PROPERTY AND RIGHTS-OF-WAY FOR VARIOUS TYPES OF ART**

### Purpose of Art in Public Places

The Village of Yellow Springs has a unique history of creative activity rooted in our history as a college town. The strength of the arts at Antioch College was integral in cultivating a deep affection for all of the arts within the broader community. Yellow Springs has become a place where people choose to live and visit because of its art scene. Building on this history, artistic displays and performances in public places can facilitate artistic conversations within the community and with communities of the past and future.

Council intends for art in public places to do one or more of the following, and preferably to meet several of these objectives:

- Promote art that communicates important human values;
- Commemorate important events, institutions and people in the life of Yellow Springs in a way that communicates their important contribution to the Village, the nation and/or the global community.
- Convey the creative and welcoming nature of our community;
- Increase community collaboration and inclusion, promote participation and contribution;
- Enhance the value, aesthetics and functionality of public buildings, facilities and gateways;
- Celebrate the highly valued natural environment of the area.
- Enhance the use of biking and walking trails as well as public parks and open space consistent with the primary use of these facilities.
- To attract persons to the Village to enhance economic activity.
- Encourage the artistic endeavors of Village residents of all ages and abilities.

This policy will begin with background about the use of public property and rights of way, review the types of art and how they typically use public space, and to

describe procedures for promoters of art to obtain Village approval to place or perform art in public places or in public rights-of-way.

## BACKGROUND

As a college town, one of YS great strengths has been its arts community. Using public places for the art is a way Village government can support this great strength for the enrichment of local citizens and visitors.

The Village of Yellow Springs government is responsible for public lands and public rights of way. The level of responsibility depends upon whether the public property is a right-of-way (street, sidewalk or trail), building, park or other public land.

Federal, state and local law determines, in part, the rights and responsibilities of government and citizens regarding the use of public lands. Specifically regarding speech, federal law characterizes public lands/spaces in three categories: public spaces as public forums, limited public forums and non-public forums. The public's rights in each forum vary. Competing interests of various members of the public are balanced in each forum. In a public building or on a public property or right-of-way, speech subject to fewer governmental interests in a public forum than in a non-public or limited public forum.

The Village Charter and Village Ordinances already govern much of what occurs on public lands and rights of way. In general, Village Council determines “what” or “whether” something happens on Village property and the Village Manager implements Councils decisions. Relevant laws are discussed below.

Village policy regarding the use of public lands and rights-of-way for 2D art, 3D art, performing art, trees or vegetation, recreation facilities, benches or bike racks, or as “green” open space will be different depending upon the type of land or property in question. In some instances, the Village's policy is already in a policy document, such as the Bryan Center Use Policy.

Public art has long been a valued part of the private and public life of villagers. Part I will describe the Village's public spaces and any existing law or policy regarding those. Part II will describe types of art that typically occupy public rights-of-way or other public property, guiding principles, policies and procedures.

## I. PUBLIC PLACES

### **A. RIGHTS OF WAY – Streets, Sidewalks, Trails**

The Codified Ordinances of the Village contain several provisions about the use and management of the rights of way. These rules are set forth primarily in Chapter 1021 (see Appendix B) .

Rights of way in the Village include state highways (S.R. 68, 343), Village streets and sidewalks, some Village bike trails and a regional trail (the Little Miami Trail) the latter being managed by Greene County Parks & Trails Department in cooperation with the Village.

Because the policy of the Village regarding the use and management of the rights-of-way is set forth in law, it is likely that Council would need to change the law to change policy for the use and management of the public rights-of-way. Under Chapter 1021, the Village Manager has significant authority and responsibility regarding permitted uses in the rights-of-way due to the many demands for use and impact on public safety and services.

Other key principles guiding decisions by Council about the placement of art in public places and rights-of-way include:

- Maintaining the role of the elected representatives with all the citizens, including the arts community, in determining the highest and best use for public property;
- Respect the desire of other artists for use of the same spaces, including future generations of artists, by having time-limitations on the placement of art.
- Respect for other users of public places, including the need for open space, recreational uses and sports, public access issues related to rights-of-way and public service needs.

## **B. PUBLIC PROPERTY**

For further background, here is a summary of the public property of the Village of Yellow Springs:

Bryan Center Building

Youth Center

Basketball Court

Public Lobby – 1<sup>st</sup> floor, outside of Police station

Public Hallway – 1<sup>st</sup> floor, east, outside of Youth Centre

Public Hallway – 2<sup>nd</sup> floor, north, outside of Mayor’s Court and Council Chambers

Public Hallway – 2<sup>nd</sup> floor, east, outside of government offices, leased rooms

Council Chambers

Dance Room

Conf. Room (“Arts & Crafts”)

A&B Room

Office – now leased to YSAC

Public Stairwell on East, including bulletin board

Bryan Center Grounds

- Front lawn
- Parking lot
- Pottery building (semi-public, leased)
- Basketball courts
- Skate Park
- Woods near stream

Public Parks

- Beattie Hughes Park
- Bill Duncan Park
- Ellis Park and Lloyd Kennedy Arboretum
- Gaunt Park and Pool
- Little Miami Scenic Bike Trail (co-managed with Greene County Parks & Trails, includes the Woman’s Park (in the LM Trail ROW))

Non-public spaces

- Offices in Bryan Center
- Police Station
- Public Service lands (Water, WWTP, Service Center (Sutton Farm))
- Glass Farm – leased for farming
- Building on Walnut (leased to YS Schools)

USES FOR VILLAGE PUBLIC SPACES. Public spaces belong to the public...to everyone. One person or group’s use of a space may exclude the right of others to use the space, or to maintain open space. The exclusive use may be temporary or long term. The rights of all people must be considered in granting a permit, license or lease for the use of any public property or right-of-way. If a longer-term art installation is envisioned, the impact on future generations, including future artists, sports enthusiasts, tree planters or others must be considered.

USE OF PUBLIC SPACES FOR ART

Art takes many forms. It can transient like a performance. It can have a low impact on physical space (buskers, fabric art in rights-of-way) or it may be of a more permanent nature with a high impact on physical space (sculpture installation).

ESTABLISHMENT OF AN ART COMMISSION TO ADVISE COUNCIL – Council may establish an Art Commission, on a standing or ad hoc basis, to advise Council regarding the merits of any art concept, proposed art exhibit or installation. The Arts Commission’s primary role will be to review the art to ensure that it meets the PURPOSE statement at the beginning of this policy.

COMMISSION COMPOSITION. The Arts Commission will be composed of five to nine persons. Persons on this Commission will be appointed by Council. It is envisioned that persons on this Commission will have diverse backgrounds, and collectively will have expertise in art, public art, public lands management and/or public construction. Because the Commission can be ad hoc (on a project by project basis) the composition of the Commission may change as Council appoints person with expertise for a particular project.

RECOMMENDATIONS TO COUNCIL. The Arts Commission will review the Conceptual Proposal and later, more specific renderings or depictions of the art to make a recommendation to Council at the Conceptual Proposal stage and/or at the approval of an Agreement between the Village and the Promoter as to whether a proposed art project meets the PURPOSE statement for this policy and specifically how it does so.

“AS NEEDED” JURY FUNCTION. If a Promoter does not have a person or group established to perform the jury function for a project, upon request of Council, the Arts Commission could function as a “jury” regarding the artistic quality and merit of a proposed art project as well as determining whether the project meets the PURPOSE Statement.

OWNERSHIP OF ART. It is the policy of the Village to either own or lease the art that will be placed on public property. Ownership will generally be by donation by the artist and/or promoter. The Council will accept donation or lease the art by resolution.

ARTISTIC RIGHTS. Artistic rights and the rights of the Village regarding the use of the art will be negotiated on a case-by-case basis.

## PART II.

### TYPES OF ART AND PROCEDURES RELATED TO PUBLIC PLACES

TYPE OF ART:	PERFORMANCE – TRANSIENT
EXAMPLES:	Spontaneous art - Busking, other performances of short duration, usually out-of-doors in public rights-of-way, public parks, Bryan Center lawn
PRINCIPLES:	Public safety only, generally no use issues (e.g., conflicts with other uses). Rights-of-way need to be passable.
POLICY:	No governmental involvement absent complaint of law violation.
PROPOSAL TO COUNCIL:	No. Usually spontaneous.

PERMIT <sup>1</sup> :	No.
AGREEMENT <sup>2</sup> :	No.
TYPE OF ART:	PERFORMANCE – PUBLIC - LONGER DURATION OR EVENT
EXAMPLES:	Planned performance, usually longer than two hours in duration from set up to take down, usually planned in advance as an event. Cyclops festival, concerts on the Bryan Ctr lawn.
PRINCIPLES:	For events where the public is invited, issues arise – excluding an area from use by others (coordination), safety issues, area to be used, parking, clean-up, use of personnel, streets issues, other logistical issues need to be managed.
POLICY:	Follow use policy for Bryan Center, Park or other site specific policy. Village staff approvals/notifications needed. Fees may be charged per policy.
PROPOSAL:	Only an event permit.
PERMIT:	Yes.
AGREEMENT <sup>3</sup> :	No.
TYPE OF ART:	VISUAL ART INSTALLATION IN A PUBLIC HALLWAY
EXAMPLES:	YSHS Art Show in hallway on Second Floor of the Bryan Center
PRINCIPLES:	This is a limited public forum. Other uses in this space include employee ingress and egress, Village Manager’s Office, Mayor’s court, Council business, public restrooms. Area is open to the public, public attending meetings and classes in other rooms, including unaccompanied youth. Village must own the art, lease the art, or approve an installation. Coordination needed.
POLICY:	<i>Follow the two-step procedure in Appendix A.</i>
PROPOSAL:	First, a conceptual proposal will be brought to the floor of Council for public discussion. If Council approves the conceptual proposal, Council will ask the Village Manager and the promoter of the art to bring a detailed proposal back to Council for approval. The proposal should include an agreement to be reviewed by Council and signed by the parties if approved.

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<sup>1</sup> Event permit. This is a form that is available in the Village Manager’s office and on the website. It is used for many types of events (runs, walks, music, art shows, etc.) that close rights-of-way or exclusively use village grounds.

<sup>2</sup> An agreement with the Village would cover issues such as ownership of the art, security, insurance, installation issues, length of time, transfer or disposal of art at end of installation, maintenance, mutual rights and responsibilities.

<sup>3</sup> An agreement with the Village would cover issues such as ownership of the art, security, insurance, installation issues, length of time, transfer or disposal of art at end of installation, maintenance, mutual rights and responsibilities.

	To begin the process, the promoter should complete Appendix A and submit it to the Office of the Village Manager.
PERMIT:	No, not an event.
AGREEMENT <sup>4</sup> :	Yes.
TYPE OF ART:	INSTALLATIONS REQUIRING CEMENT BASES OR OTHER FOUNDATION LOCATED IN A PUBLIC RIGHT-OF-WAY OR ON PUBLIC LAND
EXAMPLES:	Sculpture, artistic sign or other type of installed art. Flock of Hands, Springs sign
PRINCIPLES:	This type of art is “high impact” on public property, taking space for a longer period of time, excluding it from use by others. Utilities and right-of-way issues could be involved. Higher impact on Village staff (maintenance, mowing). Cost issues likely to be higher. The art will be owned or leased by the Village. The artist or owner of the art will need to donate the art or donate its use (lease). This type of installation should be time-limited (1+ years, longer term) in order to allow future citizens the opportunity to use the space. Coordination and approval of sites by the Council after review and recommendation by the Village Manager is required. Maintenance must be endowed. If the Village owns the art, the art may be sold after the exhibit and proceeds used to fund other public art projects or arts non-profit groups.
POLICY:	<i>Follow the two-step procedure in Appendix A.</i>
PROPOSAL:	First, a conceptual proposal will be brought to the floor of Council for public discussion. If Council approves the conceptual proposal, Council will ask the Village Manager and the promoter of the art to bring a detailed proposal back to Council for approval. The proposal should include an agreement to be reviewed by Council and signed by the parties if approved.

To begin the process, the promoter should complete Appendix A and submit it to the Office of the Village Manager.

PERMIT:	No, not an event.
AGREEMENT <sup>5</sup> :	Yes.

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<sup>4</sup> An agreement with the Village would cover issues such as ownership of the art, security, insurance, installation issues, length of time, transfer or disposal of art at end of installation, maintenance, mutual rights and responsibilities.

<sup>5</sup> An agreement with the Village would cover issues such as ownership of the art, security, insurance, installation issues, length of time, transfer or disposal of art at end of installation, maintenance, mutual rights and responsibilities.

APPENDIX A

PROCEDURE

FOR ART DISPLAY OR INSTALLATION  
IN A PUBLIC BUILDING, ON PUBLIC PROPERTY OR  
IN A PUBLIC RIGHT-OF-WAY

REVIEW PROCESS

**STEP 1: CONCEPTUAL PLAN REVIEW BY COUNCIL**

DATE SUBMITTED TO THE VILLAGE MANAGER: \_\_\_\_\_

DATE RECEIVED BY THE ART COMMISSION: \_\_\_\_\_

DATE OF HEARING BEFORE VILLAGE COUNCIL: \_\_\_\_\_ (must be after the Art Commission meets and is ready to make a recommendation).

COUNCIL DECISION ON CONCEPTUAL PLAN: \_\_\_\_\_

**STEP 2: NEGOTIATION OF PROJECT AGREEMENT AND FOR REVIEW AND DECISION BY COUNCIL**

NEGOTIATION OF A *PROJECT AGREEMENT* BETWEEN PROMOTOR'S REPRESENTATIVE AND VILLAGE MANAGER (1-2 months).

PRESENTATION TO COUNCIL WITH RESOLUTION (within 2 weeks after PROJECT AGREEMENT IS FINALIZED).\* Council may review during more than one meeting before making a decision, take public input. Village Solicitor also reviews and signs. The Promotor must provide proof of funding for costs related to the display, maintenance, removal. Council reviews and must approve a Project Agreement before the art may be installed or displayed on public property or in a public right-of-way.

COUNCIL DECISION ON THE PROJECT AGREEMENT: \_\_\_\_\_

CONCEPTUAL PROPOSAL  
FOR A DISPLAY OR INSTALLATION  
OF ART

Name of Project: \_\_\_\_\_

Check:  2D display (less than 6 months)  
 3D display/installation (less than 6 months)  
 3D installation (more than 6 months)  
 Other. Describe \_\_\_\_\_

Name and Contact Information for the Promoter: \_\_\_\_\_

\_\_\_\_\_

Name and Contact Information for the Promoter’s representative  
(person the Village Manager will work with on the Conceptual Proposal  
and Project Agreement): \_\_\_\_\_

\_\_\_\_\_

Provide a description of the art concept (including any drawings,  
diagrams, images of included art works or of previous or similar work,  
can be attachments):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How does this art fulfill the Village’s “Purpose of Public Art” statement?

\_\_\_\_\_

\_\_\_\_\_

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**BUDGET -- PLEASE ATTACH A BUDGET FOR THIS PROJECT.**

Who is providing the funding for the art? \_\_\_\_\_

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Are any non-profit organizations involved in the creation or funding of this project? If yes, please describe: \_\_\_\_\_

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Who is providing the funding for the installation, maintenance, insurance and removal of the art after the project is over?

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Name and Contact Information for the Artist(s) (if known. Attach resumes).

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If the artist is not known, how will the artist(s) be chosen?

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Will this art be donated or leased to the Village?

Donated

Leased (will be returned to artist at the end of the project in “as is” condition).

If the art is three dimensional, will it require attachment to the ground (e.g., poured base, etc.)?  Yes  No.

If yes, please describe the attachment method, size of base (depth, length, height), materials used in base. Note: An engineer’s stamped plan may be required to insure safe installation by compliance with the Ohio Building Code.

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What is your recommendation for a length of time for display? \_\_\_\_\_ months or \_\_\_\_\_ years beginning on \_\_\_\_\_.

What do you expect the long-term maintenance issues to be with this installation or display?

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What is your estimate of the long-term maintenance costs:

\_\_\_\_\_/month or \_\_\_\_\_/yr.

NOTE: The Village of Yellow Springs is not responsible for the theft or damage to the display. Issues related to maintenance, restoration, theft, insurance, etc. will be addressed in the Project Agreement if Council approves the Conceptual Plan.

*Please submit the Conceptual Plan proposal and attachments to the Village Manager’s Office when complete.*

## APPENDIX B

CHAPTER 1021.01 of the Codified Ordinances of the Village of Yellow Springs, Ohio

Some laws governing the Village rights-of-way are as follows:

Chapter 1021.01 (a). The purpose of this chapter is to provide requirements for the use or occupancy of any and all rights of way in the Municipality, and for the issuance of permits to persons for such use and occupancy, and to set forth the policies of the Municipality related thereto.

Chap. 1021.01 (c). The Village Manager is hereby granted the authority and duty of enforcing the provisions of this chapter.

Chapter 1021.01 (d). No person shall use, occupy, own or operate facilities in, under or over any rights of way or any public property within the Municipality unless such person first obtains a permit and conforms to the requirements set forth therein and in this chapter.

Chapter 1021.01(f) The policy of the Municipality with regard to rights of way is hereby declared to be:

- (1) To promote public safety and protect public property;
- (2) To promote the utilization of rights of way for the public health, safety and welfare in the Municipality;
- (3) To promote the availability of a wide range of utility, communication and other services to the Municipality's citizens and taxpayers at reasonable rates;
- (4) To promote cooperation between the Municipality and permittees in the occupation of rights of way, and work therein, in order to minimize public inconvenience during right of way work, and unecomonic, unneeded and unsightly duplication of facilities;
- (5) To ensure adequate public compensation for private use of the rights of way and the regulation thereof;
- (6) To promote and require reasonable accommodation of all uses of rights of way and to establish the following priority of use of rights of way when all requested usage of rights of way by permittees cannot be accommodated:
  - a) Use by the Municipality;
  - b) Use by another governmental entity, with the Municipality's concurrence or other uses required by law, shall have second priority;
  - c) Franchise permittees shall have third priority;
  - d) General permittees shall have fourth priority;
  - e) Special permittees shall have fifth priority;
  - f) Residential permittees shall have sixth priority;

However, the Village Manager may reasonably require right of way permittees to cooperate to accommodate use by other permittees. Further, the Village Manager may alter this priority when the Village Manager reasonably determines a deviation herefrom to be in the public interest.

- (7) To protect the value of private property by setting minimum aesthetic standards for uses in public property.

Further provisions in Chapter 1021 provide for a procedure for permits, criteria for granting permits, obligations of permittees, conditions of permits, fees and auditing.

Chapter 1021.14, Reservation of Rights, provides that a) Nothing in this chapter shall be construed to prevent the Municipality from constructing, maintaining, repairing or relocating any Municipal utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street or right of way; or constructing, maintaining, relocating or repairing any sidewalk or other public work or improvement; and b) Nothing in this chapter should be construed to grant any right or interest in any right of way or public property other than that explicitly set forth herein or in a permit.

END OF POLICY