



# Highway Division DIRECTIVE



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REFERENCE	
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SUBJECT

**Placement of Artwork on State  
Highway Right of Way**

## PURPOSE:

To describe the process to allow artwork to be placed on state highway right of way either as part of ODOT's project development process or through the District Manager.

## GENERAL:

There has been an increasing interest by local communities to incorporate artwork within the state highway system. The overall design of the state highway system should blend with the natural and cultural environment keeping in mind the intended traffic volume and preservation of valuable adjacent scenic lands and natural and historic resources. ODOT recognizes the effects of the state highway system on local communities and how artwork can enhance and reflect the historic and cultural character of the community.

This Directive provides a process for ODOT to allow for the enhancement of the state highway system by including local community artwork on state highway right of way and will apply to artwork requested or approved after the effective date of the Directive. Safety is of primary concern for ODOT; therefore any Artwork allowed to be placed on state highway right of way must be found by ODOT to not diminish the safety of motorists or the state highway system.

It should be noted that this Directive is intended to provide a means to guide ODOT decision makers in determining the appropriateness of allowing artwork to be placed on state highway right of way. It is not to imply ODOT's review or approval of the artwork itself. The content of the artwork is determined by the Local Government as described in this Directive.

After ODOT's review and approval of the proposed placement of artwork, ODOT will initiate an Intergovernmental Agreement (IGA) with the requesting Local Government. Should the Local Government desire to change the design, content or format of the Artwork during the term of the IGA, a new proposal must be submitted following the process outlined in this Directive.

Artwork on the state highway differs from the City/County Entrance Program and the Highway Beautification Program described in Oregon Administrative Rule Chapter 734, Division 57.

## DEFINITIONS:

"Artwork" – Any drawing, painting, sculpture, statue, or other item of a creative or artistic nature intended or used to attract the interest or attention of motorists but does not include roadside memorials; political, advertising, or other unpermitted signs. For the purposes of this

Directive, “Artwork” also does not include standard architectural elements, whether structural or not, such as light poles, overpass screening, sound walls, or bridge components designed into the highway feature by ODOT during the project development process and are owned and maintained by ODOT.

“Local Government” – The City or County with jurisdiction in the area where the Artwork is proposed. When a state highway is on recognized tribal land, the Tribal Government with jurisdiction in the area will be considered the “Local Government” for purposes of this Directive.

### **MINIMUM CRITERIA:**

A Local Government’s proposal for the placement of Artwork on state highway right of way must address the following criteria. Each proposal will be evaluated by ODOT on a case-by-case basis as described in this Directive.

#### **Safety**

Artwork must not interfere with the operation, maintenance or use of the highway. It must not block sight distance of an intersection, road approach, or traffic control device or cause a distraction for motorists, therefore, the proposed Artwork must:

1. Be located outside the highway clear zone as described in the AASHTO Roadside Design Guide;
2. Be placed as far from the travel way or edge of the pavement as practical;
3. Not be attached to or imitate a traffic control device;
4. Not have moving elements or simulate movement;
5. Not have bold or vibrant colors, reflective or glaring materials or surface finishes, or have illumination or other elements that would cause the proposed Artwork to be a distraction to motorists. Any illumination must be shielded to prevent light from being directed at the highway and of such low intensity or brilliance as to not cause glare or to impair the vision of motorists on the highway. Flashing or blinking lights, are not allowed; and
6. Be of a size and scale so to not demand the attention of motorists to the point the driver is distracted by the Artwork.

The safety of the highway system and motorists is of utmost concern for ODOT. The following will be considered by ODOT in determining if the proposals to place Artwork on highway right of way meet this Directive. The Artwork:

1. Does not attract pedestrians to an area not designed or intended for pedestrian traffic or placed at a location that would cause motorists to stop or to enter or exit the highway in areas not designed for such use;
2. Is not placed on trees, rocks or other natural features (ground mounted, free standing artwork may be allowed);
3. Is not attached to any bridge structure, sound wall or other highway feature other than artwork that may be incorporated as part of the project development process. A mural painted on a bridge structure, sound wall or other highway feature may be allowed when located on a low speed highway and is part of an overall graffiti prevention strategy;

4. Does not interfere with the horizontal or vertical clearance of the roadway so as not to impede freight mobility or movement of motor vehicles, bicycles, or pedestrians;
5. Is not placed within 500 feet of traffic control devices or other signs, gores, decision points, or other Artwork; and
6. Does not adversely affect highway structures, drainage patterns or storm water runoff quality, landscaping, natural vegetation or other plantings.

#### Content and Format

The content or format of the Artwork is to be determined by the Local Government through a public review process. The Artwork must depict the historic or cultural characteristic of the community and blend with the surrounding area.

The Artwork shall not contain text, interpretation of the Artwork, information on the artist, or advertising or other form of a commercial message (business, product, or brand name, logo, phone number, web page, etc.). It shall not resemble or imitate a traffic control device, represent or pay tribute to a specific individual, or contain elements that move, shimmer, shake or contain other methods to attract the attention of motorists.

#### Design

The design of all Artwork must be coordinated with the aesthetic design of the highway system and all its features taking into consideration the roadway design, the clear zone, motorists, and the environment. The Artwork shall not be suspended over the highway.

Artwork must be designed using long lasting materials and construction techniques which will require minimal care and resist vandalism and must be no larger than a size and scale that is compatible with the surrounding area and landscape.

#### Maintenance

Maintenance of the proposed Artwork and the surrounding area will be the responsibility of the requesting Local Government as set out in the IGA. The Artwork must be kept clean and in good repair. Artwork damaged by vehicular crashes, vandalism including graffiti, acts of nature, or regular wear or aging must be repaired or removed by the Local Government in a timely manner.

Offensive graffiti must be removed promptly. All maintenance must be conducted in a manner to minimize interference with highway traffic. No direct access (ingress or egress) to the Artwork is allowed from the main travel way of an access controlled highway,

If the Artwork is not maintained, repaired, or removed as required, the Artwork may be removed by ODOT at the Local Government's expense without commitment by ODOT for restoration, replacement, or compensation to the Local Government. Any Artwork removed by ODOT will be stored for 30 days for recovery by the Local Government.

#### Compliance with State and Federal Regulations

The proposed Artwork must comply with all state and federal regulations including regulations for Outdoor Advertising, and the marking and signing of state highways.

### Location

Artwork will be considered on primary and secondary state highways as part of the project development process or by the District Manager after first considering if it is more appropriate to transfer the roadway, sidewalk or the property to the Local Government.

Artwork will not be allowed on the Interstate highway system (along the mainline or the entrance and exit ramps) or in the median of any expressway, freeway or divided highway.

Artwork located on property outside the state highway right of way but visible from the highway must comply with Outdoor Advertising Sign regulations.

Artwork must be located within the territorial or zoning jurisdiction of the requesting Local Government.

### Financial Responsibilities

All costs, including labor, materials, supplies, and traffic control for the design, engineering, testing, construction, installation, maintenance, repair and removal of the artwork will be the responsibility of the requesting Local Government. When illumination is included as part of the artwork, the Local Government will be responsible for the cost of the electricity and any necessary utility lines and permits.

ODOT will assume the administrative costs associated with reviewing the proposal for Artwork and for executing the IGA with the requesting Local Government if the proposal is approved.

### **APPLICATION PROCESS:**

A proposal for Artwork on state highway right of way must be submitted in writing by the Local Government that has jurisdiction in the area where the Artwork is proposed to be located. When there is an ongoing project development process, the proposal request will be submitted to the Project Leader. Other proposals are to be submitted to the local District Manager.

The Local Government must ensure that the proposal is developed through a public process. The method of gathering local support will be determined by the Local Government.

The Artwork proposal must:

- include a full description or drawing of the proposed Artwork including the proposed materials and how it expresses the community's historic or cultural character;
- include the proposed location (highway and milepoint) for the Artwork;
- show how the proposal meets the criteria outlined in this Directive;
- include the name, address, and telephone number of the Local Government contact person responsible for the proposal;
- include an adopted resolution that describes the following:
  - the Local Government's jurisdiction in the area of the project site;
  - the Local Government's approval of the Artwork content;
  - the Artwork's proposed life span;

- the Local Government's commitment to ensure maintenance of the Artwork including timely graffiti removal/repair and removal of the Artwork at the end of its life span; and
- a schedule for commencing and completing the proposed Artwork installation.
- include design plans stamped by a licensed professional engineer registered in the State of Oregon demonstrating structural stability, the ability to withstand the necessary wind loads, the means or method of installation, and how the proposed Artwork meets the Safety criteria outlined above.

### **ODOT REVIEW:**

The proposed site for installation of Artwork by a Local Government must be reviewed and approved by ODOT prior to development of an IGA. ODOT will apply the criteria in this Directive when reviewing proposals for placement of Artwork on state highway right of way. Considerations will include the location, potential for motorist distraction, impact to highway maintenance or operations, impact to motorist safety, and access for Artwork maintenance. Additional site specific criteria and conditions may be applied to the Artwork proposal as determined by the ODOT Project Leader or District Manager. The approval for placement of Artwork will be granted at ODOT's sole discretion.

When Artwork is proposed as part of the project development process, the Project Leader will coordinate the review with the Region Technical Center, the local District Manager, and the Federal Highway Administration; ensure the conditions of this Directive are met; and incorporate the Artwork into the highway project, if approved. If the proposal is approved, the Project Leader will be responsible to initiate an IGA to document the Local Government's responsibility for the Artwork. If the proposal is denied, the Project Leader will notify the Local Government in writing.

When the Artwork is proposed outside of the project development process, the District Manager will coordinate the review with the Region Technical Center and the Federal Highway Administration and ensure the criteria of this Directive are met. If the proposal is approved, the District Manager will be responsible to initiate an IGA to document the Local Government's responsibility for the Artwork. If the proposal is denied, the District Manager will notify the Local Government in writing.

### **DOCUMENTATION:**

Upon approval by ODOT of the proposal for placement of Artwork on state highway right of way, ODOT will initiate an Intergovernmental Agreement (IGA) with the Local Government. The IGA must include:

- the location (highway and milepoint) and description of the Artwork;
- the duration the Artwork is allowed on the state highway right of way;
- a requirement that the Local Government, at no cost to ODOT, must move or remove the Artwork when:
  1. requested by ODOT;
  2. the Artwork interferes with construction, maintenance or operation of the state highway;

3. federal or state laws are interpreted in such a way that would prohibit Artwork on state highway right of way; or
  4. the IGA terminates.
- indemnification of ODOT by the Local Government from third party claims;
  - compliance with environmental regulations when conducting work on state highway right of way;
  - payment by the Local Government of any costs resulting from legal action involving ODOT regarding the Artwork;
  - the Local Government's responsibility to maintain the Artwork and any area surrounding the Artwork. Artwork damaged by crashes, vandalism, or acts of nature must be repaired or removed by the Local Government within 14 days of discovery. Offensive graffiti must be repaired or removed within 48 hours of discovery.
  - if the Artwork is not maintained, repaired, or removed as required, the Artwork may be removed by ODOT at the Local Government's expense without commitment for restoration, replacement, or compensation to the Local Government;
  - a requirement for a utility permit as necessary to address electric lines serving the Artwork;
  - notification of the District Manager at least 48 hours prior to any onsite work; and
  - traffic control according to Oregon Temporary Traffic Control Handbook (OTTCH) and the Manual on Uniform Traffic Control Devices (MUTCD).

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