

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ADOPTING THE ARTISTIC
CROSSWALK POLICY

WHEREAS, artistic crosswalks are a way to represent a neighborhood and the Fresno community; and

WHEREAS, artistic crosswalks can be used to showcase a community's unique culture and history or liven up an intersection with artistic and colorful designs; and

WHEREAS, it is necessary to evaluate artistic crosswalk applications in light of the primary purpose of streets is safe travel for pedestrians, vehicles and other forms of transportation; and

WHEREAS, the City will choose the types of crosswalk art that will be displayed to promote the interests of the City pursuant to the regulations and procedures set forth in the Artistic Crosswalk Policy; and

WHEREAS, this Resolution and the Artistic Crosswalk Policy is not intended to create any public forum, but at most shall constitute government speech and be available solely as outlined in the Artistic Crosswalk Policy; and

WHEREAS, the Artistic Crosswalk Policy outlines the procedures and processes for artistic crosswalks and defines eligibility, locations, design standards, material and paint type, application and permitting, waiver of artist's rights and maintenance.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Council adopts Artistic Crosswalk Policy attached as Exhibit A and fully incorporated herein.

Date Adopted:

1 of 3

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No.

2. This Resolution shall become effective immediately upon adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

BY: _____

Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
Brandon M. Collet Date
Senior Deputy City Attorney

Exhibit A: Artistic Crosswalk Policy

CITY OF FRESNO - PUBLIC WORKS DEPARTMENT
POLICIES AND PROCEDURES

POLICY NUMBER: 220.02

POLICY NAME: ARTISTIC CROSSWALK POLICY

Responsible Division: Traffic Operations and Planning

Date Issued: May 26, 2022

Date Revised:

Approved by Assistant Director: Andrew Benelli/Signature on File

Approved by Director: Scott Mozier/ Signature on File

Purpose: This policy is drafted to outline the procedures and processes for installing artistic crosswalks.

Through this policy, the permittee relinquishes all intellectual-property rights and moral rights (droit moral) in the artistic crosswalk, including but not limited to all such rights under the California Art Preservation Act; under the federal Visual Artists Rights Act of 1991; or under any other local, state, federal, or international laws that confer such rights, whether in effect on the date the permit is issued or enacted thereafter.

Policy: To establish the artistic crosswalk criteria, guidelines, and rights that conform to current local, state and federal guidance and rules for crosswalks. By establishing this process, the City of Fresno is not and does not intend to designate artistic crosswalks as public forums. To the extent an artistic crosswalk is determined to be communicative, it is to be understood as the City's speech rather than the permittee's speech.

A. Vision and Intent

Crosswalks are an essential part of a transportation network as they facilitate roadway crossings for pedestrians. The function, design, and appearance of crosswalks are governed by the California Manual on Uniform Traffic Control Devices (CA MUTCD) and the Federal Highway Administration (FHWA) Interpretation Letter 3(09)-24(I)-Application of Colored Pavement.

The City of Fresno regularly receives requests for permission from the public to install artistic crosswalks. The City of Fresno recognizes the desire to improve the visual quality of the streetscape and create a sense of place, character, or identity of a neighborhood or location.

B. Eligibility

An applicant must be an organization, such as a business or neighborhood association that accepts responsibility for design, installation, maintenance, removal of an artistic

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crosswalk, and is able to secure a street work permit for the artistic crosswalk. Applications submitted by individuals shall not be accepted. Applicants must agree to comply with all permit requirements, including maintaining liability insurance as evidenced by an acceptable certificate of insurance. Applicants are encouraged to have community support for the proposed projects.

C. Location Requirements

1. The proposed artistic crosswalk must be
 - a. At a location where there is an existing marked crosswalk; or
 - b. At an unmarked crosswalk location that meets the City of Fresno's standards for installation of a marked crosswalk. If the proposed location is an unmarked crosswalk, the application may request installation of a marked crosswalk.
 - c. If the City determines the location is appropriate for a marked crosswalk, the City will install the crosswalk in accordance with the City's standards. The City of Fresno is not responsible for the installation or repair of artistic crosswalks. The applicant is responsible for artistic crosswalk installation and/or repair of artistic crosswalks.
2. The proposed artistic crosswalk shall be at a location where a vehicle is currently required, by stop sign or traffic signal, to stop.
3. The proposed artistic crosswalk must be at a location that has a posted speed limit not exceeding 30 MPH and has a maximum of two through lanes.
4. The surface of the location of the proposed artistic crosswalk must be asphalt rather than concrete. (Material will not bond or be as durable when placed on concrete). The location's existing asphalt pavement must be in good condition as materials will not bond if the pavement is in poor condition. Public Works Department shall inspect the pavement condition for adequacy of a thermoplastic paint or street-grade paint used in the artistic crosswalk. If the Public Works Department finds the pavement in poor condition, the department will work with the applicant to find a different location that meets requirement of the criteria, guidance, and permitting process and has pavement in good condition. The City's Traffic Engineer shall review each artistic crosswalk location to determine if it is on a corridor scheduled for near-term street maintenance (slurry, overlay, etc.). Proposed artistic crosswalk locations scheduled for near-term street maintenance may be held in abeyance until maintenance is completed.
5. Approval of the location of an artistic crosswalk is at the discretion of the City's Traffic Engineer.

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D. Design Standards

1. Crosswalks shall contain two white transverse (horizontal) lines and comply with the most current CAMUTCD crosswalk standards. Artistic crosswalks must be within the two horizontal lines.
2. Transverse crosswalk lines shall be white except in school zones, where they shall be yellow.
3. Artistic crosswalks must not impair the visibility of the transverse crosswalk lines and must not be reflective.
4. The design of artistic crosswalks must be solely for aesthetic purposes. Artistic crosswalks must not convey any political, religious, commercial, or other messages. In addition, designs must not contain logos, text, advertising, offensive symbols, three-dimensional graphics or geometric shapes (such as triangles and octagons) that could be confused with a standard traffic control device or legend.
5. Designs that could potentially distract a driver or could be confused with traffic signs or traffic pavement legends are prohibited.
6. The design shall contribute to the visual quality of the streetscape. For example, by using a limited palette of colors and simple graphic images to avoid visual clutter, taking into account the needs of persons with color deficiencies or partial sight (see, for example, United States Access Board's website for further information).
7. If more than one crosswalk at an intersection is proposed as an artistic crosswalk, the design of all such crosswalks must create a unified aesthetic at the intersection.
8. Artistic crosswalks shall not extend to sidewalks, curbs, or gutters.
9. Examples of acceptable artistic crosswalk designs and materials include brick lattice patterns, paving bricks, paving stones, setts, cobbles, and other resources designed to simulate such paving.
10. All elements of pattern and color for artistic crosswalks must be uniform, consistent, repetitive, and expected so as not to be a source of distraction. (MUTCD Office Ruling 3(09)-24(I) – Application of Colored Pavement).

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E. Material and Paint Type

1. Artistic crosswalks must use a non-reflective street-grade or thermoplastic paint, which provides a non-slip surface for pedestrians, bicyclists, and those who use wheelchairs or other assistive-mobility devices.
2. Street-grade paint is typically an acrylic water-based emulsion pavement color coating. Typically, during application of acrylic asphalt paint and for a period of at least 24 hours after application, temperatures must be above 50°F or higher and should not be applied in rain or when rain is in the forecast. Thermoplastic paint is a durable heat-applied material often used for pavement markings. Typically, during application of thermoplastic paint, the surface temperature must be 50°F or higher and the surface must be clean, dry, and free of debris.
3. Artistic crosswalks must be installed in warm weather conditions in order to achieve appropriate pavement adherence.
4. Materials shall meet City and Caltrans standards for pavement markings.
5. Materials must be reviewed and approved by the City's Traffic Engineer prior to permittee installation of the artistic crosswalk.

F. Application and Permitting Requirements

Each applicant must submit a completed application and street work permit.

A special events permit may also be required for installation of an artistic crosswalk.

After receiving a complete application, the City's Traffic Engineer shall determine whether a proposed artistic crosswalk complies with the requirements of the criteria, guidance, and permitting process, the CA MUTCD and applicable standards promulgated by the FHWA. If approved, the applicant becomes the permittee.

1. For City funded artistic crosswalk projects, the City Traffic Engineer will have final approval over the artistic crosswalk location, design and colors.
2. Artistic crosswalk installation and maintenance are not typical City services. Each applicant is responsible for all costs associated with the permit application process. Each permittee is responsible for all costs of material, permits, maintenance related to the artistic crosswalk, and, when the permit for the artistic crosswalk expires or is terminated, for all costs of removing the artistic crosswalk and restoring the affected pavement.

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G. Waiver of Artist's Rights

1. A creative crosswalk installed under this policy is not intended to be and is not public art; a work of fine art under the California Art Preservation Act (Civil Code § 987); or a work of visual art under the Federal Visual Artists Rights Act of 1991 (17 U.S.C. §§ 106A & 113(d)).
2. The City will not issue a creative-crosswalk permit to an applicant until the applicant has obtained from each individual who will design or install the creative crosswalk, and has submitted to the City, a signed writing, addressed to the City, in which the individual — 1. waives all intellectual-property rights or moral rights (droit moral) the individual might have in the creative crosswalk, including but not limited to all such rights (a) under the California Art Preservation Act; (b) under the Federal Visual Artists Rights Act of 1991; or (c) under any other local, state, federal, or international laws that confer such rights, whether in effect on the date the permit is issued or enacted thereafter; and 2. agrees that the City, in its sole discretion and without providing any notice or compensation to the individual, may remove the creative crosswalk if:
 - a. The permittee fails to remove the creative crosswalk as this policy requires when the permit expires or is revoked;
 - b. State or federal law requires removal;
 - c. The City must remove the creative crosswalk to perform maintenance on the street; or
 - d. The City's Traffic Engineer determines that the creative crosswalk constitutes a hazard to pedestrian or vehicular traffic.

H. Maintenance

Each permittee shall maintain liability insurance that names the City as an additional insured as long as the artistic crosswalk is in place and must provide the City with an acceptable certificate of insurance before installation of the artistic crosswalk and before performing maintenance on the artistic crosswalk. Each permittee is responsible for all permitting fees.

Each permittee must have a plan, approved by the City's Traffic Engineer that provides for the continued maintenance of the artistic crosswalk, including periodic paint touch-ups and repainting.

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Each permittee must agree to the following in a signed writing approved as to form by the City Attorney:

1. That the City will maintain transverse crosswalk lines and other traffic control devices but assumes no responsibility for maintaining the artistic crosswalk.
2. That the City, telecommunication companies, utility companies, Underground Service Alert, and other entities that work within the public right-of-way on roadways are not responsible for damage to, or alteration of, the artistic crosswalk and are not responsible for repairing damage to the artistic crosswalk.
3. That the City performs maintenance on its streets, such as overlays and slurry seals; that such maintenance may require the removal of covering of an artistic crosswalk; and that the City will not reinstall the artistic crosswalk, although the permittee may reinstall the artistic crosswalk at permittee's cost.
4. That the City may revoke the artistic crosswalk permit at any time by written notice to the permittee.
5. That the permittee must promptly remove the artistic crosswalk and restore the crosswalk to its condition before installation of the artistic crosswalk, all at no cost to the City, upon receiving a revocation notice or the City's written request for removal, or when the artistic crosswalk permit expires.
6. That the permittee relinquished all intellectual property rights and moral rights (droit moral) in the artistic crosswalk, including but not limited to all such rights under the California Art Preservation Act; under the Federal Visual Artists Rights Act of 1991; or under any other local, state, federal, or international laws that confer such rights, whether in effect on the date the permit is issued or enacted thereafter.

I. Relevant Local, State and Federal Rules

The relevant local, state, and federal rules as of the date of this policy are set out below. But these rules are subject to change without notice. Applicants should refer to state and federal rules in effect at the time of application, and a permittee should refer to the local, state and federal rules in effect while the artistic crosswalk is in place.

City of Fresno Installation of Uncontrolled Crosswalks

Relevant section:

- Evaluation criteria for marked crosswalks.

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California Manual on Uniform Traffic Control Devices (CA MUTCD) 2014, Revision 6

Relevant sections:

- Section 3B.18 Crosswalk Markings Paragraph 01: Crosswalk markings provide guidance for pedestrians who are crossing roadways by defining and delineating paths on approaches to and within signalized intersections, and on approaches to other intersections where traffic stops.
- Section 3B.18 Crosswalk Markings Paragraph 08: Crosswalk lines should not be used indiscriminately.
- Section 3B.18 Crosswalk Markings Paragraph 17: Crosswalk markings should be located so that the curb ramps are within the extension of the crosswalk markings.
- Section 3B.18 Crosswalk Markings paragraph 21: In general, crosswalks should not be marked at intersections unless they are intended to channelize pedestrians. Emphasis is place on the use of mark crosswalks as a channelization device.
- Section 3G.01 Colored Pavements Paragraph 02: If non-retroreflective colored pavement, including bricks and other types of patterned surfaces, is used purely aesthetic treatment and is not intended to communicate a regulatory, warning, or guidance message to road users, the colored pavement is not considered to be a traffic control device, even if it if located between the lines of a crosswalk.
- Section 3G.01 Colored Pavements Paragraph 6: Colored pavement located between crosswalk lines should not use colors or patterns that degrade the contrast of white crosswalk lines or that might be mistaken by road users as a traffic control application.

FHWA Interpretation Letter 3(09)-24(I) –Application of Colored Pavement Treatment in Crosswalks, August 15, 2013 Excerpts Relevant to Artistic Crosswalks:

Colored Pavement in Crosswalks

In the late 1990s, the marketplace introduced and promoted aesthetic treatments for urban streetscape environments that included the opportunity to install a range of colors and a multitude of patterns. The most popular opportunity to implement these treatments was between the legally marked transverse lines of crosswalks.

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This was typically done as part of larger efforts by cities to enhance the aesthetics of an area.

The FHWA's position has always been and continues to be that subdued-colored aesthetic treatments between the legally marked transverse crosswalk lines are permissible provided that they are devoid of retroreflective properties and that they do not diminish the effectiveness of the legally required white transverse pavement markings used to establish a crosswalk. Examples of acceptable treatments include brick lattice patterns, paving bricks, paving stones, setts, cobbles, or other resources designed to simulate such paving. Acceptable colors for these materials would be red, rust, brown, burgundy, clay, tan, or similar earth tone equivalents. All elements of pattern and color for these treatments are to be uniform, consistent, repetitive, and expected so as not to be a source of distraction. No element of the aesthetic interior treatment is to be random or unsystematic. No element of the aesthetic interior treatment can implement pictographs, symbols, multiple color arrangements, etc., or can otherwise attempt to communicate with the roadway user.

Patterns or colors that degrade the contrast of the white transverse pavement markings establishing the crosswalks are to be avoided. Attempts to intensify this contrast by increasing or thickening the width of the transverse pavement markings have been observed in the fields. These attempts to increase contrast are perceived to be efforts to circumvent the contrast prerequisite so that an intentional noncompliant alternative of an aesthetic interior pattern or color can be used. Further techniques to install an empty buffer space between an aesthetic treatment and the interior edge of the white transverse crosswalk markings have also been observed in the field. This strategy is also perceived to be an attempt to circumvent FHWA's prior position on contrast. However, an empty buffer space between a subdued colored, uniform patterned aesthetic treatment can be implemented to enhance contrast between the aesthetic treatment and the white transverse pavement markings. When used properly, buffer spaces can be an effective tool to disseminate a necessary contrast in order to visually enhance an otherwise difficult to discern white transverse crosswalk marking, provided that the aesthetic treatment conforms to the conditions in the preceding paragraph.