



Civic Arts Commission

CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Modesto Covarrubias, Chair

Subject: Public Art Funding for Municipal Capital Improvement Projects Ordinance;
Adding Berkeley Municipal Code Chapter 6.13

RECOMMENDATION

Adopt first reading of an Ordinance adding Chapter 6.13 (Public Art Funding for Municipal Capital Improvement Projects, Attachment 1) of the Berkeley Municipal Code to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with eligible municipal capital improvement projects, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley's existing public art funding policy, which was established in 1999 (Attachment 2), stipulates that eligible municipal Capital Improvement Projects are to dedicate 1.5% of the cost of their construction for public art. The proposed Public Art Funding Ordinance for Municipal Capital Improvement Projects increases the percentage from 1.5% to 1.75% for public art. The fiscal impacts of the recommendation are as follows:

- The increased percentage may result in a change to the amount allocated for public art. For example, the annual baseline allocation to the Public Art Fund has been \$65,164, which has been calculated as 1.5% of the cost of eligible capital projects. By increasing the percentage to 1.75% the annual allocation would be \$76,025, an annual increase of \$10,861. However, with the proposed policy change the amount allocated for public art will be tied to the actual amounts appropriated by Council for eligible capital projects, and as such, the allocations for art will rise and fall with any increase or decrease to capital appropriations and the eligibility of those capital projects.
- The proposed Public Art Funding Ordinance also recommends that the City take "reasonable efforts to include funds for public art" in all eligible projects which may allow additional Capital Improvement Project appropriations to comply with the 1.75% for art requirement. This includes any new CIP appropriations (beyond the baseline CIP appropriations) for eligible capital projects on the biennial and

mid-cycle budget adoption (July 1) and any new eligible capital appropriations adopted in the Amendments to the Annual Appropriation Ordinance (November and May). These midyear capital project appropriations have historically not included a set-aside for public art because the policy and procedures developed in 1999 were based upon a once annual budgeting process and did not account for amendments to the annual appropriation ordinance (AAOs 1 & 2).

- The fiscal impacts will vary from year to year because the CIP appropriations which occur as part of the AAO1 and AAO2 always vary; and will depend on the eligibility of the projects. An analysis of the CIP appropriations in FY21 and FY22 for both Parks Recreation and Waterfront (PRW) Department and Public Works (PW) Department shows that there were some eligible projects included in the AAOs that would have generated funds for public art. However, the difference in total amount allocated annually to public art utilizing the current budgeting practice versus the proposed methodology was negligible for these two years.
- The Public Art Funding amount of 1.75% of the estimated cost of construction will be calculated during the budgeting process at all three times of the year when capital project appropriations are adopted by Council. As part of the budget planning process, City departments will use an accepted percentage of 75% of the total capital project budget amount as the accepted “estimated cost of construction.” This reflects an assumption for excluded “soft costs” of project design and staff time. The resulting estimated cost of construction will be the basis for the calculation of the 1.75% for art amount. This amount will not be revised should the department’s estimates be incorrect, unless there is a future new appropriation, at which time the percent for art calculation will be made based upon the “estimated cost of construction” for the new appropriation.
- The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter which will specifically describe the process for identifying the eligible capital projects during all three times annually when the City makes budget appropriations.

There will be no fiscal impacts to the majority of the CIP budget because the following types of capital projects are excluded from this policy: (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project); (ii) Emergency repair projects; (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project); (iv) Studies and environmental review; (v) Roof replacement (not including projects where roof replacement is a portion of a larger project); (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project); (vii) Utilities projects, except where the project includes construction or reconstruction of a building; (viii) Vehicle repair and replacement; (ix) IT purchases and installations; (x) Seismic upgrades and waterproofing (not including projects where

these are a portion of a larger project); (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground; and (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

The Civic Arts Commission's Public Art Budgets will designate as separate any funds that are restricted by funding source for specific uses or locations. Appropriations for public art shall only be expended for acquisition of public art in a manner consistent with the specific restrictions established for each funding source.

CURRENT SITUATION AND ITS EFFECTS

The Public Art Funding Ordinance is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. Throughout the City of Berkeley, creative works of public art breathe life into the built environment and reflect the unique character of our city. Public art engages artists to enhance Berkeley's public spaces, which in turn improves the quality of life for residents and visitors alike.

While the City of Berkeley has an existing "percent-for-art" policy, which was established by resolution in 1999, funding for public art has not kept pace as a proportion of the City's capital budget as the CIP budget has increased over the past two decades. In response to the Civic Arts Commission's request that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, the Office of Economic Development worked in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department, and the Parks, Recreation, and Waterfront Department, to analyze the City of Berkeley's funding for public art (Attachment 3). A key finding of this analysis was that the City of Berkeley's existing public art funding policy is no longer compatible with the City's current processes for budgeting and capital planning. The Civic Arts Commission recommends establishing this new public art funding policy to address the findings detailed in the staff analysis.

Additionally, the City of Berkeley established the Public Art in Private Development policy by Ordinance in 2017, which requires qualifying private development projects to either incorporate a public art element or pay an in-lieu fee to the Private Percent for Art fund. The Civic Arts Commission recommends establishing this new public art funding policy for municipal projects as an Ordinance so that the two public art policies have parity.

Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley.

On February 23, 2022, Berkeley's Civic Arts Commission voted unanimously to

recommend that City Council adopt a City of Berkeley ordinance: Public Art Funding for Municipal Capital Improvement Projects. (M/S/C: Bullwinkel/Passmore. Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — None.)

BACKGROUND

The City has completed over 80 public art projects since its inception in 1967, with many of the early works commissioned through the City's own voluntary contributions, philanthropic donations, and grant funding. The City's longstanding Public Art Program includes a City collection valued at \$3 million dollars with numerous public artworks installed throughout the city.

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S., thereby establishing the City's current public art funding policy and program. Under this policy and program, each of the City of Berkeley's eligible capital projects are to dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

The 1999 Resolution established that, as part of the development of the City's budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. The policy includes an exemption for "any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art]." The policy also established that a project's 'soft costs'—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are exempt.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of baseline capital funding sources and project categories. The planning process as detailed by the 1999 public art funding resolution is no longer compatible with the City's current processes and procedures for capital project planning and related budget appropriations. Currently, due to the multiple sources of small allocations of funding received into the Public Art Fund, the vast majority of public art projects are implemented as off-site works of art. For some major capital projects, the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches. An example of public art integrated into a City capital improvement project includes the new public art at San Pablo Park, which was funded by Measure T-1.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

There are no identifiable California Environmental Quality Act effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Civic Arts Commission recommends establishing a new Public Art Funding policy for municipal capital improvement projects in order to align public art funding determinations with the City's current processes for budgeting and capital planning. Furthermore, establishing the new Public Art Funding policy for municipal projects as an Ordinance will allow the two public art policies to have parity. Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley. The additional one quarter of one percent (0.25%) is a small increase relative to the overall budgets of eligible capital improvement projects, but this percentage will provide more funding for public art which may be used to commission new work or to care for the artwork already in the City's public art collection.

ALTERNATIVE ACTIONS CONSIDERED

The Civic Arts Commission considered leaving the Public Art Funding policy as a resolution, however decided to recommend the policy be adopted as an Ordinance so that the requirement would be formally adopted into the City's municipal code in order to have legislative parity with the Public Art on Private Development requirement of the Berkeley Municipal Code, Chapter 23.316. The Civic Arts Commission also considered recommending that the percentage set aside from municipal capital improvement projects for public art be increased to two percent (2%), however there was an interest in aligning the municipal requirement with the Public Art on Private Development policy, which is one and three quarters percent (1.75%) for on-site public art projects.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. The revised implementation plan for this process will result in no significant financial impacts to departmental operations as (1) the majority of capital projects will be considered to be exempt; (2) the proposed General Fund baseline allocation to the Public Arts Fund will be increased to offset the additional percentage charged to eligible capital projects.

CONTACT PERSON

Jennifer Lovvorn, Secretary, Civic Arts Commission, Office of Economic Development,
981-7533

Attachments:

- 1: Ordinance: Public Art Funding on Municipal Capital Improvement Projects
- 2: Resolution No. 60,048-N.S. (1999 "1.5% for Art" Resolution)
- 3: Analysis of Public Art Funding from City of Berkeley Construction Projects

ORDINANCE NO. -N.S.

PUBLIC ART FUNDING FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS;
ADDING BERKELEY MUNICIPAL CODE CHAPTER 6.13

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 6.13 is added as follows:

6.13 APPROPRIATION FOR PUBLIC ART FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS

6.13.010 Purpose.

The City of Berkeley believes that the cultivation and development of a livable city is enhanced by the presence of public art and creative expressions available for the enjoyment of all members of the community. Public art enhances community vitality, fosters a sense of belonging, and provides opportunities to meaningfully involve community members in the design of their environment. Furthermore, public art provides professional opportunities for artists, which contributes to the economic sustainability of the arts community. The City of Berkeley is committed to strengthening its municipal public art program by enhancing the funds available for public art and ensuring flexibility to provide equitable public art experiences in the City of Berkeley that are timely, meaningful, and relevant. Therefore, it is the purpose of this Chapter and the policy of this City to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with municipal capital improvement projects to be paid into the Public Art Fund, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

6.13.020 Public Art Fund Allocation.

(a) It shall be City policy to set aside one and three quarters percent (1.75%) of its estimated capital improvement project (CIP) budgets, as defined in this section, for the purpose of providing public art. Except as provided in this section, all CIP projects shall be subject to this policy, including but not limited to buildings, shelters, parking garages and lots, restrooms, small structures, parks, medians, landscaping, plazas, gateways, bridges, walls, tunnels, street and road construction. CIP projects include new construction, as well as renovations and alterations. Salaries and benefits of public employees supporting CIP projects shall not be included in the CIP budget subject to this ordinance. This policy shall apply to all capital improvement projects included in the annual capital improvement program (CIP) budget, as well as capital improvement projects funded through any amendment to the annual appropriation ordinance.

(b) The following CIP projects are excluded from this policy:

- (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project).
- (ii) Emergency repair projects.
- (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project).
- (iv) Studies and environmental review.
- (v) Roof replacement (not including projects where roof replacement is a portion of a larger project).
- (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project).
- (vii) Utilities projects, except where the project includes construction or reconstruction of a building.
- (viii) Vehicle repair and replacement.
- (ix) IT purchases and installations.
- (x) Seismic upgrades and waterproofing (not including projects where these are a portion of a larger project).
- (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground.
- (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

6.13.030 Reasonable efforts to include funds for public art.

(a) City staff shall use reasonable efforts to obtain appropriate approvals from any funding source for any capital improvement project, to allow use of one and three quarters percent (1.75%) of such funds for the acquisition of public art as provided in this title. Such efforts shall include, without limitation, identifying public art in grant applications for capital improvement projects, efforts to include expenditures for public art in developer funded infrastructure projects, and efforts to allocate for public art in developer-constructed infrastructure and public facilities.

(b) If the city enters into an agreement with another public entity, whereby city funds are transferred to such other public entity for the capital improvement project that

would otherwise be deemed subject to the public art requirements under this title, city staff shall use reasonable efforts to include in such agreement, whenever it is lawful to do so, a requirement that the recipient entity or its successor in interest shall take appropriate measures to insure that not less than one and three quarters percent (1.75%) of the city funds so transferred are expended for acquisition of public art.

(c) Before proposing a bond issue or making a request for an appropriation for the construction of any of the projects set forth in this Chapter, the officer, board or commission concerned shall add thereto for the Public Art allocation associated with the proposed CIP project, one and three quarters percent (1.75%) of the gross estimated construction cost. Where funding eligibility is limited by law or funding agency rules, the Public Art allocation shall be based upon one and three quarters percent (1.75%) of eligible construction costs. For any public bond raising funds for capital percentage, the designated Public Art allocation percentage will be stated in the bond language presented to voters.

(d) Nothing in this section is intended to prohibit the city council from adopting an ordinance or resolution establishing a public art contribution for any project otherwise excluded from this policy or setting the public art contribution for any project at greater than one and three quarters percent (1.75%) of the CIP budget.

(e) Aggregation of Funds. Funds shall be deposited into the Public Art Fund. Per BMC Chapter 6.14, the Civic Art Commission shall determine public or publicly-accessible sites for art funded by the one and three quarters percent (1.75%) for art policy. Funds may be expended on public art at any appropriate site within the city. Funds from two or more CIP projects may be pooled to fund a single work of art. Funds may be used for permanent or temporary public art.

(f) The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.

6.13.040 Definitions. For purposes of this Section:

- "Alteration" of a building, aboveground structure, or transportation improvement project shall include substantial changes to elements such as walls, partitions, or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial changes" shall include additions to, renovation of, removal of, and modification of such elements.
- "Construction cost" shall mean the total estimated construction contract award amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Civic Arts Commission. "Construction cost" shall not include movable or personal property or construction cost contingency.

- "Public Art" shall mean the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Civic Arts Commission.
- "Public Art Collection" shall mean the various artworks owned by the City under the jurisdiction of the Civic Arts Commission that are accessioned by action of the Commission into the Public Art Collection.
- "Transportation improvement project" refers to Public Works projects which include both aboveground and below-ground transportation-related projects; boarding ramps; transit platforms; terminals and transportation systems with their attendant passenger amenities, such as shelters, seating, lighting, landscaping, and signage; transportation-related structures such as maintenance and operating facilities; power substations; and street/highway-related transit improvements such as bridges and overpasses.

6.13.050 Administrative Fees.

The Civic Arts Commission shall supervise and control the expenditure of all funds appropriated for public art and shall allocate up to twenty percent (20%) of said funds for all necessary and reasonable administrative costs incurred in connection therewith unless such administrative fee is limited or prohibited by the funding source.

6.13.060 Maintenance and Conservation Funds.

The Civic Arts Commission may set aside and expend up to ten percent (10%) of the total public art allocation for each project for maintenance and conservation of artworks in the Public Art Collection. When permitted by the funding source, funds set aside pursuant to this Section shall be invested in an interest-bearing account when the total of such funds set aside exceeds \$10,000.

6.13.070 Miscellaneous Provisions.

(a) Construction and installation of public art shall comply with the requirements of all applicable building codes, laws, ordinances, rules and regulations.

(b) Nothing in this Section shall be construed to limit or abridge the jurisdiction of the officer, board or commission of the participating City department to supervise and control the expenditure of project funds other than the one and three quarters percent (1.75%) allocation for public art.

(c) This ordinance shall not be applied retroactively to projects for which a public art allocation previously would not have been required, nor to those projects for which project funding has been approved by prior voter action but not yet appropriated or expended. Nor shall this ordinance be construed to allow for an increase in the total

public art allocation for a project that is already underway or for which the public art allocation has already been established.

(d) Ownership. All art acquired pursuant to this chapter shall be acquired in the name of the City of Berkeley as part of the Public Art Collection and title shall vest in the City of Berkeley.

6.13.080 Superseding Effect.

The ordinance codified in this chapter shall supersede and supplant Resolution No. 60,048-N.S. adopted by City Council on June 1, 1999.

Section 2. The provisions of this Ordinance apply to all municipal capital appropriations approved for Fiscal Year 2023 and beyond.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

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

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.

Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

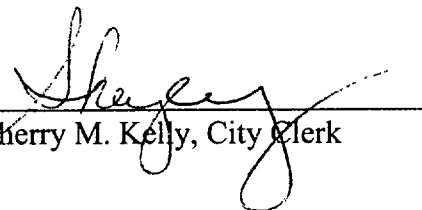
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk


Shirley Dean, Mayor



Office of Economic Development

December 26, 2019

To: David White, Deputy City Manager
 From: Jordan Klein, Economic Development Manager
 Subject: Public Art Funding from City of Berkeley Construction Projects

Introduction

Over the past five years, the annual contribution to the Public Art Fund has decreased, even as the City's Capital Improvement Program (CIP) budget has generally increased (see Table 1).

The Civic Arts Commission has requested that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, and that the City Auditor audit the determination of the Public Art Fund budget. In response, the Office of Economic Development, working in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department (PW) and the Parks, Recreation, and Waterfront Department (PRW), has prepared this memo to (1) summarize the current situation regarding funding for the City of Berkeley's public art program; (2) identify outstanding issues regarding the Public Art program budgeting; and (3) make recommendations for near-term and longer-term actions to address those issues.

Table 1: CIP and Public Art Budget, 2016-2021

| Fiscal Year | Capital Improvement Plan, Original Budget | Public Art Fund, Original Budget ¹ |
|-------------|---|---|
| 2021 | \$59,765,721 | \$65,164 |
| 2020 | 111,962,162 | 65,164 |
| 2019 | 39,926,908 | 65,164 |
| 2018 | 81,571,653 | 69,364 |
| 2017 | 32,908,296 | 70,940 |
| 2016 | 36,151,639 | 71,502 |

Background

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S. (Attachment 1, hereafter referenced as 'the 1999 Resolution'), thereby establishing the City's current public art policy and program, and the Public Art Fund.² Under this policy and program, each of the City of Berkeley's eligible capital projects must dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or to contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

1: This table does not include the public art contribution for the Center Street Garage, which comprised fund transfers to the Public Art Fund in FY2017 (\$222,860) and FY2019 (\$51,924), and design and construction of the Cube Gallery (\$106,060).

2: In 2017 the City of Berkeley established the Public Art in Private Development policy and program, which requires qualifying private development projects to either incorporate a public art element or pay an in lieu fee to the Private Percent for Art fund. That program is distinct from the program described in this memo.

The 1999 Resolution establishes that as part of the development of the City's budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. It also notes that the policy should not be applied to "any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art]." The Resolution also establishes that a project's 'soft costs'—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are not eligible for application of the policy.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of capital funding sources and project categories. For some (but not all) of those 'off the top' funding contributions, a deduction is made for soft costs. The vast majority of public art projects are implemented as off-site works of art. For some major capital projects (including Center Street Garage as the most recent example), the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches.

Staff Review of 2020 CIP and Public Art Budget

Office of Economic Development (OED) staff, in consultation with staff from the Budget Office, PW, and PRW, reviewed the Fiscal Year (FY) 2020 capital program by project, together with the FY 2020 Public Art Fund calculation spreadsheet provided by the Budget Office, to determine which projects had been identified as eligible capital projects for application of the public art requirement, and which projects had been excluded (see Attachment 2). Staff found the following:

- FY 2020 eligible capital projects. The following list includes those projects that were funded by expense accounts from which a contribution to the Public Art Fund was made.
 - ADA Building Improvements
 - FY 2020 Street Rehabilitation Projects
 - ADA Curb Ramp Repairs
 - Traffic Calming Program
 - Finger Dock & Piling Replacement
 - Rose Garden-Phase II
 - San Pablo Play Structure
 - West Campus Pool Filter
 - George Florence Play Equipment
 - King School Play Area
 - Ohlone Basketball Court
 - Parks Minor Maintenance Projects
 - Public Works Building Maintenance Projects

The total budget amount for these projects is \$4,894,278, or 4.4% of the total FY 2020 CIP budget. Capital Planning staff observed that the budgets for several of these projects include soft costs; thus if the guidelines established in the Resolution were more strictly enforced, it could result in a reduction of the Public Art Fund contribution.

- Staff identified the following capital projects that could be eligible for application of the public art policy, but to which the policy has not yet been applied.
 - EV Charging stations (\$600,000)
 - Police Parking Marina facility (\$481,570)

- Sacramento Street Complete Street Project (\$47,000)
- Telegraph Channing Elevator Replacement (\$300,000)

The total budget for these projects is \$1,428,570. Application of the public art policy would require a contribution of up to \$21,429 to the Public Art Fund.³

- Many of the funding streams that are used to finance CIP projects prohibit the use of funds for public art projects. These funding streams include state and regional gas taxes (e.g., Measure B, Measure BB, and Vehicle Registration Fees), special property assessments (e.g., Street Lighting Fee, Sanitary Sewer Fee, Storm Drain Fee), certain grant funds, development agreement proceeds, and insurance claims for camp repairs. In FY 2020, these funding streams accounted for \$79,730,929, or 71.2% of the total CIP budget.
- Sixteen CIP projects, totaling \$14,106,220 or 12.6% of the total CIP budget, are funded through Measure T1 Bond proceeds. One (1) percent of the total bond proceeds have been dedicated to public art projects; those funds are managed separately from the general Public Art Fund, and are being used to implement public art projects at North Berkeley Senior Center and San Pablo Park. The Civic Arts Commission has expressed frustration and disappointment that the public art contributed was calculated at 1% rather than 1.5% in accordance with the 1999 Resolution.

In staff's review of the CIP, we noted that some of the Measure T1 Bond proceeds are being used to fund non-construction projects (e.g., conceptual plans and studies) and project management costs. In addition, each of the construction projects has associated soft costs that are ineligible for application of the public art policy. Therefore, if staff used the 1999 Resolution methodology (1.5% of construction costs) rather than the current methodology (1% of total bond proceeds), the resulting contribution to public art might actually be less.

- The CIP includes non-construction projects and soft costs that are ineligible for application of the public art policy, including debt service, vehicle and other equipment replacement, software, and design and engineering costs. In FY 2020 the budget for these projects totaled \$10,116,148, or 9.0% of the total CIP budget.

Outstanding Issues

- The process for calculation of the annual contribution to the Public Art Fund that is outlined in the 1999 Resolution is not compatible with the City's other regular processes for budgeting and capital planning. The consensus among staff—including staff from the Civic Arts program, PW and PRW capital planning, and Budget Office—is that except for major projects (e.g., projects greater than \$10 million) the Budget Office's current process (a flat application to qualifying funding streams and project categories) should be maintained.
- Staff also observes that budget appropriations that occur in November and spring typically exclude funds for the public art program. At least two of the FY 2020 projects noted above, where the public art requirement has not been applied but may warrant application, fall into this category – Police Parking Marina Facility, and Sacramento Street Complete Streets.

3: The total budget for these projects (\$1,428,570) may include soft costs, or other costs that are ineligible for application of the public art calculation. Those costs would need to be excluded from the calculation, which could reduce the Public Art Fund contribution.

- Actual expenditures on major projects sometimes exceed budgeted amounts, and those additions are often excluded from the public art program. For example, actual expenditures on construction of the Center Street Garage increased by roughly \$5.4 million over the originally budgeted expenditures; however, the project's public art contribution was calculated based on the original budget. The project's compliance with the public art policy required an additional contribution of \$81,306 to the Public Art Fund, which was allocated by City Council on December 3, 2019.
- The public art policy was applied to the majority of, but not all, maintenance projects and expenditures from qualifying funding sources. Capital planning staff noted the vast deferred maintenance needs of the City's infrastructure and capital assets, and the urgent need to direct as much funding as possible towards the completion of those projects. Parks staff observed that the application of the policy to Measure F funds expended on 'Minor Maintenance' projects is incorrect and should be reversed for FY21.

Civic Arts program staff noted that the City's public art collection also suffers from deferred maintenance issues, and that there is a nexus for application of the public art policy to expenditures on maintenance projects in order to provide a reliable funding source for collection maintenance.

Recommendations

The following near-term and mid-term activities could address and resolve the outstanding issues identified above.

Near-term actions:

- Include allocations to the Public Art Fund, for the purpose of bringing the projects referenced above into compliance with the public art policy, for inclusion in the mid-cycle budget update. This would include an allocation of \$21,429 to the Public Art Fund for the EV Charging Stations, Police Parking Marina facility, Sacramento Street Complete Street Project, and Telegraph Channing Elevator Replacement.
- Establish as a regular practice that staff from the Budget Office, Civic Arts Program, and PW and PRW capital planning teams engage twice per year to review and plan for public art policy implementation.
- Incorporate into any mid-year budget expenditures on capital projects a review by Budget Office staff for public art policy applicability.
- Consider whether and how the policy should be applied to minor maintenance projects (versus major projects and new improvements).

Longer-term actions:

- Amend the 1999 Resolution to update the public art policy, in collaboration with the City Manager's Office, Capital Planning staff from PW and PRW, and the Civic Arts Commission, and with careful consideration of the following:

- Update the process and timing for the determination of the annual contribution to the Public Art Fund to be better aligned with the City's budgeting and capital planning processes, and with consideration of staffing and budget constraints.
- Establish more clear criteria to determine which projects and capital funding sources are eligible for application of the public art policy, especially with regards to expenditures on maintenance and repairs.

- Establish as a regular practice that grant applications for capital projects include expenditures on public art in the proposed budget, whenever possible without jeopardizing the application.

- For future bond measures for public construction projects, ensure that the public art policy is appropriately incorporated into the final bond language.

Attachments:

- 1- Resolution No. 60,048-N.S. Establishing the Percent for Art Program
- 2- FY2020 Capital Improvement Plan Budgeted Expenditures By Project By Fund, with Percent for Art Applicability

Cc:

Paul Buddenhagen, Deputy City Manager
Teresa Berkeley-Simmons, Budget Manager
Scott Ferris, Director, Parks, Recreation & Waterfront
Phil Harrington, Director, Public Works
Civic Arts Commission

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

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

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.

Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

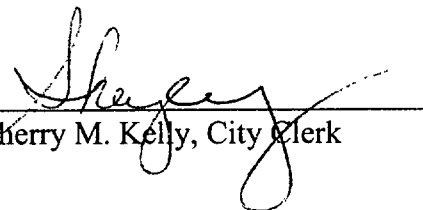
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk


Shirley Dean, Mayor

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Citywide Capital Program by Project, by Fund | | | | | | | | |
|--|---------------------------|--|--|--|----------------------|--|-------------------------------------|------|
| Public Art Policy Applicability | | | | | | | | |
| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution | |
| | Transportation | Pavement Markings (incl. Roadway Thermo Marking) | \$ 50,000 | \$ - | \$ 50,000 | Funded by Excess Property Transfer Tax | \$ - | |
| | | EV Charging Stations @ Corp Yard and Marina | \$ 600,000 | \$ - | \$ 600,000 | Funded by Excess Property Transfer Tax; may warrant policy application | \$ - | |
| 10 Total | General Fund | | \$ 650,000 | \$ - | \$ 650,000 | | \$ - | |
| 330 | PRW | Berkeley Tuolumne Camp (BTC) | \$ 49,795,822 | \$ - | \$ 49,795,822 | Funding source prohibition | \$ - | |
| | | Cazadero Camp - Landslide Repair | \$ 854,306 | \$ - | \$ 854,306 | Funding source prohibition | \$ - | |
| 330 Total | Camp Fund | | \$ 50,650,128 | \$ - | \$ 50,650,128 | | \$ - | |
| 369 | Unallocated | Transportation | Traffic Calming Devices Replacement & Maintenance | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 369 | | Streets | Street Rehabilitation FY 2020 State Transportation Tax | \$ 445,303 | \$ - | \$ 445,303 | Funding source prohibition | \$ - |
| | | | Street Rehabilitation FY 2020 SB1 | \$ 1,500,000 | \$ - | \$ 1,500,000 | Funding source prohibition | \$ - |
| | | | Street Rehabilitation FY 2021 State Transportation Tax | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 369 Total | Gas Tax | | \$ 2,045,303 | \$ - | \$ 2,045,303 | | \$ - | |
| | | | Pavement Marking Program | \$ 150,000 | \$ - | \$ 150,000 | Funding source prohibition | \$ - |
| 391 | | Streets | Street Rehabilitation FY2020 | \$ 700,000 | \$ - | \$ 700,000 | Funding source prohibition | \$ - |
| 391 Total | Measure B LS&R | | \$ 850,000 | \$ - | \$ 850,000 | | \$ - | |
| 392 | | | Milvia Bikeway Project | \$ 76,000 | \$ - | \$ 76,000 | Funding source prohibition | \$ - |
| 392 | | | Citywide Bicycle Parking | \$ 13,334 | \$ - | \$ 13,334 | Funding source prohibition | \$ - |
| 392 | | | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183 | \$ - | \$ 28,183 | Funding source prohibition | \$ - |
| | | | Bike & Ped CIP (Contingency) | \$ 75,000 | \$ - | \$ 75,000 | Funding source prohibition | \$ - |
| 392 Total | Measure B B&P | | \$ 192,517 | \$ - | \$ 192,517 | | \$ - | |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|----------------------------|--|---------------------|--|---------------------|-------------------------------------|-------------------------------------|
| 397 | Streets | Street Rehabilitation FY2020 | \$ 155,000 | \$ - | \$ 155,000 | Funding source prohibition | \$ - |
| 397 | Sidewalks | Proactive and Responsive Sidewalk Repair Projects | \$ 200,000 | | \$ 200,000 | Funding source prohibition | \$ - |
| 397 Total | Measure F | | \$ 355,000 | | \$ 355,000 | | \$ - |
| 406 | Transportation | San Pablo/Ashby Intersection Traffice Signal Improvements | \$ 76,000 | \$ - | \$ 76,000 | Funding source prohibition | \$ - |
| 406 | Streets | Street Rehabilitation FY2020 - BB LSR Sales Tax | \$ 2,200,000 | \$ - | \$ 2,200,000 | Funding source prohibition | \$ - |
| 406 | Sidewalks | Proactive and Responsive Sidewalk Repair Projects | \$ 100,000 | \$ - | \$ 100,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Traffic Calming Program | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Traffic Signal Maintenance | \$ 250,000 | \$ - | \$ 250,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183 | \$ - | \$ 28,183 | Funding source prohibition | \$ - |
| 406 Total | Measure BB LS&R | | \$ 2,704,183 | \$ - | \$ 2,704,183 | | \$ - |
| 407 | Transportation | Shattuck Reconfiguration | \$ 118,354 | \$ - | \$ 118,354 | Funding source prohibition | \$ - |
| 407 | Transportation | Ninth Street Pathway Phase II | \$ 83,557 | \$ - | \$ 83,557 | Funding source prohibition | \$ - |
| 407 | | San Pablo/Ashby Intersection Traffice Signal Improvements | \$ 110,000 | \$ - | \$ 110,000 | Funding source prohibition | \$ - |
| 407 | | Sacramento St./North Berkeley BART Complete Sts | \$ 273,253 | \$ - | \$ 273,253 | Funding source prohibition | \$ - |
| 407 | | Citywide Bicycle Parking | \$ 26,664 | \$ - | \$ 26,664 | Funding source prohibition | \$ - |
| 407 Total | Mesure BB B&P | | \$ 611,828 | \$ - | \$ 611,828 | | \$ - |
| 450 | | Minor Maintenance | \$ 550,000 | \$ 412,500 | \$ 137,500 | Soft costs excluded | \$ 6,188 |
| 450 | | Gilman Reserve/ Facility Assmt./ Sewer-Laterals | \$ 100,000 | \$ 75,000 | \$ 25,000 | Soft costs excluded | \$ 1,125 |
| 450 | | W. Campus Pool Filter | \$ 175,000 | \$ 131,250 | \$ 43,750 | Soft costs excluded | \$ 1,969 |
| 450 | | Rose Garden-Phase II (see Meas. T1 proj wksht) | \$ 50,000 | \$ 37,500 | \$ 12,500 | Soft costs excluded | \$ 563 |
| 450 | | San Pablo Play Equipment (see Meas. T1 proj wksht) | \$ 200,000 | \$ 150,000 | \$ 50,000 | Soft costs excluded | \$ 2,250 |
| 450 | | George Florence Play Equipment (see Meas. T1 proj wksht) | \$ 125,000 | \$ 93,750 | \$ 31,250 | Soft costs excluded | \$ 1,406 |
| 450 | | King School Park Play Area | \$ 50,000 | \$ 37,500 | \$ 12,500 | Soft costs excluded | \$ 563 |
| 450 | | Ohlone Basketball | \$ 300,000 | \$ 225,000 | \$ 75,000 | Soft costs excluded | \$ 3,375 |
| 450 Total | Parks Tax | | \$ 1,550,000 | \$ 1,162,500 | \$ 387,500 | | \$ 17,438 |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| | | | | | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|------------------------|--------------|--|----------------------|--|----------------------|--|-------------------------------------|
| Fund | Category | Project Name | | FY2020 Total | | | | |
| 607 | T1 | PRW | AQUATIC PARK TIDE TUBES | \$ 220,835 | \$ - | \$ 220,835 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | FRANCES ALBRIER COMMUNITY CENTER | \$ 425,000 | \$ - | \$ 425,000 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GROVE PARK PHASE 2 | \$ 880,325 | \$ - | \$ 880,325 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | LIVE OAK COMMUNITY CENTER | \$ 4,232,106 | \$ - | \$ 4,232,106 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | UNIVERSITY AVE,MARINA,SPINNAKER ST | \$ 83,022 | \$ - | \$ 83,022 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | MUNICIPAL PIER | \$ 2,056,908 | \$ - | \$ 2,056,908 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GEORGE FLORENCE PLAY STRUC | \$ 531,703 | \$ - | \$ 531,703 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | SAN PABLO PLAY EQUIP | \$ 1,056,715 | \$ - | \$ 1,056,715 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | STRAWBERRY CREEK PARK PH 2 | \$ 1,131,389 | \$ - | \$ 1,131,389 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | ROSE GRDN PTHWAYS,TENNIS CRT,PERG | \$ 345,835 | \$ - | \$ 345,835 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GILMAN N. FLDHOSE/RSTRM | \$ 172,025 | \$ - | \$ 172,025 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | WILLARD CLUBHOUSE RENO | \$ 197,025 | \$ - | \$ 197,025 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | Facilities | Veteran's Building | \$ 148,215 | \$ - | \$ 148,215 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | | Corporation Yard | \$ 50,467 | \$ - | \$ 50,467 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | | Public Safety Building | \$ 19,762 | \$ - | \$ 19,762 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | Streets | Street Rehabilitation FY 2020 | \$ 2,554,888 | \$ - | \$ 2,554,888 | 1% for Public Art Accounted Separately | \$ - |
| 607 Total | T1 Bonds | | | \$ 14,106,220 | \$ - | \$ 14,106,220 | | \$ - |
| 609 | | IT | ERP Replacement Fund | \$ 2,734,552 | | \$ 2,734,552 | Non-construction project | \$ - |
| 609 Total | ERP Replacement | | | \$ 2,734,552 | | \$ 2,734,552 | | \$ - |
| 891 | | IT | PC Replacement (PC-R) and Server Replacement | \$ 540,370 | | \$ 540,370 | Non-construction project | \$ - |
| 891 Total | | | | \$ 540,370 | | \$ 540,370 | | \$ - |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------|---------------|---|--------------|--|------------------|---|-------------------------------------|
| 610 | Facilities | Roof Replacement | \$ 290,000 | \$ 164,773 | \$ 125,227 | Emergency repairs and maintenance - included at approximately 58% | \$ 2,472 |
| 610 | | Building Assesment (Contingency) | \$ 70,000 | \$ 39,773 | \$ 30,227 | Emergency repairs and maintenance - included at approximately 58% | \$ 597 |
| 610 | | Civic Center Carpet Replacement | \$ 440,000 | \$ 250,000 | \$ 190,000 | Emergency repairs and maintenance - included at approximately 58% | \$ 3,750 |
| 610 | | Fire Station 6 Drill Tower | \$ 45,000 | \$ 25,568 | \$ 19,432 | Emergency repairs and maintenance - included at approximately 58% | \$ 384 |
| 610 | | HazMat Storage Upgrade | \$ 35,000 | \$ 19,886 | \$ 15,114 | Emergency repairs and maintenance - included at approximately 58% | \$ 298 |
| 610 | | Police Parking Enforcement Marina Facility and Parking Lot Improver | \$ 250,000 | | \$ 250,000 | May warrant policy application | \$ - |
| 610 | | ADA Building Improvements | \$ 100,000 | \$ 100,000 | \$ - | | \$ 1,500 |
| 610 | PRW | Rose Garden-Phase II | \$ 100,000 | \$ 75,000 | \$ 25,000 | Soft costs excluded | \$ 1,125 |
| 610 | PRW | San Pablo Play Structure | \$ 300,000 | \$ 225,000 | \$ 75,000 | Soft costs excluded | \$ 3,375 |
| 610 | Debt Svc | Ball Fields Acquisition Debt Service | \$ 249,971 | | \$ 249,971 | Non-capital project | \$ - |
| 610 | Debt Svc | Animal Shelter Debt Service/2010 COP Animal Shelter | \$ 402,613 | | \$ 402,613 | Non-capital project | \$ - |
| 610 | Debt Svc | Theater Debt Service | \$ 249,971 | | \$ 249,971 | Non-capital project | \$ - |
| 610 | Debt Svc | University Ave. W/C Debt Service | \$ 406,952 | | \$ 406,952 | Non-capital project | \$ - |
| 610 | Streets | Street Rehabilitation FY2020 | \$ 1,825,050 | \$ 1,725,000 | \$ 100,050 | Soft costs excluded | \$ 25,875 |
| 610 | | Street Rehabilitation FY2021 | \$ 99,950 | \$ - | \$ 99,950 | Design costs | \$ - |
| 610 | 5302-431-6520 | Sidewalks | \$ 100,000 | \$ - | \$ 100,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 500,000 | \$ - | \$ 500,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 285,000 | | \$ 285,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 50,000 | | \$ 50,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 200,000 | \$ 200,000 | \$ - | | \$ 3,000 |
| 610 | | Transportation | \$ 119,278 | \$ 119,278 | | | \$ 1,789 |
| 610 | | Transportation | \$ 606,662 | | \$ - | Bayer Mitigation \$ - Funding source prohibition | \$ - |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|-------------------------------|--|---------------------|--|---------------------|--|-------------------------------------|
| 610 | Transportation | Sacramento St Complete Streets/North Berkeley BART | \$ 47,000 | | \$ 47,000 | May warrant policy application | \$ - |
| 470 | 5307 Other Infrastructure | Coucil Supp. - Funding for Street Lighting | \$ 416,608 | | \$ 416,608 | Property Fee - 218 Funding source prohibition | \$ - |
| | Other Infrastructure | Underground Utility Distrcit No. 48 Project | \$ 250,000 | | \$ 250,000 | Placeholder for fire safety project w/PG&E; monies gathered from unspent fund balances (where art funds have already been taken), salary savings, etc. | \$ - |
| | Transportation | Traffic Calming Program | \$ 50,000 | \$ 50,000 | \$ - | | \$ 750 |
| 610 Total | Capital Improvement | | \$ 7,489,055 | \$ 2,994,278 | \$ 4,494,777 | Rama's spreadsheet for Public Art calculation shows \$2,994,278 from this fund. Please indicate which additional projects were included. | \$ 44,914 |
| 613 | Bay Area Air Quality | Citywide Bicycle Parking | \$ 60,000 | | \$ 60,000 | Funding source prohibition | \$ - |
| 613 Total | | | \$ 60,000 | | \$ 60,000 | | \$ - |
| 642 | Sidewalks | 50/50 Program | \$ 100,000 | | \$ 100,000 | Funding source prohibition (Money is from private property owners for sidewalk repairs) | \$ - |
| 642 Total | Private Party Sidewalk | | \$ 100,000 | | \$ 100,000 | | \$ - |
| | | Milvia Bikeway Project | \$ 273,000 | | \$ 273,000 | Funding source prohibition | \$ - |
| | | Sacramento St./North Berkeley BART Complete Sts | \$ 1,364,202 | | \$ 1,364,202 | Funding source prohibition | \$ - |
| | | Southside Complete Streets | \$ 506,640 | | \$ 506,640 | Funding source prohibition | \$ - |
| 674 Total | CALTRANS | | \$ 2,143,842 | | \$ 2,143,842 | | \$ - |
| 820 | Facilities | Transfer Station AirCo building upgrade for office use | \$ 385,000 | | \$ 385,000 | Design, planning and other soft costs | \$ - |
| 820 | Facilities | Transfer Station Rebuild Final Geotechnical Site investigation to support engineering design | \$ 100,000 | | \$ 100,000 | Design, planning and other soft costs | \$ - |
| | | Solid Waste & Recycling Transfer Station Rebuild CEQA process | \$ 1,200,000 | | \$ 1,200,000 | Design, planning and other soft costs | \$ - |
| 820 Total | Zero Waste | | \$ 1,685,000 | | \$ 1,685,000 | | \$ - |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|---------------------------|--|----------------------|--|----------------------|--|-------------------------------------|
| 825 | | Finger Dock & Piling Replacement | \$ 250,000 | \$ 187,500 | \$ 62,500 | Soft costs excluded | \$ 2,813 |
| 825 | | Sewer Lateral Work | \$ 100,000 | | \$ 100,000 | | \$ - |
| 825 | | Marina Debt Service | \$ 485,719 | | \$ 485,719 | Non-capital project | \$ - |
| 825 | PRW | Minor Maintenance | \$ 150,000 | | \$ 150,000 | | \$ - |
| 825 Total | Marina Operations | | \$ 985,719 | \$ 187,500 | \$ 798,219 | | \$ 2,813 |
| 830 | Sewers | Sewer Rehab - Sanitary Sewer Master Plan | \$ 623,106 | | \$ 623,106 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | Sewers | San Pablo (City's Limit to Limit) | \$ 3,256,112 | | \$ 3,256,112 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Neilson, Berryman, et al | \$ 4,515,649 | | \$ 4,515,649 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Seawall Dr, Seventh St, et al | \$ 5,099,864 | | \$ 5,099,864 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | West Frontage (Caltrans ROW) | \$ 182,617 | | \$ 182,617 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Urgent Repairs FY 2020 | \$ 503,457 | | \$ 503,457 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MH Rehab FY 2020 | \$ 503,457 | | \$ 503,457 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Parker St, MLK Wy, et al | \$ 1,035,441 | | \$ 1,035,441 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MLK Wy, Cedar St, et al | \$ 782,526 | | \$ 782,526 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Walnut St, The Alameda, et al | \$ 593,927 | | \$ 593,927 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Urgent Repairs FY 2021 | \$ 84,731 | | \$ 84,731 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MH Rehab FY 2021 | \$ 84,731 | | \$ 84,731 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 Total | Sanitary Sewer | | \$ 17,265,619 | | \$ 17,265,619 | | \$ - |
| 831 | | Berkeley Rose Garden Drainage | \$ 679,239 | | \$ 679,239 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | GI Allston Way Permeable Paver Maintenance | \$ 200,000 | | \$ 200,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Storm Drainage Repairs - Wildcat/Shelby Trail | \$ 75,000 | | \$ 75,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Piedmont Avenue Green Infrastructure | \$ 25,000 | | \$ 25,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Storm Drain Planning & Studies | \$ 750,000 | | \$ 750,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 Total | Clean Storm | | \$ 1,729,239 | | \$ 1,729,239 | | \$ - |
| | | Telegraph Channing Elevator Replacement | \$ 300,000 | | \$ 300,000 | May warrant policy application | \$ - |
| 835 Total | Off Street Parking | | \$ 300,000 | | \$ 300,000 | | \$ - |
| | | Police Parking Enforcement Marina Facility and Parking Lot Improvement | \$ 231,570 | | \$ 231,570 | May warrant policy application | \$ - |
| 840 Total | Parking Meter Fund | | \$ 231,570 | | \$ 231,570 | | \$ - |
| 860 | Equipment | Vehicle Replacement | \$ 2,611,000 | | \$ 2,611,000 | Non-construction project | \$ - |

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Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|--------------------|--------------------|--------------|-----------------------|--|-----------------------|-------------------------------------|-------------------------------------|
| 860 Total | Equip. Replacement | | \$ 2,611,000 | | \$ 2,611,000 | | \$ - |
| Grand Total | | | \$ 111,591,145 | \$ 4,344,278 | \$ 107,246,867 | | \$ 65,164 |

