



Civic Arts Commission
Office of Economic Development

**Civic Arts Commission
Public Art Committee
Thursday, February 11, 2021 at 4:00 p.m.**

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY
THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Civic Arts Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81941868281>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-900-9128** and enter Meeting ID: **819 4186 8281**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

To submit an e-mail comment during the meeting to be read aloud during public comment, email civicarts@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply.

Agenda

- 1. CALL TO ORDER AND ROLL CALL**
- 2. PUBLIC COMMENT**
- 3. CHAIR'S REPORT**
- 4. DISCUSSION ITEMS WITH POSSIBLE ACTION**
 - a) Discuss the use of Public Art Funds

5. STAFF REPORT

6. ADJOURNMENT

Attachments:

1. 1999 Public Art Resolution
2. Private Percent for Art Ordinance

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Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Civic Arts Office located at 2180 Milvia Street, First Floor, Berkeley, CA 94704.

ADA Disclaimer

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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

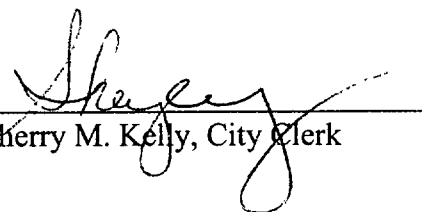
This resolution shall become effective June 1, 1999.


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

ORDINANCE NO. 7,579-N.S.

PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS, BMC CHAPTER 23C.23

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

Section 1. That Berkeley Municipal Code Chapter 23C.23 is amended to read as follows:

**Chapter 23C.23
Percentage for Public Art on Private Projects**

Sections:

- 23C.23.010 Purpose**
- 23C.23.020 Applicability**
- 23C.23.030 Exceptions**
- 23C.23.040 Definitions**
- 23C.23.050 General Requirements**
- 23C.23.060 Required Permits**
- 23C.23.070 In-Lieu Fee**
- 23C.23.080 Administrative Regulations (Guidelines)**

Section 23C.23.010 Purpose

The purpose of this Chapter is to establish a public art requirement for private developments in order to provide the following benefits to the community:

- Maintain Berkeley's art and culture for generations;
- Recognize the vital importance of the arts to the City as a whole;
- Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the City of Berkeley;
- Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate. (Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.020 Applicability

- A. This Chapter applies in all zoning districts in the City.
- B. This Chapter applies to:
 - 1. New Multifamily residential projects of five or more Dwelling Units
 - 2. New Commercial structures
 - 3. New Industrial structures
- C. This Chapter applies to all construction of building additions exceeding 10,000 square feet. (Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.030 Exceptions

This Chapter does not apply to the following project types:

- A. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60% of the units.
- B. Buildings with Religious Assembly Uses as defined in Section 23F.04.010 and Buildings with Arts and Cultural Uses. For purposes of this section, "Arts and

Cultural Use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.

C. Transitional Housing. (Ord. 7547-NS § 1, 2017; Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.040 Definitions

For purposes of this Chapter, the following definitions shall apply:

- A. "Artist" means an individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales. Members of the design team are not artists for On-Site Publicly Accessible Art projects. Individuals who have a conflict of interest, including a familial or financial relationship to the developer or design team, are not artists for On-Site Publicly Accessible Art projects.
- B. "Construction Cost" means the amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the Building Permit Fees section of the resolution establishing fees and charges as adopted by the City Council.
- C. "Developer" means a person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this Chapter.
- D. "On-Site Publicly Accessible Art" means an original work by an Artist, including, but not limited to, functional art integrated into the building, landscape, or element of infrastructure, including sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, textile, art glass, digital media art, video, earthworks and multi-media installation, that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
- E. "Guidelines" means the guidelines adopted by the City Council pursuant to Section 23C.23.080. (Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.050 General Requirements

- A. Developers subject to this Chapter shall either:
 - 1. Include On-Site Publicly Accessible Art valued at 1.75% of the Construction Cost. In the event the value of On-Site Publicly Accessible Art as installed is less than 1.75% of the Construction Cost, an amount equal to 80% of the difference in value shall be paid to the City as an in-lieu fee.
 - 2. Pay an in-lieu fee of 0.80% of the Construction Cost to the City as set forth in Section 23C.23.070. (Ord. 7526-NS § 1, 2017; Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.060 Required Permits

On-Site Publicly Accessible Art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments. The process for identifying and securing required permits shall be set forth in the Guidelines. (Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.070 In-Lieu Fee

- A. Applicability. As an alternative to providing On-Site Publicly Accessible Art, the Developer may elect to pay an in-lieu fee to the City as set forth in this Section.
- B. Purpose. Any in-lieu fees paid to the City pursuant to this Chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. Amount of Fee. The in-lieu fee shall be 0.80% of the Construction Cost.
- D. Time of Payment of Fee. The in-lieu fee shall be paid at the same time as other building permit fees. (Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.080 Administrative Regulations (Guidelines)

- A. The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this Chapter.
- B. The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines. (Ord. 7494-NS § 1 (part), 2016)

Section 2. This Ordinance shall apply prospectively to those projects that do not have a Use Permit that has been approved prior to the effective date of this Ordinance.

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 Council Chambers, 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.

At a special meeting of the Council of the City of Berkeley held on October 3, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Droste.

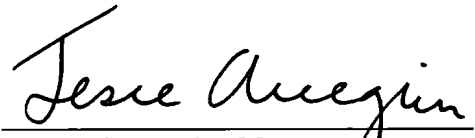
At a regular meeting of the Council of the City of Berkeley held on October 17, 2017, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

ATTEST: 
Mark Numainville, City Clerk


Jesse Arreguin, Mayor

Date signed: October 19, 2017