

RESOLUTION NO 68 278–N S

ESTABLISHING BUDGET PRIORITIES FOR EXPENDITURE OF SHORT TERM RENTAL TAXES COLLECTED BY THE CITY PURSUANT TO BERKELEY MUNICIPAL CODE SECTIONS 7 36 AND 23C 22

WHEREAS through the adoption of Ordinance No 7 521 N S on February 28 2017 the City Council clarified that short term rentals are subject to the Transient Occupancy Tax and

WHEREAS the purpose of the Ordinance was to allow hosts to benefit from available space in their homes while among other things preventing long term rental units from being replaced with short term rentals protect affordable housing units from conversion and generate City revenue to share City infrastructure cost and other public expenditures and

WHEREAS the proliferation of short term rentals reduces the supply of housing in the City and

WHEREAS fees charged by short term rental units can easily eclipse the rate charged by a standard rental unit incentivizing the owners of short term rental units to theoretically keep units empty and

WHEREAS Ordinance No 7 521 N S does not specify the programs to which the revenue generated from the Transient Occupancy Tax ought to be allocated and

WHEREAS the City's Housing Trust Fund helps to develop and preserve long term below market rate housing for low very low and extremely low income households and receives funding from development fees and various other sources and

WHEREAS in accordance with BMC Section 23C 23 050 developers must either Include On Site Publicly Accessible Art valued at 1 75% of the Construction Cost or Pay an in lieu fee of 0 80% of the Construction Cost to the City and

WHEREAS the city will generate revenue to support administrative costs through the 2% monthly enforcement fee and from penalties imposed on violators of the provisions set forth in BMC 23C 22

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the City Manager shall allocate the 2% monthly enforcement fee and revenue generated from any associated penalties to staff costs

BE IT FURTHER RESOLVED that starting in FY 2019 staff costs as approved by the City Council that exceed the above enforcement fees and penalties shall be appropriated from the short term rental taxes collected pursuant to BMC Section 23C 22 050 Section H with primary allocation of the rental tax to the purposes listed below

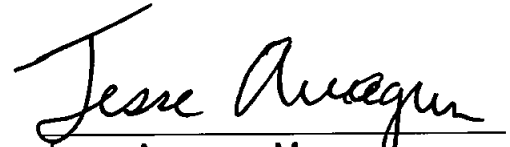
- 1 Two thirds (66 7%) allocated to the Affordable Housing TrustFund
- 2 One third (33 3%) allocated to the Civic Arts GrantFund

The foregoing Resolution was adopted by the Berkeley City Council on December 19 2017 by the following vote

Ayes Bartlett Davila Droste Harrison Maio Wengraf Worthington and Arreguin

Noes None

Absent Hahn

  
Jesse Arreguin Mayor

Attest   
Mark Numainville City Clerk

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

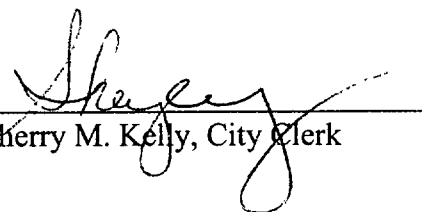
This resolution shall become effective June 1, 1999.


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

## **Chapter 23E.20 Live/Work Provisions**

Sections:

- [23E.20.010](#) Applicability of Regulations
- [23E.20.020](#) Purposes
- [23E.20.030](#) Business License Required
- [23E.20.040](#) Employment, Client and Customer Visits
- [23E.20.050](#) Portions of Unit Not to be Separately Rented or Sold
- [23E.20.060](#) Usable Open Space
- [23E.20.070](#) Change of Use to or from Live/Work Units
- [23E.20.080](#) Low Income Inclusionary Live/Work Units
- [23E.20.090](#) Findings

### **23E.20.010 Applicability of Regulations**

This Chapter applies to all Live/Work Units in any District in Berkeley. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.020 Purposes**

The purposes of this Chapter are:

- A. To provide for the appropriate development of units which incorporate both living and working space.
- B. To provide flexibility as needed for the development of Live/Work Units, particularly within existing buildings.
- C. To provide locations where appropriate new businesses can start up.
- D. To provide opportunities for people to live in mixed use industrial and commercial areas where compatible with existing uses.
- E. To protect existing and potential industrial uses from conflicts which neighboring and nearby residential uses can cause.
- F. To protect existing and potential residential uses from increased detriment which neighboring and nearby industrial uses can cause.
- G. To permit Live/Work Units that function predominantly as workspaces and secondarily as residences.



H. To assure that the division of space between living and working space within these units reflects the priority of workspace.

I. To assure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial and residential buildings in their area, while remaining consistent with the predominantly workspace character of live/work buildings. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.030 Business License Required**

At least one resident in each Live/Work Unit shall maintain at all times a valid City Business License and Zoning Certificate or Use Permit for a business on the premises. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.040 Employment, Client and Customer Visits**

A. Persons who do not reside in the Live/Work Unit may be employed in a Live/Work Unit if a Use Permit is obtained and the parking required in the District is provided.

B. Subject to the provisions of Section C, client and customer visits to Live/Work Units are permitted if a Use Permit is obtained and the parking required in the District is provided.

C. The Board may grant a Use Permit to establish or change the work use of a Live/Work Unit to medical offices or group instruction, subject to the finding in Section [23E.20.090.C](#). (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.050 Portions of Unit Not to be Separately Rented or Sold**

No portion of a Live/Work Unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.060 Usable Open Space**

A. A minimum of forty (40) square feet of usable open space shall be provided for each Live/Work Unit.

B. For those Live/Work projects established through change of use of an existing building, the Board may approve a Use Permit to substitute interior space accessible to all residents for the required open space in the project, if it finds that it is not practical or desirable to provide exterior open space. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.070 Change of Use to or from Live/Work Units**

- A. In the MU-LI District, Live/Work Units may not be changed to residential use, nor may the portion of the Live/Work Unit devoted to residential space be increased above the percentage of residential space when the unit was established.
- B. In Districts other than the MU-LI District, Live/Work Units may be changed to exclusively residential use or the residential floor area increased above forty percent (40%), only if all requirements for establishing a residential use are met.
- C. In Districts other than the MU-R District, Live/Work Units may be changed to exclusively commercial use, except as limited by Section D, provided that in the C-W District, only ground floor space may be so changed. All such changes are subject to Section [23C.08.030.A.3](#). In the MU-R District, Live/Work Units may not be changed to exclusively commercial use.
- D. Live/Work Units created by a change of use from residential use pursuant to this Section may not be changed to exclusively commercial use.
- E. In the C-W, MU-LI and MU-R Districts, the Board may grant a Use Permit to change residential units to Live/Work Units provided that the requirements of this Section are met.
- F. To change a dwelling unit to a Live/Work Unit, the finding required by Section [23C.08.030.A.3](#) must be made.
- G. In the C-W and MU-R Districts, in any change from residential to live/work, an area equal to at least seventy-five percent (75%) of the pre-existing residential floor area must be retained as living area within the Live/Work Unit, except pursuant to a Use Permit under Section [23E.20.090.B](#). (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.080 Low Income Inclusionary Live/Work Units**

- A. The developer of any project which creates five or more Live/Work Units shall provide low income inclusionary units which conform with the following provisions:
1. One inclusionary Live/Work Unit shall be provided for each five (5) Live/Work Units in the project, however there shall be no inclusionary requirement for a fraction of a unit;
  2. Inclusionary Live/Work Units shall be sold or rented at a price or rent affordable to a household with an income of eighty percent (80%) of the median income for the Oakland Primary Metropolitan Statistical Area;

3. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units;

4. Inclusionary Live/Work Units shall maintain affordable rents or resale prices under the provisions for increase set forth in the City-wide regulations concerning inclusionary units (Chapter 23C.12).

B. Inclusionary Live/Work Units may, at the applicant's sole discretion, differ from the other Live/Work Units in the project in that the inclusionary units may be smaller than other Live/Work Units in the project as long as they meet the minimum size requirement for Live/Work Units in the District; may have a lower grade of finishes than other Units in the project; and may be located anywhere within the project. (Ord. 6478-NS § 4 (part), 1999)

### **23E.20.090 Findings**

A. To approve any Use Permit concerning a Live/Work Unit in any District, the Zoning Officer or Board must find that the proposed Use Permit is consistent with the purposes of this Chapter.

B. In order to approve a Use Permit under Section [23E.20.070.G](#) to change a residential unit to a Live/Work Unit and retain less than seventy-five percent (75%) of the pre-existing residential area as living area within the Live/Work Unit, the Board must find that:

1. There are special circumstances particular to the application which make it appropriate to retain less than seventy-five (75%) of the pre-existing residential area as living space within the Live/Work Unit;

2. The exterior appearance of the Live/Work Unit has been designed to be compatible with adjacent and nearby residential uses.

C. In order to approve a Use Permit to establish or change the work use of a Live/Work Unit to medical office or group instruction, the Board must find that adequate parking for the use has been provided. (Ord. 6478-NS § 4 (part), 1999)

### 23E.80.040 Special Provisions: Protected Uses

A. The following uses which were lawfully in place as of July 6, 1989 are Protected Uses where the affected space is used exclusively for a Protected Use or the Protected Use is combined with residential use in the form of a Live/Work Unit. Protected Uses are divided into two categories, as follows:

Category 1	Art/Craft Studio
Category 2	Art Galleries, ancillary to Art/Craft Studios and when located in the same building Child Care Facility Family Day Care Home Fine arts performance, instruction and rehearsal studios (dance, music, theater) Theaters, Stage Performance, but excluding Motion Picture Theaters

B. Except as set forth in this section, a change in use from a protected use to any other use, protected or not, may only be authorized pursuant to Section [23E.80.090.C](#).

C. A change of use of less than 5,000 square feet, from one protected use to another within the same category, shall be allowed with a Zoning Certificate.

D. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or more from one protected use to another in the same category.

E. The Zoning Officer may issue an Administrative Use Permit for a change of use of less than 5,000 square feet from one category of protected use to another.

F. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from one protected use to another category of protected use.

G. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or less from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.

H. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.

I. Any protected use specified in this section which is owner-occupied and which protected use occupies all of the non-residential floor area within a building shall not be subject to the requirements of this section. (Ord. 6478-NS § 4 (part), 1999)