

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.

