



Civic Arts Program  
Office of Economic  
Development  
City Manager's Office

# FREQUENTLY ASKED QUESTIONS

## PUBLIC ART ON PRIVATE DEVELOPMENT PROGRAM A QUICK GUIDE FOR PRIVATE DEVELOPERS

**This document is a quick information guide to the Public Art on Private Development Program. For more details and specific guidelines please contact the Civic Arts Coordinator, Mary Ann Merker at [mmerker@cityofberkeley.info](mailto:mmerker@cityofberkeley.info).**

### **WHY IS THE CITY OF BERKELEY REQUIRING THAT MY DEVELOPMENT CONTRIBUTE TO PUBLIC ART?**

The goal for the Public Art in Private Projects Ordinance is to maintain Berkeley's arts and culture, enhance the economic sustainability of artists and art organizations, and create a more desirable community in which to live and work.

### **WHO CHOOSES THE PUBLIC ARTWORK?**

The artist and the artwork are chosen by the developer.

### **WHAT IS A WORK OF PUBLIC ART?**

Public art is artwork in the public realm, which may be situated on public or private property, and acquired through public or private funding. The most important aspect of a work of public art is that it is created by a professional working artist of recognized achievement in the field of public art. The artist may collaborate with architects, landscape architects, engineers, lighting designers and/or other professionals, but he or she must be the primary designer of the art project.

### **HOW WOULD MY DEVELOPMENT BENEFIT FROM INCORPORATING PUBLIC ART ON SITE?**

There are many benefits for Developers to include on-site public artwork, including gaining an enhanced profile, receiving awards, and positive media press. The artwork can help enhance the building making their properties more attractive to both business, residential markets, and promoting good relationships within the community.

### **WHAT ARE CITY OF BERKELEY'S REQUIREMENTS FOR PUBLIC ART IN PRIVATE DEVELOPMENT?**

The Public Art on Private Projects Ordinance, adopted by the City of Berkeley in June 2016 and retroactive to June 9, 2015, establishes a requirement for art for all new multifamily residential projects of five or more dwelling units, new commercial and industrial structures and all construction of building additions exceeding 10,000 sq. ft. or more. The ordinance provides an option of commissioning artwork on the development site equal to the cost of 1% of the estimated construction valuation, or paying the 0.8% to the Private Percent Art fund in-lieu of commissioning artwork.

### **HOW DOES PUBLIC ART ON-SITE GET SELECTED?**

First, the Developer should schedule a meeting with the Civic Arts Coordinator. At this meeting, the developer will gain more details about the process, costs and resources available.



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Once this initial meeting has taken place, the developer must employ a Public Art Consultant from an approved list on the City of Berkeley's Public Art on Private Development website, whose services would be used to solicit or identify public artists. If the developer chooses a Public Art Consultant not on the approved list, the developer can submit the consultant's resume to the Civic Arts Commission.

### **CAN I PAY THE ART CONSULTANT OUT OF THE ART FEE?**

The Public Art Consultant fee cannot be charged to the On-site Publicly Accessible Art fee valued at 1% of the construction costs.

### **WHAT CRITERIA DOES THE CIVIC ART COMMISSION APPLY TO REVIEW AND APPROVE THE PROPOSED PUBLIC ART?**

When reviewing the final Art Plan, the Commission will evaluate the public art based on the following criteria:

- Appropriateness of the artwork to the site;
- Visibility of the artwork by the public;
- Durability of Materials;
- Public Safety.

### **ARE THERE ANY ADDITIONAL DEPARTMENTS INVOLVED IN THE REVIEW PROCESS?**

The Civic Arts Commission is the only designated group involved in the review process for the public art component. The Design Review and Zoning Adjustment Board are not part of this process.

### **ARE THERE ADMINISTRATIVE FEES ASSOCIATED WITH THE ON-SITE PUBLICLY ACCESSIBLE ART?**

If the developer elects to provide on-site accessible art then they must pay an administrative fee equal to 5% of the 1% requirement directly to the Private Percent Art Fund prior to issuance of the building permit. The 5% administration fee can be counted toward the total requirement.

### **WHO OWNS THE ARTWORK?**

The public art is owned by the property owner and must remain on the site for a minimum of 10 years.

### **WHO IS RESPONSIBLE FOR MAINTENANCE OF ARTWORK?**

The property owner is responsible for the maintenance and conservation of the artwork. Durable materials should be used for minimal maintenance and proven ability to withstand the specific environmental conditions of the site. Artwork shall have reasonable maintenance requirements as specified by the artist.

### **WHAT HAPPENS IF THE OWNER SELLS THE PROPERTY?**

In case the development project is sold, the ownership of the public art will be transferred with the property. The artwork must remain at the development for 10 years. If the value of the art is itemized in the sale, the original owner may be subject to the California Art Resale Act.



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## **I WANT TO REMOVE THE ARTWORK FROM THE DEVELOPMENT SITE. WHAT SHOULD I DO?**

If the development owner wishes to sell, de-accession or remove the artwork from a site, the owner must notify the City of Berkeley a minimum of 6 months in advance before doing so, and should replace the on-site publicly accessible art that is removed with an alternative artwork equal or greater value. The developer should notify the artist prior to removal of the artwork according to the California Preservation of Works of Art Act and the Federal Visual Artist Rights Act.

## **HOW DO I PAY THE ART IN LIEU FEE?**

In lieu of an on-site project, a developer may contribute 0.8% of the estimated total construction valuation to the Private Percent Art Fund. A separate check must be written out to the City of Berkeley with a memo to the Art in Lieu fee and dropped off to the Civic Arts Program located in the City Manager's Office at 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704. Upon payment of the in-lieu fee the developer will receive a receipt from the Civic Arts Program and provides a copy to their Planner to complete their public art requirement.