



## Kriss Worthington

Councilmember, City of Berkeley, District 7

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### ACTION CALENDAR

June 9, 2015

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Kriss Worthington  
 Councilmember Jesse Arreguin

Subject: Referral to City Manager and Planning Commission: Drafting Percent for Art Ordinance, and Adding a Condition of Approval to Sizable Projects

#### RECOMMENDATION:

1. Refer to the City Manager for ordinance drafting the proposed private "Percent for Art" resolution adopted by the Civic Arts Commission; and
2. Request that the City Manager direct Planning staff to include as a condition of approval of all new residential multi-family and commercial developers which would be subject to this proposed "Percent for Art" policy, a requirement that those projects would be subject to and must comply with a percent for arts ordinance when adopted by City Council.

#### BACKGROUND:

The City of Berkeley is well known for its diversity in art, music and culture. Arts and culture are also an important economic engine, bringing visitors from throughout the region and world to Berkeley to take part in our community's numerous cultural activities and thereby supporting our local restaurants and businesses. Since 1999, the City of Berkeley has required all public improvements and bond measures to budget 1.5% of the total expenses for public art. Berkeley currently has no such requirement on private development. The 2004 Berkeley Arts and Culture Plan Policy 5.1 D. called for researching and implementing "*a Percent-for-Art Program for private developments applicable to major private construction projects*".

In March 2015, the Berkeley City Council referred to the Civic Arts Commission a proposal to establish a local percent for art ordinance. The Commission has held several meetings to craft a percent-for-art policy and on May 6, 2015, the Civic Art Commission voted 8-0-0-1 to send the attached policy to the City Council with a request that staff draft an ordinance based on the language of the Commission's framework. This policy would require all new developments of multi-family residential buildings of 20 or more units and commercial or industrial buildings of 25,000 square feet floor area or more to dedicate 1% of project constructions costs to publicly accessible art on-site and to in-lieu fees for public art. A majority of the arts funds could be used on the development site.

This policy would allow the Civic Arts Commission to develop guidelines for the selection of projects to be funded by the Public Art Fund. An annual selections process will result in recommendations of projects for funding subject to Council approval.

This policy proposal will help maintain Berkeley's art and music culture for generations.

FINANCIAL IMPLICATIONS:

Unknown. Proposed policy will fund the construction of publicly accessible art on the project site and additional revenues to a new Public Art Fund.

CONTACT PERSONS:

Councilmember Kriss Worthington            510-981-7170

Attachment:

1. Private 1% for Arts resolution adopted by Civic Arts Commission

**Private Percent for Art Resolution as adopted by the Civic Arts Commission**

**Whereas**, the City of Berkeley recognizes the vital importance of the arts to the city as a whole,

**Whereas**, the economic sustainability of artists and arts organizations is key to the vitality of the City of Berkeley,

**Whereas**, the City of Berkeley acknowledges the value of a citywide 1% of private development for art legislation in the context of other cities in the state of California,

**Be it resolved** that the City of Berkeley adopt a 1% for art in private development ordinance with details as follows:

**1. 1% for the art requirement on private development applies as follows:**

- This requirement applies to all new developments of multifamily residential buildings of 20 or more units, and commercial buildings and industrial buildings of 25,000 square feet floor area or more in all neighborhoods of the City. (*Further discussion to be had on this at May 27 Civic Arts Commission meeting.*)
- For all applicable buildings, the “percent for art” amount is equal to 1% of the construction cost.
- Allocation of Funds: Of the 1% for art, 60% will be allocated for publicly accessible art on site and 40% will be allocated to an in-lieu fee that will go into the City’s Art Fund.
- On-site art will be defined as artwork that meets the definition of “work of art” in the Berkeley Municipal Code (attached as Appendix A) and shall be situated in a publicly accessible location and installed as part of the construction of a new building and subject to the following approval process.

**2. Approval Process for On-Site Artwork:** Owners must consult with and obtain approval of the on-site art from the Civic Arts Commission as follows:

- Proposed art program (artist and specific artwork design not required at this point) submitted at permit application for Arts Commission approval. Proposed art program should indicate general location, budget allocation, and type and scale of possible artwork.
- Artist’s design requires approval by the Civic Arts Commission as a condition of the final building design approval process.
- Owner must validate proposed artwork value through an appraisal of the artist’s work of comparable scale and quality to be submitted to the Civic Arts

Commission as part of the artist design review.

- The Commission will render a decision in writing within 60 days (or later if mutually agreed upon) of receiving the following: 1. proposed art program, and 2. the artist's proposed design.
- If the owner and Commission cannot agree, the owner shall pay the entire one percent as an in-lieu fee for the Art Fund.

### **3. In-Lieu Fee for Art Fund:**

Payment of the "point four percent" (0.4%) in-lieu fee to the Art Fund would be payable to the City at the time of permitting.

Funds within the dedicated art fund are to be used for the following:

- art projects that meet the definition of "work of art" in the Berkeley Municipal Code
- capital improvements or capital acquisition for non-profit arts organizations located in Berkeley
- capital improvement for City-owned cultural assets

### **4. Art Fund Expenditure Guidelines and Approval Process:**

- The Civic Arts Commission shall develop guidelines for the selection of projects to be funded by the Art Fund and will administer a selection process annually resulting in recommendations of projects for funding subject to Council approval.
- The reasonable administrative expenses of Civic Arts staff to administer the Art Fund in compliance with the requirements the ordinance shall come from the Art Fund and shall not to exceed 20% of the amount contributed to the fund.