



Office of the City Manager

ACTION CALENDAR

June 28, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Submitted by: Carol Johnson, Acting Director, Planning and Development Department
Michael Caplan, Economic Development Manager, Office of Economic Development

Subject: One-Percent for Public Art on Private Projects Ordinance, Adding Berkeley Municipal Code Chapter 23C.23

RECOMMENDATION

1. Consider the information presented in this staff report, including the recommendations from the Planning Commission and the Civic Arts Commission, and decide what percentage of the proposed Public Art requirement should be required if an applicant chooses to pay a fee in lieu of providing public art; and
2. Adopt first reading of an Ordinance adopting the One-Percent for Public Art on Private Projects (1% for Art), adding Berkeley Municipal Code Chapter 23C.23; and
3. Adopt a Resolution adopting the City of Berkeley Guidelines and Procedures for the Percent for Public Art in Private Development Program.

FISCAL IMPACTS OF RECOMMENDATION

The One-Percent for Public Art on Private Projects (1% for Art) Ordinance implementation would generate funds to support public art and arts organizations. A new City Fund will be created for this purpose to track the revenues and expenditures.

CURRENT SITUATION AND ITS EFFECTS

On June 9, 2015, the City Council submitted a “final” referral to the Planning Commission (PC), requesting a draft 1% for Art Ordinance (Attachment 3). It would require developers of private projects to devote one percent of the construction cost to publicly accessible art in the proposed development project, or pay an in-lieu fee in that amount to the City for public art. The referral included direction for applicability, exceptions, role of the Civic Arts Commission (CAC), and other requirements.

The goals of the 1% for Art Ordinance, stated in the referral, are 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.

The City has an existing public arts program enabled by the 1999 Percent for Art Resolution, requiring the City of Berkeley to commit 1.5% of eligible Capital Improvement funds each year to Public Art funding. The 1% for Art Ordinance would align private development with the City's public art policy.

The PC and the CAC engaged in developing the 1% for Art Ordinance. A complete Percent for Art in Private Development Program includes the 1% for Art Ordinance and a set of Guidelines related to CAC roles and responsibilities. The 1% for Art Ordinance is the legal framework, while the Guidelines provide the role and responsibilities of the CAC. Both require City Council adoption. The draft 1% for Art Ordinance contains language including applicability, exceptions, general requirements, and administrative regulations. The Guidelines include specific requirements for the production of public art on-site pursuant to the 1% for Art Ordinance or the use of in-lieu funds.

BACKGROUND

The 1% for Art Ordinance:

The 1% for Art Ordinance would provide either on-site art at new private developments, or funds to the Cultural Trust Fund (in-lieu fee). The ordinance follows a similar format to the Inclusionary Housing Requirements (BMC Chapter 23C.12). It includes sections on the in-lieu fee and direction to promulgate administrative regulations, both of which provide guidance in developing the complete Percent for Art in Private Development Program.

The General Requirements section of the ordinance provides the applicant with two options for allocating funds:

- 1) Include on-site publicly accessible artwork valued at 1% of construction costs; or
- 2) Pay an in-lieu fee to the Cultural Trust Fund.

Both options were discussed at multiple Planning Commission meetings.

The In-lieu Fee section of the ordinance was drafted with a similar format to the Inclusionary Housing In-Lieu Fee requirements. It includes the sections stating the purpose, amount of fee, calculation of fee, and time of payment of fee.

The 1% for Art Ordinance would apply to all zoning districts in the City. In particular, it would apply to new development, including multi-family residential projects of five or more dwelling units, new commercial structures, and new industrial structures. The third applicable project type is building additions exceeding 10,000 square feet. The PC made the recommendation to base the "additions" threshold upon square footage rather

than a monetary value of building additions, since the cost of construction may change over time.

The 1% for Art Ordinance would not apply to the five buildings exceeding 75 feet in height in the C-DMU (BMC Section 23E.68.070), affordable housing projects, community and institutional use projects, and transitional housing projects. The exclusion of the five tall buildings in the C-DMU was one of the focus points from the Council's referral.

City of Berkeley Guidelines and Procedures:

The Guidelines and Procedures for the 1% for Art Ordinance state the responsibilities and decision-making authority granted to the CAC. The Guidelines focus on procedures and input by the CAC and may need to be shifted over time, and can be modified by the Council to address those needs. The guidelines include eligible and ineligible costs that may be charged to the 1% for Art requirement, as well as eligible expenditures for the Cultural Trust Fund. It describes the art selection process in relation to the planning application and review process.

Commissions' Processes and Decision Points:

The Planning Commission and the Civic Arts Commission separately discussed the 1% for Art Ordinance at multiple meetings, focusing on a range of issues. Areas of focus for the Commissions included applicability, definition of "work of art," in-lieu fee percentage, and expenditures of the in-lieu funds.

On July 1, 2015, the Planning Commission discussed the City Council's "final" referral for the 1% for Art Ordinance. That referral identifies recommendations regarding exemptions, applicability, and other requirements. The Planning Commission also met on October 21, 2015 and November 4, 2015 for further discussions. Prominent issues included excluding tenant improvements, but including building additions, in the applicability section, clarifying some of the definitions, and discussing the in-lieu fee percentage.

On October 28, 2015 the Civic Arts Commission discussed the 1% for Art Ordinance and provided feedback with a written statement about the "work of art" definition. The CAC also recommended that the in-lieu fee percentage be incentivized by allowing a reduction on the 1% amount down to 0.8%.

On January 20, 2016, the Planning Commission held a Public Hearing for the 1% for Art Ordinance draft and recommended it to the City Council (see Attachments 3 and 4). The PC discussed the threshold for building additions, as well as the in-lieu fee percentage (Attachment 5). After discussing the in-lieu percentage options, the Commission took three votes in an attempt to set the amount. They considered recommendations of 1%, 0.8% and 0.75%, with none of those options collecting a majority of PC votes. The third motion adopted by the Planning Commission (see

below) requests that the Council set the appropriate in-lieu amount. The Planning Commission passed the following motions:

Motion/Second/Carried (Poschman/Novosel) to recommend multiple text modifications to Section 23C.XX.010 (Purposes), (found in the draft ordinance provided to Council), including CAC's recommendations. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

Motion/Second/Carried (Murphy/Poschman) to recommend revising the Applicability Section as follows: (1) Subsection 23C.XX.020.C: replace the proposed monetary threshold with floor area of minimum 10,000 square feet, and (2) eliminate Subsection 23C.XX.020.D until criteria developed. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel. Noes: Poschman, Trevino. Abstain: None. Absent: Pollack. (6-2-0-1)

Motion/Second/Carried (Poschman/Murphy) to recommend sending Subsection 23C.XX.050.A.2 (General Requirements) to City Council along with the three previous votes and request City Council decide the appropriate in-lieu fee percentage. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

The draft resolution and Guidelines which accompany this staff report present the in-lieu fee amount at 1%, subject to amendment per the Council policy direction staff have requested.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Publicly accessible art is a benefit to the community at large, as well as inhabitants of the particular project. The PC and CAC have developed the 1% for Art Ordinance to provide either on-site public art, or to provide additional funds into the City public art program.

CONTACT PERSON

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Mary Ann Merker, Civic Arts Coordinator, City Manager Department, 510-981-7533

Attachments:

- 1: Ordinance: One-Percent for Public Art on Private Projects
- 2: Resolution: Adopting Guidelines and Procedures for the Percent for Public Art in Private Development Program
 - Exhibit A: City of Berkeley Guidelines and Procedures: Public Art in Private Development Program Resolution

- 3: June 9, 2015 Council Referral
- 4: January 20, 2016 Planning Commission Public Hearing Staff Report
- 5: January 20, 2016 Public Hearing Notice
- 6: January 20, 2016 Public Hearing Minutes

ORDINANCE NO. -N.S.

ONE-PERCENT FOR PUBLIC ART ON PRIVATE PROJECTS; ADDING BERKELEY
MUNICIPAL CODE 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
One-Percent 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.

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.

Section 23C.23.030 Exceptions

This Chapter does not apply to the following project types:

- A. Commercial Mixed Use District (C-DMU) projects described in Section 23E.68.070.B.
- B. 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.
- C. 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 non-profit organizations dedicated to cultural activities available to a broad public.
- D. Transitional Housing

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.

Section 23C.23.050 General Requirements

- A. Developers subject to this Chapter shall either:
 - 1. Include On-Site Publicly Accessible Art valued at 1% of the Construction Cost.
 - 2. Pay an in-lieu fee of 1% of the Construction Cost to the City as set forth in Section 23C.23.070.

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.

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 1% 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.

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.

Section 2. 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.

RESOLUTION NO. ##,###-N.S.

ADOPTING GUIDELINES AND PROCEDURES FOR THE PERCENT FOR PUBLIC ART IN PRIVATE DEVELOPMENT PROGRAM

WHEREAS, on June 9, 2015, the City Council submitted a referral to the Planning Commission, requesting a draft One-Percent for Art Ordinance, to include the role of the Civic Arts Commission; and

WHEREAS, on June 28, 2016, the Berkeley City Council adopted the first reading of the One-Percent for Public Art on Private Projects Ordinance; and

WHEREAS, the Ordinance, to be codified in Berkeley Municipal Code Chapter 23C.23, establishes regulations for public art on private development projects; and

WHEREAS, the Ordinance refers to guidelines in Section 23C.23.080, which the Council, by resolution, must adopt for the administration and implementation of Berkeley Municipal Code Chapter 23C.23; and

WHEREAS, the Civic Arts Commission will use the guidelines to determine compliance with Berkeley Municipal Code Chapter 23C.23.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley Guidelines and Procedures: Public Art in Private Development Program, included herein as Exhibit A, are hereby adopted as the guidelines pursuant to Berkeley Municipal Code Section 23C.23.080.

Exhibit:

A: City of Berkeley Guidelines and Procedures: Public Art in Private Development Program

Exhibit A

CITY OF BERKELEY

GUIDELINES AND PROCEDURES:

PUBLIC ART IN PRIVATE DEVELOPMENT PROGRAM

I. INTRODUCTION

Berkeley Municipal Code (BMC) Chapter 23C.23 (One-Percent for Public Art on Private Projects) requires that specified projects include public art with a minimum value of 1% of the construction cost or pay an in lieu fee of 1% to the City. This requirement will add to the artistic fabric of our community.

II. PURPOSE OF GUIDELINES

The purpose of these Guidelines is to set forth the specific requirements for the production of public art pursuant to Chapter 23C.23 or the use of in lieu payments pursuant to it.

In general, these Guidelines call for:

- A. The commissioning of artists of the highest artistic merit who can bring artistic recognition and expression to the City of Berkeley;
- B. The encouragement of local artistic endeavors and support of local artists;
- C. The encouragement of public dialogue and interaction with art in public places, through appropriate education forums and public meetings, and programs;
- D. The inclusion of a broad range of works of art, reflective of the overall diversity of current works in the field of visual arts;
- E. The commissioning of works of art varying in genre, style, scale, medium, form and intent, and reflective of trends and disciplines in art on a local, regional, national and international level; and
- F. Broad and equitable distribution of works of art in the City of Berkeley.

III. DEFINITIONS

- A. "Artist" has the meaning prescribed by BMC Section 23C.23.040.A.
- B. "Arts and Cultural Plan" means the long term plan approved by the Berkeley City Council in 2004 by Resolution No. 62,599-N.S., as amended from time to time.

- C. “Civic Arts Coordinator” means the designated staff position within the office of the City Manager that supports the Developer through the Public Art in Private Development Program and reviews the Preliminary Public Art Plan.
- D. “Conceptual Public Art Plan” means the preliminary design phase of On-Site Publicly Accessible Art, which includes the proposed artwork medium and proposed location(s) for the artwork, including the placement of the artwork within the site plan of the Development Project.
- E. “Cultural Services” mean classes, performances or events that provide opportunities for the public to freely experience visual, performing, media, dance or literary arts activities.
- F. “Cultural Trust Fund” means the fund established by the City for the purpose of implementing the Arts and Cultural Plan.
- G. “Developer” has the meaning prescribed by BMC Section 23C.23.040.D.
- H. “Development Project” means any project subject to the requirements of Chapter 23C.23.
- I. “Final Public Art Plan” means the final design phase of On-Site Publicly Accessible Art, and includes scale drawings and/or maquettes, materials and color samples that fully describe the Artist’s or Artists’ approach to the project, as well as engineering drawings of the structure and installation of the On-Site Publicly Accessible Art.
- J. “On-Site Publicly Accessible Art” has the meaning prescribed by BMC Section 23C.23.040.E. “Publicly Accessible” means 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.
- K. “Preliminary Public Art Plan” means the plan submitted by the Developer’s Public Art Consultant to the Civic Arts Coordinator that describes the Artist’s or Artists’ proposed scope of work for On-Site Publicly Accessible Art, the proposed location(s) for the artwork, and the Artist(s) selection process that will be employed, and includes a written agreement between the Public Art Consultant and the Developer with a payment schedule directly related to the scope of work and extending through the completion of the project proposal.

- L. “Public Art Consultant” means a curator, designer or art consultant with proven experience of overseeing artist selection and management of art in public places.

IV. PLANNING APPLICATION AND REVIEW

- A. The Planning Department will advise Developers of their obligations under Chapter 23C.23 as part of the Use Permit application process. The public art approval process is designed to operate parallel to the land use review process in order to gain approvals in a simultaneous time frame. For each Development Project, the public art approval process, as described below, must be completed prior to the issuance of a building permit.
- B. The Developer shall identify in its Use Permit application whether it elects to provide On-Site Publicly Accessible Art. Developers who do so will be provided with these Guidelines and directed to meet with the Civic Arts Coordinator.
- C. The Civic Arts Commission, not the Design Review Committee or Zoning Adjustments Board, is responsible for providing review and recommendations on the Final Public Art Plan, but not content, viewpoint or any other expressive aspect of the proposed On-Site Publicly Accessible Art. (See Section V.C.4.)
- D. Developers who elect as part of their application to provide On-Site Publicly Accessible Art must develop three plans during the On-Site Publicly Accessible Art process:
 - a. A Conceptual Public Art Plan to be presented to the Planning Department at the time of submitting an application for Use Permit. (See Section V.C.1.)
 - b. A Preliminary Public Art Plan to be presented to the Civic Arts Coordinator for review and approval prior to development of a Final Public Art Plan. Projects with On-Site Publicly Accessible Art budgets of less than \$100,000 do not require a Preliminary Public Art Plan and may proceed directly to the development of the Final Public Art Plan. (See Section V.C.3.)
 - c. A Final Public Art Plan, approved by the Civic Arts Commission, to be included with building permit application materials submitted to Planning staff prior to issuance of a building permit for the Development Project. (See Section V.C.6.)

E. In cases where the Developer has elected to pay an in lieu fee under Section 23C.23.070, the Developer shall pay that fee to the City for deposit into the Cultural Trust Fund prior to issuance of a building permit.

V. ON-SITE PUBLICLY ACCESSIBLE ART

- A. The placement of pre-existing artworks and restoration or preservation of existing historic artworks and Artist-designed elements on building facades and other Publicly Accessible areas may be considered On-Site Publicly Accessible Art in limited circumstances if, by the determination of the Civic Arts Coordinator, they are appropriate to the site and integrated into the design of the Development Project.
- B. On-Site Publicly Accessible Art that is freestanding or consists of site-integrated visual art elements shall be sited within Publicly Accessible areas of the Development Project. On-Site Publicly Accessible Art may not be located inside the structure unless the space in which it is located is Publicly Accessible.
- C. The procedures for review and approval of the On-Site Publicly Accessible Art are as follows:
1. The Developer shall submit to the Planning Department the Conceptual Public Art Plan at the time of submission of an application for a Use Permit.
 2. The Developer shall engage the services of a Public Art Consultant.
Developers may select a Public Art Consultant from a list of pre-approved Public Art Consultants, which is developed by the Civic Arts Commission through a call for consultants process. Developers may alternatively select an individual not on the pre-approved list. In that case, the Developer must produce materials for the Civic Arts Coordinator's approval demonstrating the individual's experience and competency as a Public Art Consultant. Projects with On-site Public Art budgets of less than \$100,000 do not require a Preliminary Public Art Plan and may skip the remainder of step 2. The Public Art Consultant and Developer shall create a Preliminary Public Art Plan to present to the Civic Arts Coordinator for review and approval prior to development of a Final Public Art Plan. Information the Public Art Consultant will present at the Preliminary Public Art Plan stage includes:

- i. Background research conducted on the project location and its parameters, what was learned about the site and community that influenced the Preliminary Art Plan.
 - ii. General conceptual and material approach to artwork design: what ideas the Artist will explore, media that are being considered; imagery that is under consideration.
 - iii. Specific location(s) for the artwork within the Development Project.
 - iv. How the theme was developed, how the artwork location was selected, how the stakeholders influenced and responded to the idea, and the media/materials that are being considered and whether the On-Site Publicly Accessible Art meets the criteria of paragraphs A and B of this section.
 - v. Artist selection process to be employed.
 - vi. Written agreement between the Public Art Consultant and the Developer with a payment schedule directly related to the scope of work and extending through the completion of the project proposal.
3. Once the Civic Arts Coordinator has completed review and approval of the Preliminary Public Art Plan, the Developer and Public Art Consultant may proceed with the development of the Final Public Art Plan, including Artist selection. During this process, the Civic Arts Coordinator will monitor the Artist's or Artists' progress and may request technical information as needed. The Civic Arts Coordinator may recommend that the Artist(s) consult with a conservator on materials choices, fabrication methods and artwork maintenance requirements.
4. The Developer shall submit a Final Public Art Plan to the Civic Arts Coordinator, who will review the plan for completeness and subsequently schedule it for review and final approval by the Civic Arts Commission. The Civic Arts Commission's review criteria include consistency with the Preliminary Public Art Plan, whether the Artist or Artists have adequately addressed issues of durability and maintenance, and whether the requirements of the Final Public Art Plan (as listed below) are adequately addressed. For

projects with On-Site Publicly Accessible Art budgets greater than \$500,000, if the Commission believes that the criteria have not been adequately addressed it may request that the project return for another review. Information that the Artist(s) will present at the Final Public Art Plan stage includes:

- i. Complete plan for On-Site Publicly Accessible Art, including artwork rendering, scale, materials, and methods of fabrication and attachment.
 - ii. Description of artwork materials, including samples, explanation of selection process, durability, and any other relevant information.
 - iii. Explanation of the relationship between the artwork and the site, the function of the artwork, next stage of project evolution, and any issues the Artist considered relative to conservation and maintenance of the artwork.
 - iv. An executed agreement between the Developer and the Artist(s).
 - v. A construction budget for the On-Site Publicly Accessible Art component of the Development Project.
5. The Developer must include the approved Final Public Art Plan with the Development Project materials submitted for final review by Planning Department staff and the Zoning Adjustments Board.
 6. Prior to construction and installation of the On-Site Publicly Accessible Art, signed engineering and construction documents must be reviewed as part of the overall building permit review for the Development Project.

VI. ELIGIBLE AND INELIGIBLE COSTS

A. The following costs may be charged to the On-Site Publicly Accessible Art requirement of Chapter 23C.23.

1. All direct expenses to create the On-Site Publicly Accessible Art;
2. Professional fees for the Artist(s) (up to 20% for design through construction document phase);
3. Additional labor costs incurred by the Artist(s) and/or contracted services such as engineering required for the production and installation of the On-site Public Art;
4. Required permit fees associated with the On-Site Publicly Accessible Art;

5. Pre-approved travel expenses directly related to the On-Site Publicly Accessible Art;
 6. Transportation of the On-Site Publicly Accessible Art to the site;
 7. Structural elements to mount, display or secure the On-Site Publicly Accessible Art;
 8. Installation of the On-Site Publicly Accessible Art;
 9. Identification and information plaque containing the Artist's or Artists' name(s), media, and date.
- B. The following costs may not be charged to the On-Site Publicly Accessible Art requirement of Chapter 23C.23.
1. Public Art Consultant fees;
 2. Services or utilities necessary to operate, maintain or conserve the On-Site Publicly Accessible Art for the life of the Development Project;
 3. Publicity;
 4. Insurance for the On-Site Publicly Accessible Art for the life of the Development Project.
- C. Any proposed On-Site Publicly Accessible Art that includes facade treatments, hardscapes or functional elements, must demonstrate that the associated costs are supplemental to the original construction budget for these surface areas.
- Documentation of these added funds must be submitted for approval to the Civic Arts Commission as a part of the Final Public Art Plan.

VII. OWNERSHIP MAINTENANCE AND REMOVAL OR REPLACEMENT

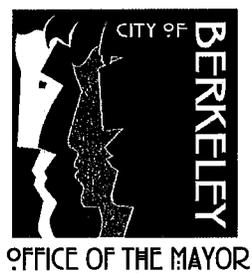
- A. On-Site Publicly Accessible Art shall remain the property of the Developer.
- B. On-Site Publicly Accessible Art must remain on the site for a minimum of 10 years. After 10 years, if the Developer wishes to remove the On-Site Publicly Accessible Art, the Developer shall notify the City at least 6 months before doing so, and shall replace the On-Site Publicly Accessible Art that is removed with alternative On-Site Publicly Accessible Art of equal or greater value, which shall be subject to the same review and approval process for the original On-Site Publicly Accessible Art set forth in these Guidelines.

- C. The Developer shall notify the Artist(s) prior to removal of On-Site Publicly Accessible Art according to the California Preservation of Works of Art Act and the Federal Visual Artists Rights Act (VARA).
- D. The contract between the Developer and the Artist(s) will include a maintenance plan and requires the Artist(s) to make repairs for any inherent vice related to the design and fabrication of the artwork for one year. The Developer shall consult with the Artist(s) regarding repairs to the On-Site Publicly Accessible Art. If the Artist or Artists are deceased or choose not to do the repair, the Developer shall retain a professional art conservator to undertake repairs. If the Development Project on which the On-Site Publicly Accessible Art is located is destroyed beyond recognition of the original artwork, the Artist(s) will be given first refusal to buy the On-Site Publicly Accessible Art pursuant to the requirements of the California Preservation of Works of Art Act and the VARA. If the Development Project property changes hands and the value of the art is itemized in the sale, the original owner may be subject to the California Art Resale Act.

VIII. THE CULTURAL TRUST FUND

- A. The City of Berkeley recognizes the important role the arts play in creating livable places. Therefore, Developers subject to Chapter 23C.23 are strongly encouraged to consider development of On-Site Publicly Accessible Art. Nonetheless, Developers have the option of paying an in lieu fee. All such payments will be deposited into the Cultural Trust Fund.
- B. The purpose of the Cultural Trust Fund is to provide arts and Cultural Services to the community at large by funding implementation of the Arts and Cultural Plan. Expenditures from the Cultural Trust Fund will be recommended annually by the Civic Arts Commission to the City Council as part of the annual budget process. The recommendations of the Civic Arts Coordinator and Civic Arts Commission shall conform to the following allocations:
 - 1. 35%: Grants to nonprofit arts and cultural organizations for the provision of Publicly Accessible Cultural Services to Berkeley's communities;

2. 35%: Commissions for Art in public places including unique permanent and temporary artworks, and enhancements to City-funded capital improvement projects for public art on City property or public rights of way;
 3. 20%: Administration of the Cultural Trust Fund, not to exceed 20% of the total amount being allocated in any given fiscal year;
 4. 10%: Conservation of the City's collection of public art.
- C. The Civic Arts Commission shall maintain a regular annual public process for deciding how the funds shall be allocated in accordance with the priorities of the Arts and Cultural Plan.
- D. The City will create an inventory, with condition assessments, for all work in the City's collection of public art on City property. The inventory will identify conservation and will be prioritized by the severity of conservation need. The Cultural Trust Fund will be used to address those artworks with the highest priority first. The Commission will continue to assess the collection and prioritize conservation needs on an annual basis.



RECEIVED AT
COUNCIL MEETING OF:

JUN 09 2015

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Action Calendar
June 9, 2015

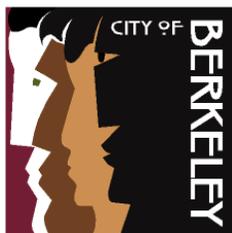
**Revised motion from Mayor Bates and Councilmembers Worthington Item 40,
"Referral to City Manager and Planning Commission: Drafting Percent for Art
Ordinance, and Adding a Condition of Approval to Sizable Projects."**

1. Request the City Manager notify applicants for all new residential multi-family projects and for all new commercial projects that the City Council is considering an ordinance that would require developers of such projects to devote one percent of the construction cost to public art or to pay an in lieu fee in that amount to the City for public art purposes; and include a condition of approval on all such projects that would require compliance with such an ordinance if it is adopted, in an amount not to exceed 1% of the construction cost of the project.

2. Refer to the Planning Commission the March 18 language passed by the City Council of the "One Percent for Public Art on Private Projects" with revisions by the City Council based on the recommendations of the Civic Arts:
 - The Private Percent for Art Ordinance would apply to all new multifamily residential buildings of five or more units, commercial buildings, and industrial buildings with the exception of C-DMU Downtown Mixed Use District projects subject to "Additional Community Benefits for Buildings Exceeding 75 Feet."
 - The ordinance would require owners of property subject to the ordinance to devote one percent of construction costs to public art as a community benefit, either as publicly accessible artwork on site or through an in-lieu fee.
 - Owners seeking to provide public artwork on site should consult with and obtain approval of the public art program from the Civic Arts Commission. The Commission will render a decision within 90 days of receiving the proposal, or later if mutually agreed upon. If the owner and Commission cannot agree, the owner shall pay the in-lieu fee or appeal to the City Council.
 - On-site eligible artwork includes permanent artwork that meets the definition of "work of art" in the Berkeley Municipal Code, cultural programming, and cultural facilities.
 - The Civic Arts Commission shall make recommendations for Council approval on off-site art projects to be funded by the newly established art fund, which can include temporary or permanent art that meets the definition of "work of art" in the Berkeley Municipal Code, cultural programming, and cultural facilities.

Original Language with Revisions Shown

- The Private Percent for Art Ordinance would apply to all new multifamily residential buildings of five or more units, commercial buildings, and industrial buildings with the exception of C-DMU Downtown Mixed Use District projects subject to "Additional Community Benefits for Buildings Exceeding 75 Feet." in all areas of the City outside of the Downtown Mixed Use District.
- The ordinance would require owners of property subject to the ordinance to devote one percent of construction costs to public art as a community benefit, either as publicly accessible artwork on site or through an in-lieu fee.
- Owners seeking to provide public artwork on site should consult with and obtain final approval of the public art program from the Civic Arts Commission. The Commission will render a decision within 90/120 days of receiving the proposal, or later if mutually agreed upon. If the owner and Commission cannot agree, the owner shall pay the in-lieu fee or appeal to the City Council.
- On-site eligible artwork includes permanent artwork that meets the definition of "work of art" in the Berkeley Municipal Code, cultural programming, and cultural facilities.
- ~~Owners may opt to pay the fee without proposing on-site art, or they may propose a combination of installing on-site art and paying a fee whose total value is one percent of construction costs.~~
- ~~Owners paying the in-lieu fee would make the payment to a dedicated art fund to be used for art projects that meet the definition of "work of art" in the Berkeley Municipal Code or capital improvements for non-profit arts organizations in Berkeley.~~
- The Civic Arts Commission shall make recommendations for Council approval on off-site art projects to be funded by the newly established art fund, which can include temporary or permanent art that meets the definition of "work of art" in the Berkeley Municipal Code, cultural programming, and cultural facilities.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: January 20, 2016

TO: Members of the Planning Commission

FROM: Sydney Stephenson, Planning Intern
Alex Amoroso, Principal Planner

SUBJECT: Public Hearing: Draft One Percent for Publicly Accessible Art on Private Projects Ordinance

RECOMMENDATION

Hold a Public Hearing on the draft One Percent for Publicly Accessible Art on Private Projects Ordinance (1% Ordinance). Recommend the draft Ordinance, with any changes if necessary, to the Council.

BACKGROUND

The Planning Commission received the Council Referral on July 9, 2015, to require developers of private projects to devote one percent of the construction cost to publicly accessible art (on site) or pay an in-lieu fee (Attachment 1). The Planning Commission and the Civic Arts Commission have been engaged in developing this private percent for public art program, which includes both an ordinance and related guidelines. The Planning Commission had two meetings prior to the Public Hearing to discuss and finalize the recommendations on the Draft One Percent for Public Art on Private Projects Ordinance, the relevant staff reports are found in Links 1 and 2. The Civic Arts Commission (CAC) met on October 28, 2015 and provided feedback on the draft 1% Ordinance with their written motion (Attachment 2).

This Public Hearing is required of the Commission, so that a recommendation can be forwarded to the Council. Attachment 3 is the Public Hearing notice as published and posted. The draft of the 1% Ordinance is Attachment 4. While the Guidelines do not require a Public Hearing or Planning Commission recommendation, they are included in this packet for reference (Attachment 5).

DISCUSSION

This staff report discusses the roles and interactions between the 1% Ordinance and its Guidelines. There are two items that require Planning Commission decisions, to finalize the recommendation of the draft 1% Ordinance for Council.

Ordinance and Guidelines interactions

Together the 1% Ordinance and the Guidelines will make up Berkeley's private percent for public art program. The 1% Ordinance is the legal framework, while the Guidelines provide the responsibilities and decisions that the CAC hold. Both are required to be adopted by the City Council. The draft 1% Ordinance contains information including applicability, exceptions, general requirements, and administrative regulations. The Guidelines include specific requirements for the production of public art on-site pursuant to the 1% Ordinance or the use of in-lieu funds pursuant to it.

Any changes to the 1% Ordinance must go through the City Council process. While, changes to the Guidelines does not require the same Planning Commission process prior to authorization by the City Council. The Guidelines focus on procedures and input by the Civic Arts Commission and may need to be shifted over time.

Decision Points

There are two decision points in the 1% Ordinance requiring Commission input to complete the recommendation to Council: in the Applicability, General Requirements, and In-Lieu Fee sections. The staff requests that the Commission discuss the topics listed below and come to recommendations for each.

Applicability Section 23C.XX.020 C: the square footage threshold for applicable building additions would place a minimum size on additions, over which the 1% Ordinance would apply. Listed below are options gathered from other Cities' ordinances, a similar example from Berkeley where a threshold is set, and options for size flexibility:

Options:

1. 10,000 square feet or more and a construction value of \$200,000 or more (Palo Alto)
2. 25,000 square feet or more (Pasadena)
3. Construction of new buildings and additions of more than 20,000 square feet (Berkeley's C-DMU Green Building Provisions)
4. Smaller or larger than what has been stated above?
5. No requirement for additions.

A threshold for size of additions to existing structures would open opportunities to capture art and/or fees, for other than new construction. While the Council referral does not reference this, staff included it for consideration, since several other jurisdictions have used the option.

General Requirements Section 23C.XX.050 Allocation of Funds: the amount of the in-lieu fee requirement could be the same as that required for the on-site art, or reduces, as shown in the options below:

Options:

- a. Pay 1% of construction costs to in-lieu fund.
- b. Pay reduced amount of 0.8% of construction costs to in-lieu fund.

This option is included for consideration at the request of the Civic Arts Commission, because they believe the reduced in-lieu fee might encourage project developers to choose the in-lieu fee option rather than on-site publicly accessible art, and this would increase fees to the Cultural Trust Fund.

Planning staff is of the opinion that a reduced in-lieu fee is not necessary. The process for including publicly accessible art on site is complex. The value of the 1% of construction cost may not generate sufficient funds to provide for a substantial art presence on site. These reasons may push developers to consider the in-lieu fee as a more practical and time saving option, even at the full 1% cost.

Once a recommendation for the in-lieu fee amount is made, that figure will also be included in In-Lieu Fee Section 23C.XX.060 Amount of Fee, to complete that section.

Environmental Review

CEQA is used to evaluate physical impacts resulting from changes in use and activity. The One Percent for Public Art on Private Projects Ordinance sets a financial requirement for projects, but has no effect on the development of land or projects. Therefore, this action can be considered exempt from CEQA, per Section 15061.b.3, which states:

"...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

CONCLUSION

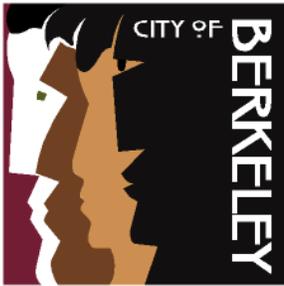
Staff recommends that the draft One Percent for Publicly Accessible Art on Private Projects Ordinance be recommended to the Council for action.

ATTACHMENTS:

1. Council Referral on 1% for Art from June 9, 2015
2. 10/29/15 Civic Arts Commission's Motion on First Draft 1% Ordinance
3. 1/20/2016 Public Hearing Notice
4. Draft One Percent for Public Art on Private Projects Ordinance
5. Guidelines for One Percent for Public Art

LINKS:

1. [10/21/15 Planning Commission Meeting Agenda](#)
2. [11/4/15 Planning Commission Meeting Agenda](#)



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

JANUARY 20TH, 2016

One Percent for Public Art on Private Projects Draft Ordinance

The Planning Commission, of the City of Berkeley, will hold a Public Hearing on the above matter, on **Wednesday, January 20th, 2016**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley, California (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION:

The purpose of the new Zoning Ordinance Chapter 23C.XX is to require public art in new private construction projects. The One Percent for Public Art on Private Projects Ordinance requires the applicant to choose one of the following: 1) allocate one percent of the project's construction cost to a publically accessible artwork on-site, and place the artwork on site; or, 2) pay an in-lieu fee of a yet to be determined percentage of construction costs to the Cultural Trust Fund (in lieu fund); or 3) split the required commitment to public art between art on-site and the in-lieu fee. This ordinance applies to all zoning districts. Applicable project types include: multi-family residential projects of five or more dwelling units, new commercial and industrial structures, and all construction of building additions exceeding a yet to be determined square footage threshold.

The draft ordinance language can be found in the link provided below:

[One-Percent for Art on Private Projects Draft Ordinance](#)

LOCATION:

The proposed Ordinance would apply Citywide, in all Districts identified.

ENVIRONMENTAL REVIEW STATUS Public Review Information: CEQA is used to evaluate physical impacts resulting from changes in use and activity. The One Percent for Public Art on Private Projects Ordinance sets a financial requirement for projects, but has no effect on the development of land or projects. Therefore, this action can be considered exempt from CEQA, per Section 15061.b.3, which states:

"...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

PUBLIC COMMENT & FURTHER INFORMATION

Comments may be made verbally at the Public Hearing, and in writing before the hearing. Written comments or questions concerning this project should be directed to:

Alex Amoroso
Planning Commission Secretary

E-mail: aamoroso@CityofBerkeley.info

City of Berkeley
Land Use Planning Division
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704

Telephone: (510) 981-7410

To assure distribution to Commission members prior to the meeting, ***correspondence must be received by 12:00 noon, seven (7) days before the meeting.*** For items with more than ten (10) pages, fifteen (15) copies must be submitted to the Secretary by this deadline. For any item submitted less than seven (7) days before the meeting, fifteen (15) copies must be submitted to the Secretary prior to the meeting date.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions should be directed to Alex Amoroso at aamoroso@CityofBerkeley.info.



Planning Commission

1 **FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
 2 **January 20, 2016**

3 The meeting was called to order by Chair Murphy at 7:03 p.m.

4 **Location:** North Berkeley Senior Center, Berkeley, CA

5 **Commissioners Present:** Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman,
 6 Trevino.

7 **Commissioners Absent:** Pollack (excused).

8 **Staff Present:** Alex Amoroso, Kelly Cha, Elizabeth Greene, Sydney Stephenson.

9 **ORDER OF AGENDA:** None.

10 **CONSENT CALENDAR:** None.

11 **PUBLIC COMMENT PERIOD:** None.

12 **PLANNING STAFF REPORT:** Principal Planner Alex Amoroso announced that the next
 13 Planning Commission meeting is scheduled for February 17, 2016.

14 **COMMUNICATIONS IN PACKET:** None.

15 **LATE COMMUNICATIONS** (Received after the Packet deadline):

- 16 • 2015-12-16 – Matthew Lewis, Director of Local Affairs, EVAP, Short Term Rentals – Item 10
- 17 • 2016-01-16 – Larry Rinder, re: height limits on Telegraph Avenue between Dwight and
- 18 Parker – Item 11
- 19 • 2016-01-18 – John English, Re: Development Standards in the Telegraph Commercial Zone
- 20 – Item 11
- 21 • 2016-01-19 – Jesse Townley, Chair, Berkeley Rent Board, re: Short-Term Rentals – Item 10
- 22 • 2016-01-20 – Gloria Bruce, Executive Director, and Charlotte Rosen, Membership &
- 23 Communications Associate, East Bay Housing Organizations (EBHO), Re:
- 24 Recommendations on Item 10: Short-Term Rentals – Item 10
- 25 • 2016-01-20 – Ben Darrow, Chair, and Igor Tregub, Vice Chair, Housing Advisory
- 26 Commission, Item 10: Short Term Rentals – Item 10

27 **LATE COMMUNICATIONS** (Received and distributed at the meeting):

- 28 • 2016-01-20 – Civic Arts Commission Policy Committee, Comments on the Private Percent
- 29 for the Arts Ordinance – Item 9

- 30 • 2016-01-20 – Civic Arts Commission Policy Committee, Comments on the Private Percent
31 for Arts Guidelines – Item 9
- 32 • 2016-01-20 – Kris Kargo, Resident, Re: Development Standards in the Telegraph Commercial
33 Zone (C-T) – Item 11
- 34 • 2016-01-20 – Cristian Ionescu-Zanetti and Mia Caporal, Chilton Way Residents and
35 homeowners, re: FAR Development Standards South of Dwight – Item 11
- 36 • 2016-01-20 – Gene Poschman, Planning Commissioner, Motions and thoughts on Short-Term
37 Rental Ordinance – Item 10

38 **CHAIR REPORT:** None.

39 **COMMITTEE REPORT:** None.

40 **7. APPROVAL OF MINUTES:**

41 Motion/Second/Carried (GP/JN) to approve the Planning Commission Meeting Minutes from
42 December 16, 2015 with a minor change on line 133. Ayes: Murphy, Matthews, Chapple, Davis,
43 Poschman, Novosel, Bartlett, Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

44 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

45 **AGENDA ITEMS**

46 **9. Public Hearing:** *1% for Art Ordinance*

47 Motion/Second/Carried (GP/TD) to open a public hearing on 1% for Art Ordinance. Ayes: Murphy,
48 Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: None.
49 Absent: Pollack. (8-0-0-1)

50 Principal Planner Alex Amoroso clarified that the proposed ordinance is intended to provide
51 publicly-accessible art on private property development projects. The City already require
52 additional fees on development projects on public properties. The guidelines are used for setting
53 process, rather than the ordinance because making changes to guidelines is much easier than
54 amending an adopted ordinance. The Commission discussed and provided
55 feedback/recommendations on imposing fees on major additions to existing buildings, and on
56 appropriate in-lieu fee percentage, as well as some text amendments.

57 Public Speakers: 3

58 Motion/Second/Carried (JN/DM) to close the public hearing on 1% for Art Ordinance. Ayes:
59 Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain:
60 None. Absent: Pollack. (8-0-0-1)

61 Motion/Second/Carried (GP/JN) to recommend multiple text modifications to Section 23C.XX.010
62 (Purposes), (found in the draft Ordinance provided to Council), including CAC's
63 recommendations. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman,
64 Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

65
66 Motion/Second/Carried (TD/DM) to recommend Subsection 23C.XX.030 (Exception) to City
67 Council as drafted. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman,
68 Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

69
70 Motion/Second/Carried (SM/GP) to recommend revising the Applicability Section as follows: (1)
71 Subsection 23C.XX.020.C: replace the proposed monetary threshold with floor area of minimum
72 10,000 square feet, and (2) eliminate Subsection 23C.XX.020.D until criteria developed. Ayes:
73 Murphy, Matthews, Bartlett, Chapple, Davis, Novosel. Noes: Poschman, Trevino. Abstain: None.
74 Absent: Pollack. (6-2-0-1)

75
76 Motion/Second/Carried (SM/GP) to revise the definition for the term "Arts and Cultural Use" to
77 include the phrase "buildings of arts and culture". Ayes: Murphy, Matthews, Bartlett, Chapple,
78 Davis, Novosel, Poschman, Trevino Noes: none.. Abstain: None. Absent: Pollack. (8-0-0-1)

79
80 Motion/Second/Failed (BB/ZT) to recommend 1% in-lieu fee. Ayes: Bartlett, Chapple, Poschman,
81 Trevino. Noes: Murphy, Matthews, Davis, Novosel. None. Abstain: None. Absent: Pollack. (4-4-
82 0-1)

83
84 Motion/Second/Failed (TD/DM) to recommend 0.8% in-lieu fee. Ayes: Davis, Matthews. Noes:
85 Murphy, Bartlett, Chapple, Novosel, Poschman, Trevino. None. Abstain: None. Absent: Pollack.
86 (2-6-0-1)

87
88 Motion/Second/Failed (JN/SM) to recommend 0.75% in-lieu fee. Ayes: Murphy, Novosel. Noes:
89 Bartlett, Chapple, Davis, Poschman, Trevino. None. Abstain: Matthews. Absent: Pollack. (2-5-1-
90 1)

91
92 Motion/Second/Carried (GP/SM) to recommend sending Subsection 23C.XX.050.A.2 to City
93 Council along with the three previous votes and request City Council decide the appropriate in-
94 lieu fee. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes:
95 None. Abstain: None. Absent: Pollack. (8-0-0-1)

96
97 Motion/Second/Carried (TD/JN) to recommend Subsection 23C.XX.050.C to be drafted by staff
98 to include a covenant that would ensure that art resulting from this ordinance is maintained on
99 site at the time of sale of the property. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel,
100 Poschman, Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

102 Motion/Second/Carried (GP/DM) to recommend the proposed Ordinance to City Council with all
103 the identified changes. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman,
104 Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

105

106 Motion/Second/Carried (GP/TD) to forward the Guidelines as Civic Arts Commission
107 recommended. Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino.
108 Noes: None. Abstain: None. Absent: Pollack. (8-0-0-1)

109 **10. Public Hearing: *Short Term Rental Ordinance***

110 Motion/Second/Carried (JN/ZT) to open the public hearing on the Short-Term Rental Ordinance.
111 Ayes: Murphy, Matthews, Bartlett, Chapple, Davis, Novosel, Poschman, Trevino. Noes: None.
112 Abstain: None. Absent: Pollack. (8-0-0-1)

113 Principal Planner Alex Amoroso identified several late communication available to the
114 Commission and public. He explained that the ordinance is to allow Short-Term Rentals (STRs),
115 collect fees from Short-Term Rentals, and set a framework for Code Enforcement. Amoroso
116 highlighted some of the proposed language in the Ordinance and pointed out that the
117 Commission's direction is needed on the number of occupants allowed in an STR, and whether
118 to allow STRs in Accessory Dwelling Units (ADUs).

119 Public Speakers: 16

120 Motion/Second/Carried (JN/TD) to close the public hearing. Ayes: Murphy, Matthews, Bartlett,
121 Chapple, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: None. Absent: Pollack. (8-
122 0-0-1)

123

124 Motion/Second/Carried (JN/SM) to Subsection 23C.XX.050.C (Number of Occupants) to follow a
125 standard of 2 persons per bedroom, plus 1 additional person. Ayes: Murphy, Matthews, Bartlett,
126 Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: Chapple. Absent: Pollack. (7-0-1-1)

127

128 Motion/Second/Carried (GP/TD) to support the removal of ES-R District from Subsection
129 23C.XX.020.A. Ayes: Murphy, Matthews, Bartlett, Davis, Novosel, Poschman, Trevino. Noes:
130 None. Abstain: Chapple. Absent: Pollack. (7-0-1-1)

131

132 Motion/Second/Failed (SM/GP) to recommend Subsection 23C.XX.020.A as drafted. Ayes:
133 Murphy, Poschman. Noes: Matthews, Bartlett, Davis, Novosel, Trevino. Abstain: Chapple.
134 Absent: Pollack. (2-5-1-1)

135

136 Motion/Second/Carried (JN/TD) to add C-NS and MU-R District to Subsection 23C.XX.020.A.
137 Ayes: Murphy, Matthews, Bartlett, Davis, Novosel, Trevino. Noes: Poschman. Abstain: Chapple.
138 Absent: Pollack. (6-1-1-1)

139

140 Motion/Second/Failed (TD/JN) to allow STRs in ADUs. Ayes: Matthews, Davis, Novosel. Noes:
141 Murphy, Bartlett, Poschman, Trevino. Abstain: Chapple. Absent: Pollack. (3-4-1-1)

142

143 Motion/Second/Failed (SM/GP) to prohibit STRs in ADUs. Ayes: Murphy, Bartlett, Poschman,
144 Trevino. Noes: Matthews, Davis, Novosel. Abstain: Chapple. Absent: Pollack. (4-3-1-1)

145

146 Motion/Second/Carried (JN/DM) to revise Subsection 23C.XX.050.E (Notification) to require one-
147 time, initial notification. Ayes: Murphy, Mathews, Bartlett, Davis, Novosel. Noes: Poschman,
148 Trevino. Abstain: Chapple. Absent: Pollack. (5-2-1-1)

149

150 Motion/Second/Carried (GP/SM) to incorporate the language provided by Commissioner
151 Poschman into Section 23C.XX.070. Ayes: all other. Murphy, Mathews, Bartlett, Davis,
152 Poschman, Trevino. Noes: None. Abstain: Chapple, Novosel. Absent: Pollack. (6-0-2-1)

153

154 Motion/Second/Carried (TD/DM) to remove “consecutive” from Subsection 23C.XX.050.B.2.
155 Ayes: Murphy, Mathews, Bartlett, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain:
156 Chapple. Absent: Pollack. (7-0-1-1)

157

158 Motion/Second/Failed (TD/BB) to remove Subsection 23C.XX.050.D. Ayes: Davis, Bartlett. Noes:
159 Murphy, Matthews, Novosel, Poschman, Trevino. Abstain: Chapple. Absent: Pollack. (2-5-1-1)

160

161 Motion/Second/Carried (SM/ZT) to request staff to get feedback from City Attorney and Building
162 Official on Building Code and ADA compliance. Ayes: Murphy, Mathews, Bartlett, Davis,
163 Novosel, Poschman, Trevino. Noes: None. Abstain: Chapple. Absent: Pollack. (7-0-1-1)

164

165 Motion/Second/Carried (ZT/SM) to add the language “A property containing a unit with a “no-fault
166 eviction” cannot become an STR for five years.” Ayes: Murphy, Bartlett, Novosel, Poschman,
167 Trevino. Noes: None. Abstain: Chapple, Davis, Matthews. Absent: Pollack. (5-0-3-1)

168

169 Motion/Second/Carried (GP/BB) to add the language to Section 23C.XX.050 “...either the host or
170 rental-platform company must pay the equivalent transient occupancy tax (TOT), and an
171 additional enforcement fee, to be established as a percentage of rents, not exceed the cost of the
172 program.” Ayes: Murphy, Matthews, Bartlett, Davis, Novosel, Poschman, Trevino. Noes: None.
173 Abstain: Chapple. Absent: Pollack. (7-0-1-1)

174

175 Motion/Second/Carried (GP/SM) to add a requirement linking business license information on
176 hosting platforms in Section 23C.XX.050. Ayes: Murphy, Matthews, Bartlett, Novosel, Poschman,
177 Trevino. Noes: Davis. Abstain: Chapple. Absent: Pollack. (6-1-1-1)

178

179 Motion/Second/Carried (TD/BB) to remove the Purpose A, and reorder the rest of the Purposes;
180 add language “To generate City revenue to share City infrastructure cost and other public

181 expenditures by operation of STRs under established standards.” Ayes: Murphy, Matthews,
182 Bartlett, Davis, Novosel, Poschman, Trevino. Noes: None. Abstain: Chapple. Absent: Pollack. (7-
183 0-1-1)

184

185 Motion/Second/Carried (JN/SM) to recommend the draft ordinance with the identified
186 modifications to the Council. Ayes: Murphy, Matthews, Bartlett, Davis, Novosel, Poschman,
187 Trevino. Noes: None. Abstain: Chapple. Absent: Pollack. (7-0-1-1)

188 **11. Discussion: *Changes to Telegraph Commercial Zoning District***

189 Senior Planner Elizabeth Greene explained that staff report focused on: (1) how to achieve the
190 current FAR of 5.0 by increasing development potential in C-T district, (2) whether to allow
191 development to go beyond the current Floor Area Ratio (FAR), and (3) where in C-T District the
192 changes should be considered. Three recommendations include: (1) Base height of 65 feet to
193 match up the existing FAR of 5.0 (up to six stories in height); (2) Increase height to go beyond
194 the existing FAR of 5.0 (but density bonus already offers 35% increase, which is approximately
195 1.75 stories. This achieves up to 8-story in height); or (3) a Use Permit to allow extra height and
196 extra FAR. The Commission discussed potential community benefits to allow higher
197 height/density.

198 Public Speakers: 14

199 **The meeting was adjourned at 12:04 am**

200 **Commissioners in attendance: 8 of 9**

201 **Members in the public in attendance: 35**

202 **Public Speakers: 33**

203 **Length of the meeting: 5 hours 1 minute**