

The people of the City of Berkeley do ordain as follows:

SECTION 1. TITLE.

This Ordinance may be cited as the “2026 Berkeley Arts and Creative Economy Rescue and Sustainability Ballot Measure.”

Section 7.30.010. Title.

This Chapter shall be known and may be cited as, the “2026 Berkeley Arts and Creative Economy Rescue and Sustainability Ballot Measure” (hereinafter, the “Ordinance”).

Section 7.30.020. Necessity of Parcel Tax.

The People of the City of Berkeley have determined:

(A) Arts and culture are a critical part of what makes Berkeley a special place to live. Berkeley has long been a nationally recognized cultural capital—home to a diverse, vibrant, and historically significant arts community. With over 150 nonprofit arts and culture organizations across theater, music, opera, dance, visual arts, film, festivals, literary arts, and arts education, Berkeley’s identity as a progressive, creative, and inclusive city is inseparable from its artistic ecosystem. A Berkeley without the arts isn’t truly Berkeley.

(B) Berkeley’s creative economy employs thousands of people and makes our downtown and neighborhoods more vibrant. Our arts organizations help increase property values, attract new businesses and tourism, and bring patrons downtown and to commercial corridors to support our restaurants, hotels, and other businesses. Supporting the arts means a stronger local economy and better quality of life for all of us.

(C) Every dollar invested in the arts returns dividends to the City. Performing arts venues are primary and secondary sources of revenue and job generation. Studies show that each ticket purchased for a local arts performance generates an estimated \$14–\$16 in additional economic activity for surrounding businesses. Arts organizations provide workforce development, internships, and lifelong learning opportunities, all while fostering community cohesion and civic pride.

(D) The COVID-19 pandemic dealt a devastating blow to the arts and culture sector in Berkeley. Local arts organizations continue to struggle with rebuilding audience attendance post-pandemic, rising labor and production costs, and funders’ shifting philanthropic priorities. Despite creative adaptations and deep cuts, many Berkeley institutions are operating at unsustainable deficits. Multiple beloved Berkeley theaters have closed already and more could follow. The damage to the arts and cultural infrastructure of Berkeley is not only ongoing but accelerating. We must support our arts organizations and preserve our City’s artistic and cultural legacy.

(E) Berkeley arts institutions provide social cohesion to a community, valuable youth educational opportunities, free public performances and events, and discounts for residents and workers. This Ordinance will help protect these community benefits and allow arts organizations to put on even more public festivals, events, and performances.

(F) Public investment is urgently needed to preserve and revitalize Berkeley's arts and cultural sector. A dedicated, long-term funding stream is necessary to ensure the survival and resurgence of our arts institutions.

(G) Performing arts organizations are particularly vulnerable due to their inability to cover costs through ticket sales alone, as well as the slow, erratic return of in-person audiences post-COVID. Without immediate and sustained assistance, many of Berkeley's treasured arts organizations will not survive, putting Berkeley's civic identity, creative economy, and national reputation at risk.

(H) Berkeley's artistic sector fosters diversity, equity, inclusion, and belonging. Local artists and organizations provide cultural programming that reflects and uplifts the voices of historically marginalized communities. Continued investment will ensure access to arts education for youth, platforms for BIPOC and LGBTQIA+ artists, and space for intergenerational storytelling and cross-cultural dialogue.

(I) Local governments must now lead in protecting freedom of expression and the future of the arts. In an era of escalating federal disinvestment in arts and culture and attacks on artistic freedom, cities like Berkeley must act decisively to defend our values. This Ordinance affirms our City's belief that arts and culture are not expendable luxuries, but essential public goods worthy of bold investment.

(J) This Ordinance is a necessary act of rescue, resilience, and renewal ensuring that the cultural heartbeat of Berkeley not only survives, but thrives. We must preserve our City's theater, music, and dance venues for our children, adults, and seniors to maintain Berkeley as an educational and cultural destination for generations to come.

(K) The voters wish to empower the Civic Arts Commission and the City Council to issue regulations consistent with this Ordinance which fulfill and further the purpose and intent of this Ordinance.

Section 7.30.030. Definitions. [RESERVED]

Section 7.30.040. Authority.

This Ordinance is enacted in accordance with the authority granted to charter cities by Article XI section 5 of the California Constitution and Government Code section 50075. The parcel tax authorized herein is based on use rather than ownership of the property, and is not an ad valorem property tax. The People of the City of Berkeley declare their intent that this citizens initiative be enacted, and the parcel tax be collected if this Ordinance is approved by a simple majority of voters pursuant to California Cannabis Coalition v. City of Upland (2017) 3 Cal.5th 924, City of Fresno v. Fresno Building Healthy Communities (2020) 59 Cal.App.5th 220, and Jobs & Housing Coalition v. Oakland (2021) 73 Cal.App.5th 505. To the extent that the California Constitution or state law is amended on or after the date that this Ordinance is passed by voters to change or create additional voting requirements in order to implement or to continue to implement this Ordinance, the People of the City of Berkeley declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect, this parcel tax or this Ordinance.

Section 7.30.050. Municipal Affairs.

The People of the City of Berkeley hereby declare that providing additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley through a parcel tax for the purposes set forth in this Ordinance constitutes a municipal affair. The People hereby further declare their desire for this Ordinance to coexist with any similar tax measures adopted at the City, County of Alameda, or state levels.

Section 7.30.060. Purpose.

The parcel tax imposed under this Ordinance is solely for the purpose of raising revenue to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley. The People hereby further declare that this additional funding is meant to supplement, not replace, existing funding from the City that is currently spent for the same purposes supported by this Ordinance. Because the proceeds of the parcel tax will be deposited into one or more special funds restricted for the expenditures specified herein, the tax is a special tax.

Section 7.30.070. Special Fund.

All funds collected by the City from the special tax imposed by this Ordinance shall be deposited into one or more special funds in the City treasury and appropriated and expended only for the purposes and uses authorized by this Ordinance. This fund, or these funds, shall be known as the “Arts Vitality Fund” or “Fund.”

Section 7.30.080. Use of Proceeds.

The proceeds of this special tax shall be placed in the Arts Vitality Fund that must be used only for the purpose of providing additional funding for grant programs for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley, which are specified in Sections 7.30.090, 7.30.100, 7.30.110, 7.30.120, & 7.30.130. The purpose of the special fund is to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley.

Section 7.30.090. Use of Proceeds. Performing Arts Rescue & Sustainability.

(A) Seventy-Five percent (75.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a new Civic Arts grant program for performing arts rescue and sustainability, as follows:

(B) Purpose: Supporting the growth and stability of Berkeley’s performing arts community through funding the operational and programmatic expenses of nonprofit Performing Arts Organizations.

(C) Grant Awards: Grants shall be awarded on a two (2) year or more cycle (the Grant Activity Period). If awarded, Awarded Grant Applicants receive the award for the fiscal year, and will receive the same award each following year for the duration of the Grant Activity Period. A two-year or longer cycle is used to reduce the amount of administrative time and effort required to apply for City funding.

(D) Grant Awards Eligibility:

(1) Grant Applicants must have an official business address in the City of Berkeley and must, for at least three consecutive years of operation in the City of Berkeley immediately preceding the application, be a “Performing Arts Organization,” which is defined as an entity with the primary purpose of developing, producing, presenting, and/or training for live performances and providing live performances with regularity for the public involving artists like actors, dancers, musicians, bands, and other performers within the City of Berkeley. The entity’s eligibility and purpose are assessed and verified by Civic Arts staff using the organization’s website, mission, core values, past activities and programs, proposed future activities and programs, annual tax return filings, and IRS National Taxonomy of Exempt Entities codes (NTEE).

(2) Grant Applicants must also be either (1) a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board or (2) an entity that is nonprofit in nature and uses a fiscal sponsor, which must be a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(3) Grant Applicants applying for or receiving award amounts in excess of one hundred thousand dollars (\$100,000) must provide community benefits, which may include, but are not limited to: free public performances or events; Berkeley resident or employee discounts; performances or educational programming in schools for youth; after school programs for youth; or free or discounted community use of facilities by Berkeley residents or entities.

(E) Grant Awards Ineligibility. The following are ineligible to apply for or be awarded a grant:

(1) City of Berkeley, County of Alameda, or State of California government departments or units, including any University of California Berkeley Affiliated Entities. University of California Berkeley Affiliated Entity means any legal entity, subsidiary, department, unit, or program that is directly or indirectly controlled by or under common control with the University of California Berkeley, including but not limited to Arts Organizations, Performing Arts Organizations, or other organizations established to advance the mission of the University. For purposes of this definition, “control” means the power, whether direct or indirect, to direct the management and policies of such entity, whether through ownership, governance, representation on its governing board, contractual arrangements, or otherwise.

- (2) Colleges or universities.
- (3) For-profit businesses or sole proprietorships.
- (4) Individual artists.
- (5) Nonprofit organizations which are not Performing Arts Organizations, such as social service nonprofits, religious institutions, etc.
- (6) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(F) Grant Amount.

(1) All Grant Applicants may request up to a specified percentage of their Annual Operating Expenses for each year of the Grant Activity Period.

(2) For Performing Arts Organizations with Annual Operating Expenses greater than or equal to one million dollars (\$1,000,000) per fiscal year, the grant request may be up to ten percent (10.00%) of its Annual Operating Expenses. In the event the Annual Operating Expenses of a Grant Applicant exceeds twelve million five hundred thousand dollars (\$12,500,000), the Annual Operating Expenses shall be capped at twelve million five hundred thousand dollars (\$12,500,000) for purposes of this calculation.

(3) For Performing Arts Organizations with Annual Operating Expenses that are less than one million dollars (\$1,000,000) per fiscal year, the grant request may be up to twelve-and-one-half percent (12.50%) of its Annual Operating Expenses.

(4) Annual Operating Expenses shall mean the average annual operating expenses over the Grant Applicant's previous three fiscal years.

(5) Awarded Grant Applicants will receive annual payments over each Grant Activity Period.

(6) Award amounts and the number of awards will be determined by the number of applications received, the amounts requested, and final grant application evaluation scores as determined by the Grant Review Panel. In no event shall an Awarded Grant Applicant receive less than fifty percent (50.00%) of the requested grant application amount. In the event that the available grant funds for this program are inadequate to meet the aforementioned minimum award, the applications of organizations awarded grants in the first grantmaking cycle of this grant program shall be prioritized.

(7) Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year.

(G) Permissible Funding Use. The following are permissible uses of funds:

- (1) Talent, artist, and contractor fees, wages, or stipends.

- (2) Equipment rentals.
- (3) Professional development and training.
- (4) Program supplies and materials.
- (5) Staff salaries.
- (6) Rent and utilities.
- (7) Venue and permit fees.

(H) Impermissible Funding Use. The following are impermissible uses of funds:

- (1) Activities that are primarily for university-enrolled or college-enrolled students.
- (2) Capital improvement projects.
- (3) Deficit or debt reduction.
- (4) Equipment purchases.
- (5) Expenses incurred outside of the Grant Activity Period.
- (6) Expenses in connection with fundraising.
- (7) Political advocacy or lobbying.
- (8) Projects with religious purposes.
- (9) Start-up costs for new organizations or businesses.
- (10) Trusts, endowments, or cash reserves.

(I) Funding Requirements. Funds must be used for purposes consistent with this Ordinance within the Grant Activity Period.

Section 7.30.100. Use of Proceeds. Civic Arts Grants for Arts Organizations and Individual Artist Projects.

(A) Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through grant programs for Arts Organizations and Individual Artist Projects as follows:

(B) Purpose: Supporting the growth and stability of Berkeley's arts community through funding individual artists living in Berkeley with project-based funding and through funding the operational and programing expenses of nonprofit arts organizations.

(C) Grant Awards: Grants shall be awarded on a one (1) year cycle for Individual Artist Grant Applicants (the Individual Artist Grant Activity Period) and a two (2) year or more cycle for Organization Grant Applicants (the Organization Grant Activity Period). If awarded, Organization Grant Applicants receive their award for the fiscal year, and will receive the same award each following year during the Organization Grant Activity Period. A two-year or longer cycle is used for Organization Grant Applicants to reduce the amount of administrative time and effort required to apply for City funding.

(D) Grant Awards Eligibility: Individual Artist Grant Applicants must qualify for eligibility under subsection (D)(1) and Organization Grant Applicants must qualify for eligibility under subsection (D)(2).

(1) Individual Artists. Individual Artist Grant Applicants must be an individual artist and not applying as a partnership, group, or collective; a resident of the City of Berkeley; an individual artist working in film and new media, multidisciplinary/interdisciplinary arts, social practice, visual arts, dance, folk and traditional arts, literary arts, music, or theater; and at least 18 years of age.

(2) Organizations. Organization Grant Applicants must have an official business address in the City of Berkeley and must be an “Arts Organization,” which is defined as an entity with the primary purpose of providing arts, creative, or cultural programming or services within the City of Berkeley. The entity’s purpose is assessed and verified by Civic Arts staff using the organization’s website, mission, core values, past activities and programs, proposed future activities and programs, and IRS National Taxonomy of Exempt Entities codes (NTEE). Organization Grant Applicants must also be either (1) a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board or (2) an entity that is nonprofit in nature and uses a fiscal sponsor, which must be a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(E) Grant Awards Ineligibility: Individual Artist Grant Applicants. The following individuals are ineligible to be awarded a grant:

(1) City of Berkeley employees employed at the time of the application or during any part of the Individual Artist Grant Activity Period.

(2) Full-time students enrolled at the time of the application or during any part of the Individual Artist Grant Activity Period.

(3) Any individual who has been awarded a grant during either of the previous two grant cycles (two fiscal years).

(4) Any individual who plans to produce a festival with the grant award.

(5) Individuals who do not live in the City of Berkeley.

(6) Organizational applicants (for example, festivals, nonprofit organizations, businesses, etc.).

(F) Grant Awards Ineligibility: Organization Grant Applicants. The following organizations are ineligible to be awarded a grant:

(1) City of Berkeley government department units.

(2) For-profit businesses or sole proprietorships.

(3) Any organization with an active grant award pursuant to Section 7.30.090 of this Ordinance.

(4) Nonprofit organizations which are not arts/cultural organizations such as social service nonprofits, religious institutions, etc.

(5) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(G) Grant Amount.

(1) All Individual Artist Grant Applicants may request up to seven thousand five hundred dollars (\$7,500) for project support during the Individual Artist Grant Activity Period.

(2) All Organizational Grant Applicants may request up to twenty-five thousand dollars (\$25,000) for operating-related expenses for each year of the Organization Grant Activity Period (for example, \$50,000 over two years).

(3) Awarded Organization Grant Applicants will receive annual payments over each Organization Grant Activity Period.

(4) Awarded Individual Artist Grant Applicants will receive one payment over a one-year Individual Artist Grant Activity Period.

(5) Award amounts and the number of awards will be determined by the number of applications received, the amounts requested, and final grant application evaluation scores as determined by the Grant Review Panel.

(6) Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year.

(H) Permissible Funding Use: Individual Artist Grant Applicants. The following are permissible uses of funds for Awarded Individual Artist Grant Applicants:

(1) Artist fees.

(2) Equipment rentals.

- (3) Stipends for collaborators.
- (4) Supplies and materials needed for the project.
- (5) Venue or studio fees.

(I) Permissible Funding Use: Organization Grant Applicants. The following are permissible uses of funds for Awarded Organization Grant Applicants:

- (1) Talent, artist, and contractor fees, wages, or stipends.
- (2) Equipment rentals.
- (3) Professional development and training.
- (4) Program supplies and materials.
- (5) Staff salaries.
- (6) Rent and utilities.
- (7) Venue and permit fees.

(J) Impermissible Funding Use: Individual Artist Grant Applicants. The following are impermissible uses of funds by Awarded Individual Artist Grant Applicants:

- (1) Expenses incurred outside of the Individual Artist Grant Activity Period.
- (2) Joint projects funded by awards to two or more Individual Artist Grant Applicants.
- (3) Political advocacy or lobbying.
- (4) Project production and presentation of activities outside of the City of Berkeley.
- (5) Projects for which the main intent is curation, archiving, or journalism.

(K) Impermissible Funding Use: Organization Grant Applicants. The following are impermissible uses of funds by Awarded Organization Grant Applicants:

- (1) Activities in schools during in-school hours.
- (2) Activities that are primarily for university-enrolled or college-enrolled students.
- (3) Capital improvement projects.
- (4) Deficit or debt reduction.

- (5) Equipment purchases.
 - (6) Expenses incurred outside of the Organization Grant Activity Period.
 - (7) Expenses in connection with fundraising.
 - (8) Political advocacy or lobbying.
 - (9) Projects with religious purposes.
 - (10) Start-up costs for new organizations or businesses.
 - (11) Trusts, endowments, or cash reserves.
- (L) Funding Requirements: Awarded Individual Artist Grant Applicants.
- (1) All project components must be completed within the Individual Artist Grant Activity Period.
 - (2) Public presentation. A public presentation of the new artwork within the City of Berkeley is required. The presentation must engage a defined Berkeley audience or community in a meaningful way, as determined by the Civic Arts Commission.
- (M) Funding Requirements: Awarded Organization Grant Applicants.
- (1) Funds must be used for operating and programing expenses within each year of the Organization Grant Activity Period.

Section 7.30.110. Use of Proceeds. Capital Projects.

- (A) Ten percent (10.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a grant program for capital projects of nonprofit arts organizations.
- (B) Purpose. Supporting long-term sustainability of the arts and culture sector by retaining and improving arts organizations' spaces in the City of Berkeley. Capital projects and asset acquisitions funded by the Arts Vitality Fund are intended to assist nonprofit Arts Organizations in Berkeley. A capital project is a project that helps maintain, improve, or add to the organization's infrastructure. It results in an acquisition of a new asset or new construction, improvements, expansion, renovation, rehabilitation, repairs, or replacement of an existing facility or other infrastructure assets located in the City of Berkeley. Capital projects are expected to result in a long-term useful life and long-term benefit.
- (C) Grant Awards. Grants shall be awarded on a project-by-project basis.
- (D) Grant Awards Eligibility: Grant Applicants must be all of the following:
 - (1) Grant Applicant's official business address is located in the City of Berkeley.

(2) Grant Applicant is a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(3) Grant Applicant is an Arts Organization, which is an entity with a primary purpose of providing arts, creative, or cultural programming or services and whose purpose is assessed and verified by Civic Arts Commission staff using the applicant organization's website, mission, core activities, and IRS National Taxonomy of Exempt Entities (NTEE) codes.

(E) Grant Awards Ineligibility. The following are ineligible to apply for, or be awarded, a grant:

(1) City of Berkeley government departments or units.

(2) Colleges or universities.

(3) Fiscally-sponsored organizations.

(4) For-profit businesses or sole proprietorships.

(5) Individual artists.

(6) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(7) Grant Amount. The capital projects program grant is up to two hundred thousand dollars (\$200,000) per project. A project budget is required with the application. Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year; amounts are subject to change.

(F) Permissible Funding Use. The following are permissible uses of funds:

(1) Assistive technology.

(2) Contractor and permit fees.

(3) Construction and repairs.

(4) Equipment.

(5) Established capital campaigns where Civic Arts Commission funding would be the final amount needed.

(6) Lighting.

(7) Heating, ventilation, and air conditioning (HVAC).

- (8) Project planning, assessment consultancies, or feasibility studies.
- (9) Project management salaries.
- (G) Impermissible Funding Use. The following are impermissible uses of funds:
 - (1) Administrative or other organizational costs unrelated to the capital project.
 - (2) Capital projects located on public or private school grounds, not including Independent Schools that are Performing Arts Organizations.
 - (3) Capital projects located on college or university campuses that are not accessible to the general public and do not primarily function as locations for Arts Organizations.
 - (4) Locations outside the City of Berkeley.
 - (5) Multiple projects proposed within the same grant application.
 - (6) Fundraising expenses.
 - (7) Regular programming.
 - (8) Political advocacy or lobbying.
 - (9) Spaces not available or accessible to the general public.
 - (10) Start-up costs for creating new organizations or businesses.
 - (11) Trusts, endowments, or cash reserves.
- (H) Project Requirements.
 - (1) Documentation of the project process and completion.
 - (2) Project must be completed within the timeframe specified within the grant agreement or any amendments thereto.
 - (3) Project must be completed within the City of Berkeley.
 - (4) Project must meet Americans with Disabilities Act (ADA) standards and any other building requirements pursuant to federal, state, or local law.
 - (5) For projects involving construction, proof of building ownership or long-term lease of building.

Section 7.30.120. Use of Proceeds. Community Festivals.

(A) Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a grant program for community festival grants.

(B) Purpose. Supporting festivals and special events in Berkeley. A festival or special event is defined as a public event that celebrates a community, neighborhood, historically significant day, or shared cultural interest, and may include art fairs, celebrations of cultural heritage, and other events that occur over a limited time period.

(C) Grant Awards. Grants shall be awarded on an annual basis for festivals that are single or multi-day events that generally occur one time per year. These grants will not fund ongoing programming.

(D) Grant Awards Eligibility: Grant Applicants must be at least one of the following:

(1) Nonprofit 501(c)(3) (or any California state equivalent designation), 501(c)(4), or 501(c)(6) organization with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(2) An organizational entity that is nonprofit in nature (for example, artist collectives and guilds) and using a Fiscal Sponsor, which must be a 501(c)(3) (or any California state equivalent designation) with tax exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(E) Grant Awards Ineligibility. The following are ineligible to apply for, or be awarded, a grant:

(1) City of Berkeley government departments or units.

(2) For-profit businesses or sole proprietorships.

(3) Individual artists.

(4) Grant Amount. The community festival grant is up to twenty-five thousand dollars (\$25,000) per festival for festival-related expenses. Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year. A budget is required with the application.

(F) Permissible Funding Use. The following are permissible uses of funds:

(1) Talent, artist, and performer fees, wages, or stipends.

(2) Equipment rentals.

(3) Production or technical staff contractors.

(4) Supplies and materials needed for the festival or event.

- (5) Venue and permit fees.
- (6) Sanitation and security costs.
- (G) Impermissible Funding Use. The following are impermissible uses of funds:
 - (1) Activities not available to the general public.
 - (2) Activities occurring outside the City of Berkeley.
 - (3) Administrative or other organizational costs unrelated to production of the event.
 - (4) Capital improvement projects.
 - (5) Events in schools during school hours.
 - (6) Events on university campuses that are primarily for enrolled students.
 - (7) Events where fundraising is the primary purpose.
 - (8) Events where sporting is the primary purpose (e.g., sporting tournaments, marathons, etc.).
 - (9) Ongoing programming (e.g., regular programs or events that occur throughout the year and would not be considered a festival or special event).
 - (10) Political advocacy or lobbying.
- (H) Festival Requirements.
 - (1) Festival must have a free component.
 - (2) Festival must be open and accessible to the public.
 - (3) Festival must take place in the City of Berkeley.
 - (4) Festival must take place within one year of the grant award.

Section 7.30.130. Use of Proceeds. Administrative Overhead.

Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be used to cover administrative costs incurred to effectuate this Ordinance.

Section 7.30.140. Imposition of Parcel Tax.

(A) A special tax for the purpose of providing additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations,

individual artists, and cultural and arts festivals in the City of Berkeley is hereby authorized to be imposed on use and occupancy within the City of Berkeley as set forth below.

(B) There is hereby imposed a special non-ad valorem parcel tax on all Owners of Parcels in the City of Berkeley for the privilege of using municipal services that constitute municipal affairs pursuant to Section 7.30.050 and the availability of such services that constitute municipal affairs pursuant to Section 7.30.050. The tax imposed by this Ordinance shall be assessed on the Owner unless the Owner is by law exempt from taxation, in which case, the tax imposed shall be assessed to the holder of any Possessory Interest in such Parcel, unless the holder is also by law exempt from taxation. The tax is imposed as of July 1 of each year on the person who owned the Parcel on that Date. The tax shall be collected at the same time, by the same officials, and pursuant to the same procedures as the one percent tax imposed pursuant to Article XIII A of the California Constitution.

(C) The tax hereby imposed shall be set as follows:

(1) For all dwelling units, the tax is imposed at a rate of \$0.07 per square foot of improvements.

(2) For all other property, including parking structures, the tax is imposed at a rate of \$0.07 per square foot of improvements.

(D) The tax enacted by this Ordinance shall be imposed and levied for a period of twelve (12) years, commencing on January 1, 2027. The City shall place delinquencies on subsequent tax bills.

Section 7.30.150. Exemptions.

(A) Senior Exemption. An owner and occupier of any residential property that (1) is 65 years of age or older and (2) has a combined household income, from all sources from the previous calendar year, that is at or below the income level qualifying as “low income” for a household of such size as defined by the U.S. Department of Housing and Urban Development (HUD) annual survey of income limits for the public housing and Section 8 Programs for such fiscal year is exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director of Finance and shall include federal tax returns and W-2 forms or any other documentation and information needed to determine eligibility for this exemption.

(B) Very Low Income Household Exemption. An owner and occupier of any residential property who (1) resides in such unit and (2) has a combined household income, from all sources from the previous fiscal year, that is at or below the income level qualifying as “very low income” for a household of such size as defined by the U.S. Department of Housing and Urban Development (HUD) annual survey of income limits for the public housing and Section 8 Programs for such fiscal year is exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director

of Finance and include federal tax returns and W-2 forms and any other information needed to determine eligibility for this exemption.

(C) Tax Exempt Religious or Educational Organizations. Real property that is owned by a religious organization or school that California law exempts from taxes is also exempt from this special tax. To qualify for this exemption, each religious organization or school that seeks an exemption must submit such information required to determine eligibility to the Director of Finance.

(D) Affordable Housing Exemption. Affordable 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 percent of the units and transitional housing for individuals and families transitioning out of homelessness are exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director of Finance and include federal tax returns and W-2 forms and any other information needed to determine eligibility for this exemption.

Section 7.30.160. Collection of Tax.

The special tax imposed by this Ordinance shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

Section 7.30.170. Collection of Unpaid Taxes.

The amount of any tax, penalty, and interest imposed by this Ordinance will be deemed a debt to the City. Any person that owes money under the provisions of this Ordinance will be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

Section 7.30.180. Accountability Measures.

In accordance with the requirements of California Government Code section 50075.1 and 50075.3, the following accountability measures shall apply to the special tax:

(A) One or more separate, special accounts, referred to as the “Arts Vitality Fund” or “Fund,” shall be created, into which the proceeds of the special tax, including penalties and interest earned on such proceeds, must be deposited.

(B) The specific purpose of the special tax is for the purpose of raising revenue to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley. The proceeds of the special tax shall be applied only to those specific purposes.

(C) The proceeds of the special tax must be deposited in one or more special accounts that will be created and maintained by the City. No later than January 1 of each year, commencing with January 1, 2028, the Finance Director of the City must file an annual report with the City Council that provides (1) the amount of special tax funds collected and expended, and (2) the status of any project required or authorized to be funded pursuant to this Ordinance. These annual reports must cover the fiscal year most recently ended.

Section 7.30.190 Additional Accountability Measures, Role of and Oversight by Civic Arts Commission.

(A) The Civic Arts Commission shall adopt regulations for recommendation to the City Council for approval by resolution which effectuate the purposes and intent of this Ordinance.

(B) The Civic Arts Commission shall be charged with developing application procedures and with reviewing and approving applications for grants.

(C) The Civic Arts Commission shall have the responsibility for citizen oversight of this Ordinance and shall be charged with the following:

(1) Annual review of a required audit produced by an independent or elected auditor hired by the City utilizing funds reserved for the administration of this Ordinance. The annual audit shall review all of the money issued as a grant award to ensure that the funds have been spent in a manner consistent with this Ordinance and any Administrative Regulations adopted by Council for the implementation of this Ordinance.

(2) Assembling one or more Grant Review Panels to score applications in accordance with the review criteria. A Grant Review Panel shall be comprised of individuals located in the greater Bay Area with diverse backgrounds and experiences. Individuals shall apply to be included in the panelist pool through a process established by the Civic Arts Commission. The Civic Arts Commission shall approve the eligibility of panelists that can be selected to serve on a panel. Panelists shall be knowledgeable and/or experienced about the performing arts and cultural sector as it pertains to nonprofit organizations, practicing artists, cultural events, and cultural equity. Each grant application shall be reviewed by a panel comprised of at least three panelists. Civic Arts staff shall ensure that the makeup of panels is representative of Berkeley's demographics and the artistic disciplines evident in the grant application pool. The Grant Review Panel meeting shall be public. Applicants may attend the Grant Review Panel meeting and shall be given an opportunity to address the panel. Civic Arts staff shall create funding scenarios based on the amount of available funding, number of applications, and panelist scores.

(3) The recommendations of the Grant Review Panel(s) and the funding scenarios shall be reviewed by the Grants Subcommittee, which shall be comprised of at least three (3) members of the Civic Arts Commission, and either approved, rejected, or modified.

(4) Once a recommendation is approved by the Grants Subcommittee, the recommendation shall be forwarded to the full Civic Arts Commission for approval, rejection, or modification.

(5) All reviews of panel recommendations and grant awards by the Grants Subcommittee and the Civic Arts Commission shall occur at public meetings.

(6) Upon approval by the full Civic Arts Commission, grant awards shall be reviewed and approved by the City Council or referred back to the Civic Arts Commission for further review and/or modification.

Section 7.30.200. Amendment.

The City Council may not amend or repeal any of the provisions of this Ordinance, and may not extend or increase the special tax unless it is submitted to, and approved by, a majority of the voters of the City of Berkeley. Notwithstanding the forgoing, the City Council may amend this Ordinance provided that the changes further the purposes of the Ordinance and that at least a majority of City Councilmembers vote in favor of such changes. The people of the City of Berkeley affirm that actions not constituting an amendment or repeal of any provision of this Ordinance, or an expansion, extension, or increase of the rate of the special tax, include but are not limited to:

(A) An action that interprets or clarifies (1) the methodology of applying or calculating the special tax or (2) any definition applicable to the special tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is consistent with this Ordinance;

(B) Fix any technical errors within this Ordinance which may thwart the ability of the City to levy and collect this tax or to carry out the Ordinance's purpose;

(C) The collection of the special tax even if the City had, for some period of time, failed to collect the special tax.

(D) Pursuant to Section 7.30.190(A), the City Council's adoption of regulations recommended by the Civic Arts Commission which effectuate the purposes and intent of this Ordinance.

SECTION 2. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

This Ordinance is not a "project" under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA). CEQA's regulations define "project" to exclude the "submission of proposals to a vote of the people...of a particular community that does not involve a public agency sponsored initiative," and the "creation of government funding mechanisms." (2 Cal. Code of Regs. section 15378(b)(2)-(4).)

SECTION 3. SEVERABILITY.

If any provision of this Ordinance, or any section, phrase, or word thereof, or the applicability of any provision, section, part, phrase, or word to any person or circumstances, including any exemption to the special tax or defined term, is for any reason held to be invalid or unconstitutional, the remaining provisions, sections, parts, phrases, or words shall not be affected,

but shall remain in full force and effect, and to this end the provisions, sections, parts, phrases, and words of this Ordinance are severable.

The voters hereby declare that this Ordinance, and each section, provision, part, phrase, and word, including any exemption to the special tax or defined term, would have been adopted irrespective of whether any one or more provisions, sections, parts, phrases, or words are found to be invalid or unconstitutional.

SECTION 4. LEGAL DEFENSE.

The People of the City of Berkeley desire that this Ordinance, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this Ordinance, hereby declare that the proponent(s) of this Ordinance have a direct and personal stake in defending this Ordinance from constitutional or statutory challenges to the Ordinance's validity or implementation. In the event that the City fails to defend this Ordinance, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility, or implementation of this Ordinance, in whole or in part, in any court of law, the Ordinance's proponents shall be entitled to assert their direct personal stake by defending the Ordinance's validity and implementation in any court of law and shall be empowered by the People through this Ordinance to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and any losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged Ordinance. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.

SECTION 5. CONFLICTING MEASURES.

If this Ordinance and one or more conflicting measures appear on the same City ballot, the provisions of the measure that receives the greater number of affirmative votes will prevail in its entirety, and the other measure or measures shall be null and void.

If this Ordinance is approved by the voters but superseded by law by another conflicting measure approved by the voters at the same election, and the conflicting ballot measure is later held to be invalid, this Ordinance shall be self-executing and will be given full force and effect.

SECTION 6. LIBERAL CONSTRUCTION.

This Ordinance shall be liberally construed to effectuate its purposes.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall become effective upon its approval by a simple majority of electors voting on this Ordinance.