



**Civic Arts Commission
Policy Subcommittee
Thursday, July 18, 2024
10:30 – 11:30 AM**

Subcommittee Members:

Civic Arts Commission Representatives: Kim Anno (Subcommittee Chair), Lisa Bullwinkel, Cameron Woo

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1614776545>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** and enter Meeting ID: **161 477 6545**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. To submit an e-mail comment during the meeting to be read aloud during public comment, email civicarts@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150-word limit. Time limits on public comments will apply.

Agenda

1. CALL TO ORDER

2. ROLL CALL

3. LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of Huchiun (Hooch-yoon), the ancestral and unceded land of the Chochenyo (Cho-chen-yo) speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona (Vuh-roh-nuh) Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. We acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year

history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan (Lih-Shawn) Tribe and create meaningful actions that uphold the intention of this Land Acknowledgement.

4. PUBLIC COMMENT (for items not on the agenda)

5. DISCUSSION ITEMS WITH POSSIBLE ACTION

- a) Discuss a Council Referral Request for Amendments to the Public Art on Private Development Ordinance and Budget Referral Request for Fee Nexus Study. (Attachments 1, 2, & 3)

6. ADJOURNMENT

Attachments:

- 1. Berkeley Municipal Code Chapter 23.316 PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS
- 2. CAC Staff Report Amending Public Art on Private Development Requirement
- 3. Parks, Recreation and Waterfront Commission Funding Request to Council

Staff Contact:

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your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

ACCESSIBILITY INFORMATION:

To request disability-related accommodations to participate in the meeting, including auxiliary aids or services, please contact the Disability Compliance Program by phone (510) 981-6418 or by TTY (510) 981-6347 at least three business days before the meeting date.

Chapter 23.316

PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS

Sections:

- 23.316.010 Chapter Purpose.**
- 23.316.020 Applicability.**
- 23.316.030 Definitions.**
- 23.316.040 General Requirements.**
- 23.316.050 Required Permits.**
- 23.316.060 In-Lieu Fees.**
- 23.316.070 Administrative Regulations (Guidelines).**

23.316.010 Chapter Purpose.

The purpose of this chapter is to establish a public art requirement for private developments to provide the following benefits to the community:

- A. Maintain Berkeley's art and culture for generations.
- B. Recognize the vital importance of the arts to the city as a whole.
- C. Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the city.
- D. Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.020 Applicability.

- A. *Districts.* This chapter applies in all districts in Berkeley.
- B. *Uses.* This chapter applies to:
 - 1. New multifamily residential projects of five or more dwelling units;
 - 2. New commercial structures; and
 - 3. New industrial structures.
- C. *Project Size.* This chapter applies to all construction of building additions exceeding 10,000 square feet.
- D. *Exceptions.* This chapter does not apply to the following project types:

1. 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 percent of the units.
2. Buildings with religious assembly uses as defined in Chapter [23.502](#) (Glossary) and buildings with arts and cultural uses. For purposes of this section, "arts and cultural use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.
3. Transitional housing. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.030 Definitions.

A. *Terms Defined.* Terms used in this chapter are defined as follows:

1. *Artist.* 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.
2. *Construction Cost.* 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.
3. *Developer.* 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.
4. *On-Site Publicly Accessible Art.* 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.
5. *Guidelines.* The guidelines adopted by the City Council pursuant to Section [23.316.070](#) (Administrative Regulations (Guidelines)).

B. *Terms Not Defined.* Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.040 General Requirements.

Developers subject to this chapter shall do one of the following:

- A. Include on-site publicly accessible art valued at 1.75 percent of the construction cost. If the value of on-site publicly accessible art as installed is less than 1.75 percent of the construction cost, an amount equal to 80 percent of the difference in value shall be paid to the City as an in-lieu fee.
- B. Pay an in-lieu fee to the City of 0.80 percent of the construction cost. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.050 Required Permits.

- A. *Subject to Laws and Regulations.* On-site publicly accessible art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies.
- B. *Permits Must Be Obtained.*
 - 1. Before 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.
 - 2. The process for identifying and securing required permits shall be set forth in the Guidelines. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.060 In-Lieu Fees.

- A. *Alternative to On-Site Art.* 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. *Use of Fees.* Any in-lieu fees paid to the City pursuant to this chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. *Amount of Fee.* The in-lieu fee shall be 0.80 percent of the construction cost.
- D. *Time of Payment.* The in-lieu fee shall be paid at the same time as other building permit fees. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.316.070 Administrative Regulations (Guidelines).

- A. *Adoption of Guidelines.* The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.

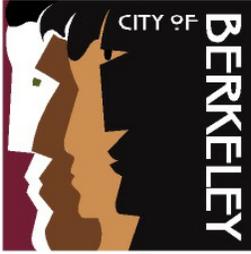
B. *Determining Compliance with Guidelines.* The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines. (Ord. 7787-NS § 2 (Exh. A), 2021)

The Berkeley Municipal Code is current through Ordinance 7910-NS, passed May 21, 2024.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)



Civic Arts Program

MEMORANDUM

TO: Civic Arts Commission
FROM: Jennifer Lovvorn, Civic Arts Program
DATE: April 15, 2024
SUBJECT: Implications of Amending the Public Art on Private Development Requirement

The Public Art on Private Development Requirement, Berkeley Municipal Code (BMC) 23.316 (Attachment 1), requires that developers do one of the following:

- A. Include on-site publicly accessible art valued at 1.75 percent of the construction cost. If the value of on-site publicly accessible art as installed is less than 1.75 percent of the construction cost, an amount equal to 80 percent of the difference in value shall be paid to the City as an in-lieu fee.
- B. Pay an in-lieu fee to the City of 0.80 percent of the construction cost.

This requirement applies to:

- New multifamily residential projects of five or more dwelling units
- New commercial structures
- New industrial structures
- All construction of building additions exceeding 10,000 square feet

The following project types are exempt from the requirement:

- Development projects where at least 60 percent of the units are affordable housing
- Buildings with religious assembly uses or nonprofit arts/cultural uses
- Transitional housing

Making any changes to the Public Art Requirement that could be construed as “establishing, increasing, or imposing” a fee would require a nexus fee study to achieve compliance with the state’s Mitigation Fee Act. Development impact fees are imposed on specific development projects to defray the cost of new or additional public facilities that are needed to serve these requirements—here, the public facility is public art. Any action “establishing, increasing, or imposing” a development impact fee that is imposed as a condition of approval of a development project by a local agency is subject to the state Mitigation Fee Act. Its

requirements include preparing a nexus fee study that shows a “reasonable relationship” between the fee and the cost the development imposes on the community. This requirement also includes annual reporting and the nexus study must be conducted again every eight years.

Examples of changes to the Public Art Requirement that may require a nexus fee study include:

1. An increase in the amount of the “percent for art” would qualify as “establishing, increasing, or imposing,” a fee.
2. Changes in applicability such that developers who previously were not subject to it now would be. For example, expressly making buildings that are classified as Group Living Accommodations subject to the art requirement (when they currently are not) would likely require a nexus study first because it would constitute an “increased” fee.
3. Similarly, any other changes to the applicability section (BMC 23.316.020) may result in a change to the basis upon which the fee is calculated and therefore result in an “increased” fee. For example, making changes to language to bring consistency between this requirement and other City requirements, such as the applicability threshold of “five or more dwelling units” to square feet to align with the affordable housing in-lieu fee.
4. Adding another option to allow developers to designate a percentage of construction cost to build non-profit arts venue space would also likely constitute a new or increased fee for the purposes of the state Mitigation Fee Act.
5. Similarly, amending the Public Art Requirement such that it only imposes a fee and does not offer the developer a choice between a public art installation or an in-lieu fee would likely require the City to conduct a nexus fee study.



Parks, Recreation and Waterfront Commission

CONSENT CALENDAR

June 25, 2024

To: Honorable Mayor and Members of the City Council
 From: Parks, Recreation and Waterfront Commission
 Submitted by: Claudia Kawczynska, Chairperson
 Subject: Allocation of funds for a Nexus Study to develop a Parks Impact Fee for new developments

RECOMMENDATION

To provide for the foreseeable new park and recreation needs generated by the City's assigned (RHNA) population growth, the Parks, Recreation and Waterfront Commission recommends that the City Council allocate \$100,000 to fund a Nexus Study, in the FY24/25 Budget, as a first step toward adopting a Parks Impact Fee for new developments.

FINANCIAL IMPLICATIONS

Most Californian cities charge Parks Impact Fees on new development, which generate millions of dollars to mitigate the park needs created by population growth. While a Parks Impact Fee can be established by legislative action, an Impact Study (Nexus) is required.

For example, a modest impact fee of \$5,000 per unit would generate \$0.5M/per new 100 units. If such a fee had been in place in 2022 when the City approved plans for nearly 900 homes, a Parks Impact Fee would have generated \$4.5 million in single year. Thus, any delay is making this upfront investment of \$100,000 to fund a Nexus Study will result in the loss of millions in future funding for our parks!

CURRENT SITUATION AND ITS EFFECTS

A. Berkeley's Parks Service Standards Are Below Average

The City of Berkeley currently maintains a parks service standard of 2 acres of parks per 1,000 residents. This standard was adopted in the 1977 "Master Plan" and has been incorporated in the City's General Plan guidance ever since; most recently in the City's 2002 Open Space Plan, which is significantly out of date. Furthermore, Berkeley's 2 acres/1,000 residents fails to meet the Quimby Act's base standard of 3 acres/1,000 residents.

The City of Berkeley’s 2 acres/1000 park service standard is below average in comparison to comparable municipalities. The below table shows that Berkeley’s standard is significantly lower than Fremont, Sacramento, Los Angeles, and Fresno..

City	Parks Acres/1000 residents
Fremont	5
Sacramento	5
Los Angeles	4.2
Fresno	3
Berkeley	2

B. Population Growth’s Impact on Parks

Berkeley’s current population is 122,580. Based on the Regional Housing Needs Assessment (RHNA) assigned to Berkeley by the Association of Bay Area Governments (ABAG), Berkeley must accommodate the addition of 8,934 new residential units between 2023-2031. This new growth will bring Berkeley’s population to 140,935 by 2040. To meet Berkeley’s policy goal of 2 acres/1,000 residents would require 52 acres of new parkland by 2040.

C. Berkeley’s Current Parks Taxes Insufficient is to Meet Future Needs

The existing City Parks tax of \$0.213/ft2 is needed primarily for maintenance of existing park facilities and is insufficient to cover major capital improvements or property acquisition for new parks. Thus, the City’s current parks taxes are not intended or expected to address the impacts of residential and employee population growth.

D. Parks Impact Fees Mitigates Growth Impacts on Parks

Each of the Cities in Table 1 has a parks impact fee, which is charged to new development to mitigate the impact of new growth (residents and employees) on parks infrastructure. Park impact fees may be used to pay for park land, park improvements, community centers, recreation facilities, trails, open space, and etc.

Santa Monica, a city to which Berkeley often compares itself, currently charges the following park impact fees:

- Single Family Residential – \$9,092 per unit
- Multi-Family Residential – Studio/1 Bedroom - \$4,927 per unit
- Multi-Family Residential – 2+ Bedrooms - \$7,936 per unit
- Retail \$1.78 per square foot
- Office \$2.75 per square foot
- Medical Office \$1.51 per square foot
- Lodging \$3.71 per square foot
- Industrial \$1.55 per square foot

In FY 2021-22, the City of Santa Monica collected \$1,952,613 in parks impact fees and expended \$944,782 from its improvement fund.

The City of Berkeley does not have a parks impact fee. By way of information, Berkeley does have a “Percent for Art Policy” that assesses a fee [BMC 23.316], which applies to multi-family residential development and commercial developments and requires on-site artwork values at 1.75% of construction costs: or an in-lieu valued at 0.8% of the construction costs: or combination of the two.

D. Procedure for Adopting a Parks Impact Fee

Adopting a Parks Impact Fee does not require a vote of the people, and it can be approved by City Council action after complying with the Mitigation Fee Act and conducting requisite public hearings. A Parks Impact Fee would be charged only on new development. Accordingly, it would provide a way for new growth to contribute a “fair share” to address the parks infrastructure need created by that growth.

The process for adopting impact fees is well-established. The principal requirement is the preparation of a “Nexus study.” Nexus studies are typically prepared by well-established professional consulting firms with expertise in municipal finance and real estate issues. After completing the nexus study, the final step is to determine and adopt a fee for each land use through the legislative process, after evaluating local policy and financial considerations, and deciding how the impact fee program will be implemented. This step includes an evaluation regarding whether fees should be charged at or below the maximum nexus fee amount and how the impact fee program will be implemented, including how fees may be annually adjusted.

E. Summary

Berkeley is not keeping up with its *modest* park service standard. As the City’s residential and employee population grows—as it must grow as the City responds to its Regional Housing Needs Allocation—Berkeley’s parks infrastructure will foreseeably fall further behind. Berkeley is an outlier in terms of its being a densely urbanized area that has not adopted a Parks Impact Fee.

Adopting a Parks Impact Fee will require a meaningful allocation of resources (i.e., funding of a nexus study) as well as a commitment of staff time from PRW, Planning and Economic Development and resources to support the preparation of the nexus study. However, it is well established that new development may be asked to pay for its “fair share” of the cost attributable to the increased demand for public facilities: the City Council has the legal authority to adopt a Parks Impact Fee (and has adopted other impact fees); and that—considering Berkeley’s projected growth—meaningful funding to meet the needs of that growth would be generated by a Parks Impact Fee.

CITY MANAGER

The City Manager takes no position on the recommendation contained in this report.

COMMISSION

At a regular meeting on May 8, 2024, the Parks, Recreation and Waterfront Commission M/S/C to approve recommendation and designate Abshez, Kawczynska, and Wozniak to present PRW Commission at City Council meeting re: budget: (M/S/C: Cox/Hurtado/U) Ayes: Cox; Diehm; Hurtado; Kawczynska; Lee; Ranuzzi; Wozniak; Noes: None; Absent: Abshez.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONAL FOR RECOMMENDATION

See body of report.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Roger Miller, Secretary, Parks, Recreation and Waterfront Commission, 510-981-6704
Claudia Kawczynska, Chairperson, Parks, Recreation and Waterfront Commission