



Civic Arts Commission
Office of Economic Development

**Civic Arts Commission
Policy Subcommittee
Monday, April 26, 2021 5:00 PM**

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Civic Arts Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/86523856998>. 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 **1-669-900-9128** and enter Meeting ID: **865 2385 6998**. 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. **CHAIR'S REPORT**
4. **DISCUSSION ITEMS WITH POSSIBLE ACTION**
 - a) Affordable Housing For Artists Referral (Attachments 1)
 - b) Draft Public Art Ordinance (Attachment 2)
 - c) Budget Referral Requests:
 - Arts reopening grant funds
 - Capital improvement grant funds

- Restoration of festival grant funds to \$156K and \$53K of public art funds deferred last year

5. ADJOURNMENT

Attachments:

1. Affordable Housing for Artists Referral Document
2. Draft Public Art Ordinance

Staff Contact:

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Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Civic Arts Office located at 2180 Milvia Street, First Floor, Berkeley, CA 94704.

ADA Disclaimer

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Council Member Letterhead

TO: Honorable Mayor, [Jesse Arrequin](#) and Members of the City Council

FROM: ~~Referrer Name~~ [Civic Arts Commission](#)
~~if so, i need to take a vote April 27th, so prior will workshop this at policy~~
~~subcommittee~~
Submitted by: Councilmember (Terry Taplin, Sophie Hahn, Susan Wengraf?)

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SUBJECT: Direction and Referral to City Manager on Use of Ground Floor Vacant Storefronts as Affordable Artist Live/Work Space

Introduction: [Artists have been significantly displaced in the City of Berkeley due to the high cost of rent for both housing and studio space in Berkeley. Two sculptors: Mildred Howard and Michael Christian two of the nation/region's most successful artists provide two case studies of displacement from South Berkeley. Covid has scaled this issue.](#)

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RECOMMENDATION:

1. Refer to the City ~~Manager~~ [Council](#) to take the following actions to initiate the process of amending zoning to allow affordable live/work housing for artists in lieu of ground floor retail or commercial use.
 - ~~a.~~ a. Work with the Planning and Zoning Departments to craft language to expand allowable ground floor uses in desired areas of the City, such as the San Pablo Avenue and University Avenue corridors and other appropriate districts.
2. Refer to the City ~~Manager~~ [Council](#) to adopt city policies that encourage adaptive re-use of vacant commercial storefronts for cultural uses to aid in maintaining healthy neighborhoods and animation of targeted areas.
 - a. Encourage property owners that have commercial vacancies to entertain alternative uses by artists with subsidy incentive programs.
 - b. Consider incentives such as a tax reduction or credit, low interest loans for improvements, and grant programs to support retrofitting costs of creating artist affordable housing space or cultural use on the property-
 - c. Endorse a focus on the San Pablo and University corridor for affordable artist live/work housing as a pilot project during the upcoming 2021-2022 budget cycle.
3. Request the Civic Arts Commission (or an appropriate Subcommittee) to adopt a clear definition of allowable uses and criteria for tenant eligibility.
 - a. Clarify what constitutes desirable and appropriate use, based on review of the City's existing definition for arts and cultural studio uses in the WEBAC zoning

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code in addition to current best practices. [This includes defining the responsibility of tenants to maintain a lively street presence.](#)

- b. Define eligibility criteria for live/work and work/live applications in the pilot area and the responsibility for applicant selection.

FISCAL IMPACTS

We see no major fiscal impact due to existing reduction in retail income from declining businesses, accelerated by the pandemic. The potential loss of retail or commercial income is difficult to separate from the existing vacancy rate. Allowing affordable artist live/work in lieu of retail may actually increase developer interest and project feasibility.

CURRENT SITUATION AND ITS EFFECTS

Housing costs continue to drive artists out of Berkeley. This has accelerated since the Covid pandemic proved so economically devastating to the cultural sector. Berkeley's artists are important contributors to its cultural life, its reputation and spirit of innovation.

Retail vacancies have risen steadily in recent years as more purchasing has migrated online. The Covid pandemic has accelerated this trend and led to even greater amounts of empty space, even in Berkeley's most popular commercial areas.

Studies recently done by a local citizen's task force of the San Pablo Avenue and University Avenue corridors documented up to 20% of properties either vacant or in risk of default in the areas suggested for the pilot program.

Removing barriers to adaptive re-use of these spaces holds not only potential to provide a new supply of affordable live/work spaces for artists but activate neighborhood areas that are increasingly unpopulated and in danger of falling into blight. The presence of artists living and working around the clock has been documented as a key factor in creating more livable, animated urban areas.

The [Berkeley Arts and Culture Plan Update](#), approved by City Council in ~~xxx~~2018 provides a framework for supporting the arts within the context of economic growth, and for its inclusion in future City plans. Affordable artist housing is identified as the top priority.

Commented [1]: when was this approved?

The Goal of this referral is to increase active uses of ground floor space and provide a new low impact, supply of affordable live/work spaces for artists.

BACKGROUND

Currently ground floor commercial requirements make new developments difficult to pencil and existing spaces sit vacant. Commercial activity is changing given the pandemic and the move to online purchasing.

Commented [2]: add more data here. mention the San Pablo and University inventory: methodology and detail.

Commented [3R2]: Also include reference to any existing City language on vibrancy goals.

The first goal outlined in the 2018-2027 Berkeley Cultural Plan Update is to: "Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations". The plan calls for expanded availability of affordable housing and workspaces for both artists and arts organizations. Specifically the following Policy recommendations are identified:

1.1 c: *Facilitate the creation of artist workspaces through land use policy changes, such as encouraging use of ground-floor commercial spaces by individual artists and arts nonprofits.*

1.2 b: *Identify vacant and underutilized buildings that could be converted for use as artist housing and workspaces.*

The utilization of ground floor space for artist live/work will increase the vibrancy of an area and create new housing opportunities for artists at risk of displacement with existing space conversion.

While West Berkeley is a geography that presents the potential for a greater number of affordable housing units, we recommend that the overall strategy consider citywide affordable housing opportunities for artists and cultural workers.

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ENVIRONMENTAL SUSTAINABILITY

Limited impact

RATIONALE

Improved use of existing space to increase vibrancy, prevent further neighborhood deterioration, and create additional housing for low income artists and cultural workers.

CONTACT

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DRAFT BERKELEY PUBLIC ART FUNDING ORDINANCE

ORDINANCE NO. X,XXX

Berkeley Municipal Code Chapter 6.14: VISUAL ART IN PUBLIC PLACES [Or Title 7: FINANCE, REVENUE & TAXES?]

APPROPRIATION FOR PUBLIC ART

(1). Purpose.

The City of Berkeley believes that the cultivation and development of a livable city is enhanced by the presence of public art and creative expressions available for the enjoyment of all members of the community. Public art enhances community vitality, fosters a sense of belonging, and provides opportunities to meaningfully involve community members in the design of their environment. Furthermore, public art provides professional opportunities for artists, which contributes to the economic sustainability of the arts community. The City of Berkeley is committed to strengthening its municipal public art program by enhancing the funds available for public art and ensuring flexibility to provide equitable public art experiences in the City of Berkeley that are timely, meaningful, and relevant. Therefore, it is the purpose of this Chapter and the policy of this City to provide for the allocation of two percent (2%) of the cost of construction associated with municipal capital improvement projects to be paid into the Public Art Fund, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

(2). Public Art Fund Allocation.

(a) It shall be City policy to set aside two percent (2%) of its capital improvement project (CIP) budgets, as defined in this section, for the purpose of providing public art. Except as provided in this section, all CIP projects shall be subject to this policy, including but not limited to buildings, shelters, parking garages and lots, restrooms, small structures, parks, medians, landscaping, plazas, gateways, bridges, walls, tunnels, street and road construction. CIP projects include new construction, as well as renovations and alterations. Salaries and benefits of public employees supporting CIP projects shall not be included in the CIP budget subject to this ordinance. This policy shall apply to all capital improvement projects included in the annual capital improvement program (CIP) budget, as well as capital improvement projects funded through any amendment to the annual appropriation ordinance.

(b) The following CIP projects are excluded from this policy:

- (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project).
- (ii) Emergency repair projects.
- (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing.

- (iv) Studies and environmental review.
- (v) Roof replacement (not including projects where roof replacement is a portion of a larger project).
- (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project).
- (vii) Utilities projects, except where the project includes construction or reconstruction of a building.
- (viii) Vehicle repair and replacement.
- (ix) IT purchases and installations.
- (x) Seismic upgrades and waterproofing (not including projects where these are a portion of a larger project).
- (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground.
- (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

(3) Reasonable efforts to include funds for public art.

(a) City staff shall use reasonable efforts to obtain appropriate approvals from any funding source for any capital improvement project, to allow use of two percent (2%) of such funds for the acquisition of public art as provided in this title. Such efforts shall include, without limitation, identifying public art in grant applications for capital improvement projects, efforts to include expenditures for public art in developer funded infrastructure projects, and efforts to allocate for public art in developer-constructed infrastructure and public facilities.

(b) If the city enters into an agreement with another public entity, whereby city funds are transferred to such other public entity for the capital improvement project that would otherwise be deemed subject to the public art requirements under this title, city staff shall use reasonable efforts to include in such agreement, whenever it is lawful to do so, a requirement that the recipient entity or its successor in interest shall take appropriate measures to insure that not less than two percent (2%) percent of the city funds so transferred are expended for acquisition of public art.

(c) Before proposing a bond issue or making a request for an appropriation for the construction of any of the projects set forth in this Chapter, the officer, board or commission concerned shall add thereto for the Public Art allocation associated with the proposed CIP project, two percent (2%) of the gross estimated construction cost. Where funding eligibility is

limited by law or funding agency rules, the Public Art allocation shall be based upon two percent of eligible construction costs.

(d) Nothing in this section is intended to prohibit the city council from adopting an ordinance or resolution establishing a public art contribution for any project otherwise excluded from this policy or setting the public art contribution for any project at greater than two percent of the CIP budget.

(e) Aggregation of Funds. Funds shall be deposited into the Public Art Fund. Per BMC Chapter 6.14, the Civic Art Commission shall determine public or publically-accessible sites for art funded by the two percent for art policy. Funds may be expended on public art at any appropriate site within the city. Funds from two or more CIP projects may be pooled to fund a single work of art. Funds may be used for permanent or temporary public art.

(f) The Civic Arts Commission shall adopt administrative regulations to implement this section.

(4) Definitions. For purposes of this Section:

- "Alteration" of a building, aboveground structure, or transportation improvement project shall include substantial changes to elements such as walls, partitions, or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial changes" shall include additions to, renovation of, removal of, and modification of such elements.
- "Civic Art Collection" shall mean the various artworks owned by the City under the jurisdiction of the Civic Arts Commission that are accessioned by action of the Commission into the Civic Art Collection.
- "Construction cost" shall mean the total estimated construction contract award amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Civic Arts Commission. "Construction cost" shall not include movable or personal property or construction cost contingency.
- "Public Art" shall mean the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Civic Arts Commission. [See notes at the end for other definition of Public Art included in the BMC]
- "Transportation improvement project" refers to Public Works projects which include both aboveground and below-ground transportation-related projects; boarding ramps; transit platforms; terminals and transportation systems with their attendant passenger amenities, such as shelters, seating, lighting, landscaping, and signage; transportation-related

structures such as maintenance and operating facilities; power substations; and street/highway-related transit improvements such as bridges and overpasses.

(5) Administrative Fees.

The Civic Arts Commission shall supervise and control the expenditure of all funds appropriated for public art and shall allocate up to twenty percent (20%) of said funds for all necessary and reasonable administrative costs incurred in connection therewith unless such administrative fee is limited or prohibited by the funding source.

(6) Maintenance and Conservation Funds.

The Civic Arts Commission may set aside and expend up to ten percent (10%) of the total public art allocation for each project for maintenance and conservation of artworks in the Civic Art Collection. When permitted by the funding source, funds set aside pursuant to this Section shall be invested in an interest-bearing account when the total of such funds set aside exceeds \$10,000.

(7) Miscellaneous Provisions.

(a) Construction and installation of public art shall comply with the requirements of all applicable building codes, laws, ordinances, rules and regulations.

(b) Nothing in this Section shall be construed to limit or abridge the jurisdiction of the officer, board or commission of the participating City department to supervise and control the expenditure of project funds other than the two percent (2%) allocation for public art.

(c) This ordinance shall not be applied retroactively to projects for which an public art allocation previously would not have been required, nor to those projects for which project funding has been approved by prior voter action but not yet appropriated or expended. Nor shall this ordinance be construed to allow for an increase in the total public art allocation for a project that is already underway or for which the public art allocation has already been established.

(d) Ownership. All art acquired pursuant to this chapter shall be acquired in the name of the City of Berkeley as part of the Civic Art Collection and title shall vest in the City of Berkeley.

NOTES – Alternate Definitions of Public Art in Berkeley Municipal Code:

BMC Chapter 6.14 VISUAL ART IN PUBLIC PLACES

A. *"Visual art in public places" means any visual work of art displayed for two weeks or more in an open City-owned area, on the exterior of any City-owned facility, in areas designated as*

public areas, lobbies, or public assembly areas, or on non-city property if the work of art is installed or financed, whether wholly or in part, with city funds or grants procured by the City.

B. "Work of art" is an original work by an artist and includes, but is not limited to, functional art integrated into public improvements, sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, weaving, art glass, multi-media, computer-generated art, electronic and media art, video, earth art, installation art, performance and time based works of visual art, and social practice art.

BMC Chapter 23C.23 Percentage for Public Art on Private Projects.

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.