



**MEMORANDUM**

**DATE:** July 18, 2023  
**TO:** Paul Buddenhagen, City Manager  
**FROM:** Charles S. Bryant, Community Development Director  
**SUBJECT:** Study Session: Emeryville Art Center

**RECOMMENDATION**

Staff recommends that the City Council consider the following report on the Emeryville Art Center and provide direction.

**BACKGROUND**

In March 2006, the Emeryville Redevelopment Agency (“Agency”) purchased 4060 Hollis Street, a property located immediately south of Old Town Hall, northeast of the Hollis Street and 40<sup>th</sup> Street intersection. The property is 33,697 square feet and is almost completely occupied by a one-story brick building constructed about 1942, and formerly occupied by the United Stamping Company. The Agency purchased this site for the purpose of adaptive reuse of the existing building to provide space for the annual Emeryville Celebration of the Arts Exhibition as well as year-round performing arts uses.

*2006 Plan*

The first plan for the Art Center, developed in 2006-07, included 10,000 square feet of gallery space for the Emeryville Celebration of the Arts Exhibition, 3,000 square feet of exhibit and storage areas for the Emeryville Historical Society, 3,000 square feet of classroom space for the Pacific Center for the Photographic Arts, and 15,000 square feet for flexible exhibit and performance space.

*2011 Plan*

In 2011, a second plan was developed in coordination with Emeryville Center for the Arts (ECfA), a non-profit entity created to operate the Art Center. In addition to plans for the physical space and other activities, ECfA developed a Strategic Plan and Business Plan. The Agency had entered into an Exclusive Right to Negotiate Agreement (ERN) with ECfA in December 2010 for the purpose of negotiating a Lease Disposition and Development Agreement (LDDA) for the development of the Art Center.

On September 22, 2011, the Planning Commission approved a Conditional Use Permit and Design Review application for adaptive reuse of the property. This plan included a 242-seat theater, 7,600 square foot gallery, 3,900 square feet of office space for ECfA

staff, a 1,200-square foot exterior courtyard, a 1,700-square foot café, a retail store and support spaces for the theatre, gallery and café spaces.

In 2012, the State of California dissolved all redevelopment agencies statewide. While ECfA had made progress toward funding the project approved in September 2011, a funding gap of \$7,600,000 existed at that time. When the Agency was dissolved, both the funding programmed for the Art Center, as well as the 4060 Hollis Street property itself, were at risk of redirection to other taxing entities.

#### *2012 Plan*

As these events took place, members of the ECfA board explored an alternate design for the Art Center to reduce the scope of the project and associated costs. This third design contemplated use of only 13,000 square feet of the existing building, leaving the balance of the space for future redevelopment.

Despite these efforts, the financial uncertainty around the project delayed progress, the ERN expired, and the land use entitlements approved in September 2011 expired. Eventually, ECfA was dissolved as an entity.

#### *2018 Plan*

Ultimately, the City was able to retain the property at 4060 Hollis Street due to the State's approval of the Successor to the Emeryville Redevelopment Agency's ("Successor Agency") Long Range Property Management Plan ("LRPMP"). The LRPMP identifies the property as eligible for transfer from the Successor Agency to the City for government use as an art center, due to the above-summarized history, and on September 5, 2017 the City Council accepted the property from the Successor Agency (Successor Agency Resolution No. SA04-17 and City Council Resolution No. 17-140). In addition to the property, the City retained \$3,800,000 of the Agency's pre-2011 non-housing proceeds programmed for the Art Center.

During the City Council meeting of October 17, 2017, then Vice-Mayor Bauters requested and received majority support for a study session agenda item regarding the Art Center project for January 2018.

On January 16, 2018, the City Council held a study session regarding the Art Center project. Following consideration of a staff presentation of implementation options, the City Council approved a public-private partnership approach to project implementation and approved a Request for Qualifications/Proposals (RFQP) to solicit developer interest in partnering with the City.

During the January 2018 study session, the City Council established project objectives and key elements for the Art Center project (described further below), which formed the basis for the RFQP and developer selection process.

The RFQP was released on February 12, 2018, and the City received nine responses by the April 13, 2018 deadline. The RFQP was arranged as a two-phase selection process, with the first phase consisting of qualifications review, and the second phase consisting of qualified respondents' submittals of conceptual proposals for the project. Of the nine proposals received, three were selected to move forward to the second phase of the selection process. The second phase submittals were reviewed by two separate panels: a staff panel that had also evaluated the first phase qualifications submittals, and a "Blue Ribbon Panel" comprised of subject matter experts.

On September 17, 2018, staff presented the results of the RFQP submittal review process to the City Council and recommended selection of Orton Development, Inc. ("ODI") as the City's development partner for the Art Center. The City Council concurred with the staff recommendation and selected ODI for the project.

On November 13, 2018, the City Council authorized execution of an ERN with ODI and staff began negotiating a LDDA for the design, construction and operation of the Art Center.

On August 27, 2020, subsequent to holding two study sessions (on February 28, 2019, and on May 28, 2020), the Planning Commission approved ODI's Conditional Use Permit and Design Review application for the project. The approved design for adaptive reuse of the existing building included approximately 13,000 square feet of flexible gallery/multipurpose space suitable for visual and performing arts uses, 17 artist studios comprising approximately 10,000 square feet total, approximately 4,500 square feet of office/co-working space, and a 2,400 square foot café space.

On September 1, 2020, the City Council approved the first reading of Ordinance 20-020, which authorized the execution of the LDDA and Ground Lease with ODI for the Art Center. The second reading of the ordinance was approved by the City Council on September 20, 2020. The LDDA set forth the conditions precedent to the City's proposed lease of the 4060 Hollis property to ODI, which were required to be met before ODI could commence construction of the project as approved by the Planning Commission. The LDDA also provided that ODI would cause the formation of a nonprofit entity to operate the Art Center, and placed limitations on the amount of equity that ODI could contribute to the project to ensure long-term financial sustainability.

### *2020 Plan*

Beginning in December 2020, ODI considered the impact of the COVID-19 pandemic on the project, as well as the impact of rising construction costs, which led to a value-engineering exercise and design changes. As a result, ODI applied for an amendment to the previously approved Conditional Use Permit and Design Review Permit for the Art Center to reflect the revised design. Among other things, the proposed amendment would have relocated the forum and multi-purpose gallery to the north section of the building, eliminated the café space, reduced the size of the multi-purpose gallery, and increased the size of the co-working area. On June 24, 2021, the Planning Commission held a public

hearing on the proposed amendment of the permits and, after determining that it could not make the findings to support approval of the amendment, voted unanimously to deny the amendment. At the July 6, 2021, City Council meeting, the City Council voted to call for review of the Planning Commission's decision. On October 5, 2021, the City Council held a public hearing on the amendment of the permits and adopted Resolution No. 21-108 unanimously affirming the Planning Commission's denial.

#### *2022 - Termination of LDDA*

As noted above, the LDDA contained the conditions precedent to the City's lease of 4060 Hollis to ODI, which included provisions intended to ensure the long-term financial viability of the Art Center. Section 7.2 of the LDDA contained a provision allowing for the termination of the LDDA if any of the conditions precedent to the lease were impossible to meet.

Specifically, Section 2.3 of the LDDA required the submittal of a Financing Plan that demonstrated the Total Development Costs would not exceed \$12,900,000 or, if Total Development Costs exceeded that amount, that grants or philanthropic donations sufficient to fund costs more than \$12,900,000 had been secured. ODI submitted a Financing Plan on November 23, 2020, and the City's review determined that the cost estimates for the project were not consistent with the scope of construction work contemplated by the approved design drawings.

Due to (1) the City's concerns that the Financing Plan submitted in November 2020 understated the project costs, (2) ODI's requests for approval for a redesign of the project in 2021 to reduce project costs, (3) the California Construction Cost Index's increase of 17.2% between December 2020 and September 2022, and (4) ODI not providing evidence of any grant or philanthropic donation for Development Costs in excess of \$12,900,000, the City determined that the condition requiring ODI's submittal of a Financing Plan with Development Costs less than \$12,900,000 was impossible to meet. Accordingly, the City provided notice of termination under Section 7.2 of the LDDA on October 11, 2022.

#### *2023 Study Session*

On April 4, 2023, Mayor Bauters requested a future City Council study session on options for next steps for the Art Center. Council Member Kaur suggested the study session include a discussion on incorporating a City library into the Art Center project, which was accepted, and the study session request was unanimously approved by the City Council.

## **DISCUSSION**

### *Policy Support*

With the Art Center's extensive history as outlined above, it is unsurprising that the project has had long-standing policy support.

The August 2006 Park Avenue District Plan's "Implementation" chapter calls for "...a cultural arts center to accommodate visual and performing arts." The plan also identifies "...the east side of Hollis Street between 40th Street and Old Town Hall..." as a potential location.

The Emeryville General Plan, adopted in October 2009, includes a policy and an action related to the Art Center. Policy PP-P-21 states that "A community cultural arts center will be developed." Action PP-A-10 is to "Prepare a strategic plan and design documents for an Arts and Cultural Center."

On November 15, 2016, the City Council adopted the Public Art Master Plan, which calls for the City to "Encourage the development of the Emeryville Center for the Arts as space for the community to showcase and celebrate the work of local and visiting artists..." in its Priority Action Plan.

On October 16, 2017, the City Council adopted the Economic Development Strategy, which includes "Complete the Art Center Project" as a high-priority action under the experiential marketing and promotion topic.

Most recently, on May 16, 2023, the City Council adopted its priorities for Fiscal Years ("FY") 2024 and 2025, which included the Art Center.

### *Objectives and Key Elements*

As noted above, the City Council established objectives and key elements for the Art Center in January 2018. Staff recommends that the City Council confirm the Art Center Objectives and Key Elements in consideration of the current context as outlined below.

#### Objectives:

- *Minimize City subsidy while ensuring fiscal sustainability of operations*

On June 6, 2023, the City Council adopted the Operating Budget for FY 2024 and 2025. This budget includes projected General Fund operating deficits of \$1.3 million in FY 24 and \$2.7 million in FY 25, which were addressed using prior year ending general fund balance. The staff report to the City Council notes that this approach is not sustainable and either new revenue will be needed, or expenditures will need to be reduced, highlighting the continuing relevance of this objective.

- *Maximize civic and community arts-based uses of the facility*

While this objective could be seen as in tension with the aim of minimizing City subsidy, its importance was highlighted in view of the public reception of the revised 2020 plan for the Art Center. Public commenters expressed concern with the amount of square footage

planned for commercial space, indicating a strong community desire to maximize civic and community arts-based uses.

- *Expedite completion of the project*

The most recent attempt to implement the Art Center project commenced in October 2017, and resulted in an agreement in September 2020, and termination of that agreement in October 2022. During that five-year period, construction costs increased, the City continued to incur maintenance costs for the property, and no additional capital funding was secured for the project. In consideration of the strong policy and community support for the Art Center, expediting completion remains an important objective.

- *Utilize robust community engagement in developing programming for the facility*

One contributing factor to the public's muted support for the revised 2020 plan for the Art Center was lack of clarity on programming for the facility and operating details. This deficiency was due in part to the lack of an established operating partner, which was an entity to be created over the course of developing the project. The recent increase in state funding for the Rotten City Cultural Arts District may hold promise for the funding of various activities that could build and coalesce support for future programming.

#### Key Elements:

- *Dedicated space for annual Emeryville Celebration of the Arts*

Securing space for the Annual Emeryville Celebration of the Arts Exhibition remains a significant challenge and a high priority. While the event has been held for many years in numerous commercial locations that have been fortuitously available when needed, there is no assurance in any given year that space will be secured.

- *Dedicated and managed gallery space for artists*

In 2017, gallery space in Emeryville was limited. Artists now have additional opportunities to secure gallery space with the relocation of Compound Gallery from Oakland to Emeryville in April 2022 and the upcoming gallery at the Emery development. The City continues to encourage the development of galleries to provide opportunities for artists to display their work and to further the City's status as a home of Art and Innovation.

- *Dedicated flexible use space suitable for performing arts and other community events*

In 2022, the City adopted amendments to the Cabaret Ordinance to streamline the process for businesses to host live entertainment. Several businesses have secured Cabaret Licenses and are periodically hosting performances in conjunction with their

operations; however, Emeryville does not have any dedicated facilities to host performing arts.

### *Library*

As noted above, the City Council requested an evaluation including a City library as part of the Art Center. Emeryville residents have been receiving library services, including reciprocal privileges throughout the statewide library system, through the Oakland Public Library for many years. The City's General Plan states:

“Libraries: There are no public libraries in Emeryville. The Oakland Public Library's Golden Gate Branch, located just outside the city limits on San Pablo Avenue near Stanford Avenue, serves as the main circulation library for Emeryville residents. The Emeryville Secondary School and Anna Yates Elementary School each include a library for use by students. The Emeryville Center of Community Life may include a library, although it would likely focus on serving public school students and would not replace the Golden Gate Branch as the City's main library facility.”

City staff have previously researched establishing a joint community/school library with the Emery Unified School District as part of the Emeryville Center of Community Life (ECCL), or with Alameda County (“County”). Establishing a new public library is a significant endeavor that requires consideration of start-up costs and ongoing staffing costs.

In 2019, staff asked the County to provide an estimate of their costs to support a community library in Emeryville for 20 hours per week at ECCL, a staffing level selected to allow students to continue to have secure access to the library during the school day. The County's estimated cost in 2019 was approximately \$800,000 per year for 20 hours per week of library staffing and services.

Accordingly, staff recommends that the incorporation of a library into the Art Center be considered in conjunction with the overall objectives and key elements outlined above. Including a library in the Art Center as a key element would require modifying the objectives relating to (1) minimizing City subsidy of operations, due to anticipated staffing costs, and (2) expediting completion of the project.

### *Implementation Options*

The history of the Art Center project suggests that the project's challenges are complex and intertwined. Then, as now, the City does not have the fiscal capacity to provide significant ongoing support of the operational costs of the Art Center. Additionally, there is currently insufficient capital funding to support the capital requirements of constructing the Art Center as previously envisioned. Finally, a private organization with sufficient organizational and financial capacity has not yet been identified to operate the Art Center.

The implementation approach utilized by the City in 2018 sought to resolve these challenges through a public-private partnership in a design-build-operate-maintain configuration. This was to be a “turn-key” approach where private developers were invited to combine revenue-generating commercial uses with civic, arts-based uses to mitigate ongoing operational costs, provide private capital to address capital funding deficiencies, and identify or create a non-profit operator for the Art Center.

The following chart briefly outlines the lessons learned during the attempt at “turn key” implementation:

<b>Challenge</b>	<b>“Turn-Key” Approach</b>	<b>Lesson Learned</b>
Operational Funding	Introduce commercial uses through a market-driven approach	Market dynamics can change faster than the project can be adapted (e.g. COVID-19) and ongoing community support of combined uses and understanding of financial model is required
Capital Funding	Seek developer equity to leverage City capital funds	Equity requires repayment, which requires operating revenue (see above). Reuse of the existing building, and tenant improvements, are costly and increase with time
Operational Partner	Encourage a partnership with an existing operator or create a new entity to operate the facility	Existing operators often cannot plan around the long or indeterminate timeframes required to negotiate/design/build the project; creating a new organization requires dedicated “champions” and fundraising competencies

At the January 16, 2018 City Council study session, staff provided three options for the project: a) establish a new non-profit entity to oversee fundraising and programming of the Art Center, b) operate the Art Center as a City-run facility, or c) form a public-private partnership among and between the City (as landowner), a developer (as contractor and joint operator) and one or more community arts groups (facility user and joint operator). These options remain possible pathways to implementation, but in consideration of the lessons learned, further refinement of these alternatives, as discussed below, is merited.

Establish a new non-profit entity to oversee the Art Center

Establishing a *new* non-profit entity would require leadership outside of the City to assemble a board of interested individuals, and, importantly, requires a dedicated “champion” for the Art Center.



Identifying an *existing* non-profit organization with the capacity to lead the project is another possible approach. Staff could design a Request for Proposals and a robust accompanying outreach program to solicit interest from existing nonprofit arts-based organizations. However, staff suspects that due to the significant capital expenditures required, and the time required to coordinate community support, negotiate required agreements, and design, entitle and build the facility, the number of established organizations willing and able to lead the project is extremely limited, and the City may not receive a satisfactory response.

#### Operate the Art Center as a City-run facility

City operation of the Art Center facility and programs is not a desirable operating model, according to prior interviews with several community members, and as suggested by the Public Art Master Plan, which calls for the City to “Consider alternatives for non-profit operations versus City operations”. City management of a facility designed for creative expression may create unique and unforeseen political and legal concerns. Moreover, as noted above, the City’s fiscal capacity to operate new programs is limited.

#### Form a public-private partnership

In 2018, staff communicated that a public-private partnership model appeared to hold the most promise for expedient completion of the project with minimal fiscal risk to the City, and this was the approach recommended by staff. As outlined above, this was described as a “turn-key” model, using a two-step RFQP solicitation. While this approach may still be viable, the “lessons learned” section above highlights potential pitfalls.

#### “Hybrid” approach

An implementation strategy that combines elements of the methods outlined above could address the shortcomings inherent in each. One possible approach could be to combine the non-profit and City-operated methods, where the City would contract for the design and construction of a building that met the minimum, immediate need of providing a suitable facility for the Annual Celebration of the Arts Exhibition. This “minimal viable project” would be designed with economy in mind, to manage capital construction costs. The City would operate the facility as a community events space through its Community Services staff, similar to the indoor facility rentals currently offered at ECCL and the Senior Center. Once the minimum viable project is complete, or nearly complete, the City could engage existing, arts-based nonprofit organizations to solicit interest in using and managing the space on a periodic or ongoing basis, and these proposals could introduce commercial uses if required for sustainable operating revenues.

This approach has the benefit of providing a useable building on a potentially quicker timeframe than the “turn-key” approach which requires identifying partners from the outset. This, in turn, could lead to a larger number of potential operating partners being willing and able to plan programming, tenant improvements, and incorporate operation of the Art Center into their organization’s plans.

The drawbacks of this approach are that the City would incur operation and maintenance costs for some indeterminate amount of time until an operating partner is secured, and there is a risk that no operating partner is able to fully fund the costs of operating and maintaining the building over the long term. Additionally, to the extent the future operating partner(s) require modification of the building to suit their needs, it is possible that some of the work the City would invest in the building would need to be revisited.

Despite the drawbacks, staff recommends that the feasibility of the hybrid approach be studied further. Initial steps would include engaging a design and engineering firm to evaluate the scope required for a minimum viable project in consultation with the Emeryville Celebration of the Arts, and the costs and benefits of reuse of the existing building as compared to new construction.

### **FISCAL IMPACT**

The current Capital Improvement Program includes the following appropriations for the Art Center: \$5,728,975 in General Capital funds (Fund 475), \$3,800,000 in retained Agency non-housing bond proceeds (Fund 479), \$1,423,775 developer contribution from Pixar Animation Studios, remaining from the \$2,000,000 originally pledged specifically for the project (Fund 473), \$122,028 in General Plan Maintenance funding (Fund 225) and \$1,535 Major Maintenance funds (Fund 650). A total of \$11,076,313 is programmed for the project.

While the City has budgeted approximately \$11,000,000 in capital funding for the Art Center, ongoing operational costs are unbudgeted. Operational costs will be analyzed pending the City Council's direction on next steps for the project.

### **STAFF COMMUNICATION WITH THE PUBLIC**

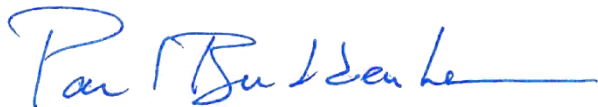
Staff has responded to several inquiries from members of the community regarding the status of the Art Center project. Staff has provided notice of this study session to members of the Public Art Committee.

## DISCUSSION QUESTIONS

1. Does the City Council wish to modify, add or delete any of the previously-established project objectives:
  - Minimize City subsidy while ensuring fiscal sustainability of operations
  - Maximize civic and community arts-based uses of the facility
  - Expedite completion of the project
  - Utilize robust community engagement in developing programming for the facility
2. Does the City Council wish to modify, add or delete any of the previously-established project key elements (including the addition of a library):
  - Dedicated space for annual Emeryville Celebration of the Arts
  - Dedicated and managed gallery space for local artists
  - Flexible use space suitable for performing arts and other community events
3. Does the City Council support implementation of the project through a “hybrid” implementation approach, as described in the staff report?
4. Does the City Council have any other comments regarding the project or the recommended implementation approach?

**PREPARED BY:** Chadrick Smalley, Deputy Director of Community Development

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Paul Buddenhagen, City Manager