San Diego Unified Port District
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(11)

BPC Policy No. 608

SUBJECT: TENANT PERCENT FOR ART

PURPOSE: To establish a policy for the inclusion of Artworks in San Diego Unified Port District (District) Tenant improvements.

The Board of Port Commissioners (Board) is committed to expanding opportunities for the citizens of California and visitors to the region to experience public art and other Artworks resulting from the creative expression of Artists throughout the District's Public Places. Such Artworks have the ability to encourage artistic exploration of the tidelands and give art a key role in making the District's mission and operations more understandable to the public at large. The District envisions building a critically acclaimed art collection that embodies the essence of the District's maritime, environmental and civic character.

To that end, a Public Art Office was created and invested with the mission of supporting the District, its Tenants and member communities by providing leadership, advocacy and stewardship for art; acquiring Artworks, organizing exhibitions and supporting Tenant Artworks that enhance the visual excitement, aesthetic appeal and cultural richness of the tidelands; and managing the Tidelands Collection as a regional cultural asset. Furthermore, a Public Art Committee was established to serve in an advisory capacity to the Board and the Public Art Office, upholding the District's vision for art on the tidelands, ensuring that the District's Artwork policies and procedures are followed and supporting the development and stewardship of the District's Tidelands Collection and other Artwork on District Public Places.

POLICY STATEMENT:

1. **Tenant Percent for Art Applicability and Calculations**

   a. **Calculations.** Tenants undertaking improvements to their leaseholds, unless otherwise exempted below, shall be required to provide a Tenant Percent for Art Allocation no less than one percent of the Tenant improvement's total Project Cost. Project Cost is defined as the combined total of all hard and soft costs for Tenant projects, exclusive of furnishings, fixtures and equipment. The Tenant shall allocate at least eighty percent of the Tenant Percent for Art Allocation to the Art Budget. In addition, the Tenant may utilize up to twenty percent of the Tenant Percent for Art Allocation for Artwork related expenses approved by the Curator.

b. **Categories.** For the purpose of the Tenant Percent for Art Allocation, Tenant improvements shall be divided into the following two categories:

(1) Tenant improvements with a Project Cost of $5,000,000 and up to $17,500,000 (equaling a Tenant Percent for Art Allocation of $50,000 - $175,000 for Artwork).

(2) Tenant improvements with a Project Cost of more than $17,500,000 (equaling a Tenant Percent for Art Allocation of more than $175,000 for Artwork).

c. **Exemptions.**

(1) Tenant improvements with a Project Cost of less than $5,000,000 shall be exempt from the Tenant percent for requirement set forth herein; or

(2) The following types of projects, unless occurring in conjunction with Tenant leasehold development and/or redevelopment, shall be exempt from the Tenant Percent for Art Allocation requirements of this section:

(a) Mechanical, plumbing and electrical system upgrades
(b) Seismic upgrades
(c) Modifications for disabled access
(d) Landscape renovation and replanting projects
(e) Dredging and sand replenishment
(f) Sewer and waterline repair or replacement
(g) Drainage and irrigations system repair or replacement
(h) Erosion control projects
(i) Repaving and new paving projects
(k) Sign changes or new signs
(l) Utilities
(m) Lighting
(n) Maintenance and repair of existing facilities
(q) Demolition projects

2. **Tenant Percent for Art Options**

The Tenant Percent for Art Allocation shall be used by the Tenant to comply with the requirements set forth herein through one, or more, of the following means:

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a. **Commission.** Commission one or more Artworks to be sited in an Open and Accessible area on the leasehold in accordance with the provisions in section 1. If the Art Budget of the commissioned Artwork and Artwork related expenses is not equal to or greater than the Tenant Percent for Art Allocation, the Tenant shall pay to the Public Art Fund an amount equal to the difference between the amount of the Tenant Percent for Art Allocation and the Art Budget of the commissioned Artwork and Artwork related expenses.

b. **Purchase.** Purchase and install one or more Artworks in an Open and Accessible area on the leasehold in accordance with the provisions in section 1. If the Art Budget of the purchased Artwork and Artwork related expenses is not equal to or greater than the Tenant Percent for Art Allocation, the Tenant shall pay to the Public Art Fund an amount equal to the difference between the amount of the Tenant Percent for Art Allocation and the Art Budget of the purchased Artwork and Artwork related expenses.

c. **In-Lieu Contribution.** Deposit into the Public Art Fund payment of an in-lieu contribution in an amount equivalent to the Tenant Percent for Art Allocation as specified in section 1.

3. **Tenant Percent for Art Review Process**

The Tenant percent for art review process is divided into two categories. Tenants should follow the corresponding review process, as follows:

Tenant improvements with a Project Cost of $5,000,000 and up to $17,500,000 (equaling a Tenant Percent for Art Allocation of $50,000 - $175,000 for Artwork) shall follow the review process outlined in section 3a(1) - (15); or

Tenant improvements with a Project Cost of more than $17,500,000 (equaling a Tenant Percent for Art Allocation of more than $175,000 for Artwork) shall follow the review process outlined in section 3b(1) - (17).

a. **Review Process for Category $5,000,000 - $17,500,000.** For Tenant improvements with a Project Cost of $5,000,000 and up to $17,500,000 (equaling a Tenant Percent for Art Allocation of $50,000 - $175,000 for Artwork) the Tenant shall complete the following steps:

(1) **Tenant Percent for Art Application.** Complete and submit a Tenant Percent for Art Application to the Public Art Office.

(2) **Preliminary Meeting.** Meet with the Public Art Office to discuss the Tenant Percent for Art requirement as set forth herein.

(3) **Tenant Art Worksheet.** Declare in a Tenant Art Worksheet the means by which the Tenant will comply with the requirements as set forth herein.

(4) **Approval of Tenant Art Worksheet.** Submit the completed Tenant Art Worksheet to the Public Art Office. The Curator shall review the Tenant Art Worksheet ensuring that it meets the evaluation criteria outlined in section 4a.

(5) **Payment.** If applicable, pay an in-lieu contribution or any remaining obligation into the District's Public Art Fund in accordance with the provisions of section 2.

(6) **Artist's Name and Qualifications.** The Tenant shall declare and submit the name and qualifications of the selected Artist or Artists to the Public Art Office.

(7) **Approval of Artist.** The Curator shall review the name and qualifications of the selected Artist(s) utilizing the evaluation criteria outlined in section 4c.

(8) **Draft Artist Agreement.** The Tenant shall submit to the Public Art Office the draft Artist agreement which shall be reviewed by the Curator to ensure that the District's interests and role are accurately represented.

(9) **Copy of Artist Agreement.** The Tenant shall enter into an agreement with the approved Artist(s) and provide the Public Art Office with a fully executed copy thereof.

(10) **Concept Proposal or Proposed Purchase of Artwork.** The Tenant shall submit to the Public Art Office the concept proposal or information about the proposed purchase of Artwork. The concept proposal, at a minimum, should include the following documentation: a written description of the proposed Artwork; a graphic representation of the Artwork in the form of scale drawings, renderings, models and/or photographs; a site plan; and an initial Art Budget.

(11) **Approval of the Concept Proposal or Proposed Purchase of Artwork.** The Curator shall review the concept proposal or information about the proposed Artwork to be purchased utilizing the evaluation criteria outlined in section 4d or 4e.

(12) **Final Design or Final Information about Artwork.** The Tenant shall submit to the Public Art Office the final design or final information about the Artwork that is to be purchased. The final design should include any updated, or more fully developed information, about the Artwork since the original concept proposal and should include current versions of the following documentation: a written description of the proposed Artwork; a graphic representation of the Artwork in the form of scale drawings, renderings, models and/or photographs; a site plan; and the final Art Budget.

(13) **Review of Final Design or Final Information about Artwork.** The Curator shall review the final design or final information to ensure that the District's Tenant percent for art requirement set forth herein is satisfied and that it is consistent with the approved concept proposal or approved Artwork that is to be purchased.

(14) **Access to Installation Site.** The Tenant shall provide to the Public Art Office access to the site(s) where the Artwork is to be installed to ensure that installation of the Artwork satisfies the District's Tenant percent for art requirement set forth herein and is in compliance with the approved final design or final information.

(15) **Documentation.** The Tenant shall install signage identifying the Artist, Artwork, and date, and shall provide the District with photographic documentation of the installed Artwork.

b. **Review Process Category above $17,500,000.** For Tenant improvements with a Project Cost over $17,500,000 (equaling a Tenant Percent for Art Allocation of more than $175,000 for Artwork) the Tenant shall complete the following steps:

(1) **Tenant Percent for Art Application.** Complete and submit a Tenant Percent for Art Application to the Public Art Office.

(2) **Preliminary Meeting.** Meet with the Public Art Office to discuss the Tenant Percent for Art requirement as set forth herein.

(3) **Tenant Art Worksheet.** Declare in a Tenant Art Worksheet the means by which the Tenant will comply with the requirements as set forth herein.

(4) **Approval of Tenant Art Worksheet.** Submit the completed Tenant Art Worksheet to the Public Art Office. The Curator shall review the Tenant Art Worksheet ensuring that it meets the evaluation criteria outlined in section 4a.

(5) **Payment.** If applicable, pay an in-lieu contribution or any remaining obligation into the District's Public Art Fund in accordance with the provisions of section 2.

(6) **Tenant Art Plan.** Declare in a Tenant Art Plan the means by which the Tenant will comply with the requirements as set forth herein.

(7) **Approval of Tenant Art Plan.** Submit the completed Tenant Art Plan to the Public Art Office. The Curator shall review the Tenant Art Plan ensuring that it meets the evaluation criteria outlined in section 4b. The Curator shall then submit the Tenant Art Plan to the Public Art Committee for review and recommendation to the Curator utilizing the evaluation criteria outlined in section 4b.

(8) **Artist's Name and Qualifications.** The Tenant shall declare and submit the name and qualifications of the selected Artist or Artists to the Public Art Office.

(9) **Approval of Artist.** The Curator shall review the name and qualifications of the selected Artist(s) utilizing the evaluation criteria outlined in section 4c.

(10) **Draft Artist Agreement.** The Tenant shall submit to the Public Art Office the draft Artist agreement which shall be reviewed by the Curator to ensure that the District's interests and role are accurately represented.

(11) **Copy of Artist Agreement.** The Tenant shall enter into an agreement with the approved Artist(s) and provide the Public Art Office with a fully executed copy thereof.

(12) **Concept Proposal or Proposed Purchase of Artwork.** The Tenant shall submit to the Public Art Office the concept proposal or information about the proposed purchase of Artwork. The concept

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proposal, at a minimum, should include the following documentation: a written description of the proposed Artwork; a graphic representation of the Artwork in the form of scale drawings, renderings, models and/or photographs; a site plan; and an initial Art Budget.

(13) **Approval of the Concept Proposal or Proposed Purchase of Artwork.** The Curator and the Public Art Committee shall review the concept proposal or information about the proposed Artwork to be purchased utilizing the evaluation criteria outlined in section 4d or 4e. The Curator shall prepare a report for the Board with the Public Art Committee's recommendation regarding approval of the project. The Board's role shall be to ensure that procedures were followed utilizing the criteria outlined in section 4f.

(14) **Final Design or Final Information about Artwork.** The Tenant shall submit to the Public Art Office the final design or final information about the Artwork that is to be purchased. The final design should include any updated or more fully developed information about the Artwork since the original concept proposal and should include current versions of the following documentation: a written description of the proposed Artwork; a graphic representation of the Artwork in the form of scale drawings, renderings, models and/or photographs; a site plan; and the final Art Budget.

(15) **Review of Final Design or Final Information about Artwork.** The Curator shall review the final design or final information to ensure that the District's Tenant percent for art requirement set forth herein is satisfied and that it is in compliance with the approved concept proposal or approved Artwork that is to be purchased.

(16) **Access to Installation Site.** The Tenant shall provide to the Public Art Office access to the site(s) where the Artwork is to be installed to ensure that installation of the Artwork satisfies the District's Tenant percent for art requirement set forth herein and is in compliance with the approved final design or final information.

(17) **Documentation.** The Tenant shall install signage identifying the Artist, Artwork, and date, and shall provide the District with photographic documentation of the installed Artwork.

4. **Evaluation Criteria**

a. **Criteria for Evaluating Tenant Art Worksheets**

(1) Reflects a commitment to fulfilling the Tenant percent for art requirement set forth herein.

(2) Is consistent with any applicable redevelopment plans or other District approved plans for the area.

(3) Includes all information as required for the Tenant Art Worksheet.

b. **Criteria for Evaluating Tenant Art Plans**

(1) Reflects a commitment to fulfilling the Tenant percent for art requirement set forth herein.

(2) Is consistent with any applicable redevelopment plans or other District-approved plans for the area.

(3) Establishes clear goals and processes against which the project can later be evaluated.

(4) Includes all information as required for the Tenant Art Plan.

c. **Criteria for Evaluating Artist Qualifications**

(1) Meets the definition of Artist, as set forth herein.

(2) Demonstrates artistic excellence, innovation and originality as represented in past work and supporting materials.

(3) Demonstrates capacity for working in media and with concepts that are appropriate to the project goals and site.

(4) Demonstrates interest and capability in creating public Artworks in collaboration with the Tenant (if applicable) the design team (if applicable) and other project partners.

(5) Demonstrates experience in successfully completing Artworks of similar scope, scale, budget and complexity, or ability to articulate how he or she would be able to bring the necessary artistic and technical skills to this project.

(6) Demonstrates interest in and understanding of the project.

(7) Is available to perform the scope of the work in a timely and professional manner.

d. **Criteria for Evaluating Concept Proposals**

(1) Meets the definition of Artwork as set forth herein.

(2) Demonstrates excellence in aesthetic quality, workmanship, innovation and creativity.

(3) Demonstrates appropriateness in scale, form and is of materials/ media suitable for the site.

(4) Demonstrates feasibility in terms of budget, timeline, safety, durability, operation, maintenance, conservation, legal and ethical issues related to possession and use of proposed Artwork, security, and/or storage and siting.

(5) For projects with a Tenant Percent for Art Allocation of more than $175,000, meets the project's goals as outlined in the Tenant Art Plan.

e. **Criteria for Evaluating Tenant Purchases of Existing Artworks**

(1) Meets the definition of Artist as set forth herein.

(2) Meets the definition of Artwork as set forth herein.

(3) Demonstrates excellence in aesthetic quality, workmanship, innovation and creativity.

(4) Demonstrates appropriateness in scale, form and is of materials/ media suitable for the site.

(5) Demonstrates feasibility in terms of cost, timeline, safety, durability, operation, condition, maintenance, conservation, legal and ethical issues related to possession and use of Artwork, security, and/or storage and siting.

(6) For projects with a Tenant Percent for Art Allocation of more than $175,000, meets the project's goals as outlined in the Tenant Art Plan.

f. **Criteria for Board Evaluation**

(1) The District policy, as set forth herein, and as administered by the Public Art Office and/or the Public Art Committee, have been followed properly.

(2) All relevant District departments have appropriately undertaken all necessary reviews, as set forth herein.

DEFINITIONS:

For purposes of this policy, the following definitions shall apply:

Art Budget: The allocated budget for the design, fabrication and installation of an Artwork that is newly Commissioned, or the budget for the purchase, shipping and installation of an existing Artwork that is being purchased.

Artist: An individual generally recognized by critics and peers as a professional practitioner of the visual, performing or language arts, based on his or her body of work, educational background, experience, exhibition history, publication and/or creation of Artworks.

Artwork: An aesthetic creation resulting from the skill and creativity of an Artist or Artists. An Artwork may be made of any materials or combination of materials and may be permanent, temporary, fixed or portable. An Artwork can be an integral part of a building or structure, and can be integrated with the work of other design professionals. For the purposes of the Public Art Office, Artwork shall be defined in terms of the visual arts, as distinguished from performing arts and literary arts. However, artworks can include visual representations of performing and literary arts, or can incorporate performative or narrative elements.

Commission: An Artwork, permanent or temporary, that is created by an Artist specifically for Public Places.

Open and Accessible: The availability for viewing and/or use without a fee by the general public during normal hours of business operation consistent with the operation and use of the leasehold.

Project Cost: The combined total of all hard costs and soft costs for Tenant projects, exclusive of furnishings, fixtures and equipment.

Public Art Committee: A committee appointed by the Chair of the Board of Port

Commissioners that serves as an advisory body to the Public Art Office and to the Board of Port Commissioners. The Public Art Committee upholds the Public Art Office's vision, ensuring that the District's Artwork policies and procedures are followed, and supporting the development and stewardship of the District's Tidelands Collection and other Artwork on District Public Places.

Public Art Fund: An annual allocation of $1.2 million from the District's general operating budget that is set aside for the Public Art Office. The amount includes expenses for staffing, operations, new permanent and temporary public art commissions and purchases, project management activities, competition costs, Artist design fees, fabrication and installation of Artworks and collections management. The Public Art Fund can accept additional funds dedicated to acquiring Artwork, such as tenant contributions or monetary donations.

Public Places: The tidelands and submerged lands granted to the District pursuant to the Port Act and any other lands conveyed to the District by any City or the County of San Diego or acquired by the District, or any area, land water, building or otherwise, where the District manages its land management authority or powers.

Tenant: The persons or entities holding leasehold interest(s) within the District's jurisdiction.

Tenant Art Plan: A detailed plan that Tenant making leasehold improvements with a Project Cost of more than $17,500,000 submits to provide additional detail about how the Tenant intends to fulfill the Tenant percent for art requirement that is generated by the leasehold improvements that are being made.

Tenant Art Worksheet: The summary sheet that all Tenants wishing to make improvements to leaseholds with a Project Cost of $5,000,000 or more submit to the Public Art Office.

Tenant Artworks: Artworks commissioned or purchased by District Tenants.

Tenant Percent for Art Allocation: The percentage of the Project Cost for qualifying Tenant projects in accordance with the requirements set forth herein which is set aside for Artwork on the leasehold or an in-lieu contribution to the Public Art Fund.

Tenant Percent for Art Application: The application that all Tenants wishing to make physical improvements to leaseholds with a Project Cost of $5,000,000 or more submit to the Public Art Office.

RESOLUTION NUMBER AND DATE: 2015-29, dated April 14, 2015 (Supersedes BPC Policy 608, Resolution 2011-160, dated November 8, 2011)