



(12)

BPC Policy No. 608

SUBJECT: TENANT PERCENT FOR ART PROGRAM

PURPOSE:

To establish a policy for the inclusion of artworks in San Diego Unified Port District (District) tenant improvements and for the administration of the Tenant Percent for Art Program.

The Board of Port Commissioners (Board) is committed to expanding opportunities for residents and visitors to the region to experience a vibrant waterfront destination with innovative artworks that enhance the visual excitement and cultural richness of Port tidelands. 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 Waterfront Arts & Activation department was created and invested with the mission of supporting the District, its tenants, and member communities by providing leadership, management of the District's public art programs, and stewardship of the Tidelands Collection as a regional cultural asset. Additionally, the Arts, Culture & Design Committee was established to serve in an advisory capacity to the Board and the Waterfront Arts & Activation department, promoting the District's vision of Port tidelands as a world-class arts and cultural destination.

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 Director of Waterfront Arts & Activation.

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 art 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
 - (j) Sign changes or new signs
 - (k) Utilities
 - (l) Lighting
 - (m) Maintenance and repair of existing facilities
 - (n) 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:

- a. **Commission.** Commission one or more permanent or temporary artworks to be sited in a publically accessible area on the leasehold in accordance with the provisions in section 1.
- b. **Purchase.** Purchase and install one or more permanent or temporary artworks in a publically accessible area on the leasehold in accordance with the provisions in section 1.
- c. **In-Lieu Contribution.** Deposit into the District's Public Art Fund an in-lieu contribution in an amount equivalent to the tenant percent for art allocation as specified in section 1. In the event that a tenant has chosen to satisfy the percent for art requirement by commissioning and/or purchasing artworks for their leasehold, but the artwork-related budgets for such artworks are less than the required allocation, the tenant shall pay into the Public Art Fund an amount equal to the difference between their commissioned and/or purchased artwork-related budgets and the required percent for art allocation.
- d. **Designated In-Lieu Contribution.** Tenants who choose to make in-lieu contributions to the District's Public Art Fund in accordance with sections 2.c. and tenants making partial in-lieu contributions as required by sections 2.a. and 2.b. may designate their in-lieu contributions specifically for use in the District's San Diego – Coronado Bay Bridge Lighting Project. This tenant percent for art option shall remain in effect until such time as the District determines that additional funds for this project are no longer needed. In the event that this project is not realized for any reason, these funds shall remain the Public Art Fund to be used for future public art projects at the District's discretion.
- e. **Early Contributions.** Anyone who makes a financial contribution to the District's Public Art Fund, who is not obligated to do so at the time the contribution is made, may credit such contribution against any obligation such person may have under this BPC Policy No. 608 that may arise within five (5) years subsequent to the contribution. Such contribution shall be unconditional, without recourse, and shall under no circumstances be considered in connection with any future project approval, nor shall such contribution have any effect whatsoever on the District's sole and absolute discretion to approve or disapprove such project.

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 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 3.a.(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 3.b.(1) - (17).

- a. **Review Process for Category \$5,000,000 - \$17,500,000.** For tenant improvements with a project cost of \$5,000,000 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 Waterfront Arts & Activation department.
 - (2) **Preliminary Meeting.** Meet with the Waterfront Arts & Activation department 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 Waterfront Arts & Activation department. The Director of Waterfront Arts & Activation shall review the Tenant Art Worksheet ensuring that it meets the evaluation criteria outlined in section 4.a.
 - (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(s) to the Waterfront Arts & Activation department.
 - (7) **Approval of Artist.** The Director of Waterfront Arts & Activation shall review the name and qualifications of the selected artist(s) utilizing the evaluation criteria outlined in section 4.c.

- (8) **Draft Artist Agreement.** The tenant shall submit to the Waterfront Arts & Activation department the draft artist agreement, which shall be reviewed by the Director of Waterfront Arts & Activation 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 Waterfront Arts & Activation department with a fully executed copy thereof.
- (10) **Artwork Concept Proposal or Proposed Purchase of Artwork.** The tenant shall submit to the Waterfront Arts & Activation department 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 color 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 Artwork Concept Proposal or Proposed Purchase of Artwork.** The Director of Waterfront Arts & Activation shall review the concept proposal or information about the proposed artwork to be purchased utilizing the evaluation criteria outlined in section 4.d.
- (12) **Artwork Final Design or Final Information about Artwork.** The tenant shall submit to the Waterfront Arts & Activation department the final design or final information about the artwork 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 color 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 Artwork Final Design or Final Information about Artwork.** The Director of Waterfront Arts & Activation 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 to be purchased.

- (14) **Access to Installation Site.** The tenant shall provide to the Waterfront Arts & Activation department 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 for 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 Waterfront Arts & Activation department.
 - (2) **Preliminary Meeting.** Meet with the Waterfront Arts & Activation department 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 Waterfront Arts & Activation department. The Director of Waterfront Arts & Activation shall review the Tenant Art Worksheet ensuring that it meets the evaluation criteria outlined in section 4.a.
 - (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 Waterfront Arts & Activation department. The Director of

Waterfront Arts & Activation shall review the Tenant Art Plan ensuring that it meets the evaluation criteria outlined in section 4.b. The Director of Waterfront Arts & Activation shall then submit the Tenant Art Plan to the Arts, Culture & Design Committee for review and recommendation to the Director of Waterfront Arts and Activation utilizing the evaluation criteria outlined in section 4.b.

- (8) **Artist's Name and Qualifications.** The tenant shall declare and submit the name and qualifications of the selected artist(s) to the Waterfront Arts & Activation department.
- (9) **Approval of Artist.** The Director of Waterfront Arts & Activation shall review the name and qualifications of the selected artist(s) utilizing the evaluation criteria outlined in section 4.c.
- (10) **Draft Artist Agreement.** The tenant shall submit to the Waterfront Arts & Activation department the draft artist agreement, which shall be reviewed by the Director of Waterfront Arts & Activation 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 Waterfront Arts & Activation department with a fully executed copy thereof.
- (12) **Artwork Concept Proposal or Proposed Purchase of Artwork.** The tenant shall submit to the Waterfront Arts & Activation department 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 color 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 Artwork Concept Proposal or Proposed Purchase of Artwork.** The Director of Waterfront Arts & Activation and the Arts, Culture & Design Committee shall review the concept proposal or information about the proposed artwork to be purchased utilizing the evaluation criteria outlined in section 4.d. The Director of Waterfront Arts & Activation shall prepare a report for the Board with the Arts, Culture & Design 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 4.f.

- (14) **Artwork Final Design or Final Information about Artwork.** The tenant shall submit to the Waterfront Arts & Activation department 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 color 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 Artwork Final Design or Final Information about Artwork.** The Director of Waterfront Arts & Activation 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 Waterfront Arts & Activation department 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. For the purpose of this policy, an artist is 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.
- (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 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 the ability to articulate how he or she would be able to bring the necessary artistic and technical skills to the 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 Artwork Concept Proposals & Artwork Purchases

- (1) Meets the definition of artist. For the purpose of this policy, an artist is 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.
- (2) Meets the definition of artwork. For the purpose of this policy, an artwork is an aesthetic creation resulting from the skill and creativity of artist(s). 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. Artworks can include visual representations of performing and literary arts, or can incorporate performative, narrative, or time-based elements.
- (3) Demonstrates excellence in aesthetic quality, workmanship, innovation, and creativity.
- (4) Demonstrates appropriateness in scale and form and will be fabricated with materials/ media suitable for the site.
- (5) Demonstrates feasibility in terms of cost, timeline, safety, durability, operation, maintenance, conservation, security, and siting.
- (6) Demonstrates feasibility with respect to legal and/or ethical issues that may be related to possession or display of the artwork.
- (7) 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 Waterfront Arts & Activation department and advised by the Arts, Culture & Design Committee, if applicable, has been followed properly.

- (2) All relevant District departments have appropriately undertaken all necessary reviews.

GLOSSARY:

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.

Arts, Culture & Design Committee: An advisory body to the Board of Port Commissioners and the Waterfront Arts & Activation department on matters related to arts and culture within the District's jurisdiction. The committee assists in upholding the District's vision of tidelands as a world-class arts and cultural destination and supports the development of arts and cultural programs within the District's jurisdiction.

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 Waterfront Arts & Activation department, artworks can include visual representations of performing and literary arts, or can incorporate performative, narrative, or time-based elements.

Publicly Accessible: The availability for viewing and experience by the general public without a fee 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 Fund: A designated District fund established in 1982 for the purpose of accumulating funds from various sources for commissioning and acquisition of permanent or temporary public artworks for exhibition within the District's jurisdiction. Originally funded through an annual budget set-aside, the Public Art Fund serves as a depository for funds received from other sources, such as: tenant percent for art in-lieu contributions; aggregated District percent for art contributions from Capital Improvement Program

projects; art sales and loans; sales of licensed artwork reproductions; public art-related grants and/or grant-matching funds; and monetary bequests and donations received from the public or other agencies for public artworks.

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

Tenant Art Plan: A detailed plan that a tenant who is 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 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 Waterfront Arts & Activation department.

Tenant Percent for Art Allocation: The percentage of a tenant's approved development or redevelopment project budget that is to be set aside for artwork for the tenant's leasehold or for payment into the District's Public Art Fund as an in-lieu contribution.

Tenant Percent for Art Application: The initial application form that a tenant who is subject to the District's percent for art requirement submits to the Waterfront Arts & Activation department to begin the review process.

RESOLUTION NUMBER AND DATE: 2018-015, dated January 9, 2018 (Supersedes BPC Policy 608, Resolution 2016-130, dated September 8, 2016; Resolution 2016-77, dated May 10, 2016, Resolution 2015-29, dated April 14, 2015; Resolution 2011-160, dated November 8, 2011)