

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2891**

**ORDINANCE AMENDING ARTICLE 8 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE TO ADD SECTION 8.32 ESTABLISHING A ONE YEAR PILOT PROGRAM REGULATING BUILDING WRAPS ON QUALIFYING BUILDINGS LOCATED IN A COMMERCIAL DISTRICT WITHIN THE JURISDICTION OF THE DISTRICT IN THE CITY OF SAN DIEGO**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Sections 4, 30, 55, and 87 of the Port Act grant the District broad general police powers, including the ability to regulate signage; and

**WHEREAS**, Section 55(a) of the Port Act requires the Board of Port Commissioners (BPC) to make and enforce all necessary rules and regulations governing the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the territorial limits of the District; and

**WHEREAS**, under Section 30(a)(2) of the Port Act, the BPC may manage the business of the District and promote the maritime and commercial interests by proper advertisement of its advantages and by the solicitation of business within or outside the District, within other states or in foreign countries, through employees or agencies that are expedient; and

**WHEREAS**, under Section 30(b)(2)(A) of the Port Act, the District may acquire, purchase, take over, construct, maintain, operate, develop, and regulate grain elevators, bunkering facilities, belt or other railroads, floating plants, lighterage, towage facilities, and any and all other facilities, aids, equipment, or property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries, or recreation in the District; and

**WHEREAS**, under Section 56 of the Port Act, the BPC shall make and enforce such local police and sanitary regulations relative to the construction, maintenance, operation, and use of all public services and public utilities in the District, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation therein as are now vested in the District; and

**WHEREAS**, it is necessary for the District to retain control of the ability to regulate all signage within the District's jurisdiction to encourage and promote commerce, navigation, fisheries, and recreation in and through its jurisdiction; and

**WHEREAS**, pursuant to the authority granted by Section 56 of the Port Act, the District previously adopted Section 8.30 of the San Diego Unified Port District Code, which clarifies that the District regulates and issues all permits or entitlements for signage within the jurisdiction of the District, and that this authority preempts all other local and municipal regulations, codes, and permit requirements for signage; and

**WHEREAS**, the regulations included in this Ordinance are adopted consistent with the authority to regulate signage granted to the District by the Port Act and the San Diego Unified Port District Code; and

**WHEREAS**, in adopting this Ordinance, the BPC does not intend to create a public forum for public discourse or expressive activity, or to provide a forum for all types of signage, but only intends to allow signage of the type and to the extent permitted in this Ordinance; and

**WHEREAS**, in adopting this Ordinance, the BPC does not intend to preclude the District from allowing building wraps on District owned buildings; and

**WHEREAS**, this Ordinance is intended to codify a proposed one-year pilot program that creates a discretionary process for potential erection of temporary Building Wraps on Qualifying Buildings ("Discretionary Process"), as those terms are defined in this Ordinance; and

**WHEREAS**, the District has considered all comments received at the public meeting on May 16, 2017 prior to adoption of this Ordinance; and

**WHEREAS**, any Building Wraps, as that term is defined in this Ordinance, located within the District must comply with all laws and regulations, including, without limitation, the California Environmental Quality Act (CEQA) (California Public Resource Code § 21000, et seq.), the California Coastal Act (Coastal Act) (Public Resource Code San Diego Unified Port District Code 30000 et seq.), the Outdoor Advertising Act (California Business and Professions Code § 5200 et seq.) and this Ordinance, as codified in Article 8 of the San Diego Unified Port District Code; and

**WHEREAS**, this Ordinance creates a Discretionary Process that will require CEQA review and Coastal Act compliance prior to the approval of any permit, entitlement or issuance of a license for each Building Wrap in the District,



and at this time, it is speculative to determine how many Building Wraps will be approved, the dimensions, manner or location of any Building Wraps and hence this Ordinance is not subject to CEQA.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

**Amendments to Article 8:** That Article 8 of the San Diego Unified Port District Code is amended to add Section 8.32 regulating building wrap signage on certain qualifying buildings within the San Diego Unified Port District as follows:

Section 1.

(a) Definitions.

In addition to the definitions and interpretations set forth in Section 0.03 of this Code, and for purposes of this Section, the following definitions shall apply:

1. "Building Wrap" means a type of Signage, as that term is defined in Section 8.30 of this Code, fabricated using materials that are transparent such as reinforced vinyl, perforated mesh, or other building wrap material temporarily affixed to the side of a Qualifying Building. Building Wraps may include any illumination, including but not limited to, electronic, digital, or similarly illuminated components, designed to emit or brightly reflect artificial light.
2. "Building Wrap Application" means an application submitted to the District in accordance with Board of Port Commissioners Policy No. 357, as it may be amended from time to time.
3. "Building Code" means the most recent edition of the California Building Standards Code. The most recent edition of the Building Code shall be that edition in effect at the time the District enters into each license for a Building Wrap on a Qualifying Building.
4. "Commercial District" means those areas currently designated as "Commercial Recreation" in Planning District 3 – Centre City Embarcadero as depicted on Exhibit 1 attached hereto and incorporated herein by reference, or as such areas may be depicted in any subsequent Port Master Plan.

5. "Inspector" means someone with sufficient knowledge and expertise to determine that a Building Wrap conforms to the requirements of the Building Code, which may be derived from experience as a District, city or county building official, inspector, or plan checker. An Inspector may be a District employee or an independent contractor of the District hired to perform the essential functions of an Inspector.
6. "Qualifying Building" means a structure within the Commercial District not owned by the District having a roof supported by permanent columns or walls intended for use by humans for commercial use. Notwithstanding the foregoing, "Qualifying Building" shall also include the San Diego Convention Center.

(b) Permitted Building Wraps.

Building Wraps may be permitted on any Qualifying Building, subject to the following:

1. *Submittal of Building Wrap Application.* A Building Wrap Application must be submitted for District consideration of any proposed Building Wrap. A license agreement pursuant to Section 1(b)(3) below will not be entered into with the applicant until the Building Wrap Application has been approved.
2. *Discretionary Review of Building Wrap Application.*
  - a) The Building Wrap Application shall undergo discretionary review by the District. Subject to Section 1(b)(5) below, the District shall not consider content in reviewing an application for a Building Wrap. The District's discretionary review of a Building Wrap Application shall include review under the California Environmental Quality Act (CEQA) (California Public Resource Code § 21000, et seq.), the California Coastal Act (Coastal Act) (Public Resource Code 30000 et seq.), San Diego Unified Port District Code and all other applicable laws, regulations and District policies. The Building Wrap Application approval may include restrictions on the time, place and manner of the erection, affixing, dimensions, and operation of Building Wraps. Examples of restrictions include, but are not limited to: (1) the location of the exterior facing surface area upon which a Building Wrap may be affixed; (2) the amount of coverage of the exterior facing surface area upon which a Building Wrap may be affixed; and (3) the number of Building Wraps that may be erected,

affixed and operated at the same time within the Commercial District. In addition, the District may require that the applicant agree to place one or more Building Wraps on the Qualifying Building, at the applicant's sole cost and expense and at such times to be designated by the District in the license agreement, that promote the District or District-sponsored events. The District reserves its full discretion to adopt all feasible mitigation measures, alternatives, including a no project alternative, and a statement of overriding consideration, if applicable and approve or disapprove one or more Building Wraps.

- b) A Building Wrap Application may only be approved or denied after review and approval of the project plans for the Building Wrap by an Inspector, certifying that the Building Wrap satisfies all relevant provisions of the Building Code.
3. *License Agreement for Building Wrap.* Upon approval of the Building Wrap Application under Section 1(b)(2) above, the District may enter into a license agreement with the applicant to affix one or more Building Wraps to a Qualifying Building. Said erecting, affixing, operating and rotating, if any, of the Building Wrap, may only occur upon the applicant's compliance with the terms set forth in the license agreement and other approvals and as set forth herein. All license agreements shall, at a minimum, include the following terms:
- a) A provision requiring a licensee to defend, indemnify, and hold the District harmless, including, but not limited to claims and challenges brought under CEQA or the Coastal Act.
  - b) A provision detailing the insurance to be required from licensee.
  - c) The requirement that a Building Wrap may only be affixed to a Qualifying Building upon inspection and approval by an Inspector, ensuring that the proposed Building Wrap satisfies all relevant provisions of the Building Code.
  - d) The requirement that the licensee be a "tenant in good standing," as that term is defined in BPC Policy No. 355, Section II.B.4.
  - e) A negotiated license fee as set forth in Section 1(b)(6) below.
  - f) The District's right to terminate the license at any time during the term of the license for no cause; provided, however, the



District shall not terminate based on content protected by the First Amendment.

4. *Compliance with Laws.* Applicant, licensee, and Building Wraps must comply with all applicable federal, state, and local laws and regulations, including, without limitation, the ordinances and policies of the District.
5. *Content.* Content on Building Wraps shall be unregulated except for content unprotected by the First Amendment, including, but not limited to, the following categories which may change from time to time: (i) child pornography; (ii) false statements of fact; (iii) commercial speech that is false, misleading, or promotes illegal activity; and (iv) certain types of (a) incitement of illegal activity; (b) fighting words; (c) obscenity; and (d) defamation.
6. *License Fee.* The license fee, which may be expressed as a formula, and a payment schedule, shall be set by the District and licensee based on market information, which may include consideration of things such as licensee's agreement to produce, install, and maintain one or more Building Wraps on the Qualifying Building that promote the District or a District-sponsored event.
7. *Time Limits.* A single Building Wrap shall not be affixed to a Qualifying Building for more than thirty (30) consecutive days.
8. *Cost Recovery.* Applicant shall be responsible for payment to the District of all costs associated with the Inspector's work in conjunction with Sections 1(b)(2) and 1(b)(3) herein, subject to BPC Policy No. 106 - Cost Recovery User Fee Policy, as it may be amended from time to time.
9. *Penalties.* Any violation of this Ordinance shall be punishable in accordance with Section 0.11 of this Code (General Penalty).

(c) Preemption

In the event of any inconsistency between this Section 8.32 and any ordinances, policies, guidelines, rules, regulations, programs, leases, temporary use permits, tidelands use and occupancy permits, or similar documents, whether adopted or enforced by the Board, by District staff, or otherwise, the provisions of this Section 8.32 shall apply.

(d) Severability

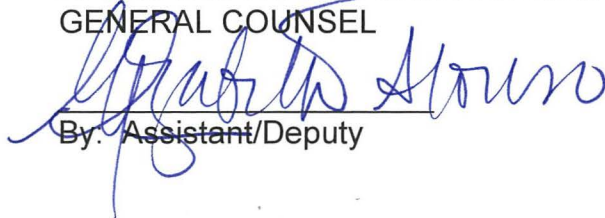
If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

The administrative record for the District's approval of this Ordinance is maintained at the District's Administrative Building located at 3165 Pacific Highway, San Diego, CA 92101. The custodian of records is the President/Executive Director.

Section 2. This Ordinance shall terminate one (1) year after the date the Ordinance takes effect; provided, however, the Board of Port Commissioners may continue, modify or terminate the Ordinance prior to said termination date.

Section 3. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

  
By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 16<sup>th</sup> day of May, 2017, by the following vote:

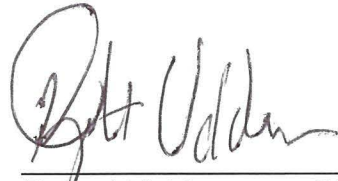
AYES: Castellanos, Malcolm, Merrifield, and Nelson

NAYS: None.

EXCUSED: Bonelli, Moore, and Valderrama

ABSENT: None.

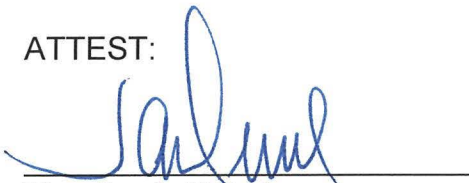
ABSTAIN: None.



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Robert Valderrama, Chair  
Board of Port Commissioners

ATTEST:



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Timothy A. Deuel  
District Clerk

(Seal)



