

SECTION NO. 8.32 – REGULATING BUILDING WRAP SIGNAGE

(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

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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.

(Enacted May 16, 2017 – Ordinance No. 2891)