

CITY OF SAN DIEGO COMMISSION FOR ARTS AND CULTURE

**DEVELOPER/APPLICANT GUIDE
TO THE CITY OF SAN DIEGO
PUBLIC ART ORDINANCE REQUIREMENTS**

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June 18, 2004

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PART I INTRODUCTION

This Developer's Guide serves as a comprehensive outline of options, the review process, public art principles, definitions and approvals needed for meeting the requirements of the City of San Diego's Public Art Ordinance.

At the onset of discussions with the developer on a private development project, City of San Diego's Commission for Arts and Culture staff will inform the developer of the Public Art Program Ordinance and its goals. Through a negotiation process, Commission staff will work with the developer to evaluate the available options and will apply the Public Art Ordinance in a flexible manner to develop an Art Plan, which will lead to a high quality and meaningful project.

Throughout the country, private developers are discovering that including artwork can enhance the overall quality of a project and give it a unique character, not achievable in other ways. Public art and cultural facilities in private development can heighten the image and the value of a project and its income producing potential. Tenants like artwork and the identity it gives a building. Some developers feel strongly that works of art increase the value of the property itself and others have found that spending money on public art and cultural amenities can generate as much press as a public relations campaign, and garner more good will. Supporting the arts through private development is a way to give back to the community in return for the ability to build. Public art also provides a chance for developers to work with artists and be part of the creative process.

There are many approaches to public art. The traditional approach of placing stand-alone sculptures, murals or other artworks in buildings, plazas or parks is one methodology. Yet, blurring the boundaries between art, architecture and landscape is the approach many developers choose. More often than not, we see an integration of public art and the built environment, where artists work as part of the project design team with the architects, engineers and landscape architects.

PART II ORDINANCE SUMMARY

A. DEVELOPMENT PROJECTS SUBJECT TO THE PUBLIC ART ORDINANCE

All private, non-residential development projects with total building permit valuations over five million dollars are subject to a set-aside for public art enhancement. The public art requirement may be satisfied by setting aside one percent of the total building permit valuation for the financing of cultural or artistic facilities and/or on-site artwork or by depositing one-half of one percent of the total building permit valuation into the Public Art Fund account to be used for the artistic enrichment of the City's public spaces.

B. DEVELOPMENT EXEMPT FROM THE PUBLIC ART ORDINANCE

- Industrial and commercial development with a total building permit valuation of less than five million dollars;
- Any premises which have an institutional use, such as churches, hospitals, and schools;
- Any premises which are used solely for residential development;
- Any premises which are owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose;
- Industrial and commercial development that is not open or accessible, in its entirety to the general public due to national security reasons; (See Appendix A)
- Any industrial or commercial development not open or accessible, in its entirety to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety. (See Appendix A)

PART III DEVELOPER OPTIONS

The developer has the following three options for meeting the requirement(s) of the Public Art Ordinance:

A. ON-SITE ARTWORK (Set-Aside One Percent of total building permit valuation)

Integration of Public Art and Architecture

The trend among private programs is to encourage the earliest possible involvement of artists with developers, architects and landscape architects. The artist(s) thereby enjoy the opportunity to work as an integral part of the project design. This approach may result in stand-alone artwork or artwork which is integrated into the project architecture or landscaping and should encompass the broadest range of expression, media and materials. Some possibilities include artist designed surface treatments, parks, plazas or other functional elements that are integrated into the development such as flooring, furniture, light fixtures, fencing, tree grates, etc.

Direct Purchase of Artwork

Developers may instead choose the traditional approach of purchasing artwork directly and then placing stand-alone sculptures or other artworks in their buildings, plazas or parks.

Selecting the Right Consultant

Developers are encouraged to contact the Commission for Arts and Culture as early in the process as possible. Commission staff is available to advise the developer on the process for integrating artwork with projects, how to select and work with artists, or how to select an art consultant. The Commission provides up to two hours of free consultation with their public art program staff. Developers may elect to work with Commission staff (a fee for services will be negotiated) or with an art consultant of their choosing.

Public art consultants are often needed to work with developers and, in some cases, they are critical to the success of a project. The right consultant can educate the developer on art options; foster good communication by facilitating discussions among people with differing backgrounds and perspectives; manage the selection, fabrication and installation processes; promote complete integration of the art with the development; keep the process on track, on time and on budget; and facilitate the entire process. Not all artists work with public art and not all art consultants have experience or skills in working with public art or private development.

How are Artists and/or Artwork Selected for Private Projects?

Developers may select their own artist(s) and/or artwork(s) without approval from the City. In San Diego's Public Art in Private Development program, the aesthetic decisions are left to the project developer. The Commission for Arts and Culture staff will work with developers to make sure the intent of the program has been met.

Ineligible Project Artists:

The following are not eligible to perform the artist's services as outlined in the Public Art Ordinance:

- Prime contractor(s), subcontractors, and architectural design, landscaping or engineering consultants for the development or any or their employees. Nothing precludes the architect from subcontracting with an artist;
- Members of the artist selection panel;
- The professional art consultant contracted by the developer;
- The developer or owner and employees of the developer or owner;
- City of San Diego Arts and Culture Commissioners,
- Public Art Committee members;
- Commission staff, and
- Business partners and immediate family members of all the above.

Art Plan Requirements

A plan for installing Artwork on-site must be submitted to Commission staff at both the conceptual and final design stages. It must provide a detailed art budget, specify artist qualifications, and demonstrate that the artwork will be in a publicly accessible location.

Conceptual Art Plan Requirements (Applicants are strongly encouraged to submit their Conceptual Art Plan with their application for a Building Permit)

The Art Plan submitted at the conceptual design stage should include the following:

Proposed Artist(s), including:

- Resume of selected artist or artists;
- Images of selected artist's work (slides, digital, video, DVD, catalogs, press clippings); and
- Statement as to why the selected artist is qualified to work on this project.

A List of Team Members, including:

- Developer (contact person, address, phone, email, web page);
- Art consultant (name, address, phone, email, web page);
- Architect (lead designer, address, phone, email, web page); and
- Landscape Architect (lead designer, address, phone, email, web page).

Art Budget

Total building permit valuation and budget for on-site artwork. Breakdowns for anticipated artist fees, artwork fabrication, art consultant fees, and appropriate administrative expenses.

Location/Siting of Artwork

A narrative statement detailing how the artwork will be incorporated into the development project in a publicly accessible location or locations.

Final Art Plan Requirements

A final report should include:

Final Detailed Art Budget, including the following eligible costs:

- Artist's services for design, fabrication, installation, and project oversight (may include overhead costs for studio rental and assistants at a fixed percentage);
- Artwork fabrication (labor and materials);
- Artwork shipping, handling, and transport;
- Artwork installation and site preparation;
- Mandatory permit and testing fees;
- Appropriate engineering services for drawings or calculations of artwork;
- Construction or shop drawings (often prepared by art fabricators, but can also be prepared by an architect or engineer working for the artist);
- Attorney fees associated with negotiation of artist contracts for the project;
- Travel expenses of the artist for site visitation, research, inspections, and oversight;
- Permanent project plaque (must acknowledge the artist);
- Professional photography of final artwork in context;
- Up to 15% of the total budget may be used for administrative costs which include collaboration costs (interface among design team members) and consultant fees; and
- Up to a total of 20% may be spent for administrative costs if the developer agrees to utilize an open selection process (allowable costs include development of RFP/RFQ, printing and mailing, advertisements and other media listing, jury fees, and art consultant costs)
- Up to 10% of the total budget for repair, conservation, maintenance, insurance specific to the artwork (fine art and general liability) and security.

The following costs may **not be** included in the Final Art Budget:

- Directional elements such as super-graphics, signage, or color-coding except where these elements are designed by the artist as described in the Art Plan.
- "Art objects" that are mass produced and of standard design such as playground equipment, fountains, or statuary.
- Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking, or other media arts.
- Decorative, ornamental, or functional elements not designed by the artist.
- Landscape and gardening unless designed by the artist.
- Utilities necessary to operate or maintain artwork over time.
- Administrative or overhead cost incurred by the developer or the owner of the premises.

Photographic Documentation showing how the artwork is incorporated into the development project in a publicly accessible location or locations.

Submittal

Should be prior to request for Final Inspection

B. ON-SITE CULTURAL USE (set-aside one percent of total building permit valuation)

An on-site Cultural Facility may include space in the development for housing a cultural activity that has as its primary purpose the presentation of one or more art forms (dance, opera, live theater, visual art, folk and community art, literature, media arts). Cultural Facilities are operated by public entities or non-profit organizations and are dedicated to cultural activities available to a broad public. Examples of acceptable cultural facilities include museums, theatres, and performing arts centers. Cultural Facilities that do not meet the definition are churches, schools, commercial movie theaters, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and for-profit facilities used for for-profit activities.

Art Plan for Cultural Use

Up to one hundred percent of the total art budget may be dedicated to the provision of space on the site of the development for a cultural use. The Art Plan for Cultural Use must demonstrate that the cultural organization occupying the Cultural Facility has the financial capacity to successfully operate and maintain the Cultural Facility in the years ahead.

1. Art Plan Contents

The Art Plan for Cultural Use must include:

- a) Demonstrated Need for the Facility
 - Need for the Cultural Facility as shown through an independent study.
- b) Reason for Selecting Cultural Organization or Facility for Upgrade
 - List of organizations considered for the Cultural Facility;
 - Criteria used for selecting the organization which will manage and operate the Cultural Facility; and
 - If only one organization was considered, justification for selecting that organization over others.
- c) Context within the Project Site
 - Cultural facility's location within the project, capacity, size, parking accommodations, and
 - Design concept.
- d) Viability of Cultural Organization (may be provided by organization)
 - Mission and goals of the organization and how the Cultural Facility will help fulfill those goals;
 - Organizational structure of the cultural organization, including board of directors, management, staff and their qualifications;
 - Demonstrated artistic merit of the organization's programming, including press clippings, reviews, awards, and other acknowledgements;
 - Record of financial stability as evidenced in audited financial statements for at least the last five years;
 - Long-term financing plan for the organization (staff and programming) and the Cultural Facility (maintenance and repairs);
 - Record of programming (schedules, catalogs, documentation);

- Proposed calendar showing use and programming in the Cultural Facility;
- Marketing plan to achieve programming goals for Cultural Facility; and
- Plans for making the Cultural Facility or the organization's programs available and affordable to the community members within the project area.

e) Legal Contract and Lease

A contract, lease, or other legal agreement that addresses:

- Responsibilities of each party with regard to the property, especially maintenance of the building, utilities, parking, hours of operation, building alterations and other improvements, trash removal, and access to common areas or alleys;
- Methods for negotiating and resolving disputes with regard to any of the above;
- Required notifications when changes occur in building management or ownership, or in management or administration of the cultural organization; and
- Assurance that the Cultural Facility will continue to be available for public/non-profit cultural purpose(s) throughout the term of the commitment.

2. Cultural Use Budgets

The following may be included in an Art Budget for Cultural Use:

- Detailed construction costs for the Cultural Facility;
- Value of the space (sq. ft.) for the Cultural Facility as a portion of the overall project cost;
- If the Cultural Facility will not be deeded to the non-profit organization, the rental value over the term of the lease;
- Cost of ancillary spaces, such as parking spaces, storage, signage, etc;
- Architectural and engineering fees (fees for the Cultural Facility, especially interior spaces); and
- Consultant fees to establish feasibility. Consultant services may also be used to issue an RFP and assess the financial capability of responding organizations. Services of an independent accountant or other financial expert may be necessary. Cultural consultants must bill hourly and their fees may not exceed ten percent of the total Art Budget. If the art budget is large, consultant fees are expected to be less than ten percent.

C. Public Art Fund Contribution (Deposit an in-lieu fee of One-half of One Percent)

The Public Art Fund is maintained by the Commission for Arts and Culture for the deposit of in-lieu contributions from private developers. These funds will be used for the artistic enrichment of the City's public spaces. Projects that have the potential to make significant impacts are identified and prioritized by Commission staff with input from the Public Art Committee and the Commission for Arts and Culture.

This section addresses the procedure(s) and deadline for contributing to the Public Art Fund. Developers may pay an in-lieu fee equal to one-half of one percent of the total building permit valuation for the development to the City Treasurer for deposit into the Public Art Fund.

1. Deadline for Public Art Fund Contribution

The in-lieu contribution must be made before a building permit for the development will be issued.

2. Procedure for Contribution to the Public Art Fund

The Developer will:

- Deliver a check in the amount of the required contribution made payable to the City Treasurer for deposit into the Public Art Fund.

PART IV ADDITIONAL REQUIREMENTS

A. Artwork Maintenance

Artwork can require specialized maintenance and periodic conservation to keep it in good repair and to preserve its visual appeal. Developers should work closely with their art consultants and artists to ensure a clear understanding of anticipated maintenance requirements. The developer has an obligation to maintain an artwork created pursuant to the Public Art Ordinance throughout the life span of the artwork, unless otherwise negotiated and approved by Commission staff.

B. Artists' Responsibilities and Rights

Agreements between artists and developers should address ownership of the artwork, intellectual property rights in the artwork, acknowledgements in reproduced images, artwork warranties, submittal of a maintenance manual and development of maintenance schedules, identification of the parties who will perform routine and specialized maintenance, approvals required for any modifications or alterations to the artwork, and an artist's right to purchase an artwork in the event that it is sold or transferred. Artists and developers should familiarize themselves with the provisions of the California Art Preservation Act (California Civil Code sections 987 et. seq.) and the federal Visual Artists Rights Act (17 United States Code sections 101, 106A, 113, and 301).

C. Covenant with the City

Developers are required to enter into an agreement with the City of San Diego which will set forth the developer's obligations with respect to on-site artwork or the provision of space on-site for a cultural use. The agreement will be recorded against the development as a covenant running with the land, binding on all purchasers, successors, transferees, and assignees.

D. Developer's Obligations Secured

Developers who elect to satisfy the requirements of the Public Art Ordinance through the installation of an on-site artwork or the provision of space on-site for a cultural use will need to secure those obligations through the acquisition of a performance bond or commercially reasonable and equivalent security acceptable to the City in its sole discretion in an amount equal to one half of one percent of the total building permit valuation for the development.

PART V REVIEW PROCESS

A. ROLE OF COMMISSION STAFF

From artist selection through Art Plan completion, developers and their consultants should proactively communicate with Commission staff to ensure that their plans meet the requirements of the Public Art Ordinance.

B. WHO REVIEWS THE ART PLAN?

The Art Plan submittal at the conceptual and final design stages will be reviewed and approved by staff. The project may be presented to the Public Art Committee or the Commission as an information item.

C. CRITERIA FOR REVIEW AND APPROVAL

Art Plan for On-Site Art

Commission staff will use the following criteria for evaluation:

- Art Plan adheres to Public Art Ordinance and the Developer's Guide;
- Critics and peers generally recognize the artist as a professional practitioner of the arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, past public commissions, exhibition record, publications, and production of artwork; and
- Artwork is located within the development project in a location or locations that is open and freely accessible to the public;
- Value equals or exceeds one percent of the total building permit valuation for the development.

Art Plan for Cultural Use

Commission staff will use the following additional criteria for evaluation:

- A need for such a Cultural Facility has been clearly demonstrated;
- The Facility is sited appropriately within the development project area;
- The managing cultural organization has demonstrated financial capability to successfully operate the Cultural Facility in the short- and long-term;
- The parties are committed to negotiating all details regarding ownership, management, costs, rights over development, and management of the Cultural Facility; and
- Agreements will be executed by the parties to ensure that the Cultural Facility will be reserved for public or non-profit cultural activity throughout the term of the commitment.

D. PROJECT COMPLETION

The art requirement of a development project must be certified as complete before a final Certificate of Occupancy will be issued. Commission staff will tour the project to determine its status, completeness, and conformance with the requirements of the Public Art Ordinance and will issue a written notification of such completion.

E. APPEALS PROCESS

Any applicant may seek review of a decision by Commission staff by filing an application for an appeal hearing with the Executive Director of the Commission no later than ten business days after the decision.

The Executive Director of the Commission shall coordinate a date for an appeal hearing before the City Manager or his designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Commission. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The Certificate of Occupancy for the development may be withheld pending resolution of the appeal.

The City Manager may in his sole discretion and authority, accept an irrevocable letter of credit or cash equivalent in the amount of (one-half of one percent of the total building permit valuation) and direct that the final certificate of occupancy be issued for the development.

At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the decision. The decision of the City Manager is final.

PART VI DEFINITIONS

Art Budget – An amount equal to one percent of the total building permit valuation

Art Plan – A narrative statement submitted by the developer indicating how the development will meet the requirements of the Public Art Ordinance. Art Plans may address on-site artwork or cultural-use within the development. Art Plans are submitted at the conceptual and final stages of project design. Art Plans must provide evidence of the artist's qualifications, illustrations and details of how the artwork is incorporated into the development in a publicly accessible location, and an outline of the art budget.

Artist – Artist means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, public performances, past public commissions, exhibition record, publications, and production of artwork.

Artwork – An artwork may be in any style, expression, genre or media, provided that it is designed by an artist as defined herein. Artworks may be stand-alone, functional or integrated into the architecture or landscaping and should encompass the broadest range of expression, media and materials.

Artwork includes:

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported or suspended, kinetic, electronic or mechanical.

Murals or paintings: may be made of any material or variety of materials with or without collage; may be made with traditional or non-traditional materials and means.

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary expression, calligraphy, any combination of media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or new genres.

Artwork as defined herein may be permanent, fixed, or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

Commission for Arts and Culture – Established in 1988 by City Ordinance to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging and increasing support for the arts and cultural institutions of San Diego. It is the Commission's responsibility to make all recommendations pertaining to arts and culture for City funding to the City Council. It is also the Commission's responsibility to advise on policies, projects and programs designed to promote the inclusion of public art in the development of neighborhoods in the City of San Diego.

Cultural Facility – A structure which houses a cultural activity, that has as its primary purpose the presenting of one or more art forms (dance, opera, live theater, visual art, folk and

community art, literature, media arts). Cultural facilities are operated by private non-profit organizations and are dedicated to cultural activities available to a broad public. Examples of acceptable facilities include museums, theatres, and performing arts centers. Facilities that do not meet the definition are churches, schools, commercial movie theaters, multi-purpose stages or amphitheaters, gymnasiums or other sports facilities, bookstores, buildings dedicated primarily to housing or administrative activities, and for-profit facilities used for for-profit activities.

Design Professional – An individual professionally trained in design, such as architecture, landscape architecture, art, graphics, urban design, and planning; as well as environmental, industrial, and interior design.

Design Team Collaboration – Projects created through the cooperative design efforts of design professionals, such as artists, architects and landscape architects.

In-Lieu Fee – A deposit of one-half of one percent of the total building permit valuation to the Public Art Fund.

Life Span of the Artwork – Artworks created under this Ordinance are meant to be permanent when properly designed and maintained. Artworks with shorter life spans are allowable if addressed in the Art Plan. Owner is required to maintain the Artwork for 50 years or until the artist, the artist's estate, and/or a qualified Art conservator verifies that the Artwork has aged or deteriorated to a point where it cannot reasonably be conserved or repaired, whichever is earlier.

Mixed-Use Projects – Developments which have both a residential and a commercial or industrial component. In the case of a mixed-use development, only that portion of the total building permit valuation attributable to the commercial or industrial component of the development shall be used for purposes of calculating the developer's obligations under the Public Art Ordinance.

Publicly Accessible – Open to the general public during normal business hours and in a manner which is consistent with normal business operations.

Public Art Committee – A group named by the Commission, in consultation with the Commission staff, to provide advice and guidance, especially with regard to Public Art Fund planning, project identification and implementation, and fund balance oversight.

Public Art Ordinance (0-2004-124) – Ordinance 0-2004-124 adopted by the City Council on May 17, 2004 which directs the Commission's Public Art Program.

Public Art Fund – The Public Art Fund is maintained, established, funded, and regulated by the Commission for Arts and Culture for the deposit of in-lieu contributions from private developers. These funds will be used for the artistic enrichment of the City's public spaces. Projects that have the potential to make significant impacts are identified and prioritized by Commission staff with input from the Public Art Committee and the Commission for Arts and Culture.

Public Art Program – The Commission’s program, which is responsible for the oversight of developer-initiated art projects, Public Art Fund projects, Commission-initiated projects, and other related activities.

Request for Proposals (RFP) – An invitation by the Commission or a developer to potential consultants, such as artists, to submit proposals for a specific project, project component, or professional service.

Request for Qualifications (RFQ) – An invitation by the Commission or a developer to potential consultants, such as artists, to submit for consideration their qualifications for a specific project, project component, or professional service.

Total Building Permit Valuation – the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

**PART VII
CITY OF SAN DIEGO
COMMISSION FOR ARTS AND CULTURE**

MISSION

The mission of the City of San Diego Commission for Arts and Culture is to vitalize the community by integrating arts and culture into community life, supporting the region's cultural assets, and showcasing San Diego as an international tourism destination.

PURPOSE

The Commission seeks, through its recommendations to the Mayor, the City Council and the City Manager, to promote and increase support for the literary, performing and visual arts. The Commission also seeks to support organizations that educate and expose the public to a rich and diverse range of artistic and cultural expressions. The Commission will advocate strongly for a substantial increase in funding for arts and culture from the City of San Diego, from the private sector, and from local, regional, state and federal governments. It seeks to develop and implement the arts in public places throughout the neighborhoods of the City of San Diego and to persuade the private sector to include the arts in private development. The policies and programs of the Commission seek to strengthen the involvement and input of artists in cultural planning, to reflect the cultural diversity of the people it serves, and to foster local, national and international cultural understanding.

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APPENDIX A

In making its determination that a particular premises is not open or accessible in its entirety to the general public due to national security reasons, the Commission will, in consultation with the Fire Chief or his designee, consider the following factors:

- 1) Whether employees of the premises must obtain classified security clearances
- 2) Whether visitors to the premises must be escorted at all times while anywhere on the premises
- 3) Whether access to the premises is controlled (the premises is fenced, entry to the premises is gated or guarded, visitors to the premises must sign in and out)

In making its determination that a particular premises is not open or accessible in its entirety to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety, the Commission will, in consultation with the Fire Chief or his designee, consider the following factors:

- 1) Whether the materials stored at the premises exceed any of the quantities listed in Tables 105-A, 105-B, or 105-C as referenced in Section 105.8 of the California Fire Code
 - 2) Whether materials stored at the premises require licenses issued under the authority of the State of California Radiological Health Branch or the federal Nuclear Regulatory Commission
 - 3) Whether materials stored at the premises appear on the federal Select Agent List and access to those materials is restricted in accordance with the permitting procedures of the Center for Disease Control, the United States Department of Agriculture, or the Department of Justice
 - 4) Whether materials stored at the premises fall under the guidelines of the National Institute of Health and the Center for Disease Control for the use of biohazardous agents and whether the premises handling them requires a laboratory designation of Biosafety level 2, 3, or 4
 - 5) Whether materials stored at the premises fall under the guidelines of the federal Drug Enforcement Agency [DEA] for narcotics and other scheduled substances and the premises is registered with the DEA as a facility which handles those substances
 - 6) Whether the materials referenced in items one through five are stored throughout the premises or only in isolated areas of the premises
 - 7) Whether visitors to the premises must be escorted at all times while anywhere on the premises
 - 8) Whether access to the premises is controlled (the premises is fenced, entry to the premises is gated or guarded, visitors to the premises must sign in and out)
-