

**POLICY GOVERNING ALLOCATION OF SPACE  
IN THE VETERANS BUILDING TO PATRIOTIC ORGANIZATIONS**

The following policy was adopted by the War Memorial Board of Trustees ("WMBT") by Resolution No. 16-21 on May 12, 2016. This policy applies to incoming patriotic organizations seeking to occupy space in the Veterans Building on or after the date of adoption of this policy. It does not apply to organizations occupying the building prior to the adoption of this policy. This policy also does not apply to one-time uses of meeting rooms or special events in the Veterans Building. A separate policy will be developed and adopted by the WMBT concerning one-time uses.

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**I. Eligible Patriotic Organizations:**

The American Legion War Memorial Commission ("ALWMC") may, subject to the terms and conditions of this Policy and the Trust, install the following types of patriotic organizations to occupy rent-free space in the Veterans Building under the San Francisco War Memorial Trust ("the Trust"):

- (a) Veteran-membership organizations composed primarily of (1) U.S. military veterans and/or their relatives, (2) veterans of foreign militaries that were U.S. allies in times of armed conflict and/or their relatives, and (3) those who served honorably in the Merchant Marines during an era of armed conflict and in an area of potential hostilities during that time and/or their relatives.
- (b) Veteran services organizations ("VSOs") such as Swords to Plowshares that both (a) provide social services exclusively or primarily<sup>1</sup> to veterans and/or their relatives, and (b) have their foundation in and are the outcome of a specific war in which the U.S. has engaged.
- (c) Nonprofit organizations dedicated to the commemoration of a war or wars, or veterans of a war or wars, in which the U.S. has engaged.

NOTE: It is the WMBT's position that governmental agencies, such as the U. S. Department of Veterans Affairs and the California Employment Development Department, do not constitute "patriotic organizations" within the meaning of the Trust.

**II. Permissible Uses of the Veterans Building:**

- (a) Both the Trust and the January 29, 2016 superior court order interpreting the Trust limit patriotic organizations' use of the Veterans Building to use "as club and meeting-rooms and for executive offices and auditorium purposes." Nevertheless, the WMBT will allow patriotic organizations to provide certain types of direct services on-site such as job training, technical training, legal services, housing placement, educational services, peer-to-peer counseling and talk therapies (including such peer-to-peer programs as Alcoholics Anonymous), and referrals to other service providers for such services. Notwithstanding the foregoing, the practice of medicine, the practice of dentistry, and

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<sup>1</sup> In the case of a VSO that provides social services primarily but not exclusively to veterans and/or their relatives, the VSO's activities in the building (both administrative functions and provision of social services) must be exclusively for veterans and/or their families.

substance abuse treatment and referrals requiring on-site physical examinations for such services shall not be allowed on-site, although patriotic organizations that provide such services may locate their executive offices in the building and use their allocated space to perform administrative functions only.

(b) Occupancy of the Veterans Building must conform to any and all applicable federal, state or municipal laws and regulations, including health, police, fire, and zoning regulations.

(c) Under Paragraph 9(n) of the Trust, occupants may not use the Veterans Building (1) “for the purpose of any business, trade or manufacture,” or (2) “for lodging or for a hotel or boarding house.”

### **III. Veterans Building Space Currently Allocated to San Francisco Posts of the American Legion:**

As of the date of adoption of this policy, the WMBT had allocated to the San Francisco Posts of the American Legion, through the ALWMC, rooms 019, 101, 102, 202, 206, 207, 208, 210, 212, 213, 221, 224, 313, 317 and 319 in the Veterans Building consisting of a total of 22,693 square feet (“Currently Allocated Space”).

Incoming patriotic organizations shall initially be assigned space within the Currently Allocated Space. If the WMBT determines that the Currently Allocated Space is fully utilized, through an annual review of space utilization data collected by War Memorial staff, the WMBT will identify additional space in the building for use by patriotic organizations. Alternatively, if the WMBT determines that the Currently Allocated Space is not fully utilized based on the annual review referenced in the foregoing sentence, the WMBT may reduce or revise the Currently Allocated Space in the future. Utilization shall be defined, measured, and tracked according to separate procedures to be adopted by the WMBT in consultation with the Posts.

### **IV. Notice to WMBT of Space Allocation to Patriotic Organizations:**

For each new patriotic organization seeking to occupy space in the Veterans Building, ALWMC shall provide WMBT with the attached **Notice of Space Allocation (Attachment A)** in accordance with the following timelines:

1. For proposed occupancies in the Currently Allocated Space, Notices of Space Allocation may be submitted to the WMBT at any time.
2. If the WMBT determines that the Currently Allocated Space is fully utilized in accordance with the procedures described in Section III, then the ALWMC may submit, no later than January 1st of each year, Notices of Space Allocation for any and all patriotic organizations it seeks to install in space other than the Currently Allocated Space the following calendar year. When feasible, the WMBT will consider requests at any time for space other than the Currently Allocated Space that is not currently assigned or occupied.

ALWMC shall include with the Notice of Space Allocation a letter from the proposed patriotic organization containing all of the following information:

- a. Description of the patriotic organization’s purpose, services, and/or activities.
- b. Description of the patriotic organization’s proposed use of space in the building.

- c. Number of patriotic organization's employees/volunteers/staff that would occupy the allocated space.
- d. Square footage requested by the patriotic organization.
- e. Confirmation that the patriotic organization is prepared to enter into an occupancy agreement with the City and County of San Francisco ("Occupancy Agreement") which sets forth occupancy terms including, but not limited to: compliance with the covenants and conditions in paragraph 9 of the Trust, prohibition on subletting, indemnification, insurance, building rules and regulations, consequences for violation of rules, and payment of all utilities, services and material of every character used in or about the allocated premises (currently estimated at \$15.42 per square foot per year or \$1.29 per square foot per month), adjusted annually on July 1 as approved by WMBT. The terms of the Occupancy Agreement shall be mutually agreed to by the WMBT and the ALWMC, with approval by both not to be unreasonably withheld.
- f. General description of proposed alterations to the allocated space that the organization proposes to implement in its requested space. NOTE: Any alterations to the building must be approved in writing by both the ALWMC and WMBT, with approval not to be unreasonably withheld, and approved alterations must be paid for in full by the occupant or ALWMC.

**V. WMBT Consideration of Space Allocation:**

1. War Memorial staff will review ALWMC's Notice of Space Allocation for completeness. Any questions concerning the proposal shall be sent by War Memorial staff to ALWMC within 15 business days of receiving the Notice.
2. Within 60 calendar days of receiving a complete Notice of Space Allocation, including all answers to any questions sent by War Memorial staff, the Veterans Committee of the WMBT shall meet to review the proposed space allocation and make recommendation(s) to the WMBT. If the Committee cannot meet within the aforementioned 60 day period, the full WMBT shall meet instead to consider and take action on the proposal. In reviewing the proposal, the Committee (or the WMBT as appropriate) shall consider the following:
  - a) Does the proposed patriotic organization satisfy the eligibility criteria set forth in Section I of this policy?
  - b) Does the proposed use fall within the uses prescribed in Section II of this policy and/or paragraph 10, (C)(2) of the Trust – *i.e.*, use as club and meeting rooms and for executive offices and auditorium purposes?
  - c) If ALWMC has proposed a particular space to be allocated to the patriotic organization, is that space appropriate based on the patriotic organization's proposed uses or activities, number of staff, and/or proposed alterations, and if not, is there an alternative appropriate space available in the building?
  - d) If the proposal includes alterations, are the alterations appropriate for the space in question? (See Section IV(f) above regarding approval requirements for alterations.)

3. At its next regularly scheduled meeting following the Veterans Committee meeting, or if no such Committee meeting occurs, at the WMBT meeting referenced in (2) above, the WMBT shall consider the proposal and shall approve the space allocation unless it finds that the space allocation does not satisfy one or more of the criteria listed in subsection (2)(a)-(d) above and/or is inconsistent with the terms of the Trust.

**VI. Approved Space Allocations:**

1. The patriotic organization shall execute an Occupancy Agreement with the City and County of San Francisco for no less than 30 days and up to one-year, with automatic annual renewals upon the patriotic organization's written request in accordance with the procedure described in Section 4 below. Upon request, the WMBT shall, when reasonably feasible, consider longer-term occupancies and not unreasonably withhold approval. If the ALWMC and WMBT have approved alterations to the allocated space in connection with the occupancy, the organization shall execute a separate agreement governing such alterations.
2. The patriotic organization shall provide to War Memorial staff the required insurance certificate and additional insured endorsement as required by the City's Risk Manager prior to occupancy.
3. The patriotic organization may commence occupancy following execution of the Occupancy Agreement and submission of required insurance documents.
4. Six months prior to the end of the one-year Occupancy Agreement, the patriotic organization will notify ALWMC and WMBT in writing if it wishes to renew the Occupancy Agreement for an additional one-year term, and ALWMC will provide its renewal recommendation to the WMBT. Within 60 days of receiving ALWMC's renewal recommendation, WMBT shall approve the renewal unless it finds the patriotic organization is not in compliance with the terms of the occupancy agreement. Shorter term occupancies are also subject to an approval process consistent with the terms of the occupancy agreement if requested by occupant prior to the end of the occupancy term.
5. Step #4 shall be repeated on an annual basis.

**Attachments: Attachment A: Notice of Space Allocation**

## Notice of Space Allocation

(Attachment A)

Notice of Space Allocation from American Legion War Memorial Commission to War Memorial Board of Trustees for new patriotic organization seeking to occupy space in the Veterans Building

Note: Complete online, print and submit to War Memorial, Veterans Building Room 110.

### ALWMC AUTHORIZATION:

Submitted By:	ALWMC Position:
Authorized Signature:	Date of Notice (m/d/yy):

### PROPOSED PATRIOTIC ORGANIZATION:

Name of Organization:	Organizational Status (e.g., 501(c)(3)):
Description of activities, functions and/or services provided by patriotic organization:	
Authorized Contact Person:	Position in Organization:
Address, City, State & Zip Code:	
Daytime Phone:	E-mail Address:
Type of Organization (check all that apply):	
<input type="checkbox"/>	A veteran-membership organization composed primarily of U.S. military veterans and/or their relatives.
<input type="checkbox"/>	A veteran-membership organization composed primarily of veterans of foreign militaries that were U.S. allies in times of armed conflict and/or their relatives.
<input type="checkbox"/>	A veteran-membership organization composed primarily of those who served honorably in the Merchant Marines during an era of armed conflict and in an area of potential hostilities during that time and/or their relatives.
<input type="checkbox"/>	A veteran services organization ("VSO") such as Swords to Plowshares that both (a) provides social services exclusively or primarily <sup>1</sup> to veterans and/or their relatives, and (b) has its foundation in and is the outcome of a specific war in which the U.S. has engaged. <sup>1</sup> In the case of a VSO that provides social services primarily but not exclusively to veterans and/or their relatives, the VSO's activities in the building (both administrative functions and provision of social services) must be exclusively for veterans and/or their families.
<input type="checkbox"/>	A nonprofit organization dedicated to the commemoration of a war or wars, or veterans of a war or wars, in which the U.S. has engaged.

### SPACE ALLOCATION:

Proposed Room Number(s):	Approximate Square Feet:
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**ALWMC shall include with this Notice of Space Allocation a signed letter from the proposed patriotic organization on the organization's letterhead containing all of the information listed on page 2.**

**TO BE FILLED OUT BY WMBT STAFF ONLY:**

Date Notice Received:	Received By:
Date Notice Complete:	Received By:

**ALWMC shall include with this Notice of Space Allocation a signed letter from the proposed patriotic organization on the organizations' letterhead containing all of the following information:**

- a. Description of the patriotic organization's purpose, services, and/or activities.
- b. Description of the patriotic organization's proposed use of space in the building.
- c. Number of patriotic organization's employees/volunteers/staff that would occupy the allocated space.
- d. Square footage requested by the patriotic organization.
- e. Confirmation that the patriotic organization is prepared to enter into an occupancy agreement with the City and County of San Francisco ("Occupancy Agreement") which sets forth occupancy terms including, but not limited to: compliance with the covenants and conditions in paragraph 9 of the San Francisco War Memorial Trust, prohibition on subletting, indemnification, insurance, building rules and regulations, consequences for violation of rules, and payment of all utilities, services and material of every character used in or about the allocated premises (currently estimated at \$15.42 per square foot per year or \$1.29 per square foot per month), adjusted annually on July 1 as approved by the War Memorial Board of Trustees.
- f. General description of proposed alterations to the allocated space that the organization proposes to implement in its requested space. NOTE: Any alterations to the building must be approved in writing by both the ALWMC and WMBT, with approval not to be unreasonably withheld, and approved alterations must be paid for in full by the occupant or ALWMC.

## AGREEMENT

The parties to this Agreement are the American Legion War Memorial Commission, a standing committee of the American Legion Eighth District Council, hereinafter referred to as "Legion," and the Board of Trustees of the San Francisco War Memorial, hereinafter referred to as "Trustees." The term of this Agreement is January 1, 2025, to December 31, 2026.

### RECITALS

- A. In July 1977, the Trustees received a grant from the Herbst Foundation, Inc. for the renovation of the Veterans Auditorium. The Herbst Foundation, Inc. and the Trustees entered into an agreement dated July 18, 1977 setting out conditions of the grant award which included that the Trustees agree to maintain direct and exclusive control over all aspects of the use and enjoyment of the theatre including all functions involved in arranging bookings for the theatre and to receive the revenue therefrom; and to rename and maintain the name of the Auditorium upon completion of the renovation as the "Herbst Theatre."
- B. In order that the Trustees be able to comply with the condition of the Herbst Foundation grant, the Legion agreed to relinquish management and control of the Veterans Auditorium to the Trustees. Simultaneously, the Legion agreed to relinquish any rights it had to manage and control the Green Room to the Trustees, and the use and occupancy of basement Room #1 and Auditorium #2 in the Veterans Building to the San Francisco Museum of Modern Art ("Museum").
- C. On September 22, 1977, an agreement was entered into between the Legion and the Trustees setting forth the transfer to the Trustees by the Legion of any rights it had to manage and control the Veterans Auditorium and The Green Room, including the right to receive all revenue therefrom; and the transfer of the use and occupancy of Room #1 and Auditorium #2 in the Veterans Building to the Museum. This agreement specified an annual sum to be paid by the Trustees to the Legion for a four-year period to offset the Legion's office expenses for administering and scheduling uses of Veterans Building space allocated for use by the Legion. The agreement provided that at the end of the four-year period, the sum, if any, would be "renegotiated based on the needs and requirements of the Legion at that time, but in no event shall said sum exceed the sum of Thirty-Five Thousand Dollars (\$35,000.00) annually, including such sum as is paid by the Museum to the Legion for the use and occupancy of Room #1 and Auditorium #2." At a Special Meeting on November 10, 2021, the Trustees enacted Resolution 21-35, which eliminated the Not-to-Exceed Amount for agreements between the Trustees and the Legion previously established by Resolution 4487.
- D. On each of September 22, 1981, September 22, 1983, September 22, 1985, September 22, 1987, September 22, 1989, September 22, 1991, September 22, 1993, September 22, 1995, September 22, 1997, September 22, 1999, September 22, 2001, January 1, 2005, December 14, 2006, February 11, 2011, November 10, 2011, September 10, 2015, October 13, 2016, October 11, 2018, October 8, 2020, November 10, 2021, and November 10, 2022, the Legion and the Trustees renewed an agreement for additional payment of sums to be made to the Legion by the Trustees, each renewal specifying the renegotiated annual sum to be paid by the Trustees to the Legion for an additional period.

- E. The Trustees approved the renewal agreement with the Legion on October 10, 2024, subject to the terms and conditions provided herein.

## **TERMS OF AGREEMENT**

### **1. PAYMENT TO LEGION BY TRUSTEES.**

The Trustees agree to pay the Legion the sums provided herein from the revenue received from the rental of the Herbst Theatre to support the Legion's mission.

- A. January 1, 2025 – December 31, 2025: A total sum to be based on a calculation of 15% of gross revenue sales at the Herbst Theatre. The 15% will be calculated based on actual sales from July 2023 - June 2024 and rendered in twelve (12) equal monthly installments. The monthly amount for 2025 is \$4,450 per month (total of \$53,400 dollars annually).
- B. January 1, 2026 - December 31, 2026: A total sum to be based on a calculation of 15% of gross revenue sales at the Herbst Theatre. The 15% will be calculated based on actual sales from July 2024 - June 2025 and rendered in 12 equal monthly installments.

### **2. LEGION BUDGETS AND REPORTS.**

- A. Legion Budget: The Legion is no longer required to submit its budget to the Trustees for consideration. The Legion is entrusted to manage and spend these funds to further its mission. The Legion may also carry-forward any unused funds to the following year.

### **3. LEGION USE OF VETERANS BUILDING VENUES.**

At the sole discretion of the Trustees, the Legion shall be granted the use of the venues in the Veterans Building, including the Herbst Theatre, The Green Room, the Thomas E. Horn Bar & Lounge, and the Memorial Court without rental charge. The Legion must submit a request for use of a venue to the Board of Trustees for consideration and approval prior to the date of any proposed event.

### **4. FORCE MAJEURE.**

In the event of a force majeure, including any governmental action or proceeding related to COVID-19 or other pandemic, fire, strike, war, act of war, terrorism, act of public authorities, earthquake, flood, or other cause beyond the parties' reasonable control that requires an unforeseen extensive closure of the Herbst Theatre, as determined by the Trustees in their reasonable discretion, the Trustees will pay a guaranteed amount of \$2500 a month to the Legion under this Agreement.

### **5. RENEWAL OF AGREEMENT.**

This Agreement shall expire on December 31, 2026. After the expiration of this Agreement, the Trustees may evaluate whether to enter into a renewal agreement, and, if so determined, the sum to be paid by the Trustees to the Legion under a renewal agreement shall be renegotiated based on the needs and requirements of the Legion at that time.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BOARD OF TRUSTEES  
WAR MEMORIAL OF SAN FRANCISCO

DocuSigned by:  
*Kate Sofia*  
By: F98E00C652682407...  
Date: 10/15/2024

AMERICAN LEGION  
WAR MEMORIAL COMMISSION,  
A standing committee of the American  
Legion Eighth District Council

Signed by:  
*CJ Reeves*  
By: 78C5DBBD28FF411...  
Date: 10/16/2024

Approved as to form:  
DAVID CHILL City Attorney

DocuSigned by:  
*Lauren Curry*  
By: D89D4A9498EC487...  
Date: 10/21/2024

Lauren Curry  
Deputy City Attorney