

File No. 100633

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date June 18, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

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OTHER

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Completed by: Linda Wong

Date June 15, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

[Split appointments to the Recreation and Park Commission; Recreation and Park Department and Commission special event permit and license decisions appealable to the Board of Appeals.]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Sections 4.106 and 4.113, to split the power to make appointments to the Recreation and Park Commission between the Mayor and the Board of Supervisors, and to make Recreation and Park Department and Commission decisions regarding special event permits and licenses that significantly impact park property or the surrounding neighborhood appealable to the Board of Appeals.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 2, 2010, a proposal to amend the Charter of the City and County by amending Sections 4.106 and 4.113 to read as follows:

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.

SEC. 4.106. BOARD OF APPEALS.

(a) The Board of Appeals shall consist of five members nominated and appointed pursuant to this section. Three of the members shall be nominated by the Mayor, and two of the members shall be appointed by the President of the Board of Supervisors. Charter Section 4.101 shall apply to these appointments. Vacancies shall be filled by the appointing officer.

Each nomination of the Mayor and the President of the Board of Supervisors is subject to approval by the Board of Supervisors, and shall be the subject of a public hearing and vote within 60 days. If the Board fails to act on the nomination within 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors, the nominee shall be deemed

SUPERVISORS MIRKARIMI, CAMPOS, MAR, DALY, AND AVALOS.
BOARD OF SUPERVISORS

approved. The appointment shall become effective on the date the Board adopts a motion approving the nomination or after 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors.

Members may be removed by the appointing officer only pursuant to Section 15.105.

In order to stagger the terms, three members shall initially serve two-year terms, and two members shall initially service four-year terms. The initial two and four-year terms of office shall be instituted as follows:

1. The respective terms of office of members of the Board of Appeals who hold office on the first day of July, 2002, shall expire at 12 o'clock noon on that date, and the three members appointed by the Mayor and the two members appointed by the President of the Board of Supervisors shall succeed to said offices at that time.

2. The Clerk of the Board of Supervisors shall determine by lot which two of the three Mayoral appointees shall serve an initial two-year term, and which one of the two appointees of the President of the Board of Supervisors shall serve an initial two-year term. The remaining appointees shall serve four-year terms. All subsequent terms shall be four years.

The Board shall appoint and may remove an executive secretary, who shall serve as department head.

(b) The Board shall hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit, except for a permit or license under the jurisdiction of the Recreation and Park Commission or Department, or the Port Commission, or a building or demolition permit for a project that has received a permit or license pursuant to a conditional use authorization.

(c) Notwithstanding subsection (b), above, the Board shall hear and determine appeals with respect to special event permits or special event licenses under the jurisdiction of the

Recreation and Park Commission or Department, if the special event permit or special event license significantly impacts Recreation and Park property or the surrounding neighborhood. "Special event" permits and "special event" licenses shall be defined by ordinance. Provided, however, that a permit or license applicant is not required to submit an appeal to the Board in order to seek judicial review of a denial of a special event permit or license application by the Recreation and Park Commission or Department. The filing of an appeal shall not stay the decision of the Recreation and Park Commission or Department. No rehearing of such appeals shall be allowed.

(d) The Board of Appeals shall hear and determine appeals:

1. Where it is alleged there is error or abuse of discretion in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the provisions of any ordinance adopted by the Board of Supervisors creating zoning districts or regulating the use of property in the City and County; or

2. From the rulings, decisions and determinations of the Zoning Administrator granting or denying applications for variances from any rule, regulation, restriction or requirement of the zoning or set-back ordinances, or any section thereof. Upon the hearing of such appeals, the Board may affirm, change, or modify the ruling, decision or determination appealed from, or, in lieu thereof, make such other additional determinations as it shall deem proper in the premises, subject to the same limitations as are placed upon the Zoning Administrator by this Charter or by ordinance.

(e) After a hearing and any necessary investigation, the Board may concur in the action of the department involved, or by the affirmative vote of four members (or if a vacancy exists, by a vote of three members) overrule the action of the Department.

Where the Board exercises its authority to modify or overrule the action of a department, the Board shall state in summary its reasons in writing.

SEC. 4.113. RECREATION AND PARK COMMISSION.

~~The Recreation and Park Commission shall consist of seven members appointed by the Mayor, pursuant to Section 3.100, for four year terms. Members may be removed by the Mayor only pursuant to Section 15.105.~~

The Recreation and Park Commission shall consist of seven members, who shall each serve a four-year term. The Mayor shall nominate three members, pursuant to Section 3.100, the Rules Committee of the Board of Supervisors, or any successor committee thereto, shall nominate three members, and the Mayor and the President of the Board of Supervisors shall jointly nominate one member, all subject to approval by the Board of Supervisors. If the Board fails to act on the nomination within 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors, the nominee shall be deemed approved. The appointment shall become effective on the date the Board adopts a motion approving the nomination or after 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors.

Members may be removed by the appointing authority pursuant to Section 15.105.

The respective terms of office of members of the Recreation and Park Commission who hold office on February 1, 2011, shall expire at noon on that date, and the members appointed pursuant to the amendments to this Section approved at the November 2010 election shall succeed to said office at that time. To stagger the terms of the seven members, of the three members nominated by the Mayor, one member shall serve a term of two years, one member shall serve a term of three years, and one members shall serve a term of four years; of the three members nominated by the Rules Committee, one member shall serve a term of two years, one member shall serve a term of three years, and one member shall serve a term of four years; and the member nominated jointly by the Mayor and the President of the Board of Supervisors shall serve a term of four years. The Clerk of the Board of Supervisors shall designate such initial terms by lot. All subsequent appointments to the Commission shall be for four-year terms.

Pursuant to the policies and directives set by the Commission and under the direction and supervision of the General Manager, the Recreation and Park Department shall manage and direct all parks, playgrounds, recreation centers and all other recreation facilities, avenues and grounds under the Commission's control or placed under its jurisdiction thereafter, unless otherwise specifically provided in this Charter.

The Department shall promote and foster a program providing for organized public recreation of the highest standard.

The Department shall issue permits for the use of all property under the Commission's control, pursuant to the policies established by the Commission.

As directed by the Commission, the Department shall administer the Park, Recreation and Open Space Fund pursuant to Section 16.107 of this Charter.

The Department shall have the power to construct new parks, playgrounds, recreation centers, recreation facilities, squares and grounds, and to erect and maintain buildings and structures on parks, playgrounds, square, avenues and grounds, except as follows:


1. No building or structure, except for nurseries, equipment storage facilities and comfort stations, shall be erected, enlarged or expanded in Golden Gate Park or Union Square Park unless such action has been approved by a vote of two-thirds of the Board of Supervisors;

2. No park land may be sold or leased for non-recreational purposes, nor shall any structure on park property be built, maintained or used for non-recreational purposes, unless approved by a vote of the electors. However, with permission of the Commission and approval by the Board of Supervisors, subsurface space under any public park, square or playground may be used for the operation of a public automobile parking station under the authority of the Department of Parking and Traffic, provided that the Commission determines that such a use would not be, in any material respect or degree, detrimental to the original purpose for which a park, square or playground was dedicated or in contravention of the conditions of any grant under which a park, square or playground might have been received. The revenues derived from

any such use, less the expenses incurred by the Department of Parking and Traffic in operating these facilities, shall be credited to Recreation and Park Department funds.

3. The Commission shall have the power to lease or rent any stadium or recreation field under its jurisdiction for athletic contests, exhibitions and other special events and may permit the lessee to charge an admission fee.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
VIRGINIA DARIO ELIZONDO
Deputy City Attorney

LEGISLATIVE DIGEST

[Split appointments to the Recreation and Park Commission; Recreation and Park Department and Commission special event permit and license decisions appealable to the Board of Appeals.]

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Sections 4.106 and 4.113, to split the power to make appointments to the Recreation and Park Commission between the Mayor and the Board of Supervisors, and to make Recreation and Park Department and Commission decisions regarding special event permits and licenses that significantly impact park property or the surrounding neighborhood appealable to the Board of Appeals.

Existing Law

Currently, the Mayor makes all seven appointments to the Recreation and Park Commission.

The Board of Appeals lacks jurisdiction to hear and determine appeals of permits or licenses granted or denied by the Recreation and Park Department or the Recreation and Park Commission.

Amendments to Current Law

This Charter Amendment would split the authority for appointing Recreation and Park Commissioners between the Mayor and the Board of Supervisors. The Mayor would nominate three (3) Commissioners, and the Rules Committee of the Board of Supervisors would nominate three (3) Commissioners, and the Mayor and the President would jointly nominate one (1) member. All nominations would be subject to approval by the Board of Supervisors. If the Board fails to act on nominees forwarded to the Clerk of the Board by the Mayor or by the Rules Committee within 60 days, the nominees would be deemed approved.

This Charter Amendment would authorize the Board of Appeals to hear appeals of decisions regarding special event permits or special event licenses made by the Recreation and Park Commission or Department, if the special event permit or special event license significantly impacts Recreation and Park property or the surrounding neighborhood. "Special event" permits and "special event" licenses include, for example, concerts, festivals and large multi-day activities. "Special event" permits and licenses shall be more specifically defined by ordinance.

Background Information

Until the 1996 Charter revision, the Recreation and Park Commission had "complete and exclusive" authority over the parks, playgrounds, and recreation facilities under its jurisdiction. When the Board of Appeals section was revised in 1996, now Charter Section 4.106, Recreation and Park Department and Commission licenses and permits were specifically excluded from Board of Appeals jurisdiction. The 1996 Charter revision also eliminated the Recreation and Park Commission's "complete and exclusive" authority over park property. Currently, final decisions of the Recreation and Commission regarding permits on park property can only be appealed to court.

A majority of the Commissions established in the City Charter have all of their members nominated by the Mayor. But in recent years, voters approved a number of reorganizations of Charter Commissions to split the appointments between the Mayor and the Board of Supervisors, and several newly created Commissions have split appointments. Commissions where both the Mayor and Board of Supervisors make appointments include the Police Commission, the Planning Commission, the Board of Appeals, the Entertainment Commission, the Building Inspection Commission, and the Youth Commission.



Gavin Newsom
Mayor

Cynthia G. Goldstein
Executive Director

C: Suprs. Mirkarm, Campos, Ma-
Dales and Avalos

May 27, 2010

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94012

Re: File No. 100633; Proposed Charter Amendment

Dear Ms. Calvillo:

Thank you for providing my office with an opportunity to comment on the draft proposal to revise Charter Section 4.106 to allow certain special event permits and licenses issued by the Recreation and Park Commission or Department to be appealed to the Board of Appeals.

Under the proposal, the Board of Appeals would have jurisdiction to hear these appeals "if the special event permit or license significantly impacts Recreation and Park property or the surrounding neighborhood." I am concerned that, as currently written, the proposed Charter language fails to define or provide any guidance as to the scope of "significant impact." Absent clarification, the Board of Appeals would be left to make a case-by-case determination of whether a particular permit would or would not have a "significant impact" on the surrounding neighborhood without any guiding standards.

I recognize that the proposal calls for separate legislation to define the terms "special event permit" and "special event license." Ideally, these definitions would be drafted so that it would not be necessary for the Board to make a determination of "significant impact;" in other words, that all special event permits and licenses, *by definition*, significantly impact Recreation and Park property or the surrounding neighborhood, and those permits and licenses that don't have a significant impact are given a different name. If that is what is envisioned, then I urge the Board of Supervisors to remove the "significant impact" language from this proposed Charter amendment.

In the alternative, if the intent is to give the Board of Appeals jurisdiction to decide when a permit or license has significant impact, it would be helpful for the Board, and the public, to be provided with establish parameters either in the Charter itself, or in the required ordinance. Currently, when a member of the public seeks to file an appeal, Board staff makes a determination as to whether or not the appeal falls within the Board's jurisdiction. If staff determines there is no jurisdiction, the would-be appellant may file a Jurisdiction Request, which elevates the question of jurisdiction to the appointed Board. The Jurisdiction Request then must be briefed, argued and decided. If the Board grants jurisdiction, only then may an appeal actually be filed. This process can take several weeks, if not months.

Without a bright-line demarcation of which special event permits and licenses have the requisite significant impact, the Board would likely be subjected to a deluge of Jurisdiction Requests from potential appellants whose requests to file an appeal are rejected by Board staff. This not only would

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consume the Board's limited resources, it would add delay to the Board's final determination in those cases warranting its review. Since the proposed Charter amendment doesn't suspend permits and licenses during the pendency of the appeal process, the contested event could take place before the Board was able to hear and decide the appeal, thereby rendering moot the appeal process.

In sum, leaving the determination of significant impact for the Board of Appeals to decide on a case by case basis, without providing guidance on the standards to apply in making this assessment, would not only make this new appeal process challenging to administer, but could jeopardize the very value of the appeal opportunity itself.

Thank you for your consideration of these concerns. Please let me know if you would like to discuss this matter further.

Sincerely,



Cynthia G. Goldstein
Executive Director

cc: Linda Wong, Rules Committee Clerk
Phil Ginsberg, General Manager, Recreation and Parks Department