File No. 100045 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee BUDGET AND FINANCE Date 3/17/10

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Completed by: Gail Johnson Date 3/1210
Completed by: _____ Date _____

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

FILE NO. 100045 ORDINANCE NO.

[Increasing Real Estate Recordation Fee.]

Ordinance amending ~~Article XIII,~~ Section 8.24-5~~, San Francisco~~ of the Administrative Code to increase the recordation fee to $3.00 from $2.00 ~~at the time of~~ for recording real estate instruments, and authorizing the Controller to adjust the fee upon notice from the District Attorney, to become operative on its effective date or on July 1, 2009, whichever is later, and making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are *~~strike-through italics Times New Roman~~*. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100045 and is incorporated herein by reference.

Section 2. The San Francisco Administrative Code is hereby amended by amending Section 8.24-5 to read as follows:

SEC. 8.24-5. REAL ESTATE FRAUD PROSECUTION RECORDATION FEE.

(a) Establishment of Fee. Pursuant to Section 27388 of the California Government Code, there is hereby established a fee of *$3.00* *~~$2.00~~* that shall be paid to the Recorder at the time of recording every real estate instrument, paper, or notice required or permitted by law. This fee may be adjusted by the Controller, upon notice from the District Attorney, that the

allowable recordation fee has been increased. Such fee shall be collected, administered, and expended in accordance with Section 27388 of the California Government Code. Money collected pursuant to this Section shall be used to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes and other purposes hereafter authorized by State law.

(b) Real Estate Fraud Prosecution Trust Fund Committee. There is hereby established a Real Estate Fraud Prosecution Trust Fund Committee ("Committee") composed of the District Attorney, City Administrator, and City Attorney, each of whom may appoint an appropriate representative to serve on the committee. The Committee shall review applications and make determinations by majority vote as to the award of funds using the procedures and criteria required by Section 27388 of the California Government Code.

(c) Annual Review. The Board of Supervisors shall annually review the effectiveness of the District Attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the District Attorney in an annual report submitted to the Board of Supervisors in accordance with Section 27388(d) of the Government Code.

(d) Administration of Funds. Pursuant to Section 27388(g) of the Government Code, no money collected pursuant to this Section shall be expended to offset a reduction in any other source of funds. Funds from the Real Estate Fraud Prosecution Trust Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

(e) Monies in this fund, including all interest earned, shall be deemed provided for specific purposes, as stated in this ordinance, and shall be carried forward at the end of each fiscal year, consistent with the provisions of the City Charter.

Section 3. This ordinance shall become operative on its effective date or on July 1, 2009 whichever is later.

APPROVED AS TO FORM:

By: _____
Sallie P. Gibson
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

March 11, 2010

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: March 17, 2010 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item 1 File 10-0045 *(continued from March 10, 2010)*	Department(s): District Attorney's Office, Police Department, and Assessor-Recorder's Office

EXECUTIVE SUMMARY

Legislative Objective

- The proposed ordinance would amend City Administrative Code Section 8.24-5 to (a) increase the Real Estate Fraud Prosecution Recordation Fee (Recordation Fee) by $1.00, or 50 percent, from $2.00 to $3.00 for each real estate document recorded in San Francisco, (b) make environmental findings, and (c) authorize the Controller's Office to automatically increase the Recordation Fee in accordance with future allowable State Government Code increases.

Legal Mandates

- On October 31, 1997, the Board of Supervisors approved Section 8.24-5 in the City's Administrative Code, to establish a new $2.00 Real Estate Fraud Prosecution Recordation Fee (Ordinance 413-97), in accordance with Section 27388 of the California Government Code. On September 27, 2008, Section 27388 of the California Government Code was amended to increase the allowable Recordation Fee from $2.00 to $3.00 for each real estate document recorded.

Fiscal Impact

- In FY 2007-2008, the City received $171,156 and in FY 2008-2009, the City received $148,164 of Recordation Fee revenues. The Assessor-Recorder's Office estimates that in FY 2009-2010, the City will receive approximately $161,822, although the FY 2009-2010 Budget assumes $242,000 of revenues.
- If the proposed ordinance is approved, the Recordation Fee would increase by $1.00, from $2.00 to $3.00 and would generate an estimated $181,797 in total Recordation Fee revenues in FY 2009-2010, or approximately $19,975 more than the currently estimated $161,822. On an annualized basis, the proposed Recordation Fee of $3.00 would generate approximately $240,571, or close to the amount budgeted in FY 2009-2010 of $242,000.

Policy Consideration

- In accordance with Administrative Code Section 8.24-5, the District Attorney's Office is required to submit an annual report to the Board of the Supervisors summarizing (a) real estate fraud cases and (b) Recordation Fee revenues and expenditures. However, the District Attorney's Office only prepared and submitted two reports to the Board of Supervisors, which included the Recordation Fee information for all three fiscal years.

Recommendations

- The District Attorney's Office should submit annual Recordation Fee reports to the Board of Supervisors, in accordance with Administrative Code Section 8.24-5.
- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

BACKGROUND/MANDATE STATEMENT

Existing Legal Requirements

Pursuant to Section 27388 of the California Government Code, the City was initially allowed to charge a Real Estate Fraud Prosecution Recordation Fee (Recordation Fee) of $2.00 when a real estate instrument, paper, or notice[1] (real estate document), that was required or permitted by State law, was recorded in San Francisco County. In accordance with Section 27388 of the California Government Code, the fees collected must be used to fund the administrative and operating costs to deter, investigate, and prosecute real estate fraud crimes and other related purposes, such as training.

On October 31, 1997, the Board of Supervisors approved Section 8.24-5 in the City's Administrative Code, to establish a new $2.00 Real Estate Fraud Prosecution Recordation Fee (Ordinance 413-97) in accordance with State Government Code. Administrative Code Section 8.24-5 also established the Real Estate Fraud Protection Trust Fund Committee, comprised of representatives from the District Attorney's Office, City Administrator, and the City Attorney's Office. The Real Estate Fraud Protection Trust Fund Committee establishes and publishes procedures for use of the Recordation Fees.

On September 27, 2008, Section 27388 of the California Government Code (Senate Bill 1396 in the FY 2007-2008 session) was amended to increase the allowable Recordation Fee from $2.00 to $3.00 for each real estate document recorded.

DETAILS OF PROPOSED LEGISLATION

In accordance with the State Government Code, the proposed ordinance would amend Section 8.24-5 of the City's Administrative Code to (a) increase the Recordation Fee by $1.00, or 50 percent, from $2.00 to $3.00 when a real estate document is recorded in San Francisco County and (b) make environmental findings. The proposed ordinance was amended by the Budget and Finance Committee on March 10, 2010 to authorize the Controller's Office to automatically, without further Board of Supervisors approval, increase the City's Recordation Fee in accordance with allowable fee increases as authorized by the State in accordance with Section 27388 of the California Government Code.

On December 29, 2009, the San Francisco Planning Department determined that the proposed Recordation Fees are categorically exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines.

[1] Real estate instrument, paper, or notice includes a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, and a notice of rescission of declaration of default.

FISCAL ANALYSIS

The Recordation Fees are currently collected by the Assessor-Recorder's Office, when each real estate document is recorded by the City's Assessor-Recorder's Office. The Real Estate Fraud Protection Trust Fund Committee determined that the Recordation Fee revenues would be allocated as follows: (a) District Attorney's Office would receive 54 percent of the revenues, (b) Police Department would receive 36 percent of the revenues, and (c) Assessor-Recorder's Office would receive ten percent of the revenues. Any unused Recordation Fee revenues can be carried over into the next fiscal year.

The District Attorney's Office uses the Recordation Fee revenues to prosecute real estate fraud cases, provide training on real estate fraud crimes and conduct outreach to the community, attorneys, social workers and other related professionals. The Police Department's Economic Crimes Unit uses their Recordation Fee revenues to conduct real estate investigations. The Assessor-Recorder's Office has been carrying forward their Recordation Fee revenues to fund enhancements to the real property tax system that would (a) automate the review and assessment of property documents and generate notifications sent to property owners, and (b) allow the Assessor-Recorder's Office to identify fraud cases more efficiently.

Table 1 below identifies the number of real estate documents recorded by the Assessor-Recorder's Office over the past three fiscal years and the total Recordation Fee revenues received.

Table 1: Number of Real Estate Documents and Revenues in FY 2007-2008, FY 2008-2009 and FY 2009-2010

	FY 2007-08	FY 2008-09	FY 2009-2010*
Number of Real Estate Documents	85,578	74,082	80,911
Recordation Fee	$2	$2	$2
Total	**$171,156**	**$148,164**	**$161,822**

* The Assessor's Office estimates $161,822 of Recordation Fee revenues will be collected in FY 2009-2010 based on actual revenues received through February 2010.

Source: Assessor-Recorder's Office

Over the past three fiscal years, the expenditures of (a) the District Attorney's Office related to real estate fraud cases, training and outreach and (b) the Police Department related to real estate investigations have exceeded the amount of Recordation Fee revenues received, as shown in Table 2 below.

Table 2: Recordation Fee Revenues and Related Expenditures in FY 2007-2008, FY 2008-2009 and FY 2009-2010

	FY 2007-08	FY 2008-09	FY 2009-2010
District Attorney's Office Revenues	$92,424	$80,009	$87,384*
District Attorney's Office Expenditures	195,396	148,516	112,398**
District Attorney's Office Difference	**($102,972)**	**($68,507)**	**($25,014)**
Police Department Revenues	$61,616	$53,339	$58,256*
Police Department Expenditures	132,047	67,058	58, 256***
Police Department Difference	**($70,431)**	**($13,719)**	**0**
Assessor-Recorder's Office Revenues	$17,116	$14,816	$16,182*
Assessor-Recorder's Office Expenditures****	$0	$0	$0
Assessor-Recorder's Office Difference	**$17,116**	**$14,816**	**$16,182**

* Estimated by the Assessor-Recorder's Office

** Estimated by the District Attorney's Office

*** Estimated by the Police Department

**** The Assessor-Recorder's Office has been setting aside the FY 2007-2008, FY 2008-2009, and FY 2009-2010 Recordation Fee revenues for an upgrade to the Assessor-Recorder's Office main hardware and software system.

Source: District Attorney's Office, Police Department, and Assessor-Recorder's Office

According to Mr. Eugene Clendinen Chief Financial Officer in the District Attorney's Office, the actual shortfalls of $102,972 in FY 2007-2008 and $68,507 in FY 2008-2009, and the estimated shortfall of $25,014 in FY 2009-2010 for the District Attorney's Office were funded or will be funded with the previous year's fund balance of Recordation Fee revenues. Mr. Clendinen advises that the District Attorney's Office uses the Recordation Fee revenues for the salaries and benefits of .50 FTE of the 8182 Head Attorney supervising the Elder Abuse Unit, which handles real estate fraud cases. In addition, Mr. Clendinen advises that some of the expenditures have included supplies and a FY 2007-2008 and FY 2008-2009 professional contract with Helen Karr, an expert on elder abuse[2], for $46,075 and $22,375, respectively.

According to Mr. Ken Bukowski, Chief Financial Officer of the Police Department, the actual shortfalls of $70,431 in FY 2007-2008 and $13,719 in FY 2008-2009 for the Police Department were funded with General Fund monies that were appropriated by the Board of Supervisors in the annual budgets. However, Mr. Bukowski advises that the Police Department will not continue to use General Fund monies to fund overtime for purposes of conducting real estate investigations in the Economic Crimes Unit in future fiscal years. According to Mr. Bukowski, the Police Department uses the Recordation Fee revenues for overtime salaries and benefits of Inspectors who conduct real estate investigations in the Economic Crimes Unit.

According to Ms. Kimberlee Kimura, Chief Administrative Officer of the Assessor-Recorder's Office, the Assessor-Recorder's Office has been carrying forward the FY 2007-2008, FY 2008-2009, and FY 2009-2010 Recordation Fee funds, for a total of $48,114 ($17,116 plus $14,816 plus $16,182), for a pending enhancement project that would enhance the real property tax system, which would (a) automate the review and assessment of property documents and generate notifications sent to property owners, and (b) allow the Assessor-Recorder's Office to

[2] According to Mr. Clendinen, many real estate fraud cases involve older adults being taken advantage of their real property.

identify fraud cases more efficiently. Ms. Kimura advises that the $48,114 of Recordation Fees would only cover a portion of the enhancement project. The project is estimated at a total cost of $500,000. According to Mr. Mark McLean, Budget Analyst of the Assessor-Recorder's Office, existing 1630 Account Clerks and 8109 Document Examiner Technicians process and administer real estate documents and fees together with other Assessor-Recorder's documents, which are paid with General Fund monies appropriated by the Board of Supervisors in the annual budget.

Estimated Increase in Recordation Fees Revenues

If the proposed ordinance is approved by the Board of Supervisors, the Recordation Fee would increase by $1.00, from $2.00 to $3.00, effective when the Mayor signs the proposed ordinance. For purposes of the analysis in Table 3 below, the Budget and Legislative Analyst estimates that the proposed ordinance would be approved by both the Board of Supervisors and Mayor by April 1, 2010.

As shown in Table 3 below, the proposed $1 increase in the Recordation Fee, from $2.00 to $3.00 would generate approximately $181,797 in FY 2009-2010, or approximately $19,975 more than the estimated $161,822, as shown in Table 1 above.

Table 3: FY 2009-2010 Estimated Recordation Fee Revenue

	FY 2009-2010*	Recordation Fee	Total Revenues
July 2009	7,853	$2	$15,706
August 2009	7,082	2	14,164
September 2009	8,563	2	17,126
October 2009	7,049	2	14,098
November 2009	5,319	2	10,638
December 2009	7,250	2	14,500
January 2010	7,131	2	14,262
February 2010	3,620	2	7,240
July 2009 – February 2010 Total	**53,867**		**$107,734**
Monthly Average of Real Estate Documents	**6,733**		
March 2010 (projected)	6,733	$2	$13,466
April 2010 (projected)	6,733	3	20,199
May 2010 (projected)	6,733	3	20,199
June 2010 (projected)	6,733	3	20,199
Total of July 2009 through June 2010	**80,799**		**$181,797**

Source: Assessor-Recorder's Office for July 2009 through February 2010 and analysis conducted by the Budget Analyst for March 2010 through June 2010

Based on an average of 80,190 real estate documents recorded each year, the proposed Recordation Fee of $3.00 would generate approximately $240,571 in annual Recordation Fee revenues, as shown in Table 4 below.

Table 4: Estimated Annualized Revenue

	Real Estate Documents from Table 1
FY 2007-2008	85,578
FY 2008-2009	74,082
Estimated FY 2009-2010*	80,911
Average of Real Estate Documents	**80,190**
Recordation Fee	$3
Annualized Total	**$240,571**

* Estimated by the Assessor-Recorder's Office

Source: Analysis conducted by the Budget and Legislative Analyst

Of the estimated $240,571 in Recordation Fee revenues, the District Attorney's Office would receive approximately $129,908 (54 percent), the Police Department would receive $86,606 (36 percent) and the Assessor-Recorder's Office would receive $24,057 (10 percent). According to Mr. Bukowski the proposed increase in Recordation Fee revenues would be used to fund the overtime salary and benefit expenditures of existing Police Department staff investigating real estate fraud cases. Mr. Clendinen advises that the proposed increase in Recordation Fee revenues would be used to fund the salary and benefit expenditures of existing District Attorney's Office staff prosecuting real estate fraud cases. Mr. Clendinen further advises that the District Attorney's Office has several funding sources for prosecuting elder abuse cases, which encompasses real estate fraud cases, which includes the General Fund, Federal grant funds and State grant funds. Mr. McLean advises that the increase in Recordation Fee revenues would be used to fund the enhancement project in the Assessor-Recorder's Office.

The Budget and Legislative Analyst notes that the estimated annual revenue of $240,571 with the proposed $3.00 Recordation Fee is slightly less than the budgeted $242,000 of Recordation Fee revenues included in the City's FY 2009-2010 budget. According to Mr. Clendinen, the proposed Recordation Fee increase was initially intended to be introduced during the FY 2009-2010 budget appropriation process, such that the increased revenues would have been realized for all of FY 2009-2010. However, Mr. Clendinen advises that the District Attorney's Office began working on drafting legislation for the proposed Recordation Fee increase in October of 2009 and the proposed ordinance was not completed and introduced until December 12, 2009.

Although Section 27388 of the California Government Code was amended to increase the allowable Recordation Fee from $2.00 to $3.00 on September 27, 2008, the proposed ordinance to actually increase the City's Recordation Fee from $2.00 to $3.00 would not be effective until approximately April 1, 2010, or approximately 18 months after the fee increase was authorized by the State. The Budget and Legislative Analyst estimates that based on an average of 80,190 (see Table 4 above) documents recorded over the last three years, the City forfeited approximately $120,285 in fee revenues, due to this delay. Therefore, on March 9, 2010, the Budget and Finance Committee amended the proposed ordinance to enable the Controller to automatically increase the City's Recordation Fee, in accordance with State Government Code provisions, once the District Attorney's Office notifies the Controller's Office of such State authorized increases. If approved, such future increases to the City's Recordation Fee would not be subject to further Board of Supervisors approval.

POLICY CONSIDERATION

In accordance with Administrative Code Section 8.24-5, the District Attorney's Office is also required to submit an annual report to the Board of the Supervisors summarizing (a) the real estate fraud cases investigated and prosecuted and (b) the amount of Recordation Fee revenue received and related expenditures incurred.

For FY 2006-2007, FY 2007-2008 and FY 2008-2009, the District Attorney's Office prepared and submitted two reports to the Board of Supervisors, which included the Recordation Fee information for all three fiscal years. Although the two reports included Recordation Fee information for all three fiscal years, such reports were not prepared and submitted on an annual basis as required by Administrative Code Section 8.24-5. The Budget and Legislative Analyst recommends that the District Attorney's Office submits annual reports to the Board of Supervisors in accordance with Administrative Code Section 8.24-5.

Such reports identified (a) the number of cases investigated, (b) the number of cases being prosecuted in court, (c) the number and types of training and outreach conducted, (d) the number and types of meetings attended, (e) any legal changes affecting the investigation and prosecution of real estate fraud, and (f) the amount of Recordation Fee revenue received and expenses incurred.

Table 5 below shows the number of real estate fraud cases investigated and the number of cases being prosecuted in court over the past three fiscal years.

Table 5: Real Estate Fraud Cases Investigated and Prosecuted

	Investigated	Cases in Court
District Attorney's Office		
October 26, 2007 through March 19, 2009	10	6
May 11, 2006 through October 25, 2007	13	5

Source: District Attorney's Office reports

RECOMMENDATIONS

1. The District Attorney's Office should submit annual Recordation Fee reports to the Board of Supervisors in accordance with Administrative Code Section 8.24-5.

2. Approval of the proposed ordinance, which would (a) increase the City's Recordation Fee from $2.00 to $3.00, as authorized by the State Government Code, for each real estate document recorded in San Francisco County, and (b) enable the Controller to automatically, without further Board of Supervisors approval, increase the City's Recordation Fee in accordance with allowable fee increases as authorized by the State in accordance with the State Government Code, is a policy decision for the Board of Supervisors.