

BOARD of SUPERVISORS



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MEMORANDUM

Date: May 2, 2024
To: Planning Department / Commission
From: Brent Jalipa, Clerk of the Budget and Finance Committee
Subject: Board of Supervisors Legislation Referral - File No. 240456 - Administrative Code - Board of Appeals Surcharges on Fees

- ☒ California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - ☒ Ordinance / Resolution
 - ☐ Ballot Measure
- ☐ Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
 - ☐ General Plan ☐ Planning Code, Section 101.1 ☐ Planning Code, Section 302
- ☐ Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- ☐ General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- ☐ Historic Preservation Commission
 - ☐ Landmark (*Planning Code, Section 1004.3*)
 - ☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
 - ☐ Mills Act Contract (*Government Code, Section 50280*)
 - ☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Brent Jalipa at Brent.Jalipa@sfgov.org.

1 [Administrative Code - Board of Appeals Surcharges on Fees]

2
3 **Ordinance amending the Administrative Code to adjust surcharges on fees imposed**
4 **under Planning Code, Section 350, and San Francisco Building Code, Section 110A, for**
5 **actions that may be appealed to the Board of Appeals; authorizing the Controller to**
6 **make future adjustments to ensure that the costs of the Board of Appeals' services are**
7 **recovered without producing revenue which is significantly more than such costs; and**
8 **affirming the Planning Department's determination under the California Environmental**
9 **Quality Act.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in single-underline italics Times New Roman font.
12 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

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

18 Section 1. The Planning Department has determined that the actions contemplated in
19 this ordinance comply with the California Environmental Quality Act (California Public
20 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
21 Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board
22 affirms this determination.

23 Section 2. Chapter 10G of the Administrative Code is hereby amended by revising
24 Sections 10G.1 and 10G.2, to read as follows:
25

1 **SEC. 10G.1. SURCHARGE IMPOSED; CATEGORIES OF PERMITS AND FEES.**

2 In order to recover the cost to the City and County for the Board of Appeals permit
3 review functions, at the time a fee for permit application, issuance, or review is collected, and
4 at the time an annual fee for renewal of the permit or license associated with the permit is
5 collected, a surcharge in the amount specified shall be charged and collected for the following
6 categories of permits and fees.

7 (a) Surcharges on fees imposed by the Department of City Planning pursuant to
8 Planning Code Section 350 for review of actions and permits that may be appealed to the
9 Board of Appeals are identified in Section 4 of Ordinance No. 149-16, referenced in Planning
10 Code Section 350(d). Notwithstanding the dollar amount stated in Ordinance No. 149-16 for
11 these surcharges, all Board of Appeals surcharges identified in Ordinance No. 149-16 shall be
12 ~~\$4437~~;

13 (b) For permits issued pursuant to San Francisco Building Code Section 110A:
14 Tables 1A-A; 1A-F, Item 3; 1A-H; 1A-K, Item 8; or 1A-Q, Item 5; that may be appealed to the
15 Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~\$4437~~;

16 (c) For permits issued pursuant to the Public Works Code that may be appealed to
17 the Board of Appeals pursuant to Charter Section 4.106, a surcharge of \$9;

18 (d) For permits specified in Police Code Section 2.26 that may be appealed to the
19 Board of Appeals pursuant to Charter Section 4.106, a surcharge of \$3 for such permits
20 issued by the Police Department, and a surcharge of \$2 for such permits issued by the
21 Entertainment Commission;

22 (e) For annual license fees specified in Police Code Section 2.27 for permits that
23 may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of
24 \$3 for such permits issued by the Police Department and a surcharge of \$2 for such permits
25 issued by the Entertainment Commission; and

(f) For permits issued pursuant to Health Code Section 19H.4 that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, and annual permit fees pursuant to Health Code Section 19H.7 and Business and Tax Regulations Code Section 249.16, a surcharge of \$45.

SEC. 10G.2. ANNUAL ADJUSTMENT OF SURCHARGE RATE.

(a) Beginning with fiscal year ~~202504-202605~~, the Controller shall each year adjust the surcharges set in Section 10G.1 ~~this Chapter 10G~~ without further action by the Board of Supervisors to reflect changes in the relevant Consumer Price Index, and to produce revenues sufficient to support the costs of providing the services for which the surcharges are assessed, but which will not produce revenue which is significantly more than the cost of providing services for which the surcharges are assessed.

(b) Not later than January 31 of each year, the Board of Appeals shall submit to the Controller data showing the allocation by department of origin for permits heard by the Board of Appeals during the previous fiscal year, as well as any other information that the Controller determines appropriate to the performance of the Controller's duties set forth in this Section 10G.2.

(c) No later than April 15~~th~~ of each year, each department authorized to collect the surcharge pursuant to this Chapter 10G shall submit its current surcharge schedule and, if applicable, the number of appealable permits filed during the prior fiscal year to the Controller, as well as any other information that the Controller determines appropriate for the performance of the Controller's duties set forth in this Section 10G.2. The Controller~~who~~ shall apply the price index adjustment, and if necessary, adjust the surcharges upward or downward for the upcoming fiscal year as appropriate to ensure that costs of providing the services are recovered without producing revenue which is significantly more than such costs. to produce a new fee schedule for the following fiscal year. In no event may the ~~price index~~ adjustment authorized by this Section cause the

1 surcharge authorized by this Chapter to exceed the department's allocable share of Board of
2 Appeals costs.

3 (d) No later than May 15~~th~~ of each year, the Controller shall file a report with the
4 Board of Supervisors reporting the new surcharges and certifying~~adjust the surcharge to ensure~~ that:
5 (1) each surcharge produces sufficient revenue to support each fee category's allocable share
6 of Board of Appeals costs, and (2) each surcharge does not produce revenue which is
7 projected to materially exceed each fee category's allocable share of Board of Appeals costs.
8 ~~If the Controller determines that the surcharge and applicable price index adjustment will either (1) not~~
9 ~~adequately cover, or (2) exceed the projected cost of Board of Appeals review subject to the surcharge,~~
10 ~~the affected department shall file legislation that would adjust the surcharge for the affected~~
11 ~~department(s) to the appropriate level.~~The adjusted surcharges shall become operative on July 1 of
12 each year.

13
14 Section 3. The Planning Department Fee Schedule, referenced in Section 4 of
15 Ordinance No. 149-16, shall be modified to reflect the Board of Appeals surcharge of \$44
16 established in Administrative Code Section 10G.1(a).

17
18 Section 4. The fees amended by this Ordinance are exempt from the definition of tax
19 under California Constitution Article XIII C, Section 1(e)(2).

20
21 Section 5. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
JEN HUBER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Board of Appeals Surcharges on Fees]

Ordinance amending the Administrative Code to adjust surcharges on fees imposed under Planning Code, Section 350, and San Francisco Building Code, Section 110A, for actions that may be appealed to the Board of Appeals; authorizing the Controller to make future adjustments to ensure that the costs of the Board of Appeals' services are recovered without producing revenue which is significantly more than such costs; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Existing law imposes a surcharge on permit and license review and renewal fees for permits and licenses issued or approved by various City authorities based on each department's allocable share of Board of Appeals costs. The surcharges currently reflected in the Administrative Code have been adjusted annually to reflect changes in the Consumer Price Index pursuant to Section 10G.2 of the Administrative Code.

Amendments to Current Law

These amendments would adjust the surcharges on fees imposed under Planning Code Section 350 and San Francisco Building Code Section 110A to \$44.00, based on each department's history of appeals filed with the Board of Appeals and consistent with the fiscal year 2024-2025 budget for the Board of Appeals. In addition, the proposed ordinance amends Section 10G.2 to allow for future adjustments to the surcharges, as determined by the Controller, to produce revenues sufficient to support the costs of providing the services without producing revenue which is significantly more than such costs, in addition to adjustments to the surcharges based on changes to the Consumer Price Index.

Background Information

This legislation is designed to reduce the dependency of the Board of Appeals on funding from the City's General Fund by adjusting surcharges in an equitable manner to generate sufficient revenue, together with Board of Appeals filing fees, to meet the operating expenses, including employee wage rates and fringe benefits, attributable to administering the administrative appeals process at the Board of Appeals. It would also allow the Controller to make future adjustments based upon the costs of the Board of Appeal's services, in addition to adjustments based on changes to the Consumer Price Index.

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