

1 [Fees for Findings of Fact in Assessment Appeals.]

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3 **Ordinance (1) amending Section 2B.11 of the San Francisco Administrative Code to (a)**
4 **replace the existing fee schedule for preparation of written findings of fact in**
5 **assessment appeals with a fee that recovers the costs attributable to the preparation**
6 **and issuance of findings by the Assessment Appeals Board, (2) making findings**
7 **relative to the City's costs of preparing written findings of fact in assessment appeals,**
8 **and (3) making findings pursuant to the California Environmental Quality Act, Public**
9 **Resources Code Section 21080(b)(8)(A), that the fees for written findings are not a**
10 **"project" and that such fees are imposed for the purpose of meeting operating**
11 **expenses, including employee wage rates, fringe benefits and other direct and indirect**
12 **overhead charges attributable to the preparation and issuance of such findings.**

13 Note: Additions are *single-underline italics Times New Roman*;
14 deletions are *strikethrough italics Times New Roman*.
15 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

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18 Section 1. Findings.

19 The Board of Supervisors finds and declares the following:

20 The number of assessment appeals filed by taxpayers with the Assessment Appeals
21 Board ("Board") has increased significantly over the past few years. There were 728
22 assessment appeals filed in fiscal year 2000/01, 1,210 appeals filed in fiscal year 2001/02,
23 2,257 appeals filed in fiscal year 2002/03 and 1,963 appeals filed in fiscal year 2003/04.

24 Section 1611.5 of the Revenue and Taxation Code requires that the Board prepare
25 written findings of fact and conclusions for its decisions in assessment appeals "if requested

1 in writing by a party up to or at the commencement of the hearing, and if payment of any fee
2 or deposit which may be required to cover the expense of preparing the findings is made by
3 the party prior to the conclusion of the hearing." The City may charge a reasonable fee to
4 cover the expense of preparing findings and conclusions. The Board's written findings must
5 "fairly disclose the board's determination of all material points raised by the party in his or her
6 petition and at the hearing, including a statement of the method or methods of valuation used
7 in appraising the property." Although not necessary to obtain judicial review of Board
8 decisions, written findings and conclusions are used most often when a party intends to
9 challenge the Board's decision in court. The findings show the court and parties not only what
10 the Board decided, but also the reasoning and analysis that led to the Board's decision. The
11 Assessor rarely requests written findings and the overwhelming majority of requests for
12 written findings are made by applicants in assessment appeals involving commercial
13 properties, a significant number of which are highrise office buildings and hotels having
14 assessed values exceeding \$100 million. Findings are rarely requested in assessment
15 appeals involving owner-occupied, residential property.

16 Careful preparation of written findings is essential. A reviewing court will use the
17 written findings and conclusions to evaluate whether the Board's determinations are
18 supported by the weight of the evidence, and whether the appraisal method or methods used
19 to value the property were properly applied. If the Board fails to make written findings upon
20 request, or if a reviewing court determines that the findings are so deficient that a remand is
21 necessary to obtain reasonable compliance with the elements of findings required by Section
22 1611.5, the Board's action is deemed to be arbitrary and capricious within the meaning of
23 Section 800 of the Government Code, authorizing the Court to award reasonable attorney's
24 fees to the applicant and against the City for the services necessary to obtain proper findings.

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1 The Board's written findings are drafted by the City Attorney's Office. In most cases in
2 which written findings have been requested, a deputy city attorney for the Board attends the
3 hearing and deliberations of the Board members. The attorney drafts proposed findings
4 based on the evidence and arguments presented at the hearing and in the briefs and other
5 submission of the parties, as well as the Board's deliberations and instructions. The Board
6 reviews the proposed findings and, once satisfied that the document fairly discloses the
7 Board's determination of all material points raised by the petition and at the hearing, and
8 adequately describes the method or methods of valuation used in appraising the property, the
9 Board members on the panel sign the written findings, which are then sent to the applicant
10 and Assessor.

11 The process of preparing and issuing written findings is time consuming and imposes
12 significant costs on the City. The deputy city attorney for the Board seldom attends hearings
13 in cases in which written findings are not requested. In cases where a party requests findings,
14 however, it is more efficient for the Board's attorney to attend the hearing than to prepare
15 written findings using an audiotape or transcript of the hearing. Preparation of proposed
16 findings by relying on audiotapes or transcripts of the hearing, and the recollections and
17 deliberations of the panel members, is less reliable, takes more time and typically requires the
18 Board to hold more sessions with the assigned attorney to review and revise proposed
19 findings than if the attorney attends the hearing. In addition to costs for attorney time, the
20 City's costs for preparing findings also includes the compensation paid to the panel members,
21 currently set at the rate of \$200 per day (\$100 per one-half day).

22 The current costs of preparing and issuing written findings significantly exceed the
23 revenue generated under the existing fee schedule set forth in Section 2B.11 of the
24 Administrative Code. The existing fee schedule for written findings is a sliding scale based on
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1 the value of the property affected by the application on the current assessment role, and
2 ranges from \$100 for properties with an assessed value up to \$1 million to a maximum fee of
3 \$1,000 for properties with an assessed value of more than \$20 million. The new fee structure
4 enacted by this ordinance instead bases the fee on the actual cost of preparing the written
5 findings in each particular case. The amount of the fee will be calculated based on two main
6 direct components: (i) the costs for the time spent by the deputy city attorney assigned to the
7 Board to attend the hearing, prepare the proposed findings and meet with the Board to review
8 the proposed findings and make revisions as directed, plus (ii) the costs of compensating the
9 Board members for the additional sessions held by the Board to review, revise and adopt
10 written findings. As set forth in the analysis prepared by the Controller's Office, contained in
11 Board of Supervisors File No. _____, the City's costs for attorney time is estimated to be \$200
12 per hour, and for additional time spent by the Board members is \$200 per member per day
13 (\$100 per one half-day). These rates include employee wage rates, fringe benefits and
14 associated direct and indirect overhead costs attributable to the preparation of the findings.

15 In adopting this ordinance, the Board intends to enable the City to recover its total
16 costs, but no more, incurred in connection with the preparation of findings. The Board of
17 Supervisors further finds that imposing and calculating the fee for each assessment appeal
18 using the expense components described above is reasonable and appropriate, and does not
19 exceed the City's total cost to prepare written findings.

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22 Section 2. CEQA Findings.

23 The Board of Supervisors finds that the revisions to the fees for written findings of fact
24 for Assessment Appeals Boards are not a project as defined by the California Environmental
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1 Quality Act pursuant to Public Resources Code Section 21080(b)(8)(A). The Board finds that
2 the fee authorized by Section 1611.5 of the Revenue and Taxation Code and Section 2B.11 of
3 the Administrative Code, as amended by this ordinance, is for the purpose of meeting
4 operating expenses, including employee wage rates and fringe benefits, attributable to such
5 written findings.

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7 Section 3. The San Francisco Administrative Code is hereby amended by amending
8 Section 2B.11, to read as follows:

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10 **SEC. 2B.11. FEE FOR FINDINGS OF FACT.**

11 (a) The fee payable to the Assessment Appeals Board to prepare findings of fact
12 pursuant to California Revenue and Taxation Code Section 1611.5 shall be based on the total
13 costs to prepare written findings (including associated departmental and citywide overhead costs),
14 calculated for each parcel of real property or economic unit for which written findings are requested,
15 and shall be set as follows:

16 (i) For the time actually expended by the assigned deputy city attorney for attending the
17 hearing for the purpose of preparing written findings, preparing the written findings and advising the
18 Board on the written findings -- \$200 per hour; plus

19 (ii) For the time actually expended by the Board members to review and approve the written
20 findings -- \$100 per half-day per member.

21 Commencing in fiscal year 2006-2007 and each fiscal year thereafter, the rates shall be
22 adjusted by operation of this section by the annual rate of inflation derived from the most recently
23 published Consumer Price Index for all Urban Consumers for the San Francisco-Oakland
24 Metropolitan Area, issued by the U.S. Department of Labor ("CPI"), but not to exceed the City's actual
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1 total costs of preparing findings. Any increases to the rates shall become effective 30 days after
2 issuance of Controller's certification as set forth in subsection (b).

3 (b) Commencing in 2006 and each year thereafter, the AAB Administrator shall review the
4 revenues from the fee and the total costs incurred by the City and present a report of the fee and cost
5 analysis to the Controller. The Controller shall then, not later than May 15, review report from the
6 AAB Administrator along with the rates set forth in subsection (a), and any adjustments made to the
7 rates under this section, to ensure that the rates generate revenues from the fee that do not exceed the
8 City's actual total costs to prepare findings. The Clerk of the Board and the City Attorney, or their
9 respective designees, shall provide additional information and reports as the Controller deems
10 necessary to review the rates and issue certifications required by this section. Based on the
11 Controller's review:

12 (i) If the revenues from the fee do exceed such costs, the Controller shall immediately
13 report and certify to the Clerk of the Board the decrease to one or both of the rates, as appropriate,
14 that he or she determines will reduce the fee revenues to a level that will recover but not exceed the
15 City's actual total costs to prepare findings. Any such reduction to the rate or rates shall take effect
16 immediately upon the Clerk's receipt of the Controller's certification. The Clerk may later increase the
17 rates to any amount that does not exceed the rates set forth in this section, as previously increased for
18 inflation by the CPI or lesser amount under this section, upon receipt of the Controller's certification
19 that the rates need to be increased to recover the City's actual total costs.

20 (ii) If the revenues from the fee do not exceed such costs, the Controller shall report and
21 certify to the Clerk of the Board the increase to one or more of the rates, as appropriate, that he or she
22 determines will increase the fee revenue to a level that will recover but not exceed such costs. The
23 increase may not exceed the cumulative CPI for the year or years since the last increase to the
24 particular rate or, if there has been no such increase, since the effective date of this ordinance. Any
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1 such increase shall take effect by operation of law and the new rate or rates shall become operative 30
2 days after issuance of the Controller's certification.

3 (iii) If the Controller determines that the rates set forth above, as adjusted for inflation by
4 the CPI, do not recover the City's actual total costs, he or she shall request the City Attorney to
5 prepare legislation that would set the rates at a higher level and transmit the same to the Clerk's Office
6 for introduction and consideration by the Board of Supervisors.

7 (c) The Clerk of the Board or his or her designee shall promptly update the website for the
8 Assessment Appeals Boards and revise pertinent forms, brochures and other explanatory materials as
9 may be appropriate to inform applicants and the public of any adjustment to the rates for the expense
10 components used to calculate the fee, and the operative date of such adjustment.

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12 ~~Where the property affected by~~
13 ~~the application is valued on the~~
14 ~~current assessment role at:~~

15 ~~Fee~~

16	\$ 0 — \$1,000,000 —	\$ 100.00
17	1,000,001 — 2,000,000 —	125.00
18	2,000,001 — 5,000,000 —	150.00
19	5,000,001 — 10,000,000 —	500.00
20	10,000,001 — 20,000,000 —	750.00
21	More than \$20,000,000 —	1,000.00

22 ~~(bd) Where an applicant files two or more applications at the same time affecting the~~
23 ~~same appraisal unit for the same tax year, the applicant shall be liable for a single findings of~~
24 ~~fact fee based on the sum of the current assessment roll values of all property contained in the~~

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1 ~~appraisal unit~~ formula set forth in subsection (a) at the rates in effect on the date the hearing
2 commences.

3 (ee) Revenues generated by the findings fees shall be used exclusively to pay City's
4 costs for the operations of the Assessment Appeals Boards ~~operating costs~~. Where the City
5 Attorney assists a Board in preparing findings of fact, the revenues from the findings fee shall
6 be paid to the City Attorney based on the actual amount of time expended by the City Attorney
7 in attending the hearing, preparing the findings for the Board, and advising the Board with respect
8 to the findings.

9 (f) Upon receipt of a request for findings, the Clerk of the Board or his or her designee, in
10 consultation with the City Attorney's Office, shall estimate the amount of time that will be required for
11 hearings, Board deliberations, and City Attorney drafting of findings and, based thereon, shall estimate
12 the amount of the fee. The Clerk or his or her designee shall transmit the estimate of the fee to the
13 party requesting the findings and notify such party that findings will not be prepared unless the
14 estimated amount of the fee is deposited with the Board prior to the commencement of the hearing.
15 Failure of the party requesting the findings to post the deposit shall be deemed a waiver of the right to
16 written findings. If, during the course of the proceedings, the Clerk or his or her designee reasonably
17 determines that the amount deposited for written findings will be insufficient to cover the expense of
18 preparing findings, he or she shall notify the party requesting the findings of the additional amount that
19 must be deposited. Such notice shall be in writing mailed, transmitted by facsimile or personally
20 delivered to the requesting party, or stated upon the record at the hearing in the presence of the party
21 or the party's representative. The requesting party shall deposit such additional amount as the Clerk or
22 his or her designee estimates is necessary to cover the revised estimate of the City's expense to prepare
23 the findings. Failure of the requesting party to deposit such additional amount within 10 days of the
24 receipt of the notice, or on or before such other date as may be specified in the notice that is on or
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1 before the date the hearing concludes, shall be deemed a withdrawal of the request and waiver of any
2 right to written findings.

3 (g) No later than 60 days after the issuance of written findings, the Clerk or his or her
4 designee shall prepare and submit to the party requesting the findings a reconciliation of the estimated
5 amount of the fee that was deposited and the actual amount of the fee as determined in accordance with
6 this section. The Clerk or his or her designee shall cause to be promptly refunded any amount
7 deposited in excess of the actual fee. If more than one person deposited the estimated fee, any such
8 refund shall be allocated between them in proportion to the amount each person deposited.

9 (h) If, prior to Board's adoption of written findings, the party requesting the findings
10 withdraws the request or is deemed to have waived the right to findings under subsection (f) for failure
11 to deposit an additional amount due as a result of a revised estimate of the fee that is higher than the
12 original estimate, the amount actually deposited with the Board shall be refunded to the party after
13 deduction therefrom of an amount equal to the expense incurred for preparation of findings calculated
14 in accordance with this section prior to date and the time the party withdrew the request or was
15 deemed to have waived the right to findings under subsection (f).

1 (i) The Office of the Assessor-Recorder, the Board of Supervisors and applicants who
2 reside in owner-occupied buildings consisting of three or fewer residential units (including single
3 family homes and condominiums), when such buildings are the subject of the proceeding, shall be
4 exempt from payment of the fee imposed under this Section.

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

By: _____
Dorji Roberts
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