File No. 100363 Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Sub - Committee: Budget and Finance Date: June 9, 2010

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Completed by: Andrea S. Ausberry Date Friday, June 4, 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.

FILE NO. 100363 ORDINANCE NO.

[Revising Board of Appeals Surcharges]

Ordinance amending Section 10G.1 of the San Francisco Administrative Code to adjust the surcharges on permit fees, license fees, permit review fees and permit and license renewal fees imposed by the Department of Building Inspection, the Planning Commission, the San Francisco Municipal Transportation Agency Board of Directors, the Department of Public Works, the Entertainment Commission, and the Department of Public Health for permits and licenses that may be appealed to the Board of Appeals; remove the surcharge imposed by the Art Commission for Street Artist Certificates; and making environmental findings.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough 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. The San Francisco Administrative Code is hereby amended by amending Section 10G.1, to read as follows:

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

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

(a) For fees imposed by the Department of City Planning pursuant to San Francisco Planning Code Sections 351(h), 352(a) (except for fees imposed for hearings on Conditional Uses under Section 303 or Planned Unit Developments under Section 304), 353(a), 353(b),

353(c), or 355 for review of permits that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~$22.50~~$25.00;

(b) For permits issued pursuant to San Francisco Building Code Section 110A: Tables 1A-A; 1A-F, Item 3; 1A-H; 1A-K, Item 8; or 1A-Q, Item 5; that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~$22.50~~$25.00;

(c) For permits issued pursuant to the San Francisco Public Works Code that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~$4.50~~6.00;

(d) For permits specified in San Francisco Police Code Section 2.26 that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of $26.50 for such permits issued by the Police Department, and a surcharge of ~~$3.00~~$4.00 for such permits issued by the Entertainment Commission;

(e) For permits specified in San Francisco Police Code Section 2.26.1 that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~$3.50~~$7.00;

(f) For annual license fees specified in San Francisco Police Code Section 2.27 for permits that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of $26.50 for such permits issued by the Police Department and a surcharge of ~~$3.00~~$4.00 for such permits issued by the Entertainment Commission;

(g) For annual license fees specified in San Francisco Police Code Section 2.27.1 for permits that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, a surcharge of ~~$3.50~~$7.00;

(h) For permits issued pursuant to San Francisco Health Code Section 1009.53 that may be appealed to the Board of Appeals pursuant to Charter Section 4.106, and annual

permit fees pursuant to San Francisco Health Code Section 1009.54 and Business and Tax Regulations Code Section 249.16, a surcharge of ~~*$24.00*~~*$51.00;*

~~*(i) For quarterly or annual certificates issued pursuant to San Francisco Police Code Sections 2404.1 and 2408(a) that may be appealed to the Board of Appeals pursuant to Charter Section 4.106 and San Francisco Police Code Section 2409, a surcharge of $9.00.*~~

Section 2. 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. 100363 and is incorporated herein by this reference.

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

By: Francesca Gessner
FRANCESCA GESSNER
Deputy City Attorney

FILE NO.

LEGISLATIVE DIGEST

[Revising Board of Appeals Surcharges]

Ordinance amending Section 10G.1 of the San Francisco Administrative Code to adjust the surcharges on permit fees, license fees, permit review fees and permit and license renewal fees imposed by the Department of Building Inspection, the Planning Commission, the San Francisco Municipal Transportation Agency Board of Directors, the Department of Public Works, the Entertainment Commission, and the Department of Public Health for permits and licenses that may be appealed to the Board of Appeals, remove the surcharge imposed by the Art Commission for Street Artist Certificates, and making Environmental Findings.

Existing Law

Existing law imposes a surcharge on permit, license, and permit review fees and permit and license 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.

Amendments to Current Law

These amendments would increase the surcharge on permit, license, permit review and renewal fees imposed in connection with permits and licenses issued, approved or renewed by the designated City departments, based on each department's history of appeals filed with the Board of Appeals and consistent with the fiscal year 2010-2011 budget for the Board of Appeals. These amendments would remove the surcharge imposed by the Art Commission for Street Artist Certificates because there were no appeals thereof filed with the Board of Appeals in fiscal year 2009-2010.

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.

Item 4 File 10-0363	**Departments:** Board of Appeals, Department of Building Inspection, Planning Department, Department of Public Works, Police Department, Entertainment Commission, Department of Public Health, San Francisco Municipal Transportation Agency, and Art Commission.

EXECUTIVE SUMMARY

Legislative Objective

- Ordinance amending Section 10G.1 of the Administrative Code to (a) adjust the surcharges on permit fees, license fees, permit review fees and permit and license renewal fees imposed by the Department of Building Inspection, Planning Commission, San Francisco Municipal Transportation Agency Board of Directors, Department of Public Works, Police Department, Entertainment Commission, and Department of Public Health for permits and licenses that may be appealed to the Board of Appeals; (b) remove the surcharge imposed by the Art Commission for Street Artist Certificates; and (c) make environmental findings.

Key Points

- Various surcharges are currently imposed on existing permits, licenses, and fees charged by various City departments, and collected by the Board of Appeals, if such permit and licenses are subject to review and appeal by the Board of Appeals. In addition, when an applicant files an appeal with the Board of Appeals, the applicant pays a filing fee ranging from $100 to $600 directly to the Board of Appeals, according to the schedule shown in Attachment I.

- The number of appeals filed with the Board of Appeals has ranged from 300 appeals in FY 2004-2005 to 156 appeals filed in FY 2008-2009. The number of appeals filed with the Board of Appeals declined by 117 cases, or 42.9 percent, from 273 cases in FY 2007-2008 to 156 cases in FY 2008-2009 primarily due to the significant reduction in the number of permits issued by the Department of Building Inspection (DBI), which resulted from the slowdown in the economy. 76.8 percent of the appeals filed with the Board of Appeals in FY 2008-2009 were from the Department of Building Inspection (DBI) and the Planning Department.

Fiscal Impact

- The proposed changes to the surcharges, as shown in Attachment II, are anticipated to generate an estimated $885,594 of revenues in FY 2010-2011, an increase of $89,882 over the $795,712 budgeted in FY 2009-2010. The additional revenues to be generated from the proposed Board of Appeals surcharges are included in the FY 2010-2011 budget, and assume an effective date of July 1, 2010. If the proposed ordinance is not approved, and the permit application volume remains relatively constant as occurred in FY 2009-2010, the Board of Appeals will receive approximately $700,594 in surcharge revenues or $185,000 less than the budgeted $885,594 in FY 2010-2011. If there is a shortfall in surcharge revenues, the Board of Appeals will reduce expenses as possible, or request additional General Fund monies to bridge any funding shortfall.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Section 10G.1 of the San Francisco Administrative Code specifies that in order to recover the cost for the San Francisco Board of Appeals permit review functions, at the time a fee for permit application, issuance or review is collected, and at the time an annual fee for renewal of that permit or license is collected, a surcharge shall be charged by various City departments and collected for various categories of permits and fees.

Under Section 10G.1 of the Administrative Code, specific Board of Appeals surcharges are included for the following permits and fees: (a) fees imposed by the Department of City Planning pursuant to San Francisco Planning Code Sections 351(h), 352(a)[1], 353(a), 353(b), 353(c) or 355; (b) permits issued pursuant to San Francisco Building Code Sections 110A: Tables 1A-A; 1A-F, Item 3; 1A-H; 1A-K, Item 8; or 1A-Q, Item 5; (c) permits issued pursuant to San Francisco Public Works Code; (d) permits specified in San Francisco Police Code Sections 2.26, 2.26.1, 2.27 and 2.27.1; (e) permits issued by the Entertainment Commission; (f) permits issued pursuant to San Francisco Health Code Sections 1009.53 and 1009.54; (g) permits issued pursuant to Business and Tax Regulations Code Section 249.16; and (h) quarterly or annual Street Artist Certificates issued pursuant to Police Code Sections 2404.1 and 2408(a).

In addition, Section 10G.2 of the City's Administrative Code provides that the Controller will adjust these Board of Appeals surcharges each year, without further action of the Board of Supervisors to reflect changes in the Consumer Price Index (CPI), specifying the procedure for adjusting such rates. Section 10G.2(d) however specifies that if the Controller determines that the surcharges and applicable price index adjustment will either (1) not adequately cover or (2) exceed the projected cost of the Board of Appeals review, the department shall file legislation to adjust the surcharges for the affected departments to the appropriate level. In accordance with these procedures, the number of appealable permits filed during the prior fiscal year will be used to determine the new surcharges, such that surcharges may not exceed a department's allocable share of the Board of Appeals costs.

Background

The Board of Appeals is a five-member appointed panel that provides a final administrative review process for hearing and deciding appeals of various City decisions. Three members are appointed by the Mayor and two members are appointed by the President of the Board of Supervisors for staggered four year terms.

The Board of Appeals meets, hears and decides appeals to grant, deny, suspend, or revoke permits, licenses and other entitlements by various City departments. During the

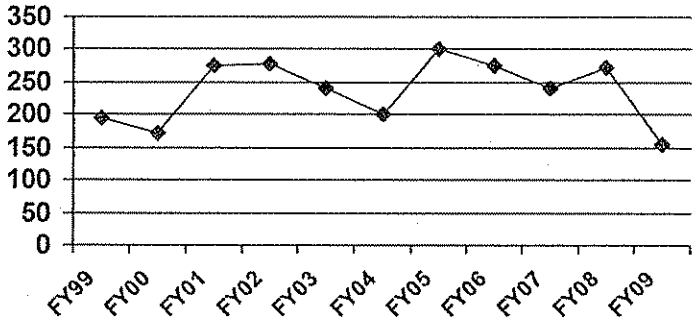
[1] In accordance with this provision, these surcharge fees are not imposed for hearings on Conditional Uses under Section 303 or Planned Unit Developments under Section 304.

hearing, the Board of Appeals will review the documents submitted and hear testimony from the appellant, permit holder, department representatives, interested neighbors and members of the public. The Board of Appeals can vote to uphold the department's determination, impose additional conditions on that determination, or overrule the determination. Appeals of Board of Appeals decisions may be filed in Superior Court.

When an applicant files an appeal, the applicant pays a filing fee ranging from $100 to $600 directly to the Board of Appeals, according to the schedule shown in Attachment I. In addition, various surcharges are imposed on existing permits, licenses, and fees charged by various City departments, if such permits and licenses are subject to review by the Board of Appeals.

Table 1 below shows the number of appeals filed with the Board of Appeals over the past 11 years, from FY 1998-1999 through FY 2008-2009:

Table 1: Number of Appeals Filed From FY 1998-1999 Through FY 2008-2009



Number of Appeals Filed Over Time

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09
Appeals	195	173	274	278	242	202	300	276	240	273	156

The number of appeals filed with the Board of Appeals declined by 117 cases, or 42.9 percent, from 273 cases in FY 2007-2008 to 156 cases in FY 2008-2009 primarily due to the significant reduction in the number of permits issued by the Department of Building Inspection (DBI), which resulted from the slowdown in the economy.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Section 10G.1 of the City's Administrative Code to (a) adjust the surcharges on permit fees, license fees, permit review fees and permit and license renewal fees imposed by the Department of Building Inspection, Planning Commission, San Francisco Municipal Transportation Agency, Department of Public Works, Police Department, Entertainment Commission, and Department of Public Health for permits and licenses that may be appealed to the Board of Appeals; (b) remove the surcharge imposed by the Art Commission for Street Artist Certificates; and (c) make environmental findings, in accordance with the California Environmental Quality Act (CEQA).

As shown above in Table 1, in FY 2008-2009, a total of 156 appeals were filed with the Board of Appeals. Attachment II, provided by Ms. Cynthia Goldstein, the Executive Director of the Board of Appeals, identifies the proportion of the 156 appeals that were filed in FY 2008-2009 for permits, licenses and certificates issued by each department, the current surcharges, the surcharges which are being proposed under the subject ordinance, the amount of the increases and decreases in the surcharges and examples of the type of permits and actions and examples of existing permit costs charged by the various City departments. As shown in Attachment II, 76.8 percent of all the appeals filed in FY 2008-2009 were from the Department of Building Inspection (DBI) and the Planning Department[2].

FISCAL IMPACT

The Board of Appeals FY 2009-2010 budget is $834,412 and includes funding for five FTE staff: one Executive Director, two Clerk Typists, one Senior Clerk Typist and one Legal Assistant. In FY 2009-2010, the Board of Appeals budgeted revenues include $795,712 of surcharge fees and $38,700 of permit application filing fees, or total revenues of $834,412 to fully support the budgeted costs of $834,412. The Controller's Office projections reflect FY 2009-2010 year-end (a) surcharge revenues of approximately $705,345, which is $90,367 or 11.4 percent less than budgeted and (b) filing fee revenues of approximately $45,000, which is $6,300 or 16.3 percent more than budgeted. Overall, $750,345 ($705,345 plus $45,000) of revenues is anticipated in FY 2009-2010, which is $84,067 or 10.1 percent less than the $834,412 budgeted.

The proposed FY 2010-2011 Board of Appeals budget is $930,494, an increase of $96,082 or 11.5 percent over the $834,412 budgeted in FY 2009-2010. Of the $96,082 increase in FY 2010-2011, $84,342 or 87.8 percent of the increase is for Services of Other Departments. According to Ms. Goldstein, this increase is primarily due to increased need for City Attorney services.

To fully fund the $930,494 proposed operating budget in FY 2010-2011, the Board of Appeals budgeted $44,900 of revenues from the various filing fees shown in Attachment I, similar to what is anticipated to be generated in FY 2009-2010. The remaining $885,594 of revenues ($930,494 budget less $44,900 filing fee revenues) are anticipated to be generated from the proposed surcharges in FY 2010-2011, which is an increase of

[2] According to Ms. Goldstein, the appeals filed by the Department of Building Inspection (DBI) and the Planning Department are combined, representing 76.8 percent of all appeals, because more than half of the DBI-issued determinations reviewed by the Board of Appeals also involve Planning review, and it is often difficult to separate the appealable issue. For example, typically a building permit is reviewed by Planning for architectural and zoning issues and then reviewed by DBI for specific building and construction plans. As a result, Ms. Goldstein advises that the number of appealable determinations on which a surcharge could be imposed is artificially lower for Planning than for DBI. In FY 2008-2009, DBI issued 30,171 permits upon which the surcharge could be imposed, and Planning issued 1,129.

$89,882 over the $795,712 budgeted in FY 2009-2010. Ms. Goldstein advises that the additional revenues to be generated from the proposed Board of Appeals surcharges are included in the FY 2010-2011 budget, and assume an effective date of July 1, 2010.

According to Ms. Goldstein, if the proposed ordinance is not approved, and the permit application volume remains relatively constant as occurred in FY 2009-2010, the Board of Appeals anticipates receiving approximately $700,594 in surcharge revenues or $185,000 less than the budgeted revenues of $885,594 in FY 2010-2011.

In addition, Ms. Goldstein advises that if there is a shortfall in surcharge revenues, as there has been in the past two years because the number of permits issued has declined due to reduced economic activity, the Board of Appeals will reduce expenses as possible. Otherwise, the Board of Appeals will need to request additional General Fund monies to bridge any funding shortfall. Ms. Goldstein notes that the proposed surcharge increases and projections of revenues assume continued suppressed permit application volume.

As noted above, in accordance with the City's Administrative Code, the number of appealable permits filed during the prior fiscal year is used to determine the surcharges for the following fiscal year, such that new surcharges may not exceed a department's allocable share of the Board of Appeals costs. The proposed ordinance would therefore remove the existing $9 surcharge imposed on Street Artist Certificates because there were no appeals filed with the Board of Appeals in FY 2009-2010. Ms. Goldstein notes that the last time a Street Artist Certificate was appealed to the Board of Appeals was in FY 2007-2008.

POLICY CONSIDERATIONS

On May 19, 2010, the Budget and Finance Committee approved the Board of Appeals FY 2010-2011 budget, as recommended by the Mayor. The proposed FY 2010-2011 budget for the Board of Appeals assumes the approval of the proposed increases in the surcharges, effective July 1, 2010. Therefore, if the proposed ordinance is not approved, the Board of Appeals FY 2010-2011 budget will exceed revenues by an estimated $185,000. Although the Budget and Legislative Analyst generally considers approval of increased surcharges to be policy decisions for the Board of Supervisors, given that the Budget and Finance Committee has already approved the FY 2010-2011 Board of Appeals budget, which assumes passage of these surcharges, the Budget and Legislative Analyst recommends approval of the proposed ordinance.

RECOMMENDATION

Approve the proposed ordinance.

Harvey M. Rose

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner

Board of Appeals Fee Schedule

Attachment I

Effective 7-24-09

Type of Appeal	Fee
ZONING ADMINISTRATOR VARIANCE Bus. & Tax Reg. Code Art. 1, Sec. 8(a)(1)	**$600**
OTHER ZONING ADMINISTRATOR DECISION: LETTER OF DETERMINATION; NOTICE OF VIOLATION; STOP WORK ORDER REQUEST; PLANNING COMMISSION ACTION Bus. & Tax Reg. Code Art. 1, Sec. 8(a)(2)	**$600**
DEPARTMENT OF BUILDING INSPECTION RESIDENTIAL HOTEL OR APARTMENT CONVERSION PERMIT Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(1)	**$525**
DEPARTMENT OF BUILDING INSPECTION BUILDING, DEMOLITION OR OTHER PERMIT Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(2)	**$175**
DEPARTMENT OF BUILDING INSPECTION IMPOSITION OF PENALTY Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(3)	**$300**
POLICE DEPARTMENT & ENTERTAINMENT COMMISSION PERMIT TO BUSINESS OWNER OR OPERATOR Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(1)	**$375**
POLICE DEPARTMENT & ENTERTAINMENT COMMISSION PERMIT TO EMPLOYEE OR CONTRACT WORKER Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(1)	**$150**
POLICE DEPARTMENT & ENTERTAINMENT COMMISSION PERMIT REVOCATION OR SUSPENSION – OWNERS AND INDIVIDUALS Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(2)	**$375**
DEPARTMENT OF PUBLIC WORKS TREE REMOVAL – WHEN CITY INITIATED ONLY Bus. & Tax Reg. Code Art. 1, Sec. 8(d)	**$100**
OTHER ORDER OR DECISION (TAXI, TOBACCO, MASSAGE, STREET ARTISTS, GENERAL TREE REMOVAL, ENTERTAINMENT AND OTHER PERMITS) Bus. & Tax Reg. Code Art. 1, Sec. 8(e)	**$300**
REHEARING REQUEST – ALL TYPES OF APPEALS Bus. & Tax Reg. Code Art. 1, Sec. 8(f)	**$150**
JURISDICTION REQUEST – ALL TYPES OF DEPARTMENTAL ACTIONS Bus. & Tax Reg. Code Art. 1, Sec. 8(g)	**$150**

Board of Appeals Surcharges

Surcharges are levied on application fees for the types of permits that have a recent history of being appealed. The amount of the surcharge is based on the proportion of the Board's work represented by the type of appeal, spread across projected permit application volume.

FY 2008-2009

Department	Proportion of Total Appeals Filed	Current Surcharge	Proposed Surcharge	Amount of Change	Examples of Permits & Actions	Examples of Permit Costs
DBI and Planning	76.8%	$22.50	$25.00	$2.50	Zoning Administrator and Planning Commission Determinations; Building, Demolition and Sign Permits	Planning: Z.A. Determination $527; Discretionary Review $300; Commission Hearing $271 - $18,434*; Building Permit $311 - $32,001*; DBI: New Construction or Alteration $201 - $40,000+*
DPW	5.8%	$4.50	$6.00	$1.50	Tree Removal, Minor Sidewalk Encroachment, Café Table & Chairs	Tree Removal $300 - $1,214; Minor Sidewalk Encroachment $974; Café Tables & Chairs $113.84
Police	1.3%	$26.50	$26.50	$0.00	Place of Entertainment	Bingo Parlor $112; Tow Car Firm $575; Mobile Caterer $775
Entertainment Commission	0.6%	$3.00	$4.00	$1.00	Place of Entertainment	Extended Hours $1,576 Place of Entertainment $1,576; One Time Event $272
MTA (Taxi)	5.2%	$3.50	$7.00	$3.50	Taxi Medallion, Ramp Medallion, A-Card, Color Scheme	Driver Permit Application $101; Ramped Taxicab Application $676; New Color Scheme $1,593 - $5,840
DPH Environmental Health**	10.3%	$24.00	$51.00	$27.00	Tobacco Sales, Massage	Tobacco Sales Annual $221; Massage Estab. Application $595; Massage Estab. Annual $860; Catering $908
Arts Commission***	0.0%	$9.00	$0.00	($9.00)	Street Artists Certificates	N/A

*Fee is based on construction costs.

**Appeals of DPH Environmental Health permits increased 7.7%.

***This charge is being eliminated because no appeals of Street Artist Certificates were filed during the prior year.

Office of the Mayor
City & County of San Francisco

Gavin Newsom

File 100363

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Mayor Gavin Newsom
RE: Ordinance revising Board of Appeals Surcharges
DATE: May 3, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is an ordinance amending Section 10G.1 of the San Francisco Administrative Code to adjust the surcharges on permit fees, license fees, permit review fees and permit and license renewal fees imposed by the Department of Building Inspection, the Planning Commission, the San Francisco Municipal Transportation Agency Board of Directors, the Department of Public Works, the Entertainment Commission, and the Department of Public Health for permits and licenses that may be appealed to the Board of Appeals, and to remove the surcharge imposed by the Art Commission for Street Artist Certificates.

I request that this item be calendared in the Budget and Finance Committee, in conjunction with the Board of Appeals' FY10-11 budget.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

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