

File No. 100724

Committee Item No. 9

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date: June 28, 2010

Board of Supervisors Meeting

Date: _____

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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Recommendation*</u> |
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Completed by: Andrea S. Ausberry

Date Friday, June 25, 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.

1 [Update to Environmental Review Fees to Increase Fees for Cost Recovery, Establish a New Fee
2 for Mitigation and Conditions of Approval Monitoring, and Make Other Clarifying Changes]

3
4 Ordinance amending the San Francisco Administrative Code, Chapter 31-Articles IV
5 and V, by amending Sections 31.22, 31.23 and 31.24 to increase all fees 2.61% which is
6 the cost of living adjustment, and an additional 2.04% for cost recovery, further
7 increase Categorical Exemption Class 32, Negative Declaration and Environmental
8 Impact Report addendum fees for cost recovery, change the timing of Environmental
9 Impact Report payments, add a new fee for mitigation and condition of approval
10 monitoring, and for the Municipal Transportation Agency and Public Utilities
11 Commission for Categorical Exemption Certificates, clarify phase collection payments
12 and refund policy, and establish a processing fee for phased payments.

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.
16 Board amendment deletions are ~~strikethrough-normal~~.

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

17 Section 1. Findings. (a) The Planning Department is able to recover the cost of long
18 range planning through its building permit review, CEQA (California Environmental Quality
19 Act, California Public Resources Code Sections 21000 et seq.) review, and land use
20 entitlement fees.

21 (b) The current fee structure is set to recover a portion of long range planning cost
22 through said fees, but the cost of long range planning, which includes historic preservation
23 survey and designation work, is increasing beyond the annual cost of living adjustment.

24 (c) It is in the public interest for the private project sponsor to reimburse the City for
25 the benefit he or she derives as a consequence of public supported planning.

1 (d) Environmental Finding. The Planning Department has determined that the
2 proposed fee adjustments are statutcrily excluded from CEQA under the CEQA Guidelines
3 Section 15273(a), which exempts rates, tolls, fares and charges such as those proposed here.
4 Said determination is on file with the Clerk of the Board of Supervisors in File No. 100724 and
5 is incorporated herein by reference.

6 Section 2. The San Francisco Administrative Code is hereby amended by amending
7 Sections 31.22 and 31.23 and adding 31.24, to read as follows:

8 SEC. 31.22 BASIC FEES.

9 (a) The Planning Departme nt shall charge the following basic fees to applicants for
10 projects located outside of recently acopted Plan Areas (adopted after July 1, 2005) that do
11 not require one or more of the following, which will be initiated through the adoption of an Area
12 Plan: Code amendments for the height or bulk district and General Plan amendments, as
13 specified in Section 31.21 above:

14 (1) For an initial study of a project excluding use of special expertise or technical
15 assistance, as described in Section 31.23 below, the initial fee shall be:

16 — Where the total estimated construction cost as defined by the San Francisco
17 Building Code is between \$0 and \$9,999: ~~\$1,003~~ 1,070;

18 — Where said total estimated construction cost is \$10,000 or more, but less than
19 \$200,000: ~~\$4,1633,903~~ PLUS 1-9342.624% of the cost over \$10,000;

20 — Where said total estimated construction cost is \$200,000 or more, but less than
21 \$1,000,000: ~~\$8,0847,579~~ PLUS 1-4621.530% of the cost over \$200,000;

22 — Where said total estimated construction cost is \$1,000,000 or more, but less
23 than \$10,000,000: ~~\$20,56119,275~~ PLUS 1-2271.284% of the cost over \$1,000,000;

1 — Where said total estimated construction cost is \$10,000,000 or more, but less
2 than \$30,000,000: \$138,356,129,705 PLUS 0.3780.396% of the cost over \$10,000,000;

3 — Where said total estimated construction cost is \$30,000,000 or more, but less
4 than \$50,000,000: \$ 218,998,205,305 PLUS 0.1420.149% of the cost over \$30,000,000;

5 — Where said total estimated construction cost is \$50,000,000 or more, but less
6 than \$100,000,000: \$249,293,233,705 PLUS 0.0340.036% of the cost over \$50,000,000;

7 — Where said total estimated construction cost is \$100,000,000 or more:
8 \$267,426,250,705 PLUS 0.0150.016% of the cost over \$100,000,000.

9 An applicant proposing major revisions to a project application that has been inactive
10 for more than six months and is assigned shall submit a new application. An applicant
11 proposing significant revisions to a project which has not been assigned and for which an
12 application is on file with the Planning Department shall be charged time and materials to
13 cover the full costs in excess of the initial fee paid.

14 (2) For preparation of an environmental impact report excluding use of special
15 expertise or technical assistance, as described in Section 31.23 below, the initial fee shall be:

16 — Where the total estimated construction cost as defined in the San Francisco
17 Building Code is between \$0 to \$199,999: \$23,763,22,277;

18 — Where said total estimated construction cost is \$200,000 or more, but less than
19 \$1,000,000: \$23,763,22,277 PLUS 0.5580.584% of the cost over \$200,000;

20 — Where said total estimated construction cost is \$1,000,000 or more, but less
21 than \$10,000,000: \$28,655,26,864 PLUS 0.3780.396% of the cost over \$1,000,000;

22 — Where said total estimated construction cost is \$10,000,000 or more, but less
23 than \$30,000,000: \$64,945,60,884 PLUS 0.1620.155% of the cost over \$10,000,000;

1 — Where said total estimated construction cost is \$30,000,000 or more, but less
2 than \$50,000,000: ~~\$98,01291,884~~ PLUS ~~0.0440-042%~~ of the cost over \$30,000,000;

3 — Where said total construction cost is \$50,000,000 or more, but less than
4 \$100,000,000: ~~\$107,025100,333~~ PLUS ~~0.0440-042%~~ of the cost over \$50,000,000;

5 — Where said total estimated construction cost is \$100,000,000 or more:
6 ~~\$129,747121,634~~ PLUS ~~0.0160-015%~~ of the cost over \$100,000,000.

7 An applicant proposing major revisions to a project application that has been inactive
8 for more than six months and is assigned shall submit a new application. An applicant
9 proposing significant revisions to a project which has not been assigned and for which an
10 application is on file with the Planning Department shall be charged time and materials to
11 cover the full costs in excess of the initial fee paid.

12 (3) For an appeal to the Planning Commission: The fee shall be \$500.00 to the
13 appellant; provided, however, that the fee shall be waived if the appeal is filed by a
14 neighborhood organization that: (a) has been in existence for 24 months prior to the appeal
15 filing date, (b) is on the Planning Department's neighborhood organization notification list, and
16 (c) can demonstrate to the Planning Director or his/her designee that the organization is
17 affected by the proposed project. An exemption from paying this appeal fee may be granted
18 when the requestor's income is not enough to pay for the fee without affecting their abilities to
19 pay for the necessities of life, provided that the person seeking the exemption demonstrates
20 to the Planning Director or his/her designee that they are substantially affected by the
21 proposed project.

22 (4) For an appeal to the Board of Supervisors of environmental determinations,
23 including the certification of an EIR, a negative declaration, or determination of a categorical
24 exemption, the fee shall be \$500.00 to the appellant; provided, however, that the fee shall be
25

1 waived if the appeal is filed by a neighborhood organization that: (a) has been in existence for
2 24 months prior to the appeal filing date, (b) is on the Planning Department's neighborhood
3 organization notification list, and (c) can demonstrate to the Planning Director or his/her
4 designee that the organization is affected by the proposed project. Fees shall be used to
5 defray the cost of appeal for the Planning Department. Such fee shall be refunded to the
6 appellant in the event the Planning Department rescinds its determination or the Board of
7 Supervisors remands or rejects the environmental impact report, negative declaration, or
8 determination of a categorical exemption to the Planning Commission for revisions based on
9 issues related to the adequacy and accuracy of the environmental determination. An
10 exemption from paying this appeal fee may be granted when the requestor's income is not
11 enough to pay for the fee without affecting their ability to pay for the necessities of life,
12 provided that the person seeking the exemption demonstrates to the Clerk of the Board of
13 Supervisors or his/her designee that they are substantially affected by the proposed project.

14 (5) For preparation of an addendum to an environmental impact report that has
15 previously been certified, pursuant to Section 15164 of the State CEQA Guidelines: or
16 reevaluation of a modified project for which a negative declaration has been prepared: \$9,538,941
17 plus time and materials as set forth in Subsection (b)(2).

18 (6) For preparation of a supplement to a draft or certified final environmental impact
19 report: One-half of the fee that would be required for a full environmental impact report on the
20 same project, as set forth in Paragraph (2) above, plus time and materials as set forth in
21 Subsection (b)(2).

22 ~~(7) For reevaluation of a modified project for which a negative declaration has been~~
23 ~~prepared: \$8,941 plus time and materials as set forth in Subsection (b)(2).~~
24
25

1 (7) For preparation of a Certificate of Exemption from Environmental Review
2 determining that a project is categorically exempt, statutorily exempt, ministerial/nonphysical,
3 an emergency, or a planning and feasibility study: ~~\$285,267~~ for applications that require only a
4 stamp, ~~\$5,5815,232~~ as an initial fee for applications that require an Exemption Certificate, plus
5 time and materials as set forth in Subsection (b)(2).

6 (8) For preparation of an exemption that requires review of historical resource
7 issues only, the following fees apply. For a determination of whether a property is an
8 historical resource under CEQA, the fee is ~~\$2,3392,193~~. For a determination of whether a
9 project would result in a substantial adverse change in the significance of an historical
10 resource, the fee is ~~\$3,2433,040~~.

11 (9) For preparation of a letter of exemption from environmental review: ~~\$285,267~~,
12 plus time and materials as set forth in Subsection (b)(2).

13 (10) For review of a categorical exemption prepared by another City Agency, such as the
14 Municipal Transportation Agency or the Public Utilities Commission: \$240, plus time and materials as
15 set forth in Subsection (b)(2).

16 (11) For reactivating an application that the Environmental Review Officer has
17 deemed withdrawn due to inactivity and the passage of time, subject to the approval of the
18 Environmental Review Officer and within six months of the date the application was deemed
19 withdrawn: ~~\$232,218~~ plus time and materials to cover any additional staff costs.

20 (12) Monitoring Conditions of Approval and Mitigation Monitoring: Upon adoption of
21 conditions of approval and/or mitigation measures which the Environmental Review Officer determines
22 require active monitoring, the fee shall be \$1,130, as an initial fee, plus time and materials as set forth
23 in Section 31.22(b)2.

24 (b) Payment.
25

1 (1) The fee specified in Subsection (a)(1) shall be paid to the Planning Department
2 at the time of the filing of the environmental evaluation application, and where an
3 environmental impact report is determined to be required, the fee specified in Subsection
4 (a)(2) shall be paid at the time the preliminary draft environmental impact report 1 (PDEIR-1)
5 the Notice of Preparation is prepared, except as specified below. However, the Director of
6 Planning or his/her designee may authorize phased collection of the fee for a project whose
7 work is projected to span more than one fiscal year. A nonrefundable processing fee of \$52 is
8 required to set-up any installment payment plan for all application fees. The balance of phased
9 payments must be paid in full one week in advance of the first scheduled public hearing before the
10 Planning Commission in consider the project or before any Environmental Impact report is published.

11 (2) The Planning Department shall charge the applicant for any time and material
12 costs incurred in excess of the initial fee charged if required to recover the Department's costs
13 for providing services. Provided, however, that where a different limitation on time and
14 materials is set forth elsewhere in this section, then that limitation shall prevail.

15 (3) The Controller will annually adjust the fee amounts specified in Section
16 31.22(a)(1), (2), (5), (7), (8), (9), (10), and (11), Section 31.22 (c), Section 31.23(d) and
17 Section 31.23.1(a) and (b) by the two-year average consumer price index (CPI) change for
18 the San Francisco/San Jose Primary Metropolitan Statistical Area (PMSA).

19 (4) Any fraternal, charitable, benevolent or any other nonprofit organization, that is
20 exempt from taxation under the Internal Revenue laws of the United States and the Revenue
21 and Taxation Code of the State of California as a bona fide fraternal, charitable, benevolent or
22 other nonprofit organization, or public entity that submits an application for the development of
23 residential units or dwellings all of which are affordable to low and moderate income
24 households, as defined by the United State Housing and Urban Development Department, for
25

1 a time period that is consistent with the policy of the Mayor's Office of Housing and the San
2 Francisco Redevelopment Agency may defer payment of the fees specified herein, with the
3 exception of the fees payable pursuant to Section 31.22(a)(3) and (4) and Section
4 31.22(a)(11) herein, until the time of issuance of the building permit, before the building permit
5 is released to the applicant; or (2) within one year of the date of completion of the
6 environmental review document, whichever is sooner. This exemption shall apply
7 notwithstanding the inclusion in the development of other nonprofit ancillary or accessory
8 uses.

9 (5) An exemption from paying the full fees set forth in Section 31.22(a) (3) and (4)
10 herein may be granted when the requestor's income is not enough to pay the fee without
11 affecting his or her ability to pay for the necessities of life, provided that the person seeking
12 the exemption demonstrates to the Director of Planning or his/her designee that he or she is
13 substantially affected by the proposed project.

14 (6) Exceptions to the payment provisions noted above may be made when the
15 Director of Planning or his/her designee has authorized phased collection of the fee for a
16 project whose work is projected to span more than one fiscal year. A nonrefundable processing
17 fee of \$52 is required to set-up any installment payment plan for all application fees. The balance of
18 phased payments must be paid in full one week in advance of the first scheduled public hearing before
19 the Planning Commission to consider the project or before any Environmental Impact report is
20 published.

21 (c) Refunds. When a request for an initial evaluation or for preparation of an
22 environmental impact report is (1) either withdrawn by the applicant prior to publication of an
23 environmental document or (2) deemed canceled by the Planning Department due to inactivity
24 on the part of the applicant, then the applicant shall be entitled to a refund of the fees paid to
25

1 the Department less the time and materials expended minus a \$427400 processing fee. Refund
2 requests must be submitted within six months of the project closure date.

3 (d) Late Charges and Collection of Overdue Accounts. The Director or his/her
4 designee shall call upon the Bureau of Delinquent Revenues or duly licensed collection
5 agencies for assistance in collecting delinquent accounts more than 60 days in arrears, in
6 which case any additional costs of collection may be added to the fee amount outstanding. If
7 the Department seeks the assistance of a duly licensed collection agency, the approval
8 procedures of Administrative Code Article 5, Section 10.39-1 et seq. will be applicable.

9 (e) These amendments to fees related to the Planning Department are intended to
10 provide revenues for the staffing and other support necessary to provide more timely
11 processing of applications within that Department.

12 SEC. 31.23 OTHER FEES.

13 (a) Where an initial evaluation or preparation of an environmental impact report and
14 related environmental studies require the use of special expertise or technical assistance not
15 provided by the board, commission, department or other person who is to carry out the
16 project, such expertise or assistance shall be paid for by such board, commission, department
17 or other person. This payment shall be made either to the Planning Department or, if the
18 Planning Department so requests, directly to the party that will provide such expertise or
19 technical assistance.

20 (b) Where outside consultants are used for such purposes, and the project is to be
21 directly carried out by a person other than a board, commission or department of the City,
22 such consultants shall report their findings directly to the Planning Department.

23 (c) Where employees of the City are used for such purposes, the costs of such
24 employees shall be paid to the board, commission or department providing such employees.

25

1 (d) In addition to any filing fees required by statute, the County Clerk shall collect a
2 documentary handling fee in the amount of ~~\$3230~~ for each filing made pursuant to California
3 Fish and Game Code Section 711.4, Subdivision (d).

4 **SEC. 31.23.1 Community Plan Fees.**

5 (a) The Planning Department shall charge the following Community Plan Fees for
6 environmental applications filed in adopted Plan Areas effective after July 1, 2005:

7 (1) For Class 1 and 3 Exemptions: same as basic fees outlined in Section
8 31.22(a)(8) and (10).

9 (2) For determination of the appropriate environmental document: ~~\$12,46211,683~~
10 and any fee pursuant to Section 31.23.1(c) below. In addition, the applicant shall pay the
11 following fees as appropriate:

12 (i) If the determination is that the project qualifies for a Community exemption or
13 exclusion, the applicant shall pay a fee of ~~\$6,8096,383~~.

14 (ii) If the determination is that the project does not qualify for a Community exemption
15 or exclusion, the applicant shall pay fees as set forth in Section 31.23.1(b) below.

16 (b) The fees for projects determined not to qualify for a Community exemption or
17 exclusion are as follows:

18 (1) For an initial study excluding use of special expertise or technical assistance, as
19 described in Section 31.22 above, the initial fee shall be:

20 — Where the total estimated construction cost as defined by the San Francisco
21 Building Code is between \$0 and \$9,999: ~~\$1,3321,249~~;

22 — Where said total estimated construction cost is \$10,000 or more, but less than
23 \$200,000: ~~\$5,5365,190~~ PLUS ~~2.5192.407%~~ of the cost over \$10,000;

1 — Where said total estimated construction cost is \$200,000 or more, but less than
2 \$1,000,000: \$10,4159,764 PLUS 1.9041.819% of the cost over \$200,000;

3 — Where said total estimated construction cost is \$1,000,000 or more, but less
4 than \$10,000,000: \$25,94124,319 PLUS 1.5971.526% of the cost over \$1,000,000;

5 — Where said total estimated construction cost is \$10,000,000 or more, but less
6 than \$30,000,000: \$172,491161,706 PLUS 0.4920.470% of the cost over \$10,000,000;

7 — Where said total estimated construction cost is \$30,000,000 or more, but less
8 than \$50,000,000: \$272,846255,785 PLUS 0.1850.177% of the cost over \$30,000,000;

9 — Where said total estimated construction cost is \$50,000,000 or more, but less
10 than \$100,000,000: \$310,647291,223 PLUS 0.0440.042% of the cost over \$50,000,000;

11 — Where said total estimated construction cost is \$100,000,000 or more:
12 \$333,148312,317 PLUS 0.0190.018% of the cost over \$100,000,000.

13 An applicant proposing major revisions to a project application that has been inactive
14 for more than six months and is assigned shall submit a new application. An applicant
15 proposing significant revisions to a project which has not been assigned and for which an
16 application is on file with the Planning Department shall be charged time and materials to
17 cover the full costs in excess of the initial fee paid.

18 (2) For preparation of an environmental impact report excluding use of special
19 expertise or technical assistance, as described in Section 31.23 above, the initial fee shall be:

20 — Where the total estimated construction cost as defined in the San Francisco
21 Building Code is between \$0 to \$199,999: \$29,57327,724;

22 — Where said total estimated construction cost is \$200,000 or more, but less than
23 \$1,000,000: \$29,57327,724 PLUS 0.7260.694% of the cost over \$200,000;

1 — Where said total estimated construction cost is \$1,000,000 or more, but less
2 than \$10,000,000: ~~\$35,66333,433~~ PLUS ~~0.4920.470%~~ of the cost over \$1,000,000;

3 — Where said total estimated construction cost is \$10,000,000 or more, but less
4 than \$30,000,000: ~~\$80,82275,769~~ PLUS ~~0.2020.193%~~ of the cost over \$10,000,000;

5 — Where said total estimated construction cost is \$30,000,000 or more, but less
6 than \$50,000,000: ~~\$121,999114,371~~ PLUS ~~0.0550.053%~~ of the cost over \$30,000,000;

7 — Where said total construction cost is \$50,000,000 or more, but less than
8 \$100,000,000: ~~\$133,306124,971~~ PLUS ~~0.0550.053%~~ of the cost over \$50,000,000;

9 — Where said total estimated construction cost is \$100,000,000 or more:
10 ~~\$161,573151,471~~ PLUS ~~0.0190.018%~~ of the cost over \$100,000,000.

11 An applicant proposing major revisions to a project application that has been inactive
12 for more than six months and is assigned shall submit a new application. An applicant
13 proposing significant revisions to a project which has not been assigned and for which an
14 application is on file with the Planning Department shall be charged time and materials to
15 cover the full costs in excess of the initial fee paid.

16 (3) For the preparation of a focused Environmental Impact Report: one-half the fee
17 that would be required for a full environmental impact report, as set forth in Paragraph (b)(2)
18 above, plus time and materials.

19 (4) The fees above listed in Section 31.24(b) will sunset 20 years after the effective
20 date of Plan Adoption.

21 (c) The Planning Department shall recover the cost of preparing and defending
22 programmatic EIRs, including consultant and City Attorney costs, from project sponsors that
23 file or have filed projects in recently adopted Plan Areas (after July 1, 2005) and filed projects
24 within 10 years of the Programmatic EIR certification.



SAN FRANCISCO PLANNING DEPARTMENT

June 25, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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Planning
Information:
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Re: Transmittal of Planning Department Case Number 2010.0440T, Board File 10-0724:
Administrative Code Sections 31.22, 31.23 and 31.23.1 to (1) increase fees 4.65 percent, add new fees for mitigation monitoring, MTA and PUC Categorical Exemption Certificates, and a phased payments processing fee; and clarify the phased collection and refund policy and change the due date of EIR fees.
Planning Commission Recommendation: Approval with Amendments

Dear Ms. Calvillo,

On June 24th, 2009, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance;

The proposed Ordinance would amend Administrative Code Sections 31.22, 31.23 and 31.23.1 to (1) increase fees 4.65 percent (2.61 percent to reflect the two-year average consumer price index (CPI) change for the San Francisco/San Jose Primary Metropolitan Statistical Area (PMSA) which is an automatic adjustment, and 2.04 percent as a surcharge to support a portion of the Preservation and Code Enforcement programs); (2) add new fees for mitigation monitoring, MTA and PUC Categorical Exemption Certificates, and a phased payments processing fee; and (3) clarify the phased collection and refund policy and change the due date of EIR fees.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15273.

At the June 24th hearing, the Commission voted to recommend approval with Amendments of the proposed Ordinance as follows:

1. Page 1, line 4, strike "31.24", add "31.23.1"
2. Page 5, line 16, strike "\$9,538" add "22,281"
3. Page 6, line 1, add (a) after (7)

1 The fee shall be a proportional share of the cost of the Programmatic EIR, which is
2 equal to the Department's average time and material costs to prepare and defend a
3 Programmatic EIR divided by the buildable envelope times the square footage of the
4 proposed project.

5 (d) Except as provided below for projects in the Transit Center District area, if at the
6 time of Community Plan adoption, a project application undergoing review required
7 amendments for height or bulk districts or General Plan amendments and now complies with
8 the Community Plan Zoning, the applicant may choose to pay either the fees specified in
9 Section 31.22 or Section 31.23.1. For projects that paid fees under Section 31.22 and opt to
10 pay fees under Section 31.23.1, the applicant shall withdraw the application filed under
11 Section 31.22 and file a new application. Applicants that file a new application and pay the
12 Section 31.23.1 fees shall be entitled to a refund under Section 31.22(c).

13 (i) Transit Center District Plan. Projects in the Transit Center District area that
14 require amendments for height or bulk district or General Plan amendments at the time of
15 project application shall pay the fees specified in Administrative Code Section 31.23.1(b) and
16 31.23.1(c). For projects that paid fees under Section 31.22, the applicant shall pay the
17 difference between Section 31.22 fees and Section 31.23.1(b) and 31.23.1(c) fees.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By:


23 Kate Herrmann/ Stacy
24 Deputy City Attorney
25