

File No. 100557

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: June 16, 2010

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement*                          |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

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Completed by: Andrea S. Ausberry

Date Friday, June 11, 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.

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FILE NO. 100557

ORDINANCE NO.

[Assessment Appeals Board: Increasing administrative processing fees, adding certain waivers; and changing to an hourly rate for findings of fact fees.]

1  
2 **Ordinance amending Administrative Code Chapter 2B "Assessment Appeals Boards,"**  
3 **by amending Section 2B.9 to increase the administrative processing fee per application**  
4 **from \$30 to \$45, by adding a fee waiver for any property assessed on the roll at a value**  
5 **of \$7,500 or less, and by adding a fee waiver for any property where there is a**  
6 **difference of \$7,500 or less between the taxpayer's opinion of value on the application**  
7 **and the subject property's assessed value on the roll; by amending Section 2B.11 to**  
8 **change the findings of fact fees from a sliding scale of \$100 to \$1,000, to an hourly rate**  
9 **of \$215 with a maximum of 30 hours billed; and a technical change.**

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

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

15           Section 1. The San Francisco Administrative Code is hereby amended by amending  
16 Section 2B.9, to read as follows:

17           Sec. 2B.9 - ~~FILING FEE~~ ADMINISTRATIVE PROCESSING FEE.

18           An applicant for a refund shall pay a ~~\$30~~ \$45.00 nonrefundable administrative processing  
19 fee to the Assessment Appeals Board at the time of filing an application with the Board, for all  
20 applications filed on or after July 1, 2010. An applicant shall pay a separate filing administrative  
21 processing fee for each application filed. The filing administrative processing fee shall be waived  
22 where: "

23           (a) The applicant would qualify for a waiver of court fees and costs pursuant to  
24 California Government Code Section ~~68511.3~~ 68632; or

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BOARD OF SUPERVISORS

1 (b)(1) The application is accompanied by a stipulation pursuant to Revenue and  
2 Taxation Code Section 1607 signed by the Assessor, the applicant, and the City Attorney,

3 (2) The applicant requests a reduction for the tax year following a tax year for which  
4 the Assessment Appeals Board has reduced the assessed value at the time of filing the  
5 application for the subsequent tax year, and

6 (3) The applicant's opinion of value is not less than the value determined by the Board  
7 for the prior year plus any automatic increases allowed by law.

8 (c) The subject property is enrolled on the property tax roll at an assessed value of \$7,500 or  
9 less, for the time period that is the subject of the application.

10 (d) There is a difference in value of \$7,500 or less, between the taxpayer's opinion of value as  
11 stated on the application, and the assessed value of the subject property on the property tax roll for the  
12 time period that is the subject of the application.

13  
14 Section 2. The San Francisco Administrative Code is hereby amended by amending  
15 Section 2B.11, to read as follows:

16 SEC. 2B.11 - FEE FOR FINDINGS OF FACT.

17 (a) The fee payable to the Assessment Appeals Board ~~(AAB)~~ to prepare findings of fact  
18 pursuant to California Revenue and Taxation Code Section 1611.5 shall be \$215.00 per hour  
19 for the time spent by the County with a total maximum of 30 hours billed, for all applications filed on or  
20 after July 1, 2010, in accordance with the following schedule:

<i>Where the property affected by the application is valued on the current assessment roll at:</i>	<i>Fee</i>
<del>\$ 0 - \$1,000,000</del>	<del>\$ 100.00</del>
<del>1,000,001 - 2,000,000</del>	<del>125.00</del>
<del>2,000,001 - 5,000,000</del>	<del>150.00</del>
<del>5,000,001 - 10,000,000</del>	<del>500.00</del>
<del>10,000,001 - 20,000,000</del>	<del>750.00</del>
<del>More than \$20,000,000</del>	<del>1,000.00</del>

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1 (b) Where an applicant files two or more applications at the same time affecting the  
2 same appraisal unit for the same tax year, the applicant shall be liable for a single findings of  
3 fact fee based on the sum of the current assessment roll values of all property contained in  
4 the appraisal unit.

5 (c) Revenues generated by the findings fees shall be used exclusively to pay *the*  
6 *Assessment Appeals Boards' operating costs expenses incurred by the County for producing the*  
7 *findings of fact and conclusions of law. Where the City Attorney assists a Board in preparing findings*  
8 *of fact, the revenues from the findings fee shall be paid to the City Attorney based on the actual amount*  
9 *of time expended by the City Attorney in advising the Board with respect to the findings.*

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13  
14 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

15  
16 By:

  
17 MARIE CORLETT BLITS  
Deputy City Attorney

**LEGISLATIVE DIGEST**

[Assessment Appeals Board: Increasing administrative processing fees, adding certain waivers; and changing to an hourly rate for findings of fact fees.]

**Ordinance amending Administrative Code Chapter 2B "Assessment Appeals Boards," by amending Section 2B.9 to increase the administrative processing fee per application from \$30 to \$45, by adding a fee waiver for any property assessed on the roll at a value of \$7,500 or less, and by adding a fee waiver for any property where there is a difference of \$7,500 or less between the taxpayer's opinion of value on the application and the subject property's assessed value on the roll; by amending Section 2B.11 to change the findings of fact fees from a sliding scale of \$100 to \$1,000, to an hourly rate of \$215 with a maximum of 30 hours billed; and a technical change.**

Existing Law

The City's Assessment Appeals Boards hear property taxpayer appeals from the Assessor's determinations of assessed value, where taxpayers seek a reduction in the assessed value of the property on the property tax rolls. A three-person panel of Assessment Appeals Board (AAB) members sit to hear and decide each case. As provided by the California Constitution, each Assessment Appeals Board must equalize the valuation of the taxable property within the City and County of San Francisco consistent with state constitutional and statutory requirements. (Administrative Code Chapter 2B "Assessment Appeals Boards; see California Constitution Article XIII, Section 16.)

Current Administrative Code Section 2B.9 requires that a \$30.00 administrative processing fee accompany the property taxpayer's application for reduced assessment. Chapter 2B also provides that this fee is waived in certain situations: where the applicant is impoverished and would qualify for a waiver of court fees if in court under the California Government Code; and in certain situations where the application relates to a prior application previously granted by the Board.

An applicant may request that the Board provide written findings of fact in conjunction with the Board's decision. Current Administrative Code Section 2B.11 requires payment of a fee for preparation of the findings, on a sliding scale that ranges from \$100 for property valued on the current assessment roll at up to \$1,000,000, to a fee of \$1,000 for property valued at more than \$20,000,000.

Amendments to Current Law

The amendment to Administrative Code section 2B.9 would substitute a \$45.00 administrative processing fee for the current \$30.00 fee; and add waiver provisions to also waive the fee for property assessed at a value of \$7,500 or less, and waive the fee where there is a difference of \$7,500 or less between the taxpayer's opinion of value on the application and the subject property's assessed value on the roll. This fee change would apply to all applications filed on or after July 1, 2010.

Further, as a technical change to Section 2B.9, the current reference to Government Code section 68511.3 for waiver of the fee for impoverished (in forma pauperis) applicants who would qualify for a fee waiver if in court, is changed to "Section 68632" to reflect state law amendments effective July 1, 2009 (Stats. 2008, Ch. 462, A.B. 2448).

The amendment to Section 2B.11 would substitute an hourly fee in place of the current sliding scale fees for preparation of findings of fact in conjunction with a Board decision, to be \$215 per hour up to a maximum of 30 hours. This fee change would apply to all applications filed on or after July 1, 2010.

Background Information

In 1994 both the \$30.00 administrative processing fee and the sliding scale findings fee of \$100 - \$1,000 were first enacted, and neither fee has been increased since.

<b>Item 5</b> <b>File 10-0557</b>	<b>Department(s):</b> Assessment Appeals Board (AAB)
<b>EXECUTIVE SUMMARY</b>	
<p><b>Legislative Objective</b></p> <ul style="list-style-type: none"> <li>• Ordinance amending Chapter 2B, Sections 2B.9 and 2B.11 of the City's Administrative Code to (a) increase and change the title for a nonrefundable administrative processing fee per application from \$30 to \$45, (b) add fee waivers for any property assessed at \$7,500 or less, or where there is a difference of \$7,500 or less between the taxpayer's opinion of assessed value and the Assessor's assessed value, (c) change the findings of fact fees from a sliding scale of \$100 to \$1,000 to an hourly rate of \$215 with a maximum of 30 billable hours, and (d) revise the finding of fact fee language to specify paying expenses incurred to produce the findings of fact and conclusions of law.</li> </ul> <p><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance complies with language from a recent Superior Court ruling regarding Assessment Appeals Board fees and the additional fee waivers guarantees access to assessment appeals hearings for those taxpayers whose Property Taxes are not significant. The proposed increase from \$30 to \$45 for the administrative processing fee reflects the annual CPI adjustments for this fee since FY 1994-1995, when the fee was last increased. The proposed revisions to the findings of fact fee more accurately reflects the actual average cost for the Assessment Appeals Board to prepare such findings of fact.</li> </ul> <p><b>Fiscal Impacts</b></p> <ul style="list-style-type: none"> <li>• Over the past four years, the number of applications filed with the Assessment Appeals Board has varied considerably, such that the application filing fee revenues and findings of fact fee revenues have fluctuated considerably. All revenues generated by the Assessment Appeals Board accrue to the City's General Fund and the Assessment Appeals Board is fully funded by the City's General Fund.</li> <li>• The proposed \$15 fee increase from \$30 to \$45 for the administrative processing fee is projected to generate an additional \$60,000 in FY 2010-2011. Due to a surge of applications over the past two years, there is currently a backlog of approximately 12-18 months from the time a new appeal application is filed until the Assessment Appeals Board actually conducts the hearing and collects the findings of fact fees. As a result, the new findings of fact fees are not anticipated to generate revenues until FY 2011-2012.</li> </ul> <p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed ordinance to reflect that the proposed new findings of fact fee of \$215 per hour would be effective for applications filed after July 1, 2010.</li> <li>• Approval of the proposed ordinance, as amended, is a policy decision for the Board of Supervisors.</li> </ul>	



**MANDATE STATEMENT AND BACKGROUND**

**Mandate Statement**

San Francisco Administrative Code Chapter 2B, Section 2B.9 currently provides that applicants requesting a reassessment of their property value must pay a \$30 nonrefundable application filing fee to the Assessment Appeals Board, at the time an application is filed with the Assessment Appeals Board.

In addition to the nonrefundable \$30 application filing fee, Section 2B.11(a) of the City’s Administrative Code currently provides that an applicant must pay the fees shown in Table 1 below, to the Assessment Appeals Board to receive findings of fact<sup>1</sup>, pursuant to California Revenue and Taxation Code Section 1611.5.

**Table 1: Fees Currently Due to the Assessment Appeals Board for Findings of Fact**

<b>Where the property affected by the application has an assessed value on the current assessment roll at</b>	<b>Fees Based on a Sliding Scale Currently Due in accordance with Section 2B.11(a) of the City’s Administrative Code</b>
\$0 to \$1,000,000	\$100
\$1,000,001 to \$2,000,000	125
\$2,000,001 to \$5,000,000	150
\$5,000,001 to \$10,000,000	500
\$10,000,001 to \$20,000,000	750
More than \$20,000,000	1,000

Section 2B.11(c) states that the revenues generated from these findings of fact fees must be used exclusively to pay the Assessment Appeals Boards’ operating costs, including the actual costs of the City Attorney to assist the Assessment Appeals Board in preparing the findings of fact.

However, Section 2B.9 of the City’s Administrative Code also provides that applicants can qualify for a waiver of the application filing and finding of fact fees, (a) pursuant to California Government Code Section 68632, which provides financial waivers if the applicant requesting the Property Tax refund is impoverished, (b) if the application is accompanied by a stipulation pursuant to California Revenue and Taxation Code Section

<sup>1</sup> Findings of fact are written legal summaries of the Assessment Appeals Board’s hearing and the specific findings on which the Assessment Appeals Board based their decision. Findings of fact, which are prepared by the Assessment Appeals Board’s attorney, are not required for all applicants, but are necessary if the applicant requesting the Property Tax refund intends to seek judicial review of an adverse Assessment Appeals Board decision.

1607 signed by three parties: the Assessor, the applicant and the City Attorney, (c) the applicant requests a reduction for the tax year following a tax year for which the Assessment Appeals Board has reduced the assessed value at the time of filing the application for the subsequent tax year, and (d) the applicant's opinion of the assessed value is not less than the value determined by the Assessment Appeals Board for the prior year plus any automatic increases allowed by law.

### **Background**

Residential and commercial Property Taxes are based on the property's assessed value, as determined by the San Francisco County Assessor's Office. If a property owner disagrees with the Assessor's determination of the assessed value, the property owner can appeal the amount of the assessed value to the Assessment Appeals Board. The Assessment Appeals Board is an independent body under the Board of Supervisors, comprised of three-member Board panels that hear and decide each applicant's request for a reassessment of their property value. Assessment Appeals Board members are appointed by the Board of Supervisors and must have a minimum of five years professional experience as either a certified public accountant, licensed real estate broker, attorney, or property appraiser accredited by a nationally recognized professional organization.

### **DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would amend Chapter 2B, Sections 2B.9 and 2B.11 of the City's Administrative Code to (a) increase and change the title of the current \$30 nonrefundable application filing fee by \$15, or 50 percent, to a \$45 nonrefundable administrative processing fee, (b) add fee waivers for any property assessed by the Assessor at a value of \$7,500 or less, or for any property where there is a difference of \$7,500 or less between the taxpayer's opinion of the assessed value on the application and the subject property's assessed value by the Assessor, (c) change the Assessment Appeals Board findings of fact fees from a sliding scale of \$100 to \$1,000, as shown in Table 1 above, to an hourly rate of \$215 with a maximum of 30 billable hours, and (d) revise the language for how finding of fact fee revenues can be used from paying the Assessment Appeals Board's operating costs, including City Attorney costs, to paying expenses incurred by the County for specifically producing the findings of fact and conclusions of law.

According to Ms. Dawn Duran, the Administrator of the Assessment Appeals Board, the revised language in the proposed ordinance is intended to comply with language from a recent Superior Court ruling regarding Assessment Appeals Board fees and the additional fee waivers are to ensure that procedural due process guarantees access to assessment appeal hearings for those taxpayers whose potential Property Taxes are not significant. Ms. Duran advises that the proposed increase to the application

administrative processing fee reflects the annual Consumer Price Index<sup>2</sup> (CPI) adjustments since this fee was last increased in FY 1994-1995. In addition, Ms. Duran advises that the proposed revisions to the findings of fact fee from the current sliding scale of \$100 to \$1,000 depending on the assessed value of the property to a rate of \$215 per hour up to 30 billable hours more accurately reflects the actual average cost for the Assessment Appeals Board to prepare each findings of fact.

## FISCAL IMPACTS

### FY 2009-2010 Assessment Appeals Budget

The Assessment Appeals Board budget for FY 2009-2010 is \$443,041 and includes funding for three permanent full-time staff: one Administrator and two clerical positions. In FY 2009-2010, due to the significant increases in applications filed, the Clerk of the Board of Supervisors reassigned an additional temporary clerk to the Assessment Appeals Board. In FY 2009-2010, the Assessment Appeals Board was budgeted to receive \$50,000 of application filing fees and \$9,000 of findings of fact fees.

### Analysis of Past Four Years of Assessment Appeals Board Applications Filed and Revenues Generated

As shown in Table 2 below, over the past four years, the number of new appeal applications filed with the Assessment Appeals Board has varied considerably, ranging from a low of 988 applications in FY 2007-2008 to 6,289 applications filed during the first ten months of the current fiscal year. As a result, the current \$30 application filing fee has resulted in fluctuating revenues, generating \$26,490 in FY 2007-2008 to \$181,000 for the first ten months of FY 2009-2010. The current sliding scale findings of fact fees have also fluctuated, generating revenues of between \$250 in FY 2008-2009 to \$16,375 in FY 2007-2008. All revenues generated by the Assessment Appeals Board accrue to the City's General Fund and the Assessment Appeals Board is fully funded by the City's General Fund.

**Table 2: Assessment Appeals Board FY Applications Filed and Revenues Received in FY 2006-2007 through FY 2009-2010**

Fiscal Years	Number of New Appeal Applications Filed	Application Filing Fee Revenues	Findings of Fact Revenues
FY 2006-2007	1,367	\$38,910	\$9,150
FY 2007-2008	988	26,490	16,375
FY 2008-2009	2,476	66,590	250
FY 2009-2010*	6,289	181,010	1,675
<b>Total</b>	<b>11,120</b>	<b>\$313,000</b>	<b>\$27,450</b>
<b>Average Annual</b>	<b>2,780</b>	<b>\$78,250</b>	<b>\$6,863</b>

\*Through April 30, 2010.

<sup>2</sup> Annual Consumer Price Index is for all urban consumers in the San Francisco-Oakland- San Jose, California region, as determined by the US Department of Labor.

As noted above, the FY 2009-2010 budget included \$50,000 of revenues from application filing fees and \$9,000 from findings of fact fees. However, as shown in Table 2 above, the actual revenues from the application filing fees has generated \$181,000 over the first ten months of FY 2009-2010, or \$131,000 more than the budgeted amount of \$50,000. Conversely, as shown in Table 2 above, the actual revenues from the findings of fact fees has only generated \$1,675 over the first ten months of FY 2009-2010 or \$7,325 less than the budgeted amount of \$9,000.

According to Ms. Duran, the revenues generated from the findings of fact are considerably less than the application filing fees, because most applicants do not request findings of fact. In addition, Ms. Duran advises that the findings of fact revenues do not coincide with the number of new appeal applications filed because the findings of fact are completed and charged to the applicants when the hearings are held, not when the applications are filed. According to Ms. Duran, due to the surge of applications over the past two years, the Assessment Appeals Board currently has a backlog of approximately 12-18 months from the time a new appeal application is filed until the Assessment Appeals Board actually conducts the hearing and collects the findings of fact fees.

#### **Proposed Revenues to be Received**

Ms. Duran advises that, if the proposed ordinance is approved, the new \$45 administrative processing fee would be effective in July of 2010 for new applications that are filed with the Assessment Appeals Board. The Board of Supervisors FY 2010-2011 budget, which includes the Assessment Appeals Board, assumes \$180,000 in revenues from the proposed nonrefundable \$45 administrative processing fee would be realized, based on 4,000 new applications being filed in FY 2010-2011. If the proposed \$45 administrative processing fee is not approved, the existing \$30 filing fee would result in approximately \$120,000 of revenues, based on the assumed 4,000 new applications to be filed in FY 2010-2011. Therefore, the proposed \$15 fee increase from \$30 to \$45 is projected to generate an additional \$60,000 in FY 2010-2011. As noted above, all of the Assessment Appeals Board revenues accrue to the City's General Fund, and the Assessment Appeals Board is fully funded by the City's General Fund.

As discussed above, due to the surge of applications filed with the Assessment Appeals Board over the past two years, there is currently a backlog of approximately 12-18 months from the time a new appeal application is filed until the Assessment Appeals Board actually conducts the hearing and collects the findings of fact fees. As a result of the backlog, Ms. Duran does not anticipate that any new revenues will be generated for the Assessment Appeals Board until FY 2011-2012 from the proposed finding of fact fee adjustment. Given the large fluctuation in finding of fact fee revenues shown in Table 2 above and that such revenues would not be realized until at least FY 2011-2012, Ms. Duran cannot accurately estimate such revenues from these fees.

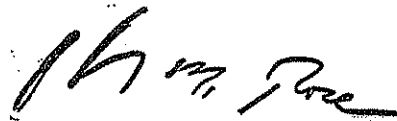
Ms. Duran advises that the proposed ordinance needs to be amended to reflect that the findings of fact fees payable to the Assessment Appeals Board at the proposed new rate of \$215 per hour would be effective July 1, 2010 for newly filed applications, not for previously filed applications. Ms. Duran advises that an Amendment of the Whole is

being prepared, which will be introduced at the June 2, 2010 Budget and Finance Subcommittee meeting to reflect these necessary changes.

**RECOMMENDATIONS**

Amend the proposed ordinance to reflect that the proposed new findings of fact fee of \$215 per hour would be effective for applications filed after July 1, 2010.

Approval of the proposed ordinance, as amended, is a policy decision for the Board of Supervisors.



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

