

File No. 161225

Committee Item No. 10

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

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 25, 2017

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
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Completed by: Linda Wong Date January 20, 2017

Completed by: Linda Wong Date \_\_\_\_\_

1 [Business and Tax Regulations Code - Business Registration with Tax Collector]

2  
3 **Ordinance amending the Business and Tax Regulations Code to remove the \$100**  
4 **minimum penalty from one of the penalties for failing to register with the Tax Collector;**  
5 **and to remove the fee and administrative requirements for obtaining a duplicate**  
6 **registration certificate.**

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

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

15 Section 1. The Business and Tax Regulations Code is hereby amended by revising  
16 Section 6.17-3, to read as follows:

17 **SEC. 6.17-3. NEGLIGENCE PENALTIES FOR FAILURE TO REGISTER,**  
18 **MISSTATEMENTS IN REGISTRATION, FAILURE TO TIMELY UPDATE REGISTRATION,**  
19 **FAILURE TO ALLOW INSPECTION OF RECORDS UPON REQUEST, AND FAILURE TO**  
20 **FILE A RETURN; SANCTION FOR FAILURE TO PRODUCE REQUESTED RECORDS.**

21 (a) Any person who fails to register *in a timely manner shall pay, in addition to any other*  
22 *liability that may be imposed under the provisions of this Article 6, a penalty assessed pursuant to*  
23 *Section 6.17-1.*

24 (b) ~~Any person who~~ fails to amend a registration within ~~7~~*seven* days of a material  
25 change, or who makes a material misrepresentation in a registration, or who fails to comply  
with a rule or regulation promulgated by the Tax Collector in a timely manner, shall pay, in

1 addition to any other liability that may be imposed under the provisions of this Article 6, a  
2 penalty in an amount equal to either \$100 or the penalty assessed pursuant to Section 6.17-1,  
3 whichever is greater.

4 (bc) The Tax Collector may impose a penalty upon any person who fails to file a return  
5 or returns required under this Article 6 on or before the date prescribed for filing up to \$500 for  
6 each such failure. The penalty under this provision shall be in addition to any other liability  
7 that may be imposed under the provisions of this Article. Filing a return that the Tax Collector  
8 determines to be incomplete in any material aspect may be deemed failure to file a return in  
9 violation of this Section 6.17-3. Any return required to be filed on a combined basis, and which  
10 is not filed on that basis, is an incomplete return. In addition, any return required to report  
11 worldwide gross receipts and payroll of a person or combined group under Section 956.2,  
12 which does not report gross receipts and payroll on a worldwide basis, is an incomplete  
13 return.

14 (ed) Any person who fails to allow a full inspection of records pursuant to a request  
15 made by the Tax Collector within the time prescribed by the Tax Collector shall pay, in  
16 addition to any other liability that may be imposed under the provisions of this Article 6, a  
17 penalty in the amount of \$500 for each such failure.

18 (de) Unless the failure to allow inspection was due to reasonable cause and not willful  
19 neglect, any person who fails to provide records pursuant to a written request made by the  
20 Tax Collector may not contest the Tax Collector's decision regarding the amount of such  
21 person's liability for any taxes, administrative collection costs, interest, penalties, or other  
22 costs and charges imposed under the Business and Tax Regulations Code, or oppose the  
23 collection of such amount, in any subsequent administrative or judicial proceeding, on the  
24 basis of any record the Tax Collector previously requested in writing that such person failed to  
25 make available to the Tax Collector on or before the earliest to occur of the following:

1 (1) The conclusion of the hearing on a petition for redetermination held pursuant  
2 to Sections 6.12-5 or 6.13-2;

3 (2) The date the jeopardy determination became final under Section 6.12-5 if  
4 such person did not request hearing thereon;

5 (3) The date the deficiency determination became final under Section 6.13-4 if  
6 such person did not request a hearing thereon.

7  
8 Section 2. The Business and Tax Regulations Code is hereby amended by deleting  
9 Section 856.1, to read as follows:

10 ~~**SEC. 856.1. APPLICATION FOR DUPLICATE REGISTRATION CERTIFICATE**~~

11 ~~(a) A holder of a registration certificate as defined in Section 852.2 shall apply to the Tax~~  
12 ~~Collector for a duplicate certificate if the original certificate has been lost or destroyed. The~~  
13 ~~registration certificate holder shall give an affidavit to the Tax Collector stating that the affiant is the~~  
14 ~~person to whom the Tax Collector has issued the registration certificate and that the registration~~  
15 ~~certificate was lost or destroyed. The registration certificate holder shall pay a fee for the issuance of~~  
16 ~~the duplicate registration certificate in the amount of Twenty Five Dollars (\$25.00).~~

17 ~~(b) If the Tax Collector determines that the affiant has satisfied all of the requirements of this~~  
18 ~~Article, including the payment of all outstanding liabilities owed to the City as enumerated in Section~~  
19 ~~856 of this Article, the Tax Collector shall issue a duplicate registration certificate. The duplicate~~  
20 ~~registration certificate shall be plainly marked or stamped as a duplicate. The Tax Collector shall~~  
21 ~~enter the fact of the duplicate in the Tax Collector's files. The Tax Collector shall maintain a record of~~  
22 ~~the alleged loss or destruction, whether or not the duplicate certificate is issued.~~

23  
24 Section 3. Effective Date. This ordinance shall become effective 30 days after  
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

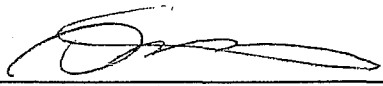
1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word  
5 of this ordinance, or any application thereof to any person or circumstance, is held to be  
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
7 shall not affect the validity of the remaining portions or applications of the ordinance. The  
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
10 unconstitutional without regard to whether any other portion of this ordinance or application  
11 thereof would be subsequently declared invalid or unconstitutional.

12  
13 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
17 additions, and Board amendment deletions in accordance with the "Note" that appears under  
18 the official title of the ordinance.

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

22 By:

  
23 Scott M. Reiber  
24 Deputy City Attorney

25 n:\egana\as2016\1700108\01145720.docx

## LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Business Registration with Tax Collector]

**Ordinance amending the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector; and to remove the fee and administrative requirements for obtaining a duplicate registration certificate.**

### Existing Law

Existing law imposes a penalty for failure to obtain a business registration certificate under Business and Tax Regulations Code ("Code") Section 6.17-3. That penalty is in addition to any other liability imposed under Article 6 of the Code (including administrative penalties), and is either \$100, or a percentage of the amount owed per Code Section 6.17-1, whichever is greater.

Existing law provides procedures and a \$25 fee to obtain a duplicate business registration certificate.

### Amendments to Current Law

This ordinance would alter the calculation of the penalty in Code Section 6.17-3 for failure to obtain a business registration certificate so that it is calculated only as the penalty assessed under Code Section 6.17-1. In other words, it would remove the \$100 minimum penalty for failure to obtain a business registration certificate from Code Section 6.17-3 such that Code Section 6.17-3 would only impose a penalty for failure to obtain a business registration certificate based on a percentage of the amount owed.

This ordinance would also delete the required procedures and fee to obtain a duplicate business registration certificate.

### Background Information

In addition to the penalty for failure to obtain a business registration certificate in Code Section 6.17-3, existing Code Section 6.19-3 permits the Office of the Treasurer and Tax Collector to impose a \$100 administrative penalty (through the administrative citation process) for the failure to obtain a business registration certificate. Thus, a taxpayer that failed to obtain a business registration certificate but was not subject to a penalty under Code Section 6.17-1 (because, for example, the taxpayer was not required to pay the business registration fee), could still be liable for the \$100 administrative penalty under Code Section 6.19-3.

<p><b>Item 10</b>  <b>File 16-1225</b>  <i>(Continued from January 11, 2017)</i></p>	<p><b>Department:</b>                  Office of the Treasurer-Tax Collector (OTTC)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed ordinance would amend the City’s Business and Tax Regulations Code to delete (i) the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector and (ii) the \$25 fee for obtaining a duplicate Business Registration Certificate.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• San Francisco’s Business and Tax Regulations Code requires that every person engaging in business within the City, regardless of whether such person is subject to taxation, must register within 15 days after commencing business within the City and obtain a Business Registration Certificate.</li> <li>• Currently, a business that fails to register must pay a penalty equal to either \$100 or the penalty assessed pursuant to Code Section 6.17-1 (starting at 5 percent of the tax), whichever is greater. Smaller businesses that fail to register are assessed a \$100 minimum penalty, while larger businesses are assessed a percentage penalty. The proposed ordinance would delete the \$100 minimum penalty but continue to require the percentage penalty for all businesses.</li> <li>• The majority of businesses subject to the \$100 minimum penalty are small businesses that renew their registration late.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• If the proposed business registration penalty structure were implemented in 2015 and taxpayers paid on the same schedule, the Office of the Treasurer and Tax Collector would have collected approximately \$1.5 million less in penalties each year, with most of the reduction in penalties benefitting the smallest businesses that come into compliance quickly after missing a business registration deadline.</li> <li>• The \$25 fee to obtain a duplicate Business Registration Certificate has not been enforced and therefore had not generated revenue to the City because the Office of the Treasurer and Tax Collector has determined that the cost of printing a duplicate certificate is minimal as a result of technological upgrades. Given that California law requires counties to collect a fee of not more than 100 percent of the cost of the service, the Office of the Treasurer and Tax Collector opted to forego the fee entirely.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approval of the proposed ordinance is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

Charter Section 2.105 requires that legislative acts in San Francisco be by ordinance, subject to approval by a majority of the Board of Supervisors.

**BACKGROUND**

San Francisco’s Business and Tax Regulations Code requires that every person engaging in business within the City, regardless of whether such person is subject to taxation, must register within 15 days after commencing business within the City and obtain a Business Registration Certificate. The Business Registration Certificate must be conspicuously displayed at the place of business. The fees for obtaining a Business Registration Certificate range from \$75 to \$35,000, based on the type of business activities and the annual gross receipts. Such fees were set as part of Proposition E, which was approved by San Francisco’s voters on November 6, 2012, and resulted in the establishment of a Gross Receipts Tax and changes to the Payroll Expense Tax, the Business Registration Fee, and the Common Administrative Provisions of the Business and Tax Regulations Code. Business Registration Certificates must be renewed each year by May 31st. Table 1 below outlines the Business Registration Certificate fees based on gross receipts for the calendar year and business activity type.

**Table 1: Business Registration Fees**

Gross Receipts for Calendar Year	Schedule A	Schedule B <sup>1</sup>	State Fee
\$0 to \$100,000	\$90	\$75	\$1
\$100,001 to \$250,000	\$150	\$125	\$1
\$250,001 to \$500,000	\$250	\$200	\$1
\$500,001 to \$750,000	\$500	\$400	\$1
\$750,001 to \$1,000,000	\$700	\$600	\$1
\$1,000,001 to \$2,500,000	\$300	\$200	\$1
\$2,500,001 to \$7,500,000	\$500	\$400	\$1
\$7,500,001 to \$15,000,000	\$1,500	\$1,125	\$1
\$15,000,001 to \$25,000,000	\$5,000	\$3,750	\$1
\$25,000,001 to \$50,000,000	\$12,500	\$7,500	\$1
\$50,000,001 to \$100,000,000	\$22,500	\$15,000	\$1
\$100,000,001 to \$200,000,000	\$30,000	\$20,000	\$1
\$200,000,001 and over	\$35,000	\$30,000	\$1

The City’s existing Business and Tax Regulations Code imposes a penalty for failure to obtain a Business Registration Certificate under Section 6.17-3. That penalty is in addition to any other liability imposed under Article 6 of the Code (including administrative penalties), and is either

<sup>1</sup> Schedule B consists solely of the business activities of Certain Services (e.g., Repair/Maintenance, Personal/Laundry, Civic Organizations), Retail Trade, and/or Wholesale Trade. Schedule A includes all other business activities that do not fall under Schedule B.



\$100, or a percentage of the amount owed per Code Section 6.17-1<sup>2</sup>, whichever is greater. Thus, a person that failed to obtain a Business Registration Certificate but was not subject to a penalty under Code Section 6.17-1 (because, for example, the person was not required to pay the Business Registration fee), could still be liable for the \$100 administrative penalty under Code Section 6.19-3. The existing Code also provides procedures and a \$25 fee to obtain a duplicate Business Registration Certificate.

#### DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the City's Business and Tax Regulations Code to delete (i) the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector and (ii) the \$25 fee for obtaining a duplicate business registration certificate.

Currently, a business that fails to register must pay a penalty equal to either \$100 or the penalty assessed pursuant to Section 6.17-1 (starting at 5 percent of the tax), whichever is greater. Smaller businesses that fail to register are assessed a \$100 minimum penalty, while larger businesses are assessed a percentage penalty.<sup>3</sup> The proposed ordinance would delete the \$100 minimum penalty but continue to require the percentage penalty for all businesses.

According to Ms. Amanda Fried, Policy and Legislative Manager at the Office of the Treasurer and Tax Collector, 8,253 businesses were penalized for failing to renew their business registration in 2015, with penalties ranging from \$100 to \$1750. The majority of businesses subject to the \$100 minimum penalty are small businesses that renew their registration late. 84 percent of businesses that registered late in 2015 had gross receipts of less than \$250,000 annually, while almost 9 percent of businesses had gross receipts of less than \$100,000 annually. According to Ms. Fried, the proposed ordinance aims to facilitate the overall tax compliance for small businesses. Under the proposed ordinance, businesses of all sizes would be subject to the same penalty structure, which starts at 5 percent of the tax amount due per month late, and caps out at 40 percent of the tax amount due, as shown in Table 2 below.

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<sup>2</sup> Section 6.17-1 states that any person who fails to pay any tax to the City, or any operator or other person who fails to collect and remit any third-party taxes shall pay a penalty of 5 percent of the tax, if the failure is for not more than 1 month after the tax became delinquent, plus an additional 5 percent for each following month or fraction of a month during which such failure continues, up to 20 percent in the aggregate, until the date of payment. Any taxes remaining unpaid for a period of 90 days after notification that the tax is delinquent shall be subject to an additional penalty of 20 percent of the tax or amount of the tax. Therefore, the total penalty is up to 40 percent of the business registration fee. Unpaid taxes and penalties shall also accrue interest at the rate of 1 percent per month, or fraction of a month, from the date the taxes become delinquent through the date the taxpayer or operator pays the delinquent taxes, penalties, interest and fees accrued to the date of payment in full.

<sup>3</sup> For example, a business that was required to pay a business registration fee of \$200 (see Table 1 above) and failed to register would pay the \$100 minimum penalty which is greater than the percentage penalty of 5 percent or \$10 per month up to 40 percent or \$80. A larger business that was required to pay a business registration fee of \$3,750 and failed to register would be assessed the percentage penalty of 5 percent or \$187 per month up to 40 percent or \$1500.

**Table 2: Business Registration Penalty Structure under the Proposed Ordinance**

	1 month	2 months	3 months	4 months	5 months	6 months
<b>Penalty</b>	5%	10%	15%	40%	40%	40%
<b>Interest</b>	1%	2%	3%	4%	5%	6%
<b>Administrative Fee</b>	\$55.00	\$55.00	\$55.00	\$55.00	\$55.00	\$55.00

**FISCAL IMPACT****Removal of \$100 Minimum Business Registration Certificate Penalty for Failing to Register a Business with the Tax Collector**

According to Ms. Fried, if the proposed business registration penalty structure were implemented in 2015 and taxpayers paid on the same schedule, the Office of the Treasurer and Tax Collector would have collected approximately \$1.5 million less annually in penalties, with most of the reduction in penalties benefitting the smallest businesses that come into compliance quickly after missing a business registration deadline.

**Removal of \$25 Fee for Not Obtaining a Duplicate Business Registration Certificate**

According to Ms. Fried, the \$25 fee to obtain a duplicate Business Registration Certificate has not been enforced and therefore had not generated revenue to the City because the Office of the Treasurer and Tax Collector has determined that the cost of printing a duplicate certificate is minimal as a result of technological upgrades. Given that California law requires counties to collect a fee of not more than 100 percent of the cost of the service, the Office of the Treasurer and Tax Collector opted to forego the fee entirely.

**RECOMMENDATION**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



**OFFICE OF SMALL BUSINESS**

CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS  
REGINA DICK-ENDRIZZI, DIRECTOR

January 10, 2017

Ms. Angela Calvillo, Clerk of the Board  
City Hall Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: BOS File No. 161226 [Business and Tax Regulations Code - Revising Administrative Citation Rules]

Small Business Commission Recommendation to the Board of Supervisors: **Approval**

Dear Ms. Calvillo,

On December 12, 2016, the Small Business Commission voted unanimously (6-0, 1 absent) to recommend that the Board of Supervisors approve BOS File No. 161226.

The Commission commends the Office of the Treasurer and Tax Collector for its receptiveness to feedback from the small businesses community's leadership and for its ensuing efforts to reduce burdensome fees and administrative requirements that create hardships for small businesses. Under existing law, the Office of the Treasurer and Tax Collector issues about 1,500 administrative citations annually to enforce violations of the Business and Tax Code, such as not posting a business registration certificate. A business has 30 days to remedy the citation, which includes administrative penalties and cost assessed in issuing the citation. Presently, when businesses do not pay within 30 days of the issuance of the citation, a late fee of 10 percent is applied to the total financial obligations of the citation, and an additional 10 percent continues to be assessed for each month the penalty goes unpaid, with no maximum. The proposed legislation limits the late fee to 40 percent of the total amount of the administrative penalty and modifies public noticing requirements. The Commission is supportive of this proposal to reduce excessive penalties and streamline procedures at the Office of the Treasurer and Tax Collector.

Thank you for considering the Commission's recommendation for approval. Please feel free to contact me should you have any questions.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

cc: Amanda Fried, Office of the Treasurer and Tax Collector  
Mawuli Tugbenyoh, Office of the Mayor  
Lisa Pagan, Office of Economic and Workforce Development  
Linda Wong, Budget & Finance Committee

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk  
Board of Supervisors

DATE: December 22, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 161225**

**Ordinance amending the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector; and to remove the fee and administrative requirements for obtaining a duplicate registration certificate.**

Please return this cover sheet with the Commission's response to Linda Wong, Assistant Clerk, Budget and Finance Committee, at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*

**RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_**

**No Comment**

**Recommendation Attached**

\_\_\_\_\_  
**Chairperson, Small Business Commission**

c: Menaka Mahajan, Small Business Commission

Office of the Treasurer & Tax Collector  
City and County of San Francisco



José Cisneros, Treasurer

November 7, 2016

Angela Calvillo  
Clerk of the Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and one copy of proposed ordinance for Board of Supervisors approval, which amends the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector, and to remove the administrative requirements for obtaining a duplicate registration certificate.

If you have any questions on this matter, please contact me at (415) 554-0889, or [Amanda.fried@sfgov.org](mailto:Amanda.fried@sfgov.org).

Thank you,

A handwritten signature in black ink, appearing to read "Amanda Kahn Fried".

Amanda Kahn Fried

Policy and Legislative Manager

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2016 NOV -7 AM 11:32  
BY [Signature]

