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NOTICE OF HEARING - STREET ARTISTS PROGRAM COMMITTEE

San Francisco Arts Commission

Edwin M. Lee
Mayor

Tom DeCaigny
Director of
Cultural Affairs

Programs:
Civic Art Collection
Civic Design Review
Community Arts & Education
Cultural Equity Grants
Public Art
SFAC Galleries
Street Artist Licensing

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City and County of
San Francisco

July 1, 2013

John Cage
#8592

Dear Mr. Cage:

A report has been filed with the Arts Commission that you allegedly violated Article 24 of the Police Code on the following date and in the following manner:

June 19, 2013 at Justin Herman Plaza: Conducting business in an improper, hazardous manner: 1) parking of your car on JHP; 2) refusing to move car when requested by Recreations and Park ranger; 3) aggressively confronting the park ranger by tearing up your traffic violation ticket and throwing it at him.

Article 24.2, Section 2408 of the San Francisco Police Code empowers the Arts Commission to deny, suspend or revoke a street artist's certificate for violation of the street artist regulations after a public hearing and for good cause shown. You are hereby requested to appear before the Street Artists Program Committee on the following date and location:

Wednesday, July 10, 2013 at 2:30 p.m. at
25 Van Ness Ave, Suite 70, San Francisco, CA 94102

You may bring to the hearing any evidence which you feel is relevant to your case. You may bring witnesses to testify on your behalf.

Failure to appear may result in a Program Committee recommendation of the penalty for the violation of which you have been charged. If this recommendation is approved by the Program Director you may either file an appeal with the Board of Permit Appeals within fifteen (15) days or request a re-hearing with the Program Committee within five (5) days from the date of the Program Committee meeting (see requirements for such request: 2nd page of the enclosed

Arts Commission Hearing Procedure of Street Artists Violations; Penalties for Violations).

Pursuant to the Police Code, Section 2409, you are entitled to appeal the decision of the Program Director to the San Francisco Board of Appeals by filling an appeal within fifteen (15) days from the date of the Program Director's decision.

If you have questions, please write or call the Street Artists Program office at 415-252-2583.

Sincerely,

Howard Lazar

Howard Lazar
Street Artists Program Director

Attachments:

Arts Commission Hearing Procedure of Street Artists Violations; Penalties for Violations

Cc: All Arts Commissioners, Street Artists Committee

ARTS COMMISSION HEARING PROCEDURE OF STREET ARTIST VIOLATIONS; PENALTIES FOR VIOLATIONS

The Street Artist Ordinance, Proposition "L" approved by the voters on November 4, 1975, grants to the Arts Commission jurisdiction to regulate street artists and to issue street artist certificates. Proposition L makes it unlawful for any person to sell a handcrafted item in any public street or public place where it is permissible, without either a street artist certificate or a peddler's permit. It further prohibits the sale by a street artist of a handcrafted item in an area not designated for street artist activities without a peddler's permit. Article 24.2, Section 2408, of the San Francisco Police Code empowers the Arts Commission to deny, suspend or revoke a street artist's certificate for violation of the street artist regulations after a public hearing and for good cause shown.

The Arts Commission may, but need not, require submittal of a Police report before proceeding with the denial, suspension or revocation of a street artist's certificate. The Arts Commission may proceed based on the submittal of a written report by its staff, a street artist, or by anyone. The procedures followed by the Arts Commission or other permit-issuing bodies for the suspension or revocation of permits is a civil proceeding separate and apart from any criminal sanctions that may be applicable.

In the event of the Arts Commission receiving notices of two convictions of criminal violations of street artist regulations by an artist, within a twelve-month period, the Commission may notify the artist that the certificate may be subject to review for possible suspension/revocation.

The Arts Commission is empowered to suspend or revoke a street artist's certificate, after a public hearing, both pursuant to its express power to revoke for good cause shown contained in the street artist regulations and under the general and discretionary powers granted to all permit-issuing departments as set forth in Sections 24 and 26 of Part III of the San Francisco Municipal Code.

Street artist violations are heard by the Commission's Street Artists Program Committee who makes recommendations for either acquittal, suspension, revocation, or denial of certification. The recommendation is submitted to the Program Director who may adopt or disapprove the recommendation.

Any suspension or revocation commences a minimum of fifteen (15) days after the Program Director's approval of the Program Committee's recommendation, allowing fifteen (15) days for the artist to file an appeal with the Board of Appeals.

Failure to appear for any violation hearing may result in a Program Committee recommendation of the penalty for the violation of which the artist has been charged. If this recommendation is approved by the Program Director, the artist may either file an appeal with the Board of Appeals within fifteen days or request a hearing with the

Program Committee within five (5) days from the date of the Committee hearing. Such request for hearing must be in writing and must state succinctly the grounds upon which such hearing is requested. If new evidence is relied upon as a ground for hearing, the request shall show: (1) the nature and character of the new evidence; (2) the names of the witnesses and/or a description of the documents to be produced; (3) why the evidence was not produced, and why the artist did not appear, at the original hearing.

There shall be a penalty of two (2) months suspension of certificate for a first offense of any of the following violations, and there shall be a penalty of revocation of certificate for a second offense of any of the following violations if the person has been found in violation by the Arts Commission within the twelve-month period immediately preceding the current offense, and that finding has not been overruled by the Board of Appeals: (1) Display of items not in accord with Arts Commission criteria; (2) Display of items not of the artist's own creation; (3) Display of items not certified by the Arts Commission; (4) Display of items by salesperson or another artist on behalf of a street artist; (5) Transference of certificate to any other person; (6) Display of items and/or participation in Arts Commission lottery by artist during period of certificate suspension; (7) Participation in Arts Commission lottery without a State Board of Equalization Resale Permit; (8) Signing in for more than one space on any given day (all lotteries included). (Lottery sign-up sheets will be kept by the Arts Commission for a period of six months.); (9) Failure to occupy a space for which the artist has signed. Occupying a space means an artist setting up the working display and the artist selling in the space for a minimum duration of three hours. In the event of a question of occupancy of a space, the Lottery Committee workers shall have available an Arts Commission document slip containing spaces for the signatures of three witnesses, to be submitted as evidence to the Arts Commission.

Violations of Section 2405, Ordinance 41-83. There shall be a penalty of three (3) weeks suspension of certificate for a first offense of any of the following violations, a penalty of six (6) weeks suspension of certificate for a second offense of any of the following violations, and there shall be a consideration of revocation of certificate for a third offense of any of the following violations if the person has been found in violation by the Arts Commission within the three-year period immediately preceding the current offense, and that finding has not been overruled by the Board of Appeals:

1) Selling, offering for sale, or soliciting offers to purchase in areas not designated by the Board of Supervisors.

2) Selling, offering for sale, or soliciting offers to purchase in areas designated by the Board of Supervisors which are not under the jurisdiction of an officer, board, or commission of the City and County:

(a) More than four and one-half (4 ½) feet from the curb line of any sidewalk.

(b) Within eighteen (18) inches of the curb line of any sidewalk.

(c) More than five (5) feet above any sidewalk.

(d) In an area more than four (4) feet long.

(e) Within seven and one-half (7 ½) feet of a sprinkler inlet or standpipe inlet (both wet and dry), measured from the outer edge of a standpipe bank from the building line to the sidewalk edge.

(f) Within twelve (10) feet from the outer edge of any entrance to any building including, but not limited to, doors, driveways, emergency exits measured in each direction parallel to the building line and thence at a 90-degree angle to the curb.

(g) Obstructing a fire escape underneath and perpendicular from building to the street within five (5) feet from an end of the fire escape.

(h) On any sidewalk adjacent to a curb which has been duly designated pursuant to local ordinance ,or regulation as one of the following: white zone, yellow zone, or bus zone.

(i) Within five (5) feet of any crosswalk.

(j) Within five (5) feet of any inflammable liquid vent or fill pipe, in either direction of the sidewalk when tanks are not being filled or within twenty-five (25) feet while tank is being filled.

(k) Within five (5) feet of the display of any other Street Artist.

(l) Within five (5) feet of a fire hydrant.

(m) Selling, offering for sale, or soliciting offers to purchase between the hours of 12:00 a.m. (midnight) and 6:00 a.m. of the following day.

(n) Failing to remove display and objects in an area designated by the Board of Supervisors by 12:00 a.m. (midnight); placement of display or objects in said area prior to 6:00 a.m., of the following day.

(0) Selling, offering for sale, or soliciting offers to purchase from any vehicle.

(p) Failing to maintain for the passage of pedestrians a space of at least eight (8) feet in width, as measured on a line perpendicular to the curb line, between the edge of the sidewalk farthest from the curb and the edge of Street Artist's activities. No portion of a Street Artist's activities shall be included in measuring the eight (8) foot clear pedestrian passageway. Not withstanding the foregoing, the Board of Supervisors, by resolution, may temporarily permit Street Artists to engage in their activities in specified locations where eight (8) feet of clear pedestrian passageway cannot be maintained. Such temporary permission may not be granted by the Board of Supervisors for any period exceeding eighteen months.

On December 9, 1996 the Art Commission voted to endorse the Street Artists Program Director in implementing a provision of the street artist ordinance which authorizes the Program Director to refuse to issue or renew a certificate for a street artist if a report has been filed with the Art Commission that the artist has violated the ordinance, pending hearing by the Commission's Street Artists Program Committee.

Specifically, Section 5 of Proposition "L" (street artist ordinance) approved by the voters at the -November 4, 1975 election states:

> **Issuance of Certificate.** If the applicant's examination is satisfactory, and if no charges of deception resorted to in obtaining the certificate, or any other violation of the applicable provisions of the San Francisco Municipal Code, have been filed with the Commission, upon payment of the certificate fee fixed by this ordinance, the Executive Director of the Art Commission shall issue a certificate to the applicant, duly signed, and shall show therein that the person named therein passed the examination and is entitled to engage in the display and sale of the specific art or craft item set forth in said certificate in accordance with the provisions of this ordinance.

The Art Commission's resolution, as follows, to implement Section 5, approved procedures that may be used to address violations in addition to, and may be taken with, the existing suspension/revocation procedures (described on the preceding pages):

RESOLUTION NO. 1209-96-560: Motion to approve Program Director's draft criteria and guidelines, as approved and amended by City Attorney and Program Committee, for implementing provision in Section 5 of Proposition "L" (Street Artist Ordinance) of November, 1975 election whereby a certificate shall not be issued (or renewed) if charges of deception resorted to in obtaining the certificate, or any other violation of the applicable provisions of the San Francisco Municipal Code, have been filed with the Art Commission; such criteria and guidelines to be made widely available; and that staff report to Arts Commission at a public hearing in six (6) months as to the impact of this change in enforcement of the Street Artist Ordinance.

After the Art Commission approved the procedures implementing Section 5, the following "NOTICE TO STREET ARTISTS" was sent to all certificate-holders, describing the procedures:

SAN FRANCISCO ARTS COMMISSION
NOTICE TO STREET ARTISTS

Section 5 of the Street Artists Ordinance allows the Director of Cultural Affairs to refuse to issue a street artist certificate or renewal if charges have been filed alleging deception or violation of the Street Artists Ordinance. The Arts Commission has

adopted the following procedures to implement Section 5. These procedures may be used to address violations in addition to, and may be taken with, the existing suspension-revocation procedures.

CHARGES OF MINOR VIOLATIONS OF THE STREET ARTISTS ORDINANCE:
- Includes most violations of a non -violent/non-threatening nature.

First Violation: "NOTICE OF WARNING" from Program Director.

Second Violation: "NOTICE OF INTENT TO RECOMMEND DENIAL OF CERTIFICATE OR RENEWAL" from Program Director.

Notice will offer artist an opportunity to have a public hearing with Program Director to discuss the charge. If artist agrees in writing to comply with Street Artists Ordinance, Program Director will recommend issuance of certificate or renewal. If artist does not agree in writing to comply with the ordinance, Program Director will recommend denial of certificate or renewal.

Third Violation: (when at least 1 of the 3 incidents has been witnessed by Police or Program staff): "NOTICE OF WITHHOLDING OF CERTIFICATE OR RENEWAL PENDING HEARING" from Director of Cultural Affairs.*

CHARGES OF SERIOUS VIOLATIONS OF THE STREET ARTISTS ORDINANCE:
- includes violations of a violent or threatening nature and violations that significantly threaten integrity of Street Artists Program.

First Verifiable Violation: "NOTICE OF WITHHOLDING OF CERTIFICATE OR RENEWAL PENDING HEARING" from Director of Cultural Affairs.*

* Denials of certificates or renewals are governed by Section 2408 of the Street Artists Ordinance. The Street Artists Program Committee will hold a public hearing on the certificate or renewal in accordance with Section 2408. A decision by the Committee and Program Director to deny certificate or renewal may be appealed to the Board of Appeals within 15 days, in accordance with Section 2409 of the Street Artists Ordinance.

OTHER AMENDMENTS TO HEARING PROCEDURES

On December 4, 1978, the Art Commission passed a resolution to enforce appointments for re-examination of wares of certificate-holders as requested by staff:

FAILURE TO APPEAR AT RE-SCREENING: If a Street Artist is unable to keep his appointment for re -screening, he must submit written notification to the Street Artists Program office stating reason(s) for inability to appear. Failure to appear for a second appointment will result in suspension of Certificate until his re-screening obligation is met.

On August 4, 1986, the Art Commission adopted the following **TIME LIMITS FOR TESTIMONY IN HEARINGS ON ISSUES AND ALLEGED VIOLATIONS:**

The Street Artists Program Committee follow a procedure whereby the times of issues and matters be posted on each agenda and that speakers be allotted two minutes for comments, provided that the Committee, at its discretion, may increase the allotted time where there is just cause.

On April 7, 1987, the Art Commission adopted the following resolution: **TIME LIMIT OF THREE YEARS ON COUNTING AN ARTIST'S VIOLATIONS OF SECTION 2405, ORD. 41-83.**

On August 1, 1988, the Art Commission adopted a **POLICY DIRECTING STREET ARTISTS TO REFRAIN FROM PARTICIPATING IN VIOLENCE:**

That it be the policy of the Arts Commission to expect street artists to walk away when violence is threatened, to do what is necessary to avoid violence, rather than to participate in violence, this being in keeping with the Arts Commission's power to suspend or revoke the certificate of any artist when, after public hearing, it appears that the artist was conducting his or her business in a disorderly, improper or hazardous manner.

On May 3, 1993, the Art Commission approved the following amendment to its "HEARING PROCEDURE OF STREET ARTIST VIOLATIONS; PENALTIES FOR VIOLATIONS" which defers a suspension or revocation to a later time within one year (amending language in **bold** print; deletions in ((double parentheses))):

((Any)) **A** suspension or revocation commences ((two (2) weeks) **fifteen (15) days** after the Art Commission's resolution, allowing ((ten (10))) **fifteen (15)** days for the artist to file an appeal with the Board of Permit Appeals ((.)), **unless the Art Commission sets a suspension period or a revocation for a later time within one (1) year of the Commission's resolution. In the event the Art Commission sets a suspension period or a revocation for a later time, the artist, if wishing to appeal, must file an appeal with the Board of Permit Appeals within fifteen (15) days after the Art Commission's resolution.**

NOTE: Certain provisions in the above amendment, as in the "HEARING PROCEDURE" itself, were superseded by Ordinance 291 -94; namely, the ordinance replaces the "Art Commission's resolution" with the Program Director's decision, and provides for the Street Artists Program Committee, rather than the Art Commission, to be the one who, through recommendation, sets a suspension period or a revocation subject to the approval of the Program Director, the Program Director's disapproval governed by certain restrictions.

On June 7, 1993, the Art Commission approved the following provision **LIMITING TESTIMONY**:

> Motion to approve statement included on Program Committee agenda limiting testimony to three minutes and no witness to cross-examine another witness without Committee approval.

On June 7, 1993, the Art Commission approved the following amendment to its "HEARING PROCEDURE OF STREET ARTIST VIOLATIONS" **providing for minimum of one (1) year between revocation of a street artist's certificate and Art Commission consideration of the artist's application for new certificate; hearing procedure; final revocation:**

POLICY PROVIDING FOR MINIMUM OF ONE (1) YEAR BETWEEN REVOCATION OF A STREET ARTIST'S CERTIFICATE AND ART COMMISSION CONSIDERATION OF THE ARTIST'S APPLICATION FOR NEW CERTIFICATE; HEARING PROCEDURE; FINAL REVOCATION:

When a former certified street artist whose previous certificate was revoked submits application for a new certificate, there shall be a minimum of one (1) year's duration between the revocation of the previous certificate and Art Commission consideration of the application for new certificate.

The request for a new certificate shall be heard in the first instance by the Art Commission's Street Artists Program Committee. In its consideration of such request for a new certificate, the Program Committee shall calendar a hearing for the request, and the applicant shall be required to submit evidence in the form of witness testimony or documentation that the applicant is now able and willing to comply with the street artist ordinance.

The Program Committee shall submit its recommendation of approval or disapproval of the request to the full Art Commission who, by resolution, shall approve or disapprove the recommendation.

In the event of the Art Commission's disapproval of the applicant's request, the applicant is entitled, pursuant to San Francisco Charter Section 3.651, to appeal the decision of the Commission to the San Francisco Board of Permit Appeals. Part III, Article I, Section 8 of the San Francisco Municipal Code provides that any such appeal

must be filed within fifteen (15) days from the date on which the Art Commission by resolution makes its decision.

When the Art Commission revokes a certificate of a street artist for the second time, the second revocation shall be final, and no consideration shall be given by the Commission of any future application submitted by the revokee.

On September 6, 1994, the Art Commission approved the following amendment, as recommended by the Advisory Committee of Street Artists and Craftsmen Examiners, to the "HEARING PROCEDURE OF STREET ARTIST VIOLATIONS" by providing for **Advisory Committee re-examination of questionable street artist wares; warning to cease and desist selling questionable items; charge of violation for non- compliance:**

> Any observation of a street artist's alleged first time non-compliance to the Art Commission's arts and crafts criteria as reported by two or more members of the Advisory Committee of Street Artists and Craftsmen Examiners, an Art Commissioner, or staff of the Street Artists Program, may be brought to the attention of the Director of the Street Artists Program who shall notify the artist to appear before the Advisory Committee of Street Artists and Craftsmen Examiners for a reexamination of the item(s)in question and to cease and desist selling or offering for sale the item(s). The Director shall warn the artist that failure to appear before the Advisory Committee may result, and failure to cease and desist selling the item(s) shall result, in a charge of violation of the Street Artist Ordinance for selling an item not in accord with Art Commission criteria.

On November 3, 1997, the Art Commission adopted the following policy **to notify the Port Commission:**

> Motion to approve policy for Street Artists Program to notify Port Commission of street artist violators on Port property.

The above resolution implements Item "e", Exhibit 2, of Port Resolution No. 95-56; this resolution, passed by the Port Commission on June 27, 1995, in reference to the street artists' spaces on Port property (Jefferson Street), is attached following the resolutions herein reprinted.