

Date: Sept. 28, 2010

Item No. 8 & 9

File No. 10041

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- William and Robert Clark v Mayor, BOS & Arts Commission**
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Completed by: Chris Rustom

Date: Sept, 23, 2010

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA  
City Attorney

JANA CLARK  
Deputy City Attorney

Direct Dial: (415) 554-3968  
Email: jana.clark@sfgov.org

**MEMORANDUM  
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
FROM: Jana Clark  
Deputy City Attorney  
DATE: September 23, 2010  
RE: 10041 William and Robert Clark v. Mayor, Board of Supervisors, Arts Commission

**COMPLAINT**

Complainants William and Robert Clark allege that the Mayor, the Board of Supervisors, and the San Francisco Arts Commission (the "Departments") violated section 67.26 and 67.28(a) of the Ordinance by approving an annual fee to be charged to street artists to pay for City Attorney staff time spent in processing public records requests.

**COMPLAINANT FILES COMPLAINT:**

On July 28, 2010, the complainants filed a complaint alleging a public records violation.

**JURISDICTION**

The Mayor and Board of Supervisors are charter departments under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear a complaint under the Ordinance against the Mayor and the Board of Supervisors. The Arts Commission is a policy body and legislative body under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission.

The Departments filed a joint response to this complaint, challenging the Task Force's jurisdiction to hear the complaint on the grounds that the complaint is in effect a challenge to a permit fee, not regulated or addressed by the Ordinance.

The complaint alleges that increasing the street artist fee to cover the costs of staff time spent processing public records requests violates the Ordinance by, in effect, amending section 67.26 and 67.28(a) of the Ordinance. The Departments' response is that the fee is designed to support the overall costs of administering and enforcing the Street Artists Ordinance. According to the Departments, the administrative costs of the program include costs of all administrative and enforcement requirements, a small part of which includes administration of public records requests. The Departments contends that increasing the fee is within the authority and discretion of the Board of Supervisors.

Section 67.26 of the Ordinance states in relevant part:

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FOX PLAZA • 1390 MARKET STREET, 6<sup>TH</sup> FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408  
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

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**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
DATE: September 23, 2010  
PAGE: 2  
RE: 10041 William and Robert Clark v. Mayor, Board of Supervisors, Arts Commission

The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.28(a) states in relevant part:

No fee shall be charged for making public records available for review

The question before the Task Force is whether a challenge to the increase in a permit fee to cover increased enforcement or administrative costs, is brought under the jurisdiction of the Task Force by virtue of the fact that part of the increased administrative costs sought to be covered include costs associated with responding to public records requests.

**ISSUES TO BE DETERMINED**

**Uncontested Facts:** On or about August 27, 2010, the Street Artists Certificate Fee was increased from \$154.16 to \$166.02 per quarter.

**Contested Facts:** Complainants appear to allege that the Street Artist Certificate Fee was increased solely to cover the costs of responding to public records requests. The Departments allege that the fee was increased to cover all administrative costs associated with the program, only part of which includes the administrative costs associated with responding to public records requests, but not intended to charge any individual for reviewing public records or to specifically cover the personnel costs of responding to a records request.

**APPLICABLE STATUTORY SECTION(S):**

**SEC. 67.28.** - Fees For Duplication.

**SEC. 67.26.** - Withholding Kept To A Minimum.

**APPLICABLE CASE LAW:**

None

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

Would a permit fee increase designed to cover increased enforcement and administrative costs of a program, which includes increased administrative costs associated with responding to public records request, violate the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three?

**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
DATE: September 23, 2010  
PAGE: 3  
RE: 10041 William and Robert Clark v. Mayor, Board of Supervisors, Arts Commission

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**

**SEC. 67.28. - FEES FOR DUPLICATION.**

**(a)**

No fee shall be charged for making public records available for review.

**SEC. 67.26. - WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.



DENNIS J. HERRERA  
City Attorney

JANA CLARK  
Deputy City Attorney

Direct Dial: (415) 554-3968  
Email: jana.clark@sfgov.org

**MEMORANDUM  
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
FROM: Jana Clark  
Deputy City Attorney  
DATE: September 7, 2010  
RE: 10041 *William and Robert Clark v. Mayor, Board of Supervisors, San Francisco Arts Commission*

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**Background**

Complainants William and Robert Clark allege that the Mayor, the Board of Supervisors, and the San Francisco Arts Commission violated section 67.26 and 67.28(a) of the Ordinance by approving an annual fee to be charged to street artists to pay for City Attorney staff time spent in processing public records requests.

**Complaint**

On July 28, 2010, Complainants filed a complaint with the Task Force alleging a violation.

**Discussion and Analysis**

The Mayor is a charter department under the Ordinance. The Task Force therefore has jurisdiction to hear the complaint against the Mayor.

The Board of Supervisors is a charter department under the Ordinance. The Task Force therefore has jurisdiction to hear the complaint against the Board.

The Arts Commission is a policy body and legislative body under the Ordinance. The Task Force therefore has jurisdiction to hear a public records complaint against the Arts Commission.



<complaints@sfgov.org>  
07/28/2010 02:44 PM

To <sotf@sfgov.org>  
cc  
bcc  
Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Mayor, Board of Supervisors,  
Arts Commission

CONTACTED:Luis R. Cancel, Howard Lazar, Sup. David Chiu, Mayor Gavin Newsom

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:Several meetings of Arts Commission and Board of Supervisors

SECTIONS\_VIOLATED:Section 67.26 and Section 67.28(a)

DESCRIPTION:On July 23, 2010 Mayor Newsom signed an ordinance approved by the Board of Supervisors and Arts Commission which charges an annual fee of \$47 to approximately 400 street artists in order to pay for Arts Commission and City Attorney staffs' time to process public document requests made by street artists pursuant to the sunshine ordinance. This fee conflicts with and has the effect of amending Sections 67.26 and 67.28(a) of the Sunshine Ordinance which state "The work of responding to public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request." and "No fee shall be charged for making public records available for review." Therefore, the Arts Commission charging a fee to process public document requests violates the Sunshine Ordinance.

HEARING:Yes

PRE-HEARING:Yes

DATE:July 28, 2010

NAME:William J. Clark and Robert J. Clark

ADDRESS:P.O. Box 882252

CITY:San Francisco

ZIP:94188

PHONE:415-822-5465

CONTACT\_EMAIL:billandbobclark@access4less.net

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No



SAN FRANCISCO ARTS COMMISSION

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 AUG 27 PM 4:16

BY CR

GAVIN NEWSOM  
MAYOR

LUIS R. CANCEL  
DIRECTOR OF  
CULTURAL AFFAIRS

Honorable Members  
Sunshine Ordinance Task Force  
Office of the Clerk, Board of Supervisors  
(Attention: Chris Rustom)  
Room 244, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL EQUITY GRANTS  
PERFORMING ARTS  
PUBLIC ART  
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

RE: Complaint No. 10041 – William and Robert Clark v. Mayor, Board of Supervisors and Arts Commission

Dear Task Force Members:

The Office of the Mayor, Clerk of the Board of Supervisors, and Arts Commission jointly file this letter in response to the above-entitled complaint.

Overview

The Task Force should dismiss this complaint because the Task Force lacks jurisdiction to adjudicate a challenge to the City's ability to set a certificate fee for street artists under the Street Artists Ordinance. We request that the Complaint Committee hear this matter at its meeting of September 14, 2010, and then forward to the Task Force a recommendation of "no jurisdiction."

In the event the Task Force nonetheless decides to address the merits of the complaint, the Task Force should find that the respondents have not violated the Sunshine Ordinance.

The Facts

The complaint states in relevant part:

On July 23, 2010 Mayor Newsom signed an ordinance approved by the Board of Supervisors and Arts Commission which charges an annual fee of \$47 to approximately 400 street artists in order to pay for Arts Commission and City Attorney staffs' time to process public document requests made by street artists pursuant to the Sunshine Ordinance. This fee conflicts with and has the effect of amending Sections 67.26 and 67.28(a) of the Sunshine Ordinance which state "the work of responding to [a] public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any [city] employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request."[(Sec. 67.26)] and "No fee shall be charged for making public



CITY AND COUNTY OF  
SAN FRANCISCO

records available for review." [(Sec. 67.28(a)] Therefore, the Arts Commission charging a fee to process public document requests violates the Sunshine Ordinance.

The complaint incorrectly states the substance of Ordinance No. 189-10 (copy attached), which Mayor Newsom signed into law on July 23, 2010 and also mistakenly equates the imposition of a street artist certificate to cover program operating costs with a fee charged to a records requester specifically for processing his or her individual records request. This ordinance does not charge "an annual fee of \$47" to each street artist "to process public document requests made by [those individual] street artists ...." Instead, the ordinance just sets the new annual fee for Street Artists Certificates for street artists who wish to participate in the Arts Commission's Street Artists Program. Hence, the entire premise of the complaint – that a street artist who makes a public records request is charged a fee for their request – is wrong.

The San Francisco Board of Supervisors has the authority and discretion to set, and annually adjust, Street Artist Certificate fees. San Francisco Police Code Section 2404.2 states that each year "the Board of Supervisors shall, by ordinance, establish or readjust the fee for a Street Artist Certificate. The fee set shall be equal to, but not greater than, the fees necessary to support the costs of administering and enforcing the provisions of the Street Artists Ordinance." S.F. Police Code §2404.2 (Fee Setting Procedure).

Administration and enforcement of the Street Artists Ordinance, in turn, includes, but is not limited to, reviewing and processing Street Artist Certificate applications, managing street artist budget issues, issuing street artist certificates and withdrawals, coordinating and documenting meetings of the relevant commission and advisory committees, arranging street artist studio visits and screening sessions, coordinating Police Department enforcement of the program rules, conducting hearings for program violations, creating and distributing written materials, agendas, and other correspondence regarding Street Artist Program matters and rules, consulting with the City Attorney's office regarding legal issues arising out of the Street Artists program, coordinating street artist sales space lotteries, processing and investigating street artist complaints, processing warnings and license revocations, as well as processing of public records requests regarding the Street Artists Program from any individual – not just certified street artists.

Board of Supervisors Ordinance No. 189-10 sets the certificate fee that a street artist must pay to remain in the Street Artist Program. The quarterly (three-month) fee, starting July 1, 2010, is \$166.02. If paid on an annual basis, the fee is \$664.08, representing an increase of \$47.44 from the prior fiscal year. Every permitted street artist must pay the same certificate fee to remain in the Street Artist Program. A permittee's obligation to pay the fee has nothing to do with whether the street artist



submits one or more public records requests to the City in connection with the Street Artist Program, or otherwise. Indeed, in our experience, the large majority of permitted street artists submit no public records requests concerning the Street Artists Program.

Before submitting its budget to the Board of Supervisors with a recommended fee increase, the Arts Commission's Street Artists Program determined that a fee increase was necessary in order to cover the costs of administering the program, including, but not limited to, increased staff salary and benefit costs, enforcement costs, as well as additional administrative costs arising out of processing and responding to public records requests.

### The Law

Section 67.26 of the Sunshine Ordinance states: "The work of responding to a public records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request." S.F. Admin. Code § 67.26. This provision precludes a City department from charging a requester for costs associated with responding to a request, such as the time it takes to search for, review, and redact records.

Section 67.28(a) of the Sunshine Ordinance states: "No fee shall be charged for making public records available for review." This provision precludes a City department from charging a requester for inspecting records. As the City Attorney's Good Government Guide (available on the City Attorney's website) states, at page 73: "The department may not charge any fees for a requester to inspect records. Admin. Code § 67.28(a)."

Other provisions of the Sunshine Ordinance regulate the fees a department may charge a requester for copies of public records. E.g., S.F. Admin. Code §§ 67.28(b), (c).

In sum, the Sunshine Ordinance precludes the City from charging a requester for its costs associated with processing a public records request and for the requester's inspection of records, but authorizes departments to charge certain fees to the requester for copies of records.

The Sunshine Ordinance does not address, much less regulate, permit fees that departments charge to individuals or entities who receive a City permit, such as participants in the Street Artists Program. The Sunshine Ordinance does not prohibit the City from setting a permit fee based on the costs of administering a permitting program or, in calculating that fee, from including the costs the department incurs in complying with public records requests.

### **The Task Force Lacks Jurisdiction To Adjudicate The Complaint**

If a department charged a records requester a fee to cover the personnel costs of responding to the request, the Task Force would have jurisdiction to determine whether the department had violated Section 67.26 of the Sunshine Ordinance. Similarly, if a department charged a records requester for inspecting a record, the Task Force would have jurisdiction to determine whether the department had violated Section 67.28(a). But those facts are not present here. Ordinance No. 189-10 sets the certificate fee for street artists in the Street Artists Program.

- Nothing in the Sunshine Ordinance remotely suggests that the Task Force has jurisdiction to determine the legality of permit fees charged to street artists – or, for that matter, the legality of fees charged to other individuals or entities for other types of permits the City issues, such as place of entertainment permits, taxi permits, or building permits. Challenges to the legality of permit fees are properly brought in a court of law, not before the Task Force.

### **The Complaint Is Without Merit**

In the event the Task Force addresses the merits of the complaint, it is clear that Ordinance No. 189-10 does not violate the Sunshine Ordinance. Because it does not authorize charging a requester for the costs of processing a records request, it does not violate Section 67.26. Because it does not authorize charging a requester for inspecting records, it does not violate Section 67.28(a).

As with many other permit fees, the Board of Supervisors sets the certificate fee for street artists by ordinance. The ordinance may specify a certificate fee as high as necessary to offset costs associated with the implementation and administration of the Street Artists Program.

The Street Artists Program is funded through Street Artists certificate fees. The Street Artist Ordinance, San Francisco Police Code Article 24 (“Street Artists Ordinance”) implements a 1975 voter initiative ordinance (“Proposition L”) and allows artist to sell their handcrafted art and craft items on designated San Francisco sidewalks. S.F. Police Code §§2400, 2405. The Street Artists Ordinance authorizes the City to collect a street artist certificate fee as well as a related “application/examination fee” (referred to collectively in this memorandum as “certificate fees”). S.F. Police Code §§ 2400, (Sec. 6), 2404.1 and 2404.1.1. In 1983 the voters passed Proposition K, amending the Street Artist Ordinance to state that “the Board of Supervisors may increase the certificate fee when necessary in order to finance the costs of the Art Commission in administering and enforcing the provisions of this Ordinance.” Proposition K (currently codified as S.F. Police Code § 2400 (Sec. 6)).

To sell artwork on designated public property, a street artist must pay the certificate fees specified by the Board of Supervisors each year. As noted above, San Francisco

Police Code Section 2404.2 states that each year "the Board of Supervisors shall, by ordinance, establish or readjust the fee for a Street Artist Certificate. The fee set shall be equal to, but not greater than, the fees *necessary to support the costs of administering and enforcing the provisions of the Street Artists Ordinance.*" S.F. Police Code §2404.2 (Fee Setting Procedure) (emphasis added). All street artists must pay the *same* street artist fee to cover all of those operational costs.

While the Arts Commission uses those certificate fee revenues to defray operating costs as required by the Street Artists Ordinance, and while those costs encompass a myriad of administrative and enforcement expenses, including the costs related to responding to records requests, the Arts Commission does not charge any street artist or any other member of the public, a fee for processing his or her individual records request. As a result, the street artist certificate fee, like any other fee the City imposes for any permit that may be used to cover general operating costs, does not violate the Sunshine Ordinance restriction on charges to individuals for records requests.

**Conclusion**

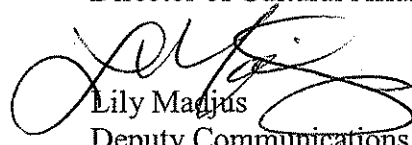
The Task Force should dismiss this complaint because it lacks jurisdiction to adjudicate the complaint. If the Task Force nonetheless addresses the merits, it should dismiss the complaint because the complaint does not state a violation of law.

We recognize that the Task Force, in its oversight role regarding operation of the public records laws, may conduct a nonadjudicatory hearing into the City's costs associated with responding to records requests, and the degree to which permit fees are used to pay those costs. But the Task Force may not judge the legality of an ordinance setting certificate fees for street artists (or any other category of City permittees), and thus should neither assert jurisdiction over the complaint nor find the complaint to be legally valid.

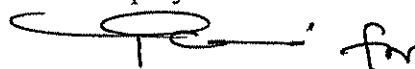
Respectfully submitted,



Luis Cancel  
Director of Cultural Affairs, San Francisco Arts Commission



Lily Madjus  
Deputy Communications Director, Mayor's Office



Angela Calvillo  
Clerk of the Board

1 [Increasing Street Artist Certificate Fee]

2  
3 Ordinance amending the San Francisco Police code, Article 24, by amending Section  
4 2404.1 to increase the fee for a Street Artist Certificate and making environmental  
5 findings.

6 NOTE: Additions are single-underline italics Times New Roman;  
7 deletions are ~~strike-through italics Times New Roman~~.  
8 Board amendment additions are double-underlined;  
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. Findings.


11 The Planning Department has determined that the actions contemplated in this  
12 Ordinance are in compliance with the California Environmental Quality Act (California Public  
13 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
14 Board of Supervisors in File No. 100710 and is incorporated herein by reference.

15 Section 2. The San Francisco Police Code is hereby amended by amending Section  
16 2404.1, to read as follows:

17 **SEC. 2404.1. STREET ARTIST CERTIFICATE: FEE.**

18 Pursuant to the provisions of Proposition K, adopted by the voters at an election held  
19 on November 8, 1983, the Board of Supervisors hereby establishes the fee for a Street Artist  
20 Certificate to be as follows: Beginning ~~July 1, 2009~~ July 1, 2010, the fee for a quarterly Street  
21 Artist Certificate shall be ~~\$154.16~~ \$166.02 and said certificate shall be valid for a period of three  
22 months from the date of issuance; except that any person certified as a street artist pursuant  
23 to the provisions of this Article shall have the option of purchasing for ~~\$616.64~~ \$664.08 an  
24 annual certificate valid for a period of one year from the date of issuance.

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

3 By:   
4 ADINE VARAH  
5 Deputy City Attorney  
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City and County of San Francisco  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 100710

**Date Passed:** July 13, 2010

Ordinance amending the San Francisco Police code, Article 24, by amending Section 2404.1 to increase the fee for a Street Artist Certificate and making environmental findings.

June 29, 2010 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Noes: 2 - Alioto-Pier and Daly

July 13, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Noes: 2 - Alioto-Pier and Daly

File No. 100710

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/13/2010 by the Board of Supervisors of the City and County of San Francisco.

Mayor Gavin Newsom

Angela Calvillo  
Clerk of the Board

July 23, 2010

Date Approved



City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Certified Copy

Ordinance

100710 [ Increasing Street Artist Certificate Fee ]

Sponsor: Mayor

Ordinance amending the San Francisco Police Code, Article 24, by amending Section 2404.1 to increase the fee for a Street Artist Certificate and making environmental findings.

6/29/2010 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Noes: 2 - Alioto-Pier and Daly

7/13/2010 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Noes: 2 - Alioto-Pier and Daly

7/23/2010 Mayor - APPROVED

STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

CLERK'S CERTIFICATE

I do hereby certify that the foregoing Ordinance is a full, true, and correct copy of the original thereof on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City and County of San Francisco.

August 27, 2010

Date

Angela Calvillo

Clerk of the Board



Bill and Bob Clark  
<billandbobclark@access4less.net>

To soft@sfgov.org

cc

bcc

09/21/2010 01:08 PM

Please respond to  
Bill and Bob Clark  
<billandbobclark@access4less.net>

Subject Document to be included in File #10041

Mr. Chris Rustom,

Please include a copy of this email into File #10041 for all the members of the Sunshine Ordinance Task Force to read before their September 28, 2010 meeting concerning our complaint.

We are filing this Sunshine Ordinance complaint because we believe the Arts Commission, the Mayor and the Board of Supervisors violated Sections 67.26 and 67.28(a) of the Sunshine Ordinance when they passed an ordinance raising the annual fee for a Street Artist Certificate by \$47.44 in order to pay for the cost of Arts Commission and City Attorney staff's time to respond to public document requests pursuant to the Sunshine Ordinance.

We assert that when a Street Artist or any member of the public files a public document request at the Arts Commission the Arts Commission has not been using the proper procedure established by the Sunshine Ordinance for review or release of public documents.

Instead, the Arts Commission has been sending all requests for review or release of public documents over to the City Attorney for the City Attorney's analysis of the documents requested for review or release to determine if those documents are public documents that can be released to or reviewed by the requester.

As a result of the use of this improper procedure, the City Attorney's staff has had to use unnecessary time to make a determination whether are not the documents requested for review or release are in fact, public documents which can be reviewed or released to the requester and the City Attorney has been billing the Arts Commission for the City Attorney's staff time to process those public document requests.

The new \$47.44 annual increase in the cost of a Street Artist Certificate is specifically to cover the cost of the Arts Commission and City Attorney staff's time to process public document requests during the fiscal year 2010-2011 (see the transcript of the Director of the Arts Commission Luis Cancel's testimony at the June 21, 2010 Budget and Finance Committee regarding the proposed ordinance to raise the annual cost of a Street Artist Certificate for the fiscal year 2010-2011).

Even though the Arts Commission is not charging a fee to pay for the cost of the Arts Commission or City Attorney's staff time to a specific requester for a review or release of a specific document or documents, we assert that the \$47.44 increase in the annual cost of a Street Artist Certificate is a violation of Sections 67.28 and 67.26(a) of the Sunshine Ordinance because it is a backdoor method of charging Street Artists a fee to pay for the cost of Arts Commission and City Attorney staff's time to process public document requests and because the fee increase is unnecessary.

The fee increase is unnecessary because the Arts Commission, the Mayor, the



Board of Supervisors and the City Controller were all aware of the fact that there was a surplus of approximately \$80,000. At the end of the 2009-2010 fiscal year which was the result of an additional \$30,000 from previous years Street Artist Certificate fees that the Controller discovered and informed Howard Lazar and the Arts Commission in an email in December 2009 plus approximately \$50,000 in salary and benefits savings resulting from the termination of the Street Artist Program's second full time staff member on February 9, 2010.

Also, since Proposition K approved by the voters on the November 1983 ballot gave the City the authority to raise the cost of a Street Artist Certificate only "when necessary", the City does not have the legal authority to increase the cost of the Street Artist Certificate to raise an additional \$17,000 for any reason because the City had more than \$17,000 surplus in the Street Artist Special Fund at the time the ordinance to raise the annual cost of the Street Artist Certificate was approved by the Board of Supervisors and the Mayor.

Finally, the Board of Supervisors and the Mayor lack the legal authority to approve this annual Street Artist Certificate fee increase of \$47.44 to cover the costs of the Art Commission and City Attorney staffs time because it would have the effect of amending the initiative ordinance known as the Sunshine Ordinance since that ordinance states that no fee shall be charged to pay for personnel time to process public document requests and that the work to process public document requests shall be considered the "normal work duty" of every city employee and because there is no language in the Sunshine Ordinance giving the Board of Supervisors the authority to amend or repeal the Sunshine Ordinance.

William J. Clark

Robert J. Clark

TESTIMONY OF LUIS CANCER AT  
THE JUNE 21, 2010 BUDGET AND FINANCE  
COMMITTEE EXPLAINING THE REASON FOR THE  
FEE INCREASE.

"The need for this increase is over two ordinances in city policy. When the street artist program was established by the city, it was determined that it be cost neutral to the city. The arts commission always does a careful job looking at what it costs to operate the program and is it operating from the revenues it generates from its fee?

The second is the Sunshine Ordinance. When that was passed, it required the arts commission to respond to requests of information regarding the operations of their programs. Unfortunately, in the last two years, we have seen a small number of individuals abusing the Sunshine Ordinance rules, requiring small groups to spend an inordinate amount of time responding to questions, responding to documents, etc.

①

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 SEP 21 PM 1:50

BY AK

From 2008 to the current -- 2008 to the current fiscal year, the number of hours that the street artist program had to spend doubled with respect to the number of requests dealing with sunshine.

In addition to staff time, you have the City Attorney's time that would be paid for. That is the reason we are seeking a \$47.44 increase, to help pay for additional part-time staff to help comply with the sunshine." "

(2)

Budget 10-11

STREET ARTISTS PROGRAM		FY 2008-2009	FY 2009-2010	Increase	FY 2010-2011	Increase
FY2010-11 Budget Estimates		Adopted Budget	Adopted Budget	on FY08-09	Estimates	on FY09-10
<b>Revenue</b>						
License Fees		207,594	240,478	32,884	262,313	21,835
Coverage from Fund Balance		-	-	-	-	-
<b>Total Revenue</b>		<b>\$ 207,594</b>	<b>\$ 240,478</b>	<b>32,884</b>	<b>\$ 262,313</b>	<b>\$ 21,835</b>
<b>Expenses</b>						
Salaries & Benefits		173,191	181,032	7,841	189,652	8,620
Material & Supplies		2,321	862	(1,459)	862	-
Advisory Committee (5 members x 35 assignments x \$100 ea)		10,000	17,618	7,618	17,500	(118)
Interpreter's fees		1,686	-	(1,686)	-	-
Lottery supplies storage		720	720	-	720	-
Records Storage (GRM)		96	96	-	96	-
Photo-finishing		950	-	(950)	-	-
City Attorney (\$214 hr x 65 hrs)		-	-	-	13,910	13,910
Telephone		850	1,032	182	727	(305)
Reproduction		3,467	1,904	(1,563)	1,132	(772)
<b>Part time temp help (\$25 hr x 208 hrs)</b>					5,200	5,200
Admin. Overhead (Inter mail - Repro)		-	400	400	400	-
Admin. Overhead (Rent)		1,501	5,053	3,552	5,053	-
Admin. Overhead (Postage)		-	500	500	500	-
Admin. Overhead (Copying expenses)		-	529	529	458	(71)
Admin. Overhead (Accounting)		12,812	19,304	6,492	13,089	(6,215)
Admin. Overhead (IT Maintenance)		-	3,541	3,541	3,541	-
Admin. Overhead (DTIS Network)		-	4,409	4,409	4,409	-
Admin. Overhead (HR services ART)		-	-	-	1,534	1,534
Admin. Overhead (HR services DHR)		-	3,478	3,478	3,530	52
Admin. Overhead subtotal		14,313	37,214	22,901	32,514	(4,700)
<b>TOTAL EXPENSES</b>		<b>\$ 207,594</b>	<b>\$ 240,478</b>	<b>\$ 32,884</b>	<b>\$ 262,313</b>	<b>21,835</b>
<b>SURPLUS / (DEFICIT)</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Proposed Annual Fee (\$262,313 divided by 395 artists)</b>		<b>\$ 532.28</b>	<b>\$ 616.64</b>	<b>84.36</b>	<b>\$ 664.08</b>	<b>\$ 47.44</b>
<b>Proposed Quarterly Fee</b>		<b>\$ 133.07</b>	<b>\$ 154.16</b>	<b>21.09</b>	<b>\$ 166.02</b>	<b>11.86</b>
<b>Fee Per Day</b>		<b>\$ 1.46</b>	<b>\$ 1.69</b>	<b>0.23</b>	<b>\$ 1.82</b>	<b>0.13</b>
<b>Current Annual Fee</b>		<b>\$ 532.28</b>	<b>\$ 616.64</b>	<b>84.36</b>	<b>\$ 664.08</b>	<b>\$ 47.44</b>
<b>Annual Increase</b>			<b>84.36</b>		<b>\$ 47.44</b>	
<b>% Increase</b>			<b>15.85%</b>		<b>7.69%</b>	
<b>Annual Revenue with current rate (395 artists)</b>			<b>\$ 240,478</b>		<b>262,313</b>	<b>21,835.00</b>

NOTE: For FY 2010-11, to accommodate public records requests and investigation of street artist violations, the costs of part-time temporary help (\$25 hr x 208 hrs = 5,200) and City Attorney advice (\$214 hr x 65 hrs = \$13,910) were added to the budget.

Budget requested by [unclear] 1/8/10

*No see page 2 & 3*



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From : Bill and Bob Clark <billandbobclark@access4less.net>  
 To : john.avalos@sfgov.org, david.campos@sfgov.org, Sophie.Maxwell@sfgov.org, Sean.Elsbernd@sfgov.org, Ross.Mirkarimi@sfgov.org  
 Cc : Gavin.Newsom@sfgov.org, Leo.Levenson@sfgov.org  
 Subject : Street Artist Certificate fee interest  
 Date : Thu, Jun 17, 2010 06:39 PM

June 17, 2010

Dear Supervisor,

We are sending you this email to ask you to vote against calendar Item #6, legislation #100710, the Street Artist Certificate fee increase.

There are several reasons why you should vote against this fee increase.

\* 1) The Arts Commission is requesting a \$17,000 increase in the Street Artist Program's budget this fiscal year for the sole purpose of paying the cost of the Street Artist Program staff's time to provide documents to individuals who request those documents pursuant to the City's Sunshine Ordinance.

\* This specific reason was stated at three separate Arts Commission hearings, the Street Artist Program Committee, The Executive Committee and the full Arts Commission, as being the only reason why it is necessary to raise the Street Artist Certificate fee for the next fiscal year.

However, it is explicitly stated in Sections 67.26 and 67.28 of the Sunshine Ordinance that no fee shall be charged for the release of documents requested pursuant to the Sunshine Ordinance and that the work of responding to a public records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee.

Sunshine Ordinance

SEC. 67.26. - WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.28. - FEES FOR DUPLICATION.

(a) No fee shall be charged for making public records available for review.

Therefore, it is illegal for any Street Artist to be charged an additional fee to pay for the cost of the Arts Commission providing any document requested pursuant to the City's Sunshine Ordinance.

2) The Arts Commission is deliberately withholding relevant information from the Board of Supervisors regarding the amount of surplus money that will be remaining in the Street

<http://webmailb.netzero.net/webmail/8?block=1&msgList=000007G0:001C6gtV000006E...> 6/21/2010

in the Street Artist Special Fund every time any Street Artist renews their certificate or a new certificate is issued to a new applicant.

That is because the present fee for a Street Artist Certificate includes the cost of two staff members even though there is presently only one full time Street Artist Program staff member.

Respectfully,

William J. Clark

January 13, 2010 minutes from the Street Artist Program Committee

Street Artists Committeeâ€”Sherene Melania, Chair

1. Commissioner Melania reported that the Committee was unable to reach consensus on the programâ€™s budget. They heard from the street artists and others on how to make the program more technologically advanced and more efficient. She explained that the fee increase was called for because of the inordinate document requests, requiring costs for staff time and City Attorneyâ€™s office time. Street Artists Committeeâ€”Sherene Melania, Chair

Mr. Lazar stated that the Program Assistant issue was separate from the one at hand â€” the ongoing public records requests - and he questioned whether replacing the current full-time Program Assistant with one or two temporary employees would cause the high number of public records requests to abate. If it did not, he would still have to hire a temporary employee â€” a third employee â€” to assist him in responding to the public records demands and the investigations of violations.

At the request of Commissioner Melania, Mr. Lazar presented the proposed budget for 2010-11, line item by line item. The budget, he said, would not have required a raise in the artistsâ€™ fees were it not for the ongoing requests received for public documents resulting in an inordinate amount of staff time spent in research and production of documents. Because of this, the costs of City Attorney time and temporary clerical assistance were added to the budget, resulting in a 7.69% increase in the artistsâ€™ fee. Currently, the artists pay \$616.64 a year for a street artist certificate, or \$154.16 for a three-month certificate, or \$1.69 per day. The present rate would have remained for next year, he said, were it not for the additional necessary costs which would increase the annual fee to \$664.08, the quarterly fee to \$166.02, the daily rate to \$1.82.

Mr. Lazar added that Director of Cultural Affairs Cancel himself had stated in no less than three public meetings throughout the past year that, unless there would be a decrease in the amount of public records requests, the Street Artists Program would seek an increase in the artistsâ€™ fees to cover the additional costs of City Attorney time and clerical assistance.

Mr. Lazar further stated his understanding that, according to the Sunshine Ordinance, he was duty-bound to make it a priority to fulfill public records requests in a timely manner, even at the detriment to his other duties of administering and enforcing the Street Artists Ordinance (an ordinance passed by the voters of San Francisco). In the recent hearing of Michael Addario vs. Arts Commission, attended by Mr. Lazar, the Sunshine Ordinance Task Force found the Arts Commission in violation of the Sunshine Ordinance by not furnishing documents on time. Mr. Lazar was now expected to return to the Compliance Committee of the Sunshine Task Force in order to tell the Committee what steps the Arts Commission would be taking to ensure that future documents requests would be fulfilled on time. Mr. Lazar wanted to be able to inform the Compliance Committee that the Arts Commission would be correcting the problem by obtaining the necessary assistance in fulfilling such requests, and that this assistance would be covered by an increase in the street artist fees.

\* For further evidence of the necessity to obtain assistance, Mr. Lazar referred the Commissioners to the following two documents: (1) the current San Francisco Arts Commission Three-Year Strategic Plan, "Draft version 01", whose page 19 recommended the addition of a part-time temporary employee to assist in researching files for "immediate disclosure requests"; and (2) the Voter's Handbook of the November, 1999 election relative to Proposition "G", Sunshine Ordinance Amendment, containing the Controller's statement on "G" which forecast the costs of additional City staffing required to implement "G".

\* Mr. Lazar went on to detail the amount of time he has spent in fulfilling public records requests. During the previous year and a half, he responded to no less than 20 requests and prepared for and spoke at Sunshine Ordinance Task Force hearings, all of which cost the street artists 178 hours of his time or \$5,601.55 of their Program's budget. This, he said, "robbed" the Program of 178 hours that could have been used by the Program Director in obtaining more selling spaces for the artists, monitoring the artists' booths, and prosecuting street artist violations. Furthermore, because of his having to devote 178 hours to the Sunshine requests, there was currently a backlog of 43 street artist violation cases awaiting his investigation and possible action/prosecution.

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Artist Special Fund at the end of the present fiscal year 2009-2010. This surplus revenue should be carried over and counted as revenue in the 2010-2011 fiscal year and used to determine what the Street Artist Certificate fee should be in the 2010-2011 fiscal year.

This is required by Section 10.02 of the S.F. Administrative Code, Section 10.100-1(c) of the S.F. Administrative Code, Section 9.113 of the S.F. City Charter and the fee setting procedure for a Street Artist Certificate mandated in Section 2404.2 of Article 24 of the S.F. Police Code.

We are also including at the bottom of this email this email several emails between Leo Levenson of the Controller's office and Kan Htun, the Arts Commission's accountant sent in December, 2009 and January, 2010 in which the Controller's office informed Howard Lazar and the Arts Commission that there is presently an additional \$30,000 remaining in the Street Artist Special Fund that the Controller's office and the Arts Commission were previously unaware of.

Since there is an additional \$30,000 in the Street Artist Fund carried over from the 2008-2009 fiscal year and the Arts Commission is requesting a fee increase based on the assertion that an additional \$17,000 is needed to balance the proposed budget for the 2010-2011 fiscal year then it is unnecessary to raise the Street Artist Certificate fee for the 2010-2011 fiscal year.

3) On February 9, 2010, Ms. Evelyn Russell, who was one of the two paid staff members of the Street Artist Program quit her job and the Arts Commission has not hired a new employee to replace her. This means that there has been an additional savings of over 4 months of her salary and benefits that has accumulated in the Street Artist Special Fund for the 2009-2010 fiscal year. This amount is approximately \$40,000 which when added to the surplus of \$30,000 from the 2008-2009 fiscal year discovered by the Controller means there will be a surplus of approximately \$70,000 remaining in the Street Artist Fund at the end of the present fiscal year. That \$70,000 should be carried over and counted as revenue for the 2010-2011 fiscal year.

4) There has only been 4 members of the Board of Artist and Craftperson Examiners appointed for the 2009-2010 fiscal year instead of the 5 members required by Article 24 of the S.F. Police Code and which was budgeted for in the present fiscal year. That means there is an additional \$3,500 in revenue collected in the present fiscal year which will be surplus at the end of the 2009-2010 fiscal year that should be carried over to the next fiscal year and counted as revenue to be included in the fee setting procedure for a Street Artist Certificate mandated in Section 2404.2 of Article 24 of the S.F. Police Code.

5) The Arts Commission has not included an additional \$6,000 that will be collected from Street Artist Certificate application fees for the 2010-2011 fiscal year in its projection of the amount of revenue needed to be raised to meet its proposed budget for the 2010-2011 fiscal year

Therefore, there will be approximately \$73,500 in surplus revenue remaining in the Street Artist Special Fund at the end of the 2009-2010 fiscal year that should be carried over and counted as revenue for the 2010-2011 fiscal year and it will be necessary to raise \$6,000 less from Street Artist Certificates for the 2010-2011 fiscal year than the Arts Commission has claimed will be necessary to raise.

Since the legislation being proposed by the Arts Commission to raise the Street Artist Certificate fee is based on the Arts Commission's budget request to raise an additional \$17,000 for a purpose prohibited by law and the fact there will be approximately \$73,500 in surplus at the end of the 2009-2010 fiscal year in the Street Artist Special Fund then it is not necessary to raise the Street Artist Certificate fee for the 2010-2011 fiscal year in order to pay for the anticipated expenses of the 2010-2011 fiscal year.

In fact, if the fee setting procedure mandated by Section 2404.2 of Article 24 of the S.F. Police Code is followed then the Street Artist Certificate fee should be reduced by a significant amount for the 2010-2011 fiscal year.

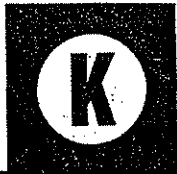
Respectfully,

William J. Clark  
Robert J. Clark



SEE PAGE 2

# Street Artist Fees



## PROPOSITION K.

<b>Shall street artists be allowed to purchase a one-year certificate for \$80.00 in order to sell their wares and shall the Board of Supervisors be allowed to increase the cost of the certificate to pay for the street artist program?</b>	<b>YES</b>	<b>137</b> ➡
	<b>NO</b>	<b>138</b> ➡

## Analysis

By Ballot Simplification Committee

**THE WAY IT IS NOW:** A person wishing to sell his or her wares as a street artist must buy a three-month certificate from the City at a fixed cost of twenty dollars (\$20.00). The voters must approve any change in the cost of this certificate.

**A YES VOTE MEANS:** If you vote yes, you want a street artist to be able to buy a one-year certificate from the City at a cost of eighty dollars (\$80.00), and you want the board of supervisors to be able to increase the cost of the certificate without voter approval.

**THE PROPOSAL:** Proposition K would give a street artist the option of buying a one-year certificate from the City at a cost of eighty dollars (\$80.00). In the future, the board of supervisors would not need voter approval to increase the cost of the certificate to pay for running the street artist program.

**A NO VOTE MEANS:** If you vote no, you want a street artist to continue to buy a three-month certificate from the City at a fixed cost of twenty dollars (\$20.00), and you want the voters to continue to approve any changes in the cost of the certificate.

### Controller's Statement on "K"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition K:

"Should the proposed Charter amendment be adopted, in my opinion, in and of itself, it would not affect the cost of government. However, as a product of its application, fees may be increased to cover increased costs of street artist certifications."

### How Supervisors Voted on "K"

On August 8 the Board of Supervisors voted 11 to 0 on the question of placing Proposition K on the ballot. The Supervisors voted as follows:

**YES:** Supervisors Harry Britt, Richard Hongisto, Willie Kennedy, Quentin Kopp, Bill Maher, John Molinari, Wendy Nelder, Louise Renne, Carol Ruth Silver, Nancy Walker and Doris Ward.

**NO:** None of the Supervisors present voted "No."

THE TEXT OF PROPOSITION K APPEARS ON PAGE 91

**K**

# Street Artist Fees

## ARGUMENT IN FAVOR OF PROPOSITION K

This proposition will not cost the City a cent. There are approximately 600 street artists who pay the Art Commission for certificate-permits to sell their arts and crafts throughout the city in spaces designated by the Board of Supervisors. The duty of enforcing the street artist regulations is shared by the Police Department and the Art Commission. Generally, the Police enforce the rules relating to display size and location. The Art Commission uses its expertise in inspecting and verifying that the items being sold are of the artist's own creation. Cases of violation are heard in both the Court and in permit-revocation procedures conducted by the Art Commission. In administering and enforcing its Streets Artists Program, the Art Commission receives no City financial support. It runs the Program entirely out of the collection of street artists permit fees, which amounts to \$48,000 a year.

The permit fee has never been raised since the beginning of the Program in 1972. The fee is \$20 per quarter,

amounting to \$80 per year for the artist.

The present law precludes any fee increase. The proposed measure will give the Board of Supervisors the authority to raise the fee when necessary to finance the costs of the Art Commission in administering and enforcing the street artist ordinance.

Without a provision to increase the fee, the Art Commission is unable to effectively administer and enforce its Program.

This measure received no opposition in hearings before the Board of Supervisors. It was passed unanimously by the Board.

This measure also provides street artists with the option to pay for their permits on a quarterly or yearly basis, a provision which was requested by the artists themselves.

Submitted by the Board of Supervisors

## ARGUMENT IN FAVOR OF PROPOSITION K

The Downtown Association has carefully monitored and adjudged the Street Artist Program since its inception. We strongly believe that the key to a successful Program is to have proper administration and enforcement. To accomplish this, it is necessary at times to raise the certificate fee. We believe this power should be

granted to the Board of Supervisors. We urge you to vote Yes on Proposition "K".

The Downtown Association of San Francisco

Lloyd A. Pflueger  
General Manager

## NO ARGUMENT AGAINST PROPOSITION K WAS SUBMITTED

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Polls are open from 7 a.m. to 8 p.m.

# City Charter

## Sec. 14.101 - Initiatives

"No initiative or declaration of policy approved by the voters shall be subject to veto, or to amendment or repeal except by the voters.

## Sec. 9140 - Cal ELECTION CODE

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