



## APPEAL PROCESS OVERVIEW

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### Mission

The Board of Appeals is a quasi-judicial body that provides the public with a final administrative review process for appeals relating to a wide range of City determinations. Originally created under the Charter of 1932, the Board strives to provide an efficient, fair and expeditious public hearing and decision-making process before an impartial panel as a last step in the City's permit issuance process.

The Board hears and decides appeals involving the granting, denial, suspension, or revocation of permits, licenses, and other entitlements by various City commissions and departments. The granting or denial of variances and other determinations by the Zoning Administrator, and Discretionary Review decisions and downtown building authorizations of the Planning Commission are included.

### Board Structure

The Board of Appeals is comprised of five Board members appointed for staggered four-year terms. Three members are appointed by the Mayor and two by the President of the Board of Supervisors. The Board office is staffed by an Executive Director, Legal Assistant and three Clerks. When an appeal is filed, Board members will conduct a public hearing on the appeal, listening to arguments and testimony from the appellant(s), permit holder(s), Department representative(s), and from interested neighbors and other members of the public. The Board then votes to either uphold the underlying departmental determination, impose conditions on the determination, or overrule the determination.

### Limitations on the Board's Jurisdiction

The Board of Appeals has no jurisdiction over permits issued by the Port Commission or the Recreation and Park Department or Commission, nor does it hear appeals of criminal matters, domestic relations matters, or other areas regulated by the State of California or the federal government. Its jurisdiction is derived from San Francisco Charter Section 4.106, by provisions in Article 1 of the San Francisco Business and Tax Regulations Code, and other City ordinances.

Building and demolition permits that are issued pursuant to Conditional Use (CU) authorization by the Planning Commission may not be appealed to the Board of Appeals (S.F. Charter Section 4.106(b).) Appeals of the underlying Conditional Use authorization may be made to the Board of Supervisors but the building or demolition permit may not be appealed to any City government body.

The Board has no authority to make amendments to the Planning Code or the Zoning Map, and has no authority to grant Conditional Use (CU) authorization. The Planning Department and Planning Commission handle these procedures.

## How to File an Appeal

### ***Be On Time***

The time limits for filing appeals are strictly enforced. As established in Article 1, Section 8 of the Business and Tax Regulations Code, most appeals must be filed within 15 calendar days from the date of issuance of the underlying departmental decision. For instance, a 15 day filing period applies to building and demolition permits, Zoning Administrator Notices of Violation, Letters of Determination and Stop Work Order Requests, and from the date of the letter which issues, denies, suspends, or revokes a permit from most other City Departments. This includes the Department of Public Works, Department of Public Health, Police Department, Municipal Transportation Authority Division of Taxis and Accessible Services, and Arts Commission.

Exceptions Include:

- Variance decisions issued by the Zoning Administrator must be appealed within 10 calendar days from the date of the variance decision letter.
- Appeals relating to Statements of Eligibility issued by the Zoning Administrator with respect to transfer of development rights must be filed within 20 calendar days.
- Appeals relating to place of entertainment permits, extended hours premises and loudspeaker permits issued by the Entertainment Commission must be filed within 10 calendar days.
- Appeals of Certificates of Appropriateness issued by the Historic Preservation Commission must be filed within 30 calendar days.

When counting “calendar days” the appeal period begins the day after the departmental action became effective. For example, if a building permit is issued on the 3<sup>rd</sup> day of the month, the last day to appeal would be the 18<sup>th</sup> day of the month. If the last calendar day falls on a weekend or City holiday, the last day to file the appeal is the next business day.

In limited circumstances, the Board will hear appeals after the filing deadline has passed. For more information, see the section below entitled: “What to do if the Filing Deadline Has Passed – Jurisdiction Requests.”

### ***Gather the Needed Paperwork***

To file an appeal, a copy of the departmental action being appealed must be submitted to the Board office. For example, a copy of the building permit (front and back) is required when the issuance of a building permit is being appealed.

For certain types of appeals, the documents needed are as follows:

Planning Department & Planning Commission Denials. Project sponsors seeking to appeal the denial of a permit application by the Planning Department or Commission may not file an appeal until the Department of Building Inspection (DBI) issues the Notice of Disapproval for the project. The appeal must be filed within 15 calendar days from the date of this Notice of Disapproval. A copy of the following documents must be submitted to Board staff: (a) the building permit application that was denied, with notation by Planning Staff on the back; and (b) the Notice of Disapproval that was issued by DBI.

Discretionary Review. For neighbors who lost at a Discretionary Review (DR) hearing at the Planning Commission and who would like to appeal the result, the 15-day appeal period is triggered by the date of issuance of the building or demolition permit sometime after the DR hearing.

DBI Penalties. For property owners who wish to appeal a monetary penalty imposed for work done without a permit, the 15-day appeal period is triggered by the date of issuance of the building, plumbing or electrical permit in question. When appealing a DBI penalty, a copy of the following documents must be submitted to Board staff: (a) the building, plumbing, or electrical permit associated with the penalty; (b) the receipt issued by DBI which shows the penalty amount paid; and (c) a completed Penalty Questionnaire, which is available at the Board office.

### ***Make an Appointment***

Appeals must be filed in person by either the appellant or the appellant's agent. This agent does not have to be a lawyer or other professional, and can simply be a friend, relative or another person chosen by the appellant. The Board asks that an appointment be made to file an appeal. Please call 415-575-6880 to set up an appointment, which are available Mondays through Fridays from 8:00 a.m. to 4:30 p.m.

### ***Complete the Preliminary Statement of Appeal Form***

For all appeals, appellants or their agents will be asked to complete a portion of the Board's Preliminary Statement of Appeal form. This is a standard form that asks appellants to briefly explain the reasons for the appeal. The reasons stated are not binding and additional opportunities are given to state the appellant's arguments both in writing and at the public hearing. Portions of this form will be completed by Board staff, setting out the briefing schedule, hearing date and other information. Additional forms may apply depending on the type of appeal filed. The Appellant may, but is not required to, submit a one page supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

### ***Pay the Fee***

A fee must be paid at the time the appeal is filed. Fees are established by the Business and Tax Regulations Code (Article 1, Section 8) and range from \$100 to \$600, depending on the type of appeal filed. For example, the fee to file an appeal of the issuance of a building or demolition permit is \$175 per permit. These fees are non-refundable, whether or not the appeal is successful or is withdrawn prior to the hearing. Fees may be paid by cash or check. Checks should be made payable to: Board of Appeals. A schedule of fees is set out at the end of this document.

### ***Submit Briefs & Evidence***

The parties to an appeal as well as members of the public may submit written arguments (briefs) and exhibits to the Board to help Board members understand the case and make a determination. The Rules of the Board set out the briefing schedule and other requirements, and the parties are encouraged to read the Rules and the Board of Appeals Briefing Guide for additional information.

- Appellant's Brief is due no later than three (3) Thursdays prior to the hearing date.
- Respondent's or Other Parties' Brief is due no later than one (1) Thursday prior to the hearing date.
- Briefs shall not exceed twelve (12) pages in length, and may include an unlimited number of exhibits.
- Briefs, whether typewritten or handwritten, shall be double-spaced. Typewritten briefs shall be in a font size no smaller than 12 point.
- Late or overlong submittals will be rejected. Please contact the Board if you wish to request permission to file late or a longer brief.
- An original and ten (10) copies of the brief with exhibits must be delivered to the Board office by 4:30 p.m. on or before the date it is due. Additional copies must be delivered to the other parties on the same day.

- If the hearing date is changed, the briefing schedule is automatically changed to require briefs on the same schedule: three Thursdays / one Thursday prior to the new hearing date.
- Exhibits may include photographs, maps, plans, drawings, letters of support or opposition, or any other information or material relevant to the appeal.
- The Board strongly encourages the submittal of plans or drawings when needed to allow the Board to understand the design or layout of a building that is the subject of an appeal.
- Where exhibits exceed ten pages in length, the Board encourages the submitting party to separate exhibits with tabs and provide a table of contents.
- Additional briefing may not be submitted at the hearing without Board approval; only photographs or drawings may be submitted at that time.

Members of the Public. Members of the public who are not parties to an appeal or affiliated with a party may submit written materials to the Board. In order for these submittals to be considered by the Board prior to the hearing, they should be delivered to the Board no later than one (1) Thursday prior to the hearing date. An original and ten (10) copies should be delivered to the Board office by 4:30 p.m. on or before the date it is due. This policy is not intended to interfere with the public's rights under the San Francisco Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code.

Please note: Any correspondence submitted to the Board is available for public review. If a member of the public does not want personal contact information publicly disclosed, they may (1) list their business address, business phone, and/or business e-mail address in lieu of home address or other personal contact information; (2) omit some or all personal contact information from their correspondence; or (3) prominently state in their correspondence that they do not want personal contact information disclosed and Board staff will redact this information.

### ***What to Expect at the Hearing***

The Board of Appeals meets on Wednesday evenings at 5:00 p.m., in San Francisco City Hall, Room 416. City Hall is located at One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Meetings are open to the public.

At the hearing, each party will be given time to argue their case, and present relevant testimony and evidence. The hearing room is equipped with a projector that can display photographs, architectural plans or other drawings and images. Members of the public will be given time to speak as well.

The appellant will speak first, then the person whose permit, variance or other determination is being appealed, and then a representative of the department that issued the determination. Each speaker will be given seven minutes to present testimony and relevant evidence. Members of the public who are unaffiliated with either party (for instance, who are not members of a party's family or paid consultants) are then given up to three minutes each to speak. Once the public has spoken, three minutes are given to each party for rebuttal. After all of the testimony is submitted, the Board will consider the evidence, deliberate, and either make a decision or continue the matter in order for additional information to be presented.

To prepare for the hearing and to become familiar with the method of presentation used, the Board recommends that the parties observe a meeting of the Board in advance of their hearing. This can be done in person or by watching a hearing on television or via computer. Meetings are broadcast on SFGTV Cable Channels 26 or 78, and may be viewed via streaming video or on demand on the internet at: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6).

## ***Standard of Review***

To win an appeal, an appellant must get four (4) out of five (5) votes to overturn or modify a departmental decision. In most cases, the Board reviews the departmental decision *de novo*, which means it hears the case anew and is not required to defer to the findings of fact or determinations of the underlying decision-maker. However, in appeals of decisions by the Zoning Administrator (ZA), the City Charter requires that the Board defer to the ZA unless the Board finds that the ZA erred or abused his or her discretion. In deciding a case, the Board may only uphold, overturn or place conditions on a departmental decision; it cannot remand (send back) a decision to the underlying department for further review or action.

## **What to do if the Filing Deadline Has Passed – Jurisdiction Requests**

After the filing deadline has passed, a person seeking to file an appeal may ask the Board for permission to file late. The process requires filing a Jurisdiction Request which, if granted, establishes a new five day period within which an appeal may be filed.

### ***Prepare a Written Statement***

At the time a Jurisdiction Request is filed, a statement must be submitted explaining why the appeal was not filed on time and also briefly outlining the merits of the case. This statement can be up to six (6) pages in length with unlimited exhibits, and should conform to the briefing requirements set out in the Rules (see above). At the time of filing, an original and ten (10) copies of this statement must be submitted to the Board office along with a copy of the permit or other departmental action for which an appeal is being sought.

The permit holder may submit a response to the Jurisdiction Request no later than ten (10) days from the date the request was filed with the Board. This response may be up to six (6) pages in length with unlimited exhibits and must conform to the briefing requirements in the Rules. An original and ten (10) copies should be delivered to the Board office by 4:30 p.m. on or before the date it is due. An additional copy must be delivered to the requestor on the same day.

### ***Make an Appointment***

The Board asks that an appointment be made to file a Jurisdiction Request. Please call 415-575-6880 to set up an appointment, which are available Mondays through Fridays from 8:00 a.m. to 4:30 p.m.

### ***Pay the Fee***

A non-refundable fee of \$150 per departmental action is required at the time of filing. The fee may be paid by cash or check. Checks should be made payable to the Board of Appeals. In the event the Board grants the Jurisdiction Request, another fee will be required in order to file the appeal.

### ***What to Expect at the Hearing***

The Board will take three (3) minutes of testimony from each side and the underlying department, will listen to any public comment, and then will discuss the matter and take a vote. This decision is final.

## ***Standard of Review***

Four (4) out of five (5) votes are needed to grant a Jurisdiction Request and allow the late filing of an appeal. The Board may grant late jurisdiction only upon a showing by the requestor that the City intentionally or inadvertently caused the requestor to be late in filing the appeal. If a Jurisdiction Request is granted, the requestor will have five (5) days from the date of the Board's decision to file an appeal. (See, Rules of the Board of Appeals, § V.10.)

## **How to File a Rehearing Request**

If a party to an appeal is dissatisfied with the Board's decision, a Rehearing Request may be filed. Such requests must be filed within 10 calendar days from the date of the Board's decision and may be filed only by the parties to an appeal. The Board may also make a motion to rehear a case at its own initiative. If the Rehearing Request period ends on a weekend or City holiday, the last day to file the request is the next business day. Only one Rehearing Request may be filed per appeal.

### ***Prepare a Written Statement***

When requesting a rehearing, a statement must be submitted to the Board explaining why the appeal should be reheard. This statement can be up to six (6) pages in length, and should conform to the briefing requirements in the Rules (see above). At the time of filing, an original and ten (10) copies must be submitted to the Board office. The other party may submit a response to the Rehearing Request no later than ten (10) days from the date the request was filed with the Board. This response may be up to six (6) pages in length with unlimited exhibits and must conform to the briefing requirements in the Rules. An original and ten (10) copies should be delivered to the Board office by 4:30 p.m. on or before the date it is due. An additional copy must be delivered to the requestor on the same day.

### ***Make an Appointment***

The Board asks that an appointment be made to file a Rehearing Request. Please call 415-575-6880 to set up an appointment, which are available Mondays through Fridays from 8:00 a.m. to 4:30 p.m.

### ***Pay the Fee***

A non-refundable fee of \$150 is required at the time of filing. The fee may be paid by cash or check. Checks should be made payable to the Board of Appeals.

### ***What to Expect at the Hearing***

The Board will take three (3) minutes of testimony from each side, and the underlying department, will listen to any public comment, and then will discuss the matter and take a vote. This decision is final.

### ***Standard of Review***

Four (4) out of five (5) votes are needed to grant a Rehearing Request. The Board may grant a rehearing request only upon a showing by the requestor that extraordinary circumstances exist and a rehearing is needed to prevent manifest injustice, or that new or different facts or circumstances have arisen that if known at the time of the original hearing could have affected the outcome of the hearing. The written request should state: (a) the nature and character of the new facts or circumstances; (b) the names of the witnesses and/or a description of the documents to be produced; and (c) why the evidence was not produced at the original hearing. (See, Rules of the Board of Appeals, § V.9.)

## **Accessibility Information**

Telephone the Board at 415-575-6880 for information concerning accessibility of the office, hearing room and meetings. The hearing room is wheelchair accessible and in-room closed captioning is provided. The Board has bilingual staff members who are available to assist Cantonese, Mandarin and Spanish speaking members of the public, and has access translation services in other languages.

## More Information

More information about the Board of Appeals, including copies of the Rules of the Board, related Charter and Code provisions, and other resource materials are available at the Board office and on the web at [www.sfgov.org/boa](http://www.sfgov.org/boa).

## Fee Schedule

<b><u>Type of Appeal</u></b>	<b><u>Fee</u></b>
<b>ZONING ADMINISTRATOR VARIANCE</b> .....	<b>\$600</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(a)(1)	
<b>OTHER ZONING ADMINISTRATOR DECISION: LETTER OF DETERMINATION; NOTICE OF VIOLATION; STOP WORK ORDER REQUEST; PLANNING COMMISSION ACTION</b> .....	<b>\$600</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(a)(2)	
<b>DEPARTMENT OF BUILDING INSPECTION RESIDENTIAL HOTEL OR APARTMENT CONVERSION PERMIT</b> .....	<b>\$525</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(1)	
<b>DEPARTMENT OF BUILDING INSPECTION BUILDING, DEMOLITION OR OTHER PERMIT</b> .....	<b>\$175</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(2)	
<b>DEPARTMENT OF BUILDING INSPECTION IMPOSITION OF PENALTY</b> .....	<b>\$300</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(b)(3)	
<b>POLICE DEPARTMENT &amp; ENTERTAINMENT COMMISSION PERMIT TO BUSINESS OWNER OR OPERATOR</b> .....	<b>\$375</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(1)	
<b>POLICE DEPARTMENT &amp; ENTERTAINMENT COMMISSION PERMIT TO EMPLOYEE OR CONTRACT WORKER</b> .....	<b>\$150</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(1)	
<b>POLICE DEPARTMENT &amp; ENTERTAINMENT COMMISSION PERMIT REVOCATION OR SUSPENSION – OWNERS AND INDIVIDUALS</b> .....	<b>\$375</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(c)(2)	
<b>DEPARTMENT OF PUBLIC WORKS TREE REMOVAL – WHEN CITY INITIATED ONLY</b> .....	<b>\$100</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(d)	
<b>OTHER ORDER OR DECISION (TAXI, TOBACCO, MASSAGE, STREET ARTISTS, GENERAL TREE REMOVAL, ENTERTAINMENT AND OTHER PERMITS)</b> .....	<b>\$300</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(e)	
<b>REHEARING REQUEST – ALL TYPES OF APPEALS</b> .....	<b>\$150</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(f)	
<b>JURISDICTION REQUEST – ALL TYPES OF DEPARTMENTAL ACTIONS</b> .....	<b>\$150</b>
Bus. & Tax Reg. Code Art. 1, Sec. 8(g)	

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