

**CITY AND COUNTY OF
SAN FRANCISCO
BOARD OF APPEALS**



ANNUAL REPORT

July 1, 2008 – June 30, 2009

**SAN FRANCISCO BOARD OF APPEALS
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REPORT HIGHLIGHTS

MISSION

The Board of Appeals provides final administrative review of a wide range of City permits and other City determinations. The Board strives to offer an efficient, fair and expeditious public hearing and decision-making process before an impartial panel.

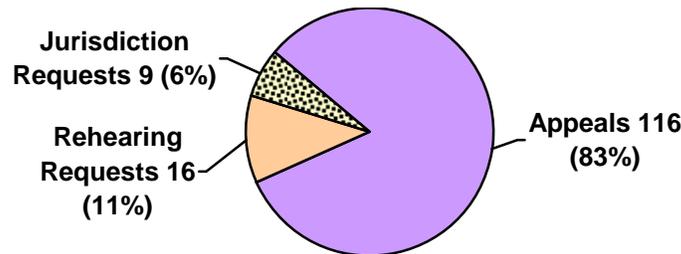
BOARD MEMBERSHIP

The Board is comprised of five members, appointed to staggered four-year terms. Three members are appointed by the Mayor and two by the President of the Board of Supervisors. The Board had a 94% attendance record during the year. Current members are:

- Frank Fung, President
- Tanya Peterson, Vice President
- Michael Garcia
- Kendall Goh
- Rafael Mandelman

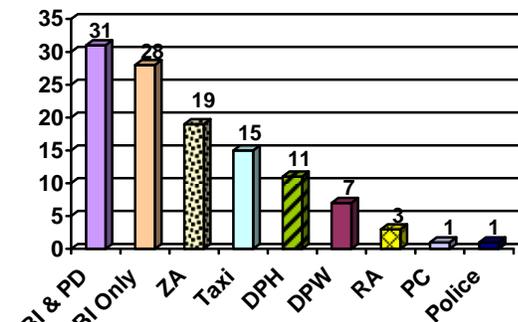
APPEALS EXPERIENCE

During the year, 193 new cases were filed with the Board. The Board held 32 regular meetings at which 141 cases were heard, comprised of appeals, jurisdiction requests and requests for rehearing, as follows:

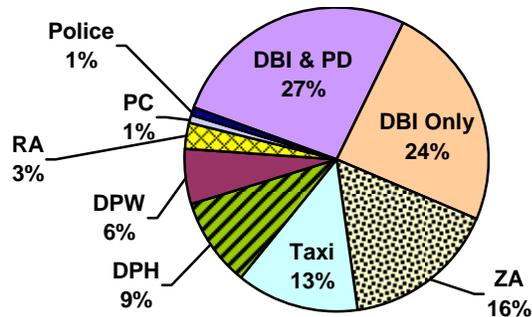


Cases Heard by Type

Of the 116 appeals heard, over half stem from determinations made by the Departments of Building Inspection (DBI) and Planning (PD). The charts below depict the number and percentage of appeals heard, identified by the entity issuing the underlying determination:¹



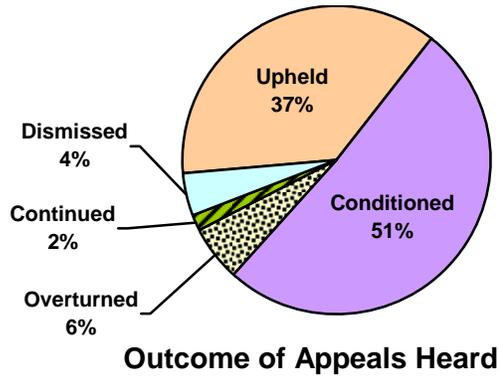
Number of Appeals by Issuing Entity



Percentage of Appeals by Issuing Entity

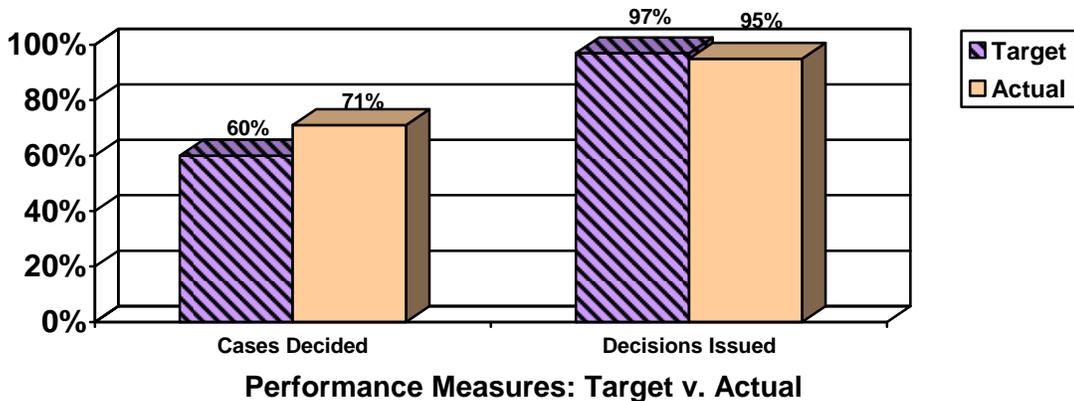
¹ DBI = Department of Building Inspection; DPH = Department of Public Health; DPW = Department of Public Works; PC = Planning Commission; PD = Planning Department; RA = Redevelopment Authority; ZA = Zoning Administrator.

When deciding an appeal, the Board may uphold or overturn the underlying determination, or place conditions on it.² As depicted in the chart below, conditions were placed on over half of the cases heard.



PERFORMANCE MEASURES

The Board uses two measures to evaluate performance; one analyzes the time it takes for cases to be decided, and the other studies how quickly written decisions are issued. The speed of Board decision-making is measured by looking at how often cases are decided within 75 days of filing. A target of 60% was set for this measure, which the Board exceeded by 11%. The speed of issuing written decisions is gauged by how often decisions are released within 15 days of final action. A target of 97% was set for this measure, which the Board failed to meet by 2%. This shortfall, caused by three decisions that were issued beyond the 15 day window, was due to staff vacancies and the complexity of the decisions.



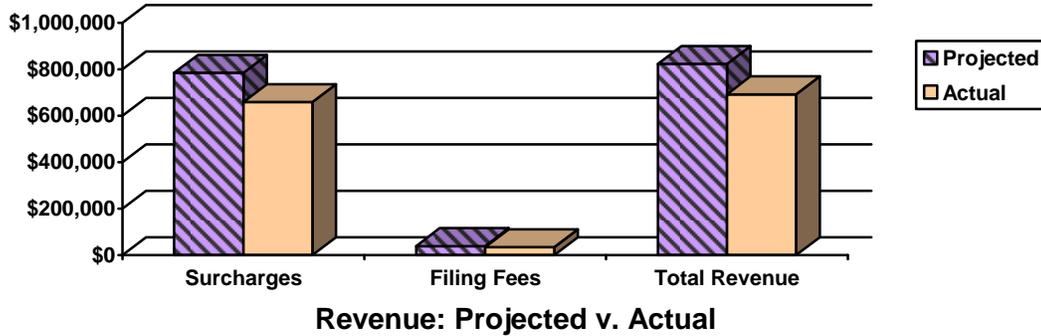
STAFF CHANGES

During the fiscal year, a new Executive Director was hired to fill a vacancy created after the prior director, Robert Feldman, unexpectedly passed away in December 2007. Mr. Feldman was a much-admired and dedicated City employee, who successfully led the department for over 22 years. Victor Pacheco, the Board’s Legal Assistant, took on the role of Interim Department Head during the eleven months between permanent appointees, devoting his talent and commitment to accomplishing the demands of both positions. In November 2008, Cynthia Goldstein was appointed as Executive Director, after many years of service at the City’s Human Rights Commission.

² Cases also may be continued, or dismissed due to a lack of jurisdiction.

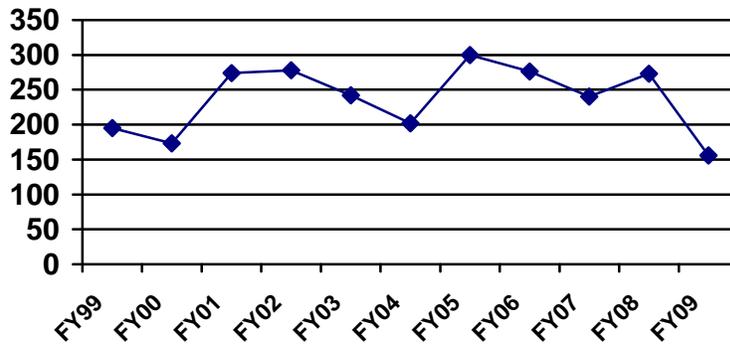
BUDGET

A Citywide decline in permit applications triggered a shortfall in the Board’s two revenue streams (95% comes from surcharges placed on permit applications and 5% from appeal filing fees). As a result, the Board ended the year having captured only 84% of its anticipated revenue.



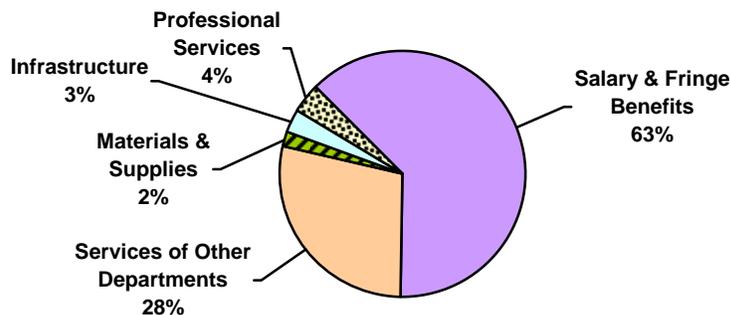
Revenue: Projected v. Actual

A significant drop in the number of appeals filed with the Board contributed to the Board’s budget shortfall. Over the past ten years, an average of 245 appeals were filed annually with the Board. This year, only 156 appeals were filed, representing a 36% decline.



Number of Appeals Filed Over Time

To address declining revenue, the Board implemented mid-year budget reductions that included eliminating three part-time, temporary positions and replacing court reporting services with SFGTV as the official record for Board meetings. The Board closed the year having reduced expenses by 8.5%. Spending was apportioned as follows:



Expenditures by Category

To prevent similar budget shortfalls in fiscal year 2009-2010, the Board worked with staff from the Mayor's Budget Office, Controller and City Attorney to generate legislation that adjusts the surcharge structure and filing fee schedule. The likelihood that the volume of permits will continue to be reduced was factored into the new surcharge rates to help mitigate any ongoing economic weaknesses. Filing fees, the majority of which hadn't been increased in over 16 years, were adjusted to bring the various rates up to 2008 dollars.³

INFRASTRUCTURE & TECHNOLOGY

The following improvements were made to the Board's physical and technological infrastructure:

- The Board moved into new offices to accommodate the consolidation plans of a neighboring City department. This move improved the Board's office space by adding more natural light and square footage, including a new storage/meeting room.
- Board staff gained access to the Planning Department's Parcel Information Database, which contains a wide array of useful property-related information.
- Scanning capabilities were added to the Board's multifunction device, allowing staff to convert paper documents into an electronic format and facilitating the sharing of information.
- Groundwork was laid for funding and design of a database that will improve efficiency and allow the Board to electronically process, track and report on its work.

LOOKING AHEAD

In the coming year, the Board will focus on moving away from a paper-intensive environment to one where information is managed and shared electronically. Funding has been allocated to design a database that will track and report on cases filed with the Board and that eventually will allow the Board to share relevant information with the other City departments that are primarily affected by Board decisions.

In addition, the Board will:

- Review and update resource materials, forms and website content to ensure that the public is given accurate and accessible information about the appeal process and Board procedures.
- Analyze and consider revisions to the Rules of the Board of Appeals, to evaluate new opportunities for maximizing efficiencies, streamline the appeal process and bring written protocols further in line with Board practices.
- Administer annual performance evaluations for all staff.
- Make operational and programmatic improvements to enhance the Board's ability to provide the public with an efficient, fair and expeditious appeal review process.

³ The Consumer Price Index was applied to each fee; see Appendix A for a table of new rates.

REPORT DETAIL

MISSION

Originally created under the Charter of 1932, the Board of Appeals (formerly known as the Board of Permit Appeals) has served the people of the City and County of San Francisco for the past seventy-seven years. As a quasi-judicial body, the Board provides the public with a final administrative review process for a wide range of City determinations. These determinations involve the granting, denial, suspension, or revocation of permits, licenses, and other use entitlements by various departments and other entities of the City & County of San Francisco.

As it processes, hears and decides cases, the Board of Appeals 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.

JURISDICTION

The Board's jurisdiction is derived from San Francisco Charter Section 4.106, provisions in Article 1 of the San Francisco Business and Tax Regulations Code, and other City ordinances. Specific rights of appeal to the Board are also set forth in the Building, Plumbing, Electrical, Planning, Public Works, Police and Health Codes, among others.

The most common types of appeals heard by the Board involve:

- Building permits issued or denied by the Department of Building Inspection (DBI), including many that are subject to Planning Department review
- Zoning Administrator (ZA) determinations
- Downtown building authorizations of the Planning Commission
- Permits associated with Taxi driving and medallions
- Tree planting and removal permits issued by the Department of Public Works (DPW)
- Tobacco sales permits overseen by the Department of Public Health (DPH)

Less common but routinely heard by the Board are:

- DPH-issued permits for medical cannabis dispensaries and massage establishments.
- Entertainment Commission permits authorizing places of entertainment
- Street artist permits issued by the Arts Commission

In addition, a legislative change made to the Public Works Code in April 2009 now gives the Board jurisdiction over appeals relating to sidewalk encroachment permits, which previously were heard by the Board of Supervisors.

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 building or demolition permits issued pursuant to a Conditional Use Authorization granted by the Planning Commission.⁴ The Board does not make amendments to the Planning Code or the Zoning Map and also has no jurisdiction over appeals of criminal or domestic relations matters, or other areas regulated by the State or federal law.

⁴ 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.

BOARD MEMBERSHIP

The Board of Appeals is comprised of five Board members appointed to staggered four-year terms. Three members are appointed by the Mayor and two by the President of the Board of Supervisors. As stated in the Rules of the Board, the Board's President and Vice President are elected for one-year terms at the first regular meeting of the Board held after January 15 each year.⁵ Board members had a 94% attendance record during the year, with the full cadre of Commissioners present for 25 out of the 32 regular meetings held, or 78% of the time.

Board membership is as follows:

Commissioner	Appointing Authority	Dates of Service
Frank Fung President, January 2009 – Present Vice President, March 2008 – January 2009	Mayor	October 19, 2004 to July 1, 2012 January 30, 1986 to June 8, 1988
Michael Garcia President, January 2008 – January 2009 Vice President, January 2007 – January 2008	Mayor	March 22, 2005 to July 1, 2010
Kendall Goh	Board of Supervisors	June 10, 2008 to July 1, 2012
Rafael Mandelman	Board of Supervisors	June 24, 2008 to July 1, 2010
Tanya Peterson Vice President, January 2009 – Present	Mayor	February 26, 2008 to July 1, 2012

MEETINGS OF THE BOARD

In fiscal year 2008-2009, the Board of Appeals held 32 regular meetings and two special meetings. Regular Board meetings are held on Wednesday nights, starting at 5:00 p.m. in City Hall, Room 416. An annual meeting schedule is developed prior to the start of the calendar year and is available in the Board's offices and on the internet.⁶ Special meetings may be called by the Board President, by a majority vote, or upon the written request of two Commissioners. The two special meetings held during the year were for the purpose of selecting a new Executive Director.

In addition to the appeals heard at each meeting, the Board also:

- Elected officers (January 21, 2009)
- Adopted the Board's fiscal year 2009-2010 budget (February 18, 2009)

⁵ Rules of the Board of Appeals, Article II, Section 1.

⁶ See: http://www.sfgov.org/site/bdappeal_page.asp?id=18982.

- Heard the following informational presentations:
 - Senior Planner Craig Nikitas presented on recent Planning Code amendments designed to control the loss of dwelling units in San Francisco. (October 15, 2008)
 - Planning Department Director John Rahaim discuss the action plan being developed for process improvements within the Planning Department. (November 5, 2008)
 - Mr. Nikitas updated the Board on the Planning Department's efforts to reform the Discretionary Review process. (May 13, 2009)
 - Susan Mizner, Executive Director of the Mayor's Office on Disability, and Deputy City Attorney Mariam Morley, presented on the Americans with Disabilities Act and other laws and policies related to disability access. (June 3, 2009)

All meetings of the Commission are open to the public except as otherwise legally authorized. Commission meetings are conducted in accordance with the Rules of the Board of Appeals, which set out the order of presentation for the different types of cases heard. Board meetings are broadcast live on SFGTV, San Francisco cable television channels 26 and 78. Meetings also may be viewed by computer, both live and on-demand at: http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6. Closed captioning is provided for these broadcasts and in the City Hall hearing room during Board meetings. Meeting agenda and minutes are posted on the Board's website at: www.sfgov.org/boa.

APPEAL PROCESS

Depending upon the basis of an appeal, it must be filed within either 10 or 15 days from the date when the underlying determination was made. On occasion, and with permission from the Board, an appeal may be filed late. After an appeal is filed, a briefing schedule is established, allowing the parties to submit written arguments and other evidence for the Board's consideration. Members of the public also may submit letters and other information, voicing their support for, or opposition to, an appeal. As required by San Francisco Business and Tax Regulations Code (Article 1, Section 12), Board staff sends notification to all property owners and occupants within a 150 foot radius of any property that is the subject of the appeal.

After reviewing the written file, Board members conduct a public hearing on the appeal, listening to arguments and testimony from the appellant(s), permit/decision holder(s), Department representative(s), and from interested neighbors and other members of the public. After some discussion, the Board then votes to either uphold or overrule the underlying departmental determination, or impose conditions on the determination.⁷

Conditions imposed by the Board are wide-ranging, and most typically include things such as:

- Modifications to building plans, for example:
 - Setting back a deck so it is further from a protesting neighbor's property line
 - Obscuring glass in neighbor-facing windows

⁷ On occasion, a matter will be continued, typically to allow additional information to be prepared and submitted to the Board, or to give the parties time to negotiate a resolution. In rare instances a matter may be continued indefinitely (to "Call of the Chair") because an unknown amount of time is needed before the Board may move forward with a determination, for instance, to await the outcome of litigation affecting the subject matter of an appeal.

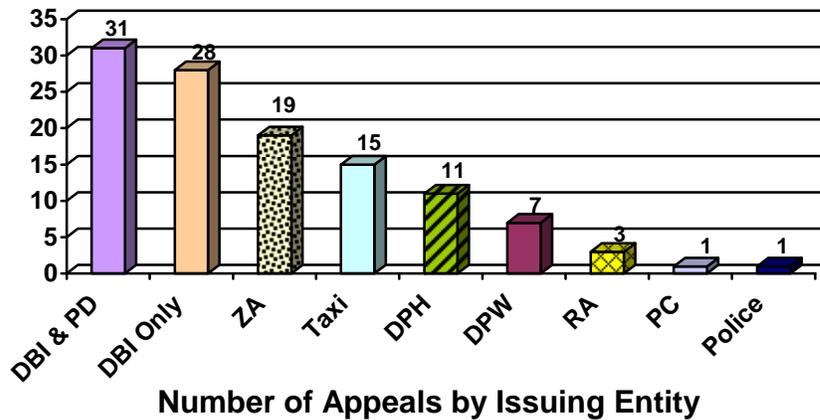
- Qualifications made to Zoning Administrator determinations, for example:
 - Requiring the filing of a Notice of Special Restrictions specifying the number of dwelling units at a property
 - Limiting the type, location or hours of operation of a commercial use
 - Implementing good neighbor policies
- Changes to the length of a suspension, for example, of taxi driving or tobacco sales permits
- Reductions in penalties imposed for performing work without a permit

In order to overturn or place conditions on a department’s decision, a supermajority of Board members must agree. When fully seated, this requires four out of five votes. (Three votes are needed if there is a vacancy on the Board.) A supermajority also is needed to grant a rehearing request or a request for late jurisdiction.

APPEALS EXPERIENCE

During the year, 193 new cases were filed with the Board. This includes 156 appeals, plus 17 rehearing requests and 20 requests for late jurisdiction. Of the cases filed, 105 also were heard during the reporting period, as were 36 other cases that had been filed before the fiscal year began. Thus, the total number of cases heard by the Board during the reporting period was 141; comprised of 116 appeals, nine requests for jurisdiction and sixteen rehearing requests.⁸

The following chart illustrates the number appeals heard by the Board, identified by the department, Commission or other entity⁹ issuing the underlying determination:



⁸ Matters filed but not heard during the year were either withdrawn or continued at the request of the parties, dismissed due to a lack of Board jurisdiction, or filed late enough in the year that they were heard the following year.

⁹ DBI = Department of Building Inspection; DPH = Department of Public Health; DPW = Department of Public Works; PC = Planning Commission; PD = Planning Department; RA = Redevelopment Authority; ZA = Zoning Administrator.

Department of Building Inspection and Planning Department

Over one quarter of the 116 appeals heard (31) stemmed from determinations made by the Department of Building Inspection (DBI) that involved Planning Department review. These appeals focused on both Planning Code and Building Code issues, and include:

- 28 appeals protesting the issuance of a permit
 - Protest appeals often are filed by neighbors concerned that proposed construction will infringe on the enjoyment of their property. For instance, when a new deck requires a firewall that may block light and air from the neighbor's home, when adding height to a building may reduce sunlight on neighboring solar panels, and when a rear yard addition might infringe into the mid-block open space.

- 3 appeals of denied permits
 - Property owners typically file appeals of permit denials, asking the Board to allow a project to go forward that DBI has disapproved. These disapprovals by DBI were made at the request of the Planning Department, which deemed the proposed projects as inconsistent with provisions of the Planning Code.

The Board upheld 39% (12) of these determinations, overturned 6.5% (2), and conditioned the determination in 48% (15) of the cases. Of the remaining 6.5% (2), one case was dismissed for lack of jurisdiction and the other was continued to Call of the Chair.

Department of Building Inspection Only

Determinations made solely by the Department of Building Inspection represent the next largest group, with twenty-eight (28) such appeals heard, and were focused strictly on Building Code issues. These include:

- 14 appeals protesting the issuance of a permit

- 1 appeal of a denied permit

- 13 appeals protesting the imposition of penalties
 - Penalty appeals typically are filed by homeowners who have been assessed fines for allegedly performing work without a permit or that exceeds the scope of a permit. In some cases, the Board has reduced penalties where it finds that the homeowner bought the property after the unpermitted work was performed or upon other exigent circumstances.

The Board upheld 7% (2) of the DBI determinations and conditioned the determination in 79% (22) of the cases. The remaining 14% (4) of the determinations were dismissed for lack of jurisdiction. Thirteen of the cases upon which conditions were placed involved the reduction of penalties.

Zoning Administrator

There were nineteen (19) appeals heard of Zoning Administrator (ZA) determinations. This includes:

- 11 appeals protesting Letters of Determination (LOD)
 - LODs are written interpretations of how certain sections of the Planning Code should be applied to specific factual situations. These appeals addressed a wide array of issues including the construction of a skateboard ramp, the replacement of wood windows with vinyl, the demolition and replacement of a billboard, and whether a chocolate shop could add a wine tasting feature.
- 3 appeals of Notices of Violation
 - All alleged unauthorized commercial use of a property
- 2 appeals of Bulletins
 - Involving the conversion of large tourist hotels to residences
- 3 appeals, as follows:
 - Variance (1)
 - Stop Work Order (1)
 - Request to Reinstate a Suspended Permit (1)

The Board upheld the determination of the Zoning Administrator in eleven cases (58%), imposing conditions in one of these cases, and overruled the ZA in the remaining eight cases (42%), imposing conditions in five of these.

Taxi

There were fifteen (15) taxi-related appeals:

- 5 from the denial of a medallion
- 6 from the revocation of a medallion and/or driving permit (A-Card)
- 2 from suspensions
- 2 from the removal of names from the medallion waiting list

Suspensions and revocations generally stem from allegations that a driver failed to satisfy the City's minimum driving requirements or violated standards of conduct (such as by harassing or abusing customers or other drivers). The Board upheld the department in ten cases, including two on which conditions were placed (e.g., upholding the denial of a medallion but placing the appellant at the top of the waiting list after one year). Five departmental determinations were overruled, and in one of these, the Board overturned the department's revocation of a driving permit, but upheld the revocation of a medallion.

Department of Public Health

Eleven (11) cases appealed determinations made by the Department of Public Health (DPH), all related to the suspension of tobacco sales permits where the permit holder was charged with selling tobacco to a minor. These suspensions resulted from a sting operation conducted by DPH in conjunction with the San Francisco Police Department, which uses underage decoys attempting to buy cigarettes. The suspension was upheld

in five of these cases, reduced in five, and one case was sent to Call of the Chair in order to allow additional time for legal questions to be answered.

Department of Public Works

Seven (7) Department of Public Works (DPW) appeals were heard during the year, all associated with tree removal permits:

- 5 appealed the denial of a permit
- 2 appealed conditions placed by the department on permits to remove trees

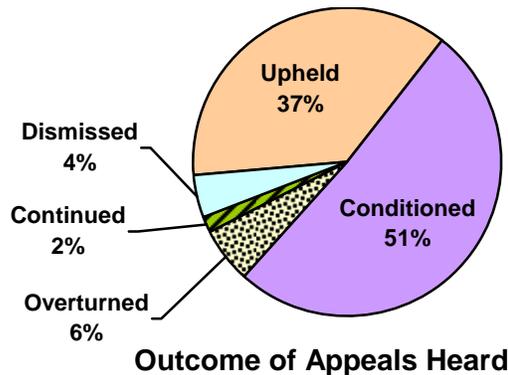
DPW's determination was upheld in five cases, with the Board imposing new conditions in two of these; the Board overruled the department in two cases, imposing conditions in both.

Other Appeals

In addition, there were:

- 3 appeals of DBI-issued permits stemming from Redevelopment Agency determinations (in which the Board upheld projects approved by the Agency prior to the expiration of the applicable Redevelopment Area Plan)
- 1 appeal of a Planning Commission motion (in which the Board upheld exceptions for the height, bulk, parking, and rear yard area associated with a project)
- 1 appeal of the Police Department's revocation of a mobile catering permit (in which the Board upheld the revocation of a permit for a taco truck operating within 1,500 feet of a school).

As seen in the chart below, in 37% (43) of the appeals heard by the Board, the underlying determination was upheld and remained unchanged. The Board overturned the departmental decision in 6% (7) of the appeals, and conditions were imposed in just over half of the cases (59).¹⁰



Other Matters Heard

- Rehearing Requests
Once an appeal is heard and decided by the Board, the parties associated with the case have ten days within which they may request that the Board reconsider its

¹⁰ Two cases were continued to Call of the Chair and the remaining five were dismissed due to a lack of jurisdiction.

decision.¹¹ The Board's Rules state that motions for rehearing require "new or different material facts or circumstances" to have arisen since the Board's consideration of the matter that, if known, "could have affected the outcome of the original hearing." The Board considered sixteen (16) rehearing requests during the reporting period; three were granted and the remaining thirteen were denied.

- **Jurisdiction Requests**
Case law provides the Board with some authority to consider taking appeals beyond the ten or fifteen day appeal period when the delay is caused in some way by the City.¹² Of the nine "Jurisdiction Requests" heard during the year, six were denied and three granted. By granting a Jurisdiction Request, the Board provides the requestor with a new ten or fifteen day period within which to file an appeal.

LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. During this year, the following appeals were the subject of court proceedings:

- Marianne Beck, et al. v. City and County of San Francisco, et al., challenging the Board's decision on December 17, 2008 to uphold the issuance of a permit to remove the back decks and fire escape on a residential building located at 1960 Golden Gate Avenue. Action was brought by the Tenderloin Housing Clinic on behalf of tenants residing at the property. The matter has been effectively stayed by agreement of the parties until a related case is decided on appeal. In the event that the plaintiffs win their related case, they will dismiss this action against the City.
- Clear Channel Outdoor, Inc. v. City and County of San Francisco, challenging the issuance of a permit to reconstruct a sign located at 2283-2297 Market Street. Clear Channel filed a permit application to remove a billboard. The permit was issued, and the property owner appealed. On October 28, 2008, the Board granted the appeal, overturned DBI, confirmed the property owner's right to reinstall a billboard on the property and authorized a revision of the building permit. The City won this case on demurrer at the trial court, and the decision was appealed. Currently, appeal briefs are being prepared, after which the Court will hear oral argument.
- Clear Channel v. San Francisco Board of Appeals, challenging the Board's decision on March 19, 2008 to overturn a permit obtained by Clear Channel to take down a sign installed on private property located at 1801 Turk Street. The property owner appealed the issuance of the permit to the Board, contending that she didn't give authorization for a permit to do work on her own property. While pending at the Board, Clear Channel sent a letter to the Planning Department and the Board withdrawing the permit saying it no longer intended to proceed with the project. The Board then overturned the permit, based on the reasoning that the property owner should've been consulted about the sign removal. Clear Channel filed suit in superior court challenging the Board's decision to revoke the permit. The City filed a "Motion for Judgment on the Pleadings," arguing that the City is entitled to judgment in its

¹¹ See, S. F. Business and Tax Regulations Code, Art. 1, Section 16; and Rules of the Board of Appeals, Section 6.

¹² See, Franklin v. Steele, 131 Cal. App. 3d 558 (1982).

favor because Clear Channel lacks standing and the case is moot. A hearing on the motion is scheduled for October 30, 2009.

- Friedman v. San Francisco Taxi Commission, et al., challenging the Board's decision on July 28, 2008 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. A hearing in S.F. Superior Court has not yet been scheduled.
- Rahimi v. San Francisco Taxi Commission, et al., challenging the Board's decision on January 14, 2009 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. A hearing in S.F. Superior Court has not yet been scheduled.
- Regan Carroll, Regan Carroll Trust – various cases. Plaintiff Regan Carroll has filed multiple lawsuits against the City relating to his project at 1179-1189 Tennessee Street. This includes a challenge to the Board's decision on June 14, 2006 to uphold a Zoning Administrator's Letter of Determination requiring that permits related to the property be routed to the Planning Department for review. The property owner sought a building permit for a residential/mixed use project in the Dogpatch Neighborhood. After the building permit application was filed but before the permit was issued, it was determined that the project was subject to review under Article 10 of the Planning Code because of its location in a neighborhood that was designated as historic. After the City won at the trial court, the property owner agreed to seek a certificate of appropriateness, which he has since obtained. The pending cases have been stayed by stipulation of the parties while the property owner attempts to obtain a final building permit.

PERFORMANCE MEASURES

All City departments are required to report on specific statistical measures as a way of assessing performance. The two measures in place for the Board of Appeals look at how quickly the Board decides cases and staff issues written decisions.

The speed at which the Board decides cases is measured by looking at how often cases are decided within 75 days of filing. Before the start of the year, a sixty percent target was set for this measure, which the Board exceeded by 11%. This performance measure is inherently volatile and in many ways is outside the Board's control. Most of the time, when cases are decided beyond the 75 day window, it is because of continuances requested by the parties to allow time for settlement negotiations or further case preparation, or when the Board requests additional evidence or time to conduct a site visit.

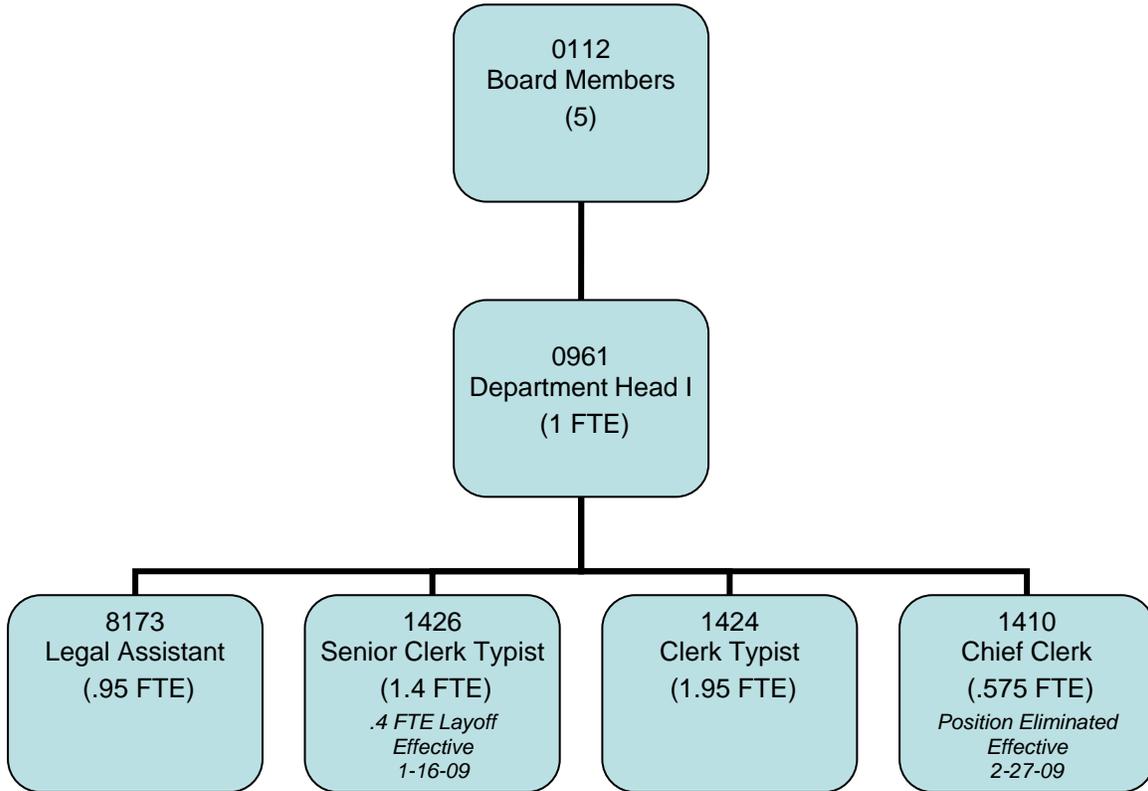
The second measure looks at often written decisions are released within 15 days of final action. A 97% target was set for this measure, which the Board missed by 2% when three decisions were released beyond the 15 day window. This was due to staff vacancies and the unusual complexity of the decisions which required City Attorney input.

BOARD STAFF

The Board is staffed by an Executive Director, a Legal Assistant and three Clerks. A new Executive Director was hired by the Board this year, to fill a vacancy created by the untimely death of prior Director, Robert Feldman. Three additional temporary staff members assisted with the work of the Board during the year, however, to address a revenue shortfall, all temporary personnel were laid off during this year.

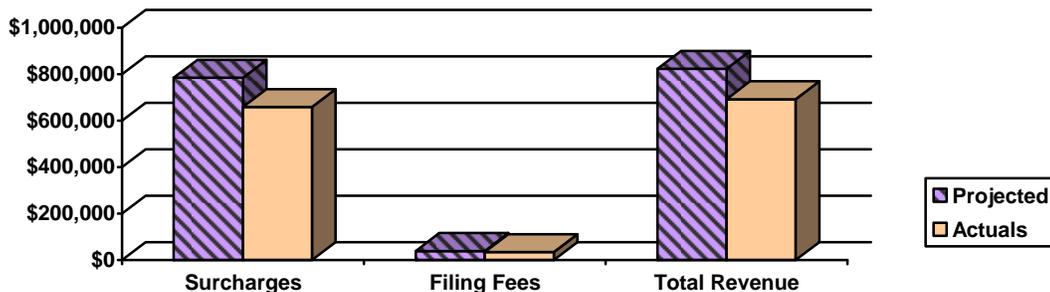
The Board's organization structure is as follows:

Organizational Chart



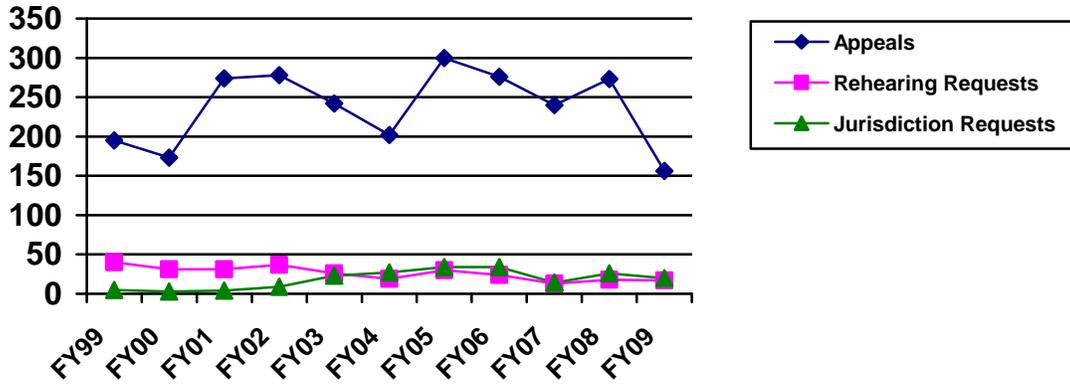
BUDGET

As was true throughout the City, the struggling economy challenged the Board's ability to meet its budgetary objectives during fiscal year 2008-2009, and to craft a viable budget for fiscal year 2009-2010. The Board's budget is derived from two sources: ninety-five percent (95%) from surcharges placed on permit applications and five percent (5%) from appeal filing fees. Going into the fiscal year, the Board projected total revenue of \$823,623, but a Citywide decline in permit applications had a negative effect on both revenue streams, resulting in revenue recovery of only 84% or \$692,422. As seen in the chart below, surcharge revenue was down 16% (\$125,949), and filing fees were down 13.5% (\$5,252).



Revenue: Projected v. Actual

Over the past ten years, an average of 245 appeals were filed annually with the Board. This year, only 156 appeals were filed, representing a 36% decline.¹³ The following graph depicts the number of cases filed in each of the past ten years.¹⁴



Number of Cases Filed Over Time

Aware that revenue was likely to be lower than originally projected, the Board took action mid year to reduce its expenses. A staff vacancy during the year created some salary savings, and in addition, the Board's three part-time, temporary positions were eliminated.¹⁵ The savings in salary and benefits costs from these sources totaled \$41,181 for the year.

The Board also reduced non-personnel expenses. A contract for court reporting services had been unsuccessfully put out to bid at the beginning of the fiscal year. Having effectively operated without one, the Board eliminated this contract and opted instead to use SFGTV as the official record for Board meetings. With a reduced appeal volume, the Board's need for neighborhood notification services and other attendant costs also were reduced. In total, the Board saved \$29,529 in non-personnel expenses.

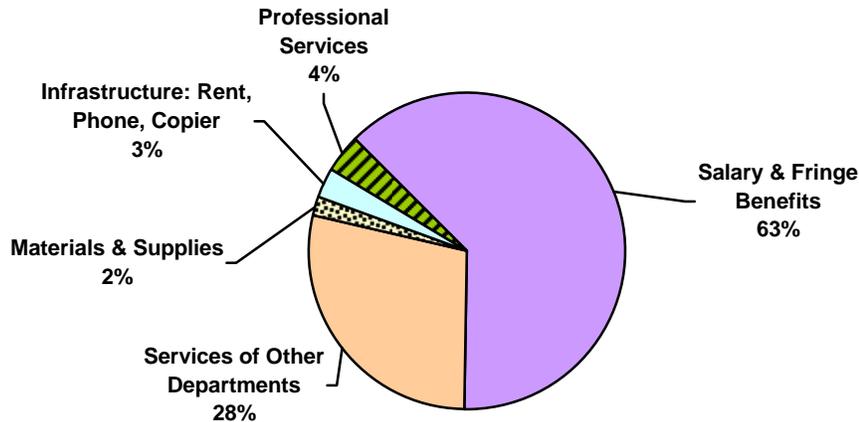
Overall, expenses were reduced by 8.5% (\$70,710), and the Board faced a year-end deficit of \$60,491. Given the unique and unforeseen economic factors contributing to the Board's fiscal situation, General Fund support was provided to close this budget gap and balance the Board's books for the year.

¹³ The discrepancy between the decline in appeal volume (36%) as compared to the decline in filing fee revenue (13.5%) can be explained by looking at the types of appeals filed and the corresponding filing fees. It is likely that in difficult economic times, fewer discretionary dollars will be spent on protest appeals filed by unhappy neighbors (costing \$100 each), than on Zoning Administrator appeals filed by developers (costing \$400) or taxi- and tobacco-related appeals filed by businesses owners (costing \$200).

¹⁴ The number of rehearing and jurisdiction requests remained relatively constant.

¹⁵ Two temporary Senior Clerk Typists left the Board in mid-January, and the Board's Chief Clerk left at the end of February.

The Board's expenditures of \$752,913 were apportioned as follows:¹⁶



Board of Appeals Expenditures by Category

To prevent similar budgetary problems in the future, the Board worked with staff from the Mayor's Budget Office, Controller and City Attorney to generate legislation that adjusts the Board's surcharge and filing fee rates. Pursuant to S.F. Administrative Code Chapter 10G.2, an annual adjustment may be made by the Controller to the surcharges applied to permits under the Board's jurisdiction to reflect changes in the Consumer Price Index (CPI).¹⁷ When this adjustment is insufficient to cover the Board's operating expenses, legislation may be introduced to increase the surcharges beyond the annual CPI application in order to generate sufficient (projected) revenue from this funding source. The Mayor's Office introduced such legislation during the annual budget preparation cycle in May, and the measure was passed by the Board of Supervisors in June. Anticipated continued deflation of permit volume was factored into the new surcharge rates with the hope that doing so would mitigate the impact of any ongoing economic weakness.

Legislation also was passed to increase the appeal filing fees charged by the Board, the majority of which hadn't been adjusted since November 1992.¹⁸ The fee increases reflect the application of inflation, bringing the various rates up to 2008 dollars.¹⁹ The expectation for fiscal year 2009-2010 is that appeal volume will continue to be below average and that, even with the fee increases, revenue from this source will be reduced as well. Still, these fee increases should help generate income necessary to balance the Board's 2009-2010 budget. A table of fees is attached as Appendix A.

¹⁶ Services received from other departments include City Attorney advice, SFGTV broadcasts and closed captioning, and information technology support from the Department of Technology.

¹⁷ Surcharges are calculated by (1) determining the number of appeals filed in the prior fiscal year that originated with actions taken by each funding department, (2) applying the percentage of appeals for each department to the Board's budget to determine the dollar amount each funding department should contribute, and (3) dividing this dollar amount by the number of appealable permits issued by each funding department.

¹⁸ The Board's fees are found in S.F. Business and Tax Regulations Code Article 1, Section 8.

¹⁹ For instance, the \$100 fee charged to appellants requesting late jurisdiction or a rehearing was set in 1992. Applying the CPI to \$100 in 1992 translates to \$151.41 in 2008. Rounded, the new rate for such filings is \$150.

INFRASTRUCTURE & TECHNOLOGY

In August 2008, to accommodate the Department of Building Inspection's desire to consolidate its neighboring offices, the Board of Appeals moved to a new location. The move added an additional private office space, plus a storage/meeting room which allows the Board to better manage the flow of appeal-related documents and retain more files on site for easier access.

The technology in place at the Board was enhanced during the year, and plans were initiated to further develop in this area. Improvements included gaining access to the Planning Department's Parcel Information Database. This system contains information useful to the work of the Board, such as permit and complaint history, ownership information, dwelling unit counts, and special zoning requirements on a parcel. The Board also added scanning capabilities to its multifunction device, allowing staff to convert paper documents into an electronic format, facilitating the sharing of information. In addition, the groundwork was laid to fund and develop a database that will allow the Board to electronically process, track and report on appeals, and will provide a platform for conveying case-related information to other City departments and on the internet.

LOOKING AHEAD

In the coming year, the Board will focus on automating its case filing and tracking system, moving away from a paper-intensive process to one where information is managed and shared electronically. The Board's fiscal year 2009-2010 budget includes system development funds to help launch this project. These resources will allow the Board to work with the Department of Technology to design a database that will track and report on cases filed with the Board. The end product will streamline the process for filing appeals and help decrease the time between filing and final Board decision. In addition, the new database will improve the Board's ability to quickly and accurately respond to requests from members of the public seeking appeal status information.

Eventually, this system will be enhanced so that the Board can electronically share relevant information with the other City departments that are primarily affected by Board decisions. In particular, the Board seeks the ability to share information with the Planning Department and the Department of Building Inspection so that Board determinations affecting particular parcels – which in effect create special zoning on a property – can be more readily tracked and enforced.

In addition, the Board will:

- Review and update resource materials, forms and website content to ensure that the public is given accurate and accessible information and guidance about the appeal process and Board procedures.
- Analyze and consider revisions to the Rules of the Board of Appeals, to evaluate new opportunities for maximizing efficiencies, to streamline the appeal process, and to bring written protocols further in line with Board practices.
- Administer annual performance evaluations for all staff.
- Make operational and programmatic improvements to enhance the Board's ability to provide the public with an efficient, fair and expeditious appeal review process.

APPENDIX A

Board of Appeals Fee Schedule
Effective 7-24-09

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