



San Francisco BOARD OF APPEALS ANNUAL REPORT FY19



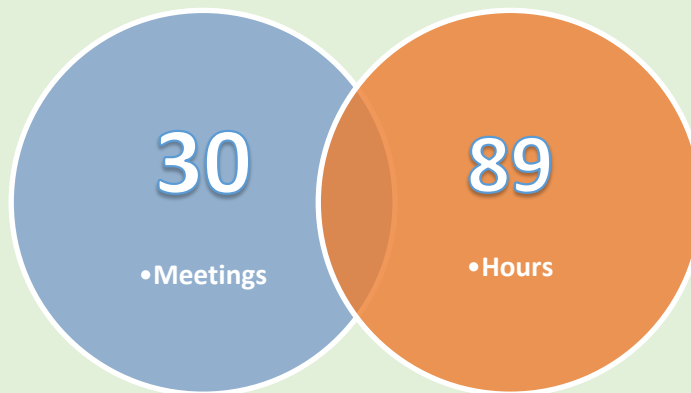
MISSION

To provide an efficient, fair and expeditious public hearing and decision-making process before an impartial panel.

- Created in 1932 under the San Francisco Charter
- Quasi-judicial body
- Provides the final administrative review for a wide range of City determinations
- Appeals may be taken on decisions to grant, deny, suspend, revoke or modify permits, licenses, and other use entitlements issued by most of the departments, Commissions and other entities of the City and County of San Francisco



BOARD MEETINGS



- Open to the public and broadcast on the City’s government television channel and website¹
- Held on most Wednesdays starting at 5:00 p.m. in City Hall
- Conducted in accordance with the Rules of the Board of Appeals
- Closed-captioned in the hearing room and on TV

Meeting agendas, minutes, and appellants’ and respondents’ briefs and other materials associated with the cases heard are posted on the Board’s website.²

¹SFGovTV: http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6

²www.sfgov.org/boa

BOARD MEMBERSHIP

The five-member Board is comprised of three members appointed by the Mayor and two by the President of the Board of Supervisors. All appointments are to staggered, four-year terms and require approval by the Board of Supervisors.

<i>Commissioner</i>	<i>Appointing Authority</i>	<i>Appointment Date</i>	<i>Term Expires</i>
<i>President Frank Fung³</i>	Mayor	October 19, 2004	July 1, 2020
<i>Vice President Rick Swig</i>	Board of Supervisors	April 2, 2015	July 1, 2020
<i>Ann Lazarus</i>	Mayor	July 25, 2012	July 1, 2022
<i>Darryl Honda</i>	Mayor	December 4, 2012	July 1, 2020
<i>Rachael Tanner</i>	Board of Supervisors	October 30, 2018	July 1, 2022



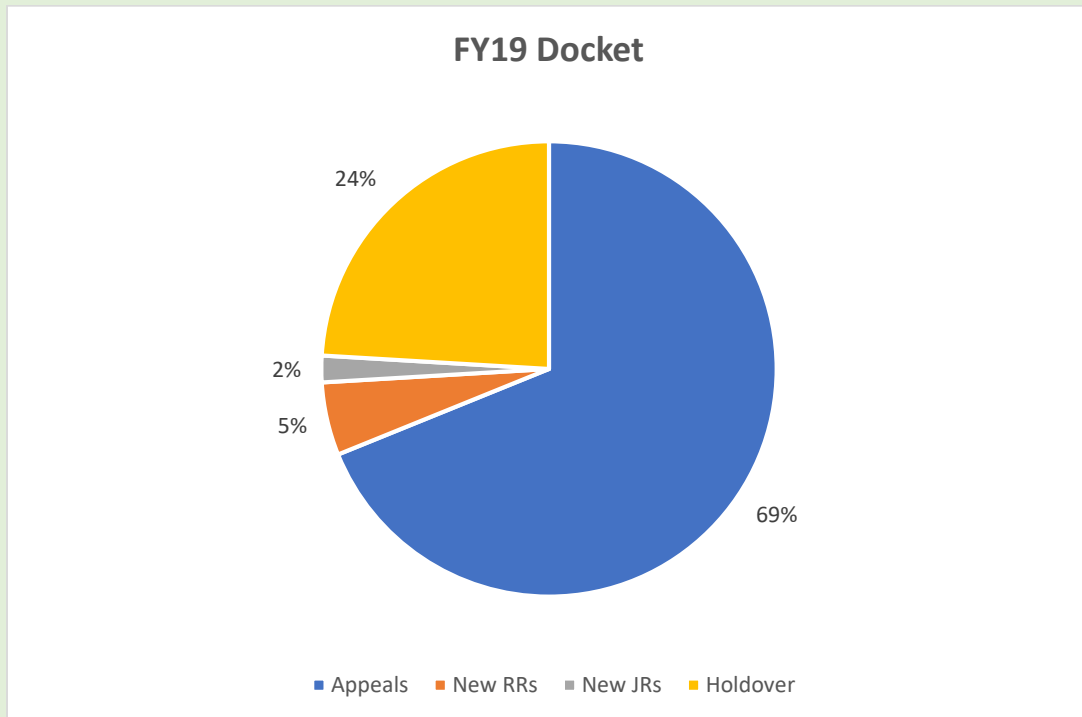
(L to R) President Frank Fung, Commissioner Ann Lazarus, Vice President Rick Swig, Commissioner Rachael Tanner and Commissioner Darryl Honda.

³ President Fung resigned on May 1, 2019 as he was appointed by Mayor Breed to the Planning Commission. Commissioner Swig became Acting President for the remainder of FY19. Mayor Breed appointed Commissioner Eduardo Santacana on July 31, 2019 to complete Frank Fung's term. President Fung also served on the Board of Appeals from January 1986 to June 1988.

APPEAL EXPERIENCE

212 matters were on the Board's docket during the year:

- 161 new matters filed
 - 146 appeals
 - 11 rehearing requests (RRs)
 - 4 jurisdiction requests (JRs)
- 51 pending or continued matters carried forward from prior years (48 appeals, 1 RR and 2 JRs)

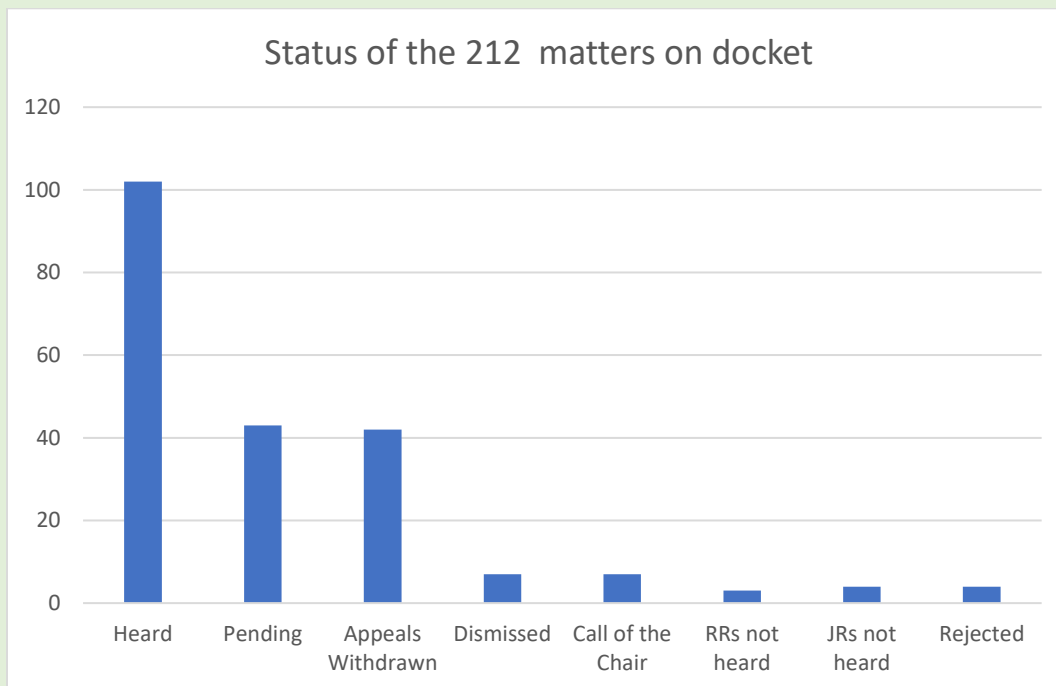


102 matters were decided by the Board:

- 91 appeals
- 9 rehearing requests
- 2 jurisdiction requests

110 matters were not heard:

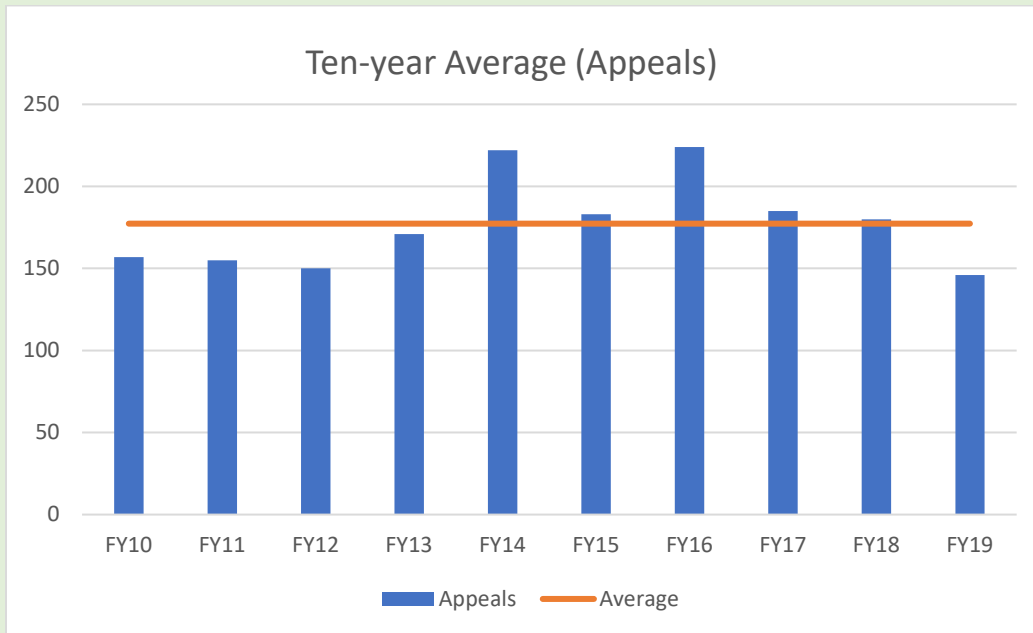
- 43 pending appeals
- 42 appeals withdrawn
- 7 appeals remained or were placed on Call of the Chair
- 7 appeals were dismissed (the appeal was moot because a permit was canceled or suspension released)
- 3 RRs (2 withdrawn and 1 heard in FY20)
- 4 JRs not heard (3 withdrawn and 1 heard in FY20)
- 4 appeals rejected



Appeal Volume

146 new appeals

Below the ten-year average of 177 appeals per fiscal year



10-year average = 177 appeals

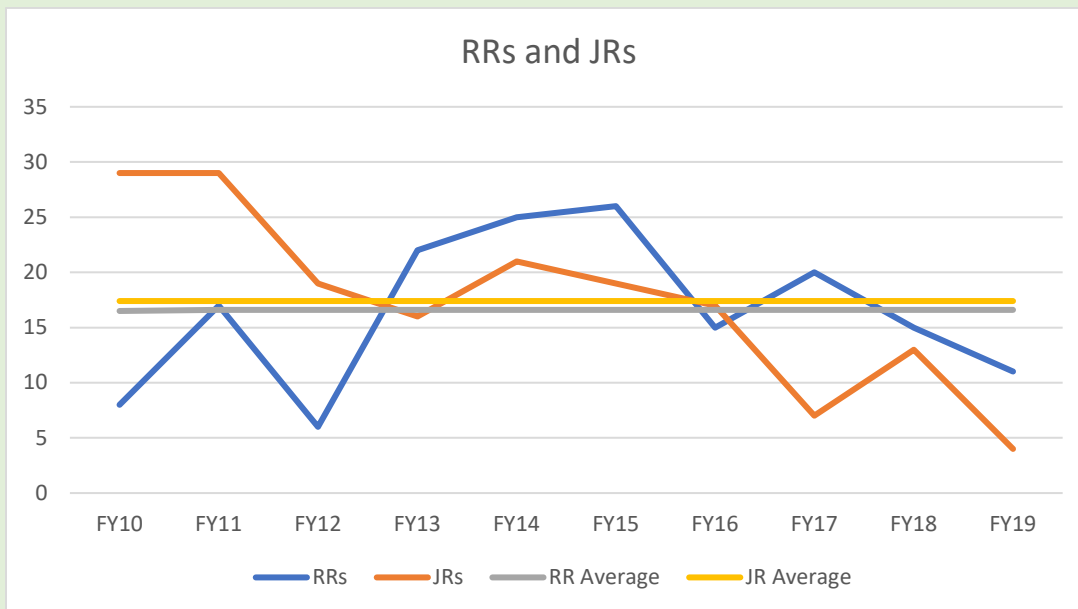
Changes in appeal volume from year to year can be attributed to a variety of causes, such as fluctuations in the health of the City's economy, new permitting legislation or business trends that trigger a spike or drop in a particular type of appeal, and specific enforcement efforts by the City that result in appealable penalties.

Rehearing & Jurisdiction Requests Volume

Rehearing Requests (RRs) ask the Board for a new hearing to reconsider a hearing decision. The Board may grant a Rehearing Request only upon a showing that there is new evidence that could have affected the outcome of the original hearing or to prevent manifest injustice.

Jurisdiction Requests (JRs) ask the Board to allow an appeal to be filed late on the basis that the City intentionally or inadvertently caused the requestor to be late in filing an appeal.

11 new Rehearing Requests **4** new Jurisdiction Requests



The volume of rehearing requests and jurisdiction requests has remained relatively low each year.

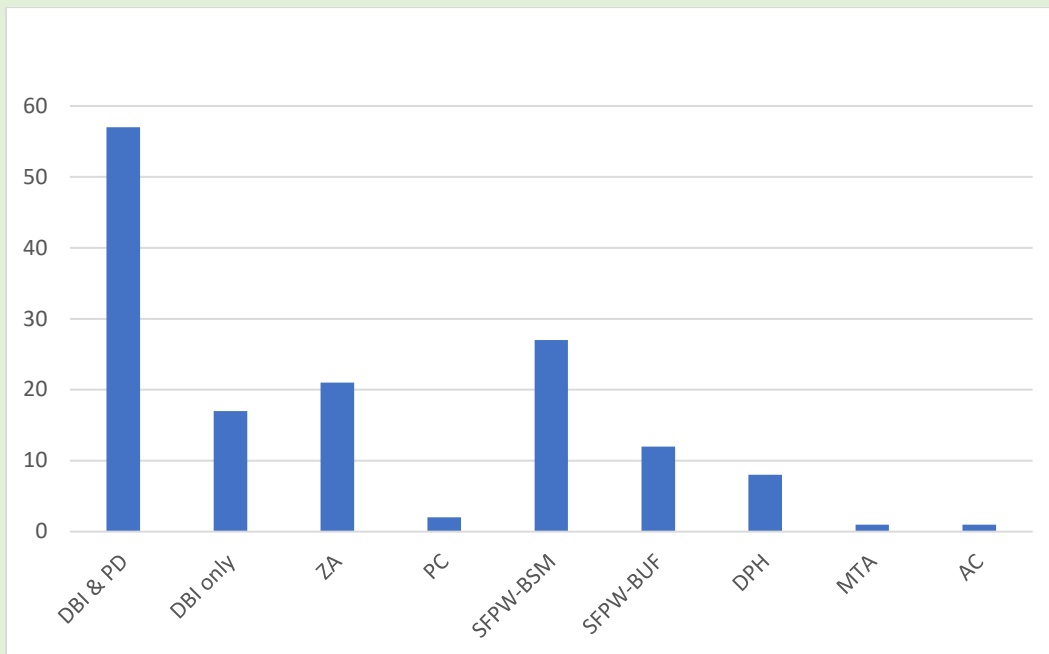
- The ten-year average for rehearing requests: **17**
- The ten-year average for jurisdiction requests: **17**

Subject Matter

66% of appeals filed were of land-use decisions made by the Department of Building Inspection (DBI), the Planning Department (PD) the Planning Commission (PC) and Zoning Administrator (ZA).

Other permit appeals came from:

- San Francisco Public Works (SFPW): 33%
- Department of Public Health (DPH): 1%
- Arts Commission (AC): <1%
- Municipal Transportation Agency (MTA): <1%





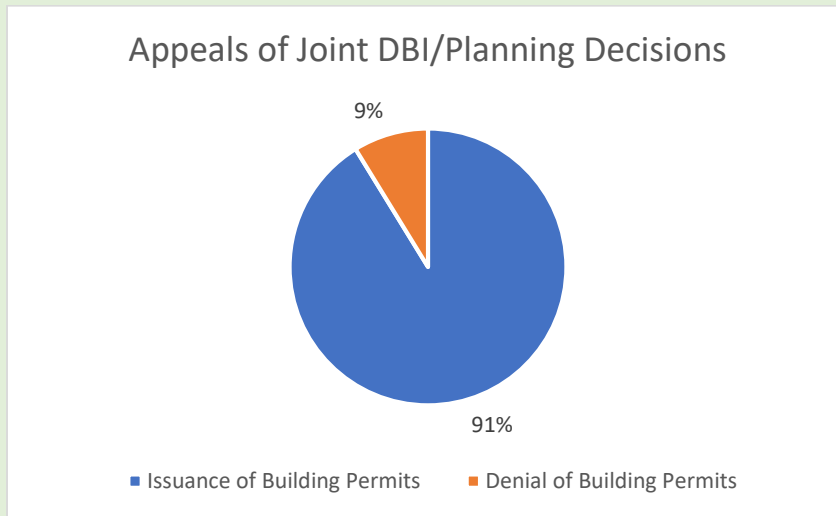
Typical land use cases involve:

- Building Permits (site and alteration permits)
- Accessory Dwelling Units
- Zoning Administrator Decisions:
 - Variances
 - Letters of Determination regarding permitted uses
 - Notices of Violations and Penalties
- Planning Commission Actions



57 appeals filed were of decisions made jointly by DBI and the Planning Department:

- 52 appeals protested the issuance of building permits; these appeals are typically filed by individuals or groups of neighbors concerned that proposed construction will negatively impact their property or neighborhood
- 5 appeals protested the denial of building permits

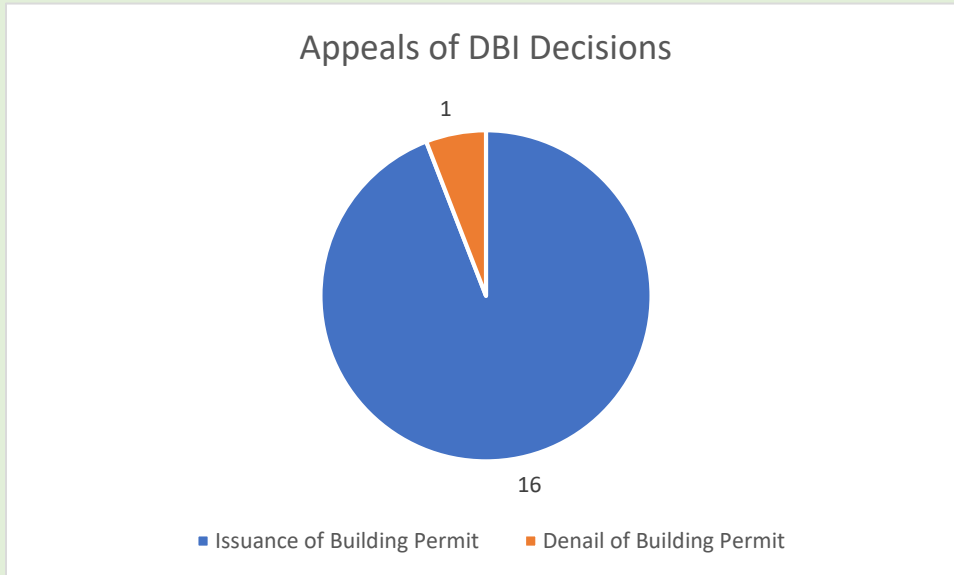


Joseph Duffy, Senior Building Inspector, DBI



17 appeals filed were of decisions made **solely** by DBI:

- 16 appeals protested the issuance of alteration permits
- 1 appeal protested the denial of an alteration permit



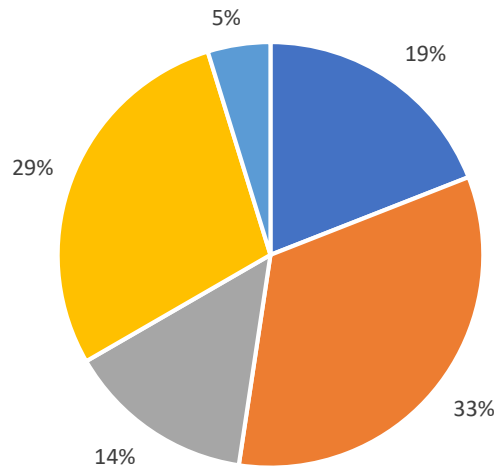
21 appeals filed were of Zoning Administrator decisions:

- 7 appeals protested Letters of Determination
- 6 appeals protested the ZA's Requests to Suspend or Revoke building permits
- 4 appeals protested the issuance of Variance decisions
- 3 appeals protested Notices of Violation and Penalty
- 1 protested the ZA's issuance of a Rear Yard Modification

Scott Sanchez, Acting Deputy Zoning Administrator, San Francisco Planning Department



Appeal of ZA Decisions



- Variances
- Letters of Determination
- Notice of Violation and Penalty
- ZA Suspension/Revocation Requests (building permits)
- Rear Yard Modification



SAN FRANCISCO PLANNING DEPARTMENT

BOARD OF APPEALS

MAY 14 2019

APPEAL # 19-053

Letter of Determination

May 2, 2019

Lilia Scott

San Francisco, CA 94112

Record Number: 2019-001789ZAD
 Site Address: 2 Foerster Street
 Assessor's Block/Lot: 3157/026
 Zoning District: RH-1 (Residential-House, One-Family)
 Staff Contact: Gabriela Pantoja, (415) 575 - 8741 or Gabriela.Pantoja@sfgov.org

1650 Mission St.
 Suite 400
 San Francisco,
 CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
 Information:
415.558.6377

2 appeals were of Planning Commission decisions:

- o Section 329 Large Project Authorizations

(8) APPEAL NO. 19-003

<p>MARY CLAIRE SALMINGO AMABLE, Appellant(s) vs. PLANNING COMMISSION, Respondent</p>	<p>1052-1060 Folsom Street & 190-194 Russ Street. Protesting the ISSUANCE on December 20, 2018, to Golden Properties LLC, of a Planning Code Section 329 Large Project Authorization (to allow exceptions to the rear yard requirement under Planning Code Section 134 and the dwelling unit exposure requirement under Planning Code Section 140, for the project involving the demolition of five existing buildings containing 10,349 square feet of commercial use and 4,656 square feet of residential use, the merger of three lots, and the new construction of a seven-story, 64-foot and 6-inch tall, approximately 58,719 square feet mixed-use building containing 2,832 square feet of ground floor commercial retail use and 55,887 square feet of residential use for 63 dwelling units, 6,991 square feet of private and common open space, and a 3,572 square feet ground floor garage with access from a new driveway on Russ Street for 16 off-street automobile parking spaces and 63 Class 1 bicycle parking spaces). CASE NO. 2016-004905ENX FOR HEARING TODAY.</p>
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(9) APPEAL NO. 18-119

<p>OUR MISSION NO EVICTION Appellant(s) vs. PLANNING COMMISSION, Respondent</p>	<p>2750 19th Street. Protesting the ISSUANCE on August 23, 2018, to <u>Willin</u> Properties LLC, of a Planning Code Section 329, Large Project Authorization (to allow construction of new six-story, 68-foot tall residential building with 60 dwelling units, approx. 10,000 sq. ft. of ground floor Production, Distribution and Repair (PDR) space, and 24 off-street parking spaces; requires exceptions to the Planning Code for Rear Yard size requirements set forth in Section 134 and Dwelling Unit Exposure requirements in Section 140). CASE NO. 2014-001400ENX. MOTION NO. 20264 FOR HEARING TODAY.</p>
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Special Note Regarding Improved Notice to Tenants Regarding Proposed Accessory Dwelling Units (ADUs)

In FY19, the Board heard testimony from residential tenants who stated that they never received notice of proposed conversions of building spaces into ADUs. These tenants were either directly (through the removal or reduction of housing services such as a garage, laundry, or storage space) or indirectly (by the nature of construction work) adversely affected. Consequently, on May 8, 2019, the Board of Appeals adopted a Resolution encouraging the establishment of notice requirements to all tenants of a residential building when permits are issued to add ADUs.

Subsequent to the adoption of this Resolution, the Board of Supervisors passed Ordinance No. 116-19 which amended the City's implementation of the state ADU program in order to bring it into compliance with recent changes in state law. The state ADU program applies to ADUs within single-family homes or in accessory buildings on the same lot as the single-family home. The ordinance added notice requirements for this type of ADU, including posting at the property, written notice to tenants of the home, and online posting.

There is a separate ordinance still pending at the Board of Supervisors that may add notice requirements for the addition of ADUs in multi-unit buildings.



Typical Cases from San Francisco Public Works (SFPW)

SFPW Bureau of Street Use and Mapping:

Wireless Facility Permits



Mobile
Facility
Permits

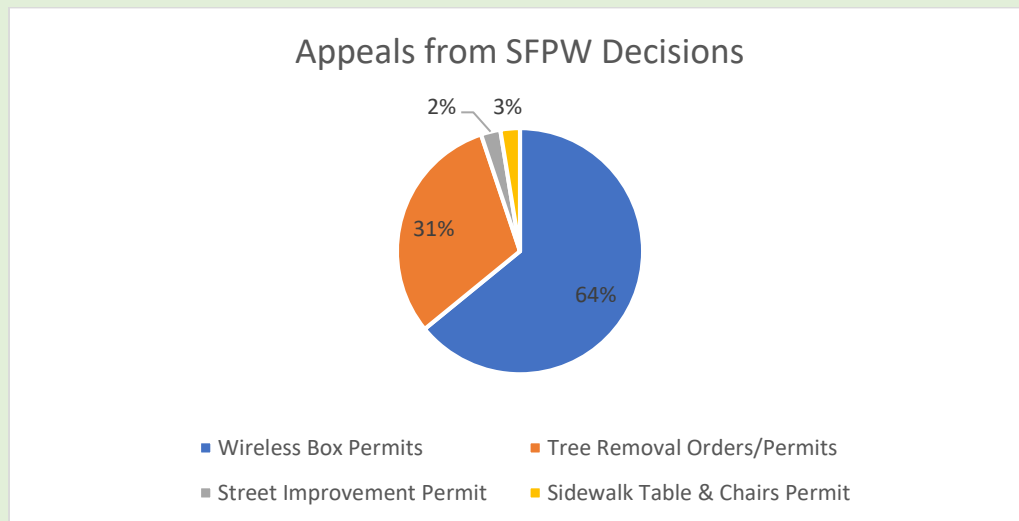


Food

SFPW Bureau of Urban Forestry: Tree Removal Permits

39 appeals filed were of decisions made by San Francisco Public Works:

- 25 appeals protested the issuance of Wireless Box Permits for the installation of cellphone equipment in the public right-of-way
- 12 appeals protested the issuance or denial of orders or permits related to tree removal
- 1 appeal protested the issuance of a Street Improvement Permit
- 1 appeal protested a Sidewalk Table and Chairs Permit
- No new appeals of Mobile Food Truck Permits in FY19



Chris Buck, Urban Forester, SFPW-BUF



Developments Related to Wireless Facility Permits

New Legislation Regarding Wireless Facility Permits

- Article 25 of the San Francisco Public Works Code sets forth the local regulations governing wireless facility permits.
- On June 30, 2019, in Ordinance No. 19-019, the Board of Supervisors amended Article 25 and made significant changes (effective September 9, 2019):
 - Carriers are no longer required to get a permit from Public Works to install wireless facilities on SFPUC and SFMTA poles. The use of these poles will be through a license which is not appealable to the Board of Appeals.
 - Public Works will only issue permits for facilities on PG&E poles. Appeals of these permits must be made directly to the Board of Appeals as Public Works is no longer required to hold a public hearing for these wireless permits.
- Public works, the Planning Department and the Recreation and Parks Department must work together to develop objective standards that satisfy Article 25's aesthetic criteria.
- It is not yet clear how these legislative changes will affect the volume of hearings at the Board of Appeals. Although there will no longer be appeals related to city-owned poles, appeals of permits issued to PG&E poles will be made directly to the Board of Appeals, which could result in an increased volume of hearings.

Request by the Board of Appeals to the Department of Public Health regarding the Health Effects and Regulation of Wireless Communications Networks

- Under Article 25, the Department of Public Health must approve a wireless service facility site permit prior to issuance. More specifically, DPH must determine, in part, whether the facility is within the FCC guidelines which set forth the safe limit for exposure to radio frequency radiation.
- In FY19, the Board frequently heard from concerned appellants that the FCC Guidelines, adopted in 1996, were outdated given the significant advancements in technology that have been made over the last two decades. These appellants expressed concerns about the health effects of the wireless facilities.
- Given the foregoing, the Board formally requested that DPH review and update its Memorandum, drafted by Dr. Rajiv Bhatia⁴ and dated June 14, 2010, regarding the health effects and regulation of wireless communication networks.

⁴ Dr. Bhatia was the Director of Occupational and Environmental Health at DPH.

- It is anticipated that DPH will provide an update to the Board by December 2019.

Appeals from Determinations of Other City Departments:

Department of Public Health

- 4 appeals related to Tobacco Sales Establishment Permits (3 denials and one suspension by DPH)
- 1 appeal of a suspension of a Permit to Operate a Swimming Pool/Spa
- 1 appeal related to the revocation of a Permit to Operate a Restaurant
- 1 appeal related to the denial of a Medical Cannabis Dispensary Permit (appeal withdrawn)
- 1 appeal related to the issuance of an order to an establishment for operating without a massage business permit (appeal rejected for lack of subject matter jurisdiction)

Arts Commission

- 1 appeal regarding the revocation of a Street Artist Certificate

SFMTA

- 1 appeal of a Memorandum Regarding Taxi Medallion Rules at SFO (Rejected for lack of subject matter jurisdiction)



Outcome: 91 Appeals Decided

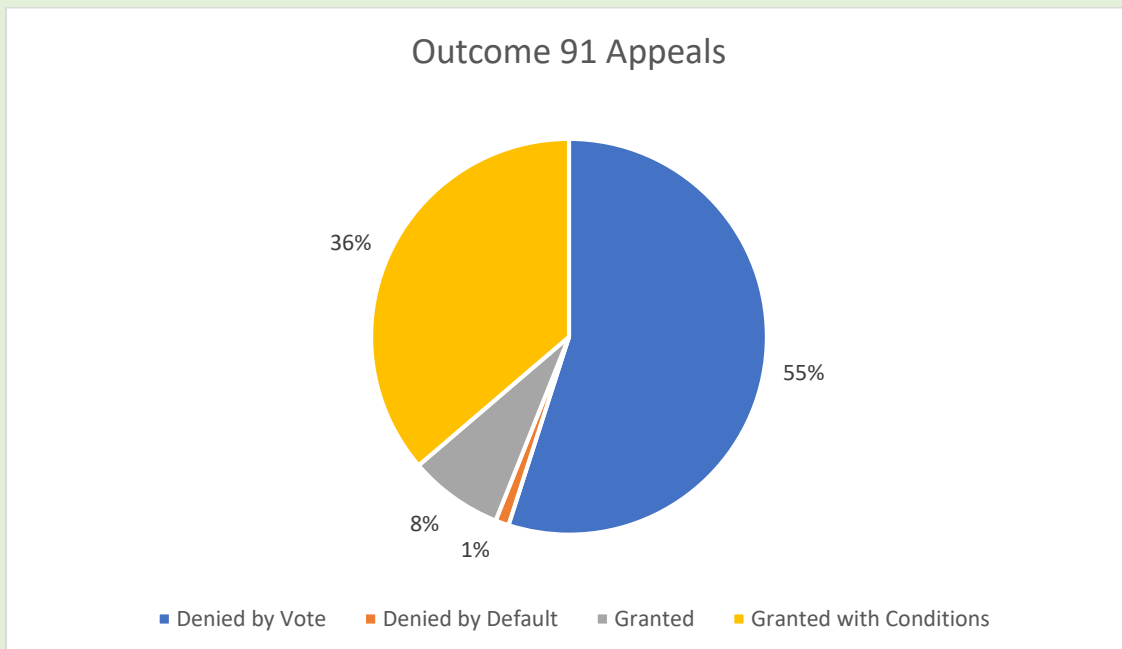
Given the supermajority vote required to grant an appeal, the Board typically denies more appeals than it grants.

50 appeals were denied by vote resulting in the underlying departmental decision being upheld

33 appeals were granted with conditions by the Board: The underlying departmental decision was conditioned or modified in some way

7 appeals were granted by the Board with the underlying departmental decision completely overturned

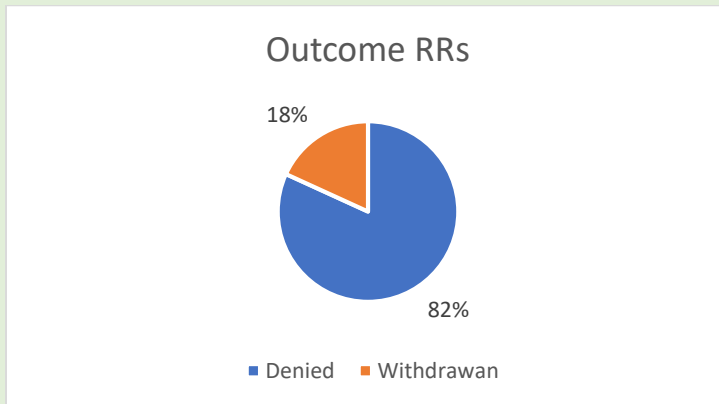
1 appeal was denied by default when the Board was unable to muster sufficient votes to pass a motion that would grant or deny the appeal (underlying departmental decision upheld by operation of law)



Outcome: Rehearing & Jurisdiction Requests

11 Rehearing Requests were on the Board's docket in FY19:

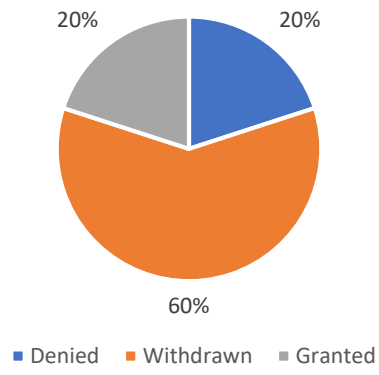
- 9 denied
- 2 withdrawn



5 Jurisdiction Requests were on the Board's docket in FY19

- 1 denied
- 1 granted
- 3 withdrawn

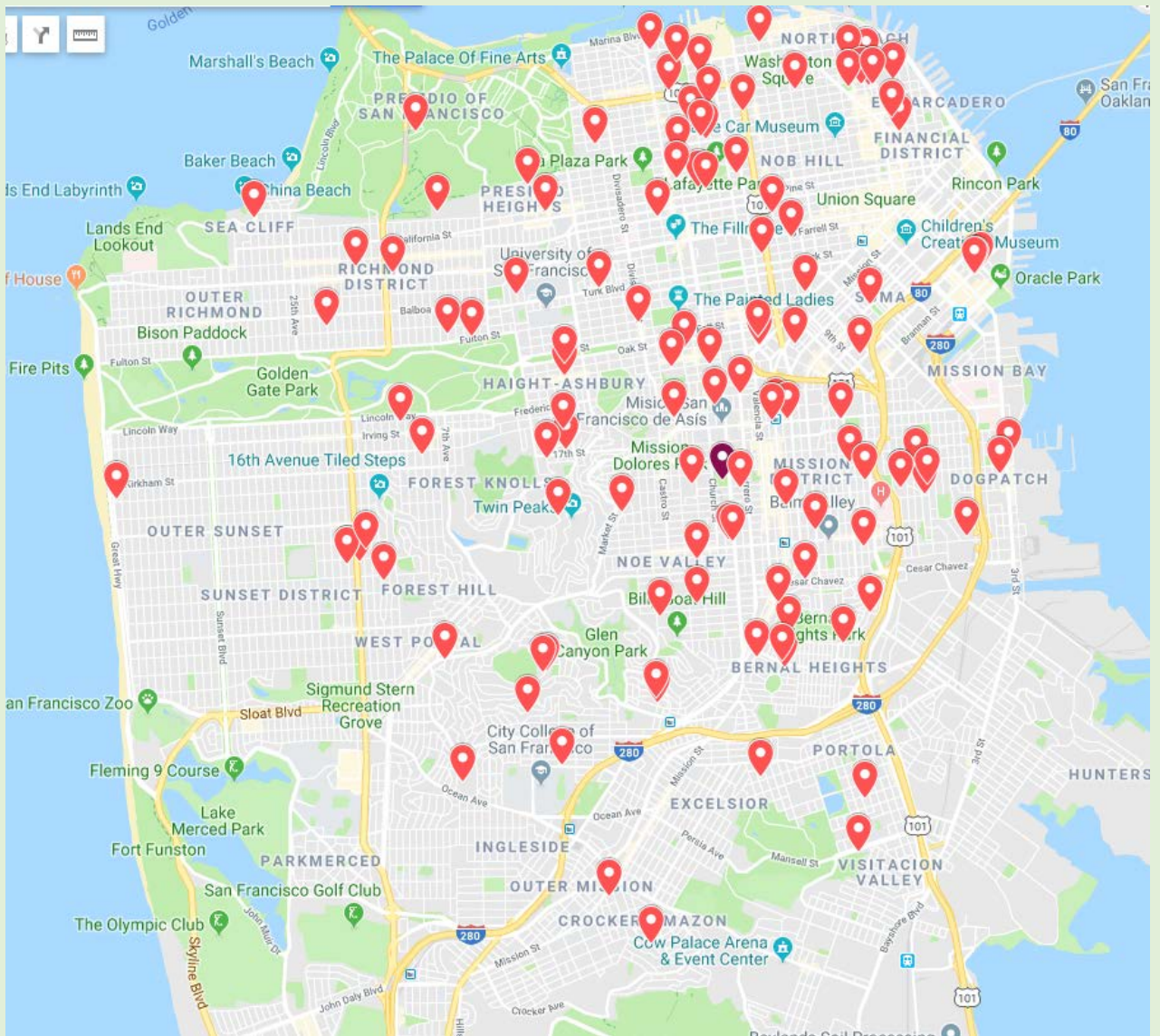
Outcome JRs



Geographic Distribution

The appeals heard by the Board during the year involve properties located in most of San Francisco's neighborhoods. As is typical for the Board, the highest concentration of appeals is seen in the northeast quadrant, and the lowest is in the southern portion of the City.

Geographic Distribution of Appeals Filed in FY19



Appeals Management System

- The Board Office replaced its outdated appeals management system with a new system that runs on the Salesforce platform⁵
- The developer built custom features to meet the needs of the Board of Appeals
- Benefits of the new system:
 - Significantly improved reporting capabilities and efficiencies; provides more accurate data for the Annual Report and facilitates information requests for public records
 - All documents related to an appeal can be uploaded to one central location
 - A user has the ability to add notes with date and time stamp which helps the office keep track of issues related to an appeal
 - Creates agendas and vote sheets and keeps track of all cases for the various calendars (the old system did not keep track of agendas or hearing dates and therefore was prone to human error because cases that were rescheduled or continued had to be manually moved)
 - Increased efficiencies create customer convenience
- One goal is to enable payments (including payments by credit card) to be made on the internet or at kiosks/cashiers in the new Permit Center, thereby eliminating the need of Board staff to handle payments (currently the Board office only accepts cash or check and must make weekly deposits to the Treasurer's Office in City Hall)

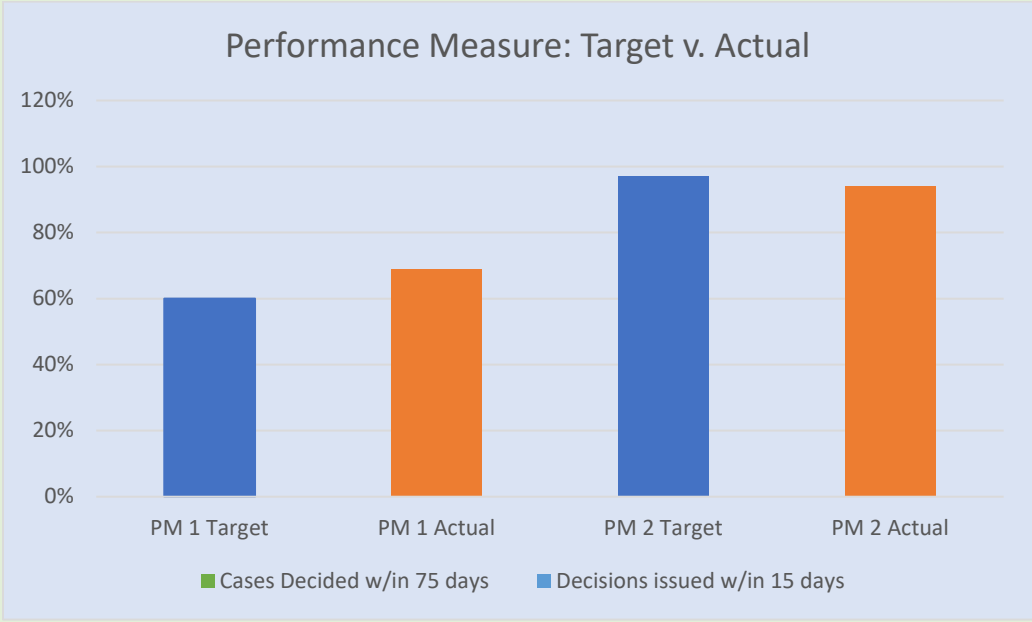
⁵ The previous appeals management system had to be replaced because it was no longer being supported by the Department of Technology.

PERFORMANCE MEASURES

City departments are required to report on specific statistical measures as a way of assessing and documenting performance. The two measures unique to the Board look at how long it takes the Board to decide cases and how quickly written decisions are published.

- Measure One: Percentage of appeals that are decided within 75 days of filing (cases decided in FY19).
 - The Board decided 91 appeals in FY19
 - The FY19 target was to decide 60% of the cases within 75 days of filing.
 - The Board exceeded this target by deciding 69% of the cases (63 cases) within 75 days of the appeal being filed.
 - With respect to the 28 cases that were decided more than 75 days after an appeal was filed:
 - 10 were delayed due to an increase in appeal volume during a particular time period
 - 11 were delayed due to rescheduling requests by the parties
 - Six were continued by the Board for additional information or to give the parties an opportunity to negotiate a settlement
 - One was delayed due to putting the matter on the Call of the Chair because the case had unique circumstances
 - If we excluded rescheduled cases, then 78% percent of the cases would have been decided within 75 days of filing

- Measure Two: How often written decisions are issued within 15 days of final Board action.
 - The FY19 target was to issue 97% of the written decisions within 15 days of final action.
 - The Board issued 94% of the written decisions within 15 days of final action.
 - For four out of the five cases that were issued more than 15 days after the final Board action, it was necessary to delay the decisions because they had an associated appeal in which an appellant requested a rehearing
 - For the fifth appeal decided more than 15 days after the final action, the decision was issued within 16 days of final action



BUDGET

REVENUE OVERVIEW

The Board has two sources of revenue:

- (1) Surcharges placed on permits which are designed to generate the revenue needed to cover operating expenses (95% of the budget)
 - a. Surcharges are collected on new and renewed permits.
 - b. The rates are based on the percentage of cases originating from each underlying department and anticipated permit application volume. These rates are analyzed annually and adjusted if needed.
- (2) Filing fees which are collected when new appeals are filed (5% of the budget)

PROJECTED REVENUE

\$1,072,300 was the projected revenue budget:

- o \$1,026,263 in projected surcharge revenue collected by permit issuing departments on new permit applications
- o \$46,037 in projected filing fee revenue collected by the Board when new appeals are filed

ACTUAL REVENUE

\$972,093 in actual revenue was collected:

- o \$933,956 in surcharges
- o \$38,137 in filing fees

-\$100,207 shortfall from projected revenue (% less than projected)

EXPENDITURES OVERVIEW

PROJECTED EXPENDITURES

\$1,072,300

ACTUAL EXPENDITURES

\$1,030,439 was spent by the Board

Expenditures		
Fund 10000	Projected	1,072,300
	Actual	992,439
	Savings	79,861
Fund 10020 (Reserve used for new appeal management system)	Actual	38,000
	Total Expenditures	1,030,439

Breakdown of Expenditures:

- \$757,584 for salaries and fringe benefits
- \$190,191 for the services of other City departments, such as the City Attorney, Department of Technology, SFGovTV, and Real Estate (rent)
- \$38,466 for specialized services such as: neighborhood notification, data production, interpreters, and infrastructure costs such as, photocopier, telephones, and postage
- \$38,000 partial payment for new Appeal Management System
- \$6,198 for materials and supplies

Reserve Account

- Given that actual revenue did not meet projections and actual expenditures exceeded actual revenue, the shortfall was covered by a transfer from the Reserve Account

FY19 Use of Reserve	
Actual Revenue	\$ 972,093
Actual Expenditures	\$ 1,030,439
Shortfall which necessitated use of the reserve	(\$58,346)

Surcharges

- The surcharges imposed on appealable permits are intended to recover costs for the Board's expenses
- Given the surplus in the Reserve Account, some surcharge fees were lowered in FY18 with the intent to rebalance the Board's cost recovery
- A reduction in the Reserve Account is consistent with our goal of rebalancing our cost recovery
- After conducting an analysis, the Controller's Office only authorized minor increases in certain surcharge amounts for FY20.

Surcharges

Department	Surcharge FY17	Surcharge FY18	Surcharge FY19	Surcharge FY20
Planning	\$25.00	\$18.50	\$18.50	\$19.00
DBI	\$25.00	\$18.50	\$18.50	\$19.00
DPH	\$52.00	\$43.00	\$43.00	\$44.50
SFMTA (TAXI)	\$7.00	\$2.00	\$2.00	\$2.00
PUBLIC WORKS	\$6.50	\$6.50	\$6.50	\$6.50
SFPD	\$26.50	\$6.00	\$6.00	\$6.00
ENTERTAINMENT COMMISSION	\$4.00	\$4.00	\$4.00	\$4.00

LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. Set forth below is a description of the lawsuits that were filed, pending or resolved during the year, in which the Board is named as a party.

New: Cort v. CCSF

Petitioner filed this case alleging the City improperly suspended or revoked permits at 2551 Mission Street. The property is an old theater that has been empty since 1987. The owner obtained permits to convert the property to a gym with a climbing wall. When concrete from the façade fell on the Mission Street sidewalk, the owner removed the remaining loose concrete, exceeding the scope of the issued permits. The Zoning Administrator requested that the Department of Building Inspection revoke the building permits, and that decision was appealed to and upheld by the Board. The parties have met to discuss the administrative record, and alternatives to litigation.

New: San Francisco Care Center v. CCSF

The petitioners in this case allege that the City improperly denied a building permit. In 2000, petitioners entered into a development agreement with the City to build an assisted living facility with 112 units. In 2007 after the project was complete, petitioners made unpermitted improvements to remove several assisted living units and create two master administrator suites. The Department of Building Inspection issued a Notice of Violation in 2017. Petitioners sought a permit to legalize the work. The Planning Commission disapproved the permit, and the Board of Appeals upheld that determination in 2018. The petitioners have requested that the City prepare the administrative record. On February 2, 2019, the City demanded that petitioners provide a deposit for the preparation of the record. Petitioners have not responded.

New: Michael J. Turon v. SF Board of Appeals et al.

Petitioner sought a permit from the Department of Building Inspection to document the legal use of 2722-2724 Folsom Street as a two-unit residential building. The Department of Building Inspection denied the permit, on the basis that the building contains three residential units. The Board upheld the denial of the permit. Petitioner filed a writ on February 4, 2019 seeking to overturn the denial of the permit.

New: Frear Schmid v. CCSF

The Historic Preservation Commission granted a Certificate of Appropriateness finding the Arts Commission's proposal to remove a statue entitled "Early Days" from the Pioneer Monument, located in the Fulton Street right of way between the Main Library and the Asian Art Museum, complied with the Planning Code, the Secretary of Interior's Standards for Rehabilitation, and the General Plan. Petitioner appealed the Certificate of Appropriateness to the Board, and the Board denied the appeal and upheld the Historic Preservation Commission's decision. Petitioner filed suit challenging the City's decision to remove the statue on a variety of grounds, including challenging the Board's decision on the appeal of the Certificate of Appropriateness. The Superior Court sustained the City's demurrer to the complaint, finding that the Board did not act in excess of its jurisdiction nor did it abuse its discretion in affirming the Certificate of Appropriateness. The Superior Court entered judgment against Petitioner, and Petitioner filed an appeal, which is currently pending before the Court of Appeal.

Pending: Marc A. Bruno, et al. v. City and County of San Francisco, et al.

This is a petition challenging CEQA categorical exemption for a building permit authorizing façade restoration and garage removal at 20 Nobles Alley in North Beach. The pro per petitioner alleges that the City used an incorrect CEQA baseline and failed to adequately analyze impacts to historic resources. The petitioner also alleges violations of the Sunshine Ordinance and conflict-of-interest rules. The petitioner elected to prepare the administrative record. After missing numerous stipulated and Court-ordered deadlines to provide the complete record to the City, the petitioner has provided the City with funds to complete preparation of the record. On September 18, 2019, the Court ruled that the petitioner failed to state any valid causes of action, but gave the petitioner thirty days to amend the petition to support the CEQA cause of action only. The City will wait to complete the administrative record until the petitioner has amended the petition.

Contest Promotions, LLC v. City & County of San Francisco, et al.

PENDING. In July 2014, the Board of Supervisors approved a settlement of Contest Promotions' previous lawsuit challenging the constitutionality of Planning Code section 602.3, which defines onsite business signs. The Board of Supervisors then amended section 602.3, which clarified that Contest Promotions' signs in San Francisco do not qualify as business signs, but are prohibited general advertising signs. On January 20, 2016, the Board upheld the Planning Department's denial of 35 sign permit applications. Contest Promotions contends that San Francisco breached the settlement agreement

when it amended section 602.3 and when it denied Contest Promotions' sign permit applications. Federal and state courts have dismissed all of Contest Promotions constitutional claims against the amended section 602.3. On March 26, 2019, the Superior Court granted summary judgment to San Francisco on Contest Promotions' remaining claims for breach of contract. Contest Promotions has appealed the merits to the Court of Appeal. The parties agreed that San Francisco's compensable attorneys' fees through entry of judgment was \$500,000.

Pending: Robert E. Gonzales v. San Francisco Board of Appeals

A lawsuit was filed in Superior Court by an adjacent property owner challenging the Board's August 26, 2015 decision to uphold a permit to erect a building at 333 Pennsylvania Avenue. On January 6, 2016, the Court denied the petitioner's motion for immediate relief, stating it failed to establish that the Planning Code or Residential Design Guidelines were violated. The petitioner has made no further effort to pursue this matter. After the case has been pending 5 years, San Francisco will move to dismiss the case for failure to prosecute.

Pending: 1049 Market Street, LLC v. City & County of San Francisco, et al.

Six lawsuits were filed by the owners of a six-story building challenging, among other things, the Board's April 8, 2015 decision to grant an appeal filed by residential tenants protesting the Zoning Administrator's (ZA) Release of Suspension Request on a permit to convert live-work units to commercial space, and the Board's April 5, 2017 decisions related to the revocation of that permit. One case was filed in federal court and the others were filed in state court.

The state cases assert claims under CEQA, a vested rights theory and several constitutional claims. The federal case focuses on federal constitutional claims. Because the state and federal suits challenge the same conduct and seek the same damages, the federal court agreed to have the state court resolve the issues of local land use law before it determines whether any federal constitutional issues remain. On this basis, the federal lawsuit has been stayed pending the outcome in state court.

In April 2016, the City won the first of the five state court cases on all issues except the jurisdictional issue relating to whether the Board had properly considered the validity of the permit. The court remanded the matter to the Board for reconsideration of whether the ZA erred or abused his discretion in determining that the property's principally permitted use as an office had not been abandoned, but left the Board the option to apply recently adopted legislation requiring a Conditional Use Authorization. The City has since prevailed in the appeal of this case, and that ruling is now final.

Another of the state court cases, which challenges on CEQA grounds the permanent zoning controls adopted by the Board of Supervisors, is before the Court of Appeal but

has not yet briefed. In August 2017, another of the state court cases was rejected based on the petitioner's failure to timely serve. The two most recently filed cases, stemming from the Board's 2017 decisions, are still before the trial court.

The parties have reached a settlement and the execution of the settlement is ongoing.

Resolved Sullivan v. CCSF

This was a petition filed in FY18 challenging a building permit which authorized an exterior stairwell at 407A 30th Street. The petitioners alleged that the stairwell would encroach on petitioners' properties at 1716 and 1720 Sanchez Street. The petitioners and real party reached a settlement and the petitioner dismissed the matter with prejudice on August 14, 2019.