San Francisco Charter

ARTICLE IV, SEC. 4.106. BOARD OF APPEALS.

(a) The Board of Appeals shall consist of five members nominated and appointed pursuant to this section. Three of the members shall be nominated by the Mayor, and two of the members shall be appointed by the President of the Board of Supervisors. Charter Section 4.101 shall apply to these appointments. Vacancies shall be filled by the appointing officer.

Each nomination of the Mayor and the President of the Board of Supervisors is subject to approval by the Board of Supervisors, and shall be the subject of a public hearing and vote within 60 days. If the Board fails to act on the nomination within 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors, the nominee shall be deemed approved. The appointment shall become effective on the date the Board adopts a motion approving the nomination or after 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors.

Members may be removed by the appointing officer only pursuant to Section 15.105.

In order to stagger the terms, three members shall initially serve two-year terms, and two members shall initially service four-year terms. The initial two and four-year terms of office shall be instituted as follows:

1. The respective terms of office of members of the Board of Appeals who hold office on the first day of July, 2002, shall expire at 12 o'clock noon on that date, and the three members appointed by the Mayor and the two members appointed by the President of the Board of Supervisors shall succeed to said offices at that time.

2. The Clerk of the Board of Supervisors shall determine by lot which two of the three Mayoral appointees shall serve an initial two-year term, and which one of the two appointees of the President of the Board of Supervisors shall serve an initial two-year term. The remaining appointees shall serve four-year terms. All subsequent terms shall be four years.

The Board shall appoint and may remove an executive secretary, who shall serve as department head.

(b) The Board shall hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit, except for a permit or license under the jurisdiction of the Recreation and Park Commission or Department, or the Port Commission, or a building or demolition permit for a project that has received a permit or license pursuant to a conditional use authorization.
(c) The Board of Appeals shall hear and determine appeals:

1. Where it is alleged there is error or abuse of discretion in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the provisions of any ordinance adopted by the Board of Supervisors creating zoning districts or regulating the use of property in the City and County; or

2. From the rulings, decisions and determinations of the Zoning Administrator granting or denying applications for variances from any rule, regulation, restriction or requirement of the zoning or setback ordinances, or any section thereof. Upon the hearing of such appeals, the Board may affirm, change, or modify the ruling, decision or determination appealed from, or, in lieu thereof, make such other additional determinations as it shall deem proper in the premises, subject to the same limitations as are placed upon the Zoning Administrator by this Charter or by ordinance.

(d) After a hearing and any necessary investigation, the Board may concur in the action of the department involved, or by the affirmative vote of four members (or if a vacancy exists, by a vote of three members) overrule the action of the Department.

Where the Board exercises its authority to modify or overrule the action of a department, the Board shall state in summary its reasons in writing.

San Francisco Business & Tax Regulations Code

ARTICLE 1

SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.

(a) Except for variance decisions and permits issued by the Entertainment Commission or its Director, and as otherwise specified in this Section 8, appeals to the Board of Appeals shall be taken within 15 days from the making or entry of the order or decision from which the appeal is taken. Appeals of variance decisions shall be taken within 10 days.

(b) Appeals to the Board of Appeals of permit decisions made pursuant to Planning Code Section 343 shall be taken within 10 days of the permit decision. This subsection (b) shall expire on the Sunset Date of Planning Code Section 343, as defined in that Section. Upon the expiration of this subsection, the City Attorney shall cause this subsection to be removed from the Business and Tax Regulations Code.

(c) Appeals to the Board of Appeals of permit decisions made pursuant to Planning Code Section 207, subsection (c)(6), shall be taken within 10 days of the permit decision.

(d) Appeals of actions taken by the Entertainment Commission or its Director on the granting, denial, amendment, suspension, or revocation of a permit, or on denial of exceptions from regulations for an Extended-Hours Premises Permit, shall be taken within 10 days from the making of the decision. Nothing in this Section 8 is intended to require an appeal to the Board of Appeals if any provision of Article 15, Article 15.1 (Entertainment Regulations Permit and License Provisions), or Article 15.2 (Entertainment Regulations for Extended-Hours Premises) of the Police Code governing these permits otherwise provides.

(e) Appeals shall be taken by filing a notice of appeal with the Board of Appeals and paying to said Board at such time a filing fee as follows:
(1) Zoning Administrator, Planning Department, Director of Planning and Planning Commission.

(A) For each appeal from the Zoning Administrator's variance decision the fee shall be $600.

(B) For each appeal from any order, requirement, decision or other determination (other than a variance) made by the Zoning Administrator, the Planning Department or Commission or the Director of Planning, including an appeal from disapproval of a permit which results from such an action, the fee shall be $600.

(2) Department of Building Inspection.

(A) For each appeal from a Department of Building Inspection denial, conditional approval or granting of a residential hotel or apartment conversion permit the fee shall be $525.

(B) For each appeal from the granting or denial of a building demolition, or other permit (other than residential hotel conversion) the fee shall be $175.

(C) For each appeal from the imposition of a penalty only the fee shall be $300.

(3) Police Department and Entertainment Commission.

(A) For each appeal from the denial or granting of a permit or license issued by the Police Department, Entertainment Commission, or the Director of the Entertainment Commission to the owner or operator of a business the fee shall be $375; for each such permit or license issued to an individual employed by or working under contract to a business, the fee shall be $150.

(B) For each appeal from the revocation or suspension of a permit or license by the Police Department, Entertainment Commission, or the Director of the Entertainment Commission the fee shall be $375 for an entity or individual.

(4) Department of Public Works. For each appeal from the decision of the Director of the Department of Public Works concerning street tree removal by a City agency, commission, or department the fee shall be $100.

(5) For each appeal from any other order or decision the fee shall be $300.

(6) For requests for rehearing under Section 16 of this Article the fee shall be $150.

(7) For requests for jurisdiction the fee shall be $150.

(8) An exemption from paying the full fee specified in subsections (d)(1) through (7) herein may be granted upon the filing under penalty of perjury of a declaration of indigency on the form provided and approved by the Board. All agencies of the City and County of San Francisco are exempted from these fees.

(9) Additional Requirements.
(A) Notice of appeal shall be in such form as may be provided by the rules of the Board of Appeals.

(B) On the filing of any appeal, the Board of Appeals shall notify in writing the department, board, commission, officer or other person from whose action the appeal is taken of such appeal. On the filing of any appeal concerning a structural addition to an existing building, the Board of Appeals shall additionally notify in writing the property owners of buildings immediately adjacent to the subject building.

(C) Except as otherwise specified in this subsection (e)(9)(C), the Board of Appeals shall fix the time and place of hearing, which shall be not less than 10 nor more than 45 days after the filing of said appeal, and shall act thereon not later than 60 days after such filing or a reasonable time thereafter.

(i) In the case of a permit issued by the Entertainment Commission or its Director, the Board of Appeals shall set the hearing not less than 15 days after the filing of said appeal, shall act thereon not more than 30 days after such filing, and shall not entertain a motion for rehearing.

(ii) In the case of a decision on a permit application made pursuant to Planning Code Section 343, the Board of Appeals shall set the hearing not less than 10 days after the filing of said appeal, shall act thereon not more than 30 days after such filing, and shall not entertain a motion for rehearing. This subsection (e)(9)(C)(ii) shall expire on the Sunset Date of Planning Code Section 343, as defined in that Section. Upon the expiration of this subsection, the City Attorney shall cause this subsection to be removed from the Business and Tax Regulations Code.

(D) With respect to any decision of the Board of Appeals related to any “dwelling” in which “protected class members” are likely to reside (each as defined in Administrative Code Chapter 87), the Board of Appeals shall comply with the requirements of Administrative Code Chapter 87 which requires, among other things, that the Board of Appeals not base any decision regarding the development of such units on information which may be discriminatory to any member of a “protected class.”

(E) Pending decision by the Board of Appeals, the action of such department, board, commission, officer or other person from which an appeal is taken, shall be suspended, except for: (i) actions of revocation or suspension of a permit by the Director of Public Health when determined by the Director to be an extreme public health hazard; (ii) actions by the Zoning Administrator or Director of the Department of Building Inspection stopping work under or suspending an issued permit; (iii) actions of suspension or revocation by the Entertainment Commission or the Director of the Entertainment Commission when the suspending or revoking authority determines that ongoing operation of the activity during the appeal to the Board of Appeals would pose a serious threat to public safety; (iv) actions of the Director of the Office of Cannabis awarding a Temporary Cannabis Business Permit; and (v) actions pursuant to a permit or determination of compliance by the Departments of Public Works or Building Inspection regarding homeless shelters during a declared shelter crisis.

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SEC. 8(a). EFFECTIVE DATE FOR COLLECTION OF FILING FEE.

The fee to be paid by the appellants as provided in Section 8 hereof shall become effective and be due for all appeals pending as of October 31, 1947, and thereafter upon filing notice of appeal, appellants shall pay the filing fee to the Secretary of the Board.

SEC. 9. INFORMATION TO BE FURNISHED TO BOARD OF APPEALS.

Upon receiving such notice it shall be the duty of the department, board, commission or person making the order or decision appealed from, to forthwith scrutinize the same and within three days notify the Board of Appeals, in writing, of the names and addresses of any known persons, firms, corporations or associations not named in the notice of appeal who or which opposed appellant in the matter in which the appeal is taken.

SEC. 10. RECORD FORWARDED TO BOARD OF APPEALS.

Upon receipt of notice of appeal it shall be the duty of the department, board, commission or person from whose decision the appeal is taken to transmit to the Board of Appeals the original application or complaint upon which the license or permit was granted, refused or revoked, and all affidavits, exhibits, letters, maps or other documents used upon the hearing before such department, board, commission or person. The application or complaint and all documents, exhibits and records forwarded therewith shall be returned to the department, board, commission or person from whose order or decision the appeal was taken, immediately after final decision by the Board of Appeals, with a statement of the decision of said Board, certified by the President or Vice-President and Secretary thereof.

SEC. 11. COURT REPORTER--FEES; VIDEOTAPE OF PROCEEDINGS AS ADMINISTRATIVE RECORD.

(a) Court Reporter; Fees. The Board of Appeals shall designate a competent court reporter as official reporter of the Board. Except as provided in subsection (b) below, the reporter shall attend all hearings of the Board and shall take down by phonographic report all the testimony, the objections made, the rulings of the Board, and all statements and remarks made, oral instructions given by the Board and the voting on all cases heard by the Board. The fees for the reporter for reporting all of the proceedings and testimony as outlined above shall be a legal charge against the City and County of San Francisco.

When requested to do so by any party or parties in writing the official reporter must, within a reasonable time after the request has been made, transcribe such specific portions as may be requested and certify to the same as being correctly reported and transcribed. The fees for such transcription shall be at the expense of the party requesting the transcript thereof. The Board of Appeals shall approve the reporter's schedule of rates and fees for reporting and transcription services in connection with Board of Appeals' proceedings.

(b) Videotape or Audiotape of Proceedings as Administrative Record. In lieu of attendance at the hearing by a court reporter, the Board is authorized to use the Department of Telecommunications
and Information Technology's Citywatch Cable Channel videotape of the Board's proceedings as the administrative record of the hearing. When requested to do so by any party or parties in writing, a copy of the videotape or such specific portions as may be requested must be provided by Citywatch within a reasonable time after the request has been made. The fee for such videotape copy shall be at the expense of the party requesting it. It shall be the burden of the party requesting the videotape to obtain at its own expense any transcription of the tape. If such a transcription is made, the party obtaining the transcription shall provide a copy to the Board for its records.

SEC. 11(a). CITY ATTORNEY--REPRESENTATION OF PLANNING AND BUILDING DEPARTMENT STAFF.

For appeals from decisions of the Planning Commission, the Zoning Administrator, the Building Inspection Commission, and the Planning and Building Departments, the following procedure shall be followed by staff to ensure that there is adequate legal advocacy on behalf of those departments in matters that involve important public policy or legal significance.

(1) Staff of the Board of Appeals shall send to the Deputy City Attorney who has been designated by the City Attorney to be counsel to the Planning Department and the Department of Building Inspection a copy of (1) the advance or draft agendas at regular intervals and the final agenda for each meeting as soon as it is prepared, (2) all Notices of Appeal within 5 working days of when they are received by the staff of the Board of Appeals; and (3) any brief submitted to the Board of Appeals immediately upon receipt by the staff of the Board of Appeals.

(2) The Zoning Administrator, Planning Department staff, and the Building Department staff member assigned to the Board of Appeals shall consult with their designated Deputy City Attorney concerning any appeals of decisions involving their respective commissions or departments.

(3) The department staff representative shall determine whether an appeal presents any issues of important public policy and the City Attorney's Office shall have the discretion to determine whether an appeal presents any issues of legal significance. The City Attorney's Office shall have the discretion to determine what level of participation by the City Attorney's Office is appropriate in order to defend the department's decision before the Board of Appeals. The applicable department will allow for the City Attorney's Office representation based on that determination.

The criteria used to make these determinations shall include, but not be limited to, whether the appeal:

(a) Challenges a decision of the Planning Commission or Building Inspection Commission;

(b) Challenges a Zoning Administrator interpretation of a provision of the Planning Code;

(c) Involves a matter that is likely to lead to litigation;

(d) Raises novel issues of law.

The services of the City Attorney's Office in advising and representing the Planning Department, including the Zoning Administrator, and Building Department in matters before the Board of Appeals shall be funded by those departments and not chargeable to the Board of Appeals.

(4) The Zoning Administrator, Planning Department staff, and the Building Department staff member assigned to the Board of Appeals shall ensure that Section 10 of the Business and Tax Regulations Code is complied with such that the complete record from the department whose decision is being appealed from shall be made available to each Commissioner at least one week before the hearing on the appeal. Any staff report that was prepared below shall be included in the packet for each hearing.

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SEC. 12. MAILING NOTICE OF HEARING.

Notices of hearing appeals shall be sent by the Secretary of the Board by United States mail to the appellant and all other parties interested as shown by the record of the Board at such time before the hearing as the rules of the Board may prescribe, and the certificate of the Secretary of mailing said notices shall be evidence thereof. In addition, notice of the hearing shall be sent to all owners and, to the extent practical, occupants of properties within 150 feet of the property that is the subject of the appeal in the same Assessor’s Block and on the block face across from the subject property. When the subject property is a corner lot, notice shall further include all property on both block face across from the subject property, and the corner property diagonally across the street. The latest City-wide Assessor’s roll for names and addresses of owners shall be used for said notice.

SEC. 13. FILING REQUEST FOR NOTICE OF HEARING.

Any person, firm, corporation, association or City and County department, board, commission or City and County official may file with the secretary of the Board of Appeals a request for notice of hearing of the appeal, and such person, firm, corporation, association, City and County department, board, commission or City and County official shall be added to the list of parties and thereafter receive notice of all proceedings before the Board as herein prescribed.

SEC. 14. HEARING AND DECISION.

The Board of Appeals shall hear the applicant, the permit holder or other interested parties, as well as a representative of the department from whose action the appeal is taken. After said hearing and such further investigations as the Board may deem necessary, but not later than 60 days or a reasonable time after the filing with it of the first appeal, the Board may concur in the action of the department authorized to issue, transfer or revoke the permit, or may overrule the action of said department and order that the permit be granted, restored, denied, or permitted to be transferred, as the case may be.

Any immediately adjacent property owner who requested discretionary review of a permit by the Planning Commission and prevailed, in whole or in part, shall have the status of a party under this Article or the Board's rules in any appeal of the permit to the Board of Appeals by the project sponsor. Status of a party includes, but is not limited to, the right to any notices provided to parties, the right to receive service of papers filed by other parties to the appeal, equal time for an oral presentation including rebuttal time, service of the Board's decision, and the right to request a rehearing; provided, however, that if there is more than one such adjacent property owner, the Board of Appeals may, at its discretion, limit the time for oral presentation to three minutes for each adjacent property owner and a combined total of three minutes rebuttal for all adjacent property owners.

SEC. 15. SEAL.

A form of seal shall be adopted by the Board, which shall be impressed upon all orders and decisions and certified copies thereof.

SEC. 16. REHEARINGS.
Rehearings may be had only upon motion of a member of the Board and upon the vote of at least four members thereof, or if a vacancy exists, by a vote of three members.

SEC. 26. FACTS TO BE CONSIDERED BY DEPARTMENTS.

(a) Subject to subsection (b), in the granting or denying of any permit, or the revoking or the refusing to revoke any permit, the granting or revoking power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking or refusing to revoke a permit, may exercise its sound discretion as to whether said permit should be granted, transferred, denied, or revoked.

(b) In the granting or denying of any permit, or the revoking or the refusing to revoke any permit with respect to a "dwelling" in which "protected class members" are likely to reside (each as defined in Administrative Code Chapter 87), the granting or revoking power shall comply with the requirements of San Francisco Administrative Code Chapter 87 which requires, among other things, that the granting or revoking power not base any decision regarding the development of "dwellings" in which "protected class" members are likely to reside on information which may be discriminatory to any member of a "protected class" (As all such terms are defined in San Francisco Administrative Code Chapter 87).

(c) A department authorized to issue or transfer permits shall not issue or transfer a permit to any person who does not have a current business tax registration certificate when such person is required to obtain a business tax registration certificate pursuant to Section 1003 of Part III of the San Francisco Municipal Code.

(d) Notwithstanding Subsection (a) of this Section, the provisions of Article 15.1 (Entertainment Regulations Permit and License Provisions) and Article 15.2 (Entertainment Regulations for Extended-Hours Premises) of the Police Code shall govern actions taken on the granting, denial, amendment, suspension, and revocation of permits regulated under those Articles, not the standards set forth in Subsection (a).

(e) Notwithstanding subsection (a), the provisions of Planning Code Section 343 shall govern actions taken on the granting, denial, amendment, suspension, and revocation of permits regulated under that Section 343, not the standards set forth in subsection (a) of this Section 26. This subsection (e) shall become operative upon receipt of preliminary approval of Planning Code Section 343 by the California Department of Housing and Community Development under California Government Code Section 66202. This subsection shall expire by the operation of law in accordance with the provisions of Planning Code Section 343(k). Upon its expiration, the City Attorney shall cause this subsection to be removed from the Business and Tax Regulations Code.

(f) Notwithstanding subsection (a), the provisions of Planning Code Section 207, subsection (c)(6), shall govern actions taken on the granting, denial, amendment, suspension, and revocation of permits regulated under that subsection (c)(6), not the standards set forth in subsection (a) of this Section 26.
SEC. 30. APPEALS TO BOARD OF APPEALS.

On the issuance, denial or revocation of any permit, any applicant for a permit who is denied such permit, or any permittee whose permit is ordered revoked, or any person who deems that his interest or property, or that the general public interest will be adversely affected as the result of operations authorized by or under any permit granted or issued, or the transfer thereof, may appeal to the Board of Appeals. Such appeal shall be in writing, and except for variances, shall be filed with the Board of Appeals not later than 15 days after the action of the department from which the appeal is taken. An appeal from the decision on a variance shall be filed with the Board of Appeals not later than 10 days after the action of the Zoning Administrator.

The form and notice of said appeal, and the procedure thereon, shall be as provided by ordinance, and when not so provided then in such form as is provided by the Board of Appeals.

SEC. 31. APPLICATIONS BARRED FOR ONE YEAR.

Whenever any person, firm or corporation shall make application for any permit, pursuant to the provisions of this Article, and said permit shall be denied by any officer, board, department or commission having jurisdiction so to do, and no appeal from the denial of said permit shall be taken, as provided in this Article, or when any appeal shall be taken to the Board of Appeals from any action or order of any officer, board, department or commission granting or denying any permit in connection with which appeal to the Board of Appeals is provided for and said Board of Appeals shall, in the instance where said permit has been granted, overrule, and in the instance where such permit had been denied, concur in, the judgment or order of said officer, board, department or commission, said application for said permit, nor for a like permit covering the same location, shall not be renewed nor shall the same be heard by the officer, board, department or commission to whom or to which the original application was made until the expiration of one year from the date of the action on said original application by said officer, board, department or commission and there shall be no appeal to said Board of Appeals for failure or refusal to hear any such application within said one-year period, provided that when any permit is denied by reason of definite existing conditions which prevent the granting of said permit, and said conditions are removed or remedied, the one-year's prohibition against reapplication will not apply.