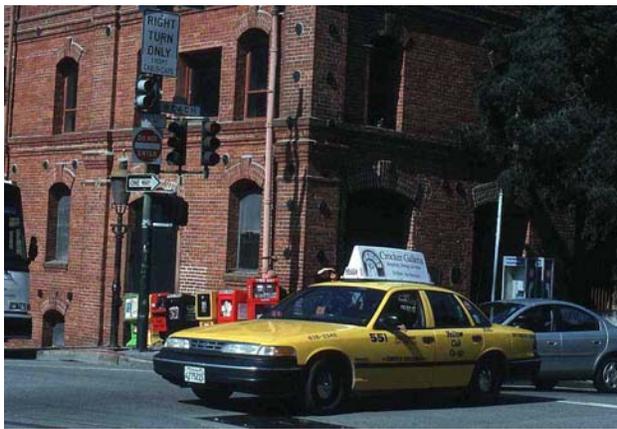
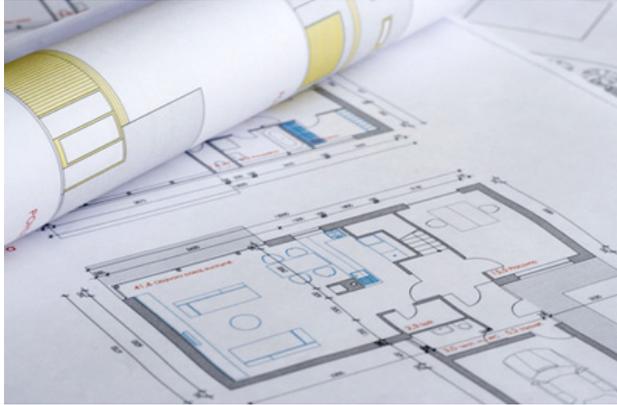


CITY AND COUNTY OF SAN FRANCISCO

BOARD OF APPEALS



ANNUAL REPORT

July 1, 2010 – June 30, 2011



HIGHLIGHTS OF FISCAL YEAR 2010-11

CASES HEARD

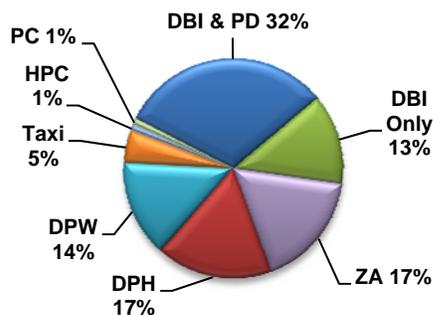
The Board held 30 regular meetings at which 151 matters were heard:

- 105 Appeals
- 29 Jurisdiction Requests
- 17 Rehearing Requests

SUBJECT MATTER

Nearly two-thirds (64%) of the appeals heard by the Board were of land use determinations, made by the Department of Building Inspection (DBI), Planning Department (PD), Zoning Administrator (ZA), Planning Commission (PC) and Historic Preservation Commission (HPC). The Board also heard appeals of determinations made by the Department of Public Health (DPH), Department of Public Works (DPW), and the Taxi Division of the Municipal Transportation Authority.

The percentage breakdown by the entity issuing the underlying determination was:



Appeals Heard by Issuing Entity

BOARD ACTION

During the year, the Board upheld half of the appeals heard, overturned or modified forty percent, and the rest were pending (7%), dismissed due to a lack of jurisdiction (1%), continued to the Call of the Chair, or withdrawn (1%).

APPEAL VOLUME

For the third year in a row, the Board's appeal volume was lower than the norm, down 32% when compared to the average number of appeals filed annually over the past ten years.

BUDGET

At the outset of the year, the Board's surcharge rates were increased to address continued projections of suppressed City-wide permit application volume. Despite this rate increase, revenue from surcharges was lower than projected by 7%. Fees paid when a new appeal is filed generated revenue in excess of projections by 15%. However, since proceeds from these fees represent only 5% of the department's budget, the surplus in that revenue stream didn't outpace the shortfall in surcharge revenue and the Board ended the year with a 6% revenue deficit. To keep the budget balanced, expenditures were reduced by a variety of means, ultimately allowing the Board to end the year with a surplus of almost \$40,000.

RULES REVISION

The Board successfully undertook an effort to update and fine-tune its rules of procedure, bringing more efficiency and clarity to its operating protocols.

ELECTION OF OFFICERS

Commissioner Tanya Peterson served as President and Commissioner Kendall Goh as Vice President for the first half of the fiscal year. In January 2011, Vice President Goh was elected President and Commissioner Michael Garcia was elected Vice President.



REPORT DETAIL

MISSION

Created under the San Francisco Charter of 1932, the Board of Appeals is a quasi-judicial body that provides the public with a final administrative review process for a wide range of City determinations. These determinations involve the granting, denial, suspension, revocation or modification 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 the last step in the City's review process.

JURISDICTION

The Board's jurisdiction is derived from San Francisco Charter Section 4.106, portions of the San Francisco Business and Tax Regulations Code¹ and other City ordinances. Specific rights of appeal to the Board are also set forth in the Planning, Building, Plumbing, Electrical, 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 or result from discretionary review decisions of the Planning Commission
- Actions by the Zoning Administrator (ZA), including variance decisions, Letters of Determination, Stop Work Order Requests and Notices of Violation and Penalty
- Taxi-related permits issued by the Municipal Transportation Authority
- Tree planting and removal permits issued by the Department of Public Works (DPW)
- Tobacco sales permits issued by the Department of Public Health (DPH)

Less common but routinely heard by the Board are appeals related to:

- DPH-issued permits for massage, tattoo and body piercing establishments
- DPW-issued permits for minor sidewalk encroachments and wireless equipment
- DBI-issued electrical permits for the installation of solar modules
- Certificates of Appropriateness issued by the Historic Preservation Commission

This year, the Board heard its first appeal of a Historic Preservation Commission decision on a Certificate of Appropriateness.² These Certificates authorize a specific scope of work to be performed on designated City landmarks and buildings within historic districts.

¹ See Article 1, Section 8, et seq.

² Recent legislation allows some appeals of Certificates of Appropriateness to be heard by the Board of Appeals. Certificates of Appropriateness for projects subject to Board of Supervisor approval are appealable to the Board of Supervisors. See Planning Code Section 1006.8(b).

Pursuant to the Charter, the jurisdiction of the Board of Appeals excludes permits issued by the Port Commission or the Recreation and Park Department or Commission, as well as appeals of building or demolition permits issued pursuant to a Conditional Use Authorization granted by the Planning Commission.³ The Board has no authority to make amendments to the Planning Code or the Zoning Map and also does not hear appeals of criminal or domestic relations matters, or other areas regulated by the State or federal law.

BOARD MEMBERSHIP

The Board of Appeals 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. All appointments are subject to the approval (by majority vote) of the full Board of Supervisors. Board officers are elected for one-year terms at the first regular Board meeting held after January 15 each year.⁴ Current Board membership is as follows:

Commissioner	Appointing Authority	Dates of Service
Kendall Goh President , January 2011 – Present Vice President, January 2010 – January 2011	Board of Supervisors	June 10, 2008 to July 1, 2012
Michael Garcia⁵ Vice President , January 2011 - Present President, January 2008 – January 2009 Vice President, January 2007 – January 2008	Mayor	March 22, 2005 to July 1, 2014
Frank Fung President, January 2009 – January 2010 Vice President, March 2008 – January 2009	Mayor	October 19, 2004 to July 1, 2012 January 30, 1986 to June 8, 1988
Chris Hwang	Board of Supervisors	May 12, 2010 to July 1, 2014
Tanya Peterson President, January 2010 – January 2011 Vice President, January 2009 – January 2010	Mayor	February 26, 2008 to July 1, 2012

MEETINGS OF THE BOARD

During fiscal year 2010-2011, the Board held 30 meetings for a total of 122 hours. The Board had a 90% attendance record, with one member absent at half of the meetings. Regular meetings are held on Wednesday nights, starting at 5:00 p.m. in City Hall.⁶

³ 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.

⁴ Rules of the Board of Appeals, Article I, Section 1.

⁵ Commissioner Garcia was reappointed by Mayor Gavin Newsom on September 1, 2010.

⁶ An annual meeting schedule is developed prior to the start of each calendar year and is available at the Board office and on the web at: <http://www.sfgov3.org/index.aspx?page=775>.

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

- Adopted revisions to the Rules of the Board of Appeals (December 15, 2010)
- Elected officers (January 19, 2011)
- Adopted the Board's fiscal year 2010-2011 budget (February 16, 2011)
- Heard an update on new rules regulating the City's taxi industry, presented by Christiane Hayashi, Deputy Director of Taxis at the Municipal Transportation Authority, (October 13, 2010)

Meetings of the Board are open to the public except as otherwise legally authorized and are conducted in accordance with the Rules of the Board of Appeals. Typically, the appellant will address the Board first, then the permit holder, the respondent department(s) and members of the public. An opportunity for rebuttal is given to the parties. Board meetings are broadcast live on San Francisco's Government Television Station (SFGTV), cable television channels 26 and 78, and may also be viewed by computer, live and on-demand at: http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6. Closed captioning is provided for these broadcasts as well as in the City Hall hearing room during Board meetings. Meeting agenda and approved minutes are posted on the Board's website at: www.sfgov.org/boa.

RULES REVISION

In an effort to update and streamline the Board's operating protocols, a review of the Rules of the Board of Appeals was undertaken. The revisions made by the Board, which took effect in December 2010, include eliminating the reply brief previously submitted by the appellant, reducing to one page the submittal allowed at the time an appeal is filed, and specifying how submittals are to be treated when they are late, exceed the page limit, or are inconsistent with the Board's formatting requirements. The Board also added new language articulating its due process requirements, giving guidance to members of the public who may seek to communicate with a Board member (orally or in writing) outside of the public process and advising that any such communication must be made part of the public record. Also, language was added to clarify the Board's policy that agents and other representatives of a party should speak during that party's allotted time and not during public comment, and articulating parameters on who is considered by the Board to be a representative.

APPEAL PROCESS

Appeals must be filed within the legally prescribed appeal period, which varies depending upon the underlying determination being appealed. For most matters, the appeal period is fifteen days from the date the determination is issued, but other appeal periods may apply (for example, variance decisions must be appealed within ten days, and appeals of Certificates of Appropriateness must be filed within thirty days). On occasion, and based on the vote of a supermajority of Board members, when a City error has caused a would-be appellant to miss the appeal period, the Board may allow an appeal to be filed late.

When 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 briefs, letters and other evidence in support of their position on an appeal. As a way of notifying the public about pending appeals, the Board mails out

postcards to all property owners and occupants within a 150 feet radius of any property that is the subject of an appeal.⁷

After reviewing the written file, Board members conduct a public hearing on the appeal at which they consider the testimony of the parties (including the issuing department) and from interested neighbors and other members of the public. After deliberation, the Board may vote to uphold or overrule the underlying departmental determination, or may impose conditions on the determination.⁸

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

- Modifications to building plans, for example:
 - Setting back a deck or other structure so it is further from a protesting neighbor's property line
 - Obscuring glass in neighbor-facing windows
 - Establishing 'good neighbor' policies such as limiting when construction may take place and how construction-related complaints will be handled
- Qualifications made to Zoning Administrator determinations, for example:
 - Requiring the filing of a Notice of Special Restrictions, such as to specify a limit on the number of dwelling units at a property
 - Limiting the type, location or hours of operation of a commercial use
- Changes to the length of a suspension, such as on taxi driving or tobacco sales permits
- Reductions in penalties imposed for performing work without or in excess of a permit
- Specifying the number or size of replacement trees when permitting trees to be removed

The Charter⁹ requires that a supermajority of Board members must agree in order to overturn or place conditions on a department's decision. When fully seated, this means four out of five votes are needed. If there is a vacancy on the Board, three votes are needed. A supermajority also is needed to grant a rehearing request or a request for late jurisdiction.

APPEAL EXPERIENCE

During the year, 201 new cases were filed with the Board: 155 appeals, 17 rehearing requests and 29 requests for late jurisdiction. The Board heard 151 cases: 128 filed during the year and an additional 23 cases that had been filed previously. The 151 matters heard consisted of 105 appeals, 29 requests for late jurisdiction and 17 rehearing requests. The remaining fifty cases filed during the year were either withdrawn by the appellant, rejected by the Board¹⁰ or were filed late enough in the year that they will be heard in the subsequent year.

⁷ See San Francisco Business and Tax Regulations Code Article 1, §12.

⁸ On occasion, the Board will decide to continue a matter, 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 the Board's "Call of the Chair" calendar) 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.

⁹ See San Francisco Charter Section 4.106(d).

¹⁰ Cases may be rejected after filing when further research determines that the Board lacks jurisdiction over the subject matter being appealed, for instance, where a Conditional Use Authorization was issued for a project related to a permit.

Geographic Distribution

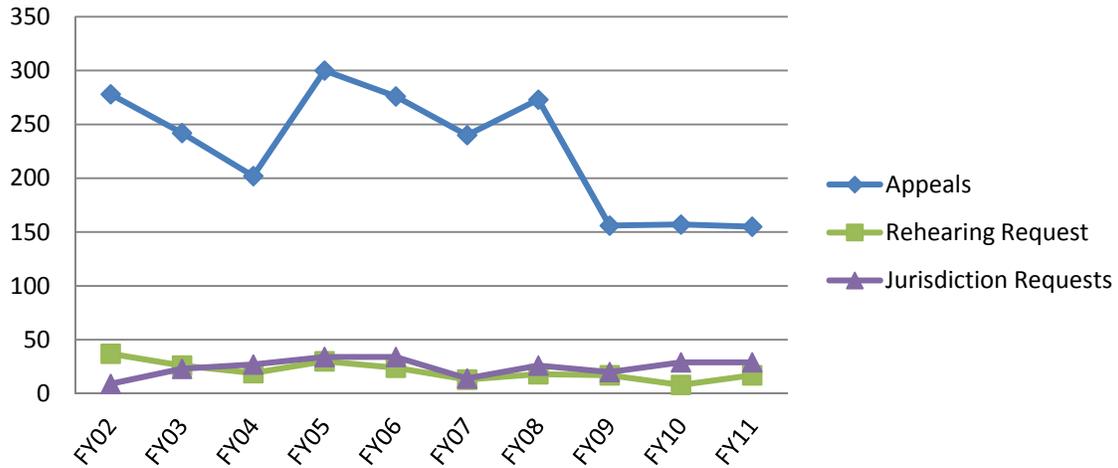
As depicted on the map below, the Board heard appeals about properties located in a wide range of City neighborhoods. Properties in the Southern and Western portions of the City generated the fewest appeals, with the Northeast quadrant seeing the highest concentration. This year, the Board heard one appeal associated with a property located on Treasure Island, stemming from the suspension of a convenience store's tobacco sales permit.



Volume

Over the past ten years, the Board received an average of 228 appeals annually. As seen in the graph below, while the number of rehearing and jurisdiction requests has remained relatively constant, the 155 appeals filed this year represent a 32% decline from the norm, clearly reflective of the economic downturn currently taking place.

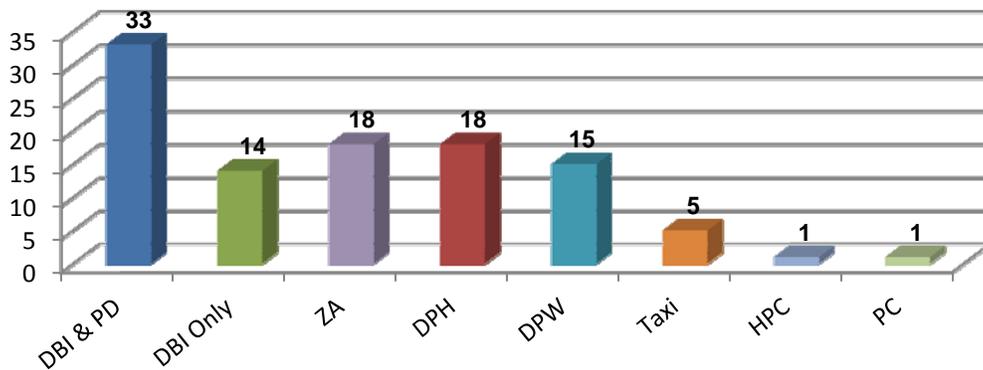
Number of Cases Filed with the Board Over Time



Subject Matter

Nearly two-thirds (64%) of the appeals heard during fiscal year 2010-11 were of land use determinations. These determinations were made by the Planning Department, Department of Building Inspection, Zoning Administrator, Historic Preservation Commission and/or Planning Commission. Department of Public Health determinations comprise the next largest group of appeals (17%), followed by determinations of the Department of Public Works (14%) and Taxi-related determinations made by the Municipal Transportation Authority (5%). The chart below illustrates the number of appeals heard by the Board, identified by the department, Commission or other entity¹¹ issuing the underlying determination:

Number of Appeals Heard by Issuing Entity



Department of Building Inspection and Planning Department

One-third (33) of the 101 appeals heard during the year stemmed from determinations made by the Department of Building Inspection (DBI) that also involved Planning Department review. These appeals focused on both Planning Code and Building Code issues, and include:

¹¹ DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; DPH = Department of Public Health; DPW = Department of Public Works; Taxi = Municipal Transportation Authority Division of Taxis and Accessible Services; HPC = Historic Preservation Commission; PC = Planning Commission.

- Thirty appeals protesting the issuance of a building permit
 - Protest appeals are often filed by neighbors concerned that proposed construction will infringe upon the enjoyment of their property. For instance, when a new deck may create sightlines into a neighbor's windows, or when a rear yard addition may obstruct the mid-block open space.
- Three appeals of denied building permits
 - Property owners appeal permit denials seeking permission for a project that has been disapproved by DBI and/or Planning. These disapprovals are often made by DBI at the request of the Planning Department, based on a determination that the proposed project is inconsistent with provisions of the Planning Code or Residential Design Standards.¹²

The Board upheld 52% (17) of these determinations and overruled 39% (13), placing conditions on the underlying permits in eleven of these cases. Of the remaining three cases (9%), one appeal was pending at the close of the year, one was withdrawn and one was administratively dismissed by the Board after the underlying environmental determination was rescinded causing the permit to become moot and the Board to lose jurisdiction over it.

Department of Building Inspection Only

Fourteen appeals were heard of determinations made solely by the Department of Building Inspection:

- Eight appeals protesting the issuance of a building permit
- Six appeals protesting the imposition of penalties
 - Penalty appeals typically are filed by property owners who have been assessed fines for performing work without a permit or for exceeding the scope of a permit. In some cases, the Board reduces penalties where it finds that the property was purchased after the unpermitted work was performed or upon other extenuating circumstances.

The Board upheld 43% (6) of the DBI determinations and overruled 43% (6), imposing conditions on five of the overruled matters, all of which involved the reduction of penalties. Of the remaining 14% (2) one appeal was pending at the close of the year and the other was continued to the Board's Call of the Chair calendar.

Zoning Administrator

The Board heard eighteen appeals of Zoning Administrator (ZA) determinations:

- Eight appeals of Variance decisions, six of which protested variances that were granted and two were appeals of variances that were denied
- Five appeals of Notices of Violation and Penalties, dealing with issues such as alleged construction beyond the scope of a permit or the unauthorized use or expansion of commercial property
- Three appeals of Requests for Release of Suspension, all of which dealt with construction on commercial property with historic elements

¹² The Residential Design Standards (formerly known as the Residential Design Guidelines) promote residential building design that protects neighborhood character, preserves historic resources and promotes the goal of environmental sustainability.

- One appeal protesting a Letter of Determination (LOD)
 - LODs are written interpretations of how certain sections of the Planning Code should be applied to specific factual situations. This appeal addressed the construction of a roof deck and related structures where the subject property exceeded the height limit set for the relevant zoning district.
- One appeal of a Request for Revocation, related to a permit to install a painted wall general advertising sign that was issued by the Department of Building Inspection over-the-counter, without Planning Department review

The Board upheld the determination of the Zoning Administrator in eleven cases (61%), overruled the ZA five times (28%) and two cases (11%) remained pending at the close of the fiscal year. Conditions were placed on all five of the overruled determinations.

Department of Public Health

Eighteen appeals were of determinations made by the Department of Public Health (DPH), all but two of which related to the suspension of tobacco sales permits where the permit holder was charged with selling tobacco to a minor. These suspensions resulted from an ongoing operation conducted by DPH in conjunction with the San Francisco Police Department, using underage decoys attempting to buy cigarettes. The length of the DPH-imposed suspension was upheld in six cases and reduced in ten cases. The two remaining DPH-related appeals were of revocations of permits to operate a massage establishment and a tattoo and body piercing parlor. Both revocations were upheld.

Department of Public Works

Fifteen appeals were heard relating to determinations made by the Department of Public Works (DPW). Ten appeals were of tree removal permits, two were of wireless site permits, and the remaining three appeals were of a minor sidewalk encroachment permit, a street occupancy permit and a permit for sidewalk tables and chairs. The Board upheld the DPW determination in half of the fourteen cases decided, and overruled half, with conditions imposed in all of the overruled cases. The one remaining case was pending at the close of the fiscal year.

Municipal Transportation Authority – Division of Taxis and Accessible Services

The Board heard five taxi-related appeals, four of which were of the Municipal Transportation Authority's (MTA) decision to deny the appellant a medallion or ramp medallion. The fifth appeal was of the revocation of both a medallion and color scheme¹³ permit. The Board upheld the MTA in three cases, overruled one and one appeal was pending at year's end.

Historic Preservation Commission

The Board heard its first appeal of a decision by the Historic Preservation Commission during the year. The appeal was of a denial of a Certificate of Appropriateness sought for the reconstruction of a landmarked carriage house located behind a landmarked home originally constructed in 1885. The HPC's denial was based on an assessment that the proposal would not appropriately reflect the historicism of the main house. The case was not decided during the year, but continued to allow the parties more time to work with Planning Department staff to come up with a mutually agreeable design.¹⁴

¹³ A color scheme permit allows the permit holder to operate a taxi company.

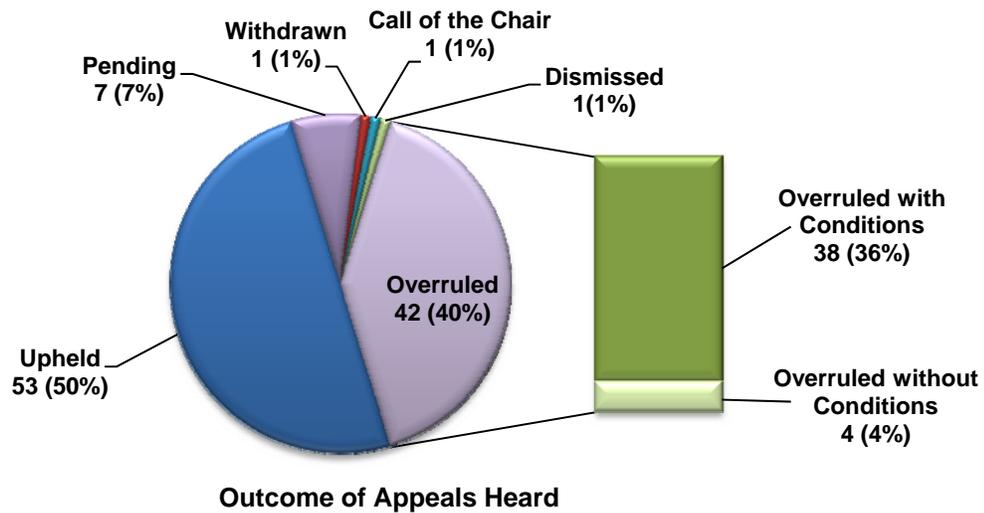
¹⁴ With no compromise reached, the case returned to the Board on July 27, 2011, and the Board upheld the HPC denial.

Planning Commission

The one Planning Commission decision appealed to the Board was a Motion that allowed a reduced setback in a proposed large office building at 350 Mission Street. Owners of an adjoining office building objected to the encroachment and the Board upheld the Planning Commission's decision.

Action Taken

Overall, the Board upheld the underlying departmental decision in 53 of the appeals heard and overruled the department in 42 cases. Conditions were imposed by the Board in 38 of the departmental determinations it overruled. One case was withdrawn, one sent to the Call of the Chair calendar, and one dismissed due to a lack of jurisdiction. The remaining seven cases were pending at the close of the fiscal year.



Other Matters Heard

In addition to appeals, the Board routinely considers Rehearing Requests and Jurisdiction Requests.

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 decision.¹⁵ Pursuant to the Board's Rules, upon the vote of a supermajority of Board members, a motion for rehearing may be granted based on a showing that "new or different material facts or circumstances have arisen" since the Board's consideration of the matter that, if known at the time, "could have affected the outcome of the original hearing."¹⁶ The Board considered seventeen rehearing requests during the fiscal year; two were granted and the remaining fifteen were denied.

Jurisdiction Requests

The Board may allow an appeal to be filed after the relevant appeal period has expired where the reason for the failure to file on time is due to some error on the part of the

¹⁵ See, S. F. Business and Tax Regulations Code, Article 1, §16; and Rules of the Board of Appeals, Article V.9.

¹⁶ Rules of the Board of Appeals, Article V.9(b).

City.¹⁷ For example, if the City didn't issue a required notice to neighbors of a permit application or issuance, or the notice did not accurately describe what is being permitted, allowing late jurisdiction might be considered. Again, a supermajority of votes is needed for such a request to be granted. Of the twenty-nine Jurisdiction Requests heard during the year, eighteen (62%) were denied by the Board and six (21%) were granted. Four requests (14%) were withdrawn and one (3%) was pending at the close of the fiscal year. By granting a Jurisdiction Request, the Board provides the requestor with a new five-day appeal period within which to file an appeal.

Call of the Chair

During the year, the Board began an effort to reduce the number of matters pending on its Call of the Chair calendar. The Call of the Chair calendar is used to place cases on hold because some factor suggests that the matter is best decided at a later time. Typical reasons include allowing related litigation to resolve, providing time for the parties to seek other necessary approvals or review from the City, and when the parties ask for an extended stay of the proceedings in order to attempt a negotiated resolution of the underlying dispute.

Of the 38 cases sitting on the Board's Call of the Chair calendar, some dated back as much as thirteen years. Eleven of the pending cases were resolved as of the close of the fiscal year. Of the 27 remaining cases, twelve are pending due to ongoing litigation, six are awaiting Planning Department action, five are awaiting action by the appellant (e.g., to decide what changes to make to a project) and four are awaiting changed circumstances (e.g., for a tenant to move out of a unit or for a temporarily disabled taxi medallion applicant to be able to drive more).

LITIGATION

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

- **Clear Channel Outdoor, Inc. v. Board of Appeals of the City & 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, revoked Clear Channel's permit and authorized a revision of the building permit to allow the property owner to reinstall a billboard. The City won this case on demurrer at the trial court. On February 25, 2011, the Court of Appeal reversed the trial court, in part, concluding that Clear Channel had standing to challenge the Board's decision to overturn its permit, but not its decision to grant the property owner the right to reinstall and maintain a sign on their property. Clear Channel has not yet indicated whether it intends to pursue this ruling further.

- **50 Beale Street LLC v. City & County of San Francisco, et. al.**, challenging the Board's decision on April 20, 2011 to uphold a Planning Commission Motion allowing a reduced setback on a proposed 24-story office building at 350 Mission Street. A hearing in Superior Court has not yet been scheduled.

¹⁷ See, Franklin v. Steele, 131 Cal. App. 3d 558 (1982); Rules of the Board of Appeals, Article V.10.

- **Robert Michael Friedman v. San Francisco Taxi Commission, et. al.**, challenging the Board's decision on July 23, 2008 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. A hearing in Superior Court has not yet been scheduled.
- **Friends of the Landmark Filbert Street Cottages, et. al., v. City & County of San Francisco, et. al.**, challenging, among other matters, the Board's denial on March 16, 2011 of late jurisdiction on three permits for a project that was given Conditional Use Authorization by the Planning Commission. The underlying writ petition has not been briefed or heard.
- **Wes Hollis v. San Francisco Municipal Transportation Authority, et. al.**, challenging the Board's decision on August 18, 2010 to revoke Mr. Hollis' color scheme permit and to suspend his taxi medallion for one year. The MTA had revoked both entitlements and the Board overturned the MTA with respect to the medallion, suspending it instead. On October 8, 2010, the Court granted Mr. Hollis' request to stay the Board's decision while his legal claims are pending. The underlying writ petition has not yet been briefed or heard.
- **NextG Networks of California, Inc. v. City & County of San Francisco, et. al.**, challenging the Board's decision on April 20, 2011 to revoke a wireless site permit issued by the Department of Public Works to a telecommunications services provider. On July 18, 2011, the City filed a motion to dismiss the appeal along with its opposition to NextG's petition to enjoin the City from removing the wireless facility at issue pending resolution of the underlying lawsuit. On September 29, 2011, the Court of Appeal granted NextG Networks' request for a stay. Briefing and a hearing on the merits have not yet been scheduled.
- **Nob Hill Association, et. al., v. City & County of San Francisco, et. al.**, challenging the Board's decision on January 13, 2010 that effectively affirmed a Letter of Determination issued by the Zoning Administrator stating that the existing entertainment-related use of the California Masonic Memorial Temple is a lawful non-conforming use and that the operators of the Temple may apply for a conditional use authorization which could intensify the entertainment-related use of the property. On June 29, 2011, the Superior Court issued a decision overturning the Board's decision that the proposed renovation of the Masonic Memorial Temple could be approved through conditional use authorization. The City and Masonic Temple have appealed; a briefing and hearing schedule has not yet been established.
- **San Francisco Architectural Heritage v. City & County of San Francisco, et. al.**, challenging the Board's decision on April 15, 2010 to uphold the issuance of permits that allow the demolition of the building located at 1450 Franklin Street and the construction of a new 13-story mixed-use project at that site. This project was part of a Redevelopment Agency Plan that expired shortly before the Board heard this appeal. A hearing in Superior Court has not yet been scheduled.
- **Greg Schoepp, dba Bay Area Compassion Health Care Center v. City & County of San Francisco, et. al.**, challenging the Board's decision on February 9, 2011 to deny a building alteration permit for the construction of a medical cannabis dispensary. A hearing in Superior Court has not yet been scheduled.

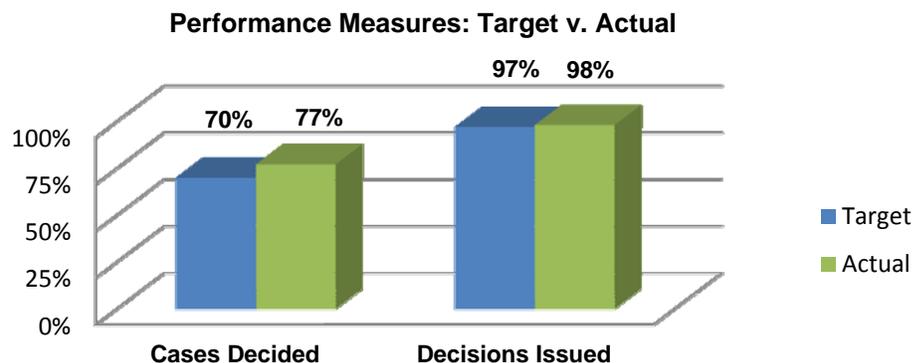
- **350 Beach LLC v. City & County of San Francisco, et. al.**, challenging the Board's decision on March 3, 2010 to uphold a Zoning Administrator's Letter of Determination regarding a Notice of Special Restrictions recorded against the petitioner's property that requires the provision of parking for the benefit of a neighboring property. On August 23, 2011, the Superior Court denied the writ petition finding that the Board did not abuse its discretion and relied on substantial evidence when it upheld the Zoning Administrator's decision. Issuance of the final Superior Court order is pending, which will be followed by a sixty day appeal period.
- **Tu Lam v. San Francisco Municipal Transportation Authority, et. al.**, challenging the Board's decision on May 29, 2009 to revoke Mr. Lam's taxi driving permit and taxi medallion. On December 7, 2009, the Court denied the petitioner's request for a stay of the revocation of his driving permit and medallion while his legal claims are pending. A hearing on the merits of the underlying writ petition has not yet been scheduled.

PERFORMANCE MEASURES

All City departments are required to report on specific statistical measures as a way of assessing and reporting on performance. The two measures unique to the work of the Board of Appeals look at how quickly the Board decides cases, and the timeliness with which Board staff issues written decisions.

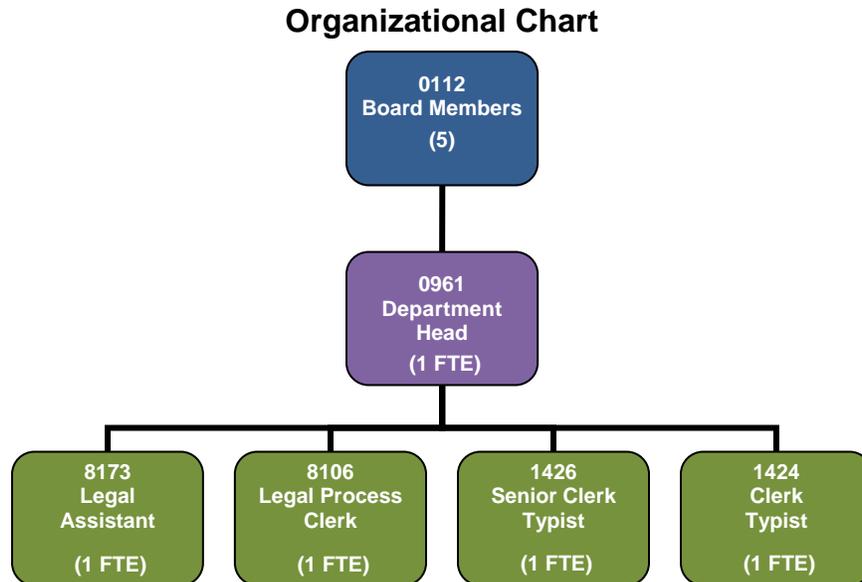
The speed at which the Board decides cases is measured by looking at how often cases are decided within 75 days of filing. Before the start of the year, a seventy percent target was set for this measure, which the Board exceeded by seven percent. Most often, when cases are decided beyond the 75 day window, it is because of continuances requested by the parties to allow time for settlement negotiations or further case preparation. On occasion, Board decisions are delayed when additional evidence is needed in order for the Board to make a fully informed decision, for instance, when a permit holder fails to provide architectural plans and the Board cannot accurately assess the impact of a project without them.

The Board's second performance measure looks at how often written decisions are released within 15 days of final Board action. A 97% target was set for this measure, which the Board exceeded by one percent; with one decision released beyond the 15 day timeframe. This decision was for an appeal of a Variance that had also been appealed by a second party. This second party filed a rehearing request, which had to be considered before both written decisions could be released, since any decision in one case would impact the other.



BOARD STAFF

The work of the Board is supported by an Executive Director, Legal Assistant, two Clerk Typists and a Legal Process Clerk. The Legal Process Clerk position is new to the Board, filled at the start of the fiscal year after a vacant third Clerk Typist position was upgraded. Candidates for the Legal Process Clerk position are required to have administrative experience in a legal setting and familiarity with processing and managing the types of appeal-related documents frequently in use at the Board. Hiring from a pool of applicants with this experience strengthened the department's skill base in support of the law-oriented work of the Board. Depicted below is the Board's current organization structure:



BUDGET

Fiscal year 2010-11 presented the Board with its third consecutive year of budgetary challenges. As the national and local economies continued to struggle back to health, the Board's revenue streams continued to suffer.

The Board's budget is derived from two sources. The majority (95%) comes from surcharges placed on permit applications for those types of permits that have a recent history of being appealed to the Board.¹⁸ The remainder (5%) comes from fees paid by individuals, community groups and businesses at the time a new appeal is filed.¹⁹ Legislation allows for the adjustment of the surcharge rates each year, if necessary to provide sufficient income to cover the Board's actual operating expenses.²⁰ Having experienced a deficit in surcharge revenue in the prior two fiscal years, the surcharge rates were adjusted slightly upward at the start of fiscal year 2010-11, in an effort to

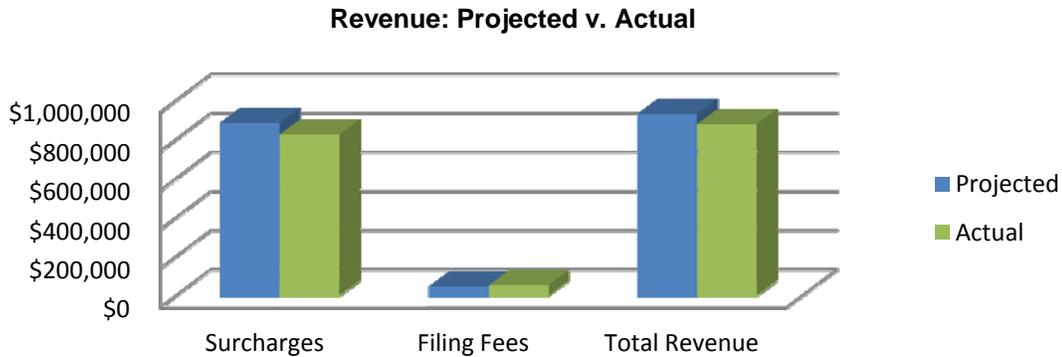
¹⁸ Surcharges are calculated by (1) determining the number of appeals filed in the prior fiscal year that originated with actions taken by each funding department, (2) applying the percentage of appeals for each department to the Board's budget to determine the dollar amount each funding department should contribute, and (3) dividing this dollar amount by the anticipated number of appealable permits issued by each funding department.

¹⁹ The Board's fees are found in S.F. Business and Tax Regulations Code Article 1, Section 8.

²⁰ San Francisco Administrative Code Chapter 10G.

mitigate another deficit. Filing fees were not increased, since they had been raised (some significantly) at the start of the prior fiscal year.

The Board's revenue budget of \$931,631 was based on projected surcharge revenue of \$885,594 and filing fee revenue of \$46,037. As depicted below, the Board ended the year having realized \$878,828 in total revenue (94% of projected); with \$825,953 from surcharges (reflecting a \$59,641 or 7% shortfall) and \$52,875 from filing fees (reflecting a \$6,838 or 15% surplus). On balance, this left the Board with a 6% revenue deficit of \$52,803.

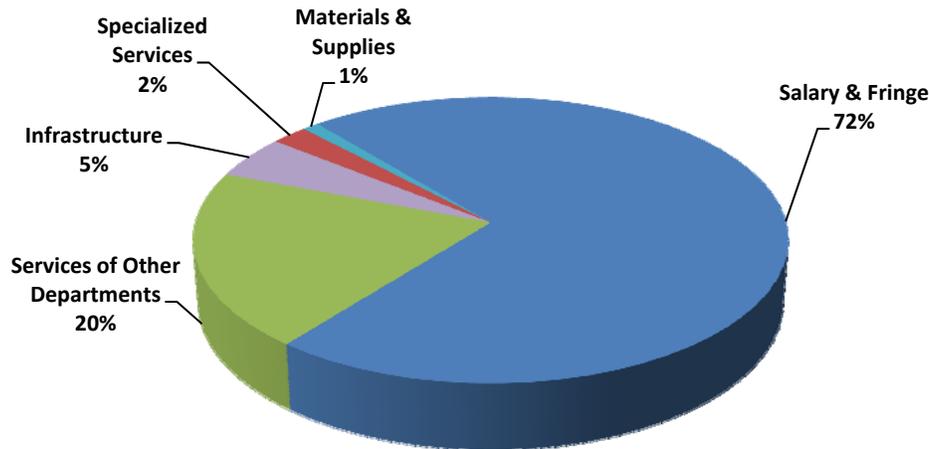


While still challenging, this deficit is smaller than those of the past two years, down from 9% (\$71,805) in fiscal year 2009-10 and from 16% (\$125,949) in 2008-09.

During the fiscal year, the Board's expenditure budget was increased to \$971,926 to account for additional fringe benefit costs, with no corresponding increase made on the revenue side. This imbalance, in conjunction with the surcharge revenue shortfalls experienced in prior years, and the City's slow economic recovery, prompted the Board to take steps throughout the year to limit its expenditures wherever possible. When a member of the Board's staff took a six month leave of absence, the position was left unfilled in order to recoup available salary savings. Since appeal volume continued to be lower than average, the Board was able to reduce spending on neighborhood notification services and other non-personnel expenses associated with the processing of appeals. Decreased appeal volume also allowed the Board to reduce its utilization of services provided by other City departments, including the services of the Department of Technology personnel involved with recording and broadcasting Board meetings, as well as the services of the City Attorney. Overall, expenses were reduced by 13.6% (\$132,921). Offset by the revenue shortfall described above and the increase in the department's expenditure budget, these savings allowed the Board to end the year with a surplus of \$39,823.

As the chart below reflects, nearly three-quarters (72% or \$602,808) of the Board's total expenditures of \$839,005 were used to pay for the salaries and fringe benefits of its employees. Twenty percent (\$168,280) paid for services provided by other City departments, including advice and assistance provided by the City Attorney, the broadcasting and closed captioning of Board meetings by the Department of Technology's SFGTV services, and support provided by the Department of Technology for the Board's computer systems, website and the construction of a database to track and report on Board cases. The expenditures for infrastructure costs such as rent, phones and the rental of a photocopier, represented 5% (\$40,705) of the Board's total

expenditures. Two percent (\$18,788) paid for specialized services such those of a contractor who researches and prepares the neighborhood notification labels, couriers delivering meeting materials to Board members and interpreters who attend Board meetings to assist limited-English speaking parties. Materials and supplies represented one percent (\$8,424) of the Board's expenditures, paying for commodities such as postage, paper and other office supplies.



Expenditures by Category

IMPROVEMENTS TO INFRASTRUCTURE

During fiscal year 2010-2011, the Board undertook a variety of initiatives to increase the accessibility of its services to the public and to improve its operating systems:

- The Board continued working with the Department of Technology on the development of an automated case tracking system that will streamline the process for filing appeals, improve the Board's ability to track and report on its cases, and provide a platform for conveying case-related information to other City departments and the public. Due to ongoing staffing reductions at the Department of Technology, this project's completion has been delayed; the system is now slated for implementation in early 2012.
- The Board improved accessibility to its services for limited-English speakers:
 - Working with the Office of Civic Engagement and Immigrant Affairs, the Board translated its key informational materials into Spanish and Chinese and made this information available on the Board's website and in its offices.
 - To assist limited-English speaking members of the public who come to the Board for assistance, the Board began contracting with Language Line Services to provide as-needed interpretation services in over 170 languages.
- Board member biographies were added to the department's website.

- The Board continued to create electronic versions of historical Board decisions for public access and inclusion in the Planning Department's Parcel Information Database.
- A critically out-of-date clerical workstation was upgraded.

LOOKING AHEAD

In the coming year, the Board will continue to make operational and programmatic improvements to enhance the Board's ability to provide the public with an efficient, fair and expeditious appeal review process. This includes:

- Implementing the case tracking database currently in development;
- Working with other City departments, in particular Planning and the Department of Building Inspection, to continue to develop electronic methods of sharing and tracking Board decisions to ensure ongoing enforcement;
- Continuing to review and update the department's resource materials to better assist the public with filing and responding to appeals and in understanding the appeal process.