

BOARD OF APPEALS ANNUAL REPORT



FY 2017

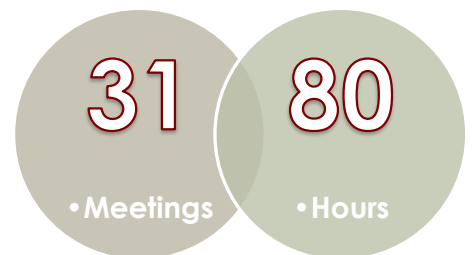
MISSION

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 & County of San Francisco

BOARD MEETINGS & MEMBERSHIP

- Open to the public & broadcast on the City's government television channel and website¹
- Held on 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 the briefs and other materials associated with the cases heard are posted on the Board's website.²

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.

Commissioner	Appointing Authority	Appointment Date	Term Expires
<i>President Darryl Honda</i>	Mayor	December 4, 2012	July 1, 2020
<i>Vice President Frank Fung³</i>	Mayor	October 19, 2004	July 1, 2020
<i>Ann Lazarus</i>	Mayor	July 25, 2012	July 1, 2018
<i>Rick Swig</i>	Board of Supervisors	April 2, 2015	July 1, 2020
<i>Bobbie Wilson</i>	Board of Supervisors	September 30, 2014	July 1, 2018

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

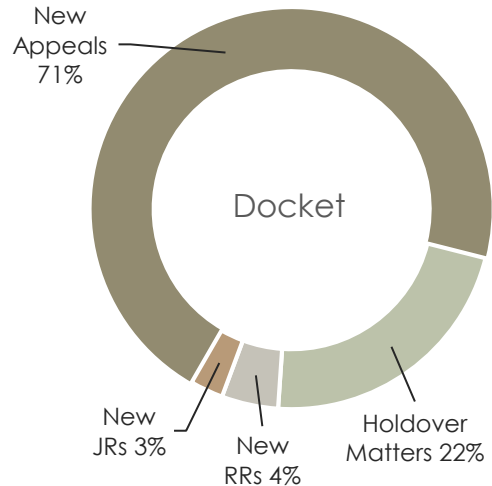
²www.sfgov.org/boa

³Commissioner Fung also served on the Board from January 1986 to June 1988.

APPEAL EXPERIENCE

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

- 204 new matters filed
 - 185 appeals
 - 12 rehearing requests (RRs)
 - 7 jurisdiction requests (JRs)
- 58 pending or continued matters carried forward from prior years (50 appeals; 8 rehearing requests)

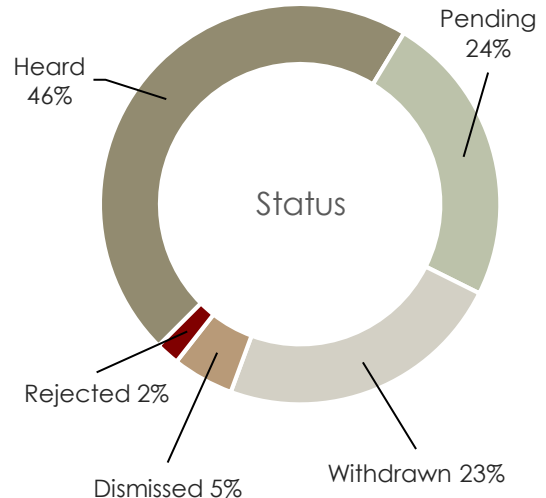


121 matters were heard by the Board:

- 99 appeals
- 5 rehearing requests
- 17 jurisdiction requests

141 matters were not heard:

- 62 pending appeals filed too late in the year to be heard this year
- 61 matters withdrawn by the appellant
- 13 appeals dismissed as moot when the underlying permit was canceled
- 5 appeals rejected due to a lack of subject matter jurisdiction⁴



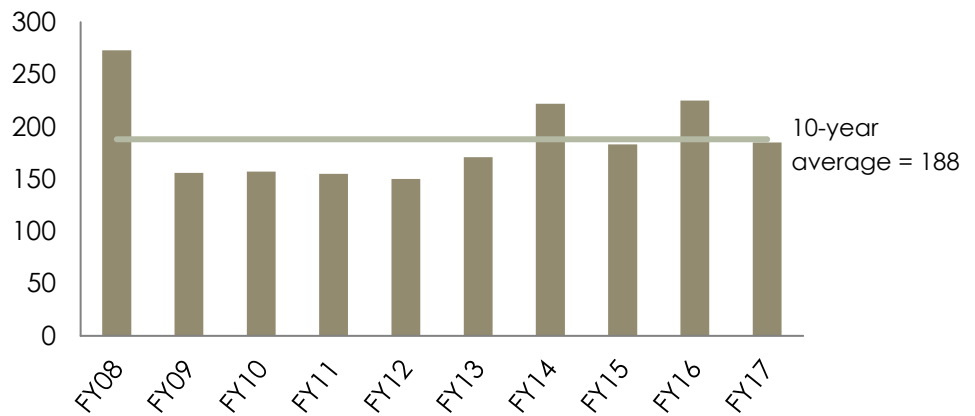
⁴For example, the Board lacks subject matter jurisdiction over building permits related to projects that have been given Conditional Use Authorization by the Planning Commission. (See, San Francisco Charter Section 4.106(b).)

Appeal Volume

185 new appeals

1.6% below the ten-year average of 188 appeals per year

17.7% below last year's appeal volume



Change 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 appeal type, and specific enforcement efforts by the City that result in appealable penalties.

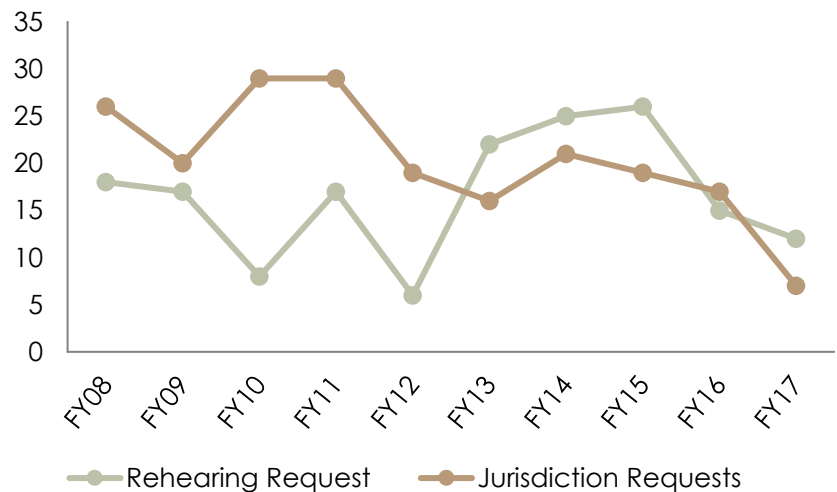
Rehearing & Jurisdiction Request Volume

12 new rehearing requests

7 new jurisdiction requests

The volume of rehearing requests (RRs) and jurisdiction requests (JRs) has remained relatively low each year. This year, the number of RRs was just slightly below average, while fewer JRs were filed than in

any of the past ten years. The drop in JRs may be attributed, in part, to a legislative change requiring notice be given to tenants when permits are issued for the removal of unpermitted dwelling units, allowing for the timely filing of related appeals.



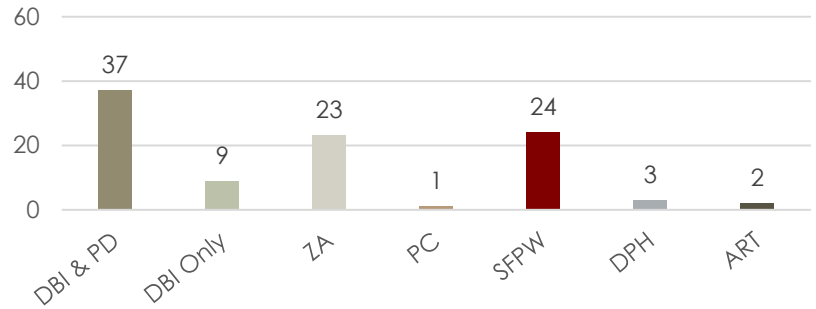
Subject Matter

71% of appeals heard were of land-use decisions made by the Department of Building Inspection, the Planning Department, Planning Commission and Zoning Administrator

17% involved the construction of decks, including roof decks

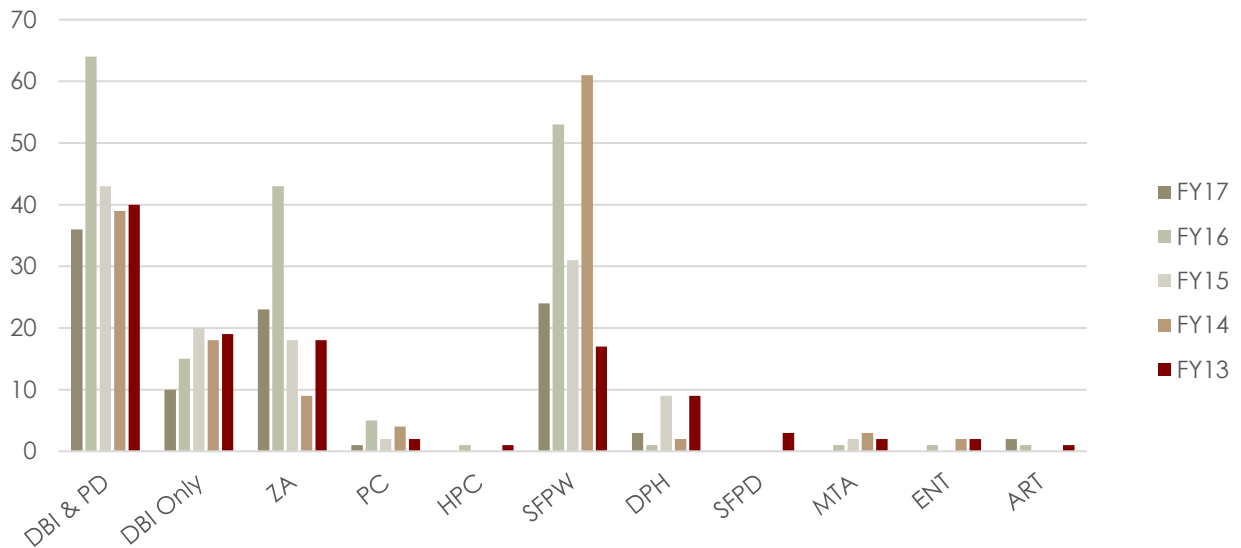
12% related to landlord-tenant disputes, continuing a trend of such appeals

Appeal Distribution⁵



A five-year view of appeal volume by source illustrates fluctuations from year-to-year, with a consistent emphasis on land use matters.

Appeal Distribution – Five Year View



⁵DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; PC = Planning Commission; HPC = Historic Preservation Commission; SFPW = Public Works; AC = Arts Commission; DPH = Public Health; EC = Entertainment Commission; MTA = Municipal Transportation Agency.

Outcome: Appeals Heard

54 appeals were denied by the Board with the underlying departmental decision upheld

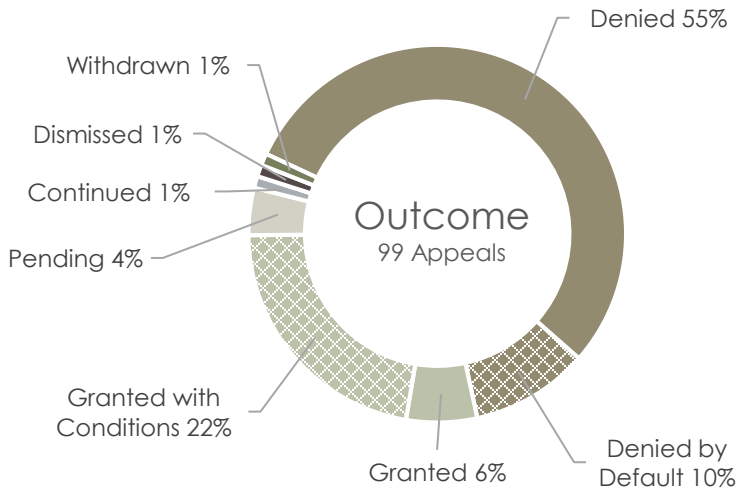
10 appeals were denied by default when the Board was unable to muster sufficient votes to pass a motion that would grant or deny the appeal

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

22 appeals were granted by the Board where the underlying departmental decision was conditioned or modified in some way

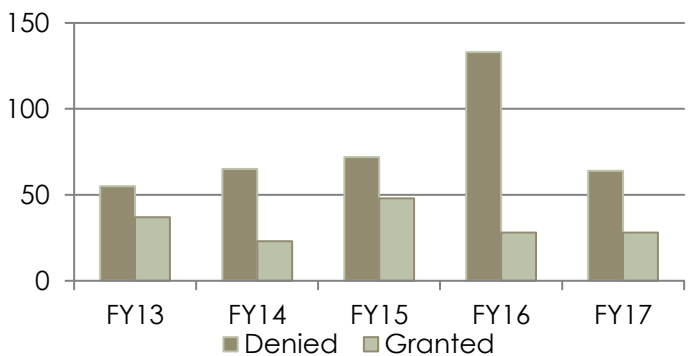
7 appeals were heard but not decided:

- 4 were pending at the close of the year awaiting the outcome of rehearing requests
- 1 was continued to a hearing date after the end of the year
- 1 was dismissed when the permit was canceled after the initial hearing but before a decision was rendered
- 1 was withdrawn after it was heard but before it was decided



Outcome: Appeals Granted & Denied 5-Year View

Given the supermajority vote required to grant an appeal, the Board typically denies more appeals than it grants. In some years, this trend is intensified based on the types of matters heard. For example, the spike in denied appeals in FY16 was due, in part, to the Board denying two clusters of nearly identical appeals that comprised 34% of the matters heard that year. Outcome in FY17 was more in line with the average.

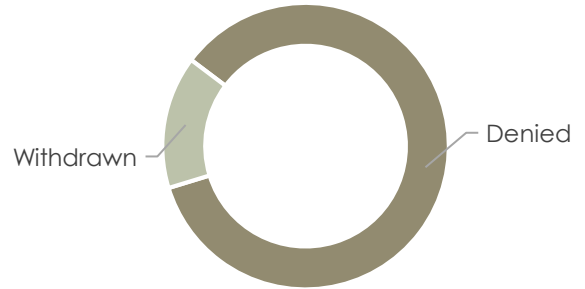


Outcome: Rehearing & Jurisdiction Requests

Rehearing Requests ask the Board to reconsider a decision in order to prevent manifest injustice or so the Board may consider new evidence that was not available when the matter was originally heard.

20 rehearing requests were on the Board's docket during the year:

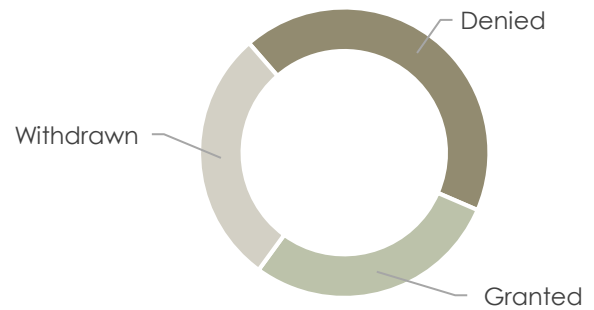
- 17 denied
- 3 withdrawn
- None granted



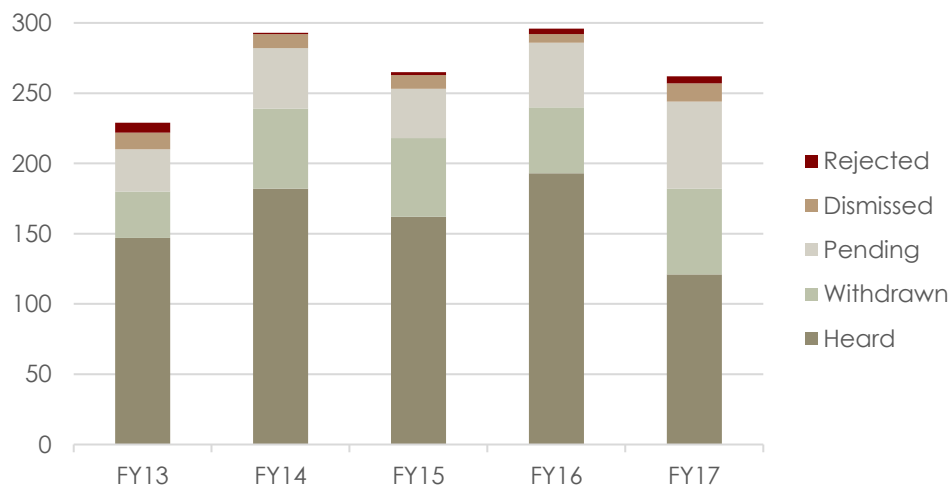
Jurisdiction Requests ask the Board to allow an appeal to be filed late based on a showing that the City committed an error that caused the failure to file on time.

7 jurisdiction requests were before the Board during the year:

- 3 denied
- 2 granted
- 2 withdrawn



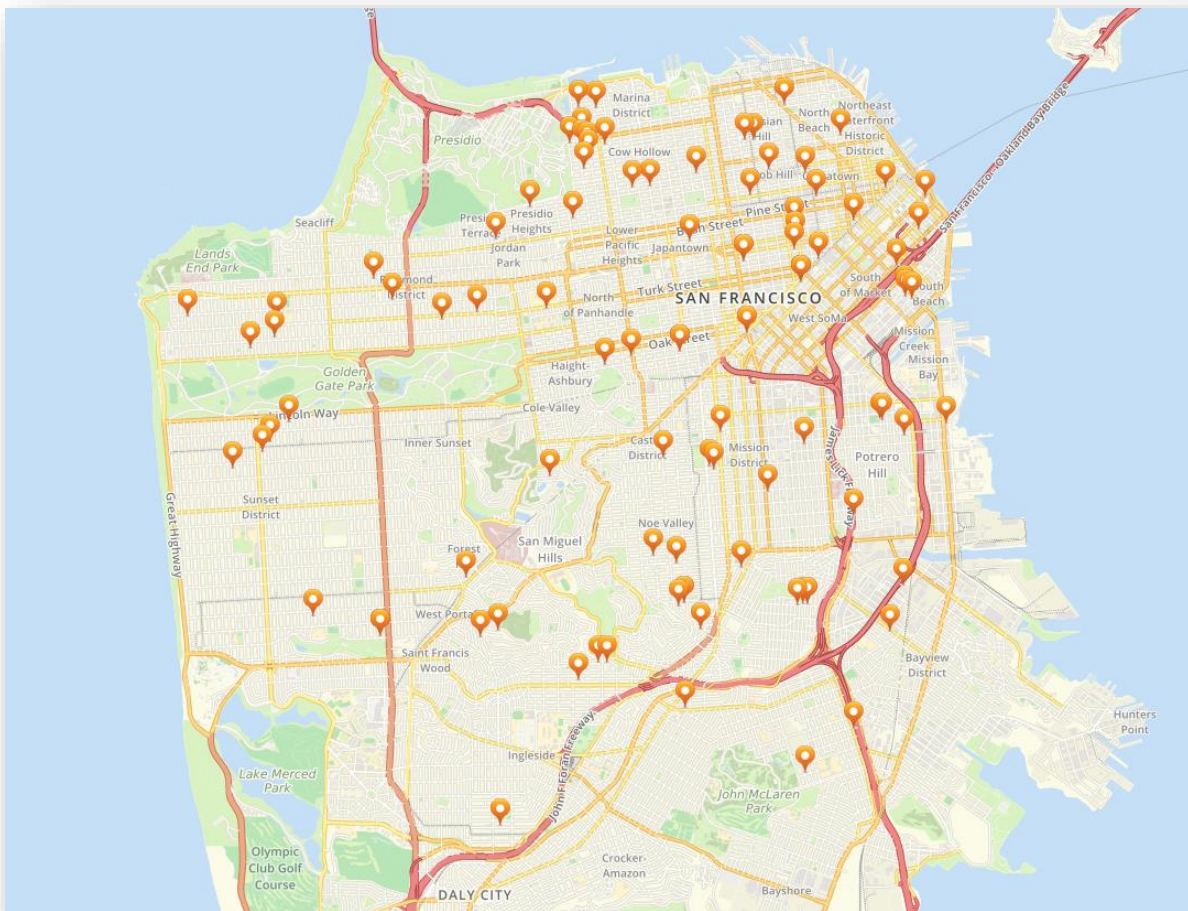
Disposition of Matters Filed – 5 Year View



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 Heard



See Appendix A for detailed information on the appeals heard by the Board during the year. An overview of the Board's jurisdiction, the standard of review applied to various appeal types, and a description of the appeal process is available on the Board's website.⁶

⁶See: <http://sfgov.org/bdappeal/resource-center>

ENHANCEMENTS

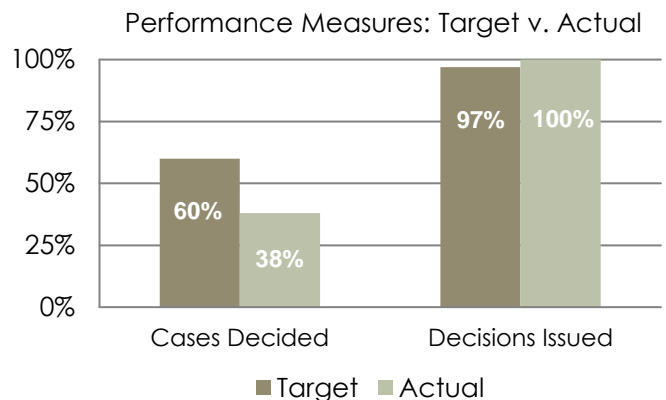
Board staff implemented several changes during the year to improve departmental effectiveness and increase public access to the appeal process:

- Developed and published Chart of Appealable Determinations⁷
- Established multi-lingual voice mail services
- Networked all office computers; creating a platform for file sharing, enhanced security and system updates
- Developed flowchart tracking all major appeal-related tasks performed by Board staff

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 1: how often cases are decided within 75 days of filing
 - While fewer appeals than projected were decided within the 75-day timeframe, the majority (62%) were delayed due to reschedulings requested by the parties.
- Measure 2: how often decisions are issued within 15 days of final Board action
 - All Board decisions were released within the 15-day timeframe.



LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. During the year, two new lawsuits were filed in which the Board of Appeals was named as a party and two lawsuits were resolved, both in favor of the City. A description of pending lawsuits and their status is provided in Appendix B.

⁷<http://sfgov.org/bdappeal/sites/default/files/Chart%20of%20Appealable%20Determinations%20%2811-16%29.pdf>

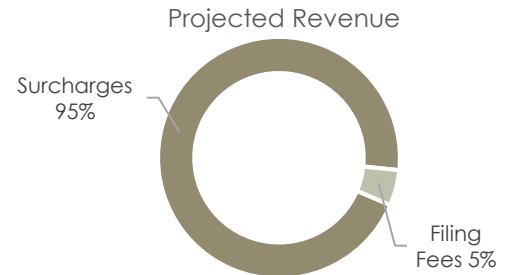
BUDGET

\$207,572 surplus dollars were on hand at the close of the year, derived from surplus revenue and expenditure savings. This surplus was deposited in the Board's reserve account for use in lean revenue years.

REVENUE

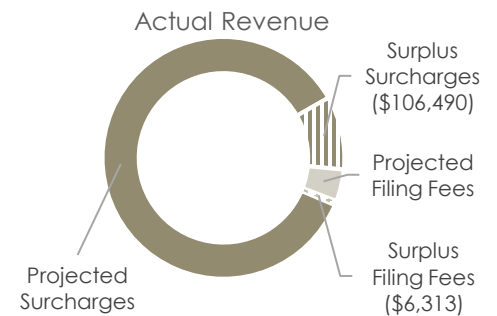
\$970,380 was the projected revenue budget:

- o \$924,343 in surcharge revenue collected by permit issuing departments on new permit applications
- o \$46,037 in filing fee revenue collected by the Board when new appeals are filed



\$1,083,183 in actual revenue was collected:

- o \$1,030,833 in surcharges
- o \$52,350 in filing fees

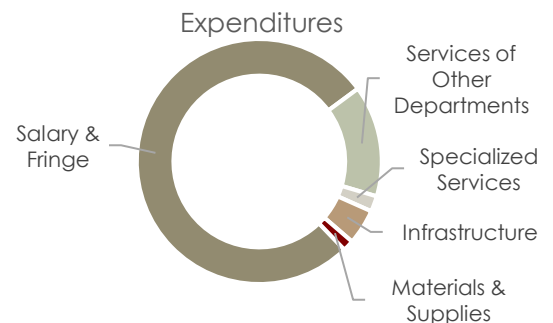


\$112,803 in surplus revenue; 11.6% over projections

EXPENDITURES

\$875,611 was spent by the Board (out of a projected budget of \$970,380):

- o 77% for salaries and fringe benefits
- o 15% for the services of other City departments, such as the City Attorney and Department of Technology
- o 2% for specialized services such as neighborhood notification data production and interpreters
- o 4.5% for infrastructure costs such as office rent, photocopier and telephones
- o 1.5% for materials and supplies, including postage for neighborhood notification mailings



\$94,769 difference between projected and actual expenditures; a savings of 9.8%.

Costs were lower than projected for:

- o City Attorney & SFGovTV services
- o Neighborhood notification data & interpreters
- o Office equipment rental

Costs were higher than projected for:

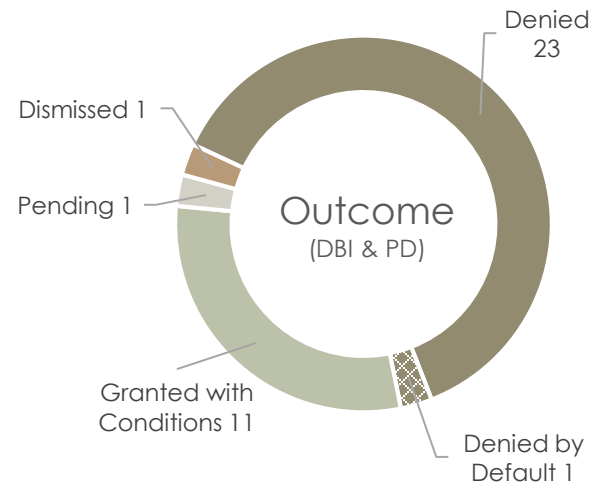
- o Certain fringe benefits

APPENDIX A – APPEAL DETAIL

A description of the cases heard by the Board during the year is set out below.

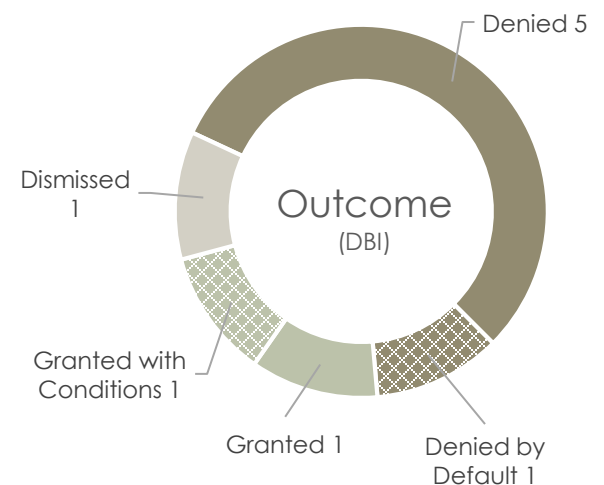
37 appeals were of decisions made jointly by the Department of Building Inspection and Planning Department:

- 32 protested the issuance of building permits, typically filed by individuals or groups of neighbors concerned that proposed construction will negatively impact their property or neighborhood
 - 17 involved issues surrounding the construction of new decks on residential buildings, raising concerns about sightlines into a neighbor’s windows or restricted access to light and air
 - 7 were filed by tenants protesting the removal of residential units or other work proposed by their landlord
- 2 protested the issuance of demolition permits
- 2 protested the denial of building permits (one for alterations to a hotel sign and the other for a change of use from a parking garage to a tourist hotel)
- 1 protested the revocation of a building permit where a Conditional Use Authorization was needed to convert residential units to office space



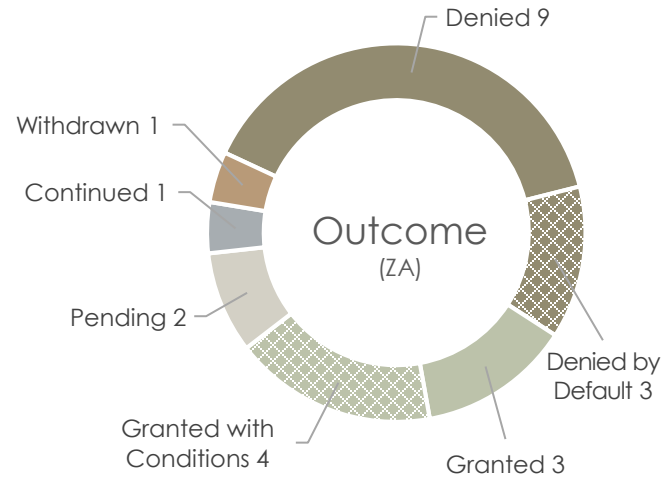
9 appeals stem from decisions made solely by the Department of Building Inspection:

- 8 protested the issuance of a building, electrical or plumbing permit
 - 5 of these were filed by tenants protesting the removal of residential units
- 1 protested a penalty imposed by DBI for work performed without a permit



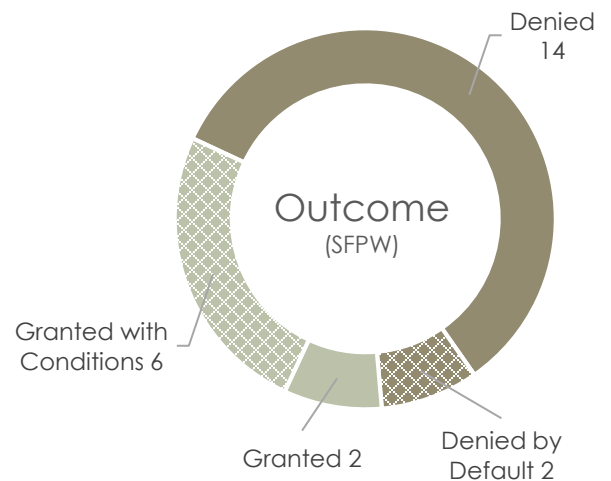
23 appeals were of Zoning Administrator decisions:

- 11 protested the granting or denial of variances
- 7 protested Notices of Violation and Penalty
- 3 protested Letters of Determination
- 1 protested the ZA's request to release a suspension on a permit
- 1 protested the ZA's request to revoke a permit



24 appeals were of decisions made by San Francisco Public Works:

- 12 protested the issuance of wireless box permits for the installation of cell phone equipment in the public right-of-way
- 8 related to tree removal permits
- 3 were of mobile food facility permits: 1 protesting the issuance of a permit, 1 appealing a permit denial, and 1 protesting conditions placed on a permit
- 1 protested a minor sidewalk encroachment permit to allow an enclosure for garbage bins outside the offices of a nonprofit organization



Additional Appeals

- Arts Commission
 - 2 appeals of Street Artist Certificates, one protested a permit denial and one a permit suspension; both were denied by the Board
- Department of Public Health
 - 3 appeals: an appeal of the issuance of a medical cannabis dispensary permit was denied by the Board; the Board also denied appeals protesting the suspension and the denial of massage establishment permits
- Planning Commission
 - 1 appeal of a Large Project Authorization granted under Planning Code Section 329 was denied by the Board

APPENDIX B – LITIGATION DETAIL

Set out 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.

AIDS Healthcare Foundation, Inc. v. City & County of San Francisco, et al.

VOLUNTARILY DISMISSED. A federal lawsuit was filed challenging the City's implementation of interim zoning controls applying formula retail restrictions to the commercial district where AIDS Healthcare Foundation (AHF) sought to open a pharmacy, and the Board's August 21, 2014 dismissal of an appeal protesting the release of a suspension on AHF's building permit. The Board dismissed the appeal as moot based on a finding that the interim controls require AHF to obtain a Conditional Use Authorization from the Planning Commission before the permit suspension may be lifted. In January 2015, the District Court granted the City's motion to dismiss AHF's petition, with leave to amend. After AHF amended its petition, the City filed another motion to dismiss, at which time AHF asked for a stay of the litigation while AHF applied for a Conditional Use Authorization for its pharmacy. The City agreed. The application for Conditional Use was denied in January 2016 and AHF failed to timely file a separate lawsuit challenging the Planning Commission's denial. After the City challenged AHF's filing of a third amended complaint, AHF voluntarily dismissed all claims against the City in December 2016.

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

PENDING. This lawsuit arises out of a dispute over Planning Code provisions regulating onsite business signs. The petitioner seeks to maintain currently posted signs that the City contends do not conform to Planning Code requirements, including a requirement that at least two-thirds of each sign display a message related to the primary business on the premises. On January 20, 2016, the Board upheld the Planning Department's denial of 35 sign permit applications. In August 2017, the Ninth Circuit Court of Appeals rejected Contest Promotions' constitutional claims. What remains, in State Court, are breach of contract claims associated with a settlement agreement between the parties and subsequent revisions made to the applicable Planning Code provisions. Briefing is ongoing and a hearing is pending.

Robert E. Gonzales v. San Francisco Board of Appeals

PENDING. 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. At that time, the petitioner requested a deferment of any further proceedings while he negotiated a settlement with the project sponsor. The petitioner has made no further effort to pursue this matter.

Tu Lam v. San Francisco Municipal Transportation Agency, et al.

PENDING. A challenge was filed to the Board's May 29, 2009 decision to revoke Mr. Lam's taxi driving permit and medallion. In December 2009, the Court denied Mr. Lam's request to stay the revocation while his legal claims are pending. A hearing on the underlying writ petition has not yet been scheduled. Since the revocation of the permit and medallion were not stayed, the City is leaving the burden of prosecuting the case with the plaintiff.

Mission Bay Alliance, et al. v. Office of Community Investment and Infrastructure, et al.

DECIDED. Two lawsuits were filed seeking to set aside project approvals associated with the construction of the Golden State Warriors Arena and Event Center in the City's Mission Bay neighborhood. One suit focused on environmental approvals and the other challenged various project entitlements, including a Place of Entertainment Permit and Office Space Allocation, both of which were appealed to and approved by the Board. In July 2016, a Superior Court judgment was entered denying both writ petitions. In August 2016, these judgments were appealed, though the office allocation argument was abandoned. In November 2016, the Court of Appeal affirmed the trial court decision and in January 2017, the California Supreme Court denied a request for review.

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

PENDING & NEW. 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 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 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. This case is on appeal, fully briefed and awaiting hearing.

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