

**From:** [Thomas Schuttish](#)  
**To:** [Rosenberg, Julie \(BOA\)](#)  
**Cc:** [Longaway, Alec \(BOA\)](#); [Mejia, Xiomara \(BOA\)](#)  
**Subject:** General Public Comment Board of Appeals Meeting 3/30/2022  
**Date:** Saturday, March 26, 2022 1:14:16 PM  
**Attachments:** [DBI INFORMATION SHEET EG-02.pdf](#)

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Dear Julie, Alec and Xiomara,

I hope you are all doing well.

Attached is a three page pdf.

It is the most recent version of DBI Information Sheet EG-02, issued in December 2021.

It replaced a rescinded version of that was issued in August 2013.

The 2013 Sheet was rescinded for a time in October 2021 and shortly thereafter revised and re-issued in December 2021 to be in compliance with the California State Fire Marshall.

I don't know if President Swig and the other Commissioners are aware of this issue which is being dealt with by the CAC, DBI, Planning and the AIA, but I hope you can forward this pdf to them and hopefully I will get to call in on Wednesday evening to comment.

Take care.

Sincerely,

Georgia



## INFORMATION SHEET

No. EG-02

**DATE** : December 13, 2021  
**CATEGORY** : Egress  
**SUBJECT** : **Emergency Escape and Rescue Openings (EERO) Into a Yard or Court of an Existing or New Building with an R-3 Occupancies**

**REFERENCE** : Currently adopted San Francisco Building Code  
Section 1030 Emergency Escape and Rescue  
AB-005 Local Equivalency Case-by-Case Application Procedures  
AB-028 Pre-application and Pre-addendum Plan Review Procedures

**INTENT** : To clarify the local equivalency requirements for emergency escape and rescue openings that open into a yard or court that does not open directly to a public way for R-3 occupancies

**DISCUSSION** :

SFBC Section 1030 requires emergency escape and rescue openings (EEROs) to open directly into a public way or to a yard or court that opens to a public way. This information sheet addresses the condition where the EERO's open to a yard or court that does not open directly to a public way for R-3 occupancies.

The intent of the code is that windows required by SFBC Section 1030 be available so that one may escape from that window to the exterior of the building without having to travel through the building itself, and so that rescue can be performed from the exterior. If the EERO's open into a yard that has no access to a public way, they do not meet the requirements of the code where both escape and rescue can be accomplished.

Projects may request for approval of local equivalency where both of the following conditions are met:

1. The escape criteria of the EERO may be accomplished where the EERO open into a yard with a minimum of 25' depth
2. The rescue criteria of the EERO at a yard or court that has no direct access to the public way shall be proposed by the project sponsor and evaluated on a case by case basis by the Supervisor or Manager.

All other conditions will also be evaluated on a case-by-case basis by the Supervisor or Manager. A pre-application meeting and/or approval of AB-005 is required.

 12-21-21

Ken Cofflin  
Fire Marshal & Assistant Deputy Chief  
San Francisco Fire Department

 12/22/21

Patrick O'Riordan, C.B.O.  
Interim Director  
Department of Building Inspection

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## INFORMATION SHEET

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**No. EG-02** : (Previously numbered E-02)  
**DATE** : August 2, 2013  
**CATEGORY** : Egress  
**SUBJECT** : **Emergency Escape and Rescue Openings to Yard for Existing or New Building of R-3 Occupancies**

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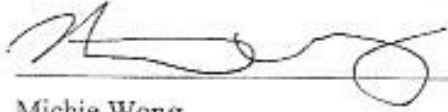
**REFERENCE** : 2013 San Francisco Building Code  
Section 1029, Emergency Escape and Rescue  
AB-005, Local Equivalency Case-by-Case Application Procedures  
AB-028 Pre-application and Pre-addendum Plan Review Procedures

**INTENT** : To clarify local equivalency requirements if the subject openings that open to a yard that does not open to a public way for R-3 occupancies

**DISCUSSION** : SFBC Section 1029 requires subject openings to open directly into a public way or to a yard that opens to a public way. In the event that subject openings open to a yard that does not open to a public way for R-3 occupancies, the following local equivalencies can be used:

1. The intent of the code is that windows required by SFBC Section 1029 be available so that rescue can be effected from the exterior or, alternatively, by which one may escape from that window to the exterior of the building without having to travel through the building itself. If these emergency windows open onto a yard that has no access to a public way, they may not meet the requirements of the code. However, as an equivalency to this requirement, an emergency escape or rescue window may open into a yard with 25' minimum depth.

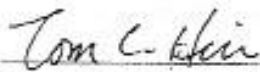
- 2. Other conditions will be evaluated on a case-by-case basis by the Supervisor or Manager. Pre-application meeting and/or approval of AB-005 is required.



Michie Wong  
Fire Marshal & Assistant Deputy Chief  
San Francisco Fire Department

8/2/13

Date



Tom C. Hui, S.E., C.B.O.  
Acting Director  
Department of Building Inspection

8/2/2013

Date

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**From:** [Carl Macmurdo](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Please grant Dirk Neyhart's rehearing request.  
**Date:** Tuesday, March 29, 2022 10:05:25 AM  
**Attachments:** [BOA public comment by CM on March 2, 2022.doc](#)

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**Subject:**  
**Date:**  
**From:**  
**To:**

Dear BOA Commissioners,

This letter supports the rehearing request submitted by appellant Dirk Neyhart, long-time holder of taxi medallion # 244. His attorney, Heidi Machen, makes three strong, salient arguments:

**1. The Board failed to follow its own rules.** After Ms. Machen requested in Zoom chat to postpone the hearing due to Commissioner Lopez's unexpected absence, your Executive Director read the Board rules into the record, notably that deliberations are generally continued to allow the absent Commissioner --- whose vote obviously **would** and **did** make a difference in the decision --- to participate and cast a vote. Thereupon, your Board inexplicably failed to follow its own rule. This is an extraordinary circumstance which has resulted in a manifest injustice to Mr. Neyhart.

**2. The Board failed to follow its precedent set in the prior *Herbal* and *Cortesos* appeals.**

**3. Manifest injustice exists.**

**Remarkably, the Agency Reply Brief fails to address, contest, or refute any of these claims. As such, you should deem that Ms. Machen's arguments are correct and grant the rehearing request.**

The Agency Reply Brief argues incorrectly that appellant must prove that new or different facts or circumstances have arisen in order for Mr. Neyhart to qualify for a rehearing. The Agency quotes language from Article 5, subsection (9)(b) in your rules. However, that entry allows for an exception which also is cited on your website. Below is the actual text posted there. It is clear that **extraordinary circumstance** and **manifest injustice** can suffice as the **sole basis** for a rehearing:

#### **Standard of Review**

*Four out of five votes are needed to grant a Rehearing Request. The Board may grant a rehearing request only upon a showing by the requestor that extraordinary circumstances exist and a rehearing is needed to prevent manifest injustice, or new or different facts or circumstances have arisen that if known at the time of the hearing could have affected the outcome. The written request should state: the nature and character of the new facts or circumstances; the names of the witnesses. (emphasis added.)*

Additionally, it is manifestly unjust, and also an extraordinary circumstance, that the Agency added Transportation Code section 1118(a)(8) in 2015 to allow for permit revocation of a Prop K medallion holder who does not have an A-Card (taxi driver's license). A California Driver's License is also required to obtain the A-Card --- but Mr. Neyhart cannot obtain a CDL, because he is blind due to his being the victim of a violent crime. The Agency's contrived policy egregiously violates ADA by targeting disabled persons. Further, it is being applied **retroactively** as a way to harvest Mr. Neyhart's permit for SFMTA's own future financial benefit. Please note that the stated basis for Mr. Neyhart's permit revocation on your March 30 agenda is his A-Card / CDL non-compliance.

During the Neyhart hearing, assigned deputy city attorney, Zachary Porianda, opined that section 1118(a)(8) is merely an enforcement provision, not a change in taxi law. I countered his argument while addressing your Board under general public comment at your March 23, 2022, meeting. I ask that my attached speech text be considered as part of the Neyhart rehearing request record. Commissioner Lopez is a licensed attorney whose input in the deliberation process and vote is vital in ascertaining the degree and extent to which Mr. Porianda's advice on multiple issues should be followed.

Please grant the rehearing request for the aforementioned reasons. A denial on March 30 will exhaust Mr. Neyhart's administrative remedies. The next step will not be an appeal to Superior Court, which will be cost-prohibitive, but rather to file a formal request for investigation by the Department of Justice, Disability Rights Section in Washington, D.C. We hope to avoid having to do so. Given that you have yet another CDL taxi appeal case on May 13 (Robert Skrak) --- with a full Board presumably present --- we ask you grant a Mr. Neyhart a rehearing and reschedule it subsequent to the Skrak hearing so that you can achieve consistency in your rulings.

Thank you for your consideration.

Carl Macmurdo

taxi industry worker



**BOA public comment by Carl Macmurdo on 3/23/2022**

At your last meeting, Deputy City Attorney Zachary Porianda quoted from a synopsis provided by your staff describing the outcome of the Ninth Circuit Slone appeal and opining as to its import.

Mr. Porianda states the Slone appeal was **dismissed**, and Judge White's ADA ruling therefore **became final**. Please note the Slone appeal was not dismissed due to lack of case merit; instead, **Mr. Slone himself** requested dismissal because the city had agreed in mediation to provide Slone with the very ADA relief Judge White had denied him. If anything at all **"became final"** as a result of the Ninth Circuit agreement, it is the city's tacit admission that its dangerous year 2002 **"essential eligibility requirement"** --- which basically requires Prop K medallion holders to drive until we drop dead at the wheel in order to retain our medallions --- **is false**. In any event, you are rightfully vested with *de novo* authority to make your own rulings.

Resolution 09-138 defines Slone's mediated ADA relief. It has been a part of the Transportation Code for thirteen years now, and it applies to **all** Prop K medallion holders, not just Slone. Contrary to Agency statements, the relief is not limited to three years. The Resolution allows for multiple qualifying maladies to be invoked, with each one providing an additional three years of ADA protection.

Separately, the Agency points to code language created in year 2015 --- which it is applying **retroactively** on disabled permit holders as cause for revoking medallions. Code section 1118(a)(8) now requires a Prop K medallion holder to have an A-Card for annual medallion renewal. However, a California Driver's License --- for which a permanently disabled permittee cannot qualify --- is required to obtain an A-card. As such, the Agency has contrived a method to harvest disabled permittee medallions in a clear and egregious violation of ADA law and principle.

Mr. Porianda claims the Agency did not alter the law in 2015, but merely created an "enforcement mechanism." I'm reminded of what the Wizard of Oz said: **"Pay no attention to the man behind the curtain."** I don't mean to disparage Mr. Porianda, who capably and cleverly performs his job duties.

To conclude, I implore the three Commissioners who so far have sided with disabled permit holders to maintain your resolve despite the pressure you now face to change your votes. Please see through the city's ruse on these taxi issues just as your predecessor Board members including Arnold Chin and Kathleen Harrington did in year 2003.

Thank you.