



# RULES OF THE BOARD OF APPEALS

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## ARTICLE I – OFFICERS AND TERMS OF OFFICE

**Section 1.** The President and Vice President shall be elected at the first regular meeting of the Board held after the 15th day of January of each year, or at a subsequent meeting after the 15th day of January. They shall hold office for one year at the pleasure of the Board, and until their successors are elected.

**Section 2.** The Board at any regular or special meeting shall appoint an Executive Secretary, who shall hold office at the pleasure of the Board and shall serve as Department Head of the Board of Appeals.

## ARTICLE II – DUTIES OF OFFICERS

**Section 1.** The President shall preside at all meetings of the Board, and shall perform all other duties necessary or incidental to ~~his or her~~their office.

**Section 2.** In the event of the incapacity or absence of the President, the Vice President shall take the place and perform the duties of the President.

**Section 3.** It shall be the responsibility of the Presiding Officer to assure a fair hearing to all parties, and that these Rules as adopted are adhered to. It shall be the responsibility of the majority of the Board that the duties of the President and Vice President are properly exercised.

**Section 4.** The Executive Secretary shall serve as administrative head of the department and shall have responsibility for all activities of the department. ~~He or she~~They shall direct and supervise the personnel of the department and shall plan, assign, coordinate and review the work and activities of the department. ~~He or she~~They shall allocate the time, personnel and funds of the department and shall be responsible for the administration of all regulatory measures entrusted to the department. ~~He or she~~The Executive Secretary shall make investigations and reports of the Board's hearings and official actions, and shall certify all

Notices of Decision and Order and all documents relating to the department. ~~He or she~~They shall examine incoming mail for proper referral and answer correspondence, shall maintain records of accounts and departmental operations, and shall verify payrolls and requisitions. The Executive Secretary shall prepare an agenda for each regular meeting, showing the names of the parties and the nature of the order or decision from which an appeal has been taken.

### **ARTICLE III – MEETINGS**

**Section 1. Regular Meetings.** Regular meetings shall be open to the public and shall be held as scheduled on Wednesdays at 5:00 p.m. in the Board hearing room provided in City Hall.

**Section 2. Special Meetings.** Subject to the provision of appropriate notice, the President or a majority of Board members may call a special meeting at any time.

**Section 3. Meeting Cancellation.** The President may cancel any regular or special meeting when notified by the Executive Secretary that there is insufficient business to be conducted or that a quorum (i.e., three Members) will not be in attendance. The Executive Secretary shall notify Board members, parties and members of the public as soon as reasonably possible that the meeting has been cancelled, and shall cause a notice of the cancelled meeting to be conspicuously posted on or near the door of the meeting place prior to the scheduled time of the meeting.

**Section 4. Notice of Hearing.** When an appeal is filed, the Executive Secretary shall email notice of the initial hearing to the parties. Announcement at a public hearing of the time and place to which a hearing is rescheduled or continued shall be deemed sufficient notice and no emailed notice shall be required for any such rescheduled or continued hearing.

**Section 5. Order of Agenda.** Requests for jurisdiction and for rehearing, and matters for further hearing shall generally be considered first on the agenda. At the President's discretion, the ordering of items on the published agenda or the order in which the Board takes up items at any meeting may differ depending upon the circumstances.

**Section 6. Order of Presentations.** Except when the Presiding Officer finds good cause to order the presentations otherwise, the order of presentation of an appeal shall be as follows:

(a) In all cases, the appellant shall speak first and shall be allowed seven minutes to present relevant testimony and evidence. Then the permit holder, representatives of the department, board, commission or person from whose order or decision the appeal is taken, and/or other parties, shall be allowed seven minutes for presentation of relevant testimony and evidence. Three minutes for rebuttal shall be provided to all parties in this same order.

(b) In all cases, the Board may request a departmental response at its own discretion.

(c) In cases of multiple appeals of the same departmental action or permit, the appeals shall be joined. ~~and the~~ appellants shall each be allowed seven minutes to present relevant testimony and evidence and three minutes for rebuttal, unless the Presiding Officers finds good cause to limit presentations based on such factors as the nature of the agenda item, appellants' arguments, the number of anticipated speakers, and anticipated duration of other agenda items. The ~~President~~ Presiding Officer shall set the amount of time given to the respondent(s) and other parties, as circumstances warrant and in the interest of fairness, but shall allow ~~no less than~~ seven minutes to present relevant testimony and evidence and three minutes for rebuttal, unless the Presiding Officer finds good to cause to limit or allow more time for presentations under same factors as above.

(d) Public Comment.

(i) Persons who are not parties to an appeal or representatives of a party may speak once for up to three minutes during the public comment portion of the hearing. The Presiding Officer may limit public comment on an agenda item to less than three minutes per speaker based on such factors as the nature of the agenda item, the number of anticipated speakers for that item, and the ~~number and~~ anticipated duration of other agenda items. Board staff shall provide speaker cards for those intending to speak during public comment to assist in maintaining decorum in the hearing room and to aid in the preparation of Board minutes. The completion of a speaker card is not required; members of the public may speak anonymously.

(ii) Representatives of a party shall address the Board during that party's allotted time and may not also speak during public comment. Representatives are persons with a financial or other close connection to a party, such as family that resides in the same household or household members; architects, attorneys, engineers, or similar paid advisors or agents; and, in appeals where an association or organization is a party, officers or board members of the governing board of the association or organization.

**Section 7. General Public Comment.** On each agenda, there will be time set aside for members of the public to address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board and do not relate to a matter calendared on the agenda ~~for hearing~~. Each member of the public may address the Board for up to three minutes. (California Government Code §\_54954.3(a); S.F. Administrative Code §\_67.17.) Members of the public shall reserve comment with respect to agendized items to when that item is called.

#### **ARTICLE IV – ADMINISTRATIVE RECORD**

**Section 1. Recording as Official Record.** Board proceedings are video recorded and broadcast by SFGTV (Department of Technology). Except as provided in Section 2, below, the SFGTV recording shall be the administrative record for each hearing.

**Section 2. Designating Transcript as Official Record.** Any party (or parties, jointly) may provide a certified court reporter to transcribe an appeal hearing. Upon request of such party or parties prior to the start of the hearing, the Board may designate the court reporter's transcription as the official record of that proceeding if the parties so stipulate, provided that the requestor agrees to supply the Board with a certified copy of the transcript at no cost to the Board.

#### **ARTICLE V – APPEAL PROCEDURES**

**Section 1. Filing an Appeal.** The method of appeal shall be as set forth in the San Francisco Business and Tax Regulations Code, Article I, Sections 8 through 16, 26, 30 and 31, and under these Rules. When counting “calendar days” for purposes of calculating the deadline for filing an appeal, the appeal period begins the day after the date of the written departmental determination being appealed. If the last calendar day falls on a weekend or City holiday, the last day to file the appeal or other action is the next business day.

(a) The appellant shall submit one copy of the permit, application or other departmental determination being appealed.

(b) The appellant shall complete a Preliminary Statement of Appeal form provided by the Board setting forth the reasons or grounds for the appeal and what action is being requested of the Board. The appellant may attach a brief supplementary statement to the Preliminary Statement of Appeal, which shall be double-spaced and shall not exceed one (1) page in length. No other exhibits or submissions are allowed at this time.

(c) The Executive Secretary or ~~his or her~~their designee will assign a hearing date and provide the hearing date and briefing schedule to the parties, in writing.

(d) The appellant shall submit the required fee and provide Board staff with a valid email and street address and telephone number.

(e) Appeals shall be filed by phone, email or at the Board office during regular business hours up to 4:30 p.m.

**Section 2. Briefing.** Briefs and other submittals shall conform to the requirements set out in Section Article V.4, and will be accepted as follows:

(a) Appellant may submit an **APPELLANT'S BRIEF** by email to boardofappeals@sfgov.org; due ~~at the Board office~~ no later than 4:30 p.m. three (3) Thursdays prior to the hearing date. If an appellant is unable to submit the brief by email, the appellant may submit/deliver a hard copy of the brief to the Board Office by the deadline.

(b) The permit holder, variance holder, determination holder, licensee, Business and Tax Regulations Code, Article I Section 14 party, or Department may submit a **RESPONDENT'S/OTHER PARTIES' BRIEF** (whether or not the appellant submits an Appellant's Brief), by email to boardofappeals@sfgov.org due ~~at the Board office~~ no later than 4:30 p.m. one (1) Thursday prior to the hearing date. A party submitting a Respondent's/Other Parties' Brief may submit/deliver a hard copy of their brief to the Board Office, by the deadline, if he or she is/they are unable to submit the brief by email.

(c) **MEMBERS OF THE PUBLIC** who are not parties to an appeal or representatives of a party (as defined in Rule Article III.6(d)(ii)), are welcome to submit written materials to the Board. Members of the public who want their submittals considered by the Board prior to the hearing, may submit materials by email to boardofappeals@sfgov.org due ~~at the Board office~~ no later

than 4:30 p.m. one (1) Thursday prior to the hearing date. –Public comment may also be submitteddelivered to the Board Office in hard copy format. –In addition, non-parties may present materials in person during public comment. This subsection is to give direction to those members of the public who want their submittals to be considered by the Board prior to hearing, and in no way interferes with the public's rights under the San Francisco Sunshine Ordinance (S.F. Adm. Code Ch. 67). Parties to an appeal may request copies of materials submitted by members of the public pursuant to San Francisco Administrative Code ~~Chapter~~Section 67.28.

(d) Pursuant to Business and Tax Regulations Code, Article I, Section 14, requestors of Discretionary Review (DR) by the Planning Commission, whose property is immediately adjacent to the subject property and who have prevailed or partially prevailed at the Planning Commission, shall have the status of a party in an appeal to the Board. In the event there is more than one such requestor, the ~~Board~~Presiding Officer may, at ~~their~~its discretion, limit the time for oral presentation to three minutes for each adjacent property owner and a combined total of three minutes of rebuttal for all adjacent property owners.

(e) If the last calendar day to submit a brief or other submittal falls on a weekend or City holiday, the last day to file the brief or other submittal will be as established by the Executive Secretary.

(f) Parties shall be limited to the briefs or submittals authorized by these Rules unless otherwise instructed by the Board. In the event a public hearing is continued by the Board, the Board shall rule on whether to accept any additional written materials and set the deadline for submittal.

(g) In appeals where architectural, construction or engineering plans are at issue, the permit holder or project sponsor is encouraged to submit the City-approved plans associated with the project at the time they submit their brief. The plans should be reduced to an 11" x 17" format.

(h) The parties are encouraged to submit photographs, maps, plans and drawings as exhibits to their briefs. Such exhibits may also be used in presentations and submitted at hearing by displaying the document on the overhead projector and providing a copy to the clerk. Computer-assisted presentations are permitted at hearing to the extent the requisite technology is available in the hearing room. The presenter bears the sole risk that such technology may not be available or operative at any given meeting.

(i) Except as otherwise provided in this section, the Executive Secretary ~~—~~ shall reject late submittals and will not include them in the administrative record in the case or provide them to Board members for their review. A party may file a written request for permission to file late on a form provided by the Board. The request must be provided to the other parties. Late submittals will be accepted upon (i) the consent of the other parties, or (ii) the consent of the President upon a showing of good cause. This section does not apply to the submittal of plans.

(j) These Rules shall be interpreted so as to be consistent with the public's rights under the San Francisco Sunshine Ordinance, S.F. Admin. Code Ch. 67.

**Section 3. Designation of Experts.** The Board may call upon and may designate without charge independent experts as it deems necessary, to report upon and make recommendations concerning technical matters in appeals.

**Section 4. Requirements for Written Submittals.**

(a) All briefs, whether typewritten or handwritten, shall be double-spaced. Typewritten submittals shall be in a font size no smaller than twelve (12) point. The Executive Secretary, at ~~his or~~ her discretion, may reject submittals that do not conform to these requirements.

(b) Unless otherwise permitted by the President pursuant to subsection (vii) below, the following page limits shall apply:

(i) Appeal briefs shall not exceed twelve (12) pages.

(ii) Jurisdiction Request and Rehearing Request briefs shall not exceed six (6) pages.

(iii) Letters requesting revisions to draft Findings submitted pursuant to Section V.8 below shall not exceed three (3) pages. No exhibits or attachments shall be allowed.

(iv) Except for the filing of a letter requesting revisions to draft Findings, in all other cases, submittals may include an unlimited number of pages of exhibits. Exhibits shall not include additional written argument by a party. Where exhibits exceed ten (10) pages in length, the Board encourages the parties to separate exhibits with tabs and/or electronic bookmarks and provide a table of contents.

(v) Parties may offer arguments and exhibits as part of their oral presentations to the Board which are not part of their written brief.

(vi) The Executive Secretary shall reject any pages of briefing that exceed the applicable page limit or exhibits that contain additional argument by a party and shall not include them in the administrative record in the case or provide them to Board members for their review.

(vii) A party may file a written request for permission to file a longer brief at least 48 hours before the brief is due. The request must be provided to the other parties, and must state extraordinary reasons why the argument cannot be made within the stated page limit. For good cause shown, the President may grant such a request.

~~(c) If a brief and/or exhibits are-is voluminous, the Board Office reserves the right to require that a party submit/deliver a hard copy. Parties shall submit hard copies of their brief to the Board Office if requested by Board staff. In all cases, an original and ten copies of the brief, all exhibits, including plans, must be submitted, in collated form, to the Board office at the time of filing.~~

~~(d) Except for the filing of a Preliminary Statement of Appeal, a Jurisdiction Request or Rehearing Request, every submittal by a party must be delivered to the opposing parties or, if known, to a party's representative, using a method that ensures delivery on the same day, by the deadline, as it is delivered to the Board. The brief may be submitted by email unless the other party requests a hard copy. –An item is “submitted” when it is received by email (boardofappeals@sfgov.org) or delivered to the Board offices.~~

## **Section 5. Communications With the Board.**

The Board is a quasi-adjudicatory body whose decisions are rendered based on the evidence that is before the Board in the public record. In order to preserve the fairness and integrity of the Board's proceedings, any evidence that the parties or members of the public wish the Board to consider in deciding a case must be made part of the public record as follows:

(a) Parties, their representatives, and members of the public should present evidence regarding a pending case only through the following means: (i) at a public meeting of the Board; and/or (ii) through written submissions to the Board, as provided for in these Rules. Parties, their representatives, and members of the public should refrain from communicating evidence, facts or information about the subject matter of a pending case outside of the public record.



(b) Any written communications to the Board containing information or evidence pertaining to a case pending before the Board must be submitted through the Executive Secretary, and not sent to individual Board member(s).

(c) This Section does not apply to communications with the Board about purely procedural matters or ministerial issues, including but not limited to, scheduling hearings.

(d) This Section is in no way intended to interfere with the public's rights under the San Francisco Sunshine Ordinance (S.F. Adm. Code Ch. 67).

**Section 6. Site Visits.** If a Board member makes a site visit to the subject property of a pending appeal, the Board member shall limit any discussion to understanding the site's physical conditions underlying the appeal, and shall not otherwise discuss the matter under appeal outside of a public hearing. Prior to commencement of the hearing to which such visit relates, the Board member must disclose the visit, and what he or she observed during the visit, on the record. If a quorum of the Board conducts a site visit at the same time, it must be noticed pursuant to the special meeting requirements of the Sunshine Ordinance (S.F. Admin. Code ~~§Ch.~~ 67.6(f)).

**Section 7. Continuances and Reschedulings.**

(a) At the time of hearing, upon the request of any party, the Board may grant rescheduling requests or continuances for good cause shown. The Board generally will not reschedule a matter based solely on the fact that fewer than five members are present at the hearing. But when the Board hears a matter with less than five members present, and the vote(s) of the missing member(s) could alter the Board's decision, the Board generally will move to continue its deliberation so that the missing member(s) may participate in the final vote.

(b) At any time before the hearing date, the parties may jointly request that the Executive Secretary reschedule the hearing to a mutually agreed upon date. Where a party's rescheduling request is opposed by one or more parties, the President may approve the request if it is made prior to the publication of the agenda for that hearing. After the relevant meeting agenda has been published, a party's contested rescheduling request may be granted only by a majority of the members present at a public hearing on the matter.

(c) If a party or department representative fails to appear at a meeting of the Board, the Board reserves the right to continue the matter to a future date. Such continuance may be administered at the President's discretion if a failure to appear is anticipated prior to a hearing. If such failure to appear becomes known during a meeting of the Board, a majority of Board members may continue the matter.

(d) If a meeting's duration extends beyond 9:30 p.m. or for good cause, the Presiding Officer may, in their discretion, recess the meeting and continue any remaining matter(s) to a future date.

### **Section 8. Consideration of Written Findings**

In cases where the Board decides to adopt written Findings summarizing the reasons for its decision at a separate subsequent hearing, the parties will be given an opportunity to review and comment on the draft Findings before they are considered by the Board. In such cases, parties may submit comments to the Executive Secretary in a format and on a schedule specified by the Executive Secretary. If any suggested revisions are not accepted by the Executive Secretary, the parties may, but are not required to, submit a letter to the Board addressing the change(s) requested and the reason(s) for or against such change(s) one Thursday prior to the Board's hearing on the Findings. Such letter must conform to the requirements set out in Section Article V.4. In addition, the parties will have three (3) minutes to present oral argument to the Board at the hearing on the Findings.

### **Section 9. Rehearing Requests.**

(a) Requests for rehearing must be filed within ~~twelve~~ days of the hearing at which the Board made its decision. A Rehearing Request may be filed only in writing by a party to an appeal. Written requests for rehearing shall conform to the briefing requirements in Section Article V.4. The response to a written request for rehearing must be submitted by ~~an~~ other party ~~or real party in interest~~ no later than ten days from the date of filing and shall conform to the briefing requirements set out in Section Article V.4. ~~Any written material from any party that is not submitted in accordance with these Rules shall only be accepted by the Board pursuant to Section V.4.~~ No requests for rehearing shall be accepted after the Board has either considered and rejected such a request for rehearing or ~~has voted to rehear such a matter and has~~ has reheard the matter ~~it and voted~~.

(b) Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing. The written request shall state:

- (i) the nature and character of the new facts or circumstances;
- (ii) the names of the witnesses and/or a description of the documents to be produced; and
- (iii) why the evidence was not produced at the original hearing.

(c) Failure to exercise due diligence to produce the new facts and circumstances at the previous hearing shall be deemed grounds for denial of the request.

(d) The Board shall allow testimony of up to three minutes from each party when hearing a Rehearing Request.

(e) This section shall not apply to any motion to rehear a case made by the Board's own initiative.

[\(f\) The parties may waive their right to a rehearing, including to expedite the Board's issuance of a Notice of Decision and Order.](#)

#### **Section 10. Jurisdiction Requests.**

(a) After the appeal period has expired, the Board lacks jurisdiction over a matter except in extraordinary cases where the Board finds that the City intentionally or inadvertently caused the requestor to be late in filing the appeal.

(b) A request for jurisdiction must be in writing and shall conform to the briefing requirements set out in [Section–Article V.4](#). The response to a written request for jurisdiction must be submitted by the permit or determination holder(s) no later than ten days from the date of filing, and shall conform to the briefing requirements set out in Section V.4. Any written material from any party that is not submitted in accordance with these Rules shall only be accepted by the Board pursuant to Section V.4.

(c) The Board shall allow testimony of up to three minutes from each party when hearing a Jurisdiction Request.

(d) If the Board grants a Jurisdiction Request, the requestor must file any appeal within five (5) days from the date of the Board's decision.

(e) Four votes are required to grant a Jurisdiction Request unless there is a vacancy on the Board, in which case, only three votes are required.

**Section 11. Administrative Dismissals.** The Executive Secretary shall administratively dismiss any appeal for which the underlying subject matter has become moot as a matter of law. The Executive Secretary shall promptly notify all parties to such appeal that the matter has been dismissed.

**Section 12. Parliamentary Procedure.** At the discretion of the President, except where the Charter or other rules provide required procedure, meetings shall be governed by the most recent edition of Robert's Rules of Order.

**Section 13. Indigency.** The Executive Secretary may waive the required appeal fee where the filing party meets the indigency standards set out in California Government Code Section 68632 or its successor, and submits an Affidavit of Indigency.

## **ARTICLE VI – AMENDMENTS**

**Section 1. Amendment of Rules.** These Rules may be amended by the Board at any Regular Meeting by a majority vote following a public hearing, provided that at least 10 days public notice is given.

Rules effective as of November 16, 1982; Amended August 28, 1985; Amended February 5, 1986; Amended April 20, 1988; Amended November 30, 1988; Amended October 14, 1992; Amended September 22, 1993; Amended April 12, 1995; Amended July 10, 1996; Amended February 5, 1997; Amended August 13, 1997; Amended June 10, 1998; Amended February 10, 1999; Amended April 4, 2001; Amended November 7, 2001; Amended January 9, 2002; Amended February 20, 2008; Amended July 9, 2008; Amended December 15, 2010.