

**Building Inspection Commission
Rules and Hearing Procedures for Appeals**

Adopted: June 12, 2024

- I. **Scope; Purpose.** These Rules are established pursuant to Section 77.9 of the San Francisco Administrative Code, which authorizes the Building Inspection Commission to adopt rules and regulations to implement appeal and hearing procedures, standards for granting or denying requests for jurisdiction and rehearing, standards for affirming and denying Department findings on suspensions, and requirements for notice and mailing in addition to those set forth in Chapter 77 of the Administrative Code. The purpose of these Rules is to ensure that the Commission conducts hearings and takes action on appeals before it in a fair and efficient manner that protects the due process rights of parties, and protects the health, safety, and welfare of the public. These Rules shall govern proceedings before the Commission, except for abatement actions heard and decided pursuant to Section 105A.2 of the San Francisco Building Code, which are governed by the Bylaws and Rules of Procedure of the San Francisco Abatement Appeals Board.
- II. **Definitions.** The definitions set forth below apply only for the purposes of these Rules. Except as the context otherwise requires, terms defined in Chapter 77 of the Administrative Code shall apply to these rules and hearing procedures.
 - a. **“Appellant”** means any person or persons, or their authorized agents, who have filed an appeal or request for jurisdiction with the Commission.
 - b. **“Applicant”** means any person, or their authorized agent, requesting a written decision or determination from a Department.
 - c. **“City”** means the City and County of San Francisco.
 - d. **“Commission”** means the San Francisco Building Inspection Commission.
 - e. **“Department”** means the Department of Building Inspection, unless the context indicates otherwise.
 - f. **“President”** means the President of the Commission, or the Vice President in the President’s absence, or another member of the Commission designated by the President or by the Commission to act as the presiding officer at a meeting.
 - g. **“Rules”** mean the rules and hearing procedures set forth herein.
 - h. **“Secretary”** means the Secretary of the Building Inspection Commission.
- III. **Authority to Hear and Decide Appeals.** Under the San Francisco Building Code and Administrative Code, the Commission may hear and decide appeals brought by applicants or candidates regarding:

- a. Decisions or determinations of the Department regarding applications for permits or determinations under the San Francisco Administrative, Building, Electrical, Housing, Mechanical, and Plumbing Codes, including appeals pursuant to Section 103A.6.3.2 of the Building Code (Expanded Compliance Control listing); building permit application completeness determinations; and amortization extension requests pursuant to Section 41.23 of the Administrative Code; but excluding decisions appealable to the Access Appeals Commission or Board of Appeals; and
 - b. A Department's failure to render a written decision or determination on any of the matters in section (a) within 15 days of a request to do so.
- IV. **Appeals Involving Technical Matters.** During the Commission's hearing of an appeal, the Commission may determine that the appeal involves technical matters that should be and have not already been heard and decided by a technical board or committee. In such a case, the Commission may in its discretion, limited by any applicable time limitations in state or local law, decline to decide the appeal and refer the matter to the appropriate technical board for a final decision. In the alternative, the Commission may continue the appeal, again subject to any applicable limitations in state or local law, for a period not exceeding two months in order to obtain the advice and recommendation of those technical boards, advisory committees, or persons that the Commission deems appropriate.
- V. **Filing of Appeal**
- a. **Time to Appeal a Written Decision.** An appeal must be filed within 15 calendar days of the date the Department mails its written decision. When counting "calendar days" for purposes of calculating the deadline for filing an appeal, the appeal period begins the day after the written decision is mailed. If the last calendar day falls on a Saturday, Sunday, or City holiday, the last day to file the appeal is the next day when City offices are open for business.
 - b. **Time to Appeal Where No Written Decision was Rendered.** If the Department fails to render a written decision upon request, the appellant has 15 working days from the request date to initiate appeal. When counting "working days" for purposes of calculating the deadline for filing an appeal, the appeal period begins the day after the request for a written decision is made, excluding Saturday, Sunday, and City holidays. If the last working day falls on a weekend or City holiday, the last day is the next day when City offices are open for business.
 - c. **Appeal Form.** To initiate an appeal, the appellant must complete and submit a Notice of Appeal form, along with any required filing fee, to the Secretary. The Notice of Appeal (sometimes referred to as the Application for Appeal) form shall be available online on the Commission's website and in hardcopy from the Department of Building Inspection at the address listed on the Commission's

website. On the Notice of Appeal form, the appellant must clearly set forth a concise statement of the issues, including a statement of the basis for the appeal and the action the appellant is requesting from the Commission.

d. Information Required to be Furnished by the Department

- i. **Identification of Interested Parties.** Within three working days of receiving a Notice of Appeal, the Department whose decision or determination is being appealed shall send written notification to the Secretary of the names and addresses of any persons, other than parties to the appeal, who have appeared before the Department, in person or in writing, to support or oppose the Department's decision or determination.
- ii. **Department's Record.** Within three working days of receiving a Notice of Appeal, the Department whose decision or determination is being appealed also shall transmit to the Secretary a copy of the Department's entire file concerning the matter being appealed, including any recordings of any hearings held by the Department.

VI. Notices

- a. **Commission Notices.** Promptly upon the Secretary's having determined that the filing of a Notice of Appeal, Request for Jurisdiction, Request for Suspension, or Request for Rehearing is complete based upon information received from the appellant and Department, the Secretary shall send a copy of said notice or request to the Department whose decision or determination is being appealed and shall mail the notice to the owner or owners of the affected property, if any, and to any persons who have filed with the Secretary a written request for notification. The Secretary shall send timely notices of the date, time, and place of a Commission hearing on the matter to the Department, the appellant, owner or owners of the affected property, persons on the Department's list furnished to the Commission pursuant to Section 77.7(a), and other persons who have filed a written request for notice of the hearing.
- b. **Department's Decisions.**
 - i. All Department decisions or determinations subject to an appeal to the Commission pursuant to the San Francisco Charter, Building Code, or Administrative Code shall include notice of the right to appeal using the language set forth in subsection VI(b)(iii) below.
 - ii. Notice of a right to appeal to the Commission shall be printed on all materials used by the Department to process requests for decisions or determinations that are subject to such appeal pursuant to the San

Francisco Charter, Building Code, or Administrative Code. Such materials shall include, but not be limited to: (1) permit application, inspection, and other forms; and (2) informational materials provided to persons seeking a decision or determination from the Department.

- iii. The notice shall be printed in bold face type of not less than 18 points. The notice for all Departments shall state: "As provided by San Francisco Charter, Building Code, or Administrative Code, decisions or determinations made by this Department regarding applications for permits under the San Francisco Building, Electrical, Housing, Mechanical, and Plumbing Codes, excluding decisions appealable to the Access Appeals Commission or the Board of Appeals, are appealable to the Building Inspection Commission within fifteen (15) calendar days of the date this decision or determination was mailed." Notices for the Department of Building Inspection shall add the information that decisions or determinations made in the enforcement of the above enumerated Codes and other laws that it enforces are appealable to the Commission.

VII. **Written Submittals.**

- a. **Appellant's Statement.** No later than 14 calendar days before the scheduled hearing date, the appellant may submit a pre-hearing statement in support of its appeal. The pre-hearing statement should clearly set forth the appellant's arguments and cite to relevant evidence that supports those arguments. The statement shall be double-spaced, in 12-point font (if typed), and not more than seven pages in length. The appellant may include any supporting documents and exhibits not previously submitted as part of its Notice of Appeal, which will not count toward the page limit.
- b. **Department's Response.** No later than seven calendar days before the scheduled hearing date, the Director of the Department may submit a statement in response. The response shall be double-spaced, in 12-point font (if typed), not more than seven pages in length, and may include any supporting documents (which shall not be counted as part of the page limit).
- c. **Number of copies and manner of submitting.** Except for the Department's written decision or determination being appealed, the parties may submit all written submissions, including the appellant's statement and the Department's response, by emailing the submissions to the Secretary at the email address provided on the Commission's webpage or, if submitted in paper form, by delivering an original and ten copies in collated form, to the Commission office at the address listed on the Commission's website. An item is considered "submitted" when the Secretary receives the submission by email or the submission is delivered to the Commission office.

- d. **Service on other parties.** Except for the Department's written decision or determination being appealed, the Secretary will forward a copy of all written submissions, including the appellant's statement and the Department's response, to the parties.

VIII. Rejection of Appeal

- a. **Notice of Rejection.** If the Secretary rejects an appeal for lack of jurisdiction or for failure to submit any required filing fee or required documentation, the Secretary must send written notice of the rejection and the reasons for rejecting the appeal, to the appellant or its authorized agent by certified mail within five working days of the filing of the appeal. If the appeal was rejected for incomplete submittal, the Secretary must include in the notice a list of all documents, materials, and other information needed to complete the appeal. An appeal is timely so long as the Notice of Appeal and any required filing fee are submitted within the 15-day appeal period described in Section V of these Rules.
- b. **Failure to Provide Notice.** If the Secretary does not provide notice within five working days as described in subsection (a), then the Secretary may not reject the appeal thereafter. The Secretary's inaction, however, does not confer jurisdiction to the Commission if it does not already exist, nor does it prevent the Commission from requiring additional documents or other information from the appellant.
- c. **Request for Jurisdiction.** If the Secretary has rejected an appeal for any reason, or if the 15-day appeal period has expired, the appellant may request the Commission to grant jurisdiction by filing a Request for Jurisdiction form, together with any required filing fee and such other information as the Commission may require. The Request for Jurisdiction form shall be available online on the Commission's website and in hardcopy from the Department of Building Inspection at the address listed on the Commission's website. The Request for Jurisdiction form must be filed with the Secretary within 15 calendar days of the date the Secretary has rejected an appeal or within 15 calendar days after the appellant has actual or constructive knowledge of the right to appeal. The Commission may grant jurisdiction for an appeal filed beyond the 15-day appeal period only upon a showing by the appellant that the delay in filing the appeal was due to misrepresentation, mistake, or other error on the part of the City. However, a showing that a Department failed to provide notice of the right to appeal required by Administrative Code Section 77.8(b) shall require the Commission to accept an appeal beyond the 15-day appeal period.

- IX. **Suspension of Action Being Appealed.** The appellant or its authorized agent may file a Request for Suspension using the form available online on the Commission's website and in hardcopy from the Department of Building Inspection at the address listed on the Commission's website. If the appellant or its authorized agent files a Request for

Suspension form, the Secretary shall issue to the applicable Department a written notice of suspension of the decision being appealed. The suspension shall take immediate effect unless the Department makes a written finding that such suspension would cause or is causing a public hazard. Upon the Department's prompt submittal of its finding to the Secretary, the suspension shall lapse unless and until the finding is denied by the Commission at its next regularly scheduled meeting. Except as provided above, a suspension shall remain in place until the Commission has rendered a final decision on the appeal.

X. **Scheduling of Appeals.**

- a. **Notice of Hearing Date.** The date, time, and place of a hearing on an appeal or request for jurisdiction shall be fixed within three working days after the Secretary determines the filing to be complete, and the appeal shall be heard within 40 calendar days thereafter.
- b. **Continuation of Hearing.** Once an appeal has been calendared for a hearing by the Commission, the matter shall not be continued except in cases where the Commission's meeting has been canceled or the appellant or appellant's authorized agent has submitted a written request for continuance, or upon a vote of the Commission. Notice of a continued date shall be mailed to all parties who received notice of the original hearing date. Any continued hearing must be set such that the Commission's decision will be issued in compliance with any applicable local or state deadlines.
- c. **Appellant's Failure to Appear.** If the appellant fails to appear at the hearing, the Commission will confirm that notice of the hearing was properly provided under Section VI. If the appellant does not appear for a noticed hearing, the decision or determination being appealed shall become immediately effective from the date the decision or determination was issued.

XI. **Hearing**

- a. **Order of Presentation at the Hearing.** Except when the President finds good cause to order the presentations otherwise, the order of presentation of an appeal shall be as follows: The appellant and the Department will each have 7 minutes to present their position. The Department shall present first, then the appellant will present. After the presentations, there will be an opportunity for public comment. After the close of public comment, each party will have 3 minutes for a rebuttal. The Department will present its rebuttal first, then the appellant may present its rebuttal. After the presentations, Commission members may ask questions of either party. The Commission may then discuss the appeal and deliberate on the appropriate action.

- b. **Rules of Evidence.** The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- c. **Decision.** Upon the hearing, the Commission may, subject to the same limitations as are placed upon the Department by law, approve, disapprove or modify the decision or determination being appealed. The Commission shall render its decision in writing within any applicable state or local law deadlines or within 90 calendar days of the first hearing, whichever comes first, and shall set forth, as part of its decision, findings, and facts sufficient to establish that the Department has or has not made an error, abused its discretion, or complied with the law.

XII. Limits on Commission's Appellate Powers.

- a. The Commission shall have, except as provided in this section, no more authority than is granted to local enforcement agencies by California statute, the regulations contained within Title 24 of the California Code of Regulations and the Model Codes adopted pursuant thereto.
- b. The Commission is not authorized to waive provisions of the Building, Electrical, Housing, Mechanical, or Plumbing Codes. However, the Commission may grant a modification to those Codes in an individual case upon a finding that a special circumstance makes compliance with the strict letter of the Codes impractical; provided that such modification is in conformance with the intent and purpose of the Codes, and further provided that the modification does not lessen any fire-protection requirement or any degree of structural integrity and will not result in a condition that is less safe or less desirable from the point of view of public safety. The Commission shall have no appellate powers over decisions or determinations made by the San Francisco Fire Department when that Department has been given exclusive enforcement jurisdiction by California law or the San Francisco Charter.
- c. Notwithstanding any of the above, the Commission shall have the authority to interpret the administrative provisions of Chapter 77 of the Administrative Code.

XIII. Appeals Barred. No person may file an appeal of the following matters:

- a. A decision concerning the same issue or issues at the same property that was finally decided by the Commission within the previous 12 months; and
- b. A decision made by the Commission when it was sitting as the Abatement Appeals Board.

- XIV. **Request for Rehearing.** Any party to the appeal may request the Commission to rehear the matter by filing a Request for Rehearing form with any applicable filing fee. The Request for Rehearing form shall be available online on the Commission’s website and in hardcopy from the Department of Building Inspection at the address listed on the Commission’s website. The Request for Rehearing shall be filed within ten calendar days of the Commission’s action on the appeal, and shall set forth new evidence or legal error as the grounds for rehearing. The Commission may grant rehearings by the vote of four members.
- XV. **Powers of President.** The President may:
- a. Require parties to state their position with respect to the various issues in the proceedings;
 - b. Require parties to produce for examination those relevant witnesses and documents under their control;
 - c. Rule on non-dispositive procedural motions, and other procedural matters that must be resolved in advance of the hearing;
 - d. Regulate the course of the hearing and conduct of participants therein;
 - e. Modify or extend time limits established by these rules upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.
- XVI. **Ex Parte Communications.** The members of the Commission may not consult any party on any fact at issue unless upon notice and opportunity for all parties to participate. No employee or agent of the City engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the Commission’s decision in the case, except as a party, witness, or counsel in the proceeding.
- XVII. **Amendment of Rules.** These Rules may be amended by the Commission at any regular meeting by a majority vote following a public hearing, provided that at least 10 days public notice is given.