

# Abatement Appeals Board Bylaws and Rules of Procedure

Adopted: January 19, 2022

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## I. Abatement Appeals Board Officers

### A. President and Vice President

**1. Election.** At its first regular meeting in February each year, or the first meeting held thereafter, the AAB shall elect a President and a Vice President. At the meeting when the election is to be held, the presiding officer shall first call for public comment on the agenda item. The presiding officer shall then call for nominations from the AAB members for the office. No second is required for nominations. After all nominations are offered, the presiding officer shall close the nominations and the Board shall vote on the nominations in the order they were received. The first candidate to receive a majority of the votes is elected to the office. If no nominee receives a majority of the votes, then the presiding officer shall direct additional roll calls until a nominee receives a majority vote and is elected. At any time during the election process, the AAB members may, by majority vote, reopen nominations.

**2. Term.** The term of office for the President and the Vice President shall be one year, at the pleasure of the AAB, and until their successors are elected.

**3. Duties.** The President shall serve as the presiding officer at all meetings of the AAB, and shall perform all other duties necessary or incidental to the position. The presiding officer shall assure a fair hearing to all parties and that the Rules of Procedure are followed. In the event of the absence or incapacity of the President, the Vice President shall perform the President's duties.

**B. AAB Secretary.** The Director of Building Inspection shall serve as the AAB Secretary. The Director may appoint a staff member to serve as representative Secretary to the AAB to perform, in the Director's stead, the duties of coordinating the functions of the AAB, including processing appeals and preparing meeting agendas and minutes.

## II. Meetings

**A. Time and Place.** Regular meetings shall be open to the public and, unless otherwise noted, shall be held as scheduled on the third Wednesday of each month at 9:00 a.m.

**B. Quorum.** Four members of the AAB shall constitute a quorum. Any action of the AAB shall require the concurrence of four members.

**C. Communications with the AAB.** The AAB is a quasi-adjudicatory body whose decisions are rendered based on the evidence that is before the AAB in the public

record. In order to preserve the fairness and integrity of the AAB's proceedings, any written communications to the AAB containing information or evidence pertaining to an appeal pending before the AAB must be submitted through the AAB Secretary, and not sent to individual AAB members. If an AAB member receives a written communication relating to a pending appeal, the member shall forward that communication to the Commission Secretary for appropriate response.

**D. 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.

### **III. Appeals**

**A. Generally.** Under San Francisco Building Code section 105A.2.3, the AAB has the power to hear and decide appeals from Orders of Abatement and to hear appeals regarding the issuance of a final bill for assessment of costs imposed pursuant to Building Code Section 102A upon a showing of substantial error by the Department of Building Inspection. The AAB may uphold, modify, or reverse such orders, provided that the public health, safety, and public welfare are secured most nearly in accordance with the intent and purpose of the Building Code and the San Francisco Housing Code. The procedure for such appeals shall be as set forth in the San Francisco Building Code Section 105A.2, Administrative Code Section 77.5, and under these Rules.

#### **B. Filing of Appeal.**

**1. Timing.** An appeal must be filed within 15 days of the posting and service of the Order of Abatement. When counting "calendar days" for purposes of calculating the deadline for filing an appeal, the appeal period begins the day after the date the Order of Abatement is posted and served. If the last calendar day falls on a weekend or City holiday, the last day to file the appeal is the next day when City offices are open for business.

**2. Appeal Form.** To appeal an Order of Abatement, the appellant must complete and submit an appeal form, along with the required fee, to the AAB Secretary. The appeal form shall be available online and in hardcopy from the Department of Building Inspection at the address listed on the AAB's website. On the appeal form, the appellant must clearly state the basis for the appeal and the action it is requesting from the AAB.

**C. Notice of hearing date.** After receiving a timely-filed and completed appeal form, the AAB Secretary will notify the appellant and Department in writing of the hearing date and deadlines for submitting written materials, consistent with the deadlines set forth in these Rules.

## **D. Written Submittals.**

**1. Appellant's Statement.** No later than 21 days before the scheduled hearing date, the appellant may submit a written statement in support of the appeal. The written statement should clearly set forth the appellant's arguments for reversing or modifying the Order of Abatement or assessment of costs 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 5 pages in length. The appellant may attach exhibits, such as photos and plans, which will not count toward the page limit.

**2. Department's Report.** No later than 7 days before the scheduled hearing date, the Department shall submit its Report. The Department's Report shall set forth the procedural history and basis for the Order of Abatement and any assessment of costs, and include any exhibits in support of the Order.

**3. Number of copies and manner of submitting.** For all written submissions, including the Appellant's Statement and the Department's Report, the party may either email the submissions to the AAB Secretary at the email address provided on the AAB's webpage or, if submitted in paper form, deliver an original and ten copies in collated form, to the AAB office at 49 South Van Ness Ave., Ste. 500, San Francisco, CA 94103. An item is considered "submitted" when it is emailed to the AAB Secretary or delivered to the AAB office.

**4. Service on other parties.** The AAB Secretary will forward a copy of all written submissions, including the Appellant's Statement and the Department's Report, to the opposing party.

**5. Calendar.** If the deadline for a written submission falls on a weekend or City holiday, deadline shall be the next day when City Offices are open for business.

**E. Request to continue hearing.** The AAB may grant one continuance of a hearing date for good cause shown. The continuance shall not exceed 60 days. If a written request for continuance is filed before a hearing date, the continuance may be granted by the AAB Secretary with the approval of the AAB President if all parties to the appeal and the Director of the Department of Building Inspection consent. If the request is opposed, it may only be granted with the approval of a majority of the AAB members at the hearing.

**F. Appellant's Failure to Appear.** If the appellant fails to appear at the hearing, the AAB will confirm that notice of the hearing was properly provided under sec. III.C. Under San Francisco Building Code section 105A.2.8.1, if the appellant does not appear for a noticed hearing, the Order of Abatement shall be immediately effective from the date the Order was issued.

**G. Order of Presentation at the Hearing.** Except when the presiding officer 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, AAB members may ask questions of either party and will give the other party an opportunity to respond. The AAB may then discuss the appeal and deliberate on the appropriate action.

**H. Findings and Decision.** The Board shall issue its written findings and decision no later than 10 days after the conclusion of the hearing.

#### **IV. Request for Rehearing**

**A. Form and Timing.** Within 10 days after the AAB issues its written findings and decision, a party may request that the AAB rehear the appeal by submitting a completed Request for Rehearing form, available on the AAB website, and paying the applicable filing fee.

**B. Grounds for rehearing.** The AAB 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, or where the AAB's decision was legally erroneous. 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.

#### **V. Request for Jurisdiction.**

**A. Form and timing.** If the AAB Secretary has rejected an appeal for any reason, or if the appeal period has expired, the appellant may request that the AAB exercise jurisdiction by filing a Request for Jurisdiction form, available on the AAB's webpage. A Request for Jurisdiction form must be filed within 10 days of the date the AAB Secretary has rejected an appeal or within 10 days after the appellant has actual or constructive knowledge of the right to appeal.

**B. Grounds for granting request.** The AAB may grant jurisdiction to hear an appeal that was filed beyond the appeal period only if the appellant shows that the delay in filing the appeal was due to misrepresentation, mistake, or other error caused by the City. If the AAB grants a Request for Jurisdiction, the appellant must file the appeal within 5 days from the date of the Board's decision.

**VI. Amendment of Rules.** These Bylaws and Rules of Procedure may be amended by the AAB at any Regular Meeting by a majority vote following a public hearing, provided that at least 10 days public notice is given.