

SAN FRANCISCO BOARD OF APPEALS DRAFT ANNUAL REPORT FY24



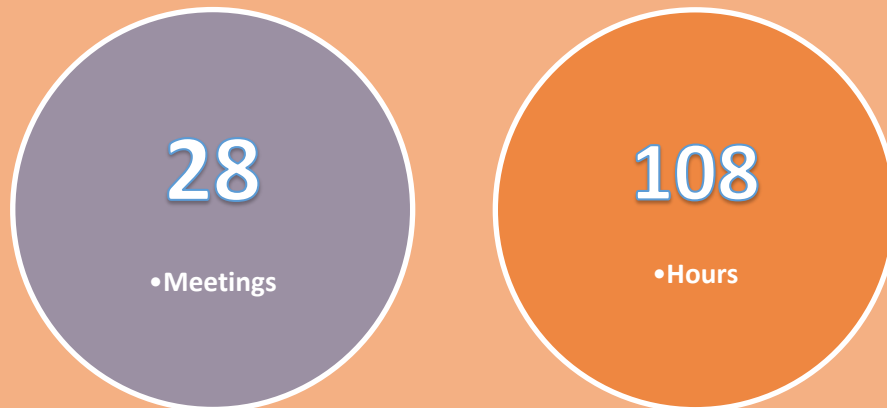
MISSION

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 and County of San Francisco.



BOARD MEETINGS



- Open to the public and broadcast on the City’s government television channel and on the Board’s website.¹
- Held on most Wednesdays starting at 5:00 p.m. Participants can attend in-person at City Hall or remotely via Zoom.
- Conducted in accordance with the Rules of the Board of Appeals.
- Closed-captioned on TV.
- Meeting agendas, minutes, and appellants’ and respondents’ briefs and other materials associated with the cases heard are posted on the Board’s website.²

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

²www.sfgov.org/boa

Comparison to Previous Years

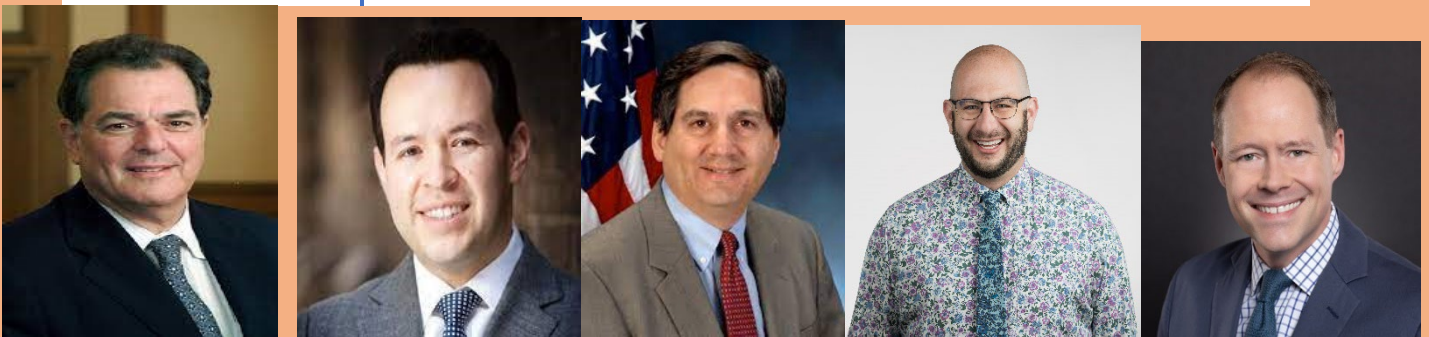
Fiscal Year	Number of Meetings	Total Hours
FY 24	28	108
FY 23	29	90
FY 22	29	84
FY 21	29	78
FY 20	25	96
FY 19	30	89
FY 18	29	105
FY 17	31	80

From FY17 through FY24, the Board had an average of 29 meetings per year and spent an average of 91 hours per year conducting hearings.

BOARD MEMBERSHIP IN FY24

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>Rick Swig</i>	Mayor	April 2, 2015	July 1, 2024 ³
<i>Jose Lopez</i>	Mayor	July 27, 2021	July 1, 2024 ⁴
<i>John Trasviña</i>	Mayor	July 28, 2022	July 1, 2026
<i>Alex Lemberg</i>	Board of Supervisors	July 18, 2022 ⁵	July 1, 2024
<i>J.R. Eppler</i>	Board of Supervisors	September 27, 2022	July 1, 2026



From Left to Right: Rick Swig, Jose Lopez, John Trasviña, Alex Lemberg and J.R. Eppler.

³ For FY16-FY20, Commissioner Swig was an appointee of the President of the Board of Supervisors. For FY21-FY24, he was an appointee of Mayor Breed. [Note: In FY25, Commissioner Swig was appointed by Board President Peskin to serve through July 1, 2028].

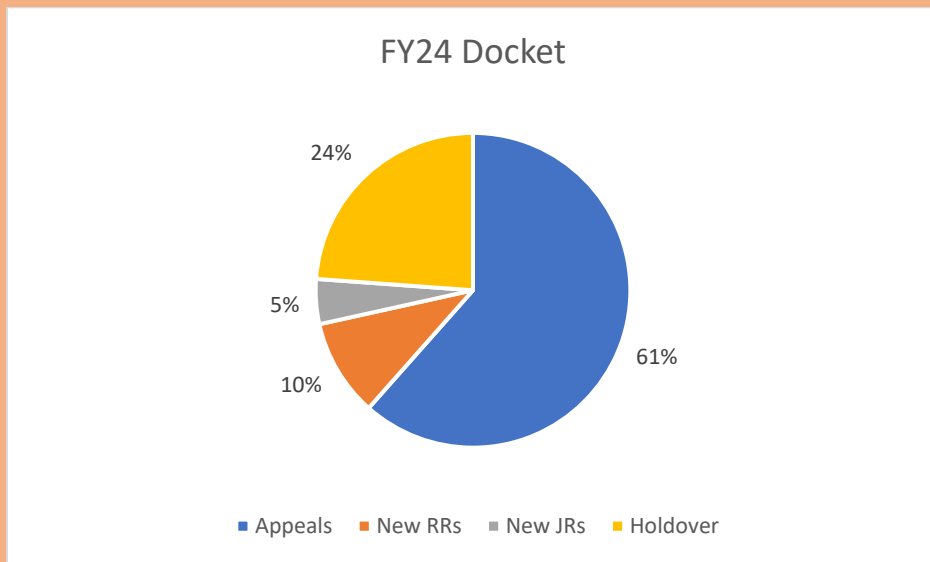
⁴ Commissioner Lopez was appointed by Mayor Breed to complete the term of former Commissioner Santacana, who resigned on April 14, 2021. [Note: In FY25, Commissioner Lopez was reappointed by Mayor Breed to serve through July 1, 2028].

⁵ Commissioner Lemberg was appointed to fill the remainder of the unexpired term of Commissioner Honda, who resigned from the Board on May 6, 2022.

APPEAL EXPERIENCE

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

- New matters filed:
 - 80 appeals.
 - 13 rehearing requests (RRs).
 - 6 jurisdiction requests (JRs).
- 31 pending or continued matters carried forward from prior years.

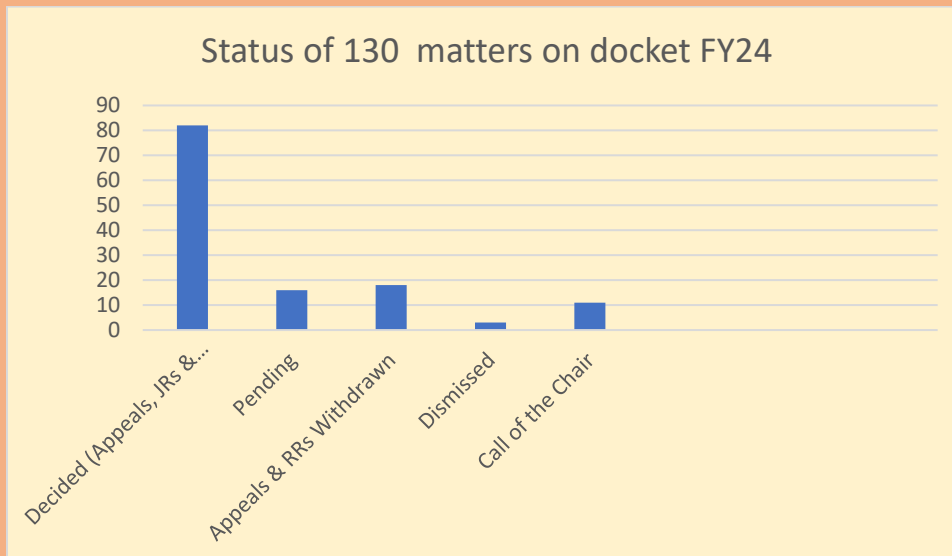


82 matters were decided by the Board:

- 67 appeals.
- 10 rehearing requests.
- 5 jurisdiction requests.

48 matters were not heard:

- 16 pending appeals⁶.
- 17 appeals and 1 RR were withdrawn.
- 11 appeals remained or were placed on Call of the Chair (these appeals did not have a scheduled hearing date).
- 3 appeals were dismissed prior to hearing⁷



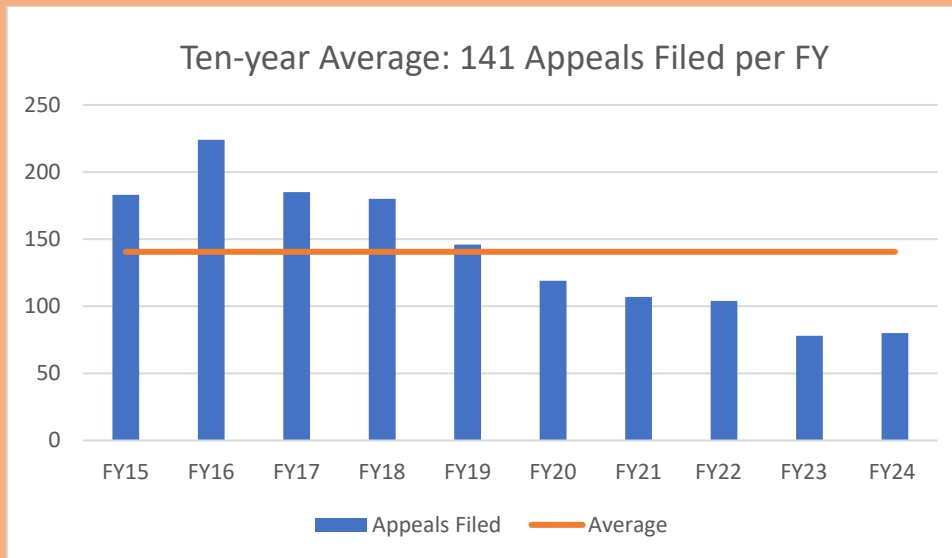
⁶ Pending appeals for the purpose of this report are those that had scheduled hearing dates and were not decided/resolved in FY24. The pending appeals do not include cases that are on the Call of the Chair.

⁷ Two appeals were dismissed because a determination was made that the Board did not have jurisdiction over the subject matter. Another appeal was dismissed because the permit was canceled, and therefore the appeal became moot.

Appeal Volume

80 new appeals filed

Below the ten-year average of 141 appeals filed per fiscal year.



Appeal volume is generally related to the volume of permit issuance. Since FY19, DBI and the Planning Department have issued significantly fewer permits and Planning Department determinations.

Changes in appeal volume from year to year can also be attributed to other 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 type of appeal.

Assembly Bill (AB) 1114 Limits Appeal Rights

To address the housing shortage in California, the California Legislature enacted Assembly Bill 1114 which took effect on January 1, 2024.

- The Board of Appeals cannot accept jurisdiction of appeals of post-entitlement phase permits for housing development projects pursuant

to Government Code Section 65913.3(c)(3). The restrictions for AB 1114 do not apply to a permit *filed* before January 1, 2024.

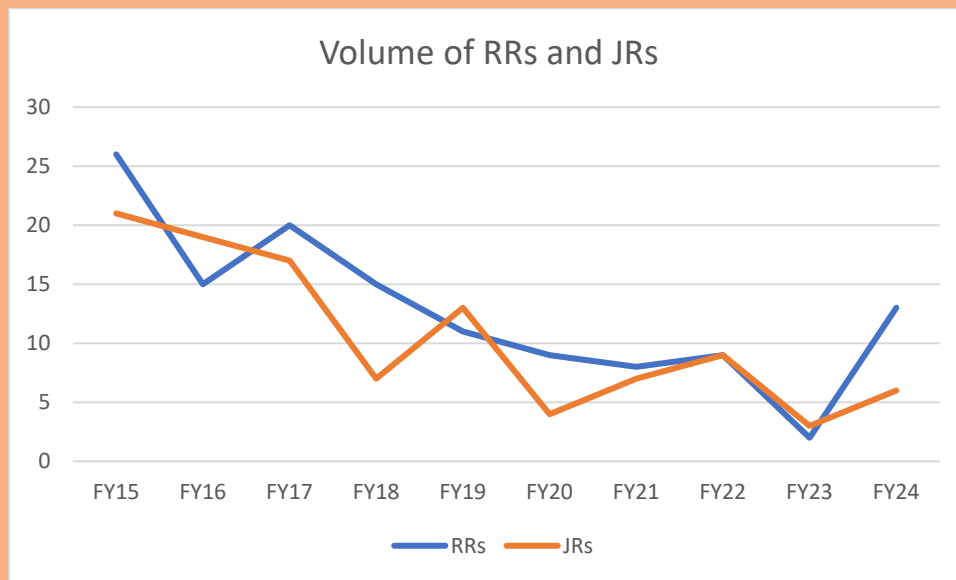
- This means that the Board does not have jurisdiction over covered permits that add housing filed on or after January 1, 2024.
- Permits for housing developments make up approximately 16% of the Board's appeal volume (based on a review of permits appealed in FY23 and FY24).

Rehearing & Jurisdiction Requests Volume

Rehearing Requests (RRs) ask the Board to reconsider a hearing decision. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a rehearing request only on a showing that new or different material facts or circumstances have arisen, where such facts and circumstances, if known at the time, could have affected the outcome of the original hearing.

Jurisdiction Requests (JRs) ask the Board to allow an appeal to be filed late on the basis that the City intentionally or inadvertently caused the requestor to be late in filing an appeal.

13 Rehearing Requests and 6 Jurisdiction Requests in FY24



In FY24, the volume of rehearing requests and jurisdiction requests increased from FY23.

- The ten-year average for rehearing requests: 13
- The ten-year average for jurisdiction requests: 11

Volume of Appeals, RRs & JRs by Fiscal Year

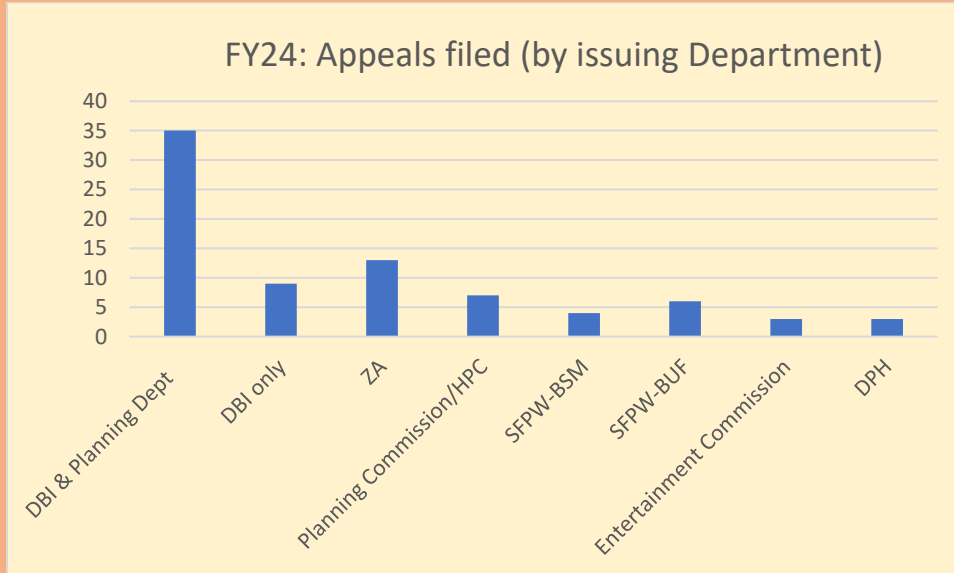
Fiscal Year	No. of Matters on the Board's Docket	No. of New Appeals	No. of New RRs	No. of New JRs	No. of Pending or Continued Cases from Prior Years
FY24	130	80	13	6	31
FY23	122	78	2	3	39
FY22	157	104	9	7	37
FY21	164	107	8	9	40
FY20	188	119	9	7	53
FY19	212	146	11	4	51
FY18	237	180	16	13	28
FY17	262	185	12	7	58

Subject Matter

80% of appeals filed were of land-use decisions made by the Department of Building Inspection (DBI), the Planning Department (PD) the Planning Commission (PC), Historic Preservation Commission (HPC) and the Zoning Administrator (ZA).

Other permit appeals challenged the decisions of:

- San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF): 8%.
- San Francisco Public Works, Bureau of Street Use & Mapping (SFPW-BSM): 5%
- Entertainment Commission: 3.5%
- DPH: 3.5%



Department	% BOA Cases FY18	% BOA Cases FY19	% BOA Cases FY20	% BOA Cases FY21	% BOA Cases FY22	% BOA Cases FY23	% BOA Cases FY24
DBI and Planning Department	76%	66%	70%	82%	63%	88%	80%
SFPW-BUF	6%	8%	20%	15%	15%	10%	8%
SFPW-BSM	14%	19%	6%	1%	10%	2%	5%
DPH	<4%	6%	3%	1%	6%	0%	3.5%
Entertainment Commission	0%	0%	0%	0%	0%	0%	3.5%
Arts Commission	0%	<1%	1%	0%	0%	0%	0%
SFPD	<1%	0%	0%	0%	0%	0%	0%



Typical land use cases involve:

- Building Permits (site and alteration permits).
- Accessory Dwelling Units.
- Zoning Administrator (ZA) Decisions:
 - Variances.
 - Letters of Determination regarding permitted uses.
 - Notices of Violations and Penalties.
 - Requests for Suspension or Revocation of Building Permits.
- Planning Commission Actions.



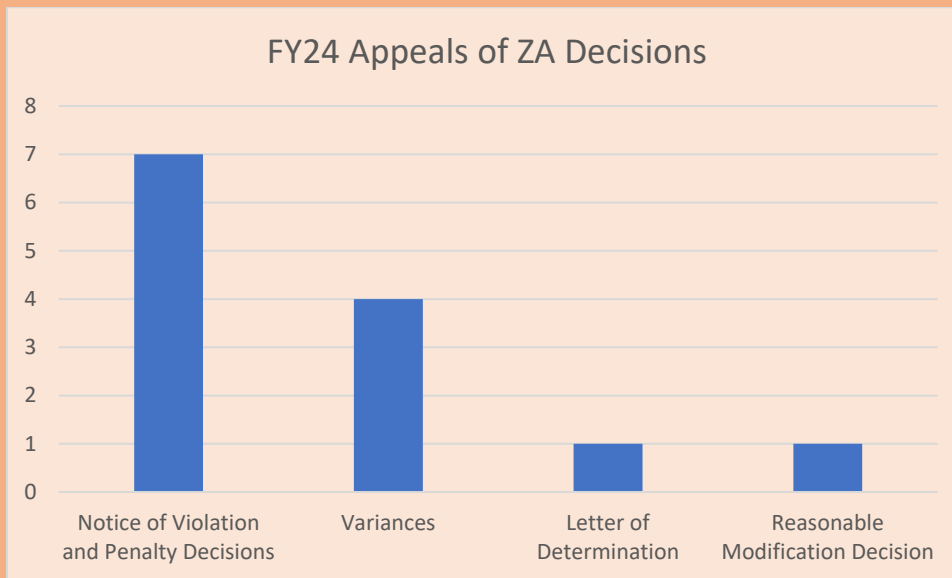
35 appeals filed were of decisions made jointly by DBI and the Planning Department:

- 33 appeals protested the issuance of building permits. These appeals are typically filed by individuals or groups of neighbors concerned that proposed construction will negatively impact their property or neighborhood.
- Two appeals protested the cancellation of building permits.

9 appeals filed were of decisions made solely by DBI (Planning Department approval was not required).

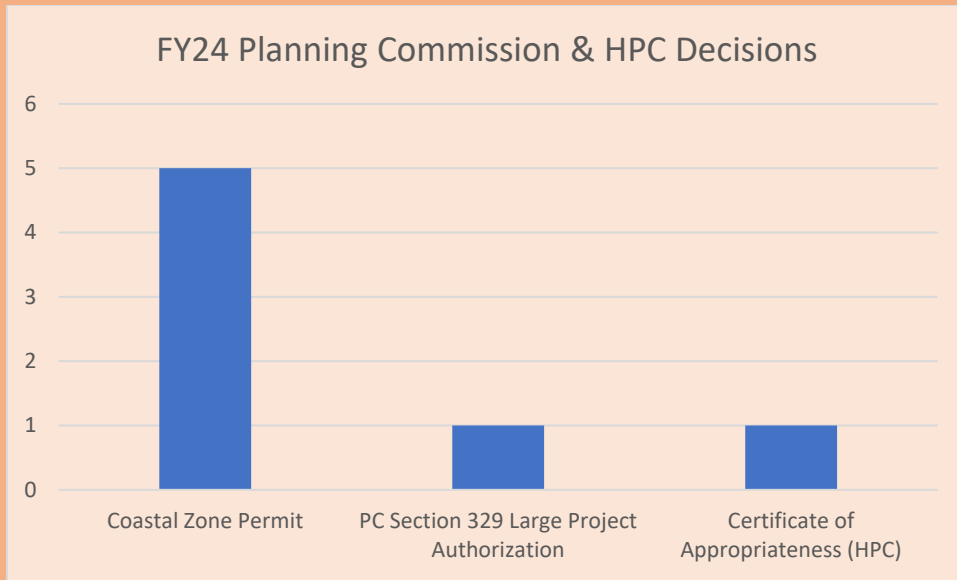
13 appeals filed were of decisions by the Zoning Administrator:

- 7 appeals protested the issuance of Notices of Violation and Penalty Decisions.
- 4 appeals protested the issuance of Variance Decisions.
- 1 appeal protested the issuance of a Letter of Determination.
- 1 appeal protested a Reasonable Modification Decision.



7 appeals were of Planning Commission and Historic Preservation Commission decisions:

- **Planning Commission**
 - 5 appeals of Coastal Zone Permits.
 - 1 appeal of a Section 329 Large Project Authorization.
- **Historic Preservation Commission**
 - 1 appeal of a Certificate of Appropriateness.



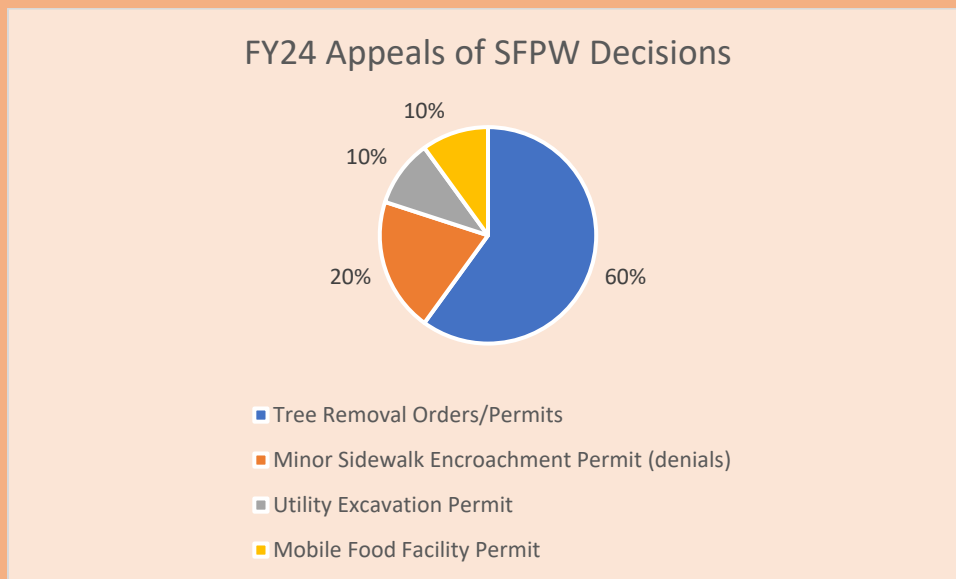


Types of Cases from San Francisco Public Works (SFPW)

Most appeals heard from Public Works involve tree removal orders. The Bureau of Urban Forestry represents SFPW at these hearings. Other types of appeals are from permits issued or denied by the Bureau of Street Use and Mapping.

10 appeals filed were of decisions made by San Francisco Public Works:

- 6 appeals protested the issuance or denial of orders or permits related to tree removal.
- 2 appeals protested the denial of Minor Sidewalk Encroachment permits.
- 1 appeal protested the issuance of a Utility Excavation permit.
- 1 appeal protested the terms of a Mobile Food Facility permit.



Other Types of Appeals Heard:

3 appeals were of permits issued by the Entertainment Commission.

3 appeals were of decisions issued by the Department of Public Health (denial of retail tobacco permits).

Outcome: 67 Appeals Decided

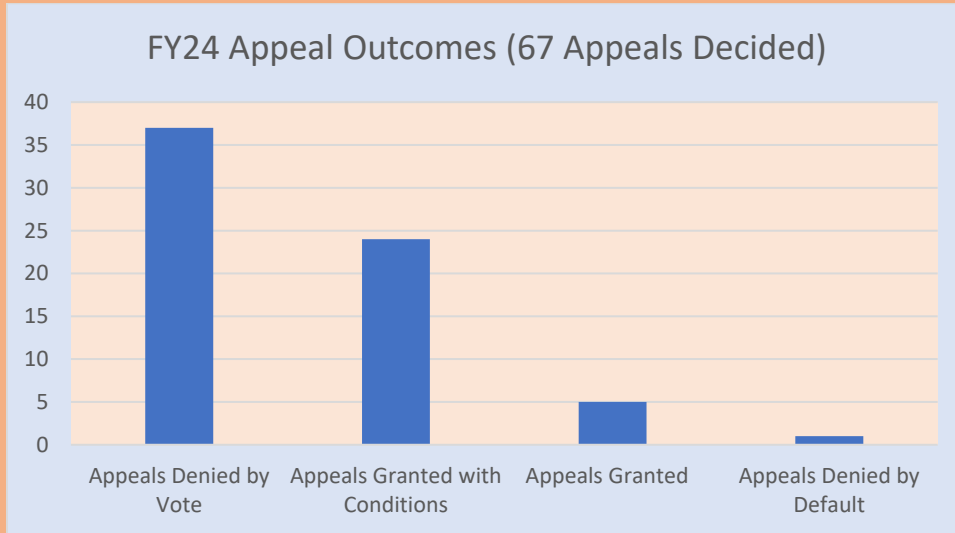
Given the supermajority vote required to grant an appeal, the Board typically denies more appeals than it grants.

37 appeals were denied by vote resulting in the underlying departmental decision being upheld.

24 appeals were granted with conditions by the Board: The underlying departmental decision was conditioned or modified in some way.

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

1 appeal was denied by default (the Board was unable to muster sufficient votes to grant or deny the appeal, so it was denied by operation of law).



Outcome: Rehearing & Jurisdiction Requests

11 Rehearing Requests were on the Board's docket in FY24:

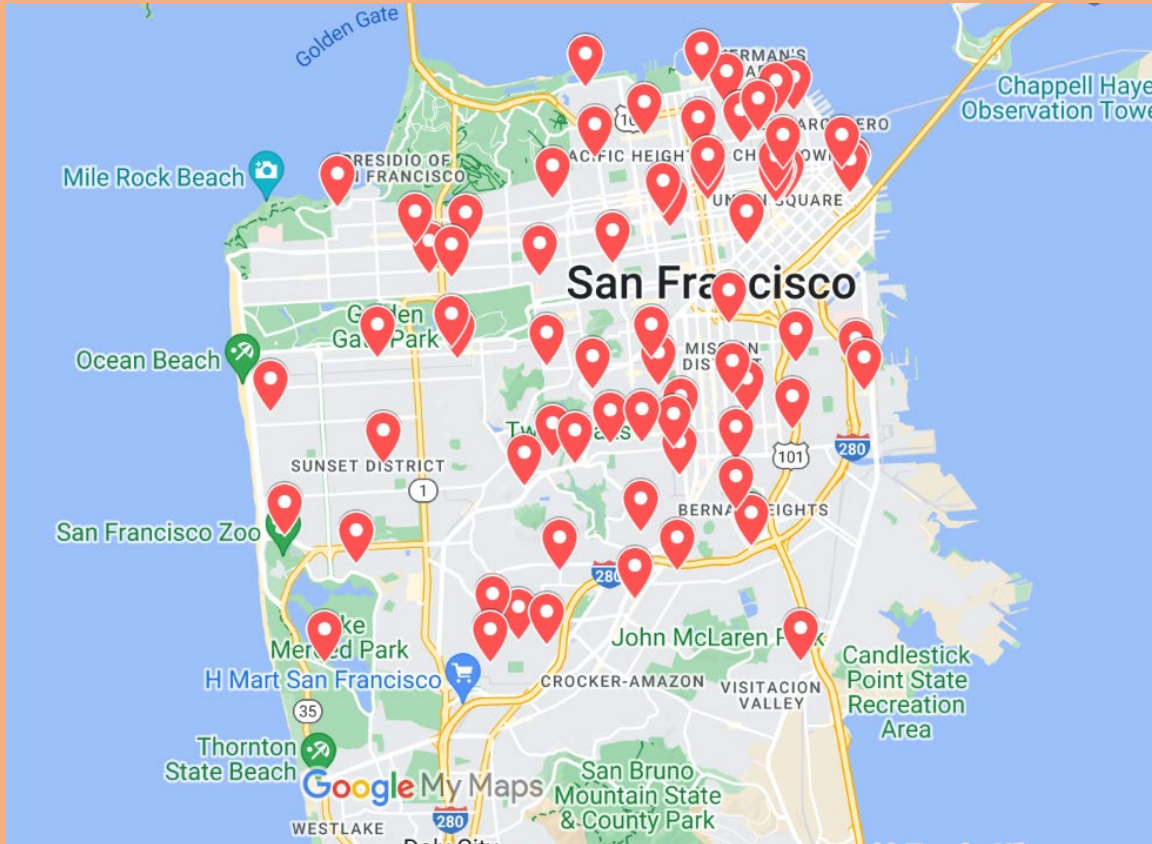
- 10 denied.
- 1 withdrawn.

5 Jurisdiction Requests were on the Board's docket in FY24

- 5 denied

Geographic Distribution of Appeals

The appeals heard by the Board during the year involve properties located in most of San Francisco's neighborhoods.⁸



⁸ In addition to the above locations, the Board heard three appeals of a Coastal Zone Permit that covered the Upper Great Highway between Lincoln Way and Sloat Boulevard.

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 One: Percentage of appeals that are decided within 75 days of filing excluding those cases continued or rescheduled at the request of the parties⁹ (cases decided in FY24).
 - The FY24 target was to decide 80% of the cases within 75 days of filing.¹⁰
 - The Board decided 78% of its cases within 75 days of the appeal being filed.

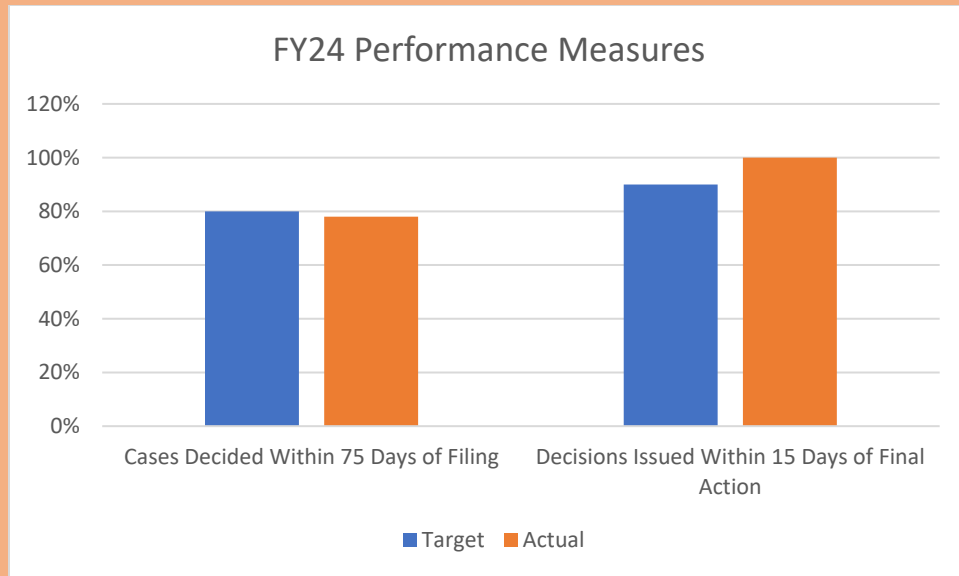
- Measure Two: Percentage of written decisions¹¹ that are issued within 15 days of final Board action.
 - The FY24 target was to issue 90% of the written decisions within 15 days of final action.¹² A total of 63 written decisions were issued in FY24.
 - The Board exceeded its target and issued 100% of the written decisions within 15 days of final action.

⁹ This metric was modified for FY23. Previously the metric did not exclude cases that were rescheduled or continued at the request of the parties.

¹⁰ In FY22 the target was 70%. From FY11-FY21 the target was 60%.

¹¹ Written decisions are issued 13 days after a decision is made at a hearing if the parties have not made a request for a rehearing.

¹² The target for FY22 was 70% and the target for FY11-FY21 was 60%.



FY24 BUDGET

REVENUE OVERVIEW

The Board has two sources of revenue:

- (1) Surcharges placed on permits which are designed to generate the revenue needed to cover operating expenses (98% of the budget).
 - a. Surcharges are collected on new and renewed permits.
 - b. The rates are based on the percentage of cases originating from each underlying department and anticipated permit application volume. These rates are analyzed annually by the Controller's Office and adjusted if needed.
- (2) Filing fees which are collected when new appeals are filed (2% of the budget).

PROJECTED REVENUE

\$1,132,059 was the projected revenue budget:

- \$1,112,059 in *projected* surcharge revenue collected by permit issuing departments on new permit applications.
- \$20,000 in *projected* filing fee revenue collected by the Board when new appeals are filed.

ACTUAL REVENUE

\$1,245,987 in actual revenue was collected:

- Surcharges: \$1,228,196
- Filing fees: \$17,790
- Collected \$159,881 more than projected revenue

EXPENDITURES OVERVIEW

PROJECTED EXPENDITURES

\$1,143,037

ACTUAL EXPENDITURES

\$1,086,106 was spent by the Board.

Expenditures		
Operating	Projected Budget	\$1,143,037
	Actual Expenditures	\$1,086,106
	Variance from projected budget	\$56,931

Breakdown of Actual Expenditures:

- \$715,040 for salaries and fringe benefits.
- \$346,011 for the services of other City departments, such as the City Attorney, Department of Technology, SFGovTV, and Real Estate (rent).
- \$19,951 for specialized services such as software licensing fees, interpreters, parking, and office management costs such as, photocopier and postage.
- \$5,104 materials and supplies.

FY24 Budget		
Operating Budget	Total Actual Revenues	\$1,245,987
	Total Actual Expenditures	\$1,086,106
	Surplus	\$159,881 (deferred revenue)

Surcharges

- The surcharges imposed on appealable permits are intended to recover costs for the Board's expenses.
- Each Spring the Controller's Office does a surcharge analysis to determine if surcharge amounts need to change.

Department	FY18	FY19	FY20	FY21	F22	FY23	FY24	FY25
Planning	\$18.50	\$18.50	\$19.00	\$20.00	\$22.50	\$37.00	\$39.00	\$44.00
DBI	\$18.50	\$18.50	\$19.00	\$20.00	\$22.50	\$37.00	\$39.00	\$44.00
DPH	\$43.00	\$43.00	\$44.50	\$46.00	\$50.50	\$45.00	\$48.00	\$51.00
SFPW	\$6.50	\$6.50	\$6.50	\$7.00	\$9.00	\$9.00	\$10.00	\$11.00
SFPD	\$6.00	\$6.00	\$6.00	\$6.00	\$6.00	\$3.00	\$3.00	\$3.00
ENT. Comm.	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$2.00	\$2.00	\$2.00

LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. Set forth below is a description of the lawsuits that were filed, pending, or resolved during the year challenging the Board's determinations.

Resolved: David Donofrio v. City & County of San Francisco, et al.

In two separate lawsuits, a neighbor challenged the approvals of a home expansion project at 11 Gladys Street in Bernal Heights. After filing a writ petition in the Superior Court, the petitioner has taken no further steps to litigate. There was no record filed with petition or requested for either case. Petitioner dismissed this litigation on February 23, 2024.

Resolved: 2700 Sloat Holding, LLC v. CCSF

The property owner filed two separate lawsuits after the Board of Appeals upheld the Zoning Administrator's interpretation and application of the Planning Code. The first lawsuit challenged the City's: (1) interpretation of State Density Bonus Law in form-based districts; (2) requirement for affordable housing fees for State Density Bonus Law projects; and (3) affordable housing tiering regulations. The property owner sought a declaratory judgment and injunction. In the second lawsuit, the property owner was petitioning for a writ of mandate and declaratory relief regarding the Zoning Administrator's bulk code interpretation. The property owner alleged violations of the Housing Crisis Act and CEQA. Petitioner sold the 2700 Sloat property to a new developer who is pursuing a new and different project for the site. Petitioner dismissed both lawsuits on May 29, 2024.

Pending: San Francisco Care Center v. CCSF

The petitioners in this case allege that the City improperly denied a building permit. In 2000, petitioners entered into a development agreement with the City to build an assisted living facility with 112 units. In 2007, after the project was complete, petitioners made unpermitted improvements to remove several assisted living units and create two master administrator suites. The Department of Building Inspection issued a Notice of Violation in 2017. Petitioners sought a permit to legalize the work. The Planning Commission disapproved the permit, and the Board of Appeals upheld that determination in 2018. The petitioners requested that the City prepare the administrative record. On February 2, 2019, the City demanded that petitioners provide a deposit for the preparation of the record. Petitioners did not respond and there has

been no further action on the writ petition. In a related action prosecuted by the City Attorney's Office against the Care Center and related defendants, the trial court issued a statement of decision in defendants' favor on certain issues, but also found that defendants violated the Building Code and imposed penalties under the State's Unfair Competition Law. The City Attorney's Office moved for a new trial, which was partially granted. Judgment was entered on March 2, 2023, and satisfaction of judgment was acknowledged and filed on June 5, 2023. Petition remains unresolved but the time to bring this matter to trial has lapsed. The City Attorney's Office intends to seek mandatory dismissal of the litigation for failure to prosecute.

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

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 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 were filed 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 the 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 Zoning Administrator 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. The City has since prevailed in the appeal of this case, and that ruling is now final.

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 has not yet been briefed. In August 2017, another of the state court cases was rejected

based on the petitioner's failure to timely serve. The two most recently filed cases, stemming from the Board's 2017 decisions, are still before the trial court.

The parties have reached a settlement, and the execution of the settlement is ongoing. The subdivision map has been issued and permitting is underway. One of the parties to the settlement has just informed the court of its desire to back out of the deal, as the property can no longer be appraised for the value established in the settlement. The trial court set a further settlement conference to discuss possible resolution and the City is exploring whether a modified agreement is possible. Discussions with the property owners regarding alternative settlement approaches are ongoing.

Pending: 1900 Bryant Street Investors, LLC v. City and County of San Francisco, et al.

Two separate lawsuits were filed by the property owner for this matter. The property owner sought a Letter of Determination from the Zoning Administrator concerning whether space at 535 Florida Street could be converted to a cafeteria for employees of a laboratory at a neighboring property, and whether this change of use would be subject to Planning Code Section 202.8 (Prop X, 2016). Section 202.8 requires that, in the zoning district where 535 Florida Street is located, any project proposing to convert more than 5,000 square feet of production, distribution, and repair (PDR) space into a new use must include replacement PDR space at a ratio of .75 square feet for every one square foot removed. The Zoning Administrator reviewed the permit history for the existing catering and retail use at the property and determined that the project proposed converting more than 5,000 square feet of PDR space to a new use despite some accessory office space at the property, and thus Section 202.8 of the Planning Code applied to the proposed employee cafeteria project. The Board upheld the Zoning Administrator's determination on February 17, 2021, finding that the Zoning Administrator did not err or abuse his discretion in the Letter of Determination. The property owner filed a writ in the Superior Court on May 18, 2021, alleging that the Board abused its discretion in upholding the ZA's Letter of Determination. On May 20, 2022, the Zoning Administrator issued a second Letter of Determination finding that lack of notice was a procedural oversight but did not invalidate permit or prejudice the permit holder. The Board upheld the second Letter of Determination on July 20, 2022. The Property owner then filed the second lawsuit – a writ petition with constitutional damage claims. The property owner is challenging the second Letter of Determination finding that the lack of Planning Code 312 notice did not invalidate the building permit. The parties have explored settlement options, but settlement appears unlikely. The City has begun preparation of the record and expects to litigate the writ claims.

Pending: Turon v. City and County of San Francisco, et al.

A property owner is challenging suspension of building permits for renovation of his two-unit flat at 2722-2724 Folsom Street. The owner alleges that the Department of Building Inspection approved the work and that the Planning Department is retaliating for an earlier dispute. This action follows a settlement of an earlier case that was also before the Board of Appeals regarding the property's legal dwelling units. The property owner is seeking a writ of mandate and alleging constitutional claims. The City moved to dismiss, which was partially granted. The parties have entered settlement discussions and executed a term sheet. The parties are attempting to work through the final issues for the settlement agreement. The Court has scheduled an October 2024 case management conference and February 2025 trial date if the parties do not ultimately settle the litigation.

Pending: Pluta v. City and County of San Francisco, et al.

A pro se litigant is challenging the denial of a proposed variance to subdivide and redevelop residential property at 4300 17th Street. The Board upheld the Zoning Administrator's denial of the variance. The proposed project would retain an existing two-unit building, add an Accessory Dwelling Unit, and build two new units on a new lot. The project requires a conditional use authorization and a variance, but the plaintiff is only challenging the denial of the variance. The plaintiff alleges violation of the Housing Accountability Act, abuse of discretion, takings, violation of the Equal Protection Clause, and fair housing violations. Plaintiff has not prosecuted the case so far. Plaintiff tried to file a Builder's Remedy project on February 1, 2023, but was informed by the Planning Department that HCD certified the Housing Element making a Builder's Remedy project unavailable.

Pending: Memarzadeh v. Board of Appeals

In two separate lawsuits, the property owner is challenging the issuance of a street-tree removal permit and a variance for a vertical addition to an existing rear-yard structure on a sloped lot at 408–412 Cortland Avenue. Both writs were untimely filed. The City filed a demurrer to the case challenging the variance, which was granted without leave to amend on September 18, 2024. The City will continue to discuss with petitioner voluntary dismissal of the tree case. If petitioner proceeds with litigation, the City intends to file a demurrer seeking dismissal of the tree case based on expiration of the statute of limitations and failure to bring the case to trial within the five-year deadline.

Pending: Susy Chen v. San Francisco Board of Appeals, et al.

The petitioner is challenging her neighbor's residential addition at 436 Eureka Street. The petition alleges there was a lack of the required 311 notice and that the project does not comply with the Planning Code or design guidelines. The petition also alleges denial of fair hearing, and violation of due process. The petitioner has not requested the administrative record or otherwise advanced the litigation. The City is monitoring the case, and will revisit its status. The petitioner claims she has the right to prepare the administrative record and has sought leave to amend her First Amended Petition to add a CEQA claim. On January 23, 2023, the Court denied petitioner's motion for leave to amend. The Court granted Petitioner's second motion to supplement with the understanding that City would file demurrer on statute of limitations grounds.