

RULES OF THE  
ACCESS APPEALS COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

Rule 1. Definitions

- (a) Commission. "Commission" means the Access Appeals Commission of the City and County of San Francisco.
- (b) Secretary. "Secretary" means the secretary of the Commission.
- (c) Department. "Department" means the Department of Building Inspection.
- (d) Director means the director of the Department.
- (e) Inclusions. The singular includes the plural, and "person" includes partnership, corporation, association, or other entity.

Rule 2. Membership

- (a) Number and Appointment. The Commission is composed of five members appointed by the Building Inspection Commission. Two are persons with a physical disability, two are persons experienced in construction, and one is a public member. Members are reimbursed at \$125.00 per meeting attended. (Health & Saf. Code, §19957.5, subd. (b); Proposition G; San Francisco Building Code § 105.3.2.)
- (b) Terms. Except for the first five members appointed, members serve staggered four-year terms. When a vacancy occurs for any reason, the appointing authority will appoint a successor. If the vacancy occurs during a term, the successor will serve the remainder of that term. (S.F. Building Code, § 105.3.2.)

Rule 3. Officers and Staff

- (a) President and Vice President. The elective officers of the Commission are the President and Vice President. The President is the presiding officer of the Commission, and has the powers and duties conferred on that office by law and custom.

If the President is absent or disqualified, or the office is vacant, the Vice President temporarily exercises the powers and duties of the President. Each has a vote.

(b) Elections. The President and Vice President are elected at the first regular meeting of the Commission after the first day of November of each year. Incumbents may not succeed themselves in office. The office of President and Vice President shall be rotated among the Commission members, with the Vice President succeeding to the office of President the following year. If the Vice President declines to accept the nomination as President, the President shall be elected from among the other members excluding the incumbent.

(c) Terms. The President and the Vice President take office on the date of their election. They hold office for one year or until their successors are elected. Each may be removed from office for misconduct in office or repeated neglect of duty by the votes of three members after reasonable notice and opportunity to be heard. If a vacancy occurs in either office for any reason, a successor will be elected at the next regular meeting to serve until the next regular election.

(d) Secretary. The Director or a designated representative is ex officio the permanent Secretary of the Commission. The Secretary is not a member of the Board, serves without compensation and has no vote. (S.F. Building Code, § 105.3.2.) The duties of the Secretary are to act as custodian of the records of the Commission, to make a complete record of all proceedings of the Commission, and to perform any other functions directed by the Commission or by these rules.

(e) Staff. The Department of Building Inspection provides necessary staff services to the Commission. (S.F. Building Code, § 105.3.2.) The Department's staff representative shall file and process all appeals to the Commission, send all notices required by law or by these rules, prepare the agenda of the meetings of the Commission, provide the Commission with a written statement of each case with the

agenda materials and give an oral presentation of the case at the Commission's hearing on the matter.

#### Rule 4. Meetings

(a) Meetings Open and Public. All meetings of the Commission are open and public. (Gov. Code, § 54953; San Francisco Charter, § 4.104, paragraph 2; Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, § 67.5; S.F. Building Code, § 105.3.6.)

(b) Quorum. Three members constitute a quorum. (S.F. Charter, § 4.104, paragraph 3.)

(c) Regular Meetings. The regular meetings of the Commission are held on the second Wednesday of each month at 1:00 p.m. and on the fourth Wednesday of the month at 1:00 p.m. in the room provided at City Hall. If that day is a holiday, the meeting is held on the next business day at the same time and place. (Gov. Code, § 54954; S.F. Charter, § 4.104; S.F. Admin. Code, § 67.6.)

(d) Special Meetings. Special meetings of the Commission may be called, but the call must comply with the requirements of state and local law. (Gov. Code, § 54956; S.F. Charter, § 4.104; S.F. Admin. Code, § 67.6(f).)

(e) Cancellation. The President may cancel any regular meeting when notified by the Secretary that there is insufficient business to be conducted or that a quorum cannot be achieved. The Secretary shall promptly notify each member that the meeting has been cancelled, and shall cause a notice of the cancellation to be conspicuously posted on or near the door of the meeting place prior to the scheduled time of the meeting.

(f) Agenda. At least fourteen days before each regular meeting the Secretary shall send a draft copy of the agenda of the meeting to each member. At least seven days before each regular meeting the Secretary shall send a copy of the agenda to all parties to matters on the agenda and to any person who has requested in writing to

receive the agendas of Commission meetings. Copies of the agenda shall also be filed with the Documents Department of the San Francisco Public Library and conspicuously posted on or near the door of the meeting place at least 72 hours before the meeting. (Gov. Code, § 54954.2(a); S.F. Admin. Code, §§ 8.16 and 67.7.)

Materials for each matter to be decided shall be sent to each Commission member with the draft agenda. Agendas of meetings and documents on file with the Secretary related to a matter on the agenda are also available for public review at the offices of the Department, 1660 Mission Street. (Gov. Code, § 54957.5; S.F. Admin. Code, § 67.9.)

(g) Rules of Evidence. Technical rules of evidence will not be enforced at Commission meetings. However, all persons testifying in any matter on the Commission agenda will first be sworn by the Official Reporter. Any relevant evidence will be admitted if it is the kind of evidence on which responsible persons are accustomed to rely in conducting serious affairs, whether or not it would be admissible in a civil trial.

(h) Duty to Vote. When a question is put to a vote at any meeting, each member present must vote for or against it, unless disqualified for conflict of interest under state or local law or excused from voting by a majority of the other members present. (S.F. Charter, § 4.104, paragraph 3; S.F. Admin. Code, § 1.29.)

(i) Method of Voting. No motion, resolution, or nomination need be seconded. All voting is by roll call and an affirmative vote of three members is sufficient to take any action. (S.F. Charter § 4.104, paragraph 3.)

(j) Official Reporter. A phonographic reporter, designated by the Commission as its Official Reporter, shall attend all meetings of the Commission and shall take down by phonographic report all of the Commission's proceedings.

When requested to do so by any party or parties in writing, the Official Reporter must, within a reasonable period of time after the request has been made,

transcribe such specific portions as may be requested and certify to the same as being correctly reported and transcribed. The fees for such transcription shall be at the expense of the party requesting the transcript. The fees shall be as prescribed by Government Code Section § 69950. (S.F. Building Code § 105.3.7.)

The Official Reporter shall notify the Commission of all requests for transcripts, and shall furnish the original copy thereof to the Commission.

(k) Public Comment. At the beginning of each calendar, there will be time set aside for members of the public to address the Commission on items of interest to the public that are within the subject matter jurisdiction of the Commission and do not relate to a matter calendared on the agenda for hearing. Each member of the public may address the Commission for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President or Chairperson may continue public comment to another time during the meeting. (Gov. Code, § 54954.3(a); S.F. Admin. Code, § 67.17.)

With respect to agenda items, the public may address the Commission when the item is called with one exception. When an agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Commission has closed the public hearing, the public's opportunity to address the Commission must be exercised during the public comment portion of the calendar.

(l) Continuances. At the request of any party, the Commission may grant continuances for good cause shown at the time of the hearing. Upon written request in advance of the hearing date, continuances may be granted by the Secretary with the approval of the President of the Commission with the concurrence of all parties to the appeal and the Director of the Department. A request for continuance that is opposed by one of the parties to an appeal or request for ratification, or by the Director of the Department, may be granted only with the approval of a majority of the members present at the public hearing on the matter.

It is the general practice of the Commission to grant a request for continuance made at the time of hearing if there are fewer than four members present.

#### Rule 5. Appeals

(a) Right to Appeal. Any person may appeal to the Commission from any action taken by the Department in enforcing or interpreting the statutes or regulations governing access by persons with disabilities to public accommodations or facilities constructed with governmental or private funds or actions taken by the Department to abate violations of the regulations. (Gov. Code, tit. 1, div. 5, ch. 7; Health & Saf. Code, div. 13, pt. 5.5; Cal. Admin. Code, tit. 24; S.F. Building Code, § 105.3.3.)

(b) Method of Appeal. An appeal is taken by filing a written notice of appeal with the Secretary of the Commission on the form prescribed. The appellant may attach to the notice any documents that support the appeal, and must furnish the Secretary with an original and seven copies of the notice and any attached documents. (S.F. Building Code, § 105.3.4.)

#### (c) Electronic Submission of Access Appeals Documentation

1. Written Documentation of Appeal. The Commission requires an appeal package with eight items as specified in its Information Guide, updated from time to time. The current, November 14, 2007 Guide states that:

"Each appeal package must include items 1 through 8 in the order noted below. Failure to include this documentation may result in an appeal being rejected for incompleteness.

1. Cover sheet with building identification and contact information.
2. Completed Notice of Appeal form.
3. Copy of front and back of permit application.
4. Unreasonable Hardship Request (UHR) form.
5. Copies of Department of Building Inspection correspondence and email.

6. Written narrative, explaining basis of appeal.
7. Verification of purported costs of compliance.
- \*8. Relevant plans, 11 x 17 maximum size."

2. Electronic Documentation of Appeal. In addition to written submittals, Effective for appeals submitted 60 days after the adoption of this language, in addition to written submittals, Appeal Packet Items 1, 2, 4 and 6 shall be submitted to the Department representative as one or more electronic document text files. Items 3, 5, and 7 may be submitted as document text files or may be scanned from original documents and submitted as tagged Portable Document Format (.pdf) files.

\*Although preferred, it is not required that Item 8, Relevant Plans, be submitted in electronic form.

It is the responsibility of appellant to make sure that all electronic files are together, and to confirm their receipt by the Department. The Department shall specify which commonly used file formats and media formats can currently be accepted.

Where it presents an undue hardship, the Secretary may, at his or her discretion, waive the requirements for electronic submission of documents.

(d) Notice. See Rule 4, paragraph (f) for notice requirements.

(e) Appearances; Testimony; Additional Documentary Evidence; Communication With Commission. The appellant must appear at the hearing in person or by representative. Failure to appear will be deemed an abandonment of the appeal. The appellant may but need not be represented by counsel, and may present witnesses. All persons testifying in any matter on the Commission agenda will first be sworn by the Official Reporter. Acceptance of additional documentary evidence at the hearing is at the discretion of the President or Chairperson.

Written submittals must be submitted to the Department representative nineteen days in advance of the hearing date by 12:00 noon. When an appeal has been continued to a later hearing date, any party may supplement the record with additional

written appeals, provided that such additional materials are submitted not less than nine days before the hearing.

All communications with the Commission by parties to an appeal shall be through the Commission secretary. All submissions of documents supporting an appeal and other written materials shall be made through the Department representative.

(f) Order of Presentation. In cases where the appellant is the owner of the property that is the subject of the hearing, the Director's staff representative will make the first presentation followed by the appellant, each for up to seven minutes. Any interested person not affiliated with the principals who wishes to speak on the item may then be heard once for up to three minutes. (Gov. Code, § 54954.3(a); S.F. Admin. Code, § 67.17(c).) The Director's representative and the appellant then each have three minutes for rebuttal. Additional time may be granted at the discretion of the President or Chairperson.

In cases where the appellant is a third party, the appellant will make the first presentation followed by the owner of the property or the owner's representative, each for up to seven minutes. The Commission may request a Departmental response at its own discretion. Any interested person unaffiliated with the principals who wishes to speak on the item may then be heard once for up to three minutes. (Gov. Code, § 54954.3(a); S.F. Admin. Code, § 67.17(c).) The appellant and the property owner then each have three minutes for rebuttal. Additional time may be granted at the discretion of the President or Chairperson.

#### Rule 6. Requests to Ratify

(a) Necessity for Ratification. State law provides that certain actions of the Department are subject to ratification by the Commission. (Cal. Admin. Code, tit. 24, pt. 2, § 101.17.11 section 4.)

(b) Request to Ratify. If the Department takes any action of the kind referred to in the preceding paragraph, the Director shall send a written request for ratification to

the President and a copy to each member. The original and each copy of the request shall be accompanied by an explanation of the action, and may include any supporting documents.

(c) Notice. At least fourteen days before the meeting at which the request will be heard, the Secretary shall send a draft notice of that meeting to each member with the agenda materials. At least seven days before the meeting, the Secretary shall send a notice of the meeting to each member and to the party who will benefit from the action of the Department if it is ratified.

(d) Order of Presentation. At the hearing the Director's staff representative will first present the reasons for the action. Any interested person may then support or oppose the request. The Director's representative may then present a rebuttal.

#### Rule 7. Appeals on Consent Calendar

(a) Purpose. This rule provides a procedure under which the Commission may calendar an appeal as a consent calendar item.

(b) Method of Calendaring. An item may be placed on the consent calendar by the Secretary following the filing by an appellant of a written notice of appeal with a request for consent calendar consideration of the appeal. Items may be placed on a consent calendar if they satisfy the following requirements: (1) the appeal involves a matter that was the subject of an earlier appeal where the Commission approved the appeal, (2) the appellant is seeking approval of a new appeal and the reason for the appeal is the same as the reason that gave rise to the earlier appeal, and (3) the Secretary determines that site conditions and code requirements that prompted the prior appeal remain the same. Such an appeal may arise, for example, but not limited to, a case where the Commission approved a hardship exemption for an earlier permit and the appellant is now seeking the same hardship exemption for a new permit and the same physical or legal restraints that gave rise to the original hardship exemption appeal remain unchanged. The appellant shall attach to the notice any documents that support

the appeal, which may include the previous decision of the Commission and documentation that no change in conditions or code requirements have occurred. The appellant must furnish the Secretary with an original and seven copies of the notice and any attached documents.

(c) Applicable Procedures. Notwithstanding Rule 5(d), the appellant is not required to be present at the Commission hearing, no evidentiary hearing on the matter will be held and the procedures of Rule 5(e) will not apply.

(d) Voting. Appeals on the consent calendar may be approved by a single vote for all items without discussion or debate. Notwithstanding Rule 7, a roll call vote shall not be required on consent calendar items. Any Commissioner, any member of the public or the Director or the Director's representative, may request that an item on the consent calendar be placed on the regular agenda for that Commission hearing or for a later hearing. If an item is removed from the consent calendar, it shall be calendared for a later meeting, unless the appellant or the appellant's representative is present and agrees to consideration of the appeal on the regular agenda for that Commission hearing.

#### Rule 8. Decisions

(a) Time. The Commission shall make its decision on an appeal or a ratification request at the meeting at which the matter is heard, unless it determines that it needs additional information or a site inspection. If it so determines, it shall continue the matter to a subsequent meeting and arrange to obtain the additional information or hold the site inspection without delay.

(b) Form and Content of Decision. Decisions and recommendations of the Commission shall be by resolution, which shall be retained as part of the Commission's official records. In its decision the Commission may approve the action of the Department unconditionally or conditionally, or may approve it in part and disapprove it in part, or may disapprove it entirely. If the Commission disapproves an

interpretation by the Department of a statute or regulation, it shall declare its own interpretation for the Department's guidance. (S.F. Building Code, § 105.3.8.)

(c) Method of Voting. All decisions on an appeal or a ratification request must be taken by roll-call vote of the members. The Secretary shall record the decision and the vote of each member in the minutes.

(d) Notice. Following the hearing the Secretary shall promptly send a written notice of the decision to the appellant and to other parties to the appeal if any. (S.F. Building Code, § 105.3.8.). The resolution of the decision must be signed by the Commission Secretary and approved in writing by the Commission President. A draft resolution shall be sent by the Commission Secretary to the Commission President, who will have up to three business days after receipt to approve in writing. To avoid delay of City business, any draft resolution to which the President does not respond within four business days may be deemed approved and may be published by the Secretary.

(e) Rehearing. The Commission may rehear an appeal upon which a decision has been rendered upon the motion of a member of the Commission and the affirmative vote of at least three of its members, provided that a request for rehearing has been made in writing within 10 days of the date of the decision. (S.F. Building Code, § 105.3.4.1.)

Rehearing requests may be filed only by parties to the appeal. In no event shall there be more than one rehearing after the Commission has voted on an appeal. No requests for rehearing shall be accepted after the Commission either has considered and rejected a request for rehearing or has voted to rehear a matter and has so reheard and voted.

It shall be the general practice of the Commission to allow testimony for up to three minutes for each speaker when a request for rehearing is heard by the Commission.

(f) Finality. All decisions are final as to the Department in the absence of fraud or prejudicial abuse of discretion. (Health & Saf. Code, § 19957.5, sub. (c); S.F. Building Code, § 105.3.3.)

(g) Publication. Meeting notices and agendas, meeting minutes and resolutions of decision are public documents. Each shall be published in a timely manner on the Building Department's public web site. Meeting notices shall be posted to the web site at least five business days before each meeting. A copy of the draft minutes shall be sent to the Commissioners within 13 days of the meeting. Minutes shall be posted to the web within 5 days of approval. Resolutions of decision shall be posted to the web site within 10 business days after final publication.

#### Rule 9. Site Inspections

The date and time for official site inspections by a quorum of the Commission shall be by motion and the vote of a majority of members present. A vote shall be by motion. Official site inspections by a quorum of the Commission at the same time shall be in accordance with the special meeting requirements of the Sunshine Ordinance, S.F. Admin. Code § 67.6(f).

#### Rule 10. Amendment or Suspension of Rules

(a) Limitations. Rules that are restatements of state or local law cannot be suspended or amended. Other rules may be suspended or amended, but no amendment is effective unless it is approved by the votes of at least four members.

(b) Method of Amending. The Commission must hold a public hearing on any proposed amendment of these rules. The hearing cannot be held until the proposed amendment has been calendared for hearing for at least 10 days.. (S.F. Charter, § 4.103.)

#### Rule 11. Parliamentary Authority

The rules of parliamentary practice, as set forth in Robert's Rules of Order, shall govern all meetings of the Commission except as provided for in these rules.

## Rule 12. Abatement Appeals

These rules shall apply to all Commission hearings, including abatement appeals.

## Rule 13 Commission Documents and Reports

All written reports and reports made on Commission letterhead, and an outline of all oral reports made on behalf of the Commission, shall be approved by a majority of the Commission prior to distribution.

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### History Note

Rules 1 through 9: adopted February 7, 1983

Amended: March 8, 1995

Amended: June 14, 1995

Amended: July 10, 1995

Amended: October 23, 1995

Amended: April 10, 1996

Amended: October 28, 1996 (to conform citations to revised Building Code and Charter section numbers)

Amended: September 9, 1998 (Rule 3(b) - Elections)

Amended: February 10, 1999 (Rule 4(c) – Regular Meetings)

Amended: April 14, 1999 (Rule 4(c) – Regular Meetings)

Amended: May 9, 2007 (Rule 7 – Consent Calendar added; conform citations to revised Building Code)

Amended: June 23, 2010 (Rule 8(d) and Rule 8(g) – Decisions)

Amended: August 25, 2010 (Rule 5(c) – Electronic Submission of Access Appeals Documentation, added); Rule 8(g) Decisions, amended