

1 [Building Inspection Commission Appeals]
2 AMENDING PART I OF THE SAN FRANCISCO MUNICIPAL CODE (ADMINISTRATIVE
3 CODE) BY ADDING CHAPTER 77 THERETO AND AMENDING PART II, CHAPTER 1 OF
4 THE SAN FRANCISCO MUNICIPAL CODE (BUILDING CODE) BY ADDING SECTION 105.8
5 THERETO TO IMPLEMENT THE CHARTER-MANDATED APPELLATE AUTHORITY OF
6 THE BUILDING INSPECTION COMMISSION, TO PROVIDE THAT APPEALS HEARD BY
7 THE FORMER ABATEMENT APPEALS BOARD SHALL BE HEARD BY THE COMMISSION,
8 AND TO AUTHORIZE AN EXEMPTION FROM OR REFUND OF APPEAL FEES UNDER
9 SPECIFIED CIRCUMSTANCES; AMENDING TABLE 1-K OF THE BUILDING CODE TO
10 ESTABLISH BUILDING INSPECTION COMMISSION APPEAL FEES;

11 Note: The entire Section is new.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Part I of the San Francisco Municipal Code (Administrative Code) is hereby
14 amended by adding Chapter 77, to read as follows:

15 **SEC. 77.1. PURPOSE.** The purposes of this Chapter are to implement the provisions
16 of Section D3.750-4 of the San Francisco Charter, to establish procedures for the processing
17 of appeals to the Building Inspection Commission, and to provide that appeals heard by the
18 former Abatement Appeals Board shall be heard by the Building Inspection Commission.

19 **SEC. 77.2. DEFINITIONS.** For purposes of this Chapter, the following definitions shall
20 apply:

21 (a) Appellant(s) shall mean any person or persons, or their authorized agents, who
22 have filed an appeal or request for jurisdiction with the Commission.

23 (b) Applicant shall mean any person, or his or her authorized agent, requesting a
24 written decision or determination from a Department.

25 (c) Commission shall mean the Building Inspection Commission.

1 (d) Department shall mean any one of the City departments whose decisions or
2 determinations are appealable to the Commission pursuant to San Francisco Charter Section
3 D3.750-4 and this Chapter, unless the context indicates otherwise.

4 (e) Departments shall mean all of the City departments whose decisions or
5 determinations are appealable to the Commission pursuant to San Francisco Charter Section
6 D3.750-4 and this Chapter.

7 (f) Decision or determination shall mean any action listed in Section 77.3 which is
8 made by the person or persons authorized by the Director of the Department of Building
9 Inspection, the Director of the Department of Public Works, or the director of the San
10 Francisco Water Department to make such decisions or determinations.

11 (g) Mail shall mean to place in the United States Mail, postage pre-paid.

12 (h) Person shall include an individual, firm, corporation, or association.

13 (i) Shall is mandatory.

14 **SEC. 77.3. APPEALS TO THE COMMISSION.** The Commission may hear and
15 decide appeals of the following matters:

16 (a) Decisions or determinations regarding applications for permits under the San
17 Francisco Building, Electrical, Housing, Mechanical, and Plumbing Codes, excluding
18 decisions appealable to the Access Appeals Commission or Board of Appeals.

19 (b) Decisions or determinations made by the Department of Building Inspection in
20 the enforcement of the Codes enumerated in subsection (a) above and the other laws that it
21 enforces.

22 (c) Decisions or determinations on sidewalk and encroachment permits and all
23 other decisions or determinations made by the Department of Public Works necessary for the
24 completion or occupancy of buildings or structures under the Codes enumerated in
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1 subsection (a) above, excluding those decisions appealable to the Board of Appeals or which
2 have been appealed to the Board of Supervisors pursuant to the Public Works Code.

3 (d) Decisions or determinations made by the San Francisco Water Department
4 necessary for the completion or occupancy of buildings or structures under the Codes
5 enumerated in subsection (a) above, excluding those decisions appealable to the Board of
6 Appeals.

7 (e) A Department's failure to render a written decision or determination within fifteen
8 (15) days of a request to do so.

9 (f) Abatement actions pursuant to Section 105.2 of the San Francisco Building
10 Code.

11 **SEC. 77.4. HEARING BY TECHNICAL BOARDS AND ADVISORY COMMITTEES.**

12 During the Commission's hearing of an appeal, the Commission may determine that the
13 appeal involves technical matters which should be and have not already been heard and
14 decided by the appropriate technical board within the Department of Building Inspection. In
15 such a case, the Commission may in its discretion decline to decide the appeal and refer the
16 matter to the appropriate technical board for a final decision. In the alternative, the
17 Commission may continue the appeal for a period not exceeding two months in order to
18 obtain the advice and recommendation of those technical boards, advisory committees, or
19 persons that the Commission deems appropriate.

20 **SEC. 77.5. APPEAL PROCEDURES. (a) Notice of Appeal; Time Limits.** An
21 appeal shall be made by filing with the Commission a Notice of Appeal on a form authorized
22 by the Commission, together with the applicable filing fee and such other information as the
23 Commission may require. The Notice of Appeal shall set forth a concise statement of the
24 issues, and must be filed within fifteen (15) calendar days of the date the Department mails its
25 written decision or determination. A Department's failure to render a written decision or

1 determination is appealable by the applicant fifteen (15) working days after he or she has
2 requested a written decision or determination from the Department.

3 **(b) Rejection of Appeal. (1) Notice to Appellant.** If the Commission Secretary
4 rejects an appeal for lack of jurisdiction or for failure to submit the appropriate filing fee or
5 required documentation, the Secretary shall send notice of the rejection and reasons therefor
6 to the appellant or appellant's authorized agent by certified mail within five (5) days of the
7 filing of the appeal. If the reason for rejection is an incomplete submittal, the Secretary shall
8 include in the notice a list of all documents, materials, and other information needed to
9 complete the appeal. Filing of the appeal shall be considered timely so long as the Notice of
10 Appeal and applicable filing fee are submitted within the fifteen-day appeal period.

11 The Secretary may not reject an appeal if the required notice is not sent to the
12 appellant within five days of the filing. The Secretary's failure to act, however, shall not confer
13 jurisdiction upon the Commission where none exists nor prohibit the Commission from
14 requiring additional documentation or other information from the appellant.

15 **(2) Request for Jurisdiction.** If the Commission Secretary has rejected an appeal for
16 any reason, or if the 15-day appeal period has expired, the appellant may request the
17 Commission to grant jurisdiction by filing a Request for Jurisdiction on a form authorized by
18 the Commission, together with the applicable filing fee and such other information as the
19 Commission may require. A Request for Jurisdiction shall be filed within fifteen (15) calendar
20 days of the date the Commission Secretary has rejected an appeal or within fifteen (15)
21 calendar days after the appellant has actual or constructive knowledge of the right to appeal.
22 The Commission may grant jurisdiction for an appeal filed beyond the 15-day appeal period
23 only upon a showing by the appellant that the delay in filing the appeal was due to
24 misrepresentation, mistake, or other error on the part of the City. However, a showing that a
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1 Department failed to provide notice of the right to appeal required by Section 77.8 (b) shall
2 require the Commission to accept an appeal beyond the 15-day appeal period.

3 **(c) Scheduling of Appeals.** The date, time, and place of a hearing on an appeal
4 or request for jurisdiction shall be fixed within three (3) working days after the Commission
5 Secretary determines the filing to be complete, and the appeal shall be heard within forty (40)
6 calendar days thereafter. Once an appeal has been calendared for a hearing by the
7 Commission, the matter shall not be continued except in cases where the Commission's
8 meeting has been canceled or the appellant or appellant's authorized agent has submitted a
9 written request for continuance. Notice of a continued date shall be mailed to all parties who
10 received notice of the original hearing date.

11 **(d) Suspension of Action Being Appealed.** Upon the filing of a Request for
12 Suspension by the appellant or the appellant's authorized agent on a form authorized by the
13 Commission, the Commission Secretary shall issue to the applicable Department a written
14 notice of suspension of the decision being appealed. The suspension shall take immediate
15 effect unless said Department makes a written finding that such suspension would cause or
16 is causing a public hazard. The Department's finding shall be submitted to the Commission
17 Secretary promptly upon its having been made, and the finding shall be affirmed or denied by
18 the Commission at its next regularly scheduled meeting. Except as provided above, a
19 suspension shall remain in place until the Commission has rendered a final decision on the
20 appeal.

21 **(e) Hearing and Decision.** Upon the hearing of any appeal taken pursuant to this
22 Chapter, the Commission may, subject to the same limitations as are placed upon the
23 Department by law, approve, disapprove or modify the decision or determination being
24 appealed. The Commission shall render its decision in writing within ninety (90) calendar
25 days of the first hearing and shall set forth, as part of its decision, findings and facts sufficient

1 to establish that the Department has or has not made an error, abused its discretion or
2 complied with the law.

3 **(f) Limits on Commission's Appellate Powers.** In exercising its appellate
4 powers under this Chapter, the Commission shall have, except as provided in this section, no
5 more authority than is granted to local enforcement agencies by California statute, the
6 regulations contained within Title 24 of the California Code of Regulations and the Model
7 Codes adopted pursuant thereto.

8 The Commission is not authorized to waive provisions of the Building, Electrical,
9 Housing, Mechanical, or Plumbing Codes. However, the Commission may grant a
10 modification to those Codes in an individual case upon a finding that a special circumstance
11 makes compliance with the strict letter of the Codes impractical; provided that such
12 modification is in conformance with the intent and purpose of the Codes, and further provided
13 that the modification does not lessen any fire-protection requirement or any degree of
14 structural integrity and will not result in a condition that is less safe or less desirable from the
15 point of view of public safety. The Commission shall have no appellate powers over
16 decisions or determinations made by the San Francisco Fire Department when that
17 department has been given exclusive enforcement jurisdiction by California law or the San
18 Francisco Charter.

19 Notwithstanding any of the above, the Commission shall have the authority to interpret
20 the administrative provisions of the above-enumerated Codes.

21 **(g) Request for Rehearing.** Any party to the appeal may request the Commission
22 to rehear the matter by filing a Request for Rehearing on a form authorized by the
23 Commission together with the applicable filing fee. The Request for Rehearing shall be filed
24 within ten (10) calendar days of the Commission's action on the appeal, and shall set forth
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1 new evidence or legal error as the grounds for rehearing. The Commission may grant
2 rehearings by the vote of four members.

3 **(h) Abatement Appeals.** Notwithstanding any of the above, the provisions of
4 Building Code Section 105.2 shall govern the appeal of an abatement action wherever they
5 conflict with this Chapter.

6 **SEC. 77.6 APPEALS BARRED.** No person may file pursuant to this Chapter an
7 appeal of the following matters: (a) a decision concerning the same issue or issues at the
8 same property that was finally decided by the Commission within the previous twelve (12)
9 months; and (b) a decision made by the Commission when it was sitting as the Abatement
10 Appeals Board.

11 **SEC. 77.7. INFORMATION REQUIRED TO BE FURNISHED BY THE**
12 **DEPARTMENT. (a) Identification of Interested Parties.** Within three (3) working days of
13 receiving notice of the appeal, the Department whose decision or determination is being
14 appealed shall send written notification to the Commission Secretary of the names and
15 addresses of any persons, other than parties to the appeal, who have appeared before the
16 Department, in person or in writing, to support or oppose the Department's decision or
17 determination.

18 **(b) Department Record.** Within three (3) working days of receiving notice of the
19 appeal, the Department whose decision or determination is being appealed shall transmit to
20 the Commission Secretary a copy of the Department's entire file concerning the matter being
21 appealed, including any mechanical recordings of any hearings held by the Department.

22 **SEC. 77.8. REQUIRED NOTICES. (a) Commission Notices.** Promptly upon the
23 Commission Secretary's having determined that the filing of a Notice of Appeal, Request for
24 Jurisdiction, Request for Suspension or Request for Rehearing is complete, the Secretary
25 shall send a copy of said notice or request to the Department whose decision or

1 determination is being appealed and shall mail the notice to the owner or owners of the
2 affected property, if any, and to any persons who have filed with the Secretary a written
3 request for notification. Timely notices of the date, time and place of a Commission hearing
4 on the matter shall be sent to the Department and mailed to the appellant, owner or owners of
5 the affected property, persons on the Department's list furnished to the Commission pursuant
6 to Section 77.7(a), and other persons who have filed a written request for notice of the
7 hearing.

8 **(b) Department Forms and Informational Materials.** Notice of a right to appeal to
9 the Commission shall be printed on all materials used by a Department to process requests
10 for decisions or determinations that are subject to such appeal pursuant to San Francisco
11 Charter Section D3.750-4 and this Chapter. Such materials shall include, but not be limited
12 to: (1) permit application, inspection and other forms, and (2) informational materials provided
13 to persons seeking a decision or determination from the Department.

14 The notice shall be printed in bold face type of not less than eighteen (18) points. The
15 notice for all Departments shall state: "As provided by San Francisco Charter Section
16 D3.750-4 and San Francisco Administrative Code Chapter 77, decisions or determinations
17 made by this Department regarding applications for permits under the San Francisco
18 Building, Electrical, Housing, Mechanical, and Plumbing Codes, excluding decisions
19 appealable to the Access Appeals Commission or the Board of Appeals, are appealable to
20 the Building Inspection Commission within fifteen (15) calendar days of the date this decision
21 or determination was mailed." Notices for the Department of Building Inspection shall add the
22 information that decisions or determinations made in the enforcement of the above-
23 enumerated Codes and other laws that it enforces are appealable to the Commission. The
24 Department of Public Works shall add the information that decisions or determinations made
25 on sidewalk and encroachment permits and all other decisions necessary for the completion

1 and occupancy of buildings or structures pursuant to the above-enumerated Codes which are
2 not appealable to the Board of Appeals or have not been appealed to the Board of
3 Supervisors pursuant to the Public Works Code are appealable to the Commission.

4 (c) **Department Decisions.** All Department decisions or determinations subject to
5 an appeal to the Commission pursuant to San Francisco Charter Section D.3.750-4 and this
6 Chapter shall include notice of the right to appeal using the language set forth in (b) above.

7 **SEC. 77.9. COMMISSION RULES AND REGULATIONS.** The Commission shall
8 adopt such rules and regulations to implement San Francisco Charter Section D3.750-4 and
9 this Chapter as it deems appropriate. The rules and regulations may include, but shall not be
10 limited to: appeal and hearing procedures, standards for granting or denying requests for
11 jurisdiction and rehearing, standards for affirming and denying Department findings on
12 suspensions, and requirements for notice and mailing in addition to those set forth in this
13 Chapter.

14 **SEC. 77.10. FEES. (a) General.** Fees for hearings before the Commission pursuant
15 to this Chapter shall be as set forth in Table 1K of the San Francisco Building Code, and shall
16 be payable at the time the request for hearing is filed.

17 (b) **Exemption from Fees.** An exemption from paying the required fee or fees
18 may be granted upon the filing under penalty of perjury of a declaration of financial hardship
19 on the form provided and approved by the Commission.

20 (c) **Refund of Fees.** The Commission may authorize a refund of the fee or fees
21 paid for a hearing pursuant to this Chapter if the Commission, in its written decision, finds that
22 the respondent Department has erred.

23 **SEC. 77.11. SEVERABILITY.** If any section, subsection, clause, phrase or portion of
24 this Chapter is for any reason held invalid or unconstitutional by any court or federal or State
25 agency of competent jurisdiction, such portion shall be deemed a separate, distinct and

1 independent provision and such holding shall not affect the validity of the remaining portions
2 thereof.

3 Section 2. Part II, Chapter 1 of the San Francisco Municipal Code (Building Code) is
4 hereby amended by adding Section 105.8, to read as follows:

5 **SEC. 105.8. Appellate Authority of the Building Inspection Commission.** The
6 appellate authority of the Building Inspection Commission is as set forth in Section D3.750-4
7 of the San Francisco Charter, as implemented by Chapter 77 of the San Francisco
8 Administrative Code.

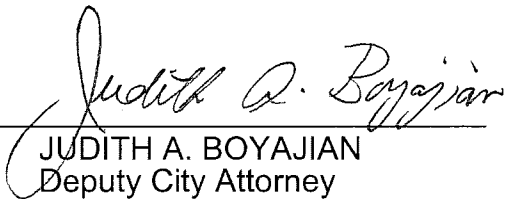
9 Section 3. Part II, Chapter 1 of the San Francisco Municipal Code (Building Code) is
10 hereby amended by amending Table 1K, to add the following:

11 BUILDING INSPECTION COMMISSION HEARING FEES:

12 Notice of Appeal	\$ 100.00
13 Request for Jurisdiction	\$ 100.00
14 Request for Rehearing	\$ 100.00

15
16 APPROVED AS TO FORM:

17 LOUISE H. RENNE, City Attorney

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19 By: 
20 JUDITH A. BOYAJIAN
Deputy City Attorney

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23
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 990798

Date Passed:

Ordinance amending Administrative Code by adding Chapter 77 and amending Building Code by adding Section 105.8 to implement the Charter-mandated appellate authority of the Building Inspection Commission, to provide that appeals heard by the former Abatement Appeals Board shall be heard by the Commission, and to authorize an exemption from or refund of appeal fees under specified circumstances, amending Table 1-K of the Building Code to establish Building Inspection Commission Appeal Fees.

May 24, 1999 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

June 1, 1999 Board of Supervisors — FINALLY PASSED

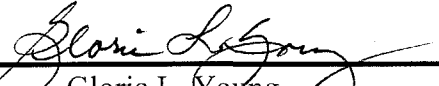
Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

File No. 990798

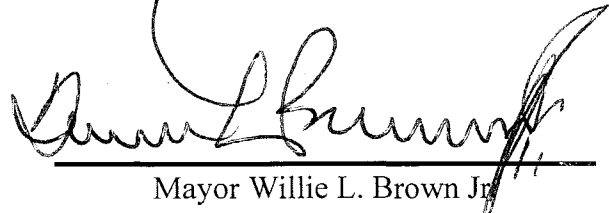
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on June 1, 1999 by
the Board of Supervisors of the City and
County of San Francisco.

JUN 11 1999

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.