

1 [Board of Appeals: Legal Representation for Planning and Building Departments.]

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3 **Ordinance amending the San Francisco Business and Tax Regulations Code by adding**
4 **Section 11(a) to establish a procedure for the City Attorney to provide legal**
5 **representation for staff of the Planning Department and Department of Building**
6 **Inspection appearing at hearings of the Board of Appeals with respect to certain**
7 **matters.**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
14 by adding Section 11(a), to read as follows:

15 SEC. 11(a) CITY ATTORNEY - REPRESENTATION OF PLANNING AND BUILDING
16 DEPARTMENT STAFF.

17 For appeals from decisions of the Planning Commission, the Zoning Administrator, the
18 Building Inspection Commission, and the Planning and Building Departments, the following procedure
19 shall be followed by staff to ensure that there is adequate legal advocacy on behalf of those
20 departments in matters that involve important public policy or legal significance.

21 (1) Staff of the Board of Appeals shall send to the deputy city attorney who has been
22 designated by the City Attorney to be counsel to the Planning Department and the Department of
23 Building Inspection a copy of (1) the advance or draft agendas at regular intervals and the final
24 agenda for each meeting as soon as it is prepared, (2) all Notices of Appeal within 5 working days of
25 when they are received by the staff of the Board of Appeals; and (3) any brief submitted to the Board of
Appeals immediately upon receipt by the staff of the Board of Appeals.

1 (2) The Zoning Administrator, Planning Department staff, and the Building Department
2 staff member assigned to the Board of Appeals shall consult with their designated deputy city attorney
3 concerning any appeals of decisions involving their respective commissions or departments.

4 (3) The department staff representative shall determine whether an appeal presents any
5 issues of important public policy and the City Attorney's Office shall have the discretion to determine
6 whether an appeal presents any issues of legal significance. The City Attorney's Office shall have the
7 discretion to determine what level of participation by the City Attorney's Office is appropriate in order
8 to defend the department's decision before the Board of Appeals. The applicable Department will
9 allow for the City Attorney's Office representation based on that determination.

10 The criteria used to make these determinations shall include, but not be limited to, whether the
11 appeal:

- 12 (a) challenges a decision of the Planning Commission or Building Inspection Commission;
- 13 (b) challenges a Zoning Administrator interpretation of a provision of the Planning Code;
- 14 (c) involves a matter that is likely to lead to litigation;
- 15 (d) raises novel issues of law.

16 The services of the City Attorney's Office in advising and representing the Planning Department,
17 including the Zoning Administrator, and Building Department in matters before the Board of Appeals
18 shall be funded by those departments and not chargeable to the Board of Appeals.

19 (4) The Zoning Administrator, Planning Department staff, and the Building Department
20 staff member assigned to the Board of Appeals shall ensure that Section 10 of the Business and Tax
21 Regulations Code is complied with such that the complete record from the department whose decision
22 is being appealed from shall be made available to each Commissioner at least one week before the
23 hearing on the appeal. Any staff report that was prepared below shall be included in the packet for
24 each hearing.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Susan Cleveland-Knowles
Deputy City Attorney