

# **RULES OF THE PORT BUILDING CODE REVIEW BOARD**

## **ARTICLE I - MEETINGS**

**Section 1.** The Port Building Code Review Board (hereinafter "Board") shall conduct regular meetings that are open to the public and held bi-annually on the first Thursday of May and November, or at other dates provided by notice. Such regular meetings shall be held on Thursdays at 1:30 p.m., in a conference room at the offices of the Port of San Francisco, Pier 1, The Embarcadero, San Francisco or other location as announced. If the regular meeting day falls on a legal holiday, it shall instead be held on the next business day or be cancelled.

**Section 2.** Special meetings of the Board shall be open to the public and shall be held at such times and places as the Board may determine by motion and majority vote, or may be called by the President for any time and place, and must be called by him or her upon the written request of two members of the Board, filed with the Board Secretary.

**Section 3.** The Board Secretary shall mail notices of meetings and hearings to all interested parties who have requested such notification, and to all parties on any list furnished to the Board by Port staff for such notification. Announcement by the Presiding Officer of the Board at a public hearing of the time and place to which a hearing is continued shall be deemed sufficient notice and no mailed notice shall be required for any such continued hearing.

**Section 4.** The Board Secretary shall prepare an agenda for each meeting, which shall be posted as required by relevant state and local laws.

## **ARTICLE II - OFFICERS AND TERMS OF OFFICE**

**Section 1.** The President and Vice President shall be elected at the first meeting of the Board, and thereafter, annually at every regular meeting in May or regular meeting closest to May. The President and Vice President shall hold office for one year at the pleasure of the Board, and until their successors are elected.

**Section 2.** The Chief Harbor Engineer shall appoint a Board Secretary to perform administrative and clerical functions for the Board.

## **ARTICLE III - DUTIES OF OFFICERS**

**Section 1.** The President shall preside at all meetings of the Board, and shall perform all other duties necessary or incidental to his or her office.

**Section 2.** In the absence of the President, or his or her inability to act, the Vice President shall take the place and perform the duties of the President.

**Section 3.** It shall be the responsibility of the Presiding Officer to assure a fair hearing to all parties, consistent with these Rules and relevant state and local laws. It shall be the responsibility of the majority of the Board that the duties of the President and Vice President are properly exercised.

**Section 4.** In the event of the incapacity or absence of the Vice President, the President may appoint an acting Vice President to serve until the elected Vice President is able to perform the duties as described in these Rules and has returned to the Board. The acting Vice President shall perform all the duties set forth in these Rules for the Vice President.

**Section 5.** A vote shall be by motion. A vote shall not be called unless by motion. A vote shall be decided by agreement of three or more members of the Board.

#### **ARTICLE IV - RECORDING OF HEARINGS AND MEETINGS**

**Section 1.** Any party (or parties, jointly) may provide a certified court reporter to transcribe an appeal hearing. Upon request of such party or parties prior to the start of the hearing, the Board may designate the court reporter's transcription as the official record of that proceeding if the parties so stipulate, provided that the requestor agrees to supply the Board with a certified copy of the transcript at no cost to the Board. Further, the Presiding Officer may, in his or her discretion, request the Board Secretary to audio record the appeal hearing.

**Section 2.** The Board Secretary shall keep a written record or minutes of the Board's meetings.

#### **ARTICLE V - APPEAL PROCEDURES & BRIEFING SCHEDULE**

##### **Section 1. Applications For Appeal; Scheduling Of Hearing**

(a) All applications for appeal to the Board shall be made by filing with the Chief Harbor Engineer a Notice of Appeal on a form provided by the Board, together with the applicable filing fee, postmarked within 15 calendar days after written notice was given of the decision that the applicant seeks to appeal. The Port's failure to render a written decision or determination is appealable to the Board by the applicant 15 calendar days after he or she has requested a written decision or determination from the Port.

The Notice of Appeal shall be addressed in writing to the Chief Harbor Engineer, Port of San Francisco, Pier 1, The Embarcadero, San Francisco, CA 94111, and shall identify the permit, order or other determination being appealed and shall set forth a concise statement of the reasons for the appeal and what action is requested of the Board. The appellant shall attach a copy of the Port permit or other written determination which is the subject of the appeal. When filing of an appeal will affect the property interest of one other than the appellant, the appellant shall include the name and address of such persons on the Notice of Appeal, and shall provide a copy of the Notice to such persons.

(b) The Chief Harbor Engineer shall file the Notice of Appeal with the Board Secretary within 5 days of receiving the Notice. If the Board Secretary rejects an appeal for lack of jurisdiction or failure to submit the appropriate filing fee or required documentation, the Secretary shall send notice of the rejection and reasons therefor to the appellant within 5 days of his or her receipt of the Notice of Appeal.

(c) Within 10 days of the receipt of a complete application, the Board Secretary shall notify all interested parties of the date when the hearing of the appeal will be held. The hearing shall be scheduled on a date not later than 45 days after the determination that the application is complete. The Board Secretary shall send one copy of the Notice of Appeal, as well as any briefing submitted by the parties, to each Board member before the hearing.

##### **Section 2. Jurisdiction Requests.**

If the Board Secretary rejects an appeal, or if the 15-day appeal period has expired, the appellant may request the Board grant jurisdiction by filing a Request for Jurisdiction on a form provided by the Board, along with the applicable filing fee. A Request for Jurisdiction shall not exceed 6 pages in length, with unlimited exhibits. An original and 10 copies shall be submitted to the Board Secretary, with additional copies delivered to any opposing parties on the same day. The Board may grant jurisdiction for an appeal filed beyond the 15-day appeal period only upon a

showing by the appellant that the delay in filing the appeal was due to misrepresentation, mistake, or other error on the part of the Port.

### **Section 3. Written Submittals.**

(a) Any written submissions that the parties to an appeal wish the Board to consider must be filed no later than 7 days before the hearing date. Parties' written submissions shall not exceed 10 pages in length, with unlimited exhibits and attachments. Parties shall submit an original and 10 copies to the Board Secretary for distribution to the Board, and shall deliver copies to the other parties on the same day.

(b) Late written submittals from the parties may be accepted only upon (i) the consent of the other parties, or (ii) the consent of the President upon a showing of good cause.

(c) Members of the public who are not parties to an appeal or representatives of a party are welcome to submit written materials to the Board. Members of the public who want their submittals considered by the Board prior to the hearing, may submit materials to the Board Secretary no later than 7 days prior to the hearing date. This subsection is to give direction to those members of the public who want their submittals to be considered by the Board prior to the hearing, and in no way interferes with the public's rights under the San Francisco Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code.

**Section 4. Conduct of 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:

In all cases, the appellant shall speak first and shall be allowed 7 minutes for their presentation of relevant testimony and evidence. Then the permit holder, representatives of the department or person from whose order the appeal is taken, and/or other parties shall be allowed 7 minutes for presentation of relevant testimony and evidence. Three minutes rebuttal shall be provided to all parties in this same order.

In cases of multiple appeals of the same department action or permit, the appeals shall be joined and the appellants shall each be allowed 7 minutes to present relevant testimony and evidence and 3 minutes for rebuttal. The Board may, at its own discretion, request a response from Port staff. Other persons desiring to speak before the Board on an appeal may speak once, not to exceed 3 minutes.

Photographs, maps, plans and drawings may be used in presentation and submitted at hearing.

**Section 5. Use of Experts.** The Board may call upon and may designate without charge experts as it deems necessary, to report upon and make recommendations concerning technical matters in appeals.

**Section 6. Site Inspections.** If a Board member makes a site visit to the subject property of a pending appeal, the Board member shall limit any discussion to understanding the site's physical conditions underlying the appeal, and shall not otherwise discuss the matter under appeal outside of a public hearing. Prior to commencement of the hearing to which such visit relates, the Board member must disclose the visit, and what he or she observed during the visit, on the record. If a quorum of the Board conducts a site visit at the same time, the site visit constitutes a special meeting subject to all special meeting requirements of the Sunshine Ordinance. (S.F. Admin. Code Ch. 67.6(f).)

**Section 7. Continuances.** Upon written request, continuances of hearings may be granted by the Board Secretary with approval of the Presiding Officer. The Board Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer.

**Section 8. Decision.** The Board shall act upon each appeal without unreasonable or unnecessary delay. The Board shall render its decision in writing by resolution filed with the Chief Harbor Engineer. The Board secretary shall mail a copy of the resolution to the appellant and other parties.

**Section 9. Rehearings.**

(a) Any party to an appeal may request the Board rehear the matter by filing a written request within 10 days of the Board's action on the appeal. The request for rehearing shall not exceed 6 pages in length, with unlimited exhibits. The prevailing party or real party in interest may submit a response to rehearing request no later than 10 days from the date of filing, which must not exceed 6 pages in length, with unlimited exhibits. An original and 10 copies of the request and response shall be submitted to the Board Secretary, with additional copies delivered to the opposing parties the same day.

Testimony not to exceed 3 minutes from each party shall be permitted when a request for rehearing is considered by the Board.

Except in extraordinary cases, and to prevent manifest injustice, requests for rehearing shall not be granted by the Board except where it is shown 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. The written request shall state: (a) the nature and character of the new facts or circumstances; (b) the names of the witnesses and/or a description of the documents to be produced; and (c) why the evidence was not produced at the original hearing. 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 for rehearing.

(b) In no event shall there be more than one rehearing after the Board has voted on an appeal, except for motions by sitting Board members to correct the Board's own errors. No requests for rehearing shall be accepted after the Board has either considered and rejected a request for rehearing or, voted to rehear a matter and has reheard it and voted.

**Section 10. Parliamentary Procedure.** At the discretion of the Presiding Officer, the rules of parliamentary practice, as set forth in Robert's Rules of Order, shall govern all meetings of the Board except as otherwise herein provided.

**Section 11. Rules of Evidence.** Technical rules of evidence will not be enforced during the Board appeal hearings. Any relevant evidence will be admitted if it is the kind upon which responsible persons are accustomed to rely in the conduct of serious affairs, whether or not it would be admissible in a civil trial.

**Section 12. Indigency.** The Board Secretary may waive the required appeal fee where the filing party meets the indigency standards set forth in California Government Code Section 68632 or its successor, and submits and Affidavit of Indigency.

**Adopted at the meeting of July 14, 2011.**