AMENDING PART I OF THE SAN FRANCISCO MUNICIPAL CODE (ADMINISTRATIVE CODE) BY ADDING CHAPTER 77 THERETO AND AMENDING PART II, CHAPTER 1 OF THE SAN FRANCISCO MUNICIPAL CODE (BUILDING CODE) BY ADDING SECTION 105.8 THERETO 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;

Note: The entire Section is new.

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

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

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

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

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

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

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

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

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

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

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

(i) Shall is mandatory.

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

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

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

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

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

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

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

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

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

SEC. 77.5. APPEAL PROCEDURES. (a) Notice of Appeal; Time Limits. An appeal shall be made by filing with the Commission a Notice of Appeal on a form authorized by the Commission, together with the applicable filing fee and such other information as the Commission may require. The Notice of Appeal shall set forth a concise statement of the issues, and must be filed within fifteen (15) calendar days of the date the Department mails its written decision or determination. A Department’s failure to render a written decision or
determination is appealable by the applicant fifteen (15) working days after he or she has requested a written decision or determination from the Department.

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

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

(2) Request for Jurisdiction. If the Commission Secretary has rejected an appeal for any reason, or if the 15-day appeal period has expired, the appellant may request the Commission to grant jurisdiction by filing a Request for Jurisdiction on a form authorized by the Commission, together with the applicable filing fee and such other information as the Commission may require. A Request for Jurisdiction shall be filed within fifteen (15) calendar days of the date the Commission Secretary has rejected an appeal or within fifteen (15) calendar days after the appellant has actual or constructive knowledge of the right to appeal. The Commission 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 City. However, a showing that a
Department failed to provide notice of the right to appeal required by Section 77.8 (b) shall require the Commission to accept an appeal beyond the 15-day appeal period.

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

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

(e) Hearing and Decision. Upon the hearing of any appeal taken pursuant to this Chapter, the Commission may, subject to the same limitations as are placed upon the Department by law, approve, disapprove or modify the decision or determination being appealed. The Commission shall render its decision in writing within ninety (90) calendar days of the first hearing and shall set forth, as part of its decision, findings and facts sufficient
to establish that the Department has or has not made an error, abused its discretion or
complied with the law.

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

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

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

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

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

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

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

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

SEC. 77.8. REQUIRED NOTICES. (a) Commission Notices. Promptly upon the
Commission Secretary’s having determined that the filing of a Notice of Appeal, Request for
Jurisdiction, Request for Suspension or Request for Rehearing is complete, the Secretary
shall send a copy of said notice or request to the Department whose decision or
determination is being appealed and shall mail the notice to the owner or owners of the
affected property, if any, and to any persons who have filed with the Secretary a written
request for notification. Timely notices of the date, time and place of a Commission hearing
on the matter shall be sent to the Department and mailed to the appellant, owner or owners of
the affected property, persons on the Department’s list furnished to the Commission pursuant
to Section 77.7(a), and other persons who have filed a written request for notice of the
hearing.

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

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

BUILDING INSPECTION COMMISSION **
BOARD OF SUPERVISORS

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

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

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

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

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

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

SEC. 77.11. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and
independent provision and such holding shall not affect the validity of the remaining portions thereof.

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

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

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

<table>
<thead>
<tr>
<th>Building Inspection Commission Hearing Fees:</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Notice of Appeal</td>
<td>$100.00</td>
</tr>
<tr>
<td>Request for Jurisdiction</td>
<td>$100.00</td>
</tr>
<tr>
<td>Request for Rehearing</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: JUDITH A. BOYAJIAN
Deputy City Attorney
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
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.

Gloria L. Young
Clerk of the Board

Date Approved

JUN 1 1 1999

Mayor Willie L. Brown Jr.